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Justice in the PRC

How the Chinese Communist Party Has Struggled with Managing Public Opinion and the Administration of Criminal Justice in the Internet Age

IRA BELKIN

'Nothing short of the death [of the defendant] will appease the public outrage'. 'Agreed. But just this once'. Ren Jianxin, then Secretary of the Central Political-Legal Commission, endorsing a subordinate's recommendation to approve the death sentence of a hit-and-run drunk driver in January 1998 (Chen 2013).

Introduction

During the summer of 2009, Tian Wenchang, the Chair of the Special Committee for Criminal Defense of the All China Lawyer's Association and a leading Chinese criminal defence lawyer, addressed a class of Chinese law students with a provocative question: 'How should guilt or innocence be determined in a criminal case – why don't we just take a public opinion poll on the Internet and let the masses decide'?

This question was particularly poignant for lawyer Tian. In 2003, for a brief moment, it appeared that he had saved his client, Liu Yong, from a death sentence. Tian had convinced the Liaoning Provincial High Court to suspend his client's death sentence on the ground that his client's confession was coerced. What Tian had not counted on was the overwhelmingly negative reaction of the Chinese public. The public

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demanded death for Liu Yong and the Supreme People's Court (SPC) obliged. The court took the virtually unprecedented step of reviewing the case on its own motion and ordered Liu Yong to be executed immediately (People's Daily Online 2003). Tian's provocative suggestion was meant to dramatise the folly of allowing public opinion to dictate the outcome of individual criminal cases. He certainly did not intend that his suggestion should be taken literally.

Shockingly, however, three years later, a judge presiding over a murder case in Xi'an did conduct a public opinion poll to determine whether the court should sentence the defendant to death or life imprisonment. The accused was a college student named Yao Jiaxin who had stabbed to death a young mother from the countryside. It was Yao's first offence and he had voluntarily turned himself in to the police. Under normal circumstances, he could have expected to be sentenced to death with a two-year reprieve, which would then likely be reduced to a life sentence. The judge first conducted a poll of the defendants' classmates. The students voted overwhelmingly for life imprisonment (Xi'an 2011). Unfortunately for Yao, the judge's tactic seemed to only further enrage the larger universe of Chinese netizens who conducted their own online poll and voted overwhelmingly for execution. The court sentenced Yao to death and he was executed shortly thereafter.

The influence of Chinese public opinion on individual criminal case decisions is a phenomenon that has received a great deal of attention in China and around the world. Some commentators have lauded the phenomenon as empowering the public to seek justice in Chinese courts. Others have expressed concern that following public opinion may achieve justice in an individual case but does little to improve the justice system. Even worse, some fear that appeasement of public opinion in the name of maintaining social stability is leading to a kind of mob justice where life and death is determined by the emotion of the online crowd of the moment.

Of course, it is quite common in the United States and other societies for the public to focus on how justice should be served in individual cases and, occasionally, even to take to the streets to demand or protest a particular outcome (Pierce & Muskal 2014). What is worthy of attention is how the Chinese Communist Party (CCP) and the Chinese government have chosen to address this phenomenon. This chapter focuses on a series of cases that led up to a policy change announced by the Hu Jintao administration in 2008 and a series of case decisions that followed that policy change. In essence, the policy embraced the notion that courts

should follow public opinion in certain cases to preserve 'social stability'. By focusing on this policy change and how it was implemented, this chapter questions whether such a policy promotes or undermines China's decades-long project to establish a society under the rule of law.

The chapter proceeds as follows. First, I analyse eight high profile cases dating from 1979 through to 2009 and look at how public opinion influenced the outcome of those cases. In some cases, the public sought leniency and in others, they called for severity. In some cases, they demanded that the defendant's life be spared and in others that he be executed. In most cases, the CCP-controlled courts acceded to the weight of perceived public opinion but they did so on a case-by-case basis and not as part of an official policy.

Second, I examine the CCP's explicit judicial policies that led to a legitimising of 'judicial populism'. Beginning around 2008, the CCP made the policy of listening to public opinion in deciding cases explicit. Chinese courts were required to consider the 'people's feelings' and decide cases according to whether their decisions would 'win the broad support of the masses', 'preserve social stability' and 'reduc[e] social protest'. This policy of 'listening to the people's feelings' was part of a broader effort by the CCP to prioritise social stability above all else. The concept '*weiwen*' (维稳), that is, maintaining social stability, was the CCP's number one goal. Under '*weiwen*', Chinese judges were directed to keep in mind three 'Supreme' concerns when deciding cases: first, the Party's cause; second, the people's interest; and third, the constitution and laws. Moreover, even though the CCP was, at the same time, dramatically reducing the number of executions ordered by Chinese courts, the policy of 'listening to the people' seemed to trump all other considerations.

Third, I analyse the effects these new populist judicial policies had on both individual case decisions and on the behaviour of litigants and other advocates. Empowering the public meant incentivising advocates and parties to appeal to public opinion instead of the courts. Moreover, such empowerment did not distinguish between the righteous and the greedy. Human rights defenders appealed to the public for support of their clients in the face of hostile courts and local officials. Mercenary advocates stirred up public opinion to benefit their paying clients. Regardless of the cause, 'judicial populism' moved the centre of the case from the courtroom to the electronic public square, the Internet. The CCP's 'judicial populism' policies were also linked with a policy of emphasising the 'forgiveness' of victims as a condition for the 'lenient' treatment of

defendants. Together these policies empowered victims to demand high amounts of compensation in exchange for their 'forgiveness' and to threaten to unleash public opinion demanding the harshest punishment, including the death penalty, if the defendant refused or was unable to meet their demands. As for individual cases, the CCP's adherence to public opinion spared the lives of some, including a battered woman who murdered her abusive spouse and a business tycoon convicted of a massive fraud. However, Chinese courts also reluctantly ordered the execution of defendants who, absent the influence of public opinion, would have been sentenced to life imprisonment. It is not hyperbole to conclude that under these policies public opinion could determine whether one lived or died.

Finally, the conclusion discusses what impact 'judicial populism' has had on China's decades-long project to establish a society under the rule of law and how it seems to have undermined, rather than enhanced, social stability. Further, the 'judicial populism' of the Hu Jintao era may have set the stage for a different approach under Hu Jintao's successor, Xi Jinping. Under Xi, the CCP is rhetorically emphasising fairness and justice in court and is taking steps to bolster the court's independence from local control. Xi also is channelling his appeals to populism through a massive anti-corruption campaign. At the same time, however, under Xi's leadership, the CCP is cracking down on the freedom expression of opinion on the Chinese Internet as well as grass roots public activism. With respect to public opinion on criminal cases, the CCP has also gone on the offensive, affirmatively moulding public opinion in high profile cases by parading suspects on Chinese television to confess to crimes even before they have been formally charged. A full assessment of Xi Jinping's judicial policies and how they impact Chinese efforts to establish a society under the rule of law must await a more thorough study. For purposes of this chapter, it seems that studying the policies of his predecessor towards media and the courts may be helpful in understanding the roots of Xi Jinping's harsh policies towards the freedom of expression and public advocacy.

Life and Death and Public Opinion

Chinese citizens' passionate expression of opinion concerning justice in criminal cases has now become a common feature of Chinese society. Its genesis can be traced to the early days of Reform and Opening Up, Deng Xiaoping's post-Cultural Revolution policy prescription for modernising

the People's Republic of China. In the late 1970s and through the 1980s and 1990s, however, ordinary citizens only learned of criminal cases through the official media, which the CCP controlled even more absolutely than it does today. Nevertheless, on occasion, the official media did report on a particular case that caught the public's attention and ordinary citizens' demands for a particular outcome sometimes actually influenced how individual cases were decided.

