

Social Conditions of Chemical Castration

Dongyue Wei ^{a, *}, Huanlin Mo ^b

South University of Technology, Guangzhou, China

^a1694975487@qq.com, ^b1181208724@qq.com

Abstract. This article considers three application modes of chemical castration in various countries, which are completely voluntary mode, compulsory mode and the combination mode of voluntary and compulsory. In terms of overseas investigation, the applicable conditions mainly include two aspects: the need to compensate the deficiency brought by the abolition of death penalty, and the social conditions of commutation and parole to guarantee human rights. While some conditions are satisfied to a certain extent in China, the existence of death penalty and the defects in parole and commutation make it unfeasible to introduce chemical castration to China.

Keywords: Chemical castration; Sex offender, Death penalty; Parole commutation.

1. Introduction

Chemical castration occurred under the background of high-risk sex offenders and the limited effect of freedom penalty on prevention and correction. Chemical castration is a kind of medical treatment, mainly using the drugs to reduce testosterone levels and to affect the sex drive. Chemical castration, as a special punishment for criminals, is an important achievement of drug therapy applied in the field of criminal justice. Compared with the punishment against freedom, chemical castration is more effective, which has been proved in the judicial practice of Sweden, Norway and Denmark.

In recent years, sexual crime rate in China is still on the rise, which not only causes irreversible physical and mental harm to the victims, but also brings many unstable factors to the society. In light of this, some begin to focus on the problem whether chemical castration can be introduced into China. Supporters usually defend themselves by reducing the recidivism rate of sex offenders and strengthening the correctional function of punishment, while opponents often hold high the banner of humanitarianism and try to occupy the moral highland. However, it is not convincing to merely emphasize the effect of implementation or value judgment, because the introduction of chemical castration penalty is actually a problem of legal transplantation, which must be based on the existence of some commonality between the transplanted foreign laws and the transplanted domestic laws. This requires researchers to turn their attention to the social conditions of the implementation of chemical castration in various countries, and at the same time reflect on the reality of our country, and keenly capture the similarities and differences among them.

The reason why a social factor can become the social condition of the implementation of chemical castration is that it has certain connection with the application of chemical castration. At present, most of the discussions on social conditions in academic circles focus on the economic foundation, technological environment and cultural tradition, and rarely respond from the institutional level. The institutional connection is just one of the important preconditions of legal transplantation. Specifically, in the field of criminal justice, the extraterritorial application of chemical castration is actually related to the cautious use of death penalty and the change system of penalty execution. This paper will focus on the two related factors, in-depth study of the social conditions of the application of chemical castration, trying to answer whether chemical castration can coordinate with criminal system in China.

2. Three Models of chemical castration

In the process of exploring the implementation of chemical castration, countries have created three models: the first is "completely voluntary mode"; the second is "compulsory mode"; the third is "combination mode of voluntary and compulsory". Completely voluntary mode refers to the judicial organ's implementation of chemical castration on the basis of guaranteeing the criminal to fully

understand the pros and cons of accepting chemical castration, and on the basis of his consent, as a condition for the prisoner to exchange for parole and commutation; the second refers to the specific conditions set by law, which can be implemented by the judicial organ without the consent of the criminal after the criminal meets the legal conditions; The third refers to the system of chemical castration in accordance with the first mode for the first or minor sexual assault crime, and the second mode for the recidivist and serious offenders.

The three modes of chemical castration are applicable to the specific circumstances of sexual assault. Under the conditions of voluntary mode, the offender is required to have the willingness to repent and treat actively. At the same time, countries such as the United States, Germany, France and other countries also require that the physiological and psychological conditions of the people who are about to be subjected to chemical castration should be evaluated by professional medical treatment, and the judicial organs should be comprehensively investigated and evaluated. Chemical castration can only be carried out if the offender is willing to take chemical castration and the risk of recidivism is very low. There are some differences among the three models in the applicable conditions of chemical castration, which are mainly reflected in the applicable crime, the way of supporting punishment, time, system carrier and legal constraints. For these differences to make a brief analysis and comments.

2.1 Completely voluntary mode

Voluntary chemical castration, which has been adopted in Britain, Germany, Denmark, Finland, Sweden and other countries, applies to rape and indecent acts committed against children. It ensures that on the basis of the right to know and the right to choose, the voluntary chemical castration is carried out in exchange for parole and commutation. At the same time, Finnish prisoners and individual citizens are allowed to apply for castration voluntarily. If the applicant is incarcerated, the petition of the applicant must be examined by the head of the criminal agency [2]. This kind of country respects the individual will of the victim, and "chemical castration" has become the replacement penalty of "freedom penalty" in judicial practice.

