

The rise of the Internet and its impact on the openness of the justice system in mainland China: improvements and limitations

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Abstract. The justice system of mainland China is characterised by secrecy to some extent, although it has been gradually reduced. The widespread availability and usage of the Internet has brought a dramatic information flow in mainland China, which could be an opportunity for better access to law and the justice system and increased openness. However, the picture is rather mixed, which will be discussed in this paper. Any information which might diminish public confidence on the justice system is still likely to be censored by various means, and public access to information on sensitive cases is still strictly controlled, although the difficulty of doing so is increased by the Internet. Therefore, this paper concludes that the rise of the Internet cannot definitely lead to more openness of and better access to the justice system without a reform of the system itself.

Keywords: Internet, openness of the justice system, mainland China.

1. The development of the Internet: uneven improvement of openness

Public trial has been established as a principle in China's constitution in terms that all cases should be tried in public unless otherwise specified by law.¹ It is also stated clearly in the criminal procedure law,² the civil procedure law³ and the administrative procedure law.⁴ Public trial, which one might argue is not equivalent of open justice but still constitutes a crucial part of the principle of open justice, is well established in paper in China so far. The SPC (Supreme People's Court of the People's Republic of China) also enacted several regulations and guidelines regarding open

¹ Article 125, Section 7, Chapter 3, The Constitution of the People's Republic of China.

² Article 11, Chapter 1, Part 1, The Criminal Procedure Law of the People's Republic of China.

³ Article 10, Chapter 1, Part 1, The Civil Procedure Law of the People's Republic of China.

⁴ Article 6, Chapter 1, The Administrative Procedure Law of the People's Republic of China.

justice a few years ago, e.g. *Several Suggestions on Reinforcing Open Justice* in 2007, *Six Regulations on Open Justice* in 2009 (which stress “comprehensive openness without delay and in accordance with law” of filing cases, trials, implementation, other hearings, documents of judicial decisions, administration related to adjudication), and *The Criteria of the Model Courts of Open Justice* in 2010. Other local courts also enacted similar guidelines or regulations, e.g. *Several Regulations on Reinforcing Open Justice* by the Higher Court of Guangdong province and *The Implementation Criteria of Justice in the Sunlight* by the Higher Court of Jiang Su province. In 2007, the State Council enacted *Regulation of the People's Republic of China on the Disclosure of Government Information*, which is applicable to administrative organs including the public security organs (the police), a significant part of the criminal justice system. These laws and regulations provide legal foundation for official information resources of the justice system. However, the development of the Internet in China has made more alternative information of the justice system available to the public.

This century is witnessing the dramatic development of the Internet in mainland China, with which comes a faster flow of information than ever before. The popularity of Internet media and Internet-based social networking tools expose the public to both a larger quantity of information and more diverse information resources. Here are some data from the China Internet Network Information Centre (CINIC) for a more vivid picture: up to the end of 2011, the number of Internet users, who are often referred to as netizens, had reached 5.13 billion of whom 26.5% were rural residents, and the number of mobile netizens had increased to 3.56 billion (China Internet Network Information Centre, 2012). Influence is expected on how the public get informed and get engaged in communication on legal issues. In fact, the Internet’s impact on the openness of the justice system presents a rather mixed picture. It is acknowledged for its impact on a certain improvement in the openness of the courts. However, the Chinese judges are thereby more exposed to Internet-mobilized pressure, which has caused great concern about the Internet’s negative influences on judicial independence, evidenced by the intense public opinion on a significant number of high profile cases in recent years. This paper will focus on the Internet’s impact on the openness of the justice system and discuss both the positive impact and its limitations but not for any purpose of prescription to heal the problems. It will also discuss the public’s perspectives on or

reaction to this problematic openness in the context of the development of the Internet.

However, before the paper goes any further with this discussion, it notes that China is a massive country of great diversity and uneven development. The situation and concerns of courts in different areas vary: e.g. what concrete problems of open justice concern judges, or even whether openness is a major concern to judges, whether or not or to what extent the Internet facilitated public pressure or media's pressure concerns judges etc. Therefore, the impact of the Internet on openness of the justice system may vary from region to region.

Generally, openness is proportional to the economic situation of the local area (Research Team of the Higher People's Court of Guangdong Province, 2012). The actual openness of the justice system in the developed areas is better than in underdeveloped areas, although both are still subject to further improvement. How far the court can benefit from the development of the Internet to promote its openness is partly dependent on funding. In less developed areas, the degree of openness of courts is restricted by their squeezed-up funding or resources (Ye *et al*, 2011; Research Team of the Higher People's Court of Guangdong Province, 2012). The shortage of funding has seriously affected the operation of courts, e.g. some primary courts do not even have enough funding to pay bills to ensure the supply of electricity and the telephone network (Peng, 2005), or pay the judges' and staff's salaries (He, 2009); courtrooms are very old and shabby or even dilapidated but the court does not have funding to build new courtrooms etc. (He, 2011). Under such circumstances, it is very unlikely to expect them to spend their overstretched funding on Internet work or any other means of promoting openness. The dominant concern of these courts, as found in an empirical study, is funding problems (Wang B., 2009). The need to maintain the routine operation takes priority over making good use of the Internet to improve the openness of the court, or even dealing with Internet-mobilized public pressure.

