

# Public Opinion and the Death Penalty Debate in China

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**What role does public opinion play in the present debate over the death penalty in China? Should one settle for an image of unanimous public support for the death penalty? The starting point of this article is a study of the growing awareness among Chinese legal experts, during the first decade of the millennium, of the particular role played by public opinion. Faced with violent opposition to their project to abolish the death penalty for economic crimes, legal experts share their concerns when confronted with such popular pressures, which can be reminiscent of certain Maoist practices. Using analyses of certain recent cases, the author seeks to bring out the other dimensions that make up public opinion, in order to question an idea that is ambiguous and problematical in the context of today's China.**

A society almost unanimously in favour of the death penalty: such is the image that has become commonplace in describing China's attitude to the question. However this image is too simple not to be misleading. One must therefore question the factors that lead to this perception of a Chinese "public opinion" under a political regime that does not make possible its formation and expression in sufficiently open and transparent conditions. Here we will question opinions relating to the death penalty. One is struck by the heterogeneousness and ambiguity of the positions expressed. Does "public opinion" today play a part in the debates about the death penalty in China? In seeking to answer this question, we will proceed in three stages: First we will briefly consider the Chinese notion of "public opinion" and its ambiguity in political and social practice in the course of the twentieth century. Secondly, we will establish its status in the current debate on the death penalty. In order to do so, we will describe how legal experts are meeting for the first time with unexpected opposition on the question of "economic crimes," and we will analyse the interpretations of this phenomenon in legal circles. Finally we will again question the problematic notion of *minyì* in such a context, in order to ask ourselves to what extent this ambiguous reality, variously translated here by the expressions "public opinion" or "popular opinion" (without overlooking the difference between them), actively contributes to the construction of a "people's space" (*minjian*), which I provisionally define as an informal space that allows people

to come together temporarily on their own initiative (rather than on that of the state) in order to take action or to discuss a certain common interest.

## The notion and evolution of public opinion

From Western history since the Enlightenment, one generally retains the idea that public opinion posits a well-defined social and institutional environment. This environment has been conceptualised by Jürgen Habermas with his idea of *Oeffentlichkeit*, "publicity," in the sense of a "public space" that allows free and critical public debate calling for reasoned argument. This ideal-type remains a convenient reference, despite the numerous discussions in political science and political philosophy around the notion of opinion – from the well-known debate in the United States between Walter Lippman and the philosopher John Dewey<sup>(1)</sup> to the radical

1. In *Public opinion* (1922), Walter Lippman deconstructs the misconceptions of the public in a democratic society about their own environment, for lack of the necessary specialised knowledge. This general ignorance of the public makes possible the manufacture of a consensus by the elites according to their own interests, through the media, etc. He therefore defends the role of experts, whom he considers better able than the ignorant masses to guide the authorities. Against this criticism, Dewey defends his ideal of "participative democracy" (*The Public and its Problems*, 1927). He recognises the problems raised by Lippman, but defends the possibility of the public forming a great community that can be educated about the real problems, pronounce judgements, and arrive at solutions to social questions. (cf. Robert Westbrook, *John Dewey and American Democracy*, Cornell U.P., 1991, pp. 293-306).

positions of Pierre Bourdieu<sup>(2)</sup> in France, to whom “there is no such thing as public opinion.”

The concept of “public opinion” was introduced in China from the West at the end of the nineteenth century. Before then, one finds the Chinese idea of *yanlu*, which conventionally designates the “channels through which criticisms and suggestions can be transmitted to the authorities.” Use of this word goes back to the Han dynasty,<sup>(3)</sup> designating the paths and institutions<sup>(4)</sup> through which the sovereign received criticism and advice. These practices and institutions were essentially centred around the person of the sovereign: they were aimed at the behaviour and policy of the sovereign only for his own benefit, so that he might correct his imperfections or his mistakes. One can consider that this imperial legacy finds a kind of continuation in contemporary China, even if it is in parallel with the gradual constitution of a public opinion in the modern, Western sense of the term. Thus an echo of this ancient practice can be found in Mao Zedong’s decision, as soon as the People’s Republic was founded, to establish, in what were of course very new conditions, a system for receiving “letters and visits” (*xinfang*), aimed at acquiring a better knowledge of the opinions of the people. The new elites, who do not question the legitimacy of the government, sometimes resort to this ancient notion in order to transmit their criticisms in an acceptable form.<sup>(5)</sup> (See the note on the studies of Isabelle Thireau on this question).<sup>(6)</sup>

The notion of public opinion in China has a range of meanings, both because of the number of translations of the expression and because of evolution in the historical context. What is really needed here is historical semantic research. We will simply note that the term chosen in the nineteenth century to express the modern Western idea was initially *yulun*, while *miny* refers back to a democratic context and expresses the people’s will. (Mao however, used “*renmin de yiyuan*” to designate the will of a “people” conceived according to communist ideology.) Today the terms *miny* and *yulun* are generally accepted as standard translations of the concept of public opinion originating in the modern West. It seems clear, in any case, that this notion in its original sense could not exist in Mao’s time: the Party was the one and only organ capable of collecting the opinion of the masses and translating it into political action. Most of the time, this idea therefore refers to a perspective that is both more limited and more instrumental, that of a “popular” opinion aroused, selected, or controlled by the political powers and the guardians of ide-

ology. Mao, in his own language, distinguished the “people’s will” (*renmin de yiyuan*) from opinion (*yulun*). The former had a positive meaning, while the latter was more pejorative.

This distinction is in reality profoundly linked to the notion of “people” as Mao defined it. As he saw it, “the people in today’s China includes the following classes: the workers, the peasants, the urban petit bourgeois and the national bourgeoisie.”<sup>(7)</sup> This definition is reproduced in the first constitutional text of the People’s Republic of China. It serves as the main criterion for distinguishing between two political concepts: that of “people” (*renmin*) and that of “subject” (*guomin*). As explained by Zhou Enlai, the difference between these two concepts is the following: “All the Chinese are subjects of China. But they do not all belong to the category of the people. The people include the majority of Chinese who enjoy the rights and liberties as defined by the Common Programme of the Chinese People’s Political Consultative Conference and by other legal measures. Subjects who are excluded from the people do not enjoy these rights, but they must observe duties and obligations.”<sup>(8)</sup> In order to avoid such an overtly ideological position being inscribed in the new Constitution, Zhou Enlai and Liu Shaoqi proposed that the concept of “subject” (*guomin*) be replaced by the notion of “citizen” (*gongmin*). The latter, which is purely legal, includes the two previous cate-

