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The media, the public and the courts under Chinese governmentality: case study of a highly publicized trial in a transitional society

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**THE MEDIA, THE PUBLIC AND THE COURTS UNDER CHINESE
GOVERNMENTALITY: CASE STUDY OF A HIGHLY PUBLICIZED TRIAL IN A
TRANSITIONAL SOCIETY**

by

Ruoxi Liu

A thesis submitted in partial fulfillment
of the requirements for the Master of Arts
degree in Journalism in the
Graduate College of
The University of Iowa

August 2015

Thesis Supervisor: Associate Professor Lyombe Eko

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Graduate College
The University of Iowa
Iowa City, Iowa

CERTIFICATE OF APPROVAL

MASTER'S THESIS

This is to certify that the Master's thesis of

Ruoxi Liu

has been approved by the Examining Committee for
the thesis requirement for the Master of Arts degree
in Journalism at the August 2015 graduation.

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ABSTRACT

Recent years have witnessed an increase in the phenomenon of highly publicized trial in China. There have been studies exploring the relationship between the media and the political system, especially the judicial system in China. Scholarship on this topic has shown that the Chinese media are playing an increasingly important role in sustaining the regime. Specifically, they are becoming more influential over the outcomes of court cases and have developed to one of the most important actors in China's legal system (Wang&Tan, 2008; Liebman, 2005, 2010; Stockmann & Gallagher, 2011). The media-court relationship provides insights into China's politics, and more importantly, reflects the logics and rationale behind the Communist Party-state's governance. This thesis aims to contribute to existing knowledge on the functioning of the Chinese judicial system using as a case study, the trial of Yao Jiabin, a young man prosecuted for a particularly heinous murder. This case study explores the dynamic relationship between the media and the courts in China under the framework of the “governmentality” of the Chinese Communist Party. The findings showed that the relationship between the media and the courts is changing, and the public has become an important actor in this relationship. As such, both the media and the courts are now more responsive to public opinion. This new dynamic is attributed to China’s evolution to a governmentality of “soft authoritarianism,” which is enabled by the Internet,

mainly online forums and social media platforms in China. However, Yao's case also suggested some limitations of China's governmentality. First, social actors including the media and the court are facing challenges in achieving a balance between being responsive to the public and maintaining their professional integrity. Secondly, "soft" authoritarianism is only a means to an end, not an end in itself. Individual interests are expected to be sacrificed for the sake of collective interests under this governmentality.

PUBLIC ABSTRACT

Recent years have witnessed an increase in the phenomenon of highly publicized trial in China. There have been studies exploring the relationship between the media and the political system, especially the judicial system in China. Scholarship on this topic has shown that the Chinese media are playing an increasingly important role in sustaining the regime. Specifically, they are becoming more influential over the outcomes of court cases and have developed to one of the most important actors in China's legal system (Wang&Tan, 2008; Liebman, 2005, 2010; Stockmann & Gallagher, 2011). The media-court relationship provides insights into China's politics, and more importantly, reflects the logics and rationale behind the Communist Party-state's governance. This thesis aims to contribute to existing knowledge on the functioning of the Chinese judicial system using as a case study, the trial of Yao Jiabin, a young man prosecuted for a particularly heinous murder. This case study explores the dynamic relationship between the media and the courts in China under the framework of the “governmentality”---the logic of governance. The findings showed that the relationship between the media and the courts is changing, and the public has become an important variable in this relationship. As such, both the media and the courts are now more responsive to public opinion. This new dynamic is attributed to China’s evolution to a governmentality of “soft authoritarianism,” which is enabled by the Internet,

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TABLE OF CONTENTS

List of Figures	viii
Introduction	1
Chapter One: Background: Commercializing Media meet Developing Courts	4
Chapter Two: Literature Review	16
Chapter Three: Methodology	20
Chapter Four: Findings and Analysis	23
Chapter Five: Conclusion and Discussion	40
References	46

LIST OF FIGURES

Figure 1: The Court Structure in China.....	8
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Introduction

Was Yao “executed” by the media and the public? People started to wonder after Yao Jiabin’s death. Yao, a 21-year-old student from Xi’an, Shaanxi Province, came to national prominence after he stabbed and killed a restaurant waitress, Zhang Miao. On October 20, 2010, on his way from school to home, Yao accidentally hit Zhang with his car. When he saw Zhang trying to memorize his car's license plate number, he panicked and stabbed Zhang to death with a knife. Two days later, Yao, accompanied by his parents, turned himself in to the local police station. The case attracted great media attention around the county, especially on social media such as Sina Weibo. The huge public and media sensation around this specific case were not only because the public was appalled by his cruelty, but also it served as a safety valve for pent-up frustrations and intensive social tensions in China. Words like “animals” “monsters” “go to hell’ were all over the Internet. Furious netizens demanded justice by calling for the “immediate death penalty for the murderer,” and public rage escalated after Yao was identified as “rich second generation” (children from rich families) with powerful family background and connections, although this turned out to be false.

This case happened during a period when cautious implementation of the death penalty was proposed by legal intellectuals and was gradually accepted by the Chinese

courts. However, with public outrage and intensive media coverage, Yao was sentenced to death on May 20, and was executed on June 7, 2011.

Yao was not the first criminal defendant to be “affected by the media.” Recently, China has witnessed an increase in the phenomenon of “media trials” or “public trials” (Liebman, 2010). There have been studies exploring the relationship between the media and the political system, especially the judicial system. Scholarship on this topic has shown that the Chinese media are playing an increasingly important role in sustaining the regime. Specifically, they are becoming more influential with respect to the outcomes of court cases, and so have become one of the most important actors in China's legal system (Wang&Tan, 2008; Liebman, 2005, 2010; Stockmann & Gallagher, 2011). A lot of observers consider the media an critical check on China’s courts, helping to increase transparency in the legal system. However, the story is not that simple. The relationship between the media and the court has become more complex since China started its economic and political reform since 1978. This changing relationship is important not only for what it reveals about both the institutions, but also for the insights it provides into the logics and rationale behind the Party-state's governance. Thus, I believe the relationship between the Chinese media and the judicial system is a topic worth in-depth study. This thesis aims to contribute to existing knowledge by exploring the dynamic

relationship between the media and the courts in China under the framework of “governmentality”, the logic of Chinese governance, using a case study in a mediated trial of Yao Jiaxin, who was tried, convicted and executed after a highly publicized and mass mediated trial.

