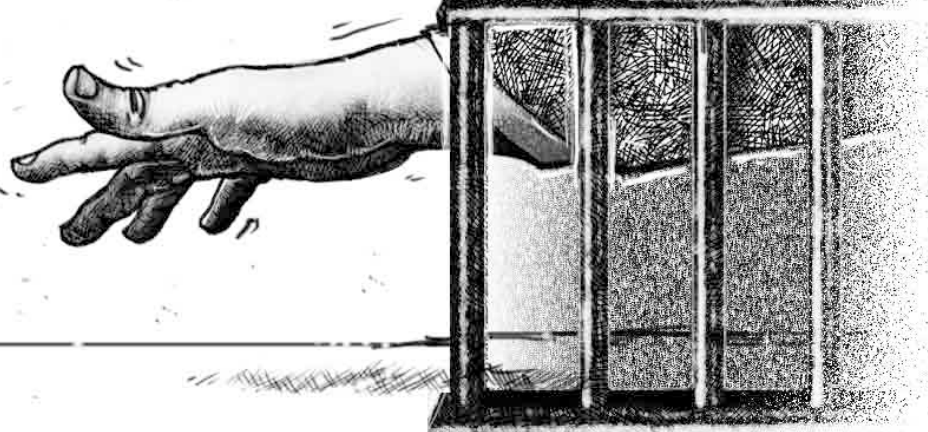
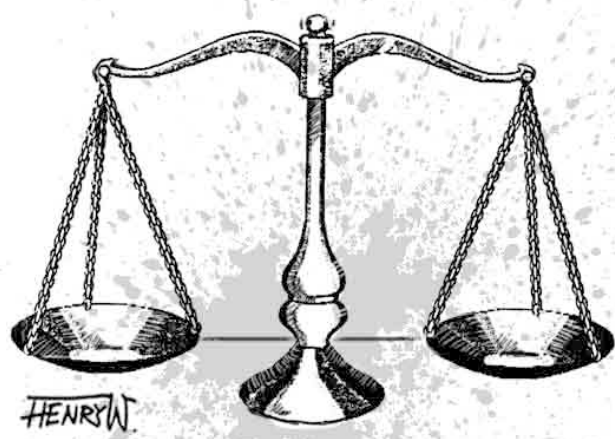


Despite public scrutiny, Chinese police continue to violate criminal justice standards in Ai Weiwei's case, writes **Jerome A. Cohen**

# Out of reach



It is now 24 days since artist-activist Ai Weiwei's (艾未未) detention by Beijing police. Yet foreign media interest has not flagged, despite the silence of the Chinese legal system and Chinese government efforts to manipulate information. Ai's family still has not received the ordinarily required notice of detention telling where he is detained and why.

There has been no attempt by police to justify this failure on the only ground permitted by law – that such notice “might hinder their investigation”. Nor have the police claimed that Ai's case falls within the narrow exceptions prescribed by law for extending a detained suspect's detention beyond seven days without their seeking prosecutors' approval.

Ai's would-be legal advisers should have been permitted to meet him weeks ago, right after detention. That is what the law requires except when the police declare that the case involves “state secrets”, which they have not. Yet police intimidation appears to prevent access to counsel even now. One lawyer was himself illegally “abducted” for several days after his discussions with Ai's family. The other, by keeping himself incommunicado, has thus far avoided the abduction, prosecution or illegal house arrest that so many other human rights lawyers have recently suffered.

Without active defence counsel, there is no hope of making police and their thugs accountable to other officials, including prosecutors, judges or legislators, not to mention the public. Although in ordinary cases even Communist Party leaders may have difficulty controlling local police, in prominent cases such as Ai's one can assume that police follow high-level party instructions.

Meanwhile, Ai's family and friends have

sought to interpret and refute whatever vague allegations Chinese officials have unfairly leaked to the press in their efforts to diminish the strong condemnations by foreign governments, media, and art and human rights groups that the case has aroused. An early commentary in the party-controlled *Global Times* seemed to confirm the widespread belief that Ai is being punished for his increasingly daring public challenges to the party's arbitrary rule and restrictions of freedom. This was soon overtaken by a report in the communist-connected *Wen Wei Po* claiming that Ai was being investigated for “economic crimes”, bigamy and pornography and that he “has begun to confess”.

The official Xinhua news agency confirmed that the investigation was focusing on unspecified “economic crimes”, as did the spokesperson for the Ministry of Foreign Affairs at a subsequent press conference. Although 10 of the 18 questions asked at the press conference were about Ai, the answers yielded little but were nevertheless entirely omitted from the official transcript. A later Xinhua dispatch embarrassingly accused Ai of plagiarism without checking its facts.

Since then, we have been treated to a broad range of rumours and speculation. The most sensational, purporting to come from a disaffected Xinhua journalist, claimed that, after having been tortured and shown a video of the even more terrible police abuse of the courageous and long “disappeared” lawyer Gao Zhisheng (高智晟), Ai confessed to tax violations in order to escape Gao's fate. Another report, from a foreign source close to certain Chinese officials, suggested that Ai may yet be investigated for involvement in one of Shanghai's many illegal land transactions.

Only three things can safely be said at

this non-transparent juncture, as we await the crucial decision on whether Ai will be formally arrested. One is that the investigation now is indeed focusing on possible income tax violations. Although we do not know why the police continue to detain Ai's associate, former journalist Wen Tao (文涛), and probably several other employees, we know that staff members, Ai's accountant, his business partners and his wife were interrogated by tax officials as well as police.

Second, it also seems clear that, whatever the evidence being assembled about tax evasion or other charges, this

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was not the motivation for Ai's detention. This case started out on a “detain first and look for justification later” basis. If evidence sufficient to sustain a conviction is found, the case will become a pre-eminent example of what criminal justice experts call “selective prosecution”. Ai has been singled out from a large number of potentially suspected offenders not because of the magnitude of any alleged economic crimes, but because of his creative and eye-catching political challenges to the regime and his defence of human rights.

Although China is rife with economic crimes that reach the highest rungs of party, government and courts, the decision whether to detain and investigate

someone suspected of such crimes is often a political act that is influenced by more than legal considerations. This is true to some extent in most countries, but China's situation is extreme.

The business and tax activities of Chinese leaders and their families are insulated from criminal investigation unless a leader loses a major power struggle. So, too, are the activities of many business executives unless they cross the politically powerful. In the rare instances when favoured executives are caught in tax offences, they sometimes avoid detention and criminal conviction, even if they had failed to pay huge amounts of tax; they are quietly allowed to settle their liability by paying at least a portion of what the tax authorities claim, plus an occasional fine. Thus, even if the police find significant valid evidence against Ai, there would be a precedent for terminating the investigation on a similar basis and releasing him.

Finally, however the investigation of this case ends, it has already demonstrated once again how China's police do not adhere not only to the standards of fair criminal justice enshrined in the International Covenant on Civil and Political Rights, which the Chinese government signed in 1998 but has yet to ratify, but also to their own country's criminal procedure law.

If a famous figure like Ai can be so blatantly abused in the glare of publicity, what protections do ordinary Chinese citizens receive from their police?

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