

# Reasons for Harsh Punishments in China

Na Jiang\* and Yifang Fu

College for Criminal Law Science, Beijing Normal University, China

\*Corresponding author: Na Jiang, College for Criminal Law Science, Beijing Normal University, China, Tel: +86 10 5880 4011; E-mail: na.jiang@bnu.edu.cn

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## Abstract

China has used harsh punishments for long, and as a result the government still executes prisoners and tortures detainees. This article examines possible reasons and policy concerns behind China's harsh punishment from a human rights perspective. Underlying concerns include historical resistance to individual rights, traditional approaches to protecting human rights and political control of 'strike hard' campaigns. The deep reasons for its using harsh punishments suggest the great need of an eventual abolition of such punishments in Chinese law and practice.

**Keywords:** Harsh punishments; Possible reasons; Human rights perspective

## Introduction

China has special historical experience, traditional culture and current policies, which have a strong influence on China's human rights situation, especially on harsh punishments. It has signed the International Covenant on Civil and Political Rights (ICCPR) two decades ago, but has not yet prohibit harsh punishments as required by it so far. The following primary factors contributing to harshness of certain criminal punishment and their relation to human rights will be explored in detail.

## Historical Reasons

The historical experience of China appears to indicate that China has adopted a stronger notion of the idea of sovereignty than the Western countries where the idea of sovereignty originated. The Chinese government generally considers the idea of sovereignty to encompass both the State's supreme power within its borders and a duty on the part of sovereign states not to interfere in the internal affairs of other states [1]. China's commitment to state sovereignty is understandable, given the extent to which foreign powers have imposed their will upon China in the past. Unfortunately, this abhorrence of outside interference on the part of China's government has also led China to resist the adoption of international human rights standards on the basis that they infringe China's supreme power to govern its own citizens. Chinese mainstream thought, in official dialogues or media reports, tends to give more emphasis on the general concept of national sovereignty than individual human rights, of international non-interference than cooperation with the international community, which indicates that China believes that its right to exclude unwanted interference should come before its duty to its own citizens to uphold human rights.

China has one of the longest written histories in the world. In ancient times, China was called the 'Middle Kingdom' and was thought to cover the territory of 'tianxia' or everything under Heaven. As the spokesman of Heaven and overlord of the world, the Emperor of China was considered the 'tianzi', or the son of heaven by all of his subjects.

From the Zhou Dynasty (1050-255 Before Christ) onwards, the Emperor had the supreme power to issue political orders. As stated in the first article of the Chinese Poetry ('Book of Songs' in English translation), 'shijing' (in Chinese pinyin), all land under the wide-ranging heaven and all servants within the sea-boundaries belonged to the Emperor. Historically, China dominated all surrounding kingdoms, and the Chinese Emperor was considered the liege lord over those kingdoms' rulers. There was no concept of equality between China's Emperor and other kings or between China and other nations. This situation, in which China was isolated from all comparable world powers, basically persisted for over 2,000 years.

China's isolation and perceived superiority was brought to an end by the First Opium War in 1840. The First Opium War was a conflict between the United Kingdom and China in which Britain's superior ships, weapons and soldiers prevailed over those of the Qing Dynasty. The war ended with the signing of China's first unequal treaty with a foreign power, in which China ceded Hong Kong island to Britain in perpetuity. For the first time in its history, China had to deal with a stronger power. China's perception of world dominance rapidly faded. The First Opium War was followed by subsequent invasions by foreign powers and China had to sign a range of similar unequal treaties. Many of these treaties required China to give up sovereignty over portions of its territory by granting trading concessions to European powers. European powers were given the right to control and govern their own people under their own law on Chinese soil. In the case of Japan, China had to cede territory outright, including Taiwan. By the turn of the 20th Century, Imperial China was totally reduced to a semi-colonial and semi-feudal country, to the detriment of the Chinese populations. In 1931, Japanese invaders initiated a comprehensive war against China, while Chinese people of all nationalities waged a wave of heroic struggles for national independence and liberation during the anti-Japanese war from 1937 to 1945. It is the first completely successful war for national liberation after over 100 years of national humiliation.

