

The Battle of Microblogging for Legal Justice in China

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Microblogging has a special appeal not only to Internet users in China who are keen to voice their opinions in a fast and easy way, but also to Chinese rulers who see microblogging sites as a giant magnetic field for them to tap into, to mold and to “supervise” public opinions. In fact, since the 1980s, “public opinion supervision” has been on the agenda of the Chinese Communist Party (the Party) by the People’s Republic of China (China). It is a term specifically coined by the Party in the 1980s to describe the mobilization of citizen awareness and opinion by the media to check against the deleterious force in the state under the guidance of the Party.¹ In such process, the media plays an indispensable role as a state agent, acting between the authorities and the citizens.

But by the time of the 21st century, Web 2.0 has completely changed the above dynamics. Armed with the Internet, public opinion has evolved into a powerful

¹赵紫阳在中国共产党第十三次全国代表大会上的报告 [Zhao Ziyang, Report Delivered at the 13th National Congress of the Communist Party of China] (October 25, 1987), *available at*, <http://cpc.people.com.cn/GB/64162/64168/64566/65447/4526369.html>.

phenomenon with a life of its own coming from the netizens, reining free from the shackles of Party's supervision, with every potential to be a genuine form of public opinion monitoring from the mass. Because of the Internet, the public, the Party and the media have to face new challenges and assume new roles. The public has become an active group of netizens, eager to voice their opinions but cautious not to overstep the boundaries. On the other hand, the Party is eager to control the Internet,² but also willing to use the Internet as a safety valve to release frustration among its citizens in a careful manner.³ In between, the Internet has inherited the role of the media since the days of commercialization in the 1980s in pleasing two masters and attaining two seemingly conflicting two goals: to avoid offending the Party and to please the market.⁴

The Internet in China has been rightly pointed out to be an arena of intense struggle, full of complex dynamics, participatory and contentious in nature.⁵ And the above complex and contradictory relationship is pronounced in legal disputes, posing

² Gary King, Jennifer Pan and Margaret E. Roberts, *How Censorship in China Allows Government Criticism but Silences Collective Expression*, *American Political Science Review* (2013); David Bamman, Brendan O'Connor, and Noah A. Smith, *Censorship and Deletion Practices in Chinese Social Media*, 17:3 *First Monday* (2012).

³ Jonathan Hassid, *Safety Valve or Pressure Cooker? Blogs in Chinese Political Life*, 62 *JOURNAL OF COMMUNICATION* 212 (2012).

⁴ Though this is not expressly stated in the law, the elaborate license system and framework have rendered private ownership almost impossible. Hence, strictly speaking, there remains no independent press in China as individually owned or civilian organized newspapers are not allowed. Rather, China's print media is largely divided into Party and non-Party organs. For discussion of the background, see Perry Keller, *Privilege and Punishment: Press Governance in China*, 21 *CARDOZO ARTS & ENT. L.J.* 87, 99, 100-101 (2003). See 中华人民共和国新闻出版总署, 报纸出版管理规定第 32 号 [General Administration of Press and Publication, *Provisions on the Administration of Newspaper Publication, Order No. 32*], promulgated Sept. 20, 2005, effective Dec.1, 2005, available at http://www.gov.cn/gongbao/content/2006/content_375808.htm.

⁵ GUOBIN YANG, *THE POWER OF THE INTERNET IN CHINA 2* (2008).

new challenges to the judiciary. Like the Internet, the judiciary is in fact an intermediary caught in-between the Party and the public. But unlike the Internet, the judiciary is a state organ under the Party. Recalling the earlier definition of public opinion supervision, the judiciary is the state organ that is rightly under the diligent public scrutiny, exercised through the media (including the Internet), and accountable to the Party. If any alleged call of miscarriage of justice reaches alarming level, the judiciary is likely to bear the brunt of such grievances.⁶ As a result, judges in China have to shoulder the double burden of public opinion supervision by the Party and public opinion monitoring by the public.

As will be discussed later in this article, we will see that netizens are eager to restore justice in society. Through the mobilization of public opinions online and offline, media trials were held to condemn or rescue suspects. Not only were disputes managed to be heard by the court but trials were rerun and sentences rewritten by judges. Hence, public opinion has been roaming wildly on the Internet, and creeping into the court rooms.

However, relying on public opinion supervision/monitoring and Internet trials is a risky endeavour to achieve populist justice. Seemingly, justice may have been restored when officials are condemned and the underdogs are rescued. The Internet is

⁶ Hualing Fu, *Putting China's Judiciary into Perspective: Is it Independent, Competent, and Fair?* in *BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW* (Erik G. Jensen and Thomas C. Heller, eds) 193, 201 (2003).

hailed once again as the frontier and forum for free speech. But scholars have warned that when legal disputes and cases are being sensationalized and dramatized, the tension between justice and law has also been further antagonized in the authoritarian state of China and in a system where judicial independence is already weak.⁷

While the above observation is certainly true, public opinion monitoring is essential at this juncture of China's development before institutionalized judicial independence is being attained. This article focuses on the intricate relationship between the Party, the judiciary, the Internet and the netizens. It argues that the Internet has transformed public opinion supervision into a form a public opinion monitoring. The prowess of the netizens lies not in their ability to gather information but in being an active power to interpret, to associate and to transform the plight of their fellows into a legal narrative. Any argument of justice and any question of rights carry weight if they ultimately succeed in entering the judicial arena and in securing state intervention. One of the biggest challenges now, perhaps, is to ensure public opinion can be a form of monitoring, untainted by the supervision of the authorities.

I. Methodology

To capture the above dynamic, this study has chosen to analyze 12 legal stories

⁷ Benjamin L. Liebman, *The Media and the Courts: Towards Competitive Supervision?* 208 CHINA QUARTERLY 833 (2011); Kaiju Chen and Xinhong Zhang, *Trial by Media: Overcorrection of the Inadequacy of the Right to Free Speech in Contemporary China*, 25 CRITICAL ARTS 46 (2011).

from the 100 events covered by the Office of Public Opinion Watch (OPOW) Reports between 2008 and 2012.⁸ Since 2008, the Office of Public Opinion Watch of *People's Daily Online* has been issuing annual reports covering the top 20 Internet events in a particular year.⁹ This selection of online events is taken from the most popular discussion boards, blogs and microblogs of the year, including *Tianya* (天涯社區), *Kaidi* (凱迪社區), *Qiangguo* (強國論壇), *Bullog* (牛博網) and *Sina Weibo* (*Microblog*) (新浪微博). In order to be qualified as a significant event, it must have attracted a significant number of posts, and the threshold number changes every year to keep in pace with the rapid development of online discussion platforms. For instance, in 2008, an event had to attract more than 1100 posts but in 2012, the standard had become one million posts.¹⁰ In addition, the categories of different forms of expression being counted in the reports have also expanded from mainly online bulletin board discussion (BBS) to microblogging since 2010.

The definition of a legal story in this study is a social conflict that could be successfully turned into a legal case being heard, a verdict being overturned, a sentence being changed, or a retrial being ordered by the courts due to the pressure of

⁸ The selection of cases was done by the annual study of the Public Opinion Monitoring Unit of the People's Online, a website operated by the official organ of the CCP. Results of the study have been published on the Annual Bluebook on Social Development edited by the Chinese Social Science Academy since 2008.

⁹ The People's Daily Online (Renmin Wang, <http://www.people.com.cn/>) belongs to the Party Press, representing the official voice of the CCP.

¹⁰ The threshold tests to be the top most significant 20 Internet events were 1100, 5,000, 50,000, 500,000, 1 million posts respectively in the years of 2008, 2009, 2010, 2011 and 2012.

public opinion on the Internet. It is true that the OPOW reports have reflected only online discussion and, as later discussion will show, online public opinion often has to collaborate with traditional media to generate its impact. What is critical for our discussion is that such impact of public opinion is openly acknowledged by the courts or the authorities in relevant cases.

Despite the small number of legal cases available, they are telling stories for qualitative study that enables us to understand how a grievance can be transformed into a judicial case, and how a case can evolve in the sentencing stage or how the final verdict be affected all due to the force of public opinion. In depth study will be carried out on four legal stories, in which large scale public survey was conducted by either the media or the court.

