

Retention or Abolition of the Death Penalty and Public Opinion on the Death Penalty

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Abstract: The discussion on the death penalty's retention or repeal has been going on for a long time, and there are different views on the retention and elimination of the death punishment. Despite the international trend toward abolition, certain countries, like China, Japan, and the United States, continue to use the death sentence, and all three countries have conducted public opinion surveys on the abolition of the death sentence, and public opinion has a certain influence on the death penalty reform. This article will compare the views of Beccaria and Bentham, the representatives of abolitionism, and Kant and Hegel, the representatives of capital punishment retention, review the outcomes of popular opinion surveys on capital punishment in China, the United States, and Japan, analyze the characteristics of public opinion, and discuss the interaction between capital punishment retention and abolition and public opinion. The study about the value of public views in terms of the death sentence reform is of reference significance to the issue of whether the death penalty should be retained or abolished.

Keywords: death penalty repealed or maintained, public opinion survey, characteristics of public opinion, interaction

1. Introduction

The repeal of capital punishment has always been a wide concern by the world, with the development of society, more than 70% of the world's countries have abolished the death sentence, but there are nearly 30% of countries have not eliminated the death penalty, including China, the United States, Japan and so on. America remains the sole western Developed country that still uses the death sentence, but it has gone through twists and turns on the issue of its abolition. The death sentence was declared a "cruel and unusual punishment" by the United States Supreme Court in *Furman v. Georgia* in 1972 and all U.S. death penalty statutes were declared unconstitutional, as a result, the death sentence was briefly banned in the United States. However, due to continued conservative opposition and high homicide rates, the U.S. Supreme Court restored the death sentence in some states four years later in *Gregg v. Georgia*, which maintained that the death punishment system itself was not in violation of the Constitution. It is undeniable that public opinion played a role in reversing abolition.

2. The Death Penalty Debate

Capital punishment, one of the oldest punishments in the world, is the end of a prisoner's life by the power given to the executioner by law. In slave and feudal societies, the death penalty was widely applied and had a high deterrent effect, and its existence was not questioned. It was not until the late eighteenth century that the famous Italian jurist Beccaria first systematically put forward the idea of abolishing the death sentence in his work *On Crimes and Punishments*. He argued that people are forced to sacrifice a part of their freedom for the sake of living together, not without limit, but with the least possible surrender of their freedom, much less the authority to end their lives, and thus the death sentence is against the social agreement and belongs to the exploitation of power [1]. Since then, the discussion about the abolition of the death sentence has commenced, with the major points of contention being abolitionism and retention.

2.1. Representative Figures of the Abolitionist Theory of the Death Penalty and Their Views

2.1.1. Cesare Bonesana Di Beccaria

In 1764, the famous Italian jurist Beccaria argued for the elimination of the death sentence in his book "An Essay on Crimes and Punishments" and discussed it in detail. He argued based on the social contract: "By what right can people kill their kind. It is certainly not the kind of right that creates kingship and law. Kingship and law, which are merely the sum of a small number of private liberties, represent the universal will as a union of individuals. Who, however, would like to have his life and death at the disposal of others? How can every man, in making the smallest sacrifice of his freedom, put his life, which is the first of all riches, on the line?" [1]. Beccaria also argues that the death penalty itself is a paradox: The legislation that represents the public will dislikes and condemns murder while also committing it; it bans citizens from being murderers while arranging for a public murderer [1].

2.1.2. Jeremy Bentham

Bentham is renowned as the father of utilitarianism and a fierce opponent of the death penalty. Jeremy Bentham's utilitarian philosophy is congruent with this penal relativism, which holds that retribution cannot be an aim in and of itself but is tied to the accomplishment of specific objectives. Punishment makes the offender suffer, thus the only way it can be justified is by saying that it makes innocent bystanders happier [2]. For utilitarians, the straightforward notion that punishment is necessary for retribution or justice is insufficient. The death sentence, according to Bentham, serves more negative than positive purposes. For one thing, after a criminal is slain, he is no longer able to make amends to society for the harm he has caused. Second, no one would benefit from a criminal's death, whereas other forms of punishment would produce positive results. Third, the death penalty has the same effect on all criminals. As a result, judges are unable to distinguish among offenders with different cultures, traits, goals, and actions. It merely gives them a one-size-fits-all tool. Eventually, because no correctional system is perfect, the death penalty is irreversible [2].

