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## Out of jail, but by no means free



**Didi Kirsten  
Tatlow**

### LETTER FROM CHINA

**BEIJING** After Zeng Jinyan's husband, the AIDS and environmental activist Hu Jia, was jailed in 2008 for "incitement to subvert state power," Ms. Zeng began bringing their newborn daughter to jail for scheduled family visits.

Today, Baobao is 3, and Mr. Hu, 38, is due out in June. But Ms. Zeng plans to leave their daughter at home for the remaining trips to the Beijing Municipal Prison.

Baobao's questions about her father's incarceration are becoming too difficult to handle, says Ms. Zeng, 28.

"She's asking, 'Why do those men have guns? Who are they going to shoot? Why is daddy in a uniform with an identity card on his shirt? Is my daddy a policeman?'" Ms. Zeng said in a recent telephone interview. "I find it really hard to answer these questions, so I think I won't bring her along anymore. Hu Jia is coming out soon, anyway."

Jailed for nearly all Baobao's life, Mr. Hu has not gotten to know his daughter

**"The government has increased its use of soft detention against activists."**

well. That may change after he's released — perhaps more than the family bargained for. Expectations are growing among human rights advocates that Mr. Hu will be subjected to house arrest, or "soft detention," a

form of extrajudicial punishment increasingly used by the authorities to control well-known dissidents.

"It is widely believed Hu Jia will be put under soft detention," said Wang Songlian, research coordinator at the Hong Kong-based Chinese Human Rights Defenders.

"The government has increased its use of soft detention against activists, and especially against high-profile ones," Ms. Wang said. In 2010, the group documented 641 such cases, she said, with the real number believed to be "far higher."

Ms. Zeng is not sure what will happen to her husband after June, but she knows it is a possibility.

"He may be put under house arrest again," she said. "He was under house arrest before he was jailed, and the overall political atmosphere is far more tough now than it was in 2007."

The use of house arrest against political dissidents has deep cultural roots in China. Perfected during the Northern Song dynasty 1,000 years ago, it has been used to spirit-sapping effect at intervals since.

This all illustrates a vast clash of cultural values playing out in China, as an increasingly modern-thinking population vies to assert its rights against a state whose practices are often mired in the authoritarian past, said Jerome Cohen, a law professor at New York University.

This tension between the old and new is especially striking in China's legal system, Mr. Cohen said. Since China began to modernize its economy and society in 1978, after decades of Maoist turmoil, there have been fast-

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paced legal and social reforms.

"A terrific amount has been done in the last 33 years," said Mr. Cohen, who first visited China nearly 40 years ago, only to find there were no colleagues to talk to. "They were hiding at home, or on a farm, doing manual labor." In fact, China had no working lawyers at all between 1957 and 1978.

Today, it has about 170,000, and quite a few are seizing on rights offered in China's own, modernized laws and Constitution, to demand greater rights and freedoms.

Yet the ruling Communist Party never intended the people to use the law against its power, Mr. Cohen said. What it wanted was "a fig-leaf of a modern system," he said. Faced with fast-spreading human rights consciousness, the government is trying to avoid the consequences of a modern legal system it has itself created.

"In a way, it's a victim of its own success," he said.

In response, the government has cracked down on rights lawyers and activists, detaining, arresting and causing the disappearances of dozens over the last few weeks alone, as it tries to counteract overseas-based calls for a "strolling" protest for greater rights.

Authoritarianism is not unique to China, yet other Confucian societies in East Asia like South Korea, Taiwan and Japan have "come out of that in the modern era," said Mr. Cohen.

"They have not let themselves become prisoners of history, even if aspects of history continue," he said.

The parallels with the past are eerie, and instructive.

During the Song dynasty, house arrest was legal, but its legality was blurred by the practice of detaining victims indefinitely after they had served their — usually two — years. Much as Mr. Hu could find himself under extrajudicial house arrest after serving his court-ordered time in June, a person convicted of criticizing the emperor or court during the Song was often kept under surveillance long after his sentence had expired.

As was the case 1,000 years ago, "soft detention" centers on the home, but the physical radius can vary, said Ms. Wang. Targets might be allowed to go to work under police scrutiny, or to travel within a fixed perimeter.

During the Song, house arrest was divided into three degrees of severity, a pattern that persists to this day.

The lightest, "juzhu," or "dwell in a fixed location," permitted individuals to travel, but only within their district — much as the high school history teacher Yuan Tengfei was confined to Beijing last year for teaching students about famine and rebellions against Communist Party rule, subjects omitted from history textbooks.

The middle, most common, kind, was known as "anzhi," or "peaceably established." It was used against the poet and official Su Shi, who was found guilty of "great irreverence" for publishing poems critical of government policies in 1079 and sentenced to two years of village arrest in Huangzhou on the Yangzi River.

Today, "it happens all the time," said Ms. Wang. "Sometimes they're allowed to go out for a walk or go to work, but often the police follow them in police vehicles."

The most severe form, "bianguan," or "surveillance and restriction," is similar to what Chen Guangcheng, a blind, self-educated lawyer, is undergoing. Since his release from jail last year, Mr. Chen has been subjected to tight restriction to his house, and bright lights shining in. Visitors are turned away, often violently.

The personal cost is high. Ms. Zeng believes the police will remain a part of the family's life after Mr. Hu's release, and Baobao's confusion will remain.

"The police will definitely come to our place, and the police cars and policemen will be in the courtyard 24 hours a day. How do I explain this situation to my daughter?" she said.