

An Analysis of The Influence of Public Opinion on Legislation and Justice: To Keep the Bottom Line and Maintain an Objective and Impartial Attitude

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Abstract. With the rapid development of the Internet, the era of information explosion has quietly arrived, and the channels for people to express their opinions and freedom of expression have been gradually broadened, but problems have also quietly arrived. People's dissatisfaction and anger about legislative bills on various social media platforms, even taking to the streets and demonstrating in public; the media are leading public opinion in a crime article, conducting media trials, constantly interfering with the judiciary, making the public doubt and criticize the impartiality and authority of the judiciary. This paper analyzes some cases in both judicial and legislative fields to explore the need for public opinion and judicial legislation to establish a harmonious and effective relationship so that they can give full play to their responsibilities and obligations in their respective fields. Ultimately, the media should play the role of monitoring and timely spreading public opinion and should reflect the principle of impartiality and objectivity in their reports, rather than inciting public opinion or reporting with biased opinions; while the legislature should fully protect the lives and property of the people when legislating or amending the constitution, and the law is to serve the people, not to facilitate the independent existence of some classes; in the process of judicial decisions, the judicial In the process of judicial decision, the justice and rigor of the judiciary should be maintained, and the decision should be made according to the law, not entirely based on public opinion, and the independence and justice of the judiciary should be maintained while avoiding controversies as much as possible.

Keywords: Legislation; Justice; Public Opinion.

1. Introduction

Public opinion arises when the public holds diverse opinions about a certain event and publishes them on the Internet to generate more resonance among netizens. Public opinion arises in three stages: firstly, the gestation stage, when social events attract public attention and trigger different opinions, and when opinions need to be discussed, exchanged and collided, there is a need and prerequisite for public opinion formation, and the opinions generated in this stage are in the form of decentralized and diversified individual opinions; secondly, the formation stage, when diversified individual opinions converge in the interaction of social groups. The opinions formed after exchanging ideas and brewing discussions are disseminated through channels to form a mature public opinion.[1] At this stage, opinion leaders emerge; finally, there is the influence stage, where rights organizations and their leaders and mass media contribute to the desired public opinion. Once formed, public opinion may become known to a broader public through mass communication and have an impact on their thoughts and behaviors, which in turn will have a certain social influence.

In the history of the past century, judicial legislation and public opinion go hand in hand and are even used as a basis to improve the defects of their own legal system. In contrast, public opinion represents the will of the public, and judicial legislation is the embodiment of justice, fairness and authority. In the United States, as a common law country, judges generally believe that the life of the law is not in logic but experience, and the ruler needs to weigh each case according to its content, which is the embodiment of legal wisdom. In today's era of information explosion, all kinds of information are disseminated very fast, and public opinion can monitor the justice of the law and the fairness of the judiciary very well. Still, at the same time, public opinion can sometimes limit the

judiciary or conduct "media trials" in advance. It is a thought-provoking issue that the media, the legislature, and the judiciary should deal with each other, delineate their responsibilities, and define the borderline rules.

The U.S. legislative system seems cumbersome, lengthy, and inefficient. It is difficult for ordinary public opinion to form a bill, and only with the help of public opinion can a statement be formed. Although the possibility of forming a constitutional law is very slim and time-consuming, it still worth doing some research on the relationship between public opinion and legislation. Hence, this paper aims to investigate the relationship between public opinion and judicial legislation by analyzing the legislative process in the United States and some judicial cases related to public opinion. This paper is divided into several parts. The first is about the legislative process in the United States, and the second is to analyze the different effects of public opinion on the judiciary through classic cases.

2. Perspective on the Legislative Process: "Three Steps"

The U.S. Congress consists of two houses: the House of Representatives and the Senate. The House of Representatives requires residents to be 25 years old or older to serve as a member of Congress; the Senate requires residents to be 30 years of age or older.

The proportion of seats held by each state in the House of Representatives is based on population, but there is at least one member. The total number of members in the House is set by law at 435. Members of the House of Representatives serve two-year terms with no limits on re-election. The House of Representatives is generally considered to represent "civil rights" or "federal rights" (because it is proportional to the population).

Each state has two members in the Senate, independent of population, with 100 members in the full chamber. Senators serve six-year staggered terms, with approximately one-third re-elected every two years. The Senate is generally considered to represent "states' rights"[2].