In this vein, it must be noted that Chinese courts do not have the authority to decide case outcomes independently of the CCP. The CCP can influence case decisions through a variety of mechanisms, including oversight by extra-judicial CCP political-legal committees as well as adjudication committees made up of court officials. Court leaders may also influence how individual cases are decided even if they did not preside over the case themselves. In fact, in a typical case, the presiding judges must submit their recommendations to the adjudication committee for approval and it is the adjudication committee that makes the actual decision (Peerenboom 2010). The CCP political-legal committee does not intervene in every case but has the authority to intervene when it deems it necessary and appropriate (Peerenboom 2010). Thus, the influence of public opinion on court decisions is filtered through a prism of government and party overseers (Zhu 2010).

The CCP tends to exert its influence in cases that it determines may have a 'large social impact', in other words, cases that may arouse strong feelings about the CCP's stewardship of the justice system and might even lead to public protests or other forms of civil disobedience or unrest. Thus, when we discuss the power of Chinese public opinion to influence the outcomes in individual criminal cases what we are talking about is the power of the public to influence the CCP, which, in turn, may direct a court to reach a particular outcome.

*Pre-Internet Cases Illustrating the Power of Public Opinion
to Influence the CCP*

Jiang Aizhen: Public Sympathy for the Victim of
Officials' Abuse

As early as 1979, it was clear that the Chinese public had strong feelings about the meaning of justice in individual cases and that the expression of those feelings had the potential to influence the CCP in determining how those cases would be decided. In the Jiang Aizhen case, a group of

cadres abused, persecuted and defamed Jiang Aizhen, a nursing assistant based in a Xinjiang agricultural production brigade. Finding no relief through official channels, she took revenge upon her oppressors, killing three and injuring one. Official media reports generated a record-breaking number of readers' letters, more than 10,000, to the People's Daily. Readers showered Jiang with money and gifts and demanded punishment for the callous cadres and leniency towards her (Liu 1990). Clearly, her plight struck a nerve with ordinary Chinese citizens who may have had to put up with similar though less severe forms of abuse. The public sympathy for Jiang Aizhen influenced the CCP and by extension, the court, to reduce her sentence from death to life imprisonment and later to 15 years imprisonment (He 2008; Zhao 2015).

Zhang Jinzhu: Public Demands Death for a Policeman's Drunken Vehicular Homicide

If the 1979 Jiang Aizhen case demonstrated how public sympathy could lead to more lenient treatment for a defendant, the 1997 Zhang Jinzhu case illustrated that public hostility could also lead to a harsher outcome. In that case, Zhang Jinzhu, a Henan police officer, was driving while intoxicated when he ran over a father and his 11-year-old son. Zhang did not stop the car when the collision occurred but dragged the boy for another mile, killing him. The Chinese media stirred up public outrage over Zhang's reckless behaviour. In December 1997, an intermediate court in Zhengzhou publicly tried the case – speakers were set up outside the courthouse for the public to come and listen – and in January 1998, the court sentenced Zhang to death. Zhang appealed but the High Court of Henan Province affirmed the verdict. A month later Zhang was executed (Chen 2012).

Before being executed, Zhang was reported to have declared: 'I have been killed by you journalists' (Ma & Xu 2007). A journalist who was privy to how the case was decided by the court revealed that four Central Party leaders had decided the verdict before the trial began. One official dictated a note on how the case should be decided: 'Nothing short of the death (of the defendant) will appease the public outrage'. Ren Jianxin, then Secretary of the Central Political-Legal Commission, the CCP body that oversees all security and judicial issues in China, reportedly made a notation recording his decision: 'Agreed. But just this once'. Secretary Ren's admonition that he would appease the public 'just this once' turned out to be wishful thinking.

While the Jiang Aizhen and Zhang Jinzhu cases may appear to represent different sides of the coin of public opinion's influence, one representing leniency and the other severity, in fact, they have much in common. In both cases, the public sided with an ordinary citizen who had been the victim of abusive behaviour by powerful officials. This theme repeats in many high profile cases and Zhang Jinzhu was hardly the last Chinese defendant to be executed to 'appease public outrage'.

Post-Internet Cases

The introduction and growth of the Internet in China had a profound effect on Chinese society. As Internet use grew in China, the ability of ordinary Chinese citizens to learn about individual criminal cases was enhanced, as was their ability to express an opinion about how justice could best be served in each case. Moreover, for the first time, an ordinary citizen's opinion could be broadcast to a huge audience in real time and could have a powerful effect on the opinions of others, and, in some case, even influence the CCP.

The following cases decided during the early years of Internet use in China shed an even brighter light on how public opinion can drive the CCP to influence the outcome of individual criminal cases.

Liu Yong: The Public Demands Death for a Mob Boss

As noted in the introduction to this chapter, on 17 April 2002, an Intermediate People's Court of Tieling City convicted a defendant named Liu Yong, former board chairman of Shenyang Jiayang Group, and sentenced him to death for various crimes, including organising, leading and actively participating in mafia-style organised crime. The most serious charge and the one that was the basis for his death sentence was that Liu ordered dozens of his subordinates to beat a cigarette vendor to death in 1999. An important piece of evidence against Liu Yong was his confession while under police interrogation.

On 15 August 2003, the Liaoning Provincial Court tossed out Liu Yong's confession finding that it could not exclude the possibility that the confession was extracted through torture, a violation of Chinese law. Liu Yong's lawyer, Tian Wenchang, had obtained statements from several witnesses that they heard Liu Yong screaming in pain during his interrogation (Yan 2002). Tian enlisted the support of several well-known legal experts who opined that a confession that was the product of torture should not be the basis of conviction despite the fact that at the

time, Chinese law did not provide for an explicit exclusionary rule for coerced confessions (People's Daily Online 2003). As a result of the court's finding that his confession was coerced, the court reduced his sentence from death to a death sentence with a two-year reprieve, which would ordinarily lead to a life sentence.

Many scholars and practitioners cheered what they saw as a significant step in rights protection, the exclusion of a coerced confession (Belkin 2011). On the other hand, at least one journalist and many ordinary citizens expressed outrage that the court reduced the sentence of a 'mafia head' from death to life. Reports about the case went viral on the Internet. One portal alone, Sohu.com, reported that over 80,000 people commented on the case online, a record at the time (Eastlaw 2003). The opinions expressed were overwhelmingly in favour of the death penalty.

In response to the public outcry over the sentence reduction, on 18 December 2003, the SPC took the extraordinary step of convening a re-trial of the case, something that the court had not done for over 60 years. On 23 December 2003, the court sentenced him to death to be carried out immediately. He was executed shortly thereafter.

Sun Zhigang: Public Outcry over a Death in Custody Leads to Abolition of Administrative Detention for Migrants

While the Liu Yong case may have been the first to demonstrate the heady power of the Internet, it was far from the last. In some ways, the Sun Zhigang case was an even more powerful example of how ordinary Chinese citizens, united for a common purpose, could use the Internet to express their opinions and actually influence the CCP to change long-standing policies and practices.

On 17 March 2003, Guangzhou police detained Sun Zhigang, a college graduate and an artist, for failing to produce an identity card that would have proven he was a lawful resident of Guangzhou City. At the time, Chinese police had the power, pursuant to administrative fiat, to detain any Chinese citizen with a rural *hukou* (户口), or household registration, found in an urban area and forcibly repatriate the person to their home village. This form of police coercion was called 'custody and repatriation' and dated back to the pre-reform era when Chairman Mao and the CCP sought to keep farmers out of Chinese cities (Cheng and Selden 1994).

Sun had a local Guangzhou work permit, but did not have the physical permit on his person at the time of his arrest. When the police detained him he made a fuss and protested his detention. In response, the police threw him in a jail cell and told his fellow inmates to 'teach him a lesson'.

