Briefing Paper

The Death Penalty and Its Reduction in Asia: An Overview

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THE DEATH PENALTY AND ITS REDUCTION IN ASIA: AN OVERVIEW

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Most recently, Pip co-published, *Drugs Law and Legal Practice in Southeast Asia*, with Tim Lindsey (Hart Publishing, 2016). Other publications include: *Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (co-edited with John Gillespie, 2006); *Borrowing Court Systems: the Experience of Socialist Vietnam* (Martinus Nijhoff, 2007); *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia* (co-edited with Sarah Biddulph, Martinus Nijhoff, 2008); *New Courts in Asia* (co-edited with Andrew Harding, Routledge, 2009); and *Law and Development and the Global Discourses of Legal Transfers* (co-edited with John Gillespie, Cambridge University Press, 2012). Pip is also widely published in European and American journals.

Pip has jointly held two ARC grants to investigate court-oriented legal reform in Cambodia and Vietnam and to analyse 'Drugs, Law and Criminal Procedure in Southeast Asia'. Current research projects focus on Vietnamese law and legal change, particularly impacting the Constitution, courts, Vietnamese conceptions of law and legal institutions, the profession and the death penalty. Her most recent collaboration analysed the Socialist legacy in Vietnam and China. Pip also works comparatively on legal sector reform in socialist East Asia.

Pip has previously been admitted as a barrister and solicitor of the Supreme Court of Victoria.

Pip's teaching includes dispute resolution, comparative legal studies, law and reform in Asia (particularly rule of law, courts and death penalty reform), and the internship subject *Law and Legal Practice in Asia*.

THE DEATH PENALTY AND ITS REDUCTION IN ASIA: AN OVERVIEW

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Almost everyone who writes about capital punishment in Asia recites the following statistic: Asia is home to around 90 percent of the world's executions.¹ Today, Asia is described as the new 'frontier' for legal reform and policy debate on the death penalty,² and a strategic battleground for the abolitionist movement.³

This brief paper does two things. First, it offers a resource that summarises the literature on the death penalty in Asia. In drawing this material together (including the Bibliography at Appendix One), it offers observations about death penalty law and practice in Asia. Secondly, it draws on regional experience and external commentary to summarise existing and proposed methods for reducing the use of capital punishment in Asia.

At the outset, there are issues with conceiving of and conducting an 'Asian' death penalty debate. To speak of 'the death penalty in Asia' implies that we can, and should, distinguish capital punishment in this region from its practice elsewhere in the world. There are practical and theoretical obstacles to having an 'Asian' death penalty debate.

First, there is no one definition of Asia. While there is a core group of 'Asian' nations, commentators select different countries for inclusion or exclusion in Asia, with implications for the interpretations of existing data on capital punishment and comparisons between Asia and the 'rest' of the world.

Secondly, political, economic and social conditions vary across Asia.⁴ Given these

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1 The author is indebted to Mary Kozlovski, JD graduate, Melbourne Law School, for her research assistance with both the paper and the attached bibliography.

Most scholars cite the figure at around, or above, 90 percent: David T Johnson and Franklin E Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press, 2009) 8; Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 5th ed, 2015) 98; Lill Scherdin, 'Introduction' in Lill Scherdin (ed), *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 7.

2 Johnson and Zimring, above n 1, 3.

3 For a critique of the notion that abolition is a 'global trend', see: Yu Zhigang, 'Abolition or Retention: Rethinking the Death Penalty in China' (2009) 30(2) *Social Sciences in China* 178.

4 Johnson and Zimring, above n 1, 305.

differences, it is highly problematic to assume ‘any common regional, cultural, religious, or historical factor [as] the major determinant of contemporary capital punishment policy’.⁵ This diversity of political, economic and social systems, in turn, produces a variety of death penalty policies and practices in Asia.⁶

The third and ongoing issue is the lack of reliable data on the death penalty in Asia. The Vietnamese and Chinese governments classify information about the death penalty as a state secret.⁷ Though some official statistics are available, several countries that practice capital punishment provide few or no statistics.⁸ The limited data from China is particularly problematic, given that the majority of executions in Asia occur there. Without accurate and consistent data, the picture of the death penalty in Asia is incomplete, and identifying potential regional trends may be inaccurate. There is also a risk that commentators may rely on, and extrapolate from, the extensive literature on capital punishment in the United States to make their observations about Asia,⁹ particularly with so little regional data available.

Fourthly, there is arguably a tendency to characterise the introduction of reductionist methods as inevitably culminating in abolition. This may obscure other trends.¹⁰

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5 Ibid 26.

6 Hood and Hoyle, above n 1, 99.

7 North Korea, India and Pakistan also do not report such statistics. For attempts to fill some of these statistical gaps in North Korea and India, see International Federation for Human Rights (FIDH), *The Death Penalty in North Korea: In the Machinery of a Totalitarian State* (May 2013); Anup Surendranath et al, *Death Penalty India Report: Volume 1* (National Law University, Delhi Press, 2016); Anup Surendranath et al, *Death Penalty India Report: Volume 2* (National Law University, Delhi Press, 2016). Giao Vu Cong has stated that the Vietnamese government is ‘reconsidering’ its decision not to disclose information about executions: Giao Vu Cong, ‘Capital Punishment in Vietnam: Status and Perspective’ in Peter Hodgkinson (ed), *Capital Punishment: New Perspectives* (Ashgate, 2013) 373.

8 Amnesty International has also faced difficulties in obtaining statistics from Laos, Malaysia and Singapore: Amnesty International, *Death Sentences and Executions 2015* (April 2016) 25.

9 Peter Hodgkinson, ‘Introduction’ in Peter Hodgkinson (ed), *Capital Punishment: New Perspectives* (Ashgate, 2013) 19; David T Johnson and Franklin E Zimring, ‘Taking Capital Punishment Seriously’ (2006) 1(1) *Asian Journal of Criminology* 89, 94. See also Johnson and Zimring, above n 1, 324–5, where the authors note gaps in the literature.

10 Kerry Ann Akers and Peter Hodgkinson, both opponents of capital punishment, believe the claims of abolitionists are ‘exaggerated’, and their achievements in reducing the scope of capital punishment and rates of execution are ‘diminished if not accompanied by root and branch reform of the fundamental flaws that characterize its implementation’: see generally Kerry Ann Akers and Peter Hodgkinson, ‘A Critique of Litigation and Abolition Strategies: A

Countries may be reductionist without being abolitionist, and 'de facto abolitionist' countries may, and indeed have, resumed executions.

I DEATH PENALTY IN ASIA: OBSERVATIONS ARISING FROM THE LITERATURE

Despite the 'risks' of having an Asian death penalty debate, commentators (scholars, practitioners and agencies) have made important observations about the death penalty in Asia, many of which are linked. This section provides a brief summary of the death penalty literature on Asia. Many of the observations made are not unique to Asia and nor do they apply uniformly across Asia. An extended bibliography is available at Appendix One.

Execution rates have declined in most Asian countries in recent years,¹¹ though there are more exceptions to this rule in Asia than in some other regions.¹² Johnson and Zimring predict the death penalty in Asia will be in a 'continuous but uneven process of decline',¹³ because of a 'substantial downward trend' in both execution rates and the 'social reputation' of capital punishment, including in China.¹⁴ Executions appear to have decreased in China since death penalty reforms were introduced starting in 2006. The unevenness of the decline is evident in two 2016 reports from international non-governmental organisations.¹⁵ Scholars do not necessarily agree that an absence of, or decline in, executions means that a country will abolish the death penalty. China's attitude to the death penalty is of 'progressive reformism rather than abolitionism'.¹⁶ Despite a lengthy period with no executions in South Korea, scholars have only tentatively said the country is moving toward abolition.¹⁷ The prospects of abolition in

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Glass Half Empty' in Hodgkinson, above n 9, 29–62.

11 Hood and Hoyle, above n 1, 99; Johnson and Zimring, above n 1, 293.

12 Johnson and Zimring, above n 1, 293.

13 Ibid 329.

14 Ibid 327–8; Susan Trevaskes, 'Lenient Death Sentencing and the 'Cash for Clemency' Debate' (2015) 73 *China Journal* 38, 40; Amnesty International, above n 8, 4.

15 Amnesty International, above n 8, 25–42; FIDH, *Going Backwards: The Death Penalty in Southeast Asia* (October 2016) 4.

16 Michelle Miao, 'The Politics of China's Death Penalty Reform in the Context of Global Abolitionism' (2013) 53(3) *British Journal of Criminology* 500, 507. The same argument has been made of Vietnam: Pip Nicholson, 'The Death Penalty in SE Asia: Is There a Trend towards Abolition?' *The Conversation* (4 March 2015) <<https://theconversation.com/the-death-penalty-in-se-asia-is-there-a-trend-towards-abolition-37214>>.

17 Sangmin Bae, 'Death Penalty Moratorium in South Korea: Norms, Institutions and Leadership'

India are also doubted.¹⁸

The policies of authoritarian nations are crucial to reducing execution rates in Asia. In 2009, China, Vietnam, North Korea and Singapore together accounted for over 90 percent of the world's executions.¹⁹ There are different views on whether these countries will abolish the death penalty. Most observers do not believe China will abolish the death penalty anytime soon. Hor²⁰ and Johnson and Zimring²¹ are cautious, but optimistic, about Singapore's prospects of abolition, while Chan believes the death penalty will remain part of Singapore's legal infrastructure for the foreseeable future.²² At this time it would appear that while Vietnam will reduce the offences to which the death penalty applies given recent changes to the Criminal Code, its resumption of executions, after a suspension to enable location of drugs needed for lethal injections, has radically increased the number killed. Meaningful debate about North Korea is stymied by secrecy.

By the 1980s, most Asian countries except China had execution rates 'well below the level necessary to play an important role in crime control', signaling a long-term decline in the use of death as a criminal sanction.²³ Johnson and Zimring distinguish between 25 to 26 Asian nations with 'zero or near-zero execution levels', and three or four nations for which executions are an 'operational feature of criminal justice'.²⁴ Hood and Hoyle argue the decline is the result of a 'new dynamic', in which countries view capital punishment not solely or primarily as an element of national criminal justice policy, but as

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in Scherдин, above n 1, 172; Kuk Cho, 'Death Penalty in Korea: From Unofficial Moratorium to Abolition?' (2008) 3(1) *Asian Journal of Comparative Law* 1, 26; Byung-sun Cho, 'Capital Punishment in South Korea: Progress and Prospects for Abolition De Jure' (2013) 4(1) *City University of Hong Kong Law Review* 45, 68–9.

- 18 Bikramjeet Bakra, 'A Knotty Tale: Understanding the Death Penalty in India' in Scherдин, above n 1, 224–7.
- 19 Johnson and Zimring, above n 1, 299–300, 351.
- 20 Michael Hor, 'Singapore's Death Penalty: The Beginning of the End?' in Roger Hood and Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, 2013) 164.
- 21 Johnson and Zimring, above n 1, 352.
- 22 Wing-Cheong Chan, 'The Death Penalty in Singapore: In Decline but Still Too Soon for Optimism' (2016) 11(3) *Asian Journal of Criminology* 179, 197–8.
- 23 Johnson and Zimring, above n 1, 291.
- 24 In this category, Johnson and Zimring include China, North Korea, Singapore and Vietnam: Johnson and Zimring, above n 1, 299–300.

a denial of universal human rights.²⁵ There are, however, different perspectives on this issue. A range of countries still resist abolition, citing sovereignty among other causes. There might also be a suggestion that over the last few years a regressive approach to abolition and or reduction has escalated with the resumption of executions in Vietnam, India and Indonesia to name just three Asian states where this has occurred.

Death penalty policy in Asia is firmly under national control.²⁶ There is weak international involvement and regional cooperation on capital punishment in Asia.²⁷ In describing South Korea's capital punishment policies, Bae states that 'peer-group pressure', from neighbouring countries or regional organisations, has never been decisive in advancing abolition in Asia.²⁸

Within nations, the character of national governments and the extent to which political elites accept and use capital punishment, strongly influence the imposition of capital punishment in Asia.²⁹ Bae states that Asia's high level of retention and use of capital punishment arises 'not from a deterministic culture, but from acts of political will', and interpretations of cultural values that suit the interests of authoritarian rulers.³⁰ Some argue there is a slightly greater tendency for economically developed nations to curtail executions.³¹ The evidence here is equivocal.

Many of the available surveys of public opinion on the death penalty, all of which have limitations, indicate moderate to strong public support for capital punishment in Asian

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25 Roger Hood and Carolyn Hoyle, 'Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic"' (2009) 38 *Crime and Justice: A Review of Research* 1, 7, 17. See also Hood and Hoyle, above n 1, 17 – 18.

26 Johnson and Zimring, above n 1, 330, 344.

27 bid 337–8, 341.

28 Bae, above n 17, 171–2.

29 Johnson and Zimring, above n 1, 297–8.

30 Sangmin Bae, 'Is the Death Penalty an Asian Value?' (2008) 39(1) *Asian Affairs* 47, 55.

31 Johnson and Zimring list South Korea and Taiwan as examples, but note that Japan and Singapore would be exceptions. Furthermore, some of Asia's poorest nations have abolished the death penalty, including Cambodia and Nepal: Johnson and Zimring, above n 1, 293–5.

countries, including in China,³² Indonesia,³³ Japan,³⁴ Malaysia,³⁵ South Korea,³⁶ and Vietnam³⁷. Some researchers have suggested public support is not as firm as it may appear in Japan³⁸ or Malaysia.³⁹ Public support for capital punishment is unclear in India⁴⁰ and Taiwan.⁴¹ A number of Asian governments have cited public support as a reason for imposing the death penalty.⁴²

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32 Trevaskes, above n 14, 43.

33 Todung Mulya Lubis, 'Abolition of the Death Penalty: Indonesia at a Crossroads' in Scherdin, above n 1, 253–4.

34 Mitsue Inazumi, 'The Regional Difference on Human Rights and Criminal Justice: Judicial Self-Determination Lost Through the Suppression from Western States? Universal Jurisdiction and Prohibition of the Death Penalty' (2013) 1 *Korean Journal of International and Comparative Law* 188, 200; Shanhe Jiang, Rebecca Pilot and Toyoji Saito, 'Why Japanese Support the Death Penalty' (2010) 20(3) *International Criminal Justice Review* 302.

35 Roger Hood, *The Death Penalty in Malaysia: Public Opinion on the Mandatory Death Penalty for Drug Trafficking, Murder and Firearms Offences* (Death Penalty Project, 2013).

36 Bae, above n 17, 172; Cho, above n 17, 1.

37 School of Law, Vietnam National University Hanoi, *Survey Project on Death Penalty: Report of Findings*, Hanoi: Vietnam National University (2011), cited in Giao Vu Cong, 'Capital Punishment in Vietnam: Status and Perspective' in Hodgkinson, above n 7, 376–8.

38 Mai Sato and Paul Bacon, *The Public Opinion Myth: Why Japan Retains the Death Penalty* (Death Penalty Project, 2015) 12–13.

39 Hood, above n 35. See also Novak's comments on the reduced support for a mandatory death penalty in Malaysia: Andrew Novak, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia and the Caribbean* (Ashgate, 2014) 80.

40 Eric G Lambert et al, 'Views on the Death Penalty Among College Students in India' (2008) 10(2) *Punishment and Society* 207.

41 Fort Fu-Te Liao, 'Why Taiwan's *de facto* Moratorium was Established and Lost' in Scherdin, above n 1, 175–6; Nigel Li, Wei-Jen Chen and Jeffrey Li, 'Taiwan: Cutting the Gordian Knot – Applying Article 16 of the ICCPR to End Capital Punishment' in Hodgkinson, above n 9, 222.

42 Fifi Rahman, 'Capital Punishment for Drug Offenses' in Fifi Rahman, and Nick Crofts (eds), *Drug Law Reform in East and Southeast Asia* (Lexington Books, 2013) 258; Inazumi, above n 34, 200; Trevaskes, above n 14, 43.

Strong political and/or judicial leadership is influential in reforming the death penalty in Asia,⁴³ and can influence public opinion.⁴⁴ Death penalty reforms in China since 2006 have been mainly driven by reformers within the Supreme People's Court (SPC), rather than public demands for abolition.⁴⁵ Political and/or judicial will has been a key determinant of death penalty policies in South Korea⁴⁶ and Taiwan,⁴⁷ among other countries. There is also a high level of judicial activism from some leading jurists in Indonesia.⁴⁸

There is increasing attentiveness to the individual circumstances of people sentenced to death and executed, including their socioeconomic status, their role in a particular offence, and their intellectual and mental capacity, among other factors. This concern is evident in research,⁴⁹ scholarly debates,⁵⁰ public opinion,⁵¹ and Asian laws and policies.⁵²

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43 Johnson and Zimring, above n 1, 301–3.

44 Office of the High Commissioner for Human Rights (OHCHR), Regional Office for South-East Asia, 'Moving Away from the Death Penalty: Lessons in South-East Asia' (2013) 18–19; Sato and Bacon, above n 38, 12; Bae, above n 17, 172.

45 Trevaskes, above n 14, 40, 43–4.

46 Cho, above n 17, 26.

47 Fort Fu-Te Liao, above n 41, 192.

48 Jimly Asshiddiqie, 'Islam, Democracy and the Future of the Death Penalty', ALC Briefing Paper No. 5, 2015: <http://law.unimelb.edu.au/__data/assets/pdf_file/0004/1685947/ALC-CILIS-Policy-Paper-10-Asshiddiqie_final.pdf>.

49 See Surendranath et al, above n 7.

50 Rahman, above n 42, 255–6; Chen Xingliang, 'A Study on the Death Penalty as Applied to those Engaged in the Transportation of Drugs: Observations on a Letter from a Prisoner Condemned to Death' (2009) 41(4) *Chinese Sociology and Anthropology* 48, 55–57; Mulya Lubis, above n 33, 263–4.

51 For example, there is public concern in China about the socioeconomic implications of Victim-Perpetrator Reconciliation Agreements, and so-called 'cash for clemency' practices: Daniel Pascoe and Michelle Miao, 'Victim-Perpetrator Reconciliation Agreements in Murder Cases: What Can Islamic-Majority Jurisdictions and the PRC Learn from Each Other?' (forthcoming); Trevaskes, above n 14; Robert Weatherley and Helen Pittam, 'Money for Life: The Legal Debate in China about Criminal Reconciliation in Death Penalty Cases' (2015) 39(2) *Asian Perspective* 277.

52 Chan, above n 22, 192–3; Susan Trevaskes, 'Creative Death Penalty Reform in China: The Case of Drug Transportation' (2016) 38(2) *Law and Policy* 143, 154–5.

Constitutional differences in Asian jurisdictions may affect whether, and how, the death penalty is implemented. For instance, constitutional challenges to the mandatory death penalty have been successful in India,⁵³ but not in Singapore, Malaysia or Indonesia.⁵⁴

II THE DEATH PENALTY IN ASIA: REDUCTIONIST STRATEGIES

Reductionist strategies vary across Asia. This paper does not debate the merits of abolition versus reduction. Rather, this paper recognises a need to share existing and proposed reductionist strategies to better inform debates about the death penalty in Asia.

The strategies are loosely ordered by reference to their relevant actors: moving from initiatives by state leaders, legislatures, and judges, to roles activist lawyers or the broader public might play — as victim or decision-maker — such as in a lay jury. It concludes by noting the critical role of accurate data in informing all debates on the death penalty in Asia.

- Official or de facto moratoria on executions and/or death sentences.⁵⁵ Moratoria may take different forms, whether official or de facto. South Korea has not executed anyone since 1997, although people remain on death row. Other Asian states have had de facto moratoria on executions (also described as being de facto abolitionist), including India and Indonesia, both of which reversed this position recently with the resumption of executions. Other countries have introduced temporary moratoria pending local investigations into aspects of capital punishment. Singapore temporarily suspended executions while conducting a review of its death penalty legislation. Jiang Na has proposed a moratorium on executions in China to ‘remedy potential errors in death sentences and executions’.⁵⁶ Mulya Lubis has suggested a moratorium on death sentences and executions in Indonesia during which an independent evaluation would be undertaken, with recommendations to

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53 Novak, above n 39, 1–8, 31–46.

54 Ibid 1–8, 73–97; Mulya Lubis, above n 33, 266. But see Natalie Zerial, ‘Decision No. 2-3/Puu-V/2007 [2007] (Indonesian Constitutional Court) (2007) 14 *Australian International Law Journal* 217.

55 *Moratorium on the Use of the Death Penalty: Report of the Secretary-General*, UN Doc A/71/332 (15 August 2016) 34 [8]–[12]; FIDH, above n 15, 17; Vietnam Committee on Human Rights, ‘The Death Penalty in Vietnam’ (June 2016) 8. See also Hood and Hoyle above n 1, 16–7 explaining that once a moratorium has been placed for a period a country can be classified as *de facto* abolitionist.

