Public Opinion and Death Penalty Reform in the People’s Republic of China

By
Franklin Zimring and David Johnson

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Franklin Zimring* and David Johnson†

Many governments invoke ‘public support’ to explain and defend their decisions to execute criminals. This article argues that public opinion does not explain the wide variation in execution policy that exists in Asia and other parts of the world. More people are executed in the People’s Republic of China than in the rest of the world combined, yet support for the death penalty appears to be no higher there than in the rest of the region. Evidence from Asia also suggests that support for capital punishment is seldom a significant obstacle to reduced use of the ultimate sanction. If the Chinese Communist Party is really committed to ‘killing less and killing cautiously’ (as it claims to be), then the difficult task of changing public opinion about capital punishment should be a lower priority than providing guidelines for capital prosecution, creating explicit standards for appellate review of death sentence and placing greater emphasis on the use of suspended death sentences.

I. Introduction

This article builds on our recent analysis of the death penalty in Asia¹ by discussing two related recent developments—a study of public opinion on the death penalty,² and the efforts since 2007 to reform death penalty practices in the People’s Republic of China (PRC/China). The article is divided into two main parts. In Part II we argue that variations in public feelings about capital punishment neither explain nor constrain the wide variations in execution policy that occur in East and Southeast Asia. This is in itself an important finding. It also liberates policy analysts to select meaningful strategies of death penalty reform without worrying about the public reaction to specific proposals. Thus liberated, Part III of this analysis suggests several priorities for reform in China’s death penalty process.

* William G Simon Professor of Law and Wolfen Distinguished Scholar, University of California, Berkeley School of Law.
† Professor of Sociology, University of Hawai’i at Mānoa.

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II. THREE NEGATIVES CONCLUSIONS

Table 1 compares the support for death penalty found by Oberwittler and Qi to poll data reported from several other Asian surveys. The first conclusion we draw from the rich new data set is that there is no clear difference between public attitudes toward the death penalty in the PRC and public sentiments on the same topic elsewhere in Asia. The most striking finding is that general support for the death penalty in China (58 per cent) is a little lower than in some other places (e.g., South Korea and Hong Kong) and a lot lower than in places such as Taiwan, Thailand, Japan and the Philippines.\(^3\)

<table>
<thead>
<tr>
<th>Country (Year of Survey)</th>
<th>% supporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>China (2007-2008)</td>
<td>58</td>
</tr>
<tr>
<td>South Korea (1999)</td>
<td>66</td>
</tr>
<tr>
<td>Hong Kong (1986)</td>
<td>68</td>
</tr>
<tr>
<td>Philippines (1999)</td>
<td>80</td>
</tr>
<tr>
<td>Taiwan (2001)</td>
<td>80</td>
</tr>
<tr>
<td>Thailand (2005)</td>
<td>84</td>
</tr>
<tr>
<td>Japan (2010)</td>
<td>86</td>
</tr>
</tbody>
</table>

The China survey — 4,472 face-to-face interviews with a response rate of 70 per cent — was conducted in Beijing, Hubei and Guangdong provinces between November 2007 and January 2008.\(^5\) In addition to asking about support for capital punishment, the survey also asked respondents how interested they are in the death penalty issue. Table 2 summarises the findings on this issue.

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\(^4\) This table is adopted and updated from Johnson and Zimring (n 1) 302 (Table 8.1).

\(^5\) Oberwittler and Qi (n 2) 10.
Table 2: Interest in Death Penalty, Chinese Adults, 2007-2008

<table>
<thead>
<tr>
<th>Degree of interest</th>
<th>% interested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Interested</td>
<td>3</td>
</tr>
<tr>
<td>Interested</td>
<td>23</td>
</tr>
<tr>
<td>Not Very Interested</td>
<td>37</td>
</tr>
<tr>
<td>Not Interested at All or Don’t Know</td>
<td>37</td>
</tr>
</tbody>
</table>

On the whole, Chinese citizens expressed little interest in the death penalty. Indeed, three-quarters of all respondents said they are not interested at all or not very interested, and only 3 per cent called themselves ‘very interested’.

