



Aalborg University and University of International Relations

Master's Thesis

**Comparative Study of Death Penalty in China and the United States:
Reasons for Retention in International and Domestic Context**

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Abstract

Both China and the US are retentionist countries, however the scope of their death penalty is different – China is a world’s leading executioner while the US embraces the retention in a very limited way. On top of providing a historical context of the institution of death penalty, the aim of this paper is to gauge the impact of two factors on domestic decision-making, that is the international community which pushes for global abolition, and public opinion which is overwhelmingly pro-retentionist in both countries. To conduct the analysis a combined theoretical approach of strategic narrative concept and political legitimacy theory is applied. A three-stage comparative analysis examines first the instruments of international United Nations framework, second the public sentiment as measured by public opinion polls and empirical studies in the two countries, and third, the synthesis of the two aspects with respect to domestic political decision-making on the matter of death penalty is made. The key finding of this thesis is that China and United States, despite having very different character of their political systems, both oppose the global push for abolition and instead, in an effort not to undermine their political legitimacy, retain the capital punishment to cater to public opinion which is overwhelmingly pro-retentionist, all the while setting up procedural safeguards in which heeds the public call for social accountability as well.

Summary

This thesis aims to compare the policies of death penalty in the United States of America and People's Republic of China, explain reasons for their retentionist status and assess the impact of international community and domestic public opinion on death penalty policy decision-making.

Both China and the US retain the capital punishment in law and practice and actively execute people every year. On paper this can appear like both being equal in this regard, however, upon a closer look it becomes apparent that there are profound differences in the application of death penalty – China is the world's leading executioner killing thousands of people every year and the United States executes tens, while embracing the retention in a very limited way. Moreover, when it comes to death penalty reform, the United States has a long history of setting up procedural safeguards and reviews to prevent wrongful executions and ensure due process, so much so that its death penalty became cumbersome, costly and ineffective. China has undeniably done a lot in regard of its death penalty reform, but still has a long way to restrict death penalty to most serious crimes only and ensure the proper treatment of the defendants.

This paper employs a method of qualitative comparative documentary analysis (with quantitative elements when assessing the popular sentiments) and utilizes a combined theoretical approach of strategic narrative concept and political legitimacy theory to conceptualize both international and domestic arenas.

A historical context of global and domestic policy in both China and the US is provided as a background for the analysis. The analysis itself is divided into three levels. Firstly, there is the examination of international community represented by the United Nations framework which is actively pushing for global abolition. Second, in the domestic context, the public opinions (and their historical development) on death penalty are examined and compared in order to explain societal sentiment. The third part contains a synopsis of the previous two where the impact of the two factors is assessed and compared between China and the US.

As a result of this research, the key findings of this thesis are discussed in the final chapter of analysis. Based on my assessment I arrive to the conclusion that China and United States, despite having very different character of their political systems, both oppose the global push for abolition and instead, in an effort not to undermine their political legitimacy, retain the capital punishment to cater to public opinion which is overwhelmingly pro-retentionist, all the while setting up procedural safeguards in which heeds the public call for social accountability as well. Thus, the conclusion of this thesis is that the role of domestic public opinion is, at least in the cases of contemporary China and the United States, much higher than the role of international narrative which has proved insufficient to push the two countries towards abolition.

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1. Introduction

“Many that live deserve death. And some that die deserve life. Can you give it to them? Then do not be too eager to deal out death in judgement.”

J.R.R. Tolkien, *The Fellowship of the Ring*

In 1983, Carlos DeLuna was a 20-years-old resident of the town of Corpus Christi in Southern Texas. On February 4, he was charged for stabbing and murdering a 24-year-old gas station clerk Wanda Lopez. Even though there was no DNA, blood evidence, or fingerprints, DeLuna was tried, convicted and sentenced to death based primarily on one eyewitness’s testimony. He was executed by lethal injection on December 7, 1989 in Huntsville, Texas (Cohen, 2012). However, according to the investigation led by the Chicago Tribune and, most notably, the team of Professor James Liebman of Columbia University Law School, Carlos DeLuna was most likely innocent. The evidence they unearthed concludes that there was in fact another Carlos, Carlos Hernandez, who was with a high level of probability responsible for the murder of the young gas station clerk. Reportedly, Hernandez even repeatedly told others that it was him who killed Lopez and it was his namesake DeLuna that was paying for the crime (Amnesty International, n.d.). While Hernandez, a long-term career criminal, did eventually die in jail in 1999, he was never charged for the murder of Lopez, neither was DeLuna ever posthumously exonerated as American courts do not generally entertain claims of innocence when the defendant is dead (DPICa, n.d.).

In August 1994, Nie Shubin was working as a welder at a hydraulic machinery plant on the outskirts of the city of Shijiazhuang in the Chinese province of Hebei. Just as Carlos DeLuna, Nie was also 20 years old when he was charged and convicted for the rape and murder of his colleague Kang Juhua whose body was found in a nearby field. He was sentenced to death several months later and executed by a firing squad on April 27, 1995. There was no confirmed evidence, no witnesses, the only account for the sentence was Nie’s confession (Global Times, 2010). In 2005, ten years later, Nie’s case came back into spotlight when another man, Wang Shujin, confessed to having murdered nine women – with Kang Juhua as one of them. In 2014, the Supreme People’s Court reopened Nie’s case and in December 2016,

it finally ruled in his favour and exonerated him citing a lack of evidence and questions over the authenticity of his confession.

These two cases, albeit different in their circumstances, tell a similar story and share a lot of resemblance with one another. Above all, they both serve as examples of grave miscarriage of justice and wrongful executions¹ in their respective countries. Both the prosecutors and the judicial system failed to prevent the state from killing an innocent person. The death penalty and the subsequent execution is unique as it is an ultimate punishment, irreversible and definitive by nature. Unfortunately, it is impossible for any judicial system to rule out errors. Can capital punishment be justified then if it is literally a question of life and death?

Death penalty, its legal status and usage, remains a highly controversial topic worldwide. Often considered inhumane and violating the most fundamental human right – the right to life – the capital punishment is nonetheless still legal in 56 countries around the world that retain and impose it on a regular basis (BBC, 2018). Among them are both countries from the two previously mentioned cases – People’s Republic of China (China) and the United States of America (the US)– as they both retain capital punishment in both law and practice².

The United States and China are arguably two most influential actors in the international system, they are both members of the UN Security Council and both shape the international world order in its own unique way. The United States is a developed nation and the world’s leading economic and military powerhouse, and it safeguards its national interests worldwide. China on the other hand is still a developing country even though it is already the world’s largest economy when we take purchase power parity into consideration and it is still growing rapidly. They differ not only in terms of economic power and their political systems, but their societies have vastly different historical traditions and values they subscribe to. And yet, while China defines itself as a socialist republic with Chinese characteristics and the US is a western liberal democracy, they both share a retentionist approach to death penalty. In the 21st century, the retentionist countries are almost “exclusively developing or undemocratic

¹ Carlos DeLuna has not been lawfully exonerated, however, Professor Liebman and his team present an undeniable case for his innocence.

² While only 20 US states use death penalty both in law and practice (Amnesty International, 2017), the capital punishment is still legal on the federal level too, thus the United States is still considered a retentionist country.

nations”, thus the United States with its retentionist attitude stands in a “distinctly unfamiliar category” among its Western allies and like-minded nations (Rose, 2013).

China is the world’s leading executioner with thousands of death row prisoners being put to death every year. While it does not have most executions per million inhabitants, it does execute more people than the rest of the world combined and is an absolute outlier when it comes to death penalty numbers and executions (Amnesty International, 2018b). However, as of right now, it is unfortunately impossible to know the exact statistics as China considers numbers of imposed death penalty sentences or performed executions to be a state secret and thus classified. The actual number is believed to be in thousands (Dui Hua, 2019). In addition, China continues to hand out death sentences for offences that are not considered the “most serious crimes” as defined by the International Covenant on Civil and Political Rights³ which has been signed by China but not ratified.

The US also actively hands out death sentences and executes criminal offenders. But it does so on a much smaller scale thanks to numerous procedural safeguards it has been setting up since 1970s to review each death penalty case. In 2018, it executed 25 people, imposed 45 death sentences and had 2,654 inmates on death row (Amnesty International, 2019). While the death penalty is retained legal on a federal level, a total of 20 US states (and the District of Columbia) have abolished the death penalty, and in fact only 30 states retain it in their legislature as a valid punishment *de jure*. Out of these, another 11 states have actually not executed anyone in the last 10 years. In addition, the US does comply with ICCPR regulations and imposes capital punishment only for the most serious offences as murder (officially also treason and espionage at the level of federal jurisdiction). As David Garland points out, the death penalty in the US does persist, but only barely at that (Garland, 2018).

This thesis aims to examine and explain the key similarities and differences China and the US have between each other with respect to capital punishment. It provides a historical overview in terms of ever-developing legislature and procedural safeguards imposition. In its analysis, it aims to highlight unique aspects and the underlying reasons for the retention of death penalty (as defined by the ideologies of punishment – deterrence, retribution, incapacitation and rehabilitation) in both countries which are impacted by a shifting public opinion and an international pressure which calls for an eventual abolition.

³ Definition of the “most serious crimes” pertains to the intentionally lethal crimes and is further explained in chapter 5.1.

Thus, the research question this thesis aims to answer is the following:

Why China and the United States both retain the capital punishment and what is the role of international context and domestic public opinion?

To conduct the research, a comparative documentary analysis within the combined theoretical framework of concept of political legitimacy and concept of strategic narrative is performed to examine the norms and values in the two respective societies. The structure of the paper is as follows. The research method and the utilized theoretical framework of this thesis is explained in detail in the following chapters of [2] methodology and [3] theoretical approach. What follows is [4] the historical context and a brief overview of how death penalty developed into its contemporary practical use globally and in both the United States and China. The core of the paper is the [5] analysis divided into three sections in which I compare the two countries on three levels from which I derive the answer to the research question. Firstly, the international context and global narrative on death penalty is examined. Second, the public sentiment towards the institution of death penalty is presented. Third, the political decision-making and policy creation as a result of and reaction to the previous two levels is analysed. The analysis is concluded with the discussion section where the key findings are summarised, examined and interpreted. Conclusion [6] sums up this paper and highlights its particular contribution to the academic debate on death penalty.

2. Methodology

This chapter presents the research methods and the theoretical framework utilized in this paper, as well as the data used to conduct the analysis. On top of that I point out limitations of my research approach.

Method

This paper presents a qualitative comparative analysis of death penalty in China and the United States of America and, as the research question suggests, aims to examine and explain the reasons why both of these (otherwise much different) countries maintain their retentionist attitude towards capital punishment. It conducts a comparative documentary analysis (content analysis) to compare and contrast conditions and aspects of this broad topic present in the two respective countries. In order to do that, a qualitative approach was utilized to consult primary (e.g. international and domestic legal documents, treaties and utterances of politicians) and secondary sources (academic articles, journals, books, NGO publications) which were critically assessed, interpreted in an original way and they provided grounds to support the arguments and conclusions. In addition, an empirical analysis based on quantitative secondary data (surveys and opinion polls) was performed to identify the differences in public opinion toward death penalty in the two countries. The third subchapter of analysis is comprised of a synthesis, in which I examine to what extent the resulting death penalty policy in China and the US comes as a result of international and domestic contexts using the theoretical concepts of strategic narrative and political legitimacy. The fourth subchapter offers an interpretation of key findings of my research. As such, the two countries and their policies on death penalty are compared on the grounds of their response to the international system, and of compliance with public opinion on death penalty as these two factors are identified as decisive when it comes to capital punishment policies.

Choice of Theory

The added value of this paper lies in an innovative approach of using a combined approach of two theoretical concepts to assess the interplay of two phenomena – the strategic

narrative concept developed by Laura Roselle et al. (originally related to Joseph Nye and conceived as means of maintaining soft power resources) and the concept of political legitimacy developed by Max Weber and advanced by Seymour Martin Lipset or John Rawls. Whereby using this approach, I argue that there are strategic narratives being constructed by both the supranational international community and the domestic governmental actors which are, in case of China and the United States, in contradiction to one another. The domestic policy makers and legislators are influenced by public opinion which is still overwhelmingly pro-retentionist in both countries. Thus, both governments relate their stance to the compliance with public sentiment in what I argue is an effort to retain and preserve political legitimacy.

Therefore, this paper does not employ traditional international relations theories of realism, nor liberalism as I have not found them to be conducive or applicable to the highly specific and complex topic at hand. Theory of constructivism (or social constructivism) has been considered for its emphasis on identities, normative values and social norms which are, arguably, influential in a discussion on human rights or death penalty. However, an application of constructivism would not prove to be fruitful as the research subject of this paper is more empirical. Instead, for the purposes of this research, I propose an original and innovative approach of the two different concepts which are, nonetheless, tightly linked to each other because the subject matter at hand is closely interrelated. Legal status of, and policy towards, the death penalty is at the end of the day a domestic issue and a matter of national governmental decision-making, thus a matter of appeasing public, hence political legitimacy is utilized. Although, due to the nature of the punishment which violates human rights, there is a strong global push for abolition of death penalty in form of an international strategic narrative.

Data collection

As previously mentioned, this paper uses predominantly qualitative data for the purposes of answering the research question within the comparative content analysis. Of particular importance were the primary sources, be it legal documents like the Criminal Law of the PRC or international treaties and documents like the *Universal Declaration of Human Rights* or the *International Covenant on Civil and Political Rights*, or procedural documents like the reports from Universal Periodic Reviews. Secondary sources, however, were of vital use as well, be it academic articles, journals or books. This paper draws greatly from works of major authors that have for a long time published on the topic of death penalty, such as Roger

Hood and Catheryn Hoyle, or William Schabas, and their comprehensive account on death penalty worldwide; Shanhe Jiang and his in-depth and long-term collaborative empirical research on public opinion in China and the US; or David Garland in the US and Hong Lu and Bin Liang in China who produced extensive accounts on the practice of capital punishment and implications of its use in the two respective countries. In addition, this paper utilized quantitative sources to complement the qualitative content analysis and paint the picture on public opinion in the two countries.

Limitations

The methodology employed in this paper might have led to certain limitations. First, the proposed theoretical framework is not an established academic approach and there might have been shortcomings in its application.

Due to Chinese official statistics on death penalty being subject of a state secret, a comprehensive and verified data on China's executions, death penalties, or death row inmates, is simply not available, therefore certain comparisons should be taken with some reservations. Instead of official data, I use estimates from international NGOs like Amnesty International and Dui Hua Foundation.

Another major limitation, at least pertaining to China, is that I only used sources available in English language. As a result, certain aspects and intricacies of death penalty practice in China might have been omitted due to the lack of research conducted in Chinese language.

When it comes to Chinese public opinion, the latest thorough and academically rigorous empirical study cited in this thesis (Oberwittler & Qi, 2009) analyses a dataset collected in 2008. Thus, since then, the public sentiment toward death penalty in China might have shifted.

Finally, perhaps the biggest limitation of this paper is that it effectively analyses only two factors behind the governmental decision-making, the domestic public opinion and international pressure within the UN framework, thus painting a rather simplified perspective on the matter.

Obviously, in reality, there is multiple actors and stakeholders involved in the decision-making process and the resulting domestic policy comes as a result of various moral, ethic,

legislative, judicial and political factors that have not been accounted for in this paper due to time constraints and for the sake of clarity and simplicity.

