

To Abolish or to Retain: Debating the Death Penalty in the United States

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Abstract. This article gives an overview of the movement to abolish death penalty around the world. The author recalls the history of the death penalty and talks the current status of the death penalty in the US. In order to discuss whether penalty should be abolished or not, the author shows the case of Furman v. Georgia which plays a transformative role in the abolishing death penalty debate, as well as some public opinions.

1. Introduction

There is movement afoot around the world to abolish the death penalty. This work is not easy given the complexity of this issue. Yet many countries have changed their legal codes and brought an end to the death penalty. The principal argument underpinning such a change is an ethical one - that it is immoral for a society to kill an individual. There are some countries, such as China and the United States, that have resisted ending this particular form of punishment. To these countries, the death penalty is the ultimate punishment for heinous and serious crimes. It deters criminals for committing such crimes and therefore restores justice in society. The critics of the death penalty often suggest, however, that it violates people's human rights. Depicting the death penalty in such a way may distract from the basic question that forms the basis of this debate; namely, the death penalty is a necessary tool to prevent crime and uphold a law-abiding society.

This paper will consider the evolution of the complex death penalty debate in the United States. Before 1972, most Americans considered the death penalty to be right and just. Today, however, many view this practice as wrong and unjust. Because of this changed ethical environment it is likely that the pressure will mount to abolish this practice in the distant future.

2. Background of death penalty

2.1 Overview

Debating the death penalty is not merely a modern phenomenon. About 200 years ago, the Italian writer Cesare Beccaria wrote the book *Crime and Punishment*. This work opened the historical process of abolishing the death penalty. Beccaria argued then that the death penalty deprives the criminals of their lives. This practice is predicated on pre-modern traditions and sensibilities and therefore not applicable in modern, progressive societies [1].

After 200 years since Beccaria's publication, nowadays 65% of the countries of the world have abolished the death penalty. The justification for this abolishment is that it is more in line with modern notions of human rights and that it will improve the legal system. For example, one of the pre-conditions of joining the European Union (EU) is the elimination of the death penalty [2].

Although many countries have abolished death penalty, the US still has not eliminated this practice. Interestingly, in 1972 the United States once temporarily abolished the death penalty. But, because of conservative political pressure and soaring murder rates, the United States resumed the death penalty in 1976. Subsequently, however, several states decided to ban the death penalty within their jurisdictions. Most of these states are located in the northeast and the Great Lakes. Yet there are also some states west of the Mississippi River that have also decided to end this practice. For example, in March 2009, New Mexico abolished the death penalty. Instead, the maximum penalty was life imprisonment. Similarly, on January 11, 2011, the Illinois State

Assembly also voted to abolish the death penalty and end the local death penalty dispute [3]. The baseline for all discussions on this practice in the United States is the influential 1972 Supreme Court decision in *Furman v. Georgia*.

2.2 *Furman v. Georgia*

Furman v. Georgia was a transformative step in the death penalty debate. The case alleged that William Foreman (a black man) murdered a white man with five children. Under Georgia law, it was up to the jury to decide whether the death penalty should be applied to a murderer. Lawyers of the Law Defense and Education Fund argued that the system was unjust because African Americans were more likely to be convicted of murder than a white person. In this case, the US Supreme Court, agreed with the opinions of the Legal Defense and Education Fund. In its verdict, the US Supreme Court pointed out that “Imposition and carrying out of the death penalty in these cases held to constitute cruel and unusual punishment in violation of Eighth and Fourteenth Amendments.” [4]. After this verdict, the death penalty was not implemented for a period of time. Further, the *Furman v. Georgia* ruling changed the parameters of the debate. Before, the discourse centered around human rights and/or religion. After the verdict, the issue was framed in legal and constitutional terms that dramatically changed the contours of the discussion. Yet did *Furman v. Georgia* actually put an end to the use of the death penalty?

The answer is a resounding no. According to statistics from the US Department of Justice, although the number of executions immediately after *Furman v. Georgia* is almost zero, the number of executions in the United States has increased from the mid-1980s to the beginning of the 21st century. For example, in 1998, 85 death sentences were imposed. This change is attributed to *Gregg v. Georgia* in 1976, when US Supreme Court pointed out that “The existence of capital punishment was accepted by the Framers of the Constitution, and, for nearly two centuries, this Court has recognized that capital punishment for the crime of murder is not invalid.” [5]. This means that the US legal system once again recognized the use of the death penalty. So, did the Supreme Court reverse itself?

3. The development direction of the death penalty in the US

3.1 Abolishing, direction of the development

On the whole, the number of death penalty executions in the US increased significantly from 1976 to 2000, but began to slowly decrease after 2000. In 2010, the United States executed 46 death sentences, far less than in 2000. This reduction may be partly ascribed to certain restrictions set in place.

