

CAPITAL PUNISHMENT: AN ETHICAL CRITIQUE OF J. S. MILL'S UTILITARIAN PERSPECTIVE

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Abstract

The debate about capital punishment is one that has troubled ethical waters in contemporary times. The basic question in this regard is whether it is just, appropriate, moral, or even effective to carry out capital punishment as a means of checking crime. No one has been able to offer a perfect knock-down argument for either side, as to whether it is moral or not. This is why capital punishment is said to be one of the most important ethical issues of the twenty-first century. The thrust of this research is therefore to make an ethical critique of Mill's perspective on capital punishment in human society. The study employs the qualitative research approach by basically using secondary sources of data collection which include books, journals, magazines, scholarly papers and the internet. The work found out that the capital punishment has not succeeded in stamping crime out of human society. The work therefore suggests among other measures, the adoption of the reformative approach as means of punishing crime; that punishment should be designed to correct and rehabilitate; that the right to life should be respected always and that other measures be adopted in order to curb crime in society rather than the Capital Punishment.

Keywords: Capital Punishment, J. S. Mill, Utilitarianism, Philosophy

Introduction

Over the epochs of philosophy, the question - why and how should someone be punished for a crime, has been asked and answered in different ways by different philosophers and scholars.

From ancient times, the death penalty has been established as a punishment system for crimes in many societies. The first death sentence historically

recorded was in 16th century BC in Egypt where a wrongdoer, a member of the nobility was accused of magic and was ordered to take his own life; during this period, the non-noble was usually killed with an axe. In the 18th century BC the code of King Hammurabi of Babylon, codified the death penalty for 25 different crimes. The death penalty was also part of the 14th century BC's Hittite code; in the 7th Century BC, Draconian Code of Athens made the death penalty for every crime committed, while in the 5th Century BC, the Roman law of the twelve tablets codified the death penalty (Kronenwetter 1-3).

Various arguments and counter arguments have been proposed following the utilitarian conception of capital punishment. Therefore, this study sets out to undertake an ethical critique of capital punishment. The study projects the pro-life reformatory model of punishment for an alternative to capital punishment.

Forms of Capital Punishment

There are various methods that have been employed in the execution of capital punishment over time in different societies. The forms of capital punishment most popularly used include

1. Lethal Injection

When this method is used, the condemned person is usually bound to a gurney and a member of the execution team positions several heart monitors on this skin.

Medical ethics preclude doctors from participating in executions. However, a doctor will certify the inmate is dead. This lack of medical participation can be problematic because often injections are performed by inexperienced technicians or orderlies. If a member of the execution team injects the drugs into a muscle instead of a vein, or if the needle becomes clogged, extreme pain can result. Weisberg reports that "many prisoners have damaged veins resulting from intravenous drug use and it is sometimes difficult to find a usable vein, resulting in long delays while the inmate remains strapped to the gurney" (19).

2. Electrocutation

For execution by the electric chair, the person is usually shaved and strapped to a chair with belts that cross his chest, groin, legs, and arms. A metal skullcap-shaped electrode is attached to the scalp and forehead over a sponge moistened

with saline. The sponge must not be too wet or the saline short-circuits the electric current, and not too dry, as it would then have a very high resistance. An additional electrode is moistened with conductive jelly (Electro-Creme) and attached to a portion of the prisoner's leg that has been shaved to reduce resistance to electricity. The prisoner is then blindfolded (Hillman 116). After the execution team has withdrawn to the observation room, the warden signals the executioner, who pulls a handle to connect the power supply. A jolt of between 500 and 2000 volts, which lasts for about 30 seconds, is given. The current surges and is then turned off, at which time the body is seen to relax. The doctors wait a few seconds for the body to cool down and then check to see if the inmate's heart is still beating. If it is, another jolt is applied. This process continues until the prisoner is dead. The prisoner's hands often grip the chair and there may be violent movement of the limbs which can result in dislocation or fractures. The tissues swell. Defecation occurs. Steam or smoke rises and there is a smell of burning (121).