56 Jiang Na, ‘Death Penalty Reforms in China: Lessons from Wrongful Convictions’ (2013) 5(2) *Tsinghua China Law Review* 126, 146.

the government on whether to abolish or retain capital punishment.⁵⁷

- A reduction in offences that carry death sentences. International non-governmental and multilateral organisations usually propose this limitation in line with jurisprudence on Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), which permits capital punishment only for the ‘most serious crimes’.⁵⁸ Some lawyers have recommended similar limitations.⁵⁹ Zhao Bingzhi and Wan Yunfeng proposed initially abolishing the death penalty for certain nonviolent economic crimes in China.⁶⁰ Vietnam has reduced the offences which carry the death penalty over time.⁶¹
- Removal of the mandatory death sentence for certain crimes.⁶² Novak argues there are three ways to mitigate the harshness of the mandatory death penalty: firstly, to separate murder into two offences, capital murder and non-capital murder, and retain the mandatory death sentence for a limited range of particularly heinous crimes; secondly, giving a trial judge sentencing discretion to determine whether the death penalty is warranted given the particular circumstances of the case, such as by requiring a judge to articulate an aggravating factor; and, thirdly, by requiring a judge to articulate a mitigating factor that removes the case from the category of seriousness warranting death.⁶³
- A prohibition on the execution of political prisoners⁶⁴ and developing other

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57 Mulya Lubis, above n 33, 268.

58 UN Doc A/71/332 above n 55, 4 [13]–[14]; FIDH, above n 15, 17.

59 See, eg, Mulya Lubis, above n 33, 268.

60 Zhao Bingzhi and Wan Yunfeng, ‘On Limiting and Abolishing the Death Penalty for Economic Crimes in China’ (2009) 41(4) *Chinese Sociology and Anthropology* 14. See also Jiang Su, ‘Kill Fewer and Kill Cautiously: A Critical Review of Death Penalty Reforms in China’ (2014) 2 *Peking University Law Journal* 277, 312–13.

61 The number of death penalty offences has been reduced to 22 from an earlier high of 44: *Criminal Code* (Socialist Republic of Vietnam) 2009. The new criminal code (introduced in 2017) reduces by 7 the offences to which the death penalty applies currently.

62 FIDH, above n 15, 17.

63 Novak, above n 39, 2–3.

64 Franklin E Zimring, ‘Is State Execution Different and Why?’ in Hood and Deva, above n 20, 22.

categories of exclusion from the death penalty, such as not sentencing pregnant mothers to death, the mentally ill or young offenders.⁶⁵

- Sentencing discretion for judges who decide capital cases.⁶⁶ For example, sentencing discretion can arise in drug-related offences, through legal distinctions between low-level couriers, and/or people who have been deceived into carrying drugs, and people who are more instrumental in drug offences.⁶⁷ Gerry et al propose that states must expand the range of people they identify as human trafficking victims to include people forced to traffic drugs, focusing specifically on Indonesia.⁶⁸ Some limited reforms in this direction have been made in Singapore.⁶⁹ These arguments are also made in China and, to a lesser extent, Vietnam.
- Improvements in the procedural safeguards around capital punishment. A common proposal is the right to appeal a death sentence to a higher court.⁷⁰ Chinese scholars have argued for a range of procedural and other reforms, including: curtailing the use of state secrets as evidence; enhancing the capacity of defence counsel in death penalty proceedings; and transparency measures to reduce abuses of power, such as the recording of police interrogations.⁷¹ Liu Renwen has advocated for Chinese prosecutors to have a greater role in the review of capital sentences.⁷² Liu Renwen

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65 Tim Lindsey and Pip Nicholson, *Drugs Law and Legal Practice in Southeast Asia* (Hart Publishing, 2016) 274. See *Criminal Code* (Socialist Republic of Vietnam) 2009, art 35.

66 Susan Trevaskes, 'China's Death Penalty: The Supreme People's Court, the Suspended Death Sentence and the Politics of Penal Reform' (2013) 53(3) *British Journal of Criminology* 482, 484, 496–7; Chen, above n 50, 54–5.

67 Chen, above n 50, 55–7.

68 Felicity Gerry et al, 'Is the Law an Ass When it Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims' (2016) *Asian Journal of International Law* 1.

69 Chan, above n 22, 192.

70 FIDH, above n 15, 17.

71 Wang Minyuan, 'On the 'Criterion' of Proof in Capital Cases and the Revision of the Criminal Procedure Law' (2009) 30(2) *Social Sciences in China* 138, 149–51; Jiang, above n 56, 147–9. On defense counsel in China, see also Jie Yang, 'The Development of China's Death Penalty Representation Guidelines: A Learning Model Based on the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases' (2013) 42(2) *Hofstra Law Review* 589.

72 Liu Renwen, 'Recent Reforms and Prospects in China' in Hood and Deva, above n 20, 115–

and Zhou Zhenjie made a series of proposals regarding SPC review procedures in death penalty cases, including increased transparency and the public provision of clear reasons for decisions.⁷³ Johnson has argued for procedural reforms in Japan, including: recording interrogations by police and prosecutors;⁷⁴ requiring prosecutors to inform defence counsel in advance that they are seeking the death penalty in murder cases; permitting defendants to provide more mitigating evidence; refusing to allow impact statements as trial evidence; developing clearer sentencing standards; better safeguarding the role of professional judges in death penalty cases; and increasing transparency in capital cases, which are conducted in heavy secrecy.⁷⁵

- Greater use of clemency and commutation.⁷⁶ Scholars have argued that clemency petitions should be introduced in China.⁷⁷ Victim-Perpetrator Reconciliation Agreements could also be reformed in several respects.⁷⁸ Mulya Lubis supports the commutation of death sentences for prisoners in Indonesia who have been on death row for a long period, with proven good conduct, to life or 20-years' imprisonment.⁷⁹
- Legislation, treaties and agreements in and/or with abolitionist countries that limit the imposition of the death penalty in Asia, such as bilateral extradition treaties, domestic laws relating to mutual assistance in criminal matters, and forms of inter-agency law enforcement cooperation.⁸⁰ The increasingly

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73 Liu Renwen and Zhou Zhenjie, 'Combining Punishment with Leniency, Implementing Temporary Measures and Radical Measures: An Exploration of Criminal 'Rule of Law' in Lin Li (ed), *The China Legal Development Yearbook* (Brill, 2009) vol 2, 188–92.

74 David T Johnson, 'An Innocent Man: Hakamada Iwao and the Problem of Wrongful Convictions in Japan' (9 February 2015) 13(6) *Asia-Pacific Journal* 22.

75 Ibid 22–24; David T Johnson, 'Retention and Reform in Japanese Capital Punishment' (2016) 49(4) *University of Michigan Journal of Law Reform* 853, 884; David T Johnson, 'Capital Punishment without Capital Trials in Japan's Lay Judge System' (27 December 2010) 8(52) *Asia-Pacific Journal* 21–7.

76 Roger Hood and Surya Deva, 'Introduction' in Hood and Deva, above n 20, 9.

77 Pascoe and Miao, above n 51; Liu, above n 72, 118–21.

78 Pascoe and Miao, above n 51.

79 Mulya Lubis, above n 33, 268.

80 In relation to Australia, see: Sam Garkawe, 'The Role of Abolitionist Nations in Stopping the

transnational character of crime may heighten the importance of the latter.⁸¹ Rightly or wrongly, Australia's role in reducing the death penalty in Asia is considered especially important, because of its abolitionist status,⁸² and its proximity to, and connections with, Asia.⁸³

- Other legislative, judicial and policy reforms in certain countries targeting the involvement of either the victim or the public in taking direct responsibility for the application of the death penalty. Lewis has argued for greater involvement of the public in death penalty sentencing through a jury system in China.⁸⁴ Pascoe and Miao recommend improvements to Victim-Perpetrator Reconciliation Agreements in China, drawing on the experiences of Islamic-majority countries (not including Indonesia, Malaysia or Brunei Darussalam).⁸⁵
- Potential constitutional challenges to capital punishment in some Asian jurisdictions led by activist lawyers. Novak observes that Indian courts have limited the imposition of the death penalty by finding the mandatory death penalty unconstitutional, permitting discretion and consideration of mitigating factors in the sentencing process.⁸⁶ Similar constitutional challenges have not been successful in Malaysia and Singapore, where constitutions 'do not include protections against cruel, inhuman, or degrading punishment or the right to a fair trial'.⁸⁷ Pascoe has argued for three potential constitutional challenges to the death penalty in Indonesia, involving judicial determination

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Use of the Death Penalty in Asia: The Case of Australia' in Hood and Deva (eds), above n 20; Natalie Klein and Lauren Knapman, 'Australians Sentenced to Death Overseas: Promoting Bilateral Dialogues to Avoid International Disputes' (2011) 37(2) *Monash University Law Review* 89; Natalie Klein, 'David Hicks, Stern Hu, Scott Rush, Jock Palfreeman and the Legal Parameters of Australia's Protection of its Citizens Abroad' (2011) 35(1) *Melbourne University Law Review* 134.

81 Johnson and Zimring, above n 1, 336.

82 Garkawe, above n 80, 90.

83 Ibid 92–3.

84 Margaret K Lewis, 'Leniency and Severity in China's Death Penalty Debate' (2011) 24 *Columbia Journal of Asian Law* 303, 330–2.

85 Pascoe and Miao, above n 51.

86 Novak, above n 39, 7, 31–46.

87 Ibid 7. For a description of recent constitutional jurisprudence on the death penalty in Singapore, see Hor, above n 20, 143–54.

on: the length of time certain prisoners have spent on death row; procedural changes to clemency petitions in Indonesia's revised 2010 clemency law; and the relationship between judicial review proceedings and clemency petitions.⁸⁸ While a 2007 Indonesian Constitutional Court opinion found the death penalty for drug crimes was constitutional, the Court recognised 'the finality and the harshness of capital punishment warranted some degree of mitigation'.⁸⁹

- Exposing legal failings. Johnson has proposed the establishment in Japan of Innocence Projects, innocence commissions, exoneration registries and aggressive investigative journalism to expose wrongful convictions in the Japanese criminal justice system, as in the United States⁹⁰
- Enhanced transparency in the administration of capital punishment, including the collection and provision of publicly available data on the number of death sentences handed down, executions carried out, executions reversed on appeal, commutations and clemencies,⁹¹ disaggregated by nationality, sex, age, racial or ethnic origin, religion or belief, sexual orientation, and other status, including disability.⁹²
- Establishment of an indigenous, regional organisation in Asia that can collect data on capital punishment, including on legal proceedings, and analyse policies and trends in the region.⁹³ Murthy has suggested that similar functions should be undertaken by National Human Rights Institutions in Asian countries.⁹⁴

Globally, the use of these strategies varies from country to country. There is great benefit in considering how these strategies might work within Vietnam.

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88 Daniel Pascoe, 'Three Coming Legal Challenges to Indonesia's Death Penalty Regime' (2015) 2(2) Indonesian Journal of International and Comparative Law: *Socio-Political Perspectives* 239.

89 Zerial, above n 54.

90 Johnson, above n 75, 883.

91 UN Doc A/71/332, above n 55, 2 [2]-[4]; FIDH, above n 15, 17.

92 FIDH, above n 15, 17.

93 Zimring, above n 64, 21–2. The editors agreed: Hood and Deva, above n 76, 9.

94 Y S R Murthy, 'The Role of National Human Rights Institutions in Abolishing Capital Punishment: A Critical Evaluation' in Hood and Deva, above n 20, 89.

There remain a great many under-explored issues in the death penalty studies of Asian countries. This conference offered an opportunity to reflect on research that could inform future death penalty debates in Vietnam.

Possible areas for further research include, but are not limited to:

- How courts determine death penalty cases? The conference heard about Singaporean, Indonesian, Indian and Chinese jurisprudence, but there is little scholarship about case determinations in all jurisdictions.
- How might profiling of death row populations inform policy development in jurisdictions beyond India? What factors might be taken into account? The following are demonstrably relevant: socio – economic situation; employment history; educational level; family situation; age and gender.
- How might interviews with death row prisoners enable greater insight into the challenges faced by criminal justice systems? What systemic failings might be revealed?
- What practices distort the fair and impartial hearing of cases that attract the death penalty? How might corruption, for example, undermine death penalty cases?
- What role, if any, does the death penalty play in deterring criminal behaviour in Asian jurisdictions? Is there any basis for the argument that the death penalty contributes to social order? Why? How?

A bibliography of sources on the death penalty in Asia is appended to this paper. This digest is not translated as the sources are only available in English. The bibliography includes an abstract for each source to assist those interested in understanding the literature and debates. The bibliography is not comprehensive. It focuses largely on sources published between 2009 and 2016. Where there are multiple publications by one author on similar topics, the more recent and/or more extensive article is cited. This abridged digest of the literature it aimed at facilitating an introduction to the literature.

Fundamentally death penalty reform targets one aspect of sentencing within the criminal justice system. Its reform is complex and the debate needs to look at wider sentencing principles and the inherent characteristics of the criminal justice system in any jurisdiction.

Finally as Babcock and Lourttau noted in 2016 the death penalty is both symptomatic of politics as well as reflective of policy, although its reform is not dependent on ‘major national transformation’.⁹⁵ Abolition frequently follows reductionism, or moratoria and

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95 Sandra Babcock and Delphine Lourttau, *Pathways to Abolition of the Death Penalty*, Death

is most usually accompanied by one or both of political leadership and / or judicial activism.⁹⁶ As noted at the outset, there is a death penalty knowledge deficit in most of Asia, largely as a result of poor empirical evidence stifling argument and informed debate. Given that we know many countries abolish the death penalty in the face of public support to retain it, it is critical to support gathering data to better inform local leaders advocating reform.

Penalty Worldwide International Human Rights Clinic, Cornell Law School (June 2016), 32 - 33.

96 Ibid.

APPENDIX ONE

LITERATURE REVIEW

Categories

Asia – Death Penalty

Asia – Crime Control/Social Order – Drugs

Asia – Comparative

Asia – Countries

ASIA – DEATH PENALTY

1. Amnesty International, *Abolitionist and Retentionist Countries* (19 December 2016) <<https://www.amnesty.org/en/documents/act50/3831/2016/en/>>

Source: Amnesty International

Abstract: More than two-thirds of the countries in the world have now abolished the death penalty in law or practice. This report shows that in the past decade, an average of over three countries a year have abolished the death penalty in law or, having done so for ordinary offences, have gone on to abolish it for all offences.

2. Amnesty International, *Death Sentences and Executions 2015* (April 2016) <<https://www.amnesty.org/en/documents/act50/3487/2016/en/>>

Source: Amnesty International

Abstract: This report covers the judicial use of the death penalty for the period January to December 2015. Amnesty International reports only on executions, death sentences and other aspects of the use of the death penalty, such as commutations and exonerations, where there is reasonable confirmation. In many countries governments do not publish information on their use of the death penalty, making confirmation of the use challenging.

3. Babcock, Sandra and Delphine Lourtou, *Pathways to Abolition of the Death Penalty*, Death Penalty Worldwide International Human Rights Clinic, Cornell Law School (June 2016)

Source: <http://www.deathpenaltyworldwide.org/pdf/Pathways%20to%20Abolition%20Death%20Penalty%20Worldwide%202016-06%20FINAL.pdf>

Abstract: A survey of the strategies used to abolish the death penalty in 14 states sourced from all continents. Examples were drawn from different periods and demonstrated very different approaches ranging from legislative or constitutional amendment to executive order.

4. Anti-Death Penalty Asia Network, 'Unfair Trials Report II: The Death Penalty is Not the Common Value of Asia' (Taiwan Alliance to End the Death Penalty, 2015) <<http://www.taedp.org.tw/en/story/2794>>

Source: Anti-Death Penalty Asia Network

Abstract: This report highlights the death penalty situation and executions in Asian countries between 2010 and 2013. It also gives an overview of the legal protection measures for the mentally disabled and mentally ill in Asian countries where the death penalty is used. Furthermore, it lists Asian countries that have acceded to the ICCPR and its Second Optional Protocol. It collects excerpts from international human rights documents. By using these documents for mutual reference, death penalty activists in Asia will be able to get a more comprehensive picture of the use of the death penalty and executions in Asian countries. Since many Asian countries do not publicize execution figures, and in a bid to circumvent the language barrier, the figures used for this report are based on a comparison of data in English language sources such as: Death Penalty Worldwide, the World Coalition Against the Death Penalty (WCADP), Amnesty International's Death Sentences and Executions reports of 2010 through 2013, as well as the Death Penalty Information Center. Also taken into account was information that ADPAN members reported back from the frontlines of the death penalty movement.

5. Bae, Sangmin, 'Is the Death Penalty an Asian Value?' (2008) 39(1) *Asian Affairs* 47

Source: Bibliography of Asian Studies

Abstract: Since World War, a growing number of countries around the world have joined the movement to abolish capital punishment. Asia remains the exception and it has been argued by some Asian leaders that the abolition of capital punishment is in conflict with "Asian values" and that the abolitionist argument constitutes an illegitimate interference in what is essentially a domestic concern. This article reviews the death penalty in the context of international human rights and examines the Asian values argument. Reviewing the teachings of

Confucius and other Asian philosophers, it suggests that the ongoing use of the death penalty in Asia is not rooted in intrinsic cultural traditions, but in fact is tied to internal political decisions. The Asian values argument has been largely used as a means to maintain political legitimacy, and not anything inherent to cultural factors.

6. *Capital Punishment and Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty: Report of the Secretary-General*, UN Doc E/2015/49 (13 April 2015)

Source: Google

Abstract: The present ninth quinquennial report reviews the use of and trends in capital punishment, including the implementation of the safeguards during the period 2009-2013. In accordance with Economic and Social Council resolutions 1745 (LIV) and 1990/51 and Council decision 2005/247, the present report is submitted to the Council at its substantive session of 2015, and will also be before the Commission on Crime Prevention and Criminal Justice at its twenty-fourth session, and the Human Rights Council at its twenty-eighth session. The report confirms the continuation of a very marked trend towards abolition and restriction of the use of capital punishment in most countries. Moreover, countries that retain the death penalty are, with rare exceptions, significantly reducing the numbers of persons executed and the crimes for which it may be imposed. Nevertheless, where capital punishment remains in force, there are serious problems with regard to international norms and standards, notably in the limitation of the death penalty to the most serious crimes, the exclusion of juvenile offenders from its scope and guarantees of a fair trial.

7. Death Penalty Project, *The Inevitability of Error: The Administration of Justice in Death Penalty Cases* (2014) <<http://www.deathpenaltyproject.org/news/1795/1795>>

Source: Death Penalty Project (UK)

Abstract: This report provides a global snapshot of cases and research findings of wrongful convictions from Japan, the United States, Taiwan, the Commonwealth Caribbean, Sierra Leone and the United Kingdom. The report was motivated in part by the recent case of Iwao Hakamada in Japan, who was released from death row earlier this year having served the last 47 years in solitary confinement awaiting execution after or new evidence came to light. This case has caused a measure of public disquiet and has once again demonstrated that wrongful convictions happen and that no country is immune. The reality is that there is no perfect criminal justice system and error is inevitable. International norms impose exacting standards in death penalty cases so as to reduce the possibility of wrongful convictions, but the findings and examples in this report leave no doubt that miscarriages of justice cannot

be eliminated altogether carrying the risk that innocent persons will be executed wherever the death penalty is imposed.

8. European Court of Auditors, *EU Support for the Fight Against Torture and the Death Penalty (pursuant to Article 287(4), second subparagraph, TFEU)* (Publications Office of the European Union, 2015) <http://www.eca.europa.eu/Lists/ECADocuments/SR15_09/SR_TORTURE_EN.pdf>

Source: Google

Abstract: The EU is strongly committed to preventing and eradicating all forms of torture and other ill-treatment as well as to abolishing the death penalty throughout the world. The Court assessed the effectiveness of the European Instrument for Democracy and Human Rights, which provides grants to civil society organisations for implementing projects that pursue these objectives. The Court concludes that the support provided was only partially effective. Although the Commission made appropriate needs assessments, it did not optimally target the funding. Because of this and also due to unfavourable political contexts, the overall impact of the projects funded was not optimal. The Court makes a number of recommendations for the Commission that concern the selection of project proposals, the coordination with other EU efforts, the performance measurement framework and the sustainability of beneficiary organisations.

9. European Union Political and Security Committee, 'EU Guidelines on Death Penalty' (2013) <http://www.eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf>

Source: Google

Abstract: The Working Group on Human Rights established, on 2 April 2013, the revised draft 'EU Guidelines on Death Penalty', which were endorsed by the Political and Security Committee on 12 April 2013. The Foreign Affairs Council approved the revised and updated text of the EU Guidelines on Death Penalty on 22 April 2013. The guidelines were originally adopted in 1998 and subsequently revised twice (2001 and 2008). The new text is a consolidation of the EU's experience in its leading role worldwide towards the abolition of the death penalty. The EU Guidelines will continue to provide the basis for the Union's action in the field.

10. Garkawe, Sam, 'The Role of Abolitionist Nations in Stopping the Use of the Death Penalty in Asia: The Case of Australia' in Roger Hood and Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, 2013) 90-104

Source: The University of Melbourne catalogue

Abstract: What role might abolitionist nations play in helping to end the use of the death penalty as the ultimate criminal sanction in retentionist Asian nations? There are some who might argue there is little such nations can do. However, the primary contention of this chapter is that abolitionist nations can and do have an ongoing important role to play in convincing all nations of the world to move away from the use of the death penalty. This contribution will analyse the laws and policies of Australia in relation to the death penalty in order to illustrate the potential role an abolitionist nation may play in stopping capital punishment in Asia.

