



Legal evaluation of the effectiveness of capital punishment as form of criminal sanction

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Abstract

There is an ongoing debate surrounding the criminal justice system, focusing specifically on the controversial topic of capital punishment. Capital punishment is the lawfully authorized execution of an individual as punishment for a specific offence usually of a severe and serious nature. The study provides a comprehensive overview of capital punishment by noting that punishments are based on the same objective of punishing the offender, whether it is death penalty, life imprisonment or imprisonment. The aim of the study is to examine the two main theories relating to the death penalty that is the reformatory theory and the deterrence theory. The researcher adopted the doctrinal research method which is the use of both primary and secondary source material dealing with the subject matter under review. In course of the research, the researcher observed that often time without number, innocent persons have been wrongfully sentenced to the death penalty and executed wrongly too. The study therefore recommends that reformatory theory as opposed to deterrent theory should be encouraged as it provides for reformation and reintegration. The study contributed to knowledge by re-affirming that reformatory theory of punishment as opposed to deterrent theory is more consonant with the reintegration of the criminal into the society.

Keywords: Ethical, human right capital punishment reformatory theory deterrent theory

Introduction

This study is an attempt to evaluate the effectiveness of capital punishment as a form of criminal sanction. It is generally agreed that offenders must be punished but the argument is whether capital punishment must remain in any country's criminal justice system or not? This argument is what this study has reviewed.

Meaning of the Term "Capital Punishment"

All punishments are based on the same concept, which is that there must be a punishment for wrongdoing. There are two main reasons for punishment. One is the belief that it is right and just that the wrongdoer should suffer for the offence committed. Another is the belief that punishing wrongdoers will discourage others from doing wrong. The death penalty is like any other punishment.

In the Nigeria criminal justice system^[1], capital punishment is an integral part, but with the growing strength of the Human Rights movement, the death penalty is being questioned as immoral. However, this is a different argument because keeping a person alive at the risk of the lives of many members of the society or potential victims is implausible and indeed morally wrong. Capital punishment which is the execution of a convicted person who has been sentenced to death after being convicted by a court of law for a criminal offence must be distinguished from an extrajudicial execution. The death penalty is an ancient sanction. There is practically no country in the world without the death penalty.

The expression "death penalty or capital punishment" refers to more severe punishment. This is the punishment that should be meted out for the worst, most intolerable, and most horrific violations against humanity. While the definition and extent of such offences vary from country to country, state to state and age to age, the branches of capital punishment remains and can still be capital punishment. Although, by regular usage in jurisprudence, criminology,

and penology, capital punishment refers to the method of protecting the state through capital punishment. In simple terms, capital punishment means the state taking the life of an individual, the state using its authority and power to snatch the life and liberty of an individual who has committed some grave offence.

History of Capital Punishment

Capital punishment is an ancient sanction. There is no country in the world that does not have the death penalty. The history of human development reveals that at no point in time has the death penalty been abolished as a form of punishment. The death penalty for murder, conspiracy, arson, and assault or rape was widely used in ancient Greece under Draconian laws^[2]. Capital Punishment or death penalty has been an integral part of the Criminal Justice System of various societies from time immemorial^[3]. Until the nineteenth century when the prison system was introduced, there was frequently no workable alternative to insure deterrence and incapacitation of criminals^[4]. The execution itself was often involving torture with cruel methods such as the breaking wheel. The conception of capital punishment as a form of punishment for wrongdoings considered as heinous crimes, spanned through centuries of human existence. As humans continued to assemble together for common good, nations in the form of ancient republics, monarchies or tribal oligarchies emerged in certain parts of the world. These nations were often united by common linguistic, religious or family ties. Moreover, expansion of these nations often occurred by conquest of neighbouring tribes or nations. Consequently, various classes of royalty, nobility, various commoners and slaves emerged. Accordingly, the systems of tribal arbitration were submerged into a more unified system of justice which formalized the relation between the different classes of people rather than tribes, hence, the need for proper organization of the society with criminal justice system.

