

Capital Punishment in Ethical Scrutiny: the Validity of Judicial Execution

Jessica Ding

Philosophical Researcher, Independent Research

Abstract

This analysis sequentially addresses the various aspects of capital punishment, beginning with the notion of justice, moving to the relationships between modes of justice and criminal punishment, and then discussing the precedent for the death penalty and its global relevance. This analysis utilizes a conceptual analysis approach that interacts with the various factors relating to capital punishment through ethical analysis, ultimately weighing everything in terms of morality while mentioning implementational considerations, which can include economic and pragmatic elements. Ultimately, concluding thoughts regarding the most proper perspective on judicial execution after ethical analysis are delivered in the final section, Section 4, of this analysis. Final conclusions on the object of this analysis reveal that capital punishment often perpetuates existing cycles of violence and fails to properly heal the deeply rooted causes behind criminal actions. Although capital punishment has deep historical precedence in the criminal justice systems of the international community, the findings of this analysis point to the fact that alternatives, which align more with restorative justice practices, are worthwhile and could lead to more ethical and effective outcomes in the pursuit for a better society.

Keywords: Capital Punishment, Retributive Justice, Restorative Justice

1. Introduction

Capital punishment dates back to early human civilization, and is closely related to base animal instincts to rid an ingroup of potential threats to the ingroups stability. Especially in early societies like European communities in the Middle Ages, public executions served as a societal demonstration in which governing institutions and individuals in power demonstrated what they preferred as proper societal behavior. The nature of judicial executions being commonplace and public also served as a consistent check onto the behavior of citizens in ancient empires, especially to warn them of the most severe consequence of disobedience: death.

However, as human society has evolved and become sophisticated, ethical considerations have arisen to contest the practice of judicial execution as improper and immoral. Especially in the modern era when societies know more and more about the human mind and psychology, many believe that capital punishment is overly cruel and unnecessary. Historically, the earliest of these protests dates back to the Enlightenment.

Proponents against the death penalty often adhere to a theory of justice called restorative justice, a relatively modern mode of justice. Ultimately, the hypothesis of this study is that restorative justice practices are a more ethically sound alternative to retributive practices like capital punishment, but that

restorative practices will be too costly to implement and thus will be unpopular for real world implementation in the international community.

2. Conceptual Justice

From a philosophical point of view, justice is murky in certain aspects and clear in others. Previous philosophers define a multitude of qualifying characteristics in which it is possible to evaluate justice, including but not limited to: comparability, relationality, procedural perfection, distribution, and institutionality [1]. Regardless of its smaller nuances, justice is obviously socially mechanized by the criminal justice system, and in principle is meant to give people what they deserve, whether that is punishment or reward. This interpretation of justice implies that there is a moral obligation behind actions taken to create the most just world, and draws questions regarding which actor is burdened with this obligation and must implement justice institutionally. Most commonly, governments take on this role and either set up a criminal justice system or a specific department of the national government to oversee this. But what happens when that organization becomes corrupt, or becomes unsure of what the right verdict is regarding a certain case? Although that law provides guidelines, laws consistently evolve and become outdated.

Especially when evaluating criminal justice, there is typically a victim-perpetrator relationship in criminal acts. In this case, the justice implementation organization must also determine whether or not the perpetrator deserves lenience or mercy in their sentence based on their intention, preexisting influences, upbringing, systemic disadvantages, lucidity, and any other confounding factors. Laws cannot always account for every combination of these circumstances, and it becomes up to the jury or judge in the courtroom to make an independent decision based on what would be the most “just”. Thus, not only is justice an overarching moral burden that all governments and peoples must consider when evaluating whether or not a situation is fair, it is also a subjective judgment that individuals may define differently based on their own experiences.

When condemning criminals as guilty, the subsequent criminal justice program that individuals are subject to also exemplify different approaches to what a society may culturally define as a just consequence. After analysis, there are two dominant lenses that emerge which are used to approach criminal consequence: restorative justice and retributive justice.