11. Hodgkinson, Peter, 'Introduction' in Peter Hodgkinson (ed), *Capital Punishment: New Perspectives* (Ashgate, 2013) 1-25

Source: The University of Melbourne catalogue

Abstract: The abolition of capital punishment requires far more than the repeal of executions, important though this is. It is my view that the claims of abolitionists are premature and exaggerated, and any success is diminished if not underpinned by root and branch reform of the fundamental flaws that characterize the implementation of capital punishment. The central thesis in this collection is to question the perceived wisdom of existing abolition strategies, which continue to reply on the usual suspects, including deterrence, morality, international law, poverty, geography, police bias, judicial bias, prosecutorial bias, inadequate legal representation, methods of executions, age, mental health and race. These are all very important issues, which help in understanding the problems inherent to the implementation of capital punishment, and all are rightly under scrutiny. There is a dearth of global scholarship, which limits a complete understanding of capital punishment. Without access to US data and scholarship, there would be even less understanding about capital punishment, but the US literature does not and cannot provide the analysis essential for a local understanding. This is compounded by ill-judged and occasionally counter-productive extrapolations from the US experience to a local situation at the expense of generating local research.

12. Hood, Roger and Carolyn Hoyle, 'Introduction' and 'The Abolitionist Movement: Progress and Prospects' in Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 5th ed, 2015) 1-47

Source: The University of Melbourne catalogue

Abstract: This book charts and explains the progress that continues to be made towards the goal of worldwide abolition of the death penalty. The majority of nations have now abolished the death penalty and the number of executions has dropped in almost all countries where abolition has not yet taken place. Emphasizing the impact of international human rights principles and evidence of abuse, the authors examine how this has fuelled challenges to the death penalty and they analyse and appraise the likely obstacles, political and cultural, to further abolition. They discuss the cruel realities of the death penalty and the failure of international standards always to ensure fair trials and to avoid arbitrariness, discrimination, and conviction of the innocent: all violations of the right to life. They provide further evidence of the lack of a general deterrent effect; shed new light on the influence and limits of public opinion; and argue that substituting for the death penalty life imprisonment without parole raises many similar human rights concerns.

13. Hood, Roger and Carolyn Hoyle, 'Where Capital Punishment Remains Contested: Variations within the Retentionist Camp (3.1) and Asia and the Pacific: Opening Up the Issue (3.4)' in Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 5th ed, 2015) 75, 98-123

Source: The University of Melbourne catalogue

Abstract: This chapter deals with those parts of the world where there are still countries which have yet to abolish the death penalty or seriously question the moral or utilitarian case for executing criminals. It seeks to account for retention around the world, the differences across regions, and the differences between apparently similar countries within those regions. In recent years, there has been an upsurge in anti-death-penalty activism in Asia and the Pacific region. Nevertheless, Asia is still home to close to 90 percent of global judicial executions, China being responsible for the majority of these. The movement to convince the larger states of the region that they should move decisively to achieve complete abolition in the near future has yet to prove successful. However, most Asian retentionist countries now cluster at the low-use end, and this group includes large countries such as India and Indonesia. Further, most of Asia does not make regular use of the death penalty, with the clear exception of China, though there, a gradual change is taking place.

14. Hood, Roger and Carolyn Hoyle, 'What are 'The Most Serious Crimes? (4.2)' in Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 5th ed, 2015) 151-54

Source: The University of Melbourne catalogue

Abstract: This chapter reviews what is known about the range of offences that are punishable by a discretionary or mandatory sentence to death in various countries, and the extent to which death sentences have been imposed and executions carried out.

15. Hood, Roger and Carolyn Hoyle, 'Excluding the Vulnerable from Capital Punishment' in Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 5th ed, 2015) 223-64

Source: The University of Melbourne catalogue

Abstract: One very significant way in which the movement to restrict the scope of capital punishment has progressed is by defining categories of persons who, because of their developmental status, are deemed not to be deserving of death. This chapter reviews the extent to which these attempts to narrow the use of capital punishment have been adopted in law and been adhered to in practice.

16. Hood, Roger and Carolyn Hoyle, 'The Question of Deterrence' in Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press, 5th ed, 2015) 389-425

Source: The University of Melbourne catalogue

Abstract: This chapter is an attempt to weigh the evidence on deterrence and reach a balanced conclusion, remembering that the utilitarian justification of deterrence is only one factor to weigh in the balance. Issues of proportionality, desert, humanity, respect for human rights, of arbitrariness and discrimination, and the dangers of wrongful convictions must all be weighed against whatever claims might be made in the name of general deterrence.

17. Hood, Roger and Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, 2013)

Source: The University of Melbourne catalogue

Abstract: Asia remains central to the quest to abolish capital punishment worldwide. This book tries to grapple with key questions by shedding light on the evolving human rights discourse, politics, public opinion, and judicial practices vis-à-vis the death penalty in Asia through in-depth analyses of the situation in China, India, Japan and Singapore. Progress towards abolition of the death penalty in these four countries – which represent diverse political and

judicial systems, levels of economic development, social structures, and civil society movements – is likely to make the biggest impact on developments in the region as a whole.

18. Hood, Roger and Carolyn Hoyle, 'Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic"' (2009) 38 *Crime and Justice: A Review of Research* 1

Source: Hein Online

Abstract: The number of countries to abolish capital punishment has increased remarkably since the end of 1988. A "new dynamic" has emerged that recognizes capital punishment as a denial of the universal human rights to life and to freedom from tortuous, cruel, and inhuman punishment, and international human rights treaties and institutions that embody the abolition of capital punishment as a universal goal have developed. We pay attention to the political forces important in generating the new dynamic: the emergence of countries from totalitarian and colonial repression, the development of democratic constitutions, and the emergence of European political institutions wedded to the spread of human rights. Where abolition has not been formally achieved in law, we discuss the extent to which capital punishment has been bridled and by what means. Finally, we examine the prospects for further reduction and final abolition in those countries that hang on to the death penalty. More and more of these countries are accepting that capital punishment must be used sparingly, judiciously, and with every safeguard necessary to protect the accused from abuse and wrongful conviction. From there, it is not a long step to the final elimination of the death penalty worldwide.

19. Human Rights Council, *Question of the Death Penalty: Report of the Secretary-General*, UN Doc A/HRC/27/23 (30 June 2014)

Source: Google

Abstract: Pursuant to Human Rights Council decision 18/117, the present report is submitted in order to update previous reports on the question of the death penalty. The report confirms that the trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for international human rights norms and standards in States that still impose the death penalty. As requested in Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

20. Inazumi, M, 'The Regional Difference on Human Rights and Criminal Justice: Judicial Self-Determination Lost Through the Suppression from Western States? Universal Jurisdiction and Prohibition of the Death Penalty' (2013) 1 *Korean Journal of International and Comparative Law* 188

Source: Index to Foreign Legal Periodicals

Abstract: States in different regions have different visions and interpretations of international law on how to achieve the goal of protecting human rights, and these differences are causing some conflicts between European states and non-European states. This article examines such conflicts in the field of criminal justice – in the exercise of extradition, universal jurisdiction, and the death penalty. In the field of international criminal law, there are new norms emerging, for example, a rule (referred in this article as 'the Rule') that in a situation of concurrent jurisdictions, the court that conducts a fair trial by providing sufficient human rights protection should proceed with the prosecution. In accordance with the Rule, European states decide to exercise their own jurisdiction over cases committed abroad by foreigners, and refuse to extradite a suspect when he or she is likely to face a death penalty or impartial trial. However, the practices of European states in applying new norms in accordance with their understandings of a fair trial and prohibition of the death penalty invited opposition from those states whose national jurisdiction is denied or defeated. They are criticised as an infringement of state sovereignty, or as an unreasonable compulsion of Western values. Such opposition can be observed in the aggressive response from African states asserting that the universal jurisdiction exercised by European states over African officials for crimes committed in Africa contradicts the sovereign equality and independence of African states, thus evoking memories of colonialism. Also, although the influence of the prohibition of death penalty by European states is reflected on the Japan-EU Agreement on the Mutual Legal Assistance in Criminal Matters, Japan continues to retain the death penalty.

21. International Commission Against the Death Penalty, 'The Death Penalty and the "Most Serious Crimes": A Country-by-Country Overview of the Death Penalty in Law and Practice in Retentionist States' (January 2013) <http://www.icomdp.org/cms/wp-content/uploads/2013/02/Most-serious-crimes_final_6Feb2013.pdf>

Source: Google

Abstract: It is a commonplace among anti-death penalty activists to state that the world is on the brink of universal abolition. Indeed – and without being too effusive – the use of the death penalty has decreased dramatically since the entry into force of the International Covenant on Civil and Political Rights (ICCPR) in 1976, in which the death penalty is carefully formulated as an exception to the right to life. Since 1976, the concept of exception to the right to life has been more fully elaborated, and has become more specific, narrowing

the scope of the applicability of the death penalty by imposing limitations on who it is permissible to execute and under what conditions. Thus certain groups are excluded - juvenile offenders, the mentally ill, pregnant women and the elderly. Further elaboration of the concept of exception has resulted in strengthened procedural safeguards and progressive restrictions on the number and nature of serious crimes for which the death penalty may be applicable. This document provides brief commentary on the concept of “most serious crimes”, followed by a country by country overview of criminal offences punishable by death in retentionist states. Offences for which the death penalty is mandatory are noted and where available information is provided on capital offences under military law. Comments are included on whether capital offences under national law do or do not meet the threshold for “most serious crimes” as this is currently understood within international law. Each country entry provides brief information on the crimes for which the death penalty is actually imposed, along with a brief listing of the number of executions carried out each year from 2007 and to mid-2012.

22. International Federation for Human Rights (FIDH), *Going Backwards: The Death Penalty in Southeast Asia* (October 2016) <<https://www.fidh.org/en/issues/death-penalty/going-backwards-the-death-penalty-in-southeast-asia>>

Source: International Federation for Human Rights (FIDH)

Abstract: Over the past year, Southeast Asia has witnessed significant setbacks with regard to the abolition of the death penalty. This report provides an update on the status of the death penalty in the region. It also provides important recommendations to governments in the region with a view to make genuine and tangible progress towards the abolition of the death penalty for all crimes.

23. Johnson, David T, 'Asia's Declining Death Penalty' (2010) 69(2) *Journal of Asian Studies* 337

Source: JSTOR

Abstract: In the past half century, there has been a remarkable decline of capital punishment in many parts of the world. As of 1970, only 21 nations had abolished capital punishment for all crimes or for “ordinary offenses” (all crimes except insurrection and offenses committed in wartime); today the total is 103, and 36 more nations retain it in law but have not executed anyone for at least 10 years. By comparison, 58 nations retain capital punishment and continue to conduct executions. At present, therefore, 70 percent of all countries have abolished capital punishment in law or practice. Capital punishment is also an endangered species in several regions of the world, including Europe, which is a death penalty-free zone except for the dictatorship of Belarus, and Central and South America, where a tradition of abolition holds sway everywhere except

Guatemala and Guyana. In Africa, only two to seven nations (out of 54) used execution in any one year between 2000 and 2006.¹ But if the death penalty is declining, it has not disappeared. There remain four strongholds in the world today: the United States, where 35 states and the federal system retain capital punishment (and where the vast majority of executions are concentrated in a handful of Southern states); the Caribbean, where 11 of 13 countries (with a combined population of 5 million) retain the death penalty but rarely carry out executions; the Muslim-majority nations of the Middle East; and Asia, where 60 percent of the world's population live and more than 90 percent of the world's executions have taken place in recent years the large majority in China.

24. Johnson, David T and Franklin E Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009)

Source: The University of Melbourne catalogue

Abstract: Asia will be hugely important for the worldwide future of the death penalty because 60 percent of the earth's population resides in the region and because it is where more than 90 percent of the world's executions have taken place in recent years. What happens in Asia in the coming decades will reveal whether the campaign against state killing that has gained momentum since World War II is a global phenomenon. The nations of Asia are also an important laboratory for learning about the major influences on death penalty policy and the impact of policy changes on society and government. Most knowledge of capital punishment and penal policy comes from the study of a few developed nations in the West – especially the United States – over a relatively short period of time. This book consists of three parts. Part I introduces the topic and provides a short summary of what is known about the law and practice of capital punishment in Asia. The next part is devoted to a series of detailed case studies of Asian nations: Japan, the Philippines, South Korea, Taiwan and China in Part II, and North Korea, Hong Kong and Macao, Vietnam, Thailand, Singapore and India in the appendices. There is also an appendix on Judicial and Extrajudicial Killing. Part III discusses the lessons learned from the Asian case studies and explores the course of capital punishment in Asia's future.

25. Johnson, David T and Franklin E Zimring, 'Asia and the Future of Capital Punishment' in David T Johnson and Franklin E Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009) 3-13

Source: The University of Melbourne catalogue

Abstract: This chapter explains why this is a critical time for the death penalty in Asia and why Asia will be so significant in determining the future course of the death penalty worldwide. First, the chapter provides a short review of the history of death penalty policy since the end of World War II. The focus is Western Europe, which has been the centre of a two-stage change in death penalty practice and theory: first capital punishment was abolished, and then the stated reasons for concern about state execution were transformed from criminal justice questions into basic principles about limiting the power of governments to ignore the interests of any of their citizens. Second, the chapter outlines some unanswered questions about the death penalty, and the most fundamental open question is how far the Europe-led campaign to end execution will go. Third, this chapter shows why Asia is a critical proving ground for theories about capital punishment and for claims about the future of death as a criminal sanction.

26. Johnson, David T and Franklin E Zimring, 'Varieties of Capital Punishment in Contemporary Asia' in David T Johnson and Franklin E Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009) 15-42

Source: The University of Melbourne catalogue

Abstract: This chapter profiles the great variety of death penalty policies in Asia and outlines the research strategy employed in later chapters featuring case studies of Asian countries. We provide an overview of the varieties of death penalty policy found in contemporary Asia by examining the region first cross-sectionally and then temporally. We present our case study methodology and our selection of five nations in East and Southeast Asia as the central subjects of this book.

27. Johnson, David T and Franklin E Zimring, 'Lessons' in David T Johnson and Franklin E Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009) 289-325

Source: The University of Melbourne catalogue

Abstract: The comparative study of death penalty policy is a relatively new and unpracticed discipline, and few of the existing studies concentrate on regional rather than global comparisons. This chapter makes the case for a regional focus by reviewing the materials in the preceding chapters so as to gather

insights from Asia about capital punishment in the world in the 21st century. The lessons are organised into three sections. First, the chapter describes features of death penalty policy in Asia that are consistent with the experiences recorded in Europe and with the theories developed to explain Western changes. Next, the chapter identifies some of the most significant variations within the Asian region – in rates of execution, trends over time, and patterns of change – that contrast with the recent history of capital punishment in non-Asian locations and hence challenge conventional interpretations of death penalty policy and change. Finally, the chapter discusses three ways in which the politics of capital punishment in Asia is distinctive: the limited role of international standards and transnational influences in many Asian jurisdictions; the presence of single-party domination in several Asian political systems; and the persistence of communist versions of capital punishment in the Asia region.

28. Johnson, David T and Franklin E Zimring, 'The Pace of Change' in David T Johnson and Franklin E Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press, 2009) 327-55

Source: The University of Melbourne catalogue

Abstract: On current evidence, the abolition of capital punishment in Asia is not a question of whether but of when, and the critical issues seem to concern the pace and processes of change rather than the direction changes will take or their eventual end point. That said, a large margin of error accompanies efforts to guess how quickly Asian capital punishment will change. Should we think in terms of a few years, a few decades, or a few centuries? What are the leading indicators of the cessation of executions? What contingencies could slow the process? These are the central concerns of this chapter.

29. Johnson, David T and Franklin E Zimring, 'Taking Capital Punishment Seriously' (2006) 1(1) *Asian Journal of Criminology* 89

Source: Discovery

Abstract: Although Asia is the most important region of the world when it comes to capital punishment, it is also one of the most understudied. This article identifies four research questions that deserve attention from students and scholars who believe taking capital punishment seriously requires studying Asia seriously too. What are the empirical contours of capital punishment in contemporary Asia? What are the histories of capital punishment in Asia? Can Western theories of capital punishment explain patterns and changes in Asia? And what is the future of capital punishment in Asia? If researchers take the trouble to explore these questions, the death penalty will not only become an interesting window into law and society in Asia, but Asia will prove to be an instructive window into the death penalty—the gravest real-life problem in the

law.

30. Kim, Dongwook, 'International Non-Governmental Organizations and the Abolition of the Death Penalty' (2016) 22(3) *European Journal of International Relations* 596

Source: Discovery

Abstract: During the past 45 years, nearly 100 national states have abolished the death penalty for all crimes. This global diffusion poses a puzzle since capital punishment has long been accepted as the ultimate criminal sanction and its abolition has often been politically unpopular in many parts of the world. Although the literature has provided several possible explanations, the role of human rights international non-governmental organizations in worldwide death penalty abolition has not yet received sustained analytic attention. This article offers the first such analysis by arguing that human rights international non-governmental organizations empower pro-abolition constituencies and influence governments toward abolition by framing capital punishment as a human rights violation and lobbying parliamentarians to repeal death penalty laws. Event history analyses of 158 national states from 1967 to 2010 offer strong support for the theory. Controlling for regime type, regional demonstration effects, the Council of Europe, and other rival factors, this article finds that human rights international non-governmental organizations' local engagement has strongly significant positive relationships with complete abolition. This finding is highly robust against control variable bias, endogeneity bias, omitted variable bias, model dependence, and the alternative operationalization of control variables and the dependent variable. Furthermore, the Philippines example demonstrates the theory's plausibility. It provides process-tracing evidence that through human rights framing and legislative lobbying, the national sections and member organizations of such human rights international non-governmental organizations as Amnesty International, the International Commission of Catholic Prison Pastoral Care, the International Federation of Human Rights, and Caritas Internationalis led Philippine legislators toward complete abolition in 2006.

31. Klein, Natalie, 'David Hicks, Stern Hu, Scott Rush, Jock Palfreeman and the Legal Parameters of Australia's Protection of its Citizens Abroad' (2011) 35(1) *Melbourne University Law Review* 134

Source: AGIS Plus Text

Abstract: The arrest and detention of Australians overseas continues to make headline news. What Australia is able and willing to do to assist one of its nationals imprisoned abroad is a complex issue steeped in legal questions and political considerations. Legal avenues for assisting Australians imprisoned abroad are explored in this article through an examination of the relatively

high profile cases of David Hicks, Stern Hu, Scott Rush and Jock Palfreeman. In navigating the legal framework, three broad themes emerge: the bond of nationality, the protection of human rights, and the importance of reciprocity. It is argued here that, from both a legal and political perspective, greatest emphasis should be placed on reciprocity in order to best understand the decisions the Commonwealth government may make and the options available to the individuals concerned.

32. Klein, Natalie and Lauren Knapman, 'Australians Sentenced to Death Overseas: Promoting Bilateral Dialogues to Avoid International Disputes' (2011) 37(2) *Monash University Law Review* 89

Source: AGIS Plus Text

Abstract: Although Australia has adopted a firm stance opposing the death penalty within Australia, this position is complicated when Australian nationals are sentenced to death for crimes committed overseas. This article explores the legal avenues open to Australia, and to the individuals concerned, in seeking a lesser penalty so as to reduce inter-state disputes in these situations. The cases of Van Nguyen and members of the Bali Nine are used as focal points in this regard. It is argued that Australia needs to decide on a firm and consistent policy opposing the death penalty, and apply this approach globally and in its bilateral relationships. These steps are required if Australia is to minimise the likelihood of inter-state disputes and ameliorate the circumstances of Australians on death row.

33. Lehrfreund, Saul, 'The Impact and Importance of International Human Rights Standards: Asia in World Perspective' in Roger Hood and Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, 2013) 23-45

Source: The University of Melbourne catalogue

Abstract: This chapter considers the extent to which the countries in Asia live up to their obligations entered into by acceding to the ICCPR and the Safeguards Guaranteeing the Protection of Rights of those Facing the Death Penalty, first adopted by the UN, without dissent in 1984. China signed the ICCPR in 1998 but has not yet ratified it, where Singapore (and Malaysia) has yet to sign or ratify the ICCPR. Nevertheless, the norms established by the ICCPR and the Safeguards have had a clear influence on recent developments directed at limiting the scope and number of crimes subject to the death penalty to the 'most serious crimes' under Article 6(2) of the ICCPR, which has been interpreted by paragraph 1 of the Safeguards to mean only 'intentional crimes with lethal or other extremely grave consequences'.

34. *Moratorium on the Use of the Death Penalty: Report of the Secretary-General*, UN Doc A/71/332 (15 August 2016)

Source: Google

Abstract: The present report is submitted to the General Assembly pursuant to its resolution 69/186. It discusses developments towards the abolition of the death penalty and the establishment of moratoriums on executions. The report also reflects on trends in the use of the death penalty, including the application of international standards relating to the protection of the rights of those facing the death penalty. It also discusses the role of national human rights institutions and private companies, as well as regional and international initiatives for advancing the abolition of the death penalty.

35. Murthy, Y S R, 'The Role of National Human Rights Institutions in Abolishing Capital Punishment: A Critical Evaluation' in Roger Hood and Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, 2013) 68-89

Source: The University of Melbourne catalogue

Abstract: National Human Rights Institutions (NHRIs) have emerged as key entities in the task of protecting and promoting human rights. This chapter reviews the potential as well as the performance of NHRIs in law reform efforts aimed at the abolition of the death penalty in the Asia-Pacific region. NHRIs perform a wide range of responsibilities such as monitoring and encouraging compliance with human rights law, promoting awareness, providing training, and fostering respect for human rights. Since capital punishment is widely recognized as an inhumane and uncivilized form of punishment, it can be argued that NHRIs are under an obligation to lead the movement against its abolition. However, it is paradoxical that while the Asia-Pacific region has witnessed an impressive growth in the establishment of NHRIs in the past two decades to protect and promote human rights, it still accounts for the highest number of executions in the world. Several questions therefore arise. What, if any, has been the contribution of NHRIs in seeking to secure abolition of the death penalty? Are they protectors or pretenders? Are they catalysis for good and humane governance or are they passive bystanders? This chapter seeks to investigate these and related aspects, confining itself to those countries which have established an NHRI in conformity with the Paris Principles (Relating to the Status of National Institutions, 1993).

