

Article

Governing through Corruption: The Symbolism of the Death Penalty for Chinese Corrupt Officials

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ABSTRACT

In a 2011 debate, the Chinese government decided to maintain the death penalty for corruption while eliminating it for other more serious crimes. While the motivation behind use of the death penalty in regard to corruption has not been fully explored, it is crucial to explore the messages of the Chinese government. Although executions are expressed in legal terms following the rule of law, the death penalty itself is understood by the public through the state-controlled media, and it is noteworthy how the Chinese state media interprets legal terms in plain language to construct the meaning of the death penalty. In other words, how does fear of crime exist if China is “governing through corruption”?¹ A content analysis of 328 corruption media reports shows that the revival of traditional values under State Confucianism reveals the rationale for condemning corrupt officials to death. Parallels between media reports and legal elements suggest that the immorality of these officials, as portrayed by the media, forms the foundation of legal arguments for the death penalty, therefore representing a step from immorality to illegality. This paper suggests that the cultural image of the new capitalist class reflects the ways in which old communist values provided a basis for denouncing white-collar criminals when capitalism entered China in 1978; further, it suggests that the government

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1. The idea comes from the concept “governing through crime” first proposed by Jonathan Simon. See JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 4 (2007).

establishes a culture of control by utilizing symbolic rhetoric in an attempt to tackle corruption by governing through corruption.

Keywords: *Corruption, China, Capitalism, Confucianism, Culture of Control*



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I. INTRODUCTION

This paper investigates the ideologies underlying the use of the death penalty for corruption in China. Since 1949, corruption has been a major political issue² the Chinese government addresses both through campaigns against corruption and by imposing harsh penalties on those convicted of this offense. Corruption is a significant problem: about 32,567 corruption cases were filed in 2011 alone. Additionally, in 2011, government agencies such as the Central Commission for Discipline Inspection (CCDI) took disciplinary or administrative action against 146,517 Party members (officials) who may have been involved in corruption (Supreme People's Procuratorate Annual Report, 2012). Criminals can be sentenced to death if they accept bribes of more than 3,000,000 RMB (\$460,000 USD) (Criminal Law Article 383, and joint memo by Supreme People's Procuratorate and Supreme People's Court, 2016), and at least 10 criminals have been executed for corruption since 2006.³

After a three-day debate in 2011, coming during the late Hu Jintao era, the National People's Congress decided to retain the option of the death penalty for bribery and graft even though they decided to eliminate it for 13 other non-violent economic crimes, such as smuggling and fraud. In 2008, the former Chief Justice of the Supreme People's Court (SPC), Wang Shengjun, has stated that the government maintains the death penalty for corruption because of strong public support (*minyì*)⁴ and that judges should factor public sentiment into the judicial decision to impose the death penalty. As a result, the death penalty for corruption exists to this day.

Although it is widely accepted that the Chinese government is the main player in the decision to retain the death penalty,⁵ it is plausible that corrupt

2. In China, corruption includes graft, bribery, embezzlement, and dereliction of duty. However, only bribery and graft are subject to the death penalty, see Zengke He, *Corruption and Anti-Corruption in Reform China*, 33 COMMUNIST AND POST-COMMUNIST STUD. 243, 244 (2000).

3. Despite these large numbers, the chance of officials accused of corruption being convicted is less than three percent, see Minxin Pei, *Corruption Threatens China's future*, 55 CARNEGIE ENDOWMENT FOR INT'L PEACE 1, 5 (2007). In economic terms, this makes corruption a high return, low-risk activity, see Andrew Wedeman, *Win, Lose, or Draw? China's Quarter Century War on Corruption*, 49 CRIME, LAW AND SOC. CHANGE 7, 7-26 (2008).

4. *Mínyì zuòwéi pàn sǐxíng yījù yīn zhēngyì zhuānjiā chēng fǎlǜ gèng bùkě qīn* (民意作为判死刑依据引争议 专家称法律更不可侵) [*Public opinion as the basis for the death penalty is controversial, experts say the law is even more inviolable*] (Sohu News, Apr. 22, 2008), <http://news.sohu.com/20080422/n256450014.shtml>.

In a 2005 survey, college students in China believed in the deterrent effect of the death penalty even if they had been educated in Western countries for years, see Bin Liang, et al., *Sources of Variation in Pro-Death Penalty Attitudes in China*, 46 BRIT. J. OF CRIMINOLOGY 119, 126-27 (2006).

5. See JONATHAN SPENCE, *THE SEARCH FOR MODERN CHINA* (1990); Yunhai Wang, *The Death Penalty and Society in Contemporary China*, 10 PUNISHMENT & SOC'Y 137, 141-45 (2008); DAVID JOHNSON & FRANKLIN ZIMRING, *THE NEXT FRONTIER: NATIONAL DEVELOPMENT, POLITICAL CHANGE, AND THE DEATH PENALTY IN ASIA* 242-43 (2009); Susan Trevaskes, *China's Death Penalty*,

officials are executed on the basis of punitive Chinese history and strong public support.⁶ First of all, the execution of corrupt officials has been common in Chinese history particularly since the Ming Dynasty (1368-1644).⁷ Secondly, Chinese law permitted the death penalty for corruption in 1933, sixteen years *before* the China Communist Party took over the country (1949). In 1947, former President Chang Kai-Shek executed high-level officials for corruption in response to public resentment for corruption. Thirdly, researchers indeed indicate that Chinese people have higher levels of support for capital punishment than their counterparts in the United States, Japan, and Germany,⁸ and judges in China are susceptible to outside interference;⁹ they may take widespread public support for the death penalty into account while making judicial decisions that satisfy public wrath.¹⁰

However, though public resentment toward corrupt officials may contribute to the use of the death penalty, general public support for the death penalty might be “at best a widely shared *perception* of the public opinion”,¹¹ the idea of which can be traced to the media. For example, Hualing Fu indicates that so-called public support for the death penalty is mostly focused on the opinions of victims and their families that are shaped and delivered by the media.¹² Following this argument, since there are no direct victims in corruption cases, the media may become the main player

53 BRITISH J. OF CRIMINOLOGY 482, 484 (2013).

6. This bottom-up argument about popular cultural influences on the death penalty has long been embedded in Western punishment theories, see Benjamin L. Liebman, *A Populist Threat to China's Courts?*, in CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA 269 (Margaret Y. K. Woo & Marry E. Gallagher eds., 2011); See generally MONA LYNCH, *SUNBELT JUSTICE: ARIZONA AND THE TRANSFORMATION OF AMERICAN PUNISHMENT* (2009); DAVID GARLAND ET AL., *AMERICA'S DEATH PENALTY: BETWEEN PAST AND PRESENT* (2011); Xuanyu Huang, *Re-Legalization or De-Legalization?: Netizens' Participation in Criminal Justice Practices in China*, 52 BRIT. J. OF CRIMINOLOGY 724, 725 (2012); Michelle Miao, *Capital Punishment in China: A Populist Instrument of Social Governance*, 17 THEORETICAL CRIMINOLOGY 233, 234-37 (2013).

7. Officials would be skinned if they accepted a bribe of over 60 dollars, see SHEN JIA-BEN (沈家本), LIDAI XINGFA KAO (歷代刑法考) [A TEXTUAL RESEARCH ON CRIMINAL LAWS] 32 (1989).

8. See Shenghui Qi & Dietrich Oberwittler, *On the Road to the Rule of Law: Crime, Crime Control, and Public Opinion in China*, 15 EUR. J. ON CRIM. POL'Y AND RES. 137, 144-48 (2009); Shanhe Jiang et al., *Death Penalty Views in China, Japan and the US: An Empirical Comparison*, 38 J. OF CRIM. JUST. 862, 862-69 (2010); Yuning Wu et al., *Support for the Death Penalty: Chinese and American College Students Compared*, 13 PUNISHMENT & SOC'Y 354, 365-66 (2011).

9. See SUSAN TREVASKES, *THE DEATH PENALTY IN CONTEMPORARY CHINA* 105-08 (2012); Hualing Fu, *Between Deference and Defiance: Courts and Penal Populism in Chinese Capital Cases*, in *THE DEATH PENALTY IN CHINA: POLICY, PRACTICE, AND REFORM* 275, 284-94 (Bin Liang & Hong Lu eds., 2016).

10. See Michelle Miao, *The Politics of China's Death Penalty Reform in the Context of Global Abolitionism*, 53 BRIT. J. OF CRIMINOLOGY 500, 515-16 (2013); Fu, *id.* at 289-91.

11. *Id.*

12. See Fu, *supra* note 9. For censorship issues, see Gary King et al., *How Censorship in China Allows Government Criticism but Silences Collective Expression*, 107 AM. POL. SCI. REV. 326, 326-43 (2013).

that mobilizes so-called public support for the death penalty. Judges, managing to respond to said public support, impose the death penalty upon corrupt officials in turn.