2.2. The Representative Figures of Death Penalty Survival Theory and Their Views

2.2.1. Immanuel Kant

Kant advocated for a theory of justice that included the death penalty. He advocated for the continuation of the death penalty, and the main reason for doing so: it must reflect justice. He argued, "Any murderer or person involved in it must suffer death. This is the legal justice that is the idea of the judicial authorities and is desired according to the a priori universal law [3]." Kant contends that the death penalty is the sole just penalty for capital offenses, and that "even if the civil society were

to disband with the consent of all of its participants (for example, if the people living on an island decided to break up and disperse to the rest of the world), the last convicted killer must be killed so that everyone personally experiences what his actions deserve and is not a blood debt in the minds of the people, who do not firmly demand this punishment: for the people can be seen as complicit in this open violation of justice [4].” Kant also openly refutes Beccaria’s claim of abolition, noting that a person suffers the punishment of death not because he desires it, but because he desires a punishable behavior [4].

2.2.2. Georg Wilhelm Friedrich Hegel

Like Kant, Hegel explicitly opposes Beccaria’s claim to abolish the death penalty, which he also believes embodies the claim of penal justice. To suggest that the death punishment assists in preventing future criminal behavior, to act as a deterrent, a scare, “would abandon the impartial assessment of justice, which is, however, the primary and substantive point of view when examining crime [5].” Hegel’s objection to Beccaria’s claim to “deny the right of the state to impose the death penalty” is centrally explained in his *Principles of the Philosophy of Law*, one of which is that the state is not at all the product of a “contract”, but a contract is something arbitrary for the individual. In terms of the state, once a person is born a citizen of the state, he or she cannot leave the state at will [6]. Second, the prisoner’s behavior contains his rationality as well as the state’s “respect” for this rationality, and the punishment is an expression of this “respect” [6]. Third, the state regards justice as a precondition, and punishment is one of the major representations of justice expressed by the state. As a result, the state’s punishment of violators, including the death sentence, is completely in line with the justice criteria [6].

The scholars who support the death sentence elimination mainly start from the standpoint of the theory of social contract and utilitarianism, while many academics who reject the death charge embrace the doctrine of death charge justice. Of course, these are only the views of these four celebrities, and the views of the general public should also be taken into consideration in the abolition of the death penalty.

3. Analysis of Public Opinion on the Death Penalty

In a democracy, the people determine the substance of the legislation, the constitution can be altered democratically, and public mood can be monitored by public opinion surveys. Any country considering the retention or abolition of the execution penalty will be influenced by public perception. China, the United States, and Japan have all conducted public opinion polls but have not yet repealed the death penalty.

3.1. China’s Public Opinion Polls

Professor Yu Jia of Northwestern University of Political Science and Law conducted a half-month public perception survey on the retention or repeal of the death punishment among 1,873 undergraduates in March 2003. When asked whether they preferred retention or abolition, 75.6% preferred retention, 24.1% preferred abolition, and 0.3% did not pick [7]. Between 2007 and 2008, the Wuhan University School of Criminal Law and the German Max Planck Institute for Foreign and International Criminal Law collaborated on a public view study on the death sentence, which was divided into two groups: the general public and professionals. 4472 persons took part, with 57.8% supporting the death sentence, 14% opposing it, and 28.2% unsure. 455 professionals took part, with 91.2% supporting the death penalty and 8.8% opposing it [8]. Professor Bin Yuan of Beijing Normal University ran a public opinion poll in 2008 on whether the death sentence should be abolished or retained. A total of 3,500 surveys were distributed, with 3,408 valid questionnaires returned. 29.8%

of respondents thought the death sentence should be preserved, 9.9% said it should be abolished completely, and 59.9% said it should be restricted and lowered but not eliminated [9]. Opposition to abolition is the dominant view in China, but the percentage of opponents is decreasing, and support for not abolishing but restricting and reducing the death penalty is increasing significantly.

3.2. The United States' Public Opinion Polls

A record sixty percent of Americans polled in Gallup's 2019 Crime Survey selected life without the chance of release "as an alternative sentence for murder" over the death option, with 36 percent choosing the death penalty [10]. According to the 2020 poll results, 43% of respondents opposed the death penalty as a punishment for murder, whereas 54% of respondents in the 2021 survey "favored the death sentence for those found guilty of murder" and 43% opposed the death sentence as an execution for homicide [10]. The 2022 Crime Survey, conducted in the aftermath of the Parkland school shooting trial, discovered that 55 percent of people support the penalty of death. In favor of the death sentence has ranged from 54% to 56% in the latest six Gallup polls [10]. Another Rasmussen Reports poll from 2022 indicated that 46% of respondents approved the death penalty, 28% opposed it, and 26% were unsure, with less than half of American people currently supporting it [10]. It is clear that support for capital punishment is dwindling in the United States, and there is a decrease in opposition, and it is not certain whether the percentage of those in favor or against increases.

