

A THEMATIC CRITIQUE OF THE MORAL PERMISSIBILITY OF CAPITAL PUNISHMENT

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Abstract

This paper explores and exposes the debate on capital punishment. Arguments for or against capital punishment remain unsettled. However, the paper, not being a mere regurgitation of the traditional debate on capital punishment, draws attention to two important factors through observable facts and available figures, viz: (1) fallibility and possibility of judicial error, and (2) practical failures of capital punishment. First, it discovers that errors in judicial rulings over the years are too obvious to ignore, and if the system decisively ignores these errors and their consequences (the many innocent lives that have been lost to the process) then it means the system has become machinery which targets the lives of the people it is supposed to protect. This is a moral taboo. Secondly, the paper finds that it is either capital punishment is inconsequential in determining crimes or it is ineffective in deterring them as it cannot boast of any success in either case. Either way, the paper argues that capital punishment is irrelevant. Consequently, the paper recommends, based on practical successes and the fulfilment of the purposes of punishment, the maxim of restorative justice and rehabilitating prisoners.

Keywords: Capital Punishment, deterrence, incapacitation, death penalty, permissibility.

Introduction

In Bronx, on August 15, 1990, eighteen-year-old Angel Diaz and four other friends were sentenced for 38 and one-third years to life for the murder of an Israeli contractor who had employed one of Diaz's friends.¹⁶⁰ After strangling the man with a shoelace and stabbing

him, they donned Halloween masks and hoods to rob, beat, and gang-rape the man's wife and 16-year-old daughter. Before that event, Diaz had already been convicted of burglary four times. The prison sentence of these young men raised two important reactions.¹⁶¹ On the one hand, we have those who argued that the court was not

¹⁶⁰ "Teen-Ager Convicted in 1988 Murder and Robbery in Bronx," *The New York Times*, July 16, 1990, 3.

¹⁶¹ Louis Pojman, "For Death Penalty," in *The Death Penalty: For and Against*, ed. Louis Pojman and

Jeffery Reiman (Lanham: Rowman and Littlefield Publishers, Inc., 1998), 1.

justified in its sentence given that life imprisonment is nowhere proportional to the degree, nature and complexity of the crime committed; justice would only be served if they were executed. On the other hand were those who argued that the court was justified since its decision was the best possible way to go; that life imprisonment shows respect for human life.¹⁶² These two reactions, to an extent, characterize the capital punishment controversy which basically addresses itself to at least four related questions: the question as to whether or not capital punishment is ethical or morally permissible; that as to whether it is administered fairly; that as to whether it is an effective deterrent to crime; and that as to whether it should be abolished.¹⁶³ Accordingly, at the heart of this paper we shall argue broadly as follows: (1) we should respect human life; (2) using capital punishment when it is not necessary to fulfil any of the legitimate purposes of punishment is inconsistent with respect for human life; (3) capital punishment is not necessary to fulfil any of the legitimate purposes of punishment in the contemporary world; (4) therefore, capital punishment should not be used in the contemporary world. Whether our argument succeeds, the reader/listener must judge for themselves.

As a way of proceeding, the paper shall be divided into three parts, viz: (1) the conceptual issue, clarification of salient concepts and the historical considerations of the issue at hand; (2) the classical arguments for and against the capital punishment question; and (3) beyond the arguments, recommendations and alternative to capital punishment.

1.0 The Conceptual Issues, Clarification and History

1.1 Clarification of Salient Concepts

The concepts to be clarified in this paper are permissibility, punishment and capital punishment.

Permissibility: This is a concept of moral appraisal or evaluation. When used in relation to an act, it suggests that that act is allowable, admissible, acceptable or all right to do in accordance with the law or some moral standards.¹⁶⁴ The opposite of permissibility is impermissibility which suggests that an act is unacceptable, prohibited or inadmissible. In other words, while proponents of capital punishment argue for the permissibility of capital punishments, opponents, abolitionists or critics of capital punishment argue for its impermissibility.