Notably, there are of course other ways for states to maintain state power, not through just legitimacy. Historically, for instance the death penalty itself served as a way to keep social order and was believed to maintain state power along the despotic power conception of Michael Mann (Mann, 1984: 189-192) by imposing the death penalty as means of oppression. Such conception of death penalty might also be applicable for colonial history of the United States. And, arguably, not only to imperial China, but for much of the 20th century China, as well. However, in this paper I depart from this one-dimensional notion of death penalty and instead introduce the legitimacy-based state power, of which the death penalty is, of course, just one partial element of based on the attitudes and sentiments of the public. Naturally, the governments balance their policies on a plethora of subjects and this thesis is concerned with just one of the policies – the retention of death penalty

While I did try to avoid an overly reductionist approach, it is only fair to point out that in reality, the discussion about the death penalty is affected, either directly or indirectly, both on a domestic and an international level, by media, NGOs, independent journalists, scholars, lawyers, shifting cultural norms and other external factors which are far too complex to cover within the restraints of this paper.

3. Theoretical Framework – Strategic Narrative and Political

Legitimacy

Instead of using traditional IR theories, this paper employs a combined approach of two theoretical concepts that can be applied on the issue of death penalty. When considering the reasons for retention in both countries, there are multiple actors affecting the resulting policies of the two respective governments. Them being an actor on their own and forming the policies themselves, they also have to address the international context and their domestic audiences too. Hence, this paper utilizes the combination of two theoretical frameworks to assess the issue of death penalty from a complex comparative perspective. The following chapter explains both concepts – the strategic narrative and the political legitimacy – and their application to the death penalty.

Strategic Narrative

First, the concept of strategic narratives developed by Laura Roselle, Alister Miskimmon and Ben O’Loughlin is used to describe how the attitudes of respective actors are formed, projected and received and how their narratives impact the decision-making in both countries with respect to the policy of curbing the capital punishment, yet still retaining it.

The strategic narrative concept was developed as an advancement on the influential theory of Joseph Nye – his conceptualization of soft power. It is without a doubt that the soft power has become central to an understanding of international relations and international system today. The concept of soft power recognizes the importance of ideas and culture in foreign (and domestic) policy (Roselle, Miskimmon, & Loughlin, 2014: 72). However, as Roselle et al. note, using Nye’s conceptualization it is still difficult to identify soft power resources more precisely, and the processes through which soft power operates. A strategic narrative concept with a set structure of its components (actors, setting, conflict or action, and resolution) presents an alternative approach that can be used when addressing concrete issues with several actors involved each having their own narrative and influencing each other – like the debate on death penalty.

Indeed, in Roselle's typology there are multiple kinds of strategic narratives. First, the international system narratives that "describe how the world is structured, who the players are, and how it works" (Roselle, Mismon, & Loughlin, 2014: 76). Second, the national narratives set out "what the story of the state or nation is, what values and goals it has" (Ibid.). Third, the issue narratives set out "why a policy is needed and (normatively) desirable" (Ibid.). Issue narratives set governmental actions in a context, with an explanation of how a particular course of action could resolve the underlying issue.

Traditionally, the strategic narratives are created and used by countries to communicate and justify a certain foreign policy or a certain approach. When pertaining to the issue of the death penalty, it might seem that such an issue is of a domestic character only. After all, each country should have a sovereign right to decide on its legal and penal policies. However, the debate on death penalty has a substantial international context within the broader global debate on human rights in which the trend towards abolition of death penalty creates a narrative on its own. Thus, this paper proposes that there is a top-down international system narrative which is in opposition to the bottom-up national and issue narratives of domestic actors in both China and the United States – with unique and different aspects and implications for both countries.

Political Legitimacy

Second, the theoretical approach of political legitimacy is employed to examine the underlying reasons for the governments' policies and attitudes towards the death penalty abolition or its retention. The concept of political legitimacy is related to the state, the regime, or the political system and its potential to stay in power. This paper however focuses on the particular issue of death penalty, and the states' policy in regard to it. The death penalty policy thus serves just as a particular element of the wider political legitimacy of the two respective states.

There are two concepts of political legitimacy – the descriptive legitimacy and the normative one. Originally conceived by John Locke and developed by Max Weber, the descriptive political legitimacy framework focuses on the consent of the public to be governed by an authority – a political regime, a polity. And it is precisely this consent that is central to the idea of political legitimacy. Stemming from the Hobbesian theory of social contract in which the political authority is transferred to a civil state to prevent the "state of nature", John Locke went forward and argued contrary to Hobbes by maintaining that the social contract does

not create authority automatically. According to Locke, the legitimacy of a political authority depends on whether the transfer of political authority happened with individuals' consent (Stanford University, 2017).

German scholar Max Weber expands on Locke's legitimacy. His approach holds at its core that "the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige" (Weber, 1964: 382). According to Weber, political legitimacy of a state can have three sources: tradition (people have faith in a political order that has been there "naturally" as an unalterable dogma, in a monarchy for instance); charisma (they have faith in the ruler being extraordinary and endowed with exceptional power or qualities not accessible to ordinary persons), or people might trust its legality – specifically the rationality of the rule of law (Netelenbos, 2016: 36-46).

Another scholar, Seymour Martin Lipset, notes that the legitimacy is defined as the "the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for society" (Lipset, 1960: 77). He further adds that the extent to which systems are legitimate depends upon the ways in which the key issues historically dividing the society are being resolved (Ibid.). In order for an authority to have both the right and justification to exercise power, it has to hold legitimacy in the eyes of its subordinates.

Based on the descriptive approach to political legitimacy, we can derive that in order for a state to maintain political legitimacy, it should appease to the public in so far as it facilitates its support and consent for being ruled over. Of course, the state or the political body can hold authority without being legitimate, or it can lose legitimacy over time. Thus, without legitimate authority such states would merely exercise power and hold authority just effectively – and in order to stay in power in the long run would need to use other means like coercion, oppression or social control.

Contrary to Weber's concept, the normative concept of political legitimacy is based around the notion of justification of political power. The normative counterpart was developed by John Rawls in several of his books and articles, namely the *Theory of Justice* (1971), *Political Liberalism* (1993) and the *Reply to Habermas* (1995).

It is beyond the scope of this paper to delve deep in all intricacies of Rawls's examination of political legitimacy related to his voluminous work on liberalism, but this section will introduce his view on legitimacy in brief. Rawls believed that the exercise of

political power is always coercive by definition. Thus, he focused not on the transfer of political authority to a civil state but instead on whether and to what extent the coercive power exercised by the state is justified. How to justify binding laws and obligations with which (at least some) citizens inevitably do not agree? How to use coercive political power in a legitimate way? His resolution to this question was the famous liberal principle of legitimacy which states:

“Our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution (written or unwritten) the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational” (Rawls, 2001).

This principle rests on Rawls’s idea on public reason and criterion of reciprocity. According to these, “those coerced by law must be able to endorse the society's fundamental political arrangements freely, not because they are dominated or manipulated or kept uninformed” (Stanford University, 2017). As such, the public reason should be stripped of moral or religious doctrines of the good, and instead focus solely on the basic political values each individual can agree on. Thus, Rawls’s principle requires that all the coercive power the state holds should be justifiable to all citizens. What then about a particular issue of death penalty?

An answer to this question might have been provided by Corey Brettschneider. He expanded greatly on original Rawls’s ideas and this paper takes into consideration his contractual relation between a citizen and the state, and the justification of coercive (punitive) action in regard to the capital punishment. In his research, Brettschneider argues strongly against the use of death penalty not necessarily on the grounds that state is a fallible agent and wrongful executions are, in practice, unavoidable, but instead points out that within the social contract theory, not even criminals cannot be stripped of fundamental rights (i.e. the right to life) because they are still citizens⁴ (Brettschneider, 2007: 193) and thus the death penalty cannot be justified.

In the context of this paper pertaining to the US and China – a liberal democracy alongside a one-party socialist republic with Chinese characteristics – an important notion

⁴ According to Brettschneider, “a deeper justification stems from the value of never terminating the relationship between citizens and the legitimate state, a relationship that itself is the foundation for the state’s authority” (Brettschneider, 2007: 193).

should be addressed. Can a nondemocratic regime be legitimate⁵? According to the theorists of political legitimacy, yes. Weber posits at length that a political regime does not have to necessarily be democratic to maintain its political legitimacy in the eye of the society it governs. Likewise, while Lipset focused primarily on democracies, his notions are easily applicable for authoritarian regimes. Lipset opines that “legitimacy, in and of itself, may be associated with many forms of political organization, including oppressive ones” (Lipset, 1959:87). Rawls specifically examined liberal democracies, however, I argue that his principles can be applied to the case of China without much difficulty as China does have a constitution, and the Chinese government enjoys an overwhelming support from the public.

Combined Approach

The national policies (and national strategic narratives), especially on such controversial topics as the death penalty issue, are of course affected by public opinion. Thus – and this applies to both democratic and authoritarian regimes – the governments must pay close attention to the relation with and towards the public when forming their policies to retain regime legitimacy and resilience and to shore up popular consent. Here we see how in the context of death penalty the two concepts, the strategic narrative and political legitimacy, are closely intertwined. As developed further in the analysis chapter, it can be observed how the two governments balance the shifting popular sentiments and at the same time restrict the death penalty by setting up procedural safeguards, yet they cater to the public opinion which is in favour of retention of death penalty for retributivist or deterrence purposes.

In conclusion, to better explain the underlying reasons for policies related to death penalty in the US and China, I use both of the theoretical frameworks outlined above and argue that they are in fact closely related to each other. The resulting policies towards capital punishment are on one hand communicated and created as strategic narratives with respect to the international system and also to national level, and on the other hand can be examined from the political legitimacy perspective with respect to governmental action and public opinion on death penalty because in line with Lipset’s definition, the political legitimacy is the capacity of the system to maintain the belief that the existing approach to the death penalty is the most appropriate for the society. In other words, when utilizing the strategic narrative framework, I

⁵ China is often labelled as a nondemocratic (Liang & Lu, 2015) or authoritarian (Noakes, 2014) regime by Western scholars.

expand on the traditional foreign policy dimension and connect the strategic narrative to the death penalty debate which, while having a substantial and impactful international dimension, is at the end of the day a matter of domestic policy decisions greatly influenced by a crucial effort of the state to maintain its political legitimacy in the eyes of the public.

4. Context – Past and Present of Death Penalty

In order to understand the current reality of capital punishment in the two examined countries and to equip the reader with sufficient knowledge to understand the subsequent chapter of analysis, it is necessary to provide a historical context of how the institution of death penalty evolved and developed into its current global form, especially in the US and China. Hence, this chapter will first briefly focus on how the death penalty has developed worldwide and the two subchapters are dedicated for a more in-depth overview of past and present situation of death penalty in the two respective countries.

4.1. General Overview

Death penalty has been used as an ultimate punishment for millennia and regarded as an effective penal weapon of social control (Hood & Hoyle, 2015). As the historian Stuart Banner puts it, “the primary purpose of capital punishment was the emphatic display of power, a reminder of what the state could do to those that broke its laws” (as cited in Hood & Hoyle, 2015). The practice of death penalty has been used by almost all societies around the globe. It was in the 18th and 19th century’s Europe when the first glimpses of abolitionist thoughts started to appear – in line with the Enlightenment and notions of rationalism and humanism. One thinker in particular proved to be vital in the evolving thought on criminal legislation. A young Italian reformer from Milan, the Marquis Cesare Beccaria, published his essay *On Crimes and Punishments* in 1764. In it, he questioned the validity of the death penalty and called for punishments that are appropriate to the nature of crimes committed, whereby calling for the death penalty abolition (Maestro, 1973: 464). Beccaria argued that the state does not possess the right to take lives and pointed out that the death penalty is irrevocable in case of a judicial error, and he was right at that. As history (and present) shows us, wrongful convictions are indeed impossible to be prevented even with the best intentions in mind. Furthermore, Beccaria doubted about the deterrence effect of the death penalty and argued that the life in prison would in fact be an even stronger deterrent:

“It is not the intenseness of the pain that has the greatest effect on the mind, but its continuance. [...] The death of a criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring

others than the continued example of a man deprived of his liberty, condemned, as a beast of burden, to repair, by his labour, the injury he has done to society, If I commit such a crime, says the spectator to himself, I shall be reduced to that miserable condition for the rest of my life. A much more powerful preventive than the fear of death which men always behold in distant obscurity.”
(Beccaria, 1764, Chapter 28).

Ironically enough – at least from today’s point of view – Beccaria’s thought had a profound impact and became particularly prominent in the newly independent United States. For example, his principles led to a restriction of death penalty to be limited to the crime of first-degree murder only in the state of Pennsylvania in 1794⁶ (Maestro, 1973: 466). Subsequently, this policy began to be widely accepted all throughout the US and Europe.

Nevertheless, it was only in the 20th century when the real abolitionist trend gained notable traction on public opinion level and policy level alike. Even though there were examples of several US states abolishing the death penalty in the 19th century (which will be further discussed in section 4.3), the true global push for abolition was initiated in Europe after the Second World War. While the first step into the direction towards abolition was made with adoption of the *Universal Declaration of Human Rights* (UDHR) at the UN level⁷, the key role in the battle towards the total abolition has to be attributed to the European Communities – notably the Council of Europe and the European Union which spearheaded the global promotion of abolitionist narrative. Especially the Council of Europe was instrumental in the promotion of human rights and full abolition of death penalty throughout the European continent and the European countries then kickstarted the international call for abolition in the second half of the 20th century (Hood & Hoyle, 2015).

As a result, the number of retentionist countries started to drop down rather rapidly towards the end of the 20th century. Especially after the collapse of Soviet Union, a “new dynamic” has emerged that recognized capital punishment as a denial of the fundamental human rights, specially of the right to life (Hood & Hoyle, 2009: 1).

⁶ Thus, it effectively restricted the death penalty to all but the most serious crimes (roughly two hundred years before such definition was put into codified international law in form of Second Protocol to the ICCPR).

⁷ The international framework, its importance and instruments, is discussed in a dedicated subchapter within the Analysis part together with the compliance of China and the US with it.

The world has undergone a remarkable change in recent decades and the trend towards universal abolition is undeniable. To better illustrate this fact, I utilize a comprehensive table originally made by Roger Hood and Carolyn Hoyle (Table 1). We can observe that the number of countries that actively retains the death penalty (those that executed at least one person in last ten years and had not declared a moratorium) had fallen from 101 in 1988 to 39 in 2014 (Hood & Hoyle, 2015). As of today, more than two thirds of countries worldwide have abolished the death penalty either in law or practice. By the end of 2017, 106 countries had abolished the death penalty in law for all crimes and 142 had abolished it in law or practice (Amnesty International, 2017: 5). However, in 2017, 23 countries around the world still carried out executions, the same number as in 2016 (Ibid: 6).

Year	Complete abolitionist		Abolitionist for ordinary offences		Total retentionist		Retentionist executions in previous 10 years		Retentionist but abolitionist <i>de facto</i>		Total number of countries
	No	%	No	%	No	%	No	%	No	%	
Dec. 1988	35	19	17	9	128	71	101	56	27	15	180
Dec. 1995	60	31	13	7	119	62	90	47	29	15	192
Dec. 2001	75	39	14	7	105	54	71	37	34	18	194
Dec. 2007	91	46	10	5	95	48	51	26	44	22	196
Apr. 2014	99	50	7	4	91	46	39	20	52	26	197

Table 1 Number of Abolitionist and Retentionist Countries around the World (Source of the table: Hood & Hoyle, 2015).

4.2. Death Penalty in China

The institution of death penalty has a long tradition in China. Historical records show that the practice of death penalty has been used in China as soon as 2200 BC during Xia dynasty. The death penalty served as an ultimate punishment and a control mechanism to maintain and preserve state power and social order. The practice remained in place for centuries and continued even with the demise of imperial China in the early twentieth century.