2.1 Restorative Justice

Restorative justice is characterized by a cooperative model between government, legal officials, and psychological experts to execute criminal justice with a rehabilitative mindset towards criminal offenders. Defined by the Canadian Department of Justice, restorative justice is “an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime” [2]. A system dominated by restorative justice would dedicate substantial time and effort towards the nuances and conditions of criminal programs, including setting up dedicated staff to interact positively and constructively with criminals, aiming to not only understand their initial mindset when committing a crime but also to reform it, acting with an end goal of complete social integration for criminals. To describe this perspective on justice more plainly, restorative programs and legal consequences would be seen more as an opportunity for improvement than a punishment for wrongdoing. This fundamental difference in perspective regarding what the conceptual purpose of a criminal program causes different applications and institutional needs when using a restorative implementation of justice. (See Section 2.3.)

Restorative justice has seen relatively little real-world implementation and subsequently has not had large amounts of pushback from the international community, but this model of justice would outlaw judicial execution as being a “cop out” method to resolving issues with crime and is the modern alternative to retributive justice. Conceptual criticisms of this type of justice argue for the harm for victims when programs use this implementation. Oftentimes, those who commit the most serious of crimes pose such a threat to society that it may become cost-ineffective to attempt rehabilitation, only to fail and for victims (or demographics at high risk of being the victim of that type of crime) to feel resent towards the government. However, these hypothetical concerns would need to see more real world examples and evidence before they can be considered as substantive. Worlds with these circumstances will be explored with detail within this text.

2.2 Retributive Justice

Retributive justice has more historical precedence than restorative justice and is more centric on what is “due” to the victim of a crime than what ought to be due to the criminal. It has three primary components: proportionality, the principle of balance, and the prioritization of innocence [3]. The component of proportionality refers to a severe crime receiving a punishment that is equal in severity, and the principle of balance is that the wrong committed by the criminal becomes equalized or permissible only after an equally severe punishment is administered. When executed to the furthest level, retributive justice aims to help victims gain vengeance for the wrongs committed to them and seeks for criminals to realize their immorality through harsher criminal sentence programs. This application style of criminal justice is what forms the historical rationale for the death penalty.

However, existing criticisms of this type of justice are loud and frequent. Especially in nations with diverse populations like the United Kingdom or the United States, retributive justice systems often perpetuate existing patterns of oppression and disproportionately harm marginalized populations without helping to address the origins behind why those groups may have higher conviction rates in the first place. This serves a counterproductive purpose of reaffirming the negative stereotypes about these groups and furthering the effect of pushing those demographics to the fringes of society.

2.3 Application Differentiation

The experience of a perpetrator under retributive and restorative systems is very different, and so are the implications for the administering government. Historically, restorative justice programs are more costly to set up and run, necessitating higher numbers of qualified professionals, facilities, and resources to create the proper infrastructure for its programs. However, a government sees far lower rates of reconviction, as much as an 8:1 cost benefit ratio in terms of economic considerations for restorative justice programs [4]. On a technical level, this means that the benefits of a restorative justice approach outweigh its costs. When in comparison to retributive approaches, there are a few other concerns to the application differentiation of these two styles. To put it simply, it is more economical to utilize retributive justice. It costs less, uses less facilities, resources, and personnel. It is far more cost-effective to rid society of its most high-risk criminals than to spend years rehabilitating them in a well-designed, high quality program facility with a nation's best psychiatric professionals.

There is one issue with an economic analysis, however, and it pertains to the sociopsychological (or what some may label as moral) aftereffects of implementing each type of justice. A retributive justice model often sparks discourse, especially with concerns to exacerbating existing socioeconomic inequalities and the severity of certain consequences like capital punishment. However, when a government is weighing its options for implementation, it is likely a better choice to value economics over potential societal

pushback, especially when the risk for social pushback is low and the government has to manage a high volume of criminals.

