

State Killing in Asia: On the Relationship between Judicial and Extra-Judicial Executions¹

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Abstract: The death penalty has declined or disappeared in most parts of the world, including Asia. At present, only four or five Asian nations retain capital punishment and continue to conduct judicial executions with any frequency: China, Vietnam, North Korea, Singapore, and possibly Pakistan. Many analysts contend that the widespread decline of the death penalty dramatically illustrates the spread and success of human rights norms, and some observers believe that the decline or disappearance of the death penalty stimulates improvement in other areas of state behavior, including the use of extra-judicial violence. This article explores and speculates about the relationship between judicial and extra-judicial killing in the Asia region. It begins by describing the variation in state killing that exists in contemporary Asia. This cross-sectional analysis suggests there is little correlation between judicial and extra-judicial executions, but the appearance of independence largely disappears when the two forms of state killing are viewed in temporal perspective. Judicial and extra-judicial executions have declined over time in many Asian jurisdictions, including Japan, South Korea, Taiwan, China, Cambodia, Indonesia, Burma, Bangladesh, the Philippines, and perhaps Nepal. The evidence is too thin to tell whether a similar pattern obtains in countries such as India and Thailand, where judicial executions are rare but where there has been considerable extra-judicial killing by the state in recent years. The article concludes by positing a hypothesis of "common causation" which suggests that the decline of extra-judicial executions may be explained by the same forces that explain the decline of capital punishment.

Labels such as "state killing" and "the killing state" are frequently used to discuss the legally permitted and regulated "judicial killing" that occurs in systems of capital punishment (Amnesty International 1989; Amnesty International 2007; Sarat 1999; Sarat 2001; Sarat and Boulanger 2005; Kassymbekova 2005; Zimring 2003; Johnson 2006). But states kill extra-judicially too, and sometimes the scale so far exceeds the volume of judicial executions that it seems reasonable to wonder whether death penalty reductions or even outright abolitions are comparatively small potatoes (Rummel 1994; Horowitz

¹ An earlier version of this article appears in David T. Johnson and Franklin E. Zimring's *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (New York: Oxford University Press, 2009, pp.443-451).

2001; McWhorter 2004; Kiernan 2007; Vieira 2007; Hagan and Raymond-Richmond 2008).²

This essay explores the relationship between judicial and extra-judicial killing in Asia. The analysis depends on a fundamental distinction between two types of extra-judicial killing: (1) the use of lethal force in reactive, unpremeditated, and legally legitimate ways (as when the police shoot a fleeing felon), and (2) execution as an instrument of a government policy designed to eliminate perceived enemies of the state in a proactive, premeditated, and illegal manner (as the People's Republic of China is alleged to do with practitioners of the Falun Gong religion, as Taiwan did in the years of "White Terror" under Chiang Kai-shek, and as Indian police do in "encounter killings"). My focus is on the connections between extra-judicial killing that is "proactive" in the type two sense and the judicially authorized executions that occur in systems of capital punishment. This approach to state killing largely ignores "reactive" executions of the type one kind because history and common sense suggest that police and soldiers tend to shoot back when insurgents or fleeing felons shoot at them first. If the Tamil Tigers (the world's leading suicide terrorist organization) were operating in Switzerland instead of Sri Lanka, the rate of Swiss state killing would rise substantially (Pape 2005:139).

² William Schabas, Professor of Human Rights Law at the National University of Ireland, has noted that "Few more dramatic examples of the spread and success of human rights law can be found" than the widespread reductions in capital punishment that have occurred in recent decades (Schabas 2004:419). But Professor Roger Hood observes that "alarming reports" of extra-judicial killing continue to surface in the work of the Special Rapporteur on extra-judicial, summary, or arbitrary executions to the United Nations Commission on Human Rights (see <http://www.ohchr.org/english/issues/executions>; see also the Project on Extrajudicial Executions in the Center for Human Rights and Global Justice at the New York University School of Law, available at <http://www.extrajudicialexecutions.org>). Hood believes the findings from projects such as these constitute "a dreadful catalogue of non-judicially sanctioned killings in far too many countries of the world, certainly on a scale out of all proportion to executions carried out under the due process of law and sometimes amounting to genocide" (Hood 2002:155).

