

THE HEDGEHOG DILEMMA IN THE COURT-MEDIA RELATIONSHIP IN CHINA

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This paper explains why Schopenhauer's "Hedgehog Dilemma" may be the most apposite metaphor for the relationship between the courts and the media. Whatever they get from each other, the media's role representing the public and the court's role representing justice are both essential to modern democracy. Therefore, their relationship has attracted attention, not just in legal and media professions, but also in public and government debate. In the last two decades, China's highest court has issued judicial interpretations and guidelines to regulate the activities of the media and the court, which has brought the topic to a new level of discussion. As a drafter of these official documents, the author will comment on development in this field and their interaction with values inherent to democracy.

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I. WHY IS THERE A NEED FOR REGULATION?

If no tension or contradiction existed between the courts and the media, there would be no need to regulate or even discuss it. While the degree of tension varies, it remains present. A moderate level of tension is healthy and acceptable as part of a lively relationship between two active mechanisms in a modern democracy. However, if either party forgets that the exercise of state power or quasi-state power must be constrained by a sense of responsibility so as to avoid abuse of power and influence, then that tension should be addressed.

First of all, a healthy interactive relationship will benefit the independence of the judiciary. Although there is no absolute judicial independence, this virtue of the judiciary is very fragile and may be undermined by the application of any improper influence. In representing public opinion, the media may also mislead public opinion in the opposite direction to justice. If the media's reporting of court activities leads to public judgment, judicial procedure will not be able to protect the independence of the judiciary.

Secondly, proper regulation of the relationship between the courts and the media may help the media become more aware of the values of the judiciary and the press, so as to establish standards that are in their best interest. Such standards may help restrain the media as a powerful player in society.

Thirdly, regulation of the relationship may also protect the rights of parties to the law and other court users. Judicial process will therefore enable all parties to fight for their rights based solely on facts and laws. If extra weight such as improper media influence is added to the scale of justice, parties cannot expect fair play in the judicial process, especially in criminal cases. Victims, witnesses, and family members of defendants may also be affected by media reportage.

II. EFFORTS MADE IN OTHER COUNTRIES

As one of the most complex areas in cross-disciplinary subjects, the court and the media have a very profound theoretical foundation concerning law, justice, democracy, freedom, communication, procedure, etc. Such related issues can be brought before the highest courts in the country in the form of abstract issues or individual cases.

Meanwhile, the relationship between courts and the media is a practical and