Voluntary chemical castration serves as an incentive strategy to consciously control one's sexual violence. From 1989 to 1996, 16 out of 26 sex crime prisoners in Danish prisons who chose to accept "chemical castration" eventually received probation, and only one of them was released to commit the crime again [3]. According to the statistical data of Sweden, Norway, Denmark and other countries, chemical castration can effectively reduce the possibility of sexual criminals committing recidivism from 40% to 5% [4]. Although chemical castration is not compulsory in this case, it still plays a significant role in curbing the recidivism of sexual violence offenders. For instance, a comparison was made in Germany between 100 sex offenders who received testosterone regulatory injections and 35 who did not undergo circumcision. The recidivism rate of sex crimes in the first group was only 3%, while half (46%) of the perpetrators of sex offenders who were directly laissez faire committed sexual assault again.

2.2 Compulsory application mode

Chemical castration In South Korea, Kazakhstan, Indonesia and Poland is a compulsory disciplinary measure. Taking Poland as an example, sexual violence is committed against children under the age of 15. No matter whether I agree or not, under the premise that the court has made a guilty judgment and issued a compulsory medical order, Offenders must start taking sex drive reducing drugs six months before release [5]. At this time, chemical castration treatment does not need the consent of the parties, but is directly applied by the judge.

Compulsory application of chemical castration mainly applies to pedophiles and rapists. After medical examination by experts of professional medical team and confirmation of their age, chemical castration is carried out in strict accordance with the court judgment [6]. The complete chemical castration procedure for those who are required to undergo chemical castration according to the verdict is the responsibility of a special medical team composed of health care professionals

(endocrinologists, urologists, psychiatrists and therapists) [7]. In terms of nature, the punishment of chemical castration by the judicial organ belongs to a kind of security punishment to the criminals who meet the legal conditions, which is extended to all sexual violence offenders with sexual desire disorder.

2.3 Combined modes

Some states in America and Australia combine the mandatory application of chemical castration and voluntary application of chemical castration, where first-time offenders can voluntarily apply for chemical castration in exchange for parole and commutation of sentence. Those who rape or molest adolescents aged 12-17 years more than twice in California and Montana in the United States, or Queensland, New South Wales and

Western Australia in Australia, are regarded as "dangerous sex offenders" and forced to receive chemical castration. In Victoria, the parole board can make anti androgen therapy a condition of parole.

3. Applicable conditions of chemical castration

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There are three main conditions in terms of chemical castration according to studies at present. First, economic development has enabled countries to afford public costs of chemical castration since World War II. Second, due to the progress of drug technology, drugs used for chemical castration have a good inhibition of sexual desire with uncommon side effects[8]. Thirdly, the number of sex offenders cases is increasing and the number of recidivism cases emerges in endlessly, which brings harm to public security. The implementation of chemical castration punishment is indeed a solution to the sex offenders in foreign countries against the background of social needs[9]. From the above social conditions of the implementation of chemical castration, the current social conditions in China are more suitable, but the social conditions for the application of chemical castration outside the country are actually directly related to the abolition of death penalty, commutation and parole. However, there are no scholars in China to make a more in-depth discussion on this research, and even a relatively comprehensive introduction to this research is still lacking

3.1 The need to compensate the deficiency brought by the abolition of death penalty

Define abbreviations and acronyms the first time they are used in the text, even after they have been defined in the abstract. Abbreviations such as IEEE, SI, MKS, CGS, sc, dc, and rms do not have to be defined. Do not use abbreviations in the title or heads unless they are unavoidable.

