GET BUSY LIVING OR GET BUSY DYING: WAITING FOR THE DEATH PENALTY, A COMPARISON OF THE APPEALS PROCESS IN THE UNITED STATES AND THE PEOPLE’S REPUBLIC OF CHINA

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ABSTRACT

This paper looks at the death penalty in the United States and China with a comparison of the judicial system in each country. The paper examines the speed at which China processes their death penalty cases and the delay in the US system. The purpose of the paper is to show that because of the delays in the US system, the financial burden to the taxpayer is increased and is not viewed as deterrence. If the US were to adopt a portion of the Chinese judicial system efficiency without sacrificing due process, then the death penalty can be a deterrent on crimes that warrant the death penalty as well as saving tax payers money from having to support an inmate in the system as they attempt to draw out the process in a delayed system.
I. INTRODUCTION

In the 2000 United States Presidential debate, then candidate George W. Bush responded to an inquiry about his feelings on the death penalty by stating:

I don’t think you should support the death penalty to seek revenge. I don’t think that’s right. I think the reason to support the death penalty is because it saves other people’s lives.¹

At yearend 2010, 139 countries have abolished the death penalty *de jure* or *de facto*, while 58 countries continue to retain its use; the United States and China are part of those countries that retain its use.² The United States has gone through a period of approval and disapproval of the death penalty. Between its reinstatement in 1977 till 2009, 7,773 people have been sentenced to death, 15% of those individuals have been executed, 5% have died from other causes and 39% received other dispositions.³ When President George W. Bush was elected into office, in the 2000 presidential election, he had presided over 154 executions as Governor of Texas.⁴ The probability of being sentenced to death in the United States is 1 in 10 with a probability of 0.6 and 1.25 per 100 actually being executed.⁵ The reason for this low probability of being executed is because there is about an 11-14 year wait between when an inmate is sentenced to when his sentence is actually carried out.⁶ This long wait is a result of the inmate choosing to engage in the United States’ lengthy appeals process.

⁶ Jane Marriott, *Walking the Eighth Amendment Tightrope: ‘Time Served’ in the United States Supreme Court, in Against the Death Penalty* 160, 160 (Jon Yorke ed., 2008); see also *Time on Death Row*, DEATH PENALTY
China has also gone through a period of approval and disapproval with its use of the death penalty. With the rise of Mao Zedong and his push for communism, he faced a growing problem with counterrevolutionaries.\(^7\) During Mao’s suppression campaigns, an estimate of 1,200,000 counter revolutionists were imprisoned, another 1,200,000 were subject to control and 700,000 were executed.\(^8\) With the rise of the new guard under Deng Xiaoping, the use of the death penalty has risen. The official figures are considered a state secret by China so no exact figure can be determined; however, Amnesty International states that China carries out 1000s of executions within a year.\(^9\) This is due to China’s expedited judicial system in regards to capital offenders.

This paper will examine the death penalty system of both the United States and China from an outside perspective with a particular focus on the appeals process in each country. While acknowledging the human rights concern with the death penalty, this paper does not examine the particular human rights concerns which are used to promote abolishing the death penalty. While there are many other positions on the abolishment or the retention of the death penalty, this paper focuses primarily on the concerns that an inmate has to wait such a long time prior to the determination of the finality of his or her case. If the United States were to adopt a more expedited system similar to the Chinese, then inmates would spend less time on death row, states could potentially save more money, innocent inmates would be freed sooner and the death penalty could achieve its original purpose of being a deterrence.

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Part I of this paper will discuss the history of the death penalty in the United States and China with particular attention to world influences. Part II will discuss the judicial system in the United States and China and the particular external influences on the system that may speed it up or slow it down. Part III analyzes the differences and similarities between the two systems and what has worked best for each country. Finally, Part IV considers several problems in the current United States appeals system and how best an expedited legal system can meet those challenges.

II. HISTORY OF THE DEATH PENALTY

The history of the death penalty around the world can be traced as far back as 1750 BC with the *lex talionis* of the Code of Hammurabi. However, some examples of the death penalty can be seen earlier within the *Holy Bible*.

In the Book of Genesis Chapter 9 verse 6, God spoke to Noah stating, “Whoso sheddeth man’s blood, by man shall his blood be shed: for in the image of God made he man.” The Book of Numbers Chapter 35 lays out clear rules of law which if broken constitutes murder punishable by death. Jesus Christ taught obedience to governmental judgment, but further taught to forgive the sinner.

The death penalty has been discussed many times in literature and has even been used as a form of opinion control. The life of Socrates was ended through the death penalty. Plato’s book *Crito*, a dialogue between Socrates and Crito, explains the reasons why Socrates decided to stay and be executed rather than escape with Crito. Socrates explained that as a boy grows up and learns about the laws of that society, that boy enters into an implied contract to obey the law and

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12 *Genesis* 9:6 (King James).

13 *See Numbers* 35:16-19 (King James).

14 *See Matthew 5* (King James).
to abide by any resulting punishment. Socrates explained that because of the social contract he entered into, he must remain to face his punishment so that justice may prevail.

Plato wrote about the notion of a social contract in his book *The Republic*. Book two of *The Republic* narrates the story of Gyges. Socrates’ main points were that a just person would do justice out of fear of injustice. Even Thomas Hobbes and John Locke justified the death penalty. Thomas Hobbes stated the sovereign derives the power to punish from his subjects, and that every man has a right to everything including his own preservation. Because of this right, subjects have to preserve their own lives that the sovereign has the power to punish as it sees fit.

John Locke wrote, in his book *Two Treatises of Government*, every man has the right to punish the offender and be the executioner of the law of nature. Locke further stated that every man has the power to kill a murderer and to deter others from doing the like injury. Locke also said that a man forfeits his own life when he commits an act that deserves death.

However, where there is use of the death penalty there is also opposition to its utilization. Montesquieu called for limitations of the death penalty and Thomas Jefferson saw it as inhumane, the English jurists Bentham and Romilly sought to have it abolished. Montesquieu advocated the nature of the crime will determine the type of punishment; however he stated that a man

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16 Id.
17 PLATO, THE REPUBLIC BOOK II (Benjamin Jowett trans., The Project Gutenberg ebook 1998) (360 BCE) (story told to Glaucon by Socrates about Gyges receiving a ring of invisibility and the actions he would take while wearing the ring).
18 Id. at 100.
19 SCHABAS, supra note 10, at 4.
20 THOMAS HOBBES, LEVIATHAN 468 (The Project Gutenberg ebook 2009) (1651).
21 Id.
22 JOHN LOCKE, TWO TREATISES OF GOVERNMENT 13 (The Project Gutenberg ebook 2005) (1690).
23 Id. at 15.
24 Id. at 26.
25 SCHABAS, supra note 10, at 4-5.
deserves to die when he violates another man’s security. Thomas Jefferson attempted to reform Virginia state law to only allow the death penalty for treason and murder, his attempt failed by one vote.