¹⁶² Louis Pojman, *Philosophy: The Quest for Truth* (Oxford: Oxford University Press, 2006), 588.

¹⁶³ Mary Williams, ed., *Capital Punishment* (San Diego: Greehaven Press, Inc., 2000), 5-10.

¹⁶⁴ Louis Pojman and James Fieser, *Ethics: Discovering Right and Wrong* (USA: Wadsworth, 2006), 9.

Punishment: This deals with the infliction of some kind of pain or discomfort upon a person for a misdeed, that is, the transgression of a law or command.¹⁶⁵ Punishment may involve death, mutilation of the body, flogging or beating, privation of bodily liberty by confinement of various sorts, banishment, forced labour, privation of civil rights, pecuniary fine, to mention a few.¹⁶⁶ Generally, inflicting pain on someone would be wrong; however, retributive and utilitarian rationales are said to justify punishment. The retributive rationale is said to justify punishment so long as it is deserved. The utilitarian rationale justifies punishment on the basis that it is a means to the “greater good” of reducing crime through deterrence, incapacitation, or rehabilitation.¹⁶⁷

Capital Punishment: The term “capital” is derived from the Latin “capitalis” (from “caput”) which means “of the head”. Hence, in the context of punishment, capital punishment alludes more fittingly to execution by beheading. However, it goes beyond that. It is simply a form of punishment that involves death.¹⁶⁸ Hence, capital punishment, also called death penalty, is

a government-sanctioned practice whereby a person is executed by the state as a punishment for a crime.¹⁶⁹ The sentence that someone be punished in such a manner is referred to as a “death sentence”, whereas the act of carrying out the sentence is known as an “execution”.¹⁷⁰ Crimes that are punishable by death are known as ‘capital crimes’ or ‘capital offences’, and they commonly include: murder, mass murder, terrorism, treason, espionage, war crimes, genocide, assault, rape, kidnapping, armed robbery and sabotage.¹⁷¹ Some distinguish capital punishment from extrajudicial executions in that while the former is carried out after conviction by a court of law, the latter is carried out without the due process of law.¹⁷²

1.2 Some Historical Considerations

Capital punishment has been used by nearly all societies since the inception of civilizations on earth. This is mostly because, not until the 19th century, there was often no suitable alternative to ensure deterrence and incapacitate criminals.¹⁷³

Death penalty laws date as far back as the Ancient Laws of China.¹⁷⁴ In the 18th century

¹⁶⁵ Joycelyn Pollock, “The Rationale for Imprisonment” in *Prisons: Today and Tomorrow*, ed. Ashley Blackburn, Shannon Fowler and Joycelyn Pollock (Burlington: Jones and Bartlett Learning, 2014), 4.

¹⁶⁶ Charles Knight, *Political Dictionary*, Vol. 2 (London: Charles Knight and Co., 1846), 604.

¹⁶⁷ Pollock, “The Rationale for Imprisonment,” 4

¹⁶⁸ Knight, *Political Dictionary*, 604.

¹⁶⁹ Peter Carlson and Judith Garrett, *Prison and Jail Administration: Practice and Theory* (Boston: Jones and Bartlett Publishers, 2008), 352.

¹⁷⁰ Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford: Oxford University Press, 2015), 147.

¹⁷¹ Hood and Hoyle, *The Death Penalty: A Worldwide Perspective*, 147.

¹⁷² Andrew Novak, *The Death Penalty in Africa: Foundations and Future Prospects* (New York: Palgrave Macmillan, 2014), 5.

¹⁷³ “Furman v. Georgia – Mr. Justice Brennan, Concurring,” law.cornell.edu, archived from the original on 18 July 2017, Retrieved 29 February 2020.

¹⁷⁴ Joseph Melusky and Keith Pesto, *Capital Punishment* (Santa Barbara: Greenwood, 2011), 8.

