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# The Art of Trial Process

An Outline of Judicial Philosophy in  
China



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# Preface

The Pursuit of Truth, Goodness, Beauty and Happiness  
Is the Legal Basis on Enhancing Judicial Credibility  
In the Background of the New Four Modernizations

With the rapid development of the new technology revolution and the information age, today's society is undergoing profound changes, the “new four modernizations”—new industrialization, informatization, urbanization, agricultural modernization—are gradually changing the traditional ideas and the traditional mode of social production and life. To adapt to the changes of the times and social development, our traditional judicial system is also facing the deep transformation and development. In the third and fourth plenary session of the 18th Central Committee of the Communist Party of China, the party put forward that a new round of judicial reform is to actively adapt to the needs of social transformation of reality, through judicial reform and enhancing the credibility of the judiciary, realize the modernization of judicial system of governance and governance capacity. The full implementation of judicial reform initiatives, such as the quota system for judges, judicial accountability system and judicial personnel classification management, ultimately depends on the increase of overall judicial capacity and judicial level of the whole judicial professions, including quota judges, judge assistants, judicial clerks, and judicial police.

In this study, it is found that the art of adjudication of judges and other staff is actually the solid foundation for the promotion of judicial credibility under the background of the “new four modernizations”. The original intention to implement reform of judicial personnel classification management, quota judge system, judicial accountability system is, through the reform of system and mechanism, to change the overpowering administrative and localization factors in operation of the traditional judicial system and mechanism, and thus to greatly enhance judicial ethics and occupation skills of the judicial occupation team—the judges, judge assistants, judicial clerks, judicial police, etc. Only if overall integral lifting of the

judicial ethics and judicial professional skills of judicial professional groups, it is possible to realize the course of justice, and then to enhance the judicial credibility, and to establish the judicial authority in the whole society. Take the pursuit of truth, goodness, beauty and happiness of the judicial ethics and judicial art as the legal basis to enhance the judicial credibility, judicial adjudication can not only solve the social contradictions and disputes, but also create good public order, and then judicature will become the best governance mode ruled by law in the law-based society.

The reform of quota judge system has an important function, that is, to enhance the overall judicial ethics and trial skills of comprehensive professional judges, through the judicial system reform and the operation mechanism of adjudicative powers reform, the judicial ethics and trial skills of professional judges will be promoted to the realm of judicial art, let the judicial art become occupation realm and pursuit of the quota judges, let the judicial art become a solid foundation for improving the public credibility of the judiciary, enable the people to experience the fairness and justice in the judicial process and judgment result of each and every judicial case, make judicial reform bonus really benefit the masses of the people, let the people really feel happiness brought by the judicature and the law.

When it comes to art, people will be naturally reminiscent of beauty and happiness—the beauty of literary, the beauty of the string, the beauty of technique, the beauty of painting, the beauty of suspenseful image, the beauty of drama depicting the life, and the pleasure and joyful experience that all these many wonderful feelings bring us. Deep in people’s heart, art is a kind of pure beauty, a kind of real happiness. A trade, a technique or an occupation skill of any kind, if practice makes perfect, skill goes beyond Dao, brings people the beauty and happiness, and that is art!

Is it possible for the judge’s trial to become a professional art that can lead to a sense of beauty and happiness? The answer is yes! The judicial activity is a kind of legal professional work, a kind of strong practical, experiential, intellectual and technical work, the trial of a judge is not only to act like a “law crafts people”, who mechanically settle disputes according to the law, but also to creatively apply the law following the spirit and principle of legislation, maintain fairness and justice of the society through judicial trial. Judge’s judicial art is both the category of legal methodology, and the summary of judicial practice and trial experience. “Dismemberment of ox by Paodin” in *Chuang-tzu* is the story of judge’s judicial art, the most vivid and appropriate metaphor. This story tells us about the truth of “definition”, as the Chinese saying goes, every profession produces its own topmost master in all trades and professions. No matter what the industry is, practice makes perfect, skilled technology achieves the universal law. Train skills according to the law of beauty, understand the universe rules, so that people get the enjoyment of beauty, realize happy life, so all walks of life are art! There’s no doubt that the judge’s trial is a professional art, and it is a professional art with a great deal of knowledge!