3. Gas Chamber

For execution by this method, the condemned person is strapped to a chair in an airtight chamber. Below the chair rests a pail of sulfuric acid. A long stethoscope is typically affixed to the inmate so that a doctor outside the chamber can pronounce death. Once everyone has left the chamber, the room is sealed. The warden then gives a signal to the executioner who flicks a lever that releases crystals of sodium cyanide into the pail. This causes a chemical reaction that releases hydrogen cyanide gas (Weisberg 127). The prisoner is instructed to breathe deeply to speed up the process. Most prisoners, however, try to hold their breath, and some struggle. The inmate does not lose consciousness immediately. According to Weisberg, "At first there is evidence of extreme horror, pain, and strangling. The eyes pop. The skin turns purple and the victim begins to drool" (130).

4. Firing Squad

Under this method, the inmate is typically bound to a chair with leather straps across his waist and head, in front of an oval-shaped canvas wall. The chair is surrounded by sandbags to absorb the inmate's blood. A black hood is pulled over the inmate's head. A doctor locates the inmate's heart with a stethoscope and pins a circular white cloth target over it. Standing in an enclosure 20 feet

away, five shooters are armed with .30 caliber rifles loaded with single rounds. One of the shooters is given blank rounds. Each of the shooters aims his rifle through a slot in the canvas and fires at the inmate (Hillman 153). The prisoner dies as a result of blood loss caused by rupture of the heart or a large blood vessel, or tearing of the lungs. The person shot loses consciousness when shock causes a fall in the supply of blood to the brain. If the shooters miss the heart, by accident or intention, the prisoner bleeds to death slowly (151).

5. Hanging

For execution by this method, the inmate may be weighed the day before the execution, and a rehearsal is done using a sandbag of the same weight as the prisoner. This is to determine the length of 'drop' necessary to ensure a quick death. If the rope is too long, the inmate could be decapitated, and if it is too short, the strangulation could take as long as 45 minutes. The rope, which should be 3/4-inch to 1 1/4-inch in diameter, must be boiled and stretched to eliminate spring or coiling. The knot should be lubricated with wax or soap "to ensure a smooth sliding action," according to the 1969 U.S. Army manual (qtd. in Hillman 154).

6. Stoning

Under this method, the condemned is pummeled by stones thrown by a group of people with the totality of the injuries suffered leading to eventual death (Abbott 52). Stoning is the next most common method of execution authorized by law with nine countries authorizing this practice. These countries include: Indonesia, Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, Sudan, United Arab Emirates, and Yemen. Many of these countries qualify the use of stoning stating that it can only be used for particular offenses. For example, Mauritania authorizes stoning only for adultery and homosexual relations, Nigeria authorizes stoning only for adultery, rape, incest, and homosexual sodomy, and Pakistan states that it will only use this method for rape or adultery. In practice, stoning is almost never used to execute criminal offenders. Most stonings that have been reported in recent years have been carried out extrajudicially—for example, by armed groups in Somalia (57). Others include the use of animals, boiling to death, crucifixion, etc.

J.S. Mills' Utilitarian Stance in Support of Capital Punishment

J.S. Mill's position about capital punishment is contained in his speech that was given before Parliament on April 21, 1868 in opposition to a bill banning capital punishment that had been proposed by Mr. Gilpin. Mill begins by stating,

It would be a great satisfaction to me if I were able to support this Motion. It is always a matter of regret to me to find myself, on a public question, opposed to those who are called sometimes in the way of honour, and sometimes in what is intended for ridicule, the philanthropists. Of all persons who take part in public affairs, they are those for whom, on the whole, I feel the greatest amount of respect; for their characteristic is, that they devote their time, their labour, and much of their money to objects purely public, with a less admixture of either personal or class selfishness, than any other class of politicians whatever. On almost all the great questions, scarcely any politicians are so steadily and almost uniformly to be found on the side of right; and they seldom err, but by an exaggerated application of some just and highly important principle. On the very subject that is now occupying us we all know what signal service they have rendered. It is through their efforts that our criminal laws, which within my memory-hanged people for stealing in a dwelling house to the value of 40s. - laws by virtue of which rows of human beings might be seen suspended in front of Newgate by those who ascended or descended Ludgate Hill have so greatly relaxed their most revolting and most impolitic ferocity, that aggravated murder is now practically the only crime which is punished with death by any of our lawful tribunals; and we are even now deliberating whether the extreme penalty should be retained in that solitary case (2).