The Communist Party of China was once willing to abolish the death penalty. In line with the traditionalist views of Marx and Engels which had a humanizing factor and looked at the death penalty as a cruel method, the Chinese Communist Party formally suggested that the death penalty should be abandoned on 15 June, 1922 (Bakken, 2011: 39). To be precise, the Party proclaimed: “We [the CPC] are currently striving to reach the following goals (...) improve the judicial system, abolish the death penalty, abolish corporal punishment” (Amnesty International, 2017). Nevertheless, in the period of subsequent revolutions and conflicts, the position was quickly abandoned never to be reclaimed.

Death penalty remained in place in 1949 after Mao Zedong’s CCP came into power in 1949. However, there were references about its abolition in the period of 1950s, in legal textbooks and even in utterances of high-level representatives. As Bakken puts it, “Although the death penalty was frowned upon in Chinese Marxist discourse, the regime has always resorted to the use of it, all the time claiming that it is necessary ‘at this stage of development’. The present talk about ‘gradual abolishment’ follows this tradition” (Bakken, 2011: 40). Nevertheless, during the Maoist years, the practice was vigorously employed for political purposes – in keeping with the Leninist principle that severe forms of punishment were to protect the revolution from bourgeois counterrevolutionaries (Noakes, 2014: 23). Mao himself named the “exploiters, counterrevolutionaries, landlords, bureaucrat-capitalists, robbers, swindlers, murderers, arsonists, hooligans, and other scoundrels who seriously disrupt social order” as fit for execution (Ibid.) in order to, as he himself called it, “assuage people’s anger” – he justified the harsh punishment on the grounds of retribution principle to appease the masses (Bakken, 2011: 40).

The 1979’s adoption of the Criminal Law was a response to the harsh radicalization during the Cultural Revolution. The new legislature introduced first reforms on death penalty and improved its legal basis. The penalty however remained firmly in place all throughout the Deng Xiaoping’s government, moreover, it became even more prevalent and bloody with the

first of the several *yanda* (strike-hard) anti-crime campaigns in 1983. Despite having a “golden opportunity” to change China’s attitude towards death penalty and advocate for a more lenient use after years of brutalisation and extra-legal executions, Deng instead called for greater use of the death penalty, and even extended the number of capital crimes to include corruption, recidivism, major theft, smuggling, tax evasion, and a range of crimes where it had not been used in the past to curb economic crime that increased with the opening-up reforms. (Bakken, 2011: 41). Nevertheless, the introduction of the Criminal Law and Criminal Procedure Law meant a major step for procedural safeguards and a more juristic approach. These changes also introduced first official prohibitions on the death penalty in China, for instance ruling out killing of juvenile offenders.

What followed was the reintroduction of *yanda* campaign again in the 1990s under the then president Jiang Zemin. Just as during the first one, this created problems of torture, presumption of guilt rather than innocence, and lack of checks and balances among the police, prosecutors and courts (Jiang, Hu, & Lambert, 2018: 4). The Chinese government enacted an amendment to the Criminal Procedural Law in form of the second criminal code in 1997, which focused on the strengthening of defendants’ rights but, in addition, the number of crimes punishable by death penalty was increased from 28 to 68, including those focusing on economic or social order crimes (Ibid.) to protect what was termed “national stability” (Noakes, 2014: 24).

The most important breakthrough in Chinese death penalty procedural safeguards was the beginning of government’s “kill fewer, kill carefully” strategy and the 2007’s restoration of power to the Supreme People’s Court (SPC) to review all death penalty sentences in which defendants were subject to immediate execution – which reversed a 1983 policy decentralizing appellate review to provincial and local courts in order to encourage executions as a means to deter crime (Ibid.).

Besides this measure, the government further bolstered a policy of the suspended death sentence – capital punishment with a two-year reprieve for the cases in which the immediate execution was deemed unnecessary⁸ (Seet, 2017). In such a case, the death penalty is automatically commuted to life imprisonment “if the convicted person does not wilfully commit an additional crime during the two-year period” (Noakes, 2014: 24). This policy was introduced already in 1979 and revised in 1997 as a means to decrease the numbers of

⁸ This policy was originally introduced with 1979 Criminal Law.

executions. The death penalty with suspended death execution is a unique characteristic in Chinese death penalty practice.

More recently, there has been a great progress achieved in terms of limiting the imposition of death penalty sentences and reducing the number of executions. It commenced with the Eighth Amendment to the Criminal Law which abolished the death penalty for 13 capital crimes in 2011 and was further developed by the Ninth Amendment which decreased the number of capital crimes by another 9 non-lethal and non-violent offences (Li, Longmire, & Lu, 2018: 3). As a result, the total number of capital crimes in China went down from 68 to 46. Both of these amendments improved also other provisions relevant to the death penalty such as applicability of conditions of the suspended death penalty sentence and setting up procedural safeguards that resulted in substantial decrease in the number of executions.

Because China does not publish complete records⁹ on death penalties imposed nor executions performed, it is not possible to properly assess the trend in its we can only rely on scarce estimates by international NGOs. According to those, we can observe a decreasing trend in the numbers of executions. In the early 2000s, China executed approximately 10,000 people annually and in 2018, according to estimates, the number of executions was around 2,000 (Dui Hua, 2019).

While the effort to curb the numbers of death sentences and executions was heightened with Xi Jinping who continued with the “kill fewer, kill carefully” rhetoric, China has not made any serious commitments in terms of setting up a timeframe for an eventual abolition, nor has it sufficiently responded to the fact that death penalty statistics are still a matter of state secret. Thus, it is impossible to assess the real numbers of sentences and executions. Nonetheless, the total abolition seems very unlikely in the near future as further explained in section 5.3.1.

⁹ In 2013, China has launched a so-called China Judgements Online, a national public database of court verdicts that “the government has hailed as a major advance in judicial transparency”. However, according to Amnesty International, it only lists a fraction of the total numbers of death penalties and executions (Amnesty International, 2017: 24-31).

4.3. Death Penalty in the United States

The fact that the United State is one of only a handful developed nations that still retains the death penalty arises from a complicated mix of social, legal, and political factors that shape American ideas about justice and the role of government in matters of law and order (Evans, 2008). Nevertheless, at a time when all other Western nations have decisively abandoned it, makes America an anomaly. This subchapter provides an overview of historical and contemporary context of the American attitude towards capital punishment and highlights the most important milestones of practical use of death penalty and policy changes related to it.

An important note needs to be made before addressing the subject more concretely. The US system of governance (and law) has two levels, the federal and state level. Both are of particular importance when talking about the topic of death penalty. The policy in individual states developed to a large degree independently from one another. For the purposes of this research I will predominantly focus on the federal level and only make a recourse to individual states in the historical overview as explaining both the historical development and contemporary nuances at the level of individual states is far beyond the scope of this paper.

When it comes to historical origins of the punishment in the United States, the first record of a death penalty sentence and execution performed in the American colonies comes from 1608 when Captain George Kendall was executed by firing squad for the crime of mutiny in Jamestown, Virginia (ProCon, 2016). Originally, the statutes of death penalty in the individual colonies (which later became individual states of the United States) were derived from the English Penal Code but varied colony from colony with some colonies having much more cruel laws than others. For example, as previously mentioned, some colonies limited the death penalty to only treason and murder, like Pennsylvania did first in 1682 (Garland, 2010). After the revolution and founding of the sovereign United States, several states followed in restriction of the practice to only the worst crimes (like Maryland, Vermont, Virginia, Kentucky, Ohio and New Hampshire).

American thought in the early years of independence was influenced by Dr. Benjamin Rush¹⁰, one of the signatories of the Declaration of independence. He challenged the belief that the death penalty serves as a deterrent and, instead, he held that the capital punishment actually increases criminal conduct. He gained support of Benjamin Franklin and William Bradford,

¹⁰ Sometimes referred to as the “American Beccaria” (Rose, 2013).

who later became the US Attorney General. Bradford was the first to “consider degrees of murder based on culpability” (DPIC, 2018). As a result, Pennsylvania, being on the forefront of the death penalty reduction at the time, restricted death penalty to only the first-degree murder in the 1794 (Evans, 2008).

From today’s perspective it might seem striking, but the United States – or at least some parts of it – was on the vanguard of abolition long before any other country. When it comes to full abolition, the first jurisdiction ever (globally) to abolish the death penalty – even for the crime of murder – was the state of Michigan in 1846, more than a century before most of the European states even started to consider the abolition. Rhode Island and Wisconsin soon followed Michigan and abolished death penalty in 1852 and 1853 (Hood & Hoyle, 2015). In the beginning of 20th century, there was a so-called “progressive period” when several states abolished the death penalty, but its duration was short-lived due to the WWI, Prohibition and Great Depression (during which the crime rates skyrocketed), and death penalty was reinstated in most of those states with no other abolitions until 1950s. During the 1930s, the practice got particularly harsh and there were more executions than in any other decade in American history, an average of 167 per year (DPIC, 2018) with an all-time peak in 1935, at 199 (Banner, 2009: 208).

The abolition movement had made a comeback since the mid-1950s and throughout the 1960s. Amidst the civil rights movement, several states have abolished the punishment. This period during president Johnson’s administration was the high point of American liberalism (Garland, 2018: 430). Until the 1970s, political discourse on death penalty in America was related predominantly to classifying capital crimes and debating more humane execution methods (Rose, 2013). Numerous procedural safeguards were set up and the time between giving a sentence and execution prolonged (Banner, 2009: 216).

The key moment in American history of death penalty occurred on June 29, 1972. In a group of cases collectively referred to as *Furman v. Georgia*, “the Supreme Court declared the death penalty unconstitutional, as cruel and unusual punishment in violation of the Eighth Amendment” of the US Constitution’s Bill of Rights (Banner, 2009: 231). *Furman v. Georgia* came only as a culmination after series of cases that each set new understanding of legal community towards the Eighth Amendment¹¹. While most of these did not explicitly concern

¹¹ These cases effectively resulted in a Supreme Court ordering a nationwide moratorium on executions already in 1967 until the question of constitutionality of capital punishment could be settled (Hood & Hoyle, 2015).

capital punishment, “they laid a foundation that lawyers would eventually use to challenge the constitutionality of death penalty” (Banner, 2009: 235) and established the concept of “evolving standards of decency” under the Eighth Amendment, which the death penalty effectively violated. As a result of the ruling, the United States de facto suspended the capital punishment and rendered the release of 629 inmates from death row (Garland, 2018: 430). The suspension of death penalty was however not to last.

In the following years after 1972, the Supreme Court created a uniform death penalty system for the entirety of United States, on a federal level. New guidelines for the judge and jury were provided and the trial was bifurcated into deliberation for the guilt first and the sentence second. Generally, only the first-degree murder remained as a sole capital offense in all states (Evans, 2008), however all capital cases were to be reviewed at the federal level. Within two years, 35 states had passed new statutes (Garland, 2018: 430). Thus, in 1976, the death penalty was reinstated by Supreme Court’s ruling in *Gregg v. Georgia* and the first execution since the moratorium was performed in Utah on January 17, 1977 (DPIC, 2018).

Since 1976, the US policy on death penalty at a federal level has not fundamentally evolved. The Supreme Court’s decisions continued to redefine the death penalty laws; over the years it ruled that executing insane, mentally handicapped, or juvenile persons would be in violation of the Eighth Amendment (even though the practical usage of death penalty varied). A new wave of abolitions came in the new millennium with seven states abolishing the punishment since 2007, with Washington as the last state to abolish in October 2018 (Amnesty International, 2019). But in general, the United States to this day retains death penalty, be it only for crimes pertaining to a first-degree murder¹².

When it comes to statistics, the United States has legally executed more than 7,000 people in the 20th century alone (Sarat, 2013: 5), vast majority of that before the suspension of death penalty in 1972. Since reinstation of the punishment, there have been 1,495 people executed in America (DPIC, 2019). As of 2018, the number of executions in the US is near its historical minimums (even though the actual number has increased for a second year in a row in 2018). The US currently executes around 20 people a year and in 2018 alone, it executed 25 people in eight states. This is still less than half of the amount of executions just ten years ago. When it comes to the number of imposed death penalties there have been 45 people sentenced

¹² An exception to this provision is the crime of treason and espionage which hold the status of capital crimes at the level of Federal jurisdiction (DPIC, 2019a). It should be noted that the federal government executes people very seldomly. Last person was executed in 2003 and only three have been executed since 1963.

to death in 16 jurisdictions in 2018. Overall, there is 2,654 death row inmates in 33 jurisdictions (Amnesty International, 2019: 14-15). The death penalty is officially retained in 30 states, but four of them have entered a gubernatorial moratorium, last one being California in March 2019 (DPIC, 2019b), and 11 states have not carried out an execution in at least 10 years (Amnesty International, 2019: 15).

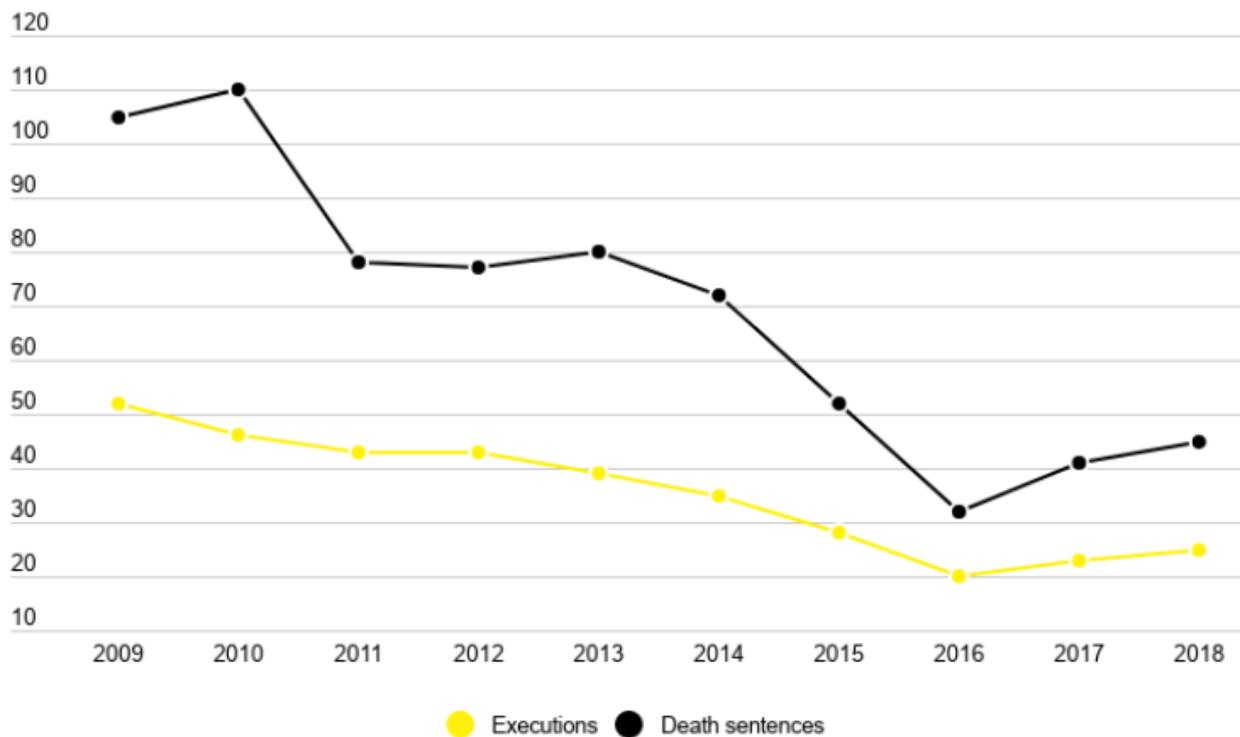


Chart 1 Death Sentences and Executions in the USA 2009 – 2018 (Source of the figure: Amnesty International, 2019: 15)

While it is a truism that the US retains the capital punishment, David Garland points out that the practice of death penalty in United States is actually a “peculiar institution”. Most convicted murderers end up serving a life-long prison sentence instead of being sentenced to death due to many procedural measures; less than one percent of convicted murderers actually end up executed. As Garland notes:

“Wherever capital proceedings are undertaken, the process is skirted round with procedural evidentiary, and appellate rules that are much more elaborate than in noncapital cases¹³. And even in the rare instance when a death

¹³ Garland notes elsewhere that the review and appellate process typically has nine stages, often more (Garland, 2018: 425).

sentence is imposed (...) the majority of these sentences are never executed because the sentence is overturned, the prisoner is exonerated, or the authorities refrain from setting an execution date. The primary cause of death for capitally convicted murderers is not judicial execution: it is 'natural causes'." (Garland, 2010: 11).