We do not have good measures of how important the death penalty is to most residents of other Asian nations, but we believe that the pattern in China — the death penalty is not salient to most citizens — probably holds true outside China as well. We also know that even though public opinion does not vary all that much between nations in the region, execution policy varies widely. Japan and Thailand have each averaged only about three executions per year for the past three decades, and Thailand has carried out executions in only 16 of the most recent 30 years. The Philippines had only seven executions in the decade before it abolished the death penalty in 2006. Hong Kong had no executions after 1967, and it abolished the death penalty in 1993. South Korea has had no executions since 1997, and Taiwan had none for 52 months between 2006 and 2009. By contrast, China has had the highest execution rate in Asia since Singapore’s execution rate started falling in the late 1990s. In short, similar levels of public support are found in nations with no executions, few executions, and thousands of executions.

This leads to our second negative conclusion: public opinion is not a major influence on rates of executions in Asia. Executions are common when authoritarian governments wish to have a lot of them, and they decline when political regimes became more democratic or less eager to kill. In recent decades, variations in public opinion toward capital punishment have not been an important cause of the reductions in execution that have occurred in East and Southeast Asia.

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6 This table is adopted and updated from Oberwittler and Qi (n 2) 10 (Table 3.1.1).
7 See Johnson and Zimring (n 1) chs 4–6 on the Philippines, South Korea and Taiwan.
8 Ibid 403.
9 Ibid 365–68.
10 Ibid chs 5–6.
The third negative conclusion is a more hopeful sign for those who worry that public support for capital punishment is an obstacle to a decline in executions and to the elimination of executions as a state policy. In the four nations that have moved closest to non-execution since 1995, public sentiment was not an important barrier to reform in any case. In the Philippines, a closely divided political elite was the main force behind reintroducing the death penalty in 1993 before it was abolished again in 2006 (the Philippines had first abolished the death penalty in 1987). In South Korea, a decade of no executions under left-liberal presidents never became an important political issue, and the moratorium has quietly continued under a conservative president. In Taiwan, the death penalty was not an issue in the 2008 presidential election, and the only real controversy over the issue occurred in 2010 when a staunchly abolitionist Minister of Justice (Wang Ching–feng) from the ruling right-wing party took a firm stand against executions and then was forced to resign. In Japan, the (conservative) Liberal Democratic Party increased executions sharply in the years leading up to its loss in the 2009 national election, and then executions ceased for more than a year when the Democratic Party of Japan took control of the government. There was little public reaction to either the increase or the cessation.

Thus, public opinion seems to tolerate substantial changes in execution policy notwithstanding general support for the death penalty as an abstraction. Changes in government death penalty policy are rarely inspired by public sentiment, and the efforts of a government to shift policy are usually tolerated by the citizenry. Death penalty reform most often occurs through what has been called ‘leadership from the front’, with the main mechanism of reform being the actions of government elites. Political changes through democratic elections were also important parts of the shifts in government that produced ‘leadership from the front’ in the Philippines (1987), South Korea (1998), Taiwan (2000) and Japan (2009), but the question of capital punishment was not salient in those elections.

Does this mean that the study of public opinion on capital punishment is unimportant? Not at all. The path-breaking work summarised in Oberwittler and Qi is a critical part of understanding the death penalty in China. The low level of concern about such matters that careful research has found means that people in China will tolerate reform if the government wills it. The reality of ‘normal’ death penalty sentiment in China is also a powerful rebuttal to claims that there is strong public demand for high levels of execution.

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12 Johnson and Zimring (n 1) 103–04.
13 Ibid 182–90.
14 The Minister of Justice said: ‘I will surrender my own life if it is necessary to prevent an execution.’ AJ Cohen, ‘Tied to the Cause’ South China Morning Post (Hong Kong 17 March 2010).
15 RL Parry, ‘Japan’s Death Penalty Effectively Scrapped with Arrival of Keiko Chiba’ The Times (19 September 2009).
16 Johnson and Zimring (n 1) 69; Parry (n 15).
17 Johnson and Zimring (n 1) 301.
18 Oberwittler and Qi (n 2).
in that country. Murderers are no more popular in China than in Cologne or Cleveland, yet there is no deep commitment in Chinese public opinion for thousands of executions each year — and this is both an important discovery and an important policy reality.

