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Abstract

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Keywords

death penalty, capital punishment, crime control, human rights

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Abstract

The United States and the People's Republic of China perceive the death penalty as a fundamental feature of the criminal justice system. Lethal injection procedures provide these countries with the humane disguise necessary to preserve capital punishment in an environment of evolving societal standards. However, this essay examines the highly problematic nature of execution by lethal injection due to numerous medical, procedural, and bureaucratic concerns often concealed from the public and press. The low-visibility nature of lethal injection in the United States and China has become troublesome, especially since it prevents public, academic, and medical evaluation on the procedure's humaneness and legality (Garland, 2007). To diminish the problems associated with lethal injection, the procedure needs to be administered in a formally regulated and professional manner.

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Introduction

This paper will discuss the medical, procedural, and bureaucratic problems surrounding lethal injection for executions in the United States and the People's Republic of China (PRC). The United States and China vastly differ in their economic power, political systems, historical traditions, and cultural values (Barca, 2019). The United States identifies as a Western liberal democracy, while China identifies as a socialist republic; however, these completely contrasting countries are both well-known for their overuse and retention of the death penalty (Jiang et al., 2010). China is currently the leading executioner worldwide, yet it is difficult to know the exact statistics as the number of death penalty sentences and performed executions is a classified state secret (Barca, 2019). In a previous yearly report conducted by Amnesty International, researchers estimated that China executes at least 1,800 people a year, many believe, but the number is believed to be far higher (Ahmad, 2000). The United States executes criminal offenders on a much smaller scale, at around twenty people a year, and reserves death sentences for the most serious offenses. In China, the death penalty can be issued for committing crimes related to corruption, tax evasion, smuggling, and major theft according to the 1979 Criminal Law statutes (Barca, 2019). Currently, 30 US states retain the death penalty as a form of criminal punishment (Barca, 2019).

With the evolving decency of society, previous methods of execution like the electric chair and firing squad are now considered inhumane forms of punishment. This evolution in social standards has prompted the United States and China to pursue more seemingly humane methods of execution, mainly lethal injection, to help justify their retention of the death penalty. In 1977, Oklahoma became the first state in America, and

worldwide, to draft a medical protocol for the use of lethal injection in executions (Zou, 2012). Legislators in Oklahoma formulated this lethal injection procedure in hopes of a more humane and inexpensive alternative to the electric chair (Zimmers et al., 2007). The narrative of this development started with Oklahoma state legislators Senator Bill Dawson and House Representative Bill Wiseman consulting with the state's chief medical examiner, Dr. Jay Chapman, and the Chair of the Department of Anesthesiology in the College of Medicine at the University of Oklahoma, Dr. Stanley Deustch, to draft an official statute for the procedure (Berger, 2008). By the late 1970s, a lethal injection process had been established in Oklahoma. The protocol formulated by Drs. Chapman and Deustch used three pharmaceutical drugs: thiopental sodium, a barbiturate anesthetic; pancuronium bromide, to induce respiratory arrest and muscle paralysis; and potassium chloride, to stop cardiac activity (Zimmers & Koniaris, 2008). Soon after this protocol's development, other states adopted the process of lethal injection, which was perceived as revolutionary and more humane, once confronted with concerns over the inhumane and outdated nature of their execution procedures. By 1982, Texas initiated the first execution by lethal injection on inmate Charles Brooks Jr. (Groner, 2002).

Although China was late to this revolution of lethal injection, the process has become the country's preferred method of execution in the 21st Century (Paul et al., 2018). In January 1997, an amendment to China's Criminal Law statutes declared that the death penalty could be conducted by either firing squad or lethal injection (Zou, 2012). Soon after, in March 1997, China's first execution by lethal injection was carried out in Kunming City and unknowingly initiated the shift of firing squads to lethal injection

as the country's preferred method of execution (Paul et al., 2018). It has been reported that Chinese lethal injection protocols are identical to the US three-drug procedure; however, like China's secrecy over their execution statistics, the identities and dosages of these drugs are classified (Paul et al., 2018).

