ABOLISHING THE DEATH PENALTY IN CHINA

Yuefeng Fan

A Thesis

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Committee:

Marian Williams, Advisor

Steven Lab
ABSTRACT

Marian Williams, Advisor

Although the death penalty is deemed inhumane and ineffective by some scholars, it still exists in some countries. Among the retentionist countries, China is the leader with a wide range of capital offenses and large number of executions. This is mainly due to the historic use of the death penalty, the influence of the heavy punishment culture, and the government and public’s belief in a deterrent effect.

The review of deterrence studies in the United States indicates that there is no consistent evidence for a deterrent effect. The studies reporting a deterrent effect are suspect due to the problems of data and methodology. Russia and Singapore are similar to China in some aspects. However, the death penalty does not show deterrence for murders in Russia and the moratorium on executions is not responsible for the increase in the murder rate. The extensive use of the death penalty in Singapore does not show deterrence, either. The comparison between these countries to China, as well as the review of deterrence studies, suggests that China can abolish the death penalty from a deterrence standpoint.
To my family and friends.
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CHAPTER I. INTRODUCTION

Significance of the Issue

Stemming from the thought of “an eye for an eye” in ancient society, the death penalty possesses many years of history in some countries, and it is still the most severe and extreme punishment against heinous crimes in present society. The debate over the abolition of the death penalty, however, has flourished since Beccaria claimed that the death penalty was unnecessary and ineffective (Hood, 2002). Scholars have long argued for its abolition or retention; some have argued that the death penalty should be abolished because it is inhumane and it does not show any more of a deterrent effect than a life sentence, while others adhered to the retention because the death penalty can spare potential victims’ lives. These and other ideas have influenced the practice of capital punishment in many western countries, especially European countries. In the twentieth century, the Council of Europe and the European Union prompted the death penalty abolition movement in Europe when they regarded the abolition of the death penalty as a requirement of their membership (Hood, 2002). The United Nations (UN) also adopted many international treaties and started the effort toward abolishing the death penalty worldwide. The UN passed the International Covenant on Civil and Political Rights (ICCPR) on December 16, 1966, for instance, stating that every human being has the inherent right to life and no one shall be arbitrarily deprived of his life (Article 6, as cited by Amnesty International, 2004a). At the same time, many nongovernmental organizations, such as Amnesty International, have paid much attention to the worldwide use of the death penalty in order to improve human rights protection. Thus, the death penalty is regarded by many scholars and international organizations as a violation of fundamental human rights and as a degradation of human civilization. Moreover, according to Hood (2002), the worldwide use of the death penalty is showing a trend towards
Nonetheless, China, as the country with the largest population, retains the death penalty, utilizes it to a large degree, and executes a great number of offenders every year. In the revised Criminal Law in China (1997), 68 crimes carry the death penalty. As for the execution number, China’s reported executions constitute about 70 to 80 percent of the total worldwide execution numbers every year, and Amnesty International suggested that the real execution number in China might be much higher than the recorded number (Hood, 2002). This fact has been widely criticized by international observers and human rights proponents, and it calls for more attention and studies on the death penalty abolition in China. In order to contribute to the abolition debate, this paper will not examine if the death penalty is morally unjust or violates the human rights to life, but will discuss the practical possibility of abolishing the death penalty in China from a deterrence standpoint.

Comparative Study in the Thesis

Chinese scholars have also become aware of the significance of this issue, and the debate over abolishing the death penalty has developed in China. But, because the Chinese government regards the official execution number as a state secret, all available data with regard to China’s executions were collected by Amnesty International through limited media reports. Therefore, no accurate and in-depth quantitative studies on the death penalty can be conducted in China. Most legal scholars argue for or against the abolition from the perspective of punishment justification and philosophy, but few people have conducted deterrence research to explore the relationship between the use of the death penalty and the crime rate.

Also facing the lack of reliable data, this thesis will not focus on data analysis. First, many previous deterrence studies provide an empirical basis for the discussion of China’s death penalty
issue. Second, other countries’ experiences regarding the use of the death penalty may be instructive for China’s practice. In spite of the socioeconomic, political, and legal differences between various countries, some similar countries’ experiences may still mirror the expected effects of abolishing the death penalty in China. Hence, taking into account most of the previous deterrence studies as well as other countries’ experiences with respect to capital punishment, this thesis will estimate the possibility of abolishing the death penalty in China.

As for the selected comparison countries, Singapore and Russia are considered comparable and instructive to China. According to an Amnesty International report (2004c), Singapore, the country with a similar culture to China, has the highest execution rate per capita. The government also treats the execution number with secrecy and controls media expression. It will prove instructive for China’s abolition movement if the data from Singapore suggest this is possible. Russia’s former president, Yeltsin, declared a moratorium on the use of the death penalty in 1996, and executions have not been observed in recent years (Hood, 2002). But, according to Hood (2002), Russian State Duma requested the reinstatement of capital punishment due to the high murder rate. Russia is a post-communist country and seeks the approval of the international community like China. Russia’s moratorium will provide another perspective for China’s abolition movement.

Plan of the Thesis

The thesis will be composed of six chapters. The following chapter will be the introduction to the Chinese criminal justice system, comparing it to the American criminal justice system. Specifically, the Chinese culture on punishment, the historic change of Chinese Criminal Law and Criminal Procedural Law, the political and social environment, the current criminal justice system, and the differences compared to the American system will be described in this section.
Focusing intensively on the use of the death penalty, each agency’s function and procedure will be explained following the order of how a death case is processed.

Chapter 3 will deal with the worldwide use of the death penalty. According to Amnesty International data, more and more countries are moving toward abolishing the death penalty (Hood, 2002). This section will provide an overview of the death penalty abolition movement and the practice in retentionist countries. The next chapter will be a review of previous deterrence studies. These studies will be grouped according to their findings, and the methodological problems and data reliability will also be discussed in this section.

Chapter 5 will be a discussion of the specific countries of Singapore and Russia, providing a comparative analysis between these countries and China from a deterrence standpoint. The thesis will end with an assessment of abolishing the death penalty in China. Based on Chinese practices, previous deterrence studies, and the comparison to other countries’ experiences, this thesis will give a speculation if the death penalty can be abolished in China and examine the potential deterrent effects following abolition.
CHAPTER II. CHINESE CRIMINAL JUSTICE SYSTEM AND THE USE OF THE
DEATH PENALTY

Political System

China has been a centralized country since the Qin Dynasty (221 B.C.-207 B.C.). Currently, China has a central administrative system and a local administrative system. The central administrative system deals with national affairs and supervises the local administrative system. The State Council is the highest administrative and executive organ in China. It exercises the “unified leadership” over its subordinate departments (e.g., Department of Public Security) and local governments at various levels (Constitution of P.R.C., 1982, Article 89). The country now constitutes 31 provinces, autonomous regions, and municipalities directly under the Central Government on the mainland plus two Special Administrative Regions-- Hong Kong and Macau. The lower level division includes cities, counties, autonomous prefectures, autonomous counties, and districts. The basic level of local government lies in townships, villages, and towns (Constitution of P.R.C., 1982). Being directed by the higher government and under the “unified leadership” of the State Council, local governments are responsible for local policy-making, order maintenance, and the management of local jurisdiction (Constitution of P.R.C., 1982). A local government’s incorrect or inappropriate decision might be modified by the higher government. According to the Constitution (1982), governmental agencies, such as the public security agency (police) in the city, are subject to the leadership of both the government at the same level and the agency at the higher level.

China is a socialist country and the Communist Party of China (CPC) is the ruling party. The CPC can organize and lead legislation and law enforcement, manage the people’s troops, supervise officials, and manage society. There are eight democratic parties cooperating and

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1 The sovereignty of Taiwan is still a pending debate.
consulting with the CPC in the country management and policy-making processes. Party teams exist in governmental agencies and other organizations in order to instruct the organizational activities².

The Chinese Constitution (1982) states that all power belongs to people, who exercise the power through the elected National People’s Congress (NPC) and local people’s congress. Therefore, the highest legislature is the NPC. Also, the NPC is the “ultimate authority over all the legal and governmental decision-making” as well as the overseer of all agencies, including the criminal justice system (Seay, 1998, para.10). In addition, the Minister, the president of the Supreme People’s Court, and the Procurator-General of the Supreme People’s Procuratorate³ are elected and can be removed by the NPC. Local people’s congresses exercise the highest power within their jurisdictions, elect major officials, and oversee all agencies. Local people’s congresses also enact local regulations and policies based on the local situation, but they must comply with laws and higher regulations. All of the people’s congresses at the county level or above have a standing committee as the permanent body to exercise their power when the people’s congresses are not in session (Constitution of P.R.C., 1982).

Chinese Culture on Punishment

During the East Chow Dynasty (770 B.C.-221 B.C.), a large number of prominent thinkers, such as Confucius and Hanfei, emerged, and groups such as Confucians and Legalists have affected the evolution of legal doctrines and systems in China for thousands of years. Legalists claimed that every human being was essentially evil and benefit-oriented. Only benefit could induce people to comply with the law, while punishment could deter them from violating the law ("Legalists", n.d.). They believed that people could only be deterred or incapacitated, but not

³ People’s Procuratorate is the organ of legal supervision in China and the obligations of procurators are similar to the prosecutors in the United States. These terms are from the Constitution of P.R.C. (1982).
rehabilitated; legalists emphasized the “rule of law” and the function of punishment to strengthen the state control. Legalism also featured the imposition of heavy punishment for minor offenses. One Legalist, Li Kui, suggested in his works that, for example, one who picked things on the road should be sliced ("Confucian", n.d.). Legalism flourished in the Qin Kingdom (770 B.C.-221 B.C.) and provided Yingzheng⁴ an effective tool to unite and manage China before Confucianism replaced it in the Han dynasty (206 B.C.-220). However, Legalism still influenced the official policy of punishment and public opinion even though it had lost the dominant place. According to Legalists, heavy punishment should be utilized especially when society was instable and chaotic. This ideology stimulated the enactment of many brutal laws in feudal regimes. It also seems to provide support for the use of the death penalty in modern China because China is experiencing a dramatic social and economic change accompanied by a severe crime wave.

As stated earlier, Confucianism replaced Legalism in the Han Dynasty because the emperor was in favor of Confucianism. Confucius believed that human nature was essentially good and people would conform to the law through education. Confucians adhered to moral education and opposed the use of punishment, especially the punishment of the vulnerable such as the elderly (Lu & Zhang, 2005). At the same time, Confucianism had another emphasis upon the role of the individual leader (e.g., an emperor) and upper classes. The leader’s good example, rather than the punishment regulated in laws, would induce and educate the public to be good (Chen, 2004). Also, the management of the country and enforcement of the law depended heavily upon the leader’s wise decisions (Seay, 1998). After Confucianism became the dominant ideology in the Han Dynasty, the discretion of individual leaders was maximized, and China started a long

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⁴ Yingzheng was a king of the Qin Kingdom who united other six kingdoms and established a centralized China starting with the Qin Dynasty (220 B.C.-207 B.C.).
history of “rule of the person”, and the public lost the respect for the law. Emperors were in favor of Confucianism because they were given more power to manage and control the public, especially those endangering the regime. The emphasis upon heavy punishment, however, still existed during each dynasty because the leaders also regarded punishment as a useful method to strengthen control. In addition, Confucius introduced the “concept of the importance of society over the individual”, which coincided with the socialism and communism doctrines (Seay, 1998, para. 2). It resulted in the neglect and sacrifice of individual interest when it conflicted with group and social interests.

