

CAPITAL PUNISHMENT AND CRIME BY ANALOGY IN COMMUNIST CHINA,  
NORTH KOREA, AND OUTER MONGOLIA

In line with Mao Tse-tung's objective of using the legal process as a powerful weapon, the People's Government of Communist China (People's Republic of China), immediately after its conquest of the Chinese mainland in 1949, abrogated all the laws codified by the Nationalist Government. Although a few basic statutes (the marriage law, the agrarian reform law, the trade union law, regulation for the punishment of counter-revolutionaries, etc.) have been enacted, at present, the People's Republic of China has not yet promulgated a comprehensive code of civil or criminal law for legal procedure. These criminal legislations are scattered in a number of individual decrees and regulations.

Both Outer Mongolia and North Korea have criminal codes. The manner of arranging material in the criminal codes of these two communist countries is similar to that used by modern European nations and the Soviet Union. These criminal codes consist of two parts: (1) General Provisions, stipulating the general principles governing crime and punishment; and (2) Specific Offenses and Punishments, specifying the constitutive elements of individual crimes and the prescribed punishment thereof.

In order to make a meaningful study of the crimes that may carry the death penalty in the communist nations, it is important to understand that such crimes cannot be enumerated exhaustively because Communist China, North Korea, and Outer Mongolia have all incorporated the principle of crime by analogy in their criminal enactments.

In the modern non-communist European and Asian criminal codes, one will invariably find an article included in the part on general provisions to the effect that an act is made punishable only by the specific provision of law at the time of such act. This principle, whose Latin version is nullum crimen, nulla poena, sine lege, forbids the application of punishment to an act lacking the description specified in the criminal statute. Contrary to the above liberal principle prohibiting loose construction of penal statutes, Communist China, North Korea, and Outer Mongolia, following the Soviet criminal legislative precedent, as stated above, have adopted the principle of punishment by analogy.

The following are the provisions containing the principle of crime by analogy in the above mentioned three East Asian communist nations.

Communist China

Article 16 of the Regulations for the Punishment of Counter-revolutionaries enacted in 1951:

Persons who have committed other crimes for counter-revolutionary purposes that are not specified in this Statute are subject to the punishment applicable to the crimes which most closely resemble those specified in this Statute.

Outer Mongolia

Article 15 of the Criminal Code enacted in 1942:

If a criminal act is not directly specified by the Criminal Code, the punishment for it shall be determined by applying the provisions in the part on Specific Offenses and Punishment of the Code which specify crimes of the kind closely resembling the act.

North Korea

Article 9 of the Criminal Code enacted in 1950:

If a given criminal offense is not directly provided for in this Code, the basis and limit of punishment therefore shall be determined in accordance with the articles of the Code that provide for the offenses most comparable to it in its importance and kind.

Thus, under the criminal law of the above mentioned three countries, death penalty may be imposed on an act not specified in advance as a capital penalty crime by statute.

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