

IS LIFE IMPRISONMENT WITHOUT PAROLE OR COMMUTATION AN EFFECTIVE ANTI-CORRUPTION MEASURE FOR CHINA?

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ABSTRACT

New legislation adopting a tough criminal stance on the crimes of corruption and bribery responds to the need for strengthening Chinese anti-corruption work. The ninth amendment to the Chinese Criminal Law Code, which adds life imprisonment without parole or commutation, has received broad support from all sectors of society. The aim of the amendment, as stated by the legislature, is to safeguard judicial fairness and prevent criminals convicted of the most serious corruption offences from having their prison sentences shortened through commutation. This stated legislative aim is not acceptable. Whether from the perspective of deterrence or alternative measures to the death penalty, the approach of adding life imprisonment without parole or commutation in order to punish the corrupt is not ideal. This article argues that, given the particular nature of crimes of corruption and given the disadvantages of life imprisonment without parole or commutation, restraint in the use of the death penalty does not mean that life

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imprisonment has to be used as an alternative measure. Moreover, the death penalty with a two-year reprieve is sufficient for realising retribution and prevention as aims of punishment.

1 BACKGROUND TO ADOPTING LIFE IMPRISONMENT WITHOUT PAROLE AND COMMUTATION IN CHINA

As is well known, China is one of the few countries in the world that still has the death penalty in its criminal law. The reform and practice of the death penalty in China have attracted broad attention nationally and internationally. According to Article 48 of the Criminal Law Code, the death penalty should be applied only to criminals who have committed extremely heinous crimes. Here, extremely heinous crimes include not only violent crimes, such as murder and rape, but also non-violent crimes, such as corruption and bribery. Therefore, the most corrupt criminals may be punished with the death penalty.

The use of the death penalty in China has peculiar Chinese characteristics. For example, if the immediate execution of a criminal sentenced to death is not deemed necessary, a two-year suspension of the execution may be pronounced simultaneously with the imposition of the death sentence. Thus, the execution of the death penalty in China has two forms, namely, the death penalty with immediate execution and the death penalty with a two-year reprieve. The legal effect of the death penalty with a two-year reprieve is regulated by Article 50 of the Criminal Law Code. It reads:

[I]f a person sentenced to death with a suspension of execution does not intentionally commit a crime during the period of suspension, he is to be given a reduction of sentence to life imprisonment upon the expiration of the two-year period; if he demonstrates meritorious service, he is to be given a reduction of sentence to not less than fifteen years and not more than twenty years of fixed-term imprisonment upon the expiration of the two-year period; if there is verified evidence that he has intentionally committed a crime, the death penalty is to be executed upon the approval of the Supreme People's Court.

Therefore, if a criminal receives the death penalty with a two-year suspension, generally speaking, he or she will be executed only if an intentional crime is committed subsequently by him or her. Otherwise, the criminal will be afforded the chance of a reduction of the sentence to life imprisonment or to not less than 15 years and not more than 20 years of fixed-term imprisonment upon the expiration

of the two-year period. The aim of this provision is to allow for the reform and rehabilitation of criminals.

However, in recent decades proponents of the abolition of the death penalty in China have made great efforts to promote their cause legislatively and judicially, especially in respect of non-violent crimes. A discussion on life imprisonment without parole and commutation in China took place among scholars in the context of alternative measures to the death penalty, and the legal status of life imprisonment without parole or commutation was stipulated recently in the ninth amendment to the Criminal Law Code.

The ninth amendment was enacted on 29 August 2015 and came into force on 1 November 2015. “Life imprisonment without parole and commutation” is a new measure that forms part of the death penalty with a two-year reprieve. It has aroused widespread concern and heated discussion among people from different circles. According to Article 44 of the ninth amendment:

[I]n case of executing the death sentence with reprieve for corruption and bribery, the People’s Court may simultaneously decide to impose life imprisonment upon such crimes without commutation or parole according to the circumstances of crimes after the death sentence with a two-year reprieve is commuted to life imprisonment.

This provision undoubtedly amounts to another material action taken by the Chinese government to meet its great concern about anti-corruption work after the 18th National Congress of the Communist Party of China in 2012, and reflects the government’s determination to punish harshly people convicted of corruption. In a report on the review results of the ninth amendment (draft), the National People’s Congress Law Committee provided detailed reasons for the legislation, stating that:

it is favorable for reflecting the principles of the criminal law adaptable to penalties, safeguarding judicial justice, preventing excessive shortening of the term of imprisonment for such crimes by means of commutation in judicial practices, and conforming to criminal policies that combine leniency with rigidity that criminals involved in a huge amount of corruption and bribery, especially in extremely serious circumstances, who receive life imprisonment after their death sentence with a two-year reprieve, have their sentences commuted to life imprisonment based on the cautious use of criminal policies and the concrete situation of cases.

