The Death Penalty in a Changing Socialist State: Reflections of 'Modernity' from the Mao Era to Contemporary China

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THE DEATH PENALTY IN A CHANGING SOCIALIST STATE:
REFLECTIONS OF ‘MODERNITY’ FROM THE MAO ERA TO CONTEMPORARY CHINA

By
Elizabeth Lehmann

UNION COLLEGE
March 2012
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Chapter I

Introduction

In the past century, China has abandoned its feudal system, created a republic, ended the republic for a communist socialist society, closed its markets and then opened them; now, China is an established world power, has a strong economic base, and is often perceived as having an iron fist regarding domestic crime and punishment. Modern day China’s criminal law, in the context of capital punishment, has undergone many drastic transformations in the past sixty years. The death penalty has been so differently implemented in modern China that within a span of twenty years, the usage of the death penalty and other criminal procedures has shifted in Chinese perspective from one end of the spectrum to the other. Comparing different aspects within the Mao era and the reform era can explain how this shift of death penalty implementation in China has changed.

In accordance with the different periods within the People’s Republic’s sixty-year history, the Mao era (1949-78), the reform era (1978-mid/late 80s), and today (1990s-2011), criminal justice and the death penalty have coincided with the Party’s current ideologies and how they wished to achieve their political goals. During each respected time period, the Chinese Communist Party’s (CCP’s) ideological perceptions were different, yet still all still residing under the context of “achieving modernity.” Achieving modernity was always the priority of the Chinese government; however, the methods were altered due to the specific period’s new leadership, new government, and new philosophies. The moral argument, whether capital punishment should or should not be abolished, will not be addressed. What will be discussed are the differing social, economic, and political aspects that have affected the Chinese use of the death penalty during each time period, respectively. The Chinese Communist Party’s political,
economical and social ideologies were dissimilar in many ways between Mao era and reform era; these differing ideologies over two different perspectives to criminal justice in regards to its principles and implementation.

The presence of criminal law and the death penalty in China has changed drastically from the Mao era to the reform era and into today for a number of reasons. The level of criminal law during each time period can be explained by answering the following question for each time period: the Party’s view of what modernity is and how it should be achieved.

What this modernity is can be identified in all varying time periods. During the Mao era, Chinese progressiveness was characterized as achieving a utopian communist state with a classless society. How this was going to be achieved was not through criminal law statutes (because of its contradiction to classic communist ideals) but by political campaigns, a state-planned economy, local-level mediation, the re-education of the criminal, and collectivism. The informality of criminal law and the death penalty during the Mao era were because of these points.

During the reform era, Chinese modernity is characterized (and still is characterized to this day) as achieving economic wealth and maintaining a stable society. How these different ideologies were going to be established was through a free-market economy, a large scope of criminal statutes, a strong procedural criminal code, and recognizing and protecting some individual rights. This large presence of criminal law and the death penalty in the reform era (affecting today) was because of these points.

This thesis will argue that the two time period’s different views on Chinese progressiveness directly affected the implementation of capital punishment during the respected time periods. The three, broad differences between the time periods that will be discussed is the
differing Party ideology (political to economical), the differing levels of criminal law formality, and the differences between a collective society and individual rights. Also, in today’s China, it is suggested that various international political and non-political groups are affecting China’s death penalty policies because of various human rights issues and the categorizations of offenses are acceptable for capital punishment. The PRC has had a dynamic and changing history in regards to the implementation of the death penalty.

Two Perspectives:

“Classic Socialism” and “Socialism with Chinese Characteristics”

One of the most prominent changes between the Mao era and the Reform era was the CCP’s shift if ideologies on obtaining modernity. These viewpoints would be set precedents towards all realms of Chinese functionality; these viewpoints would be the backbone of all societal, governmental, and economic functionalities, including criminal law.

Political incentives and achieving communist utopia was the single most important issue of the Mao era that shaped all societal and government aspects. Karl Marx, the father of communism, claimed that the death penalty was a serious detriment towards achieving socialism because it promoted imperialistic tendencies; however, he also claimed that some presence of the death penalty was unfortunately necessary in the steps to achieve the ideal, utopian communist state. On the contrary, Lenin, a Russian Marxist revolutionary, believed that a large scope and presence of the death penalty was necessary in establishing the socialist state with a law abiding polity. However, both agreed that once the ideal socialist state was achieved, the death penalty would simply be unnecessary because of the perfect harmony between the state ideologies and people. Mao also believed that the death penalty was necessary in achieving his social and
political ideologies, but he leaned more towards Marx’s view of minimal implementation. Therefore, criminal law and the death penalty were indeed present during the Mao era, but only in small amounts. Once again, criminal law was only enacted when in direct violation of China’s pursuit in achieving this utopian socialist state. Violations of personal and property rights, such as murder or robbery, were matters of the people with township tribunals, not a CCP matter. This is why crime was at an all-time high in China at the official closure of the Cultural Revolution and when the reform era kicked off.

The shift of ideological preference influenced was instrumental towards creating the much larger presence of criminal law in Chinese society during the reform era. With the re-establishment of the Chinese economy during the reform era, the term “socialism with Chinese characteristics” was coined. This phrase combines some basic principles of scientific socialism with the facts of building socialism unique in China. Socialism is the common rule and essential feature of the practice, while officials describe that Chinese characteristics are what and how the basic principles of socialism truly embody in China. By summarizing the successes and failures of creating socialism in China, drawing lessons from the benefits and losses of developing nations in their developments, and also analyzing what situations and contradictions developed countries faced in their developments, the CCP systematically answered a series of key questions in terms of China’s own path of socialism, its historical periods, its fundamental tasks and strategic steps it should take. Basically, China’s current socialism isn’t the classic practice of communism, but is rather a combination of factors that have proven over the years to function in China. These factors include a market economy, a system of Party cooperation within the People’s Congress, and strongly maintaining the socialist value system at the core of social

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2 Ibid
trends, while respecting differences and expanding common grounds. In order for China to be the greatest country she can be different adaptations of socialist beliefs necessary. In these ideological regards, a stronger presence of criminal justice was established to achieve this new characterization of progressiveness.

A segment of these two different views on achieving modernity was how the economy was going to be led. The two different forms of economy during the two periods, each aligning with a different ideology, directly influenced the level of criminal justice present in Chinese society. The state-planned economy during the Mao era was an institution that was necessary to attain the ideological goals of socialism. When China was controlled under a state-regulated economy during the Mao era, many actions that today highly vulnerable for criminal activity, such as theft and embezzlement, were not there. During the Mao era, there was no such thing as profiteering and personal wealth; there was generally little room for personal gain. On the contrary, if an individual gained profits by various means then they would have been persecuted, as were the landlords. Every aspect of life during the Mao era strived to be equal. If any person—a commoner, a scholar, a Party official, a land lord—appeared to be violating this sense of one unified social class, there would be severe consequences. There was little incentive to commit crime for personal gain because of the anti-rightist ideology resonating through every social, political, and cultural aspect in the Mao era.

The small incentive to profit for personal gains during the Mao era quickly diminished at the opening of the Chinese market. In the reform era, the CCP in one hand had a vulnerable new economy and in the other hand a susceptible society to commit crimes to gain personally. The new economy, not well established yet, had many opportunities for corruption. Naturally, with an open, free-market economy, much more crime can be committed with the prospect of personal gains.

\[^{3}\text{Ibid}\]
gain on the table, unlike the Mao era’s planned economy. A free-market economy with no
criminal law could potentially, and most likely, become a society rampant with corruption,
detrimental and counteractive to modernity. Also, a chaotic, corrupt society was the last situation
the CCP wanted to deal with having just emerged from the Cultural Revolution. The death
penalty and other criminal laws are used to deter this corruption in today’s China as well as
during the reform era.

<table>
<thead>
<tr>
<th>Table 1: Crimes Eligible for Capital Punishment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mao Era: 8 capital offenses</td>
</tr>
<tr>
<td>1. Counterrevolutionary (8)</td>
</tr>
<tr>
<td>Reform Era 1979 Criminal Code: 28 capital offenses</td>
</tr>
<tr>
<td>1. Counterrevolutionary (15)</td>
</tr>
<tr>
<td>2. Public Security (8)</td>
</tr>
<tr>
<td>3. Personal Rights (3)</td>
</tr>
<tr>
<td>4. Property Rights (2)</td>
</tr>
<tr>
<td>1997 Criminal Code (to today): 55 capital offenses</td>
</tr>
<tr>
<td>(from 1997-2010 there were 68 capital offenses, but recent legislation repealed 13 economic crimes from capital offenses)</td>
</tr>
<tr>
<td>1. National Security (7)</td>
</tr>
<tr>
<td>2. Public Security (14)</td>
</tr>
<tr>
<td>3. Socialist Market Economic Order (6)</td>
</tr>
<tr>
<td>4. Personal Rights (5)</td>
</tr>
<tr>
<td>5. Encroaching on Property (robbery) (1)</td>
</tr>
<tr>
<td>6. Disrupting the Order of Social Administration (jail break, drug trafficking) (5)</td>
</tr>
<tr>
<td>7. National Defense Interest (2)</td>
</tr>
<tr>
<td>8. Graft and Bribery (2)</td>
</tr>
<tr>
<td>9. Violating Duties of Military Servicemen (13)</td>
</tr>
</tbody>
</table>

Table 1 illustrates the reallocation of criminal laws as the Chinese economy has progressed over the years. During the Mao era, the only crimes eligible for capital punishment were counterrevolutionary offenses. In 1979, emphasis was still placed on counterrevolutionary offenses and the preservation of the state; however, other rights were protected. Throughout the
1980’s and 1990’s, a total of 59 other crimes were amended to the 1979 criminal law, most of which economical offenses. In 1997, when a more comprehensive, all inclusive criminal law was mandated, a large prominence is placed on economic crimes and the terminology of “counterrevolutionary” is not even mentioned.

Throughout these time periods, the characterization of socialism changed. During the Mao era and the reform era, two very different agendas were set; however, both governments claimed that socialism was being achieved. This suggests that the concept of socialism is more of a rhetorical notion and a flexible idea. When political environment changes the concept of socialism expands to a new meaning. The rhetoric of socialism is the same, but the goals and methods to achieve these goals are different throughout each political time period.

In summary, the position of Chinese ideology and modernity is highly influential to the level of criminal law apparent in society. Achieving political, Maoist ideologies means to have a small influence of legal institutions; achieving economical ideologies means to have a large influence of government institutions instilled in the society. These differing viewpoints determined the level criminal law utilized in a society.

The Levels of Formality of Chinese Criminal Law

According to the ideologies of the time period, the different policies implemented created informal and formal institutions in each respected time period. It is arguably true that each period had the same level of effective policies; after all, the Cultural Revolution was a state-launched campaign that remodeled all aspects of Chinese society. What is crucial is that political objectives were obtained by means of informal ways in the Mao era in order to preserve the
state’s ideologies. During the reform era, the most effective way to restore order and justice, as well as maintain a healthy, growing economy, was to install strong legal sanctions.

Informal tactics were used during the Mao era in order to obtain political goals while avoiding the overbearing presence of the government. During the Mao era, criminal law was minimally used because of the Party ideologies being attained, which was a utopian socialism. The political goal of having a classless society was being achieved in this sense; there was no bureaucratic, imperial system determining punishments for the people that resided “underneath” them or the institution. Also, during the Mao era, a type of informal punishment was expressed via political persecutions and campaigns. Many individuals were persecuted and punished for their Rightist tendencies, but these were state-led campaigns that revved up the general population in order to achieve this modernity. Therefore, people were punished during the Mao era, but it was by means of a political machine that established justice, not an organ of criminal law.

Local-level mediation with few (if any) legal processes brought resolutions to disputes during the Mao era. This little influence of government in solving every day crimes (varying in severity) was instrumental in ridding imperial influences. There was little Party influence on criminal procedures because it was taken upon the people at the local level to mediate and solve their problems. Therefore, punishments mandated through the government’s criminal justice system were few in numbers and usually enacted if the offender was seriously threatening the legitimacy of the state.

Rather than having a structural criminal law where there is a looming state apparatus to enforce the law, Mao used “Red Guards,” were activists who were not government workers but still enforced Mao’s ideologies. A plethora of Red Guards were students whom of which were
easily rallied to promote Mao’s totalitarian society and instill communist beliefs throughout the entire society. The relationship between the State and society is not clearly delineated through this system, creating a more informal but effective way of enforcing beliefs and practices upon a society. The use of the Red Guards is a clear example of this issue of informality.

A complete shift regarding the level formality took place during the reform era. The reform era had a very different approach on achieving progressiveness; this was through establishing a very clear criminal justice system.

The opening up of China’s market made it necessary for the CCP to create and instill a strong, clear, and effective criminal code and procedure. The success of this criminal law would be key to China’s legitimacy in regards to social stability and especially in the international eye. At the beginning of the reform era, the stability of society was not ideal. Mao’s political campaigns during had back lashed and created social unrest amongst China and crime rates were at an all time high. CCP members believed that the restoration of social order was quintessential in achieving long-term economic prosperity. The CCP believed that in order to establish this, a firm fist regarding criminal punishment had to be taken. Therefore, in 1979 the CCP passed China’s first criminal law that outlined criminal offenses (28 eligible for the death penalty) and outlined a new, clear set of procedural steps that the police, courts, and judges would follow by when prosecuting an individual. The severity of the punishments and rigidity of procedures have fluctuated and changed since 1979, but regardless, it is clear that the firmness of criminal law is in accordance with the current CCP’s vision and goals.

The shift from utilizing the Chinese people as a political tool to enact government policies to the strong presence of criminal law can explain the levels of formality and informality.
in each period. However, these varying levels of formality entirely link back to the status of CCP ideology and what policies best bring the different views of modernity.

**The View on Individual Rights**

In accordance with the state ideologies during the two time periods, the importance of preserving individual rights has affected criminal law statues. During Mao era and reform era, the relationship between the state and society as well as the individual and society have perceived differently. Whether emphasis was to be put on the society’s duties to the state, vice versa, or whether the individual’s duties to society, vice versa, were determined in both periods, both in context of a different view on individual rights.