It is not difficult to see that in the countries where chemical castration is carried out, there is a firm negative or prudent attitude towards the implementation of the death penalty, and the abolition or prudent use of the death penalty has long been recognized by the society. Among the countries that implement chemical castration, they can be roughly divided into three categories. One is the countries that have abolished the death penalty in an all-round way, such as Finland, Macedonia and Russia. In the criminal code, only homicide, intentional infringement of the life of state or social activists, intentional infringement of the life of judicial or investigative personnel, intentional infringement of the life of law enforcement personnel, crime of genocide as the types of death penalty reserved, sex offenders have been excluded. For example, South Korea has retained the death penalty in the code, but has terminated the death penalty since 1990[10]. There are also countries that retain the death penalty in legislation but have a low rate of actual execution. Although the death penalty was reintroduced into the criminal law of the United States in 1976, the highest death penalty can be reached for the crime of raping children. However, the court ruled that the death penalty for rape of adults without death penalty was unconstitutional, and the judgment in *Kennedy v. Louisiana*

extended to any non-homicide rape, At the same time, in the judicial practice of the United States, no death.

penalty has been imposed for sexual assault except for murder cases. Although death penalty has been imposed, only Alfred bourgeois, who was accused of murder, child abuse and molestation of his two-year-old daughter in 2004, died of drug injection at the end of 2020, And Louis Jones, who was executed in 2003 for kidnapping, raping and killing female soldiers in 1995[11].

After the death penalty is abolished or used cautiously, the gap between death penalty and life penalty widens, and chemical castration emerges as the times require and plays a role in making up the gap. On the one hand, the abolition of death penalty caters to the theory of religious respect for human life, the development of human rights movement and the support of the public. On the other hand, it also means the degeneration of the warning and deterrent function of penalty. A kind of punishment, the intensity of which can prevent a rational person from taking the road of losing certain rights after weighing the advantages and disadvantages. The death penalty is also necessary for the public to obtain a sense of security and justice. The abolition of death penalty means that there is no maximum penalty above life imprisonment, and the gap between death penalty and life penalty is widened. There is no penalty to replace death penalty and give equal punishment. Since the abolition of the death penalty, the crime rate has been on the rise in various countries [12] There is no appropriate matching punishment to punish criminals. The criminal wrongly causes more consequences to others than he has to bear. Punishment virtually favors criminals and makes them bear lighter consequences. From a weight that should have been given to criminals based on the victim's injury, it has been transformed into an unfair balance that tends to protect or even give small punishment to encourage crimes. Justice requires that those who have committed heinous crimes be sentenced to death. Justice is essentially to ensure that all people are treated equally, and that the losses inflicted by society on criminals are equal to those on innocent people. By imposing the death penalty on those who deliberately impose the death penalty on others, the death penalty ensures that justice can be done for all.

Sex offenders seriously pose harm to both the victims and society. The abolition of death penalty tilts the balance of law towards sex defenders [13], which can be compensated by the introduction of chemical castration penalty. With the development of drug technology, chemical castration narrows the gap between life penalty and death penalty. By inhibiting hormones in the body, it can control the internal desire. This kind of restriction wakes the world. When the individual's internal desire cannot restrain the impulse of hormone, it will force people to return to normal and rational life with the power of penalty. It is not the intensity of punishment that has a great impact on human mind, but the continuity of punishment. The most easy and lasting thing to touch human feelings is the small and repeated phenomenon [14]. In addition, the continuity of chemical castration has a long-term social influence and plays a more important role than death penalty. The scene of death penalty is terrible, but it is similar to a performance. In a moment, it stirs ripples in the social groups like fallen leaves into the lake. However, the fleeting ripples do not cause a big impression in the society. The social groups are forgetful, and the temporary strong penalty brings forgetfulness with the passage of time. The instant death is even relief for criminals, and punishment is difficult to guarantee.

After the abolition of the death penalty or the prudent application of death penalty, the public has a positive attitude towards the application of supplementary and alternative punishment in the punishment of sex offenders. In 2019, more than 60% of people advocate alternative measures of death penalty instead of death penalty, which has reached the lowest level in 47 years [15]. The data demonstrates that the substitution of chemical castration for death penalty has achieved good social response. Rape undoubtedly deserves severe punishment, but it cannot be compared with murder in terms of people and the public who are morally degraded and hurt. The introduction of chemical castration accords with the principles of prohibition of suicide in Christian doctrines and the principle of freedom preserved in social contract theory. For sexual assault crimes, chemical castration can restrain sexual desire by inhibiting physiological hormones, and make up for the gap between abolishing or cautiously using death penalty.

