Civil Procedure Review
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"Judicial Corruption" Understanding -

Several Theoretic Reflections Based on Empirical Investigations

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Abstract: The article seeks to define and analyse the phenomenon known as "judicial corruption" based on empirical research on the chinese system.

Keywords: Judicial corruption. China

Living in Chinese society, in many different occasions, so called "judicial corruption" is frequently mentioned topic. However, approaching this topic from an academic perspective is actually quite difficult. Except for some individual case reports and emotional arguments, the author has not discovered any academic articles or books that truly focus on judicial corruption. Both foreign and domestic research on corruption generally, particularly in relation to economic transition or the political system, can serve as a valuable starting point for research on judicial corruption[1]. However, until the study of judicial corruption has reached a definite level, most of the concepts developed cannot be simply applied to interpret or explain the phenomenon judicial corruption. Since 2002, the author has attempted to conduct in-depth empirical investigations on the adjudication procedure and practice of civil tribunals[2].

[1] In the relevant literatures which have been read by the author, *the Economic Analysis on Corruption and Bribe* written by Zhang Shuguang is quite helpful. It is originally recorded in *Social Sciences in China Quarterly (the first volume)*, 1994; and then gathered in *Systemic Structure and Its Change in Chinese Transformation* written by Zhang Shuguang, Beijing, Economic Sciences Press, 2005. Concerning the application of analysis framework as well as some relative propositions advanced by this article, the detailed explanation could be found in the following text.
[2] Up to now, the author's articles on empirical investigations which have been published include: *Civil Adjudication in Practice------Operation of Civil Procedure in the First Instance Cases at Four Intermediate Courts* which is recorded in *Modern Law Science*, 2003, the fifth issue & the sixth issue; *Civil Adjudication in Practice------*

Throughout this process, the author has always paid attention to questions such as what phenomenon "judicial corruption" refers to and how severe these problems are. Although the author has not discovered any effective means to do quantitative analysis or systemic study on judicial corruption, several intuitionistic impressions and thoughts on their logic have been gradually accumulated while observing the conduct of courts in various areas. In this article, the author starts by sorting out these scattered senses and thoughts, and then constructs some analytical framework which can combine and systematize them so as to provide a starting point for further study.

Over here, what still need to explain is, unlike general articles on corruption, this one try to take another methodology approach. That means, the common framework of "phenomenon→causation→countermeasure" would not be used in this article. And from the perspective of social interactions around "judicial corruption", this concept as well as its connections with social phenomena it refers would be expounded. According to methodologies of Sociology of Deviance or Criminology, this approach is different from the so called "objective theory" or "normative paradigm", but belongs to "expositive paradigm" or phenomenological method[3]. Meanwhile, putting the meaning of "value free" in head, the author also takes an attitude of dispassionate analysis and objective description as far as possible to observe "judicial corruption". This research method tightly connects with the so called sociological standpoint "pure epistemology". In a word, the methodology tendency this article tries to hold is keeping distance with research object or observing it from a relative viewpoint, regarding the matter with dense subjective characteristics as objective existence, and meanwhile keeping a comprehensive or hermeneutic viewpoint. This always means that researchers are not anxious to bring forward some countermeasures or suggestions of policy, but pay more attention on understanding the object of study along with its internal logic, namely emphasize more on the

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Operation of Civil Procedure in the First Instance Cases at Five Intermediate Courts which is recorded in *Peking University Law Review*, the sixth volume, the first part; and *Witness' Appearance and Verification before Court in Civil Action* which is recorded in *Peking University Chinese and comparative law***,** 2005,the second issue.

[3] The introduction on these two approaches of methodology could be found in author's article *Methodology Issue in Western Criminology Study*, Wang Yaxin, *Civil Action in Social Transformation*, China Legal Publishing House, 2001, P349-362.

aim or significance "purely from curiosity". However, this tendency is not always contrary to the study aiming at obtaining effective countermeasures. It could be regarded as a preparation for the research on countermeasures later.

I. Definition and Mapping of "Judicial Corruption"

While observing judicial corruption, the first problem involved is how to define it. This problem tightly connects with the demand of evaluating, as objectively as possible, the severity or universality of judicial corruption in real life. As a generic premise, the word "corruption" per se has several meanings. According to a definition which is purportedly relative universal in international society, corruption means "abusing public power for personal interests"[4]. Although it is just one of those greatly different definitions, it is believed that this definition contains two meanings with the significance of "greatest common divisor" (i.e. the meanings most of definitions include), namely "taking advantage of public power or authority" and "seeking for personal interests illegally or improperly". If these two meanings are applied to the concept "judicial corruption" which is restricted in the field of court adjudgement, this concept might be approximately understood as "behaviors conducting by judges who try to influence adjudgement with their official authorities so as to obtain some personal interests"[5]. This is also a somewhat vague definition which needs further interpretation and analysis.