The art of adjudication has been recognized for a long time, but at different times, people's cognitive level is different. There are many contents on the judge's judicial art in Chinese ancient legal history records: for example, since the Western Zhou Dynasty, the judicial practice of ancient China has "Five Observing" hearing ways to read people's faces, this is a trial method and technique, which is characterized by learning and grasping the parties psychological activities; as another example, in judicial practice, officials in the Song Dynasty identify the facts of the case in accordance with the law on the basis of accurately grasping the psychological activities of the parties on the one hand, and based on the actual situation of case, take poetries, stories and metaphor as examples, inspire the party's consciousness, pursue a kind of "harmony" realm combined with natural justice, national law and human feelings through the trial, shape the ideal personality under the infiltration of Chinese culture on the other hand.<sup>1</sup> In ancient Chinese judicial official verdicts, in addition to legal content, it is filled with humanistic emotions between the lines. Moreover, in the court verdict of the ancient scholar-officials, there are many references to poetry, music and even the flower are borrowed to describe the truth of brotherhood and moral love, to integrate law education into natural justice, human feelings and national law. For Literati in Song Dynasty, it is not an easy thing to deal with the disputes on marriage, farmland or property. Balancing the relationship among natural justice, national law and human feelings, it is an art,<sup>2</sup> the art of hearing a case. The beauty of prudence on accurately grasping the litigant psychological activities by the method of watching, the beauty of reason on the pursuit of harmony with emotion, reason and law in the case, the beauty of great kindness on trying to persuade human beings to realize the truth and turn towards good by allusion writing in the court verdict, are the concrete embodiments of judicial art of Chinese ancient judicial officers.

In the Republic of China, in his collection *The Art of Law* the jurist Wu Jingxiong drew the conclusion that law and judicature are art. He believed that justice is the complex of truth, goodness and beauty, and since justice is closely bound to law and judicature, law and judicature are also the complex of truth, goodness and beauty: the truth is the basis of justice, the good is the material and object of justice, and the beauty is the quality of justice. Dr. Wu Jingxiong said in his article: "When I compare law with other arts, I do not speak in a figurative or rhetorical sense. I perceive, on the one hand it is law, on the other hand it is music, poetry and painting, the two things are the same.... The means of expression, in music is sound, in poetry is word, in painting is color, when it comes to law is interest. The difference is only in the performance of the materials and media, the most important aspect of all art is the same, that is a symmetric, orderly, harmonious arrangement and the organic organization of performance elements. If the law is not art, it is nothing."<sup>3</sup>

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<sup>1</sup>Chen [1].

<sup>2</sup>Chen [1].

<sup>3</sup>Lv [2, p. 554].

American jurist Fuller believed that legal system is a “practical art”.<sup>4</sup> Judge Posner also mentioned that the new traditionalist opinion of anti-parsimony, “to put it another way, law is a kind of art—an art of conducting social management by law, and practicing by persons trained by law and with legal experience”.<sup>5</sup> I think that the conclusion made by the two great jurists in the contemporary Western world leads to a proposition: judicial adjudication is a practical art!

The law does not enforce its own, the good law and system need to be realized by the judicial activities of judges. Just as without the artist’s creative work, the creative idea of beauty can only be an imagination; and without the creative judicial practice of judges, the good legal system can only be a utopian dream of the legislator. The mission of judges is to apply the inherent law of the spiritual level to judicial process, and express it in reality in judicial practice.

The human beings in civilized society are not only the existence of body, but also the existence of spirit, and the nature of the inherent law of spirit is the law of beauty, the law of objectification of human essential power, the rule of human aesthetic activities. The pursuit of beauty is the concentrated reflection of humanity and human nature, is the highest human need and the limit of pursuit. Through feeling, experiencing and abstracting the truth, the good, the beauty of the object continuously, the human beings extract the elements of beauty, so that the human spirit can get eternal comfort, the human mind tends to be clear. As a social activity, judicial adjudication, should also follow the laws of beauty, reflect the humanity and human nature, and through judicial skills and techniques to balance the interests between people, to promote the expression of truth and good between people, to establish the unity of regularity and purposiveness, to realize the harmony between people in society ruled of law. Therefore, “establish and create the art of adjudication by following the laws of beauty” is a sociological proposition, it associates justice with aesthetics, looks forward to the legal professionals become the creator of the world beauty, looks forward to every case hearing by judge become art embodied of the truth, the good and the beauty, thus via the process of art creation by judicial adjudication, people can experience and feel the heart-thrilling beauty of the rule of law!