From the above, it is obvious that aggravated murder is the topic under discussion by Mill, and the debate is whether or not capital punishment should continue to be applied to perpetrators of that crime. Mill continues,

When there has been brought home to anyone, by conclusive evidence, the greatest crime known to the law; and when the attendant circumstances suggest no palliation of the guilt, no hope that the culprit may even yet not be unworthy to live among mankind, nothing to make it probable that the crime was an exception to his general character rather than a consequence of it, then I confess it appears to me

that to deprive the criminal of the life of which he has proved himself to be unworthy solemnly to blot him out from the fellowship of mankind and from the catalogue of the living is the most appropriate as it is certainly the most impressive, mode in which society can attach to so great a crime the penal consequences which for the security of life it is indispensable to annex to it (4).

What Mill means here is that if by conclusive evidence, it has been determined that an individual has perpetrated aggravated murder and the circumstances offer no hope via a palliation of the guilt, nor that the perpetrator may be worthy of living. Presumably, this means he or she has given dispositions indicative of an unrepentant, reprobate, and that the crime was not due to some form of diminished capacity nor, in some way, a departure from his or her character - that this proves the criminal unworthy of continued life. In such an extreme one would be tempted to agree and even holler for it, were one of his/her loved ones horrifically murdered. But one would also have to say that Mr. Mill and all others must be prescient beyond all human norms if they can say, with certainty, of anyone, that there is no hope that the culprit may even yet not be unworthy to live among mankind. One would submit that his/her notions of having the criminal make full redress to the victims, their family and community is an alternative worthy of consideration. It may be unlikely, even rare, but not impossible. To this extent it is provident to hold a remedy as superior to the capital punishment. This is because, as Kotenwatter states, "as long as the perpetrator draws breath, there is hope. As long as the perpetrator is confined and directed to constructive pursuits and dedicated to the amelioration of his or her debt then there is hope as long as there is life - whereas with no life there is, of course, no hope" (112).

For Mill, capital punishment is humane compared to life imprisonment with hard labour. While death is a cessation of life, its struggles and all its sufferance, as well as a relief from all responsibility, a life of imprisonment with hard labour is infinitely more difficult. He states that "...for it is characteristic of all punishments which depend on duration for their efficacy all, therefore, which are not corporal or pecuniary that they are more rigorous than they seem; while it is, on the contrary, one of the strongest recommendations a punishment can have, that it should seem more rigorous than it is; for its practical power depends far less on what it is than on what it seems" (12). By this he reasons that no

human infliction can make an impression on the imagination so entirely out of proportion to its real severity as the punishment of death.

Other Arguments for the Justification of Capital Punishment

The arguments for capital punishment are the various opinions or views put together in support or favour of capital punishment for crime committed. The following arguments have been variously advanced in support of capital punishment.

1. The Death Penalty is an Effective Deterrent

This is the most common and reasonable argument in favour of capital punishment which holds that the death penalty serves as an effective means in deterring crime and criminals with particular reference to murder and terrorism. The thrust for putting on this argument is that, executing a criminal will go a long way to prevent many people from committing similar crime in future. Thus it necessarily implies that the death penalty or the execution of criminals should be made public where everybody in the society will see. By so doing, it will create fear in the minds of the public and those who intend to carry out such criminal acts in the future. People fear death; nobody wants to die; therefore, it is believed that nothing will deter a criminal more than the fear of death. Life in prison is less feared, and a criminal who commits serious criminal offense such as robbery or murder would prefer life imprisonment to being executed. Thus, capital punishment when used would perform a viable role in the transmission and enforcement of the unreflective attitudes of many people who take pleasure in breaking the laws.

2. Economic Reasons

Some supporters of capital punishment hold that it is more economical to execute condemned criminals than sentencing them to life imprisonment (Asogwa 215). Here, they find it difficult to understand why the government should spend more money to support or sustain people who have committed serious criminal offenses in the society. After all, it is reasoned that some criminals after spending so much on them trying to reform them through education and training in some basic skills still go back to the society to commit same crime for which they were punished. As a result of this, supporters of the death penalty argue that it is unbearable and too costly for innocent taxpayers,

and other civil workers to continually pay tax to support criminals in prison for a long time.

3. Capital Punishment brings about Justice in the Society

In the opinion of Agua, “the theory of justice which demands ‘Tooth for a Tooth and an Eye for an Eye’ is the strongest argument of the capital punishment” (94). When a criminal does an act to fulfill his selfish motives resulting into personal gains then the equilibrium of justice in society is disturbed. To maintain this equilibrium the criminal should be punished with the same intensity of punishment no matter, even if it is capital punishment. If the criminal can dare to snatch away liberty, peace, lives from any individual then the justice says that he should also be deprived of all these facilities leading to a comfortable life of the rest of the society.