3. Judicial Execution

Judicial execution, also termed capital punishment or a death penalty, is the practice of criminal justice systems to terminate the life of a criminal who has committed a crime of a certain degree of severity. There is a differentiation between judicial execution and other acts of death that result from government operations. Examples of consequential deaths from government decisions include civilian casualties, military training accidents, victims of violent crime or terrorism, and casualties from conflict. Potential deaths that result from these actions do not fall under a judicial execution, which has a key component of morality, and requires a clear rationale before the act is performed.

There are a few dominant methodologies in which judicial execution is carried out, the most common one in the 21st century being lethal injection. This is currently the most evolved method in the international community, but certain nations still employ application methodologies for capital punishment other than lethal injection at their discretion. In the past, nations have administered capital punishment through firing squad, hanging, electrocution, or a gas chamber. These practices have fallen from popularity because of social pushback that these methods are too inhumane. However, different nations have slightly varied policies on judicial execution.

3.1 Global Comparison

In order of frequency, the countries with the highest rates of judicial executions are China, Iran, Saudi Arabia, and the United States [5]. Around 56% of UN member countries report a complete ban on judicial execution, but many influential global powers still have judicial execution de jure, with 12% of nations abolishing the practice de facto while maintaining its legality [6]. Russia, for example, has not administered capital punishment to any individual since 1996, even though it is technically legal, whereas the United States executed 23 people in 2023 [7].

To conduct an analysis across the international community, many African countries still protect the legal status of judicial execution but have abolished it de facto, with many nations beginning the legislative process to make it legally impermissible to administer capital punishment within their state. This transition is harmonized with the phenomena of African countries becoming more active participants in global affairs and trying to model the developmental pace of the rest of the world. Throughout the Americas, the death penalty is legal with exception of Mexico, Argentina, and Canada. The persistence of the death penalty in these regions can likely be traced back to the persistent turbulence and conflict that has plagued much of Central and South America since the 20th century, especially with the implementation of many militaristic regimes in the Latin-American world.

In the Asian continent, the West Asia region has many countries with significant death tolls, most notably Iran with a 48% increase in executions from 2022 to 2023 [8]. This region also has many dominant militaristic powers, and these regimes may carry out executions that are unreported to the rest of the world but are still occurring, notably in Iraq, Kuwait, Syria, Yemen, and Saudi Arabia. A few of these nations have some confirmed deaths, but exact numbers are unknown. In East Asia, China is the most prevalent user of judicial execution, estimated to have executed at least 1000 people in 2023 [9]. Japan occasionally executes criminals, but this is a rather infrequent occurrence. The North Korean republic is also estimated to execute individuals for criminal offenses but exact numbers of administration of judicial execution is unknown.

Overall, capital punishment is still a relevant practice throughout the international community. Although some regions, for example, Europe, have taken a strong stance against judicial execution, it is a generally accepted practice that is still used, even as it has become less frequently used than previous eras in modern times.

3.2 Reform Analysis

When observing various sources of reform for judicial execution, there is a scale of severity that emerges. On one end of this spectrum are light changes to the mode, method, and timing of judicial execution. On the other, is complete and utter overhaul of the practice and changing it to an entirely different style of punishment; or in the case of restorative modes of justice, rehabilitation. This section will discuss different versions of reform and their ethical implementations in order of severity.

In terms of a less severe adjustment to capital punishment, many components of that process have already occurred. Throughout the last century, the methodology used for the death penalty has become more humane and less ethically questionable, evolving from public executions by hanging or firing squad to a more private lethal injection that is typically administered within a prison facility. However, the privilege of lethal injection is awarded only to more developed countries that have the capacity to create and afford the production of those materials, not to mention extensive prison facilities and staff. In many more disparate countries, capital punishment is more popularized simply because it is too resource intensive to keep a prisoner for life or put them through a rehabilitative program.

