

THE FOUNDATIONS OF JUDICIAL DIFFUSION IN CHINA

Evidence from an Experiment

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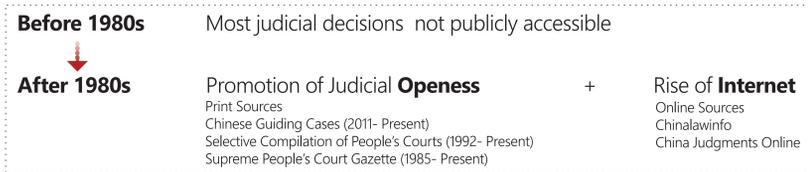
RESEARCH QUESTION

Do prior judicial decisions influence Chinese judges and how?

Introduction

An Emerging Trend in China: Increasing Accessibility of Judicial Opinions

An emerging norm of judicial transparency, coupled with the technological advances of the last decade, has resulted in the accumulation of vast bodies of cases available for consultation by both the lay and the learned.



These recent developments in the Chinese legal landscape enable judges to influence and be influenced by the decisions of judges sitting in other courts. As the emergence of "an informal system of precedent may significantly change the Chinese legal system," (Liebman & Wu, 2007) the existence, extent, and nature of any such influence is of relevance to both scholars and practitioners.

Methodology

An Experimental Approach

The literature has mostly examined the transmission of precedent in common law jurisdictions through the analysis of citation patterns.

Selected Examples

U.S. State Supreme Courts	Harris (1979), Caldeira (1985)
U.S. Court of Appeals	Smyth and Mishra (2011)
Australian State Supreme Courts	Solberg, Emrey, Haire (2006)

But Chinese judgments tend to be short and terse, and rarely, if ever, refer to other cases.

An experimental approach not only overcomes a major obstacle to studying judicial diffusion in a jurisdiction that is still wedded to the civil law tradition; it also allows us to make causal claims that cannot be substantiated by case studies alone.

THE EXPERIMENTS

Experiment 1

The Opinions Regarding Family Violence Cases (2015), Article 20 states, "fatal retaliation by a long-term victim of domestic abuse against the abuser may be eligible for sentence mitigation."

Judges were presented with this case:

Hong Xiao (girlfriend) and Ming Li (boyfriend) had lived together for three months. During the period of cohabitation, Hong Xiao was often assaulted by Ming Li. In response, Hong Xiao killed Ming Li by stabbing him to death while he was sleeping.

Judges randomly assigned to treatment were given the following supplementary information:

A court in Henan Province recently heard a similar case (there, the girlfriend and boyfriend had cohabited for two months) and gave the female criminal a lenient sentence.

Judges were then asked if they would impose a lenient sentence on a victim of domestic abuse who had fatally retaliated against her boyfriend after three months of cohabitation, and the length of the sentence they would impose.

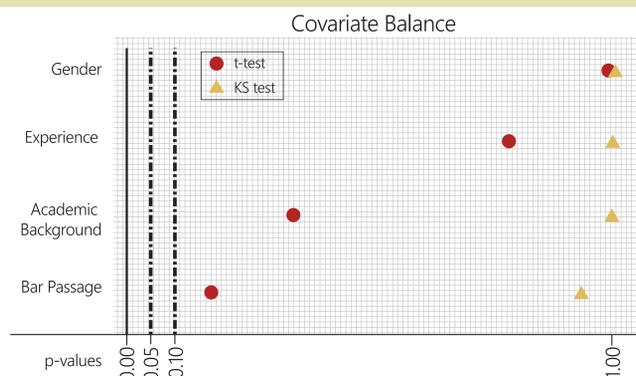
We also recorded for each judge his or her gender, length of judicial service, academic background, and bar passage (sifa kaoshi).

Subjects and Randomization:

- 407 judges from local, intermediate, and higher courts in 10 regions.
- The assignment to treatment and control was randomized within each court.