Any beautiful things are expressed in the form of formal beauty and content beauty, judge’s judicial art is the unity of formal beauty and content beauty as well. Beautiful things are often with its vivid form, color, sound and body, to express people’s emotional feelings, various forms of beauty in the form of natural law of extraordinary regularity (such as balance, proportion, tempo, rhythm) have become the object of beauty.<sup>6</sup> Although judge’s judicial art does not have a gorgeous color elegant voice and distinctive appearance and other static formal beauty as calligraphy, painting, music and other artworks, it has a variety of dynamic inner beauty reflected in the minds of litigants and the public, which is far more better than other works of art in aesthetic expression. With rational-legal language used in handling

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<sup>4</sup>Lv [3, p. 50].

<sup>5</sup>Lv [4, p. 553].

<sup>6</sup>Wang [5, p. 29].



cases, the judge shows us the beauty of linguistic rationality, which is simple and clean, concise and comprehensive; the judge presiding over the trial, accurately controlling the time, atmosphere, rhythm, timing, with which the entire trial shows us the normative beauty of orderly, smoothly, focused, and neatly. When presiding over the mediation, the judge enlightens the two parties with reason, moves them with affection, convinces them with laws, thus balances the relationship between the rights and obligations of anomie with superb mediation skills, makes the damaged personal and property relationship be clear and harmonious again, and shows us the harmonious beauty of valuing justice above material gains and advocating stability; in the process of handling cases, the judge abiding by the spirit and principle of legislation, interpreting and applying the laws creatively in order to safeguard social fairness and justice, which not only embody the beauty of morality and humanity of the judicial adjudication, but also embody the integrated beauty of the rule of law; by analyzing the law and reasoning in legal documents, the judge can convey perceptual beauty and rational beauty by the brilliant writing. In addition, judge's judicial art has more profound connotation of beauty: the spirits and principles embodied in the judicial adjudication, naturally have ingenious beauty; the judicial adjudication taking substantive fairness and procedural justice as the core, which embodies the truth, the good and the beauty of human nature; the judicial adjudication confirming human's subject status, human's dignity, value and conduct, which embodies the beauty of personality; the judicial adjudication emphasizing on the legality and continuity of the procedure, all linked with another, solid uniformed, which embodies the beauty of ups and downs and free-flowing style; the judicial adjudication taking legal thinking as the mainline, making people aware of their rights and obligations, to obtain advantages and avoid disadvantages in accordance with statutory rules, which embodies the beauty of reason; the humanity and rationality of natural order and social order reflected by the judicial adjudication, embodies the beauty of the harmony of regularity, reason and feeling, and the beauty of the union of heaven and human.

The living conditions of a nation create a unique legal system of it, but every nation always can never do without the general desire for beauty; the pursuit and competition of beautiful things, is the driving force of human progress, the meaning of human life lies in the fact that it yearns for beauty, advocates beauty, appreciates beauty, and moving forward along the direction and the imprinting of beauty. As the creator of the beauty, the judge shall stick to the laws of beauty, taking every case as beautiful flower in the garden, producing each case into a collection of art treasures in the "rule of law" museum, makes it become the interpretation and enlightenment of the goodness of humanity. Away from the law of beauty, the judicial adjudication will deviate from the long-term direction of social fairness and justice, the judge occupation will lose the social significance on maintaining the fine social order, so it is the eternal theme of the judicial adjudication to following the laws of beauty!

Advocating the value of happiness is another element of the judge's trial. In human history, the first written code of ancient Babylon "the Code of Hammurabi" pointed out at the beginning, "I established law and justice in the land and promoted

the welfare of the people.”<sup>7</sup> Although the people of different times, different stages and different ideas always have different opinions of what is “fairness” and “happiness”, but who can deny this King Hammurabi’s statement “is beyond all space and time, and expresses the essential value of the law spirit”.<sup>8</sup> The essence of the spiritual value of law is the pursuit of happiness, so that the law which can make people feel happiness is a good law. If the judge’s trial leads to the results of producing tyranny, suppressing kindness and filling with injustice and partiality, it is more terrible than evil! Foul examples corrupt the stream, but foul sentence or tyranny corrupt the fountain, it is the biggest evil, it is the biggest sorrow! On the contrary, if the result of the judge’s trial can make people have feelings of happiness, it will be the biggest social welfare, because happiness means that law and justice have brought security, peace, equality, respect for freedom; happiness means that people can enjoy their lives in a rational society, means the realization of the legal ideals have brought the people of sincerity, kindness and beauty; means that people’s interests are the most impartial secular equilibrium! Therefore, the judges must construct happiness values, with a heart of protecting people’s happiness to reinterpret the purpose of trialing, following the laws of beauty, to jointly build the spiritual connotation of judicial art, and this is the soul of judicial art!

