

# STATUS, POWER, AND SENTENCING IN CHINA\*

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In this paper we use conflict theory to examine the effect of social status on legal punishment in China. We argue that unique features of Chinese society lead to complex and contradictory predictions about status effects on criminal sanctioning. On the one hand, the principle of "equality before the law" has not been central to the Chinese legal tradition. This feature of Chinese society implies that social status might be particularly effective for securing relatively lenient punishment from the courts. On the other hand, Chinese leaders have relied heavily on the exemplary behavior of models for social control. This practice conceivably could work to the disadvantage of high-status persons who have been convicted of a crime and thus have failed to live up to high expectations. Using inmates' self-report data from the city of Tianjin, we examine the effects of individual status and the status of one's friends on sentencing. Although the findings reveal few statistically significant effects, the general pattern of relationships suggests that the harshness of punishment is related positively to individual status and negatively to the status of friends.

The conflict paradigm has long been important in criminology. It focuses research on the relationship between political/economic system and the criminal justice system. Specifically, it examines how economic and political structures influence the structure and functioning of the criminal justice system, including police arrests, court sentencing, and correctional decisions. Analyzing criminal

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justice systems within this paradigm, criminologists commonly take social position and power as central to explaining variation in legal sanctions (Chambliss and Seidman 1971; Hawkins 1987; Liska 1992; Quinney 1977; Spitzer 1975; Turk 1969). Indeed, how social position and power influence variation in legal sanctions has become a classic issue in criminological research.

Since the early 1970s, this issue has generated extensive empirical research on the effects of social position (especially class, race, and gender) on legal sanctions. (For recent reviews of this literature, see D'Alessio and Stolzenberg 1993; Spohn 1994.) To date, empirical findings are inconsistent. The early work (late 1960s to mid-1970s) frequently reported a substantial bivariate relationship between social class/race and legal sanctions (e.g., Chambliss and Seidman 1971; Hills 1971; Krisberg 1975), which was taken to support the theory. In the second stage of work (from the late 1970s to the mid-1980s), researchers found that when legal variables (offense seriousness and prior offense) were controlled, the effect of social position was reduced considerably, sometimes to zero (e.g., Bernstein, Kelly, and Doyle 1978; Cohen and Kluegal 1978; Gibson 1978).

The inconclusiveness of the findings has been attributed to various unresolved theoretical and methodological problems in research, which constitute the third and most recent stage of work (Cohen 1983; D'Alessio and Stolzenberg 1993; Hagan and Palloni 1986; Teevan 1985; Tittle and Meier 1990; Walsh 1985; Weisburd, Waring, and Wheeler 1990; Wheeler, Weisburd, and Bode 1982). Some researchers have pointed to problems in the operationalization of social class or socioeconomic status. Others argue that combining different types of offenses in a single index contributes to ambiguities in the findings because social position may have different effects on different offenses (Chiricos and Waldo 1975; D'Alessio and Stolzenberg 1993). And still others have pointed out that the impact of social position may depend on various historical, political, and moral contexts (Benson and Walker 1988; Myers 1987; Peterson and Hagan 1984).

Although the impact of social position on legal sanctions has become a classic issue in Western criminological research, the issue has hardly been examined in non-Western cultures. Yet to establish the generalizability of the hypothesis, it is theoretically important to do so. In extending the conflict hypothesis to China, we build on Western research in two important ways. First we analyze the impact of social position on legal sanctions in terms of Chinese politics and society. Then we examine the effect of social position

on three offense categories (violent, property, and "economic" offenses) because we suspect that the effect may vary by offense category. The violent and property crimes under investigation are similar to the offenses typically analyzed in the Western literature. The "economic" offenses include corruption, embezzlement of public funds, bribery, smuggling, and falsification of trademarks, certificates, and commercial coupons. These offenses have become a major concern in China during the recent economic development.

### CONFLICT THEORY ON THE CHINESE CONTEXT

Marx's and Mao Zedong's class struggle theories dominated social life in the early years of the revolution and remain influential today. These theories maintain that class struggle is the major source of all social processes and that social conflicts, reflecting class struggle, are unavoidable and pervasive in social life. Marx and Mao viewed legal institutions as tools of the class struggle that are designed to promote the interests of the ruling class; after the communist revolution, the justice system was to become a means by which the proletariat would suppress and control and bourgeoisie and other antisocial elements.