BC, the Code of King Hammurabi of Babylon codified the death penalty for 25 crimes, excluding murder. According to Michael Reggio, the first recorded death sentence occurred in Egypt in the 16th century BC. In about 621 BC, the inflexible Code of Athens attributed to Draco reputedly made death the penalty for every crime. According to Aristotle, a generation later, the lawgiver Solon reputedly retained Draco's laws for homicide but mitigated the severity of punishments for lesser offences.¹⁷⁵ The Romans also used death penalty for a wide range of offences, though exempting its imposition on Roman citizens at a time. Judaism is said to have sanctioned death penalty as retributive justice, adhering to *lex talionis*—the rule of “an eye for an eye; a tooth for a tooth; a life for a life.”¹⁷⁶ Death penalty is also condoned in Islamic law, as expressed in the Qur'an. The United States inherited its use from European settlers in the 17th century.

Until well about the 19th century, many societies administered exceptionally cruel forms of capital punishment. In Rome, the condemned were hurled from the Tarpeian Rock; some were drowned in a sealed bag with a dog, cock, ape, and viper; and still others were executed by forced gladiatorial combat or by crucifixion.¹⁷⁷ Methods of execution such as sawing the

condemned in half, flaying or boiling alive, burning at the stake, beheading or decapitation by the guillotine or an axe, hanging and stoning were employed in places like China, parts of Europe, Saudi Arabia, Iran and Sudan. Methods of electrocution, gassing, firing squad and lethal injection were also used. While in some places, executions were done in public, in others, public executions were banned.

1.3 Issues and Ethical/Moral Considerations

In the 18th century, however, philosophers began to question the ethics of the death penalty. Cesare Beccaria condemned capital punishment as an ineffective and grossly inhumane deterrent to crime. Conversely, German philosopher Immanuel Kant claims that execution was the fairest punishment for murder, arguing that even guilt-ridden killers should die in order to gain release from their anguish. Such arguments concerning the ethics of capital punishment continue to spark controversy.¹⁷⁸ Today, the question as to whether or not capital punishment is ethical is still relevant. Many still ask the question as to what moral or ethical justification a state or society has for taking an individual's life. They are concerned because the death penalty is a deliberate, not an impulsive, use of violence to take an individual's life. The fact that it is enacted into law and executed after ample

¹⁷⁵ Melusky and Pesto, *Capital Punishment*, 8.

¹⁷⁶ William Schabas, *The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts* (Boston: Northeastern University Press, 1996), 13.

¹⁷⁷ Nigel Cawthorne, *Public Executions: From Ancient Rome to the Present Day* (London: Arcturus Publishing Limited, 2012), 2.

¹⁷⁸ Mary Williams, ed., *Capital Punishment*, 17.

time to weigh alternatives makes it an issue of great ethical concern.¹⁷⁹

2.0 The Arguments: The Classical Arguments for and Against Capital Punishment

2.1.0 Justification/Argument for Capital Punishment

Proponents of capital punishment usually advance three kinds of arguments: based on deterrence, based on retribution and based on incapacitation. These arguments are discussed below.

2.1.1 Appeal to Deterrence

The deterrence argument is based on the fact that death penalty prevents future murders or crimes. Supporters of death penalty argue that the awareness that one will face death when caught and prosecuted for a particular crime discourages that person from going into such a crime. They believe that if criminals are sentenced to death and executed, potential criminals will think twice before going into crime for fear of losing their lives. Hence, society uses death penalty to discourage would-be criminals from going into crime.

In research carried out by Isaac Ehrlich in 1973, we learn that for every inmate who was executed, 7 lives were spared because others were deterred

from committing murder.¹⁸⁰ Ernest van den Haag compares the death penalty to other forms of punishment. He says that whether or not statistics remain inconclusive, capital punishment is likely to deter more than other punishments. For him, this is the case because people fear death more than anything else. In his view, whatever people fear most is likely to deter most. He insists that capital punishments are necessary to deter crimes and that deterrence is a sufficient moral and practical justification for them.¹⁸¹

2.1.2 Appeal to Retribution

The central tenet of this argument is “proportional punishment” in which case an offender is made to suffer in proportion to the amount of harm that he caused. In other words, in a situation of murder, it is only an execution that can balance the scales of justice that have been disturbed; “a death for a death” or “a life for a life”.¹⁸² Hence, the argument maintains that the society requires the death penalty for the taking of a life. For a retributivist, punishment is moral rather than utilitarian – the offender deserves to be punished in a manner that is proportional to the crime regardless of whether the punishment produces any subsequent benefit for society (such as preventing the offender from killing again or deterring others).¹⁸³

¹⁷⁹ Pojman, *Philosophy: The Quest for Truth*, 600.