The interplay among China's judicial opinions, public opinion, and the media has been noted by numerous studies,¹³ but the mechanism that allows for such interaction has not been fully explored. What messages about corruption does the media deliver to the public? What kinds of rationalization and justification¹⁴ underlie executions in the era of "killing fewer" after 2007?¹⁵

Given this, a thorough investigation of state-controlled media reports may reveal the ideologies operating behind the penalty of execution. This paper examines local and national-level media reports about corruption cases, ultimately determining how the government seeks to establish its legitimacy from the top down and therefore incorporating and referencing traditional Chinese values from the bottom-up.¹⁶ The results reveal the ideologies used in media reports, and this paper has also discovered the ways in which traditional values are associated with the execution of corrupt officials. Drawing on punishment theory, this paper will elaborate on (1) the cultural images of corrupt government officials in China produced by media reports and (2) the legitimacy of the Party-state enhanced by these images.

II. MEDIA, IDEOLOGIES, AND CORRUPTION

A. *Governing through Fear*

This paper explores the ideologies produced by the state-controlled media to reveal the possible mechanism of building legitimacy--an approach that has been applied by Jonathon Simon in his book *Governing Through Crime*. However, Simon's conclusion seems counter-intuitive when applied to China. According to Simon, the U.S. "war on crime" speaks to the public fear of crime at both a federal and state level, even extending to the education system and the workplace.¹⁷ Simon's statement is definitely true when victims are involved and fear of crime has been exaggerated. However,

13. See Miao, *supra* note 10; Fu, *supra* note 9; Bin Liang, *China's Death Penalty Practice: Working Progress, Struggle, and Challenges within the Global Abolition Movement*, in *THE DEATH PENALTY IN CHINA: POLICY, PRACTICE, AND REFORM*, *supra* note 9, at 1, 22.

14. See TREVASKES, *supra* note 9.

15. See Susan Trevaskes, *From "Killing Many" to "Killing Fewer"*, in *THE DEATH PENALTY IN CHINA: POLICY, PRACTICE, AND REFORM*, *supra* note 9, at 123, 123-24.

16. To provide a full answer to this question, it would be necessary to examine both the publications themselves (media reports and judicial opinions) and the effect of these publications on public support. This paper attempts only the first of these two tasks--that of examining relevant media reports--thus establishing the basis for future research examining the impact on public opinion.

17. See SIMON, *supra* note 1.

corruption, as a victimless crime, seldom generates “fear.” When China prioritizes the death penalty for corruption, what are the underlying ideologies that “speak to the public”? The fear of corruption is apparently not the answer here, and this paper aims to reveal this mechanism by analyzing the ideologies involved in this phenomenon.

Whether the media can directly stimulate public opinion is still unknown,¹⁸ but it is certain that the media socially constructs ideologies about crime.¹⁹ This argument gains further plausibility in China given that the media, which is designed to construct ideologies, operates under the influence of censorship and is therefore not fully independent.²⁰

Western street crime literature has long utilized media reports to analyze ideologies relating to the portrayal of criminals.²¹ Criminals are often typified as violent, bizarre, cold-blooded, and mentally ill;²² with a particular analytical lens, these descriptions connect to ideologies such as neoliberalism and racism.²³ Using this idea as a basis, scholars have recently applied the same media analysis approach to white-collar criminality. For example, Sullivan and Chermak argue that the media uses different patterns in reporting product counterfeiting and financial crimes.²⁴ Levi discusses how the media dramatizes bribery and the behavior of credit card offenders in the United Kingdom,²⁵ and Cavender makes interesting assertions about the way the media simplifies the criminality of white-collar offenders in the United States.²⁶ In addition, Buist and Leighton found that American TV

18. See Natasha A. Frost, *Beyond Public Opinion Polls: Punitive Public Sentiment & Criminal Justice Policy*, 4 SOC. COMPASS 156, 156-68 (2010).

19. See generally RAY SURETTE, *MEDIA, CRIME AND CRIMINAL JUSTICE: IMAGES AND REALITIES* (2nd ed. 1998); DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (2001); Daniel Dotter, *Creating Deviance: Scenarios of Stigmatization in Postmodern Media Culture*, 23 DEVIANT BEHAV. 419, 428-39 (2002).

20. See Rachel Murphy, *The Paradox of the State-Run Media Promoting Poor Governance in China: Case Studies of a Party Newspaper and an Anticorruption Film*, 39 CRITICAL ASIAN STUD. 63, 63-88 (2007).

21. See DAVID L. ALTHEIDE, *CREATING FEAR: NEWS AND THE CONSTRUCTION OF CRISIS* 125-154 (2002); AARON DOYLE, *ARRESTING IMAGES: CRIME AND POLICING IN FRONT OF THE TELEVISION CAMERA* 13-31 (2003); RICHARD SPARKS, *TELEVISION AND THE DRAMA OF CRIME: MORAL TALES AND THE PLACE OF CRIME IN PUBLIC LIFE* 55-77 (1992); See generally PHILIP SCHLESINGER & HOWARD TUMBER, *REPORTING CRIME: THE MEDIA POLITICS OF CRIMINAL JUSTICE* (1994); SURETTE, *supra* note 19.

22. See LORNA AMARASINGHAM RHODES, *TOTAL CONFINEMENT: MADNESS AND REASON IN THE MAXIMUM SECURITY PRISON* 163-82 (2004).

23. See GARLAND, *supra* note 19; LOIĆ WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* 195-208 (2009).

24. See Brandon A. Sullivan & Steven M. Chermak, *The Media's Portrayal of Product Counterfeiting and Financial Crimes*, 36 INT'L J. OF COMP. AND APPLIED CRIM. JUST. 305, 314-22 (2012).

25. See Michael Levi, *White-Collar, Organised and Cyber Crimes in the Media: Some Contrasts and Similarities*, 49 CRIME, L. AND SOC. CHANGE 365, 375-76 (2008).

26. See Gray Cavender et al., *Enron's Perp Walk: Status Degradation Ceremonies as Narrative*, 6 CRIME, MEDIA, CULTURE 251, 264 (2010).

shows propagate misleading perceptions about the personalities of white-collar criminals.²⁷

However, unlike street crime literature, past research seldom explains the ideologies behind media reports in regard to white-collar criminality.²⁸ If mentioned at all, neoliberal logic--such as in the case of risk management studies²⁹--is the only topic referred to. This lack of ideological focus is also present in Chinese corruption studies, though only a few studies acknowledge the “cultural blank” of the death penalty.³⁰ As a result, it is crucial to consider what ideologies Chinese media makes use of when corrupt officials are sentenced to death.

B. *Ideologies in China and Their Impact on Corruption*

One hypothesis found in literature is that the concept of power contains certain cultural images that appeal to the public and therefore may function to ease public discontentment.³¹ Thus, the question is: what are the relevant cultural images and ideologies available for analysis in China? Possible ideologies that may generate cultural symbols of criminality could be capitalism, Confucianism, Legalism, communism, and other traditional schools of thought.

Similar to in Western countries, capitalism had great influence in China after Deng Xiaoping contributed economic pragmatism to the country in 1978. Scholars argue that the new form of capitalism--neoliberalism--entered China after 2000.³² This is particularly important given that white-collar crime is fundamentally connected to capitalism,³³ and the ideological foundation of neoliberalism is believed to be the Taoist concept of “natural order”.³⁴ As a result, a liberal economy already has roots in

27. See Carrie L Buist & Paul Leighton, *Corporate Criminals Constructing White-Collar Crime*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK OF THE CRIMES OF THE POWERFUL 73, 155-69 (Gregg Barak ed., 2015).

28. See James W. Williams, *The Lessons of 'Enron': Media Accounts, Corporate Crimes, and Financial Markets*, 12 THEORETICAL CRIMINOLOGY 471, 476 (2008).

29. See Michael Levi, *Suite Revenge? The Shaping of Folk Devils and Moral Panics about White-Collar Crimes*, 49 BRIT. J. OF CRIMINOLOGY 48, 50 (2009); Stephen M. Rosoff, *The Role of the Mass Media in the Enron Fraud*, in INTERNATIONAL HANDBOOK OF WHITE-COLLAR AND CORPORATE CRIME 513, 513-22 (Henry N. Pontell & Gilbert Geis eds., 2007); *Id.*

30. See Wang, *supra* note 5; Yunhai Wang, *China's Death Penalty in a State-Power-Based Society*, in THE DEATH PENALTY IN CHINA: POLICY, PRACTICE, AND REFORM, *supra* note 9, at 97, 97-101.