2. Pierre Bourdieu, “L’opinion publique n’existe pas” (1972), in *Questions de sociologie*, Minituit, 1984, pp. 222-235.
3. The term “*dujue yanlu*” (obstructing the channels of criticism and suggestion) is used to criticise Cao Cao, *Houhanshu. Yuan Shao zhuan* (Biography of Yuan Shao), j.74 a, Beijing, Zhonghua shuju, 1974, p. 2396.
4. Pierre-Etienne Will, “Le contrôle de l’excès de pouvoir sous la dynastie des Ming,” in Mireille Delmas-Marty et al. (eds.), *La Chine et la démocratie*, Paris, Fayard, 2007, pp. 111-158 (131).
5. See Wen Renzhu, “Yanlu yu weiwen zhi xilie tan” (discussion on the link between opening channels to popular criticism and the maintenance of social order), 30 July 2009, <http://bbs.book.sina.com.cn/thread-9-0/table-831645-5482.html>, accessible 9 September 2009; Zhao Yongfeng, “Jingti ‘feibang zui zusai yanlu’” (Be careful not to use accusations of defamation for the expression of popular criticism), 9 April 2009, <http://shipping.cctv.com/20090409/103631.shtml>.
6. “Faire référence à la parole du pouvoir.” See also Isabelle Thireau and Hua Linshan, *Les Ruses de la démocratie. Contester en Chine contemporaine*, Paris, Seuil, 2010; “Faire appel auprès du pouvoir public: Une nouvelle épreuve de justice en Chine et ses transformations,” in *Les sens du public. Publics politiques, publics médiatiques*, Daniel Cefai et al., Paris, PUF, 2003, pp. 137-156.
7. Mao Zedong, “Lun renmin minzhu zhuanzheng” (On the democratic dictatorship of the People), *Mao Zedong xuanji*, Beijing, Renmin chubanshe, 1964, j.4, p. 1475.
8. Zhou Enlai, “Gongtong gangling cao’an qicao de jingguo he gangling de tedian” (The process of elaboration of the project of the Common Programme and its characteristics), 22 September 1949, quoted by Xu Chongde, *Zhonghua renmin gongheguo xianfa shi* (A history of the Constitutions of the People’s Republic of China), Fuzhou, Fujian renmin chubanshe, 2003, p. 90.

gories and corresponds better with constitutional terminology. In reality, despite Mao's doubts,<sup>(9)</sup> it was finally incorporated into the Constitution of 1954.

Despite this conceptual compromise, the political definition of the "people" still remained operational and central to the practice of the Maoist regime. The concept evolved according to the redefinition of the enemy carried out by the CCP during successive political campaigns, all through the Maoist era. The situation only changed under Deng Xiaoping: the return to legality gradually caused the figure of the political enemy in society to fade, to be replaced by that of the criminal. This is a profound change, for it allows a society that was once submerged by politics to live at last within the framework of the law. A society dominated by ideology rests on the concept of the enemy, which is relative, creative, and dialectic, and allows adjustment according to circumstances, while a society subject to the law rests on the concept of crime, a notion that is concrete, stable, and legally circumscribed.

This experience of the Maoist era continues to produce its effects in a China that has become relatively more "depoliticised" today: practices linked to the notion of "minyi" are still marked by the imperial and Maoist political legacies. But with the emergence of the Internet in the last few years, particularly since 2003, public opinion is beginning to play a new role, carrying out a not inconsiderable function of control, in particular in debates about the death penalty.

## The emergence of "public opinion" in debates about the death penalty

Discussion of the death penalty in China began first in the specialised circle of Chinese jurists around the year 2000. One can now observe the coexistence of a minority who call for abolition of the penalty with a majority who seek to promote both rationalisation and restriction of the death penalty.

Over the last few years, this situation has developed in a new way with the widening of the debate to sections of public opinion that express themselves either locally, on the occasion of a particular case, or nationally, in particular on various Internet sites. The eruption of a public opinion that is overwhelmingly hostile to abolitionist policy has obliged the circle of jurists to take into account this unexpected opposition, coming from the base and not the pinnacle of society. To give an idea of the degree of violence reached by this debate, I will quote the words of a certain Zhu Zhongqing,

who posted on the Internet in January 2006 a text entitled "International declaration against the abolitionist trend." This internaut opposes abolitionism on the grounds that it contradicts human rights if one takes into account the rights of victims: "Treating criminals humanely is in effect tolerating the inhumanity that they have shown their victims. Moreover, this penalty is rooted in human nature, and expresses a desire for reparation that is legitimate." The anti-elitist attitude of this text is interesting. I quote:

*The abolitionist movements that are widespread in the world today are all led by politicians and elites against the public will (minyi). This policy, which is imposed on the masses by the elites in jurist circles, is by nature anti-democratic. Respecting the masses is a basic necessity of democracy; the right to legislative decision must be taken in hand by the masses, and the elites of the legislative apparatus should dispose only of a right to propose with the aim of assisting the people in the elaboration of the laws instead of wanting to carry it out as they please. To lead the led against their will is in fact to 'kidnap' them (bangjia)!<sup>(10)</sup>*

## For and against the abolitionist project in relation to "economic crimes"

In the middle of the 2000s, Chinese legal circles felt they were on favourable ground when they raised the possibility

9. One can see that Article 16 of the draft of this Constitution stipulates that the People's Republic of China protects the people's democratic system, and defends the security and legal rights of all citizens (...). However, Mao asks the following question: "What is the citizen (*gongmin*)?" Li Weihai then explains that "the notion of citizen, as defined in the Constitution, includes all people who have Chinese nationality." Deng Xiaoping comes down in favour of the replacement of "*quanti renmin*" by that of "*quanti gongmin*"; and Liu Shaoqi specifies: "the citizen here designates what in the past was called '*renmin*' (the people) and '*guomin*' (the subjects or nationals). Landowners are also part of the citizens, it is simply that they are citizens who have been deprived of political rights. If we mention only 'the people,' this category of subjects or *guomin* will be necessarily excluded." See Xu Chongde, *Zhonghua renmin gongheguo xianfa shi*, op cit., p. 176, 195.
10. Six arguments listed in this text reproduce those that have often been put forward by the anti-abolitionists: "1) Abolition of the death penalty in reality runs counter to human rights, if one considers in particular victims' rights; 2) abolition is in fact inhumane, because to treat criminals humanely is to tolerate the inhumanity that they have shown to their victims; 3) abolition is contrary to human nature, because the desire for vengeance is part of human nature. The death penalty expresses a demand for redress in the name of the fundamental interests of humanity; 4) the abolitionist position is in reality contrary to democracy; 5) the death penalty is a heavy penalty but it is not cruel; 6) abolitionism flies in the face of the historical trend in favour of values such as democracy, human rights, humanity, and justice." Zhu Zhongqing, "Guoji fan feichu sixing yundong xuyan," <http://main.tianya.cn/publicforum/content/law/1/24006.shtml>. Accessible 8 July 2009.

of abolishing the death penalty in the case of “economic crimes.” Indeed, the debates carried out for legislative purposes on the necessity for rationalising a particularly chaotic penal procedure had already produced some results, even if they were still limited. The most remarkable was undoubtedly the return to the Supreme People’s Court, in January 2007, of the power to review death sentences. The fact that a new concept, that of “economic crimes,” had gradually come to the fore in numerous debates provided jurists with new grounds to revive their abolitionist project.