The ethics of maintaining capital punishment, even in a slightly more humane form, are not extremely secure. Especially if first world countries have the capacity and resources available to attempt less extreme practices for criminal punishment, it is principally harmful for those nations to take “the easy way out” and disregard the inherent human dignity of all individuals by choosing to end a criminal’s life outright rather than even push for a preliminary attempt at personal reform. One reason why governments may retain capital punishment, even if it is abolished de facto, is out of fear to seem overly soft on crime and thus lose the faith of their constituents. There is another consideration in this realm, however, of whether or not it is better for the public overall if criminals of the highest crimes are simply removed from ever risking public safety again rather than risking a relapse and subsequent conviction, and another round of resource intensive programming. Pragmatically, this argument has much validity since it would not pose significant burdens on the human race’s ability to populate and the potential benefits outweigh the cost of removing one person from society [10]. This argument would be most economical and utilitarian, if not for the fact that a considerable portion of death-row sentences are put upon inmates who are wrongfully convicted or who simply lacked the socioeconomic advantage to plead guilty to a smaller crime and utilize the system to get a lighter sentence, meaning a disproportionate number of marginalized and unfairly criminalized groups occupy slots on death row. Since 1976 in the United States, at least 4% of all death row inmates were exonerated due to the fact that they were wrongfully convicted, but not without many inmates spending at least a decade in prison for a crime they did not commit [11]. For those individuals to not only serve time wrongfully, but to also die for something they never did, is clarifying unjust and incorrect.

Regarding more extreme reforms to capital punishment, Gallup polls have found that at least 60% of United States citizens would prefer their criminal justice system use a sentence for life without parole instead of judicial execution to punish criminals with severe crimes [12]. Historically, especially in racially diverse regions like North America, the use of the death penalty can be traced back to lynchings and other forms of discrimination, with the implementation of capital punishment into legality having

been undergone as a way to codify those practices into law and remove perpetrators from moral accountability or social persecution [13]. In other countries, individuals in high stations of power have already spoken up, with much of the Western world taking significant steps to limit or completely abolish death penalties. Many religious movements also morally oppose the death penalty, citing that punishments by death violate many common religious tenets relating to kindness and mercy [14]. As such, it can be seen that from a standpoint of ethical analysis, there are clear and many reasons that would validate extreme reforms on judicial execution, and following this outcome is the notion that the most extreme way to reform capital punishment is to abolish the practice entirely. This, of course, brings the discussion to alternatives.

3.3 Alternatives

Primarily, the best and most dominant alternative approach to judicial execution is a form of restorative justice, typically in a reform program. The popular perspective—one backed by psychological studies—that supports this approach is that prison settings or death sentences will further dilapidate the conditions of a criminal's mental and physical condition [15]. Especially in cases of long-term sentencing, both prison workers (security, psychologists, etc.) and inmates display unhealthy power dynamics and tensions that heighten the risk of abuse. As of now, only Western countries have implemented rehabilitative justice practices on a large-scale. One of the most successful of these models is Norway, which sees record lows on recidivism and record rates of decreasing crime [16]. Other semi-large nations who have implemented similar rehabilitative systems include Germany, Finland, and the Netherlands.

There are a few criticisms regarding rehabilitative programs, namely that they are extremely expensive and that they deviate from the purpose of restorative justice when in practice [17]. Ultimately, however, it will be up to each nation's respective government to decide whether or not they wish to heed those warnings.

4. Conclusion

This work only conducts a preliminary investigation into the different factors that may affect the future of capital punishment across the world. Ultimately, the discussions throughout the sections of this study allude to the higher morality of restorative justice practices and advocates for nations who have the capability to abolish the practice of judicial execution. There are clear limitations to this boundary, many of which surround the idea that nations on the fringe of the developed world or undeveloped countries do not have the access to develop sufficient justice infrastructures to support alternatives to capital punishment. Analysis of the global circumstances clearly deliver multiple arguments in favor of keeping the death penalty, many economical and a few significantly ethical. As such, this work ultimately advocates that the global community take a clear stance on the issue to support abolishing the practice of capital punishment but exhibit leniency for the implementation timeline of its reform and the actors of the referenced implementation.