In sum, both Confucianism and Legalism influenced the evolution of the legal system and punishment policy in different eras. China has a long history of “rule of person” and lack of respect for law. The tradition of heavy punishment led to the wide acceptance of the death penalty in China.

Current Criminal Justice System in China and the Difference from the American Criminal Justice System

Like the administrative system, the current criminal justice system in China is composed of a central system and a local system. Except for the court system, other criminal justice agencies are strictly supervised by the higher level and central agencies. The Constitution (1982) claimed that the people’s courts exercise judicial power independently. The Supreme People’s Court oversees the trial practice national wide, and higher level people’s courts oversee the trial practices in the lower level courts (Article 126 & 127).

In this section, how a capital crime would be processed in the American criminal justice system will be introduced first, followed by the description of the processes in China’s criminal justice system. Furthermore, some major differences between the Chinese and American criminal
Processes of Death Cases in the US

In the United States, both the states and federal government have a respective set of laws and criminal justice system. The processes dealing with capital cases, however, are almost the same in both systems. The police first seek an arrest warrant from the judge, providing that they can convince the judge with sufficient evidence of the offence. After the suspect is arrested, he/she can have an attorney and will be informed by the judge of charges, bail decision, and other rights. After that, a preliminary hearing or grand jury will be held to examine the sufficiency of evidence and determine if the case should be moved to trial. Once the case is moved to the court for trial, a panel of judges or a jury of citizens will hear the case, judge the facts, apply laws, and issue a sentence (Lab et. al, 2003). Death sentences in all retentionist states, except Arkansas, are provided automatic review by the state’s highest appellate court. The death sentences may also be heard by the U.S. Supreme Court (Neubauer, 2005).

Processes of Death Cases in China

Police

Once the police obtain sufficient evidence that the offender might have committed crimes and violated the law, according to the Criminal Procedure Law (CPL, 1996), the police can submit an application for an arrest warrant to the people’s procuratorate, along with the files and evidences. This differs from the procedure in the United States, in which a warrant is issued by the judge. After gaining the warrant, the police can arrest the suspect. On the other hand, the police can also detain the suspect without the warrant under the following circumstances: (1) the suspect is to commit a crime, is committing a crime, or is caught right after committing a crime; (2) the suspect is identified by the victim or witness; (3) evidence is found beside the suspect or
at his/her residence; (4) the suspect tries to commit suicide or flee after committing a crime; (5) the suspect is likely to destroy and forge evidence or confession; (6) the suspect refuses to provide his/her real name and address; (7) the suspect has probably committed multiple crimes, transient crimes, or organized crimes (1996 CPL, Article 61).

If the police deem it necessary, they will request an arrest warrant within three days after detention. However, the time limitation can be extended under specific circumstances. For example, it can be extended to 30 days for transient crimes, multiple crimes, and organized crimes (1996 CPL, Article 69). Within 24 hours after detention or arrest, the police should interrogate the suspect so that they can reexamine the arrest (Ma, 2003). The suspect can have legal counsel after the first interrogation, or after he/she is detained or arrested (1996 CPL, Article 96).

The suspect can be released on bail if the potential sentence is less than imprisonment, or if the release of the offender will not endanger society (1996 CPL, Article 51). According to the CPL (1996), the bail may be set by judge, procurator, or the police, and it is carried out by the police. This differs from the bail system in the United States, in which the bail is set by the judge. The forms of bail are also different. There are only two forms of bail in China, which include the surety bond and the third party’s promise, while personal recognizance, bail bond, and other forms are used in the United States.

**Procurator**

The people’s procuratorate reviews the case to determine if the facts and evidence are sufficient for the charge. If the facts and evidence are insufficient, the procurator can request the police for supplementary investigation. The procurator also has the power not to charge or to dismiss the case due to insufficient evidence. The procurator will file a formal charge to the court.
if the facts and evidence are believed to be sufficient and then serve as the attorney of the
country during the trial (1996 CPL, Article 140 & 141). The procuratorate also directly
investigates graft, bribery, and some other duty crimes. As for these crimes, the procuratorate can
itself decide to arrest the offender and interrogate him/her (1996 CPL, Article 132).

One difference between the Chinese and American criminal justice system is the use of a
grand jury and preliminary hearing. In America, the preliminary hearing and grand jury are used
as screening devices to ensure that the case has sufficient facts and evidence. In China, it is the
obligation of the procurator to examine the sufficiency of evidence. Also, plea bargaining does
not exist in China’s criminal justice system. The offender does not have the opportunity to plead
guilty in order to secure a lesser sentence. Recently, some procuratorates have tried to introduce
plea bargaining, but it has not been established in China yet.

Judge

There are currently four levels of people’s courts in China: primary, intermediate, higher,
and the Supreme People’s Court (See Figure 1). Primary people’s courts are set at the lower level,
such as county, and handles crimes, except those that should be tried at higher level courts
according to the law. Cities, especially big cities, have intermediate people’s courts. Counter-
revolutionary crimes and crimes against national security, crimes which may be sentenced to life
imprisonment or death, and crimes committed by foreigners should be tried at intermediate
people’s courts. Every province, autonomous region, and municipality has a Higher People’s
Court. Higher people’s courts hear serious crimes within the jurisdiction. National serious crimes
should be tried at the Supreme People’s Court (1996 CPL, Article 19-22). Defendants can appeal
to the higher level court within 10 days after sentence (1996 CPL, Article 180). The sentence will
become effective if the appellate court approves it. There also exist special courts with limited
jurisdictions, including the Military Courts and Railway Courts (Lu & Zhang, 2005; Seay, 1998).

According to the CPL (1996), only intermediate people’s courts or higher level courts can hear cases which carry a potential death sentence (Article 20). A panel composed of three to seven judges or of judges and people’s assessors\(^5\) takes charge of the trial, including finding the truth and applying the law (Seay, 1998).

Figure 1: Court system in China

![Diagram of Court system in China]

After the court receives the charge, the judge should send a copy of the charge to the defendant so that he/she becomes aware of the charge. At the beginning of the trial, the judge will inform the defendant of his/her rights as a defendant. In the United States, this is performed before trial at a preliminary hearing or arraignment.

The distinguishing difference between a Chinese and American trial is that China adopted the inquisitorial model while the United States uses the adversarial model. In China, the judge dominates the questioning and debate; without a jury system, the panel of judges also determines

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\(^5\) According to the decision of Standing Committee of NPC about the people’s assessors, they are select from eligible citizens and qualified by the standing committee at the same jurisdiction. They may be included in the panel for some sentences. The panel is responsible for the sentence and people’s assessors have the right to vote for the verdict of facts and application of laws.
the facts and applies the law. In the United States, the prosecutor and the defense attorney dominate the questioning and debate; the jury’s obligation is to apply the law, while the judge only needs to instruct the jury on the law (Seay, 1998).

Once the defendant is sentenced, he/she can appeal to the higher court within 10 days. Procurators can also appeal within 10 days if they regard the sentence to be incorrect or if they approve the victim’s request for appeal. The review of appeals should be finished within a month or a month and a half, but sometimes the limit can be extended (1996 CPL, Article 196). However, only the accused has the right to appeal in the United States (Seay, 1998). According to the CPL (1996), the punishment cannot be increased if the accused appeals, but it can increase if the procurator appeals. The court could report to the Supreme People’s Court to seek the approval of execution. Once the death sentence is approved, it should be carried out within 7 days (1996 CPL, Article 211).

Historical Change of the Criminal Law since 1949

Since the establishment of People’s Republic of China in 1949, the leaders of the Communist Party started to enact some essential laws and create a new legal system. The death penalty, according to the communist doctrine, would be abolished eventually when crimes were eliminated after China progressed into a Communism society (Lu & Zhang, 2005). At the preliminary period of Socialism, the death penalty was still used as an instrument to deal with crimes, but Mao Zedong contended that the death penalty in China would be abolished (Monthy, 1998). Also, Mao established a restrictive policy to “kill less” and “never kill mindlessly”, which was also supported by post-Mao leaders (Simon & Blaskovich, 2002).

1979 Criminal Law

In 1979, the Chinese Criminal Law was approved by the National People’s Congress. In the
Criminal Law (CL, 1979), 28 crimes regulated in 15 articles were death eligible (Zhao & Xiao, 1998). Since the major emphasis of the government and society was still upon class struggle and the stabilization of Socialism, 15 capital crimes dealt with counter-revolutionary offenses. The counter-revolutionary who caused death or injury with poisons or germs, for instance, might be sentenced to death if it was “very serious” (1979 CL, Article 101).

There were also eight crimes against public security, such as arson and the sabotage of transportation with serious consequences, carrying the death penalty (1979 CL, Article 106 & 110). The remaining 5 capital crimes were murder, serious rape of adult women or girls under fourteen, serious robbery, and graft (1979 CL, Article 132, 139, 150, & 155). In addition, none of the capital offenses carried a mandatory death sentence (Zhao & Xiao, 1998).

The death penalty with a two-year suspension of execution was stipulated in the Criminal Law as a unique characteristic. In line with the restrictive policy of the death penalty, this policy provided death-eligible offenders with an extra period to rehabilitate through labor. The Criminal Law stipulated that, if the immediate execution was unnecessary⁶, a two-year suspension of execution might be announced while the offender was sentenced to death (1979 CL, Article 43). If the offender did show remorse during this period, the death sentence would be commuted to a life imprisonment after two years; if the offender showed remorse and had meritorious contribution, the death penalty would be commuted to 15-20 years imprisonment sentence after two years; if evidence showed that the offender resisted the rehabilitation, the death sentence would be carried out with the approval of the Supreme People’s Court (1979 CL, Article 46). Whether the offender showed remorse or not was the essential factor for the judge to determine if the death penalty should be carried out.

⁶ It was under the discretion of the judges. The judges might take into account some factors, such as the defendant’s attitude, the crime’s influence within the jurisdiction, and the public’s outrage, etc..
As for the protection of the vulnerable, the 1979 Criminal Law prohibited the imposition of the death penalty on women who were pregnant at trial and juveniles who were under eighteen when the crime was committed. However, juveniles under eighteen could be sentenced to death with a two-year suspension of execution if the crime committed was really heinous (1979 CL, Article 44).

Automatic review and approval of the death sentence by the Supreme People’s Court were required according to the Criminal Law (1979). All death sentences, except for those imposed by the Supreme People’s Court, should be reviewed and approved by the Supreme People’s Court (1979 CL, Article 43).