31. See SAUL DAVID ALINSKY, *RULES FOR RADICALS: A PRIMER FOR REALISTIC RADICALS* 50-53 (1972).

32. See Susan Trevaskes et al., *Stability and the Law*, in THE POLITICS OF LAW AND STABILITY IN CHINA I (Susan Trevaskes et al. eds., 2014).

33. For more details, see Lauren Snider, *The Sociology of Corporate Crime: An Obituary*, 4 THEORETICAL CRIMINOLOGY 169, 188-92 (2000); Williams, *supra* note 28.

34. For more details, See generally Joseph J. Spengler, *Ssu-Ma Ch'ien, Unsuccessful Exponent of*

China due to Taoist values.

Although capitalism dominates the economy, China's political background still references communism. The clash between communism and capitalism is severe,³⁵ and in an attempt to solve this tense issue, each Chinese leader has endorsed various ideologies.³⁶ In the early 2000s, Hu Jintao promoted a "harmonious society" campaign in response to increasing social instability,³⁷ which supported collectivism. This campaign later became the Stability Management Innovation, which asked citizens not to go against the government in order to achieve social harmony.³⁸ Meanwhile, the culture of punishment has evolved into a flexible and responsive penal environment.³⁹

Next, current China's leader, Xi Jinping, seems to have returned to the position of "tough on crime." He quoted Confucius and Han Fei while making a speech addressing corruption issues and governance in 2014,⁴⁰ which combined Confucius ideas with the rule of law (Legalism) to attract public attention. In light of this, Confucianism has dominated Chinese tradition for thousands of years and remains influential.

So-called State Confucianism was associated with a bureaucratic governing system in China, which claimed all-encompassing jurisdiction over the empire in 220 BC.⁴¹ State Confucianism emphasized that rulers should be morally exemplary and that social order could be restored by practicing moral virtues.⁴² State Confucianism, which supported state legitimacy, was replaced by party-state hegemony (state socialism) after 1949,⁴³ but Confucian ideas also persisted to some extent. These remnants

Laissez Faire, 30 SOUTHERN ECON. J. 223 (1964); JACQUES GERNET, A HISTORY OF CHINESE CIVILIZATION (1996).

35. For more details, see generally YASHENG HUANG, CAPITALISM WITH CHINESE CHARACTERISTICS (2008).

36. For more details, see DAVID M. LAMPTON, FOLLOWING THE LEADER: RULING CHINA, FROM DENG XIAOPING TO XI JINPING 32-35 (2014).

37. See Heike Holbig, *Ideological Reform and Political Legitimacy in China: Challenges in the Post-Jiang Era* 25-29 (German Inst. of Global and Area Stud., Working Paper No. 18, 2006); Colin S. Hawes & Shuyu Kong, *Primetime Dispute Resolution: Reality TV Mediation Shows in China's "Harmonious Society"*, 47 LAW & SOC'Y REV. 739, 740-42 (2013); TREVASKES, *supra* note 9.

38. See Yongnian Zheng & Sow Keat Tok, *Harmonious Society and Harmonious World: China's Policy Discourse under Hu Jintao*, 26 BRIEFING SERIES 1, 2-3 (2007).

39. See Miao, *supra* note 6, at 239-41.

40. Chris Buckley, *Leader Taps into Chinese Classics in Seeking to Cement Power* (N.Y. Times, Oct. 11, 2014), http://www.nytimes.com/2014/10/12/world/leader-taps-into-chinese-classics-in-seeking-to-cement-power.html?_r=1.

41. For more details, see generally BENJAMIN ISADORE SCHWARTZ, THE WORLD OF THOUGHT IN ANCIENT CHINA (2009).

42. See MIN CHEN, ASIAN MANAGEMENT SYSTEMS (1995); Rita Mei-Ching Ng, *The Influence of Confucianism on Chinese Conceptions of Power, Authority, and the Rule of Law*, in CHINESE PERSPECTIVES IN RHETORIC AND COMMUNICATION 45, 45-55 (Ray D. Heisey ed., 2000).

43. For more details, see AMBROSE KING, CHINESE POLITICS AND CULTURE 32-40 (1997).

of Confucian ideology were eventually challenged, though not eradicated, by communism and socialism during the Cultural Revolution (1966-1976). With rapid economic growth since 1978, scholars indicate that Confucianism has promoted systematic adjustments to the economic boom by demanding self-control, frugality, and unrelenting effort; these qualities undergird the modern development of East Asian capitalism.⁴⁴

Summoned by Xi's political rhetoric, the abovementioned ideologies began to become more popular, and their connection to white-collar criminality--government officials, particularly--is worth noting. First of all, both Confucian and capitalist values contribute to the positive portrayal of government officials. The media discusses admiration for officials' achievement in attaining the status of government official, and this admiration may be a product of the 1978-onward acceptance of capitalist beliefs, such as the rewards of hard work and higher education.⁴⁵ Moreover, Confucianism emphasizes capitalist ethos, which edifies the rational portrayal of government officials.

On the other hand, these ideologies could also be used to establish a negative depiction of government officials, as State Confucianism sets a high standard for those who serve the country. The lingering effects of the Cultural Revolution (1966-1976) also tend to ensure those at the top of the social ladder are accused,⁴⁶ while a different form of class tension--government officials versus the general public--is established.

The effect of these ideologies on punishment is mixed and still unknown. In reviewing these existing ideologies using media reports that discuss corruption, this paper aims to theorize how ideologies operate within the mechanism of punishment.

C. *The Current Study: The Penal Field*

The previous section suggests that numerous ideologies could be involved in the interpretation of death penalty cases, but the mechanism driving how these ideologies interact should be theorized. Miao suggests that the Chinese death penalty is manipulated to ease public discontent and build state legitimacy;⁴⁷ this paper suggests that an examination of media reports may support Miao's argument if the media propagates ideologies that appeal

44. For more details, see generally YING-SHI YU (余英時), SHÍXUÉ YŪ CHUÁNTǒNG (史學與傳統) [HISTORICAL STUDY AND TRADITION] (1982); Gary G. Hamilton & Cheng-Shu Kao, *Max Weber and the Analysis of East Asian Industrialisation*, 2 INT'L SOC 289, 289-300 (1987).

45. See Kwan Ching Lee, *From Inequality to Inequity: Popular Conceptions of Social (In)justice in Beijing*, in CREATING WEALTH AND POVERTY IN POSTSOCIALIST CHINA 213, 213-31 (Deborah S. Davis & Wang Feng eds., 2009).

46. See Fu, *supra* note 9.

47. See Miao, *supra* note 6, at 239.

to the public regarding corruption-related death penalty cases. However, how can one theorize this ideological approach when so many ideologies ally or conflict with each other in China?

Pierre Bourdieu's concept of "field" and his concomitant identification of the mechanisms through which ideas come to be accepted by individuals and institutions provide a framework for understanding how actions might incorporate cultural values using mobilizing symbols.⁴⁸ Bourdieu argues that individuals and groups use *rhetoric, signs, and symbols* as tools to bolster their ideologies. When a certain symbol is widely disseminated and becomes dominant, it becomes a *habitus* of the field; individuals then utilize the symbol unconsciously. In keeping with Bourdieu's construct, it is crucial to pinpoint the dominant symbol regarding the death penalty for corruption since this symbol determines the actions of groups or individuals in this area. Importantly, the idea that a symbol is dominant does not imply a conspiracy: individuals such as officials and judges do not need to collude with one another for a symbol to be influential.

This concept of field has been applied to penology recently. For example, in examining mass incarceration policy, Joshua Page documents how the California Correctional Peace Officers Association (CCPOA), the most influential agent in the California penal field, transfers the "get tough" ideology (symbol) from an abstract concept into a practical application by allying with or opposing other actors in the field.⁴⁹ Although mass incarceration has uncertain public support, the CCPOA has successfully utilized "tough on crime" slogans (e.g., war on crime, war on drugs, etc.) to appeal to the public--a strategy that ultimately led California to adopt mass incarceration.

The lesson California has learned is that genuine public support is not necessarily a decisive factor in the penal field. As Franklin Zimring points out, interest groups could mobilize citizen fear and hostility, shaping these emotions into a hardline consensus for additional punitive legislation.⁵⁰ In other words, to investigate a change in a particular penal field, such as China, we should focus on the *dominant symbols* (e.g., phrases such as "war on corrupt officials") operating in the field, which are disseminated by a powerful interest group in China: the Party.