Although the distinction between reactive and proactive extra-judicial killing seems theoretically sound, in practice it can be difficult to discern which has occurred. When states respond to insurgencies such as those that are ongoing in Sri Lanka, Nepal, and the Philippines, they often respond with both reactive lethal force and with proactive, preemptive strikes – and it is sometimes impossible to tell the two apart. Even at Tiananmen Square in 1989—when “the whole world was watching”—it can be difficult to tell whether Chinese forces were responding to a riot or engaging in deliberate massacre (Calhoun 1997; Gitlin 2003; Clark 2008). Moreover, many jurisdictions lack reliable counts of extra-judicial killings over time. Data difficulties such as these inhibit confident conclusions, but the available evidence does seem to suggest that the trajectories of capital punishment and proactive extra-judicial killing tend to track each other. This finding is important because it indicates that Asia’s recent death penalty declines may reflect improvement in other spheres of state activity, and because it means Asian governments tend *not* to “compensate” for reductions in their use of capital punishment by conducting more extra-judicial executions (Johnson and Zimring 2009).³

³ The question concerning the relationship between judicial and extra-judicial killing obviously extends to countries outside Asia. In Spain, for example, investigating judge Baltasar Garzon has compiled a list of the names of 114,266 people who were killed during the nearly 40-year dictatorship of Franco—an average of almost 3000 victims per year (Fuchs 2008). Extra-judicial killings declined dramatically after Franco died in 1975—the same year of Spain’s last judicial execution (that nation went on to abolish the death penalty for ordinary crimes in 1978 and for all crimes in 1995; see Hood 2002:247). In Columbia, by contrast, the last judicial execution was carried out in 1909, and the death penalty was abolished for all crimes in 1910, yet one century later extra-judicial killing remains a serious problem. In 2008, the commander of Columbia’s army (General Mario Montoya) was forced to resign after “an investigation tied dozens of military personnel under his command to an intensifying scandal over the killing of civilians by the armed forces in what apparently were attempts to inflate the number of insurgents or criminal gang members killed in combat by security forces” (Romero 2008). A week before Montoya’s resignation, the Colombian government had fired 27 soldiers and officers, including three other generals, over reports that they had lured impoverished young men from the slums around Bogota and taken them to a war zone in northern Columbia where they were killed by troops, classified as subversives, and buried in unmarked graves. At present, Colombian prosecutors are investigating accusations that 1015 civilians have been killed outside combat since 2002, when President Alvaro Uribe intensified the long war against two leftist insurgencies (Romero 2008). For an account of large scale extra-judicial killings by the police in Argentina, Brazil, and Uruguay a century or more after those countries ceased judicial executions, see Daniel Brinks (2008).

The Appearance of Independence

Table 1 (appended to this essay) depicts some of the variation in “state killing” that exists in contemporary Asia by reducing the complexity of that phenomenon to two dimensions: judicial executions (low vs. high), and proactive extra-judicial executions (low vs. high). In this simplified 2x2 scheme, it may be reasonable to resist my placement of some individual nations, but minor-to-modest adjustments do not alter the fact that at least one Asian nation can be found for each of the four cells in the table.

The distribution of Asian nations across all four cells of Table 1 could be taken as evidence that judicial and extra-judicial killing are unrelated in the Asian context. If so, then the Asian pattern might surprise those students of state-killing in the United States who believe the history of lynching and capital punishment in the southern part of the country suggests that “A culture that carried out so much unofficial capital punishment [as some southern states did] could hardly be squeamish about the official variety” (Banner 2002:229). On this view, the aggressive use of death as a criminal sanction follows directly or indirectly from a cultural commitment to violence and from the race relations and attitudes that were a central feature of that culture. In the American context, there is some evidence that the two forms of state killing are positively correlated, both contemporaneously during the post-civil war period, and after lynchings peaked early in the 20th century (Zimring 2003; Jacobs, Carmichael, and Kent 2005).⁴ If there is a positive linkage between lynchings in the past and judicial executions in the present, it