The use of the death penalty as a form of punishment has ebbed and flowed with time. The resurgence of the death penalty occurred with the rise of totalitarianism in Western Europe after the First World War. Hitler wrote casually about the Nazi’s use of the death penalty and execution of 10,000 people in his book Mein Kampf. The post-World War II international community was conscious of the effect of the death penalty and strived for its abolition. The United Nations General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948. The efforts in the United Nations to pass a moratorium on the death penalty were realized in 2007 and 2008 when the United Nations General Assembly passed a resolution on the general moratorium on the use of the death penalty. This moratorium was opposed twice before in 1994 and 1999. Of the 158 nations that voted on the resolution the United States fell on the side of China, Iran, Sudan and Syria in the opposition of the resolution.

A. The Death Penalty in the United States

The United States has been around for 235 years. The death penalty has been exercised on the North American continent since as far back as 1608 when Captain George Kendall of the

28 SCHABAS, supra note 10, at 6.
29 Id.
30 Id.
31 Id.
34 Id.
Jamestown colony was executed by firing squad for the crime of mutiny.\textsuperscript{35} The criminal law during this time was based mostly on the laws of England; however, most of the capital laws among the thirteen colonies differed from each other and changed throughout its colonial period.\textsuperscript{36} The history of the death penalty in the United States can be viewed through six different epochs: the colonial period; period leading up to the Civil War; Reconstruction; Progressive Era and World Wars; the 50s and 60s; and the 1970s to the present.\textsuperscript{37}

During the colonial and revolutionary years, the use of capital punishment evolved into a rigid and harsh system.\textsuperscript{38} The system of judicial punishment that each colony developed differed depending on when that colony was founded.\textsuperscript{39} Still the use of capital punishment viewed in relation to the population was greater among the colonies than among England during the same period.\textsuperscript{40} It is estimated that between 1530 and 1630 as many as 75 thousand of the 4.7 million colonists were put to death, while the English executed around one or two per 100 thousand.\textsuperscript{41} Among the colonies there was more than a dozen offenses that were punishable by death, some of these offenses involved little more than a personal or morality preference.\textsuperscript{42}

Eighteenth century colonial United States saw a dramatic increase in the population of the colonies. The greatest increase was in the South due to the increasing number of slaves.\textsuperscript{43} With this increase in population arose an increase in the rates of execution. During this time

\begin{itemize}
\item \textsuperscript{36} HUGO ADAM BEDAU, \textit{Background and Developments, in The Death Penalty in America} 3, 3-4 (1997).
\item \textsuperscript{37} \textit{Id.}
\item \textsuperscript{38} HOWARD W. ALLEN \& JEROME M. CLUBB with VINCENT A. LACEY, \textit{Race, Class, and the Death Penalty: Capital Punishment in American History} 27 (St. Univ. of N.Y. Press, 2008).
\item \textsuperscript{39} \textit{Id.}
\item \textsuperscript{40} \textit{Id.} at 28.
\item \textsuperscript{41} \textit{Id.} at 39.
\item \textsuperscript{42} \textit{Id.}
\item \textsuperscript{43} \textit{Id.} at 33.
\end{itemize}
period, execution of slaves for revolt and conspiracy accounted for 65% of the executions in the colonies.\footnote{Id. at 33-35.}

The late eighteenth century and early decades of the nineteenth century saw widespread and intensive efforts to reform the practices in the United States.\footnote{Id. at 47.} Enlightenment values and ideas were drawn upon to justify revolution and independence.\footnote{Id.} Enlightenment thinker Cesare Beccaria, in his book, \textit{Dei delitti e delle pene}, advocated penal servitude as the preferred punishment over the death penalty.\footnote{Schabas, supra note 10, at 4.} This idea was supported throughout most of Europe and his book was read widely in the United States.\footnote{Id.} However, the founding of the United States and the adoption of the Bill of Rights did not include any changes to capital punishment.\footnote{Id.}

The efforts to reform and modify the system were still not successful. As the colony’s gained their independence and the population continued to grow, the increase in executions continued to rise once again among the Southern States.\footnote{Allen & Clubb, supra note 38, at 48-51.} Reform began when the territory of Michigan repealed the death penalty for murder in 1847. Following this in 1852 Rhode Island and Wisconsin a year later also repealed the death penalty.\footnote{Bedau, supra note 36, at 8.} However, no other state or territory went to the extreme of abolition, but they did believe modest change was required.\footnote{Allen & Clubb, supra note 38, at 59.} During this time capital offenses were redefined, methods of execution were changed, and the manner of sentencing became less rigid.\footnote{Id.} Individual citizens began to recognize the problems with this
system as well when grand juries became unwilling to indict or petty juries were unwilling to convict when they knew the death penalty was mandatory but seemed in excess of the crime.\footnote{54 Id.}

Although the Civil War divided the country and pushed brothers to war, it also brought about changes on the use of capital punishment.\footnote{55 Id. at 67.} During the war the use of the death penalty rose dramatically among the Southern States, but during the reconstruction period the use dropped to prewar levels even among the Southern States.\footnote{56 Id.} The decline was viewed among Southern Whites as involuntary and not permanent. Many of the Southern Whites viewed African Americans as a potential source of competition. Prior to the Civil War slavery was a means to control the population, however, the War placed a greater burden on the legal system to protect these individuals.\footnote{57 Id. at 68.}

During reconstruction the South was subject to Northern control, this control limited the use and mechanisms of control the South relied on to control the African population.\footnote{58 Id.} Once the reconstruction era ended the number of legal and illegal executions increased along with other restrictions that became known as the Jim Crow laws.\footnote{59 Id.}

