THE POPULIST BIND: DEATH PENALTY ABOTTION
AS AN ANTI-DEMOCRATIC DECISION

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Abstract
The continued application of the death penalty in the United States marks the country as an extreme outlier among its allies and like-minded nations in the 21st century. In order to explain America’s retention of this criminal punishment, scholars have sought to first explore: what explains variation in a Western democracy’s retention or abolition of the death penalty? In an attempt to eliminate intervening variables present in past studies, this paper provides a comparative historical analysis of death penalty abolition movements in Great Britain and the United States. While many scholars have asserted that cultural dispositions explain the survival of capital punishment in the United States, this analysis ultimately supports the contentious hypothesis that the U.S. has not abolished the death penalty because the nation is more democratic in structure and practice than Great Britain.

Introduction
As three countries abolish the death penalty every year, over two-thirds of the world has now abandoned execution as an acceptable punishment for crime today (Amnesty International 2012). Beginning with the repeal of the death penalty in Western European nations during the 1960s, a sweeping international trend towards abolition has pressured even Rwanda, a nation still prosecuting genocide-related atrocities, to reject execution as a means of establishing justice in 2007. Despite this emerging global norm, the United States is consistently ranked among the top six nations with the most confirmed executions, led only by China, Iran, Saudi Arabia, and Iraq (DPIC “An International Perspective” 2013). Since the retentionist countries are almost exclusively developing or undemocratic nations, capital punishment as a policy places the United States in a distinctly unfamiliar category, removed from its allies and like-minded nations in the 21st century. This policy divergence was recently highlighted when the United States declined to vote alongside a record number of countries in the United Nations General Assembly for a worldwide moratorium on executions in November 2012 (DPIC “UN Death Penalty Resolution” 2013).

It has been suggested that the United States and European nations “are now farther divided on the question of capital punishment than on any other morally significant question of government policy” (Zimring 2003, 181). While the United States saw the abolition of the death penalty recently
in Connecticut in 2012 and Maryland in 2013, thirty-two American states still retain execution as a punishment for murder (DPIC “Year End Report” 2012). Since American support for the death penalty has declined substantially from 80 percent in 1994 to 63 percent in 2012 (Gallup 2012), it is an appropriate time to isolate the roots of America’s staunch retention of the death penalty. Without providing a value judgment on the appropriateness of the death penalty as a policy, this paper simply seeks to apply a high level of scrutiny to an often overlooked but significant policy divergence in the Western world. An informed explanation of America’s retention of the policy begins with the basic question: what explains variation in a Western democracy’s retention or abolition of the death penalty?

This paper will begin with Section (1), a literature review of the major theories that past scholars and social scientists have put forth in regards to death penalty politics in modern Western democracies. Section (2) presents a joint hypothesis that was constructed based on recent academic literature in the field. Section (3) provides an overview of the methodology employed to test the hypothesis and Section (4) states the findings. Section (5) explores implications of the findings on the sustainability of death penalty abolition in Europe and potential death penalty abolition in the United States. Section (6) acknowledges the limitations of the study and puts forth suggestions for future research. Finally, Section (7) provides a conclusion and a look to the future of transatlantic death penalty politics in the 21st century.

Literature Review

The first step in this academic inquiry is to examine the popularly cited answers to America’s idiosyncratic retention of the death penalty and assess their merit in the social science field. Two variables that are often discussed in the public forum are the nation’s homicide rate and the influence of special interests. The most common kneejerk explanation for America’s retention of the death penalty is the assertion that high homicide rates, spurred by lack of gun control and urban crime, make the death penalty a more urgent mechanism than in small European nations. While the United States homicide rate is higher than most European countries, the national murder rate has dropped dramatically from almost 10% in 1990 to 4.7% in 2011 (DPIC “Murder Rates Nationally and By State” 2013). Additionally, if high homicide rates are a compelling variable for death penalty retention, the internal state-by-state trends of abolition in America offer an entirely contradictory trend. For example, Maryland, a state with one of the highest murder rates at 7.5%, just abolished the death penalty in 2013. Meanwhile Texas, a state with a murder rate of only 4.4%, retains and actively uses the death penalty. In this way, the homicide rate answer does not emerge as a prominent variable.

Secondly, individuals are often apt to attribute retention of any potentially outdated policy to the influence of special interests, in this case a lack of power in the anti-death penalty advocacy community. Ironically, the United States was one of the success sites for death penalty reformers led by Cesare Beccaria’s doctrine in the 1780s (Hood & Hoyle, 11). While the policy decisions on the death penalty in European nations were certainly influenced by lobbying groups and the political advocacy of leaders like Sydney Silverman in Great Britain, neither actors can compare to the massive influence of lobbyist giants like Amnesty International and the American Civil Liberties Union in the United States today. Furthermore, the survival of the death penalty as a policy is peculiar among other legislative issues because the pro-death penalty lobby is hardly an organized force at the national or state level. Considering this logic, neither homicide rates nor the influence of special interests are recognized as...
significant variables under review today.