During the two most important political campaigns, the 1957 "antirightist" movement and the 1966–1976 "cultural revolution," equality before the law and the formal legal system were among the major "bourgeois" concepts and institutions attacked most heavily. From the late 1950s until Mao's death in 1976, the Chinese criminal justice system had no criminal code, no criminal procedure code, and virtually no lawyers (Leng and Chiu 1985). Scholars such as Leng and Chiu (1985:21) observed that under Mao's rule, the "people's justice had no place for equality before the law."

Since 1979, under Deng Xiaopin's leadership, China has started to rebuild its legal system; even today, however, the system remains weak.<sup>1</sup> For example, although the most recent Chinese constitution includes an article (Number 33) on equality before the law, it also maintains in Article 1 that "[T]he People's Republic of

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<sup>1</sup> Consider the role of counsel. In many Western countries, lawyers play a central role in the legal process. The right to legal counsel is among the most essential rights of defendants. In contrast, the role of lawyers has been minimal in China: Under Mao's rule the legal professional did not really exist.

In 1980 the Fifth National People's Congress restored the legal profession. Under the Provisional Attorney Regulation, law offices were established as government offices. Lawyers were government staff members, received their salaries from the government, and were required to be "loyal to the socialist enterprise and the interests of the people."

In 1988 the Ministry of Justice established a collective law office test program (Law Yearbook of China 1990). Collective offices included both lawyers who were paid by the government and those who received their salary from the income of the law office.

China is socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants."

In these circumstances, extralegal factors such as social position might play a particularly important role in the administration of justice. In times when the spirit of revolution prevails, such as the cultural revolution, social position (economic and political) may work to one's disadvantage, producing harsher sentences. During more stable times, however, a weak tradition of equality before the law is likely to provide the circumstance in which social position may work to one's advantage, producing less harsh sentences.

Many other characteristics of Chinese social life and tradition also may create circumstances in which social position, especially political position, influences legal sanctions. Consider the systems of informal social control. It is recognized and well documented that Chinese social control relies heavily on informal mechanisms (Leng and Chiu 1985; Troyer 1989; Zhang et al. 1995). Mao Zedong never truly believed that social control could be realized by law, and no substantive or procedural criminal law was enacted under his rule. According to Mao, justice without law is the "people's justice." This concept was incorporated in Mao's mass line and in mobilization campaigns (Leng and Chiu 1985:21).

How, then, do people come to believe in and follow the party's direction with enthusiasm? A key element is exemplary behavior of party members, especially cadres. Model behavior by cadres is a critical component of the Chinese social control system. The party has always maintained that its members and cadres must be models for others, and considers this very important in realizing its control. In cadre selection, loyalty to the party is important, but so are moral character and past behavior. This emphasis has always been reflected in the party's rules and has been enforced in its discipline. The Communist Party often attributes its power in mobilizing people to its cadres' willingness to be model citizens.

The idea of social control through model behavior by leaders has its cultural roots in traditional Chinese thinking. Since Confucius, a philosophy of social control has gradually developed whereby legal sanctions are only a supplement to moral control. Numerous passages in "The Analects of Confucius" refer to social control through officials' examples. For example, Confucius said, "If a ruler is himself upright, his people will do their duty without orders; but

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In 1993 the government licensed law offices in which all lawyers received their income from the office, but attorneys' fee schedules were regulated by the government. Today very little plea bargaining takes place in Chinese courts, and confession is highly encouraged and rewarded.

if he himself be not upright, although he may order, they will not obey." (Confucius [1960]:book 13, chap. 6:266). "If a man put himself aright, what difficulty will he have in the public service? But if he cannot put himself aright, how is he going to put others right?" (book 13, chap. 13:268).

After Mao died, Deng Xiaoping started a new era of reforms, including law and legal reforms. In 1979 the National People's Congress passed China's first Criminal Law and the country's first Criminal Procedure Law. Among the 192 articles of the Criminal Law, 10 assign harsher sentences to certain offenders, such as repeat offenders. Three of these 10 articles involve harsher sanctions for cadre offenders, including punishment for cadres who take advantage of their position to speculate and profit (Article 119), who frame and libel others (Article 138), and who extort a confession by torture (Article 136).

