



Tit for Tat? An Empirical Observation on Death Penalty Sentencing in PR. China

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Abstract

“Tit for tat” public opinion in favor of death penalty is perceived to be one of the major obstacles in the abolition of death penalty in China. By exploring 333 cases of death penalty in the period from 2010 to 2017, this paper argues that not only public opinion, but also judicial sentencing habits are following the “tit for tat” approach. In line with the legal policy – from “kill many” moving to “kill fewer and kill cautiously” - a series of procedural and substantive reforms have been implemented. However, considering the deeply rooted “tit for tat” notion among mass and legal practitioner, this paper argues that the abolition of death penalty in China is unlikely to occur in the near future.

Keywords: Death penalty; Death penalty sentencing; sentencing habits; Death penalty abolishment; Tit for tat

Abbreviation: SPC: Supreme People Court

Introduction

Death penalty (in China) continually remains a hot research topic, ranging from public opinion on death penalty [1,2], to defense for the death penalty [3] and norms and legal policies in general [4]. Yet, due to the lack of judicial transparency, especially when it comes to capital punishment, research on death penalty encountered a good many difficulties. Most importantly, seldom research on this topic has been based on real cases. Such situation has been dramatically improved as long as the courts release their documents of adjudication decisions to the public, which form a relatively systematic data source and enables an in-depth empirical observation¹ [5]. In the debate on the death penalty abolition, pro-death penalty public opinion has often been perceived as one of the major obstacles, which however

was criticized by Bakken as a pretext for the state to justify the use of death penalty.¹ As argued by Professor Hood, it is not so much the general public that needs to be influenced; rather it is the legal practitioners and political leaders will play significant role in the abolishment of death penalty [6]. This paper follows Hood’s inspiring indication, and explores judges’ sentencing habits in dealing with death penalty cases. By exploring 333 cases of death penalty in the period from 2010 to 2017, this paper will draw a profile of death penalty sentencing in current China. Focusing on judicial practice and sentencing habits, this paper aims to reveal some obstacles for death penalty abolishment besides revealed factors such as pro-death penalty public opinion, the lack of human rights discourse and political structure, etc.

¹ Bakken, Børge. “The Norms of Death: On Capital Punishment in China”, <http://chinainstitute.anu.edu.au/sites/default/files/morrison71.pdf>. Accessed 20 May 2018.

Data and Methods

Since cases are booming day by day in the database, quota sampling method is adopted in selecting cases. In total, 333 cases have been selected from total 3673 death penalty cases from official accessible database on court decisions² in the period from 2010 to 2017 in mainland China (Table 1). Keyword for the cases selecting is “death penalty” (sixing, death penalty), in conjunction with additional search condition, i.e. revision (fuhe, Review) as the type of procedure. This approach of the case selecting is based on the legal provision and practical experience on death penalty. That is, all the cases which have been sentenced to death penalty require one, and only once, revision procedure (sixing fuhe chengxu, Death penalty review procedure), either by a provincial high court or the Supreme People’s Court (zuigao renmin fayuan, Supreme people’s court). This technology enables to avoid double or triple counting of cases. Each selected cases will be given an ID number, starting with the revision year and followed by an arabic figures, such as 2010_1, 2010_2.... In selecting cases, diversification of regions has been considered to avoid situation such as some group of cases are displayed more often in some regions, e.g. drug-related offense in Yunnan Province.

| | Total | Sample |
|-------|-------|--------|
| 2010 | 11 | 11 |
| 2011 | 24 | 23* |
| 2012 | 79 | 50 |
| 2013 | 374 | 50 |
| 2014 | 1,284 | 50 |
| 2015 | 975 | 50 |
| 2016 | 848 | 50 |
| 2017 | 78 | 49 |
| Total | 3,673 | 333 |

Table 1: Data Sample.

* The case of Guo Lizhu, with ID 2011_10 in this sampling, is published twice in this database. Therefore, the actual data pool for the year 2011 reads 23 cases.