Chapter One

Background: Commercializing Media meet Evolving Courts

The Media System in China

Theoretically, freedom of the press is guaranteed in China. According to Article 35 of the Constitution of People's Republic of China (1982), “Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration” (Chinese Constitution. art 35, §2). However, the absence of official media law, as well as the vagueness and opacity of other Chinese media regulations and policies make the Chinese media system one of the most restrictive in the World (Xu, 2014). In terms of media regulation in China, there are a few governmental departments and organizations involved, including the Publicity Department of the Chinese Communist Party, the State Administration of Press, Publication, Radio, Film and Television, the Ministry of Industry and Information Technology, the State Council Information Office, and the Ministry of Public Security and Ministry of Culture (Congressional Executive Commission on China, n.d.).

Directly under the Political Bureau and the Standing Committee of the Chinese Communist Party (CCP), the Publicity Department is in charge of ideology-related matters and the information dissemination system (Major Functions of CCPPD, n.d.) It

monitors the media content and make sure that publishers do not publish things that are not in line with the Communist Party's political agenda. Although it is not an official part of the Chinese government, it gives media outlets editorial guidelines and practices media censorship and control (Xu, 2014). The Publicity Department also coordinates with other government organizations, including the State Administration of Press, Publication, Radio, Film and Television of the People's Republic of China to manage media in China. As an executive branch of the State Council, SAPPRFT is in charge of administration, distribution and regulation of news, print and Internet publications, radio, film and television industries in China (Major Functions of SAPPRFT, n.d.). The Ministry of Industry and Information Technology is a state institution primarily responsible for regulating and developing the Internet, wireless, communications and software industry. Although it is not responsible for regulating content, it plays an important role in China's telecommunications industry.

Media in Transition

The media's role in China has always remained controversial partly because of their subjection to these Party and government organizations. However, the past three decades, due to economic reform in China, have witnessed changes in the media's role. The media

have functioned as an arm of Communist Party and the government since the founding of the People's Republic in 1949. The Chinese Communist Party (CCP) has been highly sensitive to the role of the media since it recognized their importance in “informing and instructing China's population, and for asserting political control” (Liebman, 2005). The media have been "an integral part of the government or of the Communist party” and are employed by the leaders in the Party for propaganda and mobilization (Wang & Tan, 2008).

In the past three decades, China's media have undergone change and reform. With the economic reforms started in 1978, there has been rapid growth and extensive commercialization of the media. As an indispensable part of the economic reform, media outlets started gaining financial self-sufficiency by entering the market since subsidies they got from the government were getting cut (Winfield & Peng, 2005). The increasing financial self-sufficiency began to influence the media content in a way that Chinese media presented more autonomy, openness, discretion, diversity and freedom regarding political views (Lee, 1994; Zhao, 1998). In addition, commercialization led to a redirection of media focus from “delivering and gathering information on behalf of the Party-state to meeting audience demands” (Liebman, 2005, p.24). The media worked increasingly not just to inform and guide, but also to make a profit (Chu, 1994). These

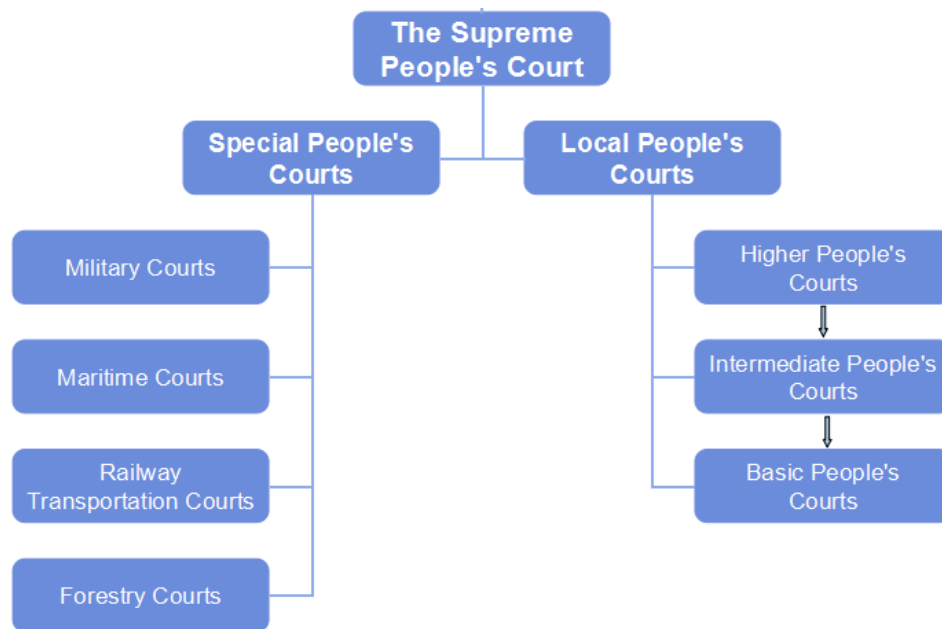
factors helped to define the new characteristics of the media in China. That is, the media have taken on another important new role, as the people's mouthpiece. This means the media not only publicize Party-State policies but also represent the interests of the people and express their desires (Wang & Tan, 2008). At the same time, despite significant changes in the media system brought about by commercialization, the fundamental political role of the media has not changed, and China's media still remain the mouthpiece of the Party-State (Stockmann & Gallagher, 2011).