The Mao era has little focus on individual rights because of the ideology of the individual role in society, to become equal and harmonious. The Mao era did not focus on protecting the individual’s rights but rather focused on protecting the society as a whole. Referring to previous points mentioned in this introduction, the main objective of the state was to become a classless society. Other rights, such property rights, were also not recognized by the Mao’s CCP because that would be contradictory to the equalization of the people. The Chinese outlook changed once the reform era began. The reform era acknowledged that basic human and property rights, such as basic rights to one’s body and personal property, should be protected by criminal statutes. Therefore, since the first criminal law in 1979, the CCP has increasingly addressed the protection basic rights in order to create a stable society. The reform era CCP made this shift in efforts to discourage criminal activity and to obtain and maintain a stable society.
The shift of views regarding the individual’s duties to society as well as the relationship between the state and society affected the viewpoint on individual rights in the reform era. With the shifting of government thinking to achieve modernity, emphasis placed on the perseverance of the individual was deemed necessary. In order to establish societal stability, individual rights must be protected by some means in a criminal code to deter criminal activity and promote a functioning nation. During the reform era, the state recognized its duty to society by recognizing individual rights.

China’s current criminal law draws many similarities from the criminal law enacted during the reform era in 1979 and its subsequent amendment in 1996. The main goal is still to achieve economic superiority and social stability, and for the most part, China has been successful in these endeavors. The criminal law has been instrumental in maintaining social order. However, recent amendments to the criminal law suggest that China is taking a more lenient stance regarding punishment. In 2011, the CCP put into law an amendment that repealed 13 crimes that prior was eligible for capital punishment, bumping done the overall number from 68 to 55 capital punishment crimes. Not much time has passed since amendment, so little can be drawn from what affects it has caused. However, from past Chinese trends, assumptions and hypotheses can be formed which I will address in this thesis.

International presence and the formation of international norms is a new aspect that is affecting the protection of individual rights as well as what the appropriate measure to be taken for those violating these rights. In the past decade, it is suggested that more than 50,000 individuals were executed through the process of criminal justice in China. China’s laws regarding the death penalty have become very high-profile due to their controversy; death penalty statutes are being mandated for many economic offenses, a controversial international
subject. In this case, it can be perceived that the society to state relationship is skewed because a
death penalty for economic crimes is violating the power of the government. Many developed
countries believe that preserving the people’s rights is a main showing of modernity, as well as
creating appropriate punishments in accordance with the crime. International standpoints could
potentially influence the direction of the CCP regarding the level of capital punishment
implementation.

The differing perspectives of the state and society, as well as society and individual, have
influenced the level of individual rights recognized in China. Looking at each time period’s
different stances on achieving modernity, it is clear how much individual rights would be present
in accordance to the ideologies in pursuit.

Conclusion

The presence of China’s criminal law and death penalty has been affected by many
different circumstances during the Mao era and reform era. According to the CCP’s separate
ideologies, the scope of criminal law apparent in Chinese society was determined during the two
time periods. Each time period had clear goals, whether political or economical, but these goals
were achieved by informal tactics and formal tactics. Informal tactics during the Mao era
contributed to the overall Party goal of a classless society; formal tactics during the reform era
contributed to the overall Party goal of achieving social stability and a prosperous economy.

The different standpoints on what Chinese modernity is and how it should be
accomplished directly impacted criminal law statutes for these numbers of reasons. China’s
death penalty laws are very distinctive and stand out alone in the international world; only a
society so influenced by ideology, so focused on its goal, and so unique as a polity could create such criminal statutes and policies utilizing the death sentence.
The actual application of the death penalty in China was never merely a legal matter, but reflective of the political and social climate of the time.\textsuperscript{4} China’s criminal justice system has undergone many transformations in the past century. The Mao era, a time of socialism and authoritarianism, had ideologies, incentives, and modes of practicing various functions (such as government) that affected its death penalty in countless ways. Each change is linked entirely to the change of regime and the specific time period’s political and societal goals. These shifts in Party goals directly coincide with the implementation of criminal justice and the death penalty, so criminal justice indeed fluctuated in its functionality, importance, and policies during China’s change through modern history.

The shifts of government regimes in modern China were directly related to the shift of ideological standpoint at that specific period in time. The CCP’s agenda in modern China, in the context of criminal justice, can be seen in several distinct time periods. The periods are divided into two general times: the Mao era and the reform era. Each period went through changes of government agenda which directly affected the implementation of criminal justice, particularly the death penalty.

Criminal justice during the Mao era went through several shifts in its implementation and structure. The Mao era specifically had three general periods of different criminal justice structures: the post-revolution period, the state-party period, and the Cultural Revolution period.

During each period within this era, the Chinese Communist Party utilized different modes of authority in order to obtain their new definition of modernity.

A constitution was founded on the basis of protecting individual rights, as well as separating law from political influences in the beginning of the Mao era. The Mao era as a whole is often characterized as a turbulent time period consisting of informal bureaucratic institutions, yet rigidity in government and societal obedience. Although without formal laws, meaning that there wasn’t a constitution that clearly stated terms of governance, the Mao era was far from without rules and was not in a state of anarchy.\(^5\) China under Mao was a highly regulated society, “behavior and thoughts were strictly channeled and programmed.”\(^6\) However, there were specific time periods in the Mao era that were subjected to more lawlessness than other times. For instance, the Cultural Revolution, a multi-year mass campaign of culturally instilling communist ideals unto society, created many rippling effects on society that caused the death of many innocent individuals and threw China into a decade of chaos.

The post-revolution period, the first period within the Mao era, was an eight year time period that had a well defined criminal justice system. The Party’s main motives were to maintain order because the government was young and susceptible to corruption or even worse, failure. The post-revolution period, the years directly following Mao’s successful Communist revolution in 1949 and the establishment of the People’s Republic, was a time where bureaucracy had to be present in order to consolidate its power.

The state-party period, the second section within the Mao era, was a period that specifically moved away from a structured criminal justice system to a more party-orientated agenda and authoritarian tendencies, such as utilizing state-launched campaigns. This period was

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\(^6\) Ibid
highly politicized; the CCP sponsored campaigns and created an agenda that purely projected the goals of the government. The state-party period lasted from 1957 to 1967.

The Cultural Revolution, the final section within the Mao era, was a time where all types of bureaucracy were challenged, including the inner leadership of the CCP. The Cultural Revolution, a mass campaign that was intended to culturally instill the ideologies of communism unto the Chinese society, had a major effect on societal issues, government, and criminal justice in terms of law and order. The Cultural Revolution and mass campaign period lasted from 1967 to 1976. At Mao’s death on September 1, 1976 Mao died and the Cultural Revolution was claimed officially over.

The different Party agendas directly affected criminal justice and, therefore, during the Mao era, there were three distinct shifts in the implementation of criminal justice: (1) law and order; (2) bureaucratic hierarchy and grassroots justice; and (3) mass campaigns that inadvertently created societal chaos and a degenerative social system. Each period’s different Party agenda was in direct alignment with the CCP’s political goals. Each of the three periods within the Mao period had very unique death penalty stipulations because of the shifts of party ideologies and practices.

During the various stages of the Mao era, as well as various times in the PRC, the rhetorical aspect of socialism during each period was similar; however, the methods and goals in achieving this socialism were dissimilar. The establishment and strengthening of the CCP, as well as the growing confidence of Mao, the larger and more effective practices to instill socialism unto the society were placed.

Political incentives and achieving a utopian communist society was the most important issue of the Mao era and it shaped many aspects of government and society. Capital punishment
has a unique role in communist and socialist ideologies. Marx and Engels, the founding fathers of communist ideologies, viewed the death penalty as a means of feudal and capitalist oppression, while Russian revolutionist Lenin saw it as an indispensable tool. Lenin stressed that the crucial question was against which class the death penalty would be used and he believed that no self-respecting revolutionary government should be without it. In Mao’s China, the death penalty was viewed as a “short-term necessity” that actually stayed for the long term but by informal methods, such as mass killings, persecutions, and other deaths that were not under the auspices of the government.

Crimes that were deemed as “counterrevolutionary,” or crimes that threatened China’s sovereignty, were the only crimes officially eligible through the legal processes of capital punishment. Table 1 describes these specific crimes during the Mao era. As listed, only crimes that infringed the security of the state, such as counterrevolutionary crimes, were technically eligible for a state-mandated capital sentence. It is important to take note that the offenses listed in Table 1 were the offenses that were punishable by death by the state. This means that the CCP condemned an individual if these crimes were committed; therefore, the death penalty punishment would not necessarily be mandated by the local tribunals.

<table>
<thead>
<tr>
<th>Table 1: Capital offenses under the PRC (1949-78)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Maintaining a link with the imperialist and betraying the motherland</td>
</tr>
<tr>
<td>(2) Inciting government workers and soldiers to insurrection</td>
</tr>
<tr>
<td>(3) Espionage</td>
</tr>
<tr>
<td>(4) Criminal activities for counterrevolutionary objectives (such as destroying military installations, factories, etc.)</td>
</tr>
<tr>
<td>(5) Undermining the unity of the people and the government</td>
</tr>
<tr>
<td>(6) Engaging in counterrevolutionary agitation and spreading rumors</td>
</tr>
<tr>
<td>(7) Secretly crossing the border for counterrevolutionary purposes</td>
</tr>
</tbody>
</table>

9 Ibid
Local tribunals, a township level judicial system, was a method of practicing criminal justice during the Mao era by ways which enabled the people at grassroots levels to have the bureaucracy system at their own hands, creating an idealized platform for socialism. Criminal justice procedures held by various members of townships or communes, local tribunals were utilized in this precise thought of promoting socialism. Therefore, state mandated or “formalized” death penalty sentences were not issued frequently by the state in particular; the local tribunals were provided the power to deal with and sentence criminals whose crimes had varying levels of severity.

Law lacked structure during the Mao era; however, the offenses listed in Table 1 were officially deemed as capital offenses in the eyes of the CCP. Crimes infringing human rights, such as rape and murder, were lacking from this list and therefore up to the local tribunals, or instead, perhaps the convicted fell victim to the mass killings that happened during chaotic times of various Maoist campaigns.

Through the Mao years, we can analyze the different strategies of Party leadership, which proceeded in three, relatively clear time periods of the Mao era: the “legal” era, the state-party era, and the Cultural Revolution era. Each time period had a different agenda that had direct effects unto the death penalty and its usage; the CCP was pursuing similar goals in each period, which was the achievement of socialism, but each time achieved this in different fashions.
Post-Revolution 1949-1957:

Establishing Sovereignty with a Well-Founded Legal System

The years directly following the establishment of the PRC was a time with well-defined legal codes and a constitution upholding individual rights in order for the shift of regimes to be smooth and effective amongst the Chinese people. This short period of legal stability within the Mao era was due to the fact that the new Communist regime was young and vulnerable to corruption or, even worse, collapse, and stability was necessary for the future prosperity of Communist China.

In the beginning of the People’s Republic, a legal code was established that was formed into a functional criminal justice system. The death penalty would be an effective tool in establishing a national Chinese sovereignty. As early as 1927, Mao unequivocally recommended killings as an “effective method for repressing reactionaries: in each district, there must be executions of at least some people found guilty of the most odious crimes” because “this kind of execution of an abusive nobleman or a local bully makes the whole district shake with fears; it is effective for eliminating the vestiges of the feudal regime.”\textsuperscript{10} This mindset was shared in the beginning of the Mao era because Mao contested that killings were necessary because the counterrevolutionaries thought was still present in society. However, a few years into the new PRC, Mao stated: “From now on, we should make fewer arrest and kill fewer people. But we cannot announce that we will no longer kill or that we will abolish capital punishment.”\textsuperscript{11} The counterrevolutionaries had to be eradicated in order to achieve sovereignty, and the death penalty was an efficient mean in doing so.

\textsuperscript{10} Ibid, 179
\textsuperscript{11} Ibid
The construction of a new legal system began with the destruction of the system that preceded it. At the Communist victory in 1949, the newly glorious CCP issued a directive in February 1949 that ordered the Six Legal Codes of the Nationalist government (the Guomindang, the preceding Chinese government and ruling regime that was ousted to Taiwan) to be repealed, including the constitution, civil, criminal, and commercial laws as well as civil and criminal procedures.\textsuperscript{12} After the revolution, a mass political struggle started to eradicate all influences of the previous government. The State Council launched a campaign towards those who still upheld some Nationalist principles in government, such as legal concepts. During this time, the CCP described law as this Marxist principle: “Law is a tool for the oppression of one class by another.”\textsuperscript{13} Therefore, the CCP strived to de-emphasize bureaucracy, but at the same time, maintain order at a time of regime shifts. This would be no easy task.

Due to maintaining order in a young government over such a large polity, a legal system was established. If the CCP had not established this presence of law and order, China could have easily slid into anarchy and the long term efforts by the Communists to overcome the Nationalist government would be thwarted by having an archaic state. However, this time period established criminal justice systems that de-emphasized bureaucracy, yet also maintained law and order. This was the phenomenon of the “people’s tribunals,” or local-level justice systems.

Law was carried out most effectively during the early Mao years by what was called the “people’s tribunal,” a practice that would later be commonly used in other ways of achieving “justice” during the Cultural Revolution. “This was a special court separate from, and over by leaders of a work unit consisting of political activists as judges, the people’s tribunals had enormous judicial powers, ranging from summons for interrogation, arrest and detainment, to

\textsuperscript{12} Ibid, 160
\textsuperscript{13} Ibid
passing sentence and awarding the death penalty.”\textsuperscript{14} This was an informal procedure to lead law and order; however, it was a function of the people and not a function of an overbearing, oppressive bureaucracy.

