

## Dichotomous Dilemma

An Examination of American Public Opinion on Capital Punishment and How Measurements Affect Our Understanding of Public Opinion

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### Abstract

Capital punishment has been a controversial topic in American public opinion discourse. The history of American public opinion on capital punishment is a unique opportunity to study how public opinion changes, is measured, and affects policy outcomes. This article examines US capital punishment opinion trends throughout recent history and aims to determine the root causes of these trends. It argues that dichotomous polls of the past that measured support for capital punishment in yes/no responses provided a narrow understanding of capital punishment discourse for policy makers, which inevitably led to more visible support for capital punishment than current, more detailed forms of polling suggest. Dichotomous polls benefitted Republicans over Democrats in past presidential elections which influenced Supreme Court judicial appointments that would further shape capital punishment discourse.

### Introduction

American public opinion on capital punishment has fluctuated significantly over the years. Complex capital punishment issues and opinions provide a unique examination of how public opinion is measured and interpreted, and how it affects policy outcomes. This paper will examine capital punishment opinion trends from the 1930s to the present day. It will examine the causes of these trends, how dichotomous polls produce skewed results, and how in-depth forms of polling provide a more nuanced understanding of opinions on capital punishment. Dichotomous response options are shown to be problematic within certain demographics, such as African Americans, because they distil complex opinions into simplified yes and no responses. Polls that use in-depth forms of measurement such as multiple response options, information levels, and criminal case vignettes produce different results from dichotomous polls that measure support through simplified answers. Polls involving more response options, higher

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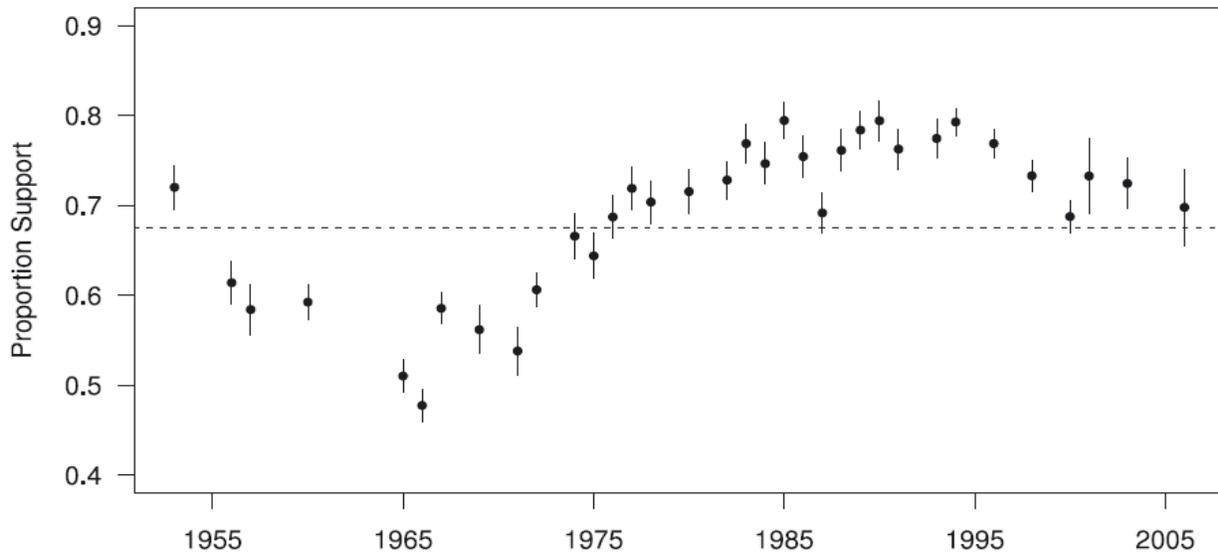
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levels of information, and criminal case vignettes suggest that the majority of the American public does not strongly support capital punishment as much as dichotomous polls lead policy makers to believe. Capital punishment is a complex issue that requires more detailed means to accurately measure public opinion that can be used to better interpret death penalty policies; simplified measurements of capital punishment that distil responses to dichotomous options provide skewed results and an inaccurate interpretation of death penalty support among the American public.

