

LEGAL SCIENCE

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Editorial Department of *Legal Science*
《法学》编辑部 编

On the Right of Combating Corruption: A Jurisprudential Commentary
on the Strict Treatment of Anti-corruption on *Weibo*

CAI Baogang

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of New Urbanization—From the Perspective of the Rights of Peasants

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**On the Right of Combating Corruption: A Jurisprudential
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Anti-corruption on *Weibo***

CAI Baogang

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On the Right of Combating Corruption: A Jurisprudential Commentary on the Strict Treatment of Anti-corruption on *Weibo*

CAI Baogang*

[**Abstract**] Recently, there has been a great deal of discussion and of significant interest in the increased use of *Weibo* (or *Microblog*)^① in anti-corruption efforts. Because *Weibo* provides a platform of discourse in the public domain it holds unprecedented possibilities for citizen influence and oversight in influencing the conduct of public officials and combating corruption. This paper argues that serious consideration should be given to the positive potential of *Weibo* in the activation and maximization of anti-corruption. Additionally, legislative and other measures should be adopted to reconcile the conflict between, on the one hand, the right of citizen's to hold government officials accountable and, on the other hand, protecting public officials' rights to privacy. In this way, sound codes of conduct in the performance of the duties of public officials can be guaranteed while ensuring the fair treatment of public officials. The rapid emergence of the use of *Weibo* in anti-corruption efforts necessitates the development of a new Chinese rule of law to lock the proverbial "Tiger" (i. e. power) into the "Cage" (i. e. rule of law).

[**Key words**] anti-corruption on *Weibo*, civil participation, the right of combating corruption, jurisprudential commentary

Recently, there has been a great deal of discussion and of significant interest in the increased use of *Weibo* in anti-corruption efforts. Through an analysis of the nature and operation of *Weibo* from the jurisprudential perspective and legal perspective respectively, we suggest that strict treatment should be taken to *Weibo* on exerting its positive energy in putting anti-corruption into full play, for which it requires the reasonable codes of conduct for the proper performance of the public officials, and thus facilitating the building of legislative measures to fight corruption by having the "tiger of power" locked in the "cage of right".

I . Sketches of Combating Corruption on *Weibo* and Its Main Conflict

Anti-corruption on *Weibo* is a social phenomenon that involves *Weibo* users' reporting, exposing,

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① *Weibo* is a Chinese social media site. Similar in its structure to Twitter. The meaning of *Weibo* translates as *Microblog*. It is often referred to as the Chinese Twitter.

criticizing and overseeing public officials for their acts of corruption through this new emerging form of we-media known as “Weibo”. According to Du Zhizhou and Zhang Yangyang, “Anti-corruption on *Weibo* is a way of combating corruption, which refers to the report of public officials for their acts of corruption and the collection of relevant evidence on *Weibo*, thus bringing about civil oversight of the acts of public officials, and the effective prevention and punishment of public officials for their acts of corruption.”^① The strong momentum of *Weibo* anti-corruption is indicated by some public officials’ being reported in the last two years, who were even given notorious nicknames, such as “Brother Watch (Yang Dacai)”, “House Uncle (Cai Bin)”, “House Auntie (Li Yunqing)”, and “House Sister (Gong Aiai)”. A new upsurge of anti-corruption was in the making on *Weibo* following the Communist Party of China’s 18th Central Committee. Lei Zhengfu, the Party Secretary of Beibei District of Chongqing, was removed from his position about 63 hours later after screenshots of his sexual activity were posted online, which created a new speed of effective anti-corruption on *Weibo*. A great disturbance might be caused simply by a video clip, one or two words, or several photographs. So, anti-corruption on *Weibo* is vividly described as “A piece of message forwarded, tens of thousands people attracted; once the Commission for Discipline Inspection marched, many public officials are doomed to be sacked.”^② According to the *2012 Annual Report of Weibo*, among the actually well-known 15 offences of corruption on the Internet in 2012, there were 6 offences reported on *Weibo*, accounting for 40%. The other 9 offences, although *Weibo* did not serve as direct report platform, were promoted by the undeniable huge amount of dissemination on *Weibo*. For those offences having been reported on *Weibo*, their investigation and prosecution required less time. Among 24 notable anti-corruption offences on *Weibo* in 2012, 15 offences were not misinformed rumors, accounting for 62.5% of the total. And among the 15 actual offences, the competent authorities have announced the punishment result of 13 offences, accounting for 86.67%. There are three kinds of corruption on the part of public officials, ranging from political corruption, economic corruption, to corruption from daily life events. Political corruption mainly refers to the public officials’ enlarging their own personal privilege and interests by abusing their power, such as buying and selling of official positions and abusing of personnel appointment and removal. Economic corruption mainly refers to the public officials’ seeking money by abusing their power, such as taking bribes, seeking private interests for their relatives and friends, etc. Corruption from daily life events mainly refers to the public official’s heeding selfish desires by abusing their power, such as extravagant consumption using public money, having mistresses and so on. Among the 24 offences of corruption reported on the Internet, offences related to the political corruption accounted for 8% of the total, and the economic corruption accounted for 40% and the corruption from daily life events accounted for 52%. The anti-corruption on Internet is, therefore, represented by anti-corruption on *Weibo*, mainly about daily life corruption.