The distribution of legal cases throughout the five years is shown in Table 1.¹¹ As we can see, there is a sudden and sharp rise of legal discussion in 2009 but a drastic drop to zero in 2012.

¹¹ The list of the legal cases can be found at Appendix 1.

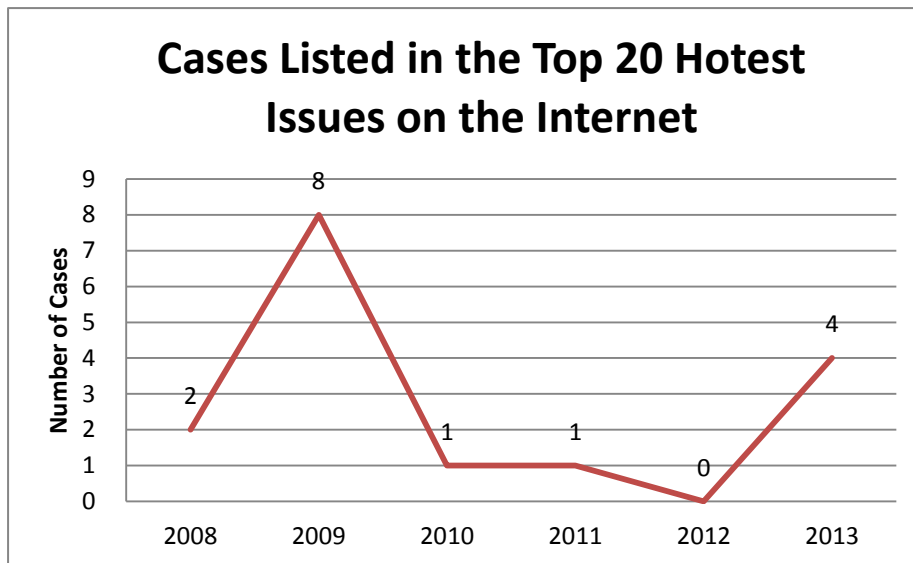


Table 1: No. of Legal Cases Selected by the Public Opinion Watch Annual Report 2008-12

There is probably no definitive explanation for this trend. Conspiracy theory may point to censorship by the government in filtering out all legal cases and discussion in the post 2009 period. But an innocuous explanation of other competing events stealing the limelight is equally plausible. In fact, cases that had made it to the top 20 lists were likely to be successful candidates that have beaten the censorship system. Studies have showed that censorship on microblogs and other social networking sites is massive in China.¹² Sensitive keywords, like Tibet, Qinghai, Ai Weiwei and Liu Xiaobo, were filtered.¹³ While critical or negative comments against the authorities are tolerated, speech that advocates collective action is strictly curtailed.¹⁴ Our study

¹² Gary King, Jennifer Pan and Margaret E. Roberts, *How Censorship in China Allows Government Criticism but Silences Collective Expression*, *American Political Science Review* (2013); David Bamman, Brendan O'Connor, and Noah A. Smith, *Censorship and Deletion Practices in Chinese Social Media*, 17:3 *First Monday* (2012).

¹³ Bamman et al, id.

¹⁴ King et al, supra note 12.

also supports the above finding that none of the legal cases covered in the OPOW reports were related to controversies on sensitive keywords or related to collective action.

The puzzling issue then becomes what sort of conflicts would be controversial enough to capture public imagination, to generate large scale public interest, to cause the authorities to take actions but not to alarm them exceedingly to silence discussion. The answer seems to be hinging much on the interpretation of the power and use of public opinion by the authorities and by the citizens.

II. Public Opinion Supervision vs. Public Opinion Monitoring

“Public opinion supervision” (*yulun jiandu* 舆论监督) is a fluid and malleable term, with multi-layered meanings in the Chinese context.¹⁵ The authorities view it as a process of understanding the sentiments of the mass, with a duty to address their corresponding concerns, to hold the responsible officials responsible but all under the guidance and leadership of the Party. In contrast, the citizens tend to view it as their entitlement to express opinion to correct wrongs in society and to monitor those in power. These two views come into loggerheads in the cyberspace and have resulted in

¹⁵ See, e.g., Li Ying, China’s Public Opinion on Internet and Impartial Judgment (June 19-20, 2004) (paper presented in Beijing at the Conference on China-U.S. Public Opinion and Law, Centre for International Communication Studies of Qinghua University, Qinghua Law School and Yale Law School). The term was originally coined by then-Premier Zhao Ziyang in the 13th Central Committee of the Communist Party (“CCCP”) of China in 1987.

different forms of compromise and resistance on both camps.

A. Public Opinion Supervision under the Leadership of the Party

The term “public opinion supervision” was coined by the former Premier Zhao Ziyang in the 13th Central Committee of the Communist Party of China in 1987, where he urged the media to report on political and Party affairs so as to achieve the purpose of “public opinion supervision.”¹⁶ In the address, he no longer mentioned the mouthpiece role of the press as in the past but highlighted three principles of the media: the press should exercise oversight over the work and conduct of public officials, inform the public of important events and reflect public debate on important issues.¹⁷ These principles were echoed by the subsequent Party Secretary Jiang Zemin in CCCP meetings in 1992,¹⁸ 1996¹⁹ and 1997.²⁰

Despite this rosy image, “public opinion supervision” was formally defined under the *Regulations of Internal Supervision of the Chinese Communist Party*

¹⁶ 赵紫阳在中国共产党第十三次全国代表大会上的报告 [Zhao Ziyang, Report Delivered at the 13th National Congress of the Communist Party of China] (October 25, 1987), *available at*, <http://cpc.people.com.cn/GB/64162/64168/64566/65447/4526369.html>.

¹⁷ See Judy Polunbaum, *The Tribulations of China's Journalists after a Decade of Reform*, in VOICES OF CHINA: THE INTERPLAY OF POLITICS AND JOURNALISM 33, 42 (Chin-Chuan Lee ed., 1990).

¹⁸ 江泽民在中国共产党第十四次全国代表大会上的报告 [Jiang Zemin, Report Delivered at the 14th National Congress of the Communist Party of China] (October 12, 1992), *available at*, <http://www.people.com.cn/GB/shizheng/252/5089/5106/20010430/456648.html>.

¹⁹ 江泽民, 中共中央关于加强社会主义精神文明建设若干重要问题的决议 [Jiang Zemin, On Resolving Serious Questions Regarding Strengthening the Construction of Socialist Spirit and Culture, Report Delivered at the 16th National Congress of the Communist Party of China] (October 10, 1996), *available at*, <http://www.people.com.cn/GB/shizheng/252/5089/5106/20010430/456601.html>.

²⁰ 江泽民在中国共产党第十五次全国代表大会上的报告 [Jiang Zemin, Report Delivered at the 15th National Congress of the Communist Party of China], (September 12, 1997), *available at* <http://xibu.tjfsu.edu.cn/elearning/lk/15c.htm>.

(*Tentative*) in 2003, to be external supervision going hand in hand with internal supervision of the Party.²¹ It is understood to mean supervision by the masses, exercised through the media.²² It is explicitly stated in the *Study Guide* that public opinion supervision can take place only under the leadership of the Party,²³ a clear reminder to the media that they are not the “fourth estate” but a Party organ. Other than exposing social problems, the media should help to solve conflicts in society.²⁴ The prime concern should always be the maintenance of “social stability,”²⁵ to assist the state rather than adding to its burden.²⁶ The above legal rhetoric was affirmed in various policy directions in 2005,²⁷ and has been implemented in various ways by local officials.

Public opinion supervision applies equally to the Internet. It was reported that local governments recruited Internet commentators in 2005 to redirect public opinion

²¹ 中国共产党党内监督条例 (试行) [Regulations of Internal Supervision of the Communist Party of China (*Tentative*)] (promulgated by the Central Committee of CCP Dec. 31, 2003, effective February 17, 2004), available at http://news.xinhuanet.com/newscenter/2005-01/16/content_2467829.htm.

Section 5 states that internal supervision within the Party must go hand in hand with external supervision, the latter including supervision by the media. Under Section 33, media supervision must take place under the guidance of the Party so as to achieve an optimal and ideal form of public opinion supervision. Immediately following, in Section 34, the media is required to adhere to Party principles and media professional ethics, to direct public opinion on the right course and to be aware of the social impact of public opinion supervision.