36. Neumayer, Eric, 'Death Penalty: The Political Foundations of the Global Trend Towards Abolition' (2008) 9(2) *Human Rights Review* 241

Source: Discovery

Abstract: The death penalty is like no other punishment. Its continued existence in many countries of the world creates political tensions within these countries and between governments of retentionist and abolitionist countries. After the Second World War, more and more countries have abolished the death penalty. This article argues that the major determinants of this global trend toward abolition are political, a claim which receives support in a quantitative cross-national analysis from 1950 to 2002. Democracy, democratization, international political pressure on retentionist countries and peer group effects in relatively abolitionist regions all raise the likelihood of abolition. There is also a partisan effect as abolition becomes more likely if the chief executive's party is left-wing oriented. Cultural, social and economic determinants receive only limited support. The global trend toward abolition will go on if democracy continues to spread around the world and abolitionist countries stand by their commitment to press for abolition all over the world.

37. Novak, Andrew, 'Introduction: The Mandatory Death Penalty in Historical and Comparative Perspective' in Andrew Novak, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia and the Caribbean* (Ashgate, 2014) 1-8

Source: The University of Melbourne catalogue

Abstract: Historically, at English common law, the death penalty was mandatory for the crime of murder and other violent felonies. Over the last three decades, however, many former British colonies have reformed their capital punishment regimes to permit judicial sentencing discretion, including consideration of mitigating factors. Applying a comparative analysis to the law of capital punishment, this book examines the constitutional jurisprudence and resulting legislative reform in the Caribbean, Sub-Saharan Africa, and South and Southeast Asia, focusing on the rapid retreat of the mandatory death penalty in the Commonwealth over the last thirty years. The coordinated mandatory death penalty challenges – which have had the consequence of greatly reducing the world's death row population - represent a case study of how a small group of lawyers can sponsor human rights litigation that incorporates international human rights law into domestic constitutional jurisprudence, ultimately harmonizing criminal justice regimes across borders.

38. Office of the High Commissioner for Human Rights (OHCHR), Regional Office for South-East Asia, 'Moving Away from the Death Penalty: Lessons in South-East Asia' (2013) <<http://bangkok.ohchr.org/files/Moving%20away%20from%20the%20Death%20Penalty-English%20for%20Website.pdf>>

Source: Google

Abstract: "The death penalty has no place in the 21st century", United Nations Secretary-General Ban Ki-moon declared on 2 July 2014 at a special event to encourage States to implement a moratorium on the death penalty. This declaration resonates globally as around 160 countries in the world have either abolished the death penalty, introduced a moratorium or do not practice it. Recent legislative reforms in South-East Asia regarding the death penalty generally correspond with that trend. The range of offences for which the death penalty applies and other reforms in the region denote incremental but tangible progress. The Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for South-East Asia has engaged with stakeholders in advocating for the abolition of the death penalty in countries of the region. The Regional Office collaborated with the Ministry of Justice in Thailand to organize an Expert Seminar on "Moving Away from the Death Penalty in South-East Asia" in Bangkok on 22 - 23 October 2013. Participants laid the ground for establishing a forum for intraregional exchange between key stakeholders on international and regional law and practice regarding the death penalty. The present publication provides an extensive review of global trends in death penalty matters, a summary of the applicable international legal standards, and the current status of legislative reform related to the death penalty in South-East Asia. This publication is intended to be a reSource for further discussions in the region toward the abolition of the death penalty.

39. Scherdin, Lill, 'Introduction' in Lill Scherdin, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 27-32

Source: The University of Melbourne catalogue

Abstract: As most jurisdictions move away from the death penalty, some remain strongly committed to it, while others hold on to it but use it sparingly. This volume seeks to understand why, by examining the death penalty's relationship to state governance in the past and present. It examines how international, transnational and national forces intersect in order to understand the possibilities of future death penalty abolition. This book questions whether the death penalty in and of itself is a hazard to a sustainable development of criminal justice. It is a resource for all those researching and campaigning for the global abolition of capital punishment.

40. Šimonovic, Ivan (ed), *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (United Nations, 2014) <<http://www.ohchr.org/Lists/MeetingsNY/Attachments/52/Moving-Away-from-the-Death-Penalty.pdf>>

Source: Google

Abstract: This book provides arguments and analysis, reviews trends and shares perspectives on moving away from the death penalty. Globally, most countries have gradually been moving away from the death penalty—by reducing the number of crimes punishable by death, introducing additional legal safeguards, proclaiming a moratorium on executions or abolishing the death penalty altogether. Amnesty International reports that in the mid-1990s, 40 countries were known to carry out executions every year. Since then, this number has halved. About 160 countries have abolished the death penalty in law or in practice; of those, 98 have abolished it altogether. In 2007, when the death penalty moratorium resolution was first adopted by the United Nations General Assembly, it was supported by 104 states. In the most recent vote, in 2012, it was supported by 110 states. While this is grounds for optimism, there are also reasons for concern. In 2013, there were at least 778 documented executions in 22 countries. Compared to the numbers for 2012—at least 682 executions in 21 countries—this amounts to a 14 per cent increase in executions, as well as an increase in the number of executing countries. Can the steady global abolitionist trend so far be reversed? There are reasons to be cautious. Some human rights achievements dating back to the early 1990s are currently facing renewed challenges. Armed conflicts involving non-state actors, triggering ethnic and religious divisions, are proliferating globally. It is still to be seen whether these setbacks will affect the trend away from the death penalty. This book seeks to contribute to efforts to prevent this from happening. The panels on which this book is based took place in New York, thus benefiting from the proximity of a number of top-level death penalty experts as well as two victims of wrongful convictions. Nevertheless, we are fortunate to be able to present an even larger number of articles from African, Asian, Caribbean and European authors. The book consists of five chapters. The first three chapters are dedicated to the three issues identified at our initial 2012 panel as decisive for decision-making on moving away from the death penalty and on which we held individual panels in 2013 and 2014: wrongful convictions (chapter 1), the myth of deterrence (chapter 2) and discrimination (chapter 3). They were supplemented with two additional chapters, covering issues highly relevant for death penalty positioning and decision-making. Values with regard to the sanctity of life and the death penalty are discussed in chapter 4. Chapter 5, with a view to being forward looking, examines the direction of the trends and reflects on the role of effective leadership.

41. Tan, Alvin, 'Avoiding Death By Other Means – Limiting the Circumstances and Range of Offences that Attract Capital Punishment' (2010) 6(1) *Cambridge Student Law Review* 288

Source: HeinOnline

Abstract: Given the vacillations across the world and throughout history on the issue of capital punishment, it is unhelpful to simply focus on the de jure abolition of the death penalty as the only indicator of where things stand and where they are headed. For example, although the United States and Commonwealth Caribbean appear set to keep the death penalty in their statute books, it is clear that changes in law and practice in those jurisdictions signal that the abolitionist movement is not in retreat. A realistic way to reduce the use of capital punishment in retentionist countries may be to further limit both the circumstances and range of offences that attract the death penalty. This is particularly true for countries where capital punishment remains a major part of the criminal justice system and continues to be deemed by the government as an effective deterrent and an appropriate form of retribution for certain crimes.

42. Thompson, Andrew S, 'Beyond Expression: Amnesty International's Decision to Oppose Capital Punishment, 1973' (2008) 7(4) *Journal of Human Rights* 327

Source: Discovery

Abstract: Amnesty International's (AI) decision in 1973 to adopt unconditional opposition to capital punishment into its mandate marked a watershed moment for both the international abolitionist movement generally, and Amnesty International specifically. But it was not an easy decision for the organization to take. Internally, there were some within the organization who opposed broadening the mandate beyond its existing work on Prisoners of Conscience, gearing that such a move would commit AI to the defense of violent individuals, which, in turn, would be detrimental to the organization's reputation. While the organization eventually chose to make campaigning against the use of the death penalty a core aspect of its work, it did so with great reluctance. And in doing so, AI filled a void within the abolitionist movement and lent new legitimacy and momentum to efforts to bring about an end to capital punishment worldwide. But more importantly, it signalled a principled shift in thinking for the organization that not only challenged the state's authority to take an individual's life but advocated a more inclusive vision in which the rights of individuals could not legitimately be forfeited for either their words or deeds.

43. Zhang Yuanhuang, 'Criminological Analysis on Deterrent Power of Death Penalty' (2009) 4(1) *Frontiers of Law in China* 31

Source: World Coalition Against the Death Penalty

Abstract: Death penalty is the most effective deterrence to grave crimes, which has been the key basis for the State to retain death penalty. In fact, either in legislation or in execution, death penalty cannot produce the special deterrent effect as expected. With respect to this issue, people tend to conduct normative exploration from the perspective of ordinary legal principles or the principle of human rights, which is more speculative than convincing. Correct interpretation based on the existing positive analysis and differentiation based on human nature which sifts the true from the false will not only help end the simple, repetitive and meaningless arguments regarding the basis for the existence of death penalty, but also help understand the rational nature of both the elimination and the preservation of death penalty, so as to define the basic direction towards which the State should make efforts in controlling death penalty in the context of promoting social civilization.

44. Zimring, Franklin E, 'State Execution: Is Asia Different and Why?' in Roger Hood and Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, 2013) 13-22

Source: The University of Melbourne catalogue

Abstract: This chapter reports a mixture of theory and practical suggestions on state execution in Asia. The central theoretical issue addressed is whether and to what extent Asia is different from other areas of the world where the struggle over state killing as judicial punishment has played out. The basic issue is whether places like the People's Republic of China, South Korea, Japan and Thailand are an entirely different cultural and political context for the evolution of death penalty policy or simply a region behind Europe in political and social development that will behave in much the same way that was observed in Western Europe at the appropriate stages of national and regional development. The analysis first describes the variety of death penalty politics found in Asia early in the twenty-first century and then on a variety of possible reasons why politics are different in many Asian nations than in Europe or elsewhere. A brief concluding section suggests two modest changes that may improve the prospects for progress towards abolition of capital punishment in Asia.

45. Zimring, Franklin E and David T Johnson, 'Law, Society and Capital Punishment in Asia' (2008) 10(2) *Punishment and Society* 103

Source: Discovery

Abstract: Students of capital punishment need to study Asia, the site of at least 85 percent and as many as 95 percent of the world's executions. This article explores the varieties of Asian capital punishment in two complementary ways. Cross-sectionally, the impression of uniformity that comes from classifying 95 percent of the population of Asia as living in executing states breaks down when closer attention is paid to the character of capital punishment policy within retentionist nations. Temporally, the general trajectory of capital punishment in the Asian region seems downward (though generalizations about patterns in this part of the world are undermined by significant data problems). Asia is also a useful territory for testing the generality of theories of capital punishment based on European experience. Looking forward, Japan and South Korea, two developed nations in Asia that still retain the death penalty, may indicate what other Asian nations are likely to do as they develop. Ultimately, Asia either will become a major staging area for worldwide abolition or the campaign against capital punishment will fail to achieve global status.

ASIA – CRIME CONTROL/SOCIAL ORDER - DRUGS

46. Amnesty International, *2015 World Day Against the Death Penalty: Not the Solution to Drug-Related Crime* (October 2015) <<https://www.amnesty.org/en/documents/act50/2634/2015/en/>>

Source: Amnesty International

Abstract: Drug-related offences are still punishable with the death penalty in more than 30 countries despite clear restrictions set out in international law to limit use of the death penalty to the "most serious crimes". This report draws attention to the use of the death penalty for drug-related offences as a human rights violation.

47. Chen Xingliang, 'A Study on the Death Penalty as Applied to those Engaged in the Transportation of Drugs: Observations on a Letter from a Prisoner Condemned to Death' (2009) 41(4) *Chinese Sociology and Anthropology* 48

Source: Bibliography of Asian Studies

Abstract: Calling into question different motives to transport drugs, the typical divisions of labour in Chinese drug circuits, and the sentences meted out to smugglers, Chen Xingliang examines the rationale of punishment schedules under the Criminal Law of China. Chen takes the position that when sufficient evidence is presented to prove a person was employed by others to transport drugs, the death penalty should not apply.

48. Chin, Ko-lin and Sheldon X Zhang, 'Combating Drug Trafficking' in Ko-lin Chin and Sheldon X Zhang, *The Chinese Heroin Trade: Cross-Border Drug Trafficking in Southeast Asia and Beyond* (New York University Press, 2015)

Source: The University of Melbourne catalogue

Abstract: In China, the government has a firm hand on every aspect of antinarcotic activities. Drug enforcement activities are mainly led and coordinated through the Narcotics Control Bureau (NCB) of the Ministry of Public Security, the equivalent of the Drug Enforcement Agency (DEA) of the U.S. Department of Justice. However, compared to their counterpart in the United States, which has close to 10,000 in staff and a budget that exceeds \$2.2 billion, the Chinese anti-narcotic bureaucracy is small. The Chinese government takes drug enforcement policies seriously and sets it as a national priority in its overall scheme of social control. National strategies in combating drug trafficking in China can be broadly grouped into two categories— (1) harsh punishment to deter participation in drug trafficking and dealing, and (2) mass education campaigns aimed at raising awareness among the populace. Under these two broad themes are a set of specific priorities, which the Chinese government calls the “comprehensive” counternarcotics strategy. Slogans aside, these national strategies represent the agenda of the Chinese government to get a handle on its ever worsening drug problem. Both official statistics and stories we heard during our field activities suggest that China is fighting an uphill battle because the supplies of illicit drugs are cheap and abundant from nearby countries full of enterprising agents eager to do business.

49. Gallahue, Patrick, *Drugs and the Death Penalty* (Open Society Foundations, 2015) <<https://www.opensocietyfoundations.org/reports/drugs-and-death-penalty>>

Source: Google

Abstract: There are currently thousands of people on death row for drug-related offenses in Asia, the Middle East, and parts of Africa. The international drug control system must share the blame, as treaties promoting strict and severe punishments for drug offenses have opened the door to such responses. UN human rights and drug control bodies now recognize that the death penalty for drugs violates international law, but a number of states that are parties to drug control treaties argue that capital drug laws are a permissible sanction. While many countries around the world are abolishing the death penalty for all crimes at an unprecedented rate, other countries such as Iran and Saudi Arabia are increasingly prescribing the death penalty for drug-related crimes despite evidence showing that it has not been effective in curbing the flow of drugs across territories. While there no fixed model for the kinds of people who have suffered the death penalty for drugs, all too often those who become smugglers

borders represent people in desperate circumstances who have been coerced or tricked into breaking the law. Sometimes they are mere teenagers. Executing those who are referred to as “little fish” is disproportionate to the crime. And as both international human rights and drug control bodies have made clear, it is a violation of human rights law. This report explores how the laws that subject drug offenders to capital punishment are inextricably linked to the international war on drugs and provides recommendations for governments to review current policies and explore alternate, less draconian sanctions.

50. Gallahue, Patrick and Rick Lines, *The Death Penalty for Drug Offences: Global Overview 2015: The Extreme Fringe of Global Drug Policy* (Harm Reduction International, October 2015) <https://www.hri.global/files/2015/10/07/DeathPenaltyDrugs_Report_2015.pdf>

Source: Google

Abstract: Hundreds of people are executed every year for contravening drug laws around the world. Many of those killed are low level couriers, duped or coerced into carrying drugs across international borders, or forced by economic necessity into taking risks. Some experience violent interrogations, are subject to flawed trials, given penalties condemned by human rights authorities and then hanged, shot, beheaded or killed via a lethal injection in violation of international law. This report looks at the death penalty for drugs in law and practice. It also considers critical developments on the issue.

51. International Federation for Human Rights (FIDH), *The Death Penalty for Drug Crimes in Asia: Report* (October 2015) <<https://www.fidh.org/en/region/asia/death-penalty-for-drug-crimes-in-asia-a-widespread-and-illegal>>

Source: International Federation for Human Rights (FIDH)

Abstract: Asia is the continent that executes the most people for drug-related crimes. This report explains how imposing the death penalty has not proven to be effective in reducing drug crimes in Asia. It analyses how the death penalty is applied for drug-related crimes in Asia, evaluates the most common arguments used by governments to justify their use of this inhumane and illegal measure, and exposes why these arguments are unjustified. The application of the death penalty to drug-related crimes also constitutes a clear violation of international human rights standards. International treaties have limited the use of the death penalty to the “most serious crimes,” but drug crimes do not meet that threshold and thus cannot be subjected to capital punishment.

52. Rahman, Fafa, 'Capital Punishment for Drug Offenses' in Fafa Rahman, and Nick Crofts (eds), *Drug Law Reform in East and Southeast Asia* (Lexington Books, 2013) 255-69

Source: The University of Melbourne catalogue

Abstract: Despite overwhelming evidence that the death penalty does not reduce drug supply or demand, it continues to be prescribed in thirty-two countries and territories across the globe, although only six of these countries make it an operational part of their criminal justice systems. In relation to capital punishment for drug offenses these nations face an undeniable truth: that most persons executed for drug offenses are low-level drug carriers recruited by syndicates to carry drugs across borders. Those who transport drugs across borders are often female and are given packages or suitcases to transport; those caught for trafficking are also overwhelmingly uneducated and are of modest financial backgrounds. Some people are death row for drug offenses are females who were arrested with a male companion: it is not entirely implausible in such situations that the drug manufacturer or dealer is the male and that the female was snared into a death sentence by default. In countries where there is a mandatory death penalty based on a statutory threshold quantity, judges are given no discretion to take into account factors which ordinarily could and should have determining influence on whether the individual lives or dies. These include financial circumstances, motives behind the transport or traffic of drugs, knowledge of the contents of the package or luggage, age of offender, and whether it was a first offense. The fact that there is no opportunity for mitigation, and no discretion on the part of the judge, means that sentences handed out are often arbitrary, heartrending, and destructive. It is this emotive factor, however, reinforced by pressure from international organisations, that may be a key factor behind recent discussions by governments on the possibility of moratoria, restoring discretion to judges, and/or complete abolition. In this chapter, I will provide a background of the situation in East and Southeast Asia, discuss the potential for reform, public and judicial opinion of the death penalty, and whether these do or even should influence policy decisions on the death penalty.

53. Trevaskes, Susan, 'Creative Death Penalty Reform in China: The Case of Drug Transportation' (2016) 38(2) *Law and Policy* 143

Source: Hein Online

Abstract: China's criminal justice system has, for decades, been consistently notorious as one of the world's most punitive. Recent reform of the nation's decades-long harsh criminal justice policy to instead balance severity with greater leniency has given reformist-minded judges and legal experts some cause for optimism. However, it has also created a judicial dilemma in determining how to apply this more lenient ethos in sentencing some capital

crimes. This is particularly the case for the capital crime of transporting drugs, which is the focus of this article. This article reveals how reform can be achieved through skillful legal maneuvering for a crime category that is caught between two contesting views of the social benefits of punishment.

ASIA – COMPARATIVE

54. Anckar, Carsten, 'Why Countries Choose the Death Penalty' (2014) 21(1) *Brown Journal of World Affairs* 7

Source: Hein Online

Abstract: The present article stems from the premise that the attitude toward the death penalty has become increasingly critical over the past decades. Nevertheless, despite these attitudinal changes, there are countries that have resisted pressures for abolition and continue to use capital punishment even in this internationally "hostile" environment. The present study's ambition is to provide an answer to the question of whether there are common characteristics that help explain why countries make use of capital punishment. If there are factors that are particularly conducive to the death penalty, these traits should manifest as we move along the time axis and the international pressure for abolition increases. In other words, we can expect the group of countries that uses the death penalty to be characterized by a greater degree of homogeneity today than it was in the past. This article introduces and discusses a number of plausible determinants of death penalty usage. It starts with an account of regional variances in death penalty usage over time, and then proceeds to study the extent to which form of government, population size, socioeconomic development, colonial heritage, dominant religion, and ethnic fragmentation are statistically related to death penalty usage. The study includes all independent countries of the world and is conducted at three points in time: 1985, 2000, and 2014. The points in time have been chosen mainly with regard to how death penalty trends have evolved over the years. The latest point in time is chosen to account for the present situation. Regarding the first point in time, the evidence shows that the abolitionist movement gained significant strength in the late 1980s. It is therefore important to choose a point in time that precedes this change of trend. Finally, it makes sense to use a point in time that falls in between 1985 and 2014 and reflects the situation at the turn of the millennium.

55. Bae, Sangmin, 'International Norms, Domestic Politics, and the Death Penalty: Comparing Japan, South Korea, and Taiwan' (2011) 44(1) *Comparative Politics* 41

Source: JSTOR

Abstract: In light of the rapidly growing abolition movement, scholars of the death penalty have noted that East Asia presents an exception to this international trend. Noting that about 95 percent of the residents of Asia live in states that retain capital punishment, and 90 percent of the world's executions take place in Asia, David Johnson and Franklin Zimring state, "Asia should be important to students of capital punishment ... for the same reason that Hawaii is of interest to volcanologists: because that is where the action is." Democracies in northeast Asia, at the same time, are at fairly different stages in their movements toward abolition. Japan has been most resistant to embracing the international norm against the death penalty, while Taiwan and especially South Korea have moved much further toward abolition. Whereas both South Korea and Taiwan have taken meaningful steps to abolish the death penalty, almost nothing has been accomplished in Japan, where the number of executions and death sentences has increased in the past few years. The differences are also apparent in the prevalence of anti-death penalty activism and political and legal initiatives for abolition. Why do countries with seemingly similar cultures and political institutions respond differently to human rights norms? Two questions emerge from these variations. First, why do these democratic countries exhibit such different levels of progress toward abolition? Second, why is the most stable democracy the most ambivalent with regard to the international human rights norm?

