On the Reconstruction of Judicial Credibility in the Context of Comprehensive Rule of Law

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Abstract. Judicial credibility is the key driving force to promote the comprehensive rule of law, and it is also the inevitable requirement of deepening the reform of judicial accountability system. In the new era, in order to coordinate the contradiction between the public and the judiciary and restore the authority on judicial credibility, we should give attention to the important links among judicial work, network public opinion and public mentality. How to achieve the balance of this relationship needs us to base on the judicial system itself, pay attention to the public opinion and the overall social environment, take the judicial effect and social effect into account, make sustained efforts from every respective like strengthening the judicial authority.

Introduction

Recently, 'Zhao Yu Case has made an opening on a great deal of uproar. After being classified as "intentional injury crime" initially, it was changed into the crime of causing serious injury due to negligence, and finally made a decision not to prosecute by the local inspection authority. The twists and turns of fate of Zhao Yu has been the focus of the community. Many are aggrieved that "heroes" have become defendants awaiting trial in court, and question the limits of "justifiable defence". However, Zhao Yu Case arouses thoughts not only about the integrity of law enforcement and case handling, but also about the conflict between the public and the judiciary.

Crisis of Confidence between the Judiciary and the Public

People Question the Fairness of the Judiciary

The conflict between the public and the judiciary is mainly reflected in the influence of public opinion on this case. The influence of public opinion on Zhao yu's case is huge. From the perspective of ordinary people, netizens sided with Zhao yu and launched a concerted crusade against unfair trials, which reflected a native concept of justice, "Defend righteousness by chivalry and punish evil and promote good." In such events, the values of justice firmly held by the public and the conservative values always held by the law collide violently, and the consequences will even reverse the moral wind direction and belief of the whole society and even an era. "Justice depends on the trust of the people,"[1] Gustav Radbruch said. This sentence not only points out the importance of the people's trust in the judiciary, but also emphasizes the need for the judiciary to uphold fairness and justice. But in practice, examples of justice deviates from the track of trust and justice values are not little. Take Peng Yu Case in 2006, which was called the turning point of "leading to the decline of social morality for 50 years". After that, few dared to help the elderly and do good deeds. Public distrust of the quality of judicial work and trials has peaked, dealing a fatal blow to judicial credibility.

The Quality of Judicial Work is Worrying

In recent years, the court has retried such old cases as Nie Shu Bin Case and Zhao Zuo Hai Case, trying to make up for the errors in judicial work by means of relief afterwards. We believe that the retrial system, while remedying judicial errors, also reflects the deficiencies of the judicial system and judicial activities in daily trials. The improper judicial procedure and weak judicial execution
will not only lead to practical problems such as "blank slips of law", but also make "procedural justice" and "substantive justice" difficult to be effectively guaranteed.

There is an English proverb goes like “Justice delayed is Justice denied.” The version of it is “Justice may be late, but will never in absence.” The accurate interpretation is “Justice delayed is not justice itself.” If the scythe of justice does not fall when necessary, the result of this trial will be wrong. The essence of vindication of unjust, false and wrong cases is of no avail. Once the judicial credibility is destroyed, the judicial relief is only to treat the symptoms but not the root cause. Compared with the remedy after the fact, our urgent task is how to avoid the repetition of Zhao Yu Style tragedy, how to promote the benign interaction between the public and the judiciary, rebuild the judicial credibility, and promote the construction of the rule of law and social progress in the new era.

**The Main Factors Causing the Crisis of Judicial Trust**

Judicial credibility is a subjective judgment of judicial behavior by the public and many organizations, and a collective psychological reflection of the public, not an individual evaluation. Judicial credibility is closely related to the exercise of judicial power. The public's respect and trust for judicial authority are embodied in the compliance and obedience to judicial judgment. In addition, the legal belief of the public also plays an important role. When the authority and dignity of the law have been deeply rooted in the hearts of people, people naturally have 100% confidence and confidence in the judiciary.

The substantive function of judicature is to solve disputes. Judicial decision has direct and vital influence on the public's trust in judicature. "Justice depends on the trust of the people," Gustav Radbruch said. It points out the importance of the people's trust in the judiciary, but also emphasizes the need for the judiciary to uphold fairness and justice. But in practice, cases that justice deviates from the track of trust and obeyed justice values are not a little. The main factors causing the crisis of judicial trust are as follows:

**Defects in the Judicial System Itself**

The error of judicial decision can be attributed to the inherent defect of the judicial system.