²² STUDY HANDBOOK ON THE (TENTATIVE) REGULATIONS OF INTERNAL SUPERVISION OF THE CHINESE COMMUNIST PARTY 75 (2004).

²³ 任铁缨, 认真对待和正确开展新闻舆论监督 [Ren Tiejing, *Treating Public Opinion Supervision Seriously and Correctly*], in STUDY HANDBOOK *ibid*, at 268..

²⁴ *Id.* at 270-271.

²⁵ *Id.* at 278.

²⁶ *Id.* at 281.

²⁷ See 广电总局印发关于切实加强和改进广播电视舆论监督工作的要求的通知 [Notice on Strengthening and Improving Public Opinion Supervision], 国家广播电影电视总局 [State Administration of Radio, Film and Television], May 10, 2005, available at <http://www.sarft.gov.cn/manage/publishfile/35/2926.html>.

to the “right course” on the internet,²⁸ with their duties to counterbalance any pessimistic views and to explain the government’s stance. Of note is that these commentators were recruited to express their opinions in their capacities as ordinary citizens, rather than as government spokespeople. Clearly, in light of the above legislative and policy directions, the Party is calling for media restraint, and is determined to retain its established role as the helmsman of social reform.

B. Public Opinion Monitoring by the Citizens.

Despite the constraints implied under public opinion supervision, the public, reporters and academics often view it as a refreshing and positive force in China’s media landscape, enabling the public’s voice to be heard.²⁹ Some equate public opinion supervision to a form of media monitoring, where the media serves as an independent watchdog monitoring the government.³⁰ Indeed, China’s investigative reporting has contributed significantly to exposing official corruption and social problems.

Regardless of such positive appraisals, inherent in the concept of public opinion

²⁸ 曹筠武, 宿迁: 引导网络舆论实践 [Cao Yunwu, *Su Qian: Directing the Implementation of Public Opinion Supervision*], 南方周末 [SOUTHERN WEEKEND], May 19, 2005, at A5. It was reported that Nanjing, Wushi and various cities in Jiangsu province had hired teams of online commentators to direct public opinion.

²⁹ For a general discussion of this unprecedented freedom felt by many inside and outside China, see Yuezhi Zhao, *Watchdogs on Party Leashes? Contexts and Implications of Investigative Journalism in Post-Deng China*, 1 JOURNALISM STUD. 577, 594 (2000).

³⁰ Ibid.

supervision are the conflicting and difficult relationships between the public, the media and the state. Theoretically, the Party is subject to the scrutiny of the public and the media, while simultaneously the public and the media are subject to the guidance of the Party. Chin-Chuan Lee describes China's media as having changed from being a Party mouthpiece to a Party publicity corporation.³¹ Rather than brainwashing people, the media has been assigned to resolve social conflict, to promote Party legitimacy and to check rising corruption at the lower levels of the government.³² Attempts by the media and the Party to articulate the exact contours of this relationship have led to a variety of interpretations of what "public opinion" means in the Chinese context.³³

If public opinion refers to the simple aggregation of individual opinion,³⁴ the monitoring that it generates could be seen as a form of consensus on social or political problems. However, public opinion may be dispersed, loosely organized and not widely heard. David Lynch points out that public opinion is composed not of "aggregates of individuals secretly holding to their thoughts, but instead [of] people recognizing a problem, producing conflicting ideas about what to do, considering those alternatives, and trying to resolve the matter by building consensus for a line of

³¹ Chin Chuan Lee, *Servants of the State or the Market? Media and Journalists in China*, in *MEDIA OCCUPATIONS AND PROFESSIONS: A READER* 241, 246 (Jeremy Tunstall ed., 2001).

³² *Id.*

³³ For a discussion of the ambiguity inherent in the term "public opinion," see SLAVKO SPLICHAL, *PUBLIC OPINION* 1-52 (1999).

³⁴ *IBID.*, at 28.

action.”³⁵ The logical extension of “public opinion monitoring,” then would seem to be monitoring by this force to prevent and redress various injustices in society. The role of the media is to reflect, channel and mobilize this opinion into a voice, turning public problems into salient public issues and affecting the outcomes of decisions. The media becomes representatives and trustees of the public, translating raw public opinion into a collective, supervisory role. In this view, public opinion monitoring could act as a powerful critique of state power because the media offers an entertaining spectacle, a chance to participate in this collective decision making process. The Internet has enabled and facilitated the gathering of the people and the collection of public opinion. However, it is not hard to note that this understanding of public opinion supervision is very different from the Communist Party’s official definition. In tension with the Party’s oversight, the media and the Internet strive to monitor the government by channeling public opinion to contest the boundaries set by the ruling regime. Its tenor is adversarial, representing a critical, liberating tradition appealing to commonly held values.³⁶

In particular, the media and the Internet can play a powerful role in instances where the courts have failed to live up to their duty to administer justice, and this is evident in cases where judicial decisions and the fate of individuals are changed after

³⁵ DAVID LYNCH, *AFTER THE PROPAGANDA STATE* 24 (1999).

³⁶ *Id.*

media exposure of events. Indeed, Benjamin Liebman praises the Chinese media as one of the most influential actors in the legal system over the last decade.³⁷ Other scholars regard the media as a key legal actor in the battle for access to justice,³⁸ even though, as cases have shown, condemnation in the media may bias trials and undermine the independence of legal proceedings.³⁹ Nonetheless, public opinion monitoring has become increasingly important since the late twentieth century. Landmark cases before the OPOW Reports in 2008 include the Sun Zhigang investigation,⁴⁰ the BMW case⁴¹ and the Liu Yong trial.⁴²

³⁷ Benjamin Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 (2005).

³⁸ NEIL J. DIAMANT, STANLEY LUBMAN & KEVIN J. O'BRIEN, *ENGAGING THE LAW IN CHINA* 10 (2005).

³⁹ In one notorious case, a defendant who was sentenced to death by the court remarked bitterly that he was in fact sentenced and "executed" by the media. The defendant, Zhang Jinzhu, a local public security official in Hunan's Zhengzhou county, knocked down a pedestrian while driving under the influence of alcohol in 1997. Without stopping, he dragged the victim with his car for about 1500 meters and hit another pedestrian in the process. The first victim was killed and the second suffered serious injury. Zhang was sentenced to death in 1998. He appealed, but the sentence was upheld. As he had been portrayed in the media as an evil monster, Zhang argued that the sentence was too heavy and that he in fact had been condemned by the media before the court's sentence. See 鄢烈山, 谁杀了公安张金柱 [Yan Lie Shan, *Who Killed Police Officer Zhang Jinzhu?*], Apr. 8, 2005, <http://news.163.com/05/0408/20/1GRFCV300001120T.html>. For discussion of the cases, Benjamin L. Liebman, *Changing Media, Changing Courts*, in *CHANGING MEDIA CHANGING CHINA* 150 (Susan L. Shirk, ed. 2010).

⁴⁰ Sun Zhigang was a 27 year old graphic designer who was beaten to death on March 17, 2003 in a Guangzhou detention centre for migrants when he failed to produce a temporary residence permit. The incident was not reported by the media until more than a month after the event when the outspoken *Southern Metropolis Daily* reported the death on April 25. Discussion spread like wildfire on the Internet and the *Beijing Youth Daily* picked up the story. Because of the coverage, the government set up an investigation team. As a result, on June 20, Premier Wen Jiabao abolished China's Custody and Repatriation system. See Dingjian Cai, *The Development of Constitutionalism in the Transition of Chinese Society*, 19 COLUM. J. ASIAN L. 1, 11 n.33 (2005).

⁴¹ The BMW case occurred at the end of 2003. Su Xiuwen fatally struck a peasant in Harbin while driving a BMW. The issue was whether this was a case of intentional murder. In the trial, the Court ruled that it was an accident. The media covered the case widely and questioned the links between Su and higher officials in the region. On appeal, the court upheld the trial judge's decision. Public opinion did not change the decision but discussion on the Internet was so heated that Party officials had to ban reporting of the case and ordered websites to remove coverage and discussions of the case. See 刘鉴强, "宝马案"疑云 [Liu Jianqiang, *"BMW Case" Suspicions*], 南方周末 [S. WEEKEND] Jan. 8, 2004, at A5.