It is thus clear that this rule was formulated by the legislature for several additional

reasons. Firstly, the principle of matching punishments to crimes is taken into account during sentencing. Penalties must be used cautiously in order to avoid an overly short term of imprisonment derived from the extremes of “too heavy capital punishment and too light non-death penalty”.¹ Secondly, the measure aims to prevent commutation and parole being abused to obtain excessively short terms of imprisonment in practice. In other words, criminals may be “exempted from capital punishment, but hardly from punishment”.² Thirdly, it is an essential step for abandoning the adaptation of capital punishment to non-violent crimes.

2 LIFE IMPRISONMENT VERSUS THE DEATH SENTENCE WITH IMMEDIATE EXECUTION

In contrast to other countries where life imprisonment is considered an independent penalty, China does not impose life imprisonment as a free-standing punishment for major crimes such as corruption and bribery. Rather, it treats life imprisonment as a special measure dependent upon capital punishment with reprieve. This is because of the original system of providing reprieves in capital punishment cases. Capital punishment with reprieve is less severe than capital punishment with immediate execution and more severe than general capital punishment with suspended execution. Hence, it limits somewhat the application of capital punishment with immediate execution and even “substitutes” for it.

Nowadays, there is a general trend in the international community of restricting and abolishing capital punishment. This has been recognised generally in criminal law circles in China. From 2007 to 2012, four resolutions were passed by the United Nations General Assembly appealing to member states to suspend their capital punishment measures. By 2014, capital punishment had been abolished or suspended in 158 countries.³ Current capital punishment policy in China stipulates that “capital punishment shall be maintained, but strictly controlled and executed with caution”. This policy has been implemented and is reflected in the recent two amendments to the criminal law.⁴ It is only in the consideration of the prudent

1 Liu Xianquan (2012) “The Relationship between the Restriction or Abolition of the Death Penalty and the Increase of the Term of Fixed-Term Imprisonment” 30(3) *Tribune of Political Science and Law* 83-94 at 83.

2 Liu Xianquan (2012) at 83.

3 Mao Lixin (2014) “The Basic Policy and Position of the United Nations on Capital Punishment—Investigation Report on Capital Punishment of the Office of the United Nations High Commissioner for Human Rights” 32(4) *Hebei Law Science* 109-117 at 111.

4 Eighth and ninth amendments to the Criminal Law Code. See Zhao Bingzhi (2014) “Study on The Disputed Questions of Death Penalty Reform in Contemporary China” 1 *Science of Law (Journal of Northwest University of Political Science and Law)* 146-154 at 146.

application of capital punishment that life imprisonment has been designated as a punishment for major corruption and bribery crimes.

In 1764, in a book titled *On Crimes and Punishments*, substitution of life imprisonment for capital punishment was proposed by Cesare Bonesana-Beccaria, the founder of the classical school of criminology. Since the 17th century, the parole system has been established gradually and publicised. Meanwhile, life imprisonment has been divided progressively into absolute life imprisonment without parole and a relative form that allows parole. Some countries have abolished capital punishment by adopting life imprisonment without parole as an alternative measure,⁵ an approach which is advocated by some Chinese scholars of criminal law.⁶ Life imprisonment with parole is acknowledged and used widely.

Although it is a new provision in the history of China's criminal law that life imprisonment without commutation or parole should be applied to major corruption and bribery crimes, there are certain theoretical insights and lessons worthy of mention in this development. However, before the enactment of the new rule, life imprisonment without parole had been criticised across the international community, and especially in European countries, as being contrary to human rights.⁷ Some Chinese scholars of criminal law also have voiced their objections to the substitution of life imprisonment without parole for capital punishment.⁸ In the USA, life imprisonment without parole is also possible, but unlike China, such form of imprisonment generally is considered only for violent crimes involving considerably high personal risk and not for non-violent crimes such

5 For example, capital punishment has been abolished in England, Sweden, Bulgaria, Ukraine and in most states of the USA.

6 See Jiang Tao (2010) "Si Xing Fei Chu Yu Xing Fa Zhi Du De Li Fa Wan Shan" ["Abolition of Capital Punishment and Legislative Improvement of Penal System"] 21 *Ren Min Jian Cha* [People's Procuratorial Semi-monthly] at 60-64.

7 See Smit DVZ (1999) "Life Imprisonment as the Ultimate Penalty in International Law: A Human Rights Perspective" 9 *Criminal Law Forum* 5-54 at 22.

8 See Gao Mingxuan & Wang Xiumei (2008) "Si Xing Ti Dai Li Bi Fen Xi" [Study on the Advantages and Disadvantages of Alternatives to the Death Penalty] 37(1) *Jiang Su Xing Zheng Xue Yuan Xue Bao* [Journal of Jiangsu Administration Institute] at 98-104; Zhang Mingkai (2008) "Si Xing De Fei Zhi Bu Xu Yao Zhong Shen Xing Ti Dai" ["The Abolition of the Death Penalty Doesn't Need the Alternative of Life Imprisonment"] 2 *Fa Xue Yan Jiu* [Chinese Journal of Law] at 79-94; Wang Zhixiang (2015) "Si Xing Ti Dai Cuo Shi: Yi Ge Xu Yao Jing Ti De Xing Fa Gai Nian" ["Alternative Measures to the Death Penalty: A Noteworthy Concept of Criminal Law"] 1 *Zhong Guo Fa Xue* [China Legal Science] at 291-303.

as corruption.⁹ Hence, this paper takes issue with the replacement of capital punishment by life imprisonment without parole in China.