Scholars argue that the execution of corrupt officials can ease public resentment, but this paper offers a different approach: prioritizing ideologies

48. See Pierre Bourdieu, *Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 814-17 (1987).

49. See JOSHUA PAGE, THE TOUGHEST BEAT: POLITICS, PUNISHMENT, AND THE PRISON OFFICERS UNION IN CALIFORNIA 111-36 (2013).

50. See FRANKLIN E. ZIMRING ET AL., PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA 162-64 (2001).

are impactfully delivered by the Party through media. To accomplish this via Bourdieu's approach, one needs to explore what dominant *symbols* have been produced in connection with these executions and whether these symbols contain cultural meanings that appeal to the public.

This research question is not new for street crime literature. For example, scholars indicate that the U.S. death penalty for murderers produces symbols--like cold-bloodedness, extreme violence, revenge, and racism⁵¹--that reflect a culture rooted in American history. Consequently, this paper explores the dominant symbols in media reports regarding the death penalty for corruption.

III. DATA AND METHOD

Information about Chinese corruption cases from 2007 to 2010--the time period in which the death penalty was imposed--was collected. Since the People's Supreme Court began to review all death penalty cases in 2007,⁵² legal opinions after that date are reportedly more unified and organized than decisions made before 2007 in terms of logic and rationale. In addition, China politically moved from a "kill many" to a "kill fewer" philosophy from 2007 onward, as in 2007, the SPC started to use *sihuan* (the suspended death penalty) to limit executions.⁵³ As a result, in comparing the rhetoric of the aforementioned philosophies, 25 corruption cases were identified within this period by searching for "corruption" and "the death penalty" with the search engines *Baidu* and *Sina*. Cases were put into one of two categories: the death penalty with immediate execution (10 cases) or the suspended death penalty (15 cases). Since the suspended death penalty delivers the signal of "to die or not to die," it is noteworthy to compare both categories as well as meeting the requirement of negative cases in content analysis. Furthermore, China does not publish information about all death penalty cases, and because this paper concentrates on what the courts communicate to the public, only published cases are relevant. Since this paper focuses on ideologies reproduced by the media, a set of all publicly available cases constitutes a rather complete set, lowering the risk of incompleteness.

A total of 328 media reports about these 25 significant cases of corruption were collected (167 on the death penalty and 161 on death

51. See DAVID GARLAND, PECULIAR INSTITUTION AMERICA'S DEATH PENALTY IN AN AGE OF ABOLITION 60-69 (2010); WACQUANT, *supra* note 23.

52. See TREVASKES, *supra* note 9; Moulin Xiong, *The Death Penalty After the Restoration of Centralized Review: An Empirical Study of Capital Sentencing*, in THE DEATH PENALTY IN CHINA: POLICY, PRACTICE, AND REFORM, *supra* note 9, at 214, 215, 217.

53. See Trevaskes, *supra* note 15.

penalty suspension). Because the media used to periodically report estimates about the prevalence of white-collar offenses and the government frequently supported campaigns against corruption,⁵⁴ media reports are not unavailable to date. The scope of the data collection was limited to media reports released after the announcement of the death penalty decision.⁵⁵ The media reports vary from specialization (general v. legal), localities (national v. local), and party-state affinity (party-state oriented v. market-oriented). For example, in addition to state-mouthpiece *People Daily* (Renmin Ribao, RMRB), the liberal *Southern Weekend* (Nanfang Zhoumo, NFZM) was selected to represent contrasting journalistic styles for the national general newspaper.

Since this study aims to investigate the dominant symbols and specific cultural meaning of corrupt officials, an open-coding strategy was used to uncover symbols, patterns, and themes generated by the media.⁵⁶ Through the investigation of media reports, the cultural symbolism of corrupt officials and of the death penalty that appears in the press can be identified, and the way in which legal elements are interpreted by the media can be determined.

The coding framework consists of a process including both legal and non-legal components. First, legal arguments were divided into two categories: crime description and sentence. All legal elements were included in sub-categories (e.g., position that the defendant took advantage of, amount of money embezzled, and intention), and aggravating factors as well as mitigating factors (e.g., harm done, the amount of money accepted, attitude, surrender, and meritorious service) were also coded. Also, the coding uses labeling to reveal the “missing” legal element. For example, whether a promise (consideration; agreement) is involved is crucial for the crime of bribery, but a promise is not an element of the crime of graft.⁵⁷ If reports do not discuss a promise, the code will be labeled *missing legal element*. If the media erroneously discusses a promise in the crime of graft, then the code will be labeled *over-stated*.

Regarding non-legal elements, six additional categories were developed to address the media’s portrayal of corruption cases: crime description, explanation, questions about the legal decision, attitude, reasons supporting the death penalty, and what the public wants. Furthermore, the legal

54. See Murray Scot Tanner, *State Coercion and the Balance of Awe: The 1983-1986 “Stern Blows” Anti-Crime Campaign*, 44 THE CHINA J. 93, 97-103 (2000).

55. Media reports are reports that can be accessed online, including Southern Daily/Weekend, Fazhi Daily, China Daily, People’s Daily, China Youth Daily, People’s Courts Daily, Rvier’s News, Beijing Daily, Xinhua Daily and Southern Weekly.

56. See MARGRIT SCHREIER, *QUALITATIVE CONTENT ANALYSIS IN PRACTICE* 107-25 (2012).

57. Ironically, although these two capital offenses have different elements, they share the same article when it comes to sentencing (Article 383), which states the requirements for a criminal to be issued the death penalty: 1. the amount of money involved exceeds 100,000 RMB and 2. serious circumstances are present.

elements are compared with non-legal elements in order to observe the media's stance on reporting legal cases. All sub-coding labels are listed below.

- Crime description
 - Amount of money involved
 - Power involved
 - Position of defendant
 - Way the defendant spends the money
 - Frequency of criminal activities
 - Miscellaneous
- Explanation of corruption cases
 - Virtue (personality; morality)
 - Boldness
 - Greed
 - Insatiable appetite
 - Miscellaneous
 - Capability
 - Negotiation (relationship)
 - Management
 - Miscellaneous
 - Environment / Culture
 - Legal aspect
- Questions for the legal system
 - Money involved
 - Conspiracy
 - Women involved
- Attitude towards the death penalty/harsh punishment
 - Positive
 - Negative
 - Ambiguous
- Reasons for supporting the death penalty/harsh punishment
 - Moral hazard
 - Betrayal of the Party
 - Abuse of power
 - Harm to society
 - Miscellaneous
- What the public wants
 - Moral aspect / Virtue (e.g., honesty, cleanness, austerity, frugality)
 - Legal aspect (e.g., no more corruption)
 - Welfare (e.g., raise living standards)
 - Political aspects (e.g., win trust)

To identify the values underpinning death penalty explanations, each category was further coded to determine whether the media's portrayal reflects Confucian virtues (e.g., Yi, Li, Lian, Chi, Jian, Zhong, Jie),⁵⁸ communist as well as socialist values (e.g., elimination of greed and focus on class tension, social ownership instead of private ownership; co-operative management of the economy), and/or capitalist values (e.g., talent, acquisition of wealth, commodities, accumulation of wealth, market competition, price system, labor equals revenue).

IV. SYMBOLS AND IDEOLOGIES IN MEDIA REPORTS

Three thematic patterns appear in the media reports used in this analysis:

1. The amount of money involved symbolizes the degree of the criminal's greed, and the metaphorical amount reflects both capitalist ethos and communist values.
2. The way a criminal spends money (lifestyle) is directly related to the degree of culpability assigned to him or her, which could be a reflection of Confucian values.
3. Criminals prostitute their ability/talent through corruption; they are bold and arrogant, which involves State Confucianism emphasizing the morality of government officials and reflects rebellion against traditional Chinese values.

A. *Amount of Money, GDP, and Degree of Criminal Greed*

The amount of money involved in the offense is emphasized in media reports, and the way the media depicts the amount of money is noteworthy.⁵⁹ First, 97.5% of reports, or 320 of 328, mention the sums of money

58. Meanings: Yi (righteousness or justice), Li (propriety or etiquette), Lian (honesty and cleanliness), Chi (shame, judgement, and sense of right and wrong), Jian (frugality), Zhong (loyalty), Jie (continence).

