

On the Feasibility of Abolishing Death Penalty in China: From the Perspective of Economic Efficiency and Criminological Principle

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Abstract. The death penalty and crime are not necessarily related in different countries, but those sentenced to death must commit crimes, while those who commit crimes are not necessarily sentenced to death. In recent years, many countries have abolished the death penalty system, the global abolition of death penalty accounts for 79%. It seems that the aim of penalty is to change from punishing criminals to educating them to return to normal society. From the perspective of economic principle and economic efficiency, if the cost of abolishing death penalty is greater than the benefit, then the abolition of death penalty is not sustainable.

Keywords: abolish of the death penalty; Principles of Economics; Principles of Criminology.

1. Introduction

In July 2011, a horrible crime occurred in Norway, a middle-aged man named Breivik committed two consecutive crimes, killing a total of 77 people, 69 of whom were teenagers at a summer camp. The killer first in Norway near the government building to create the explosion case, affecting the government building, the Ministry of Finance building and other areas. Then the murderer drove 40 kilometers away from the city of Utoya Island, posing as a police officer, on the camping students are participating in the brutal mass killings, of which the youngest was only 14 years old, the oldest 61 years old. However, Norway has abolished the death penalty, and criminals are not punished as they should be. China has not abolished the death penalty. criminal law scholars of many countries have heated debates on the legality of abolishing the death penalty and how to abolish the death penalty. Since the publication of the view of abolishing the death penalty in Beccaria's book *On Crimes and Punishments*. Today, there are 103 countries that have abolished the death penalty for all crimes, accounting for 53%, there are 50 countries that have defacto abolished the death penalty. The author thinks that whether we can abolish the death penalty in our country should be discussed from the economic efficiency and criminology principle.

2. Organization of the Text

2.1. The Relationship of Crime and Death Penalty

2.1.1 Not all crimes are committed death penalty

The utilitarian and the retributive are the Important Supports of Penalty Theory [1]. These two theories are the important cornerstones of the existence and continuance of criminal punishment. The death penalty, as the highest penalty, should be treated more carefully when we face the deprivation of life, and we must make a proper explanation from the legal level. In fact, considering the relationship between crime and penalty can not be ignored when discussing the relationship between death penalty and crime. As a citizen of a country is to know that the national provisions of the criminal acts will be punished, and in the relationship of criminal law, crime and punishment is such a pair of causal relationship. Engels once thought: "Individuals rely on the clan to protect their own safety and can also achieve this; whoever harms an individual is harming the entire clan. If a member of a clan is killed by an outsider, then the entire clan of the victim has the obligation to carry out the vampires' revenge [2]. The death penalty, which is a penalty that deprives the criminal's life directly,

has reached the highest value of the social harmfulness of the crime, and according to the principle of "the crime suits the crime", the severity of the penalty is also the highest. Therefore, different countries will formulate appropriate penalties according to their own national conditions, but the basic is based on the degree of social harmfulness of the crime to decide. As the opposite of crime, although penalty cannot make the crime and the damage it has caused disappear, the suffering of depriving rights and interests it contains can make its existence become the resistance of crime and play the role of restraining crime [3]. This seems to be a very good reason, but some scholars believe that the existence of the death penalty violates the Constitution [4]. Modern constitutional theory guides many countries to write human rights as a basic right into the constitution, the same, our country is no exception to write it into the constitution. If the state can deprive people of their lives by certain means, it is against the Constitution, and the Constitution is the fundamental law of the state, from which all laws are promulgated and enforced. Therefore, they hold that the state, as a form of public power, cannot deprive people of their lives by certain means, even if they are legal means. On the other hand, scholars who support the retention of the death penalty cite its presumed value as a universal deterrent, which is needed to encourage potential murderers to refrain from engaging in homicidal crimes [5]. A median between abolition and retention of the death penalty would require an exhaustive analysis of crimes such as homicide in legislation. It is worth mentioning that in the legislation of some foreign countries, homicide is subdivided into murder or other types of homicide, or murder is further divided into first-degree murder and second-degree murder to distinguish the intent and means of murderers, and the corresponding penalties are also different, for example, in some US states, first-degree murder carries a maximum penalty of death, while second-degree murder carries a sentence of decades in prison. Professor Harris's survey found that there is no strong support for mandatory capital punishment; those who support it are far outnumbered by those who oppose it and those who want it to be carried out in a case-dependent manner [6].

