

Assessing the Death Penalty:

A Critical Look at Its Deterrence, Human Rights Implications,
and Economic Consequences in the United States.

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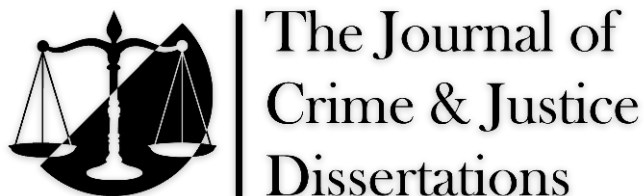
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Abstract

Capital punishment has long been a subject of intense debate within public and legal spheres. Both proponents and opponents of capital punishment are in agreement that it represents one of society's most extreme forms of punishment. In this paper, I explore this viewpoint by examining the effectiveness, ethical implications, human rights concerns, and financial costs associated with capital punishment, with a focus on the United States.

This paper employs desk-based research, involving a comprehensive review of secondary sources, including academic journals, textbooks, legal case studies, and international reports to explore the historical evolution and contemporary usage of the death penalty.

While capital punishment was initially prevalent and accepted, its justification and application have significantly waned due to moral, legal, and practical considerations. The study finds no conclusive evidence supporting the deterrent effect of capital punishment on crime rates. Instead, the death penalty may paradoxically exacerbate criminal activity. From analysis, it is apparent that the death penalty often infringes on fundamental human rights, such as the right to life and the prohibition against cruel and unusual punishment. This is exacerbated by systemic flaws in the justice system, including racial and socioeconomic biases that impact the administration of capital punishment.

The death penalty should be abolished in favour of more humane and effective criminal justice practices, such as restorative justice. The focus on rehabilitation over retribution can promote the creation of a justice system that is equitable, just, and beneficial to societal well-being. A shift from punitive measures to preventative strategies that address the root causes of crime is recommended as these align more closely with contemporary human rights standards and ethical considerations.

Contents Page

Abstract.....	1
Contents Page	2
Chapter 1: Introduction	3
1.1 Introduction.....	3
1.2 Historical Background on Capital Punishment.....	4
1.3 Capital Punishment in the United States	5
1.4 Research Overview	6
Chapter 2: A Critical Examination of Capital Punishment’s Deterrent Effect	8
2.1 Introduction.....	8
2.2 The Pleasure-Pain Axis and Deterrence.....	8
2.3 Behaviourism and Deterrence	10
2.4 Social Science Evidence regarding Capital Punishment’s Relationship with Crime Deterrence ..	11
2.5 Meaningless Executions? The Case for Abolition	11
Chapter 3: Broader Social & Financial Issues regarding Capital Punishment	13
3.1 Introduction.....	13
3.2 Capital Punishment and the Infringement of Human Rights	13
3.3 Capital Punishment and the Harsh Reality of Wrongful Convictions	15
3.4 The Death Penalty and Discrimination	16
3.5 The Economic Implications of the Death Penalty	19
Chapter 4 Conclusion.....	21
4.1 Towards Restorative Justice	21
4.2 Recommendations: Trends Towards Abolition of the Death Penalty	22
References	24

Chapter 1: Introduction

1.1 Introduction

Capital punishment, more commonly known as the death penalty, refers to the legal, state-sanctioned execution of an offender for the commission of a crime (Yost, 2023). The death penalty is only applied for capital offences - criminal acts that are punishable by death through the law (Snell, 2021). Capital punishment has a profound history among human civilisations, and its application has attracted prolonged philosophical debates that are waged to this day (Yost, 2019). The debate on capital punishment brings balance between its role in deterring crime and the moral considerations involved, affecting the legal systems of countries in which the death penalty is still practised. Capital punishment is a divisive practice, simultaneously deemed excessive and insufficient for society (Gershman, 2005). The philosophical discourses on capital punishment are driven by a host of proponents and opponents who offer compelling arguments for and against the death penalty. The proponents argue for its necessity as a deterrent to crime and a form of justice for victims, while opponents cite concerns over its ethicality, effectiveness, and potential to be an accessory for wrongful convictions (Bienen, 1999).

Under international law provisions, capital punishment is discouraged as it goes against efforts to protect human rights, which attach utmost value to human life (Steiker & Steiker, 2019). Many nations have moved to adopt the international provisions for the abolition of capital punishment but a number have remained persistent with the practice. Today, the death penalty has been abolished in 144 countries but is still practised in 55 countries globally (Amnesty International, 2022). Corroborating this information, the Death Information Center provides that capital punishment has been abolished by more than 70% of countries globally (2023).

Unlike other Western democracies, the death penalty still exists in the United States. Although the majority of the states in the U.S. still retain the death penalty, it is becoming less popular (LaChance, 2019). This is because the death penalty practice has consistently been on the decline in the country. For example, in 2020 there were 2,469 death row inmates in a total of 28 states and the Federal Bureau of Prisons (BOP), accounting for a 4% decline from 2019 (Snell, 2021). Notably, the decline during 2020 represented the twentieth consecutive year where the number of prisoners under sentence declined (Snell, 2021). Currently, the death penalty is still retained in 27 states together with the U.S. federal government and the U.S. Military and has been abolished in a total of 23 states.

Traditionally considered the ultimate retribution for the most heinous crimes, the death penalty encapsulates a profound human conflict between the pursuit of justice and the sanctity of life. Despite a declining trend of capital convictions and executions, the death penalty remains a highly contentious issue in modern jurisprudence and societal ethics (Yost, 2019; Steiker & Steiker, 2020). The debate on capital punishment continues to wage on because no consensus has been established on its deterrent effect on crime. Research studies conducted on the same have yielded contrasting reports, with a number of them guilty of abusing empirical evidence in their death penalty debates (Donohue & Wolfers, 2006). This paper will delve into the intricacies of capital punishment, examining its effectiveness in crime deterrence. The effectiveness of capital punishment shall be juxtaposed against its moral implications and economic ramifications, particularly within the context of the United States - a country where the death penalty remains a polarising issue amidst global trends towards its abolition. Ultimately, the findings from the discussion will inform the recommendations of the paper, showcasing the need to completely abolish the death penalty practice.