### **Historical Background**

The American public's concern for the rise in crime rates during the late 1960s has greatly affected capital punishment policies. Public concern at that time allowed the Republican Party to initiate capital punishment discourse in support of the death penalty and to shape future death penalty policies through the Supreme Court. Data from the General Social Survey and Gallup polls shown below in figure 1 (Shirley and Gelman, 2013: 1) indicates that public opinion on capital punishment has fluctuated significantly for several decades. The sudden change from low support in the 1960s to increased support from the late 1970s to 1990s is largely attributable to a cultural shift in how the American public viewed crime policy from the elevated crime rates through 1964 to 1968 (Zschirnt and Randol, 2014). In 1968, the Republican Party took advantage of public concern and adopted a "punitive posture with regard to crime control policy, resulting in debates over crime control issues becoming a major feature of the national political environment" (Zschirnt and Randol, 2014: 320). Previously, there was no difference between the Republican and Democratic parties on crime policy and capital punishment issues. However, during the 1968 election, the Republican Party focused on traditional controls and law enforcement authority, while the Democratic Party focused on the root causes of crime, such as standards of living and racism (Zschirnt and Randol, 2014). Shirley and Gelman's research illustrates that "relative support for Republican presidential candidates over this timespan also tended to correlate with death penalty support during this time" (2013: 13). The Democratic Party's stance on crime policy did not coincide with popular public opinion, and arguably played a role in their loss of "five of six presidential elections between 1968 and 1988" (Zschirnt and Randol, 2014: 322). The Republican Party's decision to take advantage of public concern on rising crime rates

played a role in its dominance of past presidential elections and allowed capital punishment to be framed through a Republican lens of traditional authority.



*Figure 1. “Proportion of respondents who supported the death penalty by year (95% confidence interval), based on a combination of General Social Survey and Gallup polls: overall proportion of death penalty support across all years (67.5%)” (Reproduced from: Shirley and Gelman, 2013: 1).*

Republican dominance in past presidential elections has allowed the party to shape the Supreme Court. Republican appointed justices, influenced by public opinion, played a key role in reshaping capital punishment policies that have arguably generated more support for capital punishment through the prevalence and persuasion of Supreme Court cases. Zschirnt and Randol’s research shows that justices appointed by Republican presidents since 1968 “have generally been more conservative in their voting behaviour in criminal procedure cases” (2014: 321). US capital punishment lowered from a peak “in legal executions of 199 in 1935... [and] fell to 82 in 1954” (Christianson, 2010: 184). Support for capital punishment continued to wane with low support measured at 42% in a 1968 poll (Zschirnt and Randol, 2014). Following this trend, the Supreme Court ruled in *Furman v. Georgia* (1972) that all existing death penalty statutes “violated the Eighth Amendment’s prohibition against cruel and unusual punishment” (Zschirnt and Randol,

2014: 326) because death sentences may be carried out in an arbitrary manner by juries without clear criteria for what constitutes capital punishment. The five justices in support of this motion were appointed prior to 1968, while the opposing four justices were appointed by Republican President Richard Nixon. In a Gallup poll from 1972 (Banner, 2002: 268), a few months before Furman, supporters outnumbered the opposed 50 to 42 percent. A few months after Furman, however, “support beat opposition 57 to 32 percent”: a drastic shift from an 8-point to 25-point margin in just seven months. The majority of individuals previously sentenced to the death penalty were then reaffirmed in *Gregg v. Georgia* (US Supreme Court, 1976). This case marked the beginning of the Republican majority in the Supreme Court with the appointment of Justice John Paul Stevens by President Gerald Ford. At a time when “the Court was increasingly called upon to decide whether and under what circumstances capital punishment could be carried out” (Zschirnt and Randol, 2014: 325), a Republican majority Supreme Court can be shown to play an influential role through the interpretation and affirmation of public opinion through legal action. Public opinion is “both a cause and a consequence of policies on capital punishment” (Shirley and Gelman, 2013: 26), and support continued to rise until the 1990s with an approval rating of 80%.