4. Less damage is adopted to prevent more

Ajibola describes a criminal as “a rotten apple among the good ones, he is like a virus to the society, which can even infect others of the same disease” (102). Like a doctor excises any body part to save the life of a patient likewise, a criminal is cut out permanently from the society for the well-being of the society. Human beings live in civilized society and do not allow anyone to perform any inhuman act which causes harm or any type of discomfort to any individual. Capital Punishment is the best way to remove such diseased people from the society. Before they could spread their immoral believes to other people in order to justify their act they should be removed from the society from the “root level” (Fawehinmi 48).

5. It Eliminates negativity

Capital Punishment proves to be the best method to eliminate negative elements from the society forever thus, leading to a more humane society. Everybody likes positive environment and people around himself and these criminals especially those who perform acts which lead to hindrance of one’s freedom and life spread negativity in society which result in degradation of peace of society.

6. The Purpose of Prison:

According to Akenurt,

There are three purposes for prison. First, prison separates criminals for the safety of the general population. Second, prison is a form of punishment. Third and finally, the punishment of prison is expected to rehabilitate prisoners; so that when prisoners are released from prison, these ex-convicts are less likely to repeat their crimes and risk another prison sentence (80).

By this connection, the logic for capital punishment is that prisons are for rehabilitating convicts who will eventually leave prison, and therefore prison is not for people who would never be released from prisons alive.

7. For the purpose of Safety:

Criminals who receive the death penalty are typically violent individuals. Therefore, for the safety of the prison's guards, other prisoners, and the general public (in case a death row inmate escapes prison), then logic dictates that safety is a reason for capital punishment (83).

Arguments against Capital Punishment

The arguments against capital punishment are the various views and opinions of those who are not in support of execution as a good means of punishment for any crime in the society. Below are some of their arguments.

1. It is a violation of Human Rights

Every human being deserves the right to life. The human life in all parts of the world has been seen as the most sacred and precious gift given to us by God and as such has a special value which is quite distinct from other living things (plants and animals). It is based on this background that those against capital punishment see it as a direct violation of one's right to life when someone is killed in the name of punishment.

The Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime committed. Death penalty for them is the ultimate irreversible denial of human right; it is the premeditated and

cold-blooded killing of human being by the state; it violates human right and the right from cruel inhuman and degrading punishment (92).

2. Capital punishment is often Racial and Socially biased

It is the contention of Udechukwu that “the capital punishment is performed with in most cases in a racial manner” (61). For instance, in America, approximately 48% of the criminals in federal death row are African Americans, thus, it is advocated that Capital Punishment is used racially (78). Furthermore, it is more often used against perpetrators belonging to lower strata of society, racial and ethnic minorities rather than who come from well privileged backgrounds. Thus, the poor becomes the lone victim of this punishment.

3. Risk of Wrongful execution

The critics of capital punishment observe that capital punishment has a stamp of finality which does not give room for the criminal or the society to correct errors in the case of a person falsely convicted. In other words, capital punishment is irreversible. That is, once a criminal has been executed there is nothing else anybody can do about it even in the face of later discovery of exculpable evidence. From experience of such issues such as mistake or false testimony, inexperienced defense counsel, faulty police work, coerced confession, past crime record as well as community pressure for a conviction, etc. are some of the factors glaring enough to show that judicial system is yet to come up with measure that will effectively guarantee non miscarriage of justice. In other words opponents of capital punishment are of the opinion that many of the judgments of our courts smack of fallibility of human judgment. Seen thus, capital punishment does not offer the accused persons the opportunity of being reformed or rehabilitated (Campion 84).

4. Capital Punishment is less grave

Some people believe that Capital Punishment is awarded to those convicts who have done some serious crime such as mass murder, treason, terrorism, rape etc. Such criminals deserve more severe punishment. Capital Punishment snatches away life of the criminal in a fraction of a second, which does not lead to the repentance of the criminal. Instead, convicts should be awarded life imprisonment and they should be tortured during this punishment so that they never even dream to repeat any such act. This will also lead to set an example to

others as well as lead to satisfaction to the other party who has suffered out of the act of the convict. This also leads to further strengthen the trust of people in the Judiciary.