1.2 Historical Background on Capital Punishment

Historically, laws relating to the death penalty can be traced back to the Eighteenth Century B.C. in Babylon where capital punishment was sanctioned as retribution for 25 different crimes in the Code of King Hammurabi of Babylon (Death Penalty Information Center, 2023; Ward, 2015). Before these laws, the use of capital punishment had been documented in different parts of the world, including the Draconian Code of Athens established in the Seventh Century B.C and the Law of the Twelve Tablets in the Fifth Century B.C. Rome (Steiker & Steiker, 2020). During these historical eras, the death penalty was perceived to be an appropriate and necessary form of punishment for a wide range of offences in society. This points to a retributive and punitive approach to justice among early human civilizations (Gershman, 2005). Different execution methods were used to accomplish capital punishments, the majority of which were cruel and demeaning. Crucifixion, drowning, stoning, burning alive, hanging, impalement, and beheading constituted common methods of criminal execution (Tomlinson, 2006). In addition to serving as the utmost restitution to crime, the cruel execution methods employed were presumed to inflict fear thereby achieving a general deterrent effect on offences (Priestley, 2020).

The use of the death penalty as a punishment for crime has evolved uniquely in different parts of the world. In some countries in which capital executions were rampant such as Britain, the death penalty use changed over time, and was ultimately abolished (Gaines, 2016). The abolition of the death penalty was mainly driven by the concerns surrounding its inhumanness, morality, and its infringement on human rights (Tarlow & Battell Lowman, 2018). With an increasing shift towards more rehabilitative

and restorative approaches to justice, most Western Societies moved to expunge capital punishment from their criminal justice processes (Hammel & Hammel, 2010). Importantly, however, many countries in the world have opted to retain capital punishment, validating it as a credible punishment tool that can be used to achieve the deterrence of crime (Berry III, 2011). In most European countries, the abolition of capital punishment has been precipitated by legal reforms, shifts in public opinion, and political advocacy (Berry III, 2011). These precipitant factors have however proven to be inefficient impetuses to the abolition of capital punishment in other parts of the world, including the United States and Asia, with the latter serving as the main venue for capital executions in the modern era according to Hammel and Hammel (2010).

1.3 Capital Punishment in the United States

The use of capital punishment in the United States dates back to colonial times, reflecting the practices of European colonists who brought with them the death penalty as a form of punishment for a variety of crimes (Garland et al., 2011). Capital punishment was a legal penalty in every state when the United States was founded (Banner, 2002). A wide variety of offences attracted the death penalty throughout the 17th and 18th centuries, including murder, rape, arson, theft et cetera (Steiker & Steiker, 2020). The methods used for capital execution in the U.S. were influenced by societal and technological changes (Banner, 2002). Originally, executions were conducted as a public spectacle using brute methods such as hanging which could presumably discourage future offences (Baumgartner et al., 2008; Steiker & Steiker, 2020; Garland et al., 2011). However, over the 19th Century, the movement to reform the criminal justice system grew, driven in part by the increasing unpopularity of the brutality of the death penalty. As a result, states began to limit the use of capital punishment to specific crimes. Additionally, states began introducing more humane methods of execution, such as the electric chair and lethal injection (Baumgartner et al., 2008; Banner, 2002).

The 20th Century was characterised by a fluctuation in the use of the death penalty, with factors such as crime rates, media portrayal of crime and moral campaigns affecting the oscillatory application of capital punishment. The public's fluctuating support was an important determinant factor (Steiker, 2023). The 1960s and 1970s marked a turning point in the history of capital punishment in the U.S. Initially, the Supreme Court issued rulings that placed restrictions on the use of the death penalty, declaring it unconstitutional in some cases. *Furman v. Georgia* is an example of a landmark Supreme Court case that led to its temporary cessation, with concerns raised about its arbitrary application (Banner, 2002). However, in 1976, the Supreme Court upheld new death penalty statutes that addressed the issues raised in earlier rulings, for example in the case *Gregg v. Georgia* (Gershman,

2005). This led to the reinstatement of capital punishment in many states (Steiker & Steiker, 2020; Berry III, 2020).

Despite this reinstatement, the use of the death penalty began to decline in the late 20th century and into the 21st century. Concerns about wrongful convictions, racial disparities in the application of the death penalty, and associated high costs have all contributed to the recent decline in capital punishment (Gershman, 2005; Steiker & Steiker, 2022). More recently, the emergence of innocence cases, where individuals on death row have been exonerated through DNA evidence or other means, has raised questions about the reliability of the criminal justice system in capital cases (Carl, 2020; Steiker & Steiker, 2020; Baumgartner et al., 2008). All these factors, coupled with changing public attitudes and increased awareness of the complexities and flaws of the death penalty system, have contributed to its decline in the United States. Currently, capital punishment remains authorised in 27 states as well as the federal government and the U.S. military (National Conference of State Legislatures, 2021).

