PUNISHMENT OF BRIBERY AND CORRUPTION: EVIDENCE FROM THE MALAYSIAN JUDICIAL SYSTEM

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ABSTRACT:

We investigate the judicial outcomes of crimes involving bribery and corruption in the context of the Malaysian judicial system. Using a sample of 1869 court cases over the period 2006 to 2013, we find that 'white-collar' workers, politically connected offenders, government employees, female offenders, indigenous Malaysians (*Bumiputera*) and private attorney offenders receive more lenient treatment compared to others. Evidence is also found that prior conviction of the offender and the seriousness of the offencee play significant roles in determining the fines and imprisonment of the offender. Moreover, young offenders receive harsher sentences compared to older offenders in terms of jail sentences but young offenders receive lower fines compared to older offender. We also find that more educated offenders receive more fines but fewer jail sentences. Our findings clearly suggest that not everybody is equal in the eyes of the Malaysian judicial system.

Keywords*: accountability; independence; Malaysian judicial system; white-collar workers.*

INTRODUCTION

Corruption is regarded as one of the greatest threats to world economic and social development. It undermines good governance, distorts public policy and rule of law, and leads to a misallocation of resources (Seldadyo & Haan, 2006). Corruption can be defined as the abuse of entrusted public power for private gain (Transparency International, 2009). An enormous body of literature deals with the causes, consequences, and remedies for corruption (Seldadyo & Haan, 2006; Treisman, 2007).

Our study, which seeks to examine how the Malaysian judicial system handles bribery and corruption cases, is motivated by the observation that Malaysia has increasingly been perceived as a corrupt country. The country has steadily moved down the Transparency International's corruption perception index from number 37 in 2003 to 47 in 2008 to 54 in 2012 (Transparency International, 2013).[1] This perception of increased corruption reflects very poorly on the rule of law in Malaysia. The rule of law variable in the government quality indicator refers to the "the perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence" (Kaufmann *et al*., 2010, pp.10). Malaysia's scores for rule of law indicator have been between 0.4 and 0.6 from 2003 to 2012 on a scale of -2.5 to 2.5.[2] This simply means that the confidence of the Malaysian public towards their courts is not very high.

Criminal justice system or the sentencing system is expected not to be influenced by any existing codes, or prior sentencing and the courts, should of course be fair for all citizens.

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[1] In Transparency International's Corruption Perception Index (CPI), the lower the rank of a country the more is the perceived corruption in that country. It is worth to note that the CPI is not designed to allow for country scores to be compared over time due to the fact that rank will always deliver only on relative information which makes it a one-off assessment (Transparency International).

[2] This measure gives the country's score on the aggregate indicator, in units of a standard normal distribution, i.e. ranging from approximately -2.5 to 2.5 (The World Bank, 2013).

However, other informal norms or more subjective influences such as social structural position, gender, and race are also believed to exist in the system (Miller *et al.*, 1991). We argue that whether there are differences in punishment given to offenders based on their social status, gender, ethnicity, and political loyalty is worth investigating. We believe that the punishments given to offenders can point to some factors that are considered in the sentencing process. Prior studies have found a relationship between demographic characteristics and people's perceptions of the criminal justice system (Frank *et al.*, 1996; Flanagan & Longmire, 1996; Roberts & Stalans, 2000). Unlike prior studies, we collected data on the outcomes of real court cases. Thus, our data permit us to provide direct evidence on the fairness of the Malaysian judicial system.

In this study, we investigate prosecution in bribery and corruption cases in Malaysia. Specifically, we try to distinguish any differences in the final judgment of these cases in relation to offenders with different socio-economic and demographic characteristics. Sample cases were gathered from Malaysian courts for the years 2006 through 2013 that totaled up to 1869 cases. The analysis attempts to address the following questions:

(1) Are there any differences between the punishments given to white-collar workers and other criminals in bribery and corruption cases in Malaysia?

(2) Do white-collar workers receive any favourable treatment from the judicial system in the sense that they have a shorter time interval between the time their cases were first registered and the trial date?

(3) Does the distinction between government employees and non-government employees have any effect on the judges when making a judgment?

(4) Are there any differences between the punishments given by courts for crimes carried out in government-controlled and opposition-controlled states?

(5) Are there any differences in the punishments due to the ethnicity of the offenders?

Prior studies in this area have found mixed results regarding the characteristics that affect sentencing. Apart from that, most of the papers are similar in a way that they are limited to regional sample and used public opinion surveys. This study attempts to improve on prior studies by extending the research to a new country, Malaysia. More importantly, instead of using public opinion surveys, we employ multivariate regression analysis on archival data of 1869 real court cases over the period 2006 to 2013 on bribery and corruption in Malaysia.

The key results of this study can be summarised as follows. First, the 'white-collar' workers, government employees, and Indigenous Malaysians (*Bumiputera*) receive more lenient treatment from the judicial system compared to others. Second, males receive harsher sentences compared to females. Third, in states controlled by the ruling party, offenders, in general, receive 'softer' treatment from the judicial system compared to that in opposition-controlled states.