It has been acknowledged in all countries of the world that capital punishment should be limited and even abolished, mainly because it has the following disadvantages. Firstly, capital punishment is a cruel and inhuman punishment that deprives people of their lives and, hence, infringes upon a fundamental human right. Secondly, capital punishment is irreversible, and a wrongful conviction with such a penalty is irrecoverable. And, of course, it is impossible for any judicial system to eliminate wrongful convictions. Thirdly, capital punishment is not more effective than other penalties for preventing crimes. Fourthly, it is unfair to make capital punishment applicable to different criminals or different criminal circumstances.¹⁰ Unfortunately, these malpractices have not been removed by the replacement of capital punishment with life imprisonment without parole. In fact, the above considerations constitute a justification for limiting and abolishing capital punishment.

Compared with capital punishment, which directly deprives people of their lives, life imprisonment without parole deprives people of their freedom for life. Like the death penalty, it is a cruel and inhuman punishment. This view was put forward first by scholars advocating life imprisonment. For instance, Bonesana-Beccaria considered that life imprisonment was as cruel as capital punishment and even more ruthless, so it was proposed that the former be replaced with capital punishment.¹¹ This is also a reason why life imprisonment is criticised by its opponents, as it substitutes lifelong suffering until death for the death penalty with immediate execution. Despite such life imprisonment keeping people alive, they are deprived of all possibility of being released and of any hope of a meaningful life, so their human rights are not being respected. This perspective has been recognised gradually by some countries since the twentieth century. For example, life imprisonment without parole was declared by the Federal Constitutional Court of Germany in 1977 to be a punishment that infringed upon human dignity and that was a violation of the constitution.¹² In addition, the

9 See Berry WW (2010) "More Different than Life, Less Different than Death: The Argument for According Life Without Parole Its Own Category of Heightened Review Under the Eighth Amendment" 71(6) *Ohio State Law Journal* 1109-1147 at 1109.

10 Han Youyi (2000) "Lun Si Xing De Fei Chu" ["Study on the Abolition of the Death Penalty"] 14(2) *Journal of Jiangsu Public Security College* at 101-107.

11 See Beccaria C B (2008) *On Crimes and Punishments*, translated by Huang Feng, Bei Jing Da Xue Chu Ban She: Peking University Press at 68.

12 See Horton KC (1980) "Life Imprisonment and Pardons in the German Federal Republic" 29 *International and Comparative Law Quarterly* 530-534 at 530.

Mexican Supreme Court and the Namibian Supreme Court deemed life imprisonment without parole to be a brutal and inhuman punishment that was contrary to their respective constitutions.¹³ It has been adjudicated by the EU Court of Human Rights that, in some cases, life imprisonment without parole is contrary to Article 3 of the European Convention on Human Rights, which prohibits cruel and inhuman punishments. The court ruled that criminals who had been sentenced to life imprisonment should have the opportunity of being released and of having their cases reviewed.¹⁴

Life imprisonment without parole may be imposed as an equivalent to capital punishment precisely because of its brutality. Life imprisonment without commutation or parole has been introduced in China for major corruption crimes as part of the ninth amendment to the Chinese Criminal Law Code. As a sanction, it is helpful for conducting the Chinese policy of capital punishment as it is a much more severe sentence than general capital punishment with reprieve, thereby playing a role in “rigorously controlling and cautiously executing capital punishment”.¹⁵ Nevertheless, the addition of a cruel and inhuman punishment to limit the application of and further restrict capital punishment is unreasonable in terms of protecting human rights, and it should be questioned.

People who greatly favour the substitution of life imprisonment for capital punishment believe it is necessary because they are angry with criminals and desire retaliation. To be sure, the imposition of life imprisonment without parole may relieve the emotional impact which comes with reliance on capital punishment. According to relevant surveys in China, life imprisonment without parole is accepted extensively as an alternative to capital punishment.¹⁶ Some surveys in America have suggested that the support rate for capital punishment could be

13 See Maaskamp V (2003) “Extradition and Life Imprisonment” 25 *Loyola of Los Angeles International & Comparative Law Review* 741-766 at 744; *Ex parte: Attorney General, In Re: Corporal Punishment by Organs of State* 1991 (3) SA 76 (Nam SC).

14 See Hood R (2011) *Developments on the Road to Abolition of the Capital Punishment: A Worldwide Perspective*, translated by Fu Qiang, reviewed by Gao Mingxuan 32(3) *Fa Xue Za Zhi* [*Law Science Magazine*] at 135-144; Cui Limeng “Ou Meng Cai Ding Ying Guo Bu De Zhong Shen Jian Jin Zhong Xing Fan: Ying Zheng Fu Kang Yi” [“EU’s Adjudication of not Imposing Life Imprisonment on Felons, Protest of British Government.”], available at http://www.chinadaily.com.cn/hqgj/jryw/2013-07-11/content_9557024.html (visited 12 April 2017).