Thus, the media now maintain a dual role in China's society. They have to manage a difficult and sensitive position as they continue to play their political role as the mouthpiece of the CCP, while at the same time, start producing news content that caters to the interests of Chinese audiences, and serving as watchdogs of governmental institutions, including courts, on the public's behalf. Benefiting from the dual role, the media's reporting on the courts and legal matters—a major part of media supervision—has increased significantly (Liebman, 2005).

The Judicial System in China

Broadly speaking, China's judicial system consists of three parts: the people's court, the people's procuratorate and public security systems. Strictly speaking, “the judicial system” here only refers to the people's court system. According to the Constitution of the

People's Republic of China (1982) and the Organic Law of the People's Courts (1980), “ the people's courts are judicial organs exercising judicial power on behalf of the state.” (Chinese Constitution. art 123, §7; Organic Law of the People's Courts. art 1&2). “The judicial authority of the People's Republic of China is exercised by local people's courts at various levels, military courts and other special people's courts, and the Supreme People's Courts. The local people's courts are divided into Basic People's Courts, Intermediate people's courts and Higher people's courts” (Chinese Constitution. art 124, §7).



(Figure 1: The Court Structure in China)

Courts in Transition

The role of the court has always been controversial in China due for suffering from many problems. There in China exists inequality of legal development in developed areas and less developed areas of China. Chinese courts enjoy wide discretion, which undermines the efforts towards procedural law and the authority of law. Other problems include the difficulty of implementing laws and enforcing court decisions, corruption, incompetence, lack of transparency and dealing with difficult or sensitive cases by inaction (Cohen, 2014).

One of the biggest problems is the lack of judicial independence, which can lead to the courts' subordination to both internal and external pressure, including that of the higher courts, the Party, government, public opinion and the media (*Ibid*).

Judicial independence is a concept with many layers and structures of meaning (Shetreet & Deschênes, 1985). According to Peerenboom's study (2008), decisional independence means that judges are able to decide cases and reach verdict independently based on law and facts without being interfered by other parties. Serving as one of the premises for decisional independence, personal independence deals with how judicial appointments of judges are made and the security of their terms of office. Internal independence is about judges' ability to decide cases without subjections to

administrative hierarchies (e.g. senior judges) within the court. External independence is that judges are free from interference from external parties including the CCP, the people's congresses, the government, and public opinion. External independence and ultimately decisional independence call for collective independence. Collective independence means that the judiciary is able to function as a collective entity without interference from other parties, which can only be guaranteed by adequately funded and powered.

This study synthesizes Peerenboom's categorization of judicial independence, and uses the personal independence of judges and institutional independence of courts as criteria to assess China's judicial independence. Theoretically, the courts should maintain judicial independence. Both the Constitution (1982) and the Organic Law of the People's Courts (1980) stipulate, "The people's courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations or individuals" (Chinese Constitution. art 126, §7; Organic Law of the People's Courts. art 4). However, in practice, the legal system still remains subject to interference at both the individual level (the judges) and institutional level (the courts).

With respect to individual independence, the appointments and the terms of office of Chinese judges are not guaranteed. Judges are selected by congresses: the President of the

Supreme People's Court is elected or removed by the National People's Congress, and the presidents of the local People's Courts are elected or removed by local People's Congresses (Judges Law of the People's Republic of China, 1995). But the congresses in China do not function the same way as they do in western countries. For instance, although the National People's Congress is considered the most powerful organ of the country, it is, in truth, the Chinese Communist Party that is in charge since about 70% of NPC's delegates are party members (Jones, 1985). In addition, Chinese judges are not granted life tenure. According to the Organic Law of the People's Courts (1980), "the term of office of presidents of people's courts at all levels is the same as that of people's congresses at corresponding levels," which is usually five years; and the people's congresses, which are actually in the control of the Party, have the power to remove judges at corresponding levels from office.

In terms of the independence of courts as institutions, one problem is funding. The Interim Measures on the People's Courts' Finances (2001) issued by the Ministry of Finance and the Supreme People's Court states that court funding mainly comes from the government at corresponding administrative level. This budget is listed as an independent category in the government budget (Wang, 2013), and mainly consists of two parts: budgetary funds from the government at corresponding administrative level, and

extrabudgetary funds mainly from administrative income of the courts (e.g. litigation fees, judicial fines). Sometimes, the Ministry of Finance, representing the central government, allocates additional funds to finance courts at various levels (Notice of the Ministry of Finance and the Supreme People's Court on Issuing the Measures for the Administration of Funds for the People's Courts, 2007). In addition, the courts are subjected to supervision by higher courts and people's congresses at corresponding levels (Organic Law of the People's Courts, 1980).

Following economic reform, China also started its legal reform in 1978. Over the past three decades, China has engaged in a rapid development of its legal system with considerable accomplishments. Legal actors judges have become more and more professional (Wu & Liebman, 2007). The law has started to regulate both the state and the individuals. Public awareness of the law has increased dramatically, and the people have begun to consider the law and the legal system as important routes to address their problems and disputes. In addition, the state has gradually included “the rule of law” into its ideology and legitimacy (Porter, 2004; Liebman, 2009). As a key actor in the legal system, the courts also underwent significant changes in the late 1990s. The Supreme People's Court (SPC) issued its first five-year plan for reforming China's courts in 1999 with the goal of making China's judiciary fair and more efficient (Grimheden, 2006).

However, recent developments do not suggest fundamental changes in courts' power. This kind of top-down reform initiated by the Party predetermines its limitation, that is, it is a restricted reform and the court continues to be subject to the Party and the government (Liebman, 2007).

The Media-Court Relationship in Regulations

Both the media's rights of free speech and free press and the courts' right of practicing judicial power without being interfered are fundamentally stipulated in Article 35 and Article 126, respectively in the Constitution of the People's Republic of China. However, the Constitution, with its very nature of generality, fails to provide specific instructions and guidance on how the media ought to report legal cases, and how the courts ought to respond to media supervision and public opinion. Some specific pieces of regulations and relevant policies further shed a light on how the relationship between the media and the court are prescribed.

