Legal Representation in the Chinese Criminal Court

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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. The objectives of the current study were to examine whether legal representation has an effect on criminal sentencing decisions in China. While the overall multi-regression model does not find that having a legal representative 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.

Methods

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 cases are 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 hired or retain their own counsel had lower conviction rates or lighter prison sentences than those who are represented by public defenders (Champion, 1989; Silverstein, 1965; String, 1881).

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 political and legal reforms, the systemic, structural level, making access to education, training, and professional qualification exams available to average citizens formalizes the relative smooth transformation from the "rule of man" to "rule by law" by fueling qualified lawyers into the legal profession.

As revealed by Table 1, nearly 80% of all criminal defendants charged with a serious violent offense in the Chinese criminal justice system during the 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.

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.