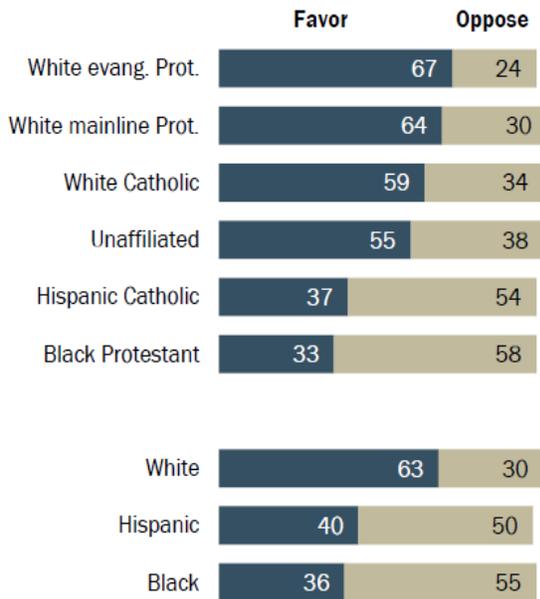
### **Current Trends**

According to the Pew Research Center (Cooperman et al., 2014), while a majority of adults in the US still support capital punishment, the percentage has been on a gradual decline for the past two decades. Compared to the 80% approval rating in the 1990s, in 2011, 62% of US adults “favored the death penalty for murder convictions, and 31% opposed it” (Cooperman et al., 2014: 1). While support for capital punishment has declined in recent years, the Pew Research Center illustrates support for capital punishment in demographic groups and religious/racial groups in figures 2 and 3 shown below (Cooperman et al., 2013: 2-3). Several trends have persisted over time, such as Republicans being more likely to support capital punishment and Democrats being more evenly divided on the issue. Data based on demographic and religious/racial groups is important because specific groups consistently vote in different ways. Since racial minorities are more likely to oppose capital punishment, policy makers should consider the

effects of discrimination on the capital punishment process when forming capital punishment policies.

### Support for Death Penalty Across Religious and Racial/Ethnic Groups

*% of U.S. adults who favor/oppose the death penalty for those convicted of murder*



Pew Research Center survey conducted March 21-April 8, 2013. RQ10. Whites and blacks are non-Hispanic only; Hispanics are of any race. Those saying "don't know" are not shown.

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### Support for Death Penalty Across Demographic Groups

*% who support the death penalty for persons convicted of murder*

	Favor	Oppose	DK	N
Total	55	37	8=100	4,006
Men	58	35	6=100	1,930
Women	52	38	9=100	2,076
Age 18-49	53	40	7=100	1,815
18-29	51	43	7=100	646
30-49	55	38	7=100	1,169
Age 50+	58	33	9=100	2,128
50-64	60	32	8=100	1,115
65+	54	35	11=100	1,013
College grad+	54	39	7=100	1,566
Some college or less	56	36	8=100	2,418
Republican	71	23	6=100	981
Democrat	45	47	8=100	1,423
Independent	57	37	6=100	1,309

Pew Research Center survey conducted March 21-April 8, 2013. RQ10. Figures may not add to 100% because of rounding.

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*Figures. 2/3: (Reproduced from: Cooperman et al., 2013: 2-3)*

### Problems With Past And Current Opinion Measurements

Past and many current measurements on capital punishment opinions are problematic because opinion is measured through dichotomous response options. All polling data discussed thus far in this paper has measured support for capital punishment in terms of dichotomous responses, such as "yes," "no," or "don't know." While polling companies and surveys have limited resources, dichotomous measurements are insufficient to interpret complex issues such as capital punishment. The fact that Supreme Court

decisions on capital punishment have “increasingly mirrored the American public’s views on the death penalty” (Zschirnt and Randol, 2014: 325) in the past is especially problematic if public opinion is measured in a simplified fashion that produces inaccurate results. When policy makers actively use public opinion polls to formulate policy, it is crucial that the data provided accurately represents the general public’s opinion.