2.1 Step 1: House sponsorship and voting

Both chambers can sponsor legislation. However, specific legislation must come from a particular chamber.

Regardless of which chamber it comes from, the proposal needs to go through three steps in that chamber. First is the proposal, which means members submit the proposed legislation to their own chamber. Then is Committee. A "suitability committee" is formed within this chamber to hear, amend, and vote on the proposal. The last is the Floor. The full House debates the legislative proposal and ultimately votes on whether to pass it. Theoretically, even if the committee in the second step does not support the proposal, the proposal can successfully land in this chamber as long as the full chamber votes to pass it in the third step. However, this is extremely rare: it generally fails to pass the committee proposal, it fails to pass the full House vote, and it will not even be voted on[3].

2.2 Step 2: Consideration by the other chamber

The Senate takes the House-passed proposal and goes through the committee stage and floor stage again in its own chamber, just as it did with its own chamber's proposal. The same is true for the House's proposals to the Senate.

If the other house rejects the other house's proposal, the natural legislation cannot pass. However, if the other chamber does not reject it outright but makes any changes to the proposal, the proposal is sent back to the chamber that introduced it for another vote. Suppose the two houses are never able to agree on the proposal. In that case, the proposal will stop "repeatedly jumping across the floor" and be sent to a "consultation committee", which is composed of representatives from both parties and both houses, for consultation, and if the agreement is reached, the proposal is expected to be passed in both chambers; if the consultation is inconclusive, the proposal is aborted[4].

2.3 Step 3: Presidential signature, non-signature or veto

This step is a manifestation of the famous "separation of powers" principle.

If the President signs, the proposal successfully becomes law. If the President vetoes it, the proposal is sent back to Congress, and if both houses again pass the proposal by a 2/3 majority in each house, the veto is overridden, and the proposal becomes law. Presidential vetoes are extremely powerful; presidents have exercised 2,580 vetoes over proposals in U.S. history, and only 111 have been re-passed by Congress and become law. Generally, it is difficult for Congress to pass or forgo the passage of a bill if the President declares that they will use the veto.

If the President does not sign it and Congress is still in regular session ten days later, the proposal automatically becomes law; if the President does not sign it, but Congress prevents it from returning to itself by adjourning, the proposal is automatically abandoned[5].

In conclusion, such a complex legislative process is rare even in Western representative countries, such as the U.K., where legislation only requires a majority in the House of Commons to pass. Moreover, the U.S. Senate has a privilege called "filibuster", which means that as long as the Senate fails to announce the termination of debate against a proposal by a 2/3 majority, the debate can go on indefinitely, and the vote on the bill will be postponed indefinitely. Thus, in fact, any proposal that wants to pass the Senate must have a 2/3 majority - which is extremely difficult in the United States. This shows that it is difficult to avoid the influence of political factors such as party conflict and exchange of interests in the U.S. legislative process, and the separation of powers can hardly truly serve the people and the victims of the cases, which makes onlookers question the respect for the protection of human rights advocated by the U.S. government.

3. Take The Anti-Abortion Act as an example

In addition, the recent news of the repeal and re-amendment of a bill in the United States has attracted the attention of the world, and countless people in the United States flooded the streets for protest marches. Still, the fact that it is difficult to shake the "authority" of the law, the government has lost the hearts of the people to a certain extent; the judge abolished the document to protect the human rights of whom? Are women not considered human beings? Which class of people is being protected? Today's U.S. legislation amending the constitution and putting the Anti-Abortion Act into effect has caused public opinion to be completely ignored and those in charge of the law to dehumanize and cover their ears. The Anti-Abortion Act is not only a loss of human rights but a threat to women's lives and dignity.

The anti-abortion bill prohibits women from having abortions under any circumstances, and women do not have the right to abortion after they become pregnant, even if the pregnancy is unwanted or if they are raped. The content of the bill accurately states that the U.S. Constitution no longer protects women from abortion, at least in the area of ethics and morality, and is undoubtedly a step backward for American democracy and freedom because, in the usual sense, although there are religious teachings that consider the fetus during pregnancy as a separate life, at the legal level, the fetus during pregnancy is not an independent person, and it has been pointed out that if the fetus during pregnancy is considered a separate life, why a fetus is not counted in the census. So, at the legal level, the default is actually that the baby during pregnancy is part of the pregnant woman herself.

On June 24, the U.S. Supreme Court ruled to overturn *Roe v. Wade*, the 1973 ruling that legalized abortion in the United States.