The rest of the paper proceeds as follows. First, we provide an overview of the institutional background of the Malaysian judicial system by focusing on the structure and the independence of the system. The paper then continues with a section on the theoretical framework and hypothesis development. The following section describes the data and methodology and is followed by data analysis. The final section offers some conclusions.

MALAYSIAN JUDICIAL SYSTEM

Structure of the Malaysian Judicial System

Malaysia is an emerging economy with a population of about 29.7 million (Department of Statistics Malaysia, 2012). The Federation of Malaysia consists of 13 states and 3 federal territories. Malaysia's population comprises of a mix of racial, religious and culturally diverse people (Department of Statistics Malaysia, 2012).[3] Since independence, Malaysia has adopted a governance system very similar to that of the British Empire with particular emphasis on three main branches namely executive, parliamentary, and judiciary (Azmi, 2012). However, there exist strong personal relations and links between the branches, particularly, members of the judiciary may have a submissive tendency to the executive branch (Department of Statistics Malaysia, 2012). The form of Westminster system that Malaysia adopted means that the parliament works in line with the executive branch which simply means the Judiciary has the responsibility to keep everything in balance and ensure a high level of independence (Fadzel, 2004). Moreover, the Malaysian legal system is founded on English common law system (Centre for Public Policy Studies, n.d.). The Malaysian legal structure consists of the legislative branch which is responsible for creating and amending laws, the judiciary branch which has the responsibility to interpret the laws and settle disputes in relation to the law. Specifically, the judiciary branch of Malaysia is responsible for ensuring that the Malaysian Federal constitution is upheld at all times and complied with in all court cases. It holds the power to settle disputes between individuals, between individuals and the states, between states, and between the Malaysian government and the state where matters associated with the Malaysian Federal constitution is affected.

The Malaysian courts can be categorised into classes: the superior courts and the subordinate courts. The superior courts consist of the Federal court, Courts of Appeal, and the High Courts while subordinate courts include the Sessions Court, Magistrates Court and the Children Court

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[3] In 2013, the population comprise of roughly 15 million Malay, 6.6 million Chinese, 2.0 million Indian, 3.5 million other Bumiputera and 2.4 million foreign. The total population is divided into 51.4% male and 48.6% female (Department of Statistics Malaysia, 2012).

(Chief Registrar's Office, n.d.). This system of courts also includes a special court that is responsible to attend to cases instituted by or against the Malaysian King, Sultan and Raja. The Federal Court is the supreme court of Malaysia, which is also the final court of appeal.[4] Judges in Malaysia are appointed by the Yang di-Pertuan Agong[5] with the advice of the Prime Minister while magistrates are appointed by state authority on the advice of the chief judge[6] (Chief Registrar's Office, n.d.). The Chief of Justice makes recommendations to the Prime Minister for the appointments of senior judicial positions.[7] This simply means that the Prime Minister holds the key to the appointment of senior officials of the Malaysian judicial system.

In the whole judicial system, there are 10 Federal Court judges, 20 Court of Appeal judges, 48 High Court judges and 16 judicial commissioners.[8] Adding up the judges of these superior courts and other subordinate courts would only yield a ratio of about 2.4 judges per million citizens compared to 10.5 in India and 51 in the United Kingdom (Centre for Public Policy Studies, n.d.).

Independence of Malaysian Judicial System

The judicial system of Malaysia is claimed to function with a high degree of independence (Centre for Public Policy Studies, n.d.). Trials for cases, civil and criminal, that are brought to the courts are fair and open. The accused must be brought before a judge within 24 hours of arrest. The accused or defendant has the right to counsel and bail. Malaysian courts use strict rules of evidence in all courts and appeal is available to higher courts. These characteristics of the Malaysian judicial system appear to suggest that the system operates at a high degree of

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[4] The Federal Court consists of the Chief of Justice, the two chief judges from the High Courts, and seven other judges.
[5] The Yang di-Pertuan Agong is the head of state in Malaysia.
[6] This is according to Article 122B (1) of Federal Constitution.
[7] This is according to Article 122B (2) of Federal Constitution.
[8] It is common practice in Malaysia to appoint judicial commissioners to act in lieu of judges of the High Court. However, they do not have the same privileges as the judges and only have a tenure of two years.

independence. On the other hand, many cases of interference with the judicial system have caught the attention of the media and public. For example, in 1988[9], the then Prime Minister, Dr. Mahathir Mohamad suspended the Lord President[10] of the Supreme Court, Tun Salleh Abas who was later charged under the tribunal for misconduct[11] (Centre for Public Policy Studies, n.d.). This led to the suspension and sacking of over half of the Supreme Court judges who had defended and backed Tun Salleh Abas. In another instance in 1996, a High Court judge decided to resign from his position after writing to the Chief of Justice about alleged corruption amongst several senior judges. However, almost a decade later the judge claimed that he had been forced to quit for his whistleblowing act (Fadzel, 2004).[12] In another case, the Royal Commission conducted an investigation into a scandal in which several individuals including a former Prime Minister were alleged to be involved in fixing judicial appointments and other court decisions (Centre for Public Policy Studies, n.d.). These specific cases cast doubt on the integrity and independence of the Malaysian judicial system. For instance, a survey in March 2007 by a local independent body, Merdeka Centre, found that less than 50% of the respondents had a favourable opinion of the judicial system whereas 36% of the respondents stated that they had an unfavourable view of the system (Transparency International, 2007).