The recognition in the 1980s of this new penal category is indeed evidence of progress in relation to the Maoist era. Crimes relating to the economy were then defined as counter-revolutionary behaviour, and therefore as political in nature. Deng Xiaoping’s reform reintegrated “economic crimes” into the law. Despite this effort towards depoliticisation, a “judicial” habitus formed by Maoism nevertheless continues to mark all penal policy relating to this kind of crime, which is increasing steadily. The “Decision of the Standing Committee of the National People’s Congress on the severe punishment of criminals who seriously undermine the economy” is an example of this. Passed by the National People’s Congress on 8 March 1982, and coming into effect on 1 April the same year, it aimed to complete the Penal Code of 1979 and to reinforce severity towards criminal economic acts such as “the act of seeking to obtain exorbitant profits through smuggling, the illicit purchase of foreign currency and speculation, the theft of public property, the theft and sale of old and precious objects and the extortion and acceptance of bribes.”<sup>(11)</sup> These offences henceforth come under various categories of offences defined in the Penal Code as “undermining the socialist economic order” (Chapter III), “undermining property” (Chapter V), “disrupting the administrative management of society” (*shehui guanli zhixu*) (Chapter VI), and “neglecting the duties one is entrusted with” (Chapter VIII).<sup>(12)</sup> In the framework of a circumstantial criminal policy, all these offences were subject to the death penalty. Since the application of these laws implies arbitrary behaviour inherited from the Maoist era, it is now objected to by most jurists.

In 2006, Zho Bingzhi<sup>(13)</sup> and Wan Yunfeng,<sup>(14)</sup> having carried out a study aimed at redefining “economic crimes” more strictly, found that 19 of these crimes committed without the use of violence were still subject to the death penalty. They amount to over a quarter (27.94 percent) of all death sentences and almost half (43.18 percent) of those sentenced without having made any use of violence.<sup>(15)</sup> In their

proposal addressed to the legislators, the two authors defend their project of complete abolition of the death penalty in cases of economic crimes. Their arguments can be summarised as follows: 1) On a theoretical level, it is necessary to abolish the application of this sentence to economic crimes because of the lack of legitimacy of the notion of retribution (*baoying gengju shang de qushi*); 2) on a practical level, its application lacks both dissuasive and preventative effectiveness; 3) finally, by their nature, these crimes are more amenable than others to an abolitionist position.

I quote the last two arguments because of the discrepancy they reveal between the perceptions of jurists and those of sections of public opinion.

*Despite numerous laws concerning the application of the death penalty to economic crimes, their effectiveness is unsatisfactory: first of all, various crimes of an economic kind do not diminish with the increase in the number of death sentences: on the contrary they continue to increase (...) For example, in 2001, there were 847 cases of smuggling (zousi) tried in the country as a whole, an increase of 122 percent over 2001; 4,740 cases concerning the production and trafficking of counterfeit money, an increase of 12.14 percent over the previous year; 17,931 people were sentenced for corruption, among whom were three cadres at the ministerial and provincial level, 52 cadres at the prefectural and departmental level and 350 cadres at the district level<sup>(16)</sup> (...) This is enough to demonstrate that the preventive and dissuasive function of the death penalty is extremely limited in the case of economic crimes (...)*

11. “Decision of the Standing Committee of the National People’s Congress regarding the severe punishment of criminals who seriously undermine the economy,” in *The Criminal Law and the Criminal Procedure Law of China*, Beijing, Foreign Languages Press, 1984, p. 229.

12. *Ibid.*, p. 8.

13. Doctor and Professor in Legal Sciences, Zhao Bingzhi is Director of the Institute of Studies on Legal Science and Criminal Law at Beijing Normal University and President of the Association of Criminal Studies in the National Association of Legal Studies. He is also vice-president of the Chinese branch of the International Association of Criminal Jurists.

14. Doctor in Legal Sciences, Wan Yunfeng is a judge in the People’s Intermediate Court in municipality of Canton.

15. Zhao Bingzhi and Wan Yunfeng, “On the limitation and abolition of the death penalty applied to economic crimes,” in Zhao Bingzhi, (ed.), *Sixing zhidu zhi xianshi kaocha yu wanshan jianyan* (Investigation and legislative Perfection on the Death Penalty), Beijing, Zhongguo renmin gong’an daxue chubanshe, 2006, pp. 293-312.

16. There are five major levels of cadres in today’s Chinese administration: 1) leaders of the Party and the government (*dang he guojia lingdaoren*); 2) the level of ministries and provinces (*shengbujij*); 3) the level of prefectures and departments (*ditingjij*); 4) the level of districts, which is also equivalent to a section (*xianchujij*), and 5) the lowest level, which is equivalent to an office (*kejij*).

The same is true in the case of corruption. Following the death sentences passed on Liu Qingshan and Zhang Zishan<sup>(17)</sup> at the beginning of the regime, the death penalty was rarely applied to this kind of case under Mao. It was only beginning with the time of the reforms that the number of crimes found in the category of corruption gradually increased, particularly in the last few years. Thus, following the death sentence passed on Guan Zhicheng, formerly secretary general of the CCP at the General Steel Company in Beijing, three other criminals guilty of corruption in the same company were discovered; following the execution of Hu Changqing, former vice-governor of the province of Jiangxi, other dignitaries such as Cheng Kejie, former vice-president of the Standing Committee of the People's National Congress, Li Zhen, former director of the Tax Office of Hebei Province, and Wang Huaizhong, former vice-governor of Anhui Province, were successively sentenced to death for corruption. A few dozen senior government officials also guilty of corruption, such as Liu Fangren, former secretary general of the Party in Guizhou Province, and Zhang Guogang, former vice-governor of the province of Hubei, were punished one after the other.<sup>(18)</sup>

In order to demonstrate that this abolitionist project is feasible, the authors borrow an argument from Lu Jianping:<sup>(19)</sup>

*Economic crimes committed without the use of violence do not display the visible, immoral, and cruel character that characterises violent crimes; moreover, the social damage they cause is above all expressed in figures, which are relatively abstract and therefore do not so easily provoke popular feeling.*<sup>(20)</sup>