1979-1997

Since the government adopted the “Open-Door” policy and initiated an economic reform in the late 1970s, China has experienced a dramatic social change and the emergence of crime waves. Due to the benefit-oriented climate and individual economic motivation, property crimes increased greatly and replaced the counter-revolutionary offenses as the major concern of the governors and legislators (Liu, 2005). According to Zhao and Xiao (1998), many amendments of the 1979 Criminal Law were enacted in response to the crime wave during 1981 to 1995, resulting in more than 80 capital crimes before the revision of the Criminal Law in 1997. In 1982, for example, the Standing Committee of the National People’s Congress passed a decision on the harsher punishment for economic crimes. In order to strike these economic crimes, which endangered the socialist construction and the public interest, this decision provided a capital punishment option for smuggling, theft, drug trafficking, and some other economic crimes. For instance, theft with very serious consequences might be sentenced to more than ten years
imprisonment, life imprisonment, or death.  

Another important change in the use of the death penalty was that the power of reviewing and approving the death sentence had been released from the Supreme People’s Court to Higher People’s Courts. This was due to the increased crimes which exceeded the capacity of the Supreme People’s Court. The “Strike Hard” campaign, which had been employed by the government as a method to combat crimes since 1983, called for speedy trial and harsh punishment. It also resulted in the release of review and approval power. In 1981, the Standing Committee of the National People’s Congress stipulated that death sentences for murder, rape, robbery, arson, and other crimes endangering public security were not required to be approved by the Supreme People’s Court under some certain circumstances. For example, if the offender did not appeal the death sentence which was imposed by the Intermediate People’s Court, the Higher People’s Court was entitled to review and approve the execution. Meanwhile, death sentences for counter-revolutionary offenses and graft should still be reviewed and approved by the Supreme People’s Court. Since then, amendments and the Organic Law of the People’s Courts (1983) also released the power of approving execution.

1997 Revised Criminal Law

According to Zhao (2005), there are 68 crimes carrying the death penalty in Chinese Criminal Law (1997), among which 44 crimes are non-violent crimes. The crimes of endangering national security (e.g., treason), crimes of endangering public safety (e.g., arson and poisoning), crimes of sabotaging socialist market order (e.g. forgery of currency), crimes against human and civil rights (e.g. murder and rape), crimes against property (e.g. larceny of previous relics), crimes against social order (e.g. extremely serious inculcation of criminal methods),

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7 The Standing Committee’s decision on serious economic crimes, retrieved from http://www.chinamonitor.org/system/law/yceconomic1982.htm
8 The Standing Committee’s decision on the approval of executions, retrieved from http://www.chinamonitor.org/system/law/sxhz1981.htm
crimes against national defense (e.g. sabotage of military facilities), graft and bribe-taking, and breach of duty by military personnel (e.g. surrender and subsequent aid to the enemy) constitute all 68 capital crimes (Monthy, 1998; Lu & Zhang, 2005). In addition, mandatory death sentences were stipulated for a handful of offenses in the revised Criminal Law. For example, hijacking of flying objects by force, duress, or other methods that cause serious injury, death, or serious damage to the flying object will be sentenced to death (1997 CL, Article 121).

The death penalty with a two-year suspension of execution is maintained in the revised Criminal Law, but the requirement for the commutation is changed. The death penalty will be revoked and commuted to life imprisonment if the offender does not intentionally commit crimes during the suspension period; if the offender has meritorious contribution, the death sentence will be commuted to 15-20 years imprisonment after two years; if evidence shows that the offender has intentionally committed crimes during this period, the death sentence will be carried out with the approval of the Supreme People’s Court (1997 CL, Article 50). The essential condition of commutation in the revised Criminal Law is now more objective and operative so that the discretion of the judge in this stage can be controlled.

As for the protection of the vulnerable, the revised Criminal Law, like the 1979 Criminal Law, excludes pregnant women and juveniles under eighteen from the death sentence. Moreover, the death penalty with a two-year suspension of execution is prohibited to be applied to juveniles, even if they have committed very heinous crimes (1997 CL, Article 49). Juveniles, according to the 1979 Criminal Law, might still be executed if they really showed no remorse. After the revision of Criminal Law, juveniles under eighteen are now completely protected from the death penalty.

The revised Criminal Law clarified that the death sentence, except for those imposed by the
Supreme People’s Court, should be approved by the Supreme People’s Court (1997 CL, Article 48). Nonetheless, higher people’s courts still possess the right to automatically review death sentences if the defendants do not appeal the sentences imposed by intermediate people’s courts (1996 CPL, Article 200). Under this circumstance, the Supreme People’s Court only needs to approve the execution.

The Use of the Death Penalty in China and the United States

According to Amnesty International, data are limited regarding the number of executions in China, but it is estimated that China accounts for 70 to 80 percent of worldwide executions (Hood, 2002). Amnesty International claims that the real execution number in China may be much higher than reported.

Table 1 below shows that the worldwide execution number was influenced by the fluctuation of China’s execution number, while China’s execution number was determined greatly by the internal policy and the development of “Strike Hard” campaigns (Hood, 2002).

According to the U.S. Department of Justice report on capital punishment (2003), the federal government and 38 states retain the death penalty. Most of the capital crimes in states are murders, but there are some exceptions. For example, treason, aircraft hijacking, and kidnapping with bodily injury or ransom when the victim dies are also death eligible in Georgia; capital sexual battery is death eligible in Florida (U.S. Department of Justice, 2003). This report also indicates that homicide-related crimes, espionage, treason, and drug trafficking are capital offenses in the federal government. The death penalty is used more at the state level rather than federal government, and the vast majority of American executions took place in southern states such as Texas and Virginia (U.S. Department of Justice, 2003).
Table 1: Number of executions in China and U.S., 1996-2005

<table>
<thead>
<tr>
<th>Year</th>
<th>Worldwide</th>
<th>China</th>
<th>U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>2,148</td>
<td>1,770</td>
<td>60</td>
</tr>
<tr>
<td>2004</td>
<td>3,797</td>
<td>3,400</td>
<td>59</td>
</tr>
<tr>
<td>2003</td>
<td>1,146</td>
<td>726</td>
<td>65</td>
</tr>
<tr>
<td>2002</td>
<td>1,526</td>
<td>1,060</td>
<td>71</td>
</tr>
<tr>
<td>2001</td>
<td>3,048</td>
<td>2,468</td>
<td>66</td>
</tr>
<tr>
<td>2000</td>
<td>1,457</td>
<td>1,000</td>
<td>85</td>
</tr>
<tr>
<td>1999</td>
<td>1,813</td>
<td>1,077</td>
<td>98</td>
</tr>
<tr>
<td>1998</td>
<td>1,625</td>
<td>1,067</td>
<td>68</td>
</tr>
<tr>
<td>1997</td>
<td>2,375</td>
<td>1,644</td>
<td>74</td>
</tr>
<tr>
<td>1996</td>
<td>4,272</td>
<td>3,500</td>
<td>45</td>
</tr>
</tbody>
</table>

Source: Amnesty International Facts and Figures on the Death Penalty

Conclusion

Considering the practice regarding the criminal justice system and the use of the death penalty, China is similar to the United States to some extent. Both China and the United States appear to be tough on crimes. The death penalty is also retained and utilized in these two countries. China’s government uses “Strike Hard” campaigns to combat crime, whereas the United States tends to be more conservative and has established “tough on crime” policies. The criminal procedures in China and the United States attempt to provide offenders some due process protection, which is now a hot topic in Chinese legal reform. For example, automatic
review of death sentences is provided in both countries. However, the due process still needs to be improved in China. Lastly, a multi-tiered court system is used in both China and the United States.

On the other hand, China’s criminal justice system and the practice of the death penalty differ from those in the United States. The major difference in the criminal justice system is that China adopted the inquisitorial model and the United States uses the adversarial model. Regarding the use of the death penalty, the range of death eligible crimes is much larger in China than in the United States, as is the execution number. Also, there are some offenses carrying mandatory death penalty in China.
CHAPTER III. WORLDWIDE USE OF THE DEATH PENALTY

According to Hood (2002), the current use of the death penalty demonstrates a global trend towards abolition. Moreover, the abolition movement is accelerating; the average number of countries that abolished the death penalty every year in the period 1989-2001 was about three times the number in the period 1965-1988 (Hood, 2002).

The latest report on the status of the death penalty worldwide was published by Amnesty International in January 2006 (Amnesty International, 2006a). The following chart provided a breakdown of the numbers:

- Abolitionist countries = 122
- Total abolitionist countries\(^9\) = 86
- Abolitionist for ordinary crimes\(^{10}\) = 11
- Abolitionist de facto\(^{11}\) = 25
- Retentionist countries\(^{12}\) = 74
- Total countries and territories = 196

The comparison of 2006 Amnesty International data to Hood’s report reveals that more and more countries are moving toward abolishing the death penalty. Hood (2002) stated that more countries have become total abolitionist directly instead of abolishing the death penalty for ordinary crimes first. The abolition activities in recent years reflected this trend. In the period 2002-2005, ten countries abolished the death penalty for all crimes, of which only three had experienced the stage of abolitionist for ordinary crimes previously (Amnesty International,

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\(^9\) Total abolitionist countries defined as the countries which have abolished the death penalty for all crimes in both law and practice.

\(^{10}\) Abolitionist for ordinary crimes defined as the countries which have abolished the death penalty for all crimes except for certain crime, such as wartime crimes.

\(^{11}\) Abolitionist de facto defined as the countries which retained the death penalty in law but suspended executions for a period, usually ten years.

\(^{12}\) Retentionist countries defined as the countries with the death penalty in law and executions in the previous ten years.
The distribution of abolitionist and retentionist countries varies among regions. Due to the deeply buried culture of respect for human rights, European countries have become leaders in the abolition movement. According to Hood (2002), the Council of Europe and the European Union both strongly oppose the death penalty and they greatly influenced the abolition practice in Europe. Since Turkey abolished the death penalty for all crimes and Greece approved the ratification of Protocol No. 13 to the European Convention on Human Rights (ECHR)\(^\text{13}\) in 2004, all Western European Countries have become totally abolitionist countries (Amnesty International, 2006b).

The majority of the Eastern European countries and the former Soviet Union countries have also either abolished the death penalty for all crimes or proclaimed a moratorium on execution. The major motivation for these countries to get rid of the death penalty or suspend executions was to seek the membership in the Council of Europe and the European Union (Hood, 2002). Also, the improvement of the relationship with western countries was another impetus; retaining the death penalty was an obstacle. For example, the former president of the Russian Federation, Yeltsin, declared a moratorium in 1996 and Amnesty International has not observed executions there since 1999 (Hood, 2002). Considering Russia’s strong intention to abolish the death penalty, Amnesty International classified it as an abolitionist in practice, even though the moratorium has only lasted for seven years (Amnesty International, 2006b). The moratorium in Kyrgyzstan, a poor Central Asian country and a former member of Soviet Union, is another instance. Kyrgyzstan’s moratorium on the death penalty lasted from 1998 to December 2004\(^\text{14}\), and the major reason for this moratorium was to please western investors and improve the relationship

\(^{13}\) In 1950, the Council of Europe adopted the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as ECHR, to improve the protection of human rights. Protocol 13: Provide for the total abolition of the death penalty.