One of the earliest and most famous example of punishments generally is the Code of Hammurabi^[5]. In 1700 BC the Babylonian King, Hammurabi developed a code of laws with the principle, *lex talionis* (which literally means the law of retaliation), which was called the Hammurabi's Code. This principle enshrined in ancient law, simply means that the offended party may return the same offending action to the origin of such act. For instance, a person from one tribe kills a member of another tribe; the law allows the imposition of the same and equal penalty to the offending party, which means the offender shall be put to death. *Lex talionis* (meaning a life for a life or eye for eye etc.) embodies the principle of exact retaliation.

The penalty for the violation of the code was cruel, barbaric and inhumane. Theft was punished by cutting off a finger or the hand. The tongue was cut off if a person commits defamation. The Judiciary is headed by a single person or a group of persons deciding on a case, an accused was made to dive in the River Euphrates to find out if he is innocent or not. If the offender floats, it means he is innocent, therefore, he keeps his house and the accuser is put to death. However, if he drowns, it means that he is guilty and the accuser gets his house^[6]. Another one is the Torah a Jewish Law, also known as the Pentateuch, the first five books of the Christian Old Testament, which lays down the death penalty for murder, kidnapping, magic, violation of the Sabbath, blasphemy, and a wide range of sexual crimes, although evidence suggests that actual executions were rare^[7].

A further example comes from the Ancient Greece, where the Athenian legal system was first written down by Draco in about 621 BC, death penalty was applied for a particularly wide range of crimes, although Solon later repealed Draco's code and published new laws, retaining only Draco's homicide statutes^[8]. Ancient Rome had offered a more systematic system than Ancient Greece. Romans used death penalty for a wide range of offenses. However, the basis of penalty remained to be retribution and it was made incumbent upon the victim's family to serve such punishment^[9]. In Islamic law, as expressed in the Quran, capital punishment is condoned. Although the Quran prescribes the death penalty for several had (fixed) crimes – including robbery, adultery, and apostasy of Islam-murder is not among them. Instead, murder is treated as a civil crime and is covered by the law of qisas (retaliation), whereby the relatives of the victim decide whether the offender is punished with death by the authorities or made to pay diyah (wergild) as compensation^[10].

Capital punishment as a tool for deterring crime is a subject of controversy in several countries and states and positions can vary within a single political ideology or cultural region. In the European Union, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment^[11]. The Council of Europe, which has 46 member states, has sought to abolish the use of the death penalty by its members absolutely^[12]. However, this only affects those member states which have signed and ratified it, and does not include Belarus^[13], which is the only country in Europe that death sentences are still handed down and carried out. Belarus is not a member of the Council of Europe, however, a referendum was held in the year 1996 that confirmed the death penalty. The most current executions took place in June 2019.

The United Nations General Assembly has adopted, in 2007, 2008, 2010, 2012 and 2014, non-binding resolutions

calling for a global moratorium on executions, with a view to eventual abolition^[14]. Although most nations have abolished capital punishment, over 60% of the world's population live in countries where the death penalty is retained, such as Nigeria^[15], China^[16], India^[17], the United States^[18], Indonesia^[19], Pakistan^[20] and Bangladesh^[21]. Viewing capital punishment in terms of retribution, abolitionists argue that it is simply revenge and cannot be condoned. While others who accept retribution as an element of criminal justice nonetheless argue that life without parole is a sufficient substitute; but on the whole, the best conscience of every rational mind intending to uphold justice and good.

Purpose of Punishment

In primitive times, crimes were mainly attributed to the influence of evil spirit, and the major purpose of punishment was to placate the gods^[22]. All punishment were based on the same concept, which is that there must be a punishment for wrongdoing. There are two main reasons for punishment then. One is the belief that it is right and just that the wrongdoer is punished for the crime he committed. Another is the belief that punishing wrongdoers will discourage others from doing wrong.