Law’s brief renaissance in early 1950s China was soon going to change; however, a rule of law was established that had outlined rights that were aligned with Western ideologies, such as human rights and criminal justice. A constitution was enacted in 1954 that proclaimed protection of the citizens. On September 15, 1954, the first National People’s Congress convened in Beijing and approved the state’s first state constitution.\textsuperscript{15} This constitution granted a plethora of freedoms, including the freedom of speech, publication, association, demonstration, and religious beliefs. In all actuality, Mao himself commented that every Chinese should abide by this constitution once it is taken into effect. This constitution also brought along the reconstruction of some branches of government, including the judicial branch. The new constitution declared the “independence of the legal system and proclaiming equality under law for all citizens.”\textsuperscript{16} For example, the People’s Court Organization Laws had an elaborate system to have the law cater its citizens in the form of justice. It declared that the people’s courts were separate (therefore not influenced by politics) and were subject only by law. The People’s Court Organization Laws also declared that there would be no prejudice, meaning that all citizens were considered equal during trial proceedings regardless of race, ethnicity, gender, occupation, social origins, religion, education, or property.\textsuperscript{17} This constitution was founded and triumphed various rights.

\textsuperscript{14} Ibid
\textsuperscript{15} Ibid, 161
\textsuperscript{16} Ibid
\textsuperscript{17} Ibid, 162
People’s rights and judicial independence under the system remained qualified during this time of legal institutions.\textsuperscript{18} For instance, it was clear that “reactionaries” or “class enemies,” such as the people who were still practicing Guomindang tendencies, had no rights under the new Constitution.\textsuperscript{19} Nor did the Constitution’s guarantee of equality before the law mean that “when the state enacts law, it would treat individuals from different classes equally in legislation.”\textsuperscript{20} Moreover, even in this period there was a continued informalization and politicization of the legal work in China.\textsuperscript{21}

The early 1950’s also had a special circumstance that leaned towards establishing a structured legal system: the Korean War. The Korean War, starting June 25, 1950 and concluding on July 27, 1953, occurred shortly after the Chinese Communist Revolution. Mao supported the Democratic People’s Republic of Korea alongside Soviet aid. This time of international struggle called for a functional and stable home front, especially for the young Republic of China. The Korean War, the first military standoff of the Cold War, was a large factor in establishing such legal codes in the beginning years of the Republic.

With the Korean War being over and the economic and ideological base of the preceding government being broken, the CCP was mostly free in 1953 to develop an integrated plan for the nation’s economical development.\textsuperscript{22} The economic model adopted was that of the Soviet Union, where state-controlled industrial production in a sequence of five-year plans was believed to have been responsible for the nation’s emergence as a world-class power in the 1930s, with the

\textsuperscript{19} Ibid
\textsuperscript{20} Ibid
\textsuperscript{21} Ibid
\textsuperscript{22} Spence, Jonathan D. \textit{The Search for Modern China}. New York: W.W. Norton & Company, 1990. 541.
ability to withstand and repulse the full force of Germany’s attack in World War II. However, the CCP’s task of reforming the economy would not be an easy feat and its policies greatly affected the Mao era.

For the task of restructuring the economy, China’s leaders set standards for bureaucratic recruitment and pay scales, introduced regular administrative procedures, and organized the people of China according to the local unites in which they worked so as to increase the efficiency of social control and indoctrination. Progressiveness was therefore characterized as agricultural and industrial supremacy by utilizing the masses.

This form of economical order had little outlets for personal monetary gain; therefore, crimes derived from economical deviance were scarce and mentioned minimally in the criminal procedures of the Mao era. The planned economy utilized the masses as a means of product output and there were various campaigns where the goals were to expedite this process. Economic prosperity was a main initiative of the CCP and led its policies after the Soviet model, but this model practiced on the basis of massive collectivism and not personal gain, which is the main outcome of capitalism apparent in western civilizations.

In the 1950s, the newly formed Chinese judicial system looked quite polished, functional, and unbiased that emphasized societal order by means of the new planned economy. Under the Supreme People’s Court, a three-level court system was set up. By 1957, a total of 4,108 laws, legal codes, regulations, and rules were approved. Many party officials were very optimistic of this new legal code, for the functionality of a nation coincides with the legitimacy of its justice.

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23 Ibid
24 Ibid
system. However, the efforts to create this judicial system and new constitution would soon be put on the back burner and disregarded almost entirely.

This period of the Mao era was as a brief time of law and order, with an establishment of a constitution, the formation of a legal code, and an uphold of basic human rights. What was also established were the local-level people’s tribunals, a grassroots law and order system, that became very influential in the years to come. The reason why the CCP had a stronger sense of bureaucracy during the beginning years of the People’s Republic was the fear that without a strong presence of law, that China could easily slip into an anarchic state. The CCP was young, fresh, and its ideologies were not well grounded in its the beginning years. Nationalist ideologies still lingered around the government institutions and society; after all, the Guomindang was just overturned and the CCP had yet to fully establish and engrain the new communist ideologies into Chinese society. The shift of government regimes and new ideologies cannot simply be instilled into society overnight; it took time. Government stability and a strong presence of law were necessary to instill communist ideologies effectively and smoothly, as well as the society to cooperate and practice communist ideologies.

Once this stability and a unified national ethos of communism were established, then the CCP and Mao would curve the agenda in order start achieving a perfect socialist state. 1957 marked the end of a constitution with a sound legal system and the year began the pursuit of Party goals by instilling, or forcing, communist ideologies unto the Chinese people.
State-Party System 1957-1967:

Obtaining Socialism through the Auspices of the Government

In order to promote methods of achieving socialism, the government deemphasized the level of bureaucracy amongst society, especially in terms of the criminal justice system, and installed the power within the people. This was a time were local tribunals, or township level criminal justice systems, were the main channels of achieving criminal justice because of the Party’s imposition of socialist principles.

The state-party system within the Mao era was a time in which the CCP created campaigns, promoted propaganda, and instilled the core ideologies of communism and socialism from the government to the people in a top-down process. The government was imposing campaigns unto the Chinese people specifically to achieve the Party’s goal, which was to obtain socialism.

By 1957, the People’s Republic was well established and the Chinese policy was healthy and functioning well. The Korean War was well over and Mao Zedong had solidified national prestige because of the good Chinese result in the Korean War. Stability had been achieved. Therefore, In 1957 there is a noticeable shift of Party agenda and methods to achieve Party goals. This was a shift from the previous legal system to a state-party system. Starting with this year, the Party turned away from the legal codes, claiming that the codes had overwhelming bureaucratic tendencies and started to focus on a more politically driven state-party system. This way, the state could run campaigns and rule the land in lieu of political implications, keeping communist ideologies always in though and in practice.
The term ‘state-party system’ is the concept that the CCP was going to implement Party ideologies, or socialism, unto society. In other words, the “state” is the government and its functionalities, and the “party” is the CCP’s goals in which they want to be achieved. Mao wanted to create a socialist society; after all, this was the whole point of the communist revolution. In the beginning years of the People’s Republic, Mao perceived the establishment of law as oppression of the people by bureaucratic institutions. This was exactly what Mao was fighting against leading up to the revolution. Therefore, the emergence of a state-party system meant that the CCP would impose its beliefs unto society, without a constitution; human freedoms (such as speech, religion, etc.) were compromised in order to instill socialist ideologies.

In 1957 Mao launched the “Anti-Rightist” campaign to urge fellow citizens to oust those who had “Rightist” tendencies, for instance, those who envisioned western ideologies. In lieu of the reforms to the constitution and upholding personal rights, Mao feared the “revisionist restoration,” which was the concept of losing the communist vision and backtracking to oppressive bureaucratic tendencies of the preceding government. The people who were targeted during this time were landlords, intellectuals, and others who had a general higher status in society. The new judicial system created in the years previous was completely disregarded. Now, the Party’s supremacy was imposed on all levels of government and society during this time period.

During the Mao era, the death penalty was intended only to be short term which, by means of formal legal processed, it was. A 1957 Chinese legal textbook explained: “We are retaining the death penalty while in the process of gradually abolishing it, and we are reducing the scope of the application of the death penalty to a minimum.”26 This claim resides from the concept that core communist principles oppose to the death penalty; therefore, the CCP (as well

as Marx) believed that the death penalty should only be a temporary stipulation until utopian socialism is achieved. The CCP viewed the goals in punishing criminals as being a few concepts: to punish and reform the criminal as well as deter and educate would be criminals as well as the rest of the general Chinese population. Mao saw capital punishment mainly as a tool to be used against counterrevolutionaries and stressed it be used cautiously in a limited number of cases.

The Anti-Rightist campaign marked the end of the new legal system. Once an individual was labeled a “rightist,” then that person lost all rights that he/she would be granted in the previous legal code. During this time, township level tribunals gained significant importance, because with the lack of a structured legal code, there must have been some influence of law. What was first established in the beginning years of the Republic in the legal era became much more prominent during the state-party era.

The main objectives of political campaigns during this time period were efforts to achieve economical feats. The Great Leap Forward’s goal was one such as that. The Great Leap Forward was a state-launched campaign aimed to use China’s vast population as a tool to create mass industrialization and a progressive communist society. In 1959, Mao’s chief concern was China’s state of economy, so he declared the campaign was planned to create socialist economy powerhouse out of China in a mere fifteen years. The plan was that the Chinese people would work at constant hours and create an enormous output of agriculture and industry, the goal being to “overtake England and catch up with America”. Slogans, flags, and tributes to Mao were greater than ever to keep the morale high. Mass participation was at its peak during this

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campaign; however, when referring back to the explanation of participation in a totalitarian regime, the people were oppressed in expressing their true opinions. This was the phenomenon of a state-party initiative: the Party’s ideologies were instilled in a forceful manner unto the people.

The Great Leap Forward had many negative effects. The campaign caused the greatest widespread of famine and starvation in modern history and resulted in thirty million Chinese deaths due to natural disasters, such as floods and droughts, and also because of the government’s inability to have a reality check and reduce way too harsh policies of production output. The leaders of the communes in Chinese towns, trying to impress the communist party, lied about the output of products saying that it was more than it was, resulting in the peasants having no food to eat. Some villages were reduced to boiling down shoelaces and making a broth to drink. In 1961, after two years of starvation, Mao called off the fifteen year plan and the condition of the society quickly bounced back a healthy status. The Great Leap Forward was an example of Mao’s brutal policies, his political misguidance, and the Chinese people’s ineptitude to speak out in lieu of the state-party ruling. This campaign exemplified the Chinese lasting characteristics of obedience, loyalty, and incapability of speaking up against the party setting the stage perfect for Mao’s complete totalitarian regime.

The Great Leap Forward was in part an attempt by Mao to use a Marxist structure of society to create communist ideals through Party goals. Mao’s goal in this campaign was for the peasants to become an industrious force, creating a strong, economic sector of society that would translate into believing a higher superstructure of ideology. However, this was obviously a disaster and the peasants did not have the skill or the materials to become this strong proletariat class. Maoist ideals through a state-party agenda would be imposed hence forth.
Mao, as discussed before, firmly believed that the masses, meaning the proletariats and peasants, were key in mobilizing a revolution in pursuit to impose communism top-down. Mao theorized that University students, due to their youthfulness and hunger to fulfill a fruitful, political stimulating lives, would be the first to respond to the Maoist call to rebel against authority. On May 25, 1966, students at Peking University led by a philosophy professor, Nieh Yuan-tzu, displayed the first large-character posters denouncing the university’s president. This first display of visual images was very influential to the launching of the revolution because posters were easy to understand, powerful, and extremely effective in denouncing officials. The display of large-character posters quickly spread to a most universities. These posters began the movement of creating Red Guards, or in other words, students that imposed the revolution among the proletariats, peasants, and intellectuals.

The strong establishment of legal institutions at the grassroots, for instance at the township level, was prominent during this time. Professional legal proceedings appeared to be only a minor part of the daily operation of any state-run legal agencies because of the goal to undermine bureaucracy. Therefore, these few legal agencies served mainly as guiding agencies for a vast network of mass organizations: that is, the “village security committees, staffed by part-time members of the people’s militia.”

After the early years of the Mao era, law as it is known in the west, with penal codes, due process, and the protection of individual rights, was next to nonexistent in China. For most of the Mao era, a disciplined party-state bureaucracy ruled. Social and political behavior was regulated by Party directives and sanctioned by a command structure.

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31 Ibid
32 Ibid
Mao and the central authority often gave out quotas and numerical guidelines for the amount of people who should be executed due to counterrevolutionary crimes. In an early campaign before the Cultural Revolution, a central directive, writing according to Mao’s instructions, announced that “the number of counter-revolutionaries in each province must be limited to a certain proportion: As a general rule, in the countryside, it should not exceed one thousandth of the population; in cities, it is appropriate to aim for one half of one thousandth….As a rule, one or two out of ten should be executed.” 33 Official statistics throughout the country strove to meet the quotas, a major deterrence from actually achieving justice and equality. During an Anti-Rightist campaign preceding the Cultural Revolution, the amount of executions exceeded the proportion that Mao had stated; 2,630,000 were arrested by local tribunals and cadres, and 712,000 were executed. The legitimacy of these executions are incredibly questionable; however, when quotas need to be met, tensions are raised.

In conclusion, the time between the establishment of a formal legal code (that was eradicated in 1957) and up to the Cultural Revolution, a state-party apparatus governed Chinese society. Through state-launched campaigns, goals would be attained and bureaucracy would always be kept in check. Due to the small amount of bureaucracy apparent, grassroots township tribunals were well established in order to keep a semi-functional legal order in place. This state-party would be functional up until the Cultural Revolution, which was a time of bureaucratic disintegration and social chaos.

33 Ibid, 179
A formal criminal justice system during the Cultural Revolution was virtually non-existent because of the government’s new political goal: to fully infuse communism into all aspects of Chinese society. Therefore, in attempts to rid all influences of bureaucracy, in terms of criminal justice, all that existed were public persecutions, political purges, and still the apparent system of local tribunals.

The time of mass campaign within the Mao era was the decision made by the CCP that determined the most effective way of achieving Party goals was to instill “culturally” communist ideologies from the bottom-up, not from the to-down. This meant that by means of propaganda, the Party would promote the masses to instill socialism from the bottom-up and for the masses, meaning the workers, peasants, soldiers, and students, to become tools to fully accept and integrate communism into society.

During the earlier Mao years when there was a state-party rule, various campaigns were launched by the CCP in order to instill socialist ideologies amongst the people. Campaigns, such as the Anti-Rightist campaign and the Great Leap Forward were both efforts to instill communist ideologies and achieve Party goals. Come 1967, an entirely new—and drastic—form of governance would take place that would entirely affect Chinese criminal justice.

