

The Fairness of Sentencing for Ethnic Minorities: An Empirical Study on Drug Crime and Sentencing in China

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Abstract: Many studies and theories found discrimination against ethnic minorities in the criminal justice system in the West, there is a lack of similar research on the sentencing of ethnic minorities in China. Basing on a sampling of drug case judgments from 31 provinces in China, this study found no difference in sentencing between Chinese ethnic minorities and individuals of Han ethnic group with regard to fixed-term imprisonment. However, with regard to life imprisonment and death sentences, ethnic minorities received more lenient treatment, which is inconsistent with the predictions of Western theory, also implies that traditional Confucianism continues to influence China's criminal justice system.

1. Introduction

Criminal law regulations around the world are based on justice and require that the same offenses will carry the same penalties. In reality, however, studies pointed out that discrimination against ethnic minorities still exists in Western countries. This led to different punishments based on the race, ethnicity, gender, or citizenship status of defendants has represented an ongoing interest in the field of criminology. Many scholars have found that in countries with large populations of immigrants—such as the United States—minorities or non-citizens have suffered discrimination in the criminal justice process. [1] Although the United States promoted sentencing reform in the 1970s, which included guidelines for federal sentencing to prevent deviations and promote justice in the United States judicial system, the disparity in sentencing based on race and ethnicity still occurred after the guidelines were implemented. [2] In China, in addition to the Han, there are approximately 55 ethnic minorities; [3] the majority of the people in China are Han, accounting for 91.5% of the country. Most western countries, such as the United States or Canada, also have many different nationalities or ethnicities. However, non-Hispanic whites currently account for approximately 50–60% of the population in the United States. Similar research in the West would suggest that the Han ethnic group should enjoy an advantageous position in China's criminal justice system, while ethnic minorities could face disadvantages.

In this article, we consider the differences in sentencing between the Han and ethnic minorities across China. Many Western sociological theories address racially disparate punishment, such as group threat theory, [4] bounded rationality, [5] and label theory. [6] However, the influence of traditional Chinese Confucianism cannot be ignored. This is because traditional Chinese

Confucianism may be interpreted to advocate for greater benevolence to disadvantaged groups as a means to show the legitimacy of the government and the fairness of society. Confucianism had a far-reaching influence on the ruling class of the past dynasties in China and continues to represent the basic philosophy for governing the country. We have explored these theories to determine which proved most consistent with current judicial practice in the Chinese criminal justice system.

2. Previous Studies on Sentencing Disparities

2.1. Ethnic Minorities and Discrimination in Criminal Justice Procedures

Studies of countries with racially and ethnically diverse populations have shown that there are different types of discrimination in the criminal justice process. The first stage is when police officers discriminate against suspects during an investigation. For example, black drivers in the United States were 40 percent more likely to be stopped than white drivers, after controlling for age, gender, and location. [7] Incarceration rates also have varied widely according to judges assigned to cases, as was found in one study on the Circuit Court of Cook County in the state of Illinois. [8] Blacks received harsher sentences upon conviction. [9] Incarceration rates and lengths of sentence frequently have depended on a defendant's race or ethnicity. [10]

Steffensmeier and Demuth's research on the differences in judgments found that race had a small to moderate influence on the outcome of the judgment; white people received lighter sentences than Blacks, and drug offenders of Latin American origin received the harshest punishments. Another study revealed that minority defendants' death sentences were more likely to be overturned upon appeals, indicating that there was a higher incidence of racial discrimination in the lower courts. The southern states of the United States exhibited a higher probability of error for minority defendants who killed white (vs. minority) victims during the first and last stages of appeals. [11]

Discrimination also has existed in other criminal procedures, including final sentencing. For example, African American defendants have been more likely to be assigned monetary bail instead of being released without bail. Moreover, their bail has been set higher than for other defendants. [12] In the United States, racial disparities have been the result of unconscious bias in criminal justice decisions. The high rates of incarceration of minorities have represented a concern for the existence of systematic discrimination against minorities in the criminal justice system. [13] Using federal case data, Rehavi and Starr found that early cases and defendant characteristics explained racial differences in sentencing; Black people's sentences were an average of 10% longer than those of Whites who had committed the same crimes. [14]