If different forms of poll measurement can be shown to generate different results on public opinion, then policy makers may have formulated policies based on skewed and unrepresentative data. Dichotomous response polls that categorize individuals into simple categories of opposition or support leave no room for the various scenarios that are reviewed in court cases, or the multiple factors in an individual’s life that offer different reasons to both support and oppose capital punishment. If an individual supports the death penalty, but only in certain scenarios, their reasons for when the death penalty is not acceptable are not counted if the individual can only respond with a simple “yes.” While, according to recent polls, the majority of US adults still support capital punishment in some capacity, different forms of measurement lead to more representative results that can be used to better inform capital punishment policy.

### **Dichotomous Polls And African Americans**

African American public opinion is particularly important in understanding how dichotomous response options skew interpretations of capital punishment. Based on dichotomous polling data, African Americans generally oppose capital punishment, but only by a small majority of 55% (Cooperman et al., 2014). According to Ramirez, “reducing opinions to a single bipolar point preference assumes there is no internal spatial variation within the individual” (2014: 79). Past polls with limited data would suggest that all respondents have a fixed opinion on various aspects of the death penalty. African Americans are influenced by competing factors to both support and oppose the death penalty (Ramirez, 2014). African Americans are more likely to live in violent areas, so supporting capital punishment is beneficial to deter crime. African Americans are also more likely to be falsely accused, discriminated against, and sentenced to the death penalty in cases of murder, so opposition towards capital punishment is beneficial to combat discrimination (Ramirez, 2014). Race “plays a role in how cases are prosecuted from beginning to end, ranging from the choice of which cases to

charge as capital cases to the empanelling of a jury who decides the ultimate fate of life or death” (Williams, 2009: 3). According to Ramirez, the Death Penalty Information Center, “indicates that 49% of new death row inmates in 2012 were African American, while only 35% were White” (2014: 78), despite African Americans composing approximately 13% of the US population. Additionally, from 1976 to 2008, “228 Black inmates were executed for killing white victims, whereas just 15 White inmates were executed for killing Black victims” (Williams, 2009: 4). African Americans are forced to weigh their opinions in terms of fair justice versus security. For these complex reasons, African Americans are also more likely to hold unstable opinions on capital punishment, which makes the demographic appear less informed about the issue, when their demographic actually tends to have more considerations and thought out opinions on the issue than white Americans (Ramirez, 2014). The complexity of and reasons for various opinions cannot be measured with dichotomous yes or no response options. Ramirez’s research, “shows that there may be important variability in opinions, even opinions toward a salient issue such as the death penalty” (2014: 91). Many African Americans who give a “no” response to oppose capital punishment may arguably be more swayed by the effects of racism on capital punishment policies, but the problematic environmental factors that prompt support for capital punishment for many of these individuals remain.

### **Multiple Response Options**

Some of the overwhelming support for capital punishment in the past and present may be attributed to dichotomous polling measures. Offering various responses to university students creates a more sophisticated understanding of death penalty stances (Worthen et al., 2014). Worthen et al. conducted a survey that measures death penalty support with four response options to the question “Are you in favor of the death penalty for persons convicted of murder?”:

- (1) Never under any circumstances
  - (2) Only under certain extreme circumstances
  - (3) Sometimes under certain circumstances
  - (4) Always under any circumstances
- (2014: 166).

It is important to note that the survey was conducted at a university in the southern US, and is arguably not representative of the entire country. Worthen et al., however, argue that it is important to understand the attitudes of the more liberal and educated youth of society, “since these individuals may very well be at the forefront of a movement toward changes in capital punishment and regulations” (2014: 165). Worthen et al. found that more response options allow for a more “nuanced understanding of capital punishment” (2014: 173). The majority of their university sample did not strongly support the death penalty. While there was more support for the death penalty overall, the majority of responses fell within the “(3) Sometimes under certain circumstances” group. Although the study is of university students enrolled in sociology classes and not representative of the general public, the results have significant implications for how policy makers understand and interpret opinions on capital punishment. Some of the overwhelming support for the death penalty in the recent past and present may be attributed to individuals who support the death penalty, but only under specific circumstances. Dichotomous polls stated 80% of the adult population supported the death penalty in the 1990s, but these might have suggested to policy makers that 80% were strongly in favour, rather than in favour sometimes under certain, or even extreme circumstances.

