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(In)justice with Chinese characteristics: the twinned stories of two human rights activists, Wu Gan and Xie Yang

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By Jerome A. Cohen



Wu Gan; source: [China Change](#).



【谢阳煽动颠覆国家政权、扰乱法庭秩序案一审公开宣判视频】



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Xie Yang; source: [Changsha Intermediate Court](#).

The two Christmas cases of Wu Gan and Xie Yang—victims of China’s 709 Crackdown on human rights activists and lawyers in 2015—demonstrate the continuing importance and benefits of pleading guilty.

“Leniency for those who confess, Severity for those who resist.” (坦白从宽，抗拒从严) has been the fundamental maxim of criminal justice in the People’s Republic of China. The Chinese Communist Party (CCP) erected into high public principle what has long quietly been the practice of many legal systems. The insistence on confession characterized Chinese justice centuries before the rise of the CCP and for many reasons.

Confession admits the correctness of the government’s charge and helps to relieve those who administer the system of doubts or feelings of guilt they might harbor. Confession reinforces prevailing ideology. It also avoids the embarrassment and risks to administrators that appeals can cause and the delay and administrative costs involved. In China refusal to confess and insistence on appeal are seen to constitute an attack on the prosecution and the government. Confession encourages others to follow suit, and it is viewed as the first step toward the reform of the accused.

Yet how persuasive can any of these factors be when torture is so often the stimulus for confession and everyone knows this? Moreover, at least in non-political cases, the CCP is increasingly concerned about the frequency of wrongful convictions caused by coerced confessions.

The Christmas timing of the two cases is worth noting. There is no doubt the PRC government wants to be thought well of abroad as well as at home, which is why it spends so much on a worldwide system of propaganda and seeks to control the UN and other organizations regarding the PRC's suppression of human rights. Of course, it prefers not to reveal many abominable acts, which is often possible because of its domination of the media and even social media.

The timing of its repressive human rights acts depends on many factors. Certainly, when it's possible to manipulate the timing of acts of repression that are likely to be condemned by the world, the PRC is eager to do so in order to reduce publicity and minimize harm to its quest for soft power. The dates of trial hearings and sentencings are one example among many others.

The twinned stories of Wu Gan and Xie Yang may be destined to continue and provide more grist for the mills of those who study the PRC's expansive and imaginative detention policies. It will be important to see, of course, how long Wu Gan can remain alive and resistant in captivity. It will also be important to see to what extent Xie Yang, having reversed his previous stand under torture, "confessed" on demand and thereby won exemption from further formal imprisonment, will be allowed to resume his former human rights advocacy or, like most of his comrades, remain in what I call "[non-release 'release'](#)".

The misleading term "house arrest" no longer does justice to the varieties of informal, unauthorized, suffocating restrictions on their freedom that most "released" human rights advocates are suffering. Indeed, many human rights activists suffer such restrictions even before they are formally detained! The PRC has blurred the line between "detention" and "freedom", giving new meaning to these words.

In China, Lawyers, Human Rights, Criminal Justice Tags Wu
Gan, Xie Yang, "Non-release 'release'"