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Legal Representation in the Chinese Criminal Court

- An Analysis of Court Cases Involving Serious Violent Crimes

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Abstract

Legal representation plays an important role in criminal sentencing decisions. China has recently stipulated a mandatory legal representation clause for all offenders facing capital charges in its Criminal Procedural Law (1996). This study uses data generated from criminal court case documents involving three serious violent crimes: murder, intentional assault, and robbery. All these crimes carry a maximum of sentence of death. The study examines whether and under what conditions legal representation has an effect on criminal sentencing decisions in China. While the overall multi-regression model did not find that having a legal representation significantly reduces the criminal sentence, a further analysis of the types of criminal defense reveals that sentencing decisions are significantly correlated with the type of defense, and in particular, the court’s appraisal of the defense. Theoretical and practical implications are discussed.

Introduction

Legal representation is considered the cornerstone of justice in most Western developed countries. The right to counsel for criminal defendants has become one of the fundamental due process rights in the United States. While studies of the effectiveness of legal representation on criminal case dispositions generated mixed results, a substantial number of studies found that legal representation significantly improved the odds for offenders to receive favorable outcomes at major stages of the criminal justice process (e.g., arrest, bail, charging, sentencing). For example, studies found that defendants who hire or retain their own counsel had lower conviction rates or lighter prison sentences than those who are represented by public defenders (Champion, 1989; Silerstein, 1965; Sterling, 1983).

China has been undergoing a series of legal reforms. One of them involves the improvement of the effectiveness and fairness of the criminal justice system. Legal representation, particularly for the poor and the less powerful, has been promoted to be an important safeguard for procedural fairness. In addition, the revised 1996 Criminal Procedural Law made legal representation mandatory for all defendants charged with a capital offense. This study examines if and under what conditions legal representation affects sentencing decisions in major violent crimes.

Legal Reforms and Legal Representation in China

Since the 1980s, a massive scale of economic reforms undertaken in China has precipitated a series of political and legal reforms. While formalization and legalization have been the focus of the political and legal reforms at the systemic, structural level, making access to education, training, and professional qualification exams available to average citizens facilitates the relative smooth transformation from the “rule of man” to “rule by law” by fueling qualified lawyers into the legal profession.

The abundant availability of qualified criminal defense attorneys also makes it feasible to enforce the laws of mandatory legal representation for the poor and those who face capital charges in China. However, this new reform initiative was implemented with much resistance from both the legal institutions and traditional cultural norms.

After decades of the legal reforms, however, the effects of these critical measures adopted by legal reforms have rarely been evaluated with empirical data. Limited studies that have examined the effectiveness of legal representation found that legal representation does not have a significant effect on the outcomes of sentences in China (Lu & Miethe, 2002).

Methods

Research Questions

- The current study examines three inter-related research questions:
- 1) What is the extent of legal representation in major violent crimes in China?
 - 2) Is legal representation effective? And in what regard? And
 - 3) Do types of legal defense matter? And under what conditions may these different types of legal defense affect the sentencing outcome?

Data, Variables and Methods

Data used in this study are drawn from published criminal court legal rulings. Records of three serious violent crimes are examined, including murder, intentional assault and robbery. After excluding other case types and cases with large missing data, a total of 225 cases were included in this analysis.

The Chinese legal rulings contain major information about the offender (e.g., age, gender, education, employment, marital status, prior offending history, attitude), offense characteristics (e.g., crime type, time, location, planning, motive, number of offenders, number of victims, weapon, harm, offender/victim relation), process (e.g., legal representation, appeal), and dispositional decisions (sentence). Table 1 presents major variables, their codes and frequency distribution.

Table 1 Frequency Distribution of All Variables (N=225)		
Sentence Outcome		
>=10 years (1)		24%
Life imprisonment (2)		12.4%
Suspended death sentence (3)		12%
Death sentence (4)		51.6%
Legal Representation		
No (0)		21.8%
Yes (1)		78.2%
Crime Type		
Robbery/Assault (0)		45.3%
Murder (1)		54.7%
Offense Severity		
No Injury (0)		11.5%
Some Injury (1)		8.9%
Single Death (2)		41.1%
Single death and add. injury (3)		13%
Multiple deaths (4)		25.5%

Analysis

As revealed by Table 1, nearly 80% of all criminal defendants charged with a serious violent crime had legal representation during trial. Given that our sample is non-random, and contains the most serious violent offenders, it is not supervising to see an extremely high rate of legal representation.