Therefore, in Chinese politics and culture, the relationship between social position and legal sanctions is complex. Because the concept of equality before the law has not been a traditional part of the Chinese legal tradition and procedure, we might expect that the power associated with social status would be employed to reduce the harshness of legal punishment. Yet because the Chinese expect more of those who occupy high positions, we might expect that these social expectations would increase the harshness of legal punishment for those who fail.

In addition to considering individual status, we examine a distinctive factor of Chinese culture: *guanxi*, or personal connections or a network of friends. Westerners who travel to China quickly discover the importance of *guanxi* in everyday life (Butterfield 1982; Madsen 1984; Troyer 1990). The Chinese traditionally have emphasized loyalty to family and friends as a moral imperative: Friends are considered morally obligated to assist one another. This cultural norm can be traced back to Confucius's concept of *yi*, loyalty to family and friends. Confucius said, "A virtuous person cares about the *yi*; an immoral person cares about personal gains" ([1960]:book IV, chap. 16:170).

In Chinese social life, this mutual dependence of family and friends is an important source of support, but also an important source of corruption. The Chinese social reality of *guanxi* provides us with an opportunity to extend the examination of extralegal factors on legal sanctions into a new social dimension. We expect that the harshness of legal sanctions will be related negatively to the social positions of family and friends—That is, to *guanxi*.

In sum, applying the conflict hypothesis to legal sanctioning in China is not a straightforward process. Selected features of Chinese society can be identified as predicting either stronger or weaker effects of individual status than those expected in Western societies. In addition, distinctive features of Chinese society can be identified as predicting stronger effects of family or friend status than those expected in Western societies. Our study is a first attempt to examine such effects empirically.

## PROCEDURES

The data for this research were collected in collaboration with the Tianjin (China) Academy of Social Science in fall 1991. The sample is representative of all inmates admitted to Tianjin prisons in 1991. Using the complete roster of inmates admitted in that year, a 25 percent sample was randomly drawn. This procedure yielded a total of 1,063 inmates. The questionnaire was self-administered and anonymous. Trained research staff members helped illiterate prisoners to complete the questionnaire. The Chinese inmates were very cooperative: The response rate was close to 100 percent, typical of Chinese surveys that have official authorization (Blau and Ruan 1990; Walder 1990, 1992, 1995).

The dependent variable, harshness of legal punishment, is measured by the length of the current sentence (in months) as expressed in the question "How long was your sentence for the current offense?"

The independent variables encompass both legal and extralegal variables. Legal variables include the total number of prior offenses, the financial damage caused by the current offense, and the level of personal injury. Prior number of offenses is taken from self-reports and official records. The amount of damage is measured by the question "How much damage (in Chinese yuan) did your current offense cause?" (In the analysis, the variable is expressed per 1,000 yuan.) Personal injury is measured by a question asking whether any personal injury occurred and is scored as a dummy variable (yes = 1; no = 0).

Extralegal variables include age, income, education, occupation, and network of personal ties or connections (*guanxi*).<sup>2</sup> Age, income, and education are measured by questions asking inmates their age in years, their usual monthly income, and their educational level (no schooling, elementary school, middle school, high school, and college and beyond). We experimented with various

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<sup>2</sup> Very few inmates in the survey were female, party members, or members of minorities; analyses based on these characteristics therefore are not feasible.

parameterizations of education. The results show that the difference between illiterate and literate inmates is much more important than any differences among the literate. Therefore we decided to use a simple dummy variable coded 0 when the inmates reported no schooling, being illiterate, or knowing a few words, and coded 1 when they reported any formal schooling.

The original question about occupation included 19 categories. We recoded these into four categories: rural residents including all peasants and rural residents; urban self-employed individuals and small business owners; workers employed by state-owned enterprises and units; and state cadres—that is, officials of the government or of government-owned enterprises. This recoding reflects the relative level of occupational status in China, with state cadres at the top of the power structure and the rural residents at the bottom. Because we are uncertain of the functional form of this effect, the variable is constructed as three dummy variables, with rural residents as the reference category. “Self-employed” is coded 1 when the inmate was a self-employed individual or owned a business (otherwise 0); “state worker” is coded 1 when the inmate was a state worker (otherwise 0); and “cadre” is coded 1 when the inmate was a state cadre (otherwise 0).