Weibo anti-corruption efforts are hugely influential owing directly to the tremendous influence of *Weibo* itself. *Weibo* is a broadcast medium platform based on users’ relationships, through which users might share their own messages, access to and disseminate other users’ small messages. *Weibo* users build personal medium communities through WEB, WAP and other kinds of clients, and they might update and share instant

① Du Zhizhou, Zhang Yangyang, “Anti-corruption on *Weibo*: Model, Status Quo and Strategy,” *Theoretical Horizon*, Vol. 6, 2012.

② Wang Yijun, “Where Is the Limitation of the Right of Combating Corruption on *Weibo*,” *China Youth Daily*, December 16, 2012.

messages not more than 140 words. *Weibo* is modeled after Twitter, which originated in the United States. *Weibo* became especially popular in China within just a few years, and its influence grows with each passing day. The celebrity bloggerati has, known as “big Vs”, more than 10 million fans, five times as much as the subscribers of *People’s Daily*. Internet is moving from the “E-era” into the “*Weibo* era”. According to the *31st Chinese Internet Statistical Report*, released by China Internet Network Information Center (CNNIC), the total of Chinese *Weibo* users is 309 million by the end of December 2012, an increase of 23.5% compared with the previous year. Chinese *Weibo* users accounted for 54.7 percent of the country’s netizen population. *Weibo* has become, as a social online platform with complex mixture of BBS, QQ and blog, the main online field of Chinese netizens, and the online center of the broadcast medium owing to its enormous amount of users. *Weibo* is reshaping the mechanism of the production and propagation of public opinion because, no matter who they are, ordinary users, opinion leaders, or even the traditional media will choose, to various degrees, the *Weibo* platform for accessing the news, disseminating information, expressing their views and moulding public opinion. “*Weibo* has become one of the most popular products of the Internet today. *Weibo*’s unique propagation involves simple fragmentation, open integration, and real-time following, and is comparatively different from the previous blog, forums and other Internet products, which leading to its serving as an attractive communication channel in disseminating information.”^① The functions of *Weibo* in anti-corruption involve the diffusion of various kinds of news embedded in the fragmented texts; the convenient and real-time publication of corruption information, which is available for self-correcting; and members of the general public serving as the role of overseer, and so on, which makes it as an important communication channel and effective way to fight corruption for China today.