Compared to previous methods of execution—electrocution, firing squad, or gas chamber—lethal injection is widely considered the humane alternative. However, citizens of the United States and China are unaware of the questionable circumstances of this practice. Therefore, this essay will discuss the use of lethal injection in the United States and China as highly problematic due to the numerous medical, procedural, and bureaucratic issues surrounding this form of capital punishment.

Theoretical Framework

This paper's framework is rooted in the work of Garland (2001; 2005; 2007; 2012). Garland's pivotal work, *Culture of Control* (2012), was first published in 2001 and aimed to formulate a critical interpretation of contemporary crime control and cultural practices surrounding national and public security within the United States. In the 1970s, Garland provided a historical-cultural narrative of the unstable economic, political, social, and cultural conditions. For example, a rise in crime rates ultimately influenced government officials and the general public to adopt more punitive sanctions and punishments, re-established expressive justice, diminished the welfare state, promoted public concern and fear of crime, and endorsed the populism and politicization associated with crime discourses (Garland & Matthews, 2002). Garland used this theory for future research surrounding the death penalty to explain the social, cultural, economic, and political changes that ensured capital punishment's retention and entrenchment in American society (Garland, 2005).

This argument is further supported by the theoretical explanations proposed by Sarat (2001). He suggests that the government's concern to kill without causing pain is an attempt to conceal the undercurrents of cruelty linked with state killing and power (Sarat, 2001). The law is concerned with presenting itself as upholding evolving standards of human decency, protecting public sensibilities, and, most importantly, maintaining its legitimacy (Sarat, 2001). As a result, inmates must be killed discreetly, bloodlessly, and quietly to conceal the callous full force of state power and preserve national values, promoting the retention of the death penalty (Sarat, 2001).

These theories proposed by Garland (2001; 2012) and Sarat (2001) explain the rapid spread of lethal injection as the preferred method of execution in the US and the PRC. Even though Garland and Sarat did not analyze these factors from the perspective of China, the Chinese government is similar to America in establishing procedural safeguards and secrecy statutes that prevent the general public from witnessing the inhumane nature of lethal injection practices to hinder the formation of abolitionist discourses. This resemblance between the US and China coincides with the arguments established by Garland (2001; 2012) and Sarat (2001). The underlying motive of lethal injection was not to formulate a humane method of execution but to promote government legitimacy and further entrench the death penalty in these countries during a time of evolving human decency (Sarat, 2001). The low-visibility nature of lethal injection in the United States and China has become problematic, especially since it prevents public, academic, and medical evaluation on the humaneness and legality of the procedure (Garland, 2007). Overall, this article aims to recognize the motives behind lethal injection procedures stated by Garland and Sarat (2001) and to

distinguish and examine the numerous medical, procedural, and bureaucratic problems of this execution practice in the United States and China.

Problems of Lethal Injection

Medical Problems

For over 50 years, the most used intravenous anesthetic agent in the United States for medical procedures has been thiopental sodium (Dershwitz & Henthorn, 2008). Therefore, when Oklahoma legislatures began drafting protocols for lethal injection in the 1970s, thiopental was the obvious choice for the medication to render the inmate unconscious before administering the pancuronium bromide and potassium chloride, which paralyzes the skeletal muscles, cease breathing and prevent electrical activity to the heart (Dershwitz & Henthorn, 2008). When an inmate is executed by lethal injection, the greatest risk is an inappropriate dosage of the thiopental sodium administered before distributing the pancuronium and potassium (Dershwitz & Henthorn, 2008). As a result, without full anesthetization, the paralytic drug can produce an intense burning or suffocating sensation upon entering the inmate's system (Berger, 2008). Additionally, the pancuronium often paralyzes the inmate, which can mask these symptoms of pain and suffocation from witnesses of the execution (Berger, 2008).