In 2002, the state of Texas executed a young Napoleon Beazley by lethal injection on 28 May in Huntsville, Texas for the murder of a man during a carjacking. He was only 17 at the time of the crime. Texas is a state which practices the death penalty. Yet even though he was a minor when he committed the crime, Beazley was convicted as an adult and received the ultimate punishment. Sentencing a minor to death is a tragic development. During the execution, Beazley showed remorse and his final words criticized the Texas criminal justice system for not giving him a second chance [6].

Napoleon Beazley’s death received widespread attention in the US and around the world. Today, in most countries, the death penalty has been abolished. The US remains an outlier and is heavily criticized for this practice. Although the situation in the United States is complex making the immediate abolishment the death penalty difficult, the imposition of the death penalty and execution of juvenile offenders is horrendous. Eventually, this criticism started to impact the debate.

In 2005, the influential case of *Roper v. Simmons* took place. At age 17, the defendant Christopher Simmons was charged with planning and committing a capital murder. After he had turned 18, he was sentenced to death. In the end, the Missouri Supreme Court agreed and set aside Simmons’ death sentence in favor of life imprisonment without eligibility for release. They pointed out that “The Eighth and Fourteenth Amendments forbid imposition of the death penalty on

offenders who were under the age of 18 when their crimes were committed.” [7]. Furthermore, they argued that the “Rejection of the imposition of the death penalty on juvenile offenders under 18 is required by the Eighth Amendment. Capital punishment must be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’”

These two cases demonstrate the dynamic nature of the legal system. Here, two teenagers, were found guilty of murder that they committed at the age of 17. Yet one, Napoleon Beazley, was sentenced to death and executed whereas the other, Simmons, received life imprisonment. In other words, the death penalty no longer applied to all juvenile offenders. This change in the law may explain why there is a decrease in capital punishment in recent years has been. Yet ultimately this demonstrates that the system is starting to crack away at the death penalty. Judging from the changes in recent years, it is likely that it will be completely abolished in the near or distant future in the United States.

3.2 Religion and death penalty

Yet though it anticipated that abolishment is around the corner, but there is still a lot of resistance. As the only country among the so-called Western democracies why has the United States still not put an end to this practice? One reason may be because of the religious composition of the United States. According to a 2008 Gallup poll, “In recent years, most Americans (about 56%) have always believed that religion plays a very important role in their lives.” Christianity has had a pervasive influence on American society [8]. Consequently, religion forms an important backdrop to the debate on the death penalty.

In the book of “Genesis” of the Hebrew Bible, God said that “Whoever sheds the blood of man, by man shall his blood be shed”, This has long been regarded as the theological basis of Christians’ death penalty. In the gospel of “Matthew” of the New Testament, Jesus rejected the old Jewish law by stating that “You have heard that it was said, “An eye for an eye and a tooth for a tooth.” But I say to you, do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also.” However, at the same time, the New Testament has given the death penalty legitimacy in the book of Romans. As in so many cases, the Bible provides contradictory evidence. Therefore, supporters and critics can find evidence in scripture for either position. Biblical verses can be cherry-picked to bolster a particular point of view. So how does religion affect the death penalty system in the United States in history?

During British colonial rule in North America, the death penalty was widely used. The death penalty was carried out publicly and was a secular activity cloaked in religious legitimacy. Around the War of Independence, people began to question the death penalty. At this time, a large number of democratic religious groups emphasized the goodness of God and the ability of self-improvement, rather than the degeneration of human nature and God’s judgment. Therefore, by the end of the Eighteenth Century, the number of death penalty cases in the United States had been greatly reduced. However, the debate on death penalty in religious circles did not end. In 1965, after the Second Vatican Conference, the Holy See began to oppose the death penalty completely. Since then, most mainstream sects have also begun to oppose the death penalty. This is a great Christian turning point in the question of death penalty. The issue is evolving [9].

As recently as of August 2, 2018, Pope Francis ordered a revision to the Catechism of the Catholic Church, updating it to describe the death penalty as “inadmissible” and an “attack on the inviolability and dignity of the person.” This statement has aroused widespread reactions from people around the world. In the United States, it can be seen from the attitudes of state officials that most of them agree with the Pope and are willing to promote the abolition of the death penalty.

The Papal decree is a significant milestone in the history of punishment in the world. Looking back in the 20th century, major religious institutions once supported the US death penalty system. However, its teachings have continued to develop over time. Nowadays, religion has become a major driving force for the abolition of the death penalty in the United States.

3.3 Public opinion on death penalty

Most people in the US believe in religion, so religion can have a major impact on many aspects of the country. Also, in this democratic country, the greater impact on the issue of the death penalty is public opinion. Deciding policy based on public opinion can work both ways. In fact, public opinion is one of the biggest obstacles to the abolition of the death penalty. For the sake of revenge and the pursuit of security, more Americans are willing to keep the death penalty. According to the Pew Research Center, public support for the death penalty in the United States has ticked up slightly since hitting a four-decade low in 2016, with 54 percent now approving of the punishment for those convicted of murder. The attitudes of Catholics mirror those of the nation, with 53 percent favoring the death penalty. The Pope's recent remarks may lead to a decline in this number, but in the short term, this value will not change drastically [10].