In contrast, courts in developed areas enjoy better facilities and better access to the Internet with guaranteed funding. Many local courts in these areas and the Supreme People's Court (SPC) have established their own websites and have published extensive information about law for the purpose of public legal education; and also information about the courts, e.g. time and venue of hearings, judgments and other judicial decisions (if

they do not contain any state secrets, trade secrets, or privacy issues), information about how to present a lawsuit, legal essays written by judges. Some even use their websites to broadcast their trials etc. for the improvement of openness and transparency. Beijing has specially established a website to broadcast trials of the courts in this city and interviews with some judges.⁵ They also provide contact details of the courts for any complains or suggestions to promote their communication with the general public, although to what extent they take it seriously is open to debate.

Although material and financial resources are of great importance, it is not the sole factor influencing the actual openness of the justice system, and certainly not the decisive one. This paper argues that the development of the Internet cannot solve the fundamental causes of the problematic openness of the justice system in mainland China, and will provide further evidence to support this argument in the next section.

2. Justice in secret

Despite the improvement of openness facilitated by the Internet, China's courts still have received a great deal of criticism of their problems of openness from scholars and the general public. The courts have also admitted the serious problems of openness. Empirical studies done by either courts or scholars both recognize problems that still exist and note that the problems of openness are partly responsible for the crisis of public confidence (Research Team of the First Intermediate Court of Beijing, 2011). A report points out problems including the following: the accessibility of judgments still remains "far from properly done"; procedural transparency remains "considerably low"; there are "all kinds of" barriers to attending public trials; the parties cannot always get access to the documents of their cases etc. (Institute for Advanced Judicial Studies, 2012). Even when the courts employed the Internet to publish relevant information to the public, it is doubtful whether their motivation is only to improve openness. A report criticizes that the activities of improving open justice are "excessively dominated by propaganda purposes" (Institute for Advanced Judicial Studies, 2012). Mixed motivation might compromise the

⁵ Available at: <http://bjfyzb.chinacourt.org>.

possible positive impact of the Internet on openness. For example, the higher court of Shaan Xi province announced that all the judgments of the courts of this province will be published on Internet; however, not all the judgments finally are published on Internet (Institute for Advanced Judicial Studies, 2011). Although many courts have started to broadcast trials, most of the cases are very simple and trials are merely conducted according to prior plans. (Wang Q, 2011) This suggests that courts are more interested in building up a better image than improving the actual openness of justice, which is evidenced by statements of several courts. For example, a higher court states that courts should “publicize themselves actively” and improve the access of media reporting but still upholding the principle of “positive propaganda”. (Research Office of the Higher People’s Court of Jiangsu Province, 2006).

The justice system of mainland China still keeps a very strong secrecy feature, which has not changed much during these years’ judicial reform and cast more shadows on the transparency. This secrecy feature is exemplified by unwritten rules, which are never established formally but extensively practiced and will be discussed in the first section, and institutional deficits – judicial secrets and subsidiary files. They are challenged but have been significantly changed by the development of the Internet. This section will focus on these remaining problems and leave the discussion of the Internet facilitated challenges to next section.

The first such problem is that of unwritten rules (*qian guize* in Chinese) within the justice system, also translated as hidden rules or latent rules. Compared with statute, judicial interpretation or any other formal rules, these informal and secret rules are not established by any formal resources and some of them are even illegal. They are not open to the public or even the parties but are followed by judges in practice, and even influence judges more than the formal rules. For example, corruption cases where the accused is of high rank are likely to arouse public concern and public trials are usually expected, but in these cases the procurators and judges have to follow the instructions from the Communist Party committee, which are usually confidential, rather than law that is open to public (Deng, 2006). The practice of unwritten rules is acknowledged both by the Chinese scholarship (Chen and Dong, 2008; Pan, 2003; Zhou, 2008) and by judges (Xia, 2010). A pragmatic reason for judges to follow unwritten rules is to cover their backs and avoid potential responsibility, as these rules will not be cited in their judgments, neither are they accessible to the parties or the

public. An example is that trial judges might seek instructions from the chief justice of the tribunal, the president of the court, the adjudicative committee or the court which might hear the case if the parties appeal, but judges will not cite the instructions although they follow them. (Xia, 2010) Therefore, even if the judgments are accessible on the Internet, the real reasoning still remains inaccessible. The strongly anti-transparent nature of unwritten rules also disables public scrutiny which is an indispensable aspect of open justice.

