

DOES EXECUTION PENALTIES FOR CRIMINALS ALIGN WITH PRINCIPLES OF HUMANITY AND JUSTICE?

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Abstract

This paper examines the compatibility of execution penalties with the principles of humanity and justice. It explores the historical evolution of capital punishment, its application across different legal systems, and its alignment with international human rights standards. The analysis evaluates arguments from both proponents and opponents of the death penalty, focusing on ethical considerations, societal impacts, and the potential for wrongful convictions. By assessing legal frameworks and philosophical theories of justice, this study seeks to determine whether capital punishment upholds or undermines the principles of humanity and justice. The death penalty remains one of the most controversial aspects of criminal justice systems worldwide. This paper analyzes whether execution penalties align with the principles of humanity and justice by examining their historical roots, legal frameworks, and ethical implications. Through a comparative legal analysis and a review of human rights standards, the study highlights the tension between retributive justice and human dignity. The findings suggest that while some view capital punishment as a necessary deterrent, its irrevocable nature and potential for misuse raise significant concerns about its compatibility with humane and just practices. This paper also examines whether execution penalties align with the principles of humanity and justice through the theoretical lenses of natural law, legal positivism, and legal realism. The analysis reveals that while natural law critiques capital punishment for undermining universal moral principles, legal positivism defends its validity when sanctioned by the law. Legal realism, however, highlights the inconsistencies and biases in its application. These perspectives underscore the complexity of reconciling the death penalty with humane and just practices, offering critical insights into its role in modern legal systems. This paper contributes to the ongoing discourse on criminal justice reform and the pursuit of equitable legal systems.

Keywords: the principles of humanity, justice, criminal justice reform

BACKGROUND

The death penalty remains a controversial practice in many countries, upheld by those who believe it deters crime, delivers justice for victims, and serves as a fitting punishment for the most heinous offenses. Advocates of positivism argue that capital punishment is justifiable under the principle of "an eye for an eye," emphasizing retribution and societal order. In contrast, naturalists contend that the death penalty is inhumane, asserting that no human has the right to impose such a punishment, regardless of the crime committed, as ultimate judgment belongs to God alone. From a realist perspective, reliance on execution as a form of justice is often criticized as being emotionally driven rather than pragmatic. Realists focus on whether the death penalty effectively delivers fairness, reduces crime, and promotes societal stability, frequently doubting

that such measures achieve their intended goals. This range of perspectives highlights the complexity and divisiveness surrounding the issue of capital punishment.¹

Before exploring this topic further, let's take a moment to understand the word **execution**. According to Merriam-Webster, it is defined as "putting to death, especially as a legal penalty." Simple in definition yet profound in implication, this term encapsulates centuries of human history, justice, and morality. What lies behind this act is not merely the enforcement of law but the deeply complex intersection of power, punishment, and society's evolving sense of right and wrong. To fully understand its significance, we will first explore the roles it has played throughout history². Death by execution has been practiced across the globe for centuries, evolving alongside societies and their systems of justice. The earliest recorded death penalty laws can be traced back to the 18th century BCE in the Code of King Hammurabi of Babylon, which listed the death penalty as punishment for 25 different crimes. Similarly, capital punishment played a key role in the 14th century BCE Hittite Code, the 7th century BCE Draconian Code of Athens—where death was the sole penalty for all crimes—and the 5th century BCE Roman Law of the Twelve Tables. Methods of execution during these periods included crucifixion, drowning, beating to death, burning alive, and impalement.

By the 10th century CE, hanging became the standard method of execution in Britain. However, during the 11th century, William the Conqueror introduced a brief era of leniency, prohibiting executions for most crimes except during wartime. This policy was short-lived, as the reign of Henry VIII in the 16th century marked a return to severe enforcement, with an estimated 72,000 executions carried out. Common methods during this period included boiling, burning at the stake, hanging, beheading, and drawing and quartering. Capital offenses ranged from treason to more unconventional crimes, such as marrying a Jew or refusing to confess. As Britain moved into the 17th and 18th centuries, the scope of capital punishment broadened. By the 1700s, 222 crimes—including minor offenses like stealing, cutting down a tree, or robbing a rabbit warren—were punishable by death. This excessive severity often led juries to acquit defendants of lesser crimes to avoid condemning them to execution. This response prompted gradual reforms, and between 1823 and 1837, the number of capital crimes was reduced by more than half.³

In France, the use of capital punishment endured from the Middle Ages until 1977⁴. The guillotine, introduced during the French Revolution, became the sole legal method of execution, with exceptions made for firing squads in cases of state security offenses. The death penalty was formally abolished in French law in 1981, marking the end of a long and complex history of executions in the country. This research delves into the effectiveness of capital punishment in improving societal safety and reducing crime rates. It also seeks to explore whether the fear of such severe consequences deters criminal behavior and to analyze the varied perspectives on this contentious practice. By examining the historical, ethical, and practical dimensions of the death penalty, this study aims to contribute to the ongoing debate about its role in modern society.