⁴ Miethe, Lu, and Deibert (2005:127) reach a similar conclusion in their cross-sectional analysis of judicial and extra-judicial killing in 185 nations (“a significant positive bivariate relationship between the availability of legal and extrajudicial executions”).

may involve the persistence of “vigilante values” (Zimring 2003:89; see also Garland 2005). But there is also American evidence for an inverse relationship between legal executions and extra-legal lynchings (Bowers 1984), and there is theoretical reason to wonder whether a formal control such as capital punishment tends to vary inversely with informal controls such as extra-judicial execution (Black 1976:107; Miethe, Lu, and Deibert 2005:120). In contrast to this ambiguous American evidence, some of which suggests a positive correlation between judicial and extra-judicial executions and some of which suggests an inverse relationship, the cross-sectional evidence summarized in Table 1 suggests that the two forms of state killing may be independent in the Asian context.

But there are at least two problems with using a cross-sectional approach to study state killing in Asia. First, the evidence on judicial and extra-judicial executions for many Asian jurisdictions is hardly high quality, not least because it is impossible to control for the incidence of crimes and rebellions that provoke lethal responses from the state. Second, since Table 1 does not take into account trends over time, the cross-sectional snapshots summarized there may obscure longitudinal patterns.

State Killing in Temporal Perspective

The appearance of independence between the two types of state killing largely disappears when one considers the temporal dimension that is missing in Table 1. Indeed, when judicial and extra-judicial executions in Asia are examined over time, the initial impression of independence turns out to be misleading because as judicial executions have declined in many Asian countries, so have extra-judicial killings.

Before illustrating this temporal correspondence with some examples, I need to make two observations about the distribution of Asian nations across the two categories of state killing. First, there are at most five nations that conduct judicial executions at a “high” level of frequency (China, North Korea, Vietnam, Pakistan, and Singapore, and the last three of those could be considered borderline in some recent years), and four of the five also rank “high” on the index of extra-judicial killing (Johnson and Zimring 2009). The only exception is Singapore, where judicial executions are common but extra-judicial killings are all but unknown. Were it not for this city-state, I would be tempted to conclude that governments that kill a lot legally have little compunction about killing illegally as well. Second, even though the large majority of Asian nations conducts few or no judicial executions, extra-judicial killing remains common in many parts of the region, including nations that have formally abolished the death penalty, such as the Philippines (Berlow 1996; Amnesty International 2006b; Uy 2007), Nepal (Mishra 2006:288), and Cambodia (Miethe, Lu, and Deibert 2005:128), and nations that seldom conduct judicial executions, such as Bangladesh (Amnesty International 2007), India (Mehta 2004; Eckert 2005), Indonesia (Nevins 2005; Friend 2005), Myanmar (Thant Myint-U 2006), Papua New Guinea (Human Rights Watch 2006), Thailand (Mydans 2003; Fritsch 2004), and Sri Lanka (Tamil Nation 2007; Human Rights Watch 2008).⁵

⁵ Sri Lanka has not carried out a judicial execution since 1976 (see Figure 1), but extra-judicial executions remain common. According to Human Rights Watch, four official commissions of inquiry set up by then President Chandrika Kumaratunga in the 1990s found that more than 20,000 people “disappeared” during armed conflicts in the 1980s and 1990s, and human rights groups believe the true figure may be two to three times higher. The same commissions identified suspects in more than 2000 cases, but few people have ever been indicted, and only a handful of low-ranking officers have been convicted. Between December 2005 and December 2007, more than 1500 people in Sri Lanka were the victims of “enforced disappearance” (which occurs when “state authorities detain a person and then refuse to acknowledge the deprivation of liberty or the person’s whereabouts,” thus “placing the person outside the protection of the law”). Many if not most of the victims have probably been killed (Human Rights Watch 2008).