According to the Wall Street Journal, the U.S. Supreme Court ruled on June 24 to eliminate the right to abortion intact, overturning the 1973 *Roe v. Wade* decision and leaving the legality of abortion to the states. The ruling reverses a landmark precedent from nearly 50 years ago and is a rare reversal that challenges the reproductive autonomy of modern America[6].

In May 2021, Texas passed a "groundbreaking" "heartbeat bill" that prohibits pregnant women in Texas from having an abortion if a professional detects a fetal heartbeat and that rape victims must follow the bill. If someone is pregnant after an assault, they cannot have an abortion after a heartbeat

is detected. Then, on September 1, 2021, Texas Senate Bill 8, the nation's strictest abortion bill, went into effect. The bill not only requires that abortions not be allowed unless a woman's life is in danger but also adds that citizens who successfully sue abortion providers will be able to receive at least \$10,000 in "restitution. After the case was decided, countless people took to the streets across the United States in protest, and flags were hung upside down everywhere. Still, once the bill was formed, it was difficult for public opinion to change anything. In this case, the power of public opinion was overwhelmed by the majesty of the constitutional amendment legislation. Those in power did not care about the public's anger, insisting on guarding the "human rights" of the fetus while ignoring the safety and dignity of women. Even the essence of equality between men and women is that women's human rights are the most important.

The essence of gender equality is a woman's choice to be the decision maker in her own life, which is essential to her life and dignity. When the government controls her decision to have an abortion, she is not treated as an adult capable of taking full responsibility for her life choices. Banning abortion is not motivated by respect for any life but precisely by a disregard for life.

Background on Roe: In December 1969, Norma McCorvey, a 21-year-old Texas girl, was pregnant for the third time. Repeatedly subjected to sexual violence, she wanted an abortion, but abortion had been banned in every U.S. state for a century. With the support of two young lawyers, McCorvey sued the state of Texas in district court for unconstitutional laws under the legal pseudonym "Roe. The case was appealed to the Supreme Court, where the justices voted 7-2 in 1973 to rule that abortion in the early stages of pregnancy is a constitutional right to privacy protected by the 14th amendment and is not subject to outside interference or obstruction. Since then, abortion bans and restrictions have been gradually relaxed in every state in the United States.

June 24 was a "tragic day," in President Joe Biden's address. The U.S. Supreme Court ruled in *Dobbs v. Jackson Women's Health Organization* (Dobbs), a case concerning Mississippi's restrictive abortion laws, allowing the state to ban abortion after 15 weeks of pregnancy by a 6-3 vote and overturning the Supreme Court's 1973 precedent of *Roe v. Wade* (Roe), which held that the right to abortion is not a constitutional civil right embedded in the U.S. Constitution and allowed state legislation to prohibit abortion. The United States is a case law nation, and Supreme Court decisions rarely overturn its own precedents. In more than 30 previous cases involving the reversal, amendment, or reinterpretation of precedent, the Supreme Court has never overturned precedent to deny individual rights already granted to citizens.

The concern for the American legal community is that the new Supreme Court decision could signal the beginning of a "dark age. Precedents involving civil rights over the past 30 years are now at risk of being revisited and overturned, ultimately touching everyone. Beyond the courts, inequality and polarization in American society will increase.

4. The Impact of the Public Opinion on Justice

The following two cases demonstrate that public opinion affects justice differently. Public opinion is a double-edged sword, but the media cannot use it to incite and personalize the "media trial" from God's perspective.

4.1 The rise of the power of public opinion - gradually becoming a ladder of judicial progress

In *Brown v. Board of Regents of Education of Topeka*, Oliver Brown, a Kansas railroad welder, applied for his daughter to attend a white school but was denied because of racial segregation. Brown then turned to the National Association for the Advancement of Colored People's Welfare for help. A Kansas court dismissed Brown's suit in the first instance, based on the "segregation but equality" system adopted by the federal Supreme Court in 1896.

However, the NACWA did not stop its efforts until 1954, when Er Warren, an active civil rights activist, took office as chief justice and worked to secure a unanimous opinion from the justices,

reversing the opposition's position. In May of that year, the court ruled in Brown's favor by abolishing segregation in schools.