\(^{14}\) The moratorium still lasted since Amnesty International observed no execution carried out in Kyrgyzstan in 2005.
In Africa south of the Sahara, more and more countries are on their way to abolishing the death penalty. Hood (2002) discovered that the attitude towards the death penalty in this region has changed dramatically in recent years. By the end of 2001, there were nine total abolitionist countries, such as South Africa and Mozambique, and eleven abolitionist de facto countries, such as Benin and the Republic of Congo, in this region (Hood, 2002).

South and Central America are also leaders of the abolition movement. All countries in this region, except for Guyana, have abolished the death penalty in law (some for ordinary crimes) or in practice (Amnesty International, 2006b). Being former English colonies, Commonwealth Caribbean countries retained the death penalty as a heritage from the “mother land” when they became independent (Fitzgerald, 1996). Some countries, such as St Lucia, resumed execution after a long moratorium; also, some countries, such as Dominica, suspended executions for years, but they showed no sign of abolition (Hood, 2002). Although the “mother land”, England, abolished the death penalty for ordinary crimes in 1965 and then all crimes in 1998, the will to abolish the death penalty in Caribbean countries is still weak due to the wide concern of violent crimes (Hood, 2002; Knowles, 2004). In North America, Canada became a total abolitionist country in 1998. In the United States, the federal government and 38 states retained the death penalty (Amnesty International, 2006b).

Hood’s (2002) report indicated that retentionist countries are distributed mainly in the Middle East, North Africa, Commonwealth Caribbean, and Asia. The death penalty is widely used in the Middle East and North Africa because the “Islamic law clearly supports the death penalty” (Simon & Blaskovich, 2002, p.10). Although Buddhism, which does not support the death penalty, is widely accepted in Asian countries and territories, these areas appear to be in
favor of the death penalty (Simon & Blaskovich, 2002). The United States is the only western developed country which still has the death penalty in law and carries out executions.

The Use of the Death Penalty in Retentionist Countries

*Death-Eligible Crimes*

The range of death-eligible crimes varies remarkably in different countries. The International Covenant on Civil and Political Rights (ICCPR) stated that the death penalty could only be imposed on the “most serious crimes”. In 1984, the Economic and Social Council of the United Nations adopted the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, which defined the “most serious crimes” as those “intention crimes with lethal or other extremely grave consequences” (Hood, 2002, p.76). However, different countries have various understandings of the definition, and they apply the death penalty to different offenses based on their unique situations. Some retentionist countries only regard very few crimes as the most serious, while some other countries have a wide range of capital crimes.

Murder is the most popular offense for which the death penalty may be imposed, but the law and practice vary. In some countries, such as the United States, murder is the major capital crime in law and in practice. Also, the death penalty is the mandatory punishment for murder in some countries. In Singapore and Zimbabwe, for example, murder carries a mandatory death penalty (Hood, 2002).

Many other offenses also carry the death penalty in different countries. By the end of 2001, 77 of 105 retentionist countries regarded some crimes against the state as capital crimes (Hood, 2002). As mentioned in the previous chapter, seven crimes endangering the national security stipulated in the Criminal Law (1997) are death eligible in China. Espionage and treason, according to the federal laws in the United States, are also eligible for the death penalty (U.S.
Department of Justice, 2003). Also, crimes endangering the public order, such as using explosives, were capital offenses in at least 14 countries at the end of 2001 (Hood, 2002). Due to the increased concern of drug trafficking in the international community, many countries now stipulate drug trafficking as capital offenses. According to Hood (2002), drug trafficking was death eligible in at least 34 countries, including the United States and China. Some countries were harsher against drug trafficking so that a mandatory death penalty would be imposed for large scale drug trafficking or even the possession of a small amount (e.g., Singapore & Thailand) (Hood, 2002).

Besides the above-mentioned crimes, economic and property crimes (e.g., bribery and corruption in Armenia), sexual offenses (e.g., aggravated rape in Belarus), religious dissent (e.g., apostasy in Iran), and some other crimes (e.g., kidnapping) may also be death-eligible in various countries and territories (Hood, 2002). Like the concern of drug trafficking, many countries have also extended the range of capital crimes to terrorism. The Indian government, for instance, expanded the use of the death penalty in anti-terrorist campaigns (Eckert, 2005). Some countries, such as Uzbekistan, are trying to reduce the number of capital offenses to restrict the use of the death penalty; at the same time, the range of death-eligible crimes has been expanded in some countries, especially in the region of Middle East and North Africa (Hood, 2002).

**Executions**

More than 90 percent of executions are carried out in Asian countries, among which China accounts for about 70-80 percent of total worldwide executions every year (Bae, 2005). The execution numbers recorded by Amnesty International indicated that, in some retentionist countries, the death penalty is rarely used in practice. In 2005, only 22 countries carried out executions, and 94 percent of executions took place in China (1770), Iran (94), Saudi Arabia (86),

As for the execution methods, the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty announced that the death penalty should be carried out with minimum suffering (Hood, 2002). Among the current worldwide practices, multiple methods are utilized to carry out the death penalty. Since 2000, hanging and shooting have become the most popular methods of execution among retentionist countries. There are also other kinds of execution methods, including beheading, electrocution, lethal injection, and stoning. In some countries like the United States, China, and Iran, multiple methods are provided (Amnesty International, 2006a).

Although the United Nations has called for a prohibition of the use of the death penalty for juveniles below 18, some countries maintain the death penalty for juveniles in the law and some of them continued carrying out executions (Hood, 2002). Hood claimed that juveniles under 18 might be sentenced to death in at least 16 countries. Since 1990, executions of juveniles have been observed by Amnesty International in eight countries, of which three countries (China, Pakistan, and Yemen) have raised the age limit up to eighteen in revised laws (Amnesty International, 2006a).

Conclusion

In general, more countries and territories are on the way towards abolition. They have either abolished the death penalty in law or in practice or restricted its use to certain serious crimes. The pressure from the international community and human rights organizations contributes greatly to the global abolition trend.

Nonetheless, the death penalty still exists in some countries. Despite the global trend, these countries, such as China and the United States, resist the abolition movement. Their resistance
results from various reasons, for example, the political and public concern of crimes and the belief in the deterrent effect of the death penalty. Also, there were some setbacks in some countries on the way to abolishing the death penalty. For example, some Caribbean countries experienced frustrations in the abolition movement, and some countries, such as Middle Eastern countries, expanded the range of capital crimes (Hood, 2002).

Among all retentionist countries, China is the leader. The wide range of capital crimes and the huge execution number are always attracting attention from many human rights organizations and the international community.
CHAPTER IV. DETERRENCE STUDIES REVIEW

Deterrence theory is based on the rational choice assumption that individuals can weigh the benefit and cost before they commit crimes. To specify, deterrence includes general deterrence and specific deterrence. According to the justification of deterrence, punishments can prevent offenders from recidivism (specific deterrence) as well as prevent potential offenders from committing crimes (general deterrence) (Peterson & Bailey, 2003).

As for the death penalty, the deterrent effect on future crimes constitutes a major concern with regard to its retention and utilization. The public is often in favor of the death penalty because they perceive that the ultimate sanction can deter potential crimes (Forst, 1983). Policy-makers and judges also take into account the deterrence of the death penalty. President Bush, for instance, justified the death penalty merely on the ground that “it saves other people’s lives” (Shepherd, 2005, p.204).

Numerous empirical studies have been conducted to examine the deterrent effect of the death penalty. The existing findings obtained from those studies, however, are mixed. Various data, time frames, methods, and control variables are adopted by researchers; as a result, different findings are reported. Some researchers claim a deterrent effect, while others deny it. Contemporary scholars cannot achieve consensus based on the conflicting evidence.

In the United States, data from Death Penalty Information Center (see table 2) indicate that the murder rate in death penalty states is higher than in non death penalty states in the last decade; also, the state-by-state data show that, among the top ten states with the highest murder rates, all of them are states that utilize the death penalty (see table 3). Based on the murder rate, it appears that the deterrent effect of the death penalty cannot be supported. Some early researchers also drew a non-deterrence conclusion from such comparisons. For example, Bailey (1974) compared
the first and second degree murder rates among death penalty states and abolitionist states in 1967-1968, and the comparison suggested that both types of murder were more common in death penalty states. The comparison among neighboring states with and without the death penalty (Bailey, 1974; Harries & Cheatwood, 1997) and the comparison of the murder rate before and after abolition (Archer, Gartner, & Beittel, 1983) did not find deterrence. These data and studies, however, cannot be employed to support a non-deterrence conclusion because the influences of some socio-demographic factors, such as income and the unemployment rate, were not controlled (Bailey, 1974; Cochran, Chamlin, & Seth, 1994). Even though some studies were conducted among neighboring states, the similarity of these states was questionable (Peterson & Bailey, 2003).

Due to the data and methodological limitations, early studies conducted before the middle of the 1970s will not be discussed here. Some recent studies will be described according to their findings with respect to a deterrent effect.

Table 2: Deterrence: States without the death penalty fared better over past decade

<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder Rate in Death Penalty States *</td>
<td>9.5</td>
<td>9.94</td>
<td>9.51</td>
<td>9.69</td>
<td>9.23</td>
<td>8.59</td>
<td>7.72</td>
<td>7.09</td>
</tr>
<tr>
<td>Murder Rate in Non-death Penalty States</td>
<td>9.16</td>
<td>9.27</td>
<td>8.63</td>
<td>8.81</td>
<td>7.88</td>
<td>6.78</td>
<td>5.37</td>
<td>5.00</td>
</tr>
<tr>
<td>Percent Difference</td>
<td>4%</td>
<td>7%</td>
<td>10%</td>
<td>17%</td>
<td>27%</td>
<td>44%</td>
<td>42%</td>
<td>42%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder Rate in Death Penalty States *</td>
<td>6.51</td>
<td>5.86</td>
<td>5.70</td>
<td>5.82</td>
<td>5.82</td>
<td>5.91</td>
<td>5.71</td>
</tr>
<tr>
<td>Murder Rate in Non-death Penalty States</td>
<td>4.61</td>
<td>4.59</td>
<td>4.25</td>
<td>4.25</td>
<td>4.27</td>
<td>4.10</td>
<td>4.02</td>
</tr>
<tr>
<td>Percent Difference</td>
<td>41%</td>
<td>28%</td>
<td>35%</td>
<td>37%</td>
<td>36%</td>
<td>44%</td>
<td>42%</td>
</tr>
</tbody>
</table>