1.4 Research Overview

The study will be conducted as desk-based research in which existing information will be collected and analysed from journals, books, articles, websites, and case law to form an opinion regarding the need to abolish or maintain capital punishment. To effectively assess the deterrent effect of capital punishment on crime, a comparison of crime rates should be done for abolitionist versus retentionist states. However, owing to the sensitive nature of the subject, raw data is unlikely to be readily obtainable, hence the information needed to conduct a proper statistical analysis would be unavailable. Still, given the low rates of capital executions, the data comparing crime rates to the application of the death penalty may not accurately showcase the correlation between the two factors. The topic of capital punishment has attracted extensive interest and as a result, substantial secondary data discussing the effectiveness and morality of the practice are available. This study shall review existing literature to unravel information that can be used to achieve the following aims:

- 1) Examine the effectiveness of capital punishment on the deterrence of crime.
- 2) Assess the ethical and legal issues associated with capital punishment, including human rights infringement, wrongful convictions, discriminatory application, and high costs to determine its suitability and practicality.

This research achieves these aims by focusing the study on the United States. Structured to foster a comprehensive understanding, this paper is divided into several chapters. The first chapter will delve into the historical overview, tracing the origins and evolution of the death penalty from ancient civilizations to its present status in American law. This historical context sets the stage for a thorough analysis of the deterrent effects of capital punishment. The second chapter will discuss the profound ethical considerations at play, exploring the moral dilemmas posed by the death penalty, including the risk of executing the innocent, the inhumanness of state-sponsored death, and the influence of discrimination on sentencing. The third chapter will explore the financial implications associated with the death penalty, considering the opportunity costs of capital punishment.

Chapter 2: A Critical Examination of Capital Punishment's Deterrent Effect

2.1 Introduction

In the past, general deterrence constituted the most cited reason when defending the need for capital punishment (Iuliano, 2014). The deterrence theory of punishment suggests that punishment can prevent future crimes by dissuading individuals from committing unlawful acts. As a principle, deterrence can either apply to the individual (specific deterrence) or the general population (general deterrence) (Chan & Oxley, 2004). Specific deterrence aims to dissuade the punished individual from committing future crimes by making the punishment unpleasant enough to outweigh the benefits of the crime (Ellis, 2003; Chan & Oxley, 2004). In contrast, general deterrence seeks to prevent crime by making examples of offenders and demonstrating the consequences of illegal actions to the wider population (Ellis, 2003). In theory therefore, the social order resulting from crime deterrence constitutes the main reason for punishing criminals. Under the consequentialist purview, the future outcome of punishment is the reduction in crime rates, an effect that is desirable for social order and functioning (Wood, 2010). Under this purview, capital punishment would be vindicated provided it can be demonstrated that it is an effective crime deterrent that maximises social order. Theoretically, the ability of capital punishment to deter crime may be attested or disproved using two principles: hedonism, the theory that the pursuit of pleasure is the highest primary good (Crimmins, 2015), and behaviourism - the study of observable behaviour through environmental stimuli and responses (Chen, 2023).

2.2 The Pleasure-Pain Axis and Deterrence

Hedonism is a philosophical notion positing that human beings are primarily driven by the need to maximise pleasure while minimising pain. The psychological aspect of hedonism, as introduced by Jeremy Bentham, suggests that humans are psychologically constructed in a way to exclusively desire pleasure (Crimmins, 2015). Since net pleasure can only be achieved in the absence of pain (Sinnott-Armstrong, 2023), it is fathomable that people, being driven by the pursuit of maximum pleasure, would consciously avoid things that would introduce pain and suffering. Within the context of capital punishment, suffering can result from prolonged isolation which often causes apprehension and deterioration in physical and mental health (Taleb, 2019). Still, the finality and extremity of death could be viewed as an extreme infliction of pain. Under the hedonistic purview, it can be argued that humans,

inherently motivated by pain minimization, would strive to avoid actions that would put them on death row. This means that the looming threat of death, coupled to the torturous aspects before the actual execution, would provide individuals with enough reason to conform and adopt law-compliant behaviours (Chan & Oxley, 2004). As a result, the number of offenders committing capital crimes would plummet. This would mean that ideally, through the hedonistic lens, capital punishment can achieve a deterrent effect on crime, validating its application through the larger utilitarian concept – the maximisation of happiness within the society.

Although hedonism provides an acceptable explanation of the drivers behind human actions, it possesses several shortcomings that weaken its effectiveness in explaining the deterrent effect of capital punishment on crime from a theoretical perspective. Firstly, hedonism disregards the subjectivity of pleasure (Heathwood, 2006). In the context of death, for example, it can be assumed that pleasure is derived from the prolongation of life. This might not be necessarily true for all individuals. For example, a suicidal person would not avoid committing capital crime on the grounds of fear of death. Secondly, the pleasure-pain axis overlooks the role of complex cognitive and emotional factors such as fear in decision-making. According to Higgins (2014), emotions like fear can influence human decision-making by activating an instinctive prevention reflex, leading individuals to take actions that automatically bring safety and risk aversion. For example, a person who shoots someone in self-defence is unlikely to have the time to ponder about the repercussions of their actions; rather, driven by fear, such individuals will likely do anything to survive in that moment. As a principle, hedonism also assumes everyone is a rational actor who is aware of and strives to stay within the rules of society (Caruana et al., 2020). This assumption leaves out important factions of people, for example, those with mental disorders who are driven by different affectomes - the spectrum of emotional and affective experiences - from the rest of the population (Becker et al., 2019). Notably, research has indicated that 5-10% of all death row inmates suffer from serious mental illnesses (Stites & Dahlsgaard, 2015). This means that a significant proportion of capital offenders lack the mental faculties to analyse the consequences of their actions from a hedonistic perspective. On the back of these shortcomings, the conjecture that capital punishment may deter crime through hedonistic incentives is flawed. If anything, capital punishment may not possess a deterrent effect on crime at all; higher crime rates have been observed in states retaining the death penalty compared to those that have abolished the practice (Leocadio, 2010).