Later, in the evolution of punishment more stress was laid on social revenge, because crime was considered a willful act of a free moral agent. Society outraged at an act of voluntary perversity necessitated punishment. Thus, we started punishing primarily for vengeance or to deter or in the interest of a just balances of accounts between “deliberate” evil doer on one hand and an injured and enraged society on the other^[23]. According to Gouldner^[24], the purpose of punishment is to gratify the desire for vengeance by making the criminal pay with his body. He posited that punishment gratifies the feeling of pleasure experienced by individual at the thought that the criminal has been brought to justice. That desire ought to be satisfied by inflicting punishment in order to avoid the danger of private vengeance. It is plain that however futile it may be, social revenge is the only honest, straight forward and logical justification for punishing the criminal^[25].

Ethical and Human Rights Considerations on Capital Punishment

The death penalty raises significant ethical and human rights concerns. International human rights organizations argue that capital punishment violates the right to life and risk executing innocent individuals. This section discusses the moral arguments for and against the death penalty, highlighting the role of legal frameworks such as the Universal Declaration of Human Rights and various international treaties. One of the central ethical concerns surrounding the death penalty is the sanctity of life. Many human rights advocates argue that state-sanctioned executions contradict the fundamental right to life, as enshrined in Article 3 of the Universal Declaration of Human Rights (UDHR)^[26].

Furthermore, Article 5 of the UDHR prohibits “cruel, inhuman, or degrading treatment or punishment”, which some legal scholars interpret as encompassing capital punishment^[27]. A key argument against the death penalty is the irreversible nature of execution and the risk of wrongful convictions. The case of Troy Davis, who was executed in Georgia in 2011 despite significant doubts about his guilt,

underscores the fallibility of judicial system^[28]. According to the Innocence Project, over 190 people have been exonerated from death row in the United States since 1973, highlighting the potential for miscarriages of justice^[29].

The irreversibility of capital punishment raises serious ethical concerns, as no legal system can guarantee absolute accuracy in convictions. From a moral perspective, proponents of the death penalty argue that it serves as just retribution for heinous crimes. The retributive justice model, rooted in Kantian ethics, posits that punishment should be proportionate to the crime committed^[30]. This perspective is often invoked by families of victims who seek closure through the execution of convicted murderers. However, critics argue that retribution should not equate to state-sanctioned killing, as this perpetuates a cycle of violence and undermines the moral authority of the legal system^[31].

The death penalty is also scrutinized for its disproportionate application to marginalized groups. Studies have shown that racial minorities and economically disadvantaged individuals are more likely to receive capital punishment^[32]. The landmark case of *McCleskey v Kemp* (1987) in the U.S. Supreme Court revealed racial disparities in the application of the death penalty, with Black defendants more likely to be sentenced to death than their white counterparts for similar crimes^[33]. This raises concerns about systemic bias and whether capital punishment can be fairly administered in practice. Internationally, the trend has been toward the abolition of the death penalty. Organizations such as Amnesty International and the United Nations have advocated for global abolition, citing human rights concerns^[34].

The European Convention on Human Rights explicitly prohibits the death penalty in peacetime, reflecting a strong stance against capital punishment in Europe^[35]. In contrast, countries like China, Iran, and Saudi Arabia continue to implement executions at high rates, often without transparent judicial processes^[36]. Ultimately, the ethical and human rights considerations surrounding the death penalty highlight fundamental questions about justice, fairness, and the role of the state in administering punishment. The persistence of wrongful convictions, the potential for discriminatory application, and international legal frameworks increasingly challenge the legitimacy of capital punishment as a humane and justifiable practice.