There is a great deal of controversy over anti-corruption on *Weibo*, people’s views on the functions of *Weibo* between the “implications” and “alarmism” vary from person to person. Some argue for its advantages. Much still remains to be done in our anti-corruption campaign. General Secretary Xi Jinping has pointed out recently that “The intensified corruption would lead to the ultimate doom of the Communist Party of China and our country, we should be alert!” The previously exhaustive approaches to anti-corruption campaign not only had little effect, but have even caused a weird situation to come into being; the more we emphasized the anti-corruption campaign, the more public officials committed corruption offences. The technology of anti-corruption campaign advances with time, from traditional means, to the Internet, and now to the *Weibo*. The emergence of *Weibo* greatly enhanced the effect of anti-corruption, as it was described, “*Weibo* anti-corruption means one more platform for restriction and oversight of the public power for the party committee and government; one more communication channel of gaining anti-corruption information and the relevant evidence for the anti-corruption competent authorities; one more deterrent for those corrupt public officials; one more short-cut and convenient path to supervise and report corruption that is accessible to members of general public; and one more warning mechanism to encourage Party members and cadres to restrain themselves.”^② The most advantageous feature of *Weibo* is to provide a platform for freedom of speech, on which the netizens can almost recklessly report and criticize public officials’ acts of corruption. The virtual

① Lu Jinzhu, “The Analysis on the Characteristics of the Propagation Mode of *Weibo* and Its Profitability,” *Modern Communication*, Vol. 4, 2010.

② Gao Bin, “When Anti-corruption Campaign Encounters *Weibo*,” *Procuratorial Daily*, June 7, 2011.

Internet allows those anonymous users to report the corruption event on *Weibo* without suffering persecution and retaliation. Especially under the circumstance of the existing deficiencies in our reporting systems, *Weibo* provides such a secretive approach of reporting, which protects the personal safety of reporting persons, and stimulates the majority of Internet users to participate in anti-corruption campaigns. A survey shows, "Internet report" became the public's most favorite communication channel for participation in anti-corruption campaigns, with 75.5% of people choosing this option. Sixty seven point three percent interviewees suggest that all the people should be mobilized to be involved in anti-corruption campaigns, and the communication channels should be open and the reporting persons should be adequately protected.^①

Others argue that *Weibo* anti-corruption efforts do more harm than good. Among those participants in anti-corruption on *Weibo*, some netizens are irrational. It is often difficult for them to examine and ponder problems from an objective and impartial perspective, which may produce rumors and have a negative impact on the smooth order of society. *Weibo* users often listen half, understand quarter, think zero, but react double. Its negative effects occur frequently owing to the lack of effective legal norms for anti-corruption on *Weibo*, the lack of clarity in procedural norms and deadline in acceptance, investigation or prosecution, and feedback of corruption offences, and the technical limitation of the website in overseeing and filtering information.^② "*Weibo* is now full of chaos mixed up with scandals, rumors and invective, and cyber crimes, such as violence, pornography and fraud, which still exist despite repeated prohibition."^③

There still others who argue that during the *Weibo* anti-corruption campaign, the citizens, despite their right to know the truth and their right to oversee, often violate the public officials' rights of privacy and ruin their reputations. They also argue that citizen's right to know the truth cannot override the public official's privacy, and should not become the key to know others' privacy, for the public officials share the equal rights with the citizens. Some deputies to the people's congress even argued, "Is there legal basis for the public officials to publish their property? Has the National People's Congress of the People's Republic of China legislated on the public official's announcement of their property? Public officials are people too, and they have their own privacy; yet public officials are public servants, but not slaves." The focus of the above controversy is the conflict and coordination between the civil right to know the truth and the public official's right of privacy, and comparatively the others are just minor issues. Based on the solution of this main conflict in the cognitive concept and the institutional norm, other problems will be solved accordingly.

II. The Restrictive Right of Anti-corruption on *Weibo* and Public Domain

To fulfill a strict treatment of *Weibo* anti-corruption, we must have an objective perception and evaluation of its nature, which is directly related to the way in which the government and citizens treat and deal with this new phenomenon properly. In order to maximize the strength of anti-corruption to overcome its drawbacks, it is necessary to have an in-depth analysis of its core essence through the messy and complex phenomena. On

① See Huang Chong, "Corruption Doomed to Removal," *China Youth Daily*, October 27, 2009.