China's period of humiliation left a deep impression on the Chinese nation, which in turn has had a strong effect on China's contemporary national policy. The Chinese people realized that they could enjoy no human rights without national sovereignty. The ordinary Chinese also recognise that the US pursues 'human rights with dual aims and

standards' and 'essentially uses the issue of human rights as an excuse.....to intervene in other countries' domestic affairs and to advance its own strategic goals' [2]. Hence, China seems to neglect and even resist individual rights in its attempt to oppose international power politics and hegemonism.

## Traditional Culture

The Chinese awareness of human rights can be traced back to the Spring-Autumn period (770-746 B.C.). While China did not then have any formal concepts of what constitute human rights, there was at least a recognition that the State has the duty to promote the welfare of the people in accordance with Chinese traditional culture. This conception is distinct from the Western theory that 'human beings are assumed to have rights that are not to be violated by the state or government' [3]. China pursued a different approach to realise the common goal of protecting individual rights, even without the express statement of human rights.

Specifically, as a principle of Chinese culture, Confucianism argues 'that the duties of rulers include the authority and right to perform their duties for the benefits of their subjects' with both virtue and duty going hand in hand. Although rights are one of China's central values necessary to 'establish a moral consensus and facilitate beneficial customs within a community', China takes the realisation of political order and social harmony at all levels of society as its final purpose. Both political order and social harmony tend 'not to protect the individual against the state but to enable the individual to function more effectively to strengthen the state'. Confucianism also provided individuals with community duties, without defining individual rights or what should be given to individuals in return for commitment to their duties. Mencius' doctrine further stated 'four principles in human relations' that arise from the fundamental good-naturedness of human beings [4]. 'The feeling of commiseration belongs to all men; so do that of shame and dislike; and that of reverence and respect; and that of approving and disapproving.' Mencius's philosophy implies 'the principle of benevolence; that of shame and dislike, the principle of righteousness; that of reverence and respect, the principle of propriety; and that of approving and disapproving, the principle of knowledge'. People have to develop these principles and nourish their nature in order to maintain pleasant and harmonious interpersonal relationships. A wise emperor and his ministers should therefore practice good governance in order to promote compatible human relations, a stable State and a flourishing world.

In history, the Chinese state was compared to one large family in which the Emperor was the head and in which each individual had a predefined role. This conception left no room for self-determined and independent individuals or political groups as the subjects who could benefit from human rights. Under China's self-supporting agricultural economy, the family was the basic way to realise social administration and no person could be an 'individual' in traditional Chinese culture. The human rights of an individual therefore made no sense in this context. Chinese society made it unnecessary for the ancient Chinese to actually create legally defined human rights. China's generally settled political order also left less room for individual rights because it was believed that benevolent rulers could ensure the welfare of their subjects without recourse to theories of formal rights.

The influence of Confucianism also militated against the adoption of human rights. Confucianism stresses the harmony among and the equal rights of individuals under the principle that 'sihai jie xiongdi' or

'all within the Four Seas are brothers' [5]. Although individuals in the Confucian era enjoyed unequal privileges on unequal social standings, Confucianism argued for the importance of "kindness" [ren'ai] and the idea that "the world is for all" or "all under heaven are equal" to recommend the ideal of "the whole world as one community" [tianxia weigong]. Distinct from "rights" in the international human rights law, the fact that equal rights were assumed by Confucianism made any progress towards human rights unnecessary. Confucianism also advocated altruism under the principle of 'jisuo buyu wushi yuren' or 'do not do unto others what you do not like others to do unto you'. In a world where people truly follow this rule, formal human rights are not needed because people will naturally uphold the interests and integrity of their fellows. Even if potential conflicts appeared, the policy of benevolence and self-cultivation could solve them in any human relationships. In such cultural atmosphere, each person, whether a commoner or a ruler, should have been willing to fulfill his or her obligations of loyalty, filial piety, fraternal duty or faithfulness in order to reach social harmony. Hence, this profound Chinese culture, which dominated human rights thought, included altruism, collectivism and various obligations to society and state.

