

Human Rights Policy: The Cases of Capital Punishment in Kyrgyzstan and South Korea

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Abstract—There are significant variations with regard to the use of the death penalty. The paper attempts to identify both environmental and the state elite's interest explanations for the capital punishment policy development by examining two cases of capital punishment in Kyrgyzstan and South Korea. In Kyrgyzstan, geopolitical situation created through influence of the EU and power struggles after the collapse of the Soviet Union has affected the state elite's decision making of death penalty policy. Induced by a new geopolitical situation, Kyrgyzstan state leaders adopted the abolition of the death penalty to increase political and financial powers. In South Korea, separation with North Korea, and the Clinton administration's engagement policy toward North Korea in the early 1990s catalyzed President DJ Kim to meet the needs of radical groups in South Korea. The state elite's interest to maintain political power led to the adoption of death penalty moratorium. This comparative study shows that various geopolitical environments result in different capital punishment policy outcomes by influencing the state elite's interests.

Index Terms—Death penalty, geopolitics, human rights policy, intervening variable.

I. INTRODUCTION

International political pressure on abolition of the death penalty has been in a global trend. Some argue that international political pressure led by a European abolishment campaign has played a significant role in abolishing the death penalty since the late 1970s [1], indicating a 168 increase of the number of the abolitionists between 1980 and 2006 [2]. Despite this trend of international pressure to abolish the death penalty, capital punishment is still used all around the world. 58 countries maintain the death penalty in both law and practice, 8 countries permit the use of the death penalty for ordinary crimes, and 97 countries abolished it completely. The death penalty has been adopted differently by various countries. Asian countries particularly show the diversity of death penalty policy, dividing into three categories: 58% in retention of the death penalty, 21% in a de facto abolition, and 21% in formal abolition [3]. What explains this variation in Asia? The hypothesis of this paper is that the geopolitical environment affects death penalty policy change by influencing the state elite's interests. The conceptual framework for the paper is illustrated in Fig. 1.

Cultural relativism is espoused by scholars in the field of Human rights. It has been argued that international human rights reflecting Western perspectives should not encroach

on other countries with different cultural values [4]. In an attempt to oppose the universality of human rights, some Asian government leaders have vividly advocated the cultural relativism at recent forums such as the World Conference on Human Rights in Vienna in 1993 and the ASEAN-EU meeting in Bangkok in March 1996 [5]. In particular, Asian countries put a great emphasis on the interests of the community instead of individuals, arguing that Western human rights principles of individualism are not suitable for these Asian societies which respect the value of 'group' over the 'individual.'

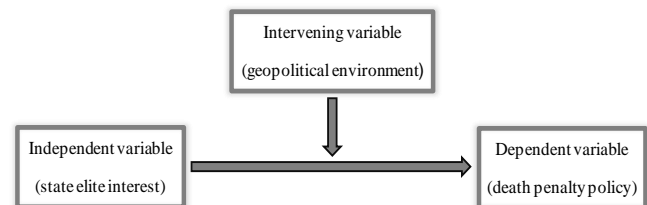


Fig. 1. The conceptual framework.

However, this cultural relativism was often used to justify the state elite's repressive action to achieve its political interest specifically in Asian countries [6]. A variety of the government policies were embodied in cultural values reconstructed by the state elite's political intentions [7]. The interest of the state elite has been the driving force for social policy in many Asian countries. Within the political context rather than cultural one in East Asia, social policy has been the means of a state-led ideology aiming at economic developmentalism. Political goals are the core background of social policy in East Asia [8]. The elite's political legitimacy prompted social policy developments in East Asia. Political pressure derived from high levels of unemployment in the late 1950s and early 1960s led to policy reforms of wage increases, a national pension program, and the medical insurance program [9].