② See Zhou Kai, "Anti-corruption Campaign on *Weibo*'s Going Deeper into 'Layers of Onion'," *China Youth Daily*, January 4, 2013.

③ Zeng Zhe, "Legal Boundaries of *Weibo*," *Legal Daily*, March 1, 2012.

the surface, *Weibo* anti-corruption is just a new method of waging an anti-corruption campaign; while in its deep nature, it is an act of civil participation in political activities, an exercise of the democratic right to oversee in accordance with the rule of law. *Weibo*'s medium serves as a new communication platform in the public domain, on which, the citizens might exercise their democratic right of overseeing, such as the right of freedom of speech, the right of criticism and suggestion, the right of complaint and accusation, and the right of reports and prosecutions, the right of association and assembly. Based on the above characteristics and comparative advantages of civil participation, we conclude that the citizens might oversee and restrict the public authorities' performance of an act and their possible corruption in the discharge of his or her functions. There are only two ways to fight corruption: constraint of power and constraint of rights. One of the major cruxes of the poor performance of previous anti-corruption campaigns is that we emphasized and implemented too much oversight within authority systems, i. e. fighting corruption was made the responsibility of public officials, which only achieved a temporary relief from corruption. "In the sealed machine of the government, power's restriction happens between the public officials, while, the citizens are far out of the whole system, so it is difficult to avoid 'Bureaucrats' covering and shielding one another in wrongdoings'."① Civil participation, as a main way to fighting corruption from outside the system, did not gain the proper attention it deserved for a long time. The major crux is that it is difficult for citizens to offer their reasonable criticism about corruption and other social public affairs through traditional media. Citizens could not conduct extensive exchanges and freedom of expression due to the high access threshold to a variety of traditional media under the strict control of the government and the media, and so on. As a result, dissemination of social information shows a one-way unequal trend from state power to the members of the general public, whose social status is gradually marginalized in communication. This imbalance within the media ecosystem causes the public domain to show signs of recession and disappearance. "In the tradition of representative democracy, it is difficult for the citizens to exercise their right of effective oversight, for the lack of convenient communication channels and standard of civil participation in political activities."②

The emergence of *Weibo* ameliorates the above mentioned drawbacks of traditional media. Anti-corruption and other public issues are extensively discussed on the open medium platform of the *Weibo* with interactions between the media organizations, government agencies, and the ordinary netizens especially, which builds a new picture of civil democratic participation and civil right to restrict on the *Weibo*. "The emergence of civil participation in the political space of the virtual Internet compensates its loss in daily life, enhances the civil enthusiasm of political participation, reduces their cost in time, money and knowledge, and enlarges a new communication channel, thus achieving fast connection and communication between the interest subjects."③ Now, *Weibo* anti-corruption has become an important reflection of public feelings in our social life, which is important for generation and development of civil participation in the democratic system. Alexis de Tocqueville reflected that, among three contributions to adjustment and guidance of American democracy, the natural environment is inferior to the rule of law, and the rule of law is inferior to the public

① Guo Daohui, "Social Power and Civil Society," *Journal of Shandong University of Science and Technology*, Vol. 2, 2007.

② Kong Lingbing, "Internet Anti-corruption from the Legal Perspective," *Public Administration & Law*, Vol. 2, 2012.

③ Tang Yalin, "Political Space on Internet and Citizens' Participation," *Wenhui Paper*, March 17, 2009.

feelings owing to their different degrees of contribution. The public feelings show national spirit. "It not only refers to something commonly mentioned as mental habits, but also includes people's various opinions and different views prevalent in the society, as well as all the thoughts that people follow in their daily habits."^① Therefore, "A democratic country can maintain freedom by the rule of law, especially by the public feeling for it."^② Nowadays, in our country, *Weibo* anti-corruption has attracted government authorities' attention and has reflected the public feelings in the talk of the street. The strong pressure of public opinion and the immediate coping with the corruption from government authorities play a huge positive role in the effective improvement of anti-corruption and the development of our entire democratic process. From a legal perspective, the reason why *Weibo* anti-corruption can cause such a strong response and efficiency lies in this unprecedented virtual public domain platform for citizens' participation in political activities. This civil right is implemented effectively by participation in political activities. It is, basically, an ideal field for free communication and a transformed public domain, as described by Habermas.