⁴² Liu Yong, a triad leader in Liaoning province, was sentenced to death on April 17, 2002. On appeal, his sentence was reduced to life imprisonment. The media questioned whether this was a fair decision and hinted at the personal connections between Liu and local officials. Waves of criticism

III. Trial by Courts vs. Trial by Online Public Opinion

A. The Judiciary

In contrast to the privileged position of the media, the judiciary in the Chinese system has been assigned to assume an ambiguous role. China does not practise separation of power or checks and balances, but believes in “checks and supervision” of a socialist style under the Party.⁴³ Judicial independence is not an institutionalized established practice.⁴⁴ Although ruling the country according to law has been a Party principle, judges “fidelity to the law should... never override their loyalty to the principle of Party leadership.”⁴⁵

In addition, the judiciary system in China is modelled on the civil servants system and most judges are Party members.⁴⁶ Since 1954, every president of the Supreme People’s Court has also been put in charge of the overseeing of the Party judicial operations.⁴⁷ Though one of the vice presidencies of the Supreme People’s Court are

came pouring in over the Internet and in the print media. The Supreme People’s Court intervened in December 2003 and reinstated the death sentence. Liu was executed within hours of the Court’s announcement. See Liebman, *supra* note 7, at 82-91.

⁴³ The phrase was introduced by the former Party General Secretary Hu Jintao in his report to the 17th National Congress of the Chinese Communist Party in 2007.胡锦涛在中共第十七次全国代表大会上的报告 [Hu Jintao, Report delivered at the 17th CPC National Congress of the Communist Party of China (15 October 2007), available at <http://cpc.people.com.cn/GB/104019/104099/6429414.html> For further discussion on Chinese style of rule by law and “checks and supervision,” see ALBERT H. Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA 59, 65 (2011).

⁴⁴ Chen, *id.*, 200.

⁴⁵ Chen, *id.*, 200.

⁴⁶ Anne S. Y. Cheung, *Exercising Freedom of Speech behind the Great Firewall: A Study of Judges’ and Lawyers’ Blogs in China*, HARVARD INTERNATIONAL LAW JOURNAL (ONLINE), 250, 259 (2011)..

⁴⁷ Suli Zhu, *The Party and the Courts*, in JUDICIAL INDEPENDENCE IN CHINA 56 (2009).

usually held by non-Party members, these individuals are carefully selected and are trusted by the Party.⁴⁸ The 2005 Civil Servant Law, which stipulated that judges are civil servants,⁴⁹ means that judges have both administrative and judicial duties to fulfill. For instance, the Law requires all civil servants to obey and implement directions from their seniors unless those directions are against the law.⁵⁰ The conventional image of Chinese judges is that they are “bureaucratic automatons” in China’s weak court system of one-party rule.⁵¹

Yet, the judiciary is not satisfied to play a mere subservient role to the executive. Hualing Fu argues that, in fact, it is in the “institutional interest of the courts to assert judicial authority, to carve out their space and to protect it.”⁵² He calls for a nuanced understanding on judicial independence in China. Fu further points out that the degree of independence of the courts is dependent on the nature of the cases being heard, the political status of the courts, and their dependence on other government departments.⁵³ In specific, the Party is more likely to intervene in criminal cases

⁴⁸ *Id.*

⁴⁹ Article 3 of the Civil Servant Law of the People’s Republic of China (adopted at the 15th session of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China on April 27, 2005, promulgated and came into force as of January 1, 2006), available at www.lawinfochina.com (last visited Apr. 26, 2010) [hereinafter Civil Servant Law].

⁵⁰ *Id.* art. 45. See Rouwei Sheng & Guosheng Shi, *The Newly Introduced Civil Servant Law with Fresh New Ideas*, PEOPLE’S DAILY, Apr. 25, 2005, available at http://news.xinhuanet.com/newscenter/2005-04/28/content_2887028.htm.

⁵¹ Rachel E. Stern, *On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits*, 32 LAW & POL’Y 79, 84 (2010).

⁵² Hualing Fu, *Putting China’s Judiciary into Perspective: Is it Independent, Competent, and Fair?* in BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW (Erik G. Jensen and Thomas C. Heller, eds) 193, 205 (2003).

⁵³ Fu, *id.*, 193, 203.

because criminals are considered to be enemies of the socialist state, threatening the stability of the social and political order of the Party.⁵⁴ On top of this, the Chinese courts are subject to the leadership of different institutions including the Party at the local level, the Party through the Political and Legal Committee, the local National People's congress, the Supreme People's Procuracy and the local government.⁵⁵ Sometimes, lower courts ask superior courts for opinion so as to fend off and circumvent the local interference.⁵⁶ In addition, cases can also be re-opened even parties have exhausted their right of appeal.⁵⁷ In light of all the above and the perennial issue of corruption,⁵⁸ the problems faced by the Chinese judiciary should not be underestimated.

Fu's observations on Chinese judiciary provide a useful point of reference to the present study. As discussion in the next section will show, of the 12 legal stories most discussed by the netizens, ten of them were criminal cases. However, rather than merely asking for appeal or re-trial, five of the twelve stories were asking their grievances to be heard by the courts. From this perspective, the netizens have become assertive in bringing their disputes to courts. Despite of the many problems that beset

⁵⁴ Fu, Id, 195-6.

⁵⁵ Fu, id., 203-5.

⁵⁶ Id. 205.

⁵⁷ This is under the procedure for "adjudicative supervision." Parties may petition for re-trial before the courts, procuratorates or even other state or party organs or the people's congresses. *See* Chen, *supra* note 43, 210.

⁵⁸ Fu considers the biggest problem of the judiciary is corruption. Fu, id., 211. For other problems that judges have to face, *see* Chen, *supra* note 43, 204-210. These include quality of judges, unsatisfactory terms of service, insufficient funding, and difficulty of enforcing judgment.

the judiciary, they still have high hopes that the judicial intervention would deliver the kind of justice that they have longed for. After all, the courts are the official fora to resolve legal disputes.

Yet, the conflicts among judicial legitimacy, the Party's goal, and the expectation of the public are brought into a sharp focus in the media and Internet era. As early as 1997, Xiao Yang, President of China's Supreme People's Court called upon all courts to put themselves under the scrutiny of the media,⁵⁹ which was in line with the over-arching principle of public opinion supervision under Party's leadership. In the Internet era of the 21st century, this scrutiny has manifested itself in the form of online public opinion monitoring directly from the people. While the courts have shown much reservation (if not hostility) towards media scrutiny from journalists,⁶⁰ they are eager to capture the public opinion to support their judgment. For instance, in 2008, the then President of the Supreme People's Court, Wang Shenjun, specifically instructed that on the decision of handing down capital punishment, the courts had to consider the feelings of society and the people so as to achieve an "unified legal and social impact."⁶¹ Wang was also known for his stance in encouraging the courts to "pursue the 'mass line,' to serve the needs of the people, to take public opinion into

⁵⁹ See Zhao, *supra* note 30, at 581.

⁶⁰ Liebman, *supra* note 7. Benjamin Liebman and Tim Wu, *China's Network Justice*, 8 Chicago Journal of International Law 257 (2007-8).

⁶¹ "最高法院院长王胜俊称，判不判死刑‘要以社会和人民群众的感觉为依据’" South Metropolitan [南方都市报] 11 April 2008, p A09.

account and seek to increase the level of public satisfaction with the work of the judiciary.”⁶² Regardless of his controversial position, this judicial willingness to take into account of public sentiment can be a catalyst for robust discussion of legal stories on the Internet.

B. Voices in the Internet

The power of the Internet and the netizens in China should not be underestimated. Since 1997, the China Internet Network Information Society (better known as CNNIC) has been boasting of a steady increase of Internet users in its biannual reports.⁶³ The latest figure revealed that by the end of 2012, the number of Internet users in China had climbed to 564 million with a penetration rate of 42.1%.⁶⁴ And among these there is the striking phenomenon of the number of microbloggers, reaching a total of 309 million microblog users, an increase of 58.73 million (23.5%) compared with 2011.⁶⁵ It is also reported that 54.7%, of all Internet users were microbloggers,⁶⁶ meaning that one in two Internet users in China microblogged, and a large portion of Chinese netizens is using the Internet to share their thoughts. Although microblogging has been described as a form of “fast food communication” where one can write only

⁶² Chen, *supra* note 43 , at 175.