*Guanxi*, or personal connections, is measured by two dummy variables: friend (*chu*) and friend (*ke*). Friend (*chu*) is coded 1 when the inmate reports close cadre friends whose positions are at the *chu* level, which is roughly parallel to a director of a government department in a major American city (otherwise coded 0). Friend (*ke*) is coded 1 when the inmate reports close cadre friends whose positions are at *ke* level, which is one level below *chu* and is roughly parallel to a supervisor of a division within a department in a major American city (otherwise coded 0).

For each of the three offense types (violent, property, and economic) we estimated two models that included both legal and extra-legal variables. Because of the high correlation between the two measures of *guanxi*, we performed and report two separate analyses. Models 1, 3, and 5 present the results when *guanxi* is measured by having at least one cadre friend at *chu* level; Models 2, 4, and 6 present the results when *guanxi* is measured by having at least one cadre friend at *ke* level.<sup>3</sup>

Diagnostic analyses revealed that the sentence length is somewhat skewed. Accordingly we transformed the variable using natural logarithms. We then compared analyses for models with logged

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<sup>3</sup> In other models we combined both measures of *guanxi* into an index. The coefficients generally fall between those presented when *chu* alone is included and when *ke* alone is included.

and unlogged dependent variables. Both the directions of the coefficients and the significance levels are generally very stable. Because the log transformation loses the original scale of the measure, the coefficients lack a straightforward interpretation. Therefore we report and interpret the models with sentencing in its original metric.

## RESULTS

Results of the regression analyses are reported in Table 1. Models 1 and 2 report the regression coefficients and significance tests for violent offenses; Models 3 and 4 report those for property crimes; Models 5 and 6 report those for economic offenses. Models 1, 3, and 5 include *guanxi* measured as *chu*; Models 2, 4, and 6 include *guanxi* measured as *ke*.

**Table 1. OLS Regressions of Length of Sentence on Legal and Extralegal Variables**

Independent Variables	Offense Type					
	Violent		Property		Economic	
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
<b>Legal</b>						
Economic costs	.83*	.84*	.34*	.34*	.04*	.04*
Personal injury	5.05	5.48	26.00*	25.94*	—	—
Prior offense	.68	.66	2.53*	2.53*	-1.52	-1.94
<b>Extralegal</b>						
Education	15.48	15.87	6.71	6.58	1.83	-1.61
Income	-.01	-.01	-.01	.00	.00	.00
Self-employed	-5.17	-5.02	-3.57	-3.49	20.26	21.02
State worker	5.97	5.82	.49	.51	3.33	2.82
Cadre	14.96	14.80	15.66	15.01	13.46	12.31
Age	3.11*	3.12*	2.60*	2.59*	4.63	4.40
Age <sup>2</sup>	-.03	-.03	-.03*	-.05	-.05	—
<i>Guanxi (Chu)</i>	3.17	—	-6.10	—	-16.70**	—
<i>Guanxi (Ke)</i>	—	-4.49	—	-.02	—	-4.40
R <sup>2</sup>	.19	.19	.10	.10	.31	.28
N	97	97	780	780	57	57

Note: Unstandardized coefficients are reported.

\*  $p < .05$ ; \*\*  $p < .10$

First we consider the legal variables. Financial or economic costs of a crime show a statistically significant effect for all crimes; as expected, the more severe the costs, the longer the sentence. By contrast, personal injury and prior offenses show a statistically significant effect only for property crimes.

Among the extralegal variables, none of the status characteristics except age yields statistically significant effects at the conventional .05 level for any of the offense types.<sup>4</sup> Thus the Tianjin data

<sup>4</sup> We perform one-tailed significance for the legal variables and the measures of *guanxi* because the signs of these relations are predicted by theory. Given the



do not support the standard prediction of conflict theory, namely that high status is associated with lenient legal punishment. Indeed, if anything, the general pattern of the results suggests that high status tends to increase the severity of punishment. The most privileged occupational category—cadre—yields positive effects across all equations. Being literate similarly exhibits positive coefficients in five of the six models. This latter finding is consistent with the general Chinese idea that knowing the law and then violating the law makes the person doubly guilty.