3.2 Advanced system of commutation and parole

It is common to apply chemical castration in exchange of commutation or probation in the voluntary mode. As mentioned above, some countries and regions have imposed chemical castration on offenders of serious sexual violence, whereas criminals have the right to choose whether or not to implement chemical castration in more countries. Sex offenders in Danish prisons have a more than 50% chance of getting parole if they choose to undergo chemical castration[16]. According to the criminal law of California, chemical castration is one of the conditions for parole for anyone who molests a minor under the age of 13[17]. Article 15 of the law on drug treatment of sexual violence offenders passed in 2011 stipulates that those who receive chemical castration can be released on parole by administrative decision even if they are within the period specified in Article 72 (1) of the criminal law (after five years of life imprisonment and one fifth of the term of imprisonment). Israel's relevant bill even stipulates that sex offenders who are unwilling to accept chemical castration may face up to 20 years' imprisonment.

Some critics argue that the choice between chemical castration and further imprisonment is "inherently coerced" and violates the doctrine of informed consent[18]. In the absence of effective consent, medical intervention should not be provided for criminals, so chemical castration should not be used as a substitute for imprisonment. However, although the choice may put the offender under pressure to agree to chemical castration, it does not mean invalid consent because their choice is still "voluntary"[19]. Even if the effective consent of chemical castration cannot be obtained, the implementation of chemical castration is not a deprivation of individual autonomy. According to the rational interpretation of autonomy, the desire to cause sex offenders is actually an obstacle to individual autonomy, because the desire based on false belief and without considering the harmful consequences is irrational and limits people's autonomy[20]. If the implementation of chemical castration can weaken these desires, it can also increase autonomy to a certain extent[21]. Therefore, formal consent is enough to show respect for the autonomy of criminals, and there is no need to apply the higher standard of "effective consent".

Even if there is no effective consent, there is still a certain social basis for accepting chemical castration in exchange for penalty execution. The main reason is that the implementation of chemical castration can match the criminal law enforcement system and maintain the balance between humanity and order.

First of all, the implementation of chemical castration and parole is consistent with the purpose of penalty execution system, both of which aim to reduce the adverse effects of long-term imprisonment and carry forward the humanitarian spirit. Lucas believes that it is wrong to imprison a person who is no longer dangerous for a long time and to return a dangerous person to society[22]. After long-term isolation from the outside world, offenders are more likely to fall into a dilemma that is out of keeping with the times and even out of touch with the changing society. If they are not integrated into the normal life in time, their economic difficulties and spiritual separation will force them to commit crimes again to a certain extent. The reason of recidivism is not only the maladjustment after being released from prison, but also the lack of a sense of psychological integration and belonging as a member of society. In addition, the long-term imprisonment also provides a platform for criminals to exchange their experience and stimulate their motivation to commit crimes again. On the premise that the parties accept chemical castration, after medical and psychological evaluation, allowing people serving a period of imprisonment to leave prison in advance, reducing the time for criminals to deviate from the society, on the one hand, can reduce the risk of recidivism, on the other hand, it can make the criminals better integrate into the society, and highlight the humanistic care of the penalty execution system.

Secondly, the combination of chemical castration and higher parole rate ensures the effect of socialization of execution and maintains a stable social order. In most countries where chemical castration is implemented, parole is the main form of release from prison, accounting for about 50% to 90%. In 2019, the parole rate of criminals in the United States reached 72%, while the parole rates in Canada and Australia were 32.7% and 39.7% respectively[23]. In recent years, some countries,

represented by Britain and the United States, have adopted strict restrictions on parole, and some states in the United States have even abolished discretionary parole. However, the application rate of parole is still high on the whole and maintains a certain growth rate. According to statistics, since 1995, the number of parole recipients in the United States has been increasing by more than 1.6% every year. There were 5944 more parole prisoners in 2005 than in 2004, an increase of 31% [24]. Higher application rate of parole helps to enhance the criminal's willingness to accept chemical castration and actively reform, and reduce the execution cost. However, compared with ordinary crimes, sex offenders have a higher possibility of recidivism, which requires the establishment of criminal law change system and a set of supporting system and supplementary system to reduce the recidivism rate of sex offenders and ensure the execution effect. A follow-up study in the UK for more than 10 years found that nearly 25% of sex offenders in Britain would commit sex offenders again; Norwegian scholars also found that more than 20% of sex offenders in Norway would commit sex offenders again within 10 years [25]. According to the official statistics of California, there are about 66000 sex offenders registered in the state, and about 33000 of them are children offenders. 50% of these criminals commit it again within the first year after parole, and the number rises to 80% in the second year [26]. Chemical castration is precisely through the regular injection of "medroxyprogesterone acetate", "cyproterone acetate" and other drugs to inhibit sexual desire and reduce the rate of recidivism. Specifically, professional doctors set up medical standards such as injection duration, hormone measurement, etc. based on the evaluation of sex offender's plot, violence level and physical fitness test, and maintain regular injection during parole, and timely record physiological value changes. The U.S. Department of justice has found that the recidivism rate of sex offenders without chemical castration treatment is about 65%, and that of those who have undergone chemical castration has dropped to 15% - 20%. Therefore, chemical castration can significantly reduce the rate of recidivism and highlight the value of order in the process of socialization of execution.