A review of the literature concerning death penalty abolition in different countries has revealed the prevalence of two significant competing theories, cultural disposition and political structure (Guess 1999, 54). Building on previous work, this literature review examines comparative historical analyses and longitudinal case studies that identify at least one of these theories in the findings. This narrowing process exposed an ongoing academic debate over whether political structure or cultural disposition is the defining variable that explains a Western democracy’s policy towards execution. After reviewing a range of findings, it is clear that the academic literature now slant heavily towards a political structure explanation.

In the comparative historical analysis “Transatlantic Perspectives on Capital Punishment,” Austin Sarat and Jurgen Martschukat explore the historical differences between the United States and Europe and identify both cultural disposition and political structure as key indicators of abolition (Sarat and Martschukat 2011). The article first discusses the influence of cultural disposition, for example how the American death penalty can be seen as a “vestige of frontier mentality” (Ibid., 6). The authors then discuss the influence of a more “porous” political structure, for example how the two-year term in the U.S. House of Representatives ties public officials to the emotions of their constituents. Sarat and Martschukat argue, “the European experience posits this: public opinion tends to follow decisions by political elites rather than leading them” (Ibid., 4). The findings suggest that cultural disposition and political structure both should be considered as explanations for differences in death penalty politics across the Atlantic.

For years, many criminal justice scholars have insisted that cultural disposition is the most influential variable in whether a Western democracy abolishes or retains the death penalty in the 21st century. Notable scholars on American capital punishment, such as Zimring, maintain that the American cultural tradition of punitiveness is the ultimate explanation for its death penalty policies (Zimring 2003). In “Capital Punishment and American Exceptionalism,” Steiker focuses on the theory that the United States has a sub-culture of violence derived from its Wild West roots (Steiker 2002, 127). Other scholars point to the Puritan notion of a social deviant’s estrangement from society as a key cultural disposition that supports the continuation of the policy in the United States (Grasmick, Cochran, Bursik, & Kimpel 1993, 296). All of these theories on cultural disposition are supported by the fact that the death penalty is complemented by other punitive elements in the American criminal justice system, including the imposition of lengthy incarceration sentences and felony disenfranchisement.

However, these cultural disposition theories err by highlighting certain cultural facets and disregarding those that contradict the hypothesis. For example, America’s “frontier mentality” may suggest a proclivity to the death penalty but America’s emphasis on individualism and self-determination certainly suggests an opposing tension. If the full range of cultural facets is considered, the influence of the cultural dispositions on a certain policy is much more complicated than the reductionist theories in the field today. While each of the cultural conception theories add interesting dimensions and contribute to a multi-causal explanation, cultural disposition theories alone paint an overly simplistic picture for this policy divide between like-minded Western democracies (Sarat and Martschukat 2011, 7). In order to fill in a perceivable gap, scholars have started to assess the importance of political structure as a critical variable in death penalty abolition across Western democracies.

In “The Myth of the Dedicated Public Servant,” Gerber and Johnson shift the debate by
illustrating how political structure alone can influence death penalty politics (Gerber & Johnson 2007). In his comparative historical analysis of the United States and Europe, Gerber posits that the American democratic structure has historically bound the nation to retention while the European democratic structures have allowed for more flexibility. In general, the process of frequent, open, and direct elections encourages American political candidates to use appeals to pathos in order to capitalize on the public’s fear and insecurity. Gerber suggests that once politicians have campaigned as tough on crime, their decisions in office do not give proper weight to any powerful social science data that may contradict their position on the death penalty (Gerber & Johnson 2007, 199). This populist bind is not found in the prototypical European democracy with institutions that remove decision-making from popular demand. Through his evaluation, Gerber suggests that political structure deserves more attention as a variable in the transatlantic study of death penalty abolition.

In “Civilized Rebels: Death Penalty Abolition in Europe as Cause, Mark of Distinction, and Political Strategy,” Hammel adds an important dimension to the political structure theory by contrasting the effects of American populism and European elitism (Hammel 2011). Hammel argues that European intellectuals considered opposition to the death penalty a “mark of distinction” that demonstrated their superiority to the masses (Hammel 2011, 174). In stark contrast, America’s populists have always been hostile to any semblance of elitism in politics. In this way, American populist attitudes have minimized the opportunity for strong independent political leadership on the issue, which is often essential on the path to abolition. By building on the findings of Gerber and Johnson, Hammel enhances the political structures theory and further supports its validity as a fresh explanation for variation in a Western democracy’s policy on the death penalty.