Treatment Effect on Interpretation:

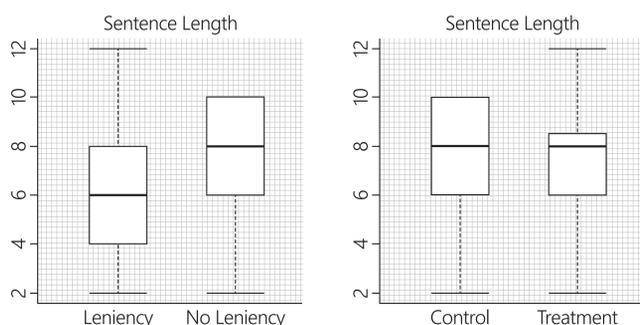
- Treatment, i.e. citation of a sister court's judgment, had a statistically significant effect on how judges interpreted the the vague legal standard of Article 20. This finding is robust across specifications.
- In addition, judges who have yet to pass the bar tend to resist the force of precedent while judges who have passed the bar tend to be swayed by it.



203 judges were assigned to treatment and 204 to control. As a check for covariate balance, we ran t and Kolmogorov-Smirnov tests for each covariate. The results suggest that the randomization succeeded in achieving covariate balance between both groups. The least balanced covariate is Bar Passage.

Treatment Effect on Legal Outcome:

- At the sentencing stage, judges who believed leniency to be legally warranted, regardless of assignment to treatment or control, sentenced less harshly.
- However, judges in the treated and control groups did not differ statistically in the length of the sentences that they meted out.



Experiment 2

To further examine the nature of the influence of prior judicial decisions on Chinese judges, we fielded a second survey that targeted students in Chinese law schools.

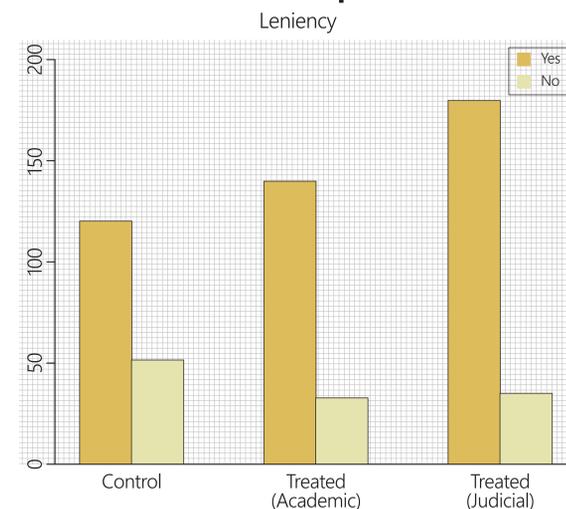
If the source of the anchor is especially important to judges, the influence of prior judicial decisions should be felt more strongly among them than among laypeople. But if the source bears no such importance, then the influence of prior judicial decisions should be generic.

This experiment is identical to the one designed for judges, except that students were assigned to either control, treatment that attributed the stimuli to a criminal law professor based in Henan University ("academic"), or treatment that attributed the stimuli to a court in Henan Province ("judicial").

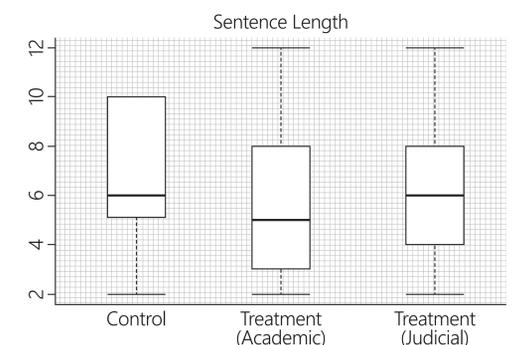
Subjects and Randomization:

- 558 Chinese law students
- The assignment to treatment and control was simply randomized through Qualtrics.

Treatment Effect on Interpretation:



Treatment Effect on Legal Outcome:



Results

- The results are similar to those obtained from the experiment on judges. The magnitude of the treatment effect is not affected by the source ("academic" or "judicial") of the stimuli.
- Moreover, the law students were influenced in their interpretation of the Opinion by judicial treatment to the same extent that judges were.

CONCLUSION

- We find that citation of a case out of Henan Province had a substantial and statistically significant effect on whether judges believed that a lighter sentence for a criminal defendant in a similar situation was legally warranted.
- This effect was not, however, accompanied by a reduction in the length of sentences awarded by judges.
- Finally, it seems that Chinese judges do not regard the judicial decisions of sister courts as having, by virtue of their source, special relevance.

Future research should examine more closely the nature of the influence that prior judicial decisions exert on judges in both common law and civil law jurisdictions as well as the conditions under which a legal judgment may become untethered from an anchored legal standard.

