

Judicial Independence and the Media in China: An Exercise in Modelling Interfering Relationships as A Means of Assessment

Thomas Van Mourik*

I. INTRODUCTION

In the Post-Mao era, China initiated numerous legal reforms to reinstate the peace and stability that had been lost during the Cultural Revolution. However, as pointed out by scholars such as Zhu and Wang, this development is taking a distinctly Chinese form as longstanding historical and societal influences pull China's legal system off the conventional western path to Rule of Law to which we are most accustomed.¹ The most significant difference in the paths taken by China and Western liberal democracies is the existence of the Chinese Party-State, which continues to operate above the law.² As the judiciary remains a tool of the Party-State, some scholars describe the legal system of China as Rule *by* Law rather than Rule *of* Law.³ This ambiguity is further compounded by the 1999 amendment to Article 5 of the Constitution of the People's Republic of China that states that China must be 'a socialist country ruled by law', insinuating that law is a tool of the rulers. Whether one follows Stanley Lubman's view that Rule of Law will continue to be caged under Party-State control, or one agrees with Randall Peerenboom's argument that Rule of Law has already begun to take shape within the framework of increasing economic and social freedoms, one thing is clear: judicial independence is crucial in order for the Party to be truly accountable for their actions. Only then will China evolve into a true Rule of Law state.⁴

* Thomas Van Mourik graduated with a BA Hons in Chinese Studies from the University of Sheffield before studying an MA in International Law at SOAS, University of London.

¹ Wang Chenguang, 'From the Rule of Man to the Rule of Law' in Cai Dingjiang and Wang Chenguang (eds), *China's Journey toward the Rule of Law: Legal Reform, 1978-2008*, vol 1 (Brill 2010) in John Fitzgerald (ed), *Social Scientific Studies in Reform Era China* (Brill 2010); Sanzhu Zhu (ed), *Laws and Institutions of Modern China* (Routledge 2011) 1-34.

² Stanley B Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University Press 1999) 298-306.

³ *ibid*; Randall P Peerenboom, *China's Long March Toward Rule of Law* (CUP 2002) 8; Zhu (n 1).

⁴ Lubman (n 2).

China is experiencing significant transformations in the modern era: increasing social and geographical stratification exacerbated by uneven economic development, environmental degradation, labour violations and pockets of social unrest.⁵ Both Peerenboom and Gu identify that the state is unlikely to focus on the liberal ideal of judicial independence whilst manipulation of the judiciary can aid the resolution (or suppression) of these more threatening social issues.⁶ However, both authors agree that the problems facing judicial independence are multifaceted and do not simply revolve around direct state intervention.⁷ The object of this Article is to assess the literature and theories surrounding the Chinese media's role in judicial independence in order to map this relationship. Using example cases, I outline the three main models that I have identified for this relationship: 1) State Censorship, 2) Media Watchdog and 3) 'Tyranny of the Majority'. I conclude by arguing that the third model is particularly useful when considering the problems of a non-independent judiciary in terms of the individual rights of defendants. Before undertaking this analysis, it would be useful to discuss Chinese legislation on judicial independence.

1.1 Chinese Legislation for Judicial Independence

The rights and duties of the Chinese judiciary are vested primarily through the Judges Law (1995, amended in 2001).⁸ As Peerenboom points out, there were significant problems facing judicial independence in China and the Judges Law was introduced to address some of these problems.⁹ For example, Article 9 requires a judge to attain a higher academic and legal experience. The Supreme People's Court (SPC) has introduced various measures in an attempt to realise Article 1, which calls for the enhancement of the 'quality of judges' and to ensure that 'judges perform their functions and duties according to law'. Achievement of these goals would build public confidence in the courts and lay the foundations of judicial independence. Many improvements have been made to the collective independence of the judiciary and the personal independence of judges, but there are still significant issues – particularly regarding social and political pressures that judges face.¹⁰ However, it is arguable that this struggle

⁵ Human Rights Watch, 'World Report 2013: China' (*Human Rights Watch*, January 2013) <<http://www.hrw.org/world-report/2013/country-chapters/china>> accessed 25 June 2014.

⁶ Randall P Peerenboom, 'Judicial Independence in China: Common Myths and Unfounded Assumptions' in Randall P Peerenboom (ed), *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (CUP 2010); Weixia Gu, 'The Judiciary in Economic and Political Transformation: Quo Vadis Chinese Courts?' [2013] *The Chinese Journal of Comparative Law* 1.

