



Two years between life and death: A critical analysis of the suspended death penalty in China

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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.

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Keywords: The suspended death sentence; The death penalty reform; Sentencing; Rehabilitation

1. Introduction

Since 2007, the Chinese judicial authorities have implemented a top-down capital punishment reform in order to reduce the number of death sentences, as well as to enhance due process safeguards in capital proceedings. This process has led to an increasing resort to a cluster of less severe punishments in the Chinese penal hierarchy, including the suspended

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<http://dx.doi.org/10.1016/j.ijlcrj.2015.10.003>

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death sentences,¹ the suspended death sentences with restricted commutation,² the suspended death sentences without the possibility of parole or commutation,³ and life imprisonment. This article will focus on the first three forms of suspended death sentences, which form the entire suspended death penalty regime.

The suspended death penalty — ‘the best alternative penal mechanism for a shift away from execution’ (Johnson and Zimring, 2009: 284) and ‘an almost perfectly double-sided response to the need for an alternative to the death penalty’ (Trevaskes, 2013: 487) — expedites capital punishment reform in a society of high public approval (Oberwittler and Qi, 2009) for extreme sanctions. Admittedly, the important role the suspended death penalty played in downsizing the volume of capital sentences during the past decade can never be overestimated. For this reason, those who promote progressive reform towards a more restrained use of the punishment by death, and potentially, the eventual full abolition, unanimously endorse a wider use of the suspended death sentence to tame the machinery of death. On the other, the symbolic appeal of the suspended death sentence, which expresses extreme condemnation and retribution, has been accepted by tough-on-crime policy makers.

Thus the rising popularity of the suspended death penalty, which is well tuned to changing political and social needs, is the outcome of a compromise by stakeholders with vastly different preferences and ideologies. This penal sanction has been given acclaim by legal reformers, policy makers, scholars and civil society advocates alike (Chen, 2004). For instance, Xiao Yang,⁴ once the President of the Supreme People’s Court of China (hereinafter the SPC), proclaimed that ‘the suspended death penalty is an ingenuous Chinese legal mechanism to protect the right to life of the criminal offenders’ (Xiao, 1999a: 20). In this sense, the ascendancy of the suspended death penalty in contemporary China can be taken as reflecting the society’s changing response to the question of what punishment should be justifiably used alongside, and gradually in place of, the death penalty to punish ‘the most serious crimes’.⁵

In contrast with the existing literature which focuses on the positive side of the suspended death sentence regime, this article takes a different approach. Here, the efficacy and humaneness of the suspended death sentences will be critically examined against the backdrop of the well-intended death penalty reform in China. There is ample room, I believe, for sober analysis of the continued expansion of this punishment, particularly in light of its most recent development, in at least three ways. The legislative formulation and judicial use of the suspended death sentences, as well as a realistic assessment of possible implications of new penal trends on the rights of those facing harsh penal sanctions are in much need of investigation. This article will contribute to the existing literature, not merely by revealing the pros and cons

¹See Articles 48, 50 (para. 1), 51 and 57, the Chinese Criminal Law of the People’s Republic of China (hereinafter the Criminal Law), promulgated in 1979 and systematically revised in 1997. The English terminologies used to describe this form of punishment vary, including ‘the two-year suspension of execution’, ‘the death penalty with two-year reprieve’, or *Sihuan* in Chinese pronunciation.

²See Articles 50 (para. 2) and 78 (para. 2(III)), *Sihuan xianzhi jianxing* in Chinese pronunciation, introduced by the Eighth Amendment to the Criminal Law (hereinafter the Eighth Amendment) adopted in 2011.

³See Article 383 (para. 3) of the Criminal Law, in the Ninth Amendment to the Criminal Law, adopted in August 2015 (hereinafter the Ninth Amendment) on the Sixteenth Meeting of the Standing Committee to the 12th National People’s Congress. This form of the suspended death sentence is yet to take effect in November 2015, and, arguably, this new form of penal sanction will only prospectively apply to serious crimes of corruption committed from November 2015 onwards. As a consequence, it is not the focus of the discussion about the suspended death penalty regime in this paper.

⁴Xiao was a reform-minded judge under whose leadership (1998–2008) the Supreme People’s Court in China launched the death penalty reform.

⁵Article 48, para. 1 of the Criminal Law stipulates that the death penalty only applies to ‘the most serious crimes’.

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