56. Druzin, Bryan H and Anthony S Wan, 'The Theatre of Punishment: Case Studies in the Political Function of Corporal and Capital Punishment' (2015) 14(3) *Washington University Global Studies Law Review* 357

Source: Discovery

Abstract: Michel Foucault famously argued that punishment was an expression of power—a way for the State to shore up and legitimize its political authority. Foucault attributed the historical shift away from public torture and corporal punishment, which occurred during the 19th century, to the availability of new techniques of social control; however, corporal and capital punishment (what we term "shock punishment") persists in many penal systems to this day, suggesting that these countries have for some reason not fully undergone this penal evolution. Using the experiences of Hong Kong and Singapore as case studies, we attempt to explain why this is the case. We argue that, while a range of factors contribute to why countries employ shock punishment, retention is often linked to the political stability of a government's rule. Punishment, as a visceral expression of power, makes shock punishment particularly appealing

to States grappling with political insecurity. In the post-war period, Hong Kong's colonial government did not feel their rule challenged to the same extent as the newly independent government in Singapore. The result is two radically divergent stories with regards to corporal punishment, with Hong Kong abolishing the practice altogether in 1991 and Singapore not only retaining it, but greatly expanding its usage. As further support for our thesis, we offer empirical data regarding the use of shock punishment and the political freedom of the societies that retain it. We identify a fairly robust, positive correlation between the use of shock punishment and authoritarian and semi-authoritarian governments desperate to legitimize their rule. The final conclusion we reach is that, while many factors undoubtedly contribute to the retention of shock punishment, its expressive power plays a significant role in why many States continue to employ it.

57. Florio, Ryan, 'The [Capital] Punishment Fits the Crime: A Comparative Analysis of the Death Penalty and Proportionality in the United States of America and the People's Republic of China' (2008) 16 *University of Miami International and Comparative Law Review* 43

Source: Hein Online

Abstract: The governments of both the United States and China maintain the death penalty as a means of punishing its most dangerous criminals, but with an astounding 68 capital offenses, China perennially remains the world leader in executions. This article examines the theory of proportionality of criminal punishment and how it relates to the respective death penalty policies in the United States and China. A comparative analysis will reveal two extremely different societies with two different perspectives on proportionality. one that recognizes and protects fundamental freedoms and another that places emphasis on collective societal welfare over individual rights. The article will describe how constitutional and legislative provisions, specific historical periods, human rights, and the judicial system interact to shape the policies that the United States and China practice today.

58. Greenberg, David F and Valerie West, 'Siting the Death Penalty Internationally' (2008) 33(2) *Law and Social Inquiry* 295

Source: Hein Online

Abstract: We examine **Sources** of variation in possession and use of the death penalty using data drawn from 193 nations in order to test theories of punishment. We find the death penalty to be rooted in a country's legal and political systems, and to be influenced by its religious traditions. A country's level of economic development, its educational attainment, and its religious composition shape its political institutions and practices, indirectly affecting its use of the death penalty. The article concludes by discussing likely future

trends.

59. Johnson, David T, 'Wrongful Convictions and the Culture of Denial in Japanese Criminal Justice' (9 February 2015) 13(6) *Asia-Pacific Journal* <<http://apjif.org/2015/13/6/David-T.-Johnson/4273.html>>

Source: *World Coalition Against the Death Penalty*

Abstract: The release of Hakamada Iwao from death row in March 2014 after 48 years of incarceration provides an opportunity to reflect on wrongful convictions in Japanese criminal justice. My approach is comparative because this problem cannot be understood without asking how Japan compares with other countries: to know only one country is to know no country well. Comparison with the United States is especially instructive because there have been many studies of wrongful conviction there and because the U.S. and Japan are the only two developed democracies that retain capital punishment and continue to carry out executions on a regular basis. On the surface, the United States seems to have a more serious problem with wrongful convictions than Japan, but this gap is more apparent than real. To reduce the problem of wrongful convictions in Japanese criminal justice, reformers must confront a culture of denial that makes it difficult for police, prosecutors, and judges to acknowledge their own mistakes.

60. Johnson, David T, 'American Capital Punishment in Comparative Perspective' (2011) 36(4) *Law and Social Inquiry* 1033

Source: Discovery

Abstract: It is often said that American capital punishment fulfils no purposes, serves no functions and possesses no coherent rationale. In *Peculiar Institution: America's Death Penalty in An Age of Abolition* (2010), David Garland argues that American capital punishment is functional, meaningful, and effective, especially in the cultural real of death penalty discourse. He also demonstrates that America's radically local version of democracy helps explain why the death penalty has persisted in the United States long after it disappeared in other Western democracies and that many of the peculiar forms through which American capital punishment is now administered have been designed to deny association with the lynchings that have occurred in American history. Garland arrives at these conclusions by comparing capital punishment in contemporary American with death penalty systems from the American past and from other Western nations. This essay argues that comparison with Asia further illuminates what is peculiar – and ordinary – in American capital punishment.

61. Johnson, David T, 'The Death Penalty in Asia: Introduction to a Special Issue of Punishment & Society' (2008) 10(2) *Punishment and Society* 99

Source: Discovery

Abstract: This article is an introduction to a special issue of the journal Punishment and Society examining some of the English-language scholarship relating to the death penalty in Asia. The special issue focuses on East Asian jurisdictions – specially, China, Taiwan and South Korea.

62. Lindsey, Tim and Pip Nicholson, *Drugs Law and Legal Practice in Southeast Asia* (Hart Publishing, 2016)

Abstract: A comparative analysis of drugs law and practice, including death penalty law and practice, in Indonesia, Singapore and Vietnam.

63. Lourtau, Delphine and Sandra Babcock, *Pathways to Abolition of the Death Penalty* (Death Penalty Worldwide, International Human Rights Clinic, Cornell Law School, June 2016) <<http://www.deathpenaltyworldwide.org/dpw-publications.cfm>>

Source: Cornell Center on the Death Penalty Worldwide

Abstract: In a world of sharply contrasting attitudes toward the death penalty, this publication presents a comparative study of the circumstances and strategies that led to abolition in fourteen jurisdictions across a range of geographical regions, cultural traditions, and legal systems. This report considers abolition cases from every continent: five in Africa (Benin, Burundi, Republic of Congo, Côte d'Ivoire, Madagascar), two each from North and South America (Canada, the US state of Maryland, Venezuela, Suriname), two in Europe (Germany, Latvia), two from the Asia-Pacific region (Nepal, Fiji) and one in the Middle East (Djibouti). While we focused primarily on countries that abolished within the last five years, we also covered a range of historical periods. Our study also highlights the many different ways in which abolition has been achieved. In the countries reviewed, abolition resulted from legislative amendment, constitutional reform, executive decree, and ratification of international treaties. In some cases abolition was brought about only months after the country's last execution; in others, decades later. While these fourteen case studies represent only a fraction of countries that have legally abolished the death penalty, their diversity allows us to gain insight into the common features of abolition debates. Opposition to capital punishment is not regionally or culturally specific. While every state's relationship with the death penalty reflects its own particular history and circumstances, examples of countries that have repealed or continue to retain capital punishment can be found in all of the world's continents, legal systems, traditions and religions. National debates on the merits and flaws of capital punishment often revolve around similar issues:

the question of deterrence, the risk of executing the innocent, and the need to conform to international human rights standards. Abolition become possible when the terms of the discussion are transformed by new developments—whether a high-profile case of innocence, a shift in government policy, or a transition to new leadership—and political leaders use those opportunities to move abolition forward.

64. Miethe, Terance D, Hong Lu and Gini R Deibert, 'Cross-National Variability in Capital Punishment: Exploring the Sociopolitical Sources of its Differential Legal Status' (2005) 15(2) *International Criminal Justice Review* 115

Source: Hein Online

Abstract: Guided by existing macrolevel theories on punishment and society, the present study explores the independent and conjunctive effects of measures of sociopolitical conditions on the legal retention of capital punishment in 185 nations in the 21st century. Significant correlations are found between a nation's retention of legal executions for ordinary crimes and its level of economic development, primary religious orientation, citizens' voice in governance, political stability, and recent history of extrajudicial executions. Subsequent multivariate analyses through qualitative comparative methods reveal substantial context-specific effects and wide variability in legal retention even within countries with similar sociopolitical structures. These results are then discussed in terms of their theoretical implications for future cross-national research on punishment and society.

65. Novak, Andrew, 'The Future of the Mandatory Death Penalty in Malaysia and Singapore: "Asian Values" and Abolition in Comparative Perspective, with Implications for Indonesia' (2014) 1(1) *Indonesian Journal of International and Comparative Law* 303

Source: Legal Trac

Abstract: Although Malaysia and Singapore have been stark holdouts to the Commonwealth-wide trend away from the mandatory death penalty toward discretionary capital sentencing, recent legislative reforms in Singapore and a softening of public opinion in Malaysia have brought these countries closer to conformity with the emerging consensus that not all murders or drug trafficking offenses are equally heinous and deserving of death. This shift is all the more remarkable because both countries have strong state-centered constitutional systems with powerful executives and weak fundamental rights protections, justified by communitarian values and wary of outsiders, especially transnational drug and organized crime syndicates. The move away from mandatory capital punishment in Malaysia and Singapore will sharply reduce the size of death row and the number of executions, which will in turn contribute to intraregional pressure to abolish the death penalty as Southeast Asian nations, including

Indonesia, are politically sensitive to the treatment of their nationals imprisoned or on death row in foreign countries.

66. Novak, Andrew, 'The Holdouts: The Survival of the Mandatory Death Penalty in Malaysia and Singapore' in Andrew Novak, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia and the Caribbean* (Ashgate, 2014) 73-97

Source: The University of Melbourne Catalogue

Abstract: For death penalty abolition, countries in East and Southeast Asia “are as culturally distinct and economically autonomous from Western European influence as any group of moderately industrialized nations can be.” 173 Due to the unique structure of the Singaporean and Malaysian constitutional orders— strong executive branches, weak fundamental rights protections, and an isolation from international human rights treaties— the mandatory death penalty continues to survive in both countries and likely will in some form for the foreseeable future. Justified by cultural exceptionalism and “Asian values,” courts in Malaysia and Singapore have resisted the pull of Commonwealth death penalty jurisprudence, emphasizing their own distinctiveness over possible similarities with other constitutional regimes. This chapter contrasts this exceptionalism with the very different path taken by Hong Kong Special Administrative Region, despite demographic and economic similarities to Singapore in particular, which justifies its abolition of the death penalty on the basis of its commitment to democratic ideals. But even Malaysia and Singapore are not immune from the global consensus that the death penalty should be reserved for the most serious crimes based on judicial consideration of the circumstances of the crime and the background of the offender. Only two years after the Singapore Court of Appeal’s decision in *Yong Vui Kong*, the Parliament of Singapore passed a major reform of criminal laws restricting the mandatory death penalty to crimes of aggravated murder and the most serious drug trafficking offenses. Even Malaysia has seen something of a thaw, as public support for the mandatory death penalty is weak and retention of the death penalty is now under legislative and executive review. In the coming years, the two countries may well align with the rest of the Commonwealth in restricting the death penalty to the rarest cases and in developing a framework for individualized sentencing discretion in capital cases. The abolition of the mandatory death penalty faces even longer odds in Brunei Darussalam as it is legally and politically immunized from constitutional challenge, though unlike Malaysia and Singapore, Brunei has not carried out an execution since independence.

67. Pascoe, Daniel and Michelle Miao, 'Victim-Perpetrator Reconciliation Agreements in Murder Cases: What Can Islamic-Majority Jurisdictions and the PRC Learn from Each Other?' (forthcoming)

Source: Pip's library

Abstract: As states that use the death penalty liberally in a world that increasingly favours abolition, the Islamic-majority jurisdictions that are strict exponents of Sharia Law and the People's Republic of China share a crucial commonality: their frequent use of victim-perpetrator reconciliation agreements to remove convicted murderers from the threat of execution. In both cases, rather than a murder convict's laws chance at escaping execution being recourse to executive clemency, victim-perpetrator reconciliation agreements fulfil much the same purpose, together with providing means of compensating victims for economic loss, and enabling the state concerned to reduce execution numbers without formally limiting the death penalty's scope in law. Utilising the functionalist approach of comparative law methodology, this article compares the fourteen death penalty retentionist nations that have most strictly incorporated Sharia criminal law principles into their positive law with the People's Republic of China, as to the functions underpinning victim-perpetrator reconciliation agreements in death penalty cases.

68. Shanhe Jiang et al, 'Formal and Informal Control Views in China, Japan and the U.S.' (2014) 42(1) *Journal of Criminal Justice* 36

Source: Discovery

Abstract: This study compared and contrasted the views of formal and informal crime control among college students from China, Japan, and the U.S., and examined the correlates behind the views. Using the same questionnaire, this study collected data from 1,275 completed surveys in the three nations. The study revealed that both Chinese and Japanese respondents evaluated formal and informal control and their combination in crime control as more important than American counterparts did. The variable trust in police was a predictor of attitudes toward formal control and the mix of formal and informal control in all the three nations. Demographics in the U.S. were more important factors than in China and Japan in predicting the respondents' ranking of the importance of formal control and informal control and their combination in crime control. This is the first empirically comparative study of the perceived importance of formal and informal mechanisms in crime prevention and control in China, Japan and the U.S. The study found both similarities and differences in the perceived importance and reasons behind them. More research is needed in the future.

69. Wang Yunhai, 'The Death Penalty and Society in East Asia: How to Understand and Compare the Death Penalty in China, Japan and South Korea' (2012) 40 *Hitotsubashi Journal of Law and Politics* 1

Source: Legal Trac

Abstract: Why are there so many differences among China, Japan and South Korea in the death penalty policy and practice even though they are the same "East Asia"? Until recently, the main method used to explain those differences is the "social system" approach. According to this approach, a social phenomenon can and should be explained by the society's system: Socialism or Capitalism? In my view, this approach affords only an external perspective of a society: we are limited to comparing only two societies which have different systems: Socialist China and Capitalist Japan. We cannot compare those societies which have the same social system, for example, Capitalist Japan and Capitalist South Korea. Thus we need a different method, one that allows us to explore internal social mechanism, and at the same time to compare several societies. Here I propose a "social character" approach and use it to understand and compare the death penalty and society in China, Japan and South Korea. The main ideas behind this approach are as follows: Every society has a fundamental core (or the strongest social power) that might be called its "social character". This core of a society may be defined as encompassing three elements: state power, law and culture (here "culture" means an informal spiritual force that exists in private civilian society as moral standards or social customs, etc.). Death penalty policy and practice are products not only of a society's external social system, but moreover of its internal social character. The social character arguably plays a more determinative role than the social system; indeed, the operation of a social system itself is in part determined by factors of social character.

ASIA – COUNTRIES

CHINA

70. Bakken, Børge, 'The Norms of Death: On Attitudes to Capital Punishment in China' in Lill Scherdin, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 194–210

Source: The University of Melbourne Catalogue

Abstract: Bakken challenges arguments about the death penalty being 'deeply ingrained' in Chinese history. There are 'multiple normative tendencies rather than one ingrained cultural pattern', and whichever tendency has greater weight at a given time 'varies according to the political system'. Death penalty practice is 'political and malleable'. Citing opinion polls, Bakken observes that parts of the elite favour the death penalty more than ordinary people, peasants or the urban poor. There is a growing awareness that innocent people have been executed, and poor people are more often executed than the rich or governing elite. Bakken finds that Chinese leaders aim to keep the death penalty in place, 'albeit in a moderate and centrally controlled form, evading accelerated moral panics or securitization movements towards ever more executions, such as was seen from 1997 to 2001'. There is no 'leadership from the front' on abolition.

71. Bakken, Børge, 'China, a Punitive Society?' (2011) 6(1) *Asian Journal of Criminology* 33

Source: Discovery

Abstract: The allegation that punishment is a core element of culture does not seem to explain the rapid changes in attitudes towards the death penalty seen in most modern societies during the last few decades. Attitudes of harshness and death in punishment are much more easily changed than proponents of the "cultural" explanation think. The misunderstandings about China (often held by Chinese themselves) are that a long tradition of harsh punishment has made such values into an unavoidable cultural norm. China, however, is not exceptional in harbouring penal populist norms as such, and Chinese history was much more lenient and merciful than assumed in these simplified arguments about "Chinese cultural harshness". Even if China today is exceptional in the uses of harsh punishments and executes more people than the rest of the world combined, there is no need to see this fact in terms of Chinese culture. China can use its own traditions to end this situation effectively in a fairly short period of time if there is the political will to do so. Given such political will, public opinion will follow suit.

72. Bin Liang and Hong Lu (eds), *The Death Penalty in China: Policy, Practice and Reform* (Columbia University Press, 2016)

Source: The University of Melbourne Catalogue

Abstract: The goal of this collection is to comprehensively and systematically examine the current conditions and progress of the existing Chinese death penalty system and to analyse critical challenges faced by that system.

73. Brook, Timothy, 'Capital Punishment and State Sovereignty in China' (2011) 11(2) *Sungkyun Journal of East Asian Studies* 107

Source: Bibliography of Asian Studies

Abstract: This essay considers the argument that Chinese legal exceptionalism with regard to its use of the death penalty derives from China's Marxist/Maoist rather than its imperial history. Starting from the premise that capital punishment is the purest expression of state sovereignty under any political constitution, the essay inquires first into the general relationship between the state and punishment, then into that relationship as it is represented in the legal rhetoric of imperial law during Ming dynasty. Reflections on some of the dynamics of debates over appropriate penalties a century ago as well as today lead to the conclusion that, despite the extensive reliance on the death penalty in earlier times, China's legal exceptionalism resides primarily in its experience with Marxist jurisprudence rather than with its own indigenous traditions.

74. Chenjie Ma, 'China's Death Penalty Practice Undermines the Integrity of the Death Penalty as a Sentencing Option' (2014) 15(2) *Australian Journal of Asian Law* 17

Source: AGIS Plus Text

Abstract: Despite a global trend toward abolition of the death penalty, China today is still believed to carry out a large number of executions every year. The retention of death penalty in China is grounded on 'national circumstances' that 'require' the death penalty to achieve crime control, incapacitation and soothe public anger. By examining a number of high-profile mismanagement of justice cases, this paper tests the current death penalty practice against the roles the death penalty is said to perform in China. It evaluates a range of legislative and policy changes that attempt to address shortcomings in the current practice. It finds that a range of problems in death penalty practice in China (including problems with evidence, judicial independence and lack of legal representation) undermine the death penalty as a sentencing option and prevent it achieving at least two of its three main aims. Recent changes in policy and in law do address these problems to some extent but because a range of fundamental flaws are left unaddressed, the death penalty system remains problematic.

75. Hu Weilie and Wang Jianping, 'Prosecutorial Reform in 2007' in Lin Li (ed), *The China Legal Development Yearbook* (Brill, 2009) vol 3

Source: Bibliography of Asian Studies

Abstract: Prosecutorial reform was implemented in 2007 in accordance with the Chinese Communist Party (CCP) Central Committee requirements for reforming judicial institutions and the three-year plan of the Supreme People's Procuratorate on prosecutorial reform. Members of the sixth plenum of the 16th CCP Central Committee in 2006 vowed to strengthen the construction of a harmonious socialist society. Forming a harmonious society became the primary goal of prosecutorial reform in 2007. The criminal policy reform combined punishment and leniency, pushed forward the handling of death penalty and juvenile delinquent cases, and quickly dealt with minor criminal cases. Internal supervision of procuratorial organizations restricted the investigation of crimes committed by government officials. The 2007 reform also improved internal supervision of the relationship between superior and subordinate.

76. Ji Li, 'The Leviathan's Rule by Law' (2015) 12(4) *Journal of Empirical Legal Studies* 815

Source: Index to Foreign Legal Periodicals

Abstract: How and how well do authoritarian states rule by law? Extant literature does not fully answer these questions. By analyzing a unique set of time series data and archives in a limiting case, this paper investigates a variety of legal measures implemented by the Chinese government in response to a critical threat -- pipeline vandalization. It finds the Leviathan has followed rudimentary legal procedures in tackling the threat. And over time it tried the death penalty, formal judicial guidance, and the revision and upgrade of substantive rules. The findings of this study cast doubt on the alleged deterrent effect of capital punishment. Moreover, it finds the supreme judicial bodies to be ready servants of the state's core interests, yet their service adds marginal value as legal dynamics at the local level are shaped mainly by the power distribution of relevant local parties. Furthermore, the statutory upgrade, does not benefit, and may even harm, pipeline safety. As the statute codified the status quo of the bargaining between the oil SOEs and the local governments, statutory allocation of primary protective responsibilities to the former might have relieved the latter from active participation in pipeline protection that is essential to preventing oil thefts. Findings from this research contribute to the literatures on Chinese law and politics, capital punishment, and the rule by law in authoritarian regimes.