The progressive era saw the death penalty change in other ways. Many states only allowed the death penalty in the case where the victim’s life was also taken; while Southern states included lesser offenses such as rape.\footnote{60 Id. at 74.} State legislatures began allowing the courts and juries to decide whether to impose the death penalty for homicide.\footnote{61 Id. at 72.} By 1915, the death sentence for homicide was discretionary in every Southern state except North Carolina and by 1918 twelve states retained a mandatory death sentence for first degree homicide.\footnote{62 Id.}
Overall nine states outright repealed the death penalty but the trend was slowly receding. The abolition movement by the states slowly died down and within a few years particularly within the 1930s and 1940s the executions recommenced and reached the highest levels for the century. This was mainly seen as a result of the increase in crime due to the Great Depression. The abolition movement resulted in subtle changes to the death penalty particularly in the methods of execution. Evolving over time with the human rights movement lynching was replaced by the electric chair; lethal gas was first authorized in 1923 and viewed as a humane improvement over hanging and the electric chair. However, by 1994, it was viewed as cruel and unusual punishment under the eighth amendment, and lethal injection was first introduced in 1977. The overall purpose of these new methods was to ensure that executions were quick, painless, reliable and fitting of a civilized society.

During this period it became routine for state courts to review all death penalty convictions, it was very rare that an appellate court did not do this already. However, the biggest change to this system was prisoners seeking relief through the federal court system. Only since the 1960s, has the Bill of Rights been used to review death penalty convictions. Since the use of the federal system, less than 0.2 percent of those on death row were sentenced under the federal death penalty statute. Litigators continue to use the Bill of Rights to attack

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63 Bedau, supra note 36, at 8.
64 Id. at 9.
65 Id.
66 Id. at 10.
67 Id.
68 Id. at 11.
69 Id. at 13.
70 Id.
71 Id.
death penalty convictions citing due process and equal protection violations, but very few persuade the court to reject the death penalty itself.\textsuperscript{72}

Another change occurring during the early 1900s and 1960s was the length of time an individual waited prior to being executed.\textsuperscript{73} Since the 1960s the average wait between sentencing and execution increased to around ten years.\textsuperscript{74} Some of these delays resulted due to the attempts made by individuals challenging the death penalty itself on constitution grounds.\textsuperscript{75} These challenges to the death penalty caused a complete suspension of all executions.\textsuperscript{76} Supreme Court Justice Arthur Goldberg suggested that this change in public perception was due to the evolving standards of decency.\textsuperscript{77} He further stated that society has transformed its view of the application of the death penalty to a notion a violation of the Eight Amendment’s cruel and unusual punishment prohibition.\textsuperscript{78}

These evolving standards of decency played a role with the Supreme Court as it discussed the application of the death penalty.\textsuperscript{79} As a result in 1972, with the case of Furman v. Georgia, the Supreme Court stopped all executions and required all state courts to resentence those on death row.\textsuperscript{80} However, the Court in Furman left the door open for the states to legislate the penalty.\textsuperscript{81} The public support of the death penalty briefly fell below 50 percent in the mid-1960s before soaring about 70 percent.\textsuperscript{82} Within four years, thirty-five states enacted statutes designed

\textsuperscript{72} Id.  
\textsuperscript{73} Id. at 14.  
\textsuperscript{74} Id.  
\textsuperscript{75} Id. at 15.  
\textsuperscript{76} Id.  
\textsuperscript{78} Id.  
\textsuperscript{79} Id.  
\textsuperscript{80} BEDAU, supra note 36, at 15.  
\textsuperscript{81} McGowen, supra note 77, at 120.  
\textsuperscript{82} Id.
to fix the flaws identified by the court and to resume capital punishment. Justice Potter Stewart responded to this by stating with the actions of thirty-five states it makes it hard for the Court to argue that capital punishment is incompatible with evolving standards of decency.

The Supreme Court once again affirmed the constitutionality of the death penalty in 1976 in *Gregg v Georgia*. The post-1976 period gave rise to new developments in capital justice. The Supreme Court’s decision shifted the attention of opponents of the death penalty to the court leaving the political field open for death penalty advocates. This resulted in unprecedented amounts of death penalty legislation.

Since the reinstatement of the death penalty, thirty-eight states, the US government and the military continue its practice. However, while the number put to death has increased since that time, the number of executions since 1977 is about equivalent to the number executed in the late eighteenth century. Capital punishment in the United States has changed throughout its history, but while it remains a form of punishment its uses have declined.

B. The Death Penalty in China

Unlike the United States, China’s history has been traced as far back as 1.7 million years. Law in China stretches back over two thousand years. The earliest Chinese dynasty was the Xia Dynasty which reigned from 2100-1600 BC. However, the first written history of

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83 BEDAU, supra note 36, at 16.
84 McGowen, supra note 77, at 121.
85 BEDAU, supra note 36, at 16.
86 McGowen, supra note 77, at 121.
87 Id.
88 Id. at 169.
89 Id. at 170.
92 Id.
China was discovered during the Shang Dynasty. The Tang Dynasty, founded in AD 618, is considered by many historians as the high point in Chinese civilizations. The Tang Dynasty was the golden age of literature and art, the government supported through Confucian ideals was perfected during this time and the idea to create scholar officials to rule the middle kingdom originated in this period. However, the greatest advancement made during the Tang Dynasty was the development of a legal system. While the development of the legal system and codification of penal statutes occurred during this time, the first execution in China was carried out as early as 2601 BC.

In each dynastic code up to and including the Qing Dynasty, there were over a hundred crimes which a person could legally be punished by death. The most serious crimes punishable by death were that of rebellion and gross unfilialness, the offender was usually executed by slicing. However, like the modern Chinese Penal code the imperial codes also levied death sentences for “ordinary crimes”.