Having known that the level of execution and the procedures that generate death sentences are not pressing concerns to the man on the street in Beijing or the woman on the factory line in Guangdong, architects of death penalty reform do not need to worry about public reactions to their reform initiatives. We now turn our attention to reform priorities for China.

III. PRIORITY REFORMS FOR CHINA

The scale of China’s death penalty presents a unique and challenging context for constructing reforms. Even after the reduction in death sentences and executions that has occurred in recent years, the PRC legal system still produces thousands of executions each year. The number of lawyers and judges available to monitor and practice in China’s system of capital justice is also limited, as are the material resources available to administer it.

The main thrust of China’s 2007 reform was to reverse the decentralisation of death penalty controls instituted in the early 1980s by requiring a review of death sentences by the Supreme People’s Court (SPC). This was a necessary change for at least two reasons. First, it created some quality control at the national level for reviewing the factual foundations of guilt, the fairness of trial procedures and the appropriateness of death sentences. Second, the 2007 reform reversed the highly permissive signals that the national government had been sending to the provinces since the abolition of SPC review a quarter-century before.

Although restoration of review power to the SPC is a necessary step for any meaningful reform, it is not a sufficient condition for quality control of capital punishment in China. In fact, the lack of legal and material resources for death penalty litigation makes the national system of capital justice highly inefficient and subject to abuse.

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21 Johnson and Zimring (n 1) 280; B Schiller, ‘In China, a Quiet Push Against Executions’ Toronto Star (Toronto 29 March 2009).

22 ‘The capital confirmation and approval procedure for cases of serious crime ... had been conducted by high courts... However, on 31 October 2006, the Chinese National People’s Congress ruled that as of 1 January 2007, the confirmation and approval procedure must be conducted only by the Supreme People’s Court.’ Y Wang, ‘The Death Penalty and Society in Contemporary China’ (2008) 10 Punishment and Society 137, 148.
appellate review process a hopeless mechanism for achieving consistency and due process in what could still be 5,000 capital cases a year.\textsuperscript{23} The skilled professional resources to conduct that many capital trials do not exist in China’s current system, and this creates a dilemma for the review process: either the \textit{ex post facto} review of trials lowers standards at the cost of justice, or it creates such a high rate of reversals that prosecutors and provincial authorities get frustrated. Whilst the development of the legal system in China is still ongoing, the diseconomies of scale in a capital process that handles thousands of cases each year will devastate the prospects for effective quality control.

Therefore, a second necessary condition for an effective reform of the death penalty administration in China is to reduce the demand for capital trials and to restrict capital prosecutions at the front end of the process to only those cases which are extremely serious. We suggest three related measures to reduce the number of capital prosecutions so that the system can provide the resources and attention that death penalty cases require. These mechanisms, discussed below, are: (i) guidelines for capital prosecution; (ii) an emphasis on symbolically equivalent non-capital sentences; and (iii) the creation of explicit standards for reviewing capital sentences.

\textbf{A. Guidelines}

Our analyses of the 2007 reforms suggested that:

\ldots front end reforms will be less costly and more efficient than back end reforms at making the system more selective\ldots The scarcity of legal resources carries several implications for reform. The first is that many additions to the PRC’s legal system may amount to less than the advertised intensity of service\ldots The second impact of scarce legal resources is that any real guarantees of special legal protections for capital defendants could create pressure to limit capital prosecutions.\textsuperscript{24}

One advantage of guidelines is obvious: a capital trial that does not occur costs nothing. By contrast, two capital trials with a successful appeal in the middle is a resource nightmare for a developing legal system.

Restrictive guidelines are needed to narrow the broad legal criteria of death eligibility to cases of special harm and moral fault. Two types of death penalty guidelines could be implemented in China: administrative standards generated by prosecutors (perhaps in response to pronouncements from the SPC), and judicial standards generated by the SPC that could be used as a legal framework by prosecutors and judges in the provinces and also by courts of appeal. Administrative screening processes are common among

\textsuperscript{23} See Schiller (n 21).