For the media, regulations include *On Protecting the Legal Right of Coverage Enjoyed by the News Collecting and Editing Staff*, issued by the General Administration of Press and Publication in 2007, and *China News Workers' Code of Professional Ethics*, revised by All-China Journalists Association in 2009, can serve as references for

journalists in China to report legal cases.

In terms of the media reporting on legal cases, these policies mainly prescribe that media reporting on legal cases is to guarantee the people's rights of information and knowledge, and to practice media supervision on legal cases on behalf of the public.

When engaging in news coverage of legal affairs, the media should also comply with relevant laws and regulations, and report with truthfulness and objectivity.

As for the court, policies including *Notice of the Supreme People's Court on Issuing the Six Provisions on Judicial Openness and Several Provisions on the People's Courts' Exposure to Public Supervision through Mass Media* (2009) and *Notice of the Supreme People's Court on Issuing the Opinions on Further Strengthening the Communication of Public Opinions* (2009) provide specific instructions for the court to handle media coverage and public opinion.

In general, the court ought to stick to the principle of openness to both the media and the public and take initiative to accept media supervision and public supervision. At the same time, the court should also regulate the media in terms of their reporting conducts under some circumstances.

With respect to the public, the court should be fully aware of the great significance of public opinion during trials, guarantee the people's rights of information, and make

sure the final result reflect the unity of legal effect and social effect. Especially, the court should pay attention to online public opinion and promote communication with the public in online environment. In addition, the court should improve the communication mechanism with the media, which can be used as important channels to get public opinion.

Chapter Two

Literature Review

Governmentality

This study was carried out within the framework of governmentality, which merges the words “government” and “mentality” into the neologism “governmentality”.

Foucault's concept of governmentality deals with government operation with regard to both the institutions of the state and the power relations permeating the society (Foucault, 1991; Dean, 1999). Governmentality “describes the conceptualizations, psychological variables, institutional logics, practices, procedures, rationalizations, and strategies of control deployed by national and international authorities as part of their ‘rulership’ or exercise of power” (Eko, 2012). In a narrow sense, governmentality is the application of “the notion of national and cultural mentalities to the field of political governance”(Ibid). The concept of governmentality states that the state exercises its governance in specific historical, political, social and cultural contexts.

Governmentality in China: The Soft Authoritarianism

Governmentality deals with the different ‘mentalities’ of government, or the thinking about as well as the thinking behind government (Lee, 2013). Different states have different governmentalities. For China, its current governmentality can be traced to 1977,

the period after the Cultural Revolution. The Party-State started political changes in late 1970s. Despite the absence of dramatic political liberalization and democratization, China has evolved, although slowly, from a totalitarian state in the past to soft authoritarianism, or new authoritarianism (Pei, 2000). The rationale behind new authoritarianism is that a developing country like China cannot fully copy the Western political model, which means it will neither democratize nor adopt a complete version of democracy from western countries. Instead, it selectively develops a system of governance that fits its culture, history, economy and society—a “democracy with Chinese characteristics” (Goldman, 2007, p.146).

China's current political system is a hybrid system (Wang, 2006). For one, an authoritarian government is still indispensable for the Party-State to maintain political order, social stability and most importantly the Chinese Communist Party's rulership. Secondly, although slow, it has started a process of liberalization and democratization to further economic development as well as facilitate a sustainable governance by being more responsive to the needs of a developing civil society.

Media-Court Relationships in Transition

Prior to the political and economic reform in 1978, the media have almost solely served as the mouthpiece of China's Party-State (Wang & Tan, 2008). At this period, the

media are not only state-controlled news outlets but also institutions with official Party-state functions by publicizing official news publicly, implementing policies, rallying support for the Party, launching political mobilization and informing Party leadership of public grievances and officials' misconducts at the local level (Liebman, 2005).

As the mouthpiece, the media perform supervision over other institutions on behalf of the Party-State. The court, with a relatively weak position within China's political system, is also subject to media oversight. As legal institutions got weaker during the Cultural Revolution, the media started to perform a more direct role of implementing policies, making key decisions, announcing and determining guilt in the absence of a functioning and competent court during this period.

China started its political changes after the Cultural Revolution and is moving to a soft authoritarian system from a totalitarian system. Under this new governmentality, both the media and the court have undergone significant changes (Wang & Tan, 2008).

Accordingly, the relationship between the media and the court is also changing under soft authoritarianism, in which the Party-State aims to increase responsiveness and accountability while continuing to maintain an authoritarian regime (Liebman, 2011).

Research Question

This study proceeds on the assumption that under China's governmentality-soft authoritarianism, the relationship between the media and the court is changing. This study seeks, through analyzing news articles and other secondary data concerning Yao's high-profile criminal case, to discover the new dynamics of the relationship between the media and the court, and further suggestions on China's governmentality.

Thus, the following research questions are proposed:

RQ: 1. How did the media cover Yao's case?

RQ2: How did the court respond to the media coverage and publicity that surrounded Yao's case?

RQ3: What did the media coverage and the courts' pronouncements on Yao's case suggest about the changing relationship between the media and the courts in China?

Chapter Three

Methodology

In order to answer the research questions, this study took the form of a case study that explored the dynamic relationship between the media and the courts in China, using Yao's trial as a case in point. A qualitative content analysis of newspaper articles was conducted with the goal of understanding how the media reported this case. This involved identifying the major themes that emerged from the coverage. In order to determine how the courts reacted to, and managed the publicity and extensive media coverage generated by the trial, news releases, interviews of judge and party officials, and court-sanctioned surveys were also examined.

Qualitative Content Analysis

A qualitative content analysis was utilized in order to explore how the media reported Yao's case.

Researchers can infer about social reality systematically through identifying themes and patterns by employing qualitative content analysis (Hsieh & Shannon, 2005). Hsieh and Shannon (2005) defined this method as “a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (p.1278). In qualitative content analysis, the

process of thematic analysis is used to organize qualitative information based on emerging patterns or themes.