According to Garland, more than 80 percent of executions since 1976 have occurred in the Southern states, with Texas alone accounting for more than one-third of them (Garland, 2018: 425). While the US retains the death penalty, only a miniscule percentage of convicts are actually executed.

To conclude this chapter, I offer a simple comparison between China and the US in relative terms. In 2018, the United States had less than one fourth of China's population. Be that as it may, in the same year the US executed a mere one percent of the total number of people that are believed to be executed in China¹⁴.

Regardless, similar to the situation in China, in the United States we can also observe the decreasing trend in terms of both the numbers of death penalties and executions. An answer to the question on what the reasons behind this trend are is provided in the next chapter, the analysis.

¹⁴ Based on estimates from Dui Hua Foundation stating that in 2018 China has executed 2,000 people (Dui Hua, 2019).

5. Analysis

After having provided an overview of key attributes of current and past death penalty practice in the US and China we can proceed to the core part of this paper. This chapter serves to provide an answer to the research question and thus explain the key reasons why both countries retain the capital punishment albeit on a vastly different scale.

In order to fully understand the death penalty policy environment and political decision-making of the US and China on the subject, the following chapter is divided into three subchapters based on the three levels of analysis. First, the international dimension that sets the global stage of death penalty and creates the push for abolition, is examined in the first subchapter. Secondly, the domestic environment in China and the US with respect to the public opinion and public approval rates for the retention, or respectively, the abolition, is explained in thorough detail in the second subchapter. The third subchapter of the analysis is focused on the political level, the resulting contemporary policy of the two respective governments – the limited retention – that has still a very different meaning in the US and in China. The three levels will be analysed using the strategic narrative approach – the construction and formation of strategic narratives both on international and national levels – and the political legitimacy framework to assess the resulting policies of the two countries with their own characteristics. The third subchapter is a synthesis of the previous two and in addition presents the arguments on why the approach to the death penalty is the way it is in the United States and China and why we can, nevertheless, observe a shift in the policy of the both countries. In the end, findings of the analysis are examined in the discussion section.

5.1. International Context – The United Nations Framework

In the global debate on death penalty, it is the international community which defines the decisively abolitionist global trend with a strong human rights perspective on the matter. The international community has put forward a number of international instruments, standards and mechanisms with a goal of eradicating or at the very least restricting the practice of death penalty worldwide. This subchapter presents these treaties and instruments and makes notions on their either binding or non-binding character. However, the Chinese and American position towards and response to them, if and how they comply with them and what effect the international context has had on the domestic policy-making is primarily explained in chapter

5.3. Overall, in this chapter I present the argument of how the international community constructs and permeates the international system narrative of global abolition of death penalty.

The international discussion on death penalty is taking place predominantly within the framework of United Nations. The UN framework is unique in its range and scope and there is no other such mechanism in place globally. This debate is happening on the backdrop of a broader debate on human rights, with the ‘right to life’ being the most important out of all human rights. William Schabas, in his exhaustive work on death penalty worldwide, points out that it is the “‘the most fundamental of all rights’, ‘the primordial right’, ‘the foundation and cornerstone of all the other rights’,... ‘the prerequisite for all other rights’, and a right which is ‘basic to all human rights’” (Schabas, 2002: 8). Schabas adds that even though the ‘right to life’ might appear basic, it is “‘intangible in scope, and vexingly difficult to define it with precision” (Ibid.).

The right to life, which is central to the debate about death penalty, has been first promoted at the international level when drafting the *Universal Declaration of Human Rights* (UDHR). Adopted by the UN’s General Assembly on 10 December 1948, the UDHR is widely accepted as the first step towards international abolition even though the death penalty was not addressed in it explicitly at all. Its Article 3 only defined the universal and fundamental ‘right to life’ as follows: “Everyone has the right to life, liberty and security of person.” (United Nations, 1948), thus no further specification was given, only an implicit one. However, both China and the United States have signed and ratified the UDHR.

Based on Vienna Convention on the Law of Treaties, adopted in Vienna on 23 May 1969, the UDHR stands as an example of the “soft law”, an international agreement such as a UN declaration or a resolution, that has a declaratory, quasi-legal character, however, it does not formally bind its parties legally (MSF, 2019). Thus, despite being ratified by both China and the US, UDHR does not officially bind the two countries to follow its provisions. On the other side of international law there are “hard laws”, like treaties, conventions, covenants or protocols. After such a treaty has been negotiated, drafted, and signed, individual states are to ratify it to become parties to it. The act of ratification binds its parties internationally to the provisions and obligations of the treaty (MSF, 2019) and can be legally enforced before a court (ECCHR, 2019).

Eighteen years later after the adoption of the UDHR, in 1966, the UN adopted the first notable “hard law” (when pertaining to death penalty), the *International Covenant on Civil and*

Political Rights (ICCPR), however it came into force ten years later in 1976. ICCPR transformed UDHR's laconic definition of 'right to life' into a more intricate definition that recognizes capital punishment as an exception to right to life under specific conditions (Schabas, 2003: 4). Specified in its Article 6(1) it states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be *arbitrarily* deprived of his life" (United Nations, 1976, emphasis added). The Article 6(2) further adds "in countries which have not abolished the death penalty, sentence of death may be imposed only *for the most serious crimes* in accordance with the law in force..." (Ibid.). The distinction of the most serious crimes is an important one and its inclusion was an attempt to limit the capital punishment and avoid executing people for crimes of less serious nature. However, what the most serious crimes actually comprised of, was deliberately not specified within the text of the ICCPR and the more precise definition of most serious crimes came only in the 1980s in the form of ECOSOC's Safeguards (explained below).

The importance of the ICCPR is vital. It did not call for total abolition of death penalty as only a small minority of countries had embraced the abolitionist position at the time of its adoption. But it emerged as a compromise laying out the groundwork and allowing for what has since been labelled a "limited retention" (Hood & Hoyle, 2015: 21) – retaining the death penalty in legislation but restraining from it if possible and imposing it only for the most serious crimes committed. And, above all, it has a legally binding power.

As previously mentioned, the ICCPR framework was further developed in the 1980s by redefining what the 'most serious crimes' were. In 1984, the UN Economic and Social Council (ECOSOC) and the General Assembly have adopted the *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*. The Safeguard 1 notes that "... the capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond *intentional crimes, with lethal or other extremely grave consequences*" (United Nations, 1984, emphasis added). With this step, the UN expanded on ICCPR and finally gave a clear definition to the crimes it perceived to be exempt from the right to life inviolability in the countries which retain the death penalty.

When it comes to the ICCPR today, there are 172 state parties having signed and ratified it (as has the United States), 6 countries that have signed but not yet ratified (as has China), and 19 countries that have not taken action in regard to the ICCPR at all (UN, 2019).

Until now, this chapter presented instruments that aimed to limit the imposition of death penalty and reduce numbers of executions but left space for using it in the most serious cases. However, when it comes to total abolition of death penalty, the first official commitment within the UN framework came in the form of the *Second Optional Protocol to the International Covenant on the Civil and Political Rights* (Second Protocol) which was adopted on 15 December 1989 and also represents a “hard law” UN instrument. Article 1 of the Second Protocol states that “no one within the jurisdiction of a State Party ... shall be executed” (United Nations, 1989). Thus, to this day, the Second Optional Protocol to the ICCPR remains as the most important and substantive achievement of global abolitionist movement as it calls for total and universal abolition of death penalty under all circumstances.

However, as of April 2019, the Second Protocol to the ICCPR has been ratified (or accessed to) by only 87 parties, the last party to subscribe to it has been the State of Palestine on 18 March 2019 (United Nations, 1989). Major retentionist countries like China, Saudi Arabia, Iran, Pakistan or United States have taken no action in regard to it.

The official treaties or instruments that individual countries can access to are only one part of the international effort to reduce death sentences and executions around the world. Besides, the non-signatory countries or those ones that have not ratified the official instruments can simply abolish the capital punishment on a domestic basis, without joining the Second Optional Protocol, or the ICCPR for that matter. Or they can retain the punishment de jure, but abolish it de facto, keeping it in law but no longer performing executions, and thus enter the so-called death penalty moratorium regime. For instance, among the major former retentionist countries that have undergone the moratorium process is Russia or South Korea.

Another tool pertaining to the United Nations death penalty abolition (or at least reduction) framework is the system of resolutions of the General Assembly calling for a worldwide moratorium on death sentences and executions, albeit just like the UDHR they represent a “soft law” measure as they have only a non-binding character. First such resolution was put forward in 1994, encouraging “states which have not yet abolished the death penalty to consider the opportunity of instituting a moratorium on pending executions” (Schabas, 2003: 19). It was not passed however and was denied in the assembly by eight votes. It was followed by another such proposal in 1999, but it was withdrawn at the last minute.

Finally, it was in December 2007 when the momentum changed and a resolution calling for the worldwide moratorium urging countries to “respect international standards that protect

the rights of those facing the death penalty, to progressively restrict its use and reduce the number of offences which are punishable by death” (OHCHR, 2018) was finally passed by the UN General Assembly. It has since been reaffirmed by UNGA another seven times¹⁵. The last resolution calling for universal moratorium to date has been passed on 17 December 2018, with a record-high support. 121 countries of the UN’s 193 member states voted in favour (compared to 117 in last moratorium resolution from 2016), 35 (including both China and the United States) voted against, 32 abstained and 5 were absent (Amnesty International, 2018a).

Another pillar of the UN framework is the Universal Periodic Review (UPR) that aims to create an ongoing pressure on and lead a long-term dialogue with individual countries reviewing their human rights records to fulfil their human rights obligations. During a UPR session an individual member state is screened for compliance with the key fundamental rights instruments. This process was established after the creation of Human Rights Council in 2006. Three documents form a basis of UPR. The state under a review submits a national report, OHCHR itself submits a report on the member states and NGOs and stakeholders submit their compilations. Afterwards, there is a discussion session during which individual member states can raise an objection or a recommendation for the state under review to raise their standards in fundamental rights. In the end, the Working group drafts an outcome of the discussion to be submitted to the Human Rights Committee. As such, currently, no other universal mechanism of this kind exists (OHCHR, 2019c). As of 2019, a third review cycle is in process, each lasting four-and-half years.

In particular relation to the research question of this paper are the UPR instances with the United States and China. China has already undergone the third UPR in November 2018 even though its response is not yet available, the US will be subject to the third round of UPR in May 2020, with the second one having happened in May 2015 (OHCHR, 2019a). The concrete cases, criticisms and recommendations are discussed in-depth in the Chapter 5.3, together with the responses from the two countries which come as a result of domestic conditions – the public opinion on the matter and specific political reasons.

To sum up, even though the regional bodies or efforts of individual states are not to be underestimated, it is without a doubt that the global trend towards abolition of death penalty comes as a result of the international UN framework that has begun with the *Universal*

¹⁵ By very similar resolutions aiming to impose a global moratorium in 2008, 2009, 2010, 2012, 2013, 2016 and 2018.

Declaration of Human Rights and International Covenant on Civil and Political Rights and continued with other instruments. Thus, at the end of 2017, 106 countries had abolished the death penalty in law for all crimes, 142 countries had abolished the death penalty in law or practice, and 53 retain and impose the death penalty (AI, 2018a).

Based on what has been thus far presented in this chapter, I argue that it can be observed that at the forum of United Nations, the overwhelming majority of countries of international community have together, throughout the second half of the 20th century and since, constructed a strong narrative towards abolition on the grounds that the capital punishment contravenes the fundamental human rights, most prominently the right to life, often considered the paramount and ultimate one.

In line with the theoretical concept of strategic narratives put forward by Roselle et al., there is an international system narrative that stresses the importance of international cooperation to pursue total abolition of death penalty and to confront those who retain it, while highlighting the acceptable behaviour. Roselle argued that there are four component parts of a narrative: a character, a setting, a conflict/action, and a resolution or a suggested resolution (Roselle et al., 2014: 74-76). We can observe that all of them are present when talking about the death penalty in the context of international push for abolition. The character or actors in this case are represented by individual countries, however overwhelmingly united within the platform of UN. When talking about the death penalty abolition, there has been an international movement that originally started in Europe in the second half of 20th century that sparked the push for abolition. Currently, there is a global majority of countries that abolished the death penalty which actively exert pressure on the retentionists within the global setting – the international arena ¹⁶, e.g. on the grounds of the United Nations. The proof of a conflict or an action to be taken can be the fact that the intentions of the UN's agenda were clear already in the 70s. Over the recent decades we can observe how the strategic narrative has begun to be constructed and has been only gaining traction since. As documented by the UN General Assembly resolutions in 1971 (Resolution 28/57) and 1977 (Resolution 32/61) with regard to Article 3 of the UDHR and Article 6 of ICCPR, “the main objective to be pursued in the field of capital punishment is that of progressively restrict the number of offences for which capital punishment might be imposed, with a view to the desirability of abolishing this punishment” (United Nations, 1977). As a result, considering the ongoing practices of accepting the

¹⁶ 106 countries have abolished the death penalty in law for all crimes, 142 countries have abolished the death penalty in law or practice, and 53 retain and impose the death penalty (AI, 2018a).

resolutions and performing the UPR processes, there is also an evidence of clear and tangible resolution as the last element of Roselle's strategic narrative framework.

In addition, we can see a multi-level issue narrative being constructed and promoted. According to Roselle et al., the issue narratives "set out why a policy is needed and (normatively) desirable, and how it will be successfully implemented or accomplished" (Roselle et al., 2014: 76). here is no doubt about the UN fulfilling this function of an issue narrative. Moreover, it does not focus solely on the resolute death penalty abolition issue even though that is its ultimate goal. It has instruments to push for the partial goals like the limited retention – reducing the numbers of death sentences and executions – in steering the remaining countries respect international treaties, or via recommending to access to various instruments of different strength, or calls for reduction of capital offences through multilateral diplomatic channels like the UPR process.

Important point to make here is that the United States, nor China, are in no way immune to the global narrative. We can see that the change in their attitude towards death penalty is well under way. That said, the individual countries' domestic policies and reactions towards the international system narrative will be analysed in the third subchapter of the analysis, in section 5.3.

5.2. Public Approval of Death Penalty

The second subchapter of my analysis is focused on public opinions on the death penalty in both the United States and China. Public opinion is an important factor that affects the death penalty, but it is not a sole determining factor. However, there is a crucial link between the public opinion and the death penalty policies which I present in the following two chapters. The governments of both countries (i.e., the Supreme People’s Court in China and Supreme Court in the United States) relate “the legality of the death penalty to public support for capital punishment” (Jiang et al., 2018: 3). In democracies, “government officials, legislators, and jurists often use public opinion as a factor to determine whether capital punishment should be retained or abolished” (Jiang, 2015). In a socialist society such as China, the same principle applies – the lawmakers and courts use public opinion to guide death penalty law and policy. The Chinese government “may have investigated its citizens’ attitudes toward capital punishment, but no (official) statistical data are available for the general public”, while there are many published empirical studies of capital punishment in the US (Ibid.).