2.2. Differences in Citizenship and Criminal Justice Procedures

Citizenship status also has impacted sentencing; non-citizen status often has been associated with harsher sentencing. An analysis of several years of data from U.S. federal courts shows that citizenship status was a significant predictor of the outcome of a judgment, more influential than what has been argued in theories of race or ethnicity and group threats. Compared with the past two decades, citizenship has had a greater impact on the outcome of the judgment. Moreover, the penalization of non-citizenship was more evident in regions that lacked citizen population growth, which proves the explanatory effectiveness of group threat theory. [15] The sentencing gap between citizens and non-citizens has been quite large, greater than the gap between minorities and whites. [16]

2.3. Racial differences in Penalties for Drug Cases

Other studies reviewed the difference in sentences imposed by U.S. judges on drug dealers. The federal judges in the southern district of California demonstrated considerable differences in the sentencing of drug smuggling cases. [17] A U.S. study on the arrest rate of drug crimes in Seattle showed that there was a statistically significant difference in the arrest rate of Blacks compared to Whites. [18]

Previous studies on the death penalty imposed on Black Americans have attributed the inequalities inherent to the criminal justice system to policies implemented since the beginning of the war on drugs. Officials' ideas about the possibility of recidivism have shaped decisions about the death penalty. The blatant racism that existed in the criminal justice system in the early 1900s has largely disappeared. Nevertheless, racial differences in the execution of justice prevail. Scholars have attributed distinct causes to these inequalities. [19] Since the Sentencing Reform Act of 1984, differences in sentencing in the United States have been related not only to the crime committed, but also to the individual characteristics of the defendant, such as ethnicity, gender, educational level, and non-citizenship, despite the fact that these characteristics are legally irrelevant, [20] indicating that the US Sentencing Reform Act did not improve the situation of unfair penalties, and that ethnic differences are factors that contribute to sentencing decisions.

3. Theoretical Framework

3.1. Group Threat Theory

Blalock's concept of "group threat" suggests that discrimination against minorities occurs when a dominant group feels their position is threatened due to the actions or existence of another group. The dominant group would view minorities as a potential economic and political threat. Consequently, extremist ideology would lead to support or approval of legislation with harsher criminal penalties on ethnic minorities that responded to perceived threats. The group threat theory has been used to explain the discrimination of ethnic minorities in countries with many immigrants. For example, Quillian proposed that the size and economic conditions of minorities could partly explain the discrimination against immigrants in Europe. [21]

In China, the Han ethnic group is the dominant ethnic group, China's ethnic minorities account for a small proportion of the population in most provinces and regions. This raises several interesting questions. Do Han Chinese feel threatened by the entry of other ethnic minorities into their areas, such as the entry of ethnic minority residents from other places into Han-dominated urban areas? Or do residents in ethnic minority areas feel threatened by Han Chinese entering their living areas? Whether they will continue to be discriminated against in their social lives as well as the judicial system remains an open question. This study aims to clarify this issue.

The proportion of ethnic minorities in China increased rapidly from 1964 to 2010. This was due primarily to China's one-child policy. The policy permitted ethnic minorities to have more children, which in turn led to stronger ethnic identities. No research has examined the possibility that this surge in minority ethnic identity generated changes in the Han majority's ideologies about prevention and protection. Has Chinese experience been different from related research in Europe and the United States that argued that the increase of immigrants or ethnic minorities has caused dominant ethnicities or races to feel threatened as a group? The research in this article attempts to answer this question.

