



A Study of Interaction Between Network Opinion and Judicial Progress: Perspective From Judgments of Several Criminal Cases

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Abstract

Nowadays the network opinion, to some extent, represents appeals of the public to the pursuit of social justice, playing an utmost impact on judicial trials. Whereas network is sentimental and also with the features of virtuality and undiscipline and lack of rigorous procedures and the like, which can not intervene or even replace the normal functional progress of the judiciary trial which is very separate from other social activities. Network opinion plays an important role in promoting the realization of social justice, and also an imperative role in the supervision of judicial trials. The independence of judicial trials should not be surrendered due to the impact of network opinion. And the judicial trial should be open to cater to the need of the public, subject to the voice of the public on procedural fairness and disclosure by facing the network opinion in a correct way and accepting its supervision, to make each of the judged cases fair and square as time goes on. A combination of lawful effect and social effect will also be achieved as a whole with the guidance of judicial justice as the unique dominating value.

Key words: Impact; Network opinion; Public voice; Judicial trial; Social justice

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INTRODUCTION

With the deepening of reform, China has entered a rapid social transitional period. Many a deep-rooted contradictions are triggered. Group events come up endlessly as the time goes on. And it has already become an increasingly big subject for both the theoretical world and the judicial practice world on how to attend the people's livelihood and care of the public voice. Under the guidance of our policy of building a socialist country under the rule of law, the law is shouldered the overwhelming task to reconcile social contradictions. However, due to the imperfections of our legal system itself and also the influence of our traditional culture value, it seems that more and more problems can not be totally solved just through legal approaches to achieve social justice up to the hearty demand of the public. Coupled with "powers above the law", "money above the law", "relationship above the law" and "human above the law", results of litigations sometimes become the gaming of social relationship or nepotism, interfered by a series of abnormal lawful thoughts and acts, which deeply hurt weak parties in society, making them feel it more difficult and even impossible to realize the fairness through the normal judicial path. Some phenomena exposed in some cases, such as "find relationship with the law court" and "handle issues from the back door", making some of the people depressed or even losing the trust of judges and judicial power in judging cases. Therefore, as a result some people have to obtain fairness and justice by "telling the truth to all the people under heaven" to realize self-remedy through internet in this age. To supervise the operation mechanism of public power through internet opinion, pushing judicial process to go to transparent and open, allowing outcome of the trial more objective and fair will result in realization of the fairness and justice of the whole society.

In this thesis, the author hope to play a certain role of inspiration and reference to the theory and practice circle by analysis of the interaction between network opinion and judicial trial through a number of criminal cases, revealing the pushing and impact roles of network opinion in contemporary judicial trial process.

1. PUSH POWER-IMPACT OF NETWORK OPINION TO JUDICIAL JUDGMENT

Nowadays internet has become the fastest media to pass information. Network opinion represents a significant proportion of the public opinion of the whole society, with their perspective aiming at the use and distribution of various public resources, especially the use and distribution of public power and public interest, and then disclose a variety of misconduct or malpractice, from a certain angle to affirm or refute some social issues to, restoring to the truth of facts to the public, which is currently playing an increasingly underestimated supervisory role on promotion of realizing the fairness and justice of society (Ding, 2010). Let us browse several criminal cases which have caused great social impact and sensation to the public due to the push of network opinion, we can find that this supervisory role is particularly strong, which even determines the progress of some cases, changing from a quantitative state to a qualitative state. Network opinion, with the characteristics of rapid spread and wide effect, in some respects, to some extent, conquers the thinking of some judges and even the whole trial team, overawing the implementation of judicial power. Except regarding impartiality as the only boss, the judge have to pay attention to the reaction of public opinion and the after-judging social effect, that is, "the public's satisfaction" probably is also as one of the basements to weigh the judicial trial jobs. For example, some local courts are pursuing the rate of "cases settled by negation of the parties", the zero rate of "cases settled by making judgment", reflecting the existence of such problem and phenomenon mentioned above. People are gaming with the judicial independence of the trial process in pursuit of social justice through making public opinion, making the final freezing outcome of the contradiction of the political effect and the legal effect which are felt by the judges in judicial practice eventually!