4. After death penalty was abolished

Ever since *Furman v. Georgia*, in the past half century, the death penalty has been widely debated in the United States. *Furman v. Georgia* was an important attempt by the US Supreme Court to break the balance between federal and state legislative and judicial institutions, and promote, instead, a unified federal legal code. After decades of evolution, the current US death penalty system has been basically stable and is slowly moving toward abolition. In this process, the US Supreme Court has regulated many of the legal contents related to the death penalty, such as the principles, scope, and quantitative standards applicable to the death penalty. At the same time, the use of the death penalty is reduced through the interpretation of the constitution and the application of jurisprudence. *Napoleon Beazley and Roper V. Simmons* are good examples of the changes in the scope of application of the death penalty in US law. So how can the problems of abolishing the death penalty be solved if the application of the death penalty is reduced and expected to be abolished?

Indeed, the death penalty is an ancient punishment and it is undeniable to have some important advantages. For example, it can effectively control the crime rate, maintain social stability to a certain extent, and some of them are somewhat incomparable to other penalties. Therefore, it is particularly important to find alternatives to the death penalty. Before and after the abolition of the death penalty in many countries, the death penalty alternatives were concerned and studied, and now the US is doing the same.

At present, the death penalty substitution system generally recognized by the international jurisprudence is Life Sentence, especially the Life Sentence Without Parole. This system has its advantages and disadvantages. It does not directly deprive the criminals of life, but deprives the criminals of most of their freedom. Is life imprisonment "better" than death? Yet a critical difference is that, the death penalty is irreparable. According to Columbia University's study in 2002, the rate of miscarriage of death sentences in the United States is as high as 68%. If the death penalty has been implemented, it will be difficult to recover. The international community has different views on this, but we can basically assume that this is the best alternative to the death penalty. At present, there are about 33 states in the United States and the District of Columbia and the federal government who apply the Life Sentence Without Parole in legal practice. The effect of this penalty is equivalent to the death penalty. It can also be said that "the cell has become the grave of the criminal" [11].

The replacement of the death penalty by means of Life Sentence Without Parole may not reflect the development of the legal system in a considerable part, but it can play a role in promoting the abolition of the death penalty. Life-long punishment allows criminals who are guilty of sin to avoid direct death, and there is room for choice, and they can create more value for the rest of their lives. Some prisoners of death have repented in prison, wrote books and biographies, and taught others not to embark on the road to crime. Although these criminals have committed serious crimes, they still realize their own values in prison and promote the social harmony and development, also can't escape the judgement [12].

The abolition of the death penalty is the direction of the development of criminal law in the United States, and to achieve this goal, it is necessary to find a suitable alternative system for the death penalty. This is not a simple question. Life Sentence Without Parole is clearly not the best solution, and it is difficult to come up with a better solution, which has both the advantages of the death penalty system and better humanity and fairness. This is exactly the problem that the United States and many other countries are facing. Yet given the severity of this issue, more research is necessary in order to find a better alternative to death penalty.

5. Conclusion

Based on the above, we can basically draw three conclusions. The United States is very likely to abolish death penalty in the distant future. In the next few decades, the use of the death penalty in the United States will be slowly reduced, and the crime of applying the death penalty will be reduced. As more and more states abolish the death penalty, it will one day be abolished in the United States. Also, the US needs to develop more successful ways to combat crime and how to deal with criminals since it has not been convincingly demonstrated that the death penalty is an effective way to deter crime.

Reference

- [1] C. Beccaria, *Crime and Punishment* Huang Feng translated version, *Beijing: China Legal Publishing House*, 2005.
- [2] Z. Chen, *Death penalty and human rights*, *Social Sciences in China*, vol 30(02), pp. 152-165, 2009.
- [3] Z.G. Yu and J. Cao, *Death penalty retention policy in the US and new death penalty reservations—the argument of whether abolishing death penalty or not in abroad*, *Politics and Law Forum*, vol. 31(01), pp.115-132, 2013.
- [4] *Furman v. Georgia*, 408 US 238 ,1972.
- [5] *Gregg v. Georgia*, 428 US 153 ,1976.
- [6] *Execution Report: Napoleon Beazley* , *Texas Execution Information Center*, US.
- [7] *Roper v. Simmons*, No. 03-63.
- [8] R.W. Liu, *Death penalty and religion*, *Research on Rule of Law*, vol. 11, pp.3-11, 2013.
- [9] L.F. Li, *God and the condemned man: the issue of death penalty in the US in Christianity.*, *Research on World Religion*, vol.05, pp.97-106, 2010.
- [10]Z.Y. Wang, *The analysis of abolishing death penalty in public*, *Journal of Guangzhou Radio and Television University*, vol.17(01), pp.91-96+112, 2017.
- [11]Z.X. Wang, *Alternatives of death penalty: a cautious and penal concept*, *Laws in China*, vol. 01, pp. 291-303, 2015.
- [12]M.K. Zhang, *No needs for abolition of the death penalty by life imprisonment*, *Research on Laws*, vol.02, pp. 79-94, 2008.