All selected cases will be analyzed mainly from three dimensions, i.e. 1) personal characteristics of perpetrators (who), 2) characteristics of committed crimes (did what), 3) and trial and sentencing (how will be punished). Using this “who-what-how” model, this study aims to draw a vivid profile of death penalty in today’s China based on real cases. To profile perpetrators, basic information such as gender, age, residence (rural or urban area), job and education will be observed, responding the issue of “class bias of capital punishment”. As regards characteristics of

committed crimes, special attention will be given to facts such as, if the crime is conducted alone or jointly, firstly or repeatedly (recidivism); if there are circumstance such as compensation/mediation, surrender; what damage bring the crime, especially the number of the death. These facts are assumed to influence the sentencing. This study aims to explore if a co-relation between these characteristics and sentencing habits exist. As regards technicalities, all items belong to the first dimension are starting with v1, such as v1_gender, similarly with the second dimension stating with v2, and v3 for the third dimension.

Limitations of this study involve the small size of the samples and missing of some kind of cases, such as politically sensitive cases, which are not included in the database. As argued by Liebman in a study with the Henan database, it is critical to take missing cases into account when using the database, and court judgments provide only one, often limited, view of actual practice [7]. To deal with these methodological problems, this study is supplemented by policy documents study and informal interviews with judges. Yet, due to major methodological shortcomings of the sampling design, this study is best viewed as an exploratory analysis of the judicial practice of death penalty in China.

Conceptual Argument

“Tit for tat” in this paper refers to a retributive/responsive attitude towards behavior of criminals. Such retribution based on the notion of “a life for a life” was deeply embedded in Chinese cultures. In ancient China, two dominant schools i.e. Legalism (Fa-Jia) and Confucianism (Ru-Jia) highly influenced the whole society. “Death penalty” was accepted by both schools, however under different reasonings. Assuming evil humanity, the Legalism took an approach of deterrence, and severe sanctions were favored by the authority to maintain the ruling of the empire. For example, a notion followed by the Legalism - “Yi sha qu sha, sui sha ke ye” - (Killing and killing, although killing can also)” (Shang shu jun· Hua ce Shangjun Book Painting Policy), implies that by killing people, less people will tend to commit homicide, death penalty by the authority shall be therefore justified. The deterrent value of death penalty favored by the Legalism was mirrored in the old Chinese proverb, “kill the chicken to frighten the monkey”. That is, executing an offender (i.e., chicken) to deter thousands of potential offenders (i.e., monkeys). On the contrast, the Confucianism was based on the kindness of the humanity. The punishment was therefore a special instrument of education. Killing without education (bu jiao er sha wei zhi nue, Do not teach and kill) was criticized and rejected by the Confucianism (Run yu ·yao yue Analects). Yet,

² <http://wenshu.court.gov.cn/>, case gathering on June 15, 2017.

death penalty after well education was acceptable (jiao hou er zhuAfter teaching), which educated others a simple idea of “a life for a life” (Xun zi ·fu guo Scorpion rich country).

In modern China, public favor for death penalty is mainly found to be out of traditional retributive attitude amongst citizens [1,2]. Such “tit for tat” attitude towards severe crimes is easily triggered and spread amongst public in the we-media era. Therefore, judicial credibility and accountability are facing new challenges, i.e. sentencing in a single popular case will be no longer isolated from citizens, but rather provides signals of common values. A recent so-called nanny arson case³ has gained extremely widely public attention with 2.3 million Weibo followers. The nanny who started a fire and killed four persons was finally sentenced to immediate death penalty. In the adjudication document, social impact (shehui yingxiang) was mentioned in justifying the death penalty sentencing.

Findings

Personal characteristics of perpetrators

According to the statistics, males are more likely imposed of death penalty compared to females, i.e. approx. 97 per cent the perpetrators are male (N=322), whereas only three per cent female (N=10).⁴ This so-called “gender bias in death penalty” is not unique, but also found in other jurisdictions. A study by Shatz (2011) showed that gender bias continues to exist in the application of the death penalty in California, United States. They found that women guilty of capital murder were far less likely than men to be sentenced to death and explained such bias as “chivalry effect”. The above discrepancy can be, to some extent, explained by the gender attributes. In comparison with male perpetrators, women are, by nature, obviously less likely to commit a violent crime, which will be more likely to be imposed of death penalty. This gender attribute- less violence - is also indicated by selected cases. Amongst the female perpetrators, 40 per cent cases (N=4) belong to drug trafficking, which are perceived less

³ Mo, 35, a female nanny, was allegedly an obsessive gambler who borrowed and also stole money from the served family as her debts mounted. She started a fire in the living room of the family's 18th-floor high-rise apartment in Hangzhou, planning to put it out quickly to play the hero and use the resulting goodwill to seek more money from her employers. Unfortunately, the fire was out of the control, which causes four deaths of the family. In the first instance as well as the appellate trial, Mo was imposed of an immediate death penalty. A revision by the SPC has not yet been given till now.