**Judge Quality and Trial Consciousness.** Judge quality and judge consciousness are the basic conditions to ensure a fair and reasonable verdict. Judge quality refers to the comprehensive ability shown by judges as a neutral judge in the hearing of specific cases, including political quality, professional ethics quality, professional ability quality and judicial character quality. The low quality of judges will lead to a series of unfair judicial acts, and the consequences of these acts will incur the dissatisfaction of their victims and strong social repercussions. For example, the low quality of professional knowledge will lead to errors of judgment in the trial of cases, or the lack of professional ethics will easily lead to judicial corruption, and also affect the low judicial efficiency to a certain extent. In addition, judges should also have general social life experience as ordinary people, be able to consider the positions of the parties and the public, and make reasonable judgments, which can highlight the authority of the judiciary. If without this point, they will be like the judge in the first instance of "Peng yu case", who does not follow the general rules and the common cognition of the society, and the verdict cannot stand scrutiny. The reason to follow "social reason" is that the ultimate goal of law is to defend mainstream values.

**Law Enforcement Directly Affects the Public Image of the Judiciary.** From the aspect of law enforcement, law enforcement is a direct link with the public, and an indispensable reference for the public to evaluate the judiciary. According to the previous survey data of judicial credibility, among the public security organs, procurators and courts, the public security judicial organs have the lowest trust. The main reasons are that the staff quality of public security judicial organs is generally low, corruption is serious, and law enforcement and handling cases are unfair. By far, the prosecutor's reputation is the best, and has little to do with its work against corruption and corruption, and perhaps little to do with its direct contact with the public. We believe that the public's impression of the judiciary is mainly derived from law enforcement, and the public's trust
in the judiciary mainly chiefly bases on law enforcement. If there are any mistakes or errors in law enforcement, regardless of law enforcement subjects, law enforcement process or law enforcement results, the public will gradually turn negative towards the judiciary. This shows the significance of law enforcement to the judicial system, judicial authority and judicial credibility.

**The Contradiction between Internet Public Opinion and Justice**

The Peng Yu Case led to the "domino" collapse of social trust, in which online public opinion played a key role, and online media amplified the public's voice in evaluating judicial activities, which often made the judiciary fall into the "dilemma" between fairness and justice and the public.

**False Reports in the News Media.** In recent years, most of the cases that have aroused heated discussion in the society have gained public attention through the communication of the Internet and other media. Especially entering the media age, everyone has the right of speech to issue a personal view of freedom. Meanwhile, with the growing enthusiasm of public participation in the judicial activity and increasing emphasis on the legal rights and interests, the public is keen to judge cases that can easily resonate oneself or reflect, especially criminal cases, because criminal cases directly affects social and public interests and order. Representative cases are Yao Jiaxin Case in 2010 and Zhao Yu Case this year, both of which are influential litigation cases.

So-called influential litigation cases refer to those cases that have great influence on legislation and judicature and are widely concerned by the society and can be used to observe the rule of law. In Yao Jia Xin Case, the strong demand for the death sentence of Yao Jia Xin was overwhelming. All major news websites, newspapers and TV stations were pre-emptive to criticize excessively and exaggerate the evil nature of Yao Jia Xin's behavior, drowning out the judicial opinions. Once the death penalty was approved, the campaign proclaimed a "victory of fair public opinion". Looking at the Zhao Yu Case, the media reports infinitely magnify the points such as "helping others in good faith" and "helping others when the road is rough". They only pass over, or even omit the cause and effect of the case, its background and objective analysis. The case that the public know is the version that deducts through news media, being serious distorted, which causes public cognition error.

As a result, there is an irrational tension between the media and the judiciary -- the trial is distorted by the media's attention, whereas, as long as the media does not pay attention, the normal state will return. The relationship among the judiciary, the media and public opinion has fallen into a vicious circle: The judiciary insists on keeping a certain distance from the media, while news media and public opinion will directly question the impartiality of the judiciary, and judicial credibility is greatly affected.

We believe that judicial justice and media supervision should complement each other and urge each other to make progress. As two indispensable elements of modern democratic civilization and social development, if they are in a confrontation situation, it will seriously harm the progress of the society and even the country. Therefore, we should seek the best balance between judicial justice and media supervision, so that the relationship between them is in a good state.