News articles on Yao's case were collected from three newspapers: *Xinhua Daily Telegraph*, *Southern Metropolis Daily* and *People's Court Daily*. These three newspapers were chosen for two reasons. First, they represent different types of newspapers in China: government-owned daily newspaper, market-driven daily newspaper and legal newspaper. Second, the amount of coverage they devoted on Yao's case generated sufficient data for this study.

Xinhua Daily Telegraph is a daily government-owned newspaper with a circulation of 1.6 million in China. Published by Xinhua News Agency, the official state news agency of the People's Republic of China, *Xinhua Daily Telegraph* is one of the most authoritative newspapers in the country and is subscribed by most governmental institutions. *Southern Metropolis Daily*, with a daily circulation of 1.7 million, is a market-oriented newspaper known for its more liberal approach and investigative journalism. *People's Court Daily*, owned by the PRC Supreme People's Court, is a newspaper focusing on legal affairs in China. Most legal institutions are the subscribers of *People's Court Daily* and it often serves as an internal reference source for China's judges.

All articles were retrieved from the China National Knowledge Infrastructure (CNKI) database and their own e-newspaper databases. The keyword “Yao Jiabin” was used to identify a preliminary sample of articles within the date range of Nov. 25, 2010 and Jun. 6, 2011. This time frame was chosen because it was between Yao's arrest and his execution. Each article was given an initial reading to determine appropriateness and relevance to the study. Duplicates and articles that did not focus on Yao Jiabin and his trial were excluded. A total of 24 articles as the final sample were chosen for analysis.

Data consisting of court media releases on Yao's trial, interviews of officials from Shaanxi government and judges from Shaanxi Higher People's Court, were also examined to find out what the courts' pronouncements suggested about their attitudes on Yao's case. These official pronouncements also gave us a glimpse of the governmentality of China with regards to the courts.

Chapter Four

Findings and Analysis

The first research question was concerned with how the media reported Yao's case. An in-depth examination of the news stories revealed some patterns of recurring themes. Two major categories of theme were identified and each theme was analyzed in detail.

The first category of theme in media coverage focused on the question of why it happened. That is, why Yao committed murder. These articles explored the causes of Yao's criminal acts from an individual moral perspective and problematic social structural contexts, while the second category focused speculations about the fate of Yao. The main question was, "what should happen to Yao?" This theme analyzed the controversy over Yao's penalty, and evaluated the influence of authorities and the public on the case.

Why the Yao Tragedy Occurred: Moral Condemnation and Speculation on the Cause of the Crime

Personal Moral Attribution

The news coverage presented moral condemnation of Yao using strong, direct and value-loaded language and words. Stories denounce him as an "animal", "garbage" and portrayed him as a cold-blooded and inhuman creature who fully deserved capital

punishment. Several accounts related how he brutally stabbed the young woman to death, leaving the victim's family heartbroken and her two-year old son behind. The coverage further pointed out that Yao's ruthless acts reflect his indifference to human life and pointed to defects in his morality, which are closely related to his family upbringing. According to these news accounts, Yao was not raised in a proper way, and the extremely bad parenting he experienced resulted in his flawed character and unhealthy mentality. A story in the Southern Metropolis Daily exemplified this theme:

“Yao claimed, he grew up with high expectations from his parents since he was a child. They treated him toughly. All he did everyday is study and practicing piano, nothing more. He would get beaten for not playing piano well and would be locked in the basement by his father. So he thought about killing himself a few times”

(Prosecutor Suggesting Against Lesser Punishment on Yao, March 2011).

Thus, the media believed Yao's parents should take certain, if not all, responsibility for Yao's failing to grow into a decent human being with a conscience and healthy character.

As an article in *The Xinhua Daily Telegraph* stated:

“It's the parents' fault to feed but not teach. His parents need to reflect on why their son became so ruthless and inhuman” (Liang, December 2010).

Social Structural Problems

Observations and analyses of the social roots of Yao's acts constituted another frequent theme of the media coverage. News articles presented three major social problems: problem with college education, class inequality and conflicts, and defects in the existing laws and compensation system.

College Education

College education is deemed by the media coverage as one of the social roots of Yao's crime. The coverage criticized college standards for failing to help Yao develop a healthy character, a sense of morality and sufficient awareness of the legal consequences of his actions. Stories stated that the poor college education should also be blamed for what Yao did. The *Southern Metropolis Daily* commented that:

“It is not a overstatement that the college education is a miserable failure... Yao Jiaxin and other students alike are ringing the alarm bells for college education”

(*Yao Jiaxin and the Alike*, April 2011).

“Nowadays, developments of healthy character, moral integrity and legal awareness have been marginalized in Chinese education. All colleges care about are students’

grades and employment rates” (*Developing Healthy Character Brooks No Delay*, April 2011).

Articles of Southern Metropolis Daily and People’s Court Daily also directly cited the general public on this theme,

“Imagine, if the college education is competent and prepares Yao with enough legal awareness and sense of valuing people’s life, I guess he would not have stabbed a woman to death after a car accident” (*Yao’s College Lacks Self-reflection*, April 2011).

A commenter in the official *People’s Court Daily* lamented:

“I feel sorry for Yao Jiabin, and also feel sad about the failure of Chinese college education” (He & Sun, March 2011).

Class Inequalities and Conflicts

Since the inception of economic reforms in 1978, China has been one of the fastest growing economies around the world. This growth has extraordinarily improved people’s living standards, while at the same time, has also witnessed increasing disparities among people in different geographical locations and in different social statuses. Income inequality has risen, propelled by a rural-urban income gap (Dollar, 2007).

The gap between the prosperous cities and the poor rural areas has been expanding

and has created social unrest and conflicts. There always have been strong sentiments regarding the growing chasm. In cybercommunities, disdain and hatred against the wealthy and privileged classes is everywhere. Cynical and celebratory comments abound when one perceived to be wealthy, corrupt or privileged falls. Often, public anger erupts over the arrogant misbehavior of the “rich second generation” — the children of wealthy families, who often have powerful political connections.