¹⁸⁰ Isaac Ehrlich, “The Deterrent Effect of Capital Punishment: A Question of Life and Death,” *American Economic Review*, 65 (June 1975): 397-417.

¹⁸¹ Ernest van den Haag, “The Deterrent Effect of the Death Penalty,” in *The Death Penalty: A Debate*, ed.

Arthur Goldberg (New York: Plenum Publishing, 1983), 63.

¹⁸² Pojman, *Philosophy: The Quest for Truth*, 604.

¹⁸³ Michael Radelet and Scott Phillips, “Capital Punishment/Death Penalty,” in *The Cambridge Handbook of Social Problems*, ed. Javier Trevino (Cambridge: Cambridge University Press, 2018), 437.

Retributivists believe that without the death penalty taken as a state responsibility, society will succumb to a rule of violence such that the victim's family or the aggrieved families will resort to killing the murderers and eventually spurring a cycle of interfamilial feuding; acts of pure vengeance, retaliation or revenge will be directed at the offender without official authorization by the state. For them, although the victim and the victim's family cannot be restored to the status which preceded the murder, an execution of the murderer will, at least, bring closure to the murderer's crime and ensure that the murder will create no more victims.¹⁸⁴ They argue that any lesser punishment will undermine the value society places on human life.

From a theological perspective, Louis Pojman argues that the authority to punish, which presumably includes the death penalty, comes from God. He maintains that the state has authority and role to dispense justice. The state, therefore, has a duty to execute those convicted.¹⁸⁵

2.1.3 Appeal to Incapacitation

The incapacitation argument is simple: capital punishment or executions save innocent lives by permanently incapacitating murderers; dead murderers cannot kill again. It thrives on the presupposition that some persons who committed capital homicide will slay other

innocent persons if given the opportunity to do so. Consequently, vicious murderers must be killed to prevent them from murdering again, either in prison or in society if they should get out. The death penalty is the most effective means of preventing such killers from repeating their crimes.¹⁸⁶ The next most serious penalty, life imprisonment without possibility of parole, prevents murderers from committing some crimes but does not prevent them from murdering in prison or escaping from prison to kill again. Just like the argument from deterrence, it is argued that permanent incapacitation helps to prevent future crimes.

2.2.0 Arguments against Capital Punishment

Five arguments against death penalty are presented here. The first two are rebuttals to the arguments from deterrence and retribution. The last three are arguments based on cost/benefit analysis, risk of executing the innocent and arbitrariness and discrimination.

2.2.1 Rebuttal to Deterrence

Actual experience establishes beyond a reasonable doubt that capital punishment does not deter people from committing crimes. Most people who commit crimes do not expect to be caught or do not carefully weigh the difference between a possible execution and life in prison before they act. For abolitionists (opponents of

¹⁸⁴ Pojman, *Philosophy: The Quest for Truth*, 591.

¹⁸⁵ Pojman, "For Death Penalty," 13.

¹⁸⁶ Paul Cassell, "In Defense of the Death Penalty," in *Debating the Death Penalty*, ed. Hugo Bedau and Paul Cassell (Oxford: Oxford University Press, 2004), 187.

capital punishment), the threat of even the severest punishment will not discourage those who expect to escape detection and arrest.¹⁸⁷ They observe that, frequently, such crimes like murder are committed in moments of passion or anger, or by criminals who were substance abusers and acted impulsively. For them, there is no conclusive proof that the death penalty does even act as a better deterrent than the threat of life imprisonment. They argue that, if however severe punishment can deter crime, then long-term imprisonment is severe enough to deter any rational person from committing a violent crime.¹⁸⁸

