

## **EVALUATE THE CLAIM THAT CAPITAL PUNISHMENT IS AN EFFECTIVE DETERRENT.**

This paper shall consider the effectiveness of capital punishment as a deterrent to committing homicides. Surely one would expect that the fear of death would be the ultimate deterrence but how is this fear perceived by various members of society? The number of convicts on Death Row in the USA only highlights the futility of such deterrence. It is therefore also necessary to consider the psychology of potential murderers and theories in order to determine the effectiveness of capital punishment as a means of deterrence.

The objective of deterrence is to reduce the likelihood of an act being carried out in the future by the threat of punishment. It is argued to be the main objective of capital punishment, but the way in which deterrence has been used within crime has varied over the years, especially in terms of capital punishment.

Before capital punishment was abolished in the England in 1968<sup>1</sup>, it was as part of a legal system far more primitive and less effective than that we employ now. Accordingly, the sixteenth century to the early eighteenth century, the system of punishment worked in a far different fashion from that of today. It was based not only on deterrence, but a retributive justice, the purpose of which is not to change the offender's behaviour or attitudes, but rather to "*seek vengeance upon a blame-worthy person because they have committed a wrongful act*"<sup>2</sup> which is referred to as the notion 'life for a life' by Biblical supporters of retribution. Although this was claimed to serve as an effective deterrent on society<sup>3</sup>, this approach could not have deterred all potential offenders, especially young offenders, as the percentage of criminals under 21 was 90% and as young as ten years of age, particularly during the eighteenth century<sup>4</sup>. It must be emphasised that it is less likely that offenders under 21 years of age would rationally weigh out the consequences of being caught then punished, which suggests that such young offenders are unlikely to be deterred by capital punishment.

The death penalty has existed for thousands of years, so surely the fact that 83 countries still retain and use the death penalty<sup>5</sup>, is evident that it cannot be the effective deterrent many claim it to be if it is still required in so many countries, and at such a high rate. In 2002, for example, at least 1,526 people were executed in 31 countries<sup>6</sup> so if it were a deterrent, or at least an effective one, would there would not

<sup>1</sup> The Murder (Abolition of the Death Penalty) Act 1965

<sup>2</sup> Davies, Croall and Tyrer, Criminal Justice, An introduction to the criminal justice system in England and Wales, 2nd Edn, (Longman: 1998), pg. 242

<sup>3</sup> For example, during the 1930s, Jack Gibbs, directed by the Federal government in the US, investigated the effectiveness of death penalty in deterring criminals, but found that capital punishment does not deter.

<sup>4</sup> <http://www.coursework.info/i/9245.html>: In what ways did the nature and causes of crime change between 1450-2002, and why?

<sup>5</sup> Amnesty International, 'The Death Penalty': [http://web.amnesty.org/pages/deathpenalty\\_index\\_eng?openview](http://web.amnesty.org/pages/deathpenalty_index_eng?openview)

<sup>6</sup> According to Amnesty International: the true figures were certainly higher.

be a significantly lower number of executions after such a long period of the death penalty being exercised? When comparing two Western countries: namely England and the US, it shows that England practiced capital punishment throughout the early twentieth century, and had a lower crime rate than that of any large US state. Since England has abolished the death penalty in 1968, its murder rate has risen over 100%<sup>7</sup> an indication that capital punishment is a deterrent to crime, as years before; England had one of the lowest murder rates in the world.<sup>8</sup> However, one must consider the population of today and prior the 1960s.<sup>9</sup> Also, nowadays homicides are always recorded and developments in the criminal system means that it is easier to find murderers. Whereas prior to the 1960s, crime strategies were naturally less developed than today. Therefore, the recorded murder rate is bound to be much higher than today.

To determine the effect of the death penalty, it is necessary to compare homicide rates in similar places that differ only that some use capital punishment and some do not, rather than the time periods being different. Such comparisons were made by Thorsten Sellin<sup>10</sup> in the US for years from 1920 to 1958. Within his conclusions the data revealed that the trends of homicide death rates between comparable states are similar. Thus showing that executions have no discernible effect on homicide death rates. Another approach is to evaluate whether a short-term deterrence is the result from capital punishment. There have been many investigations conducted over the years, such as in 1935 by Robert Dann who studied homicides in Philadelphia sixty days before five highly publicised executions and sixty days after. The natural expectation, assuming that executions act as a deterrent, would be to reduce homicide rates, but they were in fact higher than usual.<sup>11</sup>

The deterrent factor in capital punishment may not always apply equally among people, within racist societies. In parts of the world, like South Africa, the death penalty is disproportionately imposed on the black population by an almost entirely white judiciary<sup>12</sup>. Research has shown that black defendants stand a greater chance than white defendants of receiving the death penalty, especially when the victim is white. For example, between 1982 and 1983, of 81 black convicted of murdering whites 38 were hanged; of 52 white people convicted of murdering whites, only one was hanged.<sup>13</sup> From this information, the death penalty is less likely to deter white people in South Africa as the possibility of them being put to death is significantly smaller than blacks, so in such cases, it is unlikely that the death penalty would deter some people, in racially discriminated places.

As statistics concerning the crime rates and the number of executions cannot be solely depended upon, it is important to also analyse whether capital punishment's system of

<sup>7</sup> <http://www.rit.edu/~ww12461/cp.html>

<sup>8</sup> [http://www.4essays.com/essays/CAPITAL\\_.HTM](http://www.4essays.com/essays/CAPITAL_.HTM)

<sup>9</sup> <http://www.number-10.gov.uk/output/Page844.asp> : UK Population

<sup>10</sup> Thorsten Sellin. He came to prominence in the 1920s and 30s for his studies in the use of criminal statistics.