This section examines and aims to explain two aspects related to the public approval of capital punishment in the two countries. First, it provides comprehensive overview on the overall public support for retention, or abolition, in the two respective countries. Second, it focuses on the underlying reasons for the attitudes of the public based on ideologies of punishment and other aspects particular to the death penalty debate. As such, this chapter serves to provide a basis for understanding the second leg influencing the governmental decision-making, the public sentiment toward the death penalty and its implications.

The overall finding of this section is that an overwhelming majority of both the Chinese and the American society is pro-retentionist and exhibits a favourable opinion towards the death penalty. However, the “evolving standards of decency” have affected the development of death penalty in the US¹⁷ to a point where a number of procedural safeguards has been set up and the public is (almost) at the lowest levels of death penalty approval in 50 years. A similar gradually decreasing trend can be observed to be under way also in China, be it slower. Overall though, the Chinese demonstrate higher levels of approval than the Americans do.

¹⁷ The term “evolving standards of decency” has first been used in the ruling of *Trop v. Dulles* case in 1950s which started the debate about the Eighth Amendment to the Constitution which resulted in a short-lived moratorium on executions in the 1970s (Murphy & Carlson, 2010).

The two audiences differ in what they list as the most important reasons for their convictions on retention or abolition of capital punishment and this chapter addresses the comparison on these grounds too. First, when talking about death penalty, be it in Western societies or in China, the ideologies of punishment are of particular importance. Traditionally speaking, there are four ideologies of punishment – the conceptual perspectives related to the death penalty: retribution, deterrence, incapacitation and rehabilitation (Jiang, Lambert, & Wang, 2007).

Retribution influences what people regard as just and moral punishments for a crime and is based on the principle of *lex talionis*, or “an eye for an eye”. It refers to the idea that “if a person takes a life, then he or she must sacrifice his or her own life” (Jiang, 2015). For many, the death sentence for the criminal relieves the anger and hurt brought forth by his or her act of violence (Jiang et al., 2007).

According to Radelet and Borg, the core idea of the deterrence ideology is that a society must “punish offenders to discourage others from committing similar offenses; we punish past offenders to send a message to potential offenders” (as cited by Jiang, 2015). Supporters of death penalty tend to argue that executing convicted murderers deters others from committing the same crime and is a more effective deterrent than life imprisonment. However, the empirical evidence suggests otherwise and proves there is no causal link in executions lowering the crime or murder rate (Donohue, 2015).

The general principle of incapacitation claims that the elimination of an individual’s future opportunities to commit more crimes through physical restraints on their actions. By executing an offender, he or she is prevented from reoffending again (Jiang et al., 2007: 85), thus it can be argued that execution is the ultimate form of incapacitation.

Fourth and final, the principle of rehabilitation is based on the idea in which the offenders are punished in order to be treated, reformed and corrected. Miethe and Lu note that the goal of rehabilitation is to “restore a convicted offender to a constructive place in society through (...) treatment, education, and training” (as cited by Jiang et al., 2007: 85). Rehabilitation is better applied to punishment in general rather than to the death penalty specifically because it is by definition not applicable when talking about capital punishment. Unlike the first three ideologies, value of rehabilitation is instead associated with lower support for death penalty.

There are also other underlying reasons affecting the popular opinion which are examined in empirical studies. It is beyond the objectives of this research to explain all of them. The most prominent one however is the wrongful convictions, or general awareness of them. The legitimacy of death penalty and attitudes toward it “have long been tied to the issue of whether innocent people have been sentenced to death” (Jiang et al., 2018) as the reversal of a wrongful execution is, by definition, impossible. In practice, it is also impossible to rule out the possibility of a wrongful conviction being imposed despite the best effort of judicial or penal system due to insufficient evidence, fallible testimony or human factor. And there are unfortunately numerous cases of innocent persons being executed all around the world notwithstanding China and the US.

To conclude the introduction to this section, for the purposes of better clarifying the situation in the two countries and comparing the public opinions, this chapter will be divided in two parts, one for China, the other for the US. As previously mentioned in the methodology section, while this paper takes into consideration one set of primary quantitative data obtained in an online survey collected among Chinese university students in Beijing, it mainly draws its conclusions from the secondary data presented by other relevant empirical studies and major surveys that measured public opinion on the matter of death penalty and have been conducted in the US and in China over the last decades.

5.2.1. Public Approval in China

Unlike in the US, there have been but a few thorough empirical studies on public views on death penalty in China. This section will present the major ones published in English together with an original one carried out in November 2018 and thus paint a bigger picture creating an overview on public approval of death penalty in China.

The first major population survey on the subject of death penalty was conducted by the Chinese Academy of Social Science and National Bureau of Statistics of China in 1995 with 5,000 respondents in three Chinese provinces. It showed, that more than 96 percent supported the usage of death penalty and less than 1 percent agreed with abolition (Wu, Sun, & Wu, 2011: 357). However, these findings should be taken with particular caution due to “serious concerns about reliability and validity” (Oberwittler & Qi, 2009: 4).

Another survey, conducted among 524 Chinese students at a Chinese university with students from all over the country in spring of 2005 by Jiang et al., found that 69.3 percent supported the death penalty (Jiang, Lambert, Wang, Saito, & Pilot, 2010). Another large-scale survey from the same year conducted by Kang gathered data on over 2000 citizens and showed that 67 percent of them strongly supported or supported the use of death penalty (as cited in Wu, Sun & Wu, 2011: 357). Three large online surveys found similar results. The 2003 Netease.com survey of 16,000 netizens found that 83 percent of them in favour of the punishment. In the second one by popular website Sina.com from 2008, the percentage in favour of retention dropped down but still remained at considerably high 67 percent (Zhang, 2014). In the third one conducted in 2010 also by Sina, the percentage went up again, to 75 percent (Ross, 2011). More surveys among college students followed, revealing that Chinese student do overwhelmingly support the retention of death penalty ranging from 63 to 75 percent in favour of it.

A poll carried out in 2008 by Oberwittler and Qi as part of Max Planck Institute for Foreign and International Criminal Law funded by the European Union gathered 4,472 responses. It showed a considerably lower result in favour of the capital punishment – a moderate majority of 58 percent of respondents were definitely in favour of death penalty (Oberwittler & Qi, 2009). However, this survey went in-depth and proved that attitudes towards the death penalty are complex and cannot be measured with a single question. When asked more concretely about the support on individual capital offences, 78 percent supported death penalty for the crime of murder but the support progressively decreased when asked about non-lethal offences (almost half of the general population agreed that the scope of death penalty should be limited to the most serious crimes only).

Also, when provided with an alternative punishment, such as life sentence without any possibility of parole, only about 50 percent of Chinese citizens support the death penalty. However, this study, while perhaps most comprehensive in recent history, was still conducted only in three regions of China – Hubei, Guangdong and Beijing – and does not represent the entire country (Ibid.).

In addition, 64 percent of the Chinese public, an overwhelming majority, support the demand that the government should publish the annual statistics on executions and death penalties which it holds as state secret (Oberwittler & Qi, 2009: 25-26). This constitutes an important factor in approaching the public sentiment to death penalty in China. How relevant

are the opinion polls on a policy when society does not have knowledge of and access to the full extent of it?

In addition, this thesis considers a paper of which I was one of the authors too. In it, together with my colleagues we performed a survey among 206 university students at a university in Beijing over the period of two weeks in November 2018. Our results were in line with other surveys presented in this chapter. Overall, 64 percent of the respondents supported the retention of capital punishment in China based on our previous study. However, when asked about the prospect for the future abolition, i.e. whether the respondents agree with a statement that the final aim of death penalty restriction is its future abolition, the percentage of convinced retentionists went down to 58% (Barca, Giamello, & Moroz, 2018).

Based on the studies mentioned above – even considering their limitations – it can be said with more than a reasonable confidence that the Chinese public is overwhelmingly pro-retentionist. Shanhe Jiang (2015) has summarised 13 studies of death penalty views conducted in China from 1988 to 2008 (some of them included the ones already mentioned in this chapter), but not one study has ever proved that the Chinese populace would actually prefer to abolish the death penalty. We can however observe two things. The approval rate for the death penalty has been steadily decreasing since the 90s (although gradually or slowly at best), more and more people are approving of the abolition. On top of that, from the studies that have focused on it, there is a clear conclusion to be drawn – the Chinese public supports the reduction in the numbers of capital crimes, and favours greater review process and publishing of statistical data on executions and imposed death penalties.

Until now, this section has considered only a one-dimensional perspective of a simple approval rate of death penalty. Let us now proceed to the underlying reasons for the overwhelmingly pro-retentionist public views as well. First, China has long believed that the death penalty has a general deterrent effectiveness. After all, “killing a chicken to scare the monkey” is still a popular saying in traditional China and the CCP government believes that the death penalty has an educational value too. Indeed, when we look at several studies which utilized regression analysis to explain the reasons behind public views, we find that the deterrence is the strongest predictor of the attitudes toward the death penalty in China, especially in comparison with the US where the retribution factors in as the most prominent reason. It should be noted that the reason behind this is most likely the fact that China lacks sufficient published scientific research on deterrence and the notion that the death penalty does

not actually prevent the crime rate is thus not widespread. Based on a comparative study by Jiang et al. between China and US and Jiang & Wang, both retribution and rehabilitation also proved to be significant in affecting the popular opinion in China in favour of retention (Jiang et al., 2007, Jiang & Wang, 2008). However, while a majority of Chinese respondents did state incapacitation as the reason for their support, overall it has more not been found to be insignificant (Jiang et al., 2007: 90, Jiang et al., 2018: 14).

When it comes to belief in wrongful executions, since 2004, several wrongful death executions have been featured in Chinese media and on several occasions the public got very much enraged by shortcomings of Chinese judicial system. However, the results of studies on the matter of the impact of wrongful convictions are mixed. Three studies have found a relation in negatively affecting the public views toward the death penalty (Jiang et al., 2007, Jiang et al., 2010, Jiang et al., 2018), while two others found no association at all (Jiang et al., 2009, Jiang & Wang, 2008).

The general finding of the Chinese highlighting deterrence as the primary factor behind their support for death penalty has been confirmed in our survey from November 2018. In it, we included an open-ended question asking for the main reasons for their opinion on death penalty and more than one fourth of respondents' answers were related to the deterrence effect (Barca et al., 2018).

5.2.2. Public Approval in the United States

Now we turn to the examination of public opinion on death penalty in the United States, and to comparison with Chinese views. As previously mentioned in chapter 4, the US has a peculiar relation towards death penalty. Nevertheless, the public opinion plays an undeniable role in affecting the death penalty policies as well.

Whereas in China, the death penalty approval rates are mostly published in the empirical studies and there are no institutes that poll the population on a regular basis, in the United States, on top of empirical studies of several prominent authors, there are opinion polls conducted regularly by National Opinion Research Center (NORC, since 1972) and the think tanks Gallup (since 1936) and Pew Research Center (since 1996). Thus, the evaluation of public opinion is more straightforward than in China because the time series is a more continuous and

the survey samples are usually larger and more representative (not comprised of predominantly college students).

Over the last 80 years, public support for death penalty has varied significantly in the United States. It was at 61 percent when first measured in 1936 and, in general, for most of the time it has oscillated around this level. Throughout the 1950s, public support declined to an all-time low of just 47 percent in 1966 (Ellsworth & Gross, 1994: 20-21). The period of decline came in relation to the series of court cases that challenged the legality of capital punishment culminating with the Supreme Court's 1972 decision in *Furman v. Georgia* that introduced a de facto nationwide moratorium on executions for four years (Jones, 2017).

The support had been steadily increasing since already from 1966 but after the ruling in *Furman v. Georgia* case, the support has quickly climbed over 60 percent in a matter of several months (and stayed over 60 until 2016) and had been further increasing until 1982 (Ellsworth & Gross, 1994; Jones, 2017). From 1982 through 1996, the support remained stable with the proportion of respondents agreeing with the death penalty ranging from 70 to 76 percent with no apparent temporal trend (Gross, 1998).

Gallup's research (as opposed to NORC's research used by Gross) shows that the death penalty support peaked in 1994 at 80 percent. This has largely been attributed to the reaction to the sharp increase in homicides and other violent crimes that plagued American society since the 1970s and reached a point during when in mid-1990s the Americans "named crime as the most important problem facing the nation" (Jones, 2017). However, since 1996, there has been a period of steady gradual decline in approval rates of death penalty that eventually led to the current levels of just over 50 percent. Polls published by Pew Research Center indicate that since the early 2000s, there have been only few slight upticks in 2002 (to 70 percent), 2007 (to 69 percent) and most recently in 2018, where there was a short-term increase in an otherwise consistently decreasing approval rate (Oliphant, 2018). This trend is confirmed by Gallup's research too (Jones, 2017).

Most notable observation from recent research is that according the Pew Research Center, the public support fell just under 50 percent in 2016. The survey conducted upon a random sample of 1.201 respondents in the summer of 2016 shows that only 49 percent Americans favoured death penalty at that time. Most recent polls indicate a slight increase in the support. 2017's Gallup poll shows that 55 percent of American adults say they favour the

death penalty and 41 oppose it, and Pew Research Center's latest poll from 2018 indicates that 54 percent are in favour, while 39 percent are against (Jones, 2017; Oliphant, 2018).

From this alone, we can deduct several major findings. Unlike in China, the United States has, at least at two points since 1936 (that is in 1966 and in 2016) actually lost the public support for the death penalty. Overall, the development of the public sentiment has varied significantly over the last decades. However, recently, it appears that the death penalty has been losing its supporters and is near the levels of a 45-year-old minimum of just over 50 percent. Conversely, the rate of disapproval of the death penalty is reaching its historic maximums too, and is currently at around 40 percent. Henceforth, similarly as in China, the notion of public approval creates a bed rock for a creation of a national strategic narrative that upholds the importance of retaining the capital punishment but with the decreasing support an important question of whether to abolish the death penalty on a federal level arises and stands as a challenge for American legislators and Supreme Court.

When it comes to reasons for the public opinion, Ellsworth and Gross note that until 1970, no one thought to ask survey respondents why they favoured or opposed the death penalty (Ellsworth & Gross, 1994). Still, there have been numerous studies about attitudes toward capital punishment since then and as such, in comparison with China, the public polls related to the reasons for death penalty still have a much longer tradition in the US. Through 1970s until 1981, the most popular reason for support of death penalty listed by the American public had been the belief in the deterrent effect (Gross, 1998: 1454). However, Gallup's poll of 1991 showed that the deterrence fell substantially in favour of the retribution effect. Retribution, *lex talionis*, or "an eye for eye" has remained as a number one reason for favouring the capital punishment among the American public since, which has been repeatedly confirmed by Gallup's polls from 2001, 2003 and 2014 (Gallup, 2018). Polls further show that incapacitation has been favoured by 19 percent in the 1990s – listed as a distant number two reason in 1991 – but fell to the levels of only 7 percent since¹⁸. Moreover, unlike in China, where incapacitation has not actually been found to be associated with views on death penalty, all four ideologies of punishment have strongly affected public opinions in the United States (Jiang et al., 2007: 863). As expected, while retribution, deterrence, and incapacitation were related to stronger support for death penalty, rehabilitation was negatively related to it. As documented by empirical

¹⁸ Instead, the reason for death penalty that gained prominence among the US public has been the cost associated with prison, or in other words saving taxpayers' money by executing the convicts (which is actually far more expensive when accounted for the legal and judicial fees needed for all the parts of due process).

research, the belief that innocent people may be wrongfully executed also decreases support for capital punishment in the US (Ibid.).

As such, the findings of this chapter provide an overview of the public opinion in both countries and a basis for understanding of one part of the political decision-making and policy creation toward the death penalty.