Finally, chemical castration matches the standardized commutation and parole system to ensure fairness of execution. Commutation originated from the good time system of the United States. However, after the progressive treatment system was implemented in Australia in 1840, parole gradually replaced commutation as one of the main penalty execution systems, and gradually developed and matured in western countries [27]. From the perspective of the subjects who decide to apply commutation and parole, the court is the subject of review in most civil law systems, and the parole board and other administrative organs are the review subjects stipulated by most common law countries. From the perspective of parole review procedure, most of the countries that implement chemical castration, such as the United States and Canada, use verbal means to conduct trial or hearing. The review organ must listen to the oral statements of the representatives of the relevant organs and the participants in the proceedings in person, and allow the victim and the sentenced person to entrust a defender or agent to ensure their due process rights. If they are not satisfied with the parole ruling, prosecutors, victims and offenders are allowed to lodge an appeal. The parole procedure for chemical castration has certain particularity, for example, Russia and Czech countries need to consult doctors or psychiatrists before implementing chemical castration. The standardization of parole procedure can guarantee the justice of execution to a certain extent and reduce the possibility of favoritism in the process of parole.

4. Social conditions of implementing chemical castration in China

4.1 No urgency to abolish the death penalty

Theoretically, the death penalty is still possible for those who are charged with rape. Although the death penalty charges in China are gradually declining, and the number of death penalty for rape in non homicide cases is very few, according to the aggravating circumstances of rape crime in Article 236 of the criminal law, there is still the possibility of death penalty in rape cases.

From the perspective of judicial practice, the number of death penalty imposing to the rape in China is much less than that in other countries. From the data of China judicial document network, the author searched the criminal cases of China judicial document network with the keywords of "verdict result: rape crime", "death penalty" and "case type: criminal case" on February 1, 2020. Through the search one by one, we found that from 2014 to 2020, a total of 108 rape cases were sentenced to death (including death penalty with a two-year reprieve). In terms of years, in 2014 (9 cases), 2015 (5 cases), 2016 (35 cases), 2017 (18 cases), 2018 (16 cases), 2019 (5 cases) and 2020 (1 case), the total number of death penalty shows a downward trend, and the death penalty still plays a deterrent role. Although the abolition of the death penalty is an international trend, most of the countries that abolish the death penalty have a small population. However, according to the research of Amnesty International, compared with other countries in the world, China's death penalty execution number one in the world [28]. It is of practical significance and need to retain the death penalty and carry out the death penalty in the current society [29]. Because of the huge population base, the state is required to guarantee the compulsory force in the penalty. The support of the people for the death penalty makes it difficult to abolish the death penalty for a while.

Chinese current death penalty policy is "to retain the death penalty, strictly control and use the death penalty with caution", which will further enrich the criminal policy of temper justice with mercy and lay the keynote in the field of penalty. On August 29, 2015, with the promulgation of the amendment to the criminal law, it made some adjustments to the general provisions of the criminal law, improved the requirements for the execution of death penalty by offenders with reprieve, and controlled the number of death penalty to a certain extent, so that human rights can be taken into account while retaining the death penalty.

It is undoubted that chemical castration has become a major trend in the development of penalty in the world, but not all trends should be observed one by one. Whether the death penalty should be retained or not is still a matter within the scope of sovereignty. However, it seems unrealistic to abolish the death penalty in an all-round way at present, but a common view is to kill less and be cautious. Therefore, in recent years, China has gradually reduced the number of crimes applicable to death penalty and controlled it in legislation, gradually reducing the death penalty in the provisions of death penalty, and further restricting the applicable conditions of death penalty. However, the number of death penalty cases of rape has gradually decreased. Even if it is death penalty, the proportion of cases with death penalty suspended for two years has increased. According to the data of China document adjudication network, these rape cases which were sentenced to death penalty with suspended imprisonment were commuted to fixed-term imprisonment two years later. To some extent, these are in response to the world trend and imply a meaning: the death penalty will not be abolished for a long time.