According to the Judges' Law of PRC, judges have a duty to "keep state secrets and the secrets of the judicial work". The SPC and the Ministry of Justice enacted *Several Regulations of the Relationship between Judges and Lawyers in order to Protect Judicial Impartiality* in 2004, which require that "judges should strictly follow the principle of public trials... but judges must not disclose any judicial secret". Judges who seriously default on this duty might be prosecuted, according to *Regulations on Keeping Confidential Information of the Adjudicative Work by the SPC* (1990), *Regulations on the "Five Strict Forbiddances"* (2009), and *Punishment of Violation of the "Five Strict Forbiddances"* (2009). Therefore, the degree of openness is restricted by what is a judicial secret, which is subject to the court's discretion. Data on the death penalty, deliberation of the collegiate panel and the adjudicative committee, and the requests for instructions and replies of the high profile cases are generally regarded as confidential (Intermediate People's Court of Jiyuan, 2003). The scope of judicial secrecy can be very extensive, e.g. the intermediate people's court of Hanjiang generally categorizes statistics of criminal justice as secret (Intermediate Court of Hanjiang of Hubei Province, 2006). They will certainly not be released officially by any court on the Internet.

Though it contradicts the open justice principle, the secrecy principle prevails and the confidentiality of the subsidiary files is expected to be strictly followed in practice. The subsidiary files usually include "the records of the deliberation of the adjudicative committee and the collegiate panel, the internal requests, reports or instructions on how to deal with individual cases and other materials which is not suitable to open to parties or the general public" (Niu, 2003). The reason for doing so, according to staff of a local court, is that if the parties know of the deliberation, the judge who does not favour their claim is subject to hostility or even the risk of personal attack, or the parties might seek petition (Niu, 2003). However, in fact, the subsidiary files could just be a veil over disgrace. An example is

a criminal case where the adjudicative committee was involved (Chen, 1998). A person was prosecuted for embezzlement but the collegiate panel planned to return a verdict of innocence. This case was presented to the adjudicative committee and the committee agreed that the defendant was not guilty. A judgment of innocence was then made and sent to the defendant and the defendant was released. However, the head of the local procuratorate called the president of the court and required the court to change the decision. Afterwards the president of the court summoned a meeting of the adjudicative committee to re-discuss this case and it returned a guilty verdict. If a case is presented to the adjudicative committee to discuss, the parties will not be informed of this matter, not even of who sit on the committee and why they make a particular decision. This issue has seriously diminished openness and caused unfairness with respect to which the Internet is helpless.

What has been discussed above is a more general feature of the justice system. With regard to individual cases, routine cases are usually out of the attention of the public. With regard to high profile cases, due to their sensitive nature, media reporting is subject to restrictions to different degrees, e.g. the State Administration of Radio, Film, and Television (SARFT) requires that all the broadcasting and television institutions should “conduct the propaganda and reporting strictly according to the general arrangement and requirement of the centre, and whatever they are not sure about should be presented for instructions”, according to *Requirements on Effectively Improving the Work of Broadcasting and Television Institutions on Public Opinion Supervision* enacted in 2005. Information about sensitive cases on the court’s website is also very limited. Under such circumstances, rumors or grapevine news on the Internet become alternative information resources. Even if they are not the most reliable information resources, they are not always available. The Communist Party of China (CPC) is very concerned about the impact of negative online information on the images of the justice system and its administration. As a result, information control of the Internet is closely associated with its development in China. For example, keyword filtering is employed to block sensitive information from being posted or spread on the Internet. However, to what extent this might avoid a loss of public confidence towards the openness of the justice system is uncertain. When the Chinese public is getting increasingly sophisticated, partial or selectively published information may fail to convince the public what the truth is. The public would still attempt to express their disaffection toward

a lack of transparency on the Internet, or they might even take more active action to discover the truth by themselves and challenge the authority, which will be discussed in the next section.

3. Challenging the problems of openness: netizens in action

From what has been discussed above, the state can still decide what the public can know to a great extent. A lack of transparency within the justice system compromises public scrutiny which is affirmed in state ideology, although China is widely regarded to be an authoritarian country. Public scrutiny in this paper is used for a more frequently used word in China – “supervision of public opinion”. It requires information to be accessible and open to the public, so that the general public can observe the performance of the justice system and openly express their critical views when they are discontent. With regard to public scrutiny towards the justice system, China does not have law of the contempt of court; therefore theoretically there are fewer restrictions on critical speech. However, in fact it depends on to what degree the state is tolerant to critical speech against the performance of the justice system, e.g. whether there is retaliation against such speech. The possible impact of the Internet on public scrutiny includes two aspects: providing alternative information resources when official information of the justice system is not available or accessible, and providing a forum of fewer restrictions compared with paper media for members of the public to express their opinions, which will be delivered to their fellow citizens promptly considering the speed of information flows on the Internet which can help mobilize public pressure. The might be perceived as a challenge to the state in an authoritarian country and has incurred controls over information flows on the Internet.