3.2. Theories of Bounded Rationality and Focal Concerns

Spohn and Beicher argued that in the uncertainty with regard to the possibility of recidivism, judges could characterize Black and Hispanic male offenders as members of particularly predatory and criminally prone groups. [22] Bridges and Steen also confirmed that stereotypes could lead to racial differences in sentencing. Minority offenders often were punished more severely than Whites because judges believed that minorities were “more threatening and therefore deserved greater punishment and control”. [23] The theory of bounded rationality has explained that when there is insufficient information, judges have not been completely rational in their judgements of cases because they have only been able to rely on a few limited key factors as suggested by the focal concerns theory.

Similarly, the main argument of focal concerns theory is that judges’ limited time and lack of knowledge of the defendant’s background leads them to focus on three basic considerations: whether or not the convicted defendant is blameworthy, how dangerous it would be to society if the accused were not in custody, and whether or not the convicted person could serve a proper sentence; the defendant could be assigned an appropriate penalty. [24] However, different aspects of these considerations have not always been straightforward. As such, judges could still base their sentencing decisions on factors such as the race and social class of the defendants. [25] This stereotyping of ethnic minority youth defendants and their labeling as criminals into adulthood could lead to continued discrimination against them. [26]

3.3. Traditional Chinese Confucianism

Confucianism represents a foundation of traditional Chinese political and legal philosophy. China has amended the Criminal Procedure Law in 2012, while Chinese leadership emphasized both the rule of law and social harmony. This is also regarded as the product of the integration of Confucianism and Legalism in dynastic China. [27] The combination of mercy and severity is in line with the spirit of China’s traditional criminal law culture. The traditional Chinese emphasis on ideas such as “morality supplemented by penalty”, “morality governs”, criminal policy based on mercy and severity against indiscriminate killing, and “benevolent administration” had a profound effect on the ancient Chinese judicial system. [28]

Therefore, Confucianism has both subtly and overtly influenced the modern Chinese criminal justice system. It has been apparent in the tolerance and preferential treatment shown to disadvantaged groups or ethnic minorities to gain their gratitude in benefit of the country. The guiding principles of tolerance and forgiveness in Confucianism have continued to resonate strongly among the Han majority. Consequently, China’s criminal justice system could prove more inclined to treat minorities with some leniency.

Confucianism in practice could be compatible with Western notions of human rights. Scholars have identified an equivalent to the concept of human rights thought in the Confucian classics. [29] The protection of vulnerable groups could serve to achieve a certain degree of fairness that could help to maintain social order and peace and achieve long-term stability in the country. Traditional Chinese Confucianism may therefore still influence the contemporary Chinese criminal justice system, and this article attempts to explain this issue.

China has policies towards ethnic minorities that are distinct from those in the West, and most ethnic minorities in China have been assimilated. Moreover, many of them are no different from the Han in appearance, language, and customs. Some of the ethnic minorities in the border areas migrated to the Han-dominated central cities in search of work. They have been employed primarily in the catering industry, with little or no demographic impact on local residents.

China is a multi-ethnic country. However, unlike Western countries, China still lacks comprehensive empirical research on ethnic differences in the criminal justice process. The existing Western theoretical frameworks that center on group threat, bounded rationality, and focal concerns yield distinct approaches to ethnic minorities from traditional Chinese Confucianism. What philosophy informs the criminal justice system in contemporary China? This study included a selection of drug-related crimes as the object of analysis to examine the impact of ethnic factors on the sentencing of criminal cases in China's criminal justice system.

4. Data and Methods

This study was designed to analyze the impact of ethnic factors on sentencing for drug crimes in China. There were several reasons for this focus. First, drug crime cases began to rise in the 1980s and have represented a severe problem throughout China. It therefore made sense to limit the scope of the investigation to one type of crime, given the array of reasons for which sentencing could vary from one crime to another. The delimitation of the data in this way provided an agile means by which to test the impact of a given variable, in this case, minority status. Second, drug cases are tried throughout China and result in a wide range of sentences: fixed terms, life imprisonment, and death sentences. Therefore, it was possible to examine the impact of ethnic factors at a variety of levels of severity. Third, China's border areas such as Yunnan, Guangxi, and Xinjiang have had high rates of drug cases. These regions have historically had higher numbers of ethnic minorities. Finally, there has been a broad range of sentences for drug cases and the judiciary has had the opportunity to exercise discretion. The sentence of fixed-term imprisonment was calculated to the month and could be readily analyzed by a linear regression model. The difference in the probability of severe sentences could be analyzed by multiple logistic regression models for defendants sentenced to life or who received a death sentence.