<sup>11</sup> <http://hilbert.dartmouth.edu/~lamperti/capitalpunishment.html> : Lamperti. J, 'A brief look at the evidence'

<sup>12</sup> <http://www.swarb.co.uk/lawb/hmrDeathPenaltyFAQ.html> : 'Questions and Answers'

<sup>13</sup> *supra* no. 12

retributive punishment harbours or destroys all murderous mentality. The psychology behind the death penalty's affect on potential offenders, and to whom it is likely to deter, will now be considered.

The type of retribution that capital punishment falls under is known as *lex talionis* which is commonly expressed as the 'eye for an eye' approach. It is argued that this approach to punishment is most effective in deterring murders, also known as the notion 'life for a life'. In defence of capital punishment, the statement made by Robert. E. Crowe describes the effect of the death penalty on potential murderers:

*"It is the finality of the death penalty which instils fear into the heart of every murderer and it is this fear of punishment which protects society"*<sup>14</sup>

This statement illustrates the deterrent factor effectively in so far as regarding rational killers. It is natural for many people to weigh out the possibility of being caught by a wrongful act, before going ahead with it, which means that capital punishment would most likely act as a deterrent for such murderous minds. Therefore the criminal decision making process is vital on whether deterrence has an effective influence on criminals.

An understanding of personal choice is commonly based in a conception of rationality or rational choice within the context of human behaviour, which has been analysed by classical theorists. Theorists such as Cesare Beccaria and Jeremy Bentham<sup>15</sup> explored human behaviour and concluded that one of the central points to the understanding of rational choice theory is that the human being is a rational actor and that choice can be controlled through the perception of the potential pain or punishment that will follow an act judged to be in violation of the social good, the social contract.<sup>16</sup> The threat of the death penalty would cause a murderer to consider the magnitude of the consequential death penalty should they commit crimes such as rape or murder,

*"Before choosing to commit a crime, the reasoning criminal evaluates the risk of apprehension. The seriousness of the expected punishment, the value of the criminal enterprise, and his or her immediate need for crime gain."*<sup>17</sup>

This of course excludes the category of irrational murderers. Many murders are committed in defence, on impulse or out of anger, known as "passion crimes". It is consequently unlikely to deter mentally unstable murderers to whom the death penalty also applies in countries such as Iran, and the US. In these situations, they would not have been in a rational or normal state in which they would have considered the seriousness of the crime and the harshness of the punishment and a person who gets caught for killing someone is most likely someone who did not plan to murder at all. It could stem from short-term loss of logical thinking or under the influence of something such as drunkenness. Thus the death penalty seems to logically deter crimes, but the problem is that many murders are unplanned and are not a result of logic thinking. The death penalty may be an appropriate form of punishment for

<sup>14</sup> Crowe. R. E, "Capital Punishment Is a Safeguard for Society, 1925." *The Death Penalty: Opposing Viewpoints*. (Greenhaven Press: 1986.)

<sup>15</sup> Beccaria: 1738-1794, Bentham: 1748-1832,

<sup>16</sup> Keel. R, 'Rational Choice and Deterrence Theory', 1997:

<http://www.umsl.edu/~rkeel/200/ratchoc.html>

<sup>17</sup> Larry Siegel, *Criminology*, 4th ed., (West publishing: 1992), pg.131

certain criminals, but worthless as a deterrent for crimes such as death. The only thing truly assured is that the state gets vengeance on its hands that makes it no better planned than the guilty party, merely better organised.

Those who defend the deterrent value of the death penalty offer little systematic research to support their view. There have been many arguments in support of the death penalty deterring homicides, however the majority of the evidence behind it has been either lacking anecdotal evidence or being later criticised by theorists having analysed the data. Examples of this include Forst (1983), and Stock (1990) Isaac and Ehrlich's regression model on capital punishment (1933-1969), which concluded that execution does "*exert a unique deterrent effect on potential murderers*",<sup>18</sup> Forst (1983), and Stock (1990). Rather, such theorists rely on the fact that capital punishment *should* be uniquely effective, and whether it is justified rather than whether it actually deters criminals.

It cannot be determined from the research analysed whether this is truly the definite case or not because it is simply impossible to determine those who may have been deterred from committing a crime from those that have not. However, the evidence provided shows that it sways towards capital punishment not being an effective deterrent.

Taking the life of a criminal to use as an example for others, defeats the attempt of showing that killing is wrong and could send out the message that it is justified to kill people in order to protect others. The only way to effectively deter criminals is to change the criminal's mentality to no longer wishing to harm others, which can be achieved using rehabilitation and imprisonment, without parole if necessary. If this had been used for cases such as Derek Bentley<sup>19</sup> and Ruth Ellis.<sup>20</sup>, it would have avoided the killing of innocent people.

It is surprising that in a world as developed as today, countries such as Japan and the US would support capital punishment, especially as our psychological studies are so advanced. By now we should appreciate that there are many factors that influence murderous minds that must be taken into account, rather than arguing that capital punishment would deter someone from murdering.

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<sup>18</sup> 'Does Capital punishment deter murder?':

<http://hilbert.dartmouth.edu/~lamperti/capitalpunishment.html>

<sup>19</sup> He was hanged in 1953 for a murder he did not commit.

<sup>20</sup> <http://news.bbc.co.uk/1/hi/uk/243742.stm> : The last woman to be executed in the UK