Consider first the Philippines and Nepal, the two largest abolitionist nations in Asia, with populations of 91 million and 29 million, respectively. Both countries have abolished the death penalty twice in recent years. Both conducted few judicial executions during the years before their first abolition. Both rarely carried out judicial executions after the death penalty was reintroduced (there were only 7 executions in the Philippines and none at all in Nepal). Both re-abolished the death penalty shortly after its reintroduction (the interval was 12 years in the Philippines and 14 years in Nepal). Both have continued to conduct extra-judicial killing on a large scale after the second death penalty abolition. And in both nations the state's extra-judicial killing mainly seems to target "communist" insurgents and their sympathizers and supporters.

In the Philippines, hundreds of people have been killed extra-judicially by police or by members of the Armed Forces, but as of March 2007 there had not been a single criminal conviction. The number of attacks on leftist activists and community workers also "rose sharply" during the years immediately preceding the second abolition that occurred in 2006 (Amnesty International 2007). Similarly, there have been no judicial executions in Nepal since 1979, but observers describe "the routine torture and extrajudicial killing of suspected Maoists," which "had risen to a startling average of eight a day" by 2005 (Mishra 2006:288). Nepal also may have "the highest number of unexplained disappearances in the world," and the institution believed responsible for most of them – the army – enjoys "massive impunity" (Mishra 2006:288).

The Philippines and Nepalese cases illustrate how state killing can survive and even thrive after capital punishment ends. In temporal perspective, however, the volume of extra-judicial executions in both of these nations seems to have declined over the

course of the last several decades (though there have been occasional resurgences). The evidence for a reduction in extra-judicial killing is clearest for the Philippines, where even the most conservative counts indicate that at least 3000 victims were killed in the Marcos years between 1965 and 1986 – an average of 150 per year (McCoy 1999a; McCoy 1999b). By comparison, Amnesty International reported 66 extra-judicial “political killings” for all of 2005 (and this was after a significant surge in summary executions), while between 2001 and June 2006 the Philippines government recorded 114 political killings of leftists – an average of about 20 per year (Amnesty International 2006b). In June 2008, Philip Alston, the United Nations Special Rapporteur on Extra-judicial, Summary, or Arbitrary Executions, reported that extra-judicial state-killing in the Philippines continues to occur, but that there had been “a two-thirds drop” in total volume since 2006 (Alston 2008). If these counts are close to accurate, then they reflect a substantial decline in extra-judicial killing since the demise of Marcos’s dictatorship and since the Philippines abolished capital punishment for the second time in June 2006.⁶

Figures are harder to come by for Nepal, but there, too, one temporal trend seems to be a decline in unprovoked extra-judicial killing even though the democratic movement of 1989 and 1990 has “let the country down” so comprehensively that some analysts believe “today’s Nepal has regressed, politically, by nearly half a century” (Crossette 2005/06:69; Lawoti 2007; International Nepal Solidarity Network 2007). Moreover, much of the state killing that continues to occur in Nepal after its second

⁶ According to Alston and others, extra-judicial killing remains especially problematic in Davao City, Cebu City, and other parts of Mindanao (Alston 2008). In April 2008, a local journalist in Davao said that he had tallied a body count of almost 3000 “Davao Death Squad” victims over the previous decade. “He stopped counting when the local police began taking a keen interest in his arithmetic” (Miller 2008). Many observers believe these death squads are the creation of Davao mayor Rodrigo Duterte and other local elites (Alston 2008; Miller 2008).

abolition of capital punishment (for ordinary crimes in 1990 and for all crimes in 1997) is committed by the army in response to “an extreme armed Maoist movement” that engages in “almost unimaginable brutality and terror” and that aims to overthrow the present government (Crossette 2005/06:70). As United Nations High Commissioner for Human Rights Louise Arbour observed when she opened a branch office in Kathmandu, Nepal’s “grave human rights crisis” involves abuses by both the Nepali state and the Maoist insurgents (quoted in Crossette 2005/06:73). It is impossible to tell what share of Nepal’s extra-judicial killings is provoked by illegal violence, but whatever the exact proportion it appears to be substantial (Mishra 2006:285). State killings that are “proactive” in the sense that they are unprovoked by violence are problematic as a matter of law and morality, but they seem to be no more numerous now than they were in earlier periods of Nepal’s modern history.