15 See Zhao Bingzhi (2014) at 146.

16 See Yuan Bin (2009) “Wo Guo Min Zhong Si Xing Ti Dai Guan Nian De Shi Zheng Fen Xi-Jian Lun Wo Guo Si Xing Ti Dai Cuo Shi De Li Fa Xuan Ze” [“An Empirical Analysis of Chinese People’s Idea on Replacing Capital Punishment—A Concurrent Discussion on China’s Legislative Choices of Alternatives to Capital Punishment”] 20(4) *Xing Fa Lun Cong* [*Criminal Law Review*] at 151-179.

reduced by the imposition of sentences of life imprisonment without parole.¹⁷ Since the 18th National Congress, the Chinese government has been highlighting anti-corruption work. Against the general background of the cautious imposition of capital punishment, life imprisonment without commutation or parole is imposed for major corruption and bribery crimes. Undeniably, in cases where criminals are not being sentenced to capital punishment with immediate execution, they should be severely punished in line with the will of the people. However, since rational lawyers do not call for capital punishment because of people's anger with criminals, and since the efforts to limit or abolish capital punishment are not suspended because of people's persistence in favouring it, it is difficult to prove whether it is necessary and reasonable to impose brutal and inhuman life sentences to accommodate the emotions of people.

Furthermore, capital punishment continues to be imposed, and never has been suspended in China. In 2010, the Supreme People's Court emphasised that capital punishment could be applied legitimately to criminals who had committed extremely serious crimes, but reaffirmed the policy of "rigorously controlling and cautiously executing capital punishment".¹⁸ Over the past five years, there have been the cases in the judicial practice of Xu Maiyong (许迈永), Cheng Wei (程伟) and Zeng Jinchun (曾锦春) where offenders have been sentenced to death immediately for corruption and bribery crimes.¹⁹ Thus, it ought to be mentioned that this new rule in the ninth amendment to the Criminal law Code is less meaningful for limiting capital punishment than for supporting rigorous anti-corruption work.

Life imprisonment without parole is so harsh that relative life imprisonment with parole is imposed as the maximum punishment in most countries where capital punishment has been abolished. This trend is reflected generally in the prescribed minimum term of "life imprisonment" comprising 15 years in Germany and 25 years in Canada.²⁰ Even if life imprisonment without parole is available in

17 Vogel BL (2003) "Support for Life in Prison without the Possibility for Parole among Death Penalty Proponents" 27(2) *American Journal of Criminal Justice* 263-275 at 263.

18 See Zhao Bingzhi (2014) at 146.

19 See <http://jjw.sxufe.edu.cn/info/1006/1138.htm> (visited 10 March 2017); http://www.pkulaw.cn/case_es/payz_120879526.html?match=Exact (visited 10 March 2017); <http://fanfu.people.com.cn/GB/13628296.html> (visited 10 March 2017).

20 See Section 38 ("Term of imprisonment") of German Criminal Code, promulgated on 13 November 1998, *Federal Law Gazette [Bundesgesetzblatt]* at 3322, last amended by Article 1 of the Law of 24 September 2013, *Federal Law Gazette* at 3671 and with the text of Article 6(18) of the Law of 10 October 2013, *Federal Law Gazette* at 3799. See also <http://www.lawlib.utoronto.ca/bcl/crimweb/vol1.html> (visited 10 March 2017).

some countries, the possibility of criminals applying for release never has been excluded. For instance, criminals may appeal to parliament and the president for mercy in Sweden and Bulgaria, and they may ask the president for forgiveness after they have served 15 years of the sentence.²¹ By contrast, according to the ninth amendment to the Criminal Law Code of China, absolute life imprisonment without commutation or parole is a legitimate punishment for major corruption and bribery crimes. Its cruelty is self-evident.

Just as one cannot be brought back to life, a wrongful conviction followed by capital punishment is irreversible and the loss is irrecoverable. This appears to be the most important advantage of life imprisonment over capital punishment. However, a sentence of life imprisonment without parole is also irreversible and irrecoverable. Unlike property-based penalties from which equivalent compensation may be gained, capital punishment and prison terms deprive criminals of their invaluable life and liberty. Being irreversible, these deprivations cannot be measured and recompensed in monetary terms.

Life imprisonment, as a substitute for the death penalty, usually is regarded as one of the important arguments for abolishing capital punishment. In fact, both capital punishment and punishments restricting liberty are irrecoverable and irreversible in the sense explained above. However, this cannot be the sole reason why capital punishment should be eradicated. Only if irreversibility is integrated with brutality and inhumanity is there a justification for restricting and abolishing capital punishment. After all, it is arguable that capital punishment ought to be eradicated for being a violation of the human condition. As mentioned above, life imprisonment without parole is as cruel and inhuman as capital punishment and also irreversible and irrecoverable.