2.1.2 Type of crimes subject to death penalty under the current crime law of china

China's current criminal law reserves the death penalty for 46 crimes. Although it spans from Chapter 1 to Chapter 8 of the Criminal Law of China, it mainly protects three kinds of legal interests: state legal interests, social legal interests and individual legal interests. Chapter I Crimes of Endangering State Security, Chapter VII Crimes of Endangering the Interests of National Defense and Chapter VIII Crimes of Embezzlement Infringed upon legal interests of the State. Legal interests infringed upon by crimes of endangering the public security, crimes of disrupting the order of the socialist market economy and crimes of obstructing the administration of public order are legal interests of social public interests. Chapter 4 Crimes of Infringing upon the Rights of the Person and Democratic Rights of Citizens and Crimes of Infringing upon Property Belonging to the Crimes of Infringing upon the Personal and Property Interests of Citizens. Professor Chen, a well-known Chinese criminal law scholar, believes that the death penalty charges in China are redundant or redundant, such as the crime of military violation of duty, which is rarely applied in judicial practice, and the purpose is to play a certain deterrent effect. Other property crimes and economic crimes are subject to the death penalty. Although these crimes seriously violate the economic order, they do not use violent means, nor violate the personal rights of citizens and the fundamental interests of the society [7]. He considers that the institution of the death penalty by such a legal interest is unreasonable. I also agree with Professor Chen. First, it is a property crime. If a huge amount of property crime is involved, then can the property be recovered? If the property can be recovered, will the death penalty be too heavy? Robbery in property crimes in China is still subject to the death penalty. Although the crime of robbery also infringes upon the legal interests of the person, the main infringement is the property of the victim. Stipulating the death penalty may expand the evaluation of the harm degree of the crime. It is the same principle that prescribes the death penalty for economic crimes. Although there is a large amount of capital punishment, whether the property can be recovered should be discussed separately. In the above analysis, the author thinks that the scope of death penalty for crime in the Criminal Code of China is too broad, and makes a proper analysis, but the discussion of the retention or abolition of death penalty in this paper mainly focuses on the serious crimes against

personal legal interests. Because of cultural, environmental, political and other factors, some legal crimes may be different, but some natural crimes, such as murder, rape, tend to be the same in different countries, so it is more appropriate to discuss this kind of crime.

2.2. An Analysis of the Feasibility of Abolishing the Death Penalty Based on Economic Principles

Assuming the abolition of the death penalty in China, there will be two situations: the death penalty prisoners will become life imprisonment prisoners; and the death penalty prisoners will become fixed-term imprisonment prisoners.

2.2.1 After the abolition of the death penalty, the death penalty was commuted to life imprisonment.

Hypothetically, the death penalty convict will be sentenced to life imprisonment, which means that the convict will be sentenced to life imprisonment. The change from death row to life imprisonment will lead to an obvious increase in the number of criminals, the state will increase the corresponding prison, the relevant staff engaged in prison will also increase, the living cost of criminals will also increase. It is worth noting that China, as a country with a huge population base, has a huge total number of criminal cases, even though the incidence of vicious crimes has been reduced, from an economic point of view, it's not efficient. But now the death penalty in our country has changed from execution by shooting to more humanistic methods, such as injection and anesthesia. Although such a method is inefficient, the goal is to protect the human rights of those sentenced to death. In the above analysis, because the death penalty in China spans the whole criminal code, the abolition of the death penalty means that all those sentenced to death may be converted to life imprisonment. The author believes that Professor Chen 's method can be adopted to abolish the death penalty for some economic crimes and retain part of the death penalty. Understood from the perspective of economic benefits, the reduction of the death penalty and life imprisonment criminals can also help to reduce a lot of costs.