4.2 Public Opinion Influences Judicial Decisions - A Mirror of Judicial Self-Reflection

The Sixth Amendment to the U.S. Constitution states that the people have the right to a Jury trial in criminal cases and that anyone who becomes a citizen of the United States is obligated to serve as a juror free of charge. Jurors are composed of the people and are representatives of public opinion, the generators and disseminators of public opinion. In criminal cases, according to the federal government and most state systems, the twelve jurors in a case must reach a unanimous decision before a verdict can be achieved.

The American Jury is seen as a bulwark of liberty, a political function that guarantees civil liberties. This system safeguards civil liberties through the sharing of judicial power by the people, restraining power with power. The fundamental characteristic of modern democracy is that all power belongs to the people. The separation of powers is one of the defining factors of American exceptionalism. Among the three powers, judicial power is considered to be the last barrier to a nation's ability to uphold legal justice and a test of ordinary citizens' confidence in a country. In the U.S. Constitution, the people cannot participate more directly in the exercise of legislative and executive power, but the people's direct participation in the exercise of judicial power is of special significance. The Jury System is the participation of jurors as representatives of the public in litigation activities, which is the owner of power sharing the judicial power with professional judges, and the people's direct participation in the exercise of power, which makes the people better participate in the legal work of the state and maintain justice and authority of the law, and is the supervision of public opinion to play a better role[7].

4.3 Justice Keeps Itself Impartial - Limits Reduce Public Opinion Interference

The 1994 case of O.J. Simpson's murder of his wife was the most sensational event in the United States. It can be called the biggest case of doubtful acquittal in the history of the United States.

Public opinion has been chasing Simpson from the beginning, with live television coverage of dozens of helicopters and dozens of police cars chasing Simpson on the Los Angeles freeway as if it were a "police battle".

Some newspapers even used the headline "Demon Killer Simpson" directly. Moreover, media polls during the trial showed that more than 80 percent of Americans thought Simpson was guilty. The public outcry brought the Simpson trial to the forefront of the media.

However, the defense camp argued that the LAPD illegally obtained and handled the evidence and that the test results were questionable.

There is a famous rule of evidence in American law: "There can be only one bedbug in the noodle. It is a metaphor: anyone who finds a bedbug in his bowl of noodles will never look for a second one but dump the whole bowl of noodles.

In the end, the U.S. judiciary withstood the enormous pressure of public opinion and declared that the Simpson case did not meet the standard of "beyond a reasonable doubt" and acquitted Simpson.

"The Simpson wife murder case is a classic case in any era, in which many important principles of modern justice can be seen. Moreover, the opposite of "procedural justice" is "substantive justice", so what is the relationship between substantive justice and procedural justice?

4.4 The Differ Between Procedural Justice and substantive justice

Generally speaking, substantive justice determines whether a person is guilty or not and how he is sentenced, while procedural justice is how a person is convicted and sentenced[8].

In the modern concept of justice, the public believes that procedural justice is to be superior to substantive justice because legal justice, in reality, cannot be perfect justice; it must be a flawed justice because human beings are limited, so the justice that human beings pursue is also limited, so the public has to find a balance between procedural justice, and substantive justice or people are pursuing

substantive justice through procedural justice, because, through only reasonable procedural rules, human beings can willingly accept a flawed justice[9].

4.5 Trail by Public

The concept of trial by public opinion originates from "trial by media", which refers to the media publishing pre-trial reports with tendencies and pointers to guide public opinion and popular thought or comments that impact fair trials[10]. Along with the popularity of various social networking platforms, the advent of the Internet era public opinion has broadened the restrictions on the channels for publishing public opinion in traditional media, and the influence of online public opinion has become increasingly powerful. It has caused more and more public pressure on the judiciary. The influence of public opinion on the judiciary sometimes tends to be more like a moral kidnapping. Judicial influence needs to focus on fairness and independence but should also take into account the comprehensive influence of public opinion. A reasonable distance should be maintained in order to establish an effective balance system for the relationship between public opinion and justice in line with national conditions.

5. Conclusions

The primary function of the media is to disseminate information truthfully, and the second is to be able to guide public opinion objectively and correctly and to adhere to the direction of public opinion that is favorable to social development and the progress of civilization. The law is the standard principle for the construction of a society under the rule of law, and it is also the main way for citizens to protect their personal safety and property security. Moreover, the judiciary should do more to maintain the authority and fairness of the law and draw a clear line between public opinion and the judiciary to maximize their responsibilities within the scope of the regulations.

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