Public domain is, outside political power, a space or public place where citizen might freely discuss public affairs, participate in political activities beyond public official's intervention, and it is suitable for universally understandable languages in daily communication. "The best public domain is described as a communication Internet for exchanging opinions about various contents and views, where streams of communications are to be filtered and integrated in a particular way, and thus to become public opinion or public views on the basis of some cluster of specific subject."^③ The public domain includes the communications within groups, clubs, parties and salons, the traffic transportation, and the publishing of books and magazines, and so on. "Its outstanding feature is that it is a loose, open and flexible communication Internet, which is formed between the individual readers and reviewers of daily, weekly, or monthly."^④ Habermas argued that traditional society lacks a real public domain. "The political power is implemented and balanced directly among private sectors, social organizations, political parties and public administration authorities. The members of the general public might be put, just as a cheerleader, occasionally into the power circle."^⑤ Democracy and civil participation are difficult to survive in the traditional society for the lack of public domain. With the emergence of the electronic media, the public domain has been transformed again. "The general public media influence the structure of the public domain, and at the same time dominate the public domain. Thus, the public domain becomes an arena without power control, whose purpose is to win popularity through a variety of topics and discourses, but also to control various communication channels with secret strategies."^⑥ The main political function of the public domain is to have a democratic control over national activities through expressing opinions, communicating verbally, and criticizing rationally to share common public consensus. This democratic discourse serves as a communication channel to impact national activities socially, and has a criticism function to influence national power.

① Tocqueville, *Democracy in America, Vol. I*, trans. by Dong Guoliang, Beijing: The Commercial Press, 1997, p. 332.

② Ibid., p. 366.

③ Habermas, *Between Facts and Norms*, trans. by Tong Shijun, Beijing: SDX Joint Publishing Company, 2003, p. 446.

④ Habermas, "Answer to the Question about Public Domain," *Sociological Studies*, Vol. 3, 1999.

⑤ Habermas, *Structural Transformation of the Public Domain*, trans. by Cao Weidong, Shanghai: Academia Press, 1999, p. 201.

⑥ Ibid., p. 15.

“Through verbal communication, a power might come into being, whose establishment and prohibition is limited in accordance with the rule of law, while it will only exert influence on the administration of public power instead of its replacement. The right of communication cannot replace the unique system of public administration, but to exert influence in ‘the crowd of onlookers’ way.”^①The political public domain that Habermas has described has important functions against the existing regime. “There are at least two processes intertwined. . . one is the reasonable power generated by communication, the other is the manipulative power of the media, which creates public loyalty, requirement and ‘obedience’, and which might be used to fight the order of regime.”^②To accomplish communication or the democratic communication needs a public domain where people might access public opinions and criticisms. “Any kind of reform requires some kind of sound public communications, serving as a sensitive filter to observe and interpret the ‘people’s needs’, and to attract more informed, active and extensive participators.”^③