Many jurists who share this point of view occasionally express themselves in public. Thus, He Weifang, professor at Peking University and a supporter of the abolition of the death penalty,<sup>(21)</sup> on the occasion of "National Promotion of Rule of Law Day," 4 December 2006, published an article in *Nanjing zhoumo* (*Nanjing Weekly*). In this text, entitled "The death penalty is not dissuasive in preventing crime" the author wrote:

*Economic crimes such as corruption and accepting bribes belong to the category of crimes against prop-*

*erty. Such people do not seek to attack human life and have not committed violent crimes such as arson, murder, or looting. What they seek is to appropriate money illegally. When someone is condemned to death for a sizeable sum of money, it comes down to valuing human life in monetary terms: it seems to me that this is to place money above human life. In my opinion, the best way to punish these people is to deprive them of money so that they suffer for the rest of their lives from deprivation of what they love. But is it reasonable to deprive them of life?*

*Rather than establishing good systems beforehand, we only seek to punish afterwards and to vent our anger on corrupt cadres. This can temporarily soothe the people's indignation, but it is not a long-term solution. We should improve institutions instead of reinforcing superstitious attitudes about the death penalty.*<sup>(22)</sup>

As early as 2004, this abolitionist project had provoked vehement reactions in public opinion: these jurists were accused of being "hypocritical moralists" or of being of the "same species as the corrupt cadres."<sup>(23)</sup> In 2007 this kind of reaction in the media increased and became even more explicit.

When He Weifang's text was published at the end of 2006, an internaut confronted him and challenged him to

17. This was the most famous case of the condemning to death of corrupt cadres that resulted from the "three antis" campaign at the end of 1951. See Bo Yibo, *Ruogan zhongda juece yu shijian de huigu* (A retrospective of some decisions and of important events), Beijing, Zhonggong dangshi chubanshe, 2008, vol.1, pp. 105-108.
18. Zhao Bingzhi and Wan Yunfeng, "On the limitation and abolition of the death penalty applied to economic crimes," *op. cit.*, pp. 307-308.
19. Born in 1963, Doctor in Legal Sciences Lu Jianping is Professor of Law and Deputy Director of the Institute of Legal Studies and of Criminal Law at Beijing Normal University. He is also Deputy Permanent Secretary of the Council of the Association of Criminal Studies in the National Association of Legal Studies of China and Deputy Secretary and Executive Member of the International Association of Criminal Jurists.
20. Lu Jianping, "Shilun zhongguo feibaoli fanzui sixing de feizhi" (On the abolition of the death penalty applied to non-violent crimes), in Zhao Bingzhi (ed.), *Zhongguo feizhi sixing zhilu tansuo* (Discussion of the paths towards the abolition of the death penalty in China), Beijing, Zhongguo renmin gong'an daxue, 2004, p. 47.
21. Born in 1960 in Shandong, He Weifang is Professor of Law at Peking University, editor of the journal *Zhongwai faxue* (Chinese and Foreign Legal Studies), and Vice President of the Association for Historical Study of Foreign Law and of the Association for Comparative Law Studies in the National Association of Legal Sciences. He is known for his positions in defence of human rights in China and for his courage in criticising the present legal system.
22. He Weifang, "Sixing nanyi zhenshe fanzui," *Nanjing zhoumo*, 7 December 2006.
23. Li Weihua, "Toushi sixing cunfei zhizheng" (An analysis of the debate on the maintenance or abolition of the death penalty), *Wenzhaobao*, 2 December 2004.

prove his assertion about the lack of dissuasive effect of the death penalty. Above all, he defended the idea that the penalty is a response to the justified “indignation” of public opinion: the people can be wrong, but it is wrong to consider them as necessarily irrational.<sup>(24)</sup>

After the publication in *Xinxi shibao* (*Information Times*) by a certain Yan Tao of an article entitled “China must cease applying the death penalty to economic crimes,” reaction was swift. Thus, a certain Zhao Yong published a short article entitled “It is not yet time to talk blithely of abolishing the death penalty for economic crimes” in *Xinxi shibao* (*Modern Information*). Liu Min and Li Yueming posted articles on the Internet respectively entitled “To abolish the death penalty for economic crimes is to tolerate them,” and “How can anyone say that there is no connection between the question of the maintenance or the abolition of the death penalty for economic crimes and the fight against corruption?”<sup>(25)</sup>

Among the various reactions of public opinion, I will mention one case that seems to me to be representative. An internaut gives his contribution the following title: “Should the right to life of corrupt cadres come before the economic losses caused by their corruption?” He attacks the position of principle taken by jurists who oppose the execution of cadres found guilty of the embezzlement of particularly large sums of money. He deems pretentious and hollow the argument according to which “referring to the economic value of the goods embezzled in order to assess the value of human life is to devalue this human life itself.” He expresses his indignation thus:

*Peasants in Hunan Province sell their blood in order to survive, and those who are infected with AIDS are deprived of means of treatment and leave orphans behind. The unemployed and poor peasants commit suicide because they have no way of paying for the studies of their children who have gained entrance to university. As for the corrupt cadres, one sees them pitilessly monopolising the wealth that could save all these lives. Is not failing to take economic logic into account in cracking down on crime also to deny all value to the life of the poor population?*

He also rejects the jurists’ argument on the non-dissuasive character of the death penalty in economic matters: Chairman Mao “punished corrupt cadres with severity and without pity (...) Such an application of the death penalty made

it possible to make corrupt senior cadres in China disappear for 20 years.”<sup>(26)</sup>

Jurists such as Chen Xingliang show their sensitivity to the objections coming from the lower reaches of society, according to which, under cover of abstract principles, abolitionism in economic matters could favour the powerful and perpetuate inequality. He therefore reprints that internaut’s text in the editorial of a special edition about the death penalty, but adds the following comments:

*The question of corruption is closely linked to the political regime and to the power structure in particular. While penalties, including the death penalty, can play a certain role in controlling corruption, they cannot cut out the evil at the root. [Moreover], the phenomenon of corruption linked to the social conditions of a market economy does not have the same characteristics as in a planned economy. Today, even if we were to kill a hundred high officials like Liu Qingshan, that would not be enough to solve the problem of corruption. The mixture of a superstitious value attributed to the death penalty and of a fierce hatred of corruption is the origin of particularly irrational reasoning. If we do not provide any clarification on the subject, it will be impossible in China to restrict or even abolish the death penalty in the short term.*<sup>(27)</sup>

## The thinking of jurists on public opinion

In the professional milieu of law specialists, we are witnessing a gradual taking into account of the tension between the judiciary and what is called public or popular opinion (*minyī*). This tension is now sufficiently obvious for the media to question jurists on the subject. Chen Xingliang states in particular:

*Popular opinion has its own limitations. It is inevitably characterised by irrational and emotional aspects. Moreover, the support of public opinion always presents a particular rather than a general aspect: the sup-*

24. *Ibid.*

25. “Tanfu fanzui sixing: cun youyi, fei youhai” (It is better to maintain than to abolish the death penalty for crimes of corruption), <http://hj.rednet.cn/c/2007/03/30/1168900.htm>. Accessible on 30 March 2007.