¹ Roger Hood, "Capital Punishment," *britannica.com*, Aug 29, 2023

² Amnesty International, "Death Sentences and Executions 2022," *amnesty.org*, May 2023

³ Jonathan Allen, "U.S. to Carry Out 13th and Final Execution Under Trump Administration," *reuters.com*, Jan. 15, 2021

⁴ Barbara Campbell, "U.S. Executes Dustin Higgs in 13th and Final Execution Under Trump Administration," *npr.org*, Jan. 16, 2021

RESEARCH METHOD

The type of research used in studying is the Normative method. Normative research, also known as doctrinal legal research or theoretical legal research, focuses on written studies that utilize secondary sources such as legislation, court decisions, and legal theory. It often takes the form of scholarly scientific work. This type of research examines various aspects including theory, history, philosophy, comparison, structure and composition, scope and content, coherence, overview and explanation chapter by chapter, the formalities, and the binding force of legislation and the legal language used.

Primary data

Compare the implementation and abolition of the death penalty across jurisdictions (e.g., the U.S., European countries, and Islamic law). Identify patterns in how legal systems influenced by natural law, legal positivism, or legal realism handle capital punishment.

Secondary data

Secondary data is use data on the death penalty's application, such as demographics of those sentenced, wrongful convictions, and deterrence efficacy. Refer to reports from organizations like Amnesty International or the UN for insights on the death penalty's global impact.

RESULT AND DISCUSSION

This topic can be viewed in many aspects. And three of legal aspects includes legal positivism, legal realism, and also naturalism in law.

Natural Law Perspective

Natural law emphasizes universal moral principles and the inherent dignity of human beings. From this viewpoint⁵:

1. Execution penalties may be seen as incompatible with human rights and natural justice, which prioritize the sanctity of life.
2. Advocates of natural law might argue that state-sanctioned killing undermines the moral order and fails to reflect higher ethical principles.

However, some interpretations of natural law (e.g., in religious contexts) might support the death penalty for heinous crimes as a means of preserving social harmony.

Legal Positivism Perspective

Legal positivism asserts that laws are valid based on their creation and adherence to established legal processes, irrespective of moral considerations. From this lens:⁶

1. Execution penalties are justified if codified in law and enacted following due process.

⁵ Death Penalty Information Center, "Execution Database," deathpenaltyinfo.org (accessed Jan. 18, 2021)

⁶ Aris Folley, "Federal Government Carries Out 13th and Final Execution Under Trump," thehill.com, Jan. 16, 2021

2. A positivist might argue that the death penalty is a legitimate exercise of state authority if it aligns with the constitution and statutory requirements.
3. Moral critiques of capital punishment would be seen as external to the legal system and not grounds for deeming it invalid.

Legal Realism Perspective

Legal realism focuses on how laws function in practice and the social, political, and economic factors influencing judicial decisions. From this viewpoint:

1. The application of execution penalties is often inconsistent, influenced by factors like race, class, and geography.
2. Realists might critique the death penalty for reflecting societal biases rather than serving impartial justice.
3. This approach emphasizes the real-world consequences of capital punishment, such as wrongful convictions and its limited deterrent effect.

Gregg v. Georgia (1976) – U.S. Supreme Court

Public Reaction:

1. Supporters of the Death Penalty viewed the decision as a victory for justice, retribution, and deterrence. Many Americans saw the death penalty as a necessary tool to address violent crimes and restore order, especially during a time of rising crime rates in the U.S.
2. Opponents of the Death Penalty criticized the decision for failing to address systemic biases, arguing that the "guided discretion" statutes merely masked the arbitrariness highlighted in *Furman*. Advocates continued to stress issues such as racial disparities, wrongful convictions, and the ethical implications of state-sanctioned executions

Broader Impact:

1. Public opinion surveys from the 1970s showed strong support for the death penalty, reflecting a national trend toward punitive measures during this period.
2. Civil rights groups persisted in challenging death penalty laws, though their influence waned amid the public's focus on law and order.