Regardless of its general preventive role in deterring potential criminals, there is no doubt that capital punishment prevents crimes by eliminating the possibility of recidivism. However, capital punishment always has been a controversial topic because crimes may be prevented more effectively by punishments such as life imprisonment. In this regard, it is acknowledged generally that there is no evidence that capital punishment has a greater marginal benefit

21 See Gao Mingxuan & Wang Xiumei, (2008) at 98-104. For the relevant provisions of different states, see Hood (2011) at 135-144; Li Xihui (2008) "Lun Si Xing De Ti Dai Cuo Shi-Yi Wo Guo Xing Fa Li Fa Wei Ji Dian" ["On Alternatives to Capital Punishment—Based on Legislation of Criminal Law in China"] 16(2) *He Bei Fa Xue* [*Hebei Law Science*] at 27-30.

than life imprisonment.²²

Since the 18th National Congress of the Community Party, there have been unprecedented efforts to crack down on corruption in China. However, under guidance of the criminal policy of “kill fewer, kill cautiously”, people convicted of major corruption charges and who were supposed to have been sentenced to death, instead have been punished mostly with a two-year reprieve, and rarely have been executed immediately. Against this background, a sentence of life imprisonment can be expected for major corruption and bribery crimes, as a means of preventing corruption. This understanding has been expounded by scholars and in media reports.²³ Be that as it may, life imprisonment for major corruption crimes, like capital punishment, is unhelpful in preventing crimes more effectively, given the special nature of corruption and bribery, as well as the malpractices inscribed in life imprisonment without commutation or parole.

In this connection, it is noteworthy that in Transparency International’s annual Corruption Perceptions Index (CPI), the countries recognised to be relatively uncorrupt in recent years are those which do not prescribe capital punishment or life imprisonment for crimes of corruption. Also, the relatively uncorrupt rarely include countries which punish corruption with the withdrawal of liberty for longer than 10 years. Finland, a country that has been ranked at the top of the CPI consecutively from 2000 to 2013, provides for a maximum of only four years’ imprisonment for corruption and bribery crimes.²⁴ In England and Sweden, where life imprisonment without parole has been established as a prison term, corruption and bribery crimes have not been identified as crimes deserving of such punishment. In these countries, heavy penalties are not used to deter criminals, suggesting that the goal of preventing corruption may be attained mainly by

22 See Qiu Xinglong (2004) “Si Xing Duan Xiang-Cong Si Xing Wen Ti Guo Ji Yan Tao Hui Tan Qi” [“Reflections on Capital Punishment—Started from the International Seminar on Capital Punishment”] 127(5) *Fa Xue Ping Lun* [Law Review] at 18-27.

23 See Zou Wei, Luo Sha, Mao Yizhu, Zhou Liquan & Wu Mengda “Ju Jiao Xing Fa Xiu Zheng An Jiu Cao An Dui Zhong Te DaTan Wu Fan Zui Zeng She Zhong Shen Jian Jin” [“On the Establishment of ‘Life Imprisonment’ in the Drafted 9th Amendment to the Criminal Law for Crimes of Corruption”], available at http://www.npc.gov.cn/npc/xinwen/2015-08/26/content_1944449.htm (visited 10 February 2016); Shu Xinping (26 August 2015) “Zhong Shen Jian Jin Da Sui Ju Tan Huan Xiang” [“Breaking the Dream of Grand Corruption by Life Imprisonment”] *Procuratorial Daily*.

24 See Section 14 of the Finnish Criminal Law Code, which provides that even for “aggravated giving of bribes” the sentence is “imprisonment for at least four months and at most four years”.

establishing a rigid anti-corruption legal system and strengthening the supervision and control of public power through a variety of channels.²⁵

Corruption can flourish in national regimes when it is linked to institutional flaws. Establishing effective means of preventing corruption requires improvements in related political, economic, legal and supervisory management systems. This is more likely to deter crimes than subsequent severe punishments. The key to punishments deterring crimes effectively resides in the judicial practice that all crimes must be punished, and penal legislation must be rigid in this regard. In China, national staff are deterred from engaging in corruption and bribery by the anti-corruption policy of beating both tigers and flies, and by the subsequent “anti-corruption storm” that swept across the country, rather than by the punishment of life imprisonment without commutation or parole.²⁶ Currently, capital punishment stands to be applied and adapted to crimes of corruption and bribery in China. When capital punishment with immediate execution is inadequate for deterring corruption, life imprisonment without commutation or parole may play only a limited role in terms of general prevention. Undoubtedly, both capital punishment, which directly deprives criminals of their lives, and life imprisonment, whereby criminals are jailed until their deaths, thoroughly eliminate the possibility of individual recidivism. They really play only particular preventive roles. Thus, it is worthy of reflection whether such particular prevention of the highest degree is necessary.