26. Yundan shuinan, “Tangan de ‘shengming quan’ gaoyu tanwu de jingji jiazhi?” quoted by Chen Xingliang in *Sixing beiwanlu* (Memorandum on the death penalty), Wuhan, Wuhan daxue chubanshe, 2006, pp. 377-379.

27. *Ibid.*, p. 379.

port that was expressed for Wang Binyu<sup>(28)</sup> (a worker found guilty of murder committed in order to avenge the unjust behaviour of his employer) is in fact the opinion of the media and of the internauts, and is different from real public opinion. If the judiciary takes account only of this kind of opinion, this will inevitably create an iniquitous situation because (...) the majority of similar cases were not reported in the media and did not therefore attract the attention of society.

He thus emphasises the danger of such a situation: “The media will influence the judgement, and people will seek out journalists instead of lawyers when there are legal problems. This is quite clearly not a normal situation under the rule of law.”<sup>(29)</sup>

The interventions of another law professor, Lu Jianping, are also interesting in that he recognises explicitly, in the present usage of the notion of *minyì* (public or popular opinion), a more or less conscious legacy of the Maoist notion of *minfen* (popular indignation). Now we know the role allowed to that kind of “popular indignation” in the procedures of “justice by the masses” (*qunzhong sifa*): this notion served as legitimisation for the expeditious application of the death penalty during various political campaigns in the past, and as political manipulation of public opinion, in particular the anger of the people, while minimising the role of the legal system. It is therefore useful for us to resituate these two distinct but closely connected notions in their historical context. Originating in the internal purges of the CCP carried out in Jiangxi in the 1930s, “judicial practice by the masses” then developed in Yan’an, which had become the Communists’ main base. It then extended into rural society during the agricultural reforms launched in the areas progressively conquered by the CCP. Finally it was introduced into the national legal system, particularly in the cities, during the 1950s, in the course of successive political campaigns. Carried out first in the name of the Party, then in the name of the people, this judicial practice generally consisted of organising meetings of denunciation with incitement to ideological hatred, which made possible torture and collective violence, and ended with a “trial by the masses,” making it possible in a performative manner to pass a verdict, and then to execute the accused. In this operation, the mobilisation of the emotions of the people was a central dimension, without which this kind of judicial practice would hardly be distinguishable, on a formal level, from other kinds of trials. To illustrate it, we select here a typical example of this practice, which took place in Shanghai in March 1952, during the campaign of

the “three antis” (aimed at fighting corruption, waste, and bureaucratism).<sup>(30)</sup> Towards the last stage of this campaign of rectification, in March 1952, with the aim of obtaining spectacular results, all the people’s courts of the “three antis” (*sanfan renmin fating*)<sup>(31)</sup> summoned shopkeepers without any formalities and subjected them to massive torture in order to extract confessions. Thus the Shanghai No. 2 printworks summoned Bao Xintai, a salesman in a hardware shop, and ordered him to kneel while pulling him by his coat and his hair. He was forced to admit his crime in writing, which was supposedly having paid bribes to Communist cadres. Elsewhere, the Tax Office of Jiangning District summoned Bai Jianhua, a local shop owner. He was slapped until he passed out. As soon as he recovered he was accused of pretending to be dead and he was beaten with a stick. Another shop owner, He Runquan, was struck by three of the Office’s employees in turn for an hour and a half. The Tax Office of Gaoqiao District locked the shop owner Li Junrong in a large room, where ten people beat him up and stabbed his fingers with a needle.... The People’s Bank summoned and held captive the president of the board of management of the Diesel Company of China for two weeks and refused to release him.<sup>(32)</sup>

This “judicial practice by the masses,” organised and encouraged by the CCP at the beginning of the establishment of the regime, continued under Mao, despite attempts to return to constitutional practice supported by certain Communist leaders and by the majority of the important members of the democratic parties who formed part of the government be-

28. Wang Binyu, a peasant worker from Ningxia, killed five of his fellow workers on a building site on 11 May 2005. He stated that his father needed money to treat a broken leg. Wang went to see the foreman in order to receive his pay for the year, 5,000 *yuan*, before going back to his father, but the foreman paid him only 50 *yuan*, which Wang refused. In order to solve the problem he asked for assistance from the municipality’s Department of Labour. Following its intervention, the foreman agreed to pay Wang’s wages in five days. On 11 May, Wang returned to the building site to collect his pay, but in the meantime his room had been locked. Filled with anger, he had an altercation with other workers; he killed four people and wounded a fifth with a knife. On 16 June 2005 the Intermediate People’s Court in Shizuishan sentenced him to death, but Wang appealed. On 19 October, the People’s High Court of Ningxia confirmed the initial judgement, and Wang was executed the same day. This case gave rise to a major debate about murder committed in the throes of passion, as well as on the situation of peasant workers. Public opinion was widely sympathetic to Wang and wished to see him escape execution.
29. Chen Qingliang, *op. cit.*, p. 364.
30. See Marie-Claire Bergère, *La Chine de 1949 à nos jours*, Paris, Armand Colin, 2000, pp. 36-38.
31. In Shanghai 69 People’s Courts were organised for the “three antis.” For more detail, see Zhang Ning, “A Political Turning Point in Shanghai’s Legal System: 1951-1952,” paper presented at the International Academic Conference on the History of PRC State-Making, Hong Kong, 22-24 June 2009 (forthcoming in *Lingdaoze* (*Leaders*), Hong Kong, February 2010).
32. See Yang Kuisong, “Shanghai ‘wufan’ yundong zhi jingguo” (The unfurling of the three antis campaign in Shanghai), <http://www.yangkuisong.net/ztlw/sjyj/000252.htm>. Accessible on 20 April 2009.

tween 1954 and 1956. At the worst times, there arose in various provinces during the Cultural Revolution “supreme courts of poor and middle poor peasants” who assumed the right to judge and execute individuals in the name of the people in the villages.<sup>(33)</sup>

In this practice, the notion of “popular indignation” elaborated by Mao in the early 1950s served as a justification to apply the death penalty and to distinguish between immediate application and a death sentence with a two-year stay of execution.<sup>(34)</sup> I quote from the first text in which this notion is highlighted officially as a legal reference:

*The Central Committee has decided to distinguish, among the counter-revolutionaries unmasked within the Party, the People’s Liberation Army, the People’s Government, in education, commerce and industry, in religious circles, in the democratic parties, and in the People’s Associations, between those who deserve to be executed and those who do not deserve death, but must be punished by imprisonment (temporary or for life), or controlled by the masses. We should kill only those who have created a blood debt, committed serious crimes by provoking the indignation of the masses such as raping several women or looting or causing serious damage to the state. To the others we will apply only the death penalty with a two-year stay of execution (...) As for counter-revolutionaries in rural areas, we must kill only those who must be sentenced to death in order to soothe popular indignation. Absolutely nobody must be killed against the wishes of the people (...) killing must be carried out in conformity with the wishes of the people with the aim of soothing their indignation and encouraging production.*<sup>(35)</sup>

Given that the aim was to arouse collective hatred in the masses, it is not surprising that during the campaign to repress counter-revolutionaries launched by Mao on 10 October 1950, many death sentences pronounced during mass trials concerned local tyrants, ordinary thieves, and rapists rather than political enemies. The accessible files in the municipality of Shanghai<sup>(36)</sup> show that many criminal cases that had already been heard were subjected to heavier sentences in accordance with the following directives from Mao: 1) the number of death sentences was fixed by Mao himself: as he saw it, “In a large city like Shanghai one or two thousand people should be executed during 1951 in order to solve the problem. It is absolutely necessary to kill between two and five hundred people in the spring in order to curb the inso-

lence of the enemy and reinforce the morale of the people”;<sup>(37)</sup> 2) the masses must be mobilised and denunciation meetings organised (*suku dahu*): indeed, it was more difficult to mobilise the masses and arouse collective hatred in the cities than in the villages using ideological slogans, because the acts of political enemies were not perceived sufficiently concretely to fuel the hatred of the urban population; consequently, local authorities were sometimes obliged to change the sentence in certain cases that had already been heard, in order to achieve this political objective.

This notion of “popular indignation” continues to significantly influence legislation relating to the death penalty, and even its application today. Although it appears only in the special criminal laws such as the “Decision of the Standing Committee of the National People’s Congress concerning the rapid trial procedure against criminals who seriously disturb public security” passed on 2 September 1983,<sup>(38)</sup> its role in the application of this penalty is constantly observed and criticised by jurists. Thus Chen Xingliang, during a debate at Peking University on 13 May 2004, spelt out the problem in the following terms:

*There is a well-known expression that makes the rounds in this country, which is that “we must kill in order to soothe public indignation.” Although it is not a legal term that appears in the Penal Code, for a long time this expression has played an important part in the verdicts in cases subject to the death penalty. The use of this expression shows that popular opinion serves as a justification in the application of the death penalty; in other words, public opinion gives the death penalty its moral legitimacy and its character of “political justice.”*<sup>(39)</sup>

33. Zhang Cheng, “Les massacres dans les villages du district de Dao au Hunan,” in Song Yongyi (ed.), *Les Massacres de la Révolution culturelle*, Paris, Buchet /Chastel, 2008, pp. 177-178.
34. Zhang Ning, “Le débat sur la peine de mort aujourd’hui en Chine,” *Perspectives chinoises*, no. 91 (2005), p.5.; “The Political origins of death penalty exceptionalism: Mao Zedong and the practice of capital punishment in contemporary China,” *Punishment and Society*, vol. 10, no. 2 (2008), pp. 117-136.
35. “Zhongyang guanyu dui fanyou sizui de fangeming fenzi ying dabu caiqu panchu sixing huanqi zhixing zhengce de jue ding” (Decision of the Central Committee of the CCP on the sentencing to death with a stay of execution of the majority of counter-revolutionaries who deserve death), 8 May 1951, in Mao Zedong, *Jianguo yilai Mao Zedong wengao* (Manuscripts of Mao Zedong since the creation of the People’s Republic of China), Beijing, Zhongyang wenxian chubanshe, 1987, vol. 2, pp. 280-282.
36. “Shanghaishi junshi guanzhi weiyuanhui panchu fangeming anfan de jue dingshu ji shizhengfu de pishi” (Official responses of the municipal government of Shanghai and the decision of the military control committee of the CCP in Shanghai on the conviction of counter-revolutionaries), Archives of the municipality of Shanghai, B1/2/1060.
37. Mao Zedong, *Jianguo yilai Mao Zedong wengao*, op. cit., p. 47.
38. *The Criminal Law and the Criminal Procedure Law of China*, op. cit., p. 248.
39. “Sixing duihua” (Dialogue on the subject of the death penalty), in Chen Xingliang, op. cit., p. 293.

The majority of jurists who favour the restriction and eventual abolition of the death penalty perceive in this notion today two contradictory elements, referred to by some as the “two faces of popular indignation” (*minfen de liangzhang lian*): on the one hand it represents a certain spontaneous sentiment in favour of just retribution, but on the other, as what is called “collective awareness” (*jiti yishi*) or “public feeling” (*gongzhong qinggan*), it has an irrational, emotional, and occasionally hysterical dimension.<sup>(40)</sup> To these experts, it is the latter aspect that calls for the vigilance of a reasonable legislator.

This thinking in fact expresses a common perception among jurists, that of a judicial apparatus that is caught in a pincer movement from above and below: to the ideological interventions of the government is added the constant possibility of the mobilisation of a “public opinion” more or less manipulated by the same government. Liang Genlin, in a lecture on “Public recognition, political choice, and the limitation of the death penalty,” emphasises the following:

*Politicians have to take public opinion into account, respect it, and represent it, but they must also steer it in a reasonable direction. What needs to be emphasised is that democracy is not the same thing as populism. This is why one must not blindly follow public opinion and passively surrender to its demands.*<sup>(41)</sup>

Consequently, the argument of jurists who support a restriction of the death penalty (before its possible abolition) needs to be heard on two fronts: against the government (deemed by some to be *guanyi*), which has remained favourable to exceptional measures that go beyond the prescriptions of the Penal Code and the spirit of the law (*fayi*), but also against the “people,” or rather against the forces that present themselves as being “popular” but which, in the absence of the rule of law, are more populist than “democratic.”