Research Question

Together, recent scholars have created the foundation for a hypothesis that is worth exploring. A literature review on this complex issue reveals a provocative idea: is abolition or retention of the death penalty steered by a Western nation’s political structure of democracy? Keeping in mind the dimension added by Hammel, political structure theory considers the influence of a) institutional make-up and b) the decision-making practices that accompany these institutions. The theory must be two-fold because both elements inform each other in a cycle. With this relationship in mind, I seek to tighten the corresponding hypotheses presented by Gerber & Johnson and Hammel by examining the influence of differing political structures through a comparative historical analysis of the United States and Great Britain.

Hypothesis

The United States has not abolished the death penalty because American political institutions are more democratic in structure than Great Britain. In this hypothesis, “more democratic” refers to a) an institutional make-up that gives constituents immediate control over their representatives and b) populist decision-making practices that encourage respect for public opinion over a public official’s individual conscience.
**Methodology**

A comprehensive comparative historical analysis of the United States and Great Britain is an appropriate method for substantiating the controversial premise of this hypothesis. A comparative historical analysis is a type of explanatory research that uses systematic comparison between two cases and the analysis of processes over time in order to explain large political phenomena and often predict possible outcomes to current events (Mahoney 2004). As demonstrated in the literature review, many scholars have used comparative historical analyses or longitudinal studies of the United States and Europe as a framework for examining the factors of successful and unsuccessful movements for death penalty abolition. Social scientists in the field tend to agree “scrutiny of the transatlantic situation of capital punishment and punitiveness is crucial if we are to understand where America is on the road to abolition and what the European experience has to offer” (Sarat and Martschukat 2011, 13).

Given the diversity of legal systems and political cultures across Europe, I suggest the alternative strategy of a comparative historical analysis of the United States and Great Britain. After all, many European countries, such as Italy and France, maintain a civil law system with very different legal procedures. With a collective ancestry, the United States and Great Britain share a common law system, basic cultural customs, and long history of using execution as the ultimate sanction. By comparing two nations that are so closely related in legal system and cultural custom, third variables can be easily isolated and set aside as explanations. In this way, a comparative historical analysis of the United States and Great Britain helps to narrow the search for what may explain variation in a Western nation’s retention or abolition of the death penalty.

This comparative historical analysis focuses on three crucial time periods in the historical evolution of capital punishment in the United States and Great Britain. In the first section, I examine the early historical roots of the death penalty in U.S. and Great Britain in order to confirm that similar legal developments did indeed occur in both regions. A review of this time period is critical for validating the basic premise of the comparative historical analysis and a logical elimination of intervening variables. In the second section, I examine the time period of the 1960s-1970s, during which the first major divergence in capital punishment policy manifested between the two nations. While the last execution in Great Britain occurred in 1964 and the Murder (Abolition of the Death Penalty) Act of 1965 suspended the death penalty sanction for murder, the United States established a similar national moratorium period for executions from 1972 to 1976 while the Supreme Court reviewed the constitutionality of the practice. However, America diverged with Great Britain at this time when the Supreme Court ruled in Gregg v. Georgia that the death penalty did not violate the Eighth Amendment and therefore could not be abolished by federal mandate. In the final section of the historical analysis, I examine the third crucial time period, the 1990s. The 1990s was the ultimate period of differentiation in capital punishment policy, as the United States dramatically expanded the institution through “tough on crime” political efforts while the British House of Commons repeatedly denied motions to re-institute capital punishment in Great Britain.

In examining these three crucial time periods, the comparative historical analysis employs several methods of original research to accurately track trends in death penalty politics, including polling data, discourse analysis and documentary analysis. In terms of historical polling, the data came from Ipso MORI for Great Britain and Gallup for the United States. In terms of discourse analysis, the paper relies on archived articles from The Times (referred to as the London Times in the United
States) and the New York Times. Finally, in terms of documentary analysis, the paper uses transcripts from proceedings in the British House of Commons and speeches made by American political officials. Ultimately, this paper uses original documents and other primary sources to test a new structural theory on how death penalty politics historically progressed in two major Western democracies.

**Findings**

**Background**

Before the findings of the comparative historical analysis are presented, a brief inquiry into the differences between American and British political structures is required. The United States is essentially a collection of democratic states with an enormous breadth of political dispositions and diversity. A central tenet of the American federal institution is the emphasis on states’ rights, which is based on a fundamental respect for local determinism. In contrast, Great Britain, like many other European democracies, is a smaller, more centralized parliamentary democracy. This structural distinction is important because, while Great Britain can only abolish the death penalty on a federal level, the American federal government has the default option of letting the contentious issue work itself out in the state legislatures. Since only eighteen American states have abolished the death penalty (DPIC “Year End Report” 2012), this procedural strain alone could account for the United States lagging behind its European counterparts in death penalty abolition.