77. Ji Li, 'Does Law Matter in China? An Empirical Study of a Limiting Case' (2013) 46(1) *George Washington International Law Review* 119

Source: Asian Law Online

Abstract: Does law matter in China? According to previous studies, a Chinese law matters in the sense of having measurable effects if it serves vital state interests, is enforced by powerful agencies, and is clear and specific in its statutory language. From all the statutes enacted or amended since 1995, I find one that satisfies all these conditions—the Law on the Protection of Oil and Natural Gas Pipelines. Empirical analysis of the statute's implementation, however, produces puzzling results. The statute serves core state interests. It is enforced by arguably the most powerful government agencies in China, and the statutory language is clear and specific. Yet, the enforcement of the law shows no impact on the safety of the oil pipelines. Solving this empirical puzzle requires a new theoretical perspective. Because of the weak judiciary and the fragmented state structure in China, legislation and subsequent implementation of a formal rule turns on the power distribution of the implicated parties. A statute therefore may be a mere codification of the status quo that reflects the existing power distribution: hence, the lack of measurable effects of the formal legal change. The findings of this study contribute to the literatures on lawmaking and law enforcement in China, and criminal law and punishment, especially the use of capital punishment.

78. Jiang Na, 'Problems and Prospects: China's Response to Wrongful Convictions' (2015) 43(1) *International Journal of Law, Crime and Justice* 109

Source: Discovery

Abstract: This article describes the difficulties involved in the implementation criminal justice reforms. These difficulties are caused by deep flaws that affect how China responds to wrongful convictions and that dampen the prospect for their prevention or remedy. Through new case studies, it critically examines the difficulties associated with the implementation of mechanisms for preventing or remedying such convictions, both before and after the Criminal Procedure Law of the PRC (2012 CPL). It further proceeds to further analyse deep flaws in China's justice system, indicating that the prime reasons for the constant failure of justice reforms is due more to institutional practices than to attitudinal or cultural practices in China. It finally concludes by suggesting that, in order to mend the major flaws and fill the implementation gap between law and practice, authorities should learn from China's past and from relevant overseas experience to better prevent wrongful convictions.

79. Jiang Na, 'Death Penalty Reforms in China: Lessons from Wrongful Convictions' (2013) 5(2) *Tsinghua China Law Review* 126

Source: Hein Online

Abstract: This paper examines the package of legislative and judicial reforms in China that followed the discovery of several high-profile wrongful convictions in death penalty cases since 2005. The goal of such death penalty reforms was to protect human rights of the accused and prevent future wrongful convictions more generally. Since 2005, there have been two waves of such reforms. In order to understand the full effects of these two waves of reform, it is necessary to consider their effect on the entire human rights process. This paper will show that, if the reforms are considered in this light, it is clear that their intent has been frustrated by legal loopholes in the death penalty system and that the root causes of wrongful convictions involving capital cases have not yet been overcome in China. The legal loopholes allow death sentences for non-violent crimes and traditional police and judicial practices to continue and will lead to future wrongful convictions in capital cases. Although the 2011 Amendment to Criminal Law of the PRC (Amendment VIII) greatly reduces the number of crimes punishable by death in law and the 2012 Criminal Procedure Law of the PRC (CPL) brings more transparency and accountability to criminal justice institutions, further reforms will be suggested. First, China should completely abolish the death penalty for any non-violent crimes in law and immediately suspend all death sentences and executions until a water-proof net to prevent wrongful convictions can be established in practice. Second, an increased role of the defence counsel should be emphasized in any proceedings of death penalty cases, and police interrogations should be fully recorded in order to play back an entire recording of interrogations at trial. Finally, the use of state secrets as evidence against those facing the death penalty should be curtailed.

80. Jiang Su, 'Kill Fewer and Kill Cautiously: A Critical Review of Death Penalty Reforms in China' (2014) 2 *Peking University Law Journal* 277

Source: Index to Foreign Legal Periodicals

Abstract: China's death penalty scenario is exceptional not only in terms of the global trend but in terms of its sheer number of executions. Since the mid-2000s, death penalty has gained momentum in China under domestic and international pressure. A series of procedural and substantive reforms have been implemented, which changed the whole picture of the death penalty regime in China. On the whole, it can be concluded that China is moving from "kill many" to "kill fewer and kill cautiously". However, the abolition of death penalty in China is unlikely to occur in the near future since the regime is highly restricted by political structure, the lack of human rights discourse and public opinion.

81. Lewis, M K, 'Leniency and Severity in China's Death Penalty Debate' (2011) 24 *Columbia Journal of Asian Law* 303

Source: Index to Foreign Legal Periodicals

Abstract: China has implemented an initial wave of death penalty reforms that returned final review power of all capital cases to the Supreme People's Court and reportedly significantly curbed executions. After reviewing recent legal developments concerning capital cases, this Article explores how the initial push to reduce use of the death penalty has given way to a more complex and nuanced debate over what factors should determine when the death penalty is appropriate. At this juncture in the reform trajectory, the dilemma of when to be lenient and when to be severe is particularly acute as public opinion chafes against a rapid decline in executions, especially when those treated leniently are affluent and/or politically well-connected.

82. Lifeng Li, 'Sentence of Life without Parole: Proposal for the Revision of Chinese Criminal Law in the Context of the Elimination of Death Penalty' (2010) 5(3) *Frontiers of Law in China* 424

Source: Index to Foreign Legal Periodicals

Abstract: Death penalty has no alternative. Life without parole (LWOP) has been put forward to nullify the death penalty in China. Practically speaking, LWOP can satisfy the emotional demand of the public so as to nullify the death penalty. LWOP has strong rationales from both retributive and preventive perspectives. Actually, the relation between death penalty and LWOP is just a question, which should be at the top-level punishment. Compared with death penalty, LWOP has other advantages such as lower cost burden and more practicability.

83. Lijuan, Xing, 'The Rhyme of History: A Transition of Legal Culture in China Crowned by the Criminal Procedure Law 2012' (2015) 23(1) *Asia Pacific Law Review* 31

Source: *Asia-Pacific Law Review*

Abstract: This article explains how recent changes in China's legal culture are being influenced by the two philosophies of good governance currently emphasised by the country's leadership; that is, the rule of law and social harmony. Focusing specifically on criminal procedure, the article uncovers the essence of China's current legal culture – that is, the juxtaposition of the rule of law and social harmony, and analogises it with the alloy of Confucianism and Legalism in dynastic China. This article posits that the effort to amend the Criminal Procedure Law ('CPL') (2012) completes the transition of China's legal culture because it accomplishes a substantive mixture of the rule of law

and social harmony. The article then scrutinises the CPL amendments by classifying them into two groups in the light of their main functions – that is, to consolidate the rule of law and to legalise social harmony – and discusses how the rule of law and social harmony are further promoted in the criminal justice system through the first-year implementation of the CPL. A preliminary examination of the questions arising from the juxtaposition of the rule of law and social harmony under the CPL – which touches upon the basis of the criminal justice system and even the entire legal regime – precedes the conclusion of the article.

84. Liu Renwen and Zhou Zhenjie, 'Combining Punishment with Leniency, Implementing Temporary Measures and Radical Measures: An Exploration of Criminal 'Rule of Law' in Lin Li (ed), *The China Legal Development Yearbook* (Brill, 2009) vol 2

Source: Bibliography of Asian Studies

Abstract: This report discusses several important events in the area of criminal legislation in 2006, in order to approximately describe the basic conditions of criminal "rule of law" in that year.

85. Li Ying Li, 'The Death Penalty for Economic Crimes in Reformed China' in Xiaobing Li and Qiang Fang (eds), *Modern Chinese Legal Reform: New Perspectives* (University Press of Kentucky, 2013) 171-212

Source: The University of Melbourne catalogue

Abstract: This chapter first discusses the history of the death penalty in China and then explores capital punishment for economic crimes in the post-1978 reform period. Debates regarding the death penalty and the role of public opinion are also examined. Finally, it focuses on the recent case of Zheng Xiaoyu, as well as the latest developments on assigning the death penalty for economic crimes.

86. Miao, Michelle, 'Two Years Between Life and Death: A Critical Analysis of the Suspended Death Penalty in China' (2016) 45 *International Journal of Law, Crime, and Justice* 26

Source: Discovery

Abstract: The suspended death sentence is a unique form of penal punishment in the Chinese criminal regime. In the context of the recent death penalty reform, an increasing resort to the suspended death penalty has been acclaimed to facilitate a substantial reduction in the use of the death sentences and executions. While most academic attention has been paid to its utility as an alternative to the death penalty, little is devoted to examining its penological grounds and practical use. This article seeks to fill this gap

by describing the unduly complicated penal landscapes and discussing problematic consequences concerning the use of the suspended death penalty in contemporary China. It investigates its ambiguous nature, fuzzy boundaries and problematic implementation processes. It is the hope that the article will inspire further empirical exploration on this topic of great theoretical and policy import.

87. Miao, Michelle, 'Capital Punishment in China: A Populist Instrument of Social Governance' (2013) 17(2) *Theoretical Criminology* 233

Source: Discovery

Abstract: Contrary to the assumption that authoritarian authorities are insensitive to popular demands for justice, the Chinese penal regime has been highly attentive and responsive to public sentiments since its early days. As an instrument for the authorities to govern the country in the name of the people, capital punishment functioned as a tool for political struggles in Maoist China and later served as a tool to fight crimes in Deng's reform era. Nowadays, the demands of the masses for revenge, justice and equality have been translated into a fervent passion for capital punishment for certain offences and offenders. By reaching out to satisfy these public demands and sentiments, the party-state hopes to enhance its political legitimacy. In this sense, the death penalty serves as a populist mechanism to strengthen the resilience of the authoritarian party-state by venting public anxiety and resentment towards social problems created in the processes of China's rapid modernization and social fragmentation.

88. Miao, Michelle, 'The Politics of China's Death Penalty Reform in the Context of Global Abolitionism' (2013) 53(3) *British Journal of Criminology* 500

Source: Hein Online

Abstract: This paper explores the influences of worldwide anti-death penalty campaigns in the local institutional environment in China and its implications for China's capital punishment reforms in recent years. It found a 'concentric pattern' of the dissemination of human rights values and anti-death penalty activism may explain the varying attitudes towards human rights and international activism among different social groups across the Chinese society. Divergent interests of and perceptions held by national-level and lower-level legal elites are likely to be one of the causes for China to adopt an incremental reformist stance. Further, this study shows that the Chinese legal elites were poorly informed of the current status of public opinion on capital punishment. A populist-sentiment-driven administration of capital punishment is closely tied to reliance on capital punishment.

89. Pei, Wei and Michiel van der Wolf, 'A Review of the New Provisions for Sanctioning Mentally Disordered Offenders in China, in a Broader Historical Context' (2016) 49 *International Journal of Law and Psychiatry* 31

Source: Discovery

Abstract: Reforms of the criminal justice system in China in recent years have included the 2012 Code of Criminal Procedure (CCP), which resulted in new disposals for mentally disordered offenders. From a Western perspective, changes in Chinese criminal law are sometimes clichéd as toothless window dressing, but they may represent a genuine step forward in safeguarding human rights. Taking a historical perspective, this paper reveals that in the East, as much as in the West, there is a 'moral tradition' of not punishing mentally disordered offenders who are not considered responsible for their acts. There are clear differences in disposal for those acquitted having been found 'not guilty by reason of insanity'. Whereas Western jurisdictions have offered (criminal) courts the opportunity for commitment in (forensic) mental hospitals from the early 19th Century, in China, disposal has remained, until the recent changes, the responsibility of the administration (mainly the police) or the family of the offender. A few high profile cases brought to light the inadequacy of these arrangements and the general disregard of obvious mental health issues when sentencing offenders. There was lack of clarity regarding who would take responsibility for treatment and issues of future public protection arising from a mental disorder. The 2012 CCP introduces the power of mental health commitment by the judiciary for those found non-responsible for an offense because of a mental disorder. Similar to provisions in Western jurisdictions there remain human rights concerns regarding aspects of 2012 CCP and the role of 'preventive detention' for mentally disordered offenders on indeterminate secure mental health detention. Nevertheless, the shift to judicial decision making in such cases and the possibility of mental health commitment are welcome steps in improving the human rights of this vulnerable population.

90. Trevaskes, Susan, 'Lenient Death Sentencing and the 'Cash for Clemency' Debate' (2015) 73 *China Journal* 38

Source: Bibliography of Asian Studies

Abstract: This article examines how financial compensation has been drawn into death sentencing practice and debate in China. The Supreme People's Court is nowadays encouraging judges to mediate between defendants and the families of homicide victims to secure a financial agreement between the two parties that will allow courts to sentence defendants to a two-year suspended death sentence which is commuted to a life sentence after the probation period. The SPC has promoted a series of standard cases that exemplify this practice. The controversial practice, dubbed cash for clemency, complicates the death penalty debate: critics say that it undermines the law and encourages bargaining

for a life on the part of those who can afford to do so. Others, however, are sympathetic to any practice that can reduce execution rates. This controversy is part of a larger debate on state killing in the world's largest killing state.

91. Trevaskes, Susan, 'China's Death Penalty: The Supreme People's Court, the Suspended Death Sentence and the Politics of Penal Reform' (2013) 53(3) *British Journal of Criminology* 482

Source: Hein Online

Abstract: This paper examines the issue of judicial discretion and the role of the Supreme People's Court (SPC) in death penalty reform since 2007. The SPC has been encouraging judges to give 'suspended' death sentences rather than 'immediate execution' for some homicide cases. Lower court judges are encouraged to use their discretion to recognize mitigating circumstances that would allow them to sentence offenders to a suspended death sentence. The SPC has used 'guidance' instruments which include 'directives' and other SPC interpretations and a new 'case guidance' system which provides case exemplars to follow. We explore these guidance instruments as a way of deepening our understanding of how law, politics and judicial practices are interwoven to achieve reform goals.

92. Trevaskes, Susan, 'The Shifting Sands of Punishment in China in the Era of "Harmonious Society"' (2010) 32(3) *Law and Policy* 332

Source: HeinOnline

Abstract: This article about the politics of punishment in China today follows some of the political machinations involved in the development of a new policy called "Balancing Leniency and Severity." It treats this new policy as an exemplar of how politics works in the Hu Jintao era to change the way crimes are addressed in judicial decision making. This paper underscores the important ways in which political ideology informs criminal justice policy and practice in China. It examines a number of stages of development within the last decade during which Balancing Leniency and Severity has emerged as a foundational criminal justice policy.

93. Tully, Stephen, 'Facing the Death Penalty Under a China-Australia Extradition Treaty' (2016) 22 *Law Society Journal* 90

Source: AGIS Plus Text

Abstract: Australia may soon be able to extradite individuals to China if China undertakes that the death penalty will not be imposed or, if imposed, will not be carried out. Australian law does not require that an undertaking not to impose the death penalty be legally enforceable, either domestically or internationally. International jurisprudence suggests that the weight to be given to a diplomatic

assurance depends on the circumstances, including the human rights situation within a country. In these circumstances Australia could be internationally responsible should a human rights violation occur.

94. Wang Minyuan, 'On the 'Criterion' of Proof in Capital Cases and the Revision of the Criminal Procedure Law' (2009) 30(2) *Social Sciences in China* 138

Source: Bibliography of Asian Studies

Abstract: To guarantee quality in capital cases, the first essential is to ensure substantive justice, which means that there must be no problems with regard to the facts and evidence in the case. In ensuring that there is no qualitative problem with either the facts or the evidence in capital cases, the first consideration is that there should be no chance of an irretrievable error. At the same time, it is necessary to forestall any unforgivable miscarriages of justice. To do this, it is necessary to meet the "criterion of proof" for imposing a death sentence, that is, the requirements for proof. As the requirements for proof can only be guaranteed by adequate procedures, China's Criminal Procedure Law needs to improve its handling of procedures relating to capital cases.

95. Weatherley, Robert and Helen Pittam, 'Money for Life: The Legal Debate in China about Criminal Reconciliation in Death Penalty Cases' (2015) 39(2) *Asian Perspective* 277

Source: Bibliography of Asian Studies

Abstract: In this article we examine the debate among legal experts in China over the recent practice of death penalty criminal reconciliation (DPCR), which is a program that seeks to reconcile an offender convicted of a capital offense with the victim by requiring the offender to meet with, apologize, and pay economic compensation to the victim in exchange for a death sentence commuted to life in prison. Proponents of DPCR believe it provides important financial and emotional benefits to victims, helps rehabilitate offenders, and alleviates the wider social tensions generated by the offense committed. Opponents argue that DPCR violates the basic principle of equality before the law because the decisions reached using this process are sometimes influenced by public opinion and often biased toward those who can afford to pay compensation. These critics suggest that DPCR should be replaced with a comprehensive system of state compensation for victims of capital offenses.

96. Yang, Jie, 'The Development of China's Death Penalty Representation Guidelines: A Learning Model Based on the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases' (2013) 42(2) *Hofstra Law Review* 589

Source: Hein Online

Abstract: In 2010, China's legal advocates, including law professors and defence attorneys, worked together to create a code for lawyers representing defendants in death penalty cases. This code was the first of its kind in China, and was largely based on the American Bar Association Guidelines for the Appointment and Performance of Defence Counsel in death Penalty Cases. This Article discusses the efforts made in China to create its own defence representation guidelines with the assistance of the ABA Death Penalty Representation Project and the ABA Rule of Law Initiative.

97. Yu Zhigang, 'Abolition or Retention: Rethinking the Death Penalty in China' (2009) 30(2) *Social Sciences in China* 178

Source: Discovery

Abstract: The idea of abolishing the death penalty is increasingly accepted as a goal by scholars in the field of criminal law, who have put aside all consideration of national realities and the crime situation. Among the factors that have brought about this theoretical consensus is a very important one: statistical data on those countries that have abolished capital punishment, together with the assumption these figures promote: the fiction that "abolition of the death penalty is a world trend". Looking objectively at the number of countries that have abolished the death penalty, reflecting upon the unscientific nature of the statistics that scholars have swallowed whole, and exploring the current international situation are all valuable activities that may significantly assist our thinking on this issue in the context of Chinese realities and help us avoid the pitfalls and blandishments of figures in academic research. China's stage of historical development and overall situation mean that this is not the time for the immediate abolition of the death penalty.

98. Zhang Guifeng, 'Multiple Paradoxes on 'Abolishing the Death Penalty for Corrupt Officials'' (2009) 41(4) *Chinese Sociology and Anthropology* 45

Source: Bibliography of Asian Studies

Abstract: Being opposed to scholars' proposal to abolish the death penalty for corrupt government officials, Zhang Guifeng argues that, before the effective settlement of three paradoxes existing in China's ineffective struggle against corruption, the death penalty remains necessary.

99. Zhang Ning, 'The Debate on the Abolition of Capital Punishment as Applied to Economic Crimes in China' (2009) 41(4) *Chinese Sociology and Anthropology* 3

Source: Bibliography of Asian Studies

Abstract: The debate over application of the death penalty for economic crimes is complicated by political issues surrounding its use against corrupt officials.

100. Zhang Ning, 'The Political Origins of Death Penalty Exceptionalism: Mao Zedong and the Practice of Capital Punishment in Contemporary China' (2008) 10(2) *Punishment and Society* 117

Source: Reference in other article/journal

Abstract: This article focuses on the role played by Mao Zedong in the making of the Chinese communist legal system in general and in the Chinese practice of the death penalty under Mao in particular. It attempts to study this link through an analysis of an event which represented a landmark, namely the campaign of the regression against counterrevolutionaries launched in 1950—2, and through an examination of three specific cases, which enable us to observe the concrete characteristics of these practices, whose effects continue to be felt in today's China.

101. Zhang Xinxiang, 'A Study on the Non-Statutory Factors in Death Penalty Trials in China' (2014) 2 *Peking University Law Journal* 317

Source: Index to Foreign Legal Periodicals

Abstract: Limited by the legal and social structure of a death penalty case, the co-existence of two models of judgments (sociological model and jurisprudential model) is inevitable during the trial. Non-statutory factors, as **Sources** of law, reflect both the value judgment of a case's social structure and the logical inference of a case's legal structure in death penalty trials. Because of that, non-statutory factors should be brought into criminal adjudication norms. However, based on the spirit of rule of law, in modern criminal trials the non-statutory factors should not be considered as an independent criminal adjudication norm but only attachments to statutory law. This is the only proper way to embody the virtues contributed by them during the trials. Meanwhile, there should be some institutional regulations when bringing non-statutory factors into criminal adjudication norms, so that on one hand we could strengthen the judicial control on death penalty cases, and on the other hand we could make death penalty trials more rational in judgment, more standard in procedure, and safer for our society.

102. Zhao Bingzhi, 'The Ideological Transformation of Death Penalty in China' (2015) 3 *China Law/Zhong Guo Fa Lü* 104

Source: Index to Foreign Legal Periodicals

Abstract: Although the concept of the death penalty can be influenced by politics, economy, culture and other factors, it has a strong historical character. The concept of the death penalty will therefore not change with the change of national institutions and judicial institutions. The concept of the death penalty is a product of a long-term accumulation of ethnic cultural traditions. The ideological transformation of the death penalty is thus the basis of reforming the death penalty system in China.

103. Zhao Bingzhi and Wan Yunfeng, 'On Limiting and Abolishing the Death Penalty for Economic Crimes in China' (2009) 41(4) *Chinese Sociology and Anthropology* 14

Source: Bibliography of Asian Studies

Abstract: Zhao Bingzhi and Wan Yunfeng argue that a practical and feasible approach to limiting and abolishing capital punishment in China is to begin by eliminating nonviolent crimes (such as economic crimes) as capital offences. Economic crime is a useful starting point given that it does not fall within the purview of criminal law and is readily distinguishable from violent crimes that jeopardize state security, endanger public security, and damage individuals.