2.2.2 Rebuttal to Retribution

Abolitionists argue that capital punishment is not a just response for the taking of a life. They observe that although our first instinct may be to inflict immediate pain on someone who wrongs us, it is only mature to give a more measured response. In their view, our laws and criminal justice system should lead us to higher principles that demonstrate a complete respect for life, even the life of a murderer. For them, encouraging retribution which consists in pure vengeance, retaliation or revenge breeds or extends the chain of violence.¹⁸⁹ They maintain that pain, suffering and agony which an aggrieved family suffers

cannot be healed simply through the retribution of capital punishment or by vengeance.

More so, retributive justice is not adequately expressed in the idea of “a life for a life.”¹⁹⁰ This is because capital punishment will make more sense if the death of a murderer leads to the restoration of the life of the victim. In all, for them, retribution shows a society’s disvalue of human life.¹⁹¹

2.2.3 Appeal to Cost/Benefit Analysis of the Death Penalty

Abolitionists argue that many erroneously believe that the death penalty is cheaper than life imprisonment without parole. For them, as counterintuitive as it may seem at first glance, the modern death penalty is more expensive than life imprisonment without parole.¹⁹² They observe that the meter starts running when the prosecutor decides to seek the death penalty. The high costs of a capital trial, the involvement of experts, the inevitable appeals, and the costly methods of custody most prisons adopt for convicts on “death row” are among the straightforward economic costs that the death penalty incurs. More so, clinical psychologists have presented evidence to suggest that the death penalty actually incites some persons of unstable mind to murder others - either because they are

¹⁸⁷ Conrad, “Does Deterrence Need Capital Punishment,” in *The Death Penalty: A Debate*, 83-95.

¹⁸⁸ John Conrad, “The Retributivist’s Case against Capital Punishment,” in *Capital Punishment*, 25.

¹⁸⁹ Philip Brasfield, “Capital Punishment may cause Violence to increase,” in *Capital Punishment*, 118.

¹⁹⁰ Pojman, *Philosophy: The Quest for Truth*, 605.

¹⁹¹ Pojman, *Philosophy: The Quest for Truth*, 600.

¹⁹² Michael Radelet and Scott Phillips, “Capital Punishment/Death Penalty,” 441.

afraid to take their own lives and hope that society will punish them for murder by putting them to death, or because they fancy that they, too, are killing with justification, analogous to the justified killing involved in capital punishment.¹⁹³ If such evidence is sound, capital punishment can serve as an incitement to murder, and these incited murders become part of its social costs.

2.2.4 Appeal to the Risk of Executing the Innocent

Many critics of capital punishment argue that the criminal justice system has failed in some cases. They point out that historical record is replete with innocent persons indicted, convicted, sentenced and occasionally legally executed for crimes they did not commit, not to mention the guilty persons unfairly convicted, sentenced to death, and executed on the strength of perjured testimony, fraudulent evidence, subornation of jurors, and other violations of the civil rights and liberties of the accused. In the face of the fallibility of human judgment and given that the death penalty imposes an irrevocable sentence, life imprisonment is seen as a better alternative. This is because once an inmate is executed, nothing can be done to make amends if a mistake had been made. Opponents of death penalty see wrongful executions as a preventable risk. For

¹⁹³ Hugo Bedau, “An Abolitionist’s Survey of the Death Penalty in America Today,” in *Debating the Death Penalty*, ed. Hugo Bedau and Paul Cassell (Oxford: Oxford University Press, 2004), 33.

them, by substituting it with a life sentence without parole, we will be able to meet society’s needs of punishment and protection without running the risk of an erroneous and irrevocable punishment.¹⁹⁴

2.2.5 Appeal to Arbitrariness and Discrimination

Advocates for the abolition of death penalty argue that death penalty is essentially an arbitrary punishment. For them, there are no general or objective rules or guidelines as to when a prosecutor should seek the death penalty, when a jury should recommend it, and when a judge should give it. They argue that this lack of objective, measurable standards create an atmosphere for the discriminatory application of the death penalty – against economic, racial, gender and ethnic groups.¹⁹⁵ Justice William Douglas once observed that:

One searches our chronicles in vain for the execution of any member of the affluent strata of society. [However], one does not search our chronicles in vain for the crime of murder committed by the affluent.¹⁹⁶

This leads to the conclusion that the death penalty is the poor man’s justice: as the current

¹⁹⁴ Alex Kozinski, “Tinkering with Death,” in *Debating the Death Penalty*, ed. Hugo Bedau and Paul Cassell (Oxford: Oxford University Press, 2004), 13.

¹⁹⁵ Bedau, “An Abolitionist’s Survey of the Death Penalty in America Today,” 23.

¹⁹⁶ Pojman, *Philosophy: The Quest for Truth*, 606.

street saying has it, “those without the capital get the punishment.”¹⁹⁷ With respect to race, studies have repeatedly shown that a death sentence is far more likely where a white person is murdered than where a black person is murdered or where the murderer is a black person than where he is a white person.¹⁹⁸ Studies on the death penalty for rape has confirmed that black male rapists (especially where the victim is a white female) are far more likely to be sentenced to death (and executed) than white male rapists. It is also the case that male murderers are likely to receive the death sentence than their female counterparts. For these reasons, abolitionists say that until arbitrary and discriminatory factors are eliminated as determinants of who lives and who dies, the death penalty must not be used.

3.0 Beyond Arguments: A Critical Gaze upon Capital Punishment and Facts & Figures

3.1 Fallibility and the Possibility of Judicial Error

George Junius Stinney, Jr. (October 21, 1929-June 1944, 14years) was an African American electrocuted in South Carolina in 1944 for the murder of Betty June Binnicker, age 11, as well as Emma Thames, age 8. More than 70 years later, a judge threw out the conviction, calling it a “great injustice.”¹⁹⁹ This is just the tip of the iceberg because in America alone there are over

100 people who have been wrongfully executed in the last couple of years; Ray Krone is the 100th American to have been sentenced to death and then later exonerated. In the same US we still have Johnny Garrett, Jesse Tafero and others; in the UK we have had Timothy Evans, George Kelly and others. Indeed, the list is endless and cuts across all continents. Granted, in Nigeria we may not have heard about such tragedy but perhaps it is because we have not made concrete efforts in finding out if, actually, we have had any.

Another important factor to be brought forward is the cases of mentally handicapped people who were executed for committing grave crimes. These people need treatment and are to be considered for the sake of their mental state, yet oftentimes the law is as harsh as it can be towards them without particular attention to their existential circumstances. The law holds them culpable when they are not even under the use of their reason. Most times, there are even no adequate measures in the judicial system to determine the mental state of the defendants to know if they are actually culpable. Derek Bentley reminds us of such injustice.

Given these concrete examples, it raises a great concern that such an institution as capital

¹⁹⁷ Pojman, *Philosophy: The Quest for Truth*, 606.

¹⁹⁸ Bryan Stevenson, “Close to Death: Reflections on Race and Capital Punishment in America,” in *Debating the Death Penalty*, ed. Hugo Bedau and Paul Cassell (Oxford: Oxford University Press, 2004), 85.

¹⁹⁹ Jeffrey Collins, “70 Years Later, Judge Rules 14-year-old boy was wrongly Executed,” *The Christian Science Monitor*, December 17, 2014.

