

"Temple Slayer" debate centers on public opinion and judicial independence in China

December 14 -- Last July media consumers in China were chilled by news of the brutal murder of 10 people in a Taoist temple in northwest China's Shaanxi province. In the days that followed, the manhunt centered on Qiu Xinghua [Baidu Image], a 47 year-old Shaanxi resident who eventually confessed. On October 19, in a trial watched closely across China, Shaanxi's Ankang Intermediate People's Court sentenced Qiu Xinghua to death.

The case was far from over. Qiu's defense attorney, Zhang Yong (张勇), filed an appeal in October, and the trial resumed on December 8 in Shaanxi's Ankang Railway Transport Court. Zhang Yong submitted evidence from Qiu Xinghua's local village committee testifying that he had a history of mental illness, but the court rejected the lawyer's motion to submit his defendant for psychological evaluation.

Since December 10 haggling over legal procedure in the Qiu Xinghua case has gone public with a controversial open letter [Chinese here] from five prominent legal scholars, including Peking University's He Weifang (何方). The letter calls on the appeals court in Shaanxi to conduct a psychological evaluation of Qiu Xinhua based on Article 18 of China's Criminal Law, which says "a mentally ill person who causes dangerous consequences at a time when he is unable to recognize or unable to control his own conduct is not to bear criminal responsibility after being established through accreditation of legal procedures."

The drafters of the letter have said their concern lies not so much with the "Temple Killer" case itself as with the question of legal procedure in China.

There have been a number of similar public appeals from academics, journalists and citizens in recent years, often through open letters circulated via the Internet or newspaper editorials. As they spark debate on various social or policy issues (such as the proposed emergency management law this summer), they can be seen as a part of a growing climate of public opinion in China -- tolerated to varying degrees for varying issues.

The drafters of the October 10 open letter, which was circulated on the Internet, argued that "the matter has already come to its final juncture". "The case is already on appeal, and if other actions are not taken, Qiu Xinghua will be sentenced to death. By using the form of an open letter we hope to draw the attention of the court and society", said He Bin, a professor at China University of Politics and Law and another drafter of the open letter.

The letter said that following media coverage of the case "a number of psychological experts believed Qiu Xinghua might have a psychological condition as evidenced from a number of his behaviors ..."

In a November 30 article in Southern Weekend psychology expert Liu Xiwei (刘锡伟) raised concerns that Qiu Xinghua might be mentally ill, a defense his lawyer had not explored during the original trial. Some opponents of psychological evaluation in the "Temple Killer" case point to the fact that Qiu Xinghua said during trial that he was not mentally ill. Other experts have countered that such a self determination of mental fitness does not provide legal certainty. As Renmin University of China professor Chen Weidong (陈维东) put it to Legal Daily: "Someone who is truly ill more often than not believes he has no problem".

An article in yesterday's Beijing Morning Post headlined "Open letter from 5 legal scholars

invites controversy", quoted another Renmin University professor, Yang Jianxun (杨建), as saying he felt the use of an open letter was inappropriate. "I understand the sense of public welfare among these legal scholars, but I personally think its improper to use the method of an open letter", said Yang. "Using an open letter is really leveraging public opinion (社会) to put pressure on the court, using the power of the media to influence the judicial process. This is incommensurate with the 'judicial independence' we've been promoting." Professor Yang suggested that a more appropriate action would be submitting a letter of legal opinion (法律意).

One of the letter's five assignees, He Bin, countered: "Of course scholars can openly offer their opinions on cases that are currently being tried. Independence of the courts doesn't mean that the people can't express their opinions. The most important sense of judicial independence is that society be allowed to monitor [the actions of the courts] (社会督)".

In China judicial independence is a chronic issue. Official interference in court decisions is common, proceedings are generally not open to the public, and there are no peer juries for criminal cases [Click here for information on "people's assessors"].

An editorial in yesterday's Southern Metropolis Daily supported the drafters of the open letter, saying it was the duty of court prosecutors to admit evidence "impartially", including evidence seemingly beneficial to defendants in criminal cases.

"According to homegrown, popular notions of justice it is a divine rule that murder should be punished with death. However, when we try capital punishment cases, the point is to break away from barbarous retribution and take a more civilized approach (□□文明)," said the newspaper. "The people of our nation, who have set off on the road to rule of law, should be more tolerant and open in attitude toward the judicial appraisals [of evidence] in the Qiu Xinghua case and the calls of these legal experts who are sparing no efforts [to ensure a just outcome]."

An editorial in today's Legal Daily advocated following the suggestion of the legal scholars and conducting a psychological evaluation of Qiu Xinghua to ensure a fair verdict and said such measures to ensure accuracy and fairness were a "touchstone of the humanity and reason of the law": "Actually, there is a high probability that Qiu Xinghua will face death. And even if [psychological] evaluation does go ahead, there is no reason to believe that [Qiu] will be spared death for psychological reasons. But if this small evaluation is foregone, there's not even a one-thousandth of one percent chance [that he will be spared]. This tiny supplementary evaluation process is not just a little decision at a fork in the road, it is quite simply the touchstone of the humanity and reason of the law".

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