⁷ *ibid.*

⁸ Judges Law of the People's Republic of China (1995; 2001 revision).

⁹ Peerenboom, *China's Long March Toward Rule of Law* (n 3) 13-4.

¹⁰ Peerenboom, 'Judicial Independence in China' (n 6).

for judicial independence is not unique to China and has been characteristic of many developing legal systems, especially when conflicting interests are exaggerated by rapid economic development.¹¹

With regards to the relationship between the media and the judiciary, the most relevant section of the Judges Law is Article 8, which provides protection to the judiciary. It outlines, *inter alia*, that judges shall 'brook no interference from administrative organs, public organisations or individuals in trying cases according to law'.¹² Article 45 of the same law, which outlines a complaint mechanism to be used in case of interference by 'public organisations' or 'individuals', also accompanies this right embodied in Article 8.¹³ This Article implies that judges have the right to be free from the influence of the media, for they can be defined as either 'public organisations' or 'individuals'. Since rights are usually accompanied by corresponding duties, it would therefore also be assumed that the media has a duty to refrain from interfering in the functions of the judiciary. However, this assumption ignores Gu and Peerenboom's identification of the extra-legal effects that influence judicial independence in China.¹⁴ Indeed, the recent economic liberalisation and social emphasis on anti-corruption has led to the phenomenon of *yulun jiandu* (舆论监督). This is often translated as 'public opinion supervision' and involves the mobilisation of public awareness to influence the state and judiciary. This is usually done under the pretext of contributing to safeguarding against corruption.¹⁵ Cheung argues that the role of Chinese media is more complex than simply acting as a watchdog against corruption, as the media often do in liberal democracies.¹⁶ This is because the Chinese state is run under the ideology of 'democratic centralisation', in which the state derives its power from the will of the people, and therefore is subject to the scrutiny of this public will. However, the Chinese public is simultaneously guided by the Party, which is presumed to act in the best interests of the people. Cheung therefore states that 'attempts by the media and the Party to articulate the exact contours of this relationship have led to a variety of interpretations of what 'public opinion' means in the Chinese context'.¹⁷

This complex relationship is constantly in flux as the public and media explore

¹¹ *ibid*; Gu (n 6).

¹² Judges Law of the People's Republic China, art 8(2) (1995; 2001 revision).

¹³ *ibid* art 45.

¹⁴ Peerenboom, 'Judicial Independence in China' (n 6); Gu (n 6).

¹⁵ Anne SY Cheung, 'Public Opinion Supervision: A Case Study of Media Freedom in China' in Perry Keller (ed), *The Citizen and the Chinese State* (Ashgate 2011).

¹⁶ *ibid*.

¹⁷ *ibid*.

their areas and extent of scrutiny. The state balances the specific social pressures of public scrutiny with the myriad of other social, economic and administrative pressures that threaten to undermine its authority. Therefore, even though the Judges Law outlines the legal prohibition of interference with the judiciary, the Law outlines an ideal to which China aspires, rather than a pre-existing norm to be upheld.

II. MODELLING MEDIA INTERFERENCE IN JUDICIAL INDEPENDENCE

Since it has been established that the relationship between the media, state and judiciary is complex and does not strictly adhere to the legislation, it is necessary to model the true relationship. An accurate model may serve well in identifying the ramifications of a non-independent judiciary. The following Sections will outline three models for this relationship: 1) State Censorship, 2) Media Watchdog and 3) 'Tyranny of the Majority'. Although I map these three models independently, they are, in fact, not mutually exclusive. In most situations, influences from all three models are present. Yet, isolating these models will help place the issues in specific frameworks to identify targeted remedies or development paths for judicial independence in China's future.