2.3 Behaviourism and Deterrence

The possible effectiveness of capital punishment in crime reduction can be based on B.F. Skinner's operant conditioning which asserts that punishment can negatively reinforce a behaviour (Skinner, 1953). Behaviourism is a psychological theory that focuses on observable behaviours and their responses to environmental stimuli, excluding internal thoughts and emotions (Chen, 2023). In behaviourism, respondent behaviour is perceived as a function of a conditioned or unconditioned stimulus. In the context of operant conditioning, punishment involves the application of an adverse consequence to decrease a particular behaviour (Huesmann & Podolski, 2013). Therefore, it can be perceived that serial public executions of capital offenders can create a conditioning effect where the general public learns to associate certain offences with death and consciously takes measures to avoid committing such crimes (Fagan, 2006). This thought process must have informed the decision to conduct public executions – to serve as a warning to any would-be offender of the unpleasant fate that would befall them. For example, during the 18th century, the execution of convicted murderers was often followed by posthumous punishment where the criminal corpse would be publicly gibbeted, with the intention of exhibiting cruelty and concocting fear among onlookers (Priestley, 2020). In theory, fear should be sufficient in deterring criminal behaviours that would attract similar fate.

Using behaviourism to support the notion that the death penalty can deter crime has several theoretical and practical flaws. Firstly, by assuming people only factor in potential consequences when making rational decisions, behaviourism underplays the role of other factors such as impulse and emotions in decision making (Franco & Sanches, 2016). Echoing this thought, Fagan offered that the premise that capital punishment can discourage unlawful behaviour is based on the assumption that crime is a rational process where an individual knowingly chooses to commit legal or illegal behaviour (2006). However, human actions are influenced by a complex interplay of factors including individual temperament, character, psychical heredity and the natural environment (Ristea, 2013). This implies that the lone consideration of consequences as a motive for choice, as proposed under behaviourism, offers an incomplete and possibly wrong picture of what would motivate human action. Behaviorism also downplays the role of situational and psychological factors in influencing criminal behaviour. For example, mental illness and substance abuse are capable of driving behaviour in ways that overshadow the fear of punishment. As a case in point, Leong and Eth (1989) reported that a significant proportion of capital offenders on death row have been diagnosed with neuropsychiatric illnesses, demonstrating that their mental faculties were diminished. Therefore, as a theory, behaviourism is insufficient in supporting the crime deterrence effect of capital punishment.

2.4 Social Science Evidence regarding Capital Punishment's Relationship with Crime Deterrence

The need for capital punishment in contemporary society can be analysed on the grounds of its effectiveness in preventing serious crimes. In the past, the execution of criminals could be justified on the grounds of retribution, where offenders were subjected to "payback," for the harm caused by their actions (Bindal, 2009). Back then, the execution of a criminal was an act thought to balance the scales by inflicting a punishment that is proportional to the harm done. However, over time, evolving societal values and norms regarding punishment and justice changed the stance on capital punishment, and it was now viewed as a necessary evil that is only required to discourage capital crimes such as murder (Reichel, 2022). The United States Supreme Court, in its assertion of deterrence as a tenable ground for the death penalty (Van den Haag & Conrad, 2013) provided that knowledge about the execution of capital offenders could discourage the general public from committing crimes (Iuliano, 2014). This is primarily due to the fact that the death penalty violates the right to life, which this study will examine in more detail later, so there have been numerous studies conducted to examine the principal argument under which the death penalty has been justified - the deterrent effect on crime.

Most quantitative studies have failed to establish a clear association between capital punishment and the deterrence of crime (Chan & Oxley, 2004). Notably, 66% of reviewed studies reported that capital punishment had no deterrent effect on crime (Chan & Oxley, 2004). In contrast, only 23% found evidence consistent with the deterrent effect. The Federal Bureau of Investigation (FBI) reported that 83% of the states that did not practise capital punishment had murder rates that were below the national average compared to the 50% of the states that apply the death penalty (Leocadio, 2010). This implies that capital punishment may not necessarily deter crime and it is possible that other factors at play could affect crime rates, for example, policing efforts (National Research Council, Nagin & Pepper, 2012). Therefore, the association between death penalty and crime deterrence is not a direct one, and a causal relationship is difficult to establish. In a 2005 US study, it was concluded that capital executions deterred crime in only 22% and failed to reduce crime rates in 78% of the states while appearing to induce murder rates in 48% of the states (Shepherd, 2005). From these reports, it can correctly be inferred that capital punishment lacks a deterrent effect on crime (Yost, 2019).

2.5 Meaningless Executions? The Case for Abolition

Given the empirical evidence from sociological research refuting the role of the death penalty in deterring crime, capital punishment becomes arguably meaningless in the deterrent context, attracting an argument for its abolition (Yost, 2019; Bohm, 2016). Indeed, if the death penalty cannot deter crime

more than other serious forms of criminal punishment, for example life without parole, it raises critical questions about its justification as a punitive measure. Not only is the death penalty ineffective as a crime deterrent, but it is also a practice that infringes on the most basic human right – the right to life (Bullard, 2020). Because it has been demonstrated that capital punishment cannot deter crime, it is perceivable to view the practice of criminal execution as pure brutalisation - the display of increased violence towards offenders to a meaningless conclusion in the criminal justice process. Since death from capital execution is ultimate and irreversible, it offers no room for the rehabilitation of the criminal offender, which according to Forsberg and Douglas (2022), is one of the chief goals of the criminal justice process.