THEORETICAL FRAMEWORK AND HYPOTHESIS DEVELOPMENT

Punishment of White-Collar and Other Offenders

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[9] It is in this same year that the government amended the Article 121(1) of the Constitution to remove the reference to the judicial power of the Federation, which was previously given to the courts. Until today, the Constitution does not explicitly specify to whom the judicial power of Malaysia was vested in.

[10] In 1994 the government amended the Constitution of Malaysia to establish a Court of Appeal. Around this time, the Supreme Court was renamed as Federal Court and the title Lord President was changed to Chief Justice of Malaysia.

[11] The misconduct referred to was Tun Salleh Abas' decision to write to the Yang di-Pertuan Agong to criticise the then Prime Minister, Tun Mahathir Mohamad's public outburst against the Malaysian judicial system.

[12] Although the judge, Syed Ahmad Idid Iyed Abdullah did not specify the official involved in his resignation, this case was thought to be an issue related to judicial integrity.

There is no single universally accepted definition of white-collar crimes. Most definitions of white-collar crimes can be placed on a continuum with a focus on the offense at one end and a focus on the offender at the other end. In this paper, we adopt Shapiro's (1990) offender-based definition because we believe such a definition can help us examine the variation in offender characteristics. White-collar criminals are criminals who earn above average salaries, positioned high in their organisation or are people of respect and high social status in the course of their occupation (Sutherland, 1949).

Consequences that could arise from white-collar crimes include individual and societal economic losses (Payne, 2011). What it means is that white-collar crimes not only affect the individual persons or business victims but also affect the society as a whole. For example, the societal costs from these crimes include potential business failures and recovery costs such as litigation costs (Payne, 2011). Moreover, every year the economic cost and damage caused by white-collar crimes far exceeds the total costs of any other types of crimes such as robbery, burglary, and theft[13] (Dutcher, 2005; Payne, 2011). However, there are instances of soft views toward white-collar crimes. For example, Holtfreter *et al*. (2008) cited a report by the United States Department of Justice suggesting that white-collar crimes are rated as low priority compared to other crimes such as violent crimes. This supports the notion that the American public perceives white-collar crime to be less damaging compared to violent crimes (Holtfreter *et al*., 2008). The authors suggested a notion of perceived risk of victimisation as a possible explanation for differences to punishments given to white-collar crimes as compared to street crimes.

In a survey of public perception in the U.S. comparing street robbers with white-collar criminals, Rebovich and Kane (2002) found that 62.9% of the respondents believed street

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[13] The Association of Certified Fraud Examiners reported that in 2004, from white-collar crimes, organisations lost about US$600 billion which was six to eight times bigger than the total value stolen in reported thefts.

robbers were more likely to be caught, and 66.4% of the respondents believed street robbers had a higher likelihood of receiving harsher punishment compared to white-collar criminals. This result, coupled with findings of prior studies, suggest that the perception of victimisation plays a role in sentencing.

Cases on white-collar crimes are more complex because they rely heavily on documents and are light on compelling eyewitnesses. Due to their heavy reliance on corporate issues and documentation, these cases are often dry and difficult to understand. Hence, looking at these issues in the high-level burden of proof standard simply means that there is only so much that judges can do in these cases. This argument is also supported by another strand of literature which, focuses on the perception of the severity of crimes as an important determinant used in the sentencing of criminals. The severity of crimes is usually assessed by many factors such as stability of the crime which, refers to whether it was a first or repeated offense. The severity of crimes is also affected by the type of crime such as the harm done to victims. For example, white-collar crimes such as embezzlement of company funds are perceived to be less serious as it does not cause any physical harm to the victims compared to robbery (Rosenmerkel, 2001; Tanasichuk, 2007). Although both strands of literature use different reasoning and evidence to support their arguments, one thing is clearly common between them that both believe white-collar offenders do receive lower punishments compared to other criminals which can be due to the injustice in the system, lower perceived seriousness of the crime or due to the high-level burden of proof that limits the power of judges to press charges to these criminals.

 Based on the above arguments, we propose the following hypothesis:

H_1: ***White-collar offenders receive lesser punishments compared to other offenders.***

Political Influence

Generally, sentencing and judges' decision-making process are highly influenced by legal variables such as crime severity, prior conviction as well as plea versus trial conviction (Smith & Damphousse, 1996). However, there are also many extra-legal variables that are believed to be very influential in the process. These extra-legal variables include age, sex, education, and other categorical attributes such as political affiliation of the offender. Smith and Damphousse (1996) found that political connection is strongly correlated to the sentence length or sentence severity such that they reported political affiliation as the best predictor of sentence severity.