<https://www.channelstv.com/2018/02/09/nanny-sentenced-death-tragic-arson-case/>

⁴ One case out of the total 333 is marked as missing system, without indicating any information on gender.

violent compared to other capital offenses such as homicide and robbery; whereas only two per cent cases (N=39) belongs to drug trafficking amongst the male group. This can be further mirrored by the figure of robbery, i.e. 24.2 per cent male perpetrators (N=78) commit a robbery, while no female was accused of robbery (Figure 1).

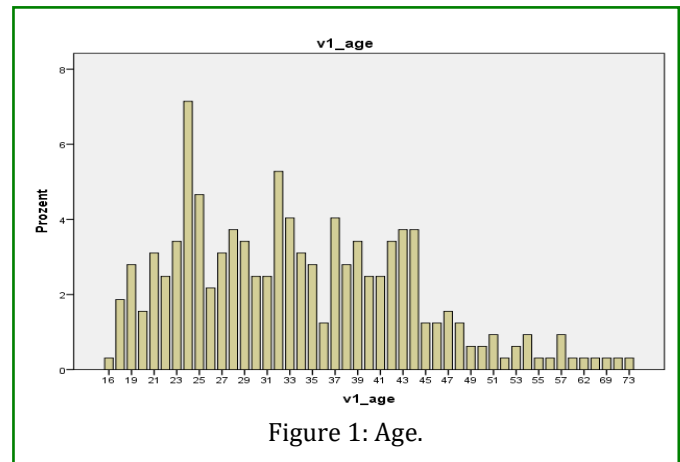


Figure 1: Age.

Among the selected 333 sampling cases, 322 cases have indicated personal information of age, with an average of 33.8 years old. Figure 1 visualizes the extent to which persons of age 24 are over-represented on the overall, followed by the age of 32. The age distribution is very wide, representing more or less any relevant age group in society. The youngest perpetrator in the sample is a youth with an age of 16 who had been accused of several the most serious crimes and therefore been imposed of the harshest punishment⁵, i.e. immediate death penalty (see exemplary case sheet 1). The oldest person is a senior citizen aged 73 who killed his wife and had been sentenced to death penalty with a reprieve.

Exemplary case sheet 1 - the youngest perpetrator (Case ID: 2013_23)

Personal Information of the Perpetrator: male, Han ethnicity, born in August 1988 in Hebei Province, with education of middle school, peddler, resident in Haidian district, Beijing, 16 years old when committing the first crime. In 2010, the perpetrator killed his female neighbor in a quarrel in her house. Caught by the victim's husband, he then fought with him and killed him. This is actually not the first crime the perpetrator had committed. In

⁵Article 49 of the Chinese Penal Code restricts the use of capital punishment to vulnerable groups such as youth, elderly and pregnant women. To be noted is that, age here is recorded according to the first commitment, in case there is more than one crime committed. Therefore, the age of perpetrator here is in line with the 18-year-old age requirement of capital punishment.

2005 in his hometown in Hebei Province, the perpetrator had conflicts with his neighbor. To punish her, he sneaked into her house in the evening. He raped his neighbor, killed her with a kitchen knife and escaped to Beijing. One year later, he assaulted another female victim in a hair salon, with result of another death in a quarrel. In 2008, he stole four cars together with two other perpetrators, which he confessed to police after he was arrested in 2011. The perpetrator was accused of homicide, rape, assault and theft and sentenced to immediate death penalty, deprive of political rights, and criminal fine in amount of RMB10,000 (approx. 1,470 USD) by Beijing no.1 intermediate court. He appealed to the Beijing high court however without success. In the revision procedure, the Supreme People's Court approved the immediate death penalty.