\textsuperscript{24} Johnson and Zimring (n 1) 279–80.
prosecutors in the United States, Japan and South Korea, and judicial screening of cases is both common and highly selective in India.

The more selective the guidelines are in choosing cases for capital prosecution, the higher the quality of procedures in a reduced number of capital trials. Effective guidelines should produce drastic reduction in death penalty prosecutions. Indeed, the type of selectivity that would enable current resources to provide careful legal process in all capital cases is not the kind that would cause a decline from 10,000 capital cases per year to 5,000, but rather one that causes a drop from 5,000 to 1,000 or so. Some large retentionist nations have death sentence rates that are that low or lower — including India and Indonesia — but there is no recent example of a contraction in capital caseload as substantial as what would have to happen in China. The nearest example may be the 90 per cent decline in executions that occurred over a 30-year period in the late nineteenth century after the Meiji oligarchs opened Japan’s doors to the West.

If our description of public opinion in the previous part is correct, then citizens in China would tolerate guidelines and their effects. But whether local prosecutors and party officials would be frustrated by this much capital contraction is difficult to say. Local governments were doing the bidding of the national government when the decentralised system was combined with a ‘strike hard’ emphasis in the early 1980s, but one legacy of that policy may be that local autonomy is of great importance to prosecutors, judges and party officials at the village and city levels. The creation of incentives for local cooperation (and perhaps the assessment of some of the costs of capital trials to the local level) may also be necessary for significant reductions in capital trials to occur.

**B. Substitute Symbolic Punishments**

In one key respect — the design of a substitute sanction that carries something close to the symbolic weight of a death sentence — China is miles ahead of other nations. China has long issued ‘suspended execution’ sentences at trial that are convertible to imprisonment after two years. In some statistical reports, this sentence is included in the death sentence category, and it is a natural consolation prize for prosecutors and victims’ families. This Mao-era invention does not limit the government’s power to release prisoners (contrast the more restrictive American tradition of ‘life without parole’), and with tight controls on changes back from ‘suspended’ to regular death sentences, suspended execution is

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26 The Indian Supreme Court has ruled that the death penalty should be given only in the ‘rarest of rare’ cases. Johnson and Zimring (n 1) 436–38.

27 Johnson and Zimring (n 1) 323, 432.

28 Ibid 56–57.

29 Ibid 279.
not only an attractive alternative to an ordinary death sentence, but it also possesses a rich local history and strong symbolic resonance. Providing positive recognition to this sentencing alternative and at the same time emphasising cost savings might also reduce the hard feelings that prosecutors experience because of losses in their autonomy.

C. Substantive Death Sentence Review Standards

One important potential associated with all capital cases receiving the SPC’s review is the creation of a penalty-centred jurisprudence in which the court can reduce capital sentences on explicitly penal grounds while upholding the substantive criminal conviction. As with suspended executions, the outcome is modified but it is not an outright loss for prosecutors and does not require extensive or expensive retrial procedures. Such standards could also facilitate centralised control over the number of death sentences and help confine death sentences to cases with national priority. Because the conviction remains undisturbed, penalty review outcomes might not be much resented by local officials. If the central government contributes some subsidy to defray the costs of imprisoning offenders who are not condemned to death, then a middle path might be opened that minimises the extent of any conflict between levels of government which could be a by–product of major reductions in the volume of executions.

IV. Conclusion

Public opinion can be an influential factor on capital punishment policy even in authoritarian political settings like the PRC, but sensitivity to public relations is probably a more important influence on how changes should be made and marketed than on the actual substantive content of death penalty reforms. As long as execution policy remains a relatively unimportant issue in China’s domestic politics, all of the changes required to reduce execution numbers are changeable at the discretion of the central government. The practical limit of death penalty reform in China is thus mostly a matter of governmental priorities, not public sentiments or social norms.

31 ‘China Urges Judges to Limit Death Penalty’ Reuters (Beijing 10 February 2010).