In this case, Yao was framed in the media coverage as a “rich second generation” person, one from a powerful family with parents being military officials, while the victim is only a young mother of a 2-year-old, a person from a poor family in a rural area. Although the information on Yao’s family background turned out to be inaccurate in the end since his father is just an ordinary worker in a military factory and his mother was already retired, this narrative of the coverage reignited the socially sensitive topic of inequality and class conflict.

Class conflict is the major social root of the crime discussed in the media coverage. When asked about his motivation for the murder, Yao said, he stabbed her after the car accident because he thought that “the rural people are hard to deal with”, according to an article in *Southern Metropolis Daily* (*Why Did Yao Think “Rural People Are Hard to Deal With?”*, December 2010). This statement of disdain for the rural poor shocked the

whole country and suggested discrimination and prejudice against underprivileged social groups. *The Southern Metropolis Daily* wrote that:

“According to Yao himself, the reason why he had to stab her to death is quite simple. She is from rural area and she is poor. When he saw she is memorizing his license number, he panicked and worried about potential blackmail, that she will keep asking for money and bringing troubles because of this car accident” (*What’s More Horrible Than Murder is Group Discrimination*, April 2011).

For its part, *Xinhua Daily Telegraph* stated that:

“What Yao said epitomizes a prevailing prejudice against people from rural areas....The better city life is built upon the arduous efforts of immigrant workers who come from rural areas. However, ridiculing and discriminating rural citizens has become a ‘trend’ in this society” (Ding, December 2010).

What’s behind this prejudice is the growing disparities between urban and rural areas, rich and poor, the privileged and the underprivileged. Writing about this problem, *The Southern Metropolis Daily* stated that:

“During the process of urbanization, rural groups have been continually marginalized. There seems exist this unbridgeable gap among different social groups, which creates discrimination or even hatred” (*What’s More Horrible Than Murder is*

Group Discrimination, April 2011).

Thus, the news stories expressed their concerns over the potential injustice that might happen in this case because of the inequality between Yao and the victim. *Xinhua Daily Telegraph* explicitly expressed this concern in its stories,

“What concerns us is whether his ‘family background’ will affect the justice.... If power and money deprive of public trust on law and justice again, the consequence will be detrimental” (Wang, November 2010).

An article on *Southern Metropolis Daily* asked:

“Does he (Yao) want to use money and power to get away with this vicious murder?!” (*Yao is More Arrogant than Li*, November 2010)

Newspapers also directly quoted social media posts from Weibo,

“Victim is powerless and comes from low social status. God will forbid if her justice is not served and upheld!” (Wu, March 2011)

The media then proposed suggestions to the administration regarding how to fix this issue:

“The statement of ‘rural people are hard to deal with’ speaks up a lot of people’s mind. Instead of pretending the absence of such conflict, the public policy should recognize and face up to this class-divide, focus on bridging widening gap and

eliminating the sense of superiority of urban citizens over rural people.” (*Why Did Yao Think “Rural People Are Hard to Deal With?”*, December 2010).

Defects in the Law and the System

According to the news coverage, another social root of Yao’s crime is the deficient traffic accident compensation system. Questions have been asked in the news stories regarding why Yao chose to kill the victim when she was only injured in the first place.

According to *Road Traffic Safety Law of the People's Republic of China* (2004) and *Interpretation of the Supreme People's Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury* (2003), victims of car accidents receive different amounts of compensation based on the circumstances: injury, disability and death. If the victim dies, the perpetrator faces a maximum liability that varies from \$4,100 in rural Shaanxi to more than \$37,000 in Shanghai (*Traffic Accidents in China*, n.d.). This is a lump-sum compensation, the driver has no concerns regarding subsequent compensation. However, if the victim is injured, especially becomes disabled in this accident, the driver has to make a comprehensive payment including disability compensation, medical expenses, nutritional costs, care services, cost of lost labor, etc. This means that the driver will have to continuously pay compensation, and this amount of compensation is way higher than the one-time death compensation. These liability

rules have created twisted incentives like “rather knock to death than to be disabled” and led to frequent “second damage,” in which for example drivers hit pedestrians and then run over them to kill them so that they do not have to pay high compensation several times.

Yao’s behavior is one example of a very dangerous trend in China---“rather knock to death than to be disabled.” The media called for reflection on Chinese current traffic accident compensation system. The *Xinhua Daily Telegraph* wrote that:

“This unspoken rule of ‘rather knock to death than to be disabled’ mirrors a huge deficiency in compensation system and a dilemma in management. It is more meaningful to reflect on the problems of the system than solely moral condemnation” (Shi, December 2010).

Social structural problems, especially the tension between social classes, are major themes discussed in media coverage, which also reflect public’s deep concerns on this case.

What Should Happen to Yao: Speculation on Yao’s Punishment

The second category then focused on what kind of punishment Yao should receive and how these newspapers evaluated opinions of the different parties on Yao’s case.

Measurement of the Penalty

This theme revolved around technical legal discussions on the measurement of penalty including the validity of Yao's voluntary surrender, whether his acts fit "killing in the heat of passion", a scenario which can potentially lessen suspect's punishment, and degrees of his subjective viciousness and threats to public safety.

Arguments from Yao's attorney and prosecutor were discussed in the media coverage. For example, *People's Court Daily* presented both sides in one article,

"Yao's attorney claimed that Yao turned himself in voluntarily and confess the whole story, and the court should take these into consideration.... Yao does not have any previous criminal records. He didn't kill with premeditation, it was a heat-of-passion manslaughter....However, the prosecutor refused to agree on Yao's attorney. He stated that Yao's behavior shows a very high subjective viciousness and jeopardizes public safety.... Although he turned himself in, this cannot serve as a sufficient condition for a lesser punishment." (He &Sun, March 2011)

More articles, especially on *Southern Metropolis Daily*, explicitly cast doubts on the applicability of "killing in the heat of passion" in Yao's case.