The Cultural Revolution shifted the Party agenda once more from the state-party focus. Starting in 1967, rather than governing China by state-party policies, Mao decided to tell the people to challenge the remaining bureaucracy. He enticed people, particularly students, to instill the socialist ideology unto society by creating a campaign in regards to the “masses,” meaning
appealing the peasants and workers, to challenge all that is unequal. The concept of mass campaign was very different from previous state-party campaigns, such as the Anti-Rightist movement or the Great Leap Forward. In the Cultural Revolution, all authority was told to be challenged. The masses were riled up and made to participate in this national ethos.

Mao wanted to culturally instill socialism by enticing the masses; however, it created a situation of chaos and major lack of order. During this time, criminal justice was extremely informal in a sense that there were little procedures in which people were convicted and sentenced. In other words, there was no official system that stated the guidelines in which someone was prosecuted. Therefore, due to this lack of structure in the criminal justice system and society as a whole, mass killings were rampant during the Cultural Revolution.

Triggered by propaganda from the CCP, the Red Guard movement was the driving force in which the masses were triggered to begin the processes of instilling communism into Chinese society from the bottom-up. The Red Guards were the tools of Mao, epitomes of the government, yet in the form of the masses and not official institutions.

The summer of 1966 marked the beginning of the Cultural Revolution. Mao’s years had a history of political campaigns, not a single year went by without a major campaign of some sort occurring. However, the Cultural Revolution was a different campaign in its entirety. Campaigns endangered the preexisting authority; however, before the Cultural Revolution, they were conducted by the party-state bureaucracy, often assisted by work-teams sent from the above. This pattern of state-party campaigns was greatly altered during the Cultural Revolution because it was a campaign that dismantled and reorganized local bureaucratic units.

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34 Ibid, 170
The summer of 1966 was known as the months of the Red Guard Movement, which were the influential beginning steps of establishing the full effects of the Cultural Revolution. The Red Guard Movement was the official start to the Cultural Revolution.

An excerpt from a young Red Guard during the early stages of the Cultural Revolution said, “Dare to think, dare to speak, dare to do, dare to attack, dare to carry on a revolution, in a word, dare to rebel. This is the basic principle of the party spirit! Not to rebel is one hundred per cent revisionist! Revolutionaries are Powerful Kinds, brandishing the big stick, applying supernatural power, destroying the ‘old world,’ ‘turning heaven and earth upside down,’ and ‘throwing men and horses off their feet’.”36 To be a Red Guard was to be filled with fervor for the party and intense resentment towards the bourgeois society. In order to become a Red Guard, in short, one had to be the ideal Chinese student in all aspects. The qualifications were: being faithful to and loving Chairman Mao and the party, being politically active, coming from a good family background, and finally, being inspected and evaluated by an already existing Red Guard. To become a Red Guard was the highest honor in the summer of 1966; they were considered Mao’s disciples, revolutionary children, and ultimate triumphs of Mao’s love and ideologies. It did not take long for the Red Guards to get out of control and breach their newfound power.

The Red Guards, also called Cadres, first began the Cultural Revolution by travelling in groups to rural villages to assimilate the revolution amongst the peasants. This was the first step of the mass campaign, dissimilar from state-party campaigns because the masses were all being enticed to embrace socialism. The revolution’s ideologies were based on stirring the masses; the students were a mechanism to achieve this goal. The revolutionary committees, consisting of Red Guards, imposed themselves on the peasants, but at the same time tried to create a

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temporary place for them in the village’s society. Through eating, working, and talking to the villagers, the ideologies of the Cultural Revolution (creating a pure, socialist state) was being instilled throughout the people.

The Red Guards also created revolutionary committees that evaluated a plethora of universities and schools, determining if the institution itself was anti or pro-revolutionary. This was a type of criminal justice, or more simply a review-committee condemning individuals of counterrevolutionary crimes. These revolutionary committees created work teams; a work team was assigned to specific universities and it temporarily replaced authorities due to the student revolt. However, the work-teams that were imposed on universities did not settle well with most students. Work teams, rather than being created and chosen by people in the school community, were mostly imposed by government backed figures that always had to do check-in type procedures with the government. In reaction to the work-teams, many students became Red Guards and took the revolution into their own hands, a much more desirable option than this non-personable way of society reformation. The work teams were abolished on July 24 of the summer of 1966, for there were many Red Guards created that took over the revolution.

By early summer in 1966 there were millions of Red Guards. The Cultural Revolution started so fast and on such a huge level and it was quickly getting out of control. Although Mao supported the revolution, he recognized that the Red Guards had met their threshold; order among the students would soon have to be established. However, the students achieved Mao’s initiative. They were affectively spreading the revolution’s ideologies, and no questions were asked about it. A realm of terror was officially founded in all spectrums of society, a type of forceful ideology with harsh consequences if not adhered to.
The Red Guards and students took to the streets of Peking (modern day Beijing) in June of 1966. Mao understood that the students would react on a high-energy, revolutionary level, but even Mao knew that the students would eventually have to be controlled. The students performed endless acts of destruction and humiliation. They burned old books, changed street names, destroyed venues that evoked the old society, and were hostile to anyone on the streets that wore old styles of clothing. The students also desecrated temples, harassed nuns, destroyed the graves of past reactionaries, anyone with western connections or characteristics were persecuted, and the persecution and desecration went on and on. The Red Guards and students suffered from a surge of newfound power. The mix of this power with their young age and lack of experience and worldly knowledge was a main contributing fact to the failure of the revolution. Professors and teachers, even though they were not capitalist or anti-revolutionary, were victimized because of the student’s loss of rationality. It was a frequent occurrence when students turned against their teachers. Students would lie and denounce their teachers, such as a young girl who announced to her classmates, “In the past two years, she [the professor] has carried out a revisionist line in her teaching and filled us with capitalist and revisionist ideas. She has poisoned our thoughts. Today, in this Great Cultural Revolution, we shall clear these ideas away”. This particular student, who was a young girl trying to earn a position as a Red Guard, would relentlessly denounce people for her personal gain because Red Guards and students yearned to make their family and their Chairman proud because of their proactive spirit. If a student’s parents showed signs of rightist tendencies, the student would condemn them in the name of Mao. Children frequently and effectively condemned their parents to an undesirable

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37 Ibid
fate. This psychological aspect of constantly trying to impress superiority through unfairly condemning people was an important aspect among the students during the Cultural Revolution.

It wasn’t until August 8, 1966 that the CCP officially set the precedent for the Cultural Revolution, nearly three months after the revolution was declared by Mao on May 16. The party issued the “sixteen-point decision” which explicitly defined the “purpose of the movement as the overthrow of those within the Party who are in authority and taking the capitalist road.”\textsuperscript{38} This document set the so-called guidelines of the revolution into sixteen factors, such as “firmly applying the class line of the party” and “correctly handling the contradictions among the people.” It is unclear how the CCP meant by ‘correctly’ handling, but it was clear that Mao supported the Red Guard’s tactics of bullying, beating, and humiliating those who showed any signs of anti-revolution. It was a double-edged sword that Mao had devised: those who didn’t participate and salute to Mao on a daily basis were condemned, and those who did participate were not allowed to question. At the end of 1966, it became imperative for the local movement to single out the top country leaders as new targets. Therefore, the mass campaign was starting to reform bureaucratic ordinances and the state-party was beginning to lose its grasp on the situation.

Starting in August and lasting until mid-November Mao received an estimated 11 million Red Guards from across the country on eight different occasions in Tiananmen Square. During these various gatherings, Mao would re-establish the revolutionary ideals and goals of the Cultural Revolution. If Mao ceased encouraging the Red Guards, would chaos have subsided? The students were a force of ill-trained dogs, when after being given many treats from their master, completely turning into hyper, out of control forces that wreaked havoc and were hard to maintain.

The Cultural Revolution transformed the authority structure. During this time, the regime displaced bureaucratic control, the main routinized form of authority, with the mass campaign. Mass organizations ascended to become parallel governments and local governments were reorganized to become campaign machines. By the middle of the Cultural Revolution, anyone in a leadership position in the state bureaucracy was dubbed as a “power-holder,” making each a legitimate target.

Violence and persecution escalated exponentially during the Cultural Revolution, illustrating the lack of legal code and the new version of “justice.” All forms of displaying western ideologies were not tolerated and forms of physical violence and persecution increased, all in the name of instilling socialism unto the people. Red Guards would frequently beat people with belts as a standard punishment. Either intended or not, many people that were subjected to beatings would end up dying. People who were condemned of being revisionist or anti-revolutionary would in fact take their own lives in fear that the Red Guards would torture them to an intolerable extent. Even public humiliation because of their irrevocable bad reputation imposed on them by the Red Guards alone would be reason enough for a person commit suicide.

In August and September, 1,772 people were murdered by the Red Guards and students in Beijing alone. In Shanghai, there were 704 suicides and 534 deaths related to the revolution in September. In Wuhan during September, there were 62 suicides and 32 murders. By the conclusion of the Cultural Revolution, millions died due to factors related to the movement.

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40 Ibid
41 Ibid, 174
43 Ibid
44 Ibid
Even though violence and chaos was increasing, Mao continued to support the Red Guards and not control their power. On August 22, 1966, Mao issued a public notice which stopped all police intervention in the Red Guard tactics and actions. Those in the police force who dared to defy this notice were labeled as counter-revolutionaries and punished. One September 5, Mao issued another notice encouraging all Red Guards to come to Beijing and spread revolutionary ideas. Mao also made all fees, including all accommodations and transportation, to be paid by the government. The Red Guards and students were a political group that not only enjoyed the power and benefits of their status, but also the superior recognition of Mao. This ego fueled the students to become chaotic, irrational figures. The students, in every way, were responsible for heading the revolution because of Mao’s encouragement, the sense of power, and the pressure from others to fulfill their revolutionary duty.

As a young girl Red Guard said years after the revolution, “After the summer of 1966, I was astonished to learn that our country was in such bad shape. Until then I hadn’t suspected that the songs I sang, the movies I watched, and the books I read were unhealthy. Nevertheless, I swallowed what I was told and didn’t raise a single negative question, not even to myself”\(^45\). This was the spirit during the beginning of the Cultural Revolution in terms of ideology, disorganization, and criminal justice.

The main activity of the Cultural Revolution ended around 1968 as China was hurled into an unstructured society with few criminal codes and Party ideology ruling the polity. However, despite the campaign’s main action being ended in 1968, the Cultural Revolution didn’t officially end until Mao’s death in 1976. The varying processes of criminal justice were not apparent

during this time; however, the people were kept in line by adhering to the time’s belief system, or else they would be at risk of being persecuted.

Conclusion

The Mao era consisted of different time periods that each had different ways of achieving Party goals, directly affecting the implementation, structure, and effectiveness of criminal justice. By means to de-emphasize bureaucracy and to promote CCP incentives, local tribunals were the main form of structure in terms of legal order; however, depending on what campaign was being enacted during a certain time, the overall effectiveness of local tribunals was questioned and, sometimes, disregarded.

Despite the lack of order, the Mao era did not lack civilian obedience. The Mao era was a certain type of authoritarian regime; although there was not a well-defined legal system, there was still a strong establishment of how society should be structured in accordance with the CCP’s agenda. Through Mao’s propaganda machines, Chinese individuals were extremely obedient in regards to respecting communist ideologies and condemning the West. If they did not adhere, then they would have been at risk of persecution. Therefore, even though stability and social structure was lacking during the Cultural Revolution, the heightened paranoia of becoming persecuted was so large that people abided by the Red Guards in order to avoid this horrible fate.

Criminal justice and state-sanctioned executions were not large influences on the Chinese society because these two functions were deemed as oppressive practices that advocated capitalist and imperialistic tendencies, factors in which China wanted to avoid. Due to avoiding the paradoxical situation of creating a workable criminal justice system, the government left the
majority of control to the community levels, truly enabling the masses with core socialist concepts. The decision to enable the local tribunals, however, caused individuals to abuse their power (such as the Red Guards during the Cultural Revolution), causing China’s temporary disorder and chaos.

The Mao era was never without a campaign or without a specific goal to be achieved. In pursuit to achieve a perfect communist society, there was a major de-emphasis on institutions and bureaucracy, an increase in citizen participation, but this participation was in tandem with the Party goals. Modernity was therefore characterized as instilling these notions unto society, and the methods in which to achieve these goals would be through various campaigns that established intense national ethos, but a lot brought along much hardship as well.
Chapter III

Criminal Justice and the Death Penalty during the Reform Era:
Establishing Order in a Free-Market Society

The reform era was a time of re-prioritization of the CCP’s ideologies and the methods in which to achieve new goals and new Party incentives. Party members who were persecuted during the Mao era, such as Deng Xiaoping, had reemerged and were prepared to change China into a international powerhouse of economic, political, and societal advancements. The reform era was a period of Party re-alignment, stability, establishing legal sanctions and a formal criminal code, and also setting the precedent for the future of China.

The reform era was a pivotal time for the direction in which China was going to take in many aspects, but most significantly, economically. There were a few different paths that the CCP could have taken in terms of the economy, for example, sticking with Maoist methods of state-party campaign or creating a free-market economy. Due to the leadership of Deng Xiaoping, many aspects of China were changed to achieve new Party ideologies and new characterization of modernity: economic progressiveness and international recognition.

When Mao died in 1976, China was left in shambles from the Cultural Revolution and poor Party leadership. Criminal justice was loosely established, and it was usually by means of local level tribunals. The Mao era had left China in utter disarray, and now the CCP had to make decisions with regards to what direction China would now go in without the direct influence of Mao Zedong.

The reform era is characterized in four time periods: the years of unchanged polices directly after Mao’s death; the economic and criminal justice reform time period; the period of a crackdown on crime; and, lastly, a period in which legal procedures were constituted and
established for China’s future. The last period set the precedent for the future of Chinese criminal justice, as well as the acceptance and realization of crimes stemming from economical deviance.