2.1 State Censorship Model

Under Deng Xiaoping's leadership, the media in China underwent significant reform. Previously, in the Maoist era, the media was considered the 'mouth and throat' of the state, effectively tasked with promulgating propaganda under the axiom that 'good news is news, bad news is not news'.¹⁸ This role developed during the Post-Mao reforms when advertising was first allowed in 1979, and all broadcasting (except the China Central Television (CCTV) service) was decentralised in 1983.¹⁹ Newspapers were required to become self-sufficient by 1994 and the Ministry of Propaganda allowed the first newspaper conglomerate to be established in 1996.²⁰ However, as noted by Cheung, traditional media in China is still predominantly state-controlled.²¹ This either occurs directly through official state-controlled media, such as the *People's Daily* newspaper or CCTV, or indirectly through supervision departments tasked with censoring and influencing the material of Non-Party media.²² As Richard Baum describes, 'Reporters who probe sensitive issues are harassed and their editors

¹⁸ *ibid.*

¹⁹ *ibid* 498-99.

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

reprimanded – or worse’.²³ Traditional media around the globe often occupies a dual role of a state watchdog and disseminating information on behalf of the state or other powerful social actors.²⁴ In China, state interference in media activities is exaggerated and journalists therefore lean towards the role of state mouthpiece more readily than that of watchdog.²⁵ This interference manifests itself both at the national and provincial level in many ways, such as the dangling of financial ‘carrots’ for those who report stories that represent the Party-State positively.²⁶

The Party-State in China implements many forms of indirect interference that compound the effect of state censorship. For instance, as pointed out by Liebman, the CCP has increasingly encouraged various non-state actors to assume a supervisory role.²⁷ The court and the media play two such mutually supervisory roles: the media has informal influence over court decisions and the courts have heard a growing number of libel cases.²⁸ Liebman argues that competition between these supervisory bodies is encouraged by the state as it has the potential to lead to positive supervision. This supervision is primarily achieved through a combination of increasing media coverage of court cases and legal development, and through a growing number of defamation cases being brought against media bodies.²⁹ However, in a state in which Rule of Law is not well established, and where instead of law, connections and influence provide more protection to individuals, the outcome of competitive supervision can be equally dangerous and may lead to personal attacks and institutional power struggles.

The Jiahe housing scandal is an example of the aforementioned relationship of state censorship. In 2003, the county government of Hunan province expropriated land in the city of Jiahe to develop a commercial area.³⁰ The purchasing affected 1,100 households and 7,000 individuals. Those affected felt extremely aggrieved because of the forced purchasing and the received compensation was only a fraction of the real value of their property (around

²³ Richard Baum, ‘Political Implications of China’s Information Revolution: The Media, the Minders, and Their Message’ in Cheng Li (ed), *China’s Changing Political Landscape: Prospects for Democracy* (Brookings Institution Press 2008).

²⁴ Jianlan Zhu, ‘Roadblock and Roadmap: Circumventing Press Censorship in China in the New Media Dimension’ (2009) 30(2) *University of La Verne Law Review* 404, 428-29.

²⁵ Baum (n 23) 161.

²⁶ *ibid* 163.

²⁷ Benjamin L Liebman, ‘The Media and the Courts: Towards Competitive Supervision?’ (2011) 208 *The China Quarterly* 833, 835.

²⁸ *ibid* 840-46.

²⁹ *ibid*.

³⁰ Cheung (n 15) 370.

3.7%).³¹ Furthermore, the local government took draconian administrative steps to coerce the residents to leave.³² A number of the affected residents travelled to Beijing to petition the relevant Ministry of Construction, but were not successful.³³ When residents resisted the evictions, three residents were arrested and detained without charge. Media coverage of this event spread across China but was met with resistance by state censorship. Editors and journalists at all levels were torn between reporting the injustice or conforming to the Party's wishes.³⁴ However, when institutional corruption in the case became apparent, both state-run and non-state media suddenly became interested in the story.³⁵ When *Oriental Horizon*, an investigative programme on CCTV, was given state permission to continue investigating the story in 2004, awareness of the injustices spread nationwide and human rights lawyers were commissioned by Qinghua University to work on the cases of the detainees.³⁶ The courts held a particularly quick hearing (lasting only one day) and the detainees were immediately released.³⁷ Although this may sound like a success story, the court never dealt with the full extent of the corruption; some local officials were exposed but it is likely that the corruption originated higher up the ladder than those who were punished.³⁸

It is important to note here that Cheung was very reliant on personal interviews that she conducted to collect evidence on this particular incident. The lack of media coverage of events prior to the discovery of corruption is very telling of the conundrum that journalists face in politically charged situations. We can therefore assume that the lack of published evidence that corroborates this phenomenon does not necessarily undermine the argument for its frequent occurrence.