5.3. Political Level – Governmental Reaction

Having provided the overview of both the international and historical context, and the overview of ever-changing public opinion in both the United States and China in regard to death penalty, the aim of this section is to analyse (and compare and contrast) the capital punishment policies and responses to both the international and domestic audiences.

First, the ever-strengthening international community's push for abolition and second, the domestic public opinion. In order to assess to what extent this notion is true and representative of reality in China and the United States, I utilize the concept of (1) political legitimacy which posits that the governments only act in accordance with public (in order not to risk falling out of favour or undermining the regime stability); and (2) strategic narratives which are constructed and permeated primarily at the international level but the analogous thing happens on a national level too.

I argue that the public opinion is the primary factor influencing factor of the resulting political attitude – as the governments in the US and China are keeping their policies on death penalty in line with the public sentiment in order to facilitate their political legitimacy in the eyes of the two respective societies and thus the public opinion contributes to the creation of a national strategic narrative in opposition to the international one. Similarly to the narrative constructed by the international system, the domestic government construct their national narratives or even issue narratives have all the necessary component parts based on Roselle's framework: actors (the domestic governments responding to the public sentiment), setting (domestic), conflict/action (debate on death penalty) and resolution or suggested resolution (retention, limited retention). As a result, this creates a contrarian force to the international narrative and puts the two respective governments in a conundrum situation – appease the international community or the domestic public opinion? In this regard both Chinese and American administrations function in the same or analogous way. This question is a key element of this thesis.

China and the United States oppose the international strategic narrative formed within the framework of the United Nations and uphold their own view – each with their own unique aspects and caveats – which is derived from the fact that the public, the Chinese and the Americans both, still favours the retention of the death penalty. Hence, in order not to lower the public support, the two governments rather opt for retention in a continuous effort not to undermine their political legitimacy as defined by Seymour Martin Lipset, who related

legitimacy to the capacity of a regime to maintain the belief among its constituents (citizens) that the existing death penalty policy is the most appropriate one for the society. This notion applies both for China and the United States without a major particular difference. While the Chinese government would not want to jeopardize its power or alienate the public to risk any form of public unrest, correspondingly, the American administration wouldn't want to lower its chances for (re-)election in the next political cycle.

What's important to mention, is that the public sentiment towards the death penalty is not inert, it fluctuates and evolves over time as documented in section 5.2. Moreover, the public sentiment, as the policy itself, is nuanced. In the previous section it has already been explained that the death penalty is favoured in China and US both, however, both societies regularly express their concerns for the practice to be just and humane, and to avoid judicial errors and wrongful convictions.

This section is structured as follows. The subchapter is divided into two parts for the two respective countries. Firstly, I analyse the reaction of both countries to the appeals of international community. Having established that the international community's push for abolition is being done primarily within the framework of the United Nations, I analyse the American and Chinese response to it, with respect to ICCPR, to Second Protocol to the ICCPR, to recent UN General Assembly resolutions on worldwide death penalty moratorium, and to the specific mentions on death penalty policies in the reports of Universal Periodic Review. Secondly, with the consideration of shifting public opinion in both countries, the domestic context is analysed with the focus on domestic political legitimacy of the governments and judicial institutions, on what concessions have been made by them, and on what the recent development in resulting policy towards death penalty has been.

5.3.1. China

Over the last two decades, Chinese attitude to the death penalty has shifted considerably from vigorous defence of its capital punishment policies in the face of international disapprobation to “growing openness and willingness” to engage in dialogue with other countries and organizations campaigning against death penalty (Miao, 2013: 504).

As previously mentioned in Chapter 4, there is a tangible and empirical evidence of China restricting its numbers of both executions and death sentences through setting up procedural safeguards and improving on judicial provisions.

In spite of the great lengths China has achieved already in its effort to curb the capital punishment, it has a long way ahead. It is a party to the *Universal Declaration of Human Rights* but, considering the insufficient definition of the right to life present in UDHR and its non-binding “soft law” character, it can achieve only so much.

More importantly, China has yet to ratify the *International Covenant on Civil and Political Rights* which defines the right to life specifically (among other fundamental human rights). The ICCPR has been signed by China on 5 October 1998 but for now more than 20 years, the CPC government has refused to ratify it. Moreover, it has not even been submitted to the National Congress for evaluation. Without a ratification, this international instrument has no binding power for China. As a result, (as the ICCPR sets the standards on only the ‘most serious crimes’ to be punishable by capital punishment) China is not bound by specific provisions of the treaty, e.g. the restrictions on application the death penalty to ‘most serious crimes’, them being only the intentional crimes with lethal or extremely grave consequences, but instead retains it for a number of non-lethal crimes too.

China has received plenty of criticism for its stance towards the ICCPR, be it from international NGOs, individual countries, or even domestic Chinese voices. However, while it has signed and ratified the *International Covenant on Economic, Social and Cultural Rights* (the second leg of *International Bill of Rights*) already in 2001, Chinese official position only ever reaffirms the continuing advancement of “administrative and judicial reforms in preparation for [ICCPR] ratification” (OHCHR, 2018) without setting any concrete timeline or commitment. As it stands, without having ratified the ICCPR, it is inconsequential to even mention the Second Protocol to ICCPR as the Chinese government has showed no commitment or willingness for total abolition of the death penalty.

When talking about the UN resolutions on universal death penalty moratorium, the Chinese stance has been consistent throughout the years (and same as the American position) in being against imposing the moratorium.

Finally, when it comes to UPR forums, the death penalty has been raised as a major topic of discussion with China, either in the direct call for its abolition, restriction, or indirectly in calls for Chinese accession to the ICCPR. So far, the country has been reviewed three times,

in February 2009, October 2013 and in November 2018¹⁹. In the first UPR cycle, China received 28 recommendations related to the death penalty and ICCPR and accepted 6 of them, in the second one, it received 55 such recommendations and accepted 12, and in the third one, it received 53 recommendations pertaining to capital punishment and ICCPR²⁰ (Barca et al., 2018; OHCHR, 2008, 2009, 2013b, 2013a, 2018, 2019b). It should however be noted that China only ever accepts those recommendations that use vague language without concrete commitments or time requirements and rejects the other ones. For instance, “in 2013, when considering the recommendations pertaining the ICCPR ratification, China accepted only those that call for her to ‘consider’, ‘take steps towards’, ‘continue its national reforms with an aim of’, ‘move towards’, or ‘accelerate administrative and legislative reforms with a view of the’ ratification of the ICCPR” (Barca et al., 2018, 25–26; HRIC, 2014).

Based on the above information, it can be derived, that China opposes the international strategic narrative that pushes her towards abolition. It should be noted that in March 2007, a firm commitment was made in the UN Human Rights Council by China’s representative, Mr. La Yifan. He said that “the death penalty’s scope of application was to be reviewed shortly, and it was expected that this scope would be reduced, with the final aim of abolishment” (Hood, 2009: 4). Since then however, no other claims like this have been made by Chinese representatives and China seems to have backpedalled in its rhetoric. Indeed, as documented by its National Report submitted to the United Nations Human Rights Council in August 2018 before the third round of the Universal Periodic Review, China’s policy is “to retain death penalty, control it strictly and apply it prudently” (OHCHR, 2018).

In line with the National Report to the UPR, the official Chinese position stipulated in its human rights action plans follows the same notion. The previous *National Human Rights Action Plan (2015-2020)* assures that “more strict standards” will be adopted and “more stringent judicial procedures” will be implemented together with a “review of death penalty” (State Council, 2012). As mentioned previously, China has passed Eighth and Ninth Amendment (in 2011 and 2015) that decreased the number of capital crimes and implemented other standards, thus improving provisions on capital punishment. This is recounted also in the latest UPR *National Report*, in which China specifies that “apart from the crimes of corruption

¹⁹ Due to the last cycle being relatively recent, the list of recommendations accepted by China is not yet available. Therefore, I make conclusions based primarily on the two previous cycles.

²⁰ It is yet unclear to assess how many of the recommendations have been accepted by China in the third UPR cycle.

and bribery, crimes subject to the death penalty as currently retained are essentially those related directly to national security, public security and the security of the people's lives" (OHCHR, 2018) but no further claims towards restriction are made.

In the current *National Human Rights Action Plan (2016-2020)* death penalty is mentioned in just one short paragraph, and there is no mention of further reduction of capital offences or restrictions, just on improved oversight and verification of the current policy (State Council, 2016). State Council of PRC has recently published an extensive white paper labelled *Progress in Human Rights over the 40 Years of Reform and Opening Up in China*, which recounts all the reforms and successes China claims to have achieved in the area of human rights since the beginning of reform process in 1978. The 47-page long document contains two sentences on death penalty and zero mentions of the ICCPR.

All of this indicates that with the adoption of "kill fewer, kill carefully" policy – the decrease of capital offences and implementing the safeguards based upon the Eighth and Ninth Amendment to the Criminal Law; and the return of the responsibility to review all the capital cases back to the Supreme Court – China considers the legislation, judicial procedures and policy changes related to the death penalty to be more or less sufficient for the time being with no necessity for a structural reform as no more emphasis is put on further restrictions in the official documents or statements.

Instead, it can be argued that China has begun to promote position of "legal sovereignty" when it comes to international treaties and penal policies. And it even started with promotion of its own conception of human rights with Chinese characteristics based on dialogue between countries (Piccone, 2018; Worden, 2017)²¹. In doing so, it creates and permeates its own national narrative about its own human rights alternative, part of which is undoubtedly dedicated to the defence of its death penalty policy too. Indeed, for example, the notion of legal sovereignty has been documented by the Chinese response to the UPR 2013 recommendation of Benin about acceding to the Second Protocol to the ICCPR. In it, China responded that it is the "governments (that) bear the primary responsibility for the implementation of international human rights treaties" (HRIC, 2014).

This paper however argues that China's death penalty policy is not a result of domestic perception of human rights per se, but of public opinion on the matter. As documented by the

²¹ To discuss this in greater detail though, is beyond the scope of this research.

public approval rate explained in-depth in the chapter 5.2, Chinese society still favours the practice of death penalty – and at a higher level than the Americans do at that. As noted by Roger Hood, “to many Chinese, capital punishment is only an issue of penal policy, not an issue of human rights” (Hood in Liang & Lu, 2015). The Chinese government often cites such public support to favour its retention of the death penalty. Zhigang Yu points to the fact that there is a wide range of factors that determine China’s death penalty choices, but while the international pressure is only an external factor, the impact of the public opinion is decisive and “the political leadership is required to listen to the public, carefully guide public opinion, and incorporate public opinion into its policy initiatives” (Yu in Liang & Lu, 2015). In China, the Communist Party is the sole representative of the people, therefore it can hardly go in direct opposition to the public sentiment in such a sensitive issue as death penalty.

Based on the Chinese positions to the international treaties and international pressure in general, I argue that the CPC and Chinese government side with the public in an effort not to threaten their legitimacy and there are no indications that the practice of death penalty should be given up on anytime soon. However, in line with the public preference for more reviewed imposition of death sentences and avoidance of wrongful executions, the government has gone a long way in ensuring the legislature and judicial process would be improved since the Criminal Law of 1997 has been enacted which has been praised by international community too. It should be noted though that China’s legalization process is still in its infancy and “the general public has yet to develop trust and confidence in the judiciary, and the judiciary has yet to establish authority and legitimacy” (Yu in Liang & Lu, 2015). As a result, we can observe a Chinese trend towards limited retention – retaining the practice (applicable to non-lethal crimes too) and confronting the international pressure but aiming to ensure the judicial review and due process in the application of death penalty.

5.3.2. The United States

Due to today’s character of the death penalty institution in the United States – relatively low numbers of executions performed predominantly in a handful of Southern states – the current US debate increasingly revolves about issues like racial disparity in the numbers of executed, ever-growing financial costs of the death penalty trials versus life sentence trials, or the means of execution as there is a growing number of studies pointing to the fact that lethal injection is not a humane form of execution at all (Epps, 2019). These issues are however

beyond the scope of this paper and I will refrain from addressing these issues (which are undeniably serious and deserve much attention) as the purpose of this thesis is to compare China and the United States on common grounds – their retentionist attitude to the practice of death penalty in general, which I argue comes as a result of international pressure (to a certain extent) and (more importantly) domestic political legitimacy based on overwhelmingly pro-retentionist sentiment of the public.

Situation in the United States is in a way much murkier than in China. While the US is fully transparent in its usage of death penalty, it publishes all the information necessary to assess the institution of capital punishment, its populace is regularly surveyed on its opinion, and there is an open long-lasting public, academic, political and judicial debate, the practice of death penalty in the US is much more complex than in China or, in the words of David Garland, “ambivalent” or even “convoluted” (Garland, 2018: 429).

In America, the national (central) government – the US Congress – lacks the legal power to abolish the death penalty by itself. To do so would require a Constitutional Amendment, which – in addition to the requirement of two-thirds majority votes in Congress and Senate – would require a ratification by three quarters of the states (Garland, 2018: 427). In a system where only 20 out of 50 states have abolished the death penalty *de jure*, such proposition is futile. In other words, “because of America’s populist, majoritarian politics, Congress has so far lacked the will to propose a radical change of this kind” (Ibid., 427).

Hence, the practice is instead influenced by the specific role the US Supreme Court enjoys in the American judicial system, the precedent-based system, the state vs. federal judiciary distinction and the complicated review and appellate process (Murphy & Carlson, 2010). Nonetheless, to a certain degree, the American death penalty policy has also been influenced by international standards which I will shed light on in this section.

Similar to China, the United States has signed and ratified Universal Declaration of Human Rights. Due to the declaratory, thus non-binding, character of UDHR, signatory countries are not necessarily committed to adhere to anyway imprecise definition of the right to life. However, at this point in comparison of China and the United States, we arrive at an important distinction.

When it comes to the ratification of the International Covenant on Civil and Political Rights as the primary binding UN document that commits its parties to respect the civil and political rights, including not only the right to life (with a clause related to the most serious

crimes as reasons for its violation), but also freedom of religion, freedom of speech, freedom of assembly, election rights and due process and fair trial rights, China has yet to ratify the covenant. On the contrary, the US has both signed and, more importantly, ratified the ICCPR even though its ratification wasn't without difficulties, objections, and, in the end, without reservations that the US had negotiated for itself.

The United States has signed the ICCPR on 5 October 1977 during Jimmy Carter's administration. And it took another 15 years to ratify the covenant, which the United States Senate finally did on 8 June 1992 during the administration of George Bush. The US ratified the covenant with five reservations, five understandings, and five declarations (UN, 2019), as Schabas called it – a previously “unprecedented number” (as cited by Ash, 2005). In one of the declarations, the US stipulated that “the provisions of articles 1 through 27 of the Covenant are not self-executing”. Some scholars have heavily criticized the United States for this as such stipulation effectively limits the ability of litigants to sue in court for direct enforcement of the treaty and, thus the implementation would have had just a limited domestic impact. In addition, the second reservation made by the US stipulated that:

“the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age” (UN, 2019).

By this reservation the US reserved the right to sentence to death juveniles – minors of age between 16 and 18 years old. For this, the US was a target of stark criticism as it received objections from eleven countries²² declaring that such provision is in “incompatible with the object and purpose of the Covenant” (UN, 2019).

As a result of ratification of the ICCPR, the US became obligated to submit a Periodic Report to the UNHCR and attend the treaty review session. For example, in its Fourth Report submitted to the UN in December 2011, the US points out that the Supreme Court further narrowed down the categories of defendants against whom the death penalty may be applied. In *Kennedy v. Louisiana* the court ruled to bar states from imposing the death penalty for the rape of a child (without the intention or result of the child's death) and in *Roper v. Simmons*

²² Eleven objecting countries were Belgium, Denmark, Finland, France, Germany, Italy, The Netherlands, Norway, Portugal, Spain, and Sweden.