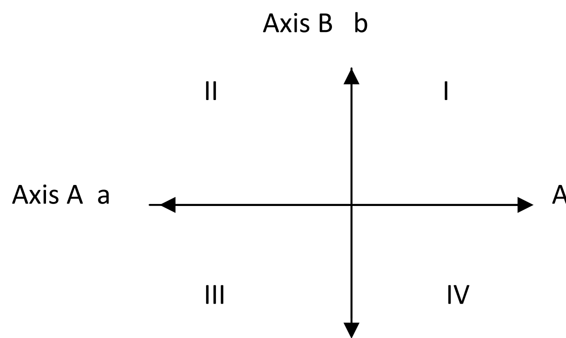
Over here, we follow the above meaning of "greatest common divisor" and regard the most crucial factors of the above definition, namely "personal interests" and "influence on adjudgement", as two dimensions measuring whether a behavior reaches "judicial corruption" as well as whether it is serious. Then we make two axes denote them. One stands for "personal

[4] This is recorded in *China: Fighting Against Corruption* which is edited by Hu Angang, China, Hangzhou, Zhejiang People Press, 2001, P2-4; in this book, the author also argue that "corruption" has many meanings and it is very difficult to define it (P245-247).

[5] In board sense, "judicial corruption" may relate to other departments, such as police and procuratorial department. In courts, it also involves other matters which are far away from adjudgement (such as personnel's arrangement). However, in order to facilitate discussion, the meaning of this concept is always restricted in the range of "adjudgement" which has been pointed out here. But we should interpret "adjudgement" broadly till it includes enforcement and other relative procedures at least, so as to approach "judicial corruption" further.

interests obtained by judges". Then, seeking or accepting large quantity of bribes, the most serious behavior, is one pole; and accepting treat or little gift, the slightest action, is the other pole. It is noticed that, besides accepting money or materials, judges are likely to submit to other personal interests, such as intercessions from family, friends, or colleges as well as interventions or pressures from internal or external leaders. Although these factors seem not to be problems of judges themselves, when they accepting intercessions or submitting to pressures and interventions, he or she has got benefits of "face", "human sentiment" or "leader's appreciation or preference in future". Therefore, according to their different degrees, these actions are also likely to distribute on axis of "personal interests obtained by judges". The other axis stands for the influence that is imposed on adjudgement by judges. They abuse their official authorities to seek for various personal interests referred above. On the pole standing for the severest actions, it is comprehensively "swearing black is white" to the case facts or obviously "perverting the laws" while applying them. However, on the other pole, it is "preference" which seems not to be "fault" or "illegal action" and is permissible in the range of judge's discretion. It is "preference" because the choice is not made through considering pure facts, law interpretation or policy, but some personal interests referred above. The degrees of these preferences are also different, for example, some preference's degree is little, but some is serious; or some is distinct, but some is vague. And there are still some other situations which are not completely "swearing black is white" or obviously "perverting the law", but result in substantial or procedural flaws, however, as long as for judges' personal interests, they could also be denoted with different dots on axis of "influence on adjudgement".

If the first axis "obtaining personal interests" is axis A, the most serious pole is "A", the slightest one is "a"; and the second axis "influence on adjudgement" is axis B, the most serious pole is "B", the slightest one is "b", various possible situations of "judicial corruption" could be represented approximately by the next graph.



In above graph, the fourth quadrant (AB) represents typical "judicial corruption", namely extreme or not so extreme cases of "swearing black is white" or "perverting the law" which are conducted by judges who take bribes, practise favoritism or submit to strong intervention or pressure, as well as other situations with different degrees but similar to these cases or with similar vicious natures. As a comparison, the second quadrant (ab) reflects some preferences based on face, common intervention or some kind of social exchange. However, the objective influence of these preferences lies in the permissible scope of discretion or on its boundary. They do not always violate laws, common sense, feelings and reasons. Compared with this, in the first quadrant, the most typical cases are "taking the bribes but not perverting the law" and some similar situations that the judge does wicked things for personal interests but its influence on adjudgement is relatively slight. They are likely to occur in daily life. On the contrary, in the third quadrant, judges impose relatively serious negative influences on adjudgement for common feelings, common superior- inferior relationship and quite limited personal interests.