The power of the Chinese to control the death penalty waned as the Qing Dynasty’s power collapsed under Western influence. At the end of the Boxer Rebellion, the British, United States and Japan called for the abolishment of corporal punishment in China and set up

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95 See CHEN, *supra* note 94, at 12.
98 Id.
99 Id.
100 Id.
modern prisons.\textsuperscript{102} This led to a greater emphasis on the rehabilitation of criminals, an approach which fit Confucian and Western ideals.\textsuperscript{103} However, capital punishment was still permissible for the most serious offenses and remained part of the Criminal Code of Sun Yat Sen’s Republican government.\textsuperscript{104}

From 1911-1949 what has been known as the Republican era or the warlord period, the forms of justice were at the hands of the territorial leaders.\textsuperscript{105} The laws developed during that period were carried over the Taiwan Strait with Chiang Kai-shek and the establishment of the Republic of China on Taiwan.\textsuperscript{106} However, with Mao Zedong coming to power in 1949 and the fall of the Republican era, capital punishment and legal violence were abandoned for more socialist ideals.\textsuperscript{107}

Mao Zedong likened execution between a human head and a head of chives, one grows back while the other does not.\textsuperscript{108} As leader, Chairman Mao attempted to advance his expectations and abolishment of the death penalty but his attempts at a criminal code were stopped due to the Anti-Rightists Movement.\textsuperscript{109} In 1963, a Criminal Procedure Law of the People’s Republic of China was drafted, but it was never adopted due to the Movement and the start of the Cultural Revolution.\textsuperscript{110} Criminal justice during this time was influenced by class status, attitude towards the offense and the prevailing political line; the severest punishment still included execution.\textsuperscript{111}

\begin{footnotesize}
\begin{enumerate}
\item[102] Id.
\item[103] Id.
\item[104] See CHEN, supra note 96, at 34.
\item[105] See Monthly, supra note 97, at 193.
\item[106] Id.
\item[107] See Macbean, supra note 101, at 207.
\item[108] See Monthly, supra note 97, at 193.
\item[109] See Macbean, supra note 101, at 207.
\item[111] See Macbean, supra note 101, at 208; see also SHAO-CHUAN LENG & HUNGDHAI CHIU, CRIM. JUSTICE IN POST MAO CHINA: ANALYSIS AND DOCUMENTS 21 (St. Univ. of N.Y. Press, 1985).
\end{enumerate}
\end{footnotesize}
Chinese policy on the death penalty followed the Soviet Union’s ideals, which were that capital punishment was incompatible with socialist ideals, but justifiable as an exceptional measure of punishment pending its abolition.\textsuperscript{112} Although, Chairman Mao spoke openly of abolishing the death penalty, he also authorized the use of it on the masses.\textsuperscript{113} Mao was particularly noted for instituting killing quotas during his counter revolutionary campaigns.\textsuperscript{114} Mao had instituted quotas throughout the development of the People’s Republic, however, his limitations on how many counter revolutionists that would be killed was based on the belief that once the killings start he may not be able to stop them.\textsuperscript{115} Mao was quoted to have said that the masses would not understand the killings and the killings would reduce the labor force and serve little to defeat our enemy.\textsuperscript{116}

Mao caused a great number of deaths during the Cultural Revolution which lasting from 1966-1976 and saw many people branded as counter revolutionists arrested, tortured and executed.\textsuperscript{117} This large number of deaths was due to Mao’s reforms, known as the Great Leap Forward, resulting in the world’s greatest man made famine, estimated to be between 15 to 40 million people starved to death.\textsuperscript{118} While this was not the typical execution seen throughout the modern world, this was the beginning of change within China.

Mao Zedong died shortly after the Cultural Revolution allowing Deng Xiaoping to move into power.\textsuperscript{119} One of the many reforms Deng made during his time in power was the adoption of the Criminal Procedure Law of the People’s Republic of China (Criminal Procedure Law) and

\textsuperscript{112} See LENG & CHIU, supra note 111, at 21; see generally Cohen, supra note 110, at 14-18.
\textsuperscript{113} See LENG & CHIU, supra note 111.
\textsuperscript{114} Li Changyu, Mao’s Killing Quotas, CHINA RIGHTS FORUM, Apr. 2005, 41.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} See Macbean, supra note 101, at 208
\textsuperscript{118} Felix Wemheuer, Dealing with Responsibility for the Great Leap Famine in the P.R.C., THE CHINA QUARTERLY, March 2010, 176, 177.
\textsuperscript{119} Eric Hyer, Associate Professor, Brigham Young Univ., The Politics of Succession, Lecture at BYU Government and Politics of China Class (Feb. 17, 2009).
Criminal Law of the People’s Republic of China (Criminal Law) in 1979. The purpose of these legislations was to signal an end to the arbitrary punishments and widespread abuse developed under Mao. However, the introduction of these statutes still did not provide for the protection of the defendant in his right to counsel and due process. However, the statutes did provide for twenty-one specific offenses that were punishable by death compared to the hundreds listed within the Qing Code.

China rekindled its interest in capital punishment, in 1981, when it applied the death penalty to twenty-three more offenses and eliminated the need for final approval of the Supreme People’s Court (SPC). The National People’s Congress (NPC) soon became nervous of the increasing number of crimes, including crimes that mandated the death penalty. The NPC passed legislation known as the Strike Hard campaign which occurred in 1983 to 1987. The purpose of this law was to relax court procedure to allow for timely processing of criminal cases and same day executions. A second Strike Hard campaign took place in 1996 to 2001 with local campaigns continuing until the policy was abolished in 2007 by the NPC.

During this period the lowest court in China was given the final authority to execute an individual. However, this was rescinded three months later by the NPC due to a level of incompetence in the lower courts. The SPC also made a move during this time to delegate final authority with the appeals court, but this measure was quickly rescinded as well in 2007.

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121 See Macbean, *supra* note 101, at 209.

122 Id.

123 See Monthy, *supra* note 97, at 193.

124 Id. at 194.

125 See Macbean, *supra* note 101, at 194.

126 Id.

127 Id.

128 Id.
reserving final authority with the SPC once again.\textsuperscript{129} An estimate of 10,000 executions took place over the first Strike Hard campaign, while estimates for the second campaign far exceed this value.\textsuperscript{130}

These Strike Hard campaigns issued by the NPC led to a lot of reforms to the Criminal Law and public opinion. In 1996, the National People’s Congress also amended the Criminal Procedure Law, which took effect in 1997; the most significant amendment was the presumption of innocence on the part of the accused.\textsuperscript{131} The Supreme People’s Court in 1996 called for a wider use of the death penalty regardless of the circumstances.\textsuperscript{132} This lead the court to sentence hundreds of individual to death, estimated at 6,000 individuals with at least 3,500 of them actually being executed.\textsuperscript{133} This resulted in the NPC revising the Criminal Law statute in 1997 by adding twenty-four additional crimes bringing the total to sixty-eight.\textsuperscript{134} This statute was once again revised in 2011; however, the NPC removed thirteen crimes from the list instead of adding to it.\textsuperscript{135}