The form and development of *Weibo*’s space are now beyond Habermas’ public domain theory. *Weibo* has become the prototype of the new public domain for free discourse communication. A notable feature of *Weibo* is its provision of a more ideal condition for the generation and development of the public domain for civil participation, which is a necessary external condition for civil participation in political activities. Otherwise, even if there was an internal condition for the right to participate provided for by the rule of law, such a right is nothing but empty talk, owing to the lack of effective implementation platforms and communication channels. “*Weibo* strongly broadens public verbal communication channels between the member of the general public and the national authorities. *Weibo* is now opening a wide space for public discourse, and those public opinions and consensus on the *Weibo* platform influence effectively the public authorities’ decision-making.”^④ Unlike E-mail, SMS, BBS, Blog, QQ, SNS and other Internet information tools, *Weibo* boasts of open, convenient, public, interactive, low cost dissemination of information, and other features. It becomes a media platform where more and more ordinary people access information and express their views. If traditional media and blogs are regarded as the fields of discourse for the elite, “*Weibo* is most likely to provide discourse stage for the effective dissemination of information for those grassroots.”^⑤ Since *Weibo* is characterized by convenience, decentralization and anonymity, the members of the general public can set their own agendas. “The climate of opinions on *Weibo* is formed more and more through ‘bottom-up’ rather than ‘top-down’ approach.”^⑥ Traditionally, it was government or media who set the agenda, while the people of general public were just audience. In the *Weibo* era, however, the people of general public are the major players in setting the media agenda. They access the new media, through which they might express their opinions freely. Their status has been raised from the audience to the decision makers who might set the agenda accordingly. “Which topic might become the subject for public discourse is not decided by the person who raised this topic, but by the topic itself. It depends on whether it is satisfying the public requirement and whether its

① Habermas, *Structural Transformation of the Public Domain*, trans. by Cao Weidong, Shanghai: Academia Press, 1999, p. 28.

② Ibid.

③ Ibid.

④ Chen Yangping, “*Weibo*: A New Opportunity for the Rising Public Domain,” Northwest University Master’s Thesis, 2012, p. 4.

⑤ Zhang Xian, “*Weibo* and Public Domain,” *Literature & Art Studies*, Vol. 12, 2010.

⑥ Jin Xiaochun, Jin Yongcheng, “Analysis on the Broadcast’s Effect of *Weibo*,” *Press Circles*, Vol. 2, 2011.

answer is vague and uncertain.”^①The members of the general public determine the methods and process of media’s agenda-setting through their reflection on some issues, such as onlooking, response and forwarding. Coupled with the integration of other Internet platforms, the *Weibo* platform offers unprecedented and amplified opportunity and space for the members of the general public to express their opinions. This new public domain brings about the achievement of the principles of equal opportunity, equal participation and freedom of discussion. This provides a new turning point for the public domain, which was declining previously due to the impact of the traditional mass media. This represents a positive meaning in defending the principle of the public nature of the media. Thus, in the public domain where the traditional media witnessed a waning era in the past, people might see the dawn of its revival, upon the coming time of Internet. News websites, BBS forums, Blogs, SNS and other Internet tools have their own insurmountable drawbacks, such as, they cannot meet the requirement of the public domain in openness, freedom, equality and criticism. By absorbing the advantages of other Internet platforms, *Weibo* developed the open application of Internet and the convenient transmission of information. The most attractive feature of *Weibo* is that it allows netizens to concern and discuss topics related to public affairs, and it is also the main way that *Weibo* users exert their influence. *Weibo* offers an important opportunity for the revival of the public domain.^②

It should be said that there was no such a public domain in China available for citizens’ free and equal communication and open criticism of public officials for a long time previously. The lack of civil oversight is the main cause for breeding corruption in China. “In recent years, traditional media show reduction in their oversight of public power; they become a ‘voice’ of the public authorities, and become the ‘parrot’ only capable of imitating the songs of flattery.”^③But, the rise of *Weibo* and other online media makes a great difference in such situation. “Internet media have reconstructed the public domain, which would have a profound impact on how to get, to implement and to maintain national political power in modern society.”^④*Weibo*, as a field of public discourse, has brought about the changes in the whole social and political environment. The citizens become more active in participating in the public affairs and their awareness gradually recovers. More and more citizens participate in public affairs, which greatly enhances the transparency of information in the whole society and the equilibration and diversification of the expression of opinions. A public domain is thus constructed for citizens to chase the truth. *Weibo* has become an important measure to promote openness, health and equalization of social democracy. Just as Habermas said, “Public Criticism is not just a piece of public opinion, and it is not simply coming from an individual’s preference, but from the members of the general public, who concern and discuss public affairs.”^⑤*The Washington Post* once commented that *Weibo* was changing the structure of Chinese public opinion. In the past the public agenda or hot topics were decided by the elite or by reporters. Now, the situation is changing, people of the general public have taken the dominant position in shaping public opinion through the use of *Weibo*. *The New York*

① Cao Ru, “The Changes of Agenda Setting under the New Media Environment and Its Nature,” *Journal of Hebei University*, Vol.4, 2008.