Gregg v. Georgia is a U.S. Supreme Court case in which it was held that death penalty for murder was not in and of itself a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments⁷. It was held that the Eighth Amendment has to be interpreted in a dynamic and flexible manner to conform with evolving standards of decency. The Court also ruled that the character of the defendant was to be considered when deciding whether to impose the death penalty to ensure that such a punishment is not disproportionate. The Supreme Court, while determining the proportionality of the death penalty, opined that it was justified because it was proven beyond reasonable doubt:

1. that the murder was committed while the offender was engaged in the commission of other capital felonies, viz., the armed robberies of the victims;

⁷ Gallup, "Death Penalty," news.gallup.com (accessed Sep. 18, 2023)

2. that he committed the murder for the purpose of receiving the victims' money and automobile; and that the murder was "outrageously and wantonly vile, horrible and inhuman" in that it "involved the depravity of (the) mind of the defendant."⁸

The death penalty is sometimes justified because the majority of poll respondents supports it in the abstract. The Supreme Court, in attempting to determine whether a punishment is cruel and unusual, asks whether the punishment comports with society's "evolving standards of decency." The Court has been reluctant to rely on opinion polls to measure these standards because poll results can vary widely depending on the polling firm and the specific wording of the questions asked. Instead, the Court has looked to the actions of state legislatures and the decisions of juries, prosecutors and governors, as reflecting public will. The myriad of disturbing facts about the death penalty has led to a sharp decline in its use and even to a lowering of support in the abstract poll question. Ultimately, the future of the death penalty will depend on whether it is retaining public support.

The use of the death penalty is not consistent with the right to life and the right to live free from torture or cruel, inhuman or degrading treatment or punishment. There is growing consensus for universal abolition of the death penalty. Some 170 States have abolished or introduced a moratorium on the death penalty either in law or in practice. Despite this abolitionist trend, the death penalty is still employed in small number of countries, largely because of the myth that it deters crime. A few states also still permit use of the death penalty for crimes other than those of extreme gravity involving intentional killing, including for drug-related crimes or terrorism charges. More work needs to be done. Worldwide abolition is necessary for the enhancement of human dignity and progressive development of human rights. From the early 1960s, although a majority of countries still used the death penalty, the drafters of the International Covenant on Civil and Political Rights (ICCPR) had already begun moves for its abolition in international law. Although Article 6 of the ICCPR permits the use of the death penalty in limited circumstances, it also provides that "nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant." Safeguards guaranteeing protection of the rights of those facing the death penalty.⁹

In 1984, the UN Economic and Social Council adopted Safeguards guaranteeing protection of the rights of those facing the death penalty. Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty. In 1989, 33 years after the adoption of the Covenant itself, the UN General Assembly adopted the Second Optional Protocol to the ICCPR that gave abolition decisive new momentum. Member States which became parties to the Protocol agreed not to execute anyone within their jurisdictions.

UN General Assembly Resolutions

In a series of resolutions adopted in 2007, 2008, 2010, 2012, 2014, 2016 and 2018, the General Assembly urged States to respect international standards that protect the rights of those facing the death penalty, to progressively restrict its use and reduce the number of offences which are punishable by death¹⁰. Religious denominations in the U.S. have frequently made statements about the death penalty, sometimes pointing out concerns about its application, and other times judging the morality of the punishment itself. Historically, most major religious bodies allowed for the use of capital punishment, but criticism of the practice has greatly increased in recent times. In a diverse democracy, no single religious point of view occupies a privileged position in the framing of law. Nevertheless, the principles of various communities of faith are relevant in the political debate because they help inform the views of their respective

⁸ U.S. Conference of Catholic Bishops, "Leviticus," bible.usccb.org (accessed Sep. 19, 2023)

⁹ Stanford Encyclopedia of Philosophy Archive, "Retributive Justice," plato.stanford.edu, June 18, 2014

¹⁰ Charles Stimson, "The Death Penalty Is Appropriate," heritage.org, Dec. 20, 2019

constituents and reflect the “evolving standards of decency” that are vital to the Supreme Court’s interpretation of the Eighth Amendment.