4.2 Structural defects of commutation and parole system

a) Legislation of commutation and parole: Commutation and parole have certain applicable conditions in China's current legislation. From the perspective of preconditions, commutation and parole are limited by the types of punishment, but parole also has restrictions on the length of sentence and the nature of the crime. For recidivists, no matter what kind of punishment and term of sentence they are sentenced to, they can not be released on parole; criminals sentenced to more than 10 years of fixed-term imprisonment or life imprisonment for rape may not be released on parole. This is because in this case, the risk of recidivism is high, and parole is difficult to prevent the crime from continuing [20]. From the perspective of applicable objects, commutation and parole are applicable to criminals who perform part of the punishment and show repentance. If the offender has significant meritorious performance during the execution of the penalty, the penalty should be reduced. The purpose of setting the limit of commutation and parole is to prevent the abuse of the penalty change system, reduce the unstable factors in community correction as much as possible, and effectively play the positive function of penalty execution.

However, there are still structural defects in the commutation and parole system. First of all, China's laws do not clearly define the trial methods of commutation and parole, but only provide the basic procedure for the executive organ to submit a proposal to the people's court for examination and approval. In practice, the court often adopts the way of written trial, neither seeking the opinions of criminals and victims, nor investigating and verifying the real performance during the execution. On the one hand, this is not conducive to the protection of the due process rights of criminals and victims; on the other hand, because the reliability of the materials is questionable, the application of commutation and parole is not necessarily appropriate. Secondly, although the relevant judicial interpretation and administrative regulations stipulate the supervision mechanism that the procuratorate can implement, the confidentiality of written hearing and the lack of investigation and verification power lead to the very limited information that the procuratorial organ can obtain from the court and the executive organ, so it is difficult to put forward effective supervision opinions. The absence of effective supervision may also breed judicial corruption and affect judicial justice. Finally, in terms of relief procedure, according to the current law of our country, the victim has no right to object to the verdict of commutation and parole. The procuratorial organ can only put forward the correction opinion to the court which has made the ruling, but the court is often unwilling to change its original ruling. This may lead to the deviation between the judicial practice and the relief goal, and make the relief procedure a mere formality.

b) Implementation of commutation and parole: Parole is rarely used in China's judicial practice. The parole rate is about 2% every year, which is far below the world average level. The number of parole criminals and the parole rate showed an overall upward trend before 1997, whereas decreasing year by year after the amendment of the criminal law. The number of parole rate was less than 0.5% in 2002[31]. In 2009, there are only three provinces where the commutation rate is more than 5%, and the parole application rate of nearly half of the provinces is less than 1%[32]. In 2014, the central political and Legal Commission issued the opinions on strictly regulating commutation, parole, temporary execution outside prison, and effectively preventing judicial corruption, which made it clear that parole should be strictly applied to three types of criminals. In 2016, the Supreme Court issued the provisions on the specific application of law in handling cases of commutation and parole, which excluded "criminals who refuse to perform the effective financial judgment" from the scope of parole. In 2016, China's parole rate was only 1.28%, which has remained at a low rate in recent years[33].

Commutation frequently applies in China compared with parole. In the past ten years, the number of commutation cases in China has exceeded 500,000 each year, while the number of parole cases is less than 50,000 each year. The commutation rate is between 20% and 30%, and even 40.9% in 2016[34]. Taking the national data of 2009 as an example, the commutation rate in all provinces has reached 12%, and there are 15 provinces with the application rate of commutation more than 40%[35]. The above data show that commutation is the main way to change the penalty execution in China, and parole is auxiliary. In 2017, China began to implement the "rules on commutation and parole", aiming to reduce the scope of commutation and improve the application rate of parole. In judicial practice, although the commutation rate has decreased, the parole rate is still low. In many provinces, the parole rate is only about 1%, which does not achieve the expected effect[36]. In terms of specific sex offenders, the application rate of commutation and parole is generally low. According to China's document adjudication network, the probability of parole and commutation of rape crime in China is about 8.2%.