Toxicology reports of inmates executed by lethal injection in Georgia, the Carolinas, and Arizona found that in 88% of the offenders' blood samples, post-mortem concentrations of thiopental sodium were lower than required for surgery (Koniaris et al., 2005). The American Veterinary Medical Association has prohibited the use of thiopental, and other paralytic drugs, to euthanize animals, stating that the practice was inhumane and unnecessary (Kreitzberg & Richter, 2007). The prevalence of

botched executions in the United States has increased because states are struggling to even simply obtain the pharmaceutical drugs necessary to complete their lethal injection protocols. To acquire the lethal injection drugs, states are purchasing their supplies from unregulated and illegal sources or amending execution protocols to use untested pharmaceuticals (Mennemeier, 2017). This is largely due to most pharmaceutical manufacturers approved by the Food and Drug Administration (FDA) restricting their supply of thiopental to state prisons intending to use the drug in lethal injection procedures (Yadav et al., 2018).

With diminishing accessibility to and supply of thiopental, the majority of state prisons source the anesthetic drug from compounding pharmacies, which use raw materials instead of FDA-approved pharmaceutical ingredients to manufacture medicines (Mennemeier, 2017). The FDA does not supervise compounding pharmacies. Instead, these companies are regulated by state pharmacy boards; therefore, the sources, production, and quality of their products are potentially questionable (Mennemeier, 2017). Compounding pharmacies sometimes use active pharmaceutical ingredients from unregistered manufacturing plants in China or India, where production methods and procedures do not conform to FDA requirements (Berger, 2014).

When states have not been able to obtain drugs from unregulated sources, they have resorted to amending drug protocols from a three-drug procedure to a one-drug procedure (Mennemeier, 2017). For example, Florida, Ohio, and Kentucky have developed protocols that only require the use of midazolam, a sedative that has never been clinically tested for use in lethal injection procedures (Mennemeier, 2017). A detailed

investigation of lethal injection's history shows that when the procedure was first formulated, it had never been scientifically or medically tested on human beings; therefore, when lethal injection was first administered in 1982, there were no prior animal or clinical trials carried out to test the safety of the execution procedure (Denno, 2007). As a result, inflicting this level of pain and suffering on death row inmates by neglecting to fully comprehend the severity of these procedures can present lethal injection as an inhumane execution process, therefore breaching the 8th Amendment right to prohibit the use of cruel and unusual forms of punishment (Zimmers & Koniaris, 2008).

Even though the drugs used in China's lethal injection procedures are a state secret, many reports issued by the Chinese government led researchers to suspect that their protocols are mechanistically similar to those used in the United States (Zou, 2012). Consequently, the medical issues surrounding lethal injection in the United States likely occur in China; additionally, the secretive nature of the PRC's execution procedures has made them more concerning. The most controversial and problematic medical issue of China's lethal injection procedures is their systematic harvesting of prisoners' organs for transplantation after execution (Paul et al., 2018). Previous execution methods, such as a firing squad, diminished the transplantation success rate due to cell degeneration of the organs from severe blood loss. Under the clinical death of lethal injection, these problems do not exist (Caplan, 2011). As a result, lethal injection has become the primary enabler for harvesting superior quality organs from Chinese prisoners (Zou, 2012).

For four decades, the Chinese medical transplant program has relied on organ procurement from executed prisoners (Paul et al., 2018). An estimated 1,600 prisoners executed by lethal injection

in China source over 3,200 transplantable organs annually (Diflo, 2004). In cases when the thiopental is insufficient in producing a completely anesthetized state, which is highly common, once organ explanation surgery begins, the prisoner can experience excruciating pain from the surgical opening of their chest, especially when pancuronium allows medical professionals to easily overlook the pain experienced due to paralysis of the inmate's muscle responses (Zou, 2012). Ultimately, the use of lethal injection to procure transplant organs from prisoners is highly unethical and problematic by violating international concepts of medical and human rights (Zou, 2012).

The medical rationale of lethal injection practices in the United States and China, as theorized by Garland (2007), helps present executions as a therapeutic procedure that minimizes suffering and pain. This form of punishment represents a safe medical procedure, which ultimately rationalizes capital punishment within these two countries (Garland, 2007). The death penalty has become deeply embedded within these countries' political, legal, and cultural systems (Garland, 2002). As a result, the United States and Chinese governments have transitioned to lethal injection practices rapidly without any proper testing or review, due to the medical sensibility this procedure presents to the public and press, to sustain capital punishment practices in a society filled with abolitionist perspectives and growing concerns over prisoners' rights.