The inmates obliged and beat him savagely. After three days, the police finally took Sun to an infirmary where he died from his wounds. The Chinese public was outraged. Overwhelming public support of Sun led to a criminal prosecution of those who had detained and beaten him, including the police officers involved.

But the public did not stop there. Spurred on by a petition publicised by three young legal scholars, the public channelled its outrage into a demand for legal reform and called for the abolition of the 'custody and repatriation' process. Within a short time, Premier Wen Jiabao announced that China's highest administrative authority, the State Council, would abolish 'custody and repatriation'. The case was hailed as a victory for the rule of law as well as a victory for populism. The Chinese public had experienced the sense that their opinions mattered. Sun Zhigang's case surfaced at a time when Internet use in China was exploding and the Internet no doubt played a role in disseminating information about the case broadly and instantaneously. The effect on those who were active online was exhilarating and empowering. The voices of ordinary Chinese people actually made a difference. The CCP was not only paying attention but agreed to dismantle a symbol and a tool of its authoritarian governance. The Sun Zhigang case seemed to signal that under the right circumstances, the public could mobilise for a more just policy as well as for justice in an individual case.

The Baoma Case: Road Rage and Privilege

Following the Sun Zhigang case, one of the first criminal cases to receive widespread attention on the Chinese Internet arose from a traffic accident in the north-eastern city of Harbin. On the morning of 16 October 2003, a tractor pulling a load of green onions scraped the side of Su Xiuwen's metallic-silver BMW in a crowded market. Su hit Dai Yiquan, a poor farmer, and his wife, Liu Zhongxia, who had stepped down from their tractor to apologise. Su then drove her luxury car straight into the growing crowd on the roadside, killing the farmer's wife and injuring twelve others. Su claimed that she accidentally stepped on the accelerator instead of the brake and that she did not intend to injure anyone (Liu 2004). She was sentenced to two years in prison with an additional suspended sentence of three years (People's Daily 2004).

The case quickly became known as the Baoma, or 'BMW' case. In the words of one journalist, this 'small case of apparent road rage became a national obsession'. The lenient sentence 'roused a great outcry' among the public. Of 200,000 online comments, 90 per cent were critical of the

sentence. Some online comments alleged, 'Su Xiuwen is a relative of a leader of Heilongjiang Province' and that Su's husband was a business tycoon. They 'removed the obstacles with money', and 'witnesses were made silent'. The widespread and overwhelmingly negative public opinion on the case seemed to take the government by surprise.

An investigation was ordered and no wrongdoing was found in the handling of the case. Su paid Dai more than RMB 90,000 (US \$11,000) as compensation and she paid the other twelve injured parties in total RMB 180,000 (US \$22,000), which, according to the People's Daily, is more than the usual amount one would pay for traffic-related damages (Zhou 2004). The allegation that Su was related to a high-ranking official turned out to be false. Dai stated publicly that he was satisfied with the settlement. His statement may have mollified the more hostile voices demanding a harsher penalty.

Xu Ting: Overturning a Life Sentence for Taking Money from a Defective ATM

The next case to receive a high level of public scrutiny involved the malfunctioning of an ATM machine. On 21 April 2006, migrant worker Xu Ting, then 24 years old and a security guard at the Guangdong High Court, went to an ATM to withdraw money. Due to a technical error, his account was debited only RMB 1 for every RMB 1,000 withdrawn. Xu took advantage of the technical error and withdrew a total RMB 175,000 (USD \$23,980) in 171 transactions on the same day, before running away with the money. Xu was eventually apprehended and in late 2007, the intermediate court in Guangzhou convicted Xu of theft (stealing from a financial institution) and, in accordance with the Criminal Law and SPC interpretations, sentenced him to life imprisonment. Xu appealed the decision.

The defective ATM case stirred a public debate over whether Xu's serendipitous conduct constituted theft and if so, whether a life sentence was too severe a punishment. Many netizens compared this case, a crime of opportunity involving a relatively modest sum, to corruption cases where officials were convicted of taking millions in bribes. Why, they asked, is an ordinary citizen punished so severely when corrupt officials get off with lighter sentences? (He 2008). The China Daily (2008) reported that some Internet portals 'received more than 10,000 visits in a single day from people who wanted to weigh in' on the Xu Ting case. Many expressed strong opposition to the severe punishment and fewer than 10 per cent 'said that they would immediately report the

dysfunction to the bank'. Others said they would like to follow Xu's lead, but were afraid of being caught (China Daily 2008).

In January 2008, the Guangdong Provincial High People's Court overturned the ruling and remanded the case to the trial court. During this period, the court reportedly sought instructions from the SPC and after a retrial in February, reduced Xu's sentence to five years. Xu's defence lawyer called the sentence reduction 'a triumph of public opinion'.

Yang Jia: Violent Retaliation for Police Abuse Punished with the Death Penalty

The next case to capture the public's attention is one where the CCP ignored public opinion and ordered a sympathetic defendant to be executed over the vigorous objection of the Chinese public. In October 2007, Yang Jia, a 28-year-old from Beijing, was arrested in Shanghai for riding an unlicensed bicycle. Yang accused the police of insulting him and beating him during six hours of interrogation for this petty offence. He attempted to sue the police but was unsuccessful. On 1 July 2008, Yang Jia detonated several small bombs outside the police station in Zhabei, Shanghai and charged into the police station, where he stabbed six officers to death and injured several more before he was apprehended.

On 27 August 2008, Yang Jia was tried at the Shanghai No. 2 Intermediate Court in a closed, one-hour trial (Shao 2008). No psychological examination was ever ordered or conducted despite pleas from his first defence counsel. Chinese media reported that the government pressured his first defence counsel to withdraw and replaced him with a lawyer friendlier to the government (Pils 2014: 109). When Yang Jia's appeal was heard, over 1,000 people expressed their support outside the court. He suddenly took on the stature of a popular hero. His declaration, 'If you won't do justice by me, I'll do justice by you!' went viral on the Internet (Pils 2009).

Four days later, Yang Jia was found guilty of premeditated murder and sentenced to death. On 20 October 2008, the death penalty was upheld on appeal, and on 21 November 2008, it was confirmed by the SPC. On 26 November, Yang Jia was executed. Unlike the cases reported above, the court's judgement went against public opinion.

Deng Yujiao: Homicide Charges Reduced to Assault

The Deng Yujiao case also involved a citizen's violent retaliation to abusive behaviour by government officials but the circumstances and

the outcome were both quite different from the Yang Jia case. On 10 May 2009, at a hotel in Hubei, a 21-year-old pedicure worker named Deng Yujiao tried to rebuff the sexual advances of a man named Deng Guida (no relation) and his two colleagues, who were all local government officials. According to Deng Yujiao's account, prostitution was common at the hotel. When she told the men she was not selling sex, Deng Guida responded: 'Aren't you all the same? You are a prostitute but you still want to have a good reputation'. Hitting her repeatedly with a wad of banknotes, he said: 'Don't you want money? Would you believe I am going to beat you to death with money today'? As she tried to leave, the three men repeatedly dragged her back. She then pulled out a knife and as Deng Guida pushed her on to a sofa, she lashed out with the blade. After the stabbing rendered him motionless, she called the police and waited for them to arrive (Branigan 2009).

On 11 May, Deng Yujiao turned herself in and was admitted to a local mental hospital. Almost immediately, Chinese citizens began expressing support for Deng on the Internet. They posted over four million comments, the vast majority supporting Deng Yujiao. Bowing to public opinion, prosecutors dropped the murder charges, granted her bail, and charged her with a lesser offence of 'intentional assault'. On 16 June, 2009, the court found her guilty of assault but exempted her from punishment on the ground that she suffered from a mental disorder, depression, that she had voluntarily turned herself in and that the victims had contributed to the incident by engaging in misconduct that led Deng Yujiao to act.