5. lity of applying chemical castration in China

5.1 Inconformity with death penalty system

The introduction of chemical castration is not compatible with China's death penalty system. From the understanding of the background of the emergence of chemical castration, as mentioned above, the death penalty has roughly the same effect as chemical castration, which is a penalty measure for

foreign countries to seek alternative punishment in the field of sex offenders under the circumstances of abolishing death penalty and careful use. But it is not feasible in China.

First, abolishing the death penalty is not in line with existing realities in China. As the Japanese scholar Masada Sozaburo pointed out: "as a concept, death penalty should be abolished. However, it is of little significance to discuss whether the death penalty should be retained or abolished in an abstract way. The key is to attach importance to the reality of the historical society, which is determined by the current situation of the society and the level of its culture[37]. It is true that the abolition of death penalty is a trend in the world, which has the value of protecting human rights and respecting life. However, the trend does not mean that it is in line with the actual situation of all countries. At present, China is still the largest country with the largest population. The situation of fighting against crimes is still grim. The death penalty can not stop all crimes, but even the most severe punishment can never completely deter crimes and reduce punishment. Turning to chemical castration is tantamount to putting the cart before the horse and conniving at criminals. In the countries where chemical castration is carried out, although there are more or less criticisms about chemical castration, one of the practical contradictions is that on the one hand, abolishing the death penalty has become a social consensus; on the other hand, sex offenders, especially against children, are rampant[38.] In this case, the implementation of chemical castration becomes the inevitable way out between the mitigative crime and the penalty. However, after a long discussion, China still does not have the social conditions to abolish the death penalty[39]. It also means that the introduction of chemical castration is not necessary.

Secondly, from the perspective of historical and cultural psychology, the views of depriving of one's life to pay for the crime are still supported by the Chinese. The long-term accumulation of cultural psychology of a nation, which is reflected in values, is people's attitude towards natural society and spiritual phenomena, which is closely related to national social environment and culture. Just as Xia Yong believes that killing people to pay for victims' lives are all based on utilitarianism. The state is supposed to cater to public interests according to the established procedures. At the same time, killing criminals is conducive to social interests, so the death penalty is reasonable[40].

5.2 Conflicts with the current legal system

Initially, chemical castration cannot be applied to all sex offenders in China. Chemical castration can only be used as the parole condition for the first offender of rape, compulsory indecent assault and child molestation, which is sentenced to less than 10 years of fixed-term imprisonment, while chemical castration is not applicable to recidivists, sex offenders who are sentenced to more than 10 years of fixed-term imprisonment or life imprisonment, or combined punishment with other serious violent crimes.

Furthermore, there are many problems in the commutation and parole system in China, resulting in the obstacles of introducing chemical castration. The parole procedure in China is characterized by administration, which can not realize the goal of parole justice. In recent years, many scholars in China have put forward different suggestions on the reform of parole procedure, such as the mode of trial in court, the mode of deliberative judicature, and the mode of setting up the executive officer of penalty[41]. But the goal of institutionalization has not been achieved. The promulgation of relevant judicial interpretation reflects the trend of strict application of parole in China, further reduces the rate of parole and restricts the function of parole. As an execution system to encourage the reform of criminals, commutation essentially changes the original sentence, negates the *res judicata* of the original judgment, and the correction effect is poor. Therefore, there has been a discussion on the existence or abolition of commutation in academic circles. However, in practice, the application rate of commutation in China is far higher than that of parole, and the application pattern of parole system is contrary to that of the common penalty execution change system in the world. As mentioned above, chemical castration needs to be matched with a relatively perfect penalty execution system in order to maximize its effectiveness. However, China's commutation, parole system and its implementation

can not be compared with the western countries with a high degree of socialization of execution, so the introduction of chemical castration lacks a practical basis.

Chemical castration can be divided into three types: voluntary, compulsory, and combination of voluntary and compulsory mode. Nevertheless, the introduction of chemical castration cannot withstand scrutiny concerning social conditions. Countries that implement chemical castration choose chemical castration instead of death penalty in the basic abolition or cautious use of death penalty and punishment, and implement chemical castration penalty in exchange for parole and commutation. In China, the death penalty is difficult to abolish in a short period of time, and the parole and commutation system is not perfect, which makes the introduction of chemical castration in China is not mature social conditions.

Acknowledgments

This project is sponsored by Guangdong Provincial Training Program of Innovation and Entrepreneurship of for Undergraduates (S202010561195).