⁶³ CNNIC, 31ST STATISTICAL REPORT ON INTERNET DEVELOPMENT IN CHINA 5 (2013), <http://www1.cnnic.cn/IDR/ReportDownloads/201302/P020130312536825920279.pdf>.

⁶⁴ *Id.*

⁶⁵ *Id.* at 5.

⁶⁶ *Id.* at 5.

140 Chinese characters in one post, study shows that it is a powerful form of communication through which one can contribute easily.⁶⁷

The Chinese Government is fully aware of this trend. The Party views the Internet as a convenient social barometer tapping directly into public sentiments since netizens could express their opinions online. It is being described by the authorities as a “magnetic field for public opinions,”⁶⁸ and as a forum to “understand the public and to gather collective wisdom”.⁶⁹ In particular, the annual reports of the Office of Public Opinion Watch (OPOW) have included the voices from microblogs since 2010.⁷⁰

The different composition of microbloggers will reveal a glimpse of how intense the battle to have one’s voice heard can be. Of the microblog market, more than 46% of about 100 million microbloggers used Sina Weibo (Microblog) in 2010, rendering Sina to be the most popular and most powerful microblog player.⁷¹ Microblog messages in a month amounted to 90 millions, with a daily average of about 3

⁶⁷ Out of the microbloggers, 202 million, namely 65.6%, used their mobile phones to access microblogs. Id. Yanqi Tong and Shaohua Lei, *War of Position and Microblogging in China*, 22 JOURNAL OF CONTEMPORARY CHINA 292, 294(2012).

⁶⁸ OPOW, *Report on Internet Public Opinion* 2010, available at <http://www.people.com.cn/GB/209043/210110/13740882.html>.

⁶⁹ OPOW, *Report on Internet Public Opinion* 2008, available at http://www.360doc.com/content/10/0601/13/390015_30661595.shtml.

⁷⁰ OPOW 2010, *supra* note 68..

⁷¹ The selected month of calculation was March to June of 2010. Sina microbloggers amounted to 46.12% of the 103, 070, 000 total microbloggers. Sina Corporation, *White Paper on Year One of China’s Microblog Market* 7 (2010), available at <http://wenku.baidu.com/view/a63536cea1c7aa00b52acb49.html>. (in Chinese)

millions, and an average of 40 messages being sent every second.⁷²

Other than individual microbloggers, the authorities and the media are eager to be players in the microblog world. As of October 2012, there were 60,064 microblog government accounts that were active on Sina Microblog, of which 34, 539 were opened by governments and Party organs, and 25,525 were opened by verified government officials.⁷³ Compared with 2010, this was a drastic increase. Back then, there were only 41 government departments or organs that had Sina Microblog accounts.⁷⁴ Interestingly, Jiangsu province and the Public Security agencies have the most number of government microblogs.⁷⁵ Likewise, the media is a keen player of microblogs. As of August 2010, there were 466 mainstream media outlets in China that had Sina microblog service accounts including 118 newspapers, 243 magazines, 36 television stations and 69 radio stations.⁷⁶ By the end of 2011, the total number of microblogs opened by media outlets and by individual media workers had reached 3,516 and 24,416 respectively, representing an increase of 10.4% and 16.7% respectively.⁷⁷

The above figures have confirmed that microblogging is a “battlefield for the war

⁷² The selected month of study was July 2010. Ibid at 9.

⁷³ Office of Public Opinion Watch, *Sina Government Microblog Report in the Second Half of 2012* (Sina Corporation 2012) at 6.

⁷⁴ Sina Corporation, *White Paper on Year One of China's Microblog Market*, *supra* note 71, 6.

⁷⁵ Id. at 16.

⁷⁶ Sina Corporation, *White Paper on Year One of China's Microblog Market*, *supra* note 71, 6.

⁷⁷ Sina Corporation, *Media Microblogging Report 2011* [2011 年媒体微博研究报告] (July 2012).

of position” in the dissemination of information and ideas, and for participation.⁷⁸

Most, the different parties involved are aware how important it is to set the agenda for social and political discussion. The netizens have high hopes that the Internet could provide a platform for their voices being heard and for changes in society being made.

As reported in 2012, one of every two Chinese netizens was a microblogger.⁷⁹ But it

is exactly this fervour and enthusiasm that make the authorities nervous. In the 2010

OPOW Report, government censorship of the Internet was admitted and the need for

public opinion supervision was reiterated.⁸⁰ The authorities are equally keen to offer

their version of events, to clarify “rumours,” and to counter-balance perceived

threatening speech.⁸¹ Caught in between, Internet service providers have to toe a

delicate line. Like traditional media, it has to please two masters, in not offending the

authorities and its users. Sina corporation is known for its close relations with the

Chinese authorities. But unlike the traditional media which can handpick their editors

and reporters, Sina and other internet service providers need to have other means to

ensure the right form of information content can be circulated. It is reported that Sina

has its own censorship department with a team of a thousand staff to monitor its

microblogs.⁸² Internet companies need to comply with various regulations in

⁷⁸ Tong and Lei, *supra* note 67, 298.

⁷⁹ CNNIC, *supra* note 63.

⁸⁰ OPOW 2010, *supra* note 68.

⁸¹ The official stance is noticeable in OPOW 2010, *supra* note 68, at 14.

⁸² King-wa Fu, Chung-hong Chan, and Michael Chau, *Assessing Censorship on Microblog in China: Discriminatory Keyword Analysis and the Real-Name Registration Policy*, IEEE INTERNET COMPUTING

censoring objectionable speech but also need to attract and keep their customers.

As a result, the stories that ultimately reach us and manage to be headline Internet events are survivors of a complex system of filtering, supervision and counter-balancing.

C. The Transformation of Legal Narratives

In this rising tide of online dissenting voices, a noticeable feature is the advocacy of law and rights. Elizabeth Perry observes that there has been a steady increase of popular protest in China since 1989 and she remarks that these protests are often framed in a language of “legal rights,” giving an impression that there has been a “rising rights consciousness” in China.⁸³ In the specific context of cyberspace, Guobin Yang has described the above oppositional voices as online social and political activism, with a special focus on the rights of disadvantaged groups.⁸⁴

Here, in our present study of twelve legal stories that had hit the virtual headline news in the last five years (2008-2012), the dissenting voices were expressed clearly in the rhetoric of rights and legal language. They represented the common concerns of many in China: the disadvantaged and the ordinary citizens who are helpless in face of a corrupted, bureaucratic and authoritarian regime. Somehow, the netizens have put

43 (May/June 2013).

⁸³ Perry’s comments were about the post-1989 Tiananmen Student Movement in China. Elizabeth J. Perry, *A New Rights Consciousness?* 29 (3) JOURNAL OF DEMOCRACY 17 (2009).

⁸⁴ Guobin Yang, *Online Activism*, 29 (3) JOURNAL OF DEMOCRACY 33 (2009).

their faith in the judiciary, and trust that justice will be delivered if members of the judiciary or higher Party members are alerted.

In the below Table, one can tell that five out of the twelve stories were concerned with attempts made by netizens or the parties involved to bring the grievances to courts and to have lawsuits filed before courts. Two of them were non-criminal in nature, while the rest were criminal cases.⁸⁵ Only two stories were about attempts to overturn sentences.⁸⁶ In total, out of the twelve stories, only the outcome of one was completely inconsistent with the majority of public opinion. Sadly, it was about forced prostitution of young girls by Party members and officials.

⁸⁵ Luo Caixia case (*Luo Caixia v. Wang Zhengrong* [罗彩霞诉王峥嵘] (Xiqing District People's Court of Tianjin Municipality, 2009), case settled on 13 August 2010), and Shanghai Fishing Enforcement case (*Zhang Hui v. Minhang District Traffic Enforcement Group of Shanghai Municipality* [张晖诉上海市闵行区城市交通行政执法大队] (Minhang District People's Court, 19 November 2009)).

⁸⁶ Xu Ting case (*People's Procuratorate of Guangzhou City v. Xu Ting* [广州市人民检察院诉许霆] (Intermediate People's Court of Guangzhou City, 31 March 2008)); and Forced Prostitution of Primary School Students (*Wuhua District People's Procuratorate of Kunming City* [昆明市五华区检察院诉张安芬和刘仕华] (Wuhua District People's Court, 18 December 2009)).