Many online commentators concluded it was the public's support that had saved Deng Yujiao from a murder conviction and serious punishment. Many applauded the result, but some legal scholars sensed the danger of 'trial by public opinion' and sounded an alarm of caution (Cohen & Zhong 2010).

What Do These Cases Mean?

Regardless of whether one agrees with the outcomes of these cases or whether one can discern a coherent and consistent thought process behind each decision, it is clear that the first decade of the twenty-first-century presented the CCP with a new set of challenges. When it came to high profile criminal cases, the Chinese public was anything but passive. A growing number of Chinese citizens with Internet access

freely expressed their opinions on how justice could best be served in individual criminal cases.

The Chinese public expressed sympathy for some individuals like Jiang Aizhen, Sun Zhigang, Xu Ting, Yang Jia and Deng Yujiao and advocated for more lenient treatment. In all but Yang Jia's case, they were successful. In other cases, specifically, Zhang Jinzhu, Liu Yong and the Baoma cases, the public demanded a more severe punishment than the official court system seemed willing to impose and in the cases of Liu Yong and Zhang Jinzhu, the influence of public opinion may have cost them their lives.

The impulse to give rein to public opinion met an immovable obstacle in the Yang Jia case. The CCP simply could not tolerate showing any leniency towards someone who had murdered police officers, regardless of how sympathetic he might be and regardless of how much public support there was for leniency.

As each case captured the public attention anew, the CCP seemed to be caught by surprise over and over again. The pressure from the public forced to the CCP to formulate a response to the unique circumstance of each case. When possible, the CCP followed public opinion, even if it meant showing more leniency or greater severity than the law seemed to warrant. The CCP's experience grappling with these cases set the stage for the promulgation a new set of judicial policies to meet these challenges.

Populist Judicial Policies for Hu Jintao's 'Harmonious Society'

Six of the cases described above, from Liu Yong to Deng Yujiao, were all decided during the first part of Hu Jintao's leadership of the CCP. Hu assumed the leadership of the Party and the government in 2002 and 2003, respectively. During Hu's first five-year term, from 2002–07, Chinese legal reform had generally continued along the previous path set by his predecessor, Jiang Zemin, with an emphasis on incremental legal reform, professionalising judicial personnel and building a modern legal system modelled very loosely on international concepts of the rule of law. Of course, all legal reform was still within the context of maintaining the CCP's monopoly on political power and fundamental conflicts between the rule of law and authoritarian governance remained unresolved. Progress was slow but the direction of reform was largely unchanged (Cai & Wang 2010).

At the same time, as legal reform was continuing along the path previously set by China's leaders, there was growing evidence of popular dissatisfaction with various aspects of life in China's fast-changing society. One indicator that appears to have grabbed the attention of China's leaders was the growing number of so-called 'mass incidents', that is, public disturbances involving large numbers of protesters. According to official Public Security Bureau statistics, public order disturbances in 2005 increased by 6.6 per cent to 87,000 over the previous year (MacGregor 2006).

There was a perception that the Chinese court system could not keep up with the pace of change in Chinese society and the growing number of disputes. Courts seemed unable to enforce their verdicts and there were increasing numbers of extra-legal petitions and protests by Chinese citizens to higher Chinese authorities, as well as violent confrontations between courts and disgruntled citizens. Fear of mounting social unrest led central Chinese authorities to rethink reform policies (Minzner 2011: 947).

Social Stability Maintenance and the 'Turn against Law'

First, there was a change in personnel. The CCP appointed Zhou Yongkang, the former Minister of Public Security as General Secretary of the Central Party Political-Legal Commission, with power to oversee all the security agencies, as well as the police, prosecutors and courts. The CCP also appointed a new set of government leaders, people with reliable political backgrounds but no legal training, to head some of the most important legal institutions. In 2008, Wang Shengjun was named President of the SPC. Wang had spent most of his career in CCP positions, including the Central Political-Legal Committee of the CCP, but had no legal education. Wu Aiyong, another career party apparatchik with no legal education, was appointed Minister of Justice (Lam 2008). These appointments signalled what one scholar, Carl Minzner, has termed 'China's Turn against Law' (Minzner 2011).

Second, during this period, the Chinese government began a campaign of *weiwèn*, shorthand for *weihu shehui wending* or 'maintaining social stability'. The government allocated vast amounts of money and resources to quash organised resistance to its authority. In March 2011, China announced its annual budget for 'stability maintenance' was over RMB 650 billion, a sum in excess of official figures for national defence (Trevaskes 2012). Part of the strategy was to build extensive closed-

circuit television surveillance networks in major cities and to maintain a strong police, military police and private security presence at protests and rallies. Stability maintenance also involved Internet censorship, paid informants, security contractors, the harassment of activists, and neighbourhood watch-dog groups (Trevaskes 2012). Management of both public opinion and the social impact of individual court case decisions also came within the ambit of maintaining social security.

Maintaining social stability was not a new priority for the CCP. 'Social stability' had been an obsession of the Chinese government for some time. Deng Xiaoping famously said that stability trumps everything. Beginning some time towards the end of Hu's first term, CCP leaders shifted to prioritising social stability over everything else, especially as it pertained to CCP policies governing judicial institutions.

Hu Jintao's new team authored several new judicial policies under the 'weiwen banner'. During the 2009 National Conference on Political-Legal Work, convened by the Party's Central Political-Legal Committee, Chairman Hu told the assembled judges, procurators and officials: 'In their work, the grand judges and grand procurators shall always regard as supreme the Party's cause, the people's interest, and the constitution and law' (Cohen 2008). Thus, the 'Three Supremes' policy prioritised the roles of the party and of the people (generally understood to mean as interpreted by the party) as the first two of the three supreme concerns for the courts. The constitution, which courts are expressly forbidden from citing as a basis for their decisions, and which, in any event, reaffirms the supremacy of the party, would also guide the courts. Finally, along with following the constitution, the courts should also follow the law. Within months, Chinese courts were enmeshed in the 'Three Supremes' campaign, which emphasised party doctrine and populist sentiment as equal (if not superior) to the constitution and law as sources for guiding judicial work.

Political slogans announced by party leaders are critically important in shaping policy in China, but these slogans tend to be vague. How would the 'Three Supremes' manifest itself in the everyday work of the court? It soon became clear that courts would be encouraged to use non-judicial means of resolving disputes, including mediation, whenever possible. This included 'reconciliation' in criminal cases as well. 'Reconciliation' involved a heavy emphasis on mediating an amount of compensation to be paid by the defendant, or the defendant's family, to the victim or the victim's family. In this way, the party hoped to avoid the endless citizen petitions complaining about the judicial system and its failure to deliver

on the execution of judgements and compensation (Trevaskes 2015; Weatherly & Pittam 2015).

As Hu Jintao and his new team of legal institution leaders took office in Hu's second term, they began emphasising that courts should 'take their lead from the people' (Xinhua News 2008). In 2008, Wang Shengjun, in one of his earliest public statements as the President of the SPC, declared that in determining whether to impose the death penalty, courts should use public 'feeling' as a basis for decisions. He explained: '[s]ome people don't understand why we should use society's and the people's feelings as a basis for our decisions – it is because it is only in this way that we can unite 'legal effects' and 'social effects' (Xinhua News 2008).

One group of legal scholars immediately criticised Wang's suggestion that courts should listen to the people's feelings in deciding whether to sentence someone to life or death. Others came to Wang Shengjun's defence. While the criticism was tolerated, official policy would follow President Wang's pronouncement and Chinese courts would be required to 'listen to the people's feelings' in deciding whether a defendant would live or die.