References

- [1] S. He., "On biological therapy in sexual crimes", unpublished.
- [2] Chemical Castration Seems to Be Working in Denmark, St. Louis Post-Dispatch, Sept. 1, 1996, p. 4D.
- [3] S. Russell, Castration of Repeat Sexual Offenders: An International Comparative Analysis, Hous. J. Int'l L.H, vol. 19, 1996, pp.425-445.
- [4] G. Donald, and B. Anthony, Chemical castration for sex offenders, BMJ, vol. 340, p. c74, 2010.
- [5] S. Blume, Secret Survivors: Uncovering Incest and Its Aftereffects in Women, NY: Ballantine Books, 1990.
- [6] M. Young, The Technical Writer's Handbook. Mill Valley, CA: University Science, 1989.
- [7] C. Pei: The operation of the death penalty system and the vicious crimes committed by the objects of death penalty in South Korea, in "A comparative study on the death penalty systems between China and South Korea", edited by Zhao Bingzhi China People's Public Security University Press, pp.285-287, 2008.
- [8] Unknown author, Capital Punishment: Our Duty or Our Doom, Issues in Ethics, vol. 1, pp.xxx, 1988.
- [9] Fyodor Dostoyevsky, Crime and Punishment, NY: Dover Publication, 2001.
- [10] Death penalty Information Center 2019<https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2019-year-end-report>.
- [11] J. Zhuang, American Chemical Castration System and Its Enlightenment, Criminal Law Review, vol. 53, pp.417-418, 2018.
- [12] K.A. Vanderzyl, Castration as an alternative to incarceration: An impotent approach to the punishment of sex offenders, N. Ill. U. L. Rev., vol. 15, pp.107-140, 1994-1995.
- [13] L. Bomann, Voluntary rehabilitation? On neurotechnological behavioural treatment, valid consent and (in)appropriate offers. Neuroethics, vol. 6, pp.65-77, 2011.
- [14] J. Savulescu, Rational desires and the limitation of lifesustaining treatment, Bioethics, vol. 8, pp.191-222, 1994.
- [15] M. Schechtman, Self-expression and self-control, Ratio, vol.17, pp.409-427, 2004.
- [16] C. Rosati, A study of internal punishment, Wis. L. Rev., vol. 123, pp.123-170, 1994.
- [17] H. Mannheim, Pioneers in Crircinology, Patterson Smith, 1972, in press.
- [18] Q. Liu, Selection and evaluation of community correction laws and regulations in various countries China People's Public Security University Press, 2004, in press.
- [19] R. Blackburn, Psychology of criminal behavior: Theory, Research and Practice, translated by Wu Zongxian, published by China Light Industry Press, 1993.
- [20] J. Zhuang, American Chemical Castration System and Its Enlightenment, Criminal Law Review, vol. 53, p.416, 2018.

- [21] J. Guo, Introduction to Western Prison System, Beijing: Law Press, 2003, in press.
- [22] DEATH SENTENCES AND EXECUTIONS 2019, <https://cdn2.assets-servd.host/alike-kingfisher/production/documents/pdf/FactSheet.pdf>.
- [23] M. Zhang, Abolition of death penalty does not need to be replaced by life penalty, Beijing: Chinese Journal of Law, vol. 2, pp. 79-94, 2008.
- [24] M. Zhang, Criminal Law, 5th ed., Beijing: Law Press, 2016, in press.
- [25] Y. Huang, Reform and development of commutation and parole system in China, Beijing: Law Press, 2012, in press.
- [26] Z. Lin, Thoughts on improving the application of parole, Beijing: Justice of China, vol. 9, pp. 74-77, 2017.
- [27] K. Ma, Principles of Comparative Criminal Law: A General Introduction to Foreign Criminal Law, Wuhan: Wuhan University Press, 2002, in press.
- [28] Q. Liu, Summary of American Criminology Research, People's Public Security University of China Press, 2002, in press.
- [29] China News website, Expert: China does not have the conditions to abolish the death penalty in a certain period of time., <http://www.chinanews.com/gn/news/2008/03-07/1185560.shtml>., Law Press, 2012The annual edition, pp. 69-70.
- [30] Y. Xia, The Philosophy of Civil Rights in the Context of China, Leiden: Martinus Nijhoff Publishers, 2011, in press.
- [31] Y. Zhang, The evolution of the judicialization of commutation and parole procedures in France, Wuhan: Studies in Law and Business, vol. 31, pp. 134-143, 2014.