Crimes of corruption and bribery belong to the category of occupational crimes. The subjects of these crimes under Chinese criminal law should be public officials. For them, the possibility of recidivism is eliminated by depriving them of their public offices and disqualifying them from serving subsequently as national staff. In their case, it is unnecessary to impose life imprisonment as a special preventive measure. In many countries, the criminal law provides that offenders who are convicted of corruption and bribery should be deprived of their relevant rights and qualifications.²⁷ Although no qualification-related punishments have been defined separately for crimes of corruption and bribery in China, Articles 54 and 57 of the Criminal Law Code provide that “criminals who are sentenced to death and life imprisonment shall be deprived of their political rights”, including

25 See Li Huizhi (2013) “Tan Wu Hui Lu Fan Zui Xing Fa Zhuang Kuang De Yu Wai Kao Cha” [“Foreign Investigation of Punishments for Crimes of Corruption and Bribery”] 35(3) *Xing Fa Lun Cong* [*Criminal Law Review*] at 433-463.

26 Pei Ding Xian (2014) “Lao Hu Cang Ying Yi Qi Da De Shen Yuan Fa Zhi Yi Yi” [The Far-Reaching Significance of the Policy of Fighting against Tigers and Flies] 4 *China Law Review* at 32-36.

27 See Li Huizhi (2013) at 433-463.

“rights to serve in posts of national institutions” and “rights to work as leaders in state-owned companies, enterprises, institutions and people’s organizations”. In the ninth amendment, a qualification-related punishment has been introduced into Article 37 for crimes that involve officials taking advantage of their jobs:

If criminals are punished for crimes committed by taking advantage of their jobs, or those performing specific obligations against professional requirements, the People’s Court may forbid such criminals from embarking on related professions within three to five years, calculated from the date of the completion of the punishment or the date of parole pursuant to the crimes, which is required for preventing recidivism.

In addition, Article 17 of the Regulations on the Disciplinary Sanctions for Civil Servants of Administrative Organs provides that “civil servants of administrative organs shall be dismissed if they are legally punished”. According to Article 24 of the Civil Service Law, “people who have received criminal punishments ever ... shall not be recruited as civil servants”. To a certain extent, these provisions have satisfied the need for the particular prevention of major crimes of corruption and bribery. Moreover, some scholars have put forward suggestions for further improving qualification-related punishments for corruption.²⁸

Furthermore, the possibility of criminals relapsing may be reduced, if not eliminated, by the imposition of punishments, the onset of old age, and the more frequent occurrence of illnesses. Sentencing those who are no further threat to society to life imprisonment without commutation or parole is not conducive to reforming criminals. Instead, it may increase the number of prisoners and, in turn, aggravate the challenge they pose for medical care.

Capital punishment and life imprisonment are inseparable in terms of their application. However, due to the existence and general applicability of commutation or parole systems, ordinary capital punishment with reprieve, life imprisonment with parole, and ordinary life imprisonment, sentencing should consider the personal circumstances of criminals so that their practical term of imprisonment might be appropriate. Only capital punishment and life imprisonment without parole are imposed upon “criminals committing extremely severe crimes” without distinction and without regard for the circumstances of their crimes and their personal conditions. Inevitably, this entails rejection of the

28 See Li Haiying & Ma Rui (2009) “Fu Bai Fan Zui Kong Zhi Shi Ye Xia De Zi Ge Xing Yan Jiu” [“Research on Qualification-related Punishments from the Perspective of Control over Corruption”] *Fa Xue Za Zhi* [Legal Science Magazine] at 49-52.

principle of fitting punishments to crimes and the impartiality of penalties. Global life expectancy in 2015 was 71,4 years (73,8 years for females and 69,1 years for males), and in China it was 77,6 years for females and 74,6 years for males.²⁹ Life imprisonment without parole applies to criminals of different ages. The actual length of the term of imprisonment and the cruelty of penalties differ greatly. Life imprisonment without parole and capital punishment are inseparable and both are unfair. In pursuing the principle that punishments should fit crimes, the Chinese legislature has decided to apply life imprisonment without commutation or parole to major corruption and bribery crimes. The problem is that it is impossible to match the punishments to the crimes in different cases by using this measure. Therefore, life imprisonment without commutation or parole should not be seen as an alternative to the “cautious application of capital punishment”.

3 LIFE IMPRISONMENT VERSUS CAPITAL PUNISHMENT WITH REPRIEVE

Life imprisonment for major corruption and bribery crimes, when attached to capital punishment with reprieve, is more severe than outright capital punishment with reprieve. Compared to the previous general reprieve system, this new system applies a stern punishment while seeking to make it preventive. This is also the meaning of the dualistic purpose of punishments. As mentioned above, defining the terms of life imprisonment is unhelpful for preventing crimes more effectively. However, corruption may be prevented more reasonably and effectively by improving the pertinent control systems. As regards the issue of retribution, the key question is whether capital punishment with reprieve is inadequate for fully realising the retributivity of punishments.

Before the enactment of the eighth amendment to the Criminal Law Code in 2011, the Chinese penalty system was defective in that “capital punishment was too heavy and non-death penalties were too light”.³⁰ However, the maximum term for capital punishment with reprieve and the minimum term for life imprisonment were extended in the eighth amendment. The problem of “non-death penalties being overly light” thus has been resolved generally and the rigidity of the reprieve system has been strengthened greatly.