While the United States is sometimes referred to as one of the most direct representative democracies in the world, the British democracy is complemented and influenced by political relics from a time past. The British government still involves their constitutional monarchy and maintains a House of Lords, a legislative body with hereditary and appointed members. While the British House of Commons certainly supplements the political structure with elected representatives, it is important to note that even the most democratic legislative body in Great Britain is not held hostage by public sentiment. For example, the Prime Minister has the power to set the date of general elections as long as it does not exceed a five-year gap. While the United States attempts to create some distance from the public with six-year terms in the Senate as opposed to the diminutive two-year House of Representatives terms, even U.S. Senators are given no where near the political flexibility afforded British government officials.

**Early Historical Roots**

Despite these structural differences, the shared historical roots of capital punishment in Great Britain and the United States can be traced back as far as American independence. In fact, the ceremony of public execution in colonial America was modeled after that of early modern England and Continental Europe. When the Italian jurist Cesare Beccaria made waves in Europe with his treatise against capital punishment On Crimes and Punishment in 1794, the Founding Father Benjamin Rush, sometimes referred to as the “American Beccaria,” adopted and utilized these ideas in his push for abolition in America. The United States and Great Britain followed a similar timeline with the privatization of execution in the 19th century. As the masses became increasingly uncomfortable with the concept of public execution, the ceremony was moved behind closed doors. Privatization occurred in most major European countries from 1850 to 1870 and in the Northeastern region of the United
States between 1830 and 1860 (Spiersenburg 2011, 21).

Although some states like Rhode Island and Wisconsin abolished the death penalty altogether in the mid-1800s, it was not until the Progressive Period that America started to see a significant shift in state policy. In the first two decades of the 20th century, six states officially abolished capital punishment and many others imposed strict restrictions on its application (DPIC “History of the Death Penalty” 2013). Until the 1970s, political discourse in America on the death penalty concentrated largely on classifying capital crimes and debating different humane execution methods. The dialogue hardly touched the option of abolition. Meanwhile, across the Atlantic, abolitionist campaigns had pushed the British Parliament to severely limit the use of capital punishment in the Homicide Act of 1957.

1960s-1970s: The Reflective Moratorium

1. Great Britain: A Successful Moratorium

Historical trends with respect to the death penalty in the United States and Great Britain followed a parallel evolution until a critical period, the mid-1960s. In 1965, the British Parliament voted to suspend the death penalty for an experimental five-year period with the Murder (Abolition) Act of 1965. This bill was pioneered by Labour politician Sydney Silverman and generated a lively debate over political conscience on the death penalty. After a rigorous five-year review of social science research and careful analysis of crime rates, the British Parliament voted with a majority of 158 to renew the Murder Act and the death penalty as a sanction for murder was permanently abolished on December 16, 1969 (“1969: MPs Vote to Abolish Hanging” 2013). Interestingly, at the time of the introduction of this bill, Sidney Silverman represented an overwhelmingly pro-death penalty constituency. Even after the Murder Act of 1965 passed, Silverman won re-election (Hammel 2011, 196). This particular case points to the level of political flexibility afforded British politicians to vote in accordance with their conscience, even if it conflicts with the will of the constituency.

In order to examine my hypothesis, I cross-referenced public polling data in Great Britain on the death penalty in the 1960s in search for a gap between popular sentiment and the decision of the British House of Commons. Since central British polling organization Ipsos MORI was founded at the end of the decade, polling data on the death penalty in the 1960s can only be gleaned from digitally archived articles in The Times. Nevertheless, a cross-reference of articles in The Times illustrates that private pollsters found the majority of the public supported the death penalty. My findings with the polling data were further substantiated by a documentary analysis of archived transcripts of the proceedings in the House of Commons for the Murder Act of 1965.

A thorough textual review of debates on the floor revealed that Members of Parliament were fully aware of the polling numbers and consciously decided to reject them as an influence on their vote. In fact, many politicians explicitly cited polling numbers in their speeches on the floor. For example, Member of Parliament (MP) Duncan Sandys reminded the Parliament on June 24, 1969 that “recent opinion polls show that over 80 percent of the country want capital punishment restored” (785 Parl. Deb. House of Commons, 1229).

Furthermore, an analysis of these transcripts provided insight into the political rhetoric of British intellectual elitism. During the floor debates in 1969 concerning the Murder Act, multiple Members of Parliament (MPs) used elitist rhetoric to encourage officials to separate themselves from
the emotions of the masses in the decision-making process. For example, on December 15, 1969, MP Hogg gave a passionate speech on the floor of the House of Commons in which he called on MPs to vote in accordance with their conscience and the social science research presented to the assembly.

“It is precisely because we regard the question of the death penalty as a matter for the individual conscience and on which the House of Commons may very well prove itself to be out of tune with a considerable body of public opinion, that we felt, and we think now, that when a decision is reached, it should be reached in a way to ensure that it has the maximum moral authority behind it.” (793 Parl. Deb. House of Commons, 942)

MP Hogg, a Conservative Member of Parliament, went on to suggest that the government was wise in attempting to “divorce this subject from the emotional atmosphere of an election year” (793 Parl. Deb. House of Commons, 943). In subsequent days of debate, MPs from the Labour and Conservative Party echoed this sentiment. On the same day, MP Winnick suggested that the determination of some moral issues is best left to educated politicians.