Offenders' social and employment status often play an important role in influencing judges when delivering trial results. In a decentralised governance system as in Malaysia where state governments exist, the central government might have some influence over the judiciary. In particular, judges in states that are governed by the ruling party may take a 'softer' view to the offenders because people in those states may be viewed as supporters of the ruling party. On the other hand, in states governed by the opposition party, trial judges may be harsher towards offenders assuming that they are supporters of the opposition party. In addition, in a large power-distance country like Malaysia, trial judges may feel that they owe some leniency to the offenders because of the offenders' position in the power structure. Based on the above arguments, we propose the following hypotheses:

H₂: Offenders who have a favourable political connection are more likely to receive lenient punishments from the court.

H₃: Offenders who are employed by the government are more likely to receive lenient punishment by the court.

Influence of Demographic Characteristics in Punishments

Prior research suggests that punishments given to criminals could vary depending on the differences in demographic characteristics. These characteristics include gender, age, education, income, marital status, political ideology, and religion (Holtfreter *et al*., 2008). These factors are even more important in the Malaysian context since the population of Malaysia consists of many different races and religious backgrounds namely Malay, Chinese, Indian and *Bumiputera* for the former and Muslim, Buddhist and Christian for the latter. There is a growing body of literature that examines how gender affects punishments given to criminals. Some studies document that men are more likely to receive tougher punishments (Cullen *et al*., 1985; Keil & Vito, 1991) while others find that women receive harsher punishments (Cohn *et al*., 1991; Miller *et al*., 1991; Rossi *et al*., 1974).

Although the literature is growing, there is limited evidence on the effect of offender demographic background such as ethnicity on the perception of the seriousness of a crime. These studies have provided mixed results such that some of them have found a relation between ethnicity and perceived seriousness of crime (Cohen-Raz *et al*., 1997) while some others have found no significant relationship between the two (Benjamin, 1989).

Schoepfer et al. (2007) using a survey found that approximately half of the sample reported that they were married. Similarly, Holtfreter et al. (2008) using a survey of 402 offenders found that 221 were married (55%).

Rodriguez *et al*. (2006) posit that female criminals can benefit from their gender in sentencing decisions. However, they add that these differences could be affected by the type of crime. Specifically, the type of crimes committed acts as a moderating variable in the relationship between gender and sentencing such that females are less likely to be sentenced for both property and drug offences and they also receive lower punishments for violent crime.

Similarly, Stith (2003) found that a gender effect does exist in sentencing but it is not solely due to the bias of individual judges.

Based on the above arguments, we propose the following hypotheses:

H_4: Male offenders receive tougher punishment in bribery and corruption cases compared to female offenders.

H_5: Married offenders receive lower punishment in bribery and corruption cases compared to other offenders.

The age-crime distribution is positively skewed, with rates of offending that peak between the "crime prone" age of eighteen to twenty-five, and then decline over time, an aging out effect (Hirschi & Gottfredson, 1983). While the age distribution appears to hold for aggregated crime rates, it varies when white-collar and non-white-collar crimes are compared, suggesting that differences in age may also be revealed when distinct types of fraud are compared (Benson & Moore, 1992). Legitimate employment opportunities are often restricted by age requirements, so white-collar offenders are likely to be, on average, older than non-white collar offenders. Based on their sample of convicted offenders, Wheeler et al. (1988) found that the "typical white-collar offender" was a white male, aged forty on average. Alternatively, the image of the non-white-collar offender was a black male, aged thirty. Based on the above arguments, we propose the following hypothesis:

H_6: Young other offenders receive tougher jail sentences but lower fines in bribery and corruption cases compared to white-collar offenders.

According to Loeber and Dishion (1983) individuals with a low level of education are more likely to participate in criminal activity (Thornberry et al. 1998). The typical white-collar offender was assumed to be highly educated, and prior research contrasting white-collar and

non-white-collar offenders supported the assertion that white-collar offenders had higher levels of education (Benson & Moore, 1992). Wheeler et al. (1988) comparing both types of offenders found that white-collar offenders had the highest levels of educational attainment. Based on the above arguments, we propose the following hypothesis:

H7: Lower levels of education by other offenders cause them to receive tougher jail sentence but lower fines in bribery and corruption cases compared to white-collar offenders.

There is also a growing body of literature that examines how differences in ethnicity affect punishments given to criminals. The issue of incorporating offender ethnicity in making judgments of crime is highly related to the issue of prejudice. In her experimental study in the Canadian context, Tanasichuk (2007) found that participants that scored high in prejudice measure perceived crimes to be more severe and they also recommended longer sentences for the offenders. Her study used four variables; these were harm caused by the crime, offender ethnicity, victim ethnicity, and stability that refers to the first or repeated offense by a criminal. Tanasichuk found that the severity of punishments rises with an increase in perceived seriousness of the crime.