With the growth of information received, the Chinese public is becoming increasingly sophisticated. They are not satisfied with restricted access to information, nor do they just passively accept whatever they are told. There might be an outcry of dissatisfaction or they might even actively take action in attempt to discover the truth if they do not trust the limited information disclosed by the authority. However, their effort might turn out to be a failure, if the authority is determined to cover up the truth. The limited co-operation from the authority might be merely a show or a strategy to calm down the outraged public. A case which is well known as the “Hide and

seek” case is a typical example where some netizens from the general public volunteered to directly take part into the investigation of a criminal case after disappointed at the information from the local authority.

A sketch of this case is as follows: in 2009, a young man, Li Qiaoming, was under criminal detention for illegally felling trees; but he was badly injured in detention and then died in hospital. The local police announced that he and other detainees had played a game of hide and seek and an accident that happened during the game caused the fatal injury. The public were shocked by this very novel but unbelievable explanation. A lot of netizens asserted their distrust of this conclusion by posting comments on the Internet. Under great public pressure, the propaganda department of the Communist Party Committee of Yunnan Province put a notice on the Internet calling for volunteers from the general public and Internet-users to participate in a special investigation committee with the opportunity of getting into the detention house and observing the place, “in order to satisfy the public’s right to know”.⁶ This special investigation committee does not only consist of members of the general public, but also some staff from the local PLC, the local procuratorate, the local police and several media representatives (Southern Weekend, 2009).

However, the investigation failed to discover the truth, as their request to watch the surveillance video recording (SVR) and to meet the other suspects who were detained with Li Qiaoming in the same room were both refused by the police. According to the vice-president of this special committee, when they requested the recording first time, the police stated that there was no SVR recording; however, when they requested it again in the detention house, the police replied that there was a SVR recording of the bedroom but not the activity room, that the content of recording was confidential and the committee members were required not to disclose to anyone that there were SVR installed in the detention house (Bian, 2009). This committee gave a report of the investigation, however, this report is mainly about the investigation process and no conclusion is reached. The report itself also indicates that this report cannot reveal the truth, while only the legal authority holding the resources can (Wang and Shen, 2009). As a

⁶ Propaganda Department of the Yunnan Provincial Committee of the Communist Party of China, *The Announcement of Participation of the Investigation of the Public Opinion Event of “Hide and Seek”* (“关于参与调查 “躲猫猫”舆论事件真相的公告”). Available at: http://special.yunnan.cn/feature/node_8080.htm.

result of this failure, some people started to suspect that this investigation is merely a show and the members of the committee are stooges, and afterwards most of the representatives of the general public on this committee were found to be journalists or working for some official websites (Wang P., 2009). The president and vice-president of the investigation committee, who represent the general public, were not selected at random. The vice-director of the local propaganda department explained that he cared about their influence on Internet although he added that they were not their stooges (Wang P., 2009). Finally, the local police admitted that Li Qiaoming was assaulted by other detainees and the staff of the detention house failed to do their duty; and subsequently two responsible staff members were prosecuted and convicted by the People's Court of Songming County of Yunnan Province, but this happened only after the Supreme People's Procuratorate (SPP) intervened (Xinhua, 2009).

This might not be the last example of the public or the netizens challenging the authority, but it reveals some of the impact of Internet on the openness of the justice system and public perceptions towards this issue. Anyone does not have to convince an editor to publish their opinions on Internet and can give their opinion more easily, compared with paper media. Internet speeds up the transmission of information significantly. It can bring an issue to the members of the general public more extensively at a timely manner, and develop public pressure on the authority for more transparency. The Internet has also provided a new option of public scrutiny in China. However, through this example, the result of the Internet facilitated or boosted challenge remains uncertain within an authoritarian regime.

4. Conclusion

The serious problem of a lack of transparency of the justice system could undermine public confidence and trust. The Internet has provided an opportunity for the public to receive more alternative and diverse information but is also subject to various information controls. The impact of the development of the Internet thereby is a rather mixed view. China's justice system still keeps, or at least attempts to keep, its secrecy feature when confronted to great information flows on the Internet. China's experience with the Internet and openness of the justice system, as studied

above, suggests that openness is not necessarily linked to the Internet. It is hard to take it for granted that the Internet will automatically bring transparency, and improvement of openness of the justice system is not just about publishing more information on the Internet but it fundamentally depends on to what degree the justice system is intended to open.

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