This difficult situation was confirmed on 10 April 2008, during a speech by Wang Shengjun, the new president of the Supreme People’s Court.<sup>(42)</sup> During an inspection tour of Shenzhen, he listed the three conditions necessary for the application of the death penalty in China today: 1) it must be applied according to the law; 2) the general situation of public security must be taken into account; 3) lastly, one must base oneself on the perception and the feelings of society and of the masses.<sup>(43)</sup> This last condition immediately gave rise to reactions in the media, and particularly from jurists. In an interview with *Nandu zhoukan* on 18 April 2008, He Weifang criticised the statement of the new president of the Supreme Court as “not being

in accordance with the idea of the modern rule of law.” Strongly opposed to this idea, the jurist challenged him in the following terms:

*The assessment by judges of popular sentiment and of the local situation where public security is concerned varies according to the perception of each individual, and it can sometimes be influenced by differences in regional crime rates. If one were to follow these perceptions subject to regional variation, one would violate the principle of equality before the law. Public opinion is difficult to measure. Modern society is pluralist by nature, and each individual has their own opinion on a given question (...) Opinion about criminality can be influenced by highly complex factors. For example the tone and the manner used by an informer to describe a case can suffice to suggest completely different versions: the same person can be described as an abominable criminal who deserves to die in order to soothe popular indignation or can be presented as someone who deserves compassion (...) Today public opinion expressed on the Internet is even more variable, complex, and difficult to assess (...) Public opinion is never stable.*

*One of the criteria on which to judge the existence of the rule of law is precisely to see if justice can be independent of public opinion. When justice depends on public opinion, we are in the situation of the mass trial where everyone raises their hands and adopts a decision by acclamation. That is terrifying. China still finds itself in a situation where the level of professionalisation in the judicial field remains very low. Among 200,000 judges, only 20 percent have had professional training.*

*The proper functioning of the legal system often depends on freedom of speech and the free circulation of*

40. “Dong Wei sixing an de luntan” (Discussions on the case of Dong Wei), in Chen Xingliang, *ibid.*, pp. 245-246.

41. Liang Genlin, “Gongzhong rentong, zhengzhi jueze yu sixing kongzhi,” in Chen Xingliang (ed.), *Fuzhi de yanshuo* (Discourse on the legal system), Beijing, Falü chubanshe, 2004, p. 360.

42. A native of Anhui and a history graduate of Hefei Normal School, Wang Shengjun joined the CCP in 1972. A member of the Central Commission for the control of discipline stemming from the 15th Plenary of the CCP and a member of the Central Committee stemming from the 16th and 17th Plenaries of the CCP, he was appointed President of the People’s Supreme Court on 15 March 2008 by the first session of the 11th National People’s Congress. On his problematical appointment, see Willy Lam, “The Politicisation of China’s Law-Enforcement and Judicial Apparatus,” *China Perspectives*, No.2 (2009), pp. 42-51.

43. <http://zh.wikipedia.org/wiki/%E7%8E%8B%E8%83%9C%E4%BF%8A>. Accessible 10 September 2009.

public opinion. These are the best means of keeping an eye on the judiciary (...) The main reason why a judge in China is often in an untenable position, caught as he is in the crossfire, is not due to too much media openness but to the lack of independence of the judiciary. In the case of Zhang Jinzhu, the wrongdoer was the political commissar of a Public Security Bureau in Zhengzhou. He ran into one person, causing his death, and injured another, after having had too much to drink. Although the majority of jurists opposed his death sentence, he was unable to escape it. Before his execution, Zhang said that he had in fact been condemned by the media. In reality, this is not true. Rather it was in response to media reports that the authorities officially decided in favour of a severe punishment. It is the determination of the authorities that puts so much pressure on the court; that is the gist of the problem. The same problem arose in the case of Liu Yong.

The judicial field is elitist by nature. However, in a democratic regime it is controlled by public opinion. The latter creates something like a general atmosphere and influences the verdict to some extent. The judiciary takes due note of public opinion, most often at the moment when the laws are drawn up. That is the fundamental point. It is the legislative institutions that can act as the echo of public opinion. They make it possible to give the latter accurate expression.<sup>(44)</sup>

This statement emphasises the problematic nature of the role played by public opinion: it plays a minor part in the legislative process but has a not inconsiderable influence at certain decisive moments in the application of the law.

## Another side of public opinion

One cannot but understand the aspiration of the world of professional jurists towards greater independence and a greater rationalisation of the judiciary. Nonetheless, careful examination of the popular mobilisations when death sentences are passed produces a more nuanced contrast between a professional and rational elite, and a necessarily emotive and irrational public opinion. I will give one or two examples of this.

The case of She Xianglin is worthy of our attention here, as the tragedy that befell him had a great impact because of the numerous interviews with the accused and with his family that appeared in newspapers and on television. Here is a

summary of the case: In 1994, She's wife, who suffered from mental problems, suddenly disappeared. Shortly afterwards, the body of a woman whose face has been rendered unrecognisable was discovered. The wife's family suspected the husband of having eliminated her and mobilised 220 people who signed a petition demanding an immediate execution.<sup>(45)</sup> The municipal court of first instance sentenced him to death. The evidence was nevertheless sufficiently scanty to give rise to a series of appeals, at the end of which the sentence was reduced, four years later, to 15 years' imprisonment. In 2005, however, Mr. She's wife reappeared, whereupon he was declared innocent and was paid compensation by the state.

This case shows two different aspects of the role of the so-called *minyī*. At first, the sentencing to death of an innocent man was due above all to the pressure of the local population, mobilised by the family of the presumed victim. On the principle that "any killer deserves to be killed," a petition was addressed to the local court. Considerable pressure was brought to bear on the judicial and police apparatus. But subsequently the publicity given to this case led to the highlighting of certain faults in the criminal apparatus in China. Not only is the onus on the accused to prove his innocence, but the extortion of confessions by torture generally plays a disproportionate role. This practice is theoretically forbidden by the penal procedure legislation,<sup>(46)</sup> but in reality, the prosecution does not bring a case without a confession, and without a confession the judges do not decide on a sentence. The joint effect of these two practices is to encourage the use of torture. The family of the unfortunate Mr. She described the state he was in after being questioned: he was covered in wounds, and had a broken finger. He himself later stated on television that he had had to "confess" to no less than four different versions of his crime, after having been subjected to long interrogations without food, water, or sleep.

Thus, while it was "popular indignation" that first expressed itself in local demonstrations, a movement of sympathy emerged on the level of the provincial and national media. Relayed by the family and supporters of the accused, this movement was able to encourage critical thinking about the abuses of the penal system.

A more recent and even more spectacular case is that of Yang Jia, a 28-year-old Beijinger. Groundlessly accused of

44. He Weifang, "Minyi jue ding sixing: Da Nandu zhoukan jizhe Chen Jianli wen" (Does public opinion decide the application of the death penalty? An answer to the questions asked by Chen Jianli, journalist at *Nandu zhoukan*), <http://blog.sina.com.cn/heweifang>, accessible 4 May 2009.

45. Yu Yifu, "She Xianglin yuan'an tantao" (A discussion on the case of unjustified accusation of She Xianglin), *Nanfeng zhoumo*, 14 April 2005.