59. Before 2015, article 383 of Chinese Criminal Law stipulated: "Criminals could be sentenced to death if 1) the amount of money exceeds 100,000 RMB" (it is now 3,000,000 RMB, according to the interpretation of the Supreme People's Court and the Supreme People's Procuratorate) "and 2) in a serious circumstance." Article 48 stipulates that only "the most heinous crime" should be subject to the death penalty, and if immediate execution is not necessary, the death penalty can be suspended for two years, and the death sentence may be reduced to life imprisonment. Currently, legal concern for corruption is redirected to the amount of money accepted rather than the seriousness of the crime. As expected, in the 25 cases examined here, the amount of money accepted and recovered is mentioned in both the crime description, and the amount of money involved ranges from 8 million to 198 million RMB. However, no court has really explained what counts as a "serious circumstance," and the amount of money accepted is easily conflated with the seriousness of corruption. This neglect of serious circumstance was also found in a previous study, see Trevaskes, *supra* note 5.

embezzled by officials. For example, when Li stole 50 million RMB (\$8 million) through graft (a death penalty crime) and 50 million RMB through embezzlement (not a death penalty crime), all media reports used “100 million” in their titles, presumably in order to sensationalize the amount. Second, in some bribery cases, not all money received can be linked to a defendant promise to do something in return. Therefore, some of the payments may not ultimately be deemed illicit income. However, the total amount of money the defendant receives, whether illicit or not, is still included in the media’s calculation.

What is noteworthy here is that these reports continuously dramatize crime by converting money into units such as “the GDP of the whole city” or “20 thousand times a peasant’s annual income.” The latter analogy creates tension between the upper class and the lower class, which is common in Chinese media reports. However, the former reveals that the Chinese style of ambition for competing in a capitalist world--and the metaphor of “delaying the competition”--is well-constructed in the statement of “the GDP of the whole city is lost because of this very corrupt official.”

The media in China, as in Western countries,⁶⁰ sensationalizes the news, and in doing so maximizes and dramatizes the amount of money involved to convey general disgust with the convicted defendant and condemnation of his or her greed. The more money involved, the more evil the criminals are portrayed to be. The offenders are typically portrayed as servants of money who like to drink expensive wines, wear premier-brand suits, live in luxurious mansions, and lust after women.

These reports include documentation like quotations from Xu Maiyong, a former vice-mayor of Hangzhou who embezzled large sums of money and accepted bribes for 300 million RMB:

“Xu is not a generous man. He is stingy and greedy, and he received the death penalty.” (People Daily #34)

“Greed is a disease, and the best way to cure the disease is to discipline ourselves.” (The leader of the CCDI)

“The amount of money is huge in this case; it’s typical, and he should be punished severely.” (Fazhi Daily #132)

“Once again, the astronomical amount of money amazes us and perfectly interprets his insatiable appetite, avarice, and covetousness . . . ” (Letters to the Editor, People Daily #55)

60. For example, prosecutors in America tend to dramatize white-collar cases by referencing a huge amount of money in pleas that can attract media attention. See BRAMDON GARRETT, TOO BIG TO JAIL: HOW PROSECUTORS COMPROMISE WITH CORPORATIONS 147-71 (2014).

The media seeks to justify the use of the death penalty primarily on the basis of the degree of greed evidenced by the crime; in this way, greed is a calculator referring to a communist deal, and the condemnation of it reflects Confucian values. In contrast, when the death penalty is not imposed, most media reports ask, “Is there more money involved?” “Is that all?” or “He must be greedier than we think.” The media seldom expresses sympathy for the defendant in such cases (16%), but they often express disappointment about the use of the suspended death penalty (87%). The message is that excessively greedy defendants deserve the death penalty and that most crimes committed by defendants who reach the stage of capital trial are greedy enough to warrant it.

To conclude, the GDP comparison represents the need for economic development, and harm to society can be measured in the sense of stimulating public anger. Furthermore, the comparison between servants of money and greed is related to the existing belief of Chinese traditional values; one should not be too excessive even when capitalist values are widely accepted--a Chinese characteristic of capitalist values.

B. *The Way Criminals Spend Money is Crucial for Culpability*

“Money recovered during the investigation” is one of the mitigating factors the court considers in determining whether to apply the death penalty. Attitudes such as “showing remorse” are seldom mentioned in these cases because, like white-collar offenders appearing in court in the West, corrupt officials present a polite image in public. Instead, the most-cited justification for the suspended death penalty in these judicial opinions is the amount of illicit receipts recovered during the investigation. In other words, amount of money can play the role of either an aggravating or a mitigating factor. The more money (or the higher the amount illicitly taken) that is recovered, the less likely the defendant is to receive the death penalty. Sometimes the court mentions that the defendant has provided information about the crime as a mitigating factor, but in doing so, it always refers to the amount of money that this information has enabled authorities to recover.

In light of this, the media tends to focus on *why* money is not recovered. In this way, the way criminals squander their money becomes the main focus of these news stories, and extravagance is held up as the evil that society should fight against. For example, when Xu Maiyong purchased luxury houses, the media delineated him as profligate and self-indulgent, suggesting it was his extravagance that led to his lust for money. Some reports contrasted *gingguan* (non-corrupt officials) with defendants, highlighting the contrast between perpetrators’ lavish lifestyle and *gingguan*’s simple lifestyle, which included elements such as riding bicycles to work, eating

inexpensive food, and having an honest wife. When media reports suggest the lessons people should take away from these corruption cases, they mention moral issues more often than structural issues. In other words, individual vices--not government structure--are portrayed as contributing to corruption.

“Li appropriated too much money and spent what 10,000 people would spend annually.” (Fazhi Weekly #24).

“They just love gambling, which devastates their personalities.” (China Youth Daily #65)

Judging from this pattern of media reports, criminals deserve the death penalty because they are profligate; they waste money on a life of indulgence. For example, news stories highlight how many bottles of wine a criminal drinks each night or how expensive their tea is. These reports seldom (3%) link the legal duties these criminals violated to the use of the death penalty. Instead, they usually (52%) indicate that criminals deserve the death penalty due to their lifestyles rather than because they abused power. For example, although the legal duty that Li violated was a low-degree one, as he was an accountant for a public housing fund and appropriated money, the media focuses instead on his lifestyle and the amount of money involved, which it uses to justify his execution. This lifestyle stands in stark contrast to traditional Confucius values, which promote a frugal life.

In focusing on lifestyle, the media juxtaposes “the amount of money” with “money recovered”; the former represents greed, and the latter represents lifestyle. Although extravagance could be the product of capitalism, it seems the idea of prodigality is not merely accepted, but has even become the decisive and salient factor in condemning defendants on the death row especially when the idea of *gingguan* lingers. The discussion of social trust and promise of accepting money, for example, are all missing in the state-controlled media.

C. *Criminals are Competent, Bold, and Arrogant*

Although media reports condemn criminals' lifestyle, they also express admiration for criminals' talents. According to the media, some criminals make money because they have talents that enable them to contribute to society; they are good at business and skilled at analyzing markets. However, these criminals also do harm to society by prostituting their talents, and the greater their talents, the more harm they cause.

The defendant's ability to build a relationship with others (*guanxi*) is another main theme in media reports. Connections, rather than actual legal

duties, are heavily reported in the news. For example, while Chang was sentenced to death for bribery, the media emphasized not only Chang's connections with the person who proffered the bribe, but also his relationships with *everyone*, including non-criminals. The media reported on his associations with his boss, women, high-level officials, citizens, companies, supervisors, and others. The media discusses relationships such as these in a neutral and impersonal tone that stands in sharp contrast to its negative tone when delineating greed or the amount of illicit bribe money a criminal takes. As a result, the media praises the criminal's talent on the one hand, but derogates his personality on the other. The construction of a criminal's personality, as discussed previously, uses the concepts of "greed" and "lifestyle."

This reveals an expectation promoted by State Confucianism: a society should be governed by morally exemplary leaders, and social order is the result of the practicing of moral virtues. Government officials are responsible for the country according to their moral integrity, and they can either destroy society or help it thrive. A talented official can lead the country to success if he or she is not contaminated by greed and extravagance.

The media also emphasizes the frequency of corrupt activities. Outlets often calculate how many times defendants have taken bribes and note how bold they are in repeating offenses over time. These statements are usually accompanied by stories about a criminal's arrogance, showing the defendant's boldness and his contempt for the law. These characteristics, in turn, violate traditional Confucian values, which endorses humbleness and self-effacing. Moreover, the media presents the death penalty as justified in cases where the defendant asks for a bribe actively rather than just taking a bribe passively since in the media's view, the act of asking for bribes further proves boldness and arrogance.

"Not only his greed, but also his boldness amazes us. In 1995, he received his first bribe (1.5 million RMB). It is amazing that a young official dared to receive this huge amount of money at that time. The CCDI failed to detect his crime, and he even got a promotion afterwards. A few years later, his corruption was known by the public, but he was not punished because he always had connections with other investigative departments. He is good at negotiation, and he thought he could even negotiate with the court after he was arrested." (China News Weekly #5)

D. *Justification of the Death Penalty: Rational, but Morally Ill*

In sum, corrupt officials are depicted as greedy, bold, arrogant, and extravagant. None of these characteristics correspond to any of the legal elements of corruption. The media tells the story of the undesirability of certain personality types as well as specific lifestyles rather than of corruption as such. On the other hand, these criminals are rational, also according to the media. Unlike street criminals, who are often portrayed as irrational or insane, corrupt officials are described as smart, calculating, sociable, composed individuals who commit crimes only because of their personal vices. It is the personalities and lifestyles of corrupt officials that make them deserve of the death penalty.