The two years directly after Mao’s death, the first period of the reform era, was a time where ideologies and Party practices differed little from the previous Maoist practices. Although this technically wasn’t a time of “reform,” leaders such as Deng Xiaoping were gaining ground and formulating plans on how to re-align party ideology to proper economically. This time period was from 1976-1978.

The period after Deng Xiaoping claimed leadership in 1978 was when the first official legal code was set up, and although Maoist ideologies were still apparent in many government processes, criminal procedural laws and codes were firmly being set into place amongst society. The lingering Maoist ideologies were very apparent in this criminal law; for example, the list of crimes eligible for the death penalty was only counter-revolutionary crimes. However, the original People’s Republic of China’s criminal law in 1979 overemphasized the political nature of the crime and lacked clarity in defining both the substantive and procedural issues involving crime and punishment.\(^4^6\) During this period, the shift between prioritizing economic crimes from counterrevolutionary can be seen, because with the establishment of a free-market society comes an influx of new crimes and corruption.

The Strike Hard campaign, the third period of the reform era, was a state-led campaign that, simply stated, cracked-down on crime. In lieu of the economy opening up to the global arena by Deng Xiaoping, China was much more susceptible to crime and corruption because of the new phenomenon of personal gain. Let’s be reminded of the commune sense of life back in the Mao era: everything and everyone was perceived as equal. There was no room to either gain

\(^4^6\) Lu, Hong; Miethe, Terance D. China’s Death Penalty, 49.
monetarily or get rich. So, with the reform of the economy came the vulnerability for more crime in Chinese society to obtain glory and riches.

The Strike Hard campaign, in a sense, was the act of the state-party system once again being implemented amongst society by the CCP because it was a campaign that exhibited Party goals through a tough agenda to deter crime. The Strike Hard campaign was a time in which the CCP decided to implement very rigid and structured criminal procedures in order to cleanse China of its societal crimes that were still lingering from the chaos and disarray caused by the Cultural Revolution. The Strike Hard campaign was instrumental in formulating future criminal codes and structuring the government, because a legal system was being established in order to restore order and make sure that Chinese society was kept in line and not susceptible to the crimes introduced by the idea of economic prosperity.

The establishment of the precedence of Chinese criminal law is the last period of the reform era; this precedence still resides in today’s China. During this period, the CCP established the direction in which Chinese criminal justice and law would go in lieu of the Strike Hard campaign and its major issues, such as hooliganism, being settled. After the Strike Hard campaign and the criminals were wiped off the street, the CCP had decided what direction criminal justice would lean towards: a greater focus on economic crimes and a de-emphasis on counterrevolutionary crimes.

The reform era was instrumental in creating policies for the future of China and even into today. Each period will be explained in full, and kept in context of what was happening during the Mao era. Each period had a very specific criminal justice system with dissimilar goals. Over time, CCP priorities would shift in lieu of the booming Chinese economy.
The death penalty during the reform era was very dissimilar to the death penalty during the Mao era. The reform era had structure and rigidity whereas the Mao era based criminal justice off of Party ideology, which was the de-emphasis of bureaucracy. This Maoist ideology was formed over the three periods of the Mao era.

The reform era marked the shift of socialist rhetoric amongst the CCP, indicating that ‘socialism’ is a flexible term and that it was used more to tie the nation under one, unified ideology. The government still proclaimed that socialism was being practiced, in order to relate to the Mao era; however, most practices of this time were not by means of collectivization or other core ideologies of socialism. Therefore, this new characterization of socialism indicates that the term is more rhetorically used rather than adhering to its actual meaning.

The varying forms of criminal justice in the reform era had its positive aspects and negative aspects; undoubtedly this era effected Chinese society and the future of Chinese criminal law and the death penalty. The Mao era and the reform era were extremely dissimilar time periods; however, they were both instrumental in establishing modern day criminal justice procedures because of systems of trial and error.

The Years after Mao 1976-1978:
A Brief Parallel of Political Ideology and its Practice

Little in terms of criminal justice, Party thought, and methods to achieve modernity changed in the years directly after Mao’s death because Mao’s legacy and ideologies were still embraced by the CCP as well as China as a whole. Mao’s philosophy on achieving modernity
through the masses was still very much alive directly after his death; it would have been too soon and shocking of a change to switch Party practices right after his death.

The years directly after Mao’s death and the conclusion of the Cultural Revolution consisted of the same ideologies that Mao implemented; it consisted of state plans for agricultural and industrial growth, both of which were Maoist ideals. For two years after Mao’s death, China stayed relatively the same with similar party goals, agendas, and procedures as it was during the Mao era. This time was quickly ousted, because previously persecuted CCP members who had conflicting visions with Mao, such as Deng Xiaoping, were coming back into the political arena.

When Mao Zedong died of complications due to long-term illness on September 9, 1976, ten minutes after midnight, a new era would soon be ushered into China. A week-long period of mourning was declared, and Mao’s body was place in a casket in the Great Hall in Beijing for the crowds to file past.\footnote{Spence, Jonathan D. The Search for Modern China, 650.} In front of 1 million Chinese assembled in Tiananmen Square, the CCP’s public eulogy, a speech given by Hua Guofeng, Mao’s successor, gave fulsome praises to Mao’s extraordinary achievements, but also had a direct political message that praised Mao’s use of persecution towards those in the CCP itself.

With Mao embalmed and at rest, the struggle for power in the CCP gained new intensity.\footnote{Ibid, 653} Leaders who had been previously expelled from the Maoist regime were now gaining recognition for their new innovative ideas for China’s direction. Hua Guofeng was named the successor of Mao and was in command. Almost obsessed with Mao, he championed the radical programs that Mao has instated, such as the Anti-Rightist principles and the Party member persecutions. Mirroring Mao, Hua championed the “Four Modernizations” in the CCP, which
were expressed as progressiveness via agriculture, industry, national defense, and the areas of science and technology. In February 1978, Hua announced a campaign similar to Maoist campaigns. Hua called this the “ten-year plan” that would raise industrial production by 10 percent each year and agriculture by 4 to 5 percent. The CCP, political motives, and methods to enlarge the economy had changed little in the immediate years after Mao’s death; however, new leadership was in the works.

While Hua was announcing the future plans for China’s growth, Deng Xiaoping was maneuvering with growing success to bring back numerous CCP cadres ousted from the Cultural Revolution. Deng was planning for China to implement a new modernization plan that would incorporate foreign investment and technology along with the training of Chinese students overseas. Deng, a figure that would lead China to a booming economy and international powerhouse, was not always an accepted figure. As Mao approached his death, Mao also became more harsh and critical, almost to a state of paranoia, towards those in his Party. Deng was amongst the persecuted; therefore, Deng wisely left Beijing in the spring of 1976 and sought shelter far to the south.

Rather than focusing on industry and agriculture as Hua was, Deng gained momentum by promoting his plan to invest in technology advancements. Soon, the CCP agenda would be focused on sending gifted students to prestigious universities, such as schools in the US, to gain knowledge on the modern sciences.

The year of 1978 was an instrumental time in modern Chinese history because of the development of international relations as well as new developments on the home front. Four significant foreign-policies were made along with two domestic ones. The foreign-policy events

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49 Ibid, 654
50 Ibid, 655
51 Ibid
were the ratification of the Sino-Japanese Treaty of Peace and Friendship (October 23); Deng Xiaoping’s denunciation of the new Soviet-Vietnamese Treaty of Friendship and Cooperation as a threat to the peace and security of the Pacific (November 8); the announcement (December 15 and 16) that the United States and China would establish full diplomatic relations on January 1, 1979, and exchange ambassadors on March 1 that same year; and the condemnation of Vietnam (December 16). These events were instrumental in establishing the CCP’s new agenda; the CCP had shifted priorities, trumped Hua and Maoist ideologies, had opened its doors, and had established official relations with the West.

Domestically, the key contextual events were the announcement by the CCP that those who were wrongly condemned dating all the way back to 1957, meaning the intellectuals and political figures who were persecuted during various campaigns, could be rehabilitated back into society (November 15). Another event was public posting in Beijing of a long wall poster declaring that Mao had been a supporter of the Gang of Four, therefore condemning the leaders who were trying to bring modernity and progressiveness to China.53

In terms of criminal justice during this time, local tribunals were still the most effective means of criminal procedures. Since little really changed during this time period from the Mao era, legal codes and procedures adhered to the years under Mao’s rule.

The period of 1976-1978 was minimally different from the Mao era; however, when Deng achieved power, China started to evolve into the country that it is today. It wasn’t until a few years into Deng’s new regime—a regime of technology, international relations and economic growth—that the CCP would have to face the problems that stem from prosperity: crime.

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52 Ibid, 656
53 Ibid

A Reformation of Party Ideology, the Economy, and the Criminal Justice System

Some stability was deemed necessary in the new CCP agenda to avoid the chaos created by the disintegration of bureaucracy during the Cultural Revolution. This was the beginning of establishing a formal legal system in China, formal by means of creating a constitution, legal stipulations, and a procedural law for the Chinese polity to abide by.

The beginning of the reform era can best be categorized as a period where the Party wanted to catch up with the rest of the world in terms of technology and the economy, as well as establish social and political stability stemmed from the Cultural Revolution’s chaos. In the beginning of the reform era, a plethora of aspects were changed because of the shift of Party ideologies, as mentioned in the previous section. Due to domestic changes and foreign diplomacies, the stage was set for China’s economy to bloom and formal constitution to be enacted. Amongst one of the most important things to be achieved by the Party was stability, without which achieving new goals would be difficult.

The economic reform that was instated by the newly enacted 1978 constitution was the most influential government process of the reform era. As stated before, the formal establishment of foreign relations via means of economic import and exports was instrumental towards the reformation of Chinese government and society. The CCP knew well that these reforms would re-shape many societal aspects of China because of the opportunity for monetary success. The rural dwellers, the vast majority of the Chinese population in 1978 and the main agricultural force, was a topic of discussion during the early reform era. Referring to agricultural policy, the CCP observed:

The rapid development of the national economy as a whole and the steady
improvement in the living standards of the people of the whole country depend on the vigorous restoration and speeding up of farm production, on resolutely and fully implementing the policy of simultaneous development of farming, forestry, animal husbandry, side-occupations and fisheries, the policy of taking grain as the key link and ensuring an all-round development, the policy of adaption to local conditions and appropriate concentration of certain crops in certain areas, and gradual modernization of farm work.  

In order to maintain a stable country, the growth of the economy would have to be in unison with other aspects of society, such as agricultural and technology. The economic reform must transcend the remaining factors of Chinese productivity and population, such as agricultural by the rural folk. Therefore, Chinese progressiveness was characterized as achieving prosperity in many areas; the economic reform was the main tool in dictating how to run other organs of society, such as technology and agriculture.

Amongst Chinese officials, there was split in regards to how criminal justice should be approached in the early reform era. During this time, opinions on how criminal justice should be approached were divided amongst CCP and the Chinese legal community. Some leaders advocated the emphasis of harsher punishments for criminals whereas other leaders advocated for addressing the social roots cause for crime, such as establishing reformative, preventative programs supplemented by criminal sanctions. Regardless of what direction the Chinese view on punishment would go to in, China’s new constitution, proposed in 1978 and adopted by the National People’s Congress in 1982, would decipher how large criminal justice, its procedures and stipulations, would factor into the state’s overall functionality.

The first Criminal Law of the People’s Republic of China was promulgated on August 6, 1979. Also what was drafted was the Criminal Procedure Law which outlined the steps of a

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54 Ibid, 657
56 Ibid
57 Ibid, 6
formalized criminal process. This was already a monumental establishment of order from the previous Mao years. As a reminder, the latter Mao years can be categorized as lacking a “formalized” legal system; rather, there was a prominence of “informal” legal systems by means of local tribunals and mass campaign acts.

In 1979, the new criminal law statute consisted of four general parts: general provisions; filing a case, investigation, and initiation of public prosecution; adjudication; and execution of the sentences.\textsuperscript{58} In fact, this statute showed a greater concern for the protection of individual rights when compared to earlier drafts and party thought regarding the criminal process.\textsuperscript{59} In terms of capital punishment, this statute made it mandatory that all executions (or those to be executed) be reported to the Supreme People’s Court in Beijing.\textsuperscript{60} All capital cases had to be reviewed by the Supreme People’s Court and then a decision was made on their part.

Compared to some of its Imperial counterparts and the PRC’s current 21\textsuperscript{st} century law, the first criminal law in 1979 “overemphasized the political nature of crime and lacked clarity in defining both the substantive and procedural issues involving crime and punishment.”\textsuperscript{61} The first criminal code was proved to be quickly outdated because of the changes of the Chinese society due to the economic reforms and its unanticipated rise of crime.

While China’s crime rates might have been seen as low in the international eye, they appeared quite high in terms of the Chinese leadership’s view. The 570,000 criminal offenses recorded in 1980 compared unfavorably to an average annual number of cases of 290,000 from 1950 through 1965.\textsuperscript{62} Crime rates were dramatically rising in urban areas, and the fact that most

\textsuperscript{58} Lu, Hong; Miethe, Terance D. \textit{Punishment: A Comparative Historical Perspective}. Cambridge: Cambridge University Press, 2005.
\textsuperscript{59} Ibid, 18
\textsuperscript{60} Ibid, 138
\textsuperscript{61} Lu, Hong; Miethe, Terance D. \textit{China’s Death Penalty}. 49.
\textsuperscript{62} Tanner, Harold M. \textit{Strike Hard!}, 62.
offenders, roughly 70 per cent, were youths (generally 25 years and younger) was also very worrisome, as they were “political dissidents and other counterrevolutionary offenders.”

During this time, officials believed that youth crime could be attributed to the detrimental effects of the Cultural Revolution, for the campaign on the ideological side created the “general decline of moral standards and erosion of discipline” and on the economic side created the “lack of employment and educational opportunities for young people.” Therefore, to officials it seemed clear that education as well as punitive sanctions were necessary in changing the mindset of the youth to a stable being.