4.1. Samples

This study focused solely on "smuggling, trafficking, transportation, and drug manufacturing crimes" as described in Article 347 of China's Criminal Law. The study used the conversion formulas stipulated by China's Supreme Court that provides measures for drugs with an equivalent amount of heroin, to ensure that the quantities of drugs involved in the different judgments are based on the same criteria so they can be considered comparable. The Supreme Court of China has uploaded court judgments from across the country to the Internet since 2014. As Chinese law stipulates that judgments must be published, this allows researchers to collect the judgment documents of the Supreme People's Court of China from official websites.

Sampling in this study was conducted randomly by province, which was roughly consistent with the proportion of the population of each province. The proportion of ethnic minority defendants in the total sample obtained in the final sampling was consistent with the proportion of ethnic minorities in China's total population, which indicates that the sampling was properly representative.

4.2. Dependent Variables

The dependent variable in the multiple linear regression model was the length of the fixed-term imprisonment sentence. According to the Chinese Criminal Law, the term should range from six months to 15 years. More serious sentences include life imprisonment and the death penalty. Because these are not continuous values, this article will not discuss them in the linear regression model, but they will be included in the multivariate logistic regression model below. The dependent

variable was converted to months to improve the accuracy of the analysis and was a continuous numerical variable.

The multivariate logistic regression model included three categorical variables: fixed-term imprisonment, life sentence, and death penalty. The model yielded the probability of life imprisonment and death penalty compared to fixed term sentences. The death penalty included immediate execution and reprieve.

4.3. Independent Variables

The focal predictor variable was the ethnic minority. There are 56 ethnic groups in China, the vast majority of which are Han, representing approximately 91.5% of the population. Due to their small proportion of the total population, this study treats all the cases involving non-Hans together as the focal variable: "ethnic minority".

Other variables included legal and case characteristics. Legal characteristics variables refer to the factors that affected sentencing by law. To save space in this article, I will not list them all here.

We decided to exclude all variables that represented less than 1% of the cases. These legal characteristics with a small probability of occurrence were not treated as variables in this model. Those factors with higher occurrence rates were retained as variables in the model. They were "truthful confession" (64.3%), surrender (10%), meritorious service (7.5%), accomplices (5.27%), and attempted crime (2.23%). The proportion of repeat offenders and recidivists was 48.7%, and the proportion of principal offenders was more than 3%.

The benchmark legal characteristics variable was the number of drugs involved. Article 347 of the Chinese Criminal Law stipulates that sentences would be longer for the manufacture, transportation, trafficking, and smuggling of drugs if the quantity of drugs involved was greater. However, the sentence for drug cases did not exhibit a linear relationship with the increase in the quantity of drugs. With the increase in the number of drugs involved, the fluctuation (variance) between the quantity of drugs and the sentence also increased. The best fit could be achieved by including the quantity of drugs in the natural logarithm model. A logarithm of variables has been a common method to solve data heteroscedasticity and skewed data, which also makes model estimates less sensitive to the estimation of extreme values. The purpose of controlling the drug variables involved was to test whether or not other factors such as the focus variable ethnic minority could independently affect sentencing. This variable was a continuous numeric variable.

The individual factors of the defendant included gender, education, and occupation. We divide China into three areas: "Minority-dominant areas", "Similar areas" and "Han-dominant areas", to create social environmental variables. Regions with a majority Han population are referred to as "Han-dominant areas". Finally, "Minority-dominant areas" are used as reference for this study.