It is believed that four types of conditions above are likely to exist more or less in practical adjudgement. But then, from the perspective of common sense or general impressions, it is possible that the situations in quadrant II are most universal, the next is quadrant I, and situations in quadrants IV and III are relatively few (those in quadrant III are possible the scarcest ones). It is totally impossible to learn about the accurate proportion of

every situation of “judicial corruption”. In fact, the lines between different quadrants are quite unclear. However, if we regard such unclear classifications as an analysis instrument and start from the rough estimations on universalities of the above situations, it is possible to deepen discussions on relative issues. Certainly, we must limit the issues first.

II. Estimations on Severity of “judicial corruption”

The meaning of “judicial occupation” is always unclear while it is used to name some objects in social life. One reason is that the range of objects being named is too wide and the standards being potentially used are various. The cases in quadrants II of above graph are likely to be the commonest objects that lead to such difficulties on naming. In this article, these cases are included in “judicial corruption” since the author potentially applies a standard that, compared with both parties, the judge should keep pure neutral in adjudgement (reflecting on the relationships with internal or external power, it means “judicial independence”). That is, neither should judges accept any intercessions, treats or gifts, nor any improper interventions from any power. This doctrine has been accepted or required to be a rule or ideal by the mainstream ideology and it is also the realities of judicial operations in some foreign countries (including Hong Kong) where has a mature legal system. Therefore, if the adjudgement is influenced by these external factors (even if the factual influence is remote or the judgment would be the same without these factors), it is reasonable to believe that judicial corruption in some degree has occurred. Also we believe that people mean this when they talk about “judicial corruption” in several occasions of social life. However, if we go on seeking for the rule related to this type of situation in Chinese specific social circumstance, it will be found that when these influences on adjudgement lie in the range of judges’ discretion, those phenomena of accepting intercession, treat or common gift and admitting to some interventions do not always constitute “judicial corruption” which is discussed by the public in daily life.

Chinese live in various interpersonal relationship networks. Even judges of this country could not jump over these networks, and then constitute a specific profession which has different ethic and separates from the social exchanges, since they have not experienced long time traditional edification like foreign judges. If the influences on adjudgement for "human feelings" are just judges' preferential choices which lie in the range of their discretions, in specific situations of daily life, people will not only acquiesce or permit them but also likely to encourage them in some ways even they are improper from the perspective of "public discourse" or common sense. The judges are even likely to be punished if they do not make such choices in some cases. Therefore, it must be admitted that, there is another culture, criterion and common sense accepted broadly in daily life and they justify many behaviors or phenomena in quadrant II so as to make it hard to name them "judicial corruption". This is also one reason that we believe this phenomenon is likely to be terribly universal in Chinese current judicial practice. However, while observing people's reply to the question whether similar phenomena should be regarded as "judicial corruption" in reality, two factors should be considered seriously. First, under the premise that judges just obtain personal interests of "social exchanges", it is always difficult to "objectively" cognize and confirm whether "influence on adjudgement" rests in the range of discretion. This is an important factor leading to the extremely easy shift of the definitions of behaviors in quadrant II. The author will make further analysis on this point in the following text. Secondly, anyone who defines something is likely to use double standards consciously or unconsciously, and this makes the question whether one phenomenon is included in "judicial corruption" quite hard to answer. One reason has been referred above, namely the coexistence of two different standards is reality.

Another is that, people always define the conception from their own benefits or subjective feelings. For example, both parties adopt the "practical" standard first. They will seek for support from people who are possible to influence the adjudgement when litigation starts, however, if the consequence does not satisfy them, one party or even both parties will adopt the "ideal" standard, and regard the judges' choices in range of discretion as "judicial corruption". Although suchlike behaviors could not be justified from the perspective of ethic

estimation, as a kind of game strategy, they own rationality and even some positive functions on restraining corruption. This point will be referred and analyzed in the following text.