Source: Death Penalty Information Center
Table 3: Nationwide Murder Rates, 1995-2004 (Murder Rates per 100,000 People)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Louisiana</td>
<td>12.7</td>
<td>13.0</td>
<td>13.2</td>
<td>11.2</td>
<td>12.5</td>
<td>10.7</td>
<td>12.8</td>
<td>15.7</td>
<td>17.5</td>
<td>17.0</td>
</tr>
<tr>
<td>Maryland</td>
<td>9.4</td>
<td>9.5</td>
<td>9.4</td>
<td>8.3</td>
<td>8.1</td>
<td>9.0</td>
<td>10.0</td>
<td>9.9</td>
<td>11.6</td>
<td>11.8</td>
</tr>
<tr>
<td>New Mexico</td>
<td>8.9</td>
<td>6.0</td>
<td>8.2</td>
<td>5.4</td>
<td>7.4</td>
<td>9.8</td>
<td>10.9</td>
<td>7.7</td>
<td>11.5</td>
<td>8.8</td>
</tr>
<tr>
<td>Mississippi</td>
<td>7.8</td>
<td>9.3</td>
<td>9.2</td>
<td>9.9</td>
<td>9.0</td>
<td>7.7</td>
<td>11.4</td>
<td>13.1</td>
<td>11.1</td>
<td>12.9</td>
</tr>
<tr>
<td>Nevada</td>
<td>7.4</td>
<td>8.8</td>
<td>8.3</td>
<td>8.5</td>
<td>6.5</td>
<td>9.1</td>
<td>9.7</td>
<td>11.2</td>
<td>13.7</td>
<td>10.7</td>
</tr>
<tr>
<td>Arizona</td>
<td>7.2</td>
<td>7.9</td>
<td>7.1</td>
<td>7.5</td>
<td>7.0</td>
<td>8.0</td>
<td>8.1</td>
<td>8.2</td>
<td>8.5</td>
<td>10.4</td>
</tr>
<tr>
<td>Georgia</td>
<td>6.9</td>
<td>7.6</td>
<td>7.1</td>
<td>7.1</td>
<td>8.0</td>
<td>7.5</td>
<td>8.1</td>
<td>7.5</td>
<td>9.5</td>
<td>10.0</td>
</tr>
<tr>
<td>South Carolina</td>
<td>6.9</td>
<td>7.2</td>
<td>7.3</td>
<td>6.3</td>
<td>5.8</td>
<td>6.6</td>
<td>8.0</td>
<td>8.4</td>
<td>9.0</td>
<td>7.9</td>
</tr>
<tr>
<td>California</td>
<td>6.7</td>
<td>6.8</td>
<td>6.8</td>
<td>6.4</td>
<td>6.1</td>
<td>6.0</td>
<td>6.6</td>
<td>8.0</td>
<td>9.1</td>
<td>11.2</td>
</tr>
<tr>
<td>Arkansas</td>
<td>6.4</td>
<td>6.4</td>
<td>5.2</td>
<td>5.5</td>
<td>6.3</td>
<td>5.6</td>
<td>8.0</td>
<td>9.9</td>
<td>8.7</td>
<td>10.4</td>
</tr>
</tbody>
</table>

*Michigan ranked 11; Alaska ranked 19. All other non death-penalty states ranked 30 and below.

Source: Death Penalty Information Center

Studies Reporting a Deterrent Effect

In 1975, Ehrlich reported a well known finding that executions had a significantly negative impact on the murder rate. The aggregate data for the U.S. murder rate came from the FBI Uniform Crime Report (UCR) during the period from 1933 to 1969. Ehrlich controlled for some demographic variables, such as the proportion of population aged 14-25, and some economic variables, such as unemployment rate and real per capita permanent income. Ehrlich (1975) examined the relationship between the murder rate and the probability of execution with multivariate regression analysis, and he reached the conclusion of a deterrent effect of executions.
He also interpreted the deterrent effect specifically into the tradeoff between executions and murders: an additional execution per year during the sampling period might have decreased the number of future murders by 7 or 8 (Ehrlich, 1975).

Next, Ehrlich conducted another cross-sectional study to explore the deterrent effect using separate data for each state in 1940 and 1950; he again reported the deterrent effect of the death penalty in a 1977 study (Hood, 2002). Ehrlich’s study was replicated and extended by researchers in the following decade, but the findings were not consistent with Ehrlich’s (Shepherd, 2005).

Shepherd (2004) examined the relationship between the death penalty and murder rate as well as the deterrent effect of the length of time spent on death row. In order to avoid aggregation problems of annual data and capture the immediate deterrent effect following executions, she employed monthly panel data from 50 states of murder, execution, and death row data during the period from 1977 to 1999. Economic variables, including the real per capita monthly income and the monthly unemployment rate, as well as demographic variables, such as the percentage of male population and African American population, were controlled. Two major findings were reported in her study: the probability of executions had a deterrent effect on all types of murder measured, including crime-of-passion murders and murders by intimates; also, a longer wait on death row undermined the deterrent effect of executions. She further estimated the tradeoff between the death penalty and murder rate in 1999-- an execution had prevented 3 murders and a death sentence had prevented 4.5 murders. As for the wait on death row, Shepherd stated that 2.75 years reduction in the death row wait resulted in one less murder (Shepherd, 2004).

Using post-moratorium, after Gregg v. Georgia (1976), panel data for 3,054 American

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15 According to Shepherd (2005), panel data, usually used in recent studies, are data from several units during a period of time and can provide a larger n.
counties during the period from 1977 to 1996, Dezhbakhsh, Rubin, and Shepherd (2003) examined the deterrent effect of executions on the murder rate. They analyzed six various models which differed in the measurement of the perceived probabilities of arrest, sentencing, and executions. Control variables included two other crime categories (aggravated assault and robbery), three county-level economic variables (real per capita personal income, real per capita unemployment insurance payments, and real per capita income maintenance payments), and some demographic variables (such as the population density), as well as the state level National Rifle Association (NRA) membership rate. The findings indicated that the probability of executions had a significantly negative relationship with the murder rate; specifically, each additional execution had prevented 18 murders (Dezhbakhsh et al., 2003).

In order to determine the deterrent effect of the death penalty, Mocan and Gittings (2003) used the state-level panel data from the Department of Justice 1977-1997. The effect of commutation and removal rates of the death penalty were included in the examination, so the data set used in this study possessed the advantage that it could identify the detailed date of execution, commutation, and removal. Various economic and demographic variables were controlled. In addition, the impact of the 1995 Oklahoma City bombing was also controlled through the introduction of a dummy variable. The authors declared that the death penalty had a significant deterrent effect upon the murder rate: each additional execution resulted in five fewer murders while each commutation induced five more murders. Additionally, one more murder resulted from a removal from the death row. However, the authors revealed that the death penalty was not a deterrent for non-capital crimes such as burglary, rape, and motor vehicle theft (Mocan & Gittings, 2003).

Finally, Cloninger and Marchesini (2001) provided empirical evidence for the deterrent
effect of the death penalty in Texas through a portfolio analysis. On January 2, 1996, the Texas Court of Criminal Appeals issued a stay; after that, other executions were suspended until April 1997. The authors developed a control group experiment: they compared the monthly change in the homicide rate before the moratorium, during 1996, and after executions resumed in April 1997. Despite the overall declining trend of homicide rates, the authors reported a deterrent result: the homicide rate declined less during the moratorium and declined more once executions resumed (Cloninger & Marchesini, 2001).

Studies Reporting No Deterrent Effect

The vast majority of deterrence studies showed no deterrent effect of the death penalty prior to Ehrlich’s study in the middle 1970s; however, those studies, as mentioned above, were problematic and will not be discussed here. Despite this, many recent studies, which adopted modern techniques and controlled for relevant variables, have not found evidence of deterrence.

Bailey (1980) examined the deterrent effect of the certainty and celerity of the death penalty. The capital homicide data of death penalty states was obtained from the FBI data for murder and nonnegligent manslaughter; the certainty of the death penalty was measured by the ratio of executions to reported homicides, but, different time lags between crime commitment and execution were used; the celerity of the death penalty was measured by the median time interval between sentence and execution, and the data were from the National Prisons Statistics Branch of the Bureau of the Census 1956-1960; only four variables, including the nonwhite population, urban population, population aged 20-40, and median family income, were controlled because the author deemed others related to each other and had no significant effect on the model. Bailey (1980) found that the certainty of executions did not have a deterrent effect on the homicide rate and the celerity of executions had a significantly negative relationship with the logged homicide
rate. However, this significant relationship refuted the deterrence hypothesis because it indicated that the longer time interval between conviction and execution, the less future homicides (Bailey, 1980).

Forst (1983) analyzed state data for the 1960s in order to determine the effect of six independent variables, including the probability of execution given conviction, on the homicide rate. Income and race variables were controlled in this study. He established a model to determine the effect of those independent variables and various measurements of the variables were used in 6 formulations. With regard to the deterrent effect of the death penalty, Forst’s study did not provide support. Moreover, a brutalization effect was found in two formulations (Forst, 1983).

In 1990, one death sentence was carried out in Oklahoma after a 25-year suspension. Cochran, Chamlin, and Seth (1994) examined the deterrent effect of this highly publicized execution on total homicides, felony murders, and stranger homicides. The data used were from the UCR Supplemental Homicide Reports (SHR) from 1989 to 1991. The homicide data were also disaggregated into two groups-- felony murder and stranger homicides-- since the authors deemed these two types of homicide were more likely to reflect the influence of the execution. No relevant economic or demographic variables were controlled in this study. Using autoregressive integrated moving average (ARIMA) techniques, the authors found that the execution did not deter total homicides and felony murders, while it showed a statistically significant brutalization effect on stranger homicides. Moreover, the authors conducted supplementary analyses with different models and time aggregation to examine the robustness of their results. The results regarding the lack of deterrence on total homicides and felony murders and the brutalization effect on stranger homicides remained. Considering that death-eligible
homicides might be most sensitive to the execution, they examined the deterrent effect on death-eligible felony murders and armed robbery homicides and again found no deterrence (Cochran et al., 1994).

Sorensen, Wrinkle, Brewer, and Marquart (1999) tested the deterrent effect of the death penalty on both general murder and felony murder in Texas, the state with the most frequent executions. The data used in this study were monthly time-series data from official sources (e.g., murder data were from UCR) for the period 1984-1997. Sorensen and his colleagues adopted execution number as the independent variable and murder and felony murder rate as dependent variables, controlling for a variety of economic and demographic variables. The results indicated that executions in Texas had no deterrent effect on either general murders or felony murders (Sorensen et al., 1999).

With the availability of state-level panel data during 1982-1994, Albert (1999) attempted to replicate Ehrlich’s study to examine the deterrent effect of the death penalty. Similar statistical techniques were used and the variables, except for time variables in Ehrlich’s study, were also included. The author changed the functional form from log-linear to linear. Also, he introduced some new variables such as per capita alcohol sales and education. However, this similar study did not reach the same conclusion as Ehrlich. The results indicated that the probability of executions had no statistically significant deterrent effect on the homicide rate (Albert, 1999).

Katz, Levitt, and Shustorovich (2003) examined the deterrent effect of prison conditions and capital punishment on the crime rate using annual state-level panel data from 1950 to 1990. The authors disaggregated the crime into murder, violent crime, and property crime; the independent variables used in this study were execution rate and the death (due to sources other than execution) rate among prisoners; various criminal justice variables (e.g., the ratio of
prisoners to state population), economic variables (including real state per capita income and the insured unemployment rate), and demographic variables (e.g., percent of urban residents) were considered as control variables. They found that prison condition has a deterrent effect on the crime rates. As for the execution rate, the results provided no deterrent evidence for violent crimes and property crimes. Even for the murder rate, which might be the most sensitive to executions, the authors found no consistent and systematic evidence for the deterrent effect of the death penalty (Katz et al., 2003).