**Lack of Public Legal Belief.** The formation of "one-sided" tendentious public opinion, in addition to the dissemination of the role of the news media, the lack of legal belief is the fundamental reason. The matrix of Chinese law is morality, because there is almost no religious belief in our society since ancient times. Morality has become the belief and pursuit of value of the Chinese people. The traditional society in ancient China was dominated by the rule of man, and there was no "rule of law", let alone legal belief. Whether it is the law of the Tang dynasty, the law of the Song dynasty, or the law of the Ming dynasty, the thought of "official standard" runs through the whole time. It has been for thousands of years. Modern western legal civilization into the country, after all efforts, gradually perfect and improve the judicial system, but in a country like China "in the human society", "reason" is still far higher than that of "jurisprudence", need to maintain the rights and interests and solve the problem, the first choice of most people is not law, but through the walk, the way such as line. Coupled with the destruction of the rule of law by the "catastrophe of ten years", the law has been weakened in people's mind. Despite the historical
origin, even though the country has vigorously advocated and repeatedly emphasized the construction of legal society in recent decades, the status of law in people's mind has been significantly improved due to numerous problems in practice from top to bottom, from legislation to law enforcement.

Berman emphasizes that "The law must be believed, or it will be useless." "But 'legal belief' is not the same as 'absolute legal belief'." As the value orientation of modern society and the justice record of society and country, the rule of law needs to be transformed into the rational demand of the public and provide the corresponding objective environment. "Shaping the legal belief of the whole people is the only way to realize the rule of law."

**Countermeasures to Promote the Benign Interaction between the Public and the Judiciary**

Restoring judicial credibility is bound to be a difficult and complicated process, obstructed by subjective and objective factors and unknown variables. To get a satisfactory answer to this question, we should not only rely on the judicial system, but also take into account the overall social environment and situation.

**Improvement of the Judicial System**

Judicial credibility contains the dimension of public trust, so we should start from establishing of public judicial trust.

When Fei Xiao Tong described the structure of Chinese rural society in *Rural China*, he put forward the famous judgment of "differential order pattern". In the traditional acquaintance society based on the small-scale peasant economy, the degree of trust of a person to others is determined by the self-centered social relation structure spreading outward in concentric circles, with the blood relationship at the front and the geographical relationship based on the region at the second. Similarly, the public's judicial trust starts from the grass-roots public security and judicial organs that have the closest and most direct contact with their own interests, and gradually decreases according to the degree of interest correlation. Law enforcement is the most important.

The key to improve public judicial trust is to handle cases fairly and efficiently, and to achieve substantive justice by ensuring procedural justice. It can be realized from the following aspects: first, judicial openness. The supreme people's court has opened the "China Judgements online" and "Shixin court gov. cn", but judicial openness is more than this, judicial results and judicial process of the open combination can truly achieve the purpose of judicial openness—judicial justice and protection of judicial right to know; Second, the elimination of improper interference by party and government organs. In practical operation, judicature is often interfered by administration, especially in our country, where the influence of "rule by man" has not faded, some courts are still attached to administration, and the problem of judicial administration is serious. If we want to realize judicial independence and lay a solid foundation for rebuilding judicial credibility, we must be clear of all obstacles interfering with judicial independence. Third, to improve the image and quality of judges. The data of judge questionnaire shows that there is a positive correlation between judge image and judicial credibility. If the quality of judges can be improved, the professional skills of judges can be strengthened, and the judicial awareness can be cultivated, it will not only be conducive to obtaining legitimate and reasonable judgments, but also contribute to the progress of the judicial system.

**The People's Legal Awareness and Belief Need to be Cultivated.** Judicial public opinion is a collection of ideas composed of social individuals whose rationality influences the evaluation of judicial credibility and the judicial choice of the society. Herbert A. Simon[2] proposed the theory of bounded rationality. One of the major limitations of individual rationality is limited self-interest, which means that in many cases individuals would rather sacrifice their own interests than do certain behaviors. This seems that self-interest are guiding individual behaviors. This includes three reasons :(1) the concept of justice; (2) conformity; (3) Anonymous Effect. 

**Anonymous Effect. In order to Enhance Judicial Credibility, It is Necessary to Take the Public Option Seriously.** Judicial credibility comes from judicial authority and judicial fairness, at
the same time, all of them influence and promote each other. To cultivate people's legal awareness and belief in law, we should first build public trust, and not only rely on judicial deterrence, otherwise the judiciary will be "instrumentalized". "The main reason people obey the laws is because the members of the collective accept them in their beliefs and are able to embody the values they express in their actions."[3] Unger said. In order to cultivate legal consciousness and legal belief, we must build a good internal and external environment and provide corresponding subjective and objective conditions.