In Malaysia, the United Malays National Organisation (UMNO) has been in power since 1951. It is the longest continuing ruling party in the world. UMNO aspires to uphold the Indigenous or *Bumiputera* (Sons of the Soil) interests and protect the Malay culture. Hence, it is natural that *Bumiputera* or Indigenous Malays will receive favourable treatment from courts. Thus, we propose the following hypothesis:

H8: Indigenous or Bumiputera people in Malaysia receive lenient punishment in criminal sentencing.

When seeking to determine variation in punishment awarded for crimes, the most obvious predictors should include prior record of the offender, seriousness of the offense, use of a court-appointed attorney vs private attorney, etc. Discussion of the prior record of the offender among white-collar criminals is challenging. Generally, the majority of convicted white-collar offenders have hardly served prison time (Ivancevich et al., 2008).

Further, guided by extant literature on public opinion surveys about seriousness of the offense i.e. non-white collar vs white collar crime, the current study attempted to understand how seriousness of the offense influence the outcome of the act. In line with Cohn et al. 1991, we identified that sections are 10(a), 10(aa), 11(a), 11(b), and 17(b) of the Malaysian Anti-Corruption Act 2009 and section 214 of the Penal Code[14] are the most relevant sections for trials related to bribery and corruption.

Finally, the white-collar offender is able to afford a better quality legal attorney to provide a defense for the allegations. Champion (1989) examined how the use of private counsels, compared to public defenders, made a difference in the severity of the punishment offered in a plea-bargain agreement. The study showed that in cases in which prosecutors elected to drop criminal charges, a majority of the defendants were represented by private attorneys. Similarly, Clarke and Koch (1976) investigated the influence of income and other factors on whether criminal defendants go to prison. They found that a defendant's income did not affect whether the person was convicted of an offense, but rather the likelihood of going to prison on conviction. Finally, they suggested that most of this effect could be explained by the fact that low-income defendants face a poorer opportunities for pre-trial release and a greater likelihood

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[14] For example, section 10(a) and 10(aa) discuss the offence of soliciting or demand for corrupt payment, 11(a) the offence of receiving or accepting corrupt money by the receiver, 11(b) the offence of giving or paying corrupt money by the giver to the receiver and 11(c) is the offence of making false claims.

of having a court-appointed rather than a private attorney. Based on the above arguments, we propose the following hypotheses:

H9: Prior records of the other offenders in Malaysia cause them to receive tougher punishment in criminal sentencing compared to white-collar offenders.

H10: The seriousness of the offence by other offenders in Malaysia causes them to receive greater punishment in criminal sentencing compared to white-collar offenders.

H11: The use of private attorney by white-collar offenders in Malaysia causes them to receive lower punishment in criminal sentencing compared to other offenders.

RESEARCH DESIGN

Data

Data for this study are court cases relating to bribery and corruption collected from court database for the years 2006 to 2013. All variables were collected from Malaysian courts' archive with the help of the Malaysian Attorney General's Chambers. The sample comprises 1,869 cases from sessions and magistrates' courts from multiple states involving bribery and corruption offenses.

[Insert Table 1]

We measure the punishments in the form of fines (*Fines*) and imprisonment (*Imp*). In all our continuous estimations, we take the natural logarithm of these variables to normalise the distributions. The independent variables in this study are offender type (*Off_Type*), political influence (*Pol_Inf*), employment type (*Emp_Type*), gender (*Gender*), marital status (*M_Status*), age (*Age*), education (*Educ*), ethnicity (*Ethnicity*), prior convictions (*Prior_Conv*), offence seriousness (*Seriousness*), and attorney (*Attorney*). All these variables are dichotomous

variables except the *Age* variable. In line with the previous studies we included all the variables in our models (Champion 1989; Clarke and Koch 1976; Cohn et al., 1991; Holtfreter et al. 2008; Ivancevich et al., 2008; Miller et al., 1991; Rossi *et al.*, 1974; Schoepfer et al. 2007; Tanasichuk 2007; and Wheeler et al., 1988).

Table 1 lists all the variables and their definitions.

Models

We estimate the following models to test our hypotheses:

$Ln\_Fines = \alpha_0 + \alpha_1 Off\_Type + \alpha_2 Pol\_Inf + \alpha_3 Emp\_Type + \alpha_4 Gender + \alpha_5 M\_Status + \alpha_6 Age + \alpha_7 Edu + \alpha_8 Ethnicity + \alpha_9 Prior\_Conv + \alpha_{10} Seriousness + e$ .... *(Model 1)*

$Ln\_Imp = \beta_0 + \beta_1 Off\_Type + \beta_2 Pol\_Inf + \beta_3 Emp\_Type + \beta_4 Gender + \beta_5 M\_Status + \beta_6 Age + \beta_7 Edu + \beta_8 Ethnicity + \beta_9 Prior\_Conv + \beta_{10} Seriousness + e$ .... *(Model 2)*

where all variables are as defined in Table 1

In models (1) and (2), negative coefficients on *Off_Type, Pol_Inf, Emp_Type, M_Status, Age, Educ, Ethnicity* and *Attorney* would support H_1, H_2, H_3, H_5, H_6, H_7, H_8, and H_{11} respectively. On the other hand, a positive coefficient on *Gender, Prior_Conv* and *Seriousness* would support H_4, H_9, and H_{10}.