**Studies Reporting Mixed Effects**

There were also many studies which revealed mixed results. In these studies, deterrent effect were not entirely refuted; in some certain jurisdictions, during certain time periods, or using unique statistical techniques, the death penalty was found to be a deterrent. At the same time, these studies denied the deterrent effect under other circumstance or even reported a brutalization effect.

Yunker (2001) examined the deterrent effect of the death penalty with two approaches in his article. First, he developed a cross-sectional study using state data on executions and homicides from 1976 to 1997, controlling for three demographic variables (urbanization ratio, nonwhite ratio, and youth ratio). The regression coefficient showed that the estimated execution rate during this time period did not have a statistically significant effect on the homicide rate. Also, Yunker analyzed national data from 1930 to 1997. Controlling for those three demographic variables, he gained the strongest evidence in this study for a deterrent effect of the estimated execution rate, which was almost significant at the 0.05 level (significant level=0.0512). Nonetheless, this deterrent effect disappeared when he changed the time period to 1930-1976, holding other aspects consistent (Yunker, 2001).
Berk (2005) used state-level panel data from 1977 to 1997 to test the deterrent effect. The dependent variable, number of executions, appeared to be greatly skewed: there were 1050 observations (n)$^{16}$, but only 11 of them had more than 5 executions. Berk pointed out that the overall relationship between number of executions and homicide number or homicide rate seemed to be supportive of the deterrent hypothesis when the execution number was more than 5. When those 11 observations, however, were removed, Berk found no evidence of a deterrent effect.

Shepherd (2005) used county-level panel data, the same data as in Dezhbakhsh et al. (2003) study, from 1977 to 1996 to determine the deterrent effect of the death penalty on murder rates in individual states. Various economic and demographic variables were controlled as in the 2003 study. She found that the impact of the death penalty on the murder rate varied among states. Among the 27 states with executions, a deterrent effect existed in 6 states, a brutalization effect existed in 13 states, and in the remaining 8 states, the death penalty showed no relationship with the murder rate. Furthermore, Shepherd identified 9 executions as a threshold for a deterrent effect. To increase the robustness of her results, she conducted two supplementary studies with different data: monthly state-level data in 1977-1999 and annual state-level data in 1960-2000. The results of these two analyses supported her conclusion with regard to a mixed effect of the death penalty and the existence of the threshold for the deterrent effect (Shepherd, 2005).

Conclusion

The results of these studies are too conflicting to reach an agreement on the deterrent effect of the death penalty. Different data, time frames, variables, and statistical techniques can and do lead to disparate findings. According to Fagan (2005), inconsistent findings should lead to the rejection of the deterrence hypothesis. Moreover, most studies reviewed point to no effect and/or

$^{16}$ $n=50$ (states) * $21$ (years) = 1050
a brutalization effect. As for those studies pointing to a deterrent effect, they are suspect.

Ehrlich’s (1975) study was much older and he examined the death penalty even before the death penalty laws were changed. His study can also be discounted because it suffers many major flaws such as the aggregate data of all states and the reliance on a particular time period (Peterson & Bailey, 2005). Also, replications of his study with different data provided no consistent support for his conclusion.

Using the same data and control variables, Shepherd reported deterrent effects in 2003, while she found deterrence in only six of twenty seven states with executions in 2005. Thus, her studies with inconsistent findings cannot support the deterrent hypothesis. Also, Cloninger and Marchesini’s (2001) study cannot provide reliable evidence for deterrence because they failed to provide a direct relationship between executions and the homicide rate.

Some researchers suggested that the general deterrent conclusion was driven by a few states, such as Texas (Shepherd, 2005; Berk, 2005). Fagan (2005) pointed out that the deterrent effect in such outlier states could not be generalized. Moreover, the deterrent effect of the death penalty in Texas has been refuted by Sorensen and his colleagues (1999).

Finally, these studies have some problems in common. First, the homicide data from the UCR used by most researchers are flawed due to reporting problems. Missing data for Florida is a problem as well (Fagan, 2005). Second, the choice of different time frames for the data collection may influence the results. For instance, Yunker’s (2001) study indicated that different time periods changed the result to a non-deterrent effect. Third, manipulating data or changing statistical methods can and do change the results. Finally, researchers controlled for various variables, but there are still some important factors, such as clearance rates for violent crimes, that were often neglected (Fagan, 2005). There are also some unknown or unobservable variables
that may influence the result. Moreover, the inclusion of some irrelevant variables may result in the enhancement of the impact of the death penalty.
CHAPTER V. CASE STUDIES

This chapter is to present case studies on the use of the death penalty in the Russian Federation and Singapore. Due to the lack of reliable data, no empirical studies can be developed to compare these two countries to China. However, some existing literature and data may allow for the analysis of the use of the death penalty in these countries and, in turn, shed light on the discussion of China’s abolition movement.

The Russian Federation

Social, Economic, and Political Similarities to China

China has a close relationship with Russia since the USSR era, and China’s earlier legal system borrowed much from the USSR. The USSR had a model role in China’s legislation and law enforcement. The Chinese Criminal Law (1979), for example, was highly similar to the Criminal Code of the USSR (1962) in both structure and content (Chen, 2003). Moreover, the current criminal theory, legislation, and practices maintain the influences from the USSR to some extent. For example, the theory of crime constituent elements is changing in present China; however, it mostly remains the theory imported from the USSR (Chen, 2003).

In the USSR period, the society was highly stable and secure; China also had the history of high social stability and low crime rate before the 1970s. Since the breakdown of the USSR in 1991, Russia has experienced a period of unstable political and economic status. The social environment also changed dramatically. The market-oriented reform started after the breakdown; problems of poverty and inequality emerged; there were also several political crises in this newly independent country ("history", n.d.). China adopted the “Open Door” policy and initiated an economic reform since the late 1970s. The economy changed to market-oriented; the concept of competition was introduced and the ideology of equality in a socialist country was reduced; with
the ultimate goal of entire richness, the government encouraged part of the people to get rich first. Considering the change and increasing crime rates in the two countries, Russia’s experience dealing with crime and the death penalty may have a suggestive effect on China’s future.

In order to improve the trade relationship with European countries, Russia sought the membership of the Council of Europe and the European Union, which are devoted to the protection of human rights in the European region. Thus, Russia promised to sign and ratify Protocol 6 of the European Convention on Human Rights (ECHR)\(^\text{17}\) and imposed an immediate moratorium on the use of the death penalty in 1996. Since China is also seeking the approval of the international community, Russia’s moratorium will be worthy of study.

*The Use of the Death Penalty in Russia*

The death penalty appeared in Russian written law in 1397. After that, the death penalty has been abolished and reinstated many times. Even during the USSR era, it had been abolished three times (in 1917, 1920, and 1947) based on the doctrine that the death penalty would be ultimately abolished under Communism, but the abolition did not last for more than four years (van den Berg, 1996). Since 1954, in response to increased violent crime, the range of capital crimes extended from serious crimes against the state to serious crimes against person and property. In 1980, the number of capital crimes as well as execution numbers started to decrease (Hood, 2002). Capital crimes were restricted to only five categories and the use of the death penalty on the vulnerable, such as juveniles, women, and the elderly, were outlawed. Many economic crimes, such as bribery and theft of state property, were excluded from capital crimes (Barry & Williams, 1997). However, the available data indicated that the execution number increased considerably from 1993 to 1996 due to Yeltsin’s harsher attitude toward criminals (Barry & Williams, 1997).

\(^{17}\) Protocol 6: The death penalty shall be abolished. No one shall be condemned to such penalty or executed.
According to the Criminal Code of the Russian Federation (1997), capital crimes have been reduced from twenty eight to five capital crimes: aggravated murder, attempted murder of a state or public figure, attempted murder of a person administrating justice or conducting a preliminary investigation, attempted murder of an employee of a law-enforcement agency, and genocide (Amnesty International, 1998; Ritter, 2000). Although the capital offenses in statute and execution numbers in Russia were not as many as in China, its history of the use of the death penalty has some similarities to China. Under the Stalin regime, the execution numbers exceeded 300,000 in some years (van den Berg, 1996). The death penalty was used as an instrument to control crimes, so the range of capital crimes expanded as a reaction to increasing crimes.

As stated above, the Council of Europe called for a moratorium on executions and the ultimate abolition of the death penalty. Although Yeltsin declared the moratorium, executions continued even after the entry into the Council of Europe in 1996. Amnesty International reported 140 executions in Russia in 1996, of which 103 were carried out after Russia joined the Council of Europe (Barry & Williams, 1997). After the last execution observed by Amnesty International in 1999, Russia became an abolitionist de facto country. As for the legislation, the Constitution and Criminal Code have not been amended to abolish the death penalty completely (Hood, 2002).

The debate regarding the abolition of the death penalty has existed in Russia in recent years. Human rights activists advocated the complete abolition of the death penalty immediately, while the general public and politicians argued to retain the death penalty and even to increase its use (Barry & Williams, 1997). The majority of people in Russia showed extremely high support for the retention because they perceived the death penalty as a deterrent to crimes. In some cities, more than 90 percent of people supported the death penalty (Ritter, 2000). Thus, some politicians opposed the abolition of the death penalty because they deemed it implausible to dismiss the
Ritter (2000) also provided several reasons that the death penalty cannot be abolished in current Russia. Serious crime is the major concern of the public and politicians. In order to control crime and protect personal safety, the public and politicians have called for the reinstatement of executions. The State Duma, for example, attempted to resume executions due to the high murder rate in 2002 (Hood, 2002). In spite of the lack of evidence for a deterrent effect of the death penalty in Russia, Russians prefer to retain the death penalty as a comfort for the public, especially those who remember the low crime rate during the USSR period (Ritter, 2000). Another reason to retain the death penalty is that it is much more expensive to imprison offenders than to execute them; the current prison system cannot lend support for abolishing the death penalty (Ritter, 2000).

Analysis

According to the limited available data, the high murder rate is not a perfect justification for the use of the death penalty. First, there is little empirical evidence that the use of the death penalty is an effective tool to control crimes or the reduction of use may result in more crimes. Moreover, van den Berg (1996) pointed out that the increase in the murder rate in 1994 was not related to the reduction of using the death penalty. Instead, he attributed the increase in the murder rate to alcohol: the higher murder rate was always correlated with the availability of cheap vodka in Russia. Although van den Berg did not provide empirical evidence for his conclusion, he challenged the perception of the death penalty as an effective crime control tool.

Second, Russia has one of the highest murder rates worldwide, and it did not increase considerably after the moratorium on the death penalty. According to van den Berg (1996), the average murder rate during 1993-1995 was about 20 per 100,000 inhabitants, while the seventh
United Nations Survey of Crime Trends and Operations of Criminal Justice (1998-2000) demonstrated that Russia’s murder rate was about 20.15 per 100,000 inhabitants\textsuperscript{18}. It showed that Russia maintained a high murder rate since last decade and it did not increase dramatically since the moratorium on the death penalty. Thus, it is reasonable to question the resumption of executions from a deterrence standpoint.