Based on the analysis above, we suggest: first, to ensure the smooth operation of the economy. Economy is the foundation of the superstructure. By promoting economic development, coordinating the contradictions between different interest subjects in the market economy, safeguarding the legitimate rights and interests of citizens and legal persons, promoting the legal attitude of the public to take on a new look, and creating psychological identification of the existing law. Second, we should strengthen legal education. Only a few people have a complete and profound understanding of the law, most of whom are unfamiliar. By vigorously popularizing the law, laws can be introduced to the public, which is conducive to the formation of general, healthy and scientific legal cognition, and more importantly, to the public's recognition and respect for the law. Finally, combine moral construction with legal construction. Based on the characteristics of China's legal culture and the relationship between morality and law, we should break down the moral tradition and make it adapt to the development of modern civilization and the requirements of legal system, and promote the construction of morality, which is more conducive to the acceptance and trust of the law by the public.

Balance the Relationship between the Media and the Judiciary

At present, the relationship between the judiciary and the media is not ideal. The function of the news media is to objectively reflect the truth, attach importance to reflect social conditions and public opinion, and defend mainstream values. However, due to the information explosion in We-media era, the media often go against their basic duties, cater to the public, distort the facts of the case, and push the judiciary into the mire. If there is no media supervision, the judicial system alone cannot guarantee the integrity of judicial personnel and the fairness and legality of judicial trial. Therefore, the press freedom of the media should be clarified through legislation and certain restrictions should also be made. The media should respect judicial independence and truth, and report relevant facts objectively and less subjectively. At the same time, the media and public opinion should be expanded to supervise judicial activities and all potential factors that may affect the justice of trials. In order to achieve objective, high-quality reporting, the media can maintain the correct direction of speech by strengthening the professional skills and ethics of the team.

In addition, the judicial system should not blindly abide by the standard of "judicial independence", but should take into account that law is used to maintain social order and the social effect must be considered. Give consideration to the "judicial effect" and "social effect", guarantee the press freedom of the media and the right of the people to know about the judiciary, actively communicate with the media and avoid unnecessary misunderstanding and estrangement. Of course, all these are based on the legitimacy of trials. This can relieve the confusion or extreme emotion of the public about the result of judicial activities.

Conclusion

At present, China is in an important stage of legal construction. The establishment of judicial credibility is very critical to the judicial system. The level of judicial credibility relates to the effectiveness of judicial work directly. If the judicial system loses the foundation of public trust, its implementation will be difficult, judicial fairness and justice is difficult to be implemented. This research mainly starts from the interior of the judicial system, the external social environment and the public mentality, to explore how to establish a sound relationship between the judiciary and the public in the new era.

Adhering to the values of fairness and justice and measuring social benefits are the inevitable
requirements of shaping judicial credibility. Public credibility contains two dimensions of trusting and credit. Only when the two reach an equilibrium level can the public credibility system really play its role and the public and social public opinion make objective and rational evaluation. Therefore, they are able to form a more positive judicial cognition. We should correctly guide the media's public opinion guidance in the era of our media to prevent the negative impact caused by false reports and excessive interference in the judicial trial by public opinion suppression. At the same time, we should respect the freedom of the news media and avoid the situation of "the power to coerce the public opinion". With the media mutual supervision, mutual promotion, mutually complementary, so as to achieve a "win-win".

The establishment of credit and trust is the most important part of the implementation of each link of judicial work. From the impartiality of judicial activities, judges' balance of legal principle and reason, to the integrity and efficiency of law enforcement, we should not only adhere to the bottom line of the law, but also protect citizens' legitimate rights and interests and the right to judicial participation. Let the public understand the operation of the judicial system, have some understanding of judicial work, and feel the spirit of judicial democracy and justice, so that they can properly express their legal appeals. Judicial workers should also pay attention to following the objective laws and not pursue "procedural justice" while ignoring the mainstream social values and moral concepts.

To sum up, in order to realize the basic principle of ruling the country by law and restore judicial credibility, it is necessary to shape the relationship of trust on the basis of a clear understanding of the contradiction between the judiciary and the public, including trustworthy subjects and persuasive behaviors. We should attach importance to the institutional construction and code of conduct within the judicial system, and adhere to sound interaction with the public and public opinion, without compromising the legitimacy.

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References