5. References

1. Stanford Encyclopedia of Philosophy, "Justice", Stanford Encyclopedia of Philosophy, August 2021. <https://plato.stanford.edu/entries/justice/#JustMappConc>
2. Government of Canada, "Restorative Justice", Department of Justice Canada, December 2021. <https://www.justice.gc.ca/eng/cj-jp/rj->

- [jr/index.html#:~:text=What%20is%20Restorative%20Justice%3F,the%20aftermath%20of%20a%20crime.%E2%80%9D](#)
3. Stanford Encyclopedia of Philosophy, “Retributive Justice”, Stanford Encyclopedia of Philosophy, July 2020. <https://plato.stanford.edu/entries/justice-retributive/>
 4. E4J University Module Series: Crime Prevention and Criminal Justice, “Topic three - How cost effective is restorative justice?”, United Nations Office on Drugs and Crime, April 2019. <https://www.unodc.org/e4j/zh/crime-prevention-criminal-justice/module-8/key-issues/3--how-cost-effective-is-restorative-justice.html>
 5. Amnesty International, “Death sentences and executions 2022”, Amnesty International, May 2023. <https://www.amnesty.org/en/documents/act50/6548/2023/en/>
 6. Amnesty International, “Death sentences and executions in 2023”, Amnesty International, May 2024. <https://www.amnesty.org/en/documents/act50/7952/2024/en/>
 7. Alexander R., “Death penalty (legal regulation)”, Legal Resource of Rusetsky Alexander, 2000. <https://web.archive.org/web/20051103070251/http://www.rusetsky.com/death.htm>
 8. Death Penalty Information Center, “Executions Around the World”, Death Penalty Information Center, 2023. <https://deathpenaltyinfo.org/policy-issues/international/executions-around-the-world>
 9. Amnesty International, “Death Penalty 2022: Executions Skyrocket”, Amnesty International, May 2023. <https://www.amnesty.org/en/latest/news/2023/05/death-penalty-2022-executions-skyrocket/>
 10. Our World in Data, “Global Population Growth”, Our World in Data, 2024. <https://web.archive.org/web/20210228152809/https://ourworldindata.org/grapher/absolute-increase-global-population>
 11. Samuel R.G., Barbara O., Chen H., and Edward H.K., “Rate of false conviction of criminal defendants who are sentenced to death”, Proceedings of the National Academy of Sciences, April 2014. <https://doi.org/10.1073/pnas.1306417111>
 12. Gallup, “Death Penalty”, Gallup Poll, 2023. <https://news.gallup.com/poll/1606/Death-Penalty.aspx>
 13. Franklin E.Z., “The Contradictions of American Capital Punishment”, Oxford University Press, 2003, Section III Appendix A, 207-215. https://books.google.com/books?hl=en&lr=&id=4HTVhOX5t7gC&oi=fnd&pg=PR7&dq=capital+punishment&ots=_0Mx5UVKzl&sig=hF_pr2Bp9uvhRUWjJZ5WMw4_4Ls#v=onepage&q=capital%20punishment&f=false
 14. Religious Action Center, “Position of the Reform Movement on the Death Penalty”, Religious Action Center, 2024. <https://www.rac.org/position-reform-movement-death-penalty>
 15. Etienne B., “Rehabilitate or punish? Psychologists are not only providing treatment to prisoners; they're also contributing to debate over the nature of prison itself”, American Psychological Association Monitor on Psychology, July-August 2003, 46. <https://www.apa.org/monitor/julaug03/rehab>
 16. First Step Alliance, “What We Can Learn From Norway’s Prison System: Rehabilitation & Recidivism”, First Step Alliance, 2023. <https://www.firststepalliance.org/post/norway-prison-system-lessons#:~:text=Norway's%20focus%20on%20rehabilitation%20and,recidivism%20rates%20in%20the%20world>
 17. Tony W., Robyn L., “Repairing the rupture: Restorative justice and the rehabilitation of offenders”, Aggression and Violent Behavior, 2009, 205-214. <https://doi.org/10.1016/j.avb.2009.03.001>

References

1. *insert references here*
2. First Name Middle Initial Last Name, “Title”. Link
3. First Name Middle Initial Last Name, First Name Middle Initial Last Name, “Title”, Publisher/Journal, Referenced section #s, pages-pages.