The majority of the perpetrators are under-educated, with ca. 40 per cent of them went only to primary school and ca. seven per cent even illiteracy. Only one person out of the total 315 who gives information regarding education holds a bachelor degree. The poor educating situation is far not in line with the nine-year compulsory education policy advocated by the government (six years primary school plus three years middle school). In regard to professional status, the majority of the perpetrators do not have a stable position. More than half of them work as a farmer (N=177), who is usually in a relatively poor financial situation especially in the western region. Approximately one quarter are even jobless (N=75), and around 7 per cent are migrant workers (N=23). Such professional status also links to criminals' residence, i.e. the majority of the perpetrators are from rural areas (73 per cent), where most of citizen working as a peasant.

In terms of ethnical groups, 86 per cent of the perpetrators belong to the ethnical group of Han. This can be explained by the ethnical population, i.e. Han is the minority group accounting for 91.6 per cent the national total population.⁶ Compared to the percentage imposed of death penalty (86 per cent), Han group seems slightly less likely to be sentenced to death than minority groups. It has to be pointed out, however, only tiny slight disparity displays here. Considering the limited number of samples, a conclusion that the minority groups are more likely to be sentenced to death cannot be therefore drawn here. Based on above observations, a profile of typical perpetrators sentenced to death can be drawn, i.e. less educated male perpetrators living in rural area, who do not have a stable job. This profile may find its explanation as "class bias of capital punishment", which was found in an empirical study by the Max Planck Institute for Foreign

and International Criminal Law. When asking the question: "If a poor or a rich person in China committed the same serious crime for which the death sentence could be imposed, is one more likely to be sentenced to death than the other in real life?", nearly 70 per cent of the respondents answered "the poor person" [1: 22]. Another explanation for the profile here is that the most violent crimes will be most likely sentenced to death according to the current legislation. Unfortunately, "less educated male perpetrators living in rural area, who do not have a stable job" are, in general, less self-controlled and tend to solve conflicts irrationally.

Characteristics of committed Crimes and correlation with Sentencing

According to the statistics, almost half of the cases are out of conflicts amongst acquaintances, including families (32.7 per cent), neighbors (six per cent), and co-workers (3.6 per cent). Infringed legal interests range from life (85.6 per cent cases), to body (14.7 per cent cases), property (34.5 per cent cases) and others (14.1 per cent, e.g. drug trafficking). In regard to detailed crimes, violent crimes resulting death of victims such as homicide (49.8 per cent) and robbery (18.8 per cent) are most likely to be sentenced to death, followed by drug trafficking (10.4 per cent), and crimes against public safety (4.4 per cent in total, amongst which 1.2 per cent for illegal possession/manufacturing firearms, 2.2 per cent for arson, 0.5 per cent for terrorism). Though death penalty can also be utilized to other serious crimes such as crimes against state safety, financial crimes and corruption, no single sample case belongs to these groups according to the statistics. It could be explained by the fact that cases that are not trialed publicly will not be included in this database. Crimes against state safety often concerns state secrets and are therefore not included in this database. Similarly, some corruption cases might be excluded from the database if they are not trialed publicly. On the other hand, only "extremely serious" crimes will be imposed of capital punishment. Though not excluded from the list, perpetrators who merely commit a financial crime are seldom sentenced to death, but rather imprisonment together with confiscation of property in judicial practice, which is also in line with the "tit for tat" approach.

Three severity-escalated primary sanctions for death penalty cases include death penalty with two years reprieve (sihuan, Death), death penalty with two-year reprieve excluding abatement, and death penalty without reprieve (immediate death penalty). In the first case, perpetrators will be given a two-year suspended sentence of the execution. The convicted person will be executed if found to intentionally commit further crimes during the two years following the sentence; otherwise, the sentence

⁶ <http://www.stats.gov.cn/tjsj/pcsj/rkpc/6rp/indexch.htm>

is automatically reduced to life imprisonment or, if the person is found to have performed deeds of merit during the two years, fixed-term imprisonment. For recidivist and perpetrators committed extremely danger crimes, an abatement of sentence to fixed-term imprisonment can be excluded by the court. Besides a primary sanction, secondary sanctions including deprivation of political rights, criminal fine and confiscation of property can be imposed.