Compared with phenomena in quadrant II, there seems to be less difficulties or contradictions to regard the phenomena in quadrant I, III and IV as "judicial corruption". However, while the phenomena in these three quadrants are all called "judicial corruption", they seem to own different characteristics as far as their frequencies be concerned. In order to explain this point, it is necessary to introduce a suit of conception as instrument, which is "micro-circumstance where judicial corruption occurs". This conception could be divided into "ordered circumstance" and "disordered circumstance". The "circumstance" here should be understood as a kind of scene, room or background that does not directly cause "judicial corruption", but could reflect, embody or condense numerous complicated factors or processes which might stimulate or restrain the occurrence of "judicial corruption". It is well known that, in the actual process of social transformation, developments in different areas are quite unbalanced. And if we regard the courts in different areas as micro-circumstances where "judicial corruption" is likely to occur, there are also various distinctions with different degrees among them. These distinctions that tightly connect with "judicial corruption" are mainly embodied in several factors, such as differences of leaders, daily management and internal culture shaped in a long term[6]. These factors have complicated connections with the conditions of local economy, society and culture, etc, and they are always influenced or even determined by the holistic administration level of local government (with the so called "ethos in officialdom" as its common name) [7] . The classification above is to divide organizations where

[6] The restriction on "circumstance" here is built on an analysis unit which is determined by the data obtained during author's empirical investigations. In investigations, we always find that there may be great or even qualitative distinctions between two courts which are close to each other. Discussion on question that why the author takes the court as basic analysis unit and various distinctions about leaders of courts, internal management and culture, could be seen in author's article *Procedure, Institute, Organization----Transformation of Basic-Level Court's Procedural Operation and Administrative Mechanism* which is recorded in *Social Science in China*,2004, the third issue.

[7] The relationship between some conditions (such as economic, social and cultural conditions) in specific area and courts where "judicial corruption" occurs is so complex that the author is incapable to do research directly. However, it could almost be certain that there is not just causality between them. For example, from our observations during empirical investigations, it is hard to say that there is some plus or minus relationship between the level of economy development in specific area and the degree of "judicial corruption" in this area. At the same

judges set themselves into “relative ordered circumstance” and “relative disordered circumstance” according to whether leaders of courts could set an example to others, whether courts' daily managements are loose and whether courts’ internal cultures are positive. And the frequencies of “judicial corruption” which are denoted by several quadrants in former section are likely to be different in these two different circumstances. Generally speaking, the occurrence of “judicial corruption” in quadrant I is few in “relative ordered circumstance”, and quite universal in “relative disordered circumstance”. And the occurrence of “judicial corruption” in quadrant IV is few in both circumstances. Then these phenomena in quadrant III are few in disordered circumstance, and they are quite rare or even unimaginable in ordered circumstance. None but the phenomena in quadrant II are likely to occur universally in both circumstances.

If we mark the universal occurrence of “judicial corruption” with “+”, individual occurrence with “-”, and infrequence with “——”, the matters we discussed above could be roughly displayed in the next graph more intuitively.

quadrant\ environment	ordered	disordered
Ⅰ	-	+
Ⅱ	+	+
Ⅲ	——	-
Ⅳ	-	-

time, from limited observations, the author cognizes that whether the ethos of officialdom in certain area is well could almost be regarded as an obvious guideline to judge whether “judicial corruption” is serious. However, at present, there is no effective method to approach and do further study on their concrete connections as well as the internal mechanism between them.

It is obvious that the above graph is still a rough estimation to the severity of "judicial corruption". And it may not be too far from people's feelings and common sense. However, there is still some difference between them: on the basis of the information and intuitive impressions obtained in empirical investigations, it is believed that the graph above could help us to comprehend the so called "judicial corruption" a little further or more deeply. Then, whether is it still possible to estimate the severity of "judicial corruption" more accurately?

If we apply the conception "circumstance" above to analyze the frequencies that different "judicial corruption" occurs, it could be found that there is a close relationship between the severity of "judicial corruption" as a whole and the respective percentages of these two "circumstances" in the whole country.

More concretely speaking, if a quantitative evaluation to the three thousands courts of this country could be conducted with this classification, we can naturally get some answers on how severe "judicial corruption" is. However, this evaluation is nearly impossible on methodology. There are three reasons. First, there is no credible data as the basis of such quantitative evaluation. And while considering the techniques, costs and other conditions, it is totally impossible to gain the data of the whole country. Second, what the so called classification of "ordered" circumstance and "disordered" circumstance denote would rather be two poles of one axis, than two totally different situations. There are infinite situations between these two poles. Therefore, it is quite difficult to define one environment in a continuum as "ordered" circumstance or "disordered" one when it is in the middle of two poles. Third, the "circumstance", whether it is ordered or disordered, is always changing with the lapse of time. Today it is quite "disordered", but tomorrow it may turn into relatively ordered status, and vice versa. While some little circumstance becoming more ordered, others are likely to become disordered. Actually, the changing of the whole environment is always a dynamic process during which one falls and another rises. The direction of change is uncertain, and its inducements might be extremely various. It not only includes some structural factors with considerable universality, such as Central Government provides transfer payment to western judicial departments and increases its intensity gradually, but also some casual ones,

such as the leader group of one court is changed. Anyway, on the basis of the evaluations in above graph, there is no way to further conduct more accurate evaluation to the severity of judicial corruption.