If prisoners are depicted as rational, capital punishment can only be justified by making them look different from the rest of us in some other way. For instance, they can be depicted as anti-social, monster-like, and unpredictable. Public support for the death penalty for corruption will arrive only if the public can differentiate those who are to be executed from those who are not. As shown below, the way that this subtle demarcation is made is ultimately connected to the interaction between Confucianism and capitalism.

First of all, media portrayals of corrupt officials as having talent and social skills entail that these officials are rational, but the media also portrays corrupt officials as morally ill individuals who are extravagant, greedy, and arrogant. On one hand, these characteristics can be seen as serious violations of the Confucian virtue of frugality, which is promoted during early education in China. On the other hand, it seems that greed and extravagance can be part of an acceptable lifestyle in China since capitalism is prevalent in this country. Thus, it is somewhat unclear why greed and extravagance are portrayed in a negative light when ascribed to corrupt officials facing the death penalty.

The market economy has long challenged the traditional Confucian virtue of frugality. After the rapid economic growth that began in 1978, the values of efficiency, wealth, and division of labor became dominant, and the pursuit of happiness became synonymous with the pursuit of profit and consumer goods. The Chinese are now encouraged to spend more money than ever before in an effort to consume “the poisonous fruits” of capitalism.⁶¹

However, under State Confucianism, a government official is a ruler, dominator, and leader whose personality should guide the Chinese people. In other words, the specter of State Confucianism keeps reminding the public

61. HUANG, *supra* note 35.

that society should be governed by morally exemplary leaders and that social order is the result of enacting moral virtues. The state becomes corrupt only when an official is corrupt. In this regard, it is not surprising that greed and extravagance are chosen as justification for executing corrupt officials, as a cultural image of *gingguan* (a clean and honest government official) is implanted in Chinese ideologies.

However, this explanation is not persuasive because in other countries that are also influenced by both capitalism and State Confucianism, there is no comparable emphasis regarding severe punishment for corruption. In addition, the Party and the media in China could instead choose another Confucian virtue--*remorse*--to excuse corrupt officials and therefore reduce or eliminate the use of the death penalty, but this scenario never happens in this paper's coding. Even though the remorse of corrupt officials is emphasized by the court, this was not observed in the coding process. Thus, to further explain why corrupt officials become scapegoats in light of Confucian values, this scenario needs to be situated in the historical context of communism.⁶²

The introduction of capitalism in China in 1978 exacerbated the wealth gap between the rich and the poor in China. The new capitalist class is not perceived to be made up of entrepreneurs, but rather of government officials.⁶³ Corruption is deemed to be the main cause of inequality, and people concerned about it are likely to question governance rather than the ethos of capitalism. In this regard, the historical context of communism has contributed denouncement of officials, and the ideology of State-Confucianism particularly emphasizes the virtue of government officials, thus strengthening support for the severe punishment for corrupt officials. Therefore, the repetitive soap opera of corruption among officials, delineated by the media, demonstrates hatred towards a certain lifestyle, uneasiness concerning the wealth gap, and a desire for punishment.

In sum, it is the personal traits of corrupt officials as depicted in the media--traits that violate widely acceptable cultural values--that increase support for severe punishment. These cultural values can be traced back to

62. Some studies focus on other aspects, such as non-Christian values; see Terance D. Miethe, et al., *Cross-National Variability in Capital Punishment Exploring the Sociopolitical Sources of Its Differential Legal Status*, 15 INT'L CRIM. JUST. REV. 115, 125-26 (2005). This study further extends the argument to the interaction between Confucianism and communism.

63. Lee, *supra* note 45; Yin Xiao-Wen (尹曉聞), *Tanwu Huilu Zui Shezhi Sixing De Xingfa Jiazhi Jiexi* (貪污賄賂罪設置死刑的刑罰價值解析) [Analysis of the Penalty Value of the Death Penalty for the Crime of Corruption and Bribery], 2011(6) SHANDONG KEJI DAXUE XUEBAO (山東科技大學學報)[JOURNAL OF SHANDONG UNIVERSITY OF SCIENCE AND TECHNOLOGY] 41, 41-46 (2011) (in Chinese); Zhongguo Renmin Daxue Zhongguo Shehui Fazhan Yanjiu Baogao (中國人民大學中國社會發展研究報告) [Research Report on China's Social Development at Renmin University of China]118-38 (2005).

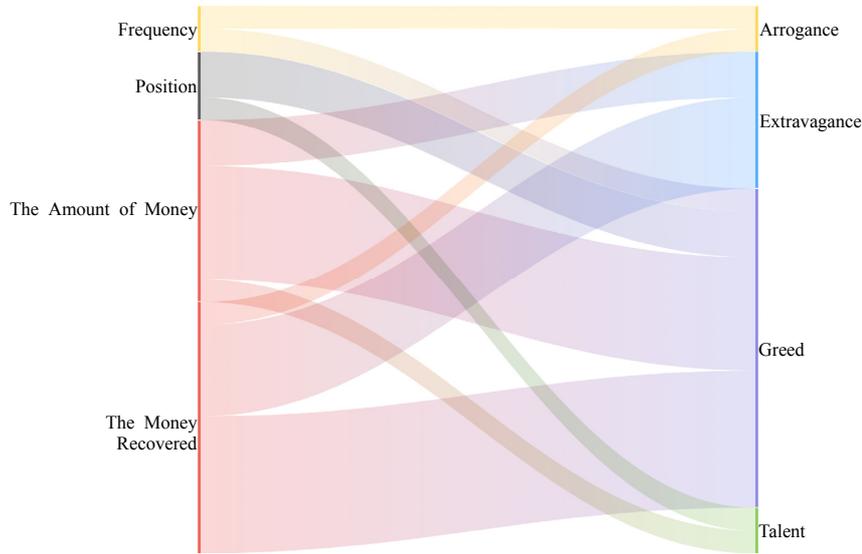
the ideology of State-Confucianism and have gained salience in light of the class tension initiated by communism. The adoption of capitalism has increased economic inequality and exacerbated the tension between officials and citizens. With the interactions between State-Confucianism, communism, and capitalism, the media is eager to find the monster that lurks within corrupt officials, and their greed and extravagance indeed serve as signs of inhumanity.

These dominant *symbols* are strengthened by the idea of rule of law, discussed below.

V. FROM IMMORALITY TO ILLEGALITY

Although the media does not necessarily report on legal elements, some reports try to connect legal concepts to justify execution. Moreover, state-controlled media reports *have* to deliver the positive images of the Party and the Nation in order to maintain stability. Hence, it is crucial to look at how the portrayal of criminals speaks to legal elements. The Sankey table below, depicts the frequencies of the legal elements that are mentioned in the previous or next paragraph with the symbols identified above. On the left of Table 1 are legal elements, and on the right are the symbols of media reports from the previous section. The line between columns represents co-concurrence frequencies. The thicker the line is, the more commonality we could see between two sets of codes.

The amount of money and the money recovered, as legal elements, are very likely to be mentioned using the symbolic word “greed,” as the money recovered is mentioned more with regard to extravagance. The defendant’s position is often mentioned with greed and talent while frequency is connected to the idea of arrogance.

Table 1: Code Co-occurrence Sankey Table, generated by Atlas.ti

The legal elements simultaneously mentioned in the reports with the symbols could be grouped into four categories, illustrated in Table 2. As the table shows, the media portrayal of defendants includes descriptions that are shown with legal elements in the same reports, further justifying the existence of the death penalty. As a result, the media portrayal of corrupt officials is not only ideologically representative of resentment and grievances, but also indicative of a logical movement from immorality to illegality. As Bourdieu indicates, dominant *symbols* (cultural images) permeate the field and are justified by the language used in the judicial field.

Table 2: Legal elements and the media's portrait

Legal elements of corruption	Media portrait of defendant
The amount of money involved	Insatiable appetite; greed
The money recovered	Spendthrift; extravagance
The position	Prostituting of talent; <i>guanxi</i>
The frequency	Boldness; arrogance

A. *Amount of Money Accepted vs. Money Recovered*

When legal elements and descriptions of corrupt officials are juxtaposed in the same reports, significant similarities are evident. First, the amount of money accepted becomes the main legal criterion the media mentions in imposing the death penalty, and the media uses its discussion of greed to justify capital punishment. In this regard, it does not sound odd when the

media tries to justify corruption with greed.

