

Foreword

In *The Death Penalty in Japan: Will the Public Tolerate Abolition?*, Mai Sato provides a significant theoretical contribution to the debate on the death penalty. While countless scholars and international organisations – particularly outside the US – approach the death penalty primarily from a human rights perspective, Sato attempts to engage with the justifications for retention that follow a socio-legal approach, based on subjective legitimacy: in other words, popular support. Across abolitionist jurisdictions, and within supranational and national bodies that oppose the death penalty, abolition is seen as a matter of principle, with the doctrine of inalienable human rights – such as the right to life – drawn on to provide the absolute justification for abolition. However, governments in many retentionist countries argue that total prohibition is not yet established as a human rights norm, and that international treaties can only be binding to those that choose to be bound by them. They cling to their sovereign right to determine their own laws and criminal justice practices, often citing in their defence popular support for the ultimate punishment.

Japan's official justification for the retention of the death penalty is public opinion, with the government claiming that it cannot abolish the death penalty while the public strongly supports it. Sato argues that, although this approach may be theoretically coherent, it requires reliable evidence about how retention actually affects public perceptions of the system's legitimacy. In other words, the Japanese government can defend its approach to the death penalty only if the surveys it relies on capture public attitudes on the subject accurately. The question addressed by this book is: to what extent can the Japanese government defend its approach to the death penalty based on "popular support"? Is the retention of the death penalty so central to popular trust in the criminal justice system that abolition would result in the erosion of political and judicial legitimacy?

Building on the theoretical framework of trust and legitimacy, the book makes an important empirical contribution – both quantitative and qualitative – to our understanding of the drivers of support for the death penalty. Sato carried out three different types of surveys with methodological rigour and resourcefulness. The first – a conventional large-scale online survey (N=20,000) conducted in Japan – measured the drivers of punitive responses to the death penalty by

focusing on socio-demographic indicators. The second was an experimental survey, involving two sub-samples (N=500x2) of the first larger survey. The experimental survey focused on two possible drivers of punitivity: information and retributive attitudes. Following the research conducted in the US on the Marshall Hypothesis, and the broader “cognitive deficit” literature in the UK, she explores the role of information about this punishment – in particular, how it is applied – in support for the death penalty. This part of the empirical endeavour also attempted to test whether support for the death penalty is merely a reflection of broader retributive attitudes.

The third empirical component comprised an innovative methodology, inspired by deliberative polling, aimed at measuring the influence of deliberation on punitivity. Participants were assembled and instructed on the Japanese death penalty system, encouraged to discuss what they were learning and exchange opinions on the issue, answer pre- and post-consultation surveys, and finally take part in a follow-up interview. Most UK research on public opinion and punitivity has either argued that public opinion is insulated from penal policy, or revealed public ignorance about penal policy and identified “cognitive deficit” as one driver of penal populism. While Sato’s second empirical project was based on the “cognitive deficit” model, the third project attempted to go one step further by paying particular attention to dialogue and the deliberation process, creating what Habermas called a ‘public sphere’.

Public opinion scholars, and academics with an interest in legitimacy, will find much to appreciate in this book. It brings together – persuasively and eloquently – a wide literature on survey methods, public opinion, trust, legitimacy, and the death penalty, as well as original research. While the book adopts Japan as a case study, it is applicable to most retentionist countries that present public support for the ultimate penalty as an obstacle to abolition. It should therefore be of interest to death penalty scholars worldwide, and to NGOs and international organisations, who may find it useful to employ arguments other than those based on human rights to engage in dialogues and *démarches* in various countries, whose elites profess to be ready for abolition or reform, but claim to resist such change due to public opinion. Ultimately, though, the power of this book is in demonstrating that, in Japan, government rationale for retention is based on very shaky grounds. Replication of Sato’s work in other jurisdictions, such as China, may show that Japan is not alone in this regard, and that this more prag-

matic approach, alongside a continuing plea for governments to respect the human rights of their citizens, might just persuade further countries to embrace abolition in the next decade or so.

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The Death Penalty in Japan

Will the Public Tolerate Abolition?

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