The original People’s Republic of China’s criminal law in 1979 overemphasized the political nature of the crime and lacked clarity in defining both the substantive and procedural issues involving crime and punishment. The law covered eight broad crime types with a total of 192 separate articles; among these eight general crimes, twenty-eight specific offenses were eligible for capital punishment (see Table 2). Table 1 from Chapter II represents that heavy emphasis was placed on crimes infringing the loyalty of the state was still prominent in 1978; however, the Chinese government would become less lenient on punishments and add many offenses to the list. Crimes eligible for capital punishment would become more numerous in the years to come; for example, bribe-taking along with graft, and kidnapping along with murder and rape. Criminal legal statutes in the late 1970s were malleable and subject to large change.

<table>
<thead>
<tr>
<th>Table 2: Capital offenses under the PRC’s criminal law (1979)</th>
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<tbody>
<tr>
<td>Counterrevolutionary Offense (Fifteen Capital Offenses)</td>
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<tr>
<td>Article 91: colluding with foreign states in plotting to harm the country.</td>
</tr>
<tr>
<td>Article 92: conspiring to subvert the government or dismember the state.</td>
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</tbody>
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63 Ibid, 62
64 Ibid, 63
65 Lu, Hong; Miethe, Terance D. China’s Death Penalty. 49.
Article 93: encouraging members of the armed forces, the police, or militia to defect to the enemy.
Article 94: defecting the enemy.
Article 95: participating in armed mass rebellion
Article 96: organizing a jailbreak.
Article 97: espionage or aiding the enemy:
   (1) Stealing, secretly gathering or supplying intelligence for the enemy;
   (2) Supplying arms and ammunition or other military materials to the enemy;
   (3) Joining a secret service or espionage organization or accepting a mission assigned by the enemy.
Article 100: carrying out acts of sabotage to promote counterrevolution such as hijacking aircraft, causing explosions, stealing state secret, manufacturing arms:
   (1) Causing explosions, setting fires, breaching dikes and using technical or other means to sabotage military equipment, production facilities, communications or transportation equipment, construction projects danger prevention equipment or other public structures or public property;
   (2) Stealing state records or military materials or plundering industrial or mining enterprises, banks, shops, warehouses or other public property;
   (3) Hijacking ships, naval vessels, aircraft, trains, trams or motor vehicles;
   (4) Directing the enemy to any bombing or shelling target; and
   (5) Manufacturing, forcibly seizing or stealing guns or ammunition.
Article 101: mass poisoning or spreading infectious diseases to promote counterrevolution.

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<tr>
<th>Endangering Public Security (Eight Capital Offenses):</th>
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<tr>
<td>Article 106: setting fires, breaching dikes, causing explosions, spreading poisons.</td>
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<tr>
<td>Article 110: sabotaging a means of transport, transportation facilities, electric power or gas facilities, or inflammable or explosive equipment.</td>
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<tr>
<th>Infringing upon Personal Rights (Three Capital Offenses):</th>
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<tr>
<td>Article 132: murder.</td>
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<td>Article 139: rape and rape involving a minor.</td>
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</table>

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<tr>
<th>Infringing upon Property Rights (Two Capital Offenses):</th>
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<tbody>
<tr>
<td>Article 150: robbery.</td>
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<tr>
<td>Article 155: graft.</td>
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</tbody>
</table>


Table 2 describes the specific crimes during the early reform era in which the death penalty was a viable punishment. As listed, there is an overwhelming favor towards capital punishment for crimes in which the stability of the state is in jeopardy. By looking at these crimes eligible for the death penalty, it is obvious that in 1979 there was still an overwhelming
influence of counterrevolutionary crimes on the new constitution and criminal law. However, what is important to notice is that there are statues that protect individual rights, such as murder and rape. There are also only two economic crimes eligible for capital punishment.

When comparing Table 2 with Table 1 (the crimes eligible for the state-mandated death penalty during the Mao era) it is clear that the constitution considers the protection of individual rights more in 1979 than during the Mao era. This is due to the fact that with the notion of personal prospect now on the table, it is only human nature for people to become more susceptible to commit acts of crime. Therefore, there must be criminal codes to punish those who violate laws in heinous ways.

In conclusion, 1979-1982 was a very influential time for the reformation of Chinese criminal law. The Chinese criminal justice system was reformed, its constituent organs, the public security, the procuratorate and the courts, were strengthened, and “the exercise of the coercive power of the state brought under the guidance of law-in the form of codes of criminal and criminal procedure law- the first time in the history of the People’s Republic.”66 Chinese authorities had, for the most part, brought order out of chaos and had closed the doors of the Cultural Revolution and its influences. Although this time brought closure of much of Mao’s campaigns and ended many detrimental societal problems (such as in regards to crime), new problems arose from this time period. For instance, during the Mao era, crime and criminal justice was overwhelmingly curtailed in terms of political offenses against the state. Now the system was worried with common crime committed by young persons of working-class background and with economic crime- much of which was committed by Communist Party cadres themselves.67 Therefore, this period was divided by people thinking that there should be

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66 Tanner, Harold D. Strike Hard!, 80.
67 Ibid, 80
emphasis on punitive techniques regarding crimes and those who thought that a greater effort should be emphasized regarding the source of the problem. In the years to come, it would become quite clear what Chinese officials favored in regards to solving the crime problem in China.

**Strike Hard! 1982-1986:**

**A Crack Down on Crime in Lieu of the Emergence of Economic Derived Crimes**

The Strike Hard campaign was a pivotal time for establishment of the current Chinese legal system and legal procedures, as well as how society would function and how much the government would intervene in matters. This was a crucial moment for the CCP to not take lightly for a series of reasons. First off, this campaign began with a fork in the road, with the CCP choosing one path. One path was the road in which the CCP had been following for the past few years after the Mao era, which was a loosely established legal system that still upheld a plethora of Maoist ideologies, such as a de-emphasis on bureaucracy. The other path was a system of strongly enforced legal procedures, with a well-defined legal code and plenty of structure in regards to the judicial process. The Strike Hard movement solidified the CCP’s choice to take the latter option.

The Strike Hard campaign was the Party’s official efforts to establish societal stability in order to achieve economic and political superiority as well as international legitimacy. The Strike Hard campaign had large bureaucratic influences unto society; police had quotas to fulfill and the main goal was to cleanse China from the crime that was starting to become rampant from the new economy.
The initial stages of the campaign began with the issuing of arrest quotas amongst local governments. Before the campaign began, local areas were made to estimate how many “trouble-makers” were in the area. Once the numbers were assessed, they were used as a quota for how many people should be arrested in the given area. To say the least, the number of arrests was quite large off the bat.

Mass arrests were instituted throughout the Strike Hard campaign in order to deter criminal action. For instance, as reported in the *People’s Daily* of August 14, six hooligan gangs led by ex-convicts released from labor reform camps had been terrorizing the city of Tangshan in the Hebei province.\(^6^8\) The gangs had been ruthlessly wreaking havoc, harassing women in public, robbing, and carrying out gang-fights in the streets. On July 19 an incident took place on a public bus in which six hooligans assaulted three women. A passenger who tried to intervene was stabbed to death. In response, the public security office arrested 106 individuals on charges of hooliganism in the next ten days, thus breaking up six hooligan gangs. Therefore, mass arrests were harsh yet effective to actually solving the crime problem amongst various Chinese areas.

The first point of the Strike Hard “battle” can be described as a party initiative to take as many real and potential criminal offenders as possible off the streets and into detention centers, re-education through labor facilities and labor reform camps.\(^6^9\) The CCP’s Minister of Public Security Liu Fuzhi claimed to the Chinese population as well as Party leadership that there had to be a call for stronger measures against crime, in particular to hooliganism and gang-related crimes, for the rate had not decreased over the past years. The method by which the Party and Liu proposed to drastically reduce crime rates was to, indeed, launch a mass campaign that

\(^{68}\) Ibid, 87  
\(^{69}\) Ibid, 88
would permanently disassemble criminals “in one fell swoop.” The Strike Hard campaign was a decision made upon the Party leadership to fully eradicate crime in very firm and swift manner.

Table 3 lists the main targets of the Strike Hard campaign. Most of the offenses that were targeted by the state were crimes that infringed stability and social order on a very shallow level. In other words, the state’s main objective was to literally clean the streets from criminals that performed heinous and violent crimes, directly affecting the civilians and the system of order. Crimes such as murder, rape, hooligan charges, and threatens to the state were held in high regards when arresting suspects and all who were involved, not necessarily just the murderer, but all associated with the crime as well. What is notability absent from list in Table 3 is economic offenses and other offenses that involved Party cadres, such as illegal detention and the use of torture. Economic crimes would become more prevalent in the years to come when the free-market society would be well-engrained; however, the Strike Hard campaign neglected these outlets for criminal activity and focused on literally “cleaning the streets” of those who presented instability towards society.

Table 3: Targets of the Strike Hard Campaign

<table>
<thead>
<tr>
<th>Category</th>
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</thead>
<tbody>
<tr>
<td>Hooligan gang elements</td>
</tr>
<tr>
<td>Serial offenders</td>
</tr>
<tr>
<td>Murderers, arsonists, bombers, poisons, drug traffickers, rapists, robbers and persons guilty of serious theft</td>
</tr>
<tr>
<td>Traffickers in women and children, criminals who force, lure or shelter women in prostitution or criminals who produce, reproduce, or sell publications, pictures or recordings of reactionary or pornographic content</td>
</tr>
<tr>
<td>Members of reactionary secret societies currently engaged in wrecking activities</td>
</tr>
<tr>
<td>Persons escaped from reform camps, persons released from labor reform or labor re-education who commit new crimes and other persons under warrant of arrest for criminal activities</td>
</tr>
<tr>
<td>Active counter-revolutionary elements who write counter-revolutionary slogans and pamphlets, write letters of counter-revolutionary contact or anonymous letters, and other remnants of the Gang of four and those currently engaged in wrecking activities</td>
</tr>
</tbody>
</table>

70 Ibid, 89
71 Ibid, 90
One of the most fundamental changes brought about by the campaign was that as the courts investigated and tried criminal cases, they were encouraged to look beyond the objective facts of the crime to give more weight to factors such as the subjective intention of the criminal offenders and the authorities’ interpretation of the degree of harm done to “public security.”

This is a difficult notion to wrap one’s head around. A practical example of this notion is the effect of the campaign on the way criminal cases were handled in the area of hooliganism. For instance, there was a large case in regards to hooliganism in mid-1983 in Shanghai handled by the Shanghai Middle People’s Courts.

The facts of the crime were as follows: on the evening of June 8, 1983, some sixty members of two rival gangs engaged each other in a fight, blocking traffic and causing public busses to be re-routed; weapons including knives, swords, sticks, and spades were employed in the brawl. Eight youths ended up being arrested. Out of the eight convicted hooligans, five were sentenced to death and deprivation of political rights, one was sentenced to life in prison and deprivation of political rights, and the remaining two were sentenced to imprisonment for 16 years. The executions were promptly carried out a month later.

Commenting on the case later, Chinese legal analysts looked at this case and questioned if this was truly a fair way to treat the criminals. After all, nobody was killed in the hooligan brawl and, prior to the Strike Hard campaign, punishments would have been no more than ten years imprisonment for all persons. Therefore, the severe sentences that the courts gave to the condemned were not illegal; however, it was evidence of the effects of the CCP’s admonition “not to interpret the law in ways beneficial to the defendant and the accompanying

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72 Ibid, 93
73 Ibid, 94
encouragement to give greater emphasis to subjective factors including the very subjective assessment of the harm done to public security rather than the objective facts of the case.” The campaign, therefore, was simply too harsh in its policies.

It is difficult to know precisely how many people were arrested, tried, and punished during the campaign. It is reported that the first battle of the Strike Hard campaign, the beginning and most ruthless part of the campaign in 1983, 1,027,000 criminals had been arrested on charges of homicide, arson, robbery, rape, and hooliganism. 975,000 had been prosecuted, 861,000 had been sentenced, including 24,000 sentenced to death. 687,000 new prisoners entered the labor reform system and 169,000 labor re-education. Citing these figures, this was the largest crack-down on criminal offenders since the 1950 campaign against the counter-revolutionaries and those in the Mao era that still supported the Guomindang.

The campaign had immediate and profound effects on the administration of criminal justice in China. Record numbers of Chinese were detained, tried and punished for law-breaking during the first six months of the campaign. In early 1984, in response to the overly intense initial policies and stipulations of the campaign, the campaign continued but at a much lower level of ferocity, and the campaign continued through late 1986 or 1987.

Was the Strike Hard campaign a success? Whether some say that the stipulations of sentencing were too harsh or not, there was great optimism that the CCP had indeed achieved its goal: to obtain stability through means of cleaning up criminal activity. However, the end results weren’t uniform as suspected. Some areas represented a decrease in criminal activity; some areas showed that there was an increase of crime and an overall unstable environment was present. In

\[74\] Ibid, 95
\[75\] Ibid, 98
\[76\] Ibid
\[77\] Ibid, 93
the long run, however, the Strike Hard campaign appeared to have brought about a fundamental
decrease in hooligan gang offenses, that is, the open violation of public order, public harassment
of women, and street-fighting that seems to have been a problem that was very apparent during
the Cultural Revolution (which caused so much chaos).\textsuperscript{78}

Post-Strike Hard Era: 1986-1997

Setting the Precedence for China’s Legal System

In the aftermath of the intensity of the Strike Hard movement, China took the next decade
to establish a workable, comprehensive criminal law that tailored around China’s various societal
issues, such as economic deviance. Due to the severity and intenseness of the Strike Hard
campaign, matched with the lack of structure during the Mao era, the CCP was enabled with past
experiences to construct a well balanced, workable criminal law that addressed the many needs
of China in an efficient, reasonable manner.

Capital punishment has seemed to have found a more permanent place in China due to
the policies enacted throughout the reform era. Deng told the Standing Committee of the
Communist Party Political Bureau in 1986: “The death penalty cannot be abolished, and some
criminals must be sentenced to death. Execution is an indispensable means through which to
educate the masses.”\textsuperscript{79} Therefore, the policies and ideology formed during the reform era,
solidified the appearance the death penalty in Chinese criminal justice.