Finally, the execution number in Russia was not large in the last decade—usually less than 100 every year and, while Russia has almost the second highest incarceration rate in the world\textsuperscript{19}, the commutation of death sentences actually would not increase the burden on the prison system to a great extent. Also, the cost concern of the death penalty has been criticized by human rights organizations because it weighs money over human rights. In addition, van den Berg (1996) pointed out that the small number of executions in Russia makes it easier to abolish the death penalty.

Singapore

\textit{Social, Economic, and Political Similarities to China}

Singapore is probably the safest country, with an extremely low crime rate compared to other countries (Lee, n.d.). The country also has the highest execution rate per capita and strongly supports the retention of the death penalty. The overall number of executions is also large in this small country: during 1991-2003, more than 400 executions were carried out in Singapore (Amnesty International, 2004c). Insofar as Singapore is similar to China with regard to the extensive use of the death penalty, Singapore’s experience is instructive.

Economic development and nation building is the first priority in Singapore. Under this circumstance, it has an important cultural feature that the individuals are subordinated to the

\textsuperscript{18} See http://www.nationmaster.com/graph-T/cri_mur_percap
\textsuperscript{19} In 2003, the incarceration rate was 628 per 100,000 in Russia and 702 per 100,000 in the USA. See www.sentencingproject.org/pdfs/pub9036.pdf
community, nation, and the pursuit of economic productivity (Oehlers & Tarulevicz, 2005). This is very similar to the situation in China: the deep-buried Confucianism thoughts and communist doctrine emphasize the national interest over individual interest; China has aimed at economic development since the economic reform started in the late 1970s.

The Use of the Death Penalty in Singapore

Singapore was a colony of England and it inherited the death penalty from British law when it became independent (Oehlers & Tarulevicz, 2005). This ultimate punishment is accepted widely by the public in Singapore, just like in China, due to its long history. Also, like China, the Singapore Government regards information on executions as secret; there is no public debate on abolishing the death penalty in Singapore, and the media expression is controlled by the government (Amnesty International, 2004c).

There are some offenses eligible for the death penalty in Singapore. Drug trafficking in certain drugs, murder, treason, and firearm offenses carry a mandatory death penalty, while seven other offences are discretionary capital offences (Amnesty International, 1997). However, the death penalty has only been imposed for drug trafficking, murder, and firearm offenses for years, among which drug trafficking accounted for most executions every year (Amnesty International, 2004c).

In recent years, Singapore was criticized by the United Nations, the European Union, and Amnesty International for the retention and extensive use of the death penalty (Amnesty International, 2004b). Amnesty International (2004b) denied the deterrent effect of the execution of drug traffickers due to the remaining serious drug addiction problem in Singapore. In response to the criticism, the Singapore Government alleged that the death penalty deterred potential
crimes, especially the establishment of drug trafficking syndicates\textsuperscript{20}. Also, the Singapore Government released the data of arrested drug abusers during 1994-2001, which demonstrated a declining trend over the years, in order to show the deterrent effect on drug control through the decline.

Amnesty International, as well as the Singapore Government, however, failed to provide accurate evidence for the debate on the deterrent effect. The reduction of drug supply may lead to the reduction of drug abuse; but, the number of drug abusers is affected by the drug treatment policy even more. According to the United Nations Office on Drugs and Crimes, the drug abuse rate in Singapore is equivalent to Finland, Sweden, and Mexico, which do not have the death penalty; Thailand, with the highest drug abuse rate in the world, retains the death penalty. Therefore, the association between the death penalty and drug abuse rate is weak. The declining number of drug abusers arrested cannot provide sufficient evidence that drug trafficking had been deterred. Moreover, Amnesty International (2004b) pointed out that new drug abusers had increased by 16\% since 2001.

The appropriate measure of the deterrent effect should be the number of drug traffickers, but neither Amnesty International nor the Singapore Government provided relevant data. Therefore, the deterrent effect is not evident and the Singapore Government’s justification of the retention of the death penalty is questionable. In addition, an independent non-governmental organization registered in 2001 in Singapore, Think Centre, pointed out that social conditions may be responsible for the occurrence of drug trafficking and addiction\textsuperscript{21}. Hence, Think Centre, as well as Amnesty International, calls for an immediate moratorium on executions to determine the deterrent effect; they also suggest the ultimate abolition of the death penalty in Singapore.

\textsuperscript{20} See http://www2.mha.gov.sg/mha/detailed.jsp?artid=990&type=4&root=0&parent=0&cat=0#_ftnref11
\textsuperscript{21} See http://www.petitiononline.com/TCAction/petition.html
Conclusion

In Russia, politicians regarded the death penalty as an effective instrument to deal with the high murder rate and called for the reinstatement of executions. But the analysis in this chapter shows that the murder rate in Russia has remained high since the breakdown of the USSR. The underlying reason for the high murder rate is mostly due to socioeconomic factors; the moratorium on executions does not lead to the substantial increase in the murder rate.

In Singapore, the government believes in the deterrent effect of the death penalty for potential crimes, especially drug trafficking. The death penalty was mostly imposed on drug traffickers in the last decade. But the Singapore government cannot provide data of decreased drug trafficking. The declining number of drug abusers arrested in Singapore says nothing about the deterrent effect of the death penalty on drug trafficking.
CHAPTER VI. CONCLUSION

There are 68 capital crimes in Chinese Criminal Law (1997) and it is estimated that thousands of executions are carried out in China every year. Running counter to the global trend towards abolition, the death penalty policy and practice in China are under development. Taking into account the current situation in China and other countries’ experiences, as well as empirical deterrence studies, this chapter will provide an estimate of abolishing the death penalty in China.

Perspectives on the Death Penalty

Official Attitudes

Recalling the communist doctrines and the earlier policy on the death penalty adopted at the beginning of the PRC, the official attitude toward the death penalty should be that it will be abolished eventually and be restricted at the present stage. The current official view, represented by a senior judge’s view, indicated that the death penalty will be abolished eventually but it must not be abolished currently (Ho, 2005). Government officials also contend that the death penalty will be abolished when conditions are satisfied, for example, when China progresses into communism stage and crimes are eliminated. However, legislators, policy makers, and law enforcement officials do not show efforts to abolish or restrict the use of the death penalty.

When revising the Criminal Law in 1997, legislators stated that the use of the death penalty would not decrease or increase due to the severe public security problem and the serious economic crime problems (Liu, 2004). However, 68 offenses were stipulated as capital crimes in Criminal Law (1997), which was criticized by some scholars as a degradation of the Criminal Law (1979). The government believes that the death penalty can deter and educate people; so, the death penalty is regarded as an effective instrument to control and prevent crimes, maintain social order, satisfy the public, and strengthen the regime (Svensson, 2001). For example, the
death penalty was an underlying part of every “Strike Hard” campaign. According to Hood (2002), every time China developed a “Strike Hard” campaign, the execution rate increased sharply. The expanded use of the death penalty during “Strike Hard” campaigns played an important symbolic role to publicize the government’s intention to combat crimes, and the government intended to deter and educate the public through executions. The large amount of death sentences and executions of drug traffickers around anti-drug day also demonstrated the symbolic role of the death penalty in China (Svensson, 2001; Amnesty International, 2004a).

In sum, the official attitude towards the death penalty does not comply with the restrictive principle. Legislation has not restricted the range of capital crimes; the government deems the death penalty as an effective instrument and even expands its use when needed.

Scholar Perspective

Although remaining as a sensitive topic in China, there are already many discussions on the abolition of the death penalty. Very few scholars support the retention of the death penalty, while support for complete abolition immediately is also sparse. Most Chinese scholars agree that the death penalty should and will be abolished in the future, but it is not realistic to abolish it completely at the present moment (Zhao, 2005; Liu, 2004; Qiu, 2002; Wang, 2004). They oppose the retention of the death penalty because it is morally inhumane and violates human rights. They also call for abolition based on the absence of a deterrent effect, despite the lack of empirical studies and reliable data in China. The contention regarding a non-deterrent effect was from studies abroad, but the most frequently cited evidence against the deterrent effect in China was the effect on theft numbers after the change in its death eligibility (see table 4).
Table 4: Case Numbers of Theft in China

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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Number</td>
<td>57,723</td>
<td>75,268</td>
<td>73,372</td>
<td>163,100</td>
<td>128,539</td>
<td>203,637</td>
<td>136,180</td>
<td>131,512</td>
</tr>
</tbody>
</table>


According to these data, scholars refuted the deterrent effect because theft cases did not decrease substantially following the introduction of the death penalty in 1982; in fact, it increased dramatically. When the revised Criminal Law removed the death penalty for theft in 1997, the cases did not increase; in fact, it decreased slightly (Zhao, 2005).

**Public Opinion**

As stated earlier, the death penalty has a deep cultural and historical root in China, so it is accepted by the public as a necessary punishment (Ho, 2005). According to the survey on attitudes toward the death penalty developed by the Institution of Law, Chinese Academy of Social Science in 1995, more than 95 percent of respondents were in favor of the death penalty (Hu, 2000). Liang, Lu, Miethe, and Zhang (2005) conducted a small-sample survey among Chinese students in a Chinese university and American universities. Being aware of the limitation of sampling and methods, the authors found a suggestive result that the vast majority of respondents were in favor of the death penalty and the perception of a deterrent effect was the major reason.

Thus, the Chinese public, like the public in other countries, supports the death penalty due to their perception of a deterrent effect. In addition, the public support for the death penalty is overwhelming in China, which is comparable to Russia and Singapore.
Can China Abolish the Death Penalty?

Crime Rates and Deterrent Status in China

Since the legislature, the government, and the public all justify the retention and the use of the death penalty based on a deterrent effect, it is necessary to examine the deterrent status in China. However, unless the China’s government releases accurate execution information, it is impossible to conduct empirical research. The deterrent effect of the death penalty in China can only be estimated roughly using available data. Also, Svensson (2001) pointed out that several preconditions of a deterrent effect cannot be met in China due to the low certainty of offenders being caught and arrested, the lack of legal knowledge by the public, and the lack of respect for law.