However, if it is allowed to offer some personal opinions on the basis of general observations, and even some subjective impressions, the author inclines to the proposition that the whole circumstance of courts is turning into relative ordered direction since the middle of 1990s when Chinese economy starts to develop in high speed. Although this does not mean the amount of "judicial corruption" decrease or this tendency could be kept, it is believable that the ordered circumstances and those turning into this direction are more universal than those disordered ones since social development not only requires the level of law enforcement to be heightened, but also provides relative capacious room for this improvement.

III Difficulties on Defining "Judicial Corruption" and the Relative Social Consciousness

Above, we make a so called "objective" evaluation to the severity or universality of "judicial corruption" in reality under the premise that some relative conceptions as well as classification have been relatively confirmed transitorily. However, it could hardly be more accurate. Furthermore, this perspective is far from enough for us to master the complexity of phenomena, and it even could not always be regarded as the key approach to do research. As a social phenomenon, "judicial corruption" includes a great deal of criticism, minus feelings, moods and expressions delivered by jurists and common people towards Chinese courts and adjudgement nowadays. With the appearance of pure value judgment or subjective judgment, this evaluation is also a kind of social reality, although, to some extent, it includes a great deal of arbitrariness. Therefore, it is still quite significant for us to understand the consequence of "judicial corruption". While discussing "judicial corruption", this aspect has to be considered adequately, so it is necessary to go back to the definition which is discussed at the beginning of this article.

Above, it has been pointed out that the concept “judicial corruption” has several meanings and it is hard to define it. And people’s feelings and descriptions to this conception are always ambiguous. One reason lies on the uncertainty of adjudgement activities conducted by judges. Over here, it is necessary to make the conception framework above be dynamic again, and we should reconsider the relativity of these two axes “judges’ personal interests” and their “influence on adjudgement”. As discussed above, nowadays, it is permissible for judges to obtain some personal interests through social exchange in China. Although there are regulations forbidding judges to obtain personal interests, it is difficult to draw a clear line between the permissible personal interests and the non-permissible ones in judicial practice since the axis of “judges’ personal interests” has two poles and there are infinite situations between them. Similarly, it is always difficult to confirm which preferences that impose influence on adjudgement rest in the scope of judge’s discretion and which ones are not so as to constitute “abuse of authority”. Vividly speaking, there is a “gray” part that is neither “black” nor “white” in the middle of two axes. This condition not only takes root on the common nature of judicial adjudgement, namely “double uncertainty” of law and facts, but also connects with some Chinese cultural traditions and the current specific situation of social transformation[8]. As far as its connection with cultural traditions is concerned, there is never “legal interpretative community” appearing in our history which could relatively reduce such double uncertainty and this also constitute one of the current backgrounds that jurists appeal for the realization of legal professionalization. And from the perspective of specific situations during social transformation which make it quite difficult to determine the quality and quantity of “personal interests” and “influence on adjudgement”, some questions below need to be expressly point out and analyze on the basis of information and impressions obtained in empirical investigations.

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[8] In Wang Chenguang’s article *Uncertainty in Law’s Application and Long-standing Mistaken Idea in System of investigating into Misjudged Case* which is recorded in *Legal Science,* 1997, the third issue, we could find the statements and related arguments under common judicial theory on uncertainty of law and fact along with the aggravation of uncertainty caused by various social conditions during the period of social transformation in our country.

As we have talked above, during the period of social transformation, levels of the developments in different areas are extraordinarily different. Therefore, the courts in different areas which are regarded as the sub-circumstances of “judicial corruption” are quite different from each other. However, this difference not only means that in different circumstances, the frequencies of “judicial corruption” with different types or severity may be different, but also means that, in different circumstances, people’s understandings on which behavior belongs to “judicial corruption” could also be quite different. In other words, different circumstances may constitute different order spaces with different popular rules as so to provide different standards for the same phenomenon. Although some situations will certainly be regarded as “judicial corruption” in the light of any definition, as far as several subtle circumstances are concerned, some permissible social exchanges or normally obtained interests which are widely accepted in some specific circumstances might be regarded as unforgivable in other circumstances. Similarly, some behaviors which are regarded as judge’s choices in his discretion in one place may be regarded as a misjudged case cause by judge’s abuse of authority in other places. And some regulations which are known but not declared by nearly every person in a specific circumstance might be totally opposite to the commonest legal sense of the public at the level of whole country[9]. And, these differences between different circumstances or between some specific circumstance and the whole country are still changing at all times. Since the circumstances which provide prescriptive “reference” or referrible standard to phenomenon differs in thousands ways, it is certainly quite difficult to make a determinate or widely accepted definition for “judicial corruption”. It needs to be pointed out that the