So what can we learn from this model? The relationship between media, state and judiciary seems inherently opaque and therefore, decisive evidence is hard to come by. We can however, make some notable inferences. First, it is important to note that reportage was restricted when the case was seemingly limited to individual grievances. It was only when wider corruption emerged that the state permitted widespread media coverage. This may be attributed to

³¹ *ibid* 374.

³² *ibid*.

³³ *ibid*.

³⁴ *ibid* 371-73.

³⁵ *ibid*.

³⁶ *ibid* 377.

³⁷ Fu Jing, 'Gov't Pays Residents For Wrong Arrest' (*China Daily*, 3 June 2004)

<http://www.chinadaily.com.cn/english/doc/2004-06/02/content_335944.htm> accessed 25 June 2014.

³⁸ Cheung (n 15) 379.

the fact that the state has become more outspoken against anti-corruption in recent times³⁹ and is therefore willing to use the media to gain support. Secondly, the judiciary only held hearings for those held in indefinite custody once the state-run Qinghua University sent lawyers to offer defence; other possible criminal offences were not heard and corruption was mostly dealt with privately.⁴⁰ In the aftermath of this scandal, state-run media lauded the Party officials as heroes who had punished corruption on behalf of the people, while the suspected main perpetrator of the institutional corruption, Zhou Xiangyong, received a light punishment from the Party and was untouched by the Procuratorate (the Chinese prosecution body).⁴¹ Therefore, the state seems to have manipulated the media to gain public support whilst determining the progress of cases before the judiciary and procuracy by dictating which cases could be heard. In this model, state censorship controls the avenues and intensity of public debate through the media. As a result, when the state interferes with the actions of the judiciary, it does so with apparent public backing – backing that it has fostered for its own means.

2.2 Media Watchdog Model

The media watchdog model has emerged due to post-Mao media reforms, rapid economic liberalisation in China and developments on the Internet. These three factors have led to the rise of ‘new media’ (online magazines, blogs, etc.) and traditional media to become more thorough with their reporting.⁴² Online magazines such as *chinaSMACK*, microblogging sites such as *Sina Weibo*, and countless blogs have contributed to a huge increase in citizens’ engagement in ‘new media’. ‘New media’ possesses a unique potential for mass citizen participation that can directly influence the state and other powerful institutions.⁴³ Traditional media has also begun to report on more legal cases due to the post-Mao legal reforms.⁴⁴ The subsequent increase in written law and its public dissemination has made it easier for journalists to highlight wrongdoing in the legal system; a development that was supported by a contemporaneous increase in liberalisation of media.⁴⁵ Marketisation of traditional media and the requirement that all non-state media companies become self-

³⁹ Wang Xiaomei, ‘Full Text of Hu Jintao’s Speech at CPC Anniversary Gathering’ (CCTV News, 1 July 2011) <<http://english.cntv.cn/20110701/107756.shtml>> accessed 13 June 2014.

⁴⁰ Cheung (n 15) 379-80.

⁴¹ *ibid.*

⁴² Zhu (n 24).

⁴³ *ibid.* 419-20.

⁴⁴ Benjamin L Liebman, ‘Watchdog or Demagogue? The Media in the Chinese Legal System’ (2005) 105(1) Columbia Law Review 1, 69.

⁴⁵ *ibid.*

sufficient has led to many traditional media outlets focusing on stories of public interest rather than serving solely as ‘party mouthpieces’.⁴⁶ Liebman argues that papers such as *Southern Metropolitan Daily* and *Caijing* have combined opportunities in economic liberalisation, relaxation in content restrictions and Party efforts to popularise legal issues, to create sections of traditional media that not only challenge traditional state scrutiny limits, but also popularise their content.⁴⁷ Even though the post-Mao media reforms did not themselves lead to full media liberalisation, when combined with the above socio-economic developments, they created a space in which limited media independence could be established. The two cases below illustrate how this space for independence in the Chinese media allows for supervision over corruption in the courts.