The decline of judicial executions in several other Asian nations also seems to correlate with a general decrease in the practice of extra-judicial killing. In Indonesia, for example, hundreds of thousands of persons were killed in the political purges of the 1960s and in the massacres on East Timor after Portugal withdrew from its colony in 1975 (Nevins 2005), but extra-judicial killing in the world’s most populous Muslim-majority nation is much less common today than it was during those bloody and tumultuous periods (Friend 2003),⁷ while judicial executions have been infrequent events

⁷ In an autobiography published in 1989, Indonesian President Suharto acknowledged publicly for the first time the extent of official involvement in extra-judicial killing. Referring to a long-running series of state killings of alleged criminals (known as “mysterious shootings”) in the early and mid-1980s, Suharto said: “There was nothing mysterious about these events. The real problem was that the events had been preceded by a terror felt by the people. Threats had come from criminals, robbers, murderers, and so on...Do we just ignore this? Obviously we had to apply a treatment, drastic action. But how drastic? Well, we had to use force. But this did not mean that we just shot them, bang, bang, just like that. No! Those who resisted, yes, they had to be shot willy-nilly. Because they resisted, they were shot. Some of the bodies were just left there. This was for shock therapy so that people

for more than 20 years, with only 33 executions between 1985 and 1995 (Hood 2002:48) and no executions at all in seven of the next eight years (1996-2000 and 2002-2003).⁸ Similarly, the rate of judicial execution in Bangladesh is only 1/20th what it is in the United States (and less than 1/100th the rate in Texas), and though extra-judicial killing remains a problem, the volume seems to have declined significantly since the former East Pakistan declared independence in 1971 (Baxter 1997).⁹ In Myanmar, which with China, North Korea, and Vietnam has one of the most repressive regimes in the region, the onset of a *de facto* moratorium on judicial executions in 1989 corresponded with an apparent decline in the military junta's willingness to kill its own civilians (Thant Myint-U 2006). Military generals have ruled Myanmar for the past 45 years, ever since tyrant, numerologist, playboy, and ex-postal clerk Ne Win took control of government in 1962. When a new junta seized power in 1988, some 3000 people died in the massacres that followed (Mydans 2007a). That junta took control at a moment much like the one that

would understand that criminal actions would still be combated and overcome. Those actions were employed in order to stamp out all crimes which exceeded the bounds of humanity. Thus these loathsome crimes abated" (quoted in Elson 2001:237). One scholar has called this "the classic case of an intelligence-based state terror campaign" (Elson 2001:237). For accounts of state-organized crime, killing, and terrorism in other contexts, see Slater and Stohl (1988), Chambliss (1989), Friedrichs (1998), Ross (2000 and 2002), and Green and Ward (2004).

⁸ Indonesia recently began what may become a sustained execution surge. From June to November of 2008, the state carried out at least nine judicial executions, and it is promising to carry out more (Johnson and Zimring 2009).

⁹ Extra-judicial killing *is* still a problem in Bangladesh. According to the Asian Legal Resource Centre, "extra-judicial killing has been adopted as a policy of maintaining law and order in Bangladesh," and official policies to justify "blatant extra-judicial killings were first developed in their latest, most terrible incarnation in October 2002, when the government of Bangladesh launched Operation Clean Heart," ostensibly to crackdown on crime. This operation resulted in the deaths of 58 persons in 86 days, in addition to the arbitrary arrest and detention of about 12,000 others. In 2003, the government of Bangladesh passed legislation known as the Joint Drive Indemnity Act, which granted total immunity to all members of the military, police, and other security forces who participated in Operation Clean Heart. And in 2004, the government of Bangladesh created a body of paramilitary units called Rapid Action Battalions (RAB), comprised of both soldiers and members of the police (Asian Legal Resource Centre 2006). Over the next four years, RAB forces killed an estimated 536 people, most in circumstances euphemistically known as "encounters" or "crossfire" (Islam 2008).