[9] This point also has tightly related to some phenomena which occur on the level of “circumstance” and “organizations” (namely not on the level of individual) and obviously belong to “judicial corruption”. For example, some “deals between power and money” occurring in several typical occasions, such as some typical occasions of penalty measurement or reprieve in criminal adjudgement when judges’ discretions are executed, are likely to be some special organizations’ continuous behaviors which follow the byelaws. In some “circumstances”, the prices and regulations etc. of these exchanges between money and different sorts of discretions are all controlled by organizations themselves. And individuals just execute the organizations’ orders. The money or benefits obtained belong to the organizations. Then individuals could just get some indirect distributions but could not be the direct beneficiaries in principle. Once there are some problems, the organizations would protect individuals to the best of their abilities. From the perspective that benefits obtained by the organizations would finally be distributed to individuals in the organizations, this situation could be regarded as some phenomenon in the first quadrant in section one of this article. However, in some special “circumstances”, this sort of behaviors obviously has been regarded as some reasonable and acceptable matters by the people in these circumstances.

"circumstance", which, from the above perspective of so called "objective evaluation", is out of the nature of "judicial corruption", has been regarded as an indispensable inner factor to define "judicial corruption" in current context. And it needs to be noticed that the "circumstance", which has been referred above and here, is not a concept instrument to analyze the origin of "judicial corruption". However, it indeed has close relationship with the occurring mechanism of this phenomenon[10].

Although it is so difficult to confirm an exact and widely accepted definition to "judicial corruption", parties, lawyers, scholars, media, the public and even judges themselves still use this conception to name some phenomena continuously in many occasions. Thus, to define "judicial corruption" is not only to cognize and describe the phenomenon, but also to constitute a sort of social mood, or reflect some aggregative social sense or consciousness. Although, from the perspective of veracity a conception cognizes and corresponds the matter it names, we could criticize that some usages are too broad or too narrow, and it also very easy to point out there may be contradictions and conflictions among many people' definitions, however, it is incontestable that these definitions and the frequent usage of "judicial corruption" per se have constituted some aggregative or universal sense. From the so called popular viewpoint that "the public credibility to judicial adjudgement is quite low", we may have to admit that, according to the common sense, the phenomena which could be named "judicial corruption"

[10] "Judicial corruption" is certainly a sort of "crime" or "aberrance". In the field of criminology or more general field of aberrance sociology, we always explain the source of "crime" or "aberrance" from two perspectives of "circumstance" and "quality". However, around the question that which one is the main source or which should be emphasized when approaching "crime" or "aberrance", there are drastic academic debates and different approaches. The introduction of "circumstance" into this article does not mean that the author takes the "circumstance" approach to study the source of "judicial corruption" or agrees that "circumstance factor" is the dominant one. As source of crime or aberrance, the external "circumstance" factor and the personal "quality" factor should be interactive and mutually constituted each other. However, at present, the author could not do further analysis and description on this process from the perspective of the source of judicial corruption, and the author needs not to discuss the source of judicial corruption directly for the perspective taken in this article. By the way, it is nearly impossible to establish some aetiology on judicial corruption through which we could not only impersonally comprehend and indicate the general rule of the occurrence of judicial corruption, but also exactly predict the research object or find out some effective countermeasures to prevent it, because the same attempt in the field of criminology or aberrance sociology has been proved to be impossible according to their history. However, if we restrict the object and circumstance of study and confirm quite limited research aim, it might be possible to study the aetiology. The author's opinion on this point could be found in footnote 2, Wang Yaxin, *Civil Action in Social Transformation* (from page 352 to 359).

seem to exist quite widely, and they continue to bring moods of anger and depression on different degrees to people. As a sort of reality, there is no doubt that these subjective feelings or moods worth much attention. However, on the other hand, some evidences have indicated that whether people widely and certainly feel that the public credibility to judicial adjudgement is low still needs further study. For example, the number of civil and commercial cases before courts had risen at all times till lately, and there is only little decline in recent years. At the same time, although there is nearly no "judicial corruption" occurring in arbitration institutions and their cases increase quickly, they have never in deed grown to be the economic dispute settlement entities which could replace courts till now. Although this is not enough for us to judge whether "public credibility" to courts is low or high, however, at least on surface, these conditions are inconsistent with our misgivings on the potential impact of "judicial corruption". In order to explain these contradictions between phenomena, it is believed that reconsidering people's behavior and process of defining "judicial corruption" again is still a significant research approach besides directly studying the internal relationship between numbers of cases before different dispute settlement institutions and their "public credibility".