46. See Article 35, *The Criminal Procedure Law of China, op cit.*, pp. 124-125 and p. 181.

stealing a bicycle on his first trip to Shanghai in 2007, Yang was subjected to six hours of interrogation. On his return to Beijing he continued to demand justice but came up against the obstructions of the police. Finally he returned to Shanghai in June 2008. On 1 July 2008, at the main office of the district police of Zhabei, he attacked 11 policemen, killing six and wounding five others. Yang Jia was sentenced to death by the intermediate People's Court of the municipality of Shanghai for intentional homicide at the first trial on 1 September that year, but when his appeal was heard, over a thousand people expressed their support outside the court. He suddenly took on the stature of a popular hero. His declaration "If you won't do justice to me, I will do it to you!" became an endlessly repeated slogan on the Web.<sup>(47)</sup> A section of public opinion supported the young man and questioned the version of events put forward by the police during the trial and after the execution of Yang Jia on 26 November: Why did the young man exact such vengeance after a "normal and legal investigation"? Why did the Shanghai police go to Beijing to negotiate with him after receiving his complaints against the police who had interrogated him if Yang had sought a quarrel without any reason? What really happened during the six hours of an interrogation of which the police made public only a few minutes of recording? Why was Yang's mother, the only person who knew the reasons behind this tragedy, held in a lunatic asylum during the trial? The tragedy experienced by Yang Jia was thus presented from a completely different perspective: the 11 policemen who were the victims in this case did not win popular sympathy. In reality they were perceived, as was Yang Jia, as victims of the present legal system, where abuses of power made possible by the lack of control accentuate tensions between the police and a population without sufficient recourse.

Thus one sees how the section of public opinion mobilised by this case calls into question not only the death sentence applied to the accused who had committed homicide, but also what was felt to be a flagrant injustice in the administration of this penalty. The same situation recurred in the case of Deng Yujiao in 2009.<sup>(48)</sup>

## Conclusion

It is hardly possible here to adequately go over the ambiguities of the notion of *minyī* (public or popular opinion). It is clear, however, that its role in the present debate on the death penalty can have multiple and sometimes contradictory meanings. At least three forms of it can be identified today:

- A statistical and abstract form in "opinion polls" (*minyī ceyān*): for example, according to a poll of 5,000 people carried out in 1995 by the Institute of Legal Studies of the Chinese Academy of Social Sciences on the question of the number of death sentences in China today, close to 42.2 percent of the population considered it to be acceptable, 31.48 percent perfectly justified, and 22.47 percent still not high enough (not to mention the 0.78 percent to whom all crimes should be punishable by death).<sup>(49)</sup> A more recent poll of 16,000 internauts (2003), carried out on the Internet, showed that 15.1 percent of respondents were in favour of abolition of the death penalty, as against 83.3 percent who favoured its maintenance (1.6 percent "didn't know").<sup>(50)</sup>
- A form of popular, emotional, and concrete mobilisation that appears on the occasion of specific local problems;
- A more or less argued form expressed at the national level in the media, and especially on the Internet, but which one can but hesitate to call "public opinion" because of its fragmentary character and because of the surveillance of the government.

One can only offer a qualified assessment of this phenomenon, but the examples examined above demonstrate how appeals to public opinion can be instrumentalised by a policy that is more populist than democratic. In particular, the role played today by public opinion in the debate over the death penalty highlights the necessity of the independence of the judiciary. But this opinion, as we have seen, can also be a means of rational criticism of the shortcomings and excesses of the authorities. As such, the growing importance it is accorded by the authorities, despite a deep ambiguity, can also be seen as an encouraging sign in the direction of a possible democratisation of Chinese political space. •

### • Translated by Michael Black

47. "Dang shashou chengwei yingxiong de shihou" (When a murderer becomes a hero), [http://www.stnn.cc/ed\\_china/200810/t20081020\\_881743.html](http://www.stnn.cc/ed_china/200810/t20081020_881743.html). Accessible on 20 October 2008.
48. A native of Badong in Hubei, this young woman of 21 was a "pedicurist" employed at the Xiongfeng Hotel in Yesanguan. On 5 May 2009, she stabbed to death a local official and wounded another because they had forced her to prostitute herself. Millions of internauts mobilised in her favour. She was acquitted on 16 June by the Badong District Court. In contrast with Yang Jia, this national heroine, celebrated for having courageously preserved her honour and her virtue, was thus able to escape conviction.
49. Hu Yunteng, *Cun yu fei - sixing jiben lilun yanjiu* (Maintenance or abolition of the death penalty – A study of the fundamental theory of the death penalty), Beijing, Zhongguo jiancha, 1999, p. 335.
50. "Nin dui zhongguo feichu sixing zhidu youhe kanfa?" (What do you think about the abolition of the death penalty in China?), <http://talkshow.163.com/vote/vote-results.php?voteID=5088>. Accessible on 30 November 2008.

## Glossary

yanlu 言路

dujue yanlu 杜絕言路

xinfang 信訪

renmin de yiyuan 人民的意願

guomin 國民

gongmin 公民

zhongguo renmin zhengzhi xieshang huiyi gongtong gangling 中國  
人民政治協商會議共同綱領

yulun 輿論

bangjia 綁架

Zhu Zhongqing 朱中卿

shehui guanli zhixu 社會管理秩序

Zhao Bingzhi 趙秉志

Wan Yunfeng 萬雲峰

baoying gengju shang de qeshi 報應根據上的缺失  
zousi 走私

Liu Qingshan 劉青山

Zhang Zishan 張子善

Guan Zhicheng 管志誠

Hu Changqing 胡長清

Cheng Kejie 成克傑

Li Zhen 李真

Wang Huaizhong 王懷忠

dang he guojia lingdaoren 黨和國家領導人

shengbuji 省部級

ditingji 地廳級

xianchuji 縣處級

keji 科級

Liu Fangren 劉方

Zhang Guoguang 張國光

He Weifang 賀衛方

Xinxi shibao 資訊時報

Yang Tao 楊濤

Zhao Yong 趙勇

Xiandai kuaibao 現代快報

Liu Min 劉敏

Li Yueming 李月明

Chen Xingliang 陳興良

Sixing beiwanlu 死刑備忘錄

minyi 民意

Wang Binyu 王斌餘

Lu Jianping 盧建平

minfen 民憤

qunzhong sifa 群眾司法

sanfan renmin fating 三反人民法庭

Bao Xintai 包鑫泰

Bai Jianhua 白建華

He Runquan 何潤泉

Li Junrong 李俊榮

suku dahui 訴苦大會

minfen de liangzhang lian 民憤的兩張臉

jiti yishi 集體意識

gongzhong qinggan 公眾情感

Liang Genlin 梁根林

guanyi 官意

fayi 法意

Wang Shengjun 王勝俊

Nandou zhoukan 南都週刊

Zhang Jinzhu 張金柱

Liu Yong 劉湧

She Xianglin 佘祥林

Yang Jia 楊佳

ni bu gei wo yige shuofa, wo jiu gei ni yige shuofa  
你不給我一個說法，我就給你一個說法

Deng Yujiao 鄧玉嬌

minyi ceyan 民意測驗