Many criminal cases occurred recently with the results showed that the powers of the indisputable facts always speak louder than words, although the judiciary organs alleged to the outside world that they tried and sentenced those criminal cases independently with no impacts by public opinions on the application of the Act, but tried and sentenced in strict accordance with the procedure of law, maintaining the judicial independence of judgment. However, what we have to admit is that, the ins and outs of the specific case seem more convincing to the public. As we all know, Yao Jiaxin case is one of the cases which

are much concerned by the Internet opinions in recent years. Under the impetus of the social public opinion, Yao Jiaxin was pushed to the execution ground step by step with the supervision of the public opinion, especially the network opinion. All the ins and outs of the Yao Jiaxin case, throughout the trial and execution of the death process, almost every aspect is being questioned and reviewed by voices from the network, and every step of the progress of the case was publicized on the Internet. The extensive discussion of cases of the Internet users, and the guideline of public opinion, formed by the outcome of cases, seems more strong and faster than the judicial process itself, in making the sentence. The result that Yao Jiaxin was sentenced to death, was rapidly speeded by Internet, by on-line communication to the public, triggering a domino effect. It caused strong impacts to a series of similar cases, challenging the final judgment res judicata. One of the most typical cases is the Li Changkui case "more than Yao Jiaxin case", called by the netizens. Netizens, especially the relatives of the victims appealed that Li Changkui case should be tried and sentenced based on the principle of "same case, with same sentence", in pursuit of justice. Li Changkui case, so it also emulates Yao Jiaxin case, with the power of the netizens' voice, to seek judicial rescue, resulting that Li Changkui was sentenced to death again finally in the retrial. He was commuted back the death penalty, since he was sentenced to death in the first trial, but the death penalty was denied in the second trial. The retrial process of Li Changkui case, is actually launched by the same court in the appealing of public opinion, under the impacts of the public voice. To start the procedure of trial supervision, means the second instance trial is really wrong. Is it true? To start the procedure for trial supervision, must be based on a precondition, that is, definite errors existing in the findings of fact or law apply.¹ What is the true reason? The trial fact-finding is

¹ Based on the Article 205 of the *Criminal Procedure Law of the People's Republic of China*, If the president of a People's Court at any level finds some definite error in a legally effective judgment or order of his court as to the determination of facts or application of law, he shall refer the matter to the judicial committee for handling. If the Supreme People's Court finds some definite error in a legally effective judgment or order of a People's Court at any lower level, or if a People's Court at a higher level finds some definite error in a legally effective judgment or order of a People's Court at a lower level, it shall have the power to bring the case up for trial itself or may direct a People's Court at a lower level to conduct a retrial. If the Supreme People's Procuratorate finds some definite error in a legally effective judgment or order of a People's Court at any level, or if a People's Procuratorate at a higher level finds some definite error in a legally effective judgment or order of a People's Court at a lower level, it shall have the power to present a protest to the People's Court at the same level against the judgment or order in accordance with the procedure for trial supervision. With respect to a case protested by a People's Procuratorate, the People's Court that has accepted the protest shall form a collegial panel for retrial; if the facts, on the basis of which the original judgment was made, are not clear or the evidence is not sufficient, it may direct the People's Court at the lower level to try the case again.

unclear, or the law applicable to error? Neither. The reason seems caused by the public opinion, esp. the internet opinion. Established judicial outcome of the trial was overthrown repeatedly, will inevitably affect public faith of the law, reducing the credibility of Justice, weakening the judicial trial of res judicature. The reason to start the retrial process in Yunnan High Court can not be said they were forced to do so under the requirements of public opinion, but the role played by the network public opinion, in promoting its revision process is evident in reality. Our society, ruled by law, seems to have been formed a feature, whenever it is encountered significant problems of social cases, from the very beginning to the end in the trial, public opinion will not stop the concern, until those cases are processed in expected situation according to public opinion