“Unfortunately, some hon. Members opposite want to make hanging an election issue. We are told that public opinion is in favor of hanging. That has been indicated in the opinion polls. If we (British Parliament) had listened to public opinion, slavery and public executions would not have been abolished in our country. It is sometimes right for the House to take the lead, and it would be right to do so tomorrow night.” (793 Parl. Deb. House of Commons, 973)

It is important to note here that even the idea of “making hanging an election issue” would seem foreign to American citizens who expect their political leaders to vote alongside the majority of constituents on all issues. Indeed, many speeches on the floor referred directly to the concept of Burkean trusteeship, a political theory of representation that “allows elected representatives to deny their constituents on matters of high principle” (Hammel 2011, 203).

One of the most surprising findings in the documentary analysis was that even the British public celebrated Parliament’s detention from popular opinion. For example, in The Times in February 1965, R.A. Bickford Smith wrote in a Letter to the Editor, “is an appeal to public opinion valid in this matter of social advance? I would suggest that on occasion public opinion should be led rather than be allowed to do the leading” (Bickford Smith 1965). Several other Letters to the Editor were published in The Times from 1965 to 1969 that supported the sentiment of Bickford Smith. The discourse analysis suggests that this type of Burkean trusteeship was accepted by at least some of the British public as a legitimate approach to political representation on the issue of death penalty abolition.

2. The United States: A Failed Moratorium

Curiously, when the British Parliament approved the Murder Act of 1965 against the will of 80 percent of their constituents, American support for the death penalty was at an all-time low. In 1966, a Harris Survey indicated that only 42 percent of Americans supported the death penalty (Bohm 2003, 31). In fact, Gallup polling of death penalty support in the United States from the 1930s onward has revealed a v-shape progression with the 1960s as the nadir (Gallup 2012). The American
government launched into its own experimental moratorium in 1972 when the Supreme Court ruling in Furman v. Georgia temporarily halted executions for four years. The justices’ decision to evaluate capital punishment in Furman was heavily influenced by public opinion polling and a decline in public support was cited as a potential measure for “evolving standards of decency” (Falco and Freiburger 2011, 1).

In 1972, Gallup tracked the fluctuation of death penalty opinions surrounding the Furman announcement. In the pre-Furman poll, 50 percent of Americans supported the death penalty. According to the post-Furman polling data, four months after the ruling, support for the death penalty had increased by 7 percentage points (Bohm 2003, 31). Death penalty issues received significant media attention until 1976 when Gregg v. Georgia ruled that capital punishment was not “cruel and unusual” and therefore dissolved the de facto moratorium in the states. Since it was unlikely that the Gregg v. Georgia decision would be reversed in the next few decades, the opportunity to review the constitutionality of state execution, a process supposedly independent from public opinion influence, was exhausted for the time being.

As the issue of the death penalty received heightened media attention and scrutiny in the 1970s, public opinion was treated as the most important barometer for the legitimacy of capital punishment in America. In fact, many Americans launched petition campaigns to restore the death penalty in states during the Furman moratorium period. For example, in March of 1972, an organized effort to gather more than a half a million signatures for a constitutional amendment to restore the death penalty was supported vigorously by then Californian Governor Ronald Reagan (“A Death Penalty is Petitions Aim” 1972). A state senator was quoted in the New York Times for suggesting, “this question will never be properly resolved until the people have had the opportunity to decide the issue” (“A Death Penalty is Petitions Aim” 1972).

Furthermore, many politicians suggested that state legislators should find a way to subvert the Furman moratorium in order to better represent the will of their constituents. For example, NY Assemblyman Vito P. Battista was quoted in the New York Times for advocating that lawyers “put an argument in the proper legal mumbo-jumbo” so that the state could disregard the potential unconstitutionality of the death penalty (“Opponents Clash on Death Penalty” 1972). A review of the media coverage of political speeches in the time period suggests that conservative and liberal politicians alike were reaching out to a constituency that largely favored the death penalty and therefore heartily echoed their wishes for retention coming out of the moratorium period in the 1970s.

1990s: “Tough on Crime” Decade

1. Great Britain: Abolition Solidified

As support for capital punishment remained high in Great Britain, there were fourteen unsuccessful attempts to reinstate it between 1969 and 1994 (Hood 2003, 26). As Great Britain entered what America experienced as the “tough on crime” decade, the British Parliament remained steadfast in their defense of death penalty abolition every time a bill was proposed on the floor. In 1995, 76 percent of the British public still supported the death penalty, a decrease of a mere four points from the 1960s (DPIC “International Polls and Studies” 2013). With the influence of the European Union’s
human rights standards and the gradual acclimation to a justice system without execution, public support for execution dropped in the late 1990s when Great Britain adopted the Sixth Protocol of the European Convention on Human Rights (Ipsos MORI 2007). Forty years after the Murder (Abolition) Act of 1965, the Ipso MORI agency documented a dramatic drop in support for capital punishment at the turn of the century, with only 56% support in 2002 (Ipsos MORI 2007).