Procedural Problems

In the United States, for the appropriate dosage of thiopental sodium to be administered during lethal injection procedures, a certain level of medical training is required to appropriately monitor anesthetic depths and insertion of the intravenous IV (Kreitzberg & Richter, 2007). Medical professionals' advanced

skills are necessary for lethal injection cases with inmates who have poor vascular access due to severe obesity or previous intravenous drug usage. Without proper insertion of the IV from medically trained staff, the pancuronium and potassium chloride can flood into the inmate's surrounding muscles, causing excruciating and prolonged pain (Groner, 2002). However, the American Medical Association (AMA) prohibits medical professionals from participating or assisting in executions because it violates their professional ethics (Kreitzberg & Richter, 2007). As a result, execution teams rarely include medically trained staff, and lethal injection procedures are performed by untrained and unqualified prison staff (Kreitzberg & Richter, 2007). These execution teams have limited training on the properties and nature of the drugs used in lethal injection protocols, making them unaware of the potential risks associated with the procedure (Berger, 2008).

In 2006, death row inmate Angel Diaz was executed in Florida for the murder of a bar manager. During his execution, Diaz writhed and gasped in pain for 34 minutes before dying due to improper insertion of the IV (Berger, 2014). There are cases of execution teams in Virginia state prisons administering more potassium chloride or pancuronium, instead of re-administering thiopental, when executions take longer than expected due to insufficient knowledge on the hazardous consequences of lethal injection drugs, which can further mask pain caused by the paralytic drugs (Berger, 2008). In addition, the risk for error is heightened in lethal injection procedures administered remotely. This precaution to protect the identity of the execution team makes it difficult for them to identify syringes for the drugs, ensure the IV does not become dislodged, allow personnel to sufficiently check the anesthetic depth, and check that the extra tubing

required does not leak or disconnect (Berger, 2008). This evidence further supports the argument that lethal injection procedures, by inflicting pain on an inmate due to improper medical techniques administered by unqualified prison staff, breach the rights stated in the 8th Amendment, prohibiting cruel and unusual forms of punishment (Denno, 2007).

There are numerous procedural problems involved in China's lethal injection practices. Firstly, there is no established standard to define whether judicial doctors, other medical professionals, or the police are responsible for conducting the execution process. In addition, official guidelines for the execution process for untrained staff are non-existent (Zou, 2012). Therefore, lethal injection practices in China lack an official standard for the length of the injection process, a list of suitable drugs and dosages, any required training for the execution team, the location of the execution, the procedures for death determination, and the proper employment of the injection pump (Zou, 2012). For example, a lethal injection procedure failed due to inadequate information regarding the operation of a high-speed injection pump by the Hangzhou Intermediate People's Court, which led to the pipe exploding (Zou, 2012). These systematic failures become highly problematic when the prisoner's organs are extracted for transplantation after execution.

The concept of brain death is not fully defined and accepted in China. As a result, this lack of brain death certification by an ECG machine means that when prisoners' organs are removed from their body after execution, the individual may potentially not be fully brain dead (Diflo, 2004). There have been eyewitness accounts of prisoners moving after execution, therefore remaining technically alive when their organs were removed (Diflo, 2004). Finally, Chinese officials have not formulated a method for

recording execution reports, which helps monitor any reoccurring issues within their lethal injection processes (Zou, 2012). In the United States, state officials have encountered the same problem. The issue becomes more troublesome when the Chinese and American governments have ratified secrecy statutes to conceal the methods used in lethal injection procedures.

The procedural concerns and lack of standards associated with lethal injection practices in the United States and China are a systematic disregard of condemned prisoners' human rights. The dismissal of prisoners' rights relates to Garland's argument that crime offenders have ceased to be individuals in need of support and care and instead are viewed as potential risks to societal norms and safety (Owen, 2007). Shifting attitudes for capital punishment in the US and China from previous rehabilitative methods have been largely influenced by increasing public fears about social disorder, criminal violence, and emerging political discourses regarding punitive solutions for these issues (Garland, 2002). Capital punishment functions as an expressive gesture of state crime control. For government institutions to maintain the death penalty in a society where countries are increasingly abolishing the practice, they must adopt a new symbolic dimension (Garland, 2005). Therefore, by instilling rhetoric of fear towards criminals, the US and China have formed clear motives for their citizens to promote the retention of the death penalty for the most serious, transgressive crimes (Owen, 2007).