In order to explain human rights policy outcomes, the 'state-centric-accounts' are not sufficient and require more rigorous explanation. C. Hood (1994) presents four variables significant to policy change. First, the force of new ideas affects policy change by changing the situation through experimental evidence, logical force or rhetorical power. Second, policy reflects the interests of the power by changing into policies which meet their purposes. Third, the environmental changes can alter policies by making current policies useless. Fourth, previous policies and institutions destroy themselves and change policies from inside [10].

The paper applies this social policy development study to human rights policy, particularly the death penalty. Among

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four variables, the political environment as well as interests of the state elite are carefully examined when we study how and why the adoption of rights related policy differs from one state to another. This paper's aim is to understand human rights policy development in Asian countries by examining the cases of death penalty policy in two different countries – Kyrgyzstan and South Korea. These case studies provide a pattern of policy development primarily driven by both 'interests' of state elites and geopolitical factors.

II. METHODOLOGY

The method of contrasting cases is adopted since it applies comparisons among equivalent units to identify independent variables which may uncover any patterns of social phenomenon either in common or in contrast [11], [12]. The main strategy of this approach is to focus on causal linkages which shape the major outcomes of interest by systematic and contextualized comparisons of contrasting cases [13].

Two countries are compared here in an attempt to explore linkages between the state elite interest influenced by the geopolitical situation, and the variation of death penalty policy adoption. Since the Asian continent constitutes more than 85 percent of the world's judicial executions [14], two countries in the Asian continent were chosen as case studies.

Selection of cases on the dependent variable is useful for identifying the sufficient variables which have an effect on the research outcome, and it helps to strengthen research design by making a test of theory plausible [15]. Both countries located in Asia carried out capital punishment before the change of death penalty policy. Death penalty policies in two countries were diversified in the early 1990s when the collapse of the Soviet Union occurred, adopting different death penalty policies; abolishment in Kyrgyzstan, and moratorium in South Korea. Choosing cases based on death penalty policy helps to clarify the critical geopolitical situation, crucial intervening variable, which influences the interests of the state elite in each country.

The goal of the paper is to see how the geopolitical factors contribute to the formation of human rights policy, specifically the death penalty. In particular, the paper presents how the decision on death penalty policy of the state elite is influenced by the interests of the state elite in their own unique geopolitical situations. This comparative contextualized frame shows that the development of death penalty policy is strongly affected by the desire of the state elite to achieve their interests. Most of all, this comparative study of capital punishment investigates geopolitical variables that affect the interests of the state elite in order to understand the diversity in capital punishment. I will examine two cases of capital punishment. These cases include Kyrgyzstan and South Korea.

III. KYRGYZSTAN

A. Geopolitical Situation

Kyrgyzstan is a strategically important country located in the area where world powers such as Russia, the United States, and China have vital interests. For the US, the country

plays a decisive role in the US global project on 'War on Terror' after September 2001 by providing the army bases for Operation Enduring Freedom (OEF) forces formed by the United States [16]. With an aim to provide aid to the newly independent nations of the former Soviet Union, the US congress passed the Freedom Support Act (FSA) in 1992. Another, called a 'Silk Road Strategy Act,' was passed in the House of Representatives in 1999, and was oriented to assist the economic and political independence of the countries of Central Asia as well as the South Caucasus. Despite the clear objectives stipulated in bills, the furtive goal of the US was to fill the vacuum of the power influence on the Central Asia after the collapse of the Soviet Union and to meet its need of addressing the security issue in Afghanistan [17].

Chinese involvement in Kyrgyzstan as well as other Central Asian countries was generated by the fear of China that the Uighur population of the Xinxiang region would be influenced by the separatist movements ignited by Central Asian independent countries whose the religious, ethnic, and cultural elements are similar to those of the Uighur region in China. In addition, the motivations of developing political and economic relations with the Central Asian countries and solving the border problems deepened Chinese participation in the region [18].