2.2.2 After the abolition of the death penalty, prisoners sentenced to death were sentenced to fixed-term imprisonment

According to modern penalty theory, the goal of penalty is to better protect human rights, and to hope that criminals can return to normal social life. In other words, it is the process of a bad person turning from a bad person to a good person, rejoining society, returning to normal social life, and this ideal also hoping to benefit society. This view, though excellent from the point of view of, does not correspond to the actual situation. For example, Criminals sentenced to death do a great deal of harm to society, the degree of harm is obviously greater than that of other crimes. For example, criminals commit their crimes in the most abominable ways, such as chopping and cooking corpses, causing psychological trauma to both the victims' families and ordinary people. The criminal murdered dozens of people in cold blood. Will they be able to return to society at the end of their sentence? I don't think they can return to society normally. Because they need a job to return to society, except for some well-off people whose families will support them to start their own businesses after being released from prison, some ordinary people can only find jobs in society. However, under the employment system of our country, civil servants and public institutions have no chance at all, and it is even more impossible for some enterprises to recruit "criminals" into their own enterprises, The most basic material life is difficult to guarantee, which will lead them to re-offend after returning to society. If a person commits vicious crimes such as murder or rape, in Chinese society, people tend to fear him and stay away from or avoid such people. The friends of these criminals will also stay away from them, the material basis of life will not be guaranteed, and friends will also leave them. It will be difficult for these people to return to society normally, which will further encourage them to commit crimes again. In 2005, for example, the number of intentional homicide cases in China was at the level of 25000 [8].

2.2.3 Responses of foreign scholars to the fact that the cost of capital punishment is higher than that of life imprisonment and capital punishment

Some foreign experts and scholars believe that the cost of the death penalty is far greater than the cost of life imprisonment, and the complexity and expense of trying such cases start long before the trial, which violates economic benefits principle. There are two main reasons: the trial judge and the defense may conduct a more thorough investigation of the crime itself; and second, the prosecution may attempt to refute the evidence in relation to the charges, involving the defendant's knowledge of the entire background, including childhood, psychiatric and psychological conditions, family relationships, employment history, etc. All require the hiring of cardiologists, psychiatrists, forensic doctors, etc. and are paid by the state [9]. Not only the cost of money, but also the cost of time is one of them. In the trial of death penalty cases, the time limit for trial is often longer, because it is related to human life, and once a human life is deprived, it cannot be recovered, so no matter which country is trying this In such cases, it will take a lot of time and cost. It is believed that the logic of this view is wrong, and it is not a reason to overthrow the retention of the death penalty. Because the death penalty deprives a person of his life, it is necessary to be meticulous and accurate when dealing with suspects. He must be sentenced to death if the facts are particularly clear and the evidence is completely convincing, not because the cost of the death penalty is higher than the Life in prison is great, while the death penalty is abolished. For example, in daily life, knives can be used not only for daily household use, but also for killing people. Can a law be enacted to prohibit the use of knives just because someone kills someone with a knife? At the national level, a more detailed criminal procedure plan should be made for such cases to prevent unjust, false and wrongly decided cases similar to Nie Shubin and others in China.