The first of these is the Qiu and Cai rape case of 2009. Qiu and Cai were two security personnel who raped two women in a hotel room in Huzhou, Zhejiang Province.⁴⁸ When tried for their crime, the court found that each defendant had committed a ‘provisional kind of spontaneous crime’ and sentenced them both to three years in prison – the minimum penalty for rape.⁴⁹ After the case was reported, it gained widespread attention and the public voiced their dissatisfaction over the use of the term ‘provisional kind of spontaneous crime’.⁵⁰ Many believed that the courts had been extremely lenient owing to the relationship that the culprits had with the local police.⁵¹ Commentators began highlighting the fact that such an act should be considered a ‘gang rape’, a more serious crime.⁵² It was also pointed out that while judges should be given autonomy, their actions should be supervised. The increasing pressure on the courts resulted in a retrial, and the defendants were separately sentenced to eleven years and eleven-and-a-half years in prison; a punishment that commentators agreed was more in-keeping with China’s criminal code that dictates a minimum sentence of ten years.⁵³

⁴⁶ Zhu (n 24) 427.

⁴⁷ Liebman, ‘The Media and the Courts’ (n 27) 835.

⁴⁸ Southern Weekend Editorial Board, ‘The Ten Most Influential Cases That Changed China in 2009’ (2012) 13(2) Asian-Pacific Law & Policy Journal 1, 14.

⁴⁹ *ibid*; Criminal Law of the People’s Republic of China (1979; 1997 revision), art 236.

⁵⁰ Southern Weekend Editorial Board (n 48) 14.

⁵¹ Wen Hua, ‘Chinese Court Coins New Term: “Temporary Rape”’ (*The Epoch Times*, 15 November 2009)

<<http://www.theepochtimes.com/n2/china-news/temporary-rape-china-25237.html>> accessed 25 June 2014.

⁵² *ibid*.

⁵³ *ibid*; ‘Court reviews “lenient” sentence for rape in E China’s Zhejiang’ (*People’s Daily Online*, 9 November 2009) <<http://english.people.com.cn/90001/90776/90882/6807693.html>> accessed 25 June 2014.

The second case is that of Deng Yujiao, a waitress who was accused of murder after she stabbed two of three men who attempted to rape her. In 2009, Deng was working in an entertainment complex in a town in Hubei Province when three local officials advanced on her asking for 'special services'.⁵⁴ When she refused, one of the men forced her on to a sofa and tried to remove her clothes. This prompted Deng to stab two of the officials, resulting in the death of one of them. Despite efforts from the local government to censor media coverage and compel the courts to issue a death sentence against Deng, both traditional media and new media created a surge of public support for her.⁵⁵ When the sentence was finally concluded, the court completely ignored the request from local officials for the death penalty against Deng. In fact, Deng was released on bail and charged with the lesser crime of intentional injury in self-defence. Furthermore, the two surviving officials were removed from office.⁵⁶ Therefore, in this case, the media had uncovered attempted corruption and miscarriage of justice, and had effectively saved Deng's life.⁵⁷

Both cases evidence the media's potential to play the role of watchdog in effecting justice in China. In each case, there was an imminent miscarriage of justice stemming from corruption, where the judiciary was pressured by the local governments to overlook certain aspects of a case or protect local officials. However, as evidenced in Deng's case, this potential has limitations. In that case, the media could protect the individual, but could not fully affect justice. The officials who attempted to rape Deng were not convicted but simply removed from office.

From this study, it can be inferred that the media influences the judiciary both directly and indirectly through the state. The indirect influence is achieved through rousing enough popular support to worry the government and press for changes in the course of law.⁵⁸ As with the two cases above, pressurising the government is much easier if it is connected with its own rhetoric – in these cases, it is the state's promotion of anti-corruption. The direct influence is much simpler and relies on social pressure.⁵⁹ It is sometimes easy to objectify the judiciary as an inanimate institution, forgetting that the media spotlight affects judges in the same way as any other individual. In either case, this model shows how the media can provide safeguards against corruption, but it is important to note that this model cannot act independently from the others.

⁵⁴ Liebman, 'The Media and the Courts' (n 27) 833.

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ Liebman, 'Watchdog or Demagogue?' (n 44) 121.

⁵⁹ Peerenboom, *China's Long March Toward Rule of Law* (n 3) 315.

The influence of coexisting models results in partial justice where the full extent of corruption is not completely exposed and the Party often deals with state officials internally.