occurred in 2007, when masses rose up in a peaceful nationwide protest that was fueled by economic and political grievances. But in 2007, extra-judicial killing occurred on a much smaller scale, with death toll estimates ranging between 15 and 31 – only 0.5 percent to 1.0 percent of the body count 20 years earlier (Mydans 2007d). Thus, even among Burmese despots who “rule by fear” and who “really believe the country would fall apart without them,” the willingness to kill people who demonstrate against them and their policies seems significantly weaker now than it was before the nation’s death penalty moratorium began (Mydans 2007c). Of course, this parallelism does not mean that Myanmar’s death penalty policy has dictated its orientation to extra-judicial killing, but it does suggest that there has been little or no effort to “compensate” for the decline in legal executions by bolstering extra-judicial killings.¹⁰

If the temporal evidence on judicial and extra-judicial executions seems patchy for some of the countries just discussed – the Philippines, Nepal, Indonesia, Bangladesh, and Myanmar – the evidence from other case studies points more unambiguously in the same direction: the two forms of state killing frequently fall together (Johnson and Zimring 2009). The huge decline in judicial executions that accompanied Meiji Japan’s opening to the West in the last half of the 19th century occurred during the same period in which several other forms of domestic state violence were tamed (Botsman 2005; Beasley 1990). In South Korea and Taiwan, the most marked declines in execution are more recent, and they reflect a much increased and more generalized reluctance to use killing as a tool of governance after democratization began than in the preceding decades (Choe 2007; Roy 2003). In China, where judicial executions seem to have dropped by

¹⁰ Australian National University Professor Des Ball (2008) believes the number of extra-judicial killings in Eastern Myanmar must still be “very high” but lower than it was before 1995.

about two-thirds since 2000, there is evidence that extra-judicial killing has remained an important tool of the communist party-state during the reform period (Matas and Kilgour 2007; Buruma 2001), but there is vastly less state killing now than there was under Chairman Mao, who was responsible for millions of violent deaths during his nearly three decades as the “Great Helmsman.”

My final illustration of the apparently positive correlation between judicial and extra-judicial executions concerns Cambodia, where between 1975 and 1978 Pol Pot’s vicious regime probably killed a larger percentage of the national population than any modern regime ever has (Rummel 1994). Cambodia abolished capital punishment in 1989, one decade after the end of a genocide that killed at least 15 percent of a total population of seven million people (Kiernan 2002; Cambodian League for the Promotion and Defence of Human Rights 2007). The main point of the abolition was to “mark with a powerful symbol” the end of the killing fields (Hood 2002:43; Dunlop 2005). As of 2008, Cambodia has not conducted any judicial executions for at least 20 years, and though extra-judicial killing still occurs, it is far less commonplace than it was when the Khmer Rouge’s lethal logic was aimed at “manufacturing difference” and achieving “disproportionate revenge” (Hinton 2005:45, 211). There have also been sharp declines in vigilante and police killings in Cambodia since 1998 (Broadhurst and Bouhours 2008).

Common Causation?

Extra-judicial killing persists in several Asian nations that have abolished capital punishment or nearly abandoned the practice of judicial execution. One result is that there appears to be little correlation between a state’s level of extra-judicial killing and its

death penalty policy, at least when the two types of killing are examined at a single point in time. But a different pattern emerges in temporal perspective, for judicial and extra-judicial executions seem to have declined over time in several Asian jurisdictions, including Japan, South Korea, Taiwan, China, Cambodia, Indonesia, Burma, Bangladesh, the Philippines, and probably Nepal.¹¹ The evidence is too thin and the relationship between judicial and extra-judicial killings too fuzzy to tell whether a similar historical pattern obtains in countries such as India and Thailand. Over the past several years there has been considerable proactive state killing in both of these nations.