Year	No. of Case successfully filed before the Court ⁸⁷	No. of cases in which the outcome was fully consistent with prevailing public opinion ⁸⁸	No. of cases in which the outcome was partially consistent with PO ⁸⁹	No. of cases in which the outcome was inconsistent with PO ⁹⁰
2008	1	1	0	0
2009	3	1	3	1
2010	1	0	0	0
2011	0	1	0	0
2012	0	0	0	0
2013	0	3	0	1

87

- (a) *Xunyang County People's Procuratorate of Shaanxi Province v. Zhou Zhenglong* [陕西省旬阳县人民检察院诉周正龙] (Xunyang County People's Court of Shaanxi Province, 27 September 2008);
- (b) *Luo Caixia v. Wang Zhengrong* [罗彩霞诉王峥嵘] (Xiqing District People's Court of Tianjin Municipality, 2009), case settled on 13 August 2010;
- (c) *Zhang Hui v. Minhang District Traffic Enforcement Group of Shanghai Municipality* [张晖诉上海市闵行区城市交通行政执法大队] (Minhang District People's Court, 19 November 2009);
- (d) *Chongming County People's Procuratorate of Kunming City v. Li Dongming and Su Shaolu* [昆明市崇明县人民检察院诉李东明和苏绍录] (Chongming County People's Court, 14 August 2009);
- (e) *Wangdu County People's Procuratorate of Hebei Province v. Li Qiming* [河北省望都县人民检察院诉李启铭] (Wangdu County People's Court, 30 January 2011).

88

- (a) *People's Procuratorate of Guangzhou City v. Xu Ting* [广州市人民检察院诉许霆] (Intermediate People's Court of Guangzhou City, 31 March 2008);
- (b) the *Wang Shuai* [王帅] case (Wang was placed in criminal detention by the police of Baoling City, Henan Province for the crime of libel after he criticized online the city government for illegal land takings. He was released afterwards and awarded state compensation for wrongful detention. See "河南副省长:王帅行为不构成诽谤罪 灵宝市将道歉并给予赔偿" *Nanfang Daily*, 18 April 2009, available at <http://china.nfdaily.cn/content/2009-04/18/content_5078872.htm>, accessed 28 May 2013);
- (c) *People's Procuratorate of Xi'an City v. Yao Jiaxin* [西安市人民检察院诉药家鑫] (Intermediate People's Court of Xi'an City, 22 April 2011).
- (d) *People's Procuratorate of Wanning City v. Chen Zaipeng and Feng Xiaosong* [万宁市人民检察院诉陈在鹏和冯小松] (No. 1 Intermediate People's Court of Hainan Province, 20 June 2013).
- (e) *Shenmu County People's Procuratorate of Shaanxi Province v. Gong Aiai* [陕西省神木县人民检察院诉龚爱爱] (Intermediate People's Court of Yulin City, 31 October 2013).
- (f) *Haidian District People's Procuratorate of Beijing Municipality v. Li X et al.* [北京市海淀区人民检察院诉李某某等] (No. 1 Intermediate People's Court of Beijing Municipality, 27 November 2013).

89

- (a) *People's Procuratorate of Zunyi City v. Yuan Ronghui et al.* [遵义市人民检察院诉袁荣会等] (Intermediate People's Court of Zunyi City, 24 July 2009);
- (b) *Xihu District People's Procuratorate of Hangzhou City v. Hu Bin* [杭州市西湖区人民检察院诉胡斌] (Xihu District People's Court, 20 July 2009);
- (c) *Badong County People's Procuratorate of Hubei Province v. Deng Yujiao* [巴东县人民检察院诉邓玉娇] (Badong County People's Court, 16 June 2009).

90

- (a) *Wuhua District People's Procuratorate of Kunming City v. Zhang Anfen and Liu Shihua* [昆明市五华区检察院诉张安芬和刘仕华] (Wuhua District People's Court, 18 December 2009).
- (b) *People's Procuratorate of Shenyang City v. Xia Junfeng* [沈阳市人民检察院诉夏俊峰] (The Supreme People's Court, 24 April 2013).

For the study on public opinion and a better understanding to the dynamics between public opinion, court decision and the desire of the netizens to bring grievances to courts, the below discussion focuses on four cases which surveys were conducted by the media or the court.

(1) Survey by CCTV: The Case of Deng Yujiao's Defence against Rape

The first story which caused huge uproar in the public was the Deng Yujiao trial in 2009. Deng was a 21 years old hotel waitress who killed a government official and wounded another in an attempt to protect herself from rape and sexual assault in May 2009.⁹¹ The story was ranked first in Internet discussion in 2009, attracting 25, 133 posts.⁹²

Deng herself called the police right after the incident and she was detained by the police officers for “intentional killing.” But after investigation, the Public Security Bureau founded that Deng had used “excessive force” to defend herself and decided to prosecute her. At that point, there was heated debate on the Internet. Some netizens went to Deng's county, Badong, in Hubei province to support her. One catchy

⁹¹ Wang Heyan, “Dust settled in the Deng Yujiao Case [邓玉娇案尘埃落定]” *Caijing Magazine* [《财经》杂志] 22 June 2009, No. 13. The case was much discussed by various scholars. Xuanyu Huang, *Re-legalization or De-legalization? Netizens' Participation in Criminal Justice Practices in China*, 52 *BRITISH JOURNAL OF CRIMINOLOGY* 724, 732 (2012); Liebman, *supra* note 7, 836.

The officials killed and wounded were the director of the local township business promotion office and his deputy respectively.

⁹² OPOW 2009, *supra* note 103.

headline on the Internet was “Everyone could be Deng Yujiao.”⁹³ The plight and helplessness of Deng being victimized by government officials and the criminal justice process had struck a chord with many.

When Deng was detained, the China’s Central Television (CCTV) had conducted an online survey, asking the netizens whether Deng’s conduct constituted lawful defence.⁹⁴ CCTV’s involvement in garnering public opinion should not be underestimated as CCTV is the Party’s main electronic media outlet and TV station. In the survey, netizens were asked whether (i) Deng’s reaction constituted lawful defence and Deng should not be found guilty; (ii) Deng had used excessive force to defend herself but should not be found guilty of intentional killing; and (iii) it was difficult to tell, there was still room for discussion.⁹⁵ The survey attracted nearly 130,000 voters, with 94% supported Deng and opted for the first option of not guilty, with 6% opted for the second option and less than 1% opted for the last option.⁹⁶ Because of the Internet discussion and survey, two lawyers acted pro bono for Deng,⁹⁷ photos and interview of Deng in the hospital were posted on the Internet,⁹⁸ and academics also joined the debate to discuss the legal merits of Deng’s defence.⁹⁹

⁹³ Huang, *supra* note 91 at p.732.

⁹⁴ <http://news.cctv.com/special/badong/shouye/index.shtml>

⁹⁵ <http://news.cctv.com/vote/see11889.shtml>

⁹⁶ *Ibid.* There were 129111 voters for the survey, with 93.41% opted for (i), 5.83% opted for (ii) and 0.75% opted for (iii).

⁹⁷ Huang, *supra* note 91, at p.733.

⁹⁸ Liebman, *supra* note 7, 836.

⁹⁹ A conference was held by thirty scholars in Beijing, calling on public support for Deng Yujiao. *Ibid.*

Eventually, Deng was found by the Badong County Court of using excessive force in defence but was exempted from any punishment because she was found to be suffering from psychological and mental disorder with acute depression.¹⁰⁰

This final judicial outcome of “guilty but free” was seen as a solution in response to the public outcry for “justice.” Although this could be seen as a half victory for Deng and the netizens, it is believed that Deng would have faced a different and worse fate if it were not for the wave of public opinion in the media and the Internet.¹⁰¹ At the end, the Deng case was listed by the Annual Report of the People’s Court of 2009 as an exemplary decision that had achieved both positive legal and social effects,¹⁰² but the authorities had been keeping a watchful eye on the development of public opinion throughout. It was reported in the OPOW 2009 Report that a microblogger nicknamed “Butcher,” who had played an important role in raising lawyer’s fee for Deng Yujiao, was a potential threat to society.¹⁰³ The case was a sensational one and was listed as one of the top 20 Internet events in 2009 (and will be discussed further in the next section).¹⁰⁴ It was further mentioned in the Report that Butcher was persuaded and “fended off” successfully by an officially

¹⁰⁰ Wang, *supra* note 91.