punishment still exists in the 21st century. Fifty-six countries retain death penalty (including such a developed country as the US) and 60% of the world's population live in countries where death penalty is applicable by law.²⁰⁰ Accordingly, the possibility of error necessitated by human fallibilism applies with particular piquancy to the issue of capital punishment. It has been observed by independent agencies especially in the US (and as we have seen in this paper) to be a process “fraught with error, discriminates on the basis of socioeconomic status, race, and geography; it is arbitrary and capricious, including its use against the mentally ill and defendants who did not kill anyone and who did not intend that anyone be killed.”²⁰¹ Fifty-five exonerations of prisoners under sentence of death were recorded in six countries: China, Maldives, Nigeria, Taiwan, USA and Zambia.²⁰² These exonerations leave us to ask this question: If there is the possibility for errors as in these cases, why continue the death penalty? Observations such as these will help us make a case against death penalty. For if we cannot be entertained about the justifications that got someone to death row, then it logically follows that we might be wrong about their guilt. It is the only form of punishment that closes the possibility of further inquiry into the case, and

this can lead to injustice that can never be overturned. History has repeatedly bore witness to this. So, we can represent this argument succinctly as follows:

1st Premise: The death penalty should be used if and only if we can prove beyond reasonable doubt (certainty) that someone is guilty. (It is “if and only if” because there is no room for self-correction when someone is sentenced to death.

2nd Premise: However, no belief, including that someone is guilty, can be conclusively justified (no certainty to that effect).

Conclusion: Therefore, we should not apply death penalty. From the foregoing, it is conspicuous that if we do not abolish the death penalty, it means we are practically reserving some innocent people as judicial rats that are set apart to be sacrificed on the altar of our court houses. This indeed is morally deplorable – a moral taboo.

3.2 Practical Success of Capital Punishment

One of the best ways to judge the effectiveness or ‘worthness’ of a thing is to determine its practical successes. How far does that thing fulfil

²⁰⁰ Amnesty International, “Abolitionist and Retentionist Countries as of July 2018,” Index: ACT 50/6665/2017.

²⁰¹ American Civil Liberties Union, “Death Penalty 101,” <https://www.aclu.org/capital-punishment/death-penalty-101>

²⁰² Amnesty International, “Abolitionist and Retentionist Countries as of July 2018,” Index: ACT 50/6665/2017.

²⁰² American Civil Liberties Union, “Death Penalty 101,” <https://www.aclu.org/capital-punishment/death-penalty-101>

the purpose for which it was created? Accordingly, we have been told that because it is the severest of all punishments, capital punishment is likely to deter more than other punishments. However, the available data and facts do not corroborate this claim.

According to our findings, 14 out of the world's 20 most dangerous and crime-prone countries have some form of provisions for capital punishment enshrined in their laws. They are: India (home to eleven terrorist organizations, including al-Qaeda and ISIS), Chad, Guinea-Conakry, Mali, DRC, Brazil, Trinidad and Tobago (this country is infested with murder, domestic violence and sexual assaults and it is one of the few countries that still retain the mandatory death for convicted murderers), Pakistan (hosts 12 terrorist organizations), Jamaica, Philippines (suspended but did not abolish the death penalty since 2006, however they have been making concrete moves to call off the suspension), Guatemala, Yemen, Nigeria and El Salvador. Furthermore, five out of the six remaining most dangerous countries - Dominican Republic, Mexico, South Africa, Colombia and Honduras - abolished the death penalty after their countries had already made the list of the most dangerous and crime-prone countries. So, it is inconsequential to the case we want to make here. However, these five countries together with the last most dangerous abolitionist country, Venezuela, have been making moves to bring back the death penalty. In fact, in South

Africa alone 76% of the population wants the death penalty reinstated. Even with the death penalty, these countries are swimming in crime.

On the flip side, 15 out of the 20 safest countries in the world, namely, Canada, Spain, The Netherlands, Australia, Estonia, Austria, Portugal, Norway, Hong Kong, Luxemburg, New Zealand, Switzerland, Iceland and Finland are abolitionist countries. Four out of the remaining five rarely use it. The details are as follows: Bahrain (has been on a moratorium and has only eight people on death row), Qatar (Death Penalty is rarely used, before the 2014 sentence of Al Jabr the last case of the death penalty was in 2003 and since 2014 to this day none has been sentenced), Japan and UAE (rarely use it), Oman (rarely uses it; they have not used it since 2001) and then in Singapore, even though people are largely indifferent about it, one of the last cases attracted a civil protest. Without the needle, these countries are safe and have minimal crime rate.