The preponderance of evidence suggests that the death penalty does not effectively deter crime. Studies consistently show that it does not reduce homicide rates more effectively than other forms of punishment. Moreover, the ethical and human rights issues associated with the death penalty further complicate its justification. Policymakers should consider these findings and explore more effective and humane ways to address crime. People living in poverty are disproportionately affected by the death penalty for many reasons. They are an easy target for the police, they cannot afford a lawyer, the free legal assistance they might receive is of low quality, procuring expert evidence is beyond their means, tracing witnesses is too costly, and access to appeals often depends on being able to afford extra counsel. Many cannot afford bail and therefore remain in custody before their trials, further hindering their efforts to prepare an effective defence. Some legal aid systems become active only at the trial stage, meaning that defendants from low socio-economic backgrounds are often interrogated and investigated without a lawyer. By the time the case reaches court, it may already be too late to guarantee a fair trial. Corruption of law enforcement officials is another detrimental factor. Capital punishment, or the death penalty, raises many ethical considerations, including:¹¹

1. Inhumane: Some argue that capital punishment is inhumane.
2. Lack of deterrence: Others argue that capital punishment is not an effective deterrent to crime.
3. Bias: Some say that capital punishment continues to be influenced by racial and economic biases.
4. Irreversibility: Capital punishment is irreversible.
5. Innocent people: A common argument against capital punishment is that innocent people may be killed due to flaws in the justice system.
6. Disrespect for human life: Some argue that the death penalty shows disrespect for human life.
7. Illusion of defending life: Others say that the death penalty gives the illusion that life can be defended by taking life.

Cultural, historical, and religious perspectives can shape attitudes towards the death penalty in a number of ways, including:¹²

1. Religious moral codes: which are based on teachings from the Bible or other religious texts, can influence how governments handle the death penalty.
2. Religious beliefs: Religious leaders and organizations may take stances on the death penalty based on their beliefs about human dignity, retribution, and redemption.
3. Religious affiliation: can affect attitudes towards the death penalty. For example, Protestants are more likely to support the death penalty than Catholics, and those with no religious preference are less likely to support it.
4. Spirituality: can also affect attitudes towards the death penalty. Spirituality is an emotional connection with a higher power that can help explain how religion influences attitudes towards the death penalty.
5. Colonial legacy: can influence the form and practice of capital punishment laws. For example, Indonesian law is a hybrid of Islamic law, local customs, and colonial influence.

¹¹ Jon’a F. Meyer, “Retributive Justice,” *britannica.com*, Sep 12, 2014

¹² Robert Blecker, “If Not the Parkland Shooter, Who Is the Death Penalty For?,” *nytimes.com*, Oct. 27, 2022

The gradual rise in use of capital punishment in the seventeenth, eighteenth, and nineteenth centuries; a peak of executions in the early 20th century; moratorium; and then the resumption of executions after moratorium. The use of the death penalty has declined sharply in the United States over the past 25 years¹³. New death sentences have fallen more than 85% since peaking at more than 300 death sentences per year in the mid 1990s. Executions have declined by 75% since peaking at 98 in 1999.

Amnesty International recorded at least 1,153 executions in 16 countries – a 31% increase from the 883 executions in 20 countries in 2022 – marking the highest total since 2015 but the lowest number of executing countries on record with the organization. As in previous years, execution totals do not include the estimated thousands of executions carried out by the world's leading executioner, China, where execution data is considered a state secret; secrecy practices and challenges accessing information in Afghanistan, North Korea, Palestine, Syria, and Vietnam also created difficulties in identifying minimum totals. This world-wide increase was primarily driven by a 48% rise in executions in Iran, which accounted for 74% of executions world-wide. Iran (at least 853 exe-cu-tions), Saudi Arabia (172 exe-cu-tions), Somalia (at least 38 exe-cu-tions), the U.S. (24 exe-cu-tions), and Iraq (at least 16 exe-cu-tions) were the top five countries responsible for recorded executions¹⁴. Compared to the pri-or year, all top five countries, except Saudi Arabia which experienced a slight decrease (196 in 2022), experienced an increase in executions. Overview, society tend to choose a better humane penalty. Dealth penalties are often disagreed to and considered inhumane which violates many human rights.

CONCLUSION

This paper examines the compatibility of execution penalties with the principles of humanity and justice. By analyzing legal frameworks, philosophical arguments, and global perspectives, it highlights the tension between punitive justice and the moral imperative to uphold human dignity. While proponents argue that capital punishment serves as a deterrent and delivers retributive justice, critics emphasize its irreversible nature, potential for judicial errors, and the violation of fundamental human rights. The discussion underscores that the morality and effectiveness of execution penalties remain deeply contested. Ultimately, the paper concludes that aligning criminal justice with humanity requires moving beyond punitive measures to focus on rehabilitation, fairness, and the sanctity of life. Whether execution penalties can coexist with these principles depends on societal values and the evolving interpretation of justice in a modern context.

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¹³ George Brauchler, "Coloradans Should Have the Final Say on the Death Penalty (and I'd Hope They Keep It)," *denverpost.com*, Mar. 1, 2019

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