4.4. The Models

4.4.1. Differences in Fixed-term Imprisonment: Multiple Linear Regression

Fixed-term imprisonment is analyzed using a multiple linear regression model. Other legal characteristics, offender characteristics, and social circumstances were all dummy variables. The formula of the multiple linear regression model was as follows:

$$Y=A+B_1\text{Ln}(X_1)+b_iX_i+\varepsilon_1 \quad (1)$$

In the formula (1), Y is the term of imprisonment, A is a constant, X_1 is the quantity of drugs involved (logarithm), and B_1 is the coefficient. Legal characteristics, offender characteristics, and

social circumstances are the control variables, together with the ethnic minority variables, X_i is used to representing them. b_i is the coefficient. ε_1 is random error.

4.4.2. Differences in the Probability of Life Imprisonment or Death Penalty: Multivariate Logistic Model

In China, when the defendant is sentenced to a heavier sentence than a fixed-term imprisonment, the judge has only two options: life imprisonment or a death sentence. The death penalty also includes the possibility of a suspended death sentence. The suspended execution period is two years. During this period, the defendant remains detained in prison, in most cases, they will not be executed after two years unless they continue to break the law while in custody. We introduced the minority ethnic variable and other control variables to determine whether there were different probabilities that ethnic minorities would receive any given sentence. The formula of the multivariate logistic model was as follows:

$$\begin{aligned} \text{Ln}(P_{dp}/ P_{fi}) &= A_1 + B_{i1} \text{Ln}(X_1) + b_{i1} X_{i1} + \varepsilon_1 \\ \text{Ln}(P_{li}/ P_{fi}) &= A_2 + B_{i2} \text{Ln}(X_2) + b_{i2} X_{i2} + \varepsilon_2 \end{aligned} \quad (2)$$

In formula (2), P_{dp} , P_{li} , and P_{fi} represent the probability of the death penalty, life imprisonment, and fixed-term imprisonment, respectively; X_1 and X_2 are the quantities of drugs involved (logarithm); b_{i1} represents the coefficient of each variable X_{i1} of the probability of sentenced to death vs. fixed-term imprisonment; and b_{i2} represents the coefficient of each variable X_{i2} of the probability of the sentence of life imprisonment or fixed-term imprisonment. Each regression coefficient represents the net influence of these variables on the above-mentioned occurrence ratio. A_1 and A_2 are the intercepts in the two equations, and ε_1 and ε_2 are random errors.

5. Hypotheses

As previously mentioned, First, the group threat or focal concerns approach suggest that ethnic minorities across China would be discriminated against in sentencing, except in areas dominated by ethnic minorities such as Xinjiang and Tibet. Second, bounded rationality would predict that in the criminal justice system, judges could only rely on limited information, such as ethnicity or race, to determine whether the defendant should be sentenced to a heavier sentence. If there existed prejudices in society where a certain minority represented a threat, race could become an independent factor that would affect sentencing. Finally, a Confucian approach would suggest that ethnic minorities would be given preferential treatment in sentencing. Which of the above ideas dominates Chinese criminal justice practice? Maybe China is not unique and that the theory of group threat, as well as bounded rationality, may also apply to China. Therefore, since Han Chinese are the majority of the Chinese population, both in society at large and in the justice system, criminal justice practice should reflect harsher penalties for ethnic minorities when dealing with them. Therefore, this study is based on the hypothesis that the Chinese judicial system also imposes harsher penalties based on race, in the form of longer sentences (in the range of fixed-term imprisonment) or a higher probability of imposing heavy penalties (in the probability of imposing life imprisonment or the death penalty) on ethnic minorities. In order to test which of the above theories apply to Chinese criminal justice practice, we propose the following hypotheses.

Hypothesis 1: Ethnic minorities have significantly longer fixed-term imprisonment than Han, even after controlling for relevant factors.

Hypothesis 2: Ethnic minorities have a significantly larger probability of being sentenced to life imprisonment or the death penalty than Han, even after controlling for relevant factors.

Hypothesis 3: The above effects exist in areas characterized by a greater population of Han as well as in those with a greater population of ethnic minorities.