As mentioned earlier, the execution number increased sharply during “Strike Hard” campaigns. Thus, the homicide rate should have decreased during these periods if the death penalty deters. However, the crime data from the Chinese Law Yearbook showed a relatively steady increasing trend in the homicide rate in spite of the increased executions during “Strike Hard” campaigns in 1983 and 1996. Liu and Messner (2001) also examined the trend and reported that the homicide rate in 1978-1998 was significantly increased. It appeared that other violent crimes rates, such as rape, assault, and robbery, decreased following the “Strike Hard” campaign in 1983, but it provided no evidence of a deterrent effect of the death penalty. First, compared to homicide, these offenses were less likely to be sentenced to death. Second, the data for these crimes were aggregated, which included many non death-eligible crimes. For instance, only very serious rapes were death eligible, but the rape rates included a large number of ordinary rapes. Third, these crime rates had large fluctuations. The rape rate, for example, decreased in 1992 and increased again in 1996.
Guangdong Province has a serious drug problem and drug-related crimes. Since the introduction of the death penalty for drug trafficking in 1980s, the drug problems should have decreased if the death penalty deters, especially since executions of drug dealers were often carried out around the anti-drug day to educate and deter people. Singapore’s experience has shown that the death penalty did not deter drug trafficking; data from the Anti-Narcotics Commission of Guangdong also showed that the drug trafficking problem in Guangdong is becoming more serious. Cases solved, drugs seized (with the exception of Opium), and dealers arrested all increased (see table 5). Even when considering the increased population, the drug problem was still becoming more serious and the introduction of the death penalty did not deter drug trafficking. Moreover, the “Strike Hard” campaign in 1996 did not show any deterrent effect on drug trafficking.

Table 5: Drugs seized in Guangdong, 1981-1998

<table>
<thead>
<tr>
<th></th>
<th>Cases Solved</th>
<th>Opium (kilo)</th>
<th>Heroin (kilo)</th>
<th>Others (kilo)</th>
<th>Dealers Arrested</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981-1990</td>
<td>850</td>
<td>1,377.3</td>
<td>299.9</td>
<td>N.A.</td>
<td>2,142</td>
</tr>
<tr>
<td>1994</td>
<td>3,045</td>
<td>11.3</td>
<td>306.0</td>
<td>1,509.7</td>
<td>4,064</td>
</tr>
<tr>
<td>1998</td>
<td>3,700</td>
<td>N.A.</td>
<td>669.5</td>
<td>6,050.4</td>
<td>4,600</td>
</tr>
</tbody>
</table>

Source: The Anti-Narcotics Commission of Guangdong, as cited by Liu & Situ (2001)

Also considering the trend of theft, it is plausible to refute the deterrent effect of the death penalty in China. Instead, crimes show their own features: the homicide rate kept increasing steadily; theft cases kept increasing in the 1980s and decreasing in the late 1990s, and drug trafficking crimes kept increasing. A strong explanation for the increasing crime trend lies in the macro-level changes in Chinese society. After the economic reform in the late 1970s and early
1980s, China experienced a dramatic change in many aspects: the breakdown of formal and informal social control, the breakdown of the socialist value system and the introduction of a western value system, large migrations from rural to urban areas, the income discrepancy among people, and the pursuit of economic interests (Liu, Zhang, & Messner, 2001). These changes accounted for the increasing crime rate in the transitional stage in China. For example, that theft offenses decreased in the late 1990s while drug trafficking kept increasing may be because drug trafficking gradually replaced theft as a profitable method to become rich.

**Previous Studies and Other Countries’ Experiences**

Recent deterrence studies in the United States showed no consistent deterrent results. Even those studies claiming deterrence results are questionable due to flawed data, the impact of changing time periods and statistical techniques, neglected variables, and the lack of a direct relationship between executions and murders. Therefore, these studies cannot be used to support the deterrent effect and, in turn, the retention of the death penalty in China.

Russia’s moratorium experience with the death penalty suggests that the death penalty does not have a deterrent effect on the murder rate at the transitional and instable stage after the USSR broke down. The murder rate in Russia remained high and the moratorium on executions did not cause a sharp increase; other factors, such as the movement toward a market economy and the use of alcohol, have kept the murder rate high both before and after the moratorium. Also, the Russian people experienced a crime-free era during the USSR period and they are afraid of crime problems at the present time; thus, they have an overwhelming support for the death penalty. Despite the strong supportive opinion, Russia sticks to the moratorium and is on the way towards abolition. At the same time, China is also transitioning from a state socialist society to a market economy. Crimes, especially economic crimes, have increased greatly, despite the utilization of
the death penalty for many of these crimes (Liu, 2005). Thus, in both Russia and China, it is the socioeconomic changes during the transition, instead of the use of the death penalty, that affect the crime trends.

Singapore has a severe drug problem and the highest execution rate per capita worldwide. The Singapore government claimed that the death penalty can deter potential drug trafficking, but it failed to provide deterrent evidence of the death penalty. The declining number of drug abusers arrested provided no comparison to drug trafficking. Even so, drug abuse remains a problem in Singapore since the percentage of new drug abusers arrested actually increased. Also, the drug abuse problem has no relationship with the existence of the death penalty according to a cross-national comparison. If justified by the deterrent purpose declared by government officials, the death penalty has no basis to exist.

In conclusion, the death penalty in China can be abolished. The available crime data in China show no deterrent effect of the death penalty; instead, the increasing crime rate has been driven by socioeconomic changes. Previous deterrence studies have not obtained consistent deterrence results and studies reporting deterrence are suspect. The murder rate in Russia did not increase significantly as the deterrent hypothesis predicted; the highest execution rate per capita in Singapore has not been followed by reliable evidence of deterrence. Therefore, the deterrent justification of the death penalty in China becomes questionable.

In addition, China is seeking to be accepted by the international community. In October 1998, China signed the International Covenant on Civil and Political Rights (ICCPR) but has not ratified it yet. The signature of the ICCPR indicated that China’s government is attempting to improve the human rights situation in order to be accepted by the international community. The present trend of the death penalty worldwide is toward abolition and the abolition movement is
accelerating. Due to this and the lack of consistent evidence supporting a deterrent effect, China may feel pressure to abolish the death penalty.

Conclusion

The extensive use of the death penalty in China is based on the long history of heavy punishment and the government and public’s belief in the deterrent effect. However, China’s practice does not support a deterrent effect of the death penalty. If the death penalty deters, future crimes, especially death-eligible crimes, should be prevented. In fact, the death penalty does not deter homicide, theft, or drug trafficking in China. Moreover, deterrence research in the United States and the experiences of the death penalty in similar countries suggest that the death penalty serves little, if any, deterrent purpose. Therefore, from the deterrence standpoint, the death penalty can be abolished in China. The abolition will not lead to the increase in the crime rate; in fact, the crime rate, especially economic crime rate, has increased since the movement toward the market economy, despite the extensive use of the death penalty during this period.

Heavy punishment, including the death penalty, has existed in China for thousands of years and the public takes it for granted. Surveys showed that the major reason to support the death penalty was the belief in the deterrent effect. In fact, the historic use of the death penalty and the desire to punish also affect the public opinion. It is hard to educate the public on the lack of the deterrent effect. Even if it is accepted by the public, the influence of the historic use and the desire to punish still exist. Nonetheless, other countries’ experiences suggest that the public opinion cannot impede the abolition. In the U.S., 60 percent of Michigan and Minnesota residents support the death penalty, but states’ governments have refused to reinstate it; Russia also refused to resume executions despite the overwhelming support and the request for reinstatement; France abolished the death penalty in 1981 even though the public resisted it.
Therefore, it is possible to overcome the public resistance and achieve the abolition.

The primary limitation of this thesis is the lack of reliable data from China and other countries. The accurate information on executions in China is unavailable, which makes it impossible to conduct meaningful empirical research on the use of the death penalty in China. Also, due to the lack of reliable data from Russia and Singapore, detailed comparison cannot be conducted between these countries and China. Therefore, the conclusion based on the deterrence studies in the United States and the comparison to Singapore and Russia can only be read as instructive, not conclusive. Once the official data are released in China, future empirical research should be conducted to study the use of the death penalty in China, which carries out the vast majority of executions worldwide.
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APPENDIX A: Capital Offenses Stipulated in the 1997 Criminal Law

Crimes of Endangering National Security (Article 113)

- Plotting to jeopardize the sovereignty, territorial integrity, and security of the country
- Instigating to split the country
- Organizing, plotting, or carrying out armed rebellions, or armed riots
- Organizing, plotting, or acting to subvert the political power of the State
- Espionage
- Stealing, secretly gathering, purchasing by bribery, or illegally providing the national secrets or intelligence for foreign institutions
- Providing the enemy with armed equipment or military materials

Crimes of Endangering Public Security (Articles 115, 119, 121, 125, and 127)

- Arson
- Breaching dikes
- Causing explosions
- Poisoning
- Threatening public security with dangerous methods
- Sabotaging transportation instruments
- Sabotaging transportation infrastructures
- Sabotaging electric power
- Sabotaging inflammable or explosive facilities
- Hi-jacking an aircraft
- Illegally manufacturing, trading, transporting, and mailing guns, ammunitions, or explosives
- Illegally trading or transporting nuclear materials
- Stealing or snatching guns, ammunitions, or explosive materials
- Forcibly seizing guns, ammunitions, or explosive materials

Crimes of Undermining the Socialist Market Economic Order (Articles 141, 144, 151, 157, 170, 199, 205, and 206)

- Producing or distributing bogus medicines
- Producing or distributing poisonous or harmful foods
- Smuggling weapons and ammunitions
- Smuggling nuclear materials
- Smuggling counterfeited currencies
- Smuggling cultural relics
- Smuggling precious metals
- Smuggling rare plants and their products
- Counterfeiting currency
- Illegal fund-raising fraud
Financial instrument fraud
Letter of credit fraud
Credit-card fraud
Illegally issuing value-added tax invoices
Counterfeiting or selling counterfeited value-added tax invoices are capital offenses

**Crimes of Infringing upon the Rights of the Person and the Democratic Rights (Articles 232, 236, 239, and 240)**

Murder
Rape
Statutory rape
Kidnapping
Abducting women and children

**Crimes of Encroaching on Property (Articles 263 and 264)**

Robbery
Theft

**Crimes of Disrupting the Order of Social Administration (Articles 295, 317, 328, 347, and 358)**

Imparting criminal methods
Organizing a jail break
Prison riots using weapons
Illegally digging and robbing ancient remains or tombs
Illegally digging or robbing fossils of ancient human beings or fossils of ancient vertebrate animals
Smuggling, trafficking, transporting, or manufacturing narcotics
Organizing another person to engage in prostitution
Forcing another person to engage in prostitution

**Crimes of Endangering the National Defense Interest (Articles 69 and 370)**

Sabotaging military weapons, military installations, or military communications
Knowingly providing unqualified weapons or military installations to the armed forces

**Crimes of Graft and Bribery (Article 383)**

Graft
● Bribe-taking

_Crimes of Violating Duties by Military Servicemen (Articles 421, 422, 423, 424, 426, 430, 431, 433, 438, 439, and 446)_

● Refusing to carry out an order in wartime
● Deliberately concealing military intelligence, furnishing falsified intelligence
● Refusing to disseminate military orders, or falsely disseminated military orders
● Surrendering to the enemy
● Deserting on the eve of a battle
● Obstructing commanding officers or on-duty servicemen from carrying out their duties
● Defecting to a foreign country
● Illegally obtaining military secrets
● Illegally providing military secrets to foreign organs
● Fabricating rumors to mislead people during wartime
● Stealing or robbing weapons or military materials
● Unlawfully selling or transferring military weaponry
● Injuring or killing innocent residents or looting property from innocent residents during wartime