IV Game Surrounding the Symbol "Judicial Corruption"

Just as discussed above, the behavior and process that name some phenomenon as "judicial corruption" could be comprehended both from the perspective of epistemology, namely, considering whether this definition fits the fact, and from the perspective of social psychology, namely observing to what extent on earth this sort of conditions reflect which kind of aggregative sense or mood in society. However, there is still another perspective that could not be ignored, namely it is possible to regard the behaviors of defining "judicial corruption" as some interactions among specific subjects. From this perspective, naming some phenomenon with the words "judicial corruption" always means a game which surrounds this symbol and occurs between various subjects in diversified occasions involved of judicial adjudgement. It could be said that this viewpoint directly originate from "symbolic interaction" in sociology

along with the so called "labeling theory" in criminology[11]. At the same time, it also tightly connects with the instrument function of definition or language expressions as "practical speaking" in communications.

The game around definition and usage of "judicial corruption" could be observed from two levels. The first level is countless concrete situations relating to judicial adjudgement in social life. Under these situations, the relevant subjects might dispute on what "judicial corruption" is or what "judicial corruption" is not, bargain with each other or reach some compromise. For example, although the judge has largish authority to decide a judgment, he always needs to consider whether the dissatisfactory party is likely to appeal to higher authorities for help with excuse of "judicial corruption". Under these situations, the judges and their superiors are likely to form some kind of interactive game relationship with the parties, lawyers and even other related people around whether the symbol "judicial corruption" is used. And in fact, such game relationship or process could always restrain corruption on different degrees. It's the very fact that there always exists the other party or both parties whose benefits are directly damaged by judicial corruption, and this constitutes the special potential cost of actualizing such behavior. According to an economist's analysis framework along with some relative propositions, dimensions and degrees of corruption relate to the strength of anti-corruption tightly, and the income and cost of anti-corruption also need to be compared. "Since the activities of anti-corruption and anti-bribe are also a kind of public decision-making, they might also contradict with decision-makers' personal interests.------ Many social incomes of anti-corruption and anti-bribe activities own obvious externality and they are hard or impossible to be transformed into internal incomes. They could neither be transformed into the incomes of anti-corruption and anti-bribe institutions, nor incomes of the people in the institutions. Therefore, compared with demand, the supply of anti-corruption and anti-bribe

[11] A brief introduction on "symbol interaction theory" could be found in Jonathan H. Turner's article *Structure of Sociological Theory* (P401-427) which is translated by Wu Quhui and published by Zhejiang People Press in 1987. On "labeling theory" in criminology, an introduction could be found in *Criminology Dictionary* (P540-541) which is edited by Criminology Seminar and published by Cheng Wen Press in Tokyo, 1982.

activities are always deficient."[12] From this proposition we can find that, compared with the common corruptions in other fields, such as national assets losses, which "transform national interest into personal interest", or exchange between money and official positions, one frequent cost of "judicial corruption" in this article is that, commonly, there always exists at least one party who has motivation to hold the person involved accountable in certain case. Always connecting with individual cases, this mechanism is based on countless personal decision-makings and likely to transform the cost of anti-corruption into interior cost. On one hand, it brings the consequence of magnifying the severity of "judicial corruption"; on the other hand, it could also form some relative effective restriction to "judicial corruption".