¹⁰¹ Huang, *supra* note 91, at p.733; Chen and Zhang, *supra* note 7, at p.50; Liebman, *supra* note 7, p. 834.

¹⁰² Supreme People’s Court, *Annual Report on the Work of People’s Courts (2009)* [《人民法院年度工作报告 (2009 年)》], 13 July 2010, available at <http://old.chinacourt.org/html/article/201007/13/417874.shtml>.

¹⁰³ OPOW, *Report on Internet Public Opinion 2009*, available at <http://sh.people.com.cn/GB/138654/10632540.html..>

¹⁰⁴ OPOW 2009, *supra* note 103.

investigator netizen, “Border Citizen,” not to intervene in another legal scandal concerning forced prostitution on primary school students.¹⁰⁵

(2) Survey by Local Television Station: Hangzhou Drag Racing 70 KM Case 2009

Another case involving survey by television station was the Hangzhou Drag Racing 70 Km Case of 2009. The case was ranked the seventh hottest Internet story in 2009, attracting 7495 posts.¹⁰⁶ What happened was a son of a rich local businessman had knocked down a recent university graduate with his Mitsubishi sports car in central Hangzhou.¹⁰⁷ The driver, Hu Bin, was detained by the policemen but not arrested. On the following day, when police reported that Hu was driving 70 kilometers per hour, a huge outburst of angry discussion took place on the Internet. This was because the university graduate was believed to be dead on the spot, after being knocked off flying five meters high and landed twenty meters away from the crash scene according to eye witnesses.¹⁰⁸ And the photos of Hu apparently smoking and laughing with his friends right after the accident only added fuel to the debate.¹⁰⁹ Due to public pressure, the police issued another report two weeks later, admitting

¹⁰⁵ Id.

¹⁰⁶ OPOW 2009, *supra* note 103.

¹⁰⁷ “杭州飙车案胡斌被判3年 双方家长均认为不公平” (Chinanews, 20 July 2009), available at <http://www.chinanews.com/gn/news/2009/07-20/1783113.shtml>. Discussion also in Liebman, *supra* note 7, p. 836.

¹⁰⁸ “网友质疑杭州飙车案 70 码车速 发明新名词欺实马” *Information Times* [信息时报], 27 July 2009, available at http://news.dayoo.com/china/200907/27/53868_10122516.htm.

¹⁰⁹ Kate Ray, *Hangzhou's drag-race driving "rich boy" arrested for manslaughter*, 18 May 2009, at http://shanghaiist.com/2009/05/18/drag-race_driver_arrested_for_mansl.php.

their mistakes and finally revealing that Hu was driving an illegally modified sports car, at a speed between 84.1 to 101.2 kilometers per hour at the time of the accident.

This incident had hit a raw nerve of many, in particular when the victim was a recent university graduate from a poor farmer's family who had been studying hard and working on his own for a better life. Many saw it as a tragedy caused by the selfish generation of the new rich.¹¹⁰ They were eager to bring Hu into justice. The legal debate had become on what charge Hu should be prosecuted. In a television programme by Qilu Television of Shandong province, audience were asked to vote through sms messages whether Hu should be charged for causing vehicular death of another which carried a maximum sentence of three years, or for endangering public safety which carried a maximum sentence of life imprisonment.¹¹¹ It was found that 89% of the voters (16091), voted for a heavier charge against Hu, while only 11% (1756) voters opted for a lenient charge.¹¹²

Despite the public stance, like the Deng case, the outcome of the Hangzhou Drag Racing case was also a half victory. In July 2009, Hu was prosecuted for causing vehicular death of another under article 133 of the Criminal Code, and was sentenced by the court to three years of imprisonment. Both Hu's family and the victim's family

¹¹⁰ Shai Oster, *China's Rich Youth Spark Bitter Divide*, WALL STREET JOURNAL, September 22, 2009 <http://online.wsj.com/article/SB125357000531429127.html>

¹¹¹ May 18, 2009, <http://society.people.com.cn/GB/86800/9322133.html>

¹¹² Ibid.

were not satisfied with the outcome.¹¹³ Netizens even questioned whether the defendant before court was the real Hu Bin.¹¹⁴ Such reaction revealed the complete lack of public trust with the police, the procuratorate and the court. Perhaps, what the public furor managed to do was to force the police to carry a proper investigation of the case and to bring the culprit before court. Without public opinion monitoring, the truth of the accident might not even be revealed.

(3) Survey by People's Daily Online to Rescue a Defamer: Wang Shuai Story 2009

Different from trying to pin down and punish a culprit, public opinion can also be used to rescue the innocent. In 2009, a young man named Wang Shuai who was working in Shanghai at that time posted online stories about his own family and other farmers who were forced out of their farmland due to industrial development without adequate compensation back in Lingbao county of Henan province. Because of this, Wang had offended the local government of Lingbao. Lingbao policemen and online policemen went to Shanghai to detain Wang in a Shanghai police station for three days, before escorting him back to Lingbao for a further detention in Lingbao police station for another 5 days. Later, Wang was arrested and was charged for defaming the

¹¹³ The father of the victim, Tan Zhuo requested the procuratorate to lodge an appeal, but was rejected by the procuratorate. See “杭州检方驳回飙车案受害者家属抗诉申请” *Peking Times* [京华时报] 31 July 2009.

¹¹⁴ Oster, *supra* note 110.

local government.

What was shocking to many was the cross-provincial arrest by local policemen for an alleged case of criminal defamation against a local government. And the fact that forced land requisition was a common problem to many immediately triggered a heated debate online.¹¹⁵ Wang story was ranked sixteenth in 2009 hottest Internet topic, attracting 5004 posts.¹¹⁶ Like the Deng story, many identified with Wang and they asked “Who would be the next Wang Shuai?”¹¹⁷

In the meantime, People’s Daily Online, the official portal operated by People’s Daily (the Party press) had carried wide coverage of the story. They interviewed Wang and conducted a large scale online survey asking the netizens whether they believed that (i) defamation is a pretext for the local government to suppress free speech; (ii) Wang had used the improper channels to complain and had harmed the reputation of the government; (iii) further investigation was necessary before conclusion can be drawn; and (iv) other opinions. Out of the 20533 voters, 93.4% believed it was the local government’s attempt to suppress free speech.¹¹⁸

In the end, Wang was not prosecuted. Not only was he set free, he received a

¹¹⁵ Amnesty International, *Standing Their Ground: Thousands Face Violent Eviction in China* October 10, 2012, <http://www.amnestyusa.org/research/reports/standing-their-ground-thousands-face-violent-eviction-in-china>.

¹¹⁶ OPOW 2009, *supra* note 103.

¹¹⁷ “人民网调查：河南灵宝青年发帖举报被囚八日，官方称其伤害领导，您怎样看？” 15 April 2009, available at <http://politics.people.com.cn/GB/1025/9132055.html>.

¹¹⁸ *Ibid.* The survey result showed 0.9% opted for option (ii), 2.4% for option (iii) and 0.9% for option (iv).

compensation of RMB780 and an apology from the local government.¹¹⁹ The Internet and online public opinion were seen as the “mighty imperial sword” that had saved Wang from the barbaric act of the local government.¹²⁰

(4) Survey by the Court: Xian Car Accident of “Passionate Killing” 2011

Other than public opinion survey conducted by the media, opinion survey was carried out by the court in the case of Yao Jiajin. The facts were equally disturbing as in the Hangzhou Drag Car Racing story. It involved a traffic accident that took place in October 2010 in Xian, Shaanxi province, when Yao Jiajin, a university music student, knocked down a farmer on a motor cycle.¹²¹ After the victim, Zhang Miao, fell on the ground, Yao feared that Zhang would remember the licence plate number of his car, so he went up and stabbed her several times before fleeing.¹²² Although Yao went to the police station to confess his act three days later,¹²³ there was a continuous outpour of public anger till Yao was tried and executed in 2011. The Yao case was ranked the top seventh Internet story in 2011, attracting more than four

¹¹⁹ “王帅发帖举报被囚获国家赔偿” *New Express* [新快报], 19 April 2009, p. A08.