② See Chen Yangping, “*Weibo*: A New Opportunity for the Rising Public Domain,” Master’s Thesis, Northwest University, 2012, p.47.

③ Zhou Yongkun, “‘Anti-corruption on Internet’ Requires Multi-hype, Anti-corruption and Clean Government Rely on Rules and Regulations,” *Social Science Weekly*, November 22, 2012.

④ Thompson, *Mass Communication, Social Theory, Public Life*, trans. by Wei Lin, Shanghai: Fudan University Press, 2003, p.79.

⑤ Habermas, *Structural Transformation of the Public Domain*, trans. by Cao Weidong, Shanghai: Academia Press, 1999, p.112.

Times also commented on the recent phenomenon in China of an active *Weibo*. When hundreds of millions of Chinese *Weibo* users focused on some social hot spots, they became powerful groups with strong political pressure, which would be huge enough to drive the change of society.^① “69% of interviewees choose ‘internet’ as the best communication channel to protect citizen’s right to know, to participate, to express opinions and to oversee,” according to the *People’s Forum* 2009 survey.^② The joint survey from *China Youth Daily* and *Tencent* shows that the internet report is the first option for citizens to choose (35.8%) as an effective way to report public official’s wrongdoings.^③ As a new online media, *Weibo* builds an unprecedented platform for overseeing the public power and publicizing democracy, for harshly criticizing, protesting, condemning and denouncing any suspected corruption of the government authorities and public officials in the discharge of his or her functions. “Everyone might post what he sees, hears and knows on *Weibo* in front of all the members of general public. This way of overseeing the relevant persons or agencies will cause them certain pressures. Therefore, the *Weibo* era is considered the era of oversight made by all the members of general public, which will favor clean governance.”^④ The value of freedom of speech on *Weibo*, especially in a period of rampant corruption, should be recognized and maintained institutionally in order to give full play to the positive energy of its anti-corruption. Particularly, people of the general public live in a hard time under the circumstances of the “government’s incompetence, bureaucratic corruption, and uncontrollable abuse of public power”. “If the citizens and social organizations are allowed to have a modest degree of freedom of speech, they might exert their freedom to protect the civil right by resisting tyrannical politics and curbing its development.”^⑤

III. The Conflict of Rights in Anti-corruption on *Weibo* and Its Legal Adaptation

From a legal point of view, the biggest conflict in *Weibo* anti-corruption is the conflict between two types of rights. “At present, the biggest problem involved in *Weibo* anti-corruption is the conflict between public official’s reputation, and their right of privacy and citizen’s right to know, and their right to oversee. On one hand, as an ordinary citizen, the public official has the right of privacy provided for by the Constitution; on the other hand, the Constitution also stipulates that public officials in the discharge of his or her functions should receive extensive oversight of the people, and the citizens have the right to know.”^⑥ To take *Weibo* anti-corruption serious, we should first of all have a correct perception, judgment and adaptation of this conflict of rights. The key to solve this problem is viewing and correctly treating the different hierarchy of value of each right theoretically and legally. Citizens’ criticizing and overseeing public officials’ suspected acts of corruption on *Weibo* platform is a fundamental right provided for by the Constitution. We must provide them

① See Li Guang, “China’s Political *Weibo*,” *Phoenix Weekly*, Vol. 7, 2012.

② See You Haibin, “Anti-corruption and Clean Government Campaign’s Entrance into the Information Age,” <http://legal.people.com.cn/GB/42729/11857595.html>, visited on March 16, 2013.

③ See Liu Yongtao, “Irony on Citizens’ Turning to Internet Instead of Government for Justice,” *China Youth Daily*, March 17, 2009.