Examination of International Perspectives on the Death Penalty

While some countries, like the United State and China, continue to implement capital punishment, others, including the European Union member states, have abolished it entirely. This section explores global trends, policy shifts, and the role of international pressure in shaping death penalty laws. The use of the death penalty varies significantly across different nations, reflecting diverse legal traditions, cultural attitudes, and political systems. The United States remains one of the few Western democracies that still employ capital punishment, though its application has declined in recent years. According to the Death Penalty Information Center, the number of executions in the U.S. has steadily decreased, with many states either abolishing the practice or imposing moratoriums due to concerns over wrongful convictions and racial disparities^[37]. However, countries like China, Iran, and Saudi Arabia continue to

carry out a high number of executions annually, often with limited transparency and due process^[38].

The European Union (EU) has been a staunch opponent of the death penalty, with all member states abolishing it as a prerequisite for joining the organization^[39]. The European Convention on Human Rights explicitly bans capital punishment, and the EU actively advocates for global abolition through diplomatic channels and economic incentives^[40]. The EU has exerted international pressure on retentionist countries, using trade agreements and foreign aid policies to encourage abolition^[41]. One of the most significant global shifts in death penalty policy has been observed in Africa and Latin America. While historically, many African nations practiced capital punishment, recent trends indicate a move toward abolition.

In 2019, Burkina Faso and Chad formally abolished the death penalty, joining other African nations such as South Africa and Rwanda, which had eliminated it earlier^[42]. Similarly, in Latin America, only a few countries, such as Cuba and Guatemala, still retain the death penalty, while most have abolished it due to human rights advocacy and political reforms^[43]. International organizations play a crucial role in shaping death penalty policies. The United Nations (UN) has repeatedly called for a global moratorium on executions, emphasizing that the death penalty contradicts human rights principles outlined in the Universal Declaration of Human Rights^[44]. The UN General Assembly has passed several resolutions urging member states to suspend executions and move toward abolition, reflecting a growing international consensus against capital punishment^[45].

Another influential body is Amnesty International, which has been at the forefront of the global campaign against the death penalty. Amnesty International publishes annual reports documenting the use of executions worldwide and lobbies governments to adopt alternative sentencing measures^[46]. Human rights groups often collaborate with legal organizations to provide pro bono legal assistance to individuals on death row, particularly in countries where due process violations are prevalent^[47]. While some nations continue to argue that capital punishment is a necessary tool for combating crime, the global trend points toward a decline in executions and increasing restrictions on its use. The influence of international treaties, human rights organizations, and evolving public opinion suggest that the future of the death penalty is likely to see further limitations and, in many cases, outright abolition.

Public Opinion on Capital Punishment

Throughout capital punishment's history, the practice has been tied to the opinions of the people. For instance, the U.S.A. Supreme Court frequently considers public opinion when determining its ruling on capital punishment procedure and statutes. In *Atkins v Virginia*^[48] and *Roper v Simmons*^[49] the public's opinions towards executing those who are juveniles or cognitively impaired held substantial weight in the Supreme Court's ruling. Also, legislative, political, and prosecutorial discussion and rhetoric encompassing capital punishment often depends greatly on the attitudes of the public.

One study conducted that examined the effect of the attitudes of the public on beliefs for capital punishment revealed that the support of capital punishment appears to be correlated with recognitions of personal accountability, and

is also correlated with a person's ability to view severe action like execution as morally warranted and isolate themselves from others^[50]. It is evident that support and attitudes of the death penalty are not particularly stable or consistent. This was demonstrated when Supreme Court Justice Thurgood Marshall predicted in *Furman v Georgia*^[51] that if people knew about the realities of the death penalty, support for the punishment would decrease or cease to exist.

The popular opinion regarding capital punishment in some countries including United State of America has drifted away from capital punishment. A poll conducted by Gallup^[52] in November 2019 detected that 60% of Americans were in favour of life in prison over the death penalty.

Factors that Influence the Public's Opinion Race and Gender

Race and gender are the two prominent sociodemographic factors that shape attitudes toward capital punishment. There have been numerous studies conducted demonstrating that race is extremely impactful, particularly in the greater negative attitudes toward the death penalty from African American respondents compared to Caucasian respondents^[53]. It is frequently noted that there is a correlation among racism and support for the death penalty^[54]. Another study has found that white racism is the greatest predictor of supporting the death penalty^[55]. Researchers have also indicated that individuals who are fearful of minorities tend to exhibit increased support of the death penalty in America and in Western European countries.