RESULTS

Descriptive Statistics

Table 2 provides descriptive statistics of the variables in this study. As Table 2 shows, the minimum and maximum amounts of fines imposed on offenders in this database are RM 600 and RM 894,400, respectively, with a mean of RM 27,984[15]. The mean and (median) period of imprisonment was 15.99 (16.00) months; the minimum and maximum period of imprisonment

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[15] RM stands for Malay Ringgit (Malaysia's currency).

(in months) given to offenders in this compilation of cases was 0.06 months (i.e., 2 days) and 324 months. The mean (median) value of *Off _Type* is 0.32 (0.35) i.e. white-collar offenders is 32 percent of our sample. As reported in Table 2, the mean and (median) value of *Pol_Inf* is 0.48 (0.50) i.e. 48 percent of our sample is case is heard in a UMNO-controlled (government controlled) sate. The mean and (median) value of *Emp_Type* is 0.23 (0.25) i.e. 23 percent of our sample are government employees. 46 percent of our sample offenders are male and 55 percent of our sample offenders are married. The mean (median) age of our sample offenders is 42.80 (43.00) years. The mean (median) value of *Educ* 0.60 (0.62) i.e. 60 percent of our sample offenders are at least college graduates. In relation to ethnicity, 19 percent of our sample offenders are *Bumiputera*. The mean (median) of *Prior_Conv* is 0.38 (0.40) i.e. 38 percent of our sample offenders have a prior conviction. The mean (median) of the variable *Seriousness* is 0.41 (0.42) i.e. 41 percent of our sample offenders fines or imprisonment were greater than the sample median fines or imprisonment. Finally, the mean(median) value of the varaiable *Attorney* was 0.62 (0.65) which shows that 62 percent of the sample offenders used a private attorney. These results are consistent with our expectations.

[Insert Table 2]

Correlations

Table 3 presents the Pearson's correlation coefficients for all the variables in this study. *Ln_Fines*, and *Ln_Imp* are negatively correlated as expected with *Off_Type* (r = -0.183, -0.214). *Pol_Inf* is negatively correlated with *Ln_Fines* and *Ln_Imp* (r = -0.024, -0.098). The variable *Emp_Type* is also negatively correlated with *Ln_Fines* and *Ln_Imp* (r = -0.091, and -0.161,). The variable *Gender* has a positive correlation with *Ln_Fines* and *Ln_ Imp* (r = 0.044 and 0.039). The variable *Age* is negatively correlated with both *Ln_Fines* and *Ln_Imp* (r = -0.321 and -0.351). The variables *Educ* and *Ethnicity* have negative and significant correlations with

Ln_Fines and *Ln_ Imp* (r = -0.214, -0.194; r = -0.218, -0.174) respectively. The variable *Prior_Conv* is positively correlated with the dependent variables as expected (r = 0.305, 0.355). The *Seriousness* variable is also positively correlated with *Ln_Fines* and *Ln_ Imp* (r = 0.502, 0.401) respectively. Finally, the variable *Attorney* is negatively correlated with *Ln_Fines* and *Ln_ Imp* (r = -0.421, -0.351) respectively.

[Insert Table 3]

Regression Analysis

Table 4 presents the results of the multivariate regression analyses. The variable *Off_Type* has a significantly negative coefficient of -0.684 in model (1) and -0.681 in model (2) respectively. These results suggest that white-collar offenders pay lesser in fines and face shorter jail sentences. These results are consistent with the prediction in H_1. Results for *Pol_Inf* has a significant negative coefficient of -0.261 in model (1) and -0.242 in model (2). These results suggest that, in government-controlled states, offenders pay lesser fines and face shorter imprisonment. These results are consistent with the prediction in H_2 that offenders with favourable political connections get more lenient punishments. Similarly, the results for the *Emp_Type* suggest that government employees receive lenient punishment. *Emp_Type* has a significant negative coefficient of -0.281 in model (1) and -0.264 in model (2). Thus, H_3 is supported.

For *Gender*, we find consistent evidence that male offenders face larger fines and longer jail sentences. The variable *Gender* has a significant positive coefficient of 0.258 in model (1) and 0.228 in model (2). Thus, H_4 is supported. However, the variable *M_Status* does not have a significant statistical relationship with the dependent variables, and therefore there is no evidence to support H_5. The results for Age suggest that older offenders receive shorter jail sentences but older offenders receive greater fines. *Age* has a weak significant negative

coefficient of 0.168 in model (1) and -0.104 in model (2), supporting H$_6$. *Educ* has positive

coefficient of 0.232 in model (1) and -0.153 in model 2. There is similar weak evidence to

suggest that educated people receive more fines but less imprisonment. Thus, H$_7$ is supported.