In line with the “tit for tat” approach, loss of life and death number is crucial in deciding sentence of death penalty. Amongst the total 333 cases, 285 cases result in death of victim with mean value of 1.4 death number. Table 2 visualizes a correlation of the severity of sentencing and the number of deaths. As shown, 285 cases resulted in death of victims, with death number ranging from one to

eight. All the cases involving four or more death were sentenced to an immediate death, whereas more than half of the cases with only one death of victim have been imposed of death penalty with two years reprieve. The “tit for tat” philosophy can be further mirrored in an analysis of the correlation between attributes of offence and its sentencing. As shown in Table 3, confiscation of property is most often imposed to crimes such as kidnap (100 per cent), financial crime (100 per cent), robbery (92.3 per cent) and drug trafficking (88.4 per cent). The key feature of these crimes is their involvement of perpetrators’ chasing of financial interests. The sentencing of these crimes therefore involves confiscation - harsh property-oriented penalty. On the contrary, simple homicide is seldom to be imposed of confiscation (four per cent).

| | | v2_Death Number | | | | | | | Total |
|------------------------|---|-----------------|----|----|---|---|---|---|-------|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 8 | |
| v3_resultfirst_setence | death penalty with reprieve | 76 | 5 | 1 | 0 | 0 | 0 | 0 | 82 |
| | death penalty with reprieve, no abatement | 17 | 1 | 0 | 0 | 0 | 0 | 0 | 18 |
| | death penalty without reprieve | 121 | 38 | 12 | 8 | 3 | 2 | 1 | 185 |
| Total | | 214 | 44 | 13 | 8 | 3 | 2 | 1 | 285 |

Table 2: Sentence by death number.

*p<.05

| | | \$v3_Resultfirst_Sentence ^a | | | | | | Total | |
|----------|--------------------------|--|---------------------|------------------------------|---------------|--------------|--------------------------------|-------|-----|
| | | DP* with Reprieve | DP without Reprieve | Deprival of Political Rights | Criminal Fine | Confiscation | DP with Reprieve, No Abatement | | |
| v2_crime | Homicide | N | 63 | 125 | 202 | 6 | 8 | 14 | 202 |
| | | % | 31.2 | 61.9 | 100.0 | 3.0 | 4.0 | 6.9 | |
| | Robbery | N | 14 | 47 | 65 | 2 | 60 | 4 | 65 |
| | | % | 21.5 | 72.3 | 100.0 | 3.1 | 92.3 | 6.2 | |
| | Drug Trafficking | N | 23 | 19 | 43 | 0 | 38 | 1 | 43 |
| | | % | 53.5 | 44.2 | 100.0 | 0.0 | 88.4 | 2.3 | |
| | Kidnap | N | 0 | 5 | 5 | 0 | 5 | 0 | 5 |
| | | % | 0.0 | 100.0 | 100.0 | 0.0 | 100.0 | 0.0 | |
| | Firearms-related Offence | N | 1 | 0 | 1 | 0 | 0 | 0 | 1 |
| | | % | 100.0 | 0.0 | 100.0 | 0.0 | 0.0 | 0.0 | |
| | Rape | N | 0 | 5 | 5 | 0 | 0 | 0 | 5 |
| | | % | 0.0 | 100.0 | 100.0 | 0.0 | 0.0 | 0.0 | |
| | Arson | N | 0 | 2 | 2 | 0 | 0 | 0 | 2 |
| | | % | 0.0 | 100.0 | 100.0 | 0.0 | 0.0 | 0.0 | |
| | Financial Crime | N | 0 | 1 | 1 | 0 | 1 | 0 | 1 |
| | | % | 0.0 | 100.0 | 100.0 | 0.0 | 100.0 | 0.0 | |
| | Assult | N | 6 | 2 | 9 | 0 | 1 | 1 | 9 |
| | | % | 66.7 | 22.2 | 100.0 | 0.0 | 11.1 | 11.1 | |

Table 3: Sentence, by detailed crimes.