3.3. Japan's Public Opinion Polls

A 2009 government study revealed that 86 percent of respondents supported the death sentence, and a 2014 survey found that 80 percent thought the death penalty was "inevitable" [11]. According to a 2015 survey of a nationally representative sample of Americans, while 83% of those polled believed the death punishment was "inevitable", a considerably lower number committed to keeping it when given a choice of five response options. 27 percent of poll participants agreed that the death penalty should be kept as a method of criminal punishment. "Should unquestionably be retained" as a form of criminal punishment [11]. Approximately 60% of people consider that the death penalty ought not to be eliminated in the future, and this figure has been gradually declining over the past few surveys; approximately 40% believe that the death sentence could be abolished in the future if the situation changes [12]. It can be seen that the majority of people in Japan support the death penalty, but this percentage has decreased, and many people are willing to choose other ways or change it according to the situation.

Favor of executing people appears to be dwindling across China, America, and Japan, with more people preferring options other than the death penalty or changing their intentions depending on the situation.

3.4. Characteristics of Opinion among the Public on the Death Penalty

Public opinion on the death penalty is regional. Different countries have different public opinions on the death penalty due to their different social and cultural backgrounds. The public's views toward abolition or retention of the death sentence are impacted by the country's traditional beliefs, death penalty policies, death penalty cases, etc. For example, public opinion in China and Japan has different views on retributive punishment and utilitarian punishment, and there are differences in the support and opposition rates of the death penalty in China and Japan.

The public's perspective on the death sentence is unstable. A position for or against the justice system is a result of the legal system and social perceptions, not an unchangeable social endowment. Death penalty attitudes exist in a person's consciousness and are significantly influenced by present circumstances, current experiences, and recent memories [13]. The more vivid members of society's

recollections of the death penalty, the more nostalgic people's perceptions of the death penalty become, whereas the more faded members of society's memories of the death penalty, the less genuine need appears in this regard. The attitude of the population may also shift depending on the situation when there are multiple options available in the survey.

The public's viewpoint on the death sentence is political. The public's attitude toward the death punishment is also related to political affiliation; for example, Conservatives prefer tougher criminal policies than liberals, and voters from right-wing parties are more likely to support the death sentence than supporters from left-wing parties [13].

4. The Interaction of Abolition of the Capital Punishment and Public Opinion on the Death Penalty

4.1. Give Full Play to the Supervisory Function of Consensus on the Application of Capital Punishment

The public is an important force in social supervision and should play an important role in the implementation of death penalty policies. Public oversight of policy implementation can, on the one hand, ensure adequate space for the realization of public interests in criminal policy while also monitoring and limiting the state's rights. On the other hand, it has the potential to promote the proper implementation of the death penalty policy [14].

4.2. Reasonably Grasp the Limitations of Considering Public Perception on Whether the Death Sentence Should Be Retained or Abolished

When there is a conflict between justice and public opinion, the first thing that justice should adhere to is the authority and independence of the law, and the justice's perspective should be based on the rights and contents granted by the law, and the second thing is to consider public opinion to some extent at an appropriate time [15]. Public opinion is often intertwined with rationality and emotion, easily guided by the outside world, and has limitations in the face of capital punishment policy, so it is very important to reasonably grasp the consideration of public opinion.

4.3. Reasonable Integration of Death Penalty Retention and Abolition with Public Opinion

Public opinion influences the implementation of criminal justice policies, while the view of punishment embodied in criminal justice in turn influences public opinion, and the relationship between the two is one of action and reaction. We should listen to public opinion but not just conform to it, and at the same time correctly guide public opinion to promote the reasonable integration of criminal justice and public opinion, and thus promote the reasonable integration of the retention or abolition of the opinion of the public and the death sentences.

5. Conclusion

Under the international trend of the repeal of capital punishment, the support rate of the death sentence in non-abolitionist countries is decreasing, and whether to choose to retain or abolish the death penalty needs to be considered carefully. Capital punishment should be abolished or retained as a complex social issue, which is affected by different factors, among which public opinion is a factor that cannot be ignored. Countries should consider the elimination or continuation of the death penalty following their national conditions while giving due consideration to public opinion, and if necessary, increasing the number of public view surveys on the repeal or retention of the death sentence. The essential component of public opinion is to appropriately guide and utilize public opinion to promote death penalty reform, improve the death penalty system, and safeguard public fairness and justice.

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