(2005) it prevented states from applying death penalty to juveniles, thus effectively fulfilling the standards of the ICCPR (US Department of State, 2011). As of May 2019, the US has been drafting its Fifth Periodic Report to the UNHCR.

Perhaps the most important outcome of the ratification of the ICCPR for the United States soft power is the fact that by having done so it can participate in UNHCR negotiations and thus, as stated by president Bush Sr. in 1991 when urging the senate to pass it, it would have “strengthened the ability of the US to influence the development of human rights principles in the international community” (Stewart, 1993: 1184).

However, while the US has accessed to the ICCPR, it has not signed, nor ratified the Second Protocol to the ICCPR, which is specifically aimed to abolish the death penalty. Accordingly, the US has been consistently against all of the UN General Assembly resolutions on worldwide moratoria. Even though several of the states of the union have effectively entered a de jure or a de facto moratorium, United States is adamant in its attitude toward the worldwide moratorium as documented by its latest vote against it in December 2018. Thus, in this regard, the attitude of the United States is identical to that of China.

When it comes to the UPR process, the United States has been reviewed twice so far, with the third cycle planned for 2020. During its first UPR process in 2010, the United States received 24 recommendations related to death penalty (OHCHR, 2010). It accepted 4 of these (OHCHR, 2015a), claiming the overall successes and ongoing development of the policy pointing out for example that the number of states that have the death penalty had continued to decline (which continues to be true since), that there is an appellate process which is substantial and thorough, that there are strict prohibitions against executions that would inflict cruel and unusual punishment, and against imposition of death penalty in a racially discriminatory manner (Ibid.). In the second cycle in 2015 it received 23 recommendations, most of them related to urging to accept the Second Optional Protocol to the ICCPR and imposing a federal moratorium on death penalty sentences and executions (OHCHR, 2015b).

We can observe three things. First, the United States is gradually restricting the death penalty even though still retaining it, be it in a very limited fashion. Second, just as in the case of China, there is a strong international push, an international strategic narrative, being constructed and promoted by the international community directed against the United States. And while the US has made some concessions, for instance, it has ratified the ICCPR and the number of abolitionist states is growing, in the words of Roger Hood, it “has yet to embrace

the aspiration, embodied in Article 6 of the ICCPR and UN Resolutions, to abolish the death penalty in due course” (Hood, 2009). Third, thus we can see that a national narrative of the United States in opposition to the international one has also come into play in influencing the decision-making of the domestic actors. In order for the US to maintain the role of global player in the human rights development, it made concessions and accepted the ICCPR. However, it had only done so with a number of reservations and declarations to preserve its decision-making rights and legal independence in some potentially divisive cases.

A crucial question arises. How much of what has been thus far presented about the US death penalty policy can be explained by and attributed to the effort to maintain political legitimacy though?

First, when looking at the public opinion polls recent decades, one thing becomes apparent. As we can see from the analysis of public opinion in the section 5.2.2, the days when the death penalty in the United States enjoyed a vigorous support from the public seem to be over. Today, the public is split on the issue, with 56 percent in favour of the practice. It should be noted that when given an option for life sentence without parole, only 50 percent of Americans would still pick death penalty. Still, within the framework of political legitimacy and the government maintaining the belief among citizens that the existing death penalty policy is the most appropriate one (as defined by Lipset), this fact alone gives politicians very few incentives for a substantial change in the direction towards abolition, on the contrary, it helps to explain the retentionist status of the US.

Second, when we look at a not-so-distant past of American death penalty, we can identify key moments in which the overwhelmingly pro-retentionist public opinion played a key role when influencing the decision-making of the government’s elected officials or the Justices of the Supreme Court. Prior to the enactment of moratorium 1972, the public support for death penalty has been on its historical low. After it has been imposed though, the public support for capital punishment rose rapidly. What’s more, there were petition campaigns being launched to restore the penalty, for instance the Californian one was vigorously supported by then Governor Ronald Reagan. Public opinion was then treated as a barometer for the legitimacy of capital punishment. Aubrey Rose points out that “conservative and liberal politicians alike were reaching out to a constituency that largely favoured the death penalty and therefore heartily echoed their wishes for retention coming out of the moratorium period in the 1970s” (Rose, 2013).

In the period of 1990s, during the “tough on crime” agenda, the public approval peaked at 80 percent in 1994. In this climate, politicians feared to ever be perceived as “soft on crime” and hence supported the death penalty on both sides of the aisle in order to score well in their campaigns (Rose, 2013). Rather (in)famously, during the presidential debate between Mike Dukakis and George Bush Sr in 1988, Dukakis was asked whether he would support the death penalty for the perpetrator if he raped and killed his wife Kitty Dukakis. Dukakis insisted that his position was pro abolition, he had opposed the death penalty his entire life and that he did not see any evidence of it being a deterrent. His polling numbers dropped from 49 to 42 percent overnight.

In the next election cycle, the democratic candidate Bill Clinton emphasized expansion of the death penalty statutes and when in office, he passed the federal Violent Crime Control & Law Enforcement Act and the Antiterrorism and Effective Death Penalty Act. Moreover, as Rose mentions, “the popularity of the ‘tough on crime’ agenda did not just influence national legislation but also judicial and prosecutorial discretion. The 1990s saw a tremendous rise in the number of executions nationwide, from 117 to 763 (...) between decades” (Rose, 2013).

Even the democratic president Barack Obama, became pro-retentionist by the time he ran for US Senate office in 2004, in 1996 however, he went on the record opposing the death penalty. In 2008, he even opposed Supreme Court’s decision on child rape no longer being a capital crime. Later, towards the end of his term in office, he called the death penalty practice “deeply troubling” but he still agreed with the institution “in theory” (Keller, 2015).

These are just few instances of critical events in recent history of American death penalty but they illustrate the impact of the public will. With the decreasing public approval in the new millennium, the numbers of executions and death sentences started to decrease as well. Public sentiment has, however, never since 1966 reached a point where the majority favoured abolition and the elected politicians (and majority of the Supreme Court) have followed the public sentiment with their rhetoric too. Based on presented facts and arguments I derive that, similarly as in China, the public opinion plays a larger role in influencing the decisions on the death penalty than the abolitionist strategic narrative of the international community.

Even though with president Donald Trump the death sentences and executions ticked up recently, given the recent abolition in the state of Washington and, more importantly, the moratorium on executions in California as the most populous state with the highest number of death row inmates in the entire country, a new discussion has been sparked on whether the time

has finally come to abolish the capital punishment nationwide (Steiker & Steiker, 2019). With the ongoing discussions about the racial disparities and frightening records of botched executions due to lethal injections, the United States might just be on the verge of a major change in its death penalty policy. However, until the public support for retention falls down more significantly, to give more concrete predictions on final abolition would be but a fool's task.

5.4. Interpretation and Discussion

In this section I reiterate and discuss the primary findings of my analysis and offer a closer, albeit brief, examination of the key arguments of this thesis to derive conclusions applicable for the death penalty policy in China and the United States. In addition, I provide a closer look to one of the key counter-arguments to the notion of legitimacy-based death penalty policy, the empirical fact that in most countries around the world political leadership must have been exercised in spite of the public opinion to take the final step in favour of abolition of capital punishment

In my analysis, I prove that China and the United States both retain death penalty all the while exercising great effort to reduce it, set up procedural safeguards and securing a functional review and due process. United States has signed and ratified the International Covenant on Civil and Political Rights and is already at a “compromise” stage which Hood and Hoyle call “limited retention” of death penalty (Hood & Hoyle, 2015: 21). From the chapters 4 and 5.3 it is apparent, that the scope of the application of the institution of death penalty is still very different in the two countries. Despite its successes, China has a long way ahead to close the gap – at least in order to comply with the requirement of imposing death penalty for most serious crimes only and to prevent wrongful convictions and executions of the innocent, and to ensure due process. Nonetheless, the milestones China has already achieved in restriction of its death penalty since the beginning of 21st century are to be commended for, regardless of objections towards its political regime or the nature of its political system.

In my analysis I argue that the resulting death penalty policy in both China and the US stems primarily from an overwhelmingly pro-retentionist public opinion, although I document a number of concessions both countries have made as a result of the pressure exerted by an international community, as a result of international strategic narrative. The international

impact has not (thus far) been strong enough to force the two countries to abolish the practice altogether, although both are participating in an international review process and are making progress in terms of restricting the penalty, each at their own pace.

Key finding of this thesis is the following. Based on the findings of my analysis, I argue that both in China and in United States the governments decision-making processes and policy changes in regard to the death penalty are to a large degree influenced by domestic public opinions, not the international pressure. The two governments and Supreme (People) Courts are appropriating the partial decisions to the public sentiment at a time in order not to risk falling out of favour – not to lose their legitimacy. While I do not claim that there is a definite causal relation between the two – as it would be nearly impossible to measure it quantitatively or to prove it empirically and there are other factors in play such as the widespread notion that death penalty serves as a means to maintain social order and prevent violent crime – based on the presented facts, I argue that both governments observe the public opinion carefully and adjust their policies on death penalty accordingly to the retentionist public sentiment.

Ambition of the Communist Party of China is to retain its power in order to maintain stability and ensure development, thus it listens to the public which consistently favours the death penalty based on deterrence and retribution principles. It does however implement procedural safeguards in an effort to curb executions and appease the public demand for death penalty being imposed justly. Stephen Noakes calls this appropriation of policies to the public a “state pragmatism” – the pragmatic effort of the state to balance retention and restraint in pursuit of popular legitimacy by catering to public both in terms of keeping death penalty in place but ensuring higher social accountability (Noakes, 2014: 25-27). Perhaps, in the same line of thinking, the Chinese government should lift the secrecy and publish records of its death sentences and executions as the majority of Chinese populace prefers it would do so.

Situation in the United States of America is more complicated primarily due to the distinction between federal and state level. Growing number of individual states have abolished the death penalty in law or in practice. The United States has eventually subscribed to the ICCPR but nonetheless, it has ignored the Second Protocol to the covenant as the practice is still retained on the national level. Furthermore, given the historical record of public opinion being an important factor at critical times (influencing for instance presidents who appoint judges of the Supreme Court), with public support still being in favour of retention, it seems unlikely that the Supreme Court would abolish it in near future. The death penalty could be

abolished by a constitutional amendment but as David Garland puts it, American legislative system is characterized by “radical local democracy” (Garland, 2018: 429) – it is precisely because the population votes in localized state elections that their elected representatives are aligning their views to its constituents’ views.

Hence, we reach a peculiar and, perhaps counterintuitive, finding of this thesis. Even though the United States and China are two very different societies with different values, and two different political systems with different regimes and different decision and policy-making processes at central (federal) and provincial (state) levels, when it comes to the death penalty policy, both arrive, be it for different reasons, to a similar, if not the same, conclusion. That is to follow the public opinion and retain the death penalty regardless of the discontent of international community in the name of domestic political legitimacy.

Again, it is necessary to point out an important distinction that while the US already retains death penalty in a very “limited” form, China is only at the beginning of its efforts to restrict the practice. Nonetheless, as presented in previous chapters, we can see empirical evidence of China’s aim to also limit the usage of death penalty.

It is at this stage that I introduce a notion so far absent in this paper but present in a portion of the literature pertaining to death penalty abolition. Having established that the legislature and governmental action is shaped by public opinion it should be noted that historically, the institution of death penalty was challenged domestically, and abolition was imposed, in a number of countries in spite of the popular opinion which favoured retention at the time. David Garland goes as far as saying that

“Whenever the death penalty has been abolished in other countries, that abolition has occurred by means of a top–down, counter-majoritarian reform by national governing elites, undertaken despite the wishes of a majority of the population. The death penalty has never been abolished because it became unpopular with the mass of the people. It has been abolished because it has become inessential and problematic for state power and because governing elites have chosen to defy majority public opinion and abolish it”(Garland, 2018: 427).

He further points to the historical examples of abolition in France 1981 where polls showed 73 percent support for retention and president Francois Mitterand decided to abolish in spite of that, or in West Germany in 1949 where polls showed 66 percent for retention (Ibid.).

Another notable examples include Great Britain in 1965 or Canada in 1963 where governments also abolished the death penalty despite high popular support for its retention. Empirical studies also show that “public support for death penalty wanes once abolition is implemented as documented by the case of West Germany or Australia (CLS, 2018; Hood, 2009); and in France, Mitterand was reelected for his second term. Studies from retentionist countries also show that if the government was to abolish death penalty, the public would simply accept the decision as documented by cases of Japan or Zimbabwe (CLS, 2018).

Of course, it is questionable whether the same would apply for China and United States given the specific nature of the two societies and two systems in which the governmental elite has been unable to simply renounce public opinion as is the key notion of this paper. It is perhaps plausible that the public would cope with abolition more easily in the US if the Supreme Court were to rule out further imposition of death penalty independently of public opinion, given the historically low approval rates. In the case of China, where the Party is considered to be the sole representant of the will of the people, it is unlikely that the leaders would go against public opinion so brazenly under the current status quo. The contrary seems to be true as the institution of capital punishment in China has been recently getting only more legal and procedural foundation for an efficient and accountable practice. However, the public sentiment towards retention might change substantially if the status of state secrete is ever lifted and official records on death penalty would become publicly available.

6. Conclusion

Both China and the United States retain death penalty in law and practice, both sentence people to death and both actively execute people. The scale of their application of death penalty is, nevertheless, profoundly different. The Americans execute a couple dozen while the Chinese execute a couple of thousand every year.

The aim of this thesis was to assess the death penalty policy and practice in the two arguably most influential countries in the world. Its objective was to identify their similarities and differences in their approach to the capital punishment and to answer the research question why China and the US both retain the death penalty and what is the role of international context and domestic public opinion. These two aspects were identified as key influencing factors behind the countries' policies on death penalty and the two countries were compared on these two grounds – with respect to international pressure which is overwhelmingly pro-abolitionist and to domestic public opinion which is overwhelmingly pro-retentionist in both countries.

First a global historical context and historical overview of death penalty policies in China and the United States to provide better understanding of the complex issue. Afterwards, a documentary analysis, framed with the combined theoretical approach of strategic narrative and political legitimacy framework, is performed. This approach proved fruitful in examining and conceptualizing the international and domestic contexts pertaining to capital punishment. The analysis is conducted in three stages, with the latter two having a comparative character. First stage involves an analysis of international push with an emphasis on United Nations treaties and instruments that aim to abolish the death penalty worldwide, thus creating a strategic narrative towards abolition. This narrative is supported and promoted by a majority of countries, thus putting China and the US to a position of outliers. Second stage is focused on the comparison of public approvals in the two countries. Thanks to opinion polls and empirical surveys, an assessment of development of the public sentiment was made as a basis for the argument of political legitimacy maintenance. In addition, an emphasis was put on reasons for retention listed by the public. Third stage of analysis contains a synthesis in which I assess the implications of the previous two for political decision-making. I examine the governmental reaction to the global strategic narrative on behalf of the US and China and at the same time, I utilize the theory of political legitimacy in relation to the public opinion. In this section I attempt to gauge the relative impact of the two factors on domestic policy changes. Findings of the analysis are discussed in the final chapter of the analysis where I draw

conclusions and offer my interpretation on the unique aspects of death penalty practice in the two countries.

The main finding of my research which provides an answer to the research question is that China and the United States retain the death penalty primarily as a result of an effort to maintain political legitimacy, or rather, in order not to undermine it. Based on my analysis, I argue that the impact of domestic legitimacy-seeking is greater at the expense of international narrative on abolition which in the specific setting of China and the US has a limited effect, nevertheless contributing to the policy of restriction the capital punishment in both countries.