Judicial Policy on the Death Penalty: Listen to the People's 'Feelings'

At the time of President Wang's statement, it was not clear if the policy of 'listening to the people' was a clarification of or a departure from China's relatively recent efforts to reduce the number of people it executed every year. Although that number has long been considered a state secret, it is widely acknowledged that China has, for many years, had the dubious distinction of executing more people annually than the rest of the world combined (Killalea 2015).

Towards the end of Hu's first five-year term, a series of high profile, scandalous and wrongful conviction cases led to a change in attitude about the death penalty. In one case, She Xianglin, the defendant, was convicted of murdering his wife, but was later freed after his wife reappeared in their village ten years after her husband had been convicted of her murder. She's wife had merely run away with a lover (Belkin 2011). In the Nie Shubin case, a defendant confessed to a murder for which another man had been convicted and executed years earlier.

These scandals forced the CCP to promote a series of measures to enhance due process in capital cases, to return review of all death sentences to the SPC and to generally reduce the number of executions. These policy changes, which were enacted under the slogan, 'Kill Fewer,

Kill Cautiously', appear to have reduced the number of executions in China significantly. Official media reported that in 2008, executions were down 30 per cent from the previous year and foreign human rights organisations estimated that executions had been reduced from about 12,000 per year in 2002, to approximately 5,000 per year in 2008 (Trevaskes 2015). The 'Kill Fewer, Kill Cautiously' policy was also part of a larger criminal justice policy that veered away from the previous 'strike hard' anti-crime campaigns and sought some balance between 'leniency and severity'. As a guide to all of China's courts, on 8 February 2010 the SPC issued guidelines for implementing its new policy of 'Balancing Leniency with Severity', and a few months later, in September 2010, the SPC issued provisional rules on sentencing in criminal cases. Taken together, these new guidelines had several salient features. The SPC highlighted for Chinese judges factors that should be considered as weighing in favour of severity or leniency, or what might be termed aggravating and mitigating factors. According to the guidelines, consideration for lenient treatment should be given for the following conditions: defendants who turn themselves in voluntarily; defendants whose family members assist authorities in delivering the defendant; first time offenders and casual (one-time) offenders; defendants charged with crimes of passion committed because of romantic, marriage and neighbourhood conflicts; defendants who make restitution to the victim, confess and express remorse; and defendants whose victims or the victim's family express forgiveness.

In the February 2010 SPC notice, however, another overarching factor was cited as deserving of special attention. In the February Notice, the SPC provided that one of the purposes of its Opinion was to 'maintain social harmony and stability' and that one of the goals of the policy of balancing leniency with severity was to 'ensure the highest level of unity between the social and legal effectiveness of all court judgments', precisely what SPC President Wang Shengjun had announced at the outset of his tenure. In Article 5 of the Notice, the SPC stated that in implementing the policy, courts must consider many factors, including 'whether the handling of the case will win the broad support of the masses and preserve social stability; [and] whether it is beneficial to reducing social protest'. Article 9 also cautioned courts that in considering leniency and severity, they should also take into account 'if the reaction of the masses is especially strong'.

Notably, the guidance for courts did not distinguish between cases where the public favoured leniency over severity. The guidance treated

both situations the same – courts should consider ‘broad support of the masses’ and ‘especially strong’ reactions of the masses in reaching their decisions. Moreover, the reasoning was explicit: to reduce ‘social protest’.

Thus, in criminal cases, as noted above, it was no longer simply a question of whether courts might be swayed by public opinion or that the CCP might instruct a court to take public opinion into account in a specific case. As of 2010, the official policy of the Chinese judicial system was that when making individual case decisions, courts were required to consider public opinion and its social impact. That policy would apply in many cases, whether they were like Liu Yong, where the public demanded death, or Deng Yujiao, where the public demanded leniency. The only exception seemed to be cases where the public expressed sympathy for a citizen who had threatened social stability by using violence against security personnel, as in the Yang Jia case. In that case, no amount of public support for the defendant could spare him the death penalty. This official policy would lead to questionable outcomes in several high profile cases as well as incentives for litigants and advocates to move the locus of their conflict from the courts to the Internet. If parties could use the Internet to mobilise public opinion in their favour, they could compel the CCP to direct the courts to also rule in their favour.

Implementation of the Policy of ‘Listening to the Feelings of the People’

The ‘Kill Fewer, Kill Cautiously’ campaign had a dramatic effect on the number of executions in China. However, even during this period of dramatic reduction in executions, SPC President Wang Shengjun’s exhortation to base death penalty decisions on the ‘feelings of the people’ actually resulted in the execution of individuals who, absent hostile public opinion, would not have been sentenced to death.

Yao Jiaxin: An Opinion Poll Leads to the Execution of a College Student

One of the first victims of Wang’s policy was Yao Jiaxin, a 21-year-old college junior at the Xi’an Conservatory of Music. On 20 October 2010, Yao was driving his Chevy Cruze when he accidentally hit Zhang Miao, a 26-year-old woman on a bicycle. Yao noticed that Zhang was writing down his licence plate number and he became fearful that she would report him and demand compensation. Yao panicked and stabbed the

young woman to death. Flanked by his parents, he turned himself in to the police on 22 October and confessed to the murder. Yao had been a model student and this was his first brush with the law. He had no prior criminal record. He voluntarily turned himself in and confessed immediately. Yao's family offered a substantial sum of money to the victim's family as compensation. Under the SPC's official policy guidance, all of these factors should have made Yao eligible for leniency.

However, during the months between Yao's arrest and his execution, the case 'captured the attention of a nation', and most of that attention was not sympathetic to Yao. Rumours circulated on the Internet that Yao's family was well-connected and would help him escape punishment. Those rumours would later turn out to be false but not before the damage to Yao was done. Yao's own comments that he assumed from Zhang Miao's peasant-like features that she might try to extort money from him supported the narrative that this was a case of a privileged young man disregarding the value of the life of an ordinary peasant. Yao's timing could not have been worse as his killing of Zhang Miao followed by four days another notorious vehicular death. In that case, a young man, apparently driving while intoxicated, hit two women college students, killing one and injuring the other. When the driver was questioned by police, he famously said, 'Sue me if you dare, my father is Li Gang', a local deputy police chief. The younger Li, Li Qiming, became the poster child for privilege and arrogance in China. Anger, scorn and sarcasm directed at him reflected Chinese society's view of privilege and its undue influence in all aspects of life in China, including the legal system. The father, Deputy Police Chief Li Gang, was forced to make a tearful apology on Chinese television. The son, Li Qiming, was sentenced in January 2011 to six years in prison. Yao's case came to the public's attention at around the same time as the 'Li Gang' incident and many comments on the Internet lumped the two together as if they were part of the same phenomenon: young men of privilege who arrogantly disregarded the lives of others and believed they could use their privileged status to get away with murder.

The trial of Yao Jiaxin was held on 22 March 2011. The courtroom was packed with 500 people, 400 of whom were classmates of Yao's at the Music Academy. The judge polled them on what they believed was the appropriate sentence for Yao. The overwhelming majority voted for life imprisonment. The poll apparently further outraged online critics, who then conducted their own opinion poll. Chinese netizens voted overwhelmingly for death. According to one online survey by Yahoo!, 10,710

out of 11,100 surveyed Internet users called for Yao to be sentenced to death while just fifty-eight preferred a life sentence.