Bureaucratic Problems

With the growing difficulty of obtaining the necessary pharmaceuticals for lethal injection procedures, states have turned to suspect sources or amended protocols to continue their use of capital punishment (Eaton, 2018). To conceal the identity of these unregulated sources and untested protocols, state legislatures have

amended or enacted secrecy statutes that hide information from the public, the press, and death row inmates about the risks associated with lethal injection (Mennemeier, 2017). In 2015, Texas enacted a secrecy statute, which blocked the public from accessing information regarding individuals and companies responsible for compounding or manufacturing execution drugs (Mennemeier, 2017).

A 2007 study found that only six US states disclosed information on their lethal injection protocols out of the thirty states practicing this execution method; however, the reports provided by these state legislators withheld details regarding the training and qualifications of execution team members (Berger, 2008). Additionally, these secrecy statutes infringe upon American citizens' 1st Amendment constitutional rights. The 1st Amendment grants the public and press a right to access government proceedings and institutions (Mennemeier, 2017). In 2014, the Louisiana Department of Corrections (DOC) was presented with this issue when a condemned prisoner's lawyers claimed it was unconstitutional for the state DOC to restrict information regarding the drugs used in the procedure for the inmate, especially when they only recently amended their lethal injection protocol to bypass obtaining one of the required drugs (Mennemeier, 2017). State legislatures in control of lethal injection protocols have proven resistant to changes, with secrecy statutes that mislead and inhibit the public, press, and death row inmates from addressing violations of constitutional norms (Berger, 2008).

The use of capital punishment in China has attracted worldwide attention due to the alarmingly high number of prisoners the Chinese government executes annually and the secrecy and political motivation surrounding the administration of

lethal injection (Miao, 2013). As mentioned previously, lethal injection protocols in China are classified state secrets, limiting the press and public's ability to scrutinize the legality of these procedures and establish the necessary safeguards to protect condemned prisoners' human rights. In addition, Chinese officials have failed in producing a set of standards for the supervision and recording of lethal injection procedures, which ensures problems regarding their execution methods remain hidden (Zou, 2012).

The Chinese government has claimed to develop a more humane program for obtaining transplant organs from executed prisoners; however, there are lingering concerns over the coercive and false pretenses used by bureaucratic officials to gain consent for organ donation from the condemned offender or their family members (Pondrom, 2013). A policy paper issued by the Chinese government stated that an executed prisoner's dead bodies or organs could be donated for transplantation under three circumstances: the prisoner volunteered before execution, the families consented, or the family members refused to collect the body (Diflo, 2004). These reformed regulations are a misleading technique by the Chinese government to assure consent no matter the actual desire of the prisoner or their family and exploit the fact that many prisoners after execution are abandoned by their family members out of shame (Diflo, 2004).

The secretive nature of lethal injection protocols in the United States and China relates to Sarat's theory that modern penal institutions are designed to conceal punishment from the public gaze (Sarat, 2002). This arrangement is necessary to maintain the legitimacy of legal and political sanctions by discreetly removing the shame and embarrassment of outdated punishment practices in an age of evolved human decency (Sarat, 2002). This logic largely explains the rapid spread of lethal injection as the preferred

method of execution in the US and China due to the procedure's ability to kill bloodlessly, discreetly, and quietly without the full force of state-power being revealed to the general public (Sarat, 2001). Since capital punishment is deeply rooted in the history and politics of the US and China, government officials in these countries will continue to promote the legitimacy of lethal injection by limiting information on this execution practice to the public and press to ensure future retention of the death penalty (Eaton, 2018).