*death penalty

In terms of number of perpetrators in a crime, the majority of cases belongs to single crime (73 per cent), and some joint crime (17.7 per cent), and only limited group/organized crime (9.3 per cent). In accordance with the statistics shown in Table 4, some crimes, by nature, are obviously more likely to be committed jointly or even as an organization crime, i.e. robbery, drug trafficking and

terrorism, whereas crimes such as homicide and rape are relatively less likely to be committed jointly. Though principal criminal in a joint crime/group crime will be punished harsher compared to single criminal in theory, a co-relation between sentencing and number of perpetrators cannot be found according to the statistics.

| | | v2_Joint | | | |
|-------------------------|---------------------------------|----------|-------|-----------------|------|
| | | Single | Joint | Group/Organized | |
| \$v2_crime ^a | Homicide | N | 178 | 18 | 10 |
| | | % | 73.3 | 30.5 | 32.3 |
| | Robbery | N | 41 | 31 | 6 |
| | | % | 16.9 | 52.5 | 19.4 |
| | Drug Trafficking | N | 20 | 12 | 11 |
| | | % | 8.2 | 20.3 | 35.5 |
| | Kidnap | N | 4 | 1 | 2 |
| | | % | 1.6 | 1.7 | 6.5 |
| | Theft | N | 14 | 3 | 3 |
| | | % | 5.8 | 5.1 | 9.7 |
| | Firearms-related Offence | N | 1 | 3 | 1 |
| | | % | 0.4 | 5.1 | 3.2 |
| | Extortion | N | 1 | 0 | 0 |
| | | % | 0.4 | 0.0 | 0.0 |
| | Rape | N | 16 | 4 | 1 |
| | | % | 6.6 | 6.8 | 3.2 |
| | Arson | N | 7 | 1 | 1 |
| | | % | 2.9 | 1.7 | 3.2 |
| | Financial Crime | N | 1 | 1 | 1 |
| | | % | 0.4 | 1.7 | 3.2 |
| Assult | N | 6 | 4 | 3 | |
| | % | 2.5 | 6.8 | 9.7 | |
| Terrorism | N | 0 | 0 | 2 | |
| | % | 0.0 | 0.0 | 6.5 | |
| Other | N | 3 | 3 | 0 | |
| | % | 1.2 | 5.1 | 0.0 | |
| Total | | N | 243 | 59 | 31 |

Table 4: Crime, by number of perpetrators.

The number of crimes in each case, to some degree, plays a role in sentencing. The majority cases involve only single crime (79.9 per cent), whereas others involve two (12.0 per cent) or more than two crimes (8.1 per cent). Under the tit-for-tat philosophy, an assumption could be made that the sentencing for a case with single crime is relatively more lenient as compared to a case involved two or more crimes. The assumption is obviously confirmed by the statistics indicated in Table 5. As shown, perpetrators who were accused of more than two crimes

were most likely to be sentenced to an immediate death penalty (96.3 per cent), followed by two crimes (82.5 per cent), whereas significantly fewer perpetrators with a single crime were imposed of an immediate death penalty (55.3 per cent). Amongst the total 27 perpetrators who were accused of more than two crimes, almost all of them were sentenced to an immediate death, with an exception of a single case where the perpetrators were sentenced to a death penalty with reprieve, however without a possibility of abatement.

| | | | v2_Plural | | | |
|--|---------------------------------|---|-----------|------------|----------------------|----|
| | | | Single | Two Crimes | More than Two Crimes | |
| \$v3_Resultfirst_Sentence ^a | DP with Reprieve | N | 100 | 7 | 0 | |
| | | % | 37.6 | 17.5 | 0.0 | |
| | DP with Reprieve, No Abatement | N | 19 | 0 | 1 | |
| | | % | 7.1 | 0.0 | 3.7 | |
| | DP without Reprieve | N | 147 | 33 | 26 | |
| | | % | 55.3 | 82.5 | 96.3 | |
| | Deprivation of Political Rights | N | 266 | 40 | 27 | |
| | | % | 100.0 | 100.0 | 100.0 | |
| | Criminal Fine | N | 1 | 3 | 4 | |
| | | % | 0.4 | 7.5 | 14.8 | |
| | Confiscation | N | 92 | 11 | 10 | |
| | | % | 34.6 | 27.5 | 37.0 | |
| | Total | | N | 266 | 40 | 27 |