INDIA

104. Bakra, Bikramjeet, 'A Knotty Tale: Understanding the Death Penalty in India' in Lill Scherdin, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 213-28

Abstract: Bakra observes that while India has moral panics and securitization movements around the death penalty, an absence of executions in recent years does not seem to have been met with 'any unanimous or long lasting outcry' from citizens or political leaders. No political party is strongly committed to abolition and, although many human rights/civil liberties groups oppose it, 'the opposition 'in principle' has rarely transformed itself into active mobilization or campaigns against the death penalty'.

105. Lambert, Eric G et al, 'Views on the Death Penalty Among College Students in India' (2008) 10(2) *Punishment and Society* 207

Source: Reference in other articles

Abstract: While research abounds on attitudes toward capital punishment in the United States, such work has been lacking in non-western nations — particularly in India, the world's largest democracy. Data recently collected have revealed variance in levels of support for the death penalty among Indian college students: 44 percent express some degree of opposition, 13 percent are uncertain, and 43 percent express some degree of support. Reasons for support or opposition also exhibited variance. According to a multivariate analysis, statistically significant reasons for support included retribution, instrumentalist goals, and incapacitation; while significant reasons for opposition included morality and the belief that deterrence could be achieved by imposing sentences of life without parole.

106. Novak, Andrew, 'Restricting the Death Penalty to the "Rarest of the Rare": The Origins of a Discretionary Death Penalty in India and Bangladesh' in Andrew Novak, *The Global Decline of the Mandatory Death Penalty: Constitutional Jurisprudence and Legislative Reform in Africa, Asia and the Caribbean* (Ashgate, 2014) 31-46

Source: The University of Melbourne catalogue

Abstract: India's constitutional regime bears many similarities to the United States, governed by principles of federalism under a written constitution that protects the rights of the accused and limits the state power of criminal punishment in highly abstract terms. During the 1970s, both countries experienced the first constitutional challenges to the death penalty as a result of progressive advances in constitutional jurisprudence that made such challenges possible for the first time. India followed *Furman v. Georgia* and its successors closely in developing its own "worst of the worst" framework for discerning when the death penalty was appropriate, modeled on the American regime. The creation of the "rarest of the rare" formula in *Bachan Singh v. State of Punjab* was partly a reaction by the Supreme Court of India to the state-level backlashes that occurred in the United States after the U.S. Supreme Court's attempt to strike down the death penalty in *Furman v. Georgia* in 1972. The Court "deemed it imprudent to attempt the judicial abolition of capital punishment, electing instead to curtail the circumstances in which death could be imposed." In this the Court was successful: executions have become astonishingly rare in modern India. As India's restrictionist jurisprudence settled, it in turn provided a model to its neighbors. The abolition of the mandatory death penalty in Bangladesh, an expression of the country's own "rarest of the rare" doctrine, widely cited Indian case law and rested on similar reasoning to the Indian Supreme Court's establishment of a discretionary death penalty regime twenty-five years earlier.

This occurred despite important constitutional differences between India's independence constitution and the more modern constitution of Bangladesh. This chapter will also briefly look at Sri Lanka, which has wrestled with its own death penalty challenges. This subregional sharing process is a microcosm of the Commonwealth-wide development of a body of persuasive transnational death penalty jurisprudence.

107. Surendranath, Anup et al, *Death Penalty India Report: Volume 1* (National Law University, Delhi Press, 2016) <<http://www.deathpenaltyindia.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-1.pdf>>

Source: National Law University Delhi, Centre on the Death Penalty

Abstract: The Death Penalty Research Project was an attempt at documenting the socio-economic profile of prisoners sentenced to death in India and also at understanding their interaction with various facets of the criminal justice system. The motivation in undertaking this Project was to contribute towards developing a body of knowledge that would enable us to have a comprehensive and in-depth understanding of the manner in which the death penalty is administered in India. While there exists excellent work on the analysis of judgments of the Supreme Court on the death penalty, there is unfortunately very little research on various other aspects of this extreme punishment. We were of the view that much wider research and its dissemination could significantly enrich the overall discussion on the death penalty and this Report is envisaged as a small step in that direction.

108. Surendranath, Anup et al, *Death Penalty India Report: Volume 2* (National Law University, Delhi Press, 2016) <<http://www.deathpenaltyindia.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-2.pdf>>

Source: National Law University Delhi, Centre on the Death Penalty

Abstract: In this volume we have mapped the experiences of prisoners sentenced to death with various aspects of the criminal justice system. As will be evident, this volume follows a very different approach compared to Volume 1. We have attempted to convey the experience of prisoners sentenced to death with different aspects of the criminal justice system through qualitative analysis. We felt it would do grave injustice to the voices we heard to reduce their experiences to just numbers. Through an analysis and representation of narratives from the prisoners, we have sought to throw light on the practices adopted by institutional actors in the administration of criminal justice. While much of this might be relevant for all prisoners, irrespective of whether they are sentenced to death, our aim here is to reflect on the processes that inform the imposition of the death penalty. Proceeding on the argument stated in the Introduction in Volume 1 that being under the sentence of death is a unique punishment, the purpose of the chapters in this volume is to understand the

extent to which the protections in the criminal justice system are adhered to while inflicting the harshest possible punishment. Even though the violations might be the same for other categories of prisoners as well, by virtue of the extraordinary nature of the death penalty, these infractions assume much larger significance. Therefore, the adherence to procedural and substantive safeguards within the criminal justice system should be the highest when the possible consequence is condemning an individual to live under the sentence of death. These safeguards exist to ensure that the legal process is a fair one and its importance cannot be overstated in the context of the death penalty.

INDONESIA

109. Gerry, Felicity et al, 'Is the Law an Ass When it Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims' (2016) *Asian Journal of International Law* 1

Source: *Asian Journal of International Law*

Abstract: Indonesia has enacted laws which provide mandatory protection for victims of human trafficking. It also has mandatory drug laws which, in some cases, lead to the death penalty. This legislative conflict together with investigative and prosecutorial failure risks the execution of human trafficked victims who are used as drug mules in organized crime. In countries where there is no statutory defence to criminal conduct, there is a need to approach criminal conduct in a way that protects victims. This includes mechanisms to ensure non-prosecution and non-punishment. The recent reprieve for Mary Jane Veloso, albeit temporary at the time of writing, is an opportunity for Indonesia to lead a new global approach to victim protection.

110. Harrison, Nadia, 'Extradition of the 'Bali Nine': Can and Should the Risk of Capital Punishment Facing Australians Be Relevant to Extradition Decisions?' (2006) 1(4) *International Journal of Punishment and Sentencing* 221

Source: AGIS Plus Text

Abstract: The power to request that a person be extradited from another country to face criminal charges in Australia lies with the Commonwealth Executive. It is a prerogative power. There are currently 12 Australians facing possible death sentences across Indonesia, Vietnam, China and Uganda. Among these are the alleged drug traffickers commonly known as the 'Bali Nine'. This paper will consider the legal viability - and not the political probability - of extraditing Australians in order to avert the death penalty, using the Bali Nine as a case study. Indonesian law will not be examined in detail and the evidence applicable to that case will not be scrutinized. Although the facts are specific, the aim is to canvass the legal points of contention which are likely to arise in relation to Australians in similar circumstances.

111. Lubis, Todung Mulya, 'Abolition of the Death Penalty: Indonesia at a Crossroads' in Lill Scherdin, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 251–69

Source: The University of Melbourne catalogue

Abstract: Indonesia has been extraordinarily active in recent years ratifying international rights instruments, creating new rights-related state bodies and agencies and new national legal instruments safeguarding human rights. Despite this fact, and despite its involvement in founding and serving on international human rights bodies, Indonesia still not only belongs to the dwindling group of retentionist states but also remains, generally speaking, a staunch advocate of the death penalty. While Indonesia is hailed in many parts of the world as a rising model for the international community in the area of human rights, this retention of the death penalty goes against the obvious steady trend throughout the world towards abolition. Due to the competing forces between those advocating greater use of the death penalty, and those calling for its abolition, Indonesia is currently at a crossroads. Another element is the imperative to protect Indonesian citizens on death row abroad, which could provide a new pragmatic reason for abolition.

112. Pascoe, Daniel, 'Three Coming Legal Challenges to Indonesia's Death Penalty Regime' (2015) 2(2) *Indonesian Journal of International and Comparative Law: Socio-Political Perspectives* 239

Source: Legal Trac

Abstract: Indonesia's President, Susilo Bambang Yudhoyono, stepped down on October 20, 2014 after two five-year terms in office. Under Joko Widodo, his successor, outright abolition is considered unlikely for the time being, as Indonesia's public, government and religious institutions still favour the retention of the death penalty. By the date of his departure from office, President Yudhoyono faced around 40 pending clemency petitions, which he did not rule on, preferring instead to pass them to his successor. Other than hoping that the new President accedes to these requests for clemency, or alternatively the courts proceeding to overturn the death sentence in judicial appeals for those prisoners who still retain the option, abolitionists and defence advocates must consider other legal possibilities for the roughly 140 prisoners currently held under sentence of death in Indonesia. Accordingly, within the context of a significant political moment for the country, I outline three potential constitutional challenges to Indonesia's death penalty, capable of being employed by and on behalf of those prisoners who remain on death row. In general, these potential challenges would involve judicial determination on: 1. the length of time that certain prisoners have spent on death row in Indonesia; 2. the procedural changes to clemency petitions brought by Indonesia's revised 2010 clemency

law; and 3. the relationship between judicial review proceedings (“*peninjauan kembali*”) and clemency petitions. In this article, I outline the legal arguments in favour of each challenge, the categories of prisoners who would stand to benefit, together with foreseeable legal and political hurdles that would need to be overcome for the petitioners.

113. Zerial, Natalie, ‘Decision No. 2-3/Puu-V/2007 [2007] (Indonesian Constitutional Court) (2007) 14 *Australian International Law Journal* 217

Source: AGIS Plus Text

Abstract: Indonesia’s legal and political systems underwent a seismic process of reform (the ‘*reformasi era*’). In less than four years, the 1945 Constitution of the Republic of Indonesia (‘*Constitution*’) was amended no less than four times, including the introduction of a set of human rights clauses in chapter XA that transformed Indonesia’s disparate constitutional human rights protections into a comprehensive human rights framework. The introduction of a constitutional human rights regime placed Indonesia in a somewhat unique and visionary position in a region that has been internationally notorious for its suspicion of ‘*Western*’ style rights regimes and where few countries have committed to either the core international human rights conventions or comprehensive internal human rights laws. As a consequence, the work of Indonesia’s fledgling Constitutional Court has been, and will continue to be, of interest to many within the region as a body of human rights jurisprudence offering unique insights into the ways in which human rights may be interpreted and applied within the Asia Pacific and Southeast Asian contexts. The court’s decisions have already been of more than passing significance to Australia, with two judgments having particular resonance. The first of these was the Constitutional Court’s decision in 2004 regarding the constitutionality of the prosecutions of the Bali Bombers.⁵ The second important decision for Australia, and the subject of the present note, was the court’s decision in 2007 to uphold the constitutionality of the death penalty in the context of an appeal made by Andrew Chan, Myuran Sukumaran and Scott Rush, three of the Bali Nine who had been caught smuggling heroin into Bali in 2005. In the process of reaching its judgment in that decision, the judges heard a panoply of expert evidence and traversed philosophy, sociology, history and religion in addition to Islamic, secular Indonesian and international law. In this context it is impossible to cover all the issues raised by the case, and as a consequence this case note will focus on the ways in which the judgment reflects a cultural and regional perspective on international human rights law, including the light it throws on the ‘*Asian values*’ debate concerning human rights. This note will consider in particular how the court approached the balance between the rights of the individual and the rights of society, and the influence of religion on various aspects of the judgment. The note will also discuss the utilisation and interpretation of international law by the court, the judges having approached the task of constitutional interpretation in a framework that

conceived of the human rights aspects of Indonesia's Constitution in a global rather than merely national context.

JAPAN

114. Ambler, Leah, 'The People Decide: The Effect of the Introduction of the Quasi-Jury System (Saiban-In Seido) on the Death Penalty in Japan' (2007) 6(1) *Northwestern University Journal of International Human Rights* 1

Source: Hein Online

Abstract: The Japanese people will soon decide the fate of criminal defendants for the first time in over 50 years. Under the Lay Assessor Act as of May 2009, randomly selected members of the Japanese public will preside over criminal trials alongside professional judges and be responsible for determining both verdicts and sentences. Japan's retention of the death penalty means that members of the public will ultimately have to decide whether a person lives or dies. This article examines the potential impact of the new lay assessor system, or saiban-in seido, on capital punishment in Japan, and considers whether it may reduce death sentences to the point of effectively abolishing them at trial stage in the District Court. The article posits that the introduction of the lay assessor system may create the momentum for Japan to align its criminal justice system with that of other developed countries—that is, abolition of the death penalty as an available criminal sanction. I approach questions about the lay assessor system and abolition of the death penalty from a normative perspective linked to current trends in international law and human rights law. Accordingly, this article argues that abolition of the death penalty—de facto or de jure—is the most desirable outcome of the introduction of lay participation in Japan. It explores the possibilities of a shift in the public conscience from passively pro-capital punishment to abolitionist through active participation in the judicial system. It is without doubt that any outcomes will depend upon the roles played by each of the parties involved in the criminal justice system: the ministry of justice, judiciary, prosecutor's office, defendant and defence lawyers. This article will examine the development and possible impact of these roles through an analysis of the vested interests of each of the parties, from the staunchly pro-capital punishment to the violently opposed, and perhaps most importantly, to the fence-sitters. Part One of this article describes developing international norms that are moving towards de jure abolition of the death penalty under all circumstances. Part Two describes the current capital punishment system in Japan—from arrest to execution—and the reasons used to justify its retention. Part Three explores Japan's twenty-year jury system in the pre-World War II period in light of the future role of lay assessors in deciding verdicts and sentences. Part Four considers how the lay assessor system may impact Japan's current attitude towards the death penalty and may even lead to a suspension of death sentences or de facto abolition. In assessing its impact,

the article analyses the vested interests of each party involved. It concludes that the introduction of the saiban-in seido may prove a vital first step towards eventual de facto abolition of the death penalty in Japan, provided each party abides by rules of fairness and justice.

115. Carney, Matthew and David T Johnson, 'Will Wrongful Convictions be a Catalyst for Change in Japanese Criminal Justice?' (9 February 2015) 13(6) *Asia-Pacific Journal* <<http://apjif.org/2015/13/6/David-T.-Johnson/4271.html>>

Source: World Coalition against the Death Penalty

Abstract: This is part one of a three part series curated and written by David T. Johnson on The Death Penalty and Wrongful Convictions in Japan. It presents a link to an extraordinary 12-minute video by Matthew Carney of the Australian Broadcasting Corporation discussing the death penalty and the problem of wrongful convictions in Japanese criminal justice. This video explains what went wrong in three cases involving men who were victimized in the worst kind of way by Japan's criminal justice system, and it raises the possibility that these cases could stimulate reform in Japan's system of capital punishment and in the criminal justice system more generally.

116. Croydon, Silvia, 'The Death Penalty in a Changing Society: A Survey of Recent Developments in Japan' (2014) 26(1) *Contemporary Japan – Journal of the German Institute for Japanese Studies* 103

Source: Discovery

Abstract: Japan's society and law in particular has recently undergone some significant changes. This article identifies five of these developments that could potentially impact practices relating to the death penalty there, and investigates the effect that they have had so far. Specifically, the developments introduced are: the amendment of the Prison Law governing for the death penalty; the introduction of citizen participation in death penalty-related trials; the change of power to the Democratic Party of Japan; the adoption of new abolitionist instruments by international and regional organizations in which Japan participates; and, the possible establishment of a National Human Rights Institution with power to make recommendations to the government. I argue that at least some of these developments have had a tangible impact, and at the very least are likely to bring down the veil of secrecy currently shrouding death row inmates.

117. Johnson, David T, 'Retention and Reform in Japanese Capital Punishment' (2016) 49(4) *University of Michigan Journal of Law Reform* 853

Source: Hein Online

Abstract: This Article focuses on the failure of abolition and of death penalty reform in Japan in order to illustrate contingencies in the trajectory of capital punishment in the modern world. Part I describes three facts about post-war Japan that help explain why it retains capital punishment today: a missed opportunity for abolition during the American occupation of the country after World War II; the long-term rule of a conservative political party; and economic and geopolitical power that has enabled the country to resist the influence of international norms. Part II describes a few ways in which Japanese capital punishment has changed in recent years— and many ways in which it has not. Part III focuses on four causes of continuity in capital punishment in Japan: the rarity of exonerations in Japanese criminal justice; a jurisprudence that does not treat death as a special form of criminal punishment requiring extra safeguards for criminal defendants in capital cases; a high degree of secrecy surrounding executions and capital sentencing; and a society in which race is not regarded as a salient factor in the administration of capital punishment. Part IV suggests how reform in Japanese capital punishment might be accomplished by challenging some of the causes of continuity. Part V concludes by observing that the road to death penalty reform is not merely a positive path requiring leadership from the front in the face of public support for the institution. It is also a negative path leading away from beliefs and practices that present obstacles to the institution's diminution and abrogation.

118. Johnson, David T, 'An Innocent Man: Hakamada Iwao and the Problem of Wrongful Convictions in Japan' (9 February 2015) 13(6) *Asia-Pacific Journal* <<http://apjif.org/2015/13/6/David-T.-Johnson/4272.html>>

Source: World Coalition Against the Death Penalty

Abstract: This is part two of a three part series curated and written by David T. Johnson on The Death Penalty and Wrongful Convictions in Japan. The main aim of this article is to explore the problem of wrongful convictions in Japanese criminal justice by focusing on the case of Hakamada Iwao, who was sentenced to death in 1968 and released in 2014 because of evidence of his innocence. The subject of wrongful convictions has received little scholarly attention since Chalmers Johnson's classic account of the Conspiracy at Matsukawa (1972), which at the time he wrote was the biggest cause célèbre in the annals of Japanese crime. In that case, three persons were killed by the sabotage of a train on the Tohoku line in August 1949. Twenty persons were arrested, nineteen of them being Communists or labour union leaders. In 1950, all 20 were convicted by the Fukushima District Court, and five were sentenced to death. But the prosecution's case came apart on appeal. By 1970, all of the accused had

been exonerated. Johnson (1972) concluded that they may well have been victims of a frame-up by police and prosecutors (p.5), but he also believed that miscarriages of justice of that kind were “extremely unlikely” to occur in post-occupation Japan because “nothing has a greater educative effect on the public and through it on the judiciary than an unfair trial” (p.406). This article argues that the problem of wrongful convictions continues to plague Japanese criminal justice today, more than four decades after Johnson wrote.

119. Johnson, David, ‘Why Does Japan Retain the Death Penalty? Nine Hypotheses’ in Lill Scherdin, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 144–60

Abstract: Explores nine hypotheses on why Japan has retained the death penalty in three broad themes: postwar history and political leadership; external forces, including Japan’s relationship with the US and South Korea – retentionist democracies – and the lack of pressure from regional organisations like APEC and ASEAN; and internal forces such as supportive public opinion. Johnson observes that the public appears to know little about death penalty practices, however, and Japanese leaders are not very responsive to public opinion in other areas. Johnson explores a Japanese cultural belief that ‘death is the appropriate way to atone for heinous crimes’. Johnson claims Japanese people are less amenable to ‘universalistic and absolutist human rights’ arguments. He also examines ‘penal populism, the perceived needs of victims and ‘leadership from the front’ in the retention of the death penalty’. Johnson argues, given moratoriums/abolition in other nations despite moral panics, penal populism and victims’ movements, the key driver of change is ‘leadership from the front, often in the face of resistance from citizens and criminal justice officials’, as in South Korea.

120. Johnson, David T, ‘Capital Punishment without Capital Trials in Japan’s Lay Judge System’ (27 December 2010) 8(52) *Asia-Pacific Journal* <<http://apjff.org/-David-T.-Johnson/3461/article.html>>

Source: World Coalition Against the Death Penalty

Abstract: In May 2009, Japan began a new trial system in which ordinary citizens sit with professional judges in order to adjudicate guilt and determine sentence in serious criminal cases. This change injected a meaningful dose of lay participation into Japanese criminal trials for the first time since 1943, when Japan’s original Jury Law was suspended during the Pacific War. This article describes the first two “capital trials” in Japan’s lay judge system and explores a few of the salient issues that are raised when citizens make life-and-death decisions. It also summarizes the other “capital trials” of 2010. One key finding is that while Japan has capital punishment, it does not have anything

that can be called a “capital trial” because until the penultimate trial session, when prosecutors make their sentencing request, nobody knows whether the punishment sought is death or something less. The rest of this article omits the quotation marks that were used in the previous three sentences to call attention to this troubling fact.

121. Lehrfreund, Saul, *The Death Penalty in Japan: A Report on Japan's Legal Obligations Under the International Covenant on Civil and Political Rights and an Assessment of Public Attitudes to Capital Punishment* (Death Penalty Project, 2013) <<http://www.deathpenaltyproject.org/legal-research-publications/the-death-penalty-in-japan>>

Source: Death Penalty Project (UK)

Abstract: This report, produced in collaboration with the Centre for Prisoners' Rights, examines Japan's death penalty from two perspectives. The first is a doctrinal approach to capital punishment based on human rights principles enshrined in international human rights law. The second perspective critically explores the notion that majority public support for the death penalty is an obstacle to abolition. Part One of the report highlights significant gaps between Japan's obligations under the International Covenant on Civil and Political Rights (ICCPR) which Japan ratified in 1979 and The Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, first agreed by the United Nations in 1984, and current Japanese law and practice. Part Two of the report describes differences between the apparent “strong public support” found by government surveys and the more complex sensibilities revealed by more sophisticated assessments of public attitudes toward capital punishment. In summary, this report demonstrates an urgent need for Japan's government and judiciary to reform several of their current positions on capital punishment, prior to its complete abolition.