In Thailand, for example, the police and other authorities summarily killed more than 2500 people during the “war on drugs” ordered by Prime Minister Thaksin Shinawatra in 2003—a crackdown that was supported by 90 percent of the public even though 40 percent said they were afraid of being falsely accused and 30 percent said they were afraid of being killed (Mydans 2003).¹² Four years later, the government’s own fact-finding panel found that more than half of the victims were “innocent” and “not involved in drugs at all” (Macan-Markar 2007; Munsgool 2007; Fritsch 2004; *The Nation* 27 November 2007). That number—2500—is seven times more extra-judicial killings than there were judicial executions in all of Thailand in the previous seven decades (Johnson and Zimring 2009).¹³

¹¹ For an argument that “a tendency toward a decline in the use of force appears to be at work in *all* human communities” (emphasis added), see Payne (2004:vi), and for related arguments about the long-term decline of many forms of violence in various parts of the world, see Elias (1982 and 1983) and Braithwaite (1993).

¹² The Interior Ministry of Thailand’s blacklist included the names of 41,914 people around the country who were “targets for monitoring” (Mydans 2003).

¹³ In January 2008, Chalerm Yubamrung, the deputy leader of the People’s Power Party that was preparing to lead Thailand’s new coalition government, promised another “war on drugs,” denied there was any government involvement in the killings of 2003, and claimed that no “innocent people” were among the

In India, too, extra-judicial killings (also known as “fake encounters”) appear to be widespread (Mehta 2004; Eckert 2005a; Eckert 2005b). An Indian policeman in Mumbai who confessed to participating in “about fifty” extra-judicial killings claimed this number is “not very many” compared to some of his colleagues, and he also said that “freelance” encounter killings are “very rare” (Luce 2007:96). “I have never been involved in a killing that hasn’t either been approved or requested by the senior commissioner of police,” explained this so-called “encounter specialist.” And he stressed: “We do not break the chain of command” (quoted in Luce 2007:96; see also Mehta 2004). But if agents of the Indian state continue to kill on a large scale even while the nation’s level of judicial execution has remained close to zero for nearly a decade,¹⁴ it is also true that fake encounter killings date back at least to the violent repression of the Telengana peasant movement (1945-1951) in the post-war and early post-independence period, while in the 1960s and 1970s, when judicial executions in India were more numerous than they are today, the extra-judicial execution of Naxalites – members of the radical, revolutionary communist groups that were born out of the Sino-Soviet split – “became standard police practice” (Pratirodh 2007). What is more, technology and media have advanced so rapidly during the last few decades that there is today vastly more

victims. In Khlong Toey and other drug-ravaged slums of Bangkok, there appears to be considerable “nostalgia” for Thaksin’s “iron-fisted drug policy” (*The Economist* 2008). In other parts of Asia as well (including India), there appears to be “deep ambivalence” toward state killing because it is simultaneously regarded as a sign of chaos and lawlessness and also a harbinger of order. Thus, state killing may be perceived as a “symptom of state crisis” in addition to being “longed for as rescue from that very decay” (Eckert 2005b).

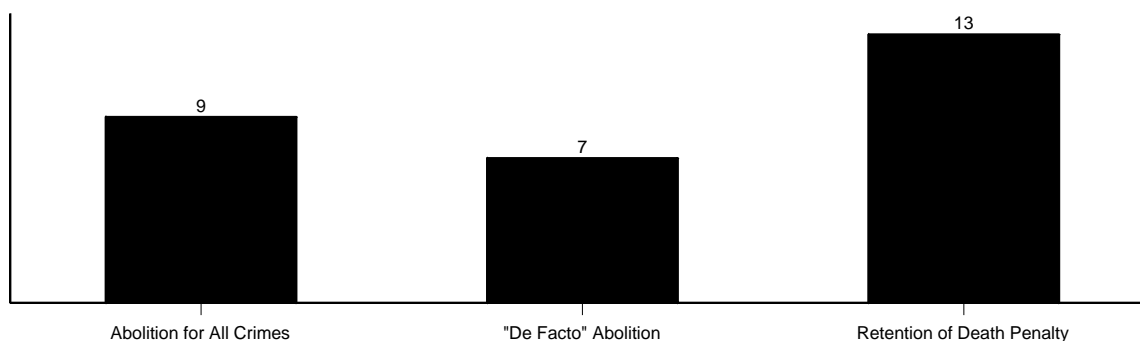
¹⁴ Professor Robin Jeffrey of the Australian National University reports that in Punjab between 1989 and 1999, Indian police arrested 50 “hardcore terrorists” (defined as “those most wanted for serious terrorist crimes”) while killing 7202—a ratio of 1 to 144. In 1992, the ratio of terrorists arrested to terrorists killed was greater than 1 to 1000 (Jeffrey 2008). But the ratio of terrorists arrested to terrorists killed in the last half of that period (7 to 15 for 1995-1999) was about 80 times lower than the ratio for the first half (43 to 7187 for 1989-1994).