On 11 April, Yao was sentenced to death. The court acknowledged that it was influenced by public opinion but claimed to be following the law. On 7 June, with the SPC having rejected his appeal, Yao was executed. The SPC claimed that its sentence was based upon Yao's 'extremely despicable motive', the 'extremely cruel measures' he used and the 'extremely serious consequences' of his crime. However, many observers saw Yao's execution as a direct result of 'public opinion'. One well-known Chinese blogger posted his opinion online: Yao 'was shouted to death by the people', 'The Cultural Revolution was started because of this kind of leftist behaviour'. Another commentator wrote, the 'Chinese People Say 'Yao' to Death Penalty'. From a distance, it appeared that the Yao Jiaxin case was playing out as a kind of class struggle. The *New York Times* even called it a case of 'class rancor' (Fauna 2013).

Some observers who were sympathetic to Yao claimed he had not had a normal childhood but had been forced to practice piano relentlessly. One police psychologist even opined that Yao's strict upbringing may have led to his inability to empathise with the victim of his crime. Many other online observers simply placed the Yao Jiaxin case into their broader narrative that the privileged in China, whether through wealth or official position, get away with crimes as long as their victims are powerless, ordinary people. What the public did not know or appreciate at the time is that while these narratives were competing for the support of public opinion, they did not merely represent the public's spontaneous reaction to the reported facts of the case. The narrative about Yao Jiaxin's alleged powerful connections was part of an orchestrated media campaign by someone close to the victim's family. A man named Zhang Xian, a professor at the Xi'an Technical College and a friend of the Zhang family, waged a public relations campaign against Yao Jiaxin spreading false information about the wealth and status of the Yao family. The Yao family had offered the Zhang family RMB 200,000 (roughly USD \$32,000) in exchange for their agreement to 'forgive' Yao and accept a penalty of less than death but the Zhang family rejected the offer. They had already received over RMB 600,000 (roughly USD \$96,500) in donations from the general public. Zhang Miao's husband had famously said that he did not care if his family received RMB 1 as long as justice was done and Yao Jiaxin paid with his life.

After Yao was executed, however, the Zhang family sued the Yaos for the RMB 200,000 compensation that Yao's family had offered but which

Zhang's family had rejected. Under pressure from negative public opinion about the civil suit, the Zhang family withdrew their claim. Yao Jiaxin's father sued Zhang Xian, the university professor who waged the false public relations campaign against him and his son. Yao claimed that Zhang Xian had spread false rumours that damaged Yao's reputation. On 31 July 2012, Yao won the case, compelling Zhang Xian to pay nominal damages (RMB 1) and make a public apology to him. Of course, the real damage had already been done. The 21-year-old Yao Jiaxin had already been executed and, as the court acknowledged, public opinion played a role in that outcome. It was only after the execution that a different court confirmed that some of the inflammatory information that turned public opinion against Yao Jiaxin was, in fact, false. Yao's case was not the only one in which public opinion seemed to outweigh all other factors in dictating a death sentence. Shortly after the Yao case began to recede from the public's attention, another case took its place.

*Li Changkui: Jilted Lover Turned Double-Murderer
Condemned by Public Opinion*

Although the cases had overlapping timelines, it was only after Yao Jiaxin was executed that public attention turned to the Li Changkui murder case. Li's case arose out of a rape-murder from two years earlier. On 16 May 2009, Li Changkui raped and murdered Wang Jiafei and killed her three-year-old brother. The case arose from an ongoing financial and personal dispute between the Li and Wang families, neighbours who both lived in a remote village in Yunnan Province. The Wang family had rejected the marriage proposed by the Li family for Li Changkui to marry Wang Jiafei. While the families were mediating their financial dispute, Li Changkui returned to his home village in Yunnan from Sichuan, where he was working as a migrant labourer. Li got into an argument with Wang Jiafei, struck her with a blunt instrument, raped her and then flung her three-year-old brother against a wall, killing him. Li initially fled the village but four days later voluntarily turned himself in to the police.

On 15 July 2010, the Zhaotong (Yunnan Province) Intermediate People's Court convicted Li and sentenced him to death. On 4 March 2011, the Yunnan Provincial High Court overruled the Intermediate Court and reduced Li's sentence to a death penalty with a two-year reprieve instead of immediate execution, which, in all likelihood would be reduced to a life sentence after two years. In other words, the High Court decided to spare Li's life. Initially, the case had received little

national attention. The Wang family then retained Wang Yong (no relation), a Beijing lawyer who had represented the victims in the Yao Jiaxin case. Wang Yong maintained a popular blog with over two million followers and sometimes used his blog posts and other media contacts to promote the interests of his clients. He publicly demanded the death penalty for Li Changkui and guaranteed that the Yunnan Provincial High Court would change his sentence to immediate execution. A short time later, the Internet was abuzz with commentary demanding that the death penalty be reinstated. The bases for the reprieve were attacked and the Wang family complained that the Li family's monetary compensation was so small that it did not even cover the cost of the funeral for the victims. There were some rumours that the Li's were wealthy because their three sons all worked in urban areas as migrants and sent their wages home to their father. There were allegations that there must have been judicial corruption involved. In response to growing public criticism of the decision to spare Li's life, court officials took the unusual step of convening a press conference to explain the decision-making process and their reasoning. On 6 July 2011, Deputy Chief Judge Zhao Jiansheng explained to the press:

In the Li Changkui case, there was no favouritism and no irregularity and no special favour given. Our ultimate penalty is reserved for those cases where there is a serious harm to social order. Jointly applying the policies of 'balancing leniency with severity' and 'kill fewer, kill more carefully', this is the outcome. This judgment was approved by the adjudication committee (which was made up of 27 people, judges and other officials). There is nothing corrupt or improper in the Li Changkui decision

(Cao 2011).

According to Deputy Chief Judge Tian Chengyou, it was government policy that murders resulting from feuds between family, friends and neighbours should not result in the death penalty because the offenders in these cases do not pose a threat to society at large. Li Changkui's life sentence was decided in accordance with this policy. Judge Tian explained further:

On the question of whether to kill or not to kill, the court will give serious consideration to public opinion, but we cannot use public opinion as a basis for our judgment. Rather, the court will apply the country's laws and policies. Our country needs to be a little more rational. We cannot sentence a person to death simply on account of the public's frenzied demand

(Baidu n.d).

The judges gave a point-by-point lesson in how to apply the policies of 'Kill Fewer, Kill Cautiously' and 'Balance Leniency with Severity'. They explained what it meant to 'voluntarily turn oneself in' and how without such a policy some criminals might never be apprehended. They explained why violent crimes arising out of neighbourhood disputes posed less risk to social safety than violent crimes committed by career criminals. It would be difficult to imagine a more patient, well-reasoned explanation for why the full adjudication committee of the court determined that Li Changkui's life should be spared in this case.

Following the press conference, and online posting by lawyer Wang Yong, 200 villagers signed a petition demanding the re-opening of the case to impose the death sentence. Participants in online surveys, as well as online commentators also overwhelmingly supported the death penalty. Some commented that while there might be disagreement about whether Yao Jiaxin should have been executed certainly Li Changkui's crime was even more heinous and therefore more deserving of an immediate execution. The Yunnan judges' well-reasoned explanations not only failed to persuade the public, they also failed to persuade the ultimate decision-makers, the CCP. In August 2011, the court announced that it was re-opening the case. One month after the press conference, on 22 August 2011, the court ordered that the death penalty be reinstated. Shortly thereafter, Li was executed. Legal experts debated the legality of the court re-opening the case to change the sentence, a process that should only be instigated when there has been a legal or factual error in the original decision. Tsinghua law professor, Zhang Jianwei, commented that the court seemed to base its decision to re-open the case because of its failure to consider 'public opinion' and that under China's current criminal procedure rules, such a failure is a 'legal error'. The Li Changkui case was the clearest example yet of the victory of the mob over the rule of law. Regardless of what one might think about the nature of Li Changkui's crime and his relative culpability when compared to Yao Jiaxin and others, in the final analysis, it appears that as in the Yao Jiaxin case, what carried the day was the fervour of public opinion.