The death penalty is a morally questionable form of crime punishment, regardless of the offence involved, because it does not contribute to rehabilitation or deterrence. Some people might argue from the retributivist perspective, offering that extreme offences such as murder and treason can be justifiably met with execution as it is only fair – an “eye for an eye” if you will (Bindal, 2009). According to the retributivist perspective of punishment, offenders deserve to be punished because they have willingly committed wrongdoings, thereby justly balancing the moral scales (Wenzel & Okimoto, 2016). This argument is however not enough to justify the continued existence of capital punishment, especially in the face of other issues including potential wrongful convictions and discriminative application. For example, Steiker and Steiker question the morals of terminating the life of an individual who may have been wrongfully convicted for crimes they did not commit (2020). Aside from its ineffectiveness in deterring crime, the ethical and humanitarian issues surrounding the death penalty are strong arguments in favour of capital punishment abolition.

Chapter 3: Broader Social & Financial Issues regarding Capital Punishment

3.1 Introduction

The complex debate on capital punishment has been waged on various fronts including deterrence, legal and procedural concerns, economic considerations, and moral and ethical grounds. Most sociological literature published on the death penalty provides that the practice is morally impermissible (Sunstein & Vermeule, 2019). On the dictates of conscience, the questions on capital punishment can be raised on various grounds, including its infringement of human rights, its potential for irreversible mistakes, its disproportionate impact on marginalised groups as well as the inhumanity it possesses (Mbah et al., 2019). Therefore, through an ethical lens, the abolition of capital punishment can be justified using four main points including human rights violations, the potential for wrongful conviction, discrimination, and cruelty.

3.2 Capital Punishment and the Infringement of Human Rights

The death penalty has been a subject of significant debate regarding its compatibility with two main human rights principles: the prohibition of torture and the right to life (Méndez, 2012). Article 5 of the Universal Declaration of Human Rights (UDHR) prohibits the subjection of individuals to any form of cruel, inhuman, torturous, or degrading treatment as a form of punishment (Henry, 2023). Similarly, under Article 3, the UDHR provides that “Everyone has the right to life, liberty and security of person” (Alfredsson & Eide, 2023, p. 89). Historically, the death penalty was used to achieve more than just retribution for crime; it was intended to inflict additional humiliation on the perpetrator in addition to providing a spectacle for onlookers (Priestley, 2020). In the past, capital punishment would be executed via barbaric practices including hanging, execution by firing squads, beheading, gassing, stoning, and falling from heights (Tomlinson, 2006). It was assumed that these cruel execution methods would inflict fear, achieving general deterrence on capital crimes. However, with time, the unpopularity of criminal execution grew, and public opinion started turning against cruel death penalty practices such as gibbeting – the public display of executed bodies as a warning (Tarlow & Battell Lowman, 2018).

Today, it can be acknowledged that international efforts have mitigated the aspects of capital punishment which could be considered cruel, degrading, and inhuman with relative success, promoting execution methods that inflict less suffering (Bojosi, 2004). For example, the Universal Declaration of

Human Rights, which was unanimously adopted by the United Nations General Assembly in 1948, regulates the right to life and prohibits torture under articles 3 and 5 as reported by Bae (2008). Nations have widely adopted this declaration and, today, most of the execution methods used are not meant to torture the subjects. In the United States, for example, measures have been taken to remove the degrading aspects of capital punishment, for example, public executions (Steiker & Steiker, 2020). Similarly, the methods of capital execution have evolved and currently, lethal injection is the primary execution method used in most states in the United States (Baumgartner et al., 2008; Snell, 2021).

The current execution methods used for capital punishment in the United States are supposed to be compliant with Article 5 of the Universal Declaration of Human Rights which prohibits torture and degrading treatment (Henry, 2023). The notion that lethal injection is more humane than traditional execution methods and therefore non-tortuous is fallacious. This is because capital is still associated with pain and suffering, both physical and psychological (Bessler, 2019). The lethal injection is accomplished by injecting potassium chloride, a chemical that rapidly stops the heart by disrupting electrical conductance thereby facilitating quick death (Zimmers et al., 2007). Lethal injection is however not devoid of physical pain; potassium chloride is excruciatingly painful if administered without proper anaesthesia (Sarat, 2022). Therefore, when improperly executed, lethal injection would subject the felon to extreme, torturous physical pain, violating the human rights prohibiting torture. Correspondingly, the lethal injection induces extreme psychological torment to death row inmates, where the constant anticipation of death causes severe mental distress, anxiety, and trepidation (Dieter, 2008).

In the end, lethal injection, which is the primary capital execution method, offers a false promise of humane execution (Sarat, 2022). As Méndez reiterates “prison conditions, together with the anxiety and psychological suffering caused by prolonged periods on death row, constitute a violation of the prohibition of torture and cruel, inhuman, and degrading treatment (CIDT)” (2012, p. 4). It is imperative to note that death row would not only traumatise the offender but their loved ones as well. The psychological consequences of watching a loved one on the death chair, including severe anxiety, profound grief, depression, and a perverse sense of loss are too significant to downplay, especially given the pointlessness of capital execution concerning crime deterrence (Sharp, 2005). Therefore, retaining the death penalty despite its deep psychological scars is fiendish, ill-founded and unacceptable.

In addition to breaching human rights provisions against torture, the death penalty also infringes upon the most basic human right - the right to life. As previously stated, the death penalty is in contravention of the right to life, as enshrined in Article 3 of the Universal Declaration of Human Rights (Alfredsson &

Eide, 2023). As a justice procedure, capital punishment causes an irreparable loss of life, ruling out the possibility of redemption. As a result of its irreversible nature, the death penalty becomes especially grave if a judicial error such as a wrongful conviction is committed (Steiker & Steiker, 2020). In acknowledgement that the death penalty undermines human dignity on top of the violation of the right to life, most nations have moved to abolish the death penalty. According to Reichel (2022), more than two-thirds of the countries worldwide have abolished the death penalty in law or practice due to its inhumanness in addition to its lack of effectiveness in deterring criminal activity. These nations have adopted more humane forms of justice including life imprisonment as an alternative to the death penalty. The states that still retain the death penalty should emulate these efforts by ending a cycle of violence and distancing themselves from the suggestion that killing is an acceptable solution to dealing with severe offences. Overall, it is imperative for the United States to re-examine its compliance with the international laws on human rights and uphold these by abolishing the death penalty as a country (Méndez, 2012).