2. SOCIAL PRESSURE COMING FROM NETWORK OPINION TO INFLUENCE JUDICIARY PROCESS

In recent years official corruption events frequently occurred, which caused a direct decline of the credibility and reputation of the government, and which also caused the court judges standing more stresses not only from all levels of the government and society but also additional pressures from public opinion when handling cases. Major case investigators often need to look at the network public opinion time to time, which adds more additional burden to their shoulders. Facing the pressure of the network public opinion, judicial officials have to be more and more cautious in handling such cases. They are afraid that they will be pushed to the antithesis of society by making some small mistakes, even be pushed to the opposite side of the masses. When those rigorous legal issues turn into sensitive political issues, and when the law already lose its most basic authority, and when we “act within the scope of the law” has been unable to eliminate the deep-seated contradictions, we would have to appease some people through political means in order to postpone some situation in tension. In thus situation, where is the authority of the law? Its credibility becomes non-existent. The judicial system and judicial proceedings based on judicial beliefs were ruined on frequently, “the rule of law” gets ruin, going into the crisis of faith, the rule of law has become only the slogan with no real effects any more. It can never play any possible substantive roles. In such rapid social transitional period, how to deal with such a judicial predicament? We deem that the staff engaged in the administration of justice and his team, has to open the justice process, in addition to the highly responsible to cases and to be more prudent in handling cases to face the inquiries and queries coming from the networks. Only in this way could be the doubted people understand the truth and believe the words from the court staffs. This is the best way to eliminate the

public doubt, also the most basic premise to achieve fair trials. We believe that, timely disclosure of the judicial process and to decide cases with convincing basis, to allow the public to know the information throughly with supervision in place, and to form an effective judicial supervision system, is the effective way to ensure judicial justice. Lack of open justice in the outcome of trials, due to lack of convincing process, even if the case is finally fair, but inevitably people will be full of questions and deem that it is a wanton of public power. Arbitrary use of public power, would inevitably cause people to question, to doubt or criticise that the truth, the trial process and the results of the justice, are not fair.

In China, the court trial, as an independent judicial process, is subject to not only the constraints of the rules of procedures of the Code of Criminal Procedure, but also the principle of “legality” in “Criminal Law”. Guilty or not guilty, is subject to the regulations in the relevant laws or acts. No public authority shall execute its powers arbitrarily. However, what the public concern often focuses on is not whether the process is serious and fair, but whether the results processed by the law is what they have been expecting all the time, that is, the recognition of “justice” differs from the laws. Many people, especially those disadvantaged groups in case proceedings, influenced by the traditional Chinese history, would have a sense that “if you are out to condemn somebody, you can always trump up a charge”. They feel that the program and process can be fabricate at somebody’s own discretion. Why such it is so ridiculous for a serious law process which supposed to be upright and impartial, to average persons? The reason is mostly rooted from traditional Chinese feudalism culture in people’s mind, also influenced by current exercise process style of the public power, which lacks an effective mechanism for control and supervision of powers. Moreover, even if such too complicated and professional procedures are working and effective in some extent, openly publicized, nor is the average persons can understand and carry out supervision and control. Therefore, most of the people will only care about whether the judicial outcome is of justice. However, what is “substantial justice” and “procedural justice”? Who will benefit from them in the end, without supervision from the mass, the social majority? This should be questioned. On the environment of networks, people can not know the truth very exactly because of unexact descriptions of the past facts, and they will even argue what ever is the real justice like based on the different understanding of justice, or based on different positions where they stands. They will even launch the “network war of words”. Here, there is an expression worth mentioning, that is, “appeasing the public resentment”. Sometimes it seems that “appeasing the public resentment” will be the reason to kill a criminal, when it forms a very strong guidance of public opinions, which will push the judges to make

sentences impartially, since the judges have to pay more attention to the social effects, to think about appeasing the “public anger”! To use public power to achieve the retribution of life, to add hatred eventually, will only lead to overkill. Therefore, the public anger should not be a trial basis for a society ruled by law. Punishment could not be based on public anger or public resentment. Making sentences based on the rule of law, under a legal social environment, is a measure taken for the maintenance or restoration of justice under the law, rather than rashness of sentiment unconscionable. Or else, the rashness of the public anger will become the executioners of the killings. To the judges, when they are facing public angers, trying and making sentences more seriously and cautiously, and apply the law impartially “based on facts and take the law as the yardstick”, are becoming more and more urgent and extremely important.