Chinese attitudes towards the legal protection of human rights were also influenced by Chinese attitudes towards the Chinese legal system. For much of Chinese history, the only form of law was criminal law. Courts (did not exist in fact but government offices) were places where people went to be punished, not where people went to seek justice. Actually, there was no court as an institution in ancient times, but administrators or government offices at all levels performed the functions of administration and justice in feudal China. Also, administration of justice in each case is a combination of law and discipline rite into one and of all laws into one. There is no civil law to appear in China until 1929 when the National Government of the Republic of China enacted the first Civil Law Code. Thus, discipline rite played an essential role in handling cases so as to gradually form the traditional legal culture of "no suit, detesting suits or regarding them as shameful". There was no court or basically no civil law used to seek for justice, but only criminal law was applied to punish the accused and even victims sometimes in order to deter and control crime. The aversion to going to court was further strengthened by the philosophy of Legalism, which held that criminals should receive disproportionate penalties in order to deter future crimes. Legalism was based on the idea that, in times of war or conflict it was necessary to 'give harsher punishment to govern troubled times' [6]. Chinese people, therefore, preferred to protect and enforce their rights through informal social dispute resolution. It was said that people 'would rather starve to death than steal' or 'be wronged than go to law'. It is no surprise that there was no desire to formalize human rights legally or have courts to provide remedies for rights violations.

In summary, the Chinese cultural tradition contributed to the informal protection of human rights through individual self-regulation. In a society where everyone maintained his/her dignity, respected the value of others, and promoted social harmony, human rights would not be violated and would need no formal definition or mechanism for remedy. Ancient Chinese society protected human rights through its own unique means, distinct from the formalism that underlies current international human rights norms.

## Strike Hard

In contemporary China, the basic penal policy is the combination of punishment with leniency. This general policy guiding China's

previous criminal policy is known as “Strike Hard”. “Strike Hard” was implemented in China for over two decades. It began as a nationwide campaign in 1983 and is still influential in practice in some locations, even though it has been replaced nationally in December 2005 by a new penal policy of justice tempered with mercy [7]. According to the spirit of the Conference on National Social Order and Public Security Work, ‘Strike Hard’ was defined as guidelines to give harsher punishments within the range of discretionary sentence and to promote faster trials within legal limits in order to crack down on serious crimes [8]. This policy combined with previous special campaigns against certain severe crimes or crimes in some fields to strengthen the function of criminal laws and prevent the frequent occurrence of serious crimes [9]. “Strike Hard” was also intended to ensure that similar crimes would receive similar punishments and that suspects would be treated equally before the law. Unfortunately, the policy failed to uphold these fundamental principles for several reasons.

Firstly, economic reforms have brought a profound social transformation to China since the 1980s. Conflicts based around different ideas on the proper distributive or administrative modes combined with increasing dissatisfaction with structural unemployment and the imbalances created during the period of social and economic transition appear to be responsible for the poor social order and the rising crime rates during the era of “Strike Hard”. The crime wave of the 1980s and 1990s is regarded as the result of ‘the first opening of capitalist opportunities’ and the ‘decline of the iron rice bowl [i.e. guaranteed social security] policies’ [10]. The crime wave appears to account for the importance that “Strike Hard” placed on practicing harsh punishments. Although the nationwide drop in crime after 2007 has made ‘Strike Hard’ mostly superfluous [11], the drop in crime did not lead to a fundamental rethinking over the use of severe punishments in principle, or ‘foreshadow a permanent or extended limitation’ on the use of such punishments. From mid-2009, the Chongqing anti-mafia crackdown relied on mass campaigns to reuse the same mode of the old “Strike Hard” strategy. The campaigns featured ‘swiftness of trial and punishment’ [12], e.g., lightning-fast death sentences which were passed only in weeks after the ‘initial arrests’ [13].

Secondly, the use of harsh punishments to keep crimes rates low has been highly stressed during ‘Strike Hard’, while the human rights of criminal convicts or defendants tended to be neglected. In some local areas, human rights were violated ‘on a massive scale’ in local areas [14]. The relationship between punishments and human rights protection appears to be oversimplified. Harsh punishments that violate the human rights of possible offenders are justified on the basis that they uphold the human rights of victims. This rationalization has led to a high risk of wrongful conviction along with disproportionately harsh penalties for offenders [15]. The imposition of a certain number of harsh punishments has become a major assessment criterion of politico-legal workers in practice. Given these problems, ‘Strike Hard’ seems to have been a political tool or movement meant to obtain almost instant punishments. Under “Strike Hard”, China lacked a long-term constructive policy of crime control based on scientific criminology and effective penal policies that have been used elsewhere to control crime.