"One of the characteristics of 'killing in the heat of passion' is that the perpetrator is provoked and irritated by the victim, but this is not the case in Yao's case. If he

receives a lesser sentence based on this argument, this case will not only fail to achieve the functions of criminal penalty and justice, but also produce negative social effects” (*The Court Should Not Make Judicial Decision in Passion*, March 2011).

Media framing of this theme, represented by *Southern Metropolis Daily*, argued against a lesser punishment for Yao. The media questioned the applicability of “killing in the heat of passion” in Yao’s case, which also echos public demand for capital punishment on Yao.

Opinion of the Authorities

Given their knowledge of Yao’s “powerful family background,” the media coverage cast doubts on the opinions of authority figures and criticized them for their alleged “pro-Yao” stands. Authority figures here include CCTV (China Central Television), the predominant state television broadcaster in China, which is often considered as an essential propaganda tool of the Party-state, and a criminal psychologist Li Meijin, who is among the ranks of Commissioner second class.

In 《News 1+1》, a news program aired on CCTV, the controversial comments Li Meijin made on Yao Jiabin’s case irritated the netizens. She posited that Yao’s acts of stabbing related to his miserable childhood experiences in playing piano. ‘His behavior of

stabbing the victim eight times could have been a mechanical repetition of him hitting the piano keys', said Li (Southern Metropolis Daily, April 12, 2011). The online public referred her as the 'defender of a murderer' and initiated a Human flesh search engine to defame her.

In addition, the state media coverage of Yao's case was considered biased by the public, as it only presented the murderer but did not present any sympathy for the victim.

As seen in one of the *Southern Metropolis Daily* articles,

“ CCTV 《News 1+1》's special reporting on Yao's case suffers several defects. This news program fails to achieve balanced reporting.... By only picturing Yao in tears and remorse, it tries to mislead the public and interfere with judicial verdict.” (*What Are the Defects in CCTV's Reporting?*, April 2011)

The comments from the criminal expert were also questioned in the media coverage. For instance, the *Southern Metropolis Daily* stated:

“Her (Li Meijin) statement is really weird. Experts' opinion should not be privileged.

The public should keep vigilant at experts' opinion since their social identities as

experts can easily privilege them, and thus their opinions might affect the

government officials and judges more. But in fact, their opinions are not necessarily

reasonable.” (*Is Expert Opinion Necessarily Reasonable?*, April 2011)

By casting doubts on the opinions of authority figures on Yao's case, the media coverage was in line with the public on this theme.

Public Opinion

This theme is a major concern in the legal newspaper, with news coverage exploring the relationship between the court and public opinion. The media coverage directly called for more attention to public opinion on legal cases.

In terms of how public opinion on high-profile cases should be treated, the articles suggested that the court should keep an open attitude towards public opinion. Despite mentioning the need to ensure judicial independence and authority, the media coverage, especially in the legal newspaper, stressed the necessity of court being responsive to public opinion. People's Court Daily wrote:

“Under China's current political and social situations, the judiciary should take the potential social effects instead of only legal effects of a judicial decision into consideration. If a judicial verdict departs too much from the public opinion, it will cause huge controversy and damages on the images of legal system.” (Han, April 2011)

Several trends have been identified in the media coverage. First, instead of

remaining superficial, the media is gaining more independence to go in-depth to examine the sensitive deep-rooted social structural problems and to question the legitimacy of authority. A more important trend is that the public has become an key actor in media coverage. Based on above analysis, that the media are increasingly reflecting public opinion are evidenced in three ways: directly citing the general public in the coverage; resonating with themes in public opinion; and explicitly suggesting responsiveness to public opinion.

The Courts' Response on Yao's Case

The second research question was concerned with how the courts responded to Yao's case. The examination of several available pronouncements revealed that the courts were attaching more importance to public opinion and media coverage and showed more openness and responsiveness to the public on matters related to Yao's case. The public opinion, serving as public supervision, is increasingly important for the courts based on these pronouncements.

For example, during Yao's first trial, Xi'an Intermediate People's Court sent out questionnaires to people in the public gallery soliciting their opinions on hearing procedure and measurement of penalty for Yao. According to the report on the Court's

website, the Court did this because this high-profile case attracted great media and public attention, and the court hoped to take public opinion into consideration to make sure of a just sentence (Xi'an Intermediate People's Court, 2011).

After the first trial, the court immediately released news about Yao's sentence on its official website, and the judge also gave an interview explaining controversial issues on Yao's case (*Judges Answering to Media Questions on Yao Jiaxin Case after First Trial*, April 2011).

Song Hongwu, the Secretary of the Committee of Political Science and Law of Shaanxi Province discussed Yao's case in a lecture a few days later after Yao's execution. Despite his claims that the verdict was not "forced by public pressure", he commented that "legal effect is not the only criteria here. Different factors, including legal, political and social effects were evaluated to reach this verdict... It will generate negative effects on social moral values if Yao is not sentenced to death... The death penalty for Yao meets the public expectations" (*The Secretary of the Committee of Political Science and Law of Shaanxi Explaining Hot Issues in Legal Field*, July 2011).

The third question was concerned with what this trial teaches us about the changing relationship between the media and the courts under soft authoritarianism in China.

One year after Yao's final trial, Huang He, a deputy judge of Shaanxi Higher People's

Court talked about the issues of media-court relationship and online public opinion in an interview. Huang considered the media-court relationship as a very tricky and subtle issue, but he also explicitly expressed that the court should “attach great importance to media supervision and take initiative in responding to media instead of dodging it.” He believed that online public supervision facilitates judicial justice and guarantees people's right of information and knowledge, but at the same time he also recognizes problems within media supervision and public opinion supervision. When asked about Yao's case, the judge admitted that the court indeed paid attention to the media reporting and online public opinion, and took them into consideration (BeijingNews, 2012).

Yao Jiabin's case served as a good example of showing the changing relationship between the media and court under the governmentality of soft authoritarianism. The resonance between the media coverage and the public opinion generated a strong force, which compelled response from the court. At the same time, the courts' pronouncements also suggested their increasing openness and responsiveness towards public opinion. Thus, the public is more and more important for both the media and the courts, and the public opinion is becoming the new dynamics of this changing relationship.