China also considers Central Asia as a transit route of trade with Iran, Afghanistan, India, and Pakistan. This geopolitical importance of Central Asia conceived by China boosts trade with the Central Asian countries including Kyrgyzstan. Russia and China have been important to trade for the Central Asian countries since the collapse of the Soviet Union. In particular, Chinese trading volume with the region has been increasing, narrowing the gap of its counterpart Russian trading volume with the region. According to Fig. 2, Chinese trade takes up 18% and Russian trade amounts to 18.4% of overall foreign trade amounts of Kyrgyzstan in 2012. Chinese economic participation in the Central Asian region is growing faster than that of Russia [19].



Fig. 2. Proportions of Russian and Chinese trade in Kyrgyzstan (2012) [20].

Coordinated security strategies in the region of China and Russia were constructed due to the threats posed by the military presence of the United States, expedited by the American military intervention in Afghanistan in the wake of the 9/11. Subsequently, these two regional superpowers (China and Russia) have increased multilateral initiatives by carrying out the Russian-backed Collective Security Treaty Organization (CSTO) and promoting counter-terrorism proposals within the framework of the Shanghai Cooperation Organization (SCO) [21].

Abolition of capital punishment in the post-communist areas such as East Europe and Central Asia particularly illustrates the significance of international intervention. International organizations such as the Council of Europe and the European Union have influenced the adoption of abolition policy in Western and Eastern Europe [22]. The first condition for joining the Council of Europe was to ratify the European Convention on Human Rights (ECHR), and the next stage was to abolish the death penalty in legislation [23]. The promise of the European Union to remove the trade barriers against the goods produced by the Central and Eastern European Countries (CEECs) is enough to attract the CEECs to be members [24]. The EU membership guarantees the economic benefits for the CEECs.

Due to the necessity of economic gains to promote the poor performance in economy after independence, Eastern European countries accepted the conditions provided by the EU such as abiding by the EU laws and regulations, opening markets with the EU members, and having a peaceful resolution on disputes and conflicts which the countries are exposed to confront both internally and externally [25]. Setting up a feasible democracy was also one important condition for being the EU member [26]. Thus one of the significant motives for the post-communist countries to abolish the death penalty was not the pursuit of human rights and democracy but the expected boons through conforming to European norms. According to Fig. 3, the EU's exports to Kyrgyzstan rose from Euro €107 in 2002 to 421 in 2012 (unit: Mio). It also shows that imports of the EU in Kyrgyzstan increased from Euro 32 in 2002 to 55 in 2012 (unit: Mio). The increase shown in the figure indicates that trade with the EU is an important element to the economy in the newly independent states of the former Soviet Union.

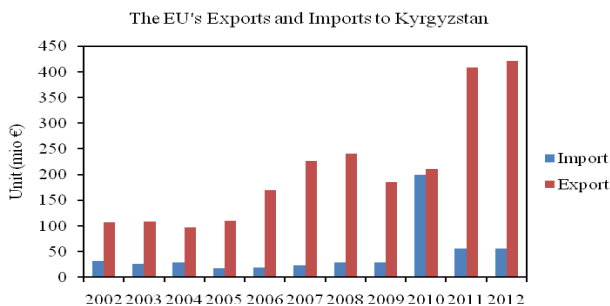


Fig. 3. The EU's exports and imports to Kyrgyzstan (2002-2012) [27].

The importance of geopolitical situation formed by influence of the EU in post-communist era, and power struggles among major powers (the U.S., Russia, and China) provided Kyrgyzstan with outside assistance in the name of "supporting democracy." Its commitment to pursuing democracy by adopting human rights policies perceived by the EU appeased the Western countries, and guaranteed incredible funding from outside. In the 1990s, the country received 16 times more aid than Uzbekistan from the US Agency for International Development (USAID), recording the highest amount of funding among the Commonwealth of Independent States (CIS) [28].

B. Elite Interests

The geopolitical situation was not the only factor which

had an effect on policy making. It is necessary to understand the nature of the decision-making body and the characteristics of the elite within the body. The Central Asian countries have been traditionally governed by clan-based informal networks. This power remains significant in the region by influencing the features of contemporary politics in Central Asia. The clan-based elite have created a political environment by constructing political discourse and controlling the flow of financial resource [29].