The most recent British large-scale poll in 2007 illustrated a populace split down the middle, 50% in support and 45% against capital punishment (Ipsos MORI 2007). In fact, in 2011, an Internet-based campaign referred to as Restore Justice has gathered significant momentum with a petition to reinstitute capital punishment for child and police officer murderers. This campaign is utilizing the British government e-petition website, a new democratic measure that allows the public to submit proposals to be debated in Parliament. If the Restore Justice e-petition gathers more than 100,000 signatures, Members of Parliament have agreed to open up debate on the floor and re-consider the issue of capital punishment in the United Kingdom (Cafe 2011). Considering this fresh development in European death penalty politics, the political proceedings in the coming years will be pivotal in the evaluation of the sustainability of the “anti-democratic abolition” of the death penalty in Great Britain.

2. The United States: Abolition Delayed

Considering the influences of the “tough on crime” agenda in politics, it is no surprise that support for the death penalty in America peaked at 80 percent in 1994. Crime politics in the 1990s created a climate where any position perceived as “soft on crime” was a serious political liability for conservatives and liberals alike (Gerber 2007, 199). In this time period, government leaders could be seen “echoing the lowest levels of public anger and fear” (Ibid., 200). Because Richard Nixon had effectively used this platform to tap into the electorate’s pathos, Republican political strategists pushed a conservative crime and punishment agenda nationwide. In March 1991, President George Bush Sr. gave a rousing speech that framed an actively utilized death penalty as instrumental in “giving back our streets to America’s families” (Bush 1991). For one of the more extreme examples in political discourse, Newt Gingrich proposed the death penalty for drug smuggling in 1996, citing his reasoning as, “I have made a decision that I love our children enough that we will kill you if you do this” (“Gingrich Suggests Tough Drug Measure” 1995).

The expectation of “tough on crime” rhetoric was not confined to Republicans and aggressively infiltrated the Democratic leadership agenda. In the 1988 presidential debate, Democratic Governor Mike Dukakis was asked if he would support the death penalty for someone that raped and killed his wife. Dukakis infamously appalled audiences when he insisted that his opposition of the death penalty was independent from those emotions. On the night of the debate, Dukakis’s polling numbers dropped from 49% to 42% (Terry 2012). After this political debacle, Democratic officials were urged to stick to conservative death penalty positions. For example, Democratic President Bill Clinton ran three television advertisements for re-election that emphasized the expansion of death penalty statutes (Gerber 2007, 183). Crime control was so central to national politics that capital punishment had become “our nation’s litmus test for measuring suitability to handle all the delicate affairs of high office, even those having nothing to do with capital punishment” (Gerber 2007, 183).

While death penalty statues had been primarily determined in state legislatures, the federal Violent Crime Control & Law Enforcement Act of 1994 and the Antiterrorism and Effective Death
Penalty Act of 1996 passed with sweeping bipartisan support in Congress during this time period. While the first act expanded the punishment to apply to sixty new offenses, even some non-homicidal crimes, the second piece of legislation tightened habeas corpus laws in an attempt to speed up and reduce the cost of execution. The popularity of the “tough on crime” agenda did not just influence national legislation but also judicial and prosecutorial discretion. The 1990s saw a tremendous rise in the number of executions nationwide, from 117 to 763, an increase of nearly 650 percent between decades (Galliher 2002, 4). This American development in the 1990s provided a clear juxtaposition with Britain’s gradual “phasing-out” of the institution despite temporal variations in death penalty opinion.

Summary of the Findings

The findings of the comparative historical analysis in both critical time periods support the hypothesis of the study. Considering that policy-making in democracies is invariably multi-causal, the findings merely suggest the relevance of a structural variable that transcends the influence of other variables effecting a Western democracy’s abolition or retention of the death penalty. In the case of the United States, a comparative historical analysis reveals that, at a decisive turning point, “more democratic” institutions and practices hindered the country on the path to death penalty abolition. The U.S. emerged from the 1970s re-affirming the moral legitimacy of capital punishment because American institutions, including the independent Supreme Court, were structurally influenced by a change in public opinion. As public support for the death penalty peaked in the 1990s with the advent of “tough on crime” agenda, death penalty retention was further entrenched by American political leaders who echoed popular sentiment to score well in their campaigns. In a broad sense, the death penalty debate at these two junctures in history serve as a perfect example of the functioning of the quintessential American democracy, in institutional make-up and decision-making practices. At the political tipping point for the nation on the death penalty issue in the 1970s, it was America’s direct democratic institutions that held the country back from abolishing the death penalty at the Supreme Court level or gaining momentum in the state legislatures.