Table 5: Sentencing, by number of crimes.
p<.05

| | | | v2_Recidivism | | | |
|--|---|---|---------------|-------|-----------------|----|
| | | | Once | Twice | More than Twice | |
| \$v3_Resultfirst_Sentence ^a | Death Penalty with Reprieve | N | 93 | 10 | 4 | |
| | | % | 35.2 | 19.6 | 22.2 | |
| | Death Penalty with Reprieve, No Abatement | N | 14 | 3 | 3 | |
| | | % | 5.3 | 5.9 | 16.7 | |
| | Death Penalty without Reprieve | N | 157 | 38 | 11 | |
| | | % | 59.5 | 74.5 | 61.1 | |
| | Criminal Fine | N | 6 | 0 | 2 | |
| | | % | 2.3 | 0.0 | 11.1 | |
| | Confiscation | N | 83 | 23 | 7 | |
| | | % | 31.4 | 45.1 | 38.9 | |
| | Deprivation of Political Rights | N | 264 | 51 | 18 | |
| | | % | 100.0 | 100.0 | 100.0 | |
| | Total | | N | 264 | 51 | 18 |

Table 6: Sentencing, by recidivism.

Among the selected cases, the majority criminals belong to the first-time incarcerated offenders (79.3 per cent), and relatively less recidivists, whom shall be punished harsher as compared to the first-time perpetrators according to legal provisions.⁷ When observing the statistics in Table 6, recidivists were, however, punished barely harsher as compared to the first-time offender. The percentage of immediate death penalty for “more than twice” group (61.1 per cent), in particular, were almost equivalent to that of the first-time group (59.5 per cent). Yet, considering the small number of the case samples

(only 18 cases for the “more than twice” group), a conclusion cannot be drawn that the sentencing policy for the recidivist regulated by law is not soundly implemented in practice.

Special circumstances such as perpetrators’ behavior after criminal activities shall be considered in sentencing. To test if these circumstances will be considered in judicial practice, activities such as surrender, compensation for victims and their influence to sentencing have been visualized in Table 7. According to the statistics based on the selected cases, such activities are actually very limited in practice, i.e. only 15.8 per cent of the total cases involve at least an above-mentioned activity. Amongst the limited activities, surrender is mostly observed (11.3 per cent), followed by compensation/mediation for/with victims (3.9 per cent),

⁷ In accordance with article 65 of the Chinese Penal Code, if a criminal commits another crime punishable by fixed-term imprisonment or heavier penalty within five years after serving his sentence or receiving a pardon, he is a recidivist and shall be given a heavier punishment.

while least likely to be seen is meritorious (0.6 per cent). Despite of the limited number, influence of these activities on sentencing is remarkable. The majority of these cases have been sentenced to a death penalty with reprieve, whereas more than half of the normal cases result in an immediate death penalty. Amongst the three categories of the special circumstance, meritorious activities such as

supporting investigation by disclosure companions' key information has most significant influence on sentencing, followed by compensation/mediation. Lenient treatment for surrender is in line with current legal policy, i.e. legal treatment for guilt admission and punishment acceptance, which again follows the approach of (ex post) "tit for tat".

| | | | v3_Resultfirst_Sentence | | | Total |
|-------------------------------|------------------------|---|-------------------------|--------------------------------|---------------------|-------|
| | | | DP with Reprieve | DP with Reprieve, no Abatement | DP without Reprieve | |
| \$v2_Circumstanc ^a | Surrender | N | 24 | 4 | 10 | 38 |
| | | % | 63.2 | 10.5 | 26.3 | |
| | Meritorious | N | 2 | 0 | 0 | 2 |
| | | % | 100.0 | 0.0 | 0.0 | |
| | Compensation/Mediation | N | 11 | 0 | 2 | 13 |
| | | % | 84.6 | 0.0 | 15.4 | |
| | None | N | 75 | 16 | 191 | 282 |
| | | % | 26.6 | 5.7 | 67.7 | |

Table 7: Sentencing, by special circumstances.
p<.05

Among the 333 cases, 26 cases have been imposed of a criminal fine, ranging from RMB 1,000 to RMB 100,000 with a mean value of RMB 13,000 and middle value of RMB 5,000. The majority cases have been imposed of a criminal fine less than RMB 10,000 (80.8 per cent). The amount disparity can be explained by uneven economic development in mainland China. Also, following the "tit for tat" approach, some kind of offences chasing large amount of proceeds such as drug trafficking will be more likely to imposed of large amount of criminal fine, whereas other offences such as theft will more likely to be imposed of small amount of criminal fine. 50 out of the 333 cases resulted in a civil compensation. Unlike the criminal fine, the disparity regarding the amount of civil compensation is relatively small, ranging from RMB 13,056 to RMB 939,671. Similarly, the mean value (RMB 182,706) and middle value (RMB 110,932) are not significantly different as that of criminal fine.