In terms of *Ethnicity*, we find evidence that ethnic *Bumiputera* receive favourable treatment

from the judiciary in terms of fines, but not for imprisonment. *Ethnicity* has a significant

negative coefficient of -0.125 in model (1), but the cofficient in model (2) is not significant.

The evidence thus only supports H$_8$ in respect of fines. The results for *Prior_Conv* suggests

that prior convicted offenders receives fines and impriserment harsher (positive coefficients

of 0.113 in model (1) and 0.235 in model (2)). Thus, H$_9$ is supported. Similarly for *Seriousness*,

the evidence indicates that more serious offenders receive harsher punishment in terms of both

fines and imprisonment (a positive coefficient of 0.321 in model (1) and 0.301 in model (2)).

The results for the varaiable *Attorney*, suggest that offender usea a private attorney receive

lower fines and imprisonment (a negative coefficient of -0.221 in model (1) and -0.198 in

model (2)). Hence, H$_{11}$ is also confirmed. In sum, we get consistent and strong evidence

supporting all our hypotheses except for H$_5$ (*M_Status*).

[Insert Table 4]

DISCUSSION AND CONCLUSION

Crimes and the punishment for crimes are topics of interest around the world. In this study, we

investigate the role of demographic and extra-legal variables in corruption and bribery cases in

determining the punishments awarded to offenders in the context of Malaysia over the period

2006 to 2013.

We find that courts in Malaysia do discriminate between offenders based on their

characteristics. However, our main finding suggests that white-collar criminals receive less

punishment in terms of fines and imprisonment compared to other offenders. This finding is

consistent with our expectation and prior studies in this area (Dutcher, 2005; Marriott, 2012). We also find that offenders in UMNO-controlled states receive relatively lenient sentences compared to offenders in other states. Moreover, government employees are treated more favourably than other in terms of fines and jail sentence. We also find that males face larger fines, and longer imprisonment compared to females. Moreover, aged offenders receive more fines but receive lesser jail sentences. We also find that educated offenders receive more fines but lesser jail sentences. We also show that *Bumiputera* Malays receive favourable treatment in terms of fines. Prior conviction of an offender has a positive effect on the severity of punishment. We also find that seriousness of the offense has a positive effect on the treatment of the offense. Finally, offenders using private attorneys are receive lower fines and lesser jail sentences.

Our study is one of the earliest to move beyond the empirical impasse in studying differences in courts' sentencing outcomes and punishments. Prior studies in this area has mostly focused on critical analysis or questionnaire surveys of the public or offenders. We provide evidence based on archival data of actual court outcomes. Our empirical analysis relates actual corruption and bribery cases to the actual judicial outcomes. Our findings suggest that the Malaysian judicial system is not as fair or independent as it is prescribed to operate. Judges appear to be influenced significantly by perceptions of the offender's societal and political position and power and personal characteristics in making sentencing decisions. Our findings confirm and extend prior studies' questionnaire or survey-based evidence regarding potential discrimination in judicial systems across different countries, beyond the white-collar versus blue collar distinction. These findings have implications for both the academic and the legal world. Judges in the Malaysian context, and possibly in other countries, need to consider the apparent discriminations and the impact on perception of lack of independence of the judicial system and impact on the public's confidence in the system. Future research should aim to test

whether similar findings hold for other juridisctions, as well as explore additional legal

variables that may influence legal outcomes.

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Table 1: Description of variables

Variable (s)	Label	Description of variable
Dependent variable(s)		
Fines	*Ln_Fines*	Natural logarithm of fines payable in *Ringgit Malaysia* (RM) which is the currency of Malaysia.
Imprisonment	*Ln_Imp*	Natural logarithm of imprisonment (custodial sentence) measured in months.
Independent Variables		
Offender type	*Off_Type*	This is a dummy variable set equal to 1 for white-collar workers and zero for others.
Political Influence	*Pol_Inf*	This is a dummy variable set equal to 1 if the case is heard in a UMNO-controlled (government-controlled) state and zero otherwise.
Employment Type	*Emp_Type*	This is a dummy variable set equal to 1 if the offender is a government employee and zero otherwise.
Gender	*Gender*	This is a dummy variable set equal to 1 if the offender is a male and zero otherwise.
Marital Status	*M_Status*	This is a dummy variable set equal to 1 if the offender is married and zero otherwise.
Age	*Age*	Age was the offender's age at the time of the offense and was measured in years.
Education	*Educ*	This is a dummy variable set equal to 1 if the offender is at least graduate and zero otherwise.
Ethnicity	*Ethnicity*	This is a dummy variable set equal to 1 if the offender is a *Bumiputera* and zero otherwise. *Bumiputera* (meaning, Sons of the Soil) refers to the original people of Malaysia.
Prior conviction	*Prior_Conv*	This is a dummy variable set equal to 1 if the offender has prior conviction and zero otherwise.
Seriousness of the offense	*Seriousness*	This is a dummy variable set equal to 1 if the offender fines or imprisonment greater than median and zero otherwise.
Attorney	*Attorney*	This is a dummy variable set equal to 1 if the offender used a private attorney and zero otherwise.

