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Sentencing and computation of punishment —On “computerized sentencing”

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Abstract  Sentencing has long been a neglected area of analysis by both China’s academic and judicial circles. Nominally, there are no specific prescriptions in China’s criminal law regarding sentencing; in practice, however, courts arbitrarily integrate sentencing into the conviction proceedings of criminal trials. This lack of established specificity, when coupled with variation in the practice of different courts in various localities, has led to a general lack of transparency and substantial discrepancies in sentencing. Though some critics of the current system propose to unify the sentencing practice by adopting “computerized sentencing”, it is important to keep in mind that a sentencing system must necessarily be a dynamic process. As such, the focus and goal of sentencing should not merely be to compute a final punishment; rather, the system must justly reflect the society’s final evaluation of the offender and the crime. It is difficult to imagine that one-dimensional system as computerized sentencing can take into account the multitude of factors in considering a crime. Therefore, although it is necessary that the sentencing process should be separated from the conviction process, a “computerized” system may not be the best alternative.

Keywords  sentencing, criminal justice, conviction, penalty, restorative justice

摘要  量刑问题长期以来被学术及司法界所忽略。理论上，中国刑事法没有对量刑问题做细致的规定；实践中，法院将量刑问题并入定罪的审理程序中一并考量，加上各地法院做法各异，造成量刑不透明和巨大的差异性。有人主张为了统一量刑采用电脑软件程式化量刑诸因素，但量刑并非刑期的量化，不应该仅仅以如何具体化刑期为中心。量刑实际反映社会对犯罪人最终评价的动态过程，理应考虑更多因

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1 Issues put forward

Sentencing and conviction are two of the most critical phases of any criminal justice system. If conviction is the basis or justification, sentencing serves as the society’s final evaluation of the offender’s behaviors and the conclusion of criminal procedure based on this justification. Justifiably, it can be argued that sentencing proceedings hold even more significant than the conviction phase. This is because the primary purpose of conviction is to determine criminal responsibilities—this purpose can only be implemented through a sentence that denounces and penalizes the offender accordingly from the standpoint of social morality. Try to imagine the aftermath of a complicated and lengthy conviction process in which various evidences are employed to confirm by a high standard of proof that the accused is guilty—if the applicable punishment for this guilt is dictated by a seemingly arbitrary standard, then the importance and authority of the conviction would be seriously diminished. In essence, the conviction would even appear to lose meaning, potentially giving rise to doubts regarding the legitimacy of the conviction and sentencing process.

Traditionally, the reason why sentencing has not attracted sufficient attention in China’s criminal proceedings is that it has long been considered a realm of substantive law. Sentencing proceedings have been deemed of low importance because the general belief is that judges only concretely and automatically apply particular sentences when they are specified within substantive law. The reality of the situation, however, is quite different. By carefully investigating specific provisions of China’s substantive criminal law, we find that the law only suggests loose penalty ranges for many offenses; for some crimes the punishment may even range from the most minor penalties, observation or community service; to the harshest, the death penalty. Another reason for the lack of discussion is that in China’s criminal proceedings, conviction and sentencing, which are completely different in nature, are nonetheless handled through a single process. Arguably, it can be said that the

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1 For example, clause 1 of article 234 of the Criminal Law of China provides: “For those who injure the body of other people, fixed-term imprisonment less than three years, penal servitude or public surveillance can be imposed.” But in the following clause 2 it is provided: “For those who commit the crime stated in the previous clause … cause death of other people or seriously wound other people causing them severe disability in extremely cruel way, fixed-term imprisonment of over 10 years, life-imprisonment or death penalty can be applied.” This provision of blurry wording literally grants the judge or the court unlimited discretion in punishing the offender in any way they want.