6. Results

6.1. OLS Models of Sentence Length Decisions of Minority-Dominated Areas and Nationwide

Table 1 presents coefficients of the multiple linear regression model. Model 1 and Model 2 only included samples from minority dominant regions. Model 3 and Model 4 include samples from throughout China. In Model 1, only ethnic minority variables were introduced for the average sentencing among the Hans and ethnic minorities in all of the samples, without consideration of other factors (variables). The coefficient of Model 1 suggested that ethnic minorities received sentences of approximately 70 months less than the Hans. Model 2 included a sample from minority dominant regions. Controlling for the variables of drug quantity, legal characteristics, offender characteristics, and social circumstances, the coefficients of minority variables became insignificant. This indicated that the lesser sentences received by ethnic minorities were primarily due to the smaller amounts of drugs involved and not that the judicial system gave them preferential treatment.

Models 3 and 4 represented multiple linear regression models for regions across the country, including minority-dominated areas. The results showed that the coefficients of minority variables were insignificant. Controlling for legal characteristics, offender characteristics, and social circumstances, the coefficients of minority variables remained insignificant. There was no statistically significant difference between ethnic minorities and Han with regard to fixed-term imprisonment. We conclude that ethnic minorities across the country were not given harsher sentences or preferential treatment for drug crimes.

In summary, Hypothesis 1 was not confirmed with regard to fixed-term imprisonment. Although it appears that ethnic minorities enjoyed advantages in sentencing in areas dominated by ethnic minorities, this advantage could be explained primarily by the smaller quantity of drugs involved in their cases. Nationwide, there was no statistically significant difference between imprisonment and sentencing for drug crimes between ethnic minorities and Han nationalities. Theories about group threat, focal concerns, or bounded rationality were not sustained, suggesting that China is different from the multi-ethnic countries of the West. On the other hand, the result of preferential treatment for ethnic minorities predicted by Confucianism has not been confirmed, the principle of fairness is reflected in the sentencing of minorities when they are sentenced to a fixed term of imprisonment.

6.2. Multiple Logistic Regression Models of Fixed-term Imprisonment Compared to Life Imprisonment and the Death Penalty in China

Because there were very few defendants who were sentenced to life imprisonment or given the death penalty, the total number of these cases in minority-dominated regions alone would have been insufficient to properly perform a data analysis. Therefore, the analysis of the multivariate logistic model could only be carried out nationwide. Model 5 included only ethnic minority variables. Model 6 controlled for the quantity of drugs involved (logarithm). Model 7, included legal characteristics, offender characteristics, and social circumstances that permitted an analysis of the net effect of minority variables. The coefficients and significance are shown in Table 2. When only controlling ethnic minority variable in the model, the coefficient was not significant. Han people and ethnic minorities received life imprisonment or the death penalty equally throughout China. The coefficients of ethnic minority variables became significantly negative ($p < 0.05$) after controlling for all variables of legal characteristics, offender characteristics, and social circumstances, ethnic minorities received lesser sentences than Han defendants. In particular, ethnic minorities were

approximately half as likely to be sentenced to life imprisonment instead of fixed-term imprisonment as their Han counterparts. Moreover, ethnic minorities were sentenced to death at a rate of only 39% as of the Han defendants. This is the net effect after controlling for all the control variables.

Table 1: OLS Models of Sentence Length Decisions of Minority Dominated Areas

	Model 1, in MinoArea		Model 2, in MinoArea	
	B	S.E.	B	S.E.
(Constant)	89.424***	10.881	28.373*	15.209
MinoEthnic	-70.204***	29.997	-2.494	18.006
LnDM			23.627***	3.932
Attorney			42.735**	17.177
Recidivist			-6.763	11.721
Accessory			-40.420	19.626
Confess			-28.058	14.524
Surrende			-10.382	34.309
Merito			-60.050	28.144
Abortive			-.870	21.955
PrinCrim			4.378	19.305
Female			19.658	19.384
HiSchool			6.858	10.131
College			—	—
Farmer			1.160	15.772
Employee			-5.726	16.346
Manager			-11.945	29.164
	Model 3, in China		Model 4, in China	
	B	S.E.	B	S.E.
(Constant)	95.286***	1.229	35.072***	2.098
MinoEthnic	5.239	3.996	1.378	2.379
LnDM			23.749***	.398
Attorney			3.532**	1.569
Recidivist			5.458***	1.440
Accessory			-24.785***	2.408
Confess			-8.010***	1.525
Surrende			-21.115***	3.938
Merito			-14.452***	2.559
Abortive			-13.809***	4.139
PrinCrim			7.900**	2.971
Female			-1.006	2.190
HiSchool			.004	1.513
College			2.316	6.787
Farmer			.325	1.845
Employee			-10.340*	5.640
Manager			-11.398	13.468