Policy Implications

In the United States, capital punishment is the most severe punishment the government can exact on a convicted offender. Therefore, lethal injection procedures deserve high levels of informed public scrutiny, especially when states amend their lethal injection protocols due to growing anti-death penalty sentiments and difficulty obtaining the necessary pharmaceuticals for these procedures (Mennemeier, 2017). However, state legislatures are formulating secrecy statutes to shield information about executions from the public and press due to increasing concern over newly amended lethal injection protocols, which lack proper clinical testing and overall procedural standards (Mennemeier, 2017).

The main solution to this bureaucratic issue is educating citizens and death row inmates on their fundamental constitutional rights. The 1st and 5th Amendments grant convicted offenders the right to due process and to access information on execution practices. These are arguably infringed upon when state officials withhold information regarding an inmate's upcoming lethal injection procedure to avoid violating secrecy statutes (Berger, 2014; Mennemeier, 2017). Under these constitutional rights, state governments should be required to share details regarding the

pharmaceuticals, the compounders or manufacturers of these drugs, the qualifications of the person performing the procedure, and the equipment used in state lethal injection protocols on prisoners (Berger, 2014). Each of these factors can substantially affect an inmate's chances of feeling serious pain during their execution and infringes upon their 8th Amendment right of prohibiting states from inflicting cruel and unusual punishment (Kreitzberg & Richter, 2007). Ultimately, by hindering public and judicial review of lethal injection procedures through secrecy statutes, state legislatures deny death row inmates' core constitutional rights and authorize corrupt governmental practices to continue (Berger, 2014).

Additionally, federal pharmaceutical regulations ensure the FDA is updating warning labels for drugs known to be misused, such as those used in lethal injections (Eaton, 2018). Citizens can file an APA 553(e) petition, which requires the FDA to update warning labels on these pharmaceuticals to include warnings about misuse resulting in severe pain and suffering (Eaton, 2018). Should these petitions prevail, the FDA would be expected to update warning labels cautioning the harmful use of lethal injection drugs, ultimately prompting courts to address clear evidence of unconstitutional execution practices (Eaton, 2018).

China's institutionalized medical dependency on the death penalty is unique; however, it remains incredibly problematic (Scobell, 1990). China's practice of obtaining transplantation organs from executed prisoners is an unacceptable violation of human rights and breaches established internationally accepted declarations stated within the Helsinki Declaration, the Belmont Report, and the International Conference on Harmonization of Clinical Practice (Danovitch et al., 2011). Scientific and economic pressure has been placed on China by international human rights

organizations to modify this unethical practice. Despite global criticism, the Chinese government continues to use lethal injection practices to obtain prisoners' organs (Diflo, 2004).

The Chinese government must address international medical practitioners referring their patients to China for transplantation (Diflo, 2004). Although Chinese government officials have implemented regulations to monitor China's transplant tourism, this practice remains ethically dubious because executed prisoners continue to be the main source for organ and tissue in Chinese transplant programs (Danovitch et al., 2011). To properly abolish this practice, Chinese transplant professionals must be trained to avoid engaging in the use of organs from executed prisoners (Danovitch et al., 2011). As a whole, capital punishment is a permanent fixture of China's criminal justice system, and the abolition of their death penalty seems impractical (Scobell, 1990). However, the unethical practice of organ procurement from Chinese prisoners executed by lethal injection should be addressed in national and international discourses to formulate laws against the possession, implantation, and trade of prisoner organs (Paul et al., 2018).

Conclusion

The United States and China perceive the death penalty as a fundamental feature of the criminal justice system. Lethal injection procedures provide these countries with the humane disguise necessary to preserve capital punishment in the abolitionist environment of evolving societal standards. However, execution by lethal injection is highly problematic for numerous medical, procedural, and bureaucratic reasons, which are often concealed from the public and press. The low-visibility nature of lethal injection in the United States and China has become troublesome, especially since it prevents public, academic, and

medical evaluation on the humaneness and legality of the procedure (Garland, 2007). To diminish the problems associated with lethal injection, the procedure needs to be administered in a formally regulated and professional manner. By scrutinizing lethal injection protocols, these countries can meet the constitutional and ethical mandates for capital punishment.

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