Realpolitik is ruled by the informal power network based on clans, and the interests of global powers including the United States, Russia, and China. Global powers aim to enhance their political and military security, and secure their economic boons. The clan elite intend to take advantages of interests of the major powers, gaining benefits for themselves. For instance, the US-led military campaign in Afghanistan provided a lot of benefits for Kyrgyzstan. In return for using Kyrgyzstan's airbase, the U.S. government increased its assistance from US\$ 41.72 million to US\$ 94.22 million in 2002. In addition, Kyrgyzstan earned more than US\$ 64 million in 2008 through leasing the airbase to the United States, and the airbase hired over 500 Kyrgyz citizens, whose total income reached over US\$ 2.6 million [30].

The informal norms and practices in clan networks are not appropriate for the democratic process by the Western countries since clan networks do not exercise the principles of democracy such as separation of powers, public oversight, and transparency in the public sector. Rather, policies which embrace Western democratic values were an inevitable strategy of the Kyrgyz leadership [30]. In accordance with the interest of the clan elite influenced by the geopolitical rationale, Kyrgyzstan has adopted a variety of policies such as multilateral agreements with major powers and democratic reforms. Death penalty policy was in line with democratic reforms. The state elite's interest was the driving force for making decisions on the death penalty in Kyrgyzstan.

Death penalty policy change in Kyrgyzstan did not stem from the public mood reflected in vivid debates or through public discussion [31]. Despite claims by human rights organizations that the death penalty will increase crime and damage the country's international image, public polls display that most people in Kyrgyzstan support capital punishment with the belief that capital punishment is useful for deterring crimes [32]. The trend appears to span the former Soviet satellite states. Smith (2006) shows that in a 2000 Gallup poll, 60 percent of the public in Eastern Europe supported the death penalty, and in Poland, 70 percent advocated for capital punishment in 2006 [33]. Although there was popular public support for the death penalty, most Eastern European countries made decisions to abolish the death penalty, a necessary condition for entering the Council of Europe.

In conclusion, the Kyrgyzstan case study confirms the hypothesis of this paper that the geopolitical environment factor contributes to death penalty policy change by influencing the state elite's interests. The independence of Kyrgyzstan from the Soviet Union in the early 1990s generated a new geopolitical environment where the major powers such as Russia, the United States, China as well as the EU have political, military, and economic interests in the

country. This new environment affected the clan elite's interest to get outside assistance with an aim to increase their political influence and secure the financial source. This interest led the elite to adopt some policies including the death penalty underlying the Western democratic principles, which meet the requirement from the powerful countries.

IV. SOUTH KOREA

A. Geopolitical Situation

Between South Korea's independence in 1948 and the actual last executions in 1997, the Korean government has executed about 1600 people [34]. This capital punishment record in South Korea indicates that the death penalty has been considered as a general punishment measure. When President Kim Dae-Jung (DJ Kim) took office in 1998, he declared a moratorium on executions, a de facto suspension of the death penalty. Since the adoption of moratorium policy in 1998, not one execution has been carried out. Despite the 2010 Korean Constitutional Court decision that the death penalty is legal by law, Amnesty International categorizes South Korea as abolitionist in practice due to the moratorium [35]. What accounts for this change of death penalty policy in South Korea?

Given that East Asian countries have distinct cultures and economies from Western Europe, the 'dependence on the EU influence' rationale applied in Eastern Europe and Central Asia does not give the proper explanations for East Asian cases on capital punishment policy. In East Asia, a variety of policies including labor, social welfare policies, and environmental policies were designed for pursuing the economic development which has been the first priority goal of the states [36]. Economic decision-making body includes the state elite and sets aside the popular-sector groups. The public demand was not reflected in policies guided by the elite [37]. In addition to the importance of the state elite in the policy adoption, it is also necessary to examine South Korea's unique geopolitical situation in which South Korean rulers have faced the confrontation with the North Korean regime since the Korean War (1950-1953). Thus, it is important to identify both the geopolitical environment factors and the interests of the state elite who had a particularly significant impact on the adoption of this policy in explaining the Korean case.