When the media attributes the death penalty decision to the defendant's extravagance, the money recovered becomes the central legal concern. These factors are connected; if a defendant is not an extravagant type of person, he will spend less money, and the money recovered will save his life. The position the defendant holds is important primarily when it is connected to money, and frequent acceptance of bribes further portrays the defendant's character as bold and arrogant.

This logic seems rational to Chinese people since Article 383 and the 2016 memo stipulates that "*Criminals should be sentenced to death if 1) the amount of money exceeds 3,000,000 RMB and 2) in a serious circumstance.*" In other words, the illicit receipt of a specific amount of money is the legal requirement for a death penalty verdict. In contrast, in other civil law countries, the seriousness of corruption is determined by the extent of the defendant's departure from his or her legal duties rather than by the amount of money illicitly received. In these countries, the amount of money at stake determines the seriousness of the offense only for property crimes. Thus, for example, in a case where a government official accepts bribes for a breach of his legal duties, the severity of that breach--not the amount of the bribe--is the standard by which the severity of the crime is judged.⁶⁴ The same rule applies to public officials who directly or indirectly seek to gain illegal benefits for carrying out their duties or for neglecting to do so (graft). However, this kind of reasoning is totally absent in Chinese media reports.

As a result, all moral arguments we would expect to see in media reports could rationally become legal arguments for imposing the death penalty. Converting *immorality* to *illegality*, these legal elements rationally and legally reinforce the media portrayal of these corrupt officials. Since the cultural images of corrupt officials are in accord with ideologies such as State Confucianism and capitalism, one can expect that these ideologies in turn enhance the slogan of rule of law if legal elements perfectly reflect these ideologies.

B. *Harm to Society: Guanxi*

In addition to the amount of money embezzled in a corruption case, which can be either an aggravating or mitigating factor, another legal element that connects to the media's moralization efforts is the idea of social harm. With regard to societal harm, the media seldom mentions the power the defendant abuses; instead, it refers to the position held by the defendant.

64. ATSUSHI YAMAGUCHI (山口 厚), XINGFA GE LUN (刑法各論) [CRIMINAL LAW: SPECIFIC OFFENCES] 605 (2nd ed. 2011).

In each of the 25 death penalty cases, the defendant's position is mentioned only to establish the defendant's connections (*guanxi*) and to show how his or her connections led to the bribe being accepted. Apparently, the media assumes that the more complex the *guanxi* (connections), the more harm the crime does to society.

For example, Wen, the head of the Ministry of Justice in Chongqing, had connections (*guanxi*) with numerous gang members. He took bribes from myriad sources, accumulating wealth for himself that then did harm to society because of its proportionally huge amount.⁶⁵ Additionally, these courts emphasize the frequency with which the defendant took bribes or appropriated public funds as further substantiation of the harm the defendant did to society. In other civil law countries, the defendant's betrayal of public trust would be considered greater the higher his or her position, but the media's logic regarding social harm is based more on amount of money and frequency rather than betrayal of public trust. That said, harm to society is determined according to bribe taken, not the nature of the acts.

The logic of social harm represents what State Confucianism endorses: harm done to society hinges on one's moral integrity. Said moral integrity is calculated using connections (*guanxi*) and the amount of money involved in judicial opinions. With the use of these mechanisms, another step from immorality to illegality is established.

C. *The Flexibility of Chinese Law*

The media not only perpetuates symbols that relate to several ideologies, but also seamlessly connects these symbols to the idea of rule of law when interpreting death penalty decisions. One possible explanation for this seamless transition could be the legal confusion the Chinese legal system creates that revolves around the flexibility in Chinese law.⁶⁶ As Michael Dutton suggests, the flexibility of administrative rules gives the Party the power to initiate social control.⁶⁷ A factor that extends the argument about the flexibility of law-in-action is the flexibility of law-on-the-books (Chinese criminal law), which ultimately contributes to

65. Interestingly, the role of the briber is crucial in my coding. For example, two bribery cases receive different sentences only because the bribers themselves are different. Wen and Chang, in different states in China, were both police chiefs who took bribes from criminals, promising to not investigate certain criminal activities. The amount of money they took was roughly commensurate; the only difference was that Chang took bribes from white-collar criminals whereas Wen took it from gang members. Here, harm to society is linked to status of the briber due to the assumption that street crimes are more dangerous, and thus the harm is more directly related to "the harm to society."

66. For more details, see generally MICHAEL DUTTON, *POLICING AND PUNISHMENT IN CHINA: FROM PATRIARCHY TO "THE PEOPLE"* (1992).

67. Michael Dutton & Tianfu Lee, *Missing the Target? Policing Strategies in the Period of Economic Reform*, 39 NCCD NEWS 316, 326 (1993).

legal confusion that the media interprets.

The amount of money embezzled in a corruption case is a legal standard that is the result of traditional practices and a historical accident. Before 1997, corruption was categorized under the heading of “property crime” and as such was subject to the same sentencing guidelines as other property crimes in which the amount of money at stake was a significant factor. When the legislature made corruption an independent category, it left the sentencing guidelines unchanged.⁶⁸ Moreover, “cash for clemency” is a widely-applied practice in China; this was especially the case around 2003, when the government promoted the concept of ‘harmonious society’.

Secondly, more legal confusion ensued when the SPC tried to distinguish between graft and embezzlement. In China, embezzlement (Article 384) is not a capital offense, while graft (Article 382) and bribe-taking (Article 385) are both punishable by death. However, the boundary between graft and embezzlement is unclear since both refer to the illegal acquisition of public funds. Before 1997, according to the National People’s Congress, officials who embezzled “too much” and “did not return the money” were also considered to be perpetrators of “graft,” but this distinction was abandoned after 1997.⁶⁹ Apparently, even Congress cannot distinguish between embezzlement and graft, but the statutes still specify that only the latter is subject to the death penalty. Because the pre-1997 legislative distinction between the two crimes is no longer valid, it is up to the judiciary to arrive at a new interpretation of the difference. A recent opinion of the SPC defined “graft” as referring to criminals who embezzle public property “permanently,” whereas embezzlement refers to criminals who embezzle public property “temporarily.”⁷⁰ The past changes in criminal law discussed above may explain why frequency is such an important element in determining whether to impose the death penalty since a defendant who frequently takes or appropriates public money may be taken to have shown his or her intent to embezzle the money “permanently.”

As a result, due to legislative oversight, the amount of money embezzled and frequency of taking bribes have become salient elements in legal reasoning underlying the death penalty for corruption, and judges are machine-like in applying these standards. Strikingly, these standards balance the state’s demand of killing fewer people and the public resentment of corruption,⁷⁰ the “to kill or not to kill” dilemma becomes based on both the amount of money involved and on moral standards. The government can easily reduce the death penalty while maintaining the Confucian ideals of

68. Hong Lu & Lening Zhang, *Death Penalty in China: The Law and the Practice*, 33 J. OF CRIM. JUST. 367, 367-76 (2005).

69. Yin, *supra* note 63.

70. Liang, *supra* note 13.

legalism, communism, and capitalism that are perpetuated by the media. As a result, the vagueness and flexibility of criminal law provide a platform for creating moral entrepreneurs.

In this regard, instead of indicating political control over both the legal system and the use of the death penalty, this paper suggests that the law is applied in a subtle, invisible way. The flexibility of law is not a consequence of intent but instead a historical accident that has provided the fertile environment for manipulation. During the process of reporting corruption cases, the Chinese government indeed selects and advocates for certain traditional values through state-controlled media. However, instead of implying omnipresent control over the legal system, the scenario is better understood as the Chinese government advocating traditional values *through* legal reasoning that already exists, and subsequent judicial opinions keep reproducing this phenomenon through their own legal reasoning.

VI. GOVERNING THROUGH CORRUPTION

“Most people want to believe that people who do horrible things are really different, but these people usually aren’t different *enough* to make people comfortable.”⁷¹

Martha Nussbaum argues that *disgust* can be an aggravating factor in death penalty rulings in the U.S.⁷² David Garland and Mona Lynch also suggest that emotion underlies rational and legal decisions about the death penalty--a plausible idea given the gravity of the situation.⁷³ In the case of corruption, Chinese media censorship produces cultural and emotional images that appeal to the public and in turn bolster the State’s legitimacy.

This paper has revealed the cultural symbols produced by the media’s portrayal of corruption (greed and extravagance)--a cherry-picking process of using dominant symbols in the Chinese penal field when corruption is depicted as a symbolic crime. As Wang Yunhai indicates, “the essence or nature of the death penalty is nothing but political,”⁷⁴ and it is also true that traditional values are summoned, revised, and re-produced to construct the meaning of culture and law.

