

# Retribution and the penalty

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The capital punishment stimulates a controversial debate in the United States. Opinion polls carried out on the topic of death penalty have proved that the population of United States in support of it has been as high as seventy four percent and sometimes as low as fifty three percent of the population. However, it is obvious polling data is malleable but this dependent in the manner in which the questions about death penalty are administered to respondents. Although the polling data is vulnerable to influence by the form in which the questions about death penalty are framed, it is not enough to undermine the reliability of the response gathered. Supposedly, the respondent to the question do not consider the alternative of life imprisonment sentence without parole as influential to change their opinion on the question.

This is mainly because people do not absolutely believe is always ever without possible parole (Alan, 2008). The opinion poll from respondents in favor of the death is an indicator that it seems fair to them murder criminals face deterrence to protect society from possible harm from them in future. Irrespective of the manner that questions about death penalty are framed it evident that respondent are have a firm ground of support for the penalty. In regard to the implementation of capital punishment opinion polls show that despite the believe that it is unfairly applied and not as effective as they would wish, three quarters population of the U. S are in full support of it.

Collected data on the opinion polls about death penalty express that a majority of the U. S population believe that there has been people who have been executed since the reinstatement of capital punishment following Gregg. This gives rise to the question why capital punishment still has

support in spite of the credible reservations about its effectiveness concerning deterrence criminals from future crime (James, 2009). In fact, the support for death punishment has its basis on fundamental views of justice. The response from majority of the respondents on the question why they are in support of capital punishment is that a punishment should be proportional to fit the crime. Most of the people in support of the death punishment give reasons from their own perspective and not efficacy of the punishment.

Thus, the death penalty given to people is simply because of retributive reasons and has nothing to do with its deterrence effect. In their point of view unfair application of capital punishment penalty are least relevant. Since death penalty give murders a proportionate punishment, its application contributes to a significant increase in the measure of justice that the system offers. Among the factors that influences individuals support for capital punishment, education is not considered to play a major role. The decision of an individual to support death punishment appears to be simply a core belief. However, it is expected that some possible change over time should be expected if support for the death punishment was really from a core value.

Demographic fails to provide the anticipated change on support of the capital punishment (Alan, 2008). Furthermore, there has been a tremendous fluctuation in both gender and attitudes over time almost changing the whole population. An explanation that has been put forward relating to crime rates has been down played since the hypothesis has no substantial evidence. In correlation to crime rates, harsh punishment for increased crime rates and light punishment for a decline in crime rates has so far depicted no

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significant change in percentage. The explanation for the support of the death penalty is a matter of future research.

At the moment, the most convincing theory stipulates that capital punishment correlates with perceptions in regards to reliability of sentencing (Evan, 2011). Overview Capital punishment is prescribed for crimes such as murder and related capital crimes. In this context, the word capital, in “capital punishment” is simply used to refer to a person’s head. In the past death penalty in retribution to people who committed murder was by execution which involved severing their head from their body. However, in modern days, the Supreme court has ruled that the capital punishment is in violation of the Eighth Amendment’s ban on arbitrary and cruel punishment. This was precisely to mitigate the severity of the capital punishment on citizens on whom the death sentence was passed. In regard to the Eighth Amendment outlines the particular aspects that determine the procedure of how it must be implemented when a jury may use. As a result of the Fourteenth Amendment that is, the Due process clause, The Eighth Amendment does apply against the states and the federal government (Evan, 2011). The analysis of the Eighth Amendment has put a requirement for courts to consider the evolving standards of decency to determine whether a particular punishment has cruel or arbitrary punishment. In consideration of the evolving standards of decency, courts not only look for objective factors to point out change in community standards but also independent evaluations on whether the statute in regard is justified.

The U. S Supreme court has ruled that a penalty has to be proportional to the crime otherwise; the punishment is a violation of the Eighth Amendment’s

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prohibition against arbitrary punishment. The proportionality analysis, the Supreme Court considers the following factors: the offense's gravity and conditions of the penalty, how the jurisdiction inflict penalty on its other criminals and how other jurisdictions pass punishment on the same crime (Evan, 2011). The principle of individualized sentencing requires that the jury must have a particular set of circumstances of the criminal guiding them to pass a death sentence and the court must have adhered to individualized sentencing process. The method of execution may be a prescription of a certain legislature but the method may not inflict unintended or deliberate pain upon the criminal.

Courts make use of “objectively intolerable” test to determine whether the method of execution is in violation of the Eighth Amendment's ban on arbitrary punishments (Evan, 2011). The Supreme Court has ruled that certain classes of people such as mentally retarded criminals are not eligible for the death penalty. Executing such people is a violation of the ban on “cruel and unusual punishments” since their mental handicap lessens the gravity of the crime and thus renders the penalty of death as

disproportionately harsh (James, 2009). Arguments with Retribution

Retribution is basically a notion that punishment is enforced simply because it is deserved. Murders sentenced to capital punishment received for the reason that they deserve it out of their crimes. In a retribution perspective, a criminal being punished so as to deter other criminals from committing the same crime; it is simply as form of ending it.

Capital punishment is unquestionably right when serves the main purpose of giving the criminal his due. This is a great idea that holds the foundation of

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the public support for capital punishment. The “ Death and Retribution” issue by Claire Finkelstein seeks to answer whether retribution demands death penalty for justice to prevail. (Alan, 2008) The approach of retribution on capital punishment leads to the assumption that it is the fit and equivalent punishment for murder. The focus is to enforce punishment on murders and make them get due harm as they imposed on others. Retributivist’s stand on the death penalty is justified and convincing in consideration of future danger or using them as an example to other criminals.