In 2007, the Supreme People’s Court took a more relaxed stance regarding the death penalty with a program called “Death Sentences with a Reprieve”, where all criminals could be sentenced without the need for an immediate execution and are given a death sentence with a two

\begin{thebibliography}{99}
\bibitem{129} Id.
\bibitem{130} Id. at 211.
\bibitem{131} Fu Hualing, \textit{Crim. Procedure Law, in INTRODUCTION TO CHINESE LAW} 129, 129 (Wang Chenguang & Zhang Xianchu eds., 1997).
\bibitem{132} See Monthy, \textit{supra} note 97, at 204
\bibitem{133} Id.
\bibitem{134} Id.
\end{thebibliography}
year reprieve.\textsuperscript{136} This means that if the prisoner has shown good behavior for two years, his death sentence can be commuted to life in prison or a sentence of 15 or 20 years.\textsuperscript{137}

Despite all the revisions in the Chinese Criminal Statute, China is still one of the leading countries in the world that performs executions. Although the United States promotes human rights around the world they continue to retain the use of the death penalty, while China is continually criticized by other world leaders for its excessive use of the punishment. No matter the policy behind the use of the death penalty, the judicial system within each country must contribute to the use of the death penalty.

\textbf{III. INFLUENCES ON THE JUDICIAL SYSTEM}

Both the United States and Chinese legal systems have specific rules and procedure for a case to work itself through the system. The United States is greatly influenced by its Constitution and what the founding fathers envisioned, while China is influenced by Mao Zedong and Soviet Communist ideals. Each country however has other forces, such as politics or popular opinion, present that influence the system to pursue a course of action

\textbf{A. Influences on the United States’ Judicial System}

The judicial system in the United States is very unique in that there are two systems (a federal and state).\textsuperscript{138} The reason for the two systems is that the US Constitution created a government system known as federalism, which refers to the sharing of powers between the national and state governments.\textsuperscript{139} The Constitution itself gave certain powers to the federal

\begin{footnotes}
\item[137] Id.
\item[138] Id.
\item[139] Id.
\end{footnotes}
government and reserved the rest to the states.140 Because the federal government is separate from the state government, each needed its own court system to apply and interpret the law.141

The federal court system is created and derives its power from Article III of the US Constitution, which states that “the judicial power … shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.”142 The state court systems vary from state to state, but typically have a three tiered system of a trial court of general jurisdiction, intermediate appellate courts, and the highest state court.143 The state court system similar to the federal courts are organized and empowered through the state Constitution, for instance in California, “the State Constitution vests the judicial power of California in the Supreme Court, Courts of Appeal, and the superior courts.”144

In the United States, the death penalty is exclusively used for the crime of murder, but can also be given for treason, espionage, drug trafficking or the killing of any officer, juror, or witness in a case involving a criminal enterprise regardless of if the killing occurs.145 Each state that condones the death penalty as a sentence has different statutes concerning what crimes constitute the sentence of death.146

According to the U.S. Bureau of Justice Statistics, of the 36 states that currently authorize the death penalty, all of them do so for murder with aggravating circumstances.147 This means that the 3,173 inmates, currently under the sentence of death at yearend 2009, were all sentenced

140 See U.S. CONST. amend. X.
141 See U.S. COURTS, supra note 138.
143 See U.S. COURTS, supra note 138.
146 Id.
147 See BUREAU OF JUSTICE STATISTICS, supra note 3, at 5.
to death because they committed murder with aggravated circumstances.\textsuperscript{148} Since general murder is not a federal law, all of these inmates’ cases would have to start in the state court system.\textsuperscript{149}

Many of the inmates that are on death row have been there for at least twenty years.\textsuperscript{150} In 2009 only 52 of the 3,173 inmates had their sentences carried out.\textsuperscript{151} The reason for the back log in carrying out the sentences is mainly held in the appeals process.\textsuperscript{152} A typical murder case trial typically is completely within two to four weeks after the start of trial.\textsuperscript{153} At this point the convicted inmate would have to file his appeal to the state court of appeals; after that court hears and reviews the case, depending on the outcome, he will then seek an appeal with the state supreme court.\textsuperscript{154} Once that process is complete within the state system, the inmate can seek a writ of certiorari with the U.S. Supreme Court, which is unlikely to be granted.\textsuperscript{155}

Once the inmate has exhausted his state remedy he can then file a writ of habeas corpus to the federal court in his jurisdiction.\textsuperscript{156} The problem here is the inmate may tend to bring up new complaints about his case, either with ineffective assistance of counsel, not calling witnesses to be questioned, not being allowed to testify or Brady violations when the prosecutor did not give evidence that was necessary.\textsuperscript{157} Since the inmate has brought up new complaints, the district court will kick the case back into the state system so that the inmate can exhaust all his claims within a state court.\textsuperscript{158}

\textsuperscript{148} \textit{Id.} at 1, 5.
\textsuperscript{149} \textit{See} U.S. COURTS, \textit{supra} note 138.
\textsuperscript{150} Interview with Irma Gonzalez, C.J., United States D. S.D. of Cal., in S.D., Cal. (Nov. 7, 2011).
\textsuperscript{151} \textit{See} BUREAU OF JUSTICE STATISTICS, \textit{supra} note 3, at 5.
\textsuperscript{152} Interview with Irma Gonzalez, \textit{supra} note 150.
\textsuperscript{153} \textit{Id.}
\textsuperscript{154} \textit{Id.}
\textsuperscript{155} \textit{Id.}
\textsuperscript{156} \textit{Id.}
\textsuperscript{157} \textit{Id.}
\textsuperscript{158} \textit{Id.}
The biggest problem for the federal courts is that the state courts do not issue opinions with their orders; so when the federal courts review the death penalty cases there is no record of the issues, making it harder for the federal judges to figure out what the issues are and how to resolve them.\textsuperscript{159} Because of the lack of opinions, the inmates raise as many issues as they can, usually between thirty and eighty, causing their cases to be delayed further.\textsuperscript{160} Most of these inmates desire an evidentiary hearing which the federal circuits are reluctant to grant; but if it is necessary the case is once again sent back to the state courts for review.\textsuperscript{161} Currently, an inmate in California, sentenced to death in 1988, has just barely appealed his case up to the US Ninth Circuit Court of Appeal.\textsuperscript{162}