3.3 Capital Punishment and the Harsh Reality of Wrongful Convictions

Wrongful convictions are not rare, isolated incidents but are indicative of deep-seated flaws in the judicial system. According to Steiker, “no legal system can ensure complete accuracy in criminal convictions” (2005). The inevitability of errors in the legal system becomes absolutely intolerable when the state deprives people of their lives, a terminal outcome that cannot be reversed. Errors within the judicial system are variable in source and can emanate from faulty eyewitness identifications, coerced confessions, and unreliable forensic evidence (Garrett, 2011). Eyewitness misidentification is one of the main drivers for wrongful convictions, appearing in approximately 70% of cases that have been overturned through DNA evidence (McPherson et al., 2023; Garrett, 2020).

Misidentification by eyewitnesses mainly result from the fallible nature of the human memory, suffusing the trial process with inherent potential for error. Additionally, factors such as suggestive interrogation techniques, brief viewing times, and coerced confessions can all contribute to witness misidentification (Vick et al., 2021). According to Kassin et al., vulnerable individuals, such as juveniles or those with cognitive impairments, are especially susceptible to the intense psychological pressure of police interrogations (2010). Undue procedures have been used to perpetrate injustice during the criminal trial process, perpetuating undesirable aspects of the justice system such as systemic racism (Garrett, 2020). These practices not only undermine the reliability of confessions but also violate

fundamental human rights principles. The misuse of these techniques has led to numerous wrongful convictions, highlighting the need for a critical reassessment of their role in the justice system.

The consequences of wrongful convictions extend beyond the innocent individuals who are executed. They affect families who suffer the emotional and financial burden of fighting for justice, often for decades (Scherr et al., 2020). Communities lose faith in the legal system, which can lead to decreased cooperation with law enforcement and an overall reduction in public safety. Furthermore, when the wrong person is sentenced, the real perpetrator remains free, posing an ongoing threat to society (Weathered, 2013). The focus on closing cases rather than ensuring justice leads to a perverse incentive structure within law enforcement agencies and prosecutorial offices.

Given the demonstrable risk of wrongful convictions, the argument for the abolition of the death penalty becomes a practical and moral imperative. Alternatives like life imprisonment without parole provide severe punishment but allow for the correction of mistakes as new evidence comes to light (Amnesty International, 2014). This shift would not only ensure justice within the criminal prosecution process but also uphold the dignity and rights of all individuals. An ethical and reliable justice system can be achieved by investing in better forensic technologies, ensuring that all accused have access to competent legal representation, and revising interrogation techniques to prevent false confessions (Norris et al., 2020). Despite these efforts, however, the death penalty should still be abolished to prevent the irreversible and profound consequences of wrongful convictions. By eliminating capital punishment, the grave risk of executing innocent people can be avoided and significant steps taken towards more humane, just, and effective systems of punishment (Drummond & Mills, 2020). The arguments and evidence against the death penalty are clear and convincing, making a strong case for its abolition on the grounds of preventing wrongful convictions alone.

3.4 The Death Penalty and Discrimination

The death penalty has often been weaponized and used as a tool for selectively punishing people who belong to the “lesser” factions in society. For example, in England, during the Middle Ages, different execution methods were employed based on the social class of individuals: the elite classes were generally afforded more honourable deaths such as beheading while commoners were subjected to cruel executions including boiling, burning, and beheading (Tomlinson, 2006). To this day, practices around the death penalty are still marred with systemic injustices. In the U.S., capital punishment reflects and perpetuates the deep-seated inequalities within the criminal justice system (Blume et al., 2004).

It can be surmised that capital punishment is one of tools used to permeate systemic and structural racism in the United States. According to Braveman et al. (2020), "Systemic and structural racism are forms of racism that are pervasively and deeply embedded in systems, laws, written or unwritten policies, and entrenched practices and beliefs that produce, condone, and perpetuate widespread unfair treatment and oppression of people of colour, with adverse health consequences" (p. 1). The unequal outcomes of the death penalty on different ethnicities in the U.S. is testament to its structural presence in the country. Throughout the history of the country, racial bias has worked against defendants of colour and minority groups in the criminal prosecution process, with death penalty decisions consistently favouring white victims (Spohn, 2013; Cobb et al., 2024). A report from the Death Penalty Information Centre highlights that although half of all the homicide victims in the U.S. are black, 75% of the prosecution cases usually involve the murder of white victims (2021). This points to a lack of fairness and equality in the criminal justice system. According to Steiker, "African American defendants have been more likely to receive capital punishment than whites" (2005, p. 729), revealing skewed implementation of justice. At the same time, criminals who have been convicted of white victim homicide have been more likely to receive the death penalty compared to those who kill African Americans (Blume et al., 2004; Steiker, 2005).