The major change in the criminal justice system in regards to the 1979 Law was the
establishment of a free-market society which created more channels to commit crime, such as

\textsuperscript{78} Ibid, 101
\textsuperscript{79} Scobell, Andrew. “The Death Penalty,” 506.
economic derived crimes. Crimes that undermined the economic order such as smuggling and producing and distributing fake and shoddy goods were now officially capital offenses in 1996.80 For example, the 1979 Law undermined the crime of corruption and categorized the crime as “encroaching on personal property.”81 In 1996 it was created in its separate crime category, separated from other property and economic offenses. This stipulation reflected a growing recognition among Chinese lawmakers and political leaders of the epidemic of corruption problems, whether it be amongst business people, Party officials, or any other organs of government and society.

Due to the decrease of hooliganism and the restoring of stability at least amongst the streets, serious progress could be made in terms with obtaining economic advancements. After this initial campaign, the Party has shifted its ideologies on what is eligible for capital punishment and what is not. The criminal punishments established during and post-Strike Hard are still very apparent in modern day China.

In response to surging crime waves and the emergence of new offense types due to the economic reforms, a plethora of provisions were made to the 1979 Criminal Law.82 As a result of these decrees that were passed through the CCP, the scope of capital offenses was dramatically increased from the previous twenty-eight offenses, as seen in Table 2, to seventy-four offense types before the revision of the Criminal Law in 1997.83

The 1996 Criminal Law, a complete revision of the 1979 Criminal Law, formalized and legalized many of the temporary measures instigated since the economic reforms of the 1980s. The Law extended the number of capital offense to sixty-eight different types from the previous

81 Ibid
82 Ibid, 368
83 Ibid, 369.
twenty-eight capital offenses in 1979s law; however, during the 1980s-90s, there were amendments to 1979s law that totaled seventy-eight capital offenses. The 1996 Criminal Law also made a more comprehensive system and condensed some laws.

In comparison with the 1979 Criminal Law, the newly added capital offenses that were officially created by the 1996 law tended to concentrate on areas of public safety, economic order, and corruption. 84 Crimes endangering public security, such as terrorism and hijacking, carried the maximum punishment of the death penalty.

The 1996 Criminal Law also clarified the economic crimes eligible for the death penalty. During the 1980s there was no precise definition of what constituted an economic crime either in Chinese law or literature on the subject. 85 There was a general agreement, however, that the definition included infractions such as bribery, embezzlement, and crimes involving the economic losses of the state. 86 Throughout the 80s, crimes continually re-slated through the CCP as capital crimes, such as drug trafficking, smuggling, and swindling. There was a lack of cohesion to the criminal law that resided throughout the 1980s and early 1990s due to the newly formed economic policies and the crimes evolving from it.

The 1996 Criminal Law also established an official procedure of the criminal justice system, a big difference from the local tribunals of the Mao era and the crime crackdown of the Strike Hard movement. The 1996 Criminal Law established four levels of courts: basic-level, intermediate, higher, and the Supreme People’s Courts. 87 The basic-level courts had jurisdiction over ordinary criminal cases. The intermediate courts had jurisdiction as courts of the first instance over cases of endangering national security, common crimes that are eligible for the

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84 Ibid
86 Ibid
death penalty. Higher courts had jurisdiction over cases of great importance that affected the entire province, such as large-scale drug trafficking. The Supreme Court has jurisdiction over cases having a major impact on the entire nation. All courts except the basic-level courts have jurisdiction over appeals from lower courts and the Supreme Court has authority of the final approval over death penalty cases.

The 1996 Criminal Law was therefore a monumental achievement in the Chinese criminal justice system. The law officially organized various crimes that were eligible for the death penalty and re-prioritized the state’s characterization of progressiveness, which was then (as it is now) determined by the economic policies of China. The same criminal law is still in effect in today’s China. However, there have been recent modifications to the current criminal law which could indicate new and growing influences on Chinese criminal justice thought and in practice such as the extremely loud and incredibly close international arena and human rights groups.

Conclusion

The reform era was a complete time of transportation for China. The various economical and criminal justice reforms that took place during the 1980s through the 1990s set the layout of modern day legal processes as well as set precedence regarding various issues.

The new characterization of socialism, a free-market society, was determined by the CCP during the reform era would take a more definite shape in the years to come. China’s economic reforms changed the criminal justice system as well as the death penalty by keeping the economic derived crimes controlled and regulated.
In the 1980s and the 90s, China’s economic future looked bright and prosperous. Well in the 21st century, today it is clear that China has become just that. Its economy is unmatched and there is no foreseen prediction of a crash of any sort. With this vast economy comes an influx of crimes deriving from illegal ways to gain monetarily, through various state campaigns to clean up China’s crime and the establishment of a comprehensive criminal law, the Chinese practice of the death penalty has shown itself to have one of the highest usage rates of the punishment in the world.
### Appendix

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<td>• Refusing to disseminate military orders, or falsely disseminating military orders</td>
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<td>• Surrendering to the enemy</td>
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<td>• Deserting on the eve of a battle</td>
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<td>• Obstructing commanding officers or on-duty servicemen from carrying out their duties</td>
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<tr>
<td>• Defecting to a foreign country</td>
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<tr>
<td>• Illegally obtaining military secrets</td>
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<td>• Illegally providing military secrets to foreign organs</td>
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<td>• Fabricating rumors to mislead people during wartime</td>
</tr>
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<td>• Injuring or killing innocent residents or looting property from innocent residents during Wartime</td>
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Chapter IV
The Death Penalty in Today’s China: A Changing Phenomenon and International Trigger of Controversy

In the 21st century, there is a heightened awareness of death penalty statutes that have been affecting various nations and their policies towards capital punishment. International codes and norms regarding the death penalty have intervened not only into the international relationship between various countries, but also has immersed as a signifying characteristic towards the country’s “modernity.”

It is well known that China is among the few countries in the world to actively and widely impose the death penalty on ordinary crimes, such as economic crimes.88 This liberal usage of the capital punishment is very controversial in the global conversation. Also, in terms of classic socialism, the death penalty is contrary to communist beliefs in the first place. Therefore, China is unique because of the large scope of crimes punishable by death as well as the contradictoriness with core principles of socialism.

The problem is that by ordinary standards of empirical research, an acceptable profile of the death penalty in today’s China is impossible to obtain.89 The accurate number of executions is unavailable outside the realm of the Chinese government. The number of persons executed in China is not merely unavailable, it is a state secret, disclosure of which triggers serious criminal liability.90 However, what can be examined are the certain crimes that are eligible for capital punishment in China and compare with international norms and practices. By comparing the

90 Ibid
amount of crimes eligible for the death penalty and how much crime there actually is, scholars can predict the amount of executions held annually.

Despite the large number of ordinary crimes eligible for the death penalty, Chinese criminal law in regards to capital punishment has recently undergone modifications. In 2011, the CCP passed legislation that retracted a number of offenses from the death penalty. Will this be a trend in China’s future? It is impossible to accurately tell. However, the influence of a growing international norm of death penalty abolition can be a possible factor towards China’s revision of its death penalty statutes.

Modifications in China’s criminal justice suggest that the international rejection of capital punishment for ordinary crimes is affecting Chinese policy making. The types of laws that were repealed from the death penalty were mostly ordinary, non-violent crimes, such as petty economic fraud and tampering with historical or cultural objects. Standards in implementing the death penalty have arisen by various nations and international humans’ rights activist groups, such as Amnesty International, that have its effects on the global arena.

The United Nations have also issued “international standards” of the implementation of the death penalty which can affect international policy making. The United Nations calls for the protection of the rights of those facing the death penalty is aimed at avoiding any danger that an innocent person could be sentenced to death and that all individuals have a fair trial.91 UN Human Rights Committees have condemned various nations not for having the death penalty, but rather for having unjustified and unstructured judicial processes.

Whether it is an international face, the official and academic view in China has been for many years that the death penalty will be abolished when conditions are appropriate sometime in the future.92

**Crimes Eligible for the Death Penalty**

Many international organizations abide by what can be categorized as “human rights codes,” meaning that the death penalty should only pertain to heinous and violent crimes. China has stirred up much controversy for its numerous crimes—some nonviolent—that are eligible for capital punishment, such as economic derived crime and corruption in a non-violent setting (such as in business or in the CCP). Due to this international pressure, it can be suggested that China has reduced its scope of the death penalty to adhere to these growing international norms regarding human rights.

A large and contentious contemporary international issue is the categorization of crimes that are eligible for the death penalty. This is a contentious issue in many countries, especially the United States, because many believe that the death penalty should be abolished all together or only reserved for the most heinous of crimes, such as aggravated murder. Many individuals of all different types of backgrounds believe that the capital punishment should be expanded or retracted. Regardless, there is an international “norm” of crimes that can be subjected to the death penalty. China’s capital crimes have been a point of controversy.

The first attempt to characterize the “most serious crimes” came in 1984 when the Economic and Social Council of the United Nations adopted by resolution the Safeguards

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92 Ibid, 98
Guaranteeing Protection of the Rights of those Facing the Death Penalty.\textsuperscript{93} This resolution proclaims the rights that citizens of all countries whom are against the death penalty, should be the right to a fair trial and that the verdict should be void of any doubt. Further, the International Convenant on Civil and Political Rights (ICCPR), a multilateral treaty adopted by the UN General Assembly, commits its signers to promote basic human rights, such as right to life and freedom of religion, speech, and assembly. In 1996, China signed but did not ratify this treaty, which meant that the Chinese government agreed with the treaty in principle but are not held to the terms of the treaty.

Ordinary crimes that are eligible for the death penalty in comparison with heinous crimes have emerged as an international controversy. There is valid argument that the death penalty should only be reserved for the most monstrous of crimes; however, nations have different categorizations of what is acceptable for the death penalty and what is not. China’s position on the death penalty was made at the UN Human Rights Council in March of 2007; CCP Representative La Yifan stated that:

China was a country with a rule of law, where the death penalty only applied to the worst crimes, and this was in agreements with the ICCPR. The death penalty’s scope of application was to be reviewed shortly, and it was expected that this scope would be reduced, with the final aim of abolishment.\textsuperscript{94}

In 2011, more than a decade after signing the treaty, La’s words would become valid.

In 2011, the CCP approved a reduction of the scope of the death penalty, reducing thirteen crimes from the original 68 crimes eligible for the death penalty. Table 4 shows the crimes eligible for capital punishment that were instated in the 1997 Law. There are eight general categories, including endangering national and public safety, undermining the market order, and various violations of human rights. This list of crimes are more condensed and evenly dispersed

\textsuperscript{93} Ibid, 131
\textsuperscript{94} Ibid, 101
by China’s priorities; economic and social order is of high precedence, therefore the punishments for these violations are strong. However, in 2011, thirteen crimes were removed from the scope of the death penalty, suggesting that China is trying to slowly phase out—or at least decrease—capital punishment. Table 5 lists all thirteen of the offenses whose punishments were reduced after the 2011 amendments were passed through the CCP.

<table>
<thead>
<tr>
<th>Table 5: Capital offenses under the PRC’s 1996 Criminal Law that are not eligible for capital punishment anymore under the 2011 amendment. 13 crimes in total.</th>
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By analyzing the crimes whose punishments were reduced, we can draw a number of observations. Firstly, most of the crimes are violations towards economic order, such as various fraud schemes or smuggling. Even though heinous crimes can be committed in tandem with these thirteen crimes, these crimes alone stand relatively non-violent. Therefore, the CCP has centralized the death penalty more around violent crimes rather than economic based crimes.
What also can be suggested is that the international community played a role in the CCP’s choice to reduce these crimes. Many international organizations criticize and delegitimize China for its implementation of the death penalty. Many believe that with the Chinese death penalty, a lot of the crimes do not equal the punishment. Therefore, in terms of international diplomacy, the Chinese government revised its criminal law in order to abide more to international human rights codes.

**China’s Death Penalty: An International Comparison**

The comparison of various nations, in regards to their death penalty, not only suggests interesting aspects about a specific nation’s functionality and social structure, but also the trends of its criminal justice formation. China, compared with the United States and India separately, has many similarities to both nations; however, there are many factors that differentiates each nation significantly from the other.

By ordinary standards of empirical research, an acceptable profile of the death penalty in China is impossible. There is an absence of reliable execution estimates in China; it is a statistical black hole.\(^95\) Whether if it is locked away in secret amongst the CCP or if it is frankly unknown (which is hard to believe), it is impossible to gather accurate data on the number of executions in China.

China’s death penalty has expanded throughout the past three decades (especially during the reform era), contrary to the international trend. By the end of 1995, while eighty-two out of 191 nations worldwide retained the death penalty, the remaining 109 countries had either

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\(^95\) Johnson, David T.; Zimring, Franklin E. The Next Frontier, 225.
completely abolished the death penalty, abolished the death penalty for ordinary offenses, or had been de facto abolitionists.\textsuperscript{96} The evolution of China’s death penalty has been on the opposite track of most countries editing their death penalty because many countries have either lessened the number of capital offenses or have abolished the penalty in its entirety.

During the 1990’s as well, the Chinese pattern on the use of the death penalty also contradicted with its former socialist counterparts in Eastern Europe.\textsuperscript{97} With the collapse of the Communist regime in Eastern Europe, countries such as Moldova, Ukraine, Albania, and Bosnia-Herzegovina abolished the death penalty in 1995.\textsuperscript{98} The Russian Federation began its commitment to abolish the death penalty in 1996 and became a de facto abolitionist state.\textsuperscript{99}

Perhaps the most comparable nation with China’s death penalty is the United States’ statutes on the penalty. The US is one of the only Western developed nation that retains and uses the death penalty for various crimes. Although both China and the US frequently use capital punishment as a form of punishment, it is undertaken based on different cultural traditions and society contexts.\textsuperscript{100} China is the world’s largest developing country and adheres to socialist rhetoric, whereas the US is the world’s largest developed country, represents individualism, and belongs to a common law.\textsuperscript{101} Despite these two country’s differences, perhaps economic superiority and efforts of development can explain the level of capital punishment apparent in a nation’s criminal justice system.

It is easy to make the argument that China’s number of executions is due to the nation’s large population and that the ratio of those executed and the population is actually quite normal.