Religion

There is currently no central agreement regarding the morality of the death penalty among religions and among the sects or denominations within each. A growing number of religious leaders, particularly those of the Jewish and Roman Catholic faith, have argued against the death penalty since the mid-20th century. All of the major Jewish movements in the United States either push for capital punishment's abolishment or have urged for a temporary moratorium. The Reconstructionist, Conservative, and Reform movements all argue against capital punishment no matter the circumstance. The Catholic Church's well established objection to capital punishment has led to negative attitudes of the death penalty from the Catholic faith. Pope John II has denounced it as "cruel and unnecessary" and Pope Francis has been extremely vocal about his beliefs on the issue^[56].

In October 2014, Pope Francis alluded to the current Catechism in prompting for the abolishment of capital punishment, stating "It is impossible to imagine that states today cannot make use of another means than capital punishment to defend peoples' lives from an unjust aggressor."^[57] In September 2015, the Pope reiterated this declaration in a landmark speech before a joint session of the United States Congress, and in 2016, he prompted Catholic leaders globally to take the initiative to stop all executions. This pressure from the Pope in 2016 was largely a result of the Catholic Church's "Holy Year of Mercy" that occurred during this year. On October 11, 2017, Pope Francis decreed capital punishment as "contrary to the Gospel" and "an inhumane measure that, regardless of how it is carried out, abases human dignity."^[58]

He held that capital punishment was "inadmissible" and that there are no circumstances in which it is acceptable, and that

an individual convicted of a crime must have "a more adequate and coherent treatment" than the present form. The Pope attributed the death penalty as "an attack on the inviolability and the dignity of the person." He also stated in the 2017 declaration that the Church doctrine is a "dynamic process that develops and grows" over the years, thus requiring the reaffirmation of the Catechism "that no matter how serious the crime that has been committed, the death penalty is inadmissible because it is an attack on the inviolability and the dignity of the person".^[59]

The Role of Perceived Fairness and the Media

In Supreme Court Justice Thurgood Marshall's argument in *Furman v Georgia*^[60] known as the "Marshall hypothesis" he proclaimed that even the most passionate advocates for capital punishment would "condemn death as a sanction" if they were cognizant that "capital punishment is imposed discriminatorily against certain identifiable classes of people; there is evidence that innocent people have been executed before their innocence can be proved; and the death penalty wreaks havoc with our entire criminal justice system". Marshall recognized that the goal of justice and equality, with regard to appropriate and nondiscriminatory courses of action to protect those who are innocent, holds a prominent role in the attitudes that people hold toward the death penalty.

A study that examined the role of fairness in the public's attitudes toward capital punishment revealed that fairness is significant in a considerable way (Murray, 2005)^[61]. The findings conclude that respondents in the study who believe that capital punishment is fairly administered are prone to support the practice with greater intensity^[62]. Also, the impact of fairness diminishes the impact of other factors that have been detected to strongly correlate with attitudes toward capital punishment, such as race and political ideology^[63].

Conclusion

The debate on the death penalty as a deterrent remains unresolved due to conflicting empirical findings and ethical dilemmas. While some argue that capital punishment prevents crime by instilling fear in potential offenders, others contend that it is an ineffective and inhumane practice that fails to produce conclusive evidence of deterrence. The mixed results from this studies highlight the complexity of measuring the true impact of capital punishment on crime rates. Moreover, the risk of wrongful executions, coupled with concerns over racial and socioeconomic biases in the administration of the death penalty, further weakens the justification for its continued use. The study found that life is precious and death is irrevocable as such death penalty eliminate the potential for betterment that could have improved the life of an individual. The study recommends that since killing a human being is immoral because life is valuable and death is final, the death penalty concept is antiquated and barbaric and should be abolished.

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