2.3 Tyranny of the Majority: Theoretical Framework

One of the main criticisms of media intervention in the outcome of legal cases is the obstruction that it poses to Rule of Law. As Cheung points out in the Jiahe housing development case, 'In the absence of media exposure, it is highly doubtful whether a legal proceeding would have been of any use'.⁶⁰ This observation is convincing, regardless of whether the media watchdog model or the state censorship model is used. This phenomenon highlights the fact that in the resolution of many cases, external social pressure remains more effective than the Rule of Law.⁶¹ This is because the courts still lack legitimacy and attacks by the media on courts inhibit the development of legitimacy. Liebman argues that this occurs because the traditional media in China uses its influence over the public like a 'demagogue' – rousing fear and preying on prejudices to achieve political motives.⁶² Through the following cases, I show how marketisation and increased public participation in both traditional media and 'new media' allow this model to be inverted so as to represent 'Tyranny of the Majority'.

The concept of 'Tyranny of the Majority' dates back to ancient Greece when it was identified that the will of the people must be constrained by law in order for due legal process to occur.⁶³ If left unconstrained, the majority might force their will upon minorities or individuals; a problem first linked to modern democracies by John Stuart Mill and that set the foundation for Separation of Powers championed by Locke and Montesquieu.⁶⁴ This model places an ethical emphasis on the courts, which are meant to act as a safeguard against such tyranny, like draconian punishments or witch-hunts instigated by pre-existing prejudices.⁶⁵ By inverting the idea of the media demagogue, we can highlight serious issues caused by the 'Tyranny of the Majority' undermining the rights of defendants – particularly those in serious criminal cases.

⁶⁰ Cheung (n 15) 379.

⁶¹ Liebman, 'Watchdog or Demagogue?' (n 44) 130.

⁶² *ibid* 131.

⁶³ Robert K Fleck and F Andrew Hanssen, 'Judicial Review as a Constraint on Tyranny of the Majority' (2013) 29(2) *Journal of Law, Economics and Organisation* 303.

⁶⁴ *ibid*.

⁶⁵ *ibid*.

III. TYRANNY OF THE MAJORITY MODEL

As Zhu notes, the marketisation of traditional media has led to increasing focus on ‘public interest’ stories. The emergence of ‘new media’ has allowed the public to become involved in debates and have their views potentially read by millions of people.⁶⁶ However, traditional media has not evolved in a vacuum and has been significantly influenced by the ‘new media’. Many traditional media outlets also operate online and allow readers to publish comments. Through this interaction between the traditional media and its customer base, the marketisation needs of the media are made easier as the people are directly engaged with the media, allowing the companies to tailor their coverage. I argue that by tailoring their coverage to the majority, the media reinforces pre-existing prejudices that are conducive to the opinions of their readers. When combined with the outlet of blogs and microblogs, the opinions of the public are more pervasive through all levels of society – affecting both the actions of the state and the mindset of judges. This is particularly noticeable in China, where the ‘public is quick to condemn the criminal and call for his arrest and punishment’, levying serious pressure on the court and state to realise ‘justice’ as soon as possible while condoning the use of dubious methods such as torture to extract confession.⁶⁷

The first case I rely upon to illustrate this model is that of the gangster Liu Yong in 2002-2003. Liu was a well-connected gangster who was sentenced to death but had his conviction overturned by the Liaoning Province High People’s Court.⁶⁸ The *Bund Pictorial* published a report suggesting that it was Liu’s connections with local officials that had influenced the Liaoning Province High People’s Court’s decision.⁶⁹ This led to accusations of corruption by the media.⁷⁰ For example, *China Youth Daily* called for the court to disclose the reasons behind its decision.⁷¹ According to Liebman, media pressure led the state to issue direct instructions to the Supreme People’s Court (SPC) to retry the case *de novo*, in accordance with the 1996 Criminal Procedure Law (CPL).⁷² The SPC found Liu guilty and sentenced him to death; he was executed just hours after his sentencing and merely four months after the initial media speculation.⁷³

⁶⁶ Zhu (n 24).

⁶⁷ Wu Xiaofeng, ‘An Analysis of Wrongful Convictions in China’ (2011) 36 Oklahoma City University Law Review 451, 455.

⁶⁸ Liebman, ‘Watchdog or Demagogue?’ (n 44) 89-90.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*; Criminal Procedure Law of the People’s Republic of China, art 205 (1996).