Note. Dependent variable: Prison term (month)

* p<0.1, **p<0.05, and ***p<0.001.

These results may reflect the Confucian concept of preferential treatment for vulnerable groups (minorities in this case), which does not conform to the western sociological concept of group threat and bounded rationality that minorities will be treated more severely in practice. Therefore, Hypothesis 2 has not been confirmed in ethnic minority areas and nationwide. Hypothesis 3 has not been confirmed in ethnic minority regions and nationwide.

7. Discussion and Conclusion

The research in this paper leads to several findings. First, it seems that the Chinese judicial system does not give more severe prison sentences to ethnic minorities that Western theories such as group threat and bounded rationality predict. Conversely, after controlling for all sentencing factors variables, minority groups are less likely to be sentenced to life imprisonment or the death penalty than Han people, which is unexpected and may require other explanatory frameworks.

Second, we found that, unlike the sentencing that is laden with racial and ethnic considerations in the West, China's ethnic policy in criminal justice is based on social reality and national needs. In other words, too much preferential treatment for minorities could undermine social justice. Chinese policymakers adjusted the traditional Confucianism, in the application of national criminal policy. Maybe a policy of equal treatment adopted equal treatment for the sentencing of fixed-term imprisonment, ethnic minorities have continued to enjoy certain leniency regarding severe penalties in comparison to the Hans. By gradual adjustment, the impact and contradictions of policy changes have been reduced.

We found that the sentencing of ethnic minorities in China was different from what would be expected from the research conducted in Western countries. Theoretical frameworks that could prove useful for an understanding of sentencing practices in Western societies, such as group threat, focal concerns or bounded rationality approaches, failed to explain criminal sentencing in China. What is the reason for this difference? Several considerations regarding Chinese society and culture, could help to explain.

First, Chinese history has achieved the integration of most ethnic groups. A number of ethnic minorities have assimilated to Han society. Although they are still identified as ethnic minorities on their ID cards, these ethnic minorities are no different from the Han in terms of language, culture, customs, and traditions. Over time, they have lived together with the Han, and they have a higher sense of happiness in the process of national integration. Ethnic minorities enjoy some benefits not available to the Han, such as their right to bear more children than what the Han majority was permitted under the one-child rule several years ago. Except for Xinjiang Uyghur and Kazakh ethnic minorities, most of the ethnic minorities have no differences in appearance from the Han in China. The lack of externally identifiable national characteristics may cause judges to intuitively not regard them as aliens. Therefore, Western theories, such as group threat and bounded rationality, fail to explain the status of ethnic minorities in the Chinese judicial system.

Second, because the Han ethnic group dominates in China, neither the judicial system nor the citizens in China feel the threat of the migrant population to the local community. For example, there already have been many ethnic minority restaurants in various cities in China, such as Xinjiang restaurants and Northwest restaurants. Most of their owners are from ethnic minorities such as the Uyghurs in Xinjiang. Moreover, there are obvious ethnographic differences between the Uyghur and Han. However, the large difference in the proportion of the total population in most parts of China has resulted in a situation where residents and judges have not felt an impact or the threat of outsider ethnic minorities in the local community. They have maintained law-abiding businesses. Therefore, their existence did not have any threatening impact on the residents of the local society.