\textsuperscript{96} Lu, Hong; Zhang, Lening. “Death Penalty in China, 370.
\textsuperscript{97} Ibid
\textsuperscript{98} Ibid
\textsuperscript{99} Ibid
\textsuperscript{101} Ibid, 85
This is correct to an extent because China embraces and frequently practices the death penalty, even if exact figures are not available. In terms of population, what better country is there to compare with China than the nation with the second largest population in the world?

The differences between India and China are boundless. In terms of government, social structure, and economy, the two nations have much dissimilarity. However, they do have one thing in common: population.

With more than 1.2 billion people, India is the largest democracy, has the tenth biggest GDP in the world, and has the world’s fourth largest economy in terms of purchasing power.\textsuperscript{102} Since 1991, when India started to liberalize, its economy has expanded 6 percent per year, a rate that rose to 7 to 9 percent average annual growth after 2004—not far behind China’s recent record-setting rates of development.\textsuperscript{103} In the long run, India is on the road towards achieving economic superiority; however, the large size of India presents social control problems.

India’s democratic system is a precarious situation. While there are reasons to notice India’s economic success, there are still many disparities in India’s society. China’s current per capita income is more than double that of India and also exports six times more products and services than India.\textsuperscript{104} Unlike China, independent India has managed to avoid disasters like famine, chiefly because it is a democracy, but Indian democracy also has a much worse record than authoritarian China at protecting its poor from other afflictions such as malnutrition, tuberculosis, and illiteracy.\textsuperscript{105} Also, there are many different ethnic groups that divide Indian’s country. By comparison, China is far less divided and much less poor than India.

\textsuperscript{102} Johnson, David T.; Zimring, Franklin E. The Next Frontier, 424.
\textsuperscript{103} Ibid
\textsuperscript{104} Ibid
\textsuperscript{105} Ibid
Among the nations that retain the death penalty, India’s laws and practices in regards to capital punishment are arguably as unique as China’s itself. In the ten years of 1998-2007, India executed only one person (in 2004), giving it a rate of less than one execution per ten billion people per year.\textsuperscript{106} Over the same ten-year period, China’s execution rate was predicted to be at least 50,000 higher.\textsuperscript{107} However, India has a long history of using the death penalty as a criminal punishment, and the execution of offenders was common throughout much of it. This low figure also indicates that India deals with its criminals in other ways not technically sanctioned by the government.

India’s stance on the death penalty, although a democratic government, can be compared to the criminal justice system that resided during the Mao era: it is informal and not well regulated. The police have become executioners outside the law; few governments can match the enthusiasm for state killing that is found among some Indian officials.\textsuperscript{108} Reports have indicated that thousands of criminals have died while in the possession of the police; many, if not most, died through torture tactics.

An explanation for this brutality amongst the police is because the criminal justice system in India does such an ineffective job of convicting and punishing offenders.\textsuperscript{109} Also, the conviction rate in India is a very low number which indicates that more individuals ought to be arrested and tried through the criminal justice system. Therefore, the death penalty in India is a very unofficial, almost archaic practice, where it is not state sanctioned yet frequently utilized through local police forces.

\textsuperscript{106} Ibid
\textsuperscript{107} Ibid
\textsuperscript{108} Ibid, 435
\textsuperscript{109} Ibid, 436
When comparing India with China, there are valid notions why India is not significantly more aggressive with the death penalty. First, India’s criminal justice system is rampant with corruption and the police are used as a quasi criminal justice system. Secondly, India’s poverty level and standard of living are significantly worse than China’s despite its already low status. Thirdly, India’s government isn’t nearly as controlling or structured as China’s, or as any other first-world country. Regardless of the moral question if the death penalty should or should not be apparent in China, in order to effectively—and properly—utilize the death penalty is if there is some sort of human rights code being obliged, such as the right to trial and a lawyer. If the government is too weak and unfound for this, then a country with the death penalty could easily slip into an authoritarian grasp with bloody massacres.

If India had a death penalty, then it can be asserted that since the government and criminal justice system is so weak, then the death penalty would be utilized in a complete negligent way. Therefore, despite China’s ambiguous with how many executions there really are, there is a stable social structure and an efficient criminal justice system that can deter the government from ruthlessly killing its citizens.

Conclusion

From past declarations from CCP officials along with recent amendments, it is safe to say that China’s criminal law is subjected to change in the future. To what extent this change will be is hard to conjure. However, through the various quotations of party members, it is clear that
reducing the scope of the death penalty is on the minds of many individuals, if not on the Party agenda.

Mu Wang, president of the Chinese Society of Criminology, commented to the international community, “I don’t know what the exact number of executions in China is, but almost all Chinese students and scholars believe that the figure is too large. Capital punishment has become a pain in the heart of many Chinese scholars and of many political leaders as well.”\textsuperscript{110} The year before, San Huapu, a spokesman for the CCP, asserted that the Chinese government executes only “a very small number of criminals” each year.\textsuperscript{111} In Chinese politics, the volume of executions is an ambiguous number; it is simply “too large” or “very small.” This level of ambiguity is characteristic of China’s death penalty statistics and perhaps will not yield accurate numbers for a very long amount of time.

Whether China’s death penalty will expand, lessen, or stay the same, is hard to tell before the future unveils itself. Despite the fact that there are 55 remaining crimes eligible for the death penalty in China, the reduction of 13 punishments one year is an interesting feat and can indicate in some future trends. International diplomacy is a complex issue, and a plethora of aspects contribute to the cooperation of nations among other nations.

\textsuperscript{110} Ibid, 233
\textsuperscript{111} Ibid, 233
Appendix

Table 4: Capital offenses under the PRC’s 1996 Criminal Law with Modifications Enacted in 2011

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<th>Crimes marked with a square symbol are reduced offenses from the 1996 Criminal Law and not eligible for capital punishment anymore under the 2011 amendment. 13 crimes were reduced.</th>
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- Organizing, plotting or acting to subvert the political power of the state
- Espionage
- Stealing, secretly gathering, purchasing by bribery or illegally providing national secrets intelligence to foreign institutions
- Providing the enemy with armed equipment or military materials

**Crimes Endangering Public Security:**
- 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
- Hijacking an aircraft
- Illegally manufacturing, trading, transporting, and mailing guns, ammunition or explosives
- Illegally trading or transporting nuclear materials
- Stealing guns, ammunition or explosive materials
- Forcibly seizing guns, ammunition or explosive materials

**Crimes Undermining the Socialist Market Economic Order:**
- Producing or distributing bogus medicines
- Producing or distributing poisonous or harmful foods
- Smuggling weapons and ammunitions
- Smuggling nuclear materials
- Smuggling counterfeit currencies
- Counterfeiting currency
- Smuggling cultural relics
- Smuggling precious metals
- Smuggling rare plants and their products
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- Financial instrument frauds
- Letter of credit frauds
- Credit-card frauds
- Illegally issuing value-added tax invoices
- Counterfeiting or selling counterfeit value-added tax invoices

**Crimes Infringing upon the Rights of the Person and his Democratic Rights:**
- Murder
- Rape
- Statutory rape
- Kidnapping
- Abducting women and children

**Crimes Encroaching on Property:**
- Robbery
- Theft

**Crimes Disrupting the Order of Social Administration:**
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**Crimes of Violating Duties of Military Servicemen:**
- Refusing to carry out an order in wartime
- Deliberately concealing military intelligence, furnishing falsified intelligence
- Refusing to disseminate military orders, or falsely disseminating 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  |

Chapter V

Conclusion

China’s death penalty is an organ of the Chinese criminal justice system, a reflection of Party ideology, and symbol of obedience and structure over a polity. China’s criminal justice system have undergone many reforms throughout the 20th and early 21st century; reflecting on the opaque practice of the death penalty during the Mao years, today, China frequently utilizes this punishment in a structured and efficient way. Today, China’s criminal law is clearly laid out along with its procedural law and the structures of the court systems.

The Chinese death penalty’s varying policies during the PRC’s history indicate the Chinese Communist Party’s ideologies and initiatives towards achieving modernity during that respected time period. Party objectives can be directly noticed by observing the nature of capital punishment and the structure of the criminal justice system. Observing the frequency of the punishment as well as the nature of capital crimes indicates the Party’s ideologies during that specific time period.

The Mao era exemplified a system of socialism that undermined bureaucracy and utilized that role of the masses to achieve modernity. During the Mao years, industrial growth was sought by means of a state-planned economy, collectivism, and the grunt work by the massive peasantry. Rightist ideals and other notions threatening the sovereignty of the state was the only category of crime that had capital punishments sanctioned by the Central Party.

After the Communist Revolution and the People’s Republic was created, in order to instill socialist ideals amongst the Chinese nation, the young regime’s sovereignty had to be fully extended and protected. In order to solidify its sovereignty, a rigid constitution and criminal law was established to make sure that the population would adhere to the new government’s rules
and regulations. Those who were still connected to the preceding regime were dealt with by means of persecution and prosecution. The CCP was vulnerable in the PRC’s early years; therefore, until Maoist and socialist ideals had fully sunk into Chinese thought, channels for rebellion had to be prevented through legal codes.

Once socialist ideals permeated through society, the approach to practicing criminal justice during the Mao era was by methods which enabled the people at grassroots levels to lead themselves with functions such as tribunals, creating an idealized platform for socialism. Local tribunals, criminal justice procedures held by various members of townships or communes, were utilized in this precise thought of promoting socialism. Therefore, state mandated or “formalized” death penalty sentences were not issued frequently by the state in particular; the local tribunals were provided the power to have these grassroots criminal justice systems that dealt with crimes with varying degrees of severity.

Mass campaigns, such as the Cultural Revolution, were instigated by the CCP that caused the complete disintegration of what little government influenced criminal justice system was apparent beforehand. By analyzing the happenings and reflections of this tumultuous time period, it is apparent that political persecution spearheaded by activists was the main form of criminal justice. Although the exact number perhaps will never be determined, it is suggested that many individuals were subjected to torture and/or death when expressing any counterrevolutionary ideologies. This indicates that individual rights were minimally protected, if at all, because if a person was accused as being Rightist then that individual had little to no access for achieving justice, let alone legal representation. Therefore, this period was void of a structured legal code and procedural law that issued out capital punishments; there was a strong presence of ideological obedience with Mao and the CCP.
The death of Mao marked the beginning of the reform era where the Party’s ideologies and government practices shifted in order to cope with the changing face of the world in terms of the economy, industry, and technology. Under the new leadership of Deng Xiaoping, the CCP emerged from Cultural Revolution with a new agenda that would establish stability to China, a necessary foundation for a new, strong economic system that was prone to entice criminal activity.

The establishment of a market-based economy explains the CCP’s creation of a strong, well-established legal and procedural code, signed into law in the year of 1979. This code would deter criminal activity by those who wished to monetarily gain, an aspect that was not apparent during the Mao years due to collectivism. A free-market economy has many channels for illegal actions; an economy where corruption runs rampant is a system that is illegitimate and doomed for disorder and failure.

Deep into the reform era, the CCP decided to launch the Strike Hard campaign with the goal the main goal to clean up the streets and deter hooligan acts. As the economy started to grow larger and larger, so did crime levels. This campaign formed a hybrid criminal justice system; quotas were set by local governments and court proceedings were large in numbers.

Despite whether the Strike Hard movement had more detriments than benefits, the campaign continued to establish order amongst city streets. The death penalty was used as a liberal state function, creating a large deterrent in society to not commit crime in fear that you would be sentenced to death. The death penalty was therefore used as a tool to obtain Party initiatives—establishing stability.

By observing the Mao era and the reform era, how the death penalty was perceived and practiced clearly indicates the specific Party ideologies being sought: collectivism or economic
prosperity. Each ideology must have specific requirements and social pre-conditions in order for the notion to become apparent in society and, more importantly, successful. Collectivism called for a social system in which bureaucracy was undermined; economic prosperity (via means of a free-market society) calls for a stable social system with systems to deter crime.

China’s modern day death penalty suggests that China is reducing the scope of its death penalty due to pressure from various international organizations, such as human rights groups and the United Nations. This pressure is due to rising worldly controversy regarding the death penalty and its moral standings. In 2011, the CCP revised the 1996 Criminal Law that reduced the sentences of 13 crimes, mainly economically stemmed crimes, therefore decreasing the scope of capital punishment. Due to Party official announcements, this happening suggests that lessening the scope of the death penalty might become a recurring trend in the Chinese criminal justice system.

Despite the overwhelming loud international community that promotes the abolition of the death penalty, the most important issue at hand in regards to China’s death penalty are the number of crimes eligible for capital punishment. What constitutes a crime’s eligibility for the death penalty? In many countries, crimes eligible for the death penalty are reserved for only the most heinous of crimes, such as aggravated murder. China’s scope of the death penalty affects fifty-five crimes, many crimes of which are derived from economic deviance and national security. This controversy over what crimes are appropriate for the death penalty suggests a main reason why China decreased the scope of its death penalty in 2011.

By analyzing the criminal justice system and the implementation of the death penalty in the Mao era, reform era, and Today, conclusions can be drawn that the categorization of “socialism” is a dynamic and diverse phrase with many interpretations. Through the various eras,
the CCP has always and vehemently claimed that socialism is being practiced, however, just in a
different, and each way a “better” way. The Party’s varying definitions and practices of socialism
suggest that “socialism” is merely rhetoric. When the political environment changes, the
government can expand the concept of socialism and utilize it in a way that benefits their
changing ideologies. Therefore, the rhetoric of socialism remains the same throughout the years
of the PRC; however, the goals and the methods change over the varying time periods.

While China has proved to have a vibrant and diverse death penalty history, as to what
the future holds for China’s death penalty is simply impossible to conjure. What can be claimed
are that different societal aspects that stem from the Party’s current ideological undertakings
directly affect the Chinese death penalty in its practice and philosophy. A structured legal system
and effective death penalty policy has an enormous effect of societal behavior, as proved by the
society’s differing behaviors throughout various time periods. Despite today’s newfound
controversy in regards to China’s death penalty, the punishment has an enormous historical
meaning, is culturally signifying, and depicts the characterization of modernity in the ever
changing, ever dynamic nation of China.
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