Another main problem in the United States is political influence over the judicial process.\textsuperscript{163} Judge selection in the US court system varies between the system and between states. Under the Federal Court system, judges are nominated by the President and confirmed by the Senate, the judges also hold life terms in that position while under good behavior.\textsuperscript{164} Under the state system, judges are selected in a variety of ways depending on the state; they are either elected, appointed for a set term, appointed for life, or a combination of appointment and election.\textsuperscript{165} Because of the role the electorate plays in states that elect judges, those judges can be influenced by the populist politics of the death penalty.\textsuperscript{166}

\begin{itemize}
\item \textsuperscript{159} Id.
\item \textsuperscript{160} Id.
\item \textsuperscript{161} Id.
\item \textsuperscript{162} Id.
\item \textsuperscript{165} Id.
\item \textsuperscript{166} Hay, \textit{supra} note 163, at 157.
\end{itemize}
One other political problem in the United States is clemency and the motivation to see or prevent a killer from being executed.\(^\text{167}\) Since the death penalty is controlled by the state, local politicians are likely to feel pressure from families and friends of both the accused and the victim to confront the situation of clemency.\(^\text{168}\) Local and federal politicians have spoken out against the abolitionist in support of the death penalty use. Former President Ronald Regan showed solid support for capital punishment as part of his conservative populism.\(^\text{169}\) Former President George H. W. Bush made restoring and using a federal death penalty a premier policy issue and so did Former President Bill Clinton.\(^\text{170}\)

B. Influences on China’s Judicial System

China’s current judicial system is very young compared to the United States. While China is still communist in ideology, a lot has changed since the time of Mao; however, it is still a country with a rule of law where the death penalty is applied to the worst offenses.\(^\text{171}\)

The Chinese system is deeply rooted in the philosophical theories of Legalism and Confucianism.\(^\text{172}\) Legalist emphasized the law (法, fa) while Confucianism focused on five virtues chief among them are humanism (仁, ren) and righteousness or justice (義, yi).\(^\text{173}\) After China’s many reforms, the judicial system is more Confucian and similar to the system prior to the end of the dynastic era.\(^\text{174}\)


\(^{168}\) *Id.* at 175.

\(^{169}\) *Id.* at 186.

\(^{170}\) *Id.*


\(^{172}\) CHEN, *supra* note 83, at 7

\(^{173}\) *Id.*

The Chinese court system was established through its constitution, adopted on December 4, 1982 and further revised on March 14, 2004.\(^{175}\) The People’s Court (人民法院) was established in chapter three, section seven, article 124 of the constitution.\(^{176}\) All cases are supposed to be public trials and the accused has the right to a defense.\(^{177}\) However, a right to a defense does not equal a right to a lawyer.\(^{178}\) The Chinese believe that criminal law was a tool for class struggle and there was nothing heroic in representing an individual labeled a class enemy.\(^{179}\) The 1979 Criminal Law and Procedure was supposed to put an end to this idea; however, it still did not provide defense lawyers the rights and protections needed to defend their client.\(^{180}\) The criminal procedure only provided that the defendant be informed seven days before trial that he had the right to representation; however, there was no such requirement if it was a capital punishment case.\(^{181}\)

Article 126 of the constitution states, “人民法院依照法律规定独立行使审判权, 不受行政机关、社会团体和个人的干涉,” meaning that the courts are to exercise independent judicial power in accordance with the law not subject to governmental interference.\(^{182}\) However, the courts are responsible to the National People’s Congress and to the Standing Committee.\(^{183}\) Thus the courts can be influenced by the party on policy issues as well as high profile cases.\(^{184}\) A prominent Chinese jurist justified this position by stating, “Law has to serve politics.”\(^{185}\) This

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\(^{176}\) Id.
\(^{177}\) Id.
\(^{178}\) Id.
\(^{179}\) Id.
\(^{180}\) CHEN, supra note 96, at 210-211
\(^{181}\) Id.
\(^{181}\) CHEN, supra note 171, at 208.
\(^{181}\) Id.
\(^{181}\) CHEN, supra note 171, at 208; see also CHEN, supra note 96, at 211
\(^{181}\) Id.
\(^{184}\) LENG & CHIU, supra note 111, at 98-99
\(^{185}\) See Monthly, supra note 97, at 205
inability of the Court to sever ties with the party has its consequences on the death penalty policy in China.\textsuperscript{186}

Prior to the enactment of the criminal procedure law, death sentences were reported to the Supreme Court who would report to the Central Committee of the Communist Party ("Party") to review the sentence.\textsuperscript{187} As China continues to change, the Party maintains control of drafting of new rules,\textsuperscript{188} as can be seen in the drafting of the 2011 revised criminal code. Hence, a death penalty case in China does not get classified as one unless the Party believes the defendant committed a serious crime.\textsuperscript{189}

Once a case has been designated as a crime serious enough to receive the death penalty, the trial court will put it on its priority list.\textsuperscript{190} Typically a case would take one or two years before it will be heard before the court; but, because the individual in a death penalty case has been classified as a 黑无类 (heiwulei, undesirable social class) the court will advance the case.\textsuperscript{191} The court and the Party do this because a 黑无类 is someone that no matter how they teach you what is right or wrong you still do not get the difference, so it is better that you are executed as soon as possible.\textsuperscript{192} Once the lower court issues a death penalty sentence, the court of appeal will automatically put it on its top priority list to review it as well.\textsuperscript{193} Since the 2007 reforms, the Supreme People’s Court once again has the ultimate authority to issue the death penalty.\textsuperscript{194}

\textsuperscript{186} Id. at 206.
\textsuperscript{187} Id.
\textsuperscript{188} Id.
\textsuperscript{189} Interview with Michael Tsai, Senior Advisor, Farmar Law Offices, in S.D., Cal. (Sept. 28, 2011).
\textsuperscript{190} Id.
\textsuperscript{191} Id.
\textsuperscript{192} Id.
\textsuperscript{193} Id.
\textsuperscript{194} McLennan, supra note 171, at 210
IV. ANALYSIS

In 2010, twenty-three countries were known to have carried out executions.\(^\text{195}\) The United States and China were part of the twenty-three that executed individuals in that year.\(^\text{196}\) According to Amnesty International, of the 110 sentenced to death in the United States, 46 executions were carried out; concurrently, in China the sentencing and execution rates were in the 1000s, with no precise number.\(^\text{197}\) The reason for this lack in confirmed statistics is that China considers the number of executions a state secret.\(^\text{198}\) Thus, human rights groups within China have estimated that between 5,000 and 10,000 executions were conducted yearly,\(^\text{199}\) while most recent state reports have only shown 700 executions within a year.\(^\text{200}\)

The United States is no close to executing as many people as China; however, the backlog in the U.S. system could be to blame. China and the United States have differing judicial systems, with China’s being closest to the United States federal system. However, even comparing the U.S. Federal court system with the Chinese court system still brings up several differences.