The policy of “Strike Hard” was abused during every step of criminal proceedings. In investigation, some inquiring officers appear to have pursued substantive justice at the price of procedural justice and human rights, e.g., collecting evidence by unlawful means or

through excessively compulsory measures. During trial, some judges tended to expand the applicable scope of ‘Strike Hard’ campaigns by imposing arbitrary sentences or by always giving harsher and prompter punishment to severe crimes that were emphasized during a campaign, irrespective of human rights standards or the merits of any particular case. In the execution process, prisoners were often maltreated and their human rights were not properly protected. Also, there was a “reportedly increased number of executions” [16].

Moreover, under the influence of ‘Strike Hard’, the policies regulating the use of the death penalty appear not to have been fully practised in some cases. During ‘Strike Hard’ campaigns, the potency of the death penalty appealed to judges in some areas as an effective way to control crime, and some people were sentenced to death beyond what the law originally intended [17]. Some local courts also considered the number of executions as an important standard to assess work achievements and therefore extensively applied the death penalty in breach of substantive or procedural laws. For example, 57 death sentences and 13 executions in 2010 were highly praised as official achievements in Chongqing’s anti-mafia campaign [18]. The overuse of the death penalty tends to increase the chance that an irreversible miscarriage of justice will occur and often leads to violations of the human rights of persons facing the death penalty. The number of official executioners in China is insufficient to perform all of the executions across China. Due to this shortage, military policemen have had to act as auxiliary executioners [19]. Executions are generally done by shooting, but lethal injection has become “the dominant form of execution” in some provinces and municipalities, according to official media reports [20].

Furthermore, during the periods of ‘Strike Hard’ and its local equivalents, officials and police officers abused their power to require suspects to undergo Reform through labour (RTL), as revealed by ‘multiple miscarriages of justice and wrongful arrests and executions’ [21]. The rapid increase in the use of these penalties depletes the funds of local detention centres. The lack of funds seems to lead to offenders being required to work overtime or to not be granted due labour remuneration in some RTL institutions. Abuse of detainees in RTL institutions is also rife. Reports show several recent cases of ‘cold shower’ death [22] and ‘skeleton death’ (death by combination of overwork and malnourishment) [23].

Meanwhile, China’s basic penal policy is also related to the principle of combining punishment with reform and combining education with labour in RTL [24]. In practice, both the current principle and specific policy appear to be abused, with too much emphasis on punishment and labour and not enough emphasis on education, persuasion and redemption. Considering the nature of labour as both a right and an obligation of citizens in China, some RTL institutions tend to deem any productive labour on the persons undergoing RTL as reform achievements. Detainees are likely to bring direct economic benefits and improve material conditions for the administrators and officers of these institutions [25]. Accordingly, the amount of labour and the quantity and quality of goods produced appear to have become the most important standard in assessing whether detainees have been effectively reformed and educated through labour [26].

This emphasis on punishment and productive labour tends to lead to disregard for the due function of RTL to educate and reform persons undergoing RTL. Some RTL institutions appear not to take reasonable approaches to educate, persuade and redeem detainees, but are likely to punish, mistreat and even torture them. Hence, the potential phenomenon of torture and inhuman or degrading treatment in these

institutions tends to result from improper use of RTL as punishments, rather than the intentional imposition of the suffering itself.

## Conclusion

In conclusion, China still has a long march towards the abolition of harsh punishment as required by the ICCPR. China currently executes prisoners, tortures detainees and reform them through labour mainly due to its historical resistance to individual rights, its traditional approaches to protecting human rights and its political control of 'strike hard' campaigns. The deep reasons for its using harsh punishments suggest the great need of an eventual abolition of such punishments in both Chinese legislation and practice in order to meet the standards of the ICCPR it has signed.

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