3. PREDETERMINED DEFECTS- FEATURED NETWORK WITH SENTIMENT

Influenced by the network opinion, the facts tend to be overwritten, or was difficult to restore, or can not be restored. Online public opinion, because of the lack of research can not be proved true or false. And it is also difficult to form the confrontation. In the process of dissemination, some factual details mixed with the publisher’s mood or even false reports, will make the netizens check the facts with tinted glasses filled with righteous indignation even for some trivial cases. Internet opinion, after all, as an effect formed by the public, with the features of congenital blindness and lack of rigorous procedures. Based on China’s legislative status quo, it is still far away from establishing effective regulatory system. Some internet users will even express wanton personal views with no discipline, lacking of thought but only depending on temporary sentimental mood.

Too much attention payed by different peoples and casual comments or even extreme speech and writing usually makes the internet public opinion lopsided. And this kind of internet public opinion is often with emotion or intense sentiment, in some certain degree. It is a conclusion that is not from convincing evidence, but from spreading rumors, which thus forming a “network trial”. In the period of rapid and sharp social transition, “stability overrides everything”, and the law should serve society. The judgment formed from internet opinions will, in a sense, affect the independence of the judicial process. Without strict process control and supervision, networks’ opinions with value trend is just partially public opinion, 6 other than the whole public opinion. The more and more influential internet opinion, forming the examination and oppugnation to the public power, which makes the judicial personnel feel that there is a force which is pressing them. By this way, it seems that justice

is done, but the process of realization is not a justicial way. Without a justicial way, how can we ensure the whole justice and fairness played in a correct way? Substantive justice is out pursuits, but we need the procedural output, a lawful track, as the ensurance. Or else the substantive result will also go to a wrong way.

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4. INTERACTIONS-NETWORK OPINION V.S. JUDICIAL TRIAL

The administration of justice should recognize that network supervision is a new type of democracy. It is a direct way of the exercise of citizens’ legal and social supervision rights. The network’s world is illusory, but the public opinion through network, after all, reflects the voice of the ordinary people, the guidance and direction of the network opinion also reflects the urgent pursuit of the general public for fairness and justice (Lei & Xin, 2010, p.26). A case about a girl from Hefei Province was injured in her face, was widely spread through the network by which such a typical case has caused great concern. It was said that the defendant’s parents worked in the local government, therefore the case will soon be marked with the stigma of the “second official generation”. Some people made speeches through internet with the intention that the eyes of the masses watched everything! They knew the truth. Their eyes are sharp! We can see that they expressed an attitude with an extremely hatred to the official, especially. To the power of the officials of China. The reason why so many people “hate government officials”, “hate the second official generation”, and “hate the rich”, mainly it is because

whether the execution of the law, the process of implementation is really fair and equitable to all the members of society which is doubted by the public, especially by the weak groups in society. In essence, it is a question of loss of trust in the law and the government. In Wu Ying case, Wu Ying was sentenced to death by the court in the beginning, but also due to the discussion, consideration and doubt of the network public opinion, the defendants in this case finally survive. The widespread dissemination of the network public opinion, finally even alerted the Prime Minister of the Central Government. This case was tried by the first trial court, the second trial court up to the final approval of the Supreme Court, the Supreme Court ultimately made the determination that the death sentence to Wu Ying was denied. In the case of "Deng Yujiao", Deng Yujiao was accused of a murderess of the procurator she killed one guy who attempted to harass her, but finally she obtained release, free of criminal penalty, due to the public concern of networks. And Deng Yujiao was also called "the girl saved by the network opinions" by netizens (Zhang, 2012). Let us check the role played by the network public opinion. Who can say it is in vain?