122. Saito, Mai and Paul Bacon, *The Public Opinion Myth: Why Japan Retains the Death Penalty* (Death Penalty Project, 2015) <<http://www.deathpenaltyproject.org/wp-content/uploads/2015/08/The-Public-Opinion-Myth1.pdf>>

Source: Death Penalty Project (UK)

Abstract: In this report, Mai Sato and Paul Bacon go beyond the simple results of opinion polls conducted recently by the Japanese government, which show very high levels of support for the death penalty. Using a similar methodology and sample, the authors reveal that the majority of the population form their views on the death penalty with limited information and based on often inaccurate perceptions – for example, believing that the crime rate is increasing. Sato and Bacon also demonstrate that people have a relatively low level of ‘psychological ownership’ when it comes to the future of the death penalty: the majority think that the government and experts should decide. Furthermore, discussions

about the death penalty among participants increased tolerance towards those with different views – which, in turn, facilitated potential reform and change.

123. Shanhe Jiang, Rebecca Pilot and Toyoji Saito, 'Why Japanese Support the Death Penalty' (2010) 20(3) *International Criminal Justice Review* 302

Source: Hein Online

Abstract: Japan is the only industrial country other than the United States, which still retains the death penalty. Although the death penalty has been a hotly contested topic in the West, there is a lack of interest and research on it in Japan. Accordingly, there is little empirical research on capital punishment in Japan. This study was undertaken to overcome this flaw. Using the data collected from 267 college students in 2005 in Japan, this study investigated the respondents' support level of capital punishment and examined why they supported or opposed it. Findings from this study revealed that the majority of the respondents in Japan supported their country's capital punishment. Deterrence, retribution, the barbarity of killing, beliefs in wrongful conviction, and rehabilitation were major predictors of their death penalty views.

MALAYSIA

124. Hood, Roger, *The Death Penalty in Malaysia: Public Opinion on the Mandatory Death Penalty for Drug Trafficking, Murder and Firearms Offences* (Death Penalty Project, 2013) <<http://www.deathpenaltyproject.org/legal-research-publications/the-death-penalty-in-malaysia>>

Source: Death Penalty Project (UK)

Abstract: In Malaysia, the death penalty is the mandatory and, thus, the only punishment available to the courts for persons convicted of murder; for trafficking in narcotics in various amounts; and for discharging a firearm during the commission of various crimes, even if no-one is hurt. There is a growing political and public debate. Should the mandatory death penalty be abolished and replaced by a discretionary system where capital punishment is used only in exceptional circumstances, or abolished altogether? This study reports the findings of a major public opinion survey of the views of a representative sample of 1,535 Malaysian citizens on this issue. A large majority said they were in favour of the death penalty, whether mandatory or discretionary: 91% for murder, 74 to 80% for drug trafficking depending on the drug concerned, and 83% for firearms offences. Concerning the mandatory death penalty, a majority of 56% said they were in favour of it for murder, but only between 25% and 44% for drug trafficking and 45% for firearms offences.

NORTH KOREA

125. International Federation for Human Rights (FIDH), *The Death Penalty in North Korea: In the Machinery of a Totalitarian State* (May 2013) <<https://www.fidh.org/en/region/asia/north-korea/the-death-penalty-in-north-korea-in-the-machinery-of-a-totalitarian>>

Source: International Federation for Human Rights

Abstract: This report denounces the nature and scale of executions in North Korea. The report concludes that the death penalty remains, in North Korea, an essential part of the totalitarian system in place. Due to the lack of access to North Korea for independent human rights organizations to enter North Korea, and the difficulty to obtain any data from authorities, FIDH sent a fact-finding mission to Seoul in December 2012 to collect first-hand testimonies from a total of 12 North Korean asylum seekers. In the 90's, during the great famine, the regime extensively used the death penalty in order to maintain order through force and terror and thus dissuade any subversive act, including attempts to flee abroad. Over a thousand public executions would have been carried out in only a few years. Since then, the government has continued to use the death penalty on a large-scale as a repressive tool, executing individuals guilty of so-called "economical crimes", "treason" or other crimes vaguely defined, basically applying capital punishment for anyone considered as disturbing public order.

SINGAPORE

126. Chan, Wing-Cheong, 'The Death Penalty in Singapore: In Decline but Still Too Soon for Optimism' (2016) 11(3) *Asian Journal of Criminology* 179

Source: Discovery

Abstract: Singapore is one of the few countries in the world which still imposes the death penalty for certain criminal offences. Until recently, it was the mandatory sentence for murder, drug trafficking and use of firearms—and it is these three offences which comprise nearly all of the executions in Singapore. This article examines the use, historical origins and recent legislative and judicial developments in the death penalty in Singapore. While the number of executions has fallen to very low levels in recent years and changes to the law relating to the mandatory death penalty in murder and drug offences have been made, it is the opinion of the author that the death penalty will continue to be used in Singapore in the foreseeable future.

127. Johnson, David, 'The Jolly Hangman, the Jailed Journalist, and the Decline of Singapore's Death Penalty' (2013) 8(1) *Asian Journal of Criminology* 41

Source: Discovery

Abstract: British journalist Alan Shadrake was convicted of contempt of court in 2010 for writing a book about capital punishment in Singapore. This article uses that book and other **Sources** to analyze four aspects of Singapore's death penalty. It begins with a profile of Darshan Singh, the hangman who executed 1,000 persons over the past half-century. The article then shows that Singapore's system of mandatory capital punishment does not produce consistency in death penalty decision-making. Next the article argues that the prosecution of Shadrake increased criticism of capital punishment in Singapore by propelling his book to bestseller status. This is followed by an explanation of why the number of persons executed in Singapore has declined in recent years, from an average of 66 per year in the mid-1990s to an average of 5 per year since 2004. The key proximate cause of this decline appears to be prosecutors, who can use their discretion to charge defendants for possessing amounts of heroin, cannabis, cocaine, and methamphetamine that are just under the thresholds for a mandatory death sentence. Capital punishment in Singapore is not really mandatory, and it cannot escape the problems of bias and arbitrariness that have long plagued discretionary death penalty systems in the United States, Japan, and other nations.

128. McDermott, Yvonne, 'Yong Vui Kong v Public Prosecutor and the Mandatory Death Penalty for Drug Offences in Singapore: A Dead End for Constitutional Challenge?' (2010) 1 *International Journal on Human Rights and Drug Policy* 35

Source: Reference in other article/journal

Abstract: This article examines constitutional challenges to the mandatory death sentence in Singapore, with particular reference to the most recent case of Yong Vui Kong v. Public Prosecutor (2010). It discusses whether the Court of Appeal was too hasty in disregarding more recent jurisprudence of the Privy Council, which held the mandatory death sentence as a form of inhuman treatment or punishment. It also examines the customary international law prohibition of the mandatory death penalty, and the imposition of the mandatory death penalty for drug offences as a breach of the equality guarantee in Singapore's constitution. The article reveals a dismal future for a nuanced and sensible approach towards drug crime in Singapore, in that the latest case closes off many avenues for constitutional litigation.

129. Shadrake, Alan, *Once a Jolly Hangman: Singapore Justice in the Dock* (Strategic Information and Research Development Centre, 2011)

Source: BERITA

SOUTH KOREA

130. Bae, Sangmin, 'Death Penalty Moratorium in South Korea: Democratic Transition and Political Leadership' in Madoka Futamura and Nadia Bernaz (eds), *The Politics of the Death Penalty in Countries in Transition* (Routledge, 2014) 92-106

Source: The University of Melbourne catalogue

Abstract: Surrounded by countries that continue to practice the death penalty, South Korea has taken a contrasting path. The last executions in South Korea were carried out in December 1997. Ten years later in December 2007, South Korea made the list of de facto abolitionist countries – states that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more. International organizations and human rights advocates applaud South Korea's suspension of the death penalty while expecting and hoping for its subsequent official abolition. As David Johnson states, 'if Asia has an abolitionist vanguard it may well be South Korea'. The purpose of this chapter is to explore the driving forces behind South Korea's abolitionist developments. Focusing on the political, legal and grassroots actors who have led the abolition movement during the process of democratic transition, the chapter discusses the roles of these actors towards the abolition of the death penalty and the impact of democratization in shaping a new perspective on South Korea's penal policy. It explores how the democratization process in South Korea influenced the country's growing willingness to comply with international human rights standards. The chapter begins with a brief overview of the East Asian divergence from the current global movement to abolish the death penalty. Then it proceeds to discuss South Korea's case focusing on how capital punishment was enforced as a powerful social institution under authoritarian regimes. Next it traces the evolution of the death penalty trend in South Korea during the phase of democratic transition. Given the significance of political leadership in hosting and leading a variety of activities in opposition to the death penalty, the focus is on the three branches of government – executive, legislative and judiciary – and on discussing their efforts to put the issue of capital punishment on the human rights agenda. Following this, the chapter moves on to an analysis of grassroots activism responsible for the abolitionist goal and, finally, it discusses the wider implications and lessons from the South Korean experience.

131. Bae, Sangmin, 'Death Penalty Moratorium in South Korea: Norms, Institutions and Leadership' in Lill Scherдин, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 161–76

Abstract: Explores South Korea's moratorium on the death penalty since 1997, stating that 'the normative discussion surrounding the death penalty ... has mostly been associated with the discourses of democratic values and human rights', in contrast to Japan. South Korea's economic growth 'was not accompanied by political liberalization or respect for human rights'. After the transition to democracy in 1987, different actors contributed to the moratorium. Bae highlights the lack of peer pressure from neighbouring countries as a key factor in the moratorium's persistence in the face of public opposition. Given this opposition, the moratorium is 'highly dependent upon leadership from the front'.

132. Byung-sun Cho, 'Capital Punishment in South Korea: Progress and Prospects for Abolition De Jure' (2013) 4(1) *City University of Hong Kong Law Review* 45

Source: Hein Online

Abstract: The debate over the propriety of capital punishment in East Asia often evokes heated argument along cultural and religious lines. In Introduction (I), the author describes the trends of capital punishment debate in East Asia. As an example of Asian debate over capital punishment, South Korean practical criminal policy and statistics need to be taken into account. In line with the practical policy, the question of who in South Korea should have hegemony over the death penalty should be analysed through the national structure of the separation of three powers: legislature, executive and judiciary. In this context, a detailed explanation of judicial attempts (II), administrative non-execution (III) and legislative efforts (IV) is followed. In addition, international law should be taken into account for the debate over the abolishment of capital punishment (V). In the conclusion (VI), the author shows that there appears to be three alternative futures for the de facto abolitionist South Korea: 1) a continuation of the current moratorium on execution, 2) resumption of execution and 3) formal abolition. South Korea's 17-year moratorium is expected to remain stagnant in 2015. What is important is that South Korea's 17-year moratorium on executions should not be regarded as a goal in itself, but should be continually presented as a step towards the total and permanent replacement of capital punishment. This step could put pressure on other East Asian countries to do the same.

133. Byung-sun Cho, 'South Korea's Changing Capital Punishment Policy: The Road from De Facto to Formal Abolition' (2008) 10(2) *Punishment and Society* 171

Source: Discovery

Abstract: The most recent executions in South Korea took place in December 1997, when 23 people were executed at short notice on the same day. Similarly, nineteen executions occurred in 1995 and 15 in 1994, in each instance occurring all on the same day. These group executions seem to reflect cultural factors that monthly statistics alone do not capture. No executions have occurred since 1998, but this de facto suspension has not been reinforced by law. Since 1999, lawmakers have thrice endorsed a bill favouring life imprisonment without parole in place of the death penalty, but each time the proposal has stalled and failed to move forward. The need remains to develop a culturally appropriate pro-abolition argument that could persuade the Korean public that the death penalty is unworkable and wrong. On 21 January 2007, in the Inhyeokdang case, the Korean Court acquitted 8 persons who had been executed 32 years earlier. The hope is that, in light of strong arguments based on the risk to innocent persons and the irreversibility of capital punishment, Korea will effectively transition from de facto to formal abolition.

134. Kuk Cho, 'Death Penalty in Korea: From Unofficial Moratorium to Abolition?' (2008) 3(1) *Asian Journal of Comparative Law* 1

Source: *Asian Journal of Comparative Law*

Abstract: The death penalty is one of the most contentious issues in Korea. In contrast to other Asian countries, the issue of whether the death penalty should be abolished has been actively debated and reviewed at governmental levels and in civil society. It is important to note that it is not just civic organizations that have begun to favour abolition of the death penalty but also state organisations including the National Assembly and the National Human Rights Commission. The Constitutional Court has invalidated some disproportionate provisions in relation to the death penalty. Since President Kim Dae-Jung took office in February 1998, there has been an "unofficial moratorium" on executions. This article provides an overview of the legal regime governing the death penalty and the on-going debate on the death penalty in Korea. It begins by briefly reviewing international treaties that call for the abolition of the death penalty, contrasting them with the retentionist trend in most Asian countries. It then reviews the major decisions of the Korean Supreme Court and the Korean Constitutional Court. It also discusses recent moves in the National Assembly and the National Human Rights Commission to abolish the death penalty. It suggests that the Korean death penalty debate has potentially significant implications for its retentionist Asian neighbours grappling with similar issues.

TAIWAN

135. Johnson, David T and Wen-chen Chang, *The Death Penalty in Taiwan: A Report on Taiwan's Legal Obligations Under the International Covenant on Civil and Political Rights* (Death Penalty Project, 2014) <<http://www.deathpenaltyproject.org/news/1750/dpp-launches-report-on-the-death-penalty-in-taiwan/>>

Source: Death Penalty Project (UK)

Abstract: This report highlights specific aspects of Taiwan's domestic legal order that does not meet the minimum standards under the International Covenant on Civil and Political Rights (ICCPR). Taiwan passed legislation to incorporate the ICCPR into the domestic legal order in 2009, yet the current death penalty practice is largely out of line with the contemporary understanding of the ICCPR as it relates to the death penalty. It is timely, given the recent executions of five prisoners on 29 April 2014, bringing the total number of executions in Taiwan since 2010 to 26, after a four-year period – 2006 to 2009- when there was a de facto moratorium.

136. Li, Nigel, Wei-Jen Chen and Jeffrey Li, 'Taiwan: Cutting the Gordian Knot – Applying Article 16 of the ICCPR to End Capital Punishment' in Peter Hodgkinson (ed), *Capital Punishment: New Perspectives* (Ashgate, 2013) 210-28

Source: The University of Melbourne catalogue

Abstract: Taiwan adopted the ICCPR as domestic legislative material in 2009, and must take a fresh look at the international covenant without delving into originalism unnecessarily. In this chapter, the authors suggest that attention should be turned to Article 16 of the ICCPR because the death penalty takes away more than one's life – it takes away a person's entire legal personality. By denying one's right as a person before the law and turning him or her into a non-person with the death sentence, the institution of capital punishment cannot coexist with the purpose and the letter of Article 16. With Article 16, this chapter aims to illuminate the true meaning of the ICCPR on the death penalty: capital punishment should be prohibited without exception. This chapter will furthermore challenge the position that the ICCPR framers' intention is the key in any effort to fathom the position of the ICCPR on the death penalty. Originalism is not applicable, since the framers' silence is not sufficient to dismiss a rational interpretation based on other interpretative methods. Taiwan stands alone in the application of the ICCPR; not being a signatory to the covenant, asking whether it should be less fettered by the framers' intention when interpreting Article 16 may help others see the ageing document in a new light.

137. Liao, Fort Fu-Te, 'Why Taiwan's de facto Moratorium was Established and Lost' in Lill Scherдин, *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* (Ashgate, 2014) 177-93

Abstract: This chapter explores how the rate of execution gradually reduced as democracy emerged from 1986 after a period of marshal law, seemingly related to 'a more general acceptance of human rights norms', as in South Korea. Following a moratorium between 2006 and 2010, Taiwan resumed executions. Liao contends there is an absence of political will under the current KMT government – whose views are closer to mainland China than those of previous governments – to abolish the death penalty. There is also an absence of judicial leadership on abolition.

138. Liao, Fort Fu-Te, 'From Seventy-Eight to Zero: Why Executions Declined After Taiwan's Democratization' (2008) 10(2) *Punishment and Society* 153

Source: Reference in other article/journal

Abstract: This article examines, from a legal perspective, why executions in Taiwan declined from 78 in 1990 to zero in 2006. The inquiry focuses on three considerations: the number of laws that authorized employment of the death penalty; the code of criminal procedure; and the manner in which executions were carried out, including the manner in which amnesty was granted. The article argues that the ratification of international covenants and constitutional interpretations did not play a significant role in the decline, and that several factors that did play a role included the annulment or amendment of laws, changes in criminal procedure, establishment of and further amendments to guidelines for execution and two laws for reducing sentences. This article maintains that the absence of executions in 2006 is a unique situation that will not last because some inmates remain on death row, meaning that executions in Taiwan will continue unless the death penalty is abolished. However, the article concludes that the guarantee of the utmost human right, the right to life, can be sustained in Taiwan through the demands of democratic majority rule.

VIETNAM

139. Giao Vu Cong, 'Capital Punishment in Vietnam: Status and Perspective' in Peter Hodgkinson (ed), *Capital Punishment: New Perspectives* (Ashgate, 2013) 359-79

Source: The University of Melbourne catalogue

Abstract: The Socialist Republic of Vietnam is among the countries which still retain both de jure and de facto capital punishment. This chapter examines the current situation and perspective about capital punishment in Vietnam.

The author will use different **Sources** to demonstrate that, in recent decades, following the international general trend, the Government of Vietnam has amended the Penal Code several times in order to reduce the number of capital crimes. In addition, more and more citizens, including government officials and members of the academic community, support abolition or reduction of capital punishment.

140. Hai Thanh Luong, 'The Application of the Death Penalty for Drug-Related Crimes in Vietnam: Law, Policy, and Practice' (2014) 17 (1) *Thailand Law Journal* <<http://www.thailawforum.com/articles/Vietnam-death-penalty.html>>

Source: Pip's library

Abstract: Since the adaption of the "open door" or "renovation" policy (known as *doi moi* in Vietnam) in the middle of 1980s, and particularly after Vietnam published and issued the 2013 Constitution, increasing attention has been given to capital punishment in Vietnam. The current paper considers global debates over abolition before describing and explaining the law and practice of the capital punishment in Vietnam within its historical, political, social, and cultural context. Further, the paper focuses on the recent legal development of capital punishment with discussions of the applicable provisions stipulated in the Criminal Code of Vietnam 1999 and its amendment and implementation in 2009 and the Criminal Procedure Code of Vietnam 2003. In short, the basic objective in this paper is to present a preliminary study of Vietnam's capital punishment and its application to drug-related crimes in a comparative context.

141. Pascoe, Daniel, 'Explaining Death Penalty Clemency in the Socialist Republic of Vietnam from 1986 to 2015' (2016) 10(2) *Vienna Journal on International Constitutional Law* 165

Source: Hein Online

Abstract: Regarding the operational specifics of death penalty policy, David T. Johnson and Franklin E. Zimring have argued that it is extreme left or right wing authoritarian states' aversion to a limitation of their own powers that determines high rates of executions in countries such as Vietnam, Singapore, China and North Korea as opposed to other, less-punitive Asian nations which share similar cultural and religious characteristics. For a regime like Vietnam's, the swift carrying out of a death sentence, especially when performed in public, serves to highlight the state's power over life and death and enhance political control over the domestic constituency. At first glance then, little scope for the exercise of the clemency power as a form of lenient reprieve from the death sentence by the executive government appears possible under a repressive regime of this nature. However, unlike China and Singapore, a notable feature of Vietnam's death penalty practice since the Doi Moi reforms of 1986 has been the executive's willingness to reprieve a large minority of prisoners sentenced

to death through Presidential clemency, even though executions themselves have continued. What official and unofficial justifications have been given for grants of Presidential clemency in Vietnam, and relatedly, what structural and cultural factors explain the use of clemency in a noticeable proportion of death penalty cases? These are the under-researched questions I provide plausible explanations for in this article, incorporating an empirical study of Vietnam's death penalty clemency grants since the mid-1980s, interpreted through the lens of the relevant academic literature on clemency and pardon grants.

142. Vietnam Committee on Human Rights, 'The Death Penalty in Vietnam' (June 2016) <http://www.queme.net/eng/news_detail.php?numb=2697>

Source: Google

Abstract: This report expresses opposition to the use of the death penalty as an inhuman, cruel and degrading punishment, and calls upon Vietnam to implement an immediate moratorium as a first step to abolishing the death penalty. In Vietnam, statistics on the number of death sentences and executions are classified as "State secrets". The State-controlled media reported at least 45 death sentences in 2015, most of them for drug offences. But the real figures are much higher. Peaceful political dissent is punishable by death under vaguely-defined "national security laws", e.g. Article 109 of the 2015 amended Criminal Code (formerly Article 79), which makes no distinction between acts of terrorism and peaceful expression. Many civil society activists are serving sentences of up to life imprisonment under this clause, simply for calling for the respect of environmental rights and democratic reforms.

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