The dynamic relationship between the media and the court mirrors the transitional society in China since 1978 when legal system and media systems were under reforms to

accommodate and facilitate the economic development. China's political system evolves from a totalitarian state to soft authoritarian in accordance with the economic development. The government loosens up certain control over the media both financially and ideologically, so that the media are able to and have to reflect public opinion to both safeguards the public interest as well as survive and make a profit. The court is also encouraged to pay more attention to public opinion and media supervision under governmentality. This evolution to soft authoritarianism is a major cause of the changing relationship between the media and the court.

Chapter Five

Conclusion and Discussion

Under the framework of governmentality, an examination of both media coverage and courts' pronouncements were conducted to address the first and second research questions. The first question was concerned with how the media covered Yao's case. In-depth analyses of recurring themes showed important trends in media coverage: the media are gaining more discretion on content and public opinion has become increasingly important in media coverage. As for the second research question regarding how the courts responded on Yao's case, available pronouncements from the courts also revealed a similar change in courts' attitude that they were being more open and responsive to the public opinion with regard to Yao's case. Both the media coverage and the courts' pronouncements suggested that the public, serving as an emerging actor, has been added to this new dynamic relationship.

Decades ago before the economic and political reforms were launched in China, the media were fully controlled by the Party-state and served as its mouthpiece and propaganda tool; courts were also subject to the Party-state, and possessed a very weak position in the political system. Back then, the media exercised supervision over the court on behalf the Party and government, and the court responded because they faced higher

pressure from the Party and the government. The Party-state was the only major mediator involved in the relationship between the media and the court.

Along with the economic and political reform in 1978, China started to move to a soft authoritarian from totalitarian state. Both the media and the court have gone through significant changes, with gaining more independence from the Party-state being a major one. Accordingly, their relationship has changed under soft authoritarianism. The power relations around Yao's case exemplified this change. Instead of the Party-state being only major mediator of this relationship, the public has started to emerge as another important actor in this relationship since the reforms were launched in 1978.

Why is public opinion able to make a difference? In addition to the governmentality of soft authoritarianism being the major reason, the emergence of the Internet, especially online forum and social media, also facilitates this process.

Enabled by Internet technology, Chinese netizens, accounting for almost half the Chinese population, are making a real political impact through their online activities. The early years have witnessed the emergence and popularity of Internet news portals, online forums and blogs, which allow citizens more access to diverse sources of information, and allow them to express their opinions on all kinds of issues, especially social and political ones (Kluver & Qiu, 2003). A social media boom in the past five years,

represented by microblogs like Weibo, intensifies this process, and offers better and freer platforms for Chinese citizen to amplify their voices. Years ago, there were no efficient channels and platforms for the mass to express their opinions. Now it is through the Internet that the public opinion can aggregate, form into a strong force and make a real impact. The Internet, especially online forums and social media, have made the public opinion being heard possible and thus added a new dimension to the relationship between the media and the court.

Yao's case not only reflected a changing media-court relationship involving the public as new dynamics, but also raises questions about the governmentality in China.

Governmentality, concerned with the operation of government in terms of the power relations within the society, focuses on the state's rationalities in excising social control. China's new governmentality of soft authoritarianism suggests that the state has started a process of liberalization and democratization by being more responsive to the public in a developing civil society while the ultimate intention is to maintain social stability and sustain authoritarian governance.

Yao's case is a snapshot of the evolving relationship between the media and the court under China's governmentality. As social actors function under China's evolving politics, both the media and the court are influenced by the governmentality of soft

authoritarianism, in which the media are more able to and willing to reflect public opinion and supervise the court, while the courts are expected to be more responsive to public opinion and accept media supervision.

Soft authoritarianism is worth recognition due to its more open and responsive approaches. However, Yao's case reveals some limitations. Both the media and the court are facing challenges with the greater importance of public opinion under soft authoritarianism. From the perspectives of the media, it is understandable that they try to safeguard the freedom of speech and supervise the judicial system in the name of the public, making sure the justice upheld. However, their practices are problematic. This kind of supervision, in the form of "media trial" or "public trial", is an "overcorrection of the inadequacy of the right to free speech" in China (Chen&Zhang, 2011), which impairs judicial independence. What's odd is that the court is also coordinating this problematic supervision, and is willing to compromise its judicial independence to respond under China's governmentality. The media and the court are struggling between being responsive to public opinion and maintaining the integrity of their professions. In Yao's case, both of them catered to public opinion at the expense of professional integrity.

Another implication that can be inferred from Yao's case about China's governmentality is that "soft" in soft authoritarianism is only a means to an end, not an

end in itself. Being soft is the means employed by the Party-state to ultimately sustain regime and maintain authoritarian governance. In this case, despite Yao's extreme cruel criminal acts, he is entitled with legal right of a fair trial. However, the fairness of his trial was impaired during the interactions among the court, the media and the public. The courts' willingness to compromise individual interests and personal legal rights to be more responsive to the media and the public actually reflects the ultimate purpose of the Party-state—to pacify the public outrage, keep social stability and finally maintain authoritarian governance.

Striking a balance in practice between judicial independence and the media & public supervision under China's current governmentality is a multi-faceted problem that calls for comprehensive solutions. This study is limited in many ways and is not in a position to provide such a solution. Yet as a media study, this study is trying to propose certain suggestions for the media in terms of covering legal cases by reflecting on Yao's case. Even though the media supervision of the courts on behalf of the public is problematic in this case, it does not mean the media have to retreat from reflecting public opinion. They should continue to publicize public opinion and guarantee people's right of knowledge on matters of public interests including legal cases. Meanwhile, the media should be careful with the ways they perform this function. To maintain professional

integrity, the media should avoid using sensational moral frames, making up facts to stir up socially-sensitive topics, and infringing the judicial independence in the name of the public.

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