To address if having legal representation necessarily translates into a favorable sentencing outcome, a multi-regression analysis has been conducted. As revealed by Table 2, offenders with legal representation were significantly more likely to receive a more serious sentencing disposition than those without legal representation. This significant effect was found after controlling other legal and extralegal variables such as offense severity, aggravating/mitigating factors, and offender prior record.

To further explore why the OLS results contradict with general expectations that legal representation should bring about favorable outcomes, we classified criminal defense by four different categories and examined the correlations between court’s appraisal and sentence outcomes. The results are presented in Tables 3 & 4.

Table 2 OLS Regression Results (N=225)			
Sentence Outcome			
	B		Standard Error
Legal Representation	0.55	***	0.16
Crime Type	0.53	***	0.16
Offense Severity	0.13		0.07
Number of Aggravating Factors	0.41	***	0.07
Number of Mitigating Factors	-0.35	***	0.11
Offender Age	-0.00		0.01
Offender Gender	-0.11		0.19
Offender Prior Record	0.21		0.18
Co-offender	-0.21		0.16
Number of Victims	0.08		0.17
Offender Victim Relation	0.28	*	0.14
Constant	1.46	***	0.31
R Square =.538	Adjusted R2 =.515		
Standard Error of the Estimate=.881		ANOVA F=22.583***	
*p<.05; **p<.01; ***p<.001			

Table 3 Number and Percent of Legal Defense Offered by Type and Sentence Outcome					
	Total Cases N=192	>=10	Life	Suspended Death	Death
Mental Capacity	4.7% (n=9)	0% (n=0)	22.2% (n=2)	22.2% (n=2)	55.6% (n=5)
Character	37.5% (n=72)	12.5% (n=9)	9.7% (n=7)	16.7% (n=12)	61.1% (n=44)
Circumstances	12% (n=23)	26% (n=6)	8.7% (n=2)	21.7% (n=5)	43.5% (n=10)
Facts	63% (n=121)	14.9% (n=18)	11.6% (n=14)	14% (n=17)	59.5% (n=72)
Pearson Chi-Square *<.05, **<.01					

Table 4 Percent of Legal Defense Affirmed by Court by Type and Sentence Outcome					
	Total Cases	>=10	Life	Suspended Death	Death
Mental Capacity	33.3% (N=9)	n/a (n=0)	50% (n=2)	50% (n=2)	20% (n=5)
Character	44.4%** (N=72)	88.9% (n=9)	85.7% (n=7)	41.7% (n=12)	29.5% (n=44)
Circumstances	30.4%* (N=23)	16.7% (n=6)	100% (n=2)	60% (n=5)	10% (n=10)
Facts	14.9%** (N=121)	16.7% (n=18)	28.6% (n=14)	35.3% (n=17)	6.9% (n=72)
Pearson Chi-Square *<.05, **<.01					

Conclusions

Given the data limitations (e.g., non-random samples, lack of corroborating data sources), readers should be cautioned when deriving conclusions from the research findings. Nevertheless, this preliminary analysis of the serious violent crimes has several important policy implications. First, defense lawyers did not seem to have any instrumental value in the Chinese criminal justice system, at least in the context of obtaining more lenient punishment for their clients. Their presence in a criminal trial serves more of a symbolic function, particularly in the death penalty cases, to be more in line with the international standards. Second, the legal reforms that intended to transform the Chinese legal system from the inquisitorial to a more adversarial system have no doubt enhanced the status of the defense attorney, as evidenced in the types of defense provided by the attorneys. Nevertheless, judges rarely affirmed the defense of facts arguments when imposing serious sanctions. The defense attorney’s lack of standing in the criminal justice system suggests that the Chinese legal reforms have a long way to go to formalize the legal profession and to ensure the due process right.