In the case of Great Britain, a comparative historical analysis reveals that, at a decisive turning point, “less democratic” institutions and practices spurred the nation forward on the path to death penalty abolition. The distanced political system allowed British politicians to make the initial leap of abolishing the death penalty in the 1960s through the Murder Act despite the fact that 80 percent of constituents supported the mechanism. The British Parliament exercised accepted practices of Burkan trusteeship, a theory of political representation that allowed them to gamble on the fact that general support for the death penalty would decrease after the public saw the criminal justice system functioning without this ultimate sanction. History followed course, as the British public’s support for restoration of the death penalty declined substantially from the original 80% to 50% today. At a ripe time in history, it was Great Britain’s flexible democratic structure that allowed the abolition of the death penalty as an “anti-democratic” decision. If the British political structure had been structured like the United States, this comparative historical analysis suggests that this variable would have resulted in death penalty retention in Great Britain in the 1960s.

While there is a lot of focus on moving American public opinion towards death penalty abolition in the United States, a comparative historical analysis of the United States and Great Britain
makes a preliminary suggestion that abolition of the death penalty has been an “anti-democratic” phenomenon historically. Furthermore, the historical case study of Great Britain proposes that abolishing the death penalty as an “anti-democratic” decision can precipitate a drastic fall in public support for the death penalty. This supports the findings of other social scientists, such as Sarat and Marschukat, who suggest that many European democracies have only accomplished solidified abolition by taking a step ahead of public opinion. For example, Germany abolished the death penalty as early as 1949 and attempts in the 1950s to reinstitute the practice based on public support were continually rejected by the political elite (Demleitner 2008, 150). When France abolished capital punishment in 1981, the French public consistently polled at a 60 to 65 percent majority in favor of capital punishment (Hammel 2011, 193). Nonetheless, a couple decades later, public support for capital punishment has dwindled considerably to 35 percent in Germany and 45 percent in France (Ipsos MORI 2007). While a blanket statement about these different European nations must be corroborated with further analysis, a preliminary review does suggest that this process of “anti-democratic abolition” is not simply a British political phenomenon.

Most importantly, the research findings serve to weaken the popular cultural dispositions theory, or the idea that retentionist nations have cultures that are inherently more inclined towards violence and revenge. This theory was informally cited recently in international headlines in September 2011 when the audience of a Republican presidential debate erupted in applause for Governor Rick Perry because he executed 234 people during his time as governor of Texas. However, the interesting implication of the “anti-democratic” phenomenon is that European countries like Great Britain cannot claim to have drastically different cultural dispositions informing their political opinions at the time of abolition. When public support for the death penalty hovered around 80 percent in Great Britain, history demonstrates that abolition was triggered by structure in spite of the country’s cultural dispositions. The logical inverse of this finding is that America’s retention of the death penalty and current support of 63 percent does not necessarily suggest a country that is culturally more attached to retribution or death as the ultimate sanction. The “anti-democratic” phenomenon found in this comparative historical analysis clarifies that an irreconcilable cultural divide alone does not urge the policy rift to persist between the United States and other European democracies.

Implications for Future Research

The first implication for future research stemming from this study is the examination of the sustainability of death penalty policy as an “anti-democratic” decision in the Western world. Although America’s state-by-state abolition process moves slowly alongside local public opinion, moderate change over time may dig a deeper trench in the long run. While the “anti-democratic” decisions to abolish the death penalty in Great Britain and Europe could prove unsustainable and lead to calls for restoration, death penalty abolition in Europe is unique because 21st century international governmental organizations have locked states into this particular policy preference. Even though elected officials once achieved death penalty abolition against the popular will of the people, the state’s refusal to execute its own citizens has become a cornerstone of European collective principles on human rights. For example, the European Union makes abolition of the death penalty a requirement for member-states and any candidates that wish to be considered for accession. Additionally, the Thirteenth Protocol of the European Convention ensures that nations in the Council of Europe cannot
temporarily suspend their obligation to right to life and restore the death penalty in times of crisis. In this way, Europe has created a supranational structure that severely weakens the chances of any nation restoring the death penalty as a policy based on popular demand. This study puts forth the influence of supranational and international organizations on death penalty abolition as a significant subject for future research.