It is noteworthy that the second deliberated draft of the eighth amendment was intended originally to increase the minimum term of reprieve and life imprisonment, apart from limiting commutation. It stipulated that criminals who

29 See <http://apps.who.int/gho/data/node.main.688> (visited 5 March 2017).

30 Liu Xianquan (2012) at 83.

received a sentence of capital punishment with reprieve could not be imprisoned for a term of less than 18 or 20 years if their penalty was commuted legitimately to life imprisonment or 25 years of imprisonment upon the expiry of their reprieve. Criminals who were sentenced to life imprisonment were not to be imprisoned for less than 15 years. However, this suggested revision was not adopted because “in practice, the execution in line with existing criminal law was relatively effective for educating and reforming these people” and “it was inappropriate to increase the terms of punishment universally”.³¹ Hence, the minimum term of life imprisonment was revised to be not less than 13 years in the eighth amendment, as finally enacted. In 2016, the minimum term of the general reprieve was pronounced by the Supreme People’s Court to be not less than 15 years.³² It is thus clear that, after careful deliberation, the legislature recognised the rigidity of general capital punishment with reprieve and negated its pointless excessive aggravation.

In similar vein, some foreign empirical studies have suggested that the need for punishment and prevention may be satisfied by about 15 to 20 years of imprisonment. Extremely long imprisonment terms may harm the personalities of criminals.³³ This is also one of the reasons why life imprisonment without parole was not stipulated or, if stipulated, was abolished eventually in most countries where capital punishment no longer exists. Hence, the rigidity of general capital punishment with reprieve is adequate for achieving the purpose of punishing and preventing corruption and bribery, which complies with the principle that the punishment should fit the crime.

Additionally, “lifelong” prosecution is formally impossible, even for severe crimes, due to the existence of the prosecution time limit system. For instance, it is stipulated by the criminal law of China that criminals cannot be prosecuted “after 20 years in case that the maximum statutory penalty is life imprisonment or capital

31 The report of the National People’s Congress Law Committee on Review Results of the 8th Amendment to the Criminal Law of the People’s Republic of China (Draft) in the 19th Meeting of the 11th Standing Committee of the National Congress of China on 23 February 2011, available at http://www.npc.gov.cn/huiyi/lfzt/xfxza8/2011-05/10/content_1666050.htm (visited 12 April 2017).

32 See “Provisions of the Supreme People’s Court on the Specific Application of Law in Handling Commutation and Parole Cases”, which were adopted at the 1693rd Session of the Judicial Committee of the Supreme People’s Court on 19 September 2016 and came into force on 1 January 2017.

33 Zhang Mingkai (2008) at 79-94.

punishment”.³⁴ However, it is stipulated also that: “If further prosecution is considered to be necessary 20 years later, a report shall be made to the Supreme People’s Procuratorate for examination and approval.”³⁵ In other words, life imprisonment without commutation or parole may be possible for major corruption and bribery crimes, notwithstanding the time limits for prosecution. Owing to such internal conflicts, people legitimately may question the rationality of absolute life imprisonment, as the prosecution would become meaningless after 20 years. As a result, people may doubt whether it is still meaningful to continue jailing criminals until their deaths as a retaliatory and preventive measure.

4 LIFE IMPRISONMENT AND RESTRICTION OF COMMUTATION

The punishment of life imprisonment without commutation or parole specified in the ninth amendment may remind people of the commutation limits provided in the eighth amendment to the Criminal Law Code. This provision may realise also the legislative purpose of preventing illegal abuse of commutation or parole to secure an excessively short prison term in practice.

The two amendments have in common that they are both components of a capital punishment with reprieve system and impose limits on commutation for criminals who are sentenced to capital punishment with reprieve after the legitimate commutation of their sentence of life imprisonment. Their differences reside in their objects. Commutation is limited to habitual offenders who are sentenced to capital punishment with reprieve, and to criminals who are sentenced to capital punishment with reprieve for intentional homicide, robbery, kidnapping, arson, explosions, throwing of hazardous substances, or organising violent crimes; while life imprisonment is imposed upon criminals who have been sentenced to capital punishment with reprieve for corruption and bribery. With regard to the effects, criminals sentenced to capital punishment with reprieve and precluded from commutation “shall be strictly controlled with the commencement date, interval and range of commutation by comparing with criminals who are sentenced to death with reprieve but precluded from commutation”.³⁶ For legitimate

34 Art 87(4) of the Chinese Criminal Law Code, adopted by the Second Session of the Fifth National People’s Congress on 1 July 1979 and amended by the Fifth Session of the Eighth National People’s Congress on 14 March 1997.

35 Art 87(4) of the Chinese Criminal Law Code.

36 Art 10 of the Supreme People’s Court on Issues Concerning the Implementation of the Provisions on Several Issues concerning the Specific Application of Law in Handling Commutation and Parole Cases.

commutation to life imprisonment upon the expiry of the reprieve, the actual term of punishment received after commutation is not less than 25 years. In the case of legal commutation to 25 years' life imprisonment, the term of punishment is not less than 20 years and parole is prohibited. Life imprisonment without commutation or parole is imposed for major corruption and bribery crimes. Corruption and bribery are non-violent crimes, so the corresponding personal risk to the criminals is far lower than the eight official categories of violent crimes, which include habitual offence and intentional homicide. Even the limitations of commutation or parole are applied only to the most serious crimes. However, absolute life imprisonment is stipulated for less-serious crimes, so it is hard to conclude that the legal system is co-ordinated reasonably.