Leniency and Severity as Demanded by the Public

For the remainder of the Hu Jintao administration, lawyers, parties and public commentators continued to use the Internet as a platform to sway public opinion in favour of the outcome they preferred and courts continued to give weight to public opinion in high profile cases. More

and more, cases were being litigated in the court of public opinion, which may not have been what Hu Jintao, Zhou Yongkang and Wang Shengjun had in mind when they embarked upon this path of judicial populism.

For example, in 2009, an Intermediate Court in Zhejiang found entrepreneur, Wu Ying, guilty of illegal fundraising and fraud and because of the large amounts of money involved, sentenced her to death. She had been the sixth richest woman in China. There was an outpouring of sympathy from the public as many saw a death sentence for an economic crime that did not involve public corruption as excessive and disproportionate. In May 2012, her sentence was reduced to death with a two-year reprieve. In another example, public opinion pressured the SPC to reverse the death sentence for a battered woman from Sichuan named Li Yan, who had murdered her abusive husband. She was re-sentenced to death with a two-year reprieve.

As noted above, the policy of 'listening to the people's feelings' does not extend to all cases. In one of the most highly publicised cases of 2009, Xia Junfeng, a street vendor was sentenced to death for stabbing two 'urban management police' or '*chengguan*', (城管) to death while they held him in custody. Xia was executed despite a public campaign calling for leniency. While street vendors are among the most disadvantaged people in China, the 'urban management police' are among the most despised. Several *chengguan* have been caught on video beating street peddlers and those videos have gone viral on the Internet in China. One in Kunming unleashed a large-scale riot. News of Xia's death sentence prompted an outpouring of calls online to spare Xia's life. On 12 March 2014, Zhou Qiang, the newly appointed President of the SPC, said of the Xia case, 'This sort of person is very dangerous if we don't kill [him], . . . [he] will cause chaos under the sun'. As with Yang Jia, China's policy of giving due weight to public opinion does not seem to apply when the victims of violence are government officials acting in their official capacity, regardless of whether they are carrying out their duties in an appropriate manner. Despite overwhelming public support, Xia Junfeng was executed.

Learning to Litigate in the Court of Public Opinion

The CCP's 'Three Supremes' policy and its emphasis on 'social stability' in court cases was having bizarre consequences in non-criminal cases as well. The judicial system became fearful of public opinion and potential

street protests and, in accordance with CCP policy, acted to appease public anger instead of determining right or wrong in individual cases.

Yang Su and Xin He (2010) have detailed how in labour disputes, courts abandoned their traditional neutral position, threw legal norms out of the window, abandoned evidentiary and procedural standards, independently assisted workers to bring their grievances, and ordered unrelated parties (bearing no actual legal liability) to assume the burden of paying workers' wages or used court or government authorities' budgets to literally paying off protesting workers to get them off the streets. Benjamin Liebman (2013) has documented similar phenomena in medical malpractice cases. Courts have approved settlements with little regard to legal provisions and have often approved compensation in amounts that exceeded what would have been awarded as damages in court. The emphasis on avoiding protests and petitioners led to the creation of a new profession: the professional protester: *zhiye yinaozhe* 职业医闹着 (literally 'medical chaos professionals'), who operate outside many major hospitals, soliciting patients and family members who appear to be in distress with offers to obtain a favourable settlement from the hospital in exchange for a percentage of the settlement or a flat fee. In the criminal context, as noted above, CCP policies incentivised litigants to use the media, both traditional and social, to stir up favourable public opinion outside of court to advance their causes in court. Victims' families used the media to stir up sympathy in an effort to drive up the amount of compensation they demanded from the defendants' family. Similar to the 'medical chaos professionals', so-called *shuijun* (水军) 'water armies', hired themselves out to litigants to make favourable online comments to draw public support for their positions. As in the Yao and Li cases described above, clever advocates began manipulating public opinion in their favour to win court cases.

In some sense, the CCP unleashed the policy of listening to 'the people's feelings' because of their sense that ordinary people did not trust the courts and that assessment had some merit. Part of the reason people did not trust the courts, however, was because of their lack of independence from the CCP and especially, powerful local officials. Some human rights defenders who found it difficult to make headway with their cases in court or with the CCP directly also discovered that they could effectively use the media to advance the cause of their clients.

In the 2010 Beihai case, lawyers used social media to save themselves as well as their clients. The case started with a street fight. On 14 November 2009, a young man named Huang Huanhai, a native of the Southern

coastal city of Beihai, became involved in a street brawl fought with five other young men and was badly beaten. Several days later, his body was found floating in the ocean. The police soon arrested the five men whom they said had fought with Huang and then handed the investigation results to prosecutors. In an August 2010 trial, three defence witnesses provided alibis for two of the defendants and all five defendants recanted their confessions on the ground that they were tortured. In response, the CCP's local political-legal committee instructed the police to arrest the alibi witnesses on perjury charges. The police complied, arrested the witnesses and accused the defence lawyers of suborning perjury. In June 2011, the police detained two of the defence lawyers and placed two other lawyers under house arrest. The defence lawyers sought help by alerting their colleagues in Beijing and elsewhere of their predicament through social media. Netizens and the legal community publicly criticised the arrests. More than twenty lawyers went to Beihai to follow the murder case and request that the four lawyers be released. The two lawyers who had been detained were later released but kept under house arrest. After five hearings, the court finally decided that the evidence provided by the prosecutors was insufficient. The judge rejected the charge of intentional injury in the death of Huang but found the defendants guilty of creating a disturbance and imposed sentences of two to three years' imprisonment. On the same day, the four lawyers received a note from the Beihai police that said the charges against them, for subornation of perjury, had been withdrawn.

Chinese criminal defence lawyers have been arrested, charged and sometimes even convicted for obtaining evidence that contradicts the police dossier. The Beihai case represented one of the few times lawyers had successfully fought back against such heavy-handed tactics and they believe they were only able to do so because of the use of social media and the Internet. As a result of the Beihai case, many active defence lawyers in China came to believe that social media is the most powerful weapon lawyers can use to protect themselves and their clients and to seek social justice.

When China's leaders developed their policy of 'listening to the people's feelings' they certainly did not intend to empower lawyers, petitioners, 'water armies', and 'medical chaos professionals' to manipulate the 'public's feelings' to influence court outcomes. Surely their intention was to shore up support for the courts and the CCP's management of the judicial system. However, it is undeniable that by institutionalising a policy of 'listening to the people' and prioritising the

CCP and 'the people' over the law and the Constitution, the CCP empowered not just ordinary citizens but created a new business model whereby clever individuals could manipulate public opinion, sometimes for noble ends and sometimes just for profit. Perhaps the most unattractive example of that phenomenon is the Li Tianyi case.

One of the most referenced cases on the Internet in 2013 was the case of Li Tianyi, the privileged son of two famous People's Liberation Army singers. The younger Li was convicted, along with four others, of gang raping a 23-year-old woman working as a waitress in a hotel bar. Because Li Tianyi was a juvenile at the time and because this was a rape case, the trial was conducted in camera. However, Li Tianyi's lawyers waged a media campaign on his behalf and against the victim. A counter-campaign was conducted by Chinese netizens. During the height of public attention to the case there were over 1.1 million comments about the case online. Li Tianyi's lawyers live-tweeted (using Weibo) the court proceedings in an effort to arouse public sympathy and in doing so, disclosed the name of the victim and her profession, claiming this was merely a case of prostitution, sex for money. In a way, the Li Tianyi case presented all the features of notorious cases that grabbed the attention of the Chinese public, and everyone in China seemed to have an opinion on the case. Was this another child of privilege taking advantage of a working person from modest means? Or was this a case of a woman who resorted to cheating a wealthy client? Online comments reflected both narratives and included the following:

Over 50,000 netizens voted in favor of this comment: 'Kill Tianyi, bring justice to the world'. Over 470,000 netizens voted in favor of this comment before it was removed from the 'popular comments' section: 'Miss Yang [or Prostitute Yang], was it satisfying? So you set up Li Tianyi and after unsuccessfully trying to extort and blackmail him, you call the police and demand compensation, because you'll be able to get money all the same? Not bad, not bad, you've found a quick road to riches for the millions of prostitutes out there! Those who support executing Miss Yang by firing squad, ding this up!'