The speed with which a case is reviewed in China and the United States is significant as well. In China, prior to the 2007 reforms a criminal defendant can be tried, convicted and executed within a matter of days.\(^\text{201}\) In the United States, a criminal defendant can sit on death row for a matter of several decades before his case comes under final review and execution is


\(^{196}\) Id.


\(^{200}\) See DIALOGUE, supra note 198.

\(^{201}\) Interview with Michael Tsai, supra note 189.
carried out.\textsuperscript{202} Even after the 2007 reforms, China still conducts a speedy trial followed by execution; but for the United States, a criminal could be waiting a while before his time is up.

The United States has taken up this issue of an individual sitting on death row for several decades in several cases. In \textit{Elledge v. Florida} certiorari was denied for a prisoner waiting for execution for the past 23 years.\textsuperscript{203} Justice Breyer in his dissent stated that the denial of certiorari ceased to serve the legitimate purpose of the death penalty.\textsuperscript{204} The US Supreme Court once again denied certiorari to an inmate that was on death row for 27 years in \textit{Foster v. Florida}.\textsuperscript{205} Justice Breyer once again writing for the dissent states that waiting on death row for 27 years is unusual especially when the practice is a wait of only 11 to 12 years.\textsuperscript{206} The view of the court is that this unusual wait would not violate the Eighth Amendment, however, the individual waiting for his sentence to be carried out would think differently.

The appeals process in China is a lot more efficient to insure that an individual gets the punishment that fits the crime. Once the trial court has ruled on the punishment, the defendant’s case is automatically appealed to the court of appeals and place on its priority list, the same process occurs for the Supreme Court.\textsuperscript{207} In the United States, since a case has to make it up through both the state and federal system for review, the case may take a while to review. Once a case is pending appeal in the United States, the case can take three to five years before it is reviewed by the court and a decision is made, the same time frame is expected for a Supreme Court review.\textsuperscript{208} However, once state system of review is exhausted, the defendant must start the

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\textsuperscript{202} Interview with Irma Gonzalez, \textit{supra} note 150.
\textsuperscript{204} \textit{Id.} at 945.
\textsuperscript{205} \textit{Foster v. Florida}, 537 U.S. 990 (2002).
\textsuperscript{206} \textit{Id.} at 993.
\textsuperscript{207} Interview with Michael Tsai, \textit{supra} note 189.
\textsuperscript{208} \textit{Id.}
\end{flushleft}
process over again with the federal system. So what a defendant has six levels of review to go through in the United States, a defendant in China only has three.

About 90-95% of all Chinese judges and prosecutors are members of the Communist Party and are selected because of their status in the Party. In the United States, generally the President picks an individual that aligns with their party preference, but even this does not mean that the nominee will vote along party lines. The difference between the United States and China in this regard is that as a member of the Communist party you are required to listen to party officials or face discipline from the party itself; whereas, in the United States a judge that does not vote how a member of his political party would vote is not subject to discipline.

The one aspect of both the Chinese and the United States court systems have in common is that they both can be influenced by the political system, China more than the United States. As mentioned above, majority of the Chinese judges are members of the Communist Party. In the United States, judges are not identified with what party they belong to, the only aspect of a political connection the public gets is through how they determine cases that come to them. US Judges are aware of the political climate and take into account growing trends in public opinion, as they issue their opinions. Generally, as social opinion changes in the United States regarding the death penalty, judges are aware and revise how they sentence an individual. Social opinion is now playing a greater role in China as well with its new program of death penalty with a reprieve.

Another similarity between both countries is the political interference from the executive branch. In the United States, a judge may not technically get the last say on a defendant’s sentence. Typically, the defendant’s family may appeal to the executive branch to grant clemency on the defendant. The executive can use his power to pardon an individual or stay an

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209 Id.

The President of China does not really have a pardon power or a say in execution directly, but the President influences an execution indirectly through his position as General Secretary of the Standing Committee. The President of China holds several roles within the party; he is the President, Chairman of the Central Military Commission, and General Secretary of the Standing Committee. Because of the requirement that the Court report to the Standing Committee the President of China does have a say in whether or not an individual should or should not be executed.

While the United States and China have different political and judicial systems, the manner in which the death penalty is adjudicated in both countries is almost similar. Both countries have judges that sit along party lines and both countries can be influenced through the executive. However, the United States tends to provide more protections to a defendant who causes the process to take longer than China does to carry out a case and execution.

V. RECOMMENDATIONS

The vast majority of individuals sentenced to death in the United States sit on death row for a matter of decades. The United States Supreme Court has previously denied certiorari to inmates that have been on death row for twenty plus years and are now just getting the sentences carried out. The minority of the Court does not view waiting on death row as cruel and unusual punishment, a violation of the Eighth Amendment. Rather the majority of the Supreme Court feels that if the inmate wished to end the uncertainties of life on death row, they could just submit to the punishment the Court deemed they deserved.

211 See U.S. CONST. art. II, § 2; see also Cal. CONST. of 1879 art. V § 8 (1988).
212 Eric Hyer, Associate Professor, Brigham Young Univ., The Politics of Policy Making, Lecture at BYU Government and Politics of China Class (Feb. 9, 2009).
213 Id.
Even if the Courts allowed executions to occur after a long wait, or if a reform occurred that prisoners were executed quickly after sentencing, the Constitution provides certain due process rights that cannot be denied. Most politicians’ consider deterrence as the main purpose of the death penalty by most politicians. Then Governor Ronald Reagan stated the California Supreme Court has set itself above the people when they ruled capital punishment is unconstitutional. He further states that with the rise of crime and the increase rise of violence in crime capital punishment is needed, the death penalty is a deterrent to murder.

When Ronald Regan became President of the United States he strongly supported capital punishment. Former President George H.W. Bush stated in the 1988 Presidential debate that he believes in the death penalty, it is a deterrent and it is needed. Former President Bill Clinton passed his 1994 Omnibus Crime Bill which added an additional 60 categories of violent felonies which would be punishable by death. Former President George W. Bush when he was debating Senator Al Gore stated that the reason to support the death penalty is that it saves lives. Current Associate Justice Aton Scalia argues in Roper v Simmons that the death penalty has a deterrent effect. Even the Chinese believe that death penalty increases public security.