As Western society creates its culture of control regarding street crime, the same control patterns are duplicated to encompass white-collar crime in Chinese society. However, there is a striking difference between Western and

71. LORNA AMARASINGHAM RHODES, *supra* note 22, at 184.

72. MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 163-65 (2004).

73. Mona Lynch, *The Disposal of Inmate #85271*, in *STUDIES IN LAW, POLITICS AND SOCIETY* VOLUME 20, 3, 32-34 (Austin Sarat ed., 2000); GARLAND, *supra* note 51.

74. Wang, *China’s Death Penalty in a State-Power-Based Society*, *supra* note 30.

Chinese society: while the culture of control in the U.S. and the U.K. is prevalent and accepted by the public, Chinese cultural control is more about *control* than *culture*, illustrated, for example, by the fact that less than 30% of the population supports the death penalty for bribery and graft.⁷⁵

In the U.S., culture has been a decisive factor in the discussion of penology; the emotion, anger, and other emotions are all connected to execution or other means of law enforcement⁷⁶. Other ideologies--such as risk management--are also important⁷⁷. This governmentality, as Foucault argues, has been established by defining and pushing out bodies that are culturally constructed⁷⁸. However, an ideology itself does not work alone; it needs a channel or structure to have impact. For example, in the prison setting, it is the staff that determines the inner culture, which will construct the knowledge of punishment⁷⁹. In this regard, the role of government itself (all departments included) is relevant, and how they respond to the prevalent ideologies--even populism--is significant since the knowledge is produced when the government confronts social conditions to make sense of its own field.

Thus, the clash between bureaucracy and populism has become a salient issue in penology; some scholars focus on how the media constructs populism, and others might switch the focus to how the bureaucratic system responds to, resists, or re-strengthens so-called ideologies. As Campbell argues, the habitus of certain penal fields could be constructed by reformers, legislators, and organizations, but the salient factor is the media coverage of criminal justice issues, which in turn contributes to criminal disenfranchisement in California⁸⁰. The public opinion, in this sense, is only the result of how media coverage delivers everyday experiences even in the U.S. context⁸¹.

The media plays a much more aggressive role in China than in the U.S.;

75. Qi & Oberwittler, *supra* note 8.

76. Mona Lynch, *Pedophiles and Cyber-Predators as Contaminating Forces: The Language of Disgust, Pollution, and Boundary Invasions in Federal Debates on Sex Offender Legislation*, 27 *LAW & SOC. INQUIRY* 529, 529-57 (2002).

77. Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 *CRIMINOLOGY* 449, 449-74 (1992).

78. Nikolas Rose et al., *Governmentality*, 2 *ANNU. REV. OF L. SOC. SCI.* 83, 83-104 (2006).

79. Rosemary Gartner & Candace Kruttschnitt, *A Brief History of Doing Time: The California Institution for Women in the 1960s and the 1990s*, 38 *LAW & SOC'Y REV.* 267, 267-304 (2004).

80. Michael C. Campbell, *Criminal Disenfranchisement Reform in California: A Deviant Case Study*, 9 *PUNISHMENT & SOC'Y* 177, 177-99 (2007). *Also see generally* KATHERINE BECKETT & THEODORE SASSON, *THE POLITICS OF INJUSTICE: CRIME AND PUNISHMENT IN AMERICA* (2003).

81. Richard Sparks, *Bringin' it All Back Home: Populism, Media Coverage, and the Dynamics of Locality and Globality in the Politics of Crime Control*, in *CRIME, RISK AND JUSTICE* 194, 194-213 (K. Stenson & R. R. Sullivan eds., 2001); Marie Gottschalk, *The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad*, 34 *LAW & SOC. INQUIRY* 439, 439-72 (2009).

so does the government in China. With censorship as a given, the Chinese government can actually cherry-pick the ideologies they like, using the media to construct the meaning of punishment. Thus, though the government, entrepreneurs, the media, and the public are all considered in the discussion of punishment in the U.S., the “top-down” and “bottom-up” concepts should not be applied to the Chinese context. Instead, the ideologies are mostly top-down in this case, and the in-between agencies, such as traditional media or social media, play the role of distracting/constructing the public attention. In this regard, it is understandable that the Chinese public’s image of criminals is not distant from the media’s portrait of criminals; they do not confront it, as they are intertwined with it.

Nevertheless, a series of Chinese campaigns still attribute societal problems to individual failures and construct depictions of “corrupt evil.”⁸² Instead of blaming the Party or society at large, selected Confucian principles place responsibility on the shoulders of individual officials. Symbolic concepts such as greed, extravagance, and arrogance all take on additional meaning in the context of individuals’ personality and actions, and by emphasizing individual characteristics, the Party shifts responsibility from the government itself to individuals, thereby ignoring structural problems that contribute to inequality. This shift of responsibility can also be understood as an effort to divert attention from deeper social problems. The Chinese government escapes responsibility for white-collar crime by redirecting blame to corrupt individuals, for example.⁸³

In sum, in depicting corrupt officials as different, the media produces the image of the new capitalist class; it is characterized by personal attributes such as greed, extravagance, and arrogance, thereby reflecting the three-way clash between Confucianism, capitalism, and communism. In contrast to a general denunciation of street criminals, communism provided a fertile ground for denouncing white-collar criminals when capitalism entered China in 1978. Additionally, State Confucianism was invoked to justify imposition of the death penalty on corrupt officials, who were depicted as having character defects condemned by Confucianism. When the amount of money accepted by a corrupt official turns out to be the principal factor influencing a sentence--and, as discussed, other legal factors are ignored--symbols espoused by the press can be supported by rule of law, representing a step

82. The process resembles Bakken’s work about how disciplines and human improvement are developed in modern China. See BØRGE BAKKEN, *THE EXEMPLARY SOCIETY: HUMAN IMPROVEMENT, SOCIAL CONTROL, AND THE DANGERS OF MODERNITY IN CHINA* 315-408 (2000).

83. Adam Ghazi-Tehrani et al., *White-Collar and Corporate Crime in China: A Comparative Analysis of Enforcement Capacity and Non-Issue Making*, 60 *CRIME, L. AND SOC. CHANGE* 241, 250 (2013).

from immorality to illegality. In the end, the Party's political language attributes social inequality to individual officials, and daily narratives of personal lifestyle--as well as the execution of corrupt officials--may ease the class tension generated by rapid economic growth. This symbolic violence⁸⁴ is now prevalent in the execution of corrupt officials. The rational but morally ill corrupt official becomes the scapegoat, and executions of corrupt officials reinforce not only the illegality of corruption, but also the immorality of this scapegoat.

This article considers the role of the media in mobilizing public support for executing corrupt officials. Other agents in the penal field--such as police, prosecutors, and scholars--may also have the power to shape penal policy and public opinion. Further study of these agents may uncover opposing symbols and cast new light on the penal policy process. A study including TV or movies as well as news reports would further illustrate the image of corrupt officials painted by the media. Moreover, this paper is limited to symbols that may mobilize *minyì* (public support) and does not discuss the actual views of the Chinese population in-depth. It would be interesting to compare these symbols with a proxy that directly reflects public opinion (e.g., a micro blog, bulletin board, or discussion board), which can prove the real impact of cultural images on public opinion.

84. In Pierre Bourdieu's concept of doxa, the possession of symbolic violence can be unconscious: everyone believes doxa is universal, and the dominant secure the advantage. See PIERRE BOURDIEU, PRACTICAL REASON: ON THE THEORY OF ACTION 1-13 (1998).

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藉貪腐統治： 死刑對於中國貪污官員之象徵意義

沈 伯 洋

摘 要

2011年，中國在廢除經濟犯罪的死刑時，維持了貪污的死刑。雖然其動機並不明朗，但中國政府所釋放出來的訊息值得探究。死刑執行本身需要符合法律要件，但從公眾的角度，對死刑的瞭解並不是透過法律，而是透過國家所控制的媒體。對此，中國媒體所釋放出來的訊息，以及媒體如何解釋符合法律的要件，對研究者至關重要。如果訴說犯罪的控制是根基於對犯罪的恐懼，那麼中國媒體要怎麼從貪污裡面找出犯罪的恐懼，進而達到其治理的目的？本研究分析了328篇中國媒體對貪污死刑的報導，指出中國傳統價值以及儒教在譴責的語言當中扮演了重要的角色。貪污犯的不道德形象成就了法律上違法的定義，並讓不道德在特定脈絡下升級成違法形象。1978年後中國資本家與勞工之間的矛盾加上共產主義的訴求提供了此種論述的土壤，而中國政府與媒體在這樣的土壤中選擇了符合傳統形象的符碼，進而達到本文所謂的「以懲罰貪污作為一種治理方式」。

關鍵詞：貪污、中國、資本主義、儒教、控制的文化