The legislative process of restricting commutation, from the proposal to the eventual formation, in the eighth amendment is interesting. In the first draft, the legislature did not propose "commutation limits", instead stipulating rigorously that no further commutation was allowed in the case of legitimate commutation to life imprisonment or fixed-term imprisonment upon expiry of the reprieve. In considering that opportunities also should be given to criminals based on the necessary examination and approval procedures so that they may be reformed, confess their sins, obey the law or improve their personalities through re-education to achieve the purpose of the punishments, limited parole has been modified as parole permitted after the prisoner has served a sentence for a certain period in practice. In reviewing the draft the second time, "no commutation" was revised to "commutation limits" because "the provision on the former is unhelpful for transforming and managing criminals".³⁷ Meanwhile, the practical minimum term of punishment was stipulated, and the regulation on the prohibition of parole was reinstated.

This suggested revision was approved in a subsequent review and finally passed by a vote as a formal provision of the criminal law. Hence, it is evident that even for the most serious crimes, the legislature insists that life imprisonment is too harsh for realising the purposes of punishment. It even considers the prohibition of commutation to be so rigorous that it is unfavourable for reforming criminals and

37 The report of the National People's Congress Law Committee on Revision of the 8th Amendment to the Criminal Law of the People's Republic of China (Draft) in the 18th Meeting of the 11th Standing Committee of the National Congress of China on 20 December 2010.

achieving the purposes of punishments. Finally, commutation has been restricted and parole forbidden. For the legislature, such a sentence is sufficient for effectively punishing and preventing habitual offences and the eight categories of serious crimes. It would go too far if the punishments were any harsher. Besides, in reviewing the draft, eight institutions, including the law committee, “agreed to differentiate criminals sentenced to capital punishment with reprieve and restricted from commutation for habitual offences and eight types of serious crimes from others” after joint research.³⁸ However, they did not accept the suggestion of lengthening the minimum term of punishments for other criminals who had capital punishment with reprieve imposed on them.³⁹ It has been four years since the more ruthless sentence of life imprisonment without commutation or parole was provided for the non-violent crimes of corruption and bribery in the ninth amendment. Compared to the restrictions on commutation, the rationale, necessity and co-ordination of the existing penalty system involving such imprisonment are not particularly remarkable.

In the ninth amendment to the Chinese Criminal Law Code, the proposal of life imprisonment without commutation or parole for major corruption and bribery crimes was accepted without any revisions, so it was surely a rash decision. It could be argued that this new rule has destroyed rather than improved the Chinese penalty system. Be that as it may, the commutation or parole systems have been standardised and improved comprehensively since 2012, thereby greatly reducing the necessity for imposing life imprisonment.⁴⁰

38 The Report of the National People’s Congress Law Committee on Review Results of the 8th Amendment to the Criminal Law of the People’s Republic of China (Draft) in the 19th Meeting of the 11th Standing Committee of the National Congress of China on 23 February 2011.

39 The Report of the National People’s Congress Law Committee on Review Results of the 8th Amendment to the Criminal Law of the People’s Republic of China (Draft) in the 19th Meeting of the 11th Standing Committee of the National Congress of China on 23 February 2011.

40 The Provisions of the Supreme People’s Court on Issues Concerning the Implementation of the Provisions on Several Issues with regard to the Specific Application of Law in Handling Commutation and Parole Cases of 17 January 2012; The Provisions of the Supreme People’s Court on Procedures for Hearing Commutation and Parole Cases of 10 April 2014; The Provisions of the People’s Procuratorate on Handling Commutation and Parole Cases of 21 July 2014; The Guiding Opinions of the Central Political and Legal Affairs Commission on Strictly Regulating Commutation, Parole and Temporary Execution Outside Prison, and the Practical Prevention of Judicial Corruption.

5 CONCLUSION

Stipulating life imprisonment without commutation or parole for major crimes of corruption and bribery is in line with the current death penalty policy of China and accommodates the needs of current Chinese anti-corruption policies. Nevertheless, it is submitted that life imprisonment is not a necessary alternative to the cautious application of capital punishment, owing to the special nature of corruption and bribery, as well as the defects of absolute life imprisonment as a punishment. Capital punishment with reprieve is adequate for achieving the rehabilitative and preventive purposes of punishment, and so conforms to the principle that the punishment should fit the crime.

Anti-corruption work not only requires harsh punishments but also relies on the improvement and perfection of pertinent political, economic and legal systems. The problem of abuse of commutation and parole systems resulting in extremely short terms of punishment for major corruption and bribery crimes may be avoided by improving such systems and strictly standardising the corresponding conditions and procedures. Although the imposition of absolute life imprisonment without commutation or parole for major corruption crimes would play a positive role in anti-corruption work in the short term, it actually is neither necessary nor reasonable in the long term.