The governance of the modern state and society mainly depends on the legal tools; the process of human history has repeatedly proved that only governance by law is compatible with the development of modern society.<sup>9</sup> The main content of governance by law is the governance by justice, and the judge’s trial is the most important content of governance by justice. The value orientation of the judge’s trial largely determines whether the legal ambition and legal value can be realized. Judge Gray said, “The judge’s decision is the law.” The judge’s trial is the process of comparing and correcting the static legal provisions with vivid and specific case facts, as well as the process of spreading and permeating the legal spirit, thus it is the practice of social governance that can best embody the legal faith. The famous ancient Greek philosopher Plato specifically discussed the importance of the judge in his masterpiece *Laws*, “Presumably it’s clear to everyone that although the giving of laws is a grand deed, still, even where a city is well equipped; if the magistrates established to look after the well-formulated laws were unfit, then not only would the laws no longer be well founded, and the situation most ridiculous, but those very laws would be likely to bring the greatest harm and ruin to cities.”<sup>10</sup> Therefore, the realization of the law value depends on the full play of the utility of the judge’s profession, to a large extent the two things above are interlinked, is a dialectic unity.

From ancient to modern times, there are widely differing versions on the legal value and judicial value, the German jurist Jhering wrote in his *The Struggle for Law*, “The goal of law is peace.” *The Declaration of Independence* of the United

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<sup>7</sup>Robert [6, p. 9].

<sup>8</sup>Yu [7, p. 16].

<sup>9</sup>Cheng [8, p. 8].

<sup>10</sup>The Law of Plato, translated, with Notes and Interpretive Essay by Thomas L. Pangle, The University of Chicago Press, Chicago and London, p. 136.

States and *Declaration of the Rights of Man and of the Citizen* of France define the value of law as human rights and freedom. Plato interpreted the value of law as the justice of philosophers in his *The Republic*. Generally speaking, the value of law is to maintain fairness and justice, the purpose of legal governance is to maintain a stable social order, to safeguard people's lives and stability of the social environment. However, due to the different standards of fairness and justice, in the past, there have been events in which the law deviated from its true value, which means the values of law and judicature shall be refined. In my opinion, the ultimate value of law is "to make people happy"! Social fairness and justice should be arranged appropriately for the public basement on happiness, in the arrangement, people enjoy the rights under the law and undertake corresponding obligations, live together in a harmonious society full of sympathy and tenderness. The ultimate value of the judge's trial should also help the people to realize the good expectation of happiness!

The law-based governance has been fully implemented in the entire parts of constitution and laws, national governance, social governance and judicial reform, and it marks China has embarked on the journey of building a society ruled by law. When our society from the "rule of man" to "rule of law", we need not only the rule of good law, but also good judges defend the dignity of law faithfully and intelligently, and defend the fine social order established by good law. As we know, the more the rule of law has been applied, the country is stronger. Moreover, if the legal profession comes prosperous, the rule of law will be prosperous, the country is strong, only if the legal profession becomes strong; the community of judges is the faithful watcher of the law, and the main force of China advancing towards democracy and rule of law.

China has its own unique national conditions, the rule of law in China's social environment is also a special complexity, in China, implementing the rule of law, improving the judicial capacity of judges, are far more difficult than the West. Therefore, as we can imagine, how many practical difficulties the professional judges face. No matter in common law or in civil law countries, the professional ethics, skills and methods of judges have developed into an independent knowledge in the field of judicial practice and theoretical research. The judge's application of law, methods and skills of interpreting the law, and the experience of the judge's trial have been sublimated into a unique professional science after a long period of accumulation and research. It is because of the professional science, Western judges can judge right and wrong with the spirit of the law in the practice of the governance by law, the world tends to be orderly and peaceful, and people can feel the different levels of safety and happiness. In comparison, the legal education in China today has not totally researched and developed education courses on judicial ethics, judicial skills and judicial methods systematically, normatively, and scientifically, and there is no systematic, standard, occupational and professional training on legal ethics and trial of traditional art in the people's courts at all levels in China today. However, the most urgent need of the professional judges chosen from the reform of quota judge system is the professional ethics, professional skills and judicial art. Moreover, the quota judges chosen by a new round of judicial reform not only need