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217 Id.
218 Id. at 186.
222 ROGER HOOD & CAROLYN HOYLE, The Death Penalty: A Worldwide Perspective 318 (Oxford Univ. Press, 4th ed. 2008), see also Roper v. Simmons, 543 US 551 (2005) (defendant convinced co-accused to participate in murder after telling them they would not get the death penalty since they were minors).
223 See HOOD & HOYLE, supra note 222, at 319.
The argument against using the death penalty is that juries are more likely to convict an individual of murder if they know they will get a life sentence versus a death sentence.\textsuperscript{224} However, in countries such as England, since the abolition of the death penalty, the number of recorded homicides per million increased from an average of 7.1 per million in 1966 to about 14 per million in 2005.\textsuperscript{225} With the abolition of the death penalty in England, the number of violent crimes has increased six fold while the number of violent crimes against persons has increased fivefold.\textsuperscript{226} However, in the United States homicide (murder and non-negligent manslaughter) rates have increased from 4.8 per 100,000 in 1960 to a current rate of 5.5 per 100,000.\textsuperscript{227}

The opponents of the death penalty cite to the rise of homicides to show that the death penalty does not have a deterrence effect. The death penalty lacks a deterrent effect mainly because a defendant will delay his execution by tying his case up in the appeals process. A defendant knowing he will not be swiftly executed would not be deterred from their actions. However, if a defendant knew there was a possibility that within a couple of years, not decades, he could be executed he may think again before participating in a crime that could result in the death penalty.

Instead of legislatures abolishing the death penalty, they instead need fix the way appeals processes are handled to get cases through the system faster. Adopting China’s policy of making these cases priorities on a judge’s calendar could be one solution. By placing a case on a priority list, there will be a set time the case will be heard and judges will know that these cases are coming up sooner rather than later. Another recommendation would be to have the state courts issue opinions with their decision. This would allow the federal courts an opportunity to review

\textsuperscript{224} Id. at 320.  
\textsuperscript{225} Id. at 326.  
\textsuperscript{226} Id.  
\textsuperscript{227} Id. at 327.
the state courts reasoning. One final solution is requiring the petitioner to appeal everything at one time or risk the right to appeal it. A tactic the petitioner may be using is neglecting to appeal one thing knowing that the case would have to return to the state system before it can continue in the federal system for appeal. If the petitioner knew he would lose the opportunity to appeal that issue, then they may make the effort to do it right the first time.

A due process issue again occurs with this solution mainly because the Fourteenth Amendment to the Constitution states that a State cannot deprive an individual of life, liberty or property without due process of law. The petitioner could argue that he is being deprived of due process since the court is not willing to hear an appeal on an issue. While this is a good argument, courts tend to do this on a regular basis. Typically if an issue is not raised during the trial court, then it is not allowed to be raised on appeal, however no due process violation occurs in that instance. Hence, allowing a petitioner to raise multiple issues on appeal either way should prompt the petitioner to be accurate in what he wants the court to do. The petitioner will be pleading the kitchen sink in the end so why not require him to plead it from the beginning to start with.

Another issue of concern with a slow appeals process is the cost to taxpayers for supporting an inmate on death row. In a 2008 report, the California Commission on the Fair Administration of Justice reported a death row inmate costs an additional $90 thousand on top of the $34 thousand for a regular inmate. The commission also reported it would cost the state an estimated $137.7 million to maintain the current system. The commission also notes that to reduce the appeals time to the national average of 12 years would cost the state $216.8 million,

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but the commission does add the caveat that this figure does not include any opportunity costs or savings.\textsuperscript{229} In a 2009 editorial to the New York Times, it was reported that death row inmates cost taxpayers in California $114 million a year beyond the costs of imprisoning an inmate for life.\textsuperscript{230} Since 1976, California has executed 13 individuals costing $250 million per execution.\textsuperscript{231}

One final concern with a slow appeals process is the concern that individuals wrongly convicted of a crime sit on death row waiting for their cases to be heard and for the evidence to exonerate them to be reviewed. In a 2010 report, Amnesty International noted that former death row prisoner Anthony Graves was exonerated after being sentenced to death in 1994 for murdering six people.\textsuperscript{232} Mr. Graves was the 138th death row prisoner to be exonerated in the United States since 1973.\textsuperscript{233} While due process is required for all individuals, innocent death row inmates can benefit from the expedited appeals process because their cases can be heard faster, the evidence presented sooner and the exoneration and release will be quicker for them.

While these solutions are by no means an ultimate solution to the death penalty, it is a start for the legislature to begin reviewing the long standing procedures that are already in place and have become dysfunctional with time.

VI. CONCLUSION

We live in a world today where violence is a reoccurring theme. There are those that are a part of society who Socrates will say has accepted their social contact and will abide by the laws of that society. There are others who will break the law that their conscience tells them is wrong

\textsuperscript{229} Id.
\textsuperscript{231} Id.
\textsuperscript{233} Id.
and willingly accept the punishment. And there are others who will break the law and fight against the punishment society deems just.

In the United States, inmates waiting for their executions to take place, are faced with the challenge of spending years in the appeals system or accepting their punishment. However, to accept defeat when so many doors are still open would not be the justice the system hopes to display. Inmates in China are still processed through the system at an ever increasing rate. While China’s system is criticized by human rights groups for executing too many, they have taken steps to address this situation, steps to show the world that they do acknowledge the rights to life.

The expedite appeals process that I suggest the United States adopt is not meant to suggest that the United States needs to execute more convicts like China. The expedited process is a means to free up judicial resources as well as help those waiting on death row to have their cases reach finality or to prove their innocence. This is but one alternative and suggestion, to decrease the wait time inmates’ face between their sentences and executions. I believe the protections currently in place protecting these individuals rights should not be taken for granted. Everyone is afforded their due process and protection of their rights. While no system is perfect, a system that uses the death penalty as a tool to discourage others from breaking laws, that system needs to show commitment to punishment. To truly be a deterrent, there must not be any hesitation in the use of that punishment; any delay or postponement of its use will only make a statement that the use of the punishment is not serious. The death penalty can save people’s lives if it were a true deterrent. The United States can make use of the death penalty as a true deterrent by correcting the speed at which death penalty cases are reviewed in the appeals process.