For age, we experimented with different functional forms, examining the possibility that the age effect might be curvilinear rather than linear. Chinese culture implies that responsibility should increase with age; this idea suggests that greater age is associated with more severe sentences. At some point, however, aging may lead to more lenient attitudes by the police and courts and thus to reduce sentences. The results generally support this hypothesis. The coefficients for age are consistently positive (statistically significant for violent and property offending), whereas the coefficients for age squared are consistently negative (statistically significant for property offending). These results suggest that the age effect is a single-peaked curve, which increases as age increases up to a point (age 36 for property crimes, age 40 for economic crimes, and age 50 for violent crimes) and then decreases.

The findings for *guanxi* are also intriguing. Personal connections in high places reduce the length of sentence in five of the six models. For economic offenses, where we expect these effects to be the strongest, the coefficient for *chu*-level *guanxi* is statistically significant at the .10 level. If this more permissive standard is applied, then having a friend in very high places (*chu*-level) reduces one's sentence by an estimated 16.7 months.

## CONCLUSIONS

The analyses reveal several interesting patterns. First, legal variables, especially the financial costs of the crime, play an important role in sentencing. They are evidently no less important in China than in the United States. Generally, the more severe the costs, the longer the sentence for all three crimes. Prior offense, however, seems to play a role only in property crimes, perhaps because there are fewer repeat offenders for violent and economic crime.

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contradictory predictions about individual status effects, discussed above, we use two-tailed tests to assess statistical significance for these variables.

Second, social status advantages such as high education, income, and occupation, which seem to decrease sentences in the West, do not exhibit such an effect in our analyses. If anything, they seem to increase the penalties in China.

Third, individual status advantages appear to increase the length of sentence, whereas having friends in high places, or *guanxi* apparently reduces legal punishment, especially for economic offenses.

If we keep in mind the provisional character of the findings, particularly the lack of statistical significance at conventional levels, the results suggest that social position (power) in China affects the harshness of legal sanctions in complex ways. We have little doubt that the resources associated with high status influence the legal decisions that subject people to criminal punishment in the first place (e.g., arrest, prosecution); for those who reach the judicial stage in the legal system, however, other social processes seem to take precedence. In China, exemplary public behavior on the part of party members and cadres is an important social control mechanism. For less serious misconduct, the party disciplines and educates cadre offenders within the party; but when a cadre commits an offense subject to criminal sanctions, a harsher punishment defends the party's reputation and therefore enhances its ability to control public behavior. If social position has any advantages for cases that reach the judicial stage, it operates through the position of friends. It seems that in sentencing, the final stage of the Chinese legal system, being socially disadvantaged but having friends in high places is an advantage.

Finally, these results in general must be viewed cautiously for two reasons. First, many of the findings do not reach the conventional level of statistical significance, in part because the variance of many independent variables is restricted. For example, only 73 of the 1,063 inmates have friends at the *ke* level, and only 34 at the *chu* level. This, however, should be expected: Few people in most societies have friends in high office. For those who do, our sample suggests that sentences are substantially reduced: 17 months shorter for economic crimes. Even so, because the variance of this variable is restricted, the results must be regarded tentatively.

Second, the sample was drawn from a prison located in one city, Tianjin; we acknowledge this limitation. A national sample would certainly be more representative, but such a design is not feasible at this time. The problems of collecting data on crime and criminal justice in China are well known. A more workable strategy is to replicate this study in other geographical areas.

In sum, research on the operation of the Chinese legal system is very sparse. Theoretically meaningful data are difficult to collect. Although our conclusions remain quite tentative and are based more on the pattern of findings than on their statistical significance, they offer a basis for hypotheses and indicate directions for future research. China offers a theoretically important context for further developing conflict theory and research on crime, power, and social control.

We must remember that conflict theory developed from Western experience and culture. Our research on status (personal and friendship networks) and sentencing suggests that this theory may require considerable modification to become applicable to the justice systems of societies, such as China's, which differ so sharply from those typically found in the Western world.

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