Social scientists and this comparative analysis have further supported the notion that “successful and sustainable abolition of capital punishment has never been a result of great popular demand” (Zimring and Hawkins 1986, 12). Consequently, what wisdom does this “anti-democratic” phenomenon leave for America and the thirty-two states that continue to retain capital punishment today? If most countries have managed “anti-democratic abolition” and public support for the death penalty has declined in the ensuing years, then America’s direct and accessible democracy gives birth to a populist bind in the majority of American states, especially in the South. In the states with highly active death penalty mechanisms, such as Texas, support for the death penalty is still as high as 73% (Ramsey 2012), roughly parallel to “tough on crime” figures in the 1990s. Additionally, though some state legislatures like Delaware are posturing for possible abolition in the future, death penalty repeal by each state may need to pass a public referendum based on different state laws. For example, in November 2012, California put death penalty abolition on the ballot but Proposition 34 was defeated by 52.8% to 47.2% when the public took a direct vote (Mintz 2012). Given these factors, grassroots campaigns have a long journey ahead of them if they hope to galvanize public sentiment towards abolition on a state-by-state basis and overpower the American structural bind that only allows change from the bottom up instead of top down.

Nevertheless, the historical findings of “anti-democratic” abolition in Great Britain do not need to imply that America’s populist bind eliminates the chance of an imminent change in death penalty policy. First, the role of bold political leadership is not to be disregarded. Although it is a rarity in American politics, the adoption of a Burkean trustee position has been known to occur in state politics on execution. While few American political representatives are willing to vote against the preferences of their constituents and risk looking “soft on crime,” former New York Governors Hugh Carey and Mario Cuomo and former California Governor Jerry Brown are three exceptions to this rule. These governors vetoed death penalty legislation despite the strong will of their state constituents (Bohm 2003, 28). Most recently, Maryland Governor Martin O’Malley took a substantial political risk with his rumored bid for the 2016 American presidency in order to push death penalty repeal in the Maryland legislature (Jacobs 2013). If the death penalty emerges as a national topic for debate in the 2016 presidential elections, the public discourse and rhetoric surrounding Governor O’Malley’s campaign could serve as an excellent case study in the populist politics of death penalty abolition going forward.

**Limitations of Study**

As in any honest academic inquiry, this study has weaknesses and limitations that could be improved upon in future research. The first limitation concerns technical flaws with examining public polling data in a comparative historical analysis, across time periods and across agencies. First, the study was confronted with the absence of original polling data in the 1960s in Great Britain because the Ipso MORI polling agency was founded a year after 1969. Nevertheless, the historical analysis substantiated claims by using a cross-reference of London Times articles and archived transcripts of
the British Parliament debates that cite the same numbers. On a broader level, when examining polling data across decades and different agencies, it is difficult to examine the consistency and quality of the questions asked in different surveys. For example, Gallup and other agencies now often ask Americans to gauge their support for the death penalty if life without parole is the alternative sanction. Research has shown that when individuals are presented with another tough alternative to the death penalty, they are much less likely to support death penalty retention in the polls (Clear & Cole 2010, 549). For example, in a May 2012 Texas Tribune poll, Texans supported the death penalty 73% without alternatives listed and expressed 53% support for death penalty as a preference over life without parole (Ramsey 2012). These are just a few discrepancies that usually accompany the large-scale analysis of public polling data and compel the tolerance of a slight margin of error.

The second limitation is the intellectual limitations of the researcher in removing all value judgments from the social science research. In evaluating why a policy divergence exists, researchers strive to transcend value judgments or biases concerning the content of the policy under review. However, how the researcher approaches such a complex policy divergence is inherently affected by the assumption that abolition is a positive or negative trend. Additionally, researchers evaluating the cultural dispositions of their own country cannot be entirely isolated or immune to the influences of the very culture under review. In order to mitigate any unconscious management of information, this study calls for other researchers who are unfamiliar with the content of the policy or who are diametrically opposed to abolition to re-examine the “anti-democratic” phenomenon. For American researchers hoping to circumvent the unconscious influence of an American cultural mentality, research into Belarus, the only remaining European retentionist country, is highly encouraged as an excellent supplement to the findings of this study.

Conclusion

By eliminating intervening variables present in past studies, this comparative historical analysis of death penalty politics in Great Britain and the United States hopes to move the literature closer to a richer understanding of what explains variation in a Western democracy’s retention or abolition of the death penalty. While a few American states will likely abolish death penalty in the coming decade, the politically entrenched regions of the South and Midwest will continue to aggravate the tensions between the United States and Western Europe over this significant policy divergence. “Triggering events” will shine a light on this division and hopefully catalyze meaningful public debate and further academic inquiries on the matter. For example, the Norway gunman Anders Behring Breivik, who killed 84 people in a summer camp in July 2011, served to test and reinforce Europe’s newly ingrained principles on the death penalty. When the Norway mass killer received a maximum of 21 years for one of the worst mass shootings in history, outrage over Norway’s leniency sparked a cross-Atlantic comparison with another recent notorious murderer James Holmes, who is awaiting trial and possible execution in Colorado for killing 12 people during a Batman movie screening. The coinciding of these two “triggering events” and the subsequent ways the U.S. and European systems handle policies hereafter will provide yet another interesting historical juxtaposition for the continued study of this policy divergence in the Western world. »


References