More so, according to Amnesty International, most executions took place in China, Iran, Saudi Arabia, Iraq and Pakistan respectively. China remained the world's top executioner. China, with this number of executions, is supposed to be the safest country in the world but it is not. This raises a concern about the relevance of capital punishment. These findings allow us to raise the following premises and draw the corresponding conclusions:

1st Premise: The Death penalty is effective as a punishment if in its application it reduces crime – here, we are to appeal to its practical success.

2nd Premise: But it has no observable practical success since in the places it is applied there is no significant reduction in crimes and in the places, it is abolished, crimes are reduced.

Conclusion: Therefore, it is either inconsequential to the rate of crimes or it is ineffective in reducing crime. [Both ways, there is no need for it. It is unnecessary].

3.3 Recommendations: What Punishment Ought to Do

Undoubtedly, punishment is meant to be retributive, reformatory, a deterrent and a defence of the common good. The proportionality principle to ensure retribution is limited and so is the *lex talionis* (the eye-for-an-eye principle), because we cannot rape the rapist or spy on the spy. And because of the problems associated with death penalty which when executed are irrevocable, there is the need to find alternative to death penalty. Indeed, more beneficial retribution can be made without the needle. For instance, the convicted person can be put in the service of the state or in the service of the person (or group) bearing the consequences of the crime while remaining incarcerated in the prison. This way, the incarcerated person fulfils a purpose and gets the psychological satisfaction

and fulfilment from doing so. This can be therapeutic.

Recent studies on this issue have also shown how the right to life is an inalienable right even when heinous crimes are committed. Hence Pope Francis declares that:

There is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens but, do not deprive the guilty of the possibility of redemption.²⁰³

This brings to mind what we said above that the death penalty was inceptioned in the first place because there was no effective way to hold prisoners. Nonetheless, since we have such systems now, capital punishment seems irrelevant.

For the other purposes of punishment, it is incontrovertible that an adequate system of incarceration meets those ends more than even capital punishment because someone who is executed cannot be reformed; and as we have

²⁰³ “Pope Francis Changes Catechism to Say Death Penalty ‘Inadmissible,’” accessed March 1, 2017, <http://www.ncregister.com/blog/edward-pentin/pope->

[francis-changes-catechism-to-declare-death-penalty-inadmissible](http://www.ncregister.com/blog/edward-pentin/pope-francis-changes-catechism-to-declare-death-penalty-inadmissible).

seen so far, execution does not reduce crime at all. People convicted should rather be given a chance and an aid to change; it is only then that the society can be transformed. This is exemplified by the corrective facilities in countries like Norway. Incarceration in Norway's criminal justice system focuses on the maxim of restorative justice and rehabilitating prisoners. This system accentuates the care of the offender and making sure they can become functioning members of the society again. Norway, as a result, has one of the lowest recidivism rates in the world, currently 20%,²⁰⁴ with approximately 3,933 offenders in prison,²⁰⁵ and one of the safest and lowest crime rates in the world.

Conclusion

This paper has shown that:

1. Punishment serves four main purposes, ; retribution, reformation, deterrence and a defence of the common good. Capital punishment is defective in meeting these ends and adequate incarceration is more effective in meeting these purposes.
2. Capital punishment does not factor in such an important phenomenon as the fallibility of the human cognitive apparatus and as a result cannot fit into the complexities of life without setting innocent people on the edge. If it is used nonetheless, it is a taboo.
3. Capital punishment fails woefully to serve as a just punishment as it cannot boast of any practical success. There are adequate substitutes that can boast of more success in keeping crime away and protecting lives. As a result, capital punishment is irrelevant and unnecessary.

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²⁰⁴ Cf. "Why Norway's Prison System is So Successful," *Business Insider*, accessed March 1, 2020, <http://www.businessinsider.com/why-norways-prison-system-is-so-succesful-2014-12?r=US&IR=T>.

²⁰⁵ Cf. "Highest to Lowest – Prison Population Total: World Brief," accessed March 1, 2020, <https://www.prisonstudies.org>.

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