2.3. Analysis of the Feasibility of Abolishing the Death Penalty Based on the Principles of Criminology

2.3.1 Principles of Criminal Philosophy

Thinking from the perspective of the relationship between criminology and philosophy, criminology was born to study how and how to commit crimes. Some philosophers believe that as long as there are people, crimes will occur in human society. The ultimate goal advocated by school philosophers is to make people be kind, and the deterrence of the law will reduce the crime rate in society. There are two viewpoints in ancient China, one is "human nature is good at the beginning", which believes that people are born with kindness, and the kindness of nature will bring positive factors to the society; the other viewpoint is Xunzi's viewpoint that human nature is inherently evil It is believed that people are greedy and lack of education after birth, so it is necessary to continue to educate people to achieve goodness. Western philosophy of the same period also believes that people are malicious. In Christianity, insist on the beginning of human, the point of view of inherent evil. According to the *Bible*, it can be seen that Adam and Eve created by God stole the fruit of the tree of knowledge in the Garden of Eden, so the crime was relegated to the world. The chief of the Roman Empire put forward the "theory of original sin and evil nature" according to the Bible. The purpose of virtue proposed by Plato, Aristotle, and Thomas Aquinas is to perfect and optimize human conduct. From this point of view, we can know that their point of view is the same as the point of view that human nature is inherently evil. However, Marxist believes that the reason why people commit crimes and have greedy desires is because the material conditions of the society are extremely unequal and the gap between the rich and the poor is too large, which leads to the frequent occurrence of crimes in society. He believes that if the entire human society enters a communist society and the allocation of social resources is based on needs, people will not commit crimes at this time. The author believes that according to the research of modern criminology, human beings have criminal genes in their genes, even if they are well educated, they may have criminal thoughts. As long as human beings still exist on the earth, human society is still the mainstream society of the earth, crimes will always happen, and crimes will also happen, but with the improvement of society's civilization, material life and spiritual life, crime will be infinitely close to zero, but always greater than zero. This kind of

philosophical point of view is applicable to all countries, but the development of material and cultural conditions in each country is inconsistent. For example, the crime rate in economically developed countries is generally low, so many developed countries have abolished the death penalty. The most typical ones are European countries. Except for Russia and Belarus, which have not abolished the death penalty in their current criminal laws, all other European countries have abolished the death penalty. To sum up, since crimes and vicious crimes will accompany human society at any time in any country, if the death penalty is abolished, criminals will not be punished as they should be, that is, the abolition of the death penalty will not apply to human society, China. The same does not apply to the abolition of the death penalty.

2.3.2 Principles of Criminal Psychology

Criminal psychology analysis is based on the law of the formation, development and change of criminal psychology, through the analysis of various signs of the perpetrator and criminal behavior process, to realize the process of gradually understanding the psychological characteristics and psychological process of criminal suspects [10]. For example, the child who lost their parents or been educated strictly are more likely exhibit to criminal tendencies. However, in some family environments where the quality of life is poor and the parents do not have a stable job, such as fathers who often drink heavily and mothers who often gamble, etc., families in such situations often have unstable sources of income and low quality of life, which also affects children. important factors in mental health. When a person commits a crime worthy of the death penalty, such as killing multiple people in a row, or using extremely cruel means to kill, if the local law does not have the death penalty or abolishes the death penalty, the murderer will bear the greatest psychological pressure reduced. As the example mentioned in the author's introduction, when Breivik killed 77 people, when the police arrived, he immediately surrendered his arms and surrendered with a relaxed face, because he knew that the death penalty was no longer in Norway's criminal law, and the most severe punishment was to kill them. Decades in prison, but no loss of life. From the perspective of criminal psychology, the abolition of the death penalty has a positive impact on the criminal's mentality when he forms a criminal idea and if he is arrested, and may promote the occurrence of this situation.

3. Summary

As a result of the Enlightenment Movement, the centuries-old anti-death penalty movement, and especially the results of the human rights movement after World War I, all of countries in the world no longer use the death penalty, and all civilized countries in the world have ratified or joined the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [11]. Its main purpose is to further protect human rights after the abolition of the death penalty, and strictly prohibit the use of cruel methods in obtaining evidence. The "fruit of the poisonous tree" theory is a typical example. From the perspective of economics, after the abolition of the death penalty, those condemned prisoners are not sent to the execution ground, but sent to prison; or they re-enter society after being released from prison, the cost consumed by the state or the damage caused to society is far greater than the retention of the death penalty. Assume that China abolished the death penalty, but unfortunately, a case similar to that in Norway occurred, where one person massacred dozens of people, which is unacceptable to the Chinese people, and the Chinese people cannot accept that such a person will not be sentenced to death. Based on the author's above analysis, from the perspective of economic principles, or from the perspective of criminal psychology, it is not applicable to the abolition of the death penalty in China's national conditions.

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