The structural and systemic racial bias in the justice system affects all stages of criminal proceedings, from arrest to sentencing (Petersen, 2017). This notion is echoed by Garrett who provides that racial discrimination appears to permeate all phases of capital litigation, including investigation, charging decisions, jury selection, and sentencing (2011). Conceivably, therefore, the use and implementation of the death penalty in the U.S. must be reviewed. Government policies that cannot protect the people against recurrent dangers, such as air pollution, racial discrimination, and terrorism, are ineffective. Such policies must be abolished and replaced by more efficient, protective, and inclusive practices. According to Steiker (2005), the government's failure to act on the discriminative nature of the death penalty is morally untenable and cannot be justified as a mere omission. This means that the racial impartiality observed with the death penalty alone is enough to call for its abolition on moral grounds. Fairness is one of the chief pillars of a well-functioning society, and it is achieved through the impartial implementation of rules and regulations (Di Martino & Prilleltensky, 2020). In the context of fairness, therefore, a systematically biased justice system in which similarly situated people are not subjected to the same treatment should be unacceptable. Since the administration of the death penalty in the United States is fraught with racial discrimination that undermines the principles of justice and equality (Bonilla-Silva, 2021), the practice of capital punishment must be revised. Eliminating the death penalty

would contribute significantly to the establishment of a more just and equitable judicial system that respects the rights and dignity of all individuals.

In addition to the documented evidence of racial discrimination, socioeconomic biases in capital sentencing also provide a compelling case for its abolition. The influence of socioeconomic bias on death penalty cases is profound. Defendants who are financially disadvantaged often receive disproportionately severe sentences, making them victims of the persistent systemic subjugation (Tilley, 2014). This is because poor defendants are often unable to afford private legal attorneys and are thus forced to rely on public defenders, who are often underfunded and overburdened, compromising the competence and adequacy of their representation (Bright, 2008). This disparity in legal aid can result in poorer defence strategies and, subsequently, harsher sentences for low-income defendants (Cox, 2018). Enhanced funding and resources for public defenders could mitigate these effects, but the inherent biases and structural inequalities embedded in the justice system may still disadvantage the most vulnerable populations. For instance, the systematic subjugation of the poor under the penalty is also perpetrated by legislative influences whereby wealthier individuals and groups have more influence over the legislative process, resulting in laws and procedures that disproportionately affect the poor (Tilley, 2014). Importantly, the intersection of poverty with race and ethnicity results in compounded biases and normalised systemic discrimination in the legal application of the death penalty (Mocan, 2020).

Removing the death penalty from the justice system would mark a significant step towards ensuring that all individuals are treated with fairness and dignity, regardless of race or economic status (Donovan, 2022). It is plausible to pursue the abolishment of capital punishment solely on the grounds of its unfair application. According to Steiker and Steiker (2020), “the Washington State Supreme Court recently struck down the death penalty on state constitutional grounds because of its racially discriminatory administration” (p. 307). This was a morally plausible move; a landmark decision highlighting a growing awareness of the inherent biases influencing capital punishment within the judicial system. The move should serve as a catalyst for the abolition of the death penalty among the remaining 27 states which still execute capital offenders. Ultimately, more systematic reviews should be conducted assessing the current degree of racial discrimination impact on the application of the death penalty in the U.S., triggering the revaluation of the penal policies countrywide. Alternatives to the death penalty, such as life imprisonment without parole, provide severe yet equitable forms of punishment that allow for corrections in the case of judicial errors.

3.5 The Economic Implications of the Death Penalty

The death penalty has been opposed on many grounds; the financial aspect is one of the reasons which offers a pragmatic argument for its abolition. It can be argued that the death penalty is an ineffective yet costly practice. According to Waldo (2017), the death penalty attracts exorbitant costs at every stage of the criminal justice process. Notably, the death penalty costs more than other forms of punishment in all stages of the execution process including trials, sentencing, state reviews, appeals and jail costs (Gray, 2011; Waldo, 2017). Despite these high costs, the ultimate perceived safeguards for capital punishment – certainty of guilt and effective crime deterrence – still remain unachievable. The expenses associated with the death penalty begin with pre-trial investigations, continue through lengthy trials, and extend into the appeal processes which can span several decades (Petersen & Lynch, 2012). This can be attributed, in part, to the terminality of the death penalty which makes capital cases more liable to thorough investigations, producing more court hearings and necessitating the use of many expert witnesses (Welsh-Huggins, 2009).

Studies have consistently found that the death penalty costs taxpayers significantly more than other serious forms of punishment such as life imprisonment without parole (Leigey & Schartmueller, 2019). This fact is backed by Jones (2017) who provides that comparatively, the death penalty attracts much higher costs compared to the less morally questionable yet effective punishment forms including life without parole. In context, for example, the Death Penalty Information Center (2016) reported that capital punishment cases can cause up to 70% more than life without parole due to the additional requirements for jury selection, trial procedures, and heightened defence and prosecution costs. The initial phases of capital cases are particularly expensive, typified by enhanced legal requirements such as an extended jury selection process, which drive up costs considerably (Dieter 2013). Similarly, the appeal process in death penalty cases is lengthy and complex, reflecting the legal system's efforts to minimise wrongful executions (Cohen, 2014). These expenditures represent a substantial allocation of financial resources that could potentially be diverted to other areas of the criminal justice system that are more effective in abating crime. For example, according to Perry (2007), capital punishment reportedly cost \$2.16 million more than life imprisonment per execution. Redirecting this money towards criminal prevention efforts such as improved community policing and rehabilitative programs would produce more crime deterrence, enhancing public safety and maintaining social order (Jones, 2017; Phillips, 2015). Overall, investing more in these areas could lead to better crime prevention and resolution outcomes, which are more beneficial to society than executing a small number of individuals.