However, there is the argument that those in support of retribution fail to justify the use of death other than to ill-suit such punishment. This creates a reservation with limited suggestions that there is still no convincing reason to include death in the punishment of a murder (James, 2009). Retributivism theory asserts precisely that it is logical to justify punishment since the criminal is liable to be punished and to the extent and virtue of his criminal act. Although the ‘ lex talionis’ doctrine is of the idea that a criminal should suffer the same as the victim of his crime, retribution can only be taken to be convincing generally as a justification for the punishment but not the extent of punishment. This clarifies the ambiguity of capital punishment in the argument for retribution since the criminal deserves to be punished for his crime. In his argument, Claire Finkelstein does put forth his view that proportionate retribution does not make support for capital punishment mandatory.

The public justice embraces the mode and standard of equality to balance the scale of justice. Hence, arguments in support of the death penalty are attempts to balance the scale of justice. In order to achieve this, retribution

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avails two strategies to achieve this (Evan, 2011). The most important consideration is to proportionately match punishment with crimes. It now becomes logical and justifiable to match worst crimes with worst punishment for criminals.

Consequently, it is mandatory that relative harsh punishment is given instead of an objective evaluation of what the offender deserves.

Establishment of a moral equivalence is of importance in the second strategy of retribution. Moral equivalence is not only a convincing strategy but also a fair approach between crimes and punishments. In this essence the criminal need not suffer an equivalent kind of harm imposed on the victim but should go through an amount equivalent harm that he caused on the victim (Evan, 2011). Empirical Findings The empirical findings seek to determine the effect of the death sentence by use of simultaneous across county-level panel data that are inclusive of post-moratorium period.

Simultaneous data is detailed and does make the analysis efficient in overcoming various limitations. The probable imitations in this case are economical, demographic as well jurisdictional differences between various counties. There is a high likely of accuracy since the data overcomes cumulative bias. A large number of county-level based observations extend the degree of freedom to broaden the range of the empirical investigation. Given the use of the simultaneous data, coefficient estimates show distinguished probabilities of arrest, conviction and execution.

The probabilities are related to murder, supply equation (Evan, 2011). Court Findings The American Juries have constantly been on the refusal to convict

a significant number of individuals charged with first degree murder of a particular offense under mandatory death penalties. The assumption that can be drawn here is that for every first degree murder criminal, there is a handful of jurors unreluctant to pass death penalty irrespective of their satisfaction with the substantial offense made. The explanation to this response is in regard to evolving standards of decency. (James, 2009)

Studies that support Retribution John J. Donohue III, Justin Wolfers Study is in support of retribution.

There is indeed significant deterrent effect of death punishment. Given the literature Capital Punishment by Evan J. Mandery, the different approaches are reliable in assessing the strength of the inferences made. A comparison of the executions and homicides in history of the U. S and Canada featuring both states that do apply and those that do not apply capital punishment lead to an interesting variation.

A particular case has little change in results of which the capital punishment had been implemented. The rare application of the death penalty such that a group of homicides deterred does not change notably over the years.

However, brief samples may give large correlations (Evan, 2011). Arguments against Retribution The arguments against retribution attack the topic from a religious perspective. Gardner C.

Hanks, against the death utilizes the Christian and secular arguments against capital punishment. Being the source of values for a majority of North Americans, they get the address from the New Testament that is a target to all true Christians. Christian arguments against the capital



punishment are founded on the Old Testament. Sanctity of life is emphasized by citing God's words to Noah after the floods. (James, 2009) Since the forgiveness of sins in the Old Testament was attained by animal sacrifice to atone for human sins, it serves as a moral balance with sin being destroyed.

Thus human sin regardless of its harm does not call for capital punishment. In regard to the New Testament, the death of Jesus Christ was the final atonement for humankind's sins. Citing the New Testament book of John 2:2: "He is the atoning sacrifice for our sins, and not for ours only but for the whole world." Since the death of Jesus was for all humankind, it catered for animal sacrifices that were required in the Old Testament and the same applies to capital punishment. Jesus' death was the ultimate sacrifice and did strike the moral balance hence no need for either animal or human sacrifice to put things right.

The argument rejects support for capital punishment since it undermines the importance of Jesus' death. However, the society may protect people from criminals but the approach should be in a manner to redeem them and not discriminate them. Empirical Findings The empirical findings seek to determine the effect of the death sentence by use of simultaneous across county-level panel data that are inclusive of post-moratorium period. Simultaneous data is detailed and does make the analysis efficient in overcoming various limitations. The probable imitations in this case are economical, demographic as well as jurisdictional differences between various counties. There is a high likelihood of accuracy since the data overcomes cumulative bias.

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Studies against Retribution Stephen J. Markman and Paul G. Cassell study, “protecting the innocent: A response to the Bedau-Radelet study” Given the weakness of human judgments, the possibility of error in use of capital punishment is of concern since it may result to execution of innocent people. In order to determine whether it is right or wrong to use capital punishment, the issue of whether the risk of error in use of death penalty is satisfactorily enough to outdo the benefits that come with it must be considered. (James, 2009) This is crucial since it is a requirement for a punishment to uphold a free society’s form of criminal justice.

Despite claims of individuals being execution yet they were innocent, empirical study show that emphasize has never been put to this concern. The loop hole in the administering of capital punishment has led to execution of the innocent. The publication by Hugo Adam and Michael L. Radelet <https://assignbuster.com/retribution-and-the-penalty/>

reveals results of constant and methodical research that involves an unacceptable risk of mistaken execution. In accordance to this various other authors have raised concern of three hundred and fifty persons being convicted by mistake (Evan, 2011).

Conclusion The result of this research is a clear indication that there exists a consensus among most criminals in U. S that capital punishment has little influence in reduction of rates of criminal acts in society. Therefore, the results undermine the crucial justifications for capital punishment in modern world (James, 2009).