Evaluation and Conclusions

By studying co-relation between characteristics of individual crime and its sentencing, a conclusion can be drawn that the judicial practice of death penalty follows the so-called "tit for tat" approach. Criminal activities resulting death of victims are more often to be imposed of death penalty than those causing merely property damage, which is in line with the simple believe of "a life for a life". Amongst these cases with death of victims, number of death is critical in deciding if an immediate death penalty shall be imposed, or more lenient approach

with two years reprieve shall be carried out instead. Sanctions involving financial interest such as criminal fine and confiscation are often imposed to cases chasing financial interest such as kidnap or drug trafficking. Again, "tit for tit" here refers to "cash for cash". Merits afterwards such as providing compensation to victims and supporting investigation by reporting joint criminals will be often rewarded a more lenient sentencing. Such sentencing habit can be perceived as (ex post) "tit for tat"- "leniency for merits".

Tremendous literature could be found in both China and abroad, in Chinese and other languages, arguing the necessity and feasibility of death penalty abolition. Those arguments might impose, more or less, pressure to Chinese government in the context of global abolitionism. However, there are other values that the government shall balance. Instead of criticizing China's maintaining of death penalty, it is more rational to explore any possible obstacles of its abolishment. Similarly, we do not like flue, but cannot cure it by simply criticizing. On the other hand, though widely disliked, flue might be beneficial, when observed from a long-term perspective, i.e. our immunity is often built up by battling a virus.

Similarly, Allen argued "the abolishment of death penalty might save innocent persons from wrongful execution, but will probably kill more since deterrence will be reduced. It could not be ignored that there is a competition among rights over scarce resources" [8: 402]. As a form of sanction, capital punishment is not only an

issue of human rights, but also relates to some other values such as justice and security. "Paying back a life with a life" is kind of old saying which is deeply rooted amongst public. Though we could not conduct such experiment to test how far private revenge of killing will go in case we abolish death penalty, there shall be no doubt that the risk is quite high, which is mirrored by the above finding, i.e. death of victim and number of death are highly related to death penalty sentencing. From this perspective, capital punishment might serve as a benign big gun at this transiting stage, which shall be seldom and definitively prudently triggered. To sum up, this study is not interested in the debate on death penalty abolition. Rather, this study observes death penalty from a different perspective, i.e. judicial practice and sentencing habits, which have not been touched by other studies, yet might be helpful to value death penalty in current China in a rational way.

Nevertheless, abolishment of death penalty is a process. Indeed, China is already on its way of death penalty abolishment. Judicial transparency is the first step of the long march, which enables data access of this study. In line with the current death penalty legal policy—from "kill many" moving to "kill fewer and kill cautiously"—a series of procedural and substantive reforms have been implemented, which are crucial steps. In terms of substantive reforms, the capital punishment is mainly applied to most serious violent crimes. 13 non-violent offences have been removed out of the list, which can be sentenced to death penalty, in the 8th Amendment to Criminal Law in 2011, followed by further 9 offenses in the 9th Amendment to Criminal Law in 2015. When it comes to procedural reforms, since 2007 any immediate death penalty shall be reviewed by the Supreme People's Court (the SPC) before execution. Indeed, the SPC interpreted this action as more than a procedural change, but rather as an official decision to restrict capital punishment [9: 66]. The review is comprehensive, involving both facts finding and legal issues. In 2007, approx. 15 per cent cases submitted to the Supreme People's Court were not approved of immediate death, which however declines to about five per cent recently [10]. Despite of the low percentage of non-approval, the death penalty review by the Supreme People's Court serves as a last control instrument, requiring utmost cautiously use of immediate death penalty by local courts. Further steps can be taken as suggested by Zimring and Johnson [11], including 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.

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