⁷³ Liebman, ‘Watchdog or Demagogue?’ (n 44) 90.

Although Liebman views this case as a success for the media watchdog model, he seems to have ignored the information released by the court, which explains the Liaoning High People's Court decision to overturn Liu's death penalty. The Liaoning High People's Court claimed Liu's confession had been obtained through torture, which invalidated the confession.⁷⁴ Due to the inherently opaque nature of the evidence needed to support the media's allegations of corruption and the courts' general lack of legitimacy, it was impossible for the court to establish convincing torture allegations to the public. The media uses the public's lack of trust in the Rule of Law to satisfy the 'Tyranny of the Majority' and overturn what may have been a correct legal decision. The speed of the retrial, conviction and execution of Liu also raises serious doubts about the following of due process and further supports the notion of popular justice.

The second case supporting this view is that of Zhang Jinzhu, a public security official in Zhengzhou who, in August 1997, was convicted of running over two cyclists, killing one.⁷⁵ Although the identity of the driver was not initially verified, *Dahe News*, a local paper, commented extensively on both the public outrage and the suspicion that the culprit was an official,⁷⁶ creating a cycle that reinforced prejudices held by the public and the media. As Zhang was driving under the influence of alcohol and did not stop his car to check on the two victims, he was immediately vilified when the story gained publicity.⁷⁷ Zhang was arrested but the prosecution did not proceed until the story hit national media. At this point, Zhang became a symbol of national corruption problems; the public and media were calling for his head.⁷⁸ Pressure from local officials led to the court passing a death sentence, stating in their reasoning that if any lighter punishment had been issued, 'it would not be enough to assuage public rage'⁷⁹ – the 'Tyranny of the Majority' had sentenced Zhang to death.

These two cases are merely the tip of the iceberg when it comes to negative interference levied on the courts by the media.⁸⁰ They show how media influence often leads to unjust heavy sentencing and swift court hearings, which may impede due legal process. Unlike Liebman's view that this relationship is best explained by the media acting as a 'demagogue', I argue that advances in the way people interact with and influence the media affects the state and the court, and that Liebman's concept is better described as the 'Tyranny of the Majority' model.

⁷⁴ Shumei Hou, Ronald C Keith and Zhiqiu Lin, *China's Supreme Court* (Routledge 2013) 128.

⁷⁵ Liebman, 'Watchdog or Demagogue?' (n 44) 69.

⁷⁶ *ibid* 70.

⁷⁷ *ibid*.

⁷⁸ *ibid*.

⁷⁹ *ibid* 71.

⁸⁰ Liebman (n 44) 72-73.

IV. CONCLUSION: PROSPECTS FOR RIGHTS OF DEFENDANTS

Throughout this Article, I have shown how the relationship between the media, the state and the courts has negative implications for judicial independence. As well as contributing to the retardation of developing Rule of Law in China, media interference has a significant impact upon the right to due process. This breach of the defendant's rights is most noticeable concerning violations of the CPL, which require that there be no public accusations of guilt prior to the decision of the courts;⁸¹ that decisions based on the facts of the case are dealt within the confines of the court;⁸² and that defendants are sentenced according to the law.⁸³ The first two models I have presented – State Censorship and Media Watchdog – allow us to map the undermining influence of the state and media upon judicial independence by placing it within a *political* framework. The media and the courts play out the struggle for supervisory authority while the state controls this contest or interferes directly in an attempt to maintain legitimacy and appease the masses – all at the expense of defendants.

However, I believe the third model I have outlined – 'Tyranny of the Majority' – can be used to assess this power struggle and breach of rights through an *ethical* framework. When combined with the two previous models, it gives further credence to the goal of establishing Rule of Law in China by allowing us to focus on the problem from a non-political angle, while also focusing on the rights of the individual. As above, these three models are not intended to be mutually exclusive, nor do they constitute an exhaustive list. The exercise of modelling the relationship of interference upon the courts allows us to assess this complex problem from various angles. I believe further socio-legal studies and identification of other models will help to build an opus of frameworks that will provide further insight into this problem and allow us to apply these models to real legal issues.

⁸¹ *ibid.*

⁸² Criminal Procedure Law of the People's Republic of China, art 42 (2012).

⁸³ Criminal Procedure Law, Part One, Chapter 1: Aim and Basic Principles.

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