Table 2: Multiple Logistic Regression Models of Fixed-term Imprisonment Compared to Life Imprisonment and Death Penalty in China

a		Model 5			Model 6		
		B	S.E.	Exp (B)	B	S.E.	Exp (B)
Life Imprisonment	Intercept	-1.834***	.060		-10.852***	.516	
	MinoEthnic	.247	.176	1.280	-.449	.254	.638
	LnDM				1.901***	.095	6.690
Death Penalty	Intercept	-2.494***	.080		-18.397***	.894	
	MinoEthnic	.013	.258	1.014	-.950	.388	.638
	LnDM				2.939***	.144	6.690
a		Model 7					
		B	S.E.	Exp (B)			
Life Imprisonment	Intercept	-17.091***	3.443				
	MinoEthnic	-.613**	.310	.542			
	LnDM	1.817***	.114	6.156			
	Attorney	7.465**	3.387	1745.023			
	Recidivist	.974***	.226	2.648			
	Accessory	-1.917***	.341	.147			
	Confess	.052	.209	1.053			
	Surrende	-3.537**	1.294	.029			
	Merito	-8.178	8.197	.000			
	Abortive	-.643	.793	.526			
	PrinCrim	-.285	.326	.752			
	Female	.217	.320	1.243			
	HiSchool	-.474**	.227	.623			
	College	-.381	.921	.683			
	Farmer	-.023	.275	.977			
	Employee	-1.050	1.417	.350			
Manager	.893	2.264	2.442				
Death Penalty	Intercept	-5917.407***	1.102				
	MinoEthnic	-.944**	.437	.389			
	LnDM	3.042***	.171	20.938			
	Attorney	5898.655b	.000	.b			
	Recidivist	1.636***	.303	5.135			
	Accessory	-3.861***	.602	.021			
	Confess	.019	.284	1.020			
	Surrende	-8.308	13.421	.000			
	Merito	-2.335**	.984	.097			
	Abortive	-2.118	1.386	.120			
	PrinCrim	.218	.397	1.243			
	Female	.305	.445	1.356			
	HiSchool	-.104	.308	.902			
	College	-.856	1.433	.425			
	Farmer	.361	.380	1.435			
	Employee	-5.793	18.643	.003			
Manager	1.591	2.552	4.910				

Note. a. The reference category is: Fix term Imprisonment. b. Floating point overflow occurred while computing this statistic. Its value is therefore set to system missing. c.* p< 0.1, ** p< 0.05, and *** p< 0.001.

Third, the modern Chinese criminal law system originated from the continental law system. The law requires judges to strictly abide by the provisions set forth and judges have been able to exercise very little discretion in specific cases. In recent years, courts across China have established

computer systems for case retrieval, which help to standardize sentencing. Therefore, if a certain factor (ethnic identity in this study) has not been legally stipulated, it should not affect sentencing in practice.

Finally, the sentencing rules for fixed-term imprisonment have been very specific and judges have lacked discretionary power, which made the coefficients from Models 3 and 4 insignificant. However, there were significant sentencing disparities that seemed to favor minorities in the harsher sentence. This shows that, although the Confucian doctrine of preferential treatment of minorities has an impact on the preservation of China's criminal justice system, it already has been weakened.

There were several limitations to this study. First, the sample was small. The sample was limited to drug crimes. Moreover, only ethnic minorities in Tibet accounted for more than 50% of a region's population. Therefore, the sample size was insufficient for comparison in areas dominated by ethnic minorities. However, the cases were representative of the country. Furthermore, because there were too few cases of death penalty (including reprieves of death penalty), only three levels were set in the multiple logistic regression model.

Second, this study only sampled drug conviction cases from 2013 to 2015 and relied on cross-sectional data. Therefore, it failed to examine potential changes in sentencing over time. Moreover, the study was designed to examine only two aspects of punishment: the term of fixed-term imprisonment and the differences in life imprisonment sentences together with the death penalty compared to fixed-term imprisonment. Other differences, such as being arrested, prosecuted, or sentenced to probation, were not explored.

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