Another level involves the public speech on "judicial corruption". When reports and discussions on "judicial corruption" appearing in various media, academic publications and internet, the frequency that this phrase and related statements appear might result in or influence the formation and change of some social sense from which we could also find out the different benefit groups' arguments along with their speaking strategies. The game on this level always means that, from common public voices in special period to discussions in lawyers' circle, they are both likely to impose some kind of pressure on judicial adjudgement, whether it is big or small, and the court also endeavors to deal with them on different degrees. Simultaneity, we should also see that there are also complex connections between the games on two levels above, or it could be said that they always influence and restrict each other in a dynamic process. On one hand, the public speech forming through games on general level is always an "internal" factor which influences the process of individual game in several concrete circumstances. And sometimes it could even take a crucial part so as to break the original balance and "reshuffle cards", and change the rules or even the order of sub-circumstance. On the other hand, it is the changeful games in countless concrete circumstances that converge to be the holistic background of forming public speech and determine the direction or tendency of games on this level around "speech right". Also, these connections or complex interactions among games on different levels deeply involve the obvious differences among different sub-

[12] See also footnote 1, Zhang Shuguang, *the Economic Analysis on Corruption and Bribe, Systemic Structure and Its Change in Chinese Transformation*, P154.

circumstances discussed above, as well as the possible deviations of popular rules in these "circumstances" from the whole society's norm consciousness.

Nowadays, we locate in a country that keeps a deeply homogenous public speech system under the conditions of extremely extensive territory and enormous population. Meanwhile, the social development levels in different areas are quite unbalanced. Therefore, countless order "circumstances" which may implement different rules have formed in this country. This kind of situation might constitute the background that our society is full of energy during the period of transformation and keeps continuous development with the lapse of time. However, on the other hand, this also means various contradictions, conflictions and problems which are difficult to resolve and the anxiety which seems to be very universal in social sense. And the raise of the conception "judicial corruption" and its popularity could be regarded as a social phenomenon which reflects these characteristics of times from the special perspective of legal system. Here, "judicial corruption" includes sorts of social interacting processes around this symbol. On one hand, it could be used to name the existence of those illegal, irregular and even criminal behaviors conducted by judges who abuse their authorities in the field of judicial adjudgement. As a universal social sense, it also reflects people's general anxiety to the decline of judicial public credibility. On the other hand, it could also be regarded as the collectivity or aggregation of games on different levels among diversified subjects, and this collectivity or aggregation own positive function of restraining corruption. Starting from such multiple perspectives, the author's basic conclusion is: on one hand, we should never treat judicial corruption lightly or underestimate its severity; on the other hand, although this phenomenon becomes apparent or prominent during the transformation period in our country, it is far from critical point or getting out of control since "judicial corruption" itself includes factors or even the mechanism to restrain its malignant spread.

There is a kind of common observation or viewpoint on judicial corruption, namely "it is at least not more serious than corruptions in administration field". The above statements that judicial corruption might confront with threaten of personal decision-making on anti-corruption and external costs might transform into internal costs could provide partial explanation to this

point. Besides, Zhang Shuguang's analysis framework along with another proposition could also be used to explain this problem. He points out that the dimension of corruption could be measured by the amounts of deals between power and money. And looking back the history, behaviors of corruption focus on the fields where, under some institutional condition, people could most easily get benefits through abusing public authorities, but the punishments are most difficult to be imposed on them. For example, some processes of manufactures and circulation of products when price double-track system was followed in special period as well as financial loans and real estate development which have ever made or still make of such fields[13]. Compared with these fields, the dimensions of judicial corruption are still relative limited Leastways, in civil and commercial adjudgement, obvious behaviors of corruption are still likely to be controlled by parties' game actions of "voting with feet" (namely avoiding going to court or choosing other mechanisms of dispute settlement, such as arbitration). But on the other hand, it should also be known that although the degree and dimensions of judicial corruption are not easy to change greatly with the changing of external conditions, this phenomenon is likely to ruin the judicial authority continuously since it tightly connects with the daily life and dispute settlement[14].

However, the game around "judicial corruption" is just one part of the "anti-corruption campaign" at the general levels of politics and society. Therefore, we could never get comprehensive and deep understanding on "judicial corruption" until connecting it with the campaign at these general levels. Certainly, this is another topic.

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[13] See also footnote 1, Zhang Shuguang, *the Economic Analysis on Corruption and Bribe, Systemic Structure and Its Change in Chinese Transformation*, P149-151.

[14] According to some economists' analyses and empirical research, corruptions in other fields are able to become the "lube" to economy reform or even economy growth so as to perform some positive functions under special conditions. Except Zhang Shuguang's article above, statements and studies on this point are also recorded in Zheng Yefu's *Positive functions of Corruption* which is recorded in *DU SHU*, the fifth issue, 1993, and *Law Oppressed by Finance, Financial Development and Economic Growth*, Lu Feng and Yao Yang, *Social Science in China,* the first issue, 2004.
Whereas, compared with these corruptions, judicial corruption hardly has such positive functions. It is believed that this point connects with the special requirements to members' characters of probity and justice in judicial fields.