### **Information Levels**

Students with high information levels are more likely to select alternatives to capital punishment when given options, such as life imprisonment without parole; the majority of the population is not well informed on capital punishment, so higher information levels could show an increase in support for alternatives to capital punishment. Lee et al., provide a detailed survey on information levels of capital punishment among criminal justice university students, which shows that higher levels of information on capital punishment correlate with increased support for capital punishment alternatives (2013). Interpretation of the data should be taken with caution because of the “experimenter effect”; although the instructor played devil’s advocate to student’s responses, “having a proponent of the death penalty teaching the class may produce different results” (Lee et al., 2013: 645). While the experimental group in Lee et al.’s study did not change in levels of support for the death penalty for “some people convicted of first-degree murder” (2013: 656), students with high

information levels were more likely to select alternatives to capital punishment than less informed students. Since even criminal justice students were shown to have low levels of information on capital punishment at the beginning of the study, compared to the general public, the tendency for informed students to support capital punishment alternatives has significant implications (Lee et al., 2013). Those with low levels of information may be using heuristics to come to conclusions on the complex issue of capital punishment. But if individuals with low information levels are shown to vote differently from those with high information levels, this has significant implications for policy outcomes. If the general public is shown to be “more certain about their general support for the death penalty than under what specific circumstances to use it” (Lee et al., 2013: 645), then some opinions could be “largely based on inaccurate or missing information” (651).

The more information respondents have on specific court cases can also greatly change how we look at capital punishment in terms of demographic trends. Burgason and Pazzani presented respondents with vignettes of criminal cases that provide in-depth details to gauge support for capital punishment (2014). The study provides a unique outlook on capital punishment because there are thousands of possible variants between cases, victims, and criminals, which could all possibly end in a death sentence. If individuals are given time to reflect and consider the wide array of possibilities and unique circumstances of different criminal cases, then their opinions on the death penalty may greatly change. When such a complex issue is distilled to simple yes and no answers, it can “lead to inaccurate results of polls” (Burgason and Pazzani, 2014: 819). In particular, Burgason and Pazzani found “no evidence that sex, race, age, income level, having a family member that was a victim of murder, taking a death penalty class, or being a Republican directly affect public support for the death penalty as a punishment for murder” (2014: 827). If the voting trends of certain demographics disappear when individuals are given detailed information, many individuals may have different opinions than what is represented in simple yes, no, and even strongly support and somewhat support responses. Additionally, if opinions change when voters are given relevant and factual information on the issue, public opinion should be re-evaluated relative to the new information.

## **Conclusion and Implications**

Capital punishment, like most complex policy issues, allows for a wide range of opinions among individuals. Complex issues make it more difficult to gauge and measure public opinion, and require sophisticated surveys that many polling firms may not have the time or resources to implement. It is important to examine how public opinion is measured on these issues because different measurements affect our understanding of the issue and possibilities for future policy outcomes. Overly simplified polls that boil complex issues down to dichotomous responses do not allow for a sophisticated understanding of how the public views capital punishment. Dichotomous polls used in the recent past could account for some of the overwhelming support for capital punishment, which would have affected the way capital punishment policy was implemented and understood by the Republican-majority Supreme Court. Explanations for African American demographic trends, multiple response options, information levels, and detailed criminal cases all differ from dichotomous polls in how public opinion is interpreted. Measurements that change our interpretations matter because these opinions are often taken into consideration when forming policy. Dichotomous polls of the past arguably “inform how contemporary shifts in public opinion on the death penalty may shape the Court’s future death penalty jurisprudence” (Zschirnt and Randol, 2014: 336). If different measurements result in different views on public opinion, the more detailed and sophisticated measures should be used to more accurately represent the public. If factors such as demographic trends, response options, information levels, and variability between criminal cases provide different interpretations of public opinion, and arguably suggest that there is less support for capital punishment than dichotomous polls, it becomes clear that more sophisticated measurements are needed to accurately gauge public opinion to better inform future capital punishment policies. Although many polling firms may not have the resources or time available for more detailed studies, oversimplified information can mislead policy makers about public opinion on capital punishment.

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