Table 2: Descriptitive statistics

Variable	Mean	Median	SD	Minimum	Maximum
Fines (RM)	27984.24	28100	63076.64	600	894400
Imprisonment (months)	15.99	16.00	29.38	0.06	324
Off_Type	0.32	0.35	0.56	0.00	1.00
Pol_Inf	0.48	0.50	0.89	0.00	1.00
Emp_Type	0.23	0.25	0.42	0.00	1.00
Gender	0.46	0.50	0.63	0.00	1.00
M_Status	0.55	0.56	0.62	0.00	1.00
Age	42.80	43.00	2.32	18.00	88.00
Educ	0.60	0.62	0.50	0.00	1.00
Ethnicity	0.19	0.20	0.39	0.00	1.00
Prior_Conv	0.38	0.40	0.50	0.00	1.00
Seriousness	0.41	0.42	0.49	0.00	1.00
Attorney	0.62	0.65	0.48	0.00	1.00

Table 3: Correlation Matrix

Variable	1	2	3	4	5	6	7	8	9	10	11	12
1. Ln_Fines	1											
2. Ln_Imp	0.467***	1										
3. Off_Type	-0.183***	-0.214***	1									
4. Pol_Inf	-0.024**	-0.098***	-0.004	1								
5. Emp_Type	-0.091**	-0.161***	0647***	0.022	1							
6.Gender	0.044*	0.039**	0.079***	-0.046*	0.150***	1						
7. M_Status	-0.254	-0.119	0.101	0.001	0.004	0.265***	1					
8. Age	0.321	-0.351***	0.321***	0.132**	0.114**	0.003	0.000	1				
9. Educ	0.214**	-0.194***	0.221**	-0.284***	0.004	0.146**	0.125***	0.135**	1			
10. Ethnicity	-0.218***	-0.104	0.004	-0.355***	0.423***	0.001	0.010	-0.148**	-0.004	1		
11. Prior_Conv	0.305**	0.355***	0.145**	0.391***	-0.214**	0.342***	0.005	0.179**	-0.224*	-0.114*	1	
12. Seriousness	0.502***	0.401**	0.224***	0.267**	-0.100	0.432***	0.101*	0.003	0.352**	-0.125**	0.356***	1
13. Attorney	-0.421***	-0.354***	0.487***	0.347***	0.004	0.102*	0.004	0.112**	0.145**	-0005	0.111	0.002

***Correlation is significant at the 0.01 level; ** Correlation is significant at the 0.05 level;* Correlation is significant at the 0.10 level (2-tailed)

All variable definitions appear in Table 1.

Table 4: Regression Analysis

$$Ln\_Fines = \alpha_0 + \alpha_1 Off\_Type + \alpha_2 Pol\_Inf + \alpha_3 Emp\_Type + \alpha_4 Gender + \alpha_5 M\_Status + \alpha_6 Age + \alpha_7 Edu + \alpha_8 Ethnicity + \alpha_9 Prior\_Conv + \alpha_{10} Seriousness + e \dots\dots\dots\dots\dots\dots\dots\dots\dots\text{ (Model 1)}$$

$$Ln\_Imp = \beta_0 + \beta_1 Off\_Type + \beta_2 Pol\_Inf + \beta_3 Emp\_Type + \beta_4 Gender + \beta_5 M\_Status + \beta_6 Age + \beta_7 Edu + \beta_8 Ethnicity + \beta_9 Prior\_Conv + \beta_{10} Seriousness + e \dots\dots\dots\dots\dots\dots\dots\dots\dots\text{ (Model 2)}$$

Variable(s)	Model 1 Estimate (t-statistics)	Model 1 Estimate (t-statistics)
Intercept	8.621***	2.231***
	(12.62)	(10.25)
Off_Type	-0.684***	-0.681***
	(5.21)	(5.89)
Pol_Inf	-0.261***	-0.242***
	(6.24)	(7.35)
Emp_Type	-0.281**	-0.264**
	(2.58)	(3.12)
Gender	0.258*	0.228*
	(1.72)	(1.70)
M_Status	-0.120	-0.101
	(1.15)	(0.96)
Age	0.168*	-0.104*
	(1.92)	(1.67)
Educ	0.232*	-0.153*
	(1.71)	(1.86)
Ethnicity	-0.125***	-0.041
	(4.65)	(0.95)
Prior_Conv	0.113***	0.235***
	(4.12)	(5.45)
Seriousness	0.321**	0.301***
	(3.56)	(3.98)
Attorney	-0.221***	-0.198***
	(4.12)	(4.52)
Adjusted R^2	0.465	0.525
N	1869	1869

***, **, * indicate statistical significance at the 0.01, 0.05, and 0.10 levels (two-tailed tests), respectively.

All variable definitions appear in Table 1