Another online commentator responded: 'For each ding, Li X eats a bullet'. Another netizen wrote, 'Seeing this water army [people hired to comment online on behalf of or against someone] posts/comments shows profoundly how powerful the Li family is. I now know why the elderly often say the people cannot fight the government/government officials [Li's parents are ranking civilian members of the PLA].'

The Li Tianyi case brought into stark relief the problem of deciding cases by public opinion. The facts of this case were complicated and the issue for the trial was whether the victim consented to sex. This seems to be a case where meticulous fact-finding would be crucial to determining the truth. Yet the Internet permits anyone who has access and user knowhow to express any opinion and assert any facts regardless of whether it is based on evidence or speculation or is tendentious fiction. Moreover, as more and more people realised that the CCP would influence court decisions based upon its perception that the public favoured a particular outcome the more people tried to use the Internet and even paid commentators to influence that perception.

In the end, Li Tianyi was convicted and sentenced to ten years in jail and his co-defendants were sentenced to three to twelve years in jail. It is difficult to know how much of a role public opinion played in the final outcome. However, there is no question that both sides did what they could to influence public opinion in an effort to influence the ultimate decision in the case.

Conclusion

Ever since 1979 when the reform period began, the CCP has been struggling with the challenge of establishing a functioning legal system while maintaining a one-party authoritarian government. Building a legal system virtually from scratch is a daunting task. Doing so while maintaining 'social stability' and attracting popular support is even more difficult.

As described above, the pursuit of 'justice' in individual cases has the potential to enflame the passions of the Chinese people. This was true even before the Internet brought news in real time to people's devices and provided every Chinese citizen with the ability to express their views to the entire country. 'Public opinion' as expressed by huge numbers of Chinese citizens online has presented great challenges for the CCP. Chinese netizens can learn about court cases from anywhere in the country and can broadcast their views about 'justice' to hundreds of millions of their fellow citizens. Moreover, there is virtually no cost to posting a comment on the Internet and there is no accountability. As Internet use was spreading in China in the first decade of the twenty-first-century, the CCP sought a way to harness the passion of the Chinese people for 'justice' in a way that supported the CCP's governance in general and its management of the Chinese judicial system in particular.

One of the ways the CCP did this was to empower Chinese citizens to influence how individual cases would be decided. The CCP made it an explicit policy that Chinese courts would 'listen to the people's feelings' in deciding criminal cases, including decisions of life and death. The promotion of 'judicial populism', was problematic because, by its very terms, it undermines the authority of professional judges tasked with applying established rules to facts proven through evidence. The expressed purpose of this policy was to unite 'social effects' and 'legal effects', to attract broad mass support for judicial decisions and to prevent social unrest and protests.

Did 'judicial populism' achieve these goals? Did it enhance social stability? Did it increase public trust of the judicial system? Did 'judicial populism' confer greater legitimacy and public support for Chinese courts?

The answer to all of these questions is resoundingly negative. Once the locus of a dispute is moved from a court of law to a public square the notion of the rule of law is lost and the institutions charged with carrying out the rule of law lose their authority and whatever legitimacy they have had. After all, what is the point of persuading a court or listening to its reasoning when the actual decision-maker is merely following public opinion polls?

Depending on one's subjective view of certain case decisions, one could reasonably argue that public opinion may have had a positive influence in some cases. One could make a case that the Chinese public pressured the CCP to reach more just outcomes in the cases where it showed greater leniency. For example, in the Jiang Aizhen, Xu Ting, Deng Yujiao, Wu Ying, Li Yan and Beihai cases, one could reasonably argue that allowing the public to express their sense of justice concerning how these individual cases should be decided, in the end, contributed to more just outcomes. In each of those cases, the court found a basis to show leniency in circumstances that would otherwise have called for a harsher outcome, including death in some cases.

On the other hand, in several other cases, the outrage of the public reflected a thirst for vengeance, perhaps inspired by the viciousness of the criminal act but also influenced by the perception of the social status of the defendant and the victim. Because that thirst for vengeance was validated by official policy, individuals who were eligible for life sentences were instead put to death. These include Liu Yong, Yao Jiaxin and Li Changkui. Regardless of whether one agrees with the final outcome, forcing the courts to succumb to popular will in these cases undermined

the authority of the judicial system and the rule of law. Even when judges patiently and rationally explained the reasoning behind their decisions the CCP overruled them because of raw public pressure.

Liu Renwen, of the Chinese Academy of Social Sciences, a leading Chinese government think tank, commented on public opinion:

[It] is a double-edged sword. The good side is that public opinion could supervise the process and prevent corruption. The bad side is that irrational public opinion can do irreversible damage. Once public opinion is stirred up, individuals can lose their power to reason. The Chinese government attaches particular importance to social stability nowadays, and so when public opinion is strong, the court is pressured to bow to the public mood. This is partly caused by people's mistrust of the system itself. Judicial corruption is not rare, and people hate the rich and officials. If we had a more credible legal system, public opinion wouldn't be so extreme

(Liu n.d).

But is the justice that the public demands real justice? The public's view of individual cases is influenced by many factors. The facts of individual cases are often held up as illustrations of a broader narrative that incites people's emotions. Is this a case of a powerful person getting away with something? Is this a case of official abuse of an ordinary person? Is this a case of a weak person fighting back against abuse by the rich and powerful? Does this case fit into a broader narrative about wealth, power and inequality and the abuses they produce?

Public opinion may also be influenced by the deliberate actions of those with an incentive to sway it in one direction or another. The Internet, or any public square, is not the ideal place to weigh evidence, make credibility determinations or engage in detached deliberation of complex facts and legal considerations. The Internet is not an ideal medium to make decisions about how individual cases should be decided.

Perhaps the best indicator that the 'judicial populism' policies failed is that they created a new kind of instability. The creation of 'water armies', 'medical chaos professionals', and the empowering of paid advocates to stir up public fervour does not seem to be what the CCP had in mind when it embarked down the 'judicial populist' path. As the Chinese saying goes, 'Once you are riding a tiger it is difficult to get down'. As CCP leaders learned, 'public opinion' can be a hard tiger to ride.

Hu Jintao's successor, Xi Jinping, has not expressly repudiated the policies of 'judicial populism'. However, he has taken China's policies towards the courts and the media in a completely different direction.

Under Xi, the CCP is rhetorically emphasising fairness and justice in court and is taking steps to bolster the court's independence from local control. Xi is channelling his appeals to populism through a massive anti-corruption campaign and not through court decisions.

At the same time, however, under Xi's leadership, the CCP is cracking down on freedom of expression on the Chinese Internet as well as on grass roots public activism and advocacy. With respect to public opinion on criminal cases, the CCP has also gone on the offensive, affirmatively moulding public opinion in high profile cases by parading suspects on Chinese television to confess to crimes even before they have been formally charged. A full assessment of Xi Jinping's judicial policies and how they impact Chinese efforts to establish a society under the rule of law must await a more thorough study. Suffice it to say that Hu Jintao's successors have, in their actions, rejected the policies of 'judicial populism'. Whether their new policies will fare any better in establishing a society under the rule of law and maintaining social stability remains to be seen.

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