④ Jin Xiaochun, Jin Yongcheng, “Analysis on the Broadcast’s Effect of *Weibo*,” *Press Circles*, Vol. 2, 2011.

⑤ Guo Daohui, “On Human Right and Citizens’ Right of Expressions,” *Hebei Law Science*, January, 2009.

⑥ Tu Yongzhen, “Anti-corruption on *Weibo*: Game Between the Members of General Public’s Right to Know and Public Official’s Right of Privacy,” *Leadership Science*, Vol. 5, 2012.

comprehensive and adequate legal protection. This right is the civil right of freedom of speech from a macroscopic view, and can be explained as a civil right to know and oversee from the microscopic point of view. The reason why such right is extremely important comes from the basic principle of popular sovereignty. The public power originated from the people and should surely be open and transparent. The public officials should allow the members of general public to know the performance of public power and accept their oversight. To discuss, understand and solve this issue we can still learn from the famous American case of the *New York Times v. Sullivan* in 1964.^① Its legal principles and the foundation of judgment remain instructive for our strict treatment of anti-corruption on *Weibo*, because the two cases share the same nature. This case's everlasting influence makes the right of news to oversee become elevated to a powerful force, the "fourth estate" outside of legislative, administrative, and judicial power.^② This case serves as a landmark to promote the freedom of press and freedom of speech, especially the freedom of media and citizens to criticize the public officials in discharge of his or her functions. What Justice Brennan wrote in the judgment is that "the discussion of public affairs should be uninhibited, energetic and widely open, which might include an intense, harsh, and even sharp attack on the government or public officials". This judgment has become a classic judgment and has been frequently quoted in later judgments. Decades later after this judgment, the chief justice's efforts to amend the libel law are shown in the U. S. Supreme Court's rulings. The core value of libel law gradually came into being, "no law... should violate freedom of speech or freedom of the press."^③ About this case, there are many background introductions and relevant studies in our country, so we won't repeat them, but simply choose the introduction and commentary of Lewis, who was a senior reporter of the *New York Times*. Lewis experienced the whole lawsuit of this case and wrote about it in his recent new book *Make No Law: the Sullivan Case and the First Amendment*.

In the *New York Times v. Sullivan* case, the First Amendment of the U. S. Constitution's "freedom of speech" clause was fully accomplished, and the freedom of speech was given extremely important value and special protection. "Without freedom of speech and freedom of assembly, the so-called rational discussion is nothing but an empty talk. Only with freedom of speech and freedom of assembly, can the rational discussion be safeguarded, and the spread of those harmful doctrines be prevented. The greatest threat to freedom is people's rigid, passive and indifferent thinking... The fear of social harms cannot be used as an excuse to suppress freedom of speech and freedom of assembly."^④ Therefore, to limit criticism is to limit democracy. As to the disrepute of the government public officials, it does not mean we have to relieve this with the cost of suppression of free speech. As for the so-called infringement of defamation in this case of freedom of speech,

① In 1960, Police Chief Sullivan accused *New York Times* of defamation based on a critical advertisement and brought the latter to court, and asked for huge compensation. *New York Times* was cornered owing to those claims filed consecutively by those local public officials. After two lost trials, the desperate *New York Times* appealed to the Federal Supreme Court. Nine chief justices in *New York Times v. Sullivan* tried their utmost to stem a raging tide, declared that, "the discussion of public affairs should be uninhibited, energetic and widely open," which safeguarded the freedom of media and citizens to criticize the public officials.

② "The fourth estate theory" originated from the United States Supreme Court Justice Potter Stewart's speech at Yale Law School. He argues that the Constitution is to maintain the existence of a well organized and responsible press, making it the fourth estate, besides legislative, executive and judicial powers. The functions of press are to actually oversee the government authorities and prevent the authorities from abusing power. See Brennan, Address, 32 *Rutgers Law Review* 173, 1979.

③ Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment*, trans. by He Fan, Beijing: Peking University Press, 2011, p. 244.

④ Ibid., p. 106.