Since President DJ Kim was the main figure who adopted a moratorium policy on death penalty in 1998, it is reasonable to investigate the geopolitical background of President DJ Kim's political period around his presidential election period. In the early 1990s, the United States, the closest ally of South Korea, has drastically changed its foreign policy toward North Korea, and began its "engagement policy." The rationale of such an extreme change from a containment policy of the United States toward the North to its reconciliation policy toward the North was its concern about North Korea's nuclear development program. The Clinton administration's engagement policy made an attempt to build a dialogue with North Korea by having several bilateral negotiations with North Korea and stressing the importance of temperance. In contrast to the precedent President Kim

Young-Sam (YS Kim)'s hard-line position toward the North which was not in line with the Clinton administration's engagement policy, President DJ Kim took the soft line stance with the North [38, 39].

While President YS Kim had been a hard-liner toward the North, President DJ Kim was an arduous advocate for reconciliation and cooperation in dealing with the North, initiating the "sunshine policy." The term "sunshine policy" comes from one of Aesop's fables, the North Wind and the Sun in which both the sun and the wind tried to take off a man's coat, and the sunshine, not the wind, could finally make it. The central goal of the policy was to minimize the North's hostile attitudes toward the South through economic support and mutual cooperation. The sunshine policy was designed to substitute the present armistice agreement with a permanent peace treaty, promote North-South confederation, and establish one unified Korea in the end. In an effort to implement the sunshine policy, the first summit meeting between the two Korea leaders, President of the Republic of Korea (ROK) DJ Kim and Chairman of the Democratic People's Republic of Korea (DPRK) Kim Jong-il, was held in Pyongyang on June 13-15, 2000 [40].

This "sunshine policy" was supported by President Clinton's "engagement policy" with North Korea [41]. Despite recent claims regarding the failure of "sunshine policy" [42], it had a considerable effect on making the South-North Korean issue a vital agenda in the world politics and improving the U.S.-North Korea relations during the period of the Clinton administration [38].

President DJ Kim's period experienced a new climate in the Korean peninsula shaped by the collapse of the Soviet Union which resulted in altering the foreign policy of the United States toward the North. Here, the geopolitics was also crucial in the policy decision of South Korea's elite.

B. Elite Interests

A recent study on the new trend for abolition of the death penalty in South Korea is a typical example of a pivotal role of the political elite at the national level. Presidents and the top officials have personal experience or beliefs regarding capital punishment, and this has a significant effect on the change of death penalty policy. President DJ Kim experienced to be put on death row, and President Roh had a career background as a human rights lawyer. Furthermore the National Human Rights Commission (NHRC) commissioners had high sensitivity to human rights personally [43].

President DJ Kim played a significant role in the de facto suspension of executions in South Korea. Kim was a tenacious advocate for democratic reforms during the 1970s and 1980s, the period of authoritarian regimes, and had dedicated his life to toppling the military regimes. Kim had experienced all kinds of oppression tactics including kidnapping, incarceration, and torture by the Korean Intelligence. He was sentenced to death for instigating demonstrations, including the "Kwangju Uprising." The Kwangju Uprising, which took place in 1980, presented the brutal atrocities of the military regime (1961-1979) by President Park, and opened the door for the democratic government era [44].

Despite the repression of President Park's military regime, Kim influenced the politics in South Korea as the opposition party leader during the post-Park's era. The military coup led by Chun Doo-Hwan in 1980 which toppled the military regime resulted in the arrest of DJ Kim and his two-year exile in the United States. After returning from the exile, he formed some opposition political parties such as the Korea Democratic Party, and made political opposition activities against President Chun's authoritarian regime. One of his great achievements as the opposition party leader was a new Korean constitution approved in 1987 which allows people to directly choose their president. After running in the three presidential campaigns in 1987, 1992, and 1997, he was finally elected president in 1998 [45].