Absolute power will inevitably lead to absolute corruption (Daniel, 1992, p.24). Litigation, always acts as the last protection shield for realizing social fairness and justice, and also shows the last expectation of the public for the correction of the social partiality. People's purpose of network supervision is just for promoting the realization of social impartiality. As we all know that there is an old legal proverb in Britain, "JUSTICE MUST NOT ONLY BE DONE, BUT MUST BE SEEN TO BE DONE".² That means, when we check the impartiality of one case, we can not only check if the final outcome of the case is impartial in entity, but also check if the total process is flawless procedure. The public hopes to be convinced by seeing the entire process is just in an open way. To the justice personnel, since their judicial power are from the people, granted by the people, they should also do good to the public, giving support to justice (Liu, 2012). Fairness and justice can not only be expressed in an abstract verbal level, but also need to be put into execution through handling each case, defending the dignity of the legislation. The public opinion in the internet should not contradict the independence of the judiciary proceedings. Handling cases Impartially can push and promote the realization of social fairness and justice, achieving the social harmony and stability. The online trial in internet before the public, is a very good researching and practicing way for accepting the public's supervision actively, which is in favor of the supervision from the public, enhancing the trust of the masses to the law court. The Court should strictly implement the procedures of open trial system, take measures to promote

² See Alfred Thompson Denning, *Due Process of Law*, Publishing House of Law.

the trial in an open way, expand the number of hearing participants in the trial, including but not limited to put the trial process in the internet for a live broadcast, to accept the public supervision. In addition to some cases related to personal privacy, state secrets and other cases which should not be tried in an open way based on the law and regulations, all the cases should be openly tried in most possible webcast way. Making the trial in the sun, in a public process, will help to improve the judicial credibility of the court.

Network sentiment and comments, to some extent, on behalf of the public outcry from society, is a way to reflect public opinion, which also forms the effective supervision to the administration of justice. However power supervision does not mean power execution. So network can not execute the power of judgment or even to form a "network judgment". Since compared with the judiciary, the citizens lack the power to restore the truth of facts, and the mass also only has very few approaches to access into limited information resources. Network, will be based on its possession of very insufficient information and inconclusive evidences, form one type of very sentimental and emotional public opinion. And further more, the virtual network world will also make some people express views with less serious and random point of view, or will even form their expected effect, by promoting network transmission in order to achieve a particular purpose through different identities log-in the website, or making forums posts by accessing into large numbers of web pages. Therefore, sometimes the network comments may not necessarily represent the view point of the majority of the people. Just as the network election may violate the rule of "one person, one vote", some civil opinion represented by the network opinion may sometimes not the true major civil opinion, which is caused by lack of rigor. And so it can not stand the in-depth study and consideration.

The power of the state is a public power, granted by the people. It is supposed to be from the people, of the people and for the people. It is under control of the people and subject to supervision by the public. As a politic principle for public executors, it must be observed by public authorities. At the legal level, an institutional guarantee is more necessary. The law represents the justice. And the judge is the embodiment of social justice. Judges can only decide cases based on the sole criterion of law and legal regulations. The law is the only loss for the judge to judge cases. When the judges are questioned by the public oversight, the judiciary are obliged to examine the case to a more cautious attitude, to restore the truth, to eliminate the mystery for the ordinary people in order to obtain more support from the public and further, to improve the judicial credibility and authority of the trial. Under the current circumstances, to accept the supervision by public opinion, and to make the judicial jobs more rigorous, is conducive to the pushing the

process open, to strengthen the judicial functions, and to promote the impartiality of justice. When the judgment comes into force, it ought not to be overruled. Or else it will affect the judicial res judicature and the social credibility of judges.

CONCLUSION

The relationship between network opinion and the judicial trial is supervising and being supervised. Under the network environment, the public is showing more and more concerns about the interpretation and implementation of fairness and justice in the total society today. To treat network comments correctly will be a big push power to the realization of judicial justice (He, 2002). China's Constitution clearly stipulates that all the powers of the country come from the people. Jurisdiction over one of the public authority, is the last bulwark to achieve social fairness and justice. Furthermore, to pay more attention to internet opinion also embodies that the people, as masters, to exercise the freedom of speech and the right to take leadership conferred by the constitution of China. Although the public comments within the legal authority to form network opinions Judicial personnel do not have to regard the public comments as scourges. On

the contrary, they need to proceed with litigations in accordance with the specifications of the law fairly and squarely with a more cautious and prudent approach under the environment of network opinion. Along with the improvement of public credibility of the judiciary, the interactions between network opinion and the process of independent judicial trials will be more and more unified gradually.

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