What's peculiar about this is that while the polities of China and the United States are so different, in the particular issue of death penalty the respective governments follow a similar pattern of aligning with the public to engender belief of having the power to govern rightfully. However, they do it for different reasons which are explained in greater detail as part of the analysis.

This thesis contributes to an ongoing academic debate on death penalty in both China and America. Moreover, it provides an added value as it uses an innovative theoretical approach of the application of strategic narrative framework and political legitimacy combined. In addition, it fills a gap in the scholarly literature by comparing Chinese and American death penalty policy from not only public opinion, but also historical and political perspective.

7. Bibliography

Amnesty International. (n.d.). Killing The Innocent With Indifference. Retrieved March 25, 2019, from Amnesty International website: <https://www.amnestyusa.org/killing-the-innocent-with-indifference/>

Amnesty International. (2017). *China's Deadly Secrets*.

Amnesty International. (2018a). Death penalty: Global abolition closer than ever as record number of countries vote to end executions. Retrieved April 24, 2019, from <https://www.amnesty.org/en/latest/news/2018/12/global-abolition-closer-than-ever-as-record-number-of-countries-vote-to-end-executions/>

Amnesty International. (2018b). *Death Sentences and Executions 2017*.

Amnesty International. (2019). *Death Sentences and Executions 2018*. Retrieved from <https://www.amnesty.org/en/documents/act50/9870/2019/en/>

Ash, K. (2005). U. S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence. *Northwestern University Journal of International Human Rights*, 3(1). Retrieved from <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1018&context=njihr>

Bakken, B. (2011). *China , a Punitive Society?* (May 2010), 33–50. <https://doi.org/10.1007/s11417-010-9086-3>

Banner, S. (2009). *The Death Penalty: an American History*. Retrieved from https://books.google.com/books?id=FzayhpsWJ5oC&dq=america+death+penalty+history+&lr=&hl=sk&source=gbs_navlinks_s

Barca, R., Giamello, G., & Moroz, I. (2018). *Reasons for Retention and Prospects for Abolition of Death Penalty in China: A Domestic Issue in the International Context*.

Beccaria, C. (1764). Of Crimes and Punishments, Chapter 28. Retrieved April 2, 2019, from https://www.constitution.org/cb/crim_pun28.htm

Brettschneider, C. (2007). *The Rights of the Guilty: Punishment and Political Legitimacy*.
<https://doi.org/10.1177/0090591706297714>

CLS. (2018). Public Opinion on the Death Penalty. Retrieved May 14, 2019, from Cornell Law School website: <http://www.deathpenaltyworldwide.org/public-opinion.cfm>

Cohen, A. (2012). Yes, America, We Have Executed an Innocent Man. Retrieved March 25, 2019, from The Atlantic website: <https://www.theatlantic.com/national/archive/2012/05/yes-america-we-have-executed-an-innocent-man/257106/>

Donohue, J. J. (2015). *There's no evidence that death penalty is a deterrent against crime*.

DPIC. (n.d.). Executed But Possibly Innocent. Retrieved March 25, 2019, from Death Penalty Information Center website: <https://deathpenaltyinfo.org/executed-possibly-innocent>

DPIC. (2018). Part I: History of the Death Penalty. Retrieved May 7, 2019, from Death Penalty Information Center website: <https://deathpenaltyinfo.org/part-i-history-death-penalty#america>

DPIC. (2019a). Federal Laws Providing for the Death Penalty. Retrieved May 12, 2019, from Death Penalty Information Center website: <https://deathpenaltyinfo.org/federal-laws-providing-death-penalty>

DPIC. (2019b). States With and Without the Death Penalty. Retrieved May 8, 2019, from Death Penalty Information Center website: <https://deathpenaltyinfo.org/states-and-without-death-penalty>

Dui Hua. (2019). Death Penalty Reform. Retrieved May 8, 2019, from The Dui Hua Foundation website: <https://duihua.org/resources/death-penalty-reform/>

ECCHR. (2019). Hard law / Soft law. Retrieved May 15, 2019, from European Centre for Constitutional and Human Rights website: <https://www.ecchr.eu/en/glossary/hard-law-soft-law/>

Ellsworth, P. C., & Gross, S. R. (1994). Hardening of the Attitudes: Americans' Views on the Death Penalty. *Journal of Social Issues*, 50(2), 19–52. <https://doi.org/10.1111/j.1540-4560.1994.tb02409.x>

Epps, G. (2019). The Supreme Court's Death Drive. Retrieved May 12, 2019, from The Atlantic website: <https://www.theatlantic.com/ideas/archive/2019/04/supreme-court-majority-defends-death-penalty/587749/>

Evans, K. M. (2008). *Capital punishment: Cruel and Unusual?* Gale Cengage Learning.

Gallup. (2018). Death Penalty | Gallup Historical Trends. Retrieved May 3, 2019, from <https://news.gallup.com/poll/1606/death-penalty.aspx>

Garland, D. (2010). *Peculiar Institution: America's Death Penalty in an Age of Abolition*.

Retrieved from

<https://books.google.com/books?hl=sk&lr=&id=76BW1H8TMKoC&oi=fnd&pg=PP9&dq=america+death+penalty+history+&ots=EGG0KDMVM3&sig=wdedqlB6VKlFc6o5aKnJq7DKXcQ#v=onepage&q&f=true>

Garland, D. (2018). Peculiar institution: America's death penalty today. *Alternative Criminologies*, (i), 423–432. <https://doi.org/10.4324/9781315158662-25>

Global Times. (2010). The death penalty: No room for error - China News - SINA English. Retrieved March 25, 2019, from <http://english.sina.com/china/p/2010/0210/303963.html>

Gross, S. R. (1998). *Update: American Public Opinion on the Death Penalty - It's Getting Personal*. 6(6).

Hood, R. (2009). *Abolition of the Death Penalty: China in World Perspective*. 1–21.

Hood, R., & Hoyle, C. (2009). Abolishing the Death Penalty Worldwide: The Impact of a “New Dynamic.” *Crime and Justice*, 38(1), 1–63. <https://doi.org/10.1086/599200>

Hood, R., & Hoyle, C. (2015). *The Death Penalty: A Worldwide Perspective* (5th ed.). OUP Oxford.

HRIC. (2014). *Summary Charts: China's Response to Recommendations Advanced by Human Rights Council Member and Observer States, 2nd Universal Periodic Review of China*. Retrieved from

https://www.hrichina.org/sites/default/files/upr_2013_recommendations_and_chinas_responses.pdf

- Jiang, S. (2015). Public Opinion and the Death Penalty. In *Death Penalty in China: Policy, Practice, and Reform*. Retrieved from [https://books.google.com/books?hl=sk&lr=&id=YPTcCgAAQBAJ&oi=fnd&pg=PT11&dq=death+penalty+in+china+hood+&ots=QquDLZa78u&sig=0-oxc9h-qfaVE3XobwEC_xmozBM#v=onepage&q=death penalty in china hood&f=true](https://books.google.com/books?hl=sk&lr=&id=YPTcCgAAQBAJ&oi=fnd&pg=PT11&dq=death+penalty+in+china+hood+&ots=QquDLZa78u&sig=0-oxc9h-qfaVE3XobwEC_xmozBM#v=onepage&q=death%20penalty%20in%20china%20hood&f=true)
- Jiang, S., Hu, M., & Lambert, E. G. (2018). *Predictors of Death Penalty Views in China: An Empirical Comparison Between College Students and Citizens*. <https://doi.org/10.1177/0306624X18767573>
- Jiang, S., Lambert, E. G., & Wang, J. (2007). *Capital Punishment Views in China and the United States*. 84–97.
- Jiang, S., Lambert, E. G., Wang, J., Saito, T., & Pilot, R. (2010). Death penalty views in China, Japan and the U.S.: An empirical comparison. *Journal of Criminal Justice*, 38(5), 862–869. <https://doi.org/10.1016/j.jcrimjus.2010.06.001>
- Jiang, S., & Wang, J. (2008). *Correlates of Support for Capital Punishment in China*. 24–38.
- Jones, J. M. (2017). U.S. Death Penalty Support Lowest Since 1972. Retrieved May 2, 2019, from Gallup website: <https://news.gallup.com/poll/221030/death-penalty-support-lowest-1972.aspx?version=print>
- Keller, B. (2015). Exclusive: Obama Calls the Death Penalty “Deeply Troubling.” Retrieved May 13, 2019, from The Marshall Project website: <https://www.themarshallproject.org/2015/10/23/watch-obama-discuss-death-penalty-racial-profiling-with-the-marshall-project>
- Li, Y., Longmire, D., & Lu, H. (2018). Death Penalty Disposition in China: What Matters? *International Journal of Offender Therapy and Comparative Criminology*, 62(1), 253–273. <https://doi.org/10.1177/0306624X16642426>
- Liang, B., & Lu, H. (2015). *The Death Penalty in China: Policy, Practice, and Reform*. <https://doi.org/10.1007/s10611-016-9642-6>
- Lipset, S. M. (1959). Some Social Requisites of Democracy: Economic Development and Political Legitimacy. *The American Political Science Review*, 53(1), 69–105.

Lipset, S. M. (1960). Political man: the social bases of politics. Retrieved April 8, 2019, from https://archive.org/stream/politicalmansoci00inlips/politicalmansoci00inlips_djvu.txt

Maestro, M. (1973). A Pioneer for the Abolition of Capital Punishment : Cesare Beccaria. *Journal of the History of Ideas*, 34(3), 463–468.

Mann, M. (1984). The Autonomous Power of the State: Its Origins, Mechanisms and Results. *Europäisches Archiv Für Soziologie*, 25(2), 185–213.

Miao, M. (2013). *The Politics of China's Death Penalty Reform in the Context of Global Abolitionism*. (March), 500–519. <https://doi.org/10.1093/bjc/azt004>

MSF. (2019). The Practical Guide to Humanitarian Law. Retrieved May 15, 2019, from Medecins Sans Frontieres website: <https://guide-humanitarian-law.org/content/article/3/international-conventions/>

Murphy, R. G., & Carlson, E. J. (2010). “Like Snow [Falling] on a Branch...”: *International Law Influences on Death Penalty Decisions and Debates in the United States*.

Netelenbos, B. (2016). Political Legitimacy beyond Weber. In *Political Legitimacy beyond Weber*. <https://doi.org/10.1057/978-1-137-55112-2>

Noakes, S. (2014). “Kill Fewer, Kill Carefully”: *State Pragmatism, Political Legitimacy, and the Death Penalty in China*. 61(3), 18–30. <https://doi.org/10.2753/PPC1075-8216610302>

Oberwittler, D., & Qi, S. (2009). *Public Opinion on the Death Penalty in China*.

OHCHR. (2008). *Report of the Working Group on the UPR China* (Vol. 56350). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/162/99/PDF/G0916299.pdf?OpenElement>

OHCHR. (2009). *UPR National Report of China*. <https://doi.org/10.1093/oxfordhb/9780199560103.003.0005>

OHCHR. (2010). *Report of the Working Group on the UPR US*. Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement>

OHCHR. (2013a). *Report of the Working Group on the UPR China*. Retrieved from

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/188/55/PDF/G1318855.pdf?OpenElement>

OHCHR. (2013b). *UPR National Report of China* (Vol. 16958). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/169/58/PDF/G1316958.pdf?OpenElement>

OHCHR. (2015a). *National Report United States 2015* (Vol. 02466).

OHCHR. (2015b). *Report of the Working Group UPR US*.
<https://doi.org/10.1002/lite.201000031>

OHCHR. (2018). *UPR National Report of China*. Retrieved from https://www.upr-info.org/sites/default/files/document/china/session_31_-_november_2018/a_hrc_wg.6_31_chn_1_e.pdf

OHCHR. (2019a). *Human Rights Council Universal Periodic Review (Third Cycle)*. Retrieved from https://www.ohchr.org/Documents/HRBodies/UPR/UPR_3rd_cycle.pdf

OHCHR. (2019b). *Report of the Working Group on the UPR China* (Vol. 22685). Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/446/59/PDF/G1844659.pdf?OpenElement>

OHCHR. (2019c). Universal Periodic Review. Retrieved April 24, 2019, from <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

Oliphant, J. B. (2018). U.S. Support for Death Penalty Ticks Up in 2018. Retrieved May 2, 2019, from Pew Research Center website: <https://www.pewresearch.org/fact-tank/2018/06/11/us-support-for-death-penalty-ticks-up-2018/>

ProCon. (2016). US Executions from 1608-2002. Retrieved May 6, 2019, from <https://deathpenalty.procon.org/view.resource.php?resourceID=004087>

Rawls, J. (2001). *Justice of Fairness: A Restatement*. Harvard University Press.

Rose, A. (2013). The Populist Bind: Death Penalty Abolition as an Anti-Democratic Decision. *American University's Clocks and Cloud, III*(Spring), 31–47.

Roselle, L., Miskimmon, A., & Loughlin, B. O. (2014). *Strategic Narrative: A New Means to*

Understand Soft Power. <https://doi.org/10.1177/1750635213516696>

Ross, G. (2011). Death Penalty Popular in China. Retrieved April 29, 2019, from Inter Press Service News Agency website: <http://www.ipsnews.net/2011/06/death-penalty-popular-in-china/>

Sarat, A. (2013). *Capital Punishment in the USA: Prospects and Possibilities*. 308–320.

Schabas, W. (2003). The Abolition of Capital Punishment from an International Law Perspective. *Convergence of Criminal Justice Systems - Bridging the Gaps*. Retrieved from <http://pgil.pk/wp-content/uploads/2014/06/International-law-death-Penalty.pdf>

Seet, M. (2017). *China's Suspended Death Sentence with a Two-Year Re-rieve: Humanitarian Reprieve or Cruel, Inhuman and Degrading Punishment?* (January 2014).

Stanford University. (2017). Political Legitimacy. Retrieved April 21, 2019, from <https://plato.stanford.edu/entries/legitimacy/>

State Council. (2012). National Human Rights Action Plan of China (2012-2015). Retrieved May 11, 2019, from Information Office of the State Council of the People's Republic of China website: http://www.china.org.cn/government/whitepaper/node_7156850.htm

State Council. (2016). National Human Rights Action Plan of China (2016-2020). Retrieved May 11, 2019, from http://english.gov.cn/archive/publications/2016/09/29/content_281475454482622.htm

Steiker, C. S., & Steiker, J. M. (2019). Will the U.S. Finally End the Death Penalty? Retrieved May 8, 2019, from The Atlantic website: <https://www.theatlantic.com/ideas/archive/2019/03/gavin-newsoms-death-penalty-moratorium-may-stick/584977/>

Stewart, D. P. (1993). United States Ratification of the Covenant on Civil and Political Rights: The Significance of the Reservations, Understandings, and Declarations. *DePaul Law Review*, 42(4), 1183–1207. Retrieved from <https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1934&context=law-review>

UN. (2019). Status of the International Covenant on Civil and Political Rights. Retrieved

May 12, 2019, from United Nations Treaty Collection website:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en#EndDec

United Nations. *International Covenant on Civil and Political Rights*. , (1976).

United Nations. *Second Optional Protocol to the International Covenant on Civil and Political Rights*. , (1989).

US Department of State. (2011). Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights. Retrieved May 13, 2019, from US Department of State website: <https://www.state.gov/j/drl/rls/179781.htm>

Weber, M. (1964). *The Theory of Social and Economic Organization*. New York: Talcott Parsons.

Wu, Y., Sun, I. Y., & Wu, Z. (2011). Support for the death penalty: Chinese and American college students compared. *Punishment and Society*, 13(3), 354–376.
<https://doi.org/10.1177/1462474511404337>

Zhang, L. (2014). Opinion | China's Death-Penalty Debate - The New York Times. Retrieved April 29, 2019, from The New York Times website: <https://www.nytimes.com/2014/12/30/opinion/chinas-death-penalty-debate.html>