¹²⁰ This comment was by the People’s Daily online, *supra* note 117 <http://politics.people.com.cn/GB/1025/9132055.html>. The expression “mighty sword” literally means the “highest valuable sword.” It was a description for the sword given by the emperor to an individual or a family, an ancient symbol signifying the highest form of protection that could override any human order or threat.

¹²¹ “药家鑫案法院判决书”, 22 April 2011, available at http://blog.sina.com.cn/s/blog_3e9f92340100r1bk.html.

¹²² *Ibid.*

¹²³ *Ibid.*

million posts.¹²⁴

Similar to the Drag Car Racing case, netizens viewed Yao case as a battle between the privileged powerful and the meek. Yao's father was a former senior military officer but the victim was a farmer and a young mother with a two year old child.¹²⁵ The netizens framed the battle as “Yao Jiajin and the Law, Yao Jiajin and China, only one can live!”¹²⁶ When there was suggestion by academics that Yao killed out of “in a heat of passion,” the netizens were outraged.¹²⁷

Perhaps, what was most surprising was that Xian Intermediate People's Court had distributed survey to the five hundred people who were present in the murder trial, seeking their opinions on how Yao should be punished and their suggestions on the case.¹²⁸ It was reported that out of the 500 present, four hundred were university students while only about 25 were farmers.¹²⁹ However, it was hard to tell how and whether the survey had influenced the final outcome of the case as the result of the survey was not disclosed. The final outcome of the case was that Yao was convicted

¹²⁴ OPOW, Report on Internet Public Opinion 2011 at 4, <http://yuqing.people.com.cn/GB/16698341.html>, Discussion on Yao attracted 4,026,097 posts.

¹²⁵ Ibid, at 11.

¹²⁶ Ibid.

¹²⁷ Please see ““药家鑫们”的土壤” (FT 中文网, 6 April 2011) <<http://www.ftchinese.com/story/001037914?full=y>> accessed 28 May 2013.

BTW, according to some scholars, 激情杀人 is a translation of “committed in a heat of passion”, see <http://magazine.caixin.com/2011-05-01/100254495.html>.

¹²⁸ *People's Procuratorate of Xi'an City v. Yao Jiaxin* (Intermediate People's Court of Xi'an City, 20 April 2011) CLI.C.348825. ‘法院审理药家鑫案向旁听者征量刑意见引争议’ *Beijing Evening Paper* [北京晚报] (14 April 2011), p 38. <http://news.sina.com.cn/c/2011-04-14/101222291617.shtml>. On the survey in the trial, see ‘Who has the final say on Yao's life and death? [药家鑫生死谁说了算]’ *Beijing Evening Paper* [北京晚报] (13 April 2011), p 38.

¹²⁹ Ibid.

of murder in trial in 2011.¹³⁰ The defence of killing out of passion or that he was provoked was not accepted by the court. Yao's sentence remained unchanged on appeal.¹³¹

The above method of collecting public opinion by the court during trial was also seen as controversial in China,¹³² but the Xian Intermediate People's Court defended its action as being consistent with a policy since 2008 of being open, transparent and in touch with the public life.¹³³ Most, it mentioned that the judge's behaviour should be under the supervision of the public.¹³⁴ Indeed, in the 2008 Policy Guideline for all courts in Shaanxi province, article 2 requires the court to seek the opinion of those present in cases with great social impact and those that involved public interest.¹³⁵

The Solicitation of Public Opinion

The above four legal stories which had captured the attention of the public and the authorities did not turn out to be full victory on every occasion. Although culprits were punished and victims were free, compromises were also made. For instance,

¹³⁰ Supra note 121.

¹³¹ ‘药家鑫故意杀人案一审宣判’ (XinhuaNet 22 May 2011, available at http://news.xinhuanet.com/2011-04/22/c_121336202.htm).

¹³² Ibid.

¹³³ “药家鑫案怎么判？法院向旁听者征“民意”引争议” (China.com, April 2011), available at http://www.china.com.cn/news/law/2011-04/15/content_22367384.htm.

¹³⁴ Ibid.

¹³⁵ Policy Guideline of Shaanxi People's High Court on Collecting the Opinions of Citizens Auditing in Trials towards the Adjudication (effective on 1 October 2008).

Deng was free but was considered as “mad;” while Hu who killed a university graduate with his race car was sentenced to a lighter sentence of three years. At the other end, Yao was executed for knocking down a victim with his car and stabbing her to death; and Wang was rescued from facing a criminal trial. All these are possible only with the help of public opinion, which traditional media and the Internet have played a definitive role in giving support and in amplifying the voices. If media involvement represents supervision by the authorities, what makes the Internet to be arguably distinguishable is that both the ruler and the ruled are adamant to gain the upper hand in this new terrain.

CONCLUSION

The essence of victimhood in all the legal stories covered in this Internet study is injustice. If it is not for the outpouring of public opinion, the victims’ stories would be silenced. Deng’s defence of rape would be denied credibility; the truth of the car accidents in Hangzhou and Xian would be secreted away; and Wang’s plight of requisition would have landed him in prison. Yet the injury inflicted is not only to the victims concerned but is a collective harm to society as a whole. The netizens are compelled to voice out as they see themselves being the potential victims in each story.

And the Internet has lent voice to the public opinion, allowing it to be expressed directly. Through public opinion, citizen awareness of issues is mobilized to act as a check against the state, to influence court decisions, or to push for legislative or policy reforms. It becomes a constant struggle to articulate the fear and concerns in ordinary life, to establish new rules on what is permissible to say, and to define justice. At times, netizens act to restore justice and take on the jury role to re-shape social and legal order. But this cry for justice needs the assistance of law and the court for only the latter are the emblems of power and official authority. Injustice must be acknowledged and addressed openly in the court. Indeed, Perry reckons the long tradition of Chinese citizens of seeking help from the courts in imperial time and in authoritarian regime.¹³⁶ Only when such failed, large scale protests might break out. In light of this, Perry describes Chinese citizens to be largely “rule conscious,” rather than being “right conscious” for they have long adhered to state-approved discourse.¹³⁷

In this sense, the Chinese court plays a critical role not only in resolving social conflicts and legal disputes, but also in softening oppositional voices, and in soothing the rising discontent in society. As the common dictum says, justice must not only be done but must be seen to be done. When the judiciary conducts public opinion survey,

¹³⁶ Perry, *supra* note 83, 19.

¹³⁷ Perry, *supra* note 83, 19.

or refers to such, they are also giving voice to the suppressed, and lending strength to society's self-healing impulse. It gives hope to the public when the judiciary responds to public sentiment. But the Chinese judiciary can only do it in a cautionary way for all the institutional constraints that define it. Perhaps, to a certain extent, public opinion has lent also legitimacy to the Court's own decision and position.

For now, with the Internet and the power of microblogs, public opinion monitoring can come direct from the citizens, forcing at least a daily relationship of direct engagement with the authorities, training the judiciary and the authorities to be attentive to the monitoring power. Regardless of the risk that such monitoring will be supervised, the Web and its promise of a voice and a site for all has become the unknown sea that lures travelers of different kinds with the temptation of discovery and conquest.

Appendix

Year	Case	Case was filed before court/ successfully prosecuted	The outcome of the trial was fully consistent with PO	The outcome of the trial was partially consistent with PO	The outcome of the trial was inconsistent with PO
2013	Teenager Li X involved in raping a barmaid		1		
2013	Gong Aiai		1		
2013	Sexual Assaults of Schoolgirls by a Headmaster		1		
2013	Xia Junfeng				1
2011	Yao Jiajin		1		
2010	Li Gang	1			
2009	Deng Yujiao			1	
2009	Hide and Seek	1			
2009	Shanghai "Fishing" Law Enforcement Case	1			
2009	Hangzhou Drag Car Racing 70KM			1	
2009	Prostitution of Primary School Students				1

2009	Wang shuai		1		
2009	Xishui Underage Prostitution			1	
2009	Luo Caixia	1			
2008	Huanan Tiger Story	1			
2008	Xu Ting ATM		1?		
Total	16	5	6	3	2