From an economical perspective, the behaviour and decisions of entities can be described using the resource dependence theory (RDT). According to Nienhüser (2008), the resource dependence theory examines how organisations manage their resources to maintain operations and achieve their goals, all while minimising external dependence and maximising stability. Viewing state governments as organisations that need to maximise their stability by minimising their external financial dependence, the RDT becomes relevant. As previously discussed, substantial financial resources are required to implement and sustain the death penalty, highlighting the economic strain it places on the criminal justice system (Cohen, 2014; Leigey & Schartmueller, 2019). Under the purview of the resource dependence theory, the organisations – state governments in this case – should adopt measures that curb the strain on their financial resources. Therefore, given the immense costs associated with the death penalty, state governments must consider its abolition, considering alternative forms of punishments that offer effective yet cheaper crime deterrent efforts. Ultimately, the allocation of vast sums of money to execute a relatively small number of individuals, particularly when life imprisonment serves as a less costly but equally effective punishment method, is an inefficient use of public resources. State policymakers must therefore perform their fiscal responsibilities by abolishing the death penalty and reallocating the freed-up funds to more beneficial uses including crime prevention programs, which not only promote public safety but also justice reform (Dieter, 2013).

Chapter 4 Conclusion

4.1 Towards Restorative Justice

In the past, punishment was mainly aimed at promoting either retribution or utilitarianism. While retributive punishment's aim is to make the criminal pay for their crimes, the utilitarian approach prioritised actions which result in overall societal happiness (Iuliano, 2014). In the context of capital punishment, utilitarianism and retributive approaches to punishment disregard both fairness and individual rights, necessitating the need for a different purview for viewing punishment. In addition to promoting law compliance, the criminal justice system should be chiefly concerned with the reformation and rehabilitation of offenders (Forsberg & Douglas, 2022). Overall, the shift towards restorative justice represents a fundamental change in how societies perceive and manage crime. The main aim of restorative justice is to repair the harm caused by criminal behaviour, a goal that can be achieved through the cooperation of relevant stakeholders, including victim families, offenders, and the community at large (Johnstone & Van Ness, 2017). This aim cannot be achieved with the death penalty as a mode of punishment, given its retributive nature which prioritises vengeance over rehabilitation and societal healing.

Restorative justice, in an acknowledgement of the harm that crime exerts on people and relationships, stresses the need to mend these violations before the reintegration of the offender into society (Van Ness et al., 2022). This rehabilitative approach has not only shown promise in reducing recidivism but also aids victim recovery and improves offender accountability (Latimer et al., 2010). For example, the relatives of a murder victim are likely to get more closure from offender remorse when the felon offers an apology for their actions (Eaton, 2023). One might rebut this, claiming that close relatives are more likely to be motivated by the justice accomplished through the vengeance of the death penalty. However, as Liciu recounts, "Capital punishment is fast and brutal thus one might think that justice is served for the family; however, this comfort can be amplified, for example, by the long-term satisfaction of lifetime incarceration" (p. 1). Overall, rehabilitative justice, which is only achievable through the abolishment of capital punishment, aligns with the contemporary comprehension of human rights and dignity – that every individual has the potential for change and growth. Additionally, restorative alternatives to the death penalty can offer a chance for community participation in the justice process, an inclusivity that can strengthen community ties and enhance public trust in the criminal justice system (Sherman et al., 2007).

Ultimately, by abolishing the death practice, the society would adopt a justice system that prioritises restorative practices over punitive measures. This would not only support the humane treatment of offenders but also foster a more compassionate, equitable, and effective justice system. The implementation of restorative justice efforts in place of retributive ones is long overdue. This is because the former offers a more sustainable and ethical alternative that addresses the root causes of crime and facilitates the long-term safety and health of society (Griffiths et al., 2007).

4.2 Recommendations: Trends Towards Abolition of the Death Penalty

Over the ages, the trend towards the abolition of the death penalty gained momentum, both globally and within the United States (Neumayer, 2008). This trend was mainly driven by the growing recognition of the ethical pitfalls of capital punishment, its ineffectiveness in deterring crime as well and its associated high economic costs (Hood & Hoyle, 2009). Nevertheless, the global death penalty abolition trend has slowed down since ‘most of the countries likely to embrace the abolitionist cause have done so by now’ (Neumayer, 2008). Several measures can be taken to reignite the abolitionist momentum, with the aim of achieving complete abrogation of capital punishment. Enhancing public education and awareness on capital punishment can reinforce abolitionist efforts. This sentiment is echoed by Banner (2016) who provides that public opinion can be shifted by making the realities of capital punishment such as its high costs, potential for irrevocable mistakes, and lack of deterrence known, creating a stronger push for its abolition. This would especially work if such educational campaigns also highlighted the benefits that accrue from the use of alternative punishment methods such as life without parole.

The cultural background of a society has a huge impact on its perception of crime and justice (Hammel, 2010). Importantly, the information passed down through societal culture can be adjusted through education. This implies that making capital punishment a more relevant topic of public interest is likely to change the perceptions about it, driving the momentum of its call for abolition. In the U.K., the campaign for the abolition of the death penalty commenced when people started to publicly question criminal execution, influencing a series of reforms which eventually culminated in its abolition (Gaines, 2016). Today, however, capital executions have become a rare and private affair. For example, there were only 17 capital executions in the year 2020 (Snell, 2021). As a result, the brutality of the death penalty has predominantly escaped the public’s attention. This may have contributed to the stall of capital punishment abolition efforts in the U.S. Therefore, groups and activists that champion human

rights must apply more effort in decrying this brutal practice that should have no place in contemporary society.

In addition to education efforts, leaders must make active attempts to strengthen legal procedures and the criminal justice system. The legal reforms should aim to eliminate the death penalty and replace it with life imprisonment without parole, ensuring that such sentences are applied fairly and uniformly, without the influence of racial or socioeconomic bias (Amnesty International, 2014). The abolishment of capital punishment will also free up funds which can then be redirected towards crime prevention and social services. According to Clear et al. (2013), applying crime prevention strategies in tandem with proper education, mental health services, and social programs can address the root causes of crime and reduce the overall crime rate. Therefore, the death penalty should be abolished and replaced by these primary preventative efforts which can actually deter crime.

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