Although President DJ Kim won the presidential election in December 1998, during the presidential election campaign the voters oscillated between pro-North leftism and pro-egalitarian human rights activism which represent his different political inclinations. He was criticized for being a "pro-North leftist" in spite of his political background as an advocate of democratic society, and his remarks in favor of boosting a market economy and strengthening South Korea's alliance with the United States [46]. It has been claimed that the pro-North federation had provided DJ Kim with funds enough to operate the overseas political organization during his exile to Japan in 1972 [45].

In order to gain enough popularity among the radical groups which supported Kim, and obviate the possibility of losing the votes among the public who were doubtful about his political intentions, President DJ Kim made several presidential election campaign promises to institute the large-scaled reforms as the means of maintaining Kim's popularity [46]. One of the reforms launched by the DJ Kim administration was a drug policy reform in 2000. The Korean Health Care System Reform Act of 2000, or the law known as the Separation of Prescribing and Dispensing (SPD), prohibits doctors from dispensing medications to outpatients, and it bans pharmacists from prescribing drugs [47]. His radical supporters targeted wealthy physicians, who were under suspicion of garnering huge profits from illegal drug price differentials and excessive prescription before the 2000 reform at the expense of the patients' money and health [46]. As another presidential campaign promise, President Kim issued a declaration of an unofficial moratorium on executions in 1998 by opposing the death penalty [48]. The need of support from the radical groups as well as President DJ Kim's personal experience on the death penalty demonstrates the necessary element of death penalty policy change.

The majority of people supported the death penalty in South Korea, according to polls conducted by various news agencies, research agencies, and internet poll companies from 1998 to 2009 (See Fig. 4). Despite the variance in support (percentages ranging from 46 to 70), most of the public believe that the death penalty is still an effective way to deter crimes and decrease the crime rate in the society [34]. However, public opinion was not included in the decision making of death penalty policy during President DJ Kim's administration.

In sum, the political survival of the state elite, especially

the president, was significant to initiate death penalty policy change in South Korea. Separation with North Korea and the new international political climate created by the Soviet Union's collapse in the early 1990s produced the dynamic Korean peninsula politics, and also played a prominent role in President DJ Kim's willingness to perform various pro-egalitarian reforms including death penalty policy. These pro-egalitarian reforms were supported by the radical groups which were politically important to President DJ Kim. This Korean case study also proves the hypothesis of the paper by giving a pattern of policy development driven by 'environmental' variables which affect particular 'interests' of the state elite.

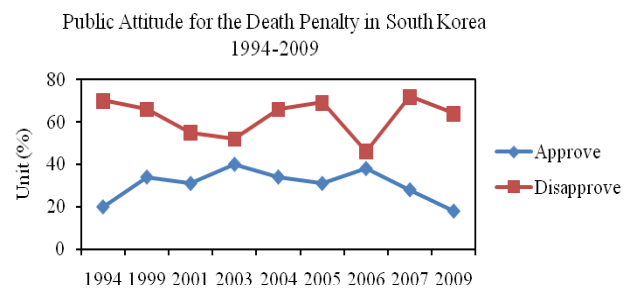


Fig. 4. Public attitude for the death penalty in South Korea (1994-2009) [34], [49], [50].

V. CONCLUSION

These case studies indicate that death penalty policy shifts in different countries comparably reflect the fact that human rights policies are based on elite interests, which are in part shaped by particular regional environments. This comparative study provides some interesting points that the cultural relativism was not the basic discipline to adopt capital punishment policy as some Asian government leaders have argued. It is worth noting that the state elite's interest combined with geopolitical situations is an important variable which explains the formation and pattern of death penalty policy in the Asian continent. With the applicability of human rights policy in the field of policy change, the cases studied in the paper help to generalize the theoretical proposition of the paper that policy change is shaped by both the political environment and the interest of the power. Nevertheless, further research is necessary to strengthen this generalization by doing more case studies and making a test of these cases studies in different settings (i.e. time and region).

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