information available about the previously hidden and isolated parts of countries such as India and Thailand, making it difficult to discern how much of the salience of proactive extra-judicial killing in the present is a function of better information and reporting.

The relationship between judicial and extra-judicial killing is an important but understudied area of criminology (Hood 2002:155; Johnson and Zimring 2009:443).¹⁵ I close, therefore, with a call for other researchers to explore more systematically than has been done here the relationships between different forms of state killing, both in the Asian contexts that are the focus of this essay and in other regions and societies. For now, at least, the evidence from Asia seems to suggest that at least in this part of the world, the relationship between judicial and extra-judicial killing tends to be one of neither independence (as the distribution of countries in Table 1 might seem to suggest) nor of substitution effects (as seems to be the case in some Latin American contexts; see Godoy 2006). Instead, these two forms of state killing appear to be connected mainly through a process of *common causation*, with the same forces that predict and explain the decline of judicial executions also accounting for the fall of proactive extra-judicial killing in a variety of Asian environments.

¹⁵ A related question concerns the use of judicial killing to stop or stem extra-judicial killing. Anne-Marie Slaughter, the dean of Princeton University's Woodrow Wilson School of International and Public Affairs and a past president of the American Society of International Law, has argued that the United Nations should issue death warrants ("as an absolute last resort") against dangerous dictators such as former Iraqi President Saddam Hussein (Slaughter 2003).

Figure 1. Status of the Death Penalty in 29 Asian Jurisdictions as of January 2009



Note: The jurisdictions are as follows. *Abolition for all crimes:* Hong Kong (abolished in 1993), Macao (1995), Australia (1985), New Zealand (1989), Bhutan (2004), Cambodia (1989), East Timor (1999), Nepal (1997), and the Philippines (2006). *"De facto" abolition* (no judicial executions for at least ten consecutive years): Brunei Darussalam (last execution in 1957), Laos (1989), Maldives (1952), Myanmar (1989), Papua New Guinea (1950), South Korea (1997), and Sri Lanka (1976). *Retention of the death penalty:* China, Japan, Mongolia, North Korea, Taiwan, Bangladesh, Pakistan, Indonesia, Malaysia, Singapore, Thailand, Vietnam, and India. The "Special Administrative Regions" of Hong Kong and Macao do not have capital punishment, but offenders from those cities can be executed in China through the process of "rendition."

Source: Johnson and Zimring 2009:16.

Table 1. Judicial and Extra-Judicial Executions in 21 Asian Nations

	<u>Extra-Judicial Executions</u>	
	Low	High
<u>Judicial Executions</u>	Low Japan South Korea Taiwan Bhutan Malaysia	Philippines Nepal Cambodia East Timor Bangladesh India Indonesia Myanmar Papua New Guinea Sri Lanka Thailand
	High Singapore	China North Korea Pakistan Vietnam

Note: Eight jurisdictions appear in Figure 1 but not in Table 1: Hong Kong, Macao, Australia, New Zealand, Brunei Darussalam, Laos, the Maldives, and Mongolia.

Source: Johnson and Zimring 2009:445.

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