5. The Need for Second chance

Human beings always demand and deserve many chances in life. Offenders of Capital Punishment also put up the argument of giving a second chance to the perpetrator. This is borne from the fact that humans are believed to be imperfect. Everyone should be given a second chance to correct himself. Even the perpetrators of crime should be given this privilege. They are also human beings and in any fit of thought if he performs any inhuman activity then his whole personality should not be scaled by his act. He should be given another chance to improve himself and make himself fit for the society. Justice is for everyone. Its primary aim is to preserve life and remove crime in society, not the criminal.

6. Capital Punishment is a Social Murder

One of the objections commonly raised by opponents of capital punishment is that it amounts to murder. They accuse the government for committing murder indirectly, hereby violating the value of the human right to life, which is one of the duties and responsibilities of the state to protect against unwarranted actions by public authorities as well as private individuals. The only difference, which they put forward is that, the murder or killing in this case is not between one person and the other but, murder directed by the society against one of its members. From the biblical point of view, they also hold that capital punishment violates the sixth commandment of God which says "thou shall not kill" (Ex 20:13).

7. Capital Punishment most times fails to Deter Crime or Criminal

Just as we have stated above, those in favour of capital punishment have maintained that the death penalty is one of the best ways to deter people from committing crime; however, those against capital punishment have put on the argument, which they hold that, there is no conclusive evidence to support their claims that it deters people totally from committing crime in the society. They went further to say that, looking at societies today, one will notice that the rate of crime in states where the death penalty is still in practice as a means of punishment is higher than states or societies without the death penalty law in

practice, therefore death penalty is not the best means of deterring criminals in the society.

Effects of Capital Punishment on the Society

Death penalty is the ultimate punishment a society can impose on its citizen who has committed a serious criminal offense. If there are no punishments people in the society will do whatever they want, and when people do what they want in the society, there will be no peace, security, and the crime rate of that society will increase. Every day in Nigeria there are series of reports of crimes being committed, ranging from kidnapping, robbery, raping, etc. This makes one to wonder, if this is due to the incompetence of our law enforcement and criminal justice system that has failed or the economic state of the nation that is making people irrational or a combination of the two.

In Nigeria, offenses which attract the death penalty include armed robbery, treason, conspiracy to treason, instigation of invasion of Nigeria, treachery, fabricating false evidence leading to the conviction or death of an innocent person etc. When the death penalty is applied in the society as a means of punishing criminal, it leaves a mark on the human society, affecting its citizens in various ways.

Conclusion

Capital punishment has been part of the criminal justice system since the earliest times. This act of punishing criminals was generally acceptable by almost all nations of the world who stand out to fight against crime in the society. This system was traced back to the old Law of Moses in the bible, which states as 'an eye for an eye and tooth for tooth'. The law of an eye for eye and tooth for tooth is a primitive and barbaric law which all countries of the world who want to meet with present day's development will do all within their powers to abolish capital punishment from her laws, which governs the society with immediate effect. Though many people have different opinions about how a criminal should be disciplined in the society, but there is no one right or correct method; we cannot use one theory and abandon the other; all are needed just as the crimes are different. So criminal acts in the society should be properly investigated and the proper method of punishment should be applied, other than capital punishment.

One of the worst possible moral offenses that a human being could commit is the taking of another human life. This is because of the value the human life has on the society. Everything depends on human life, if there is no life man would not have existed at the first place, and there would have been no need for pain and suffering and inhuman maltreatment, revenge, and criminal offenses. Since man exists, and has fin himself with one form of criminal act or the other, the society should do all within her power to restore peace back to the society, Therefore, the state in carrying out her responsibility of ensuring that there is peace and order in the society, should not act in the same way or manner as the individual would act, for the individual would act in hate, anger, and revenge so that the offender should also feel the same pain felt by his victim, but the state should act as a true judge without fear or favour to defend her citizens through peaceful avenues, ensuring that there are ways of punishing criminals rather than killing them. One cannot act to preserve human lives by taking more human lives. This practically goes against the logical law of contradiction.

The death penalty violates the human right to life: Here it is said that every human being so long as he exists has the right to life whether you are old or young, rich or poor, sick or healthy. The death penalty is therefore the ultimate denial of human right to life. It is the premeditated and cold-blooded killing of a human being by the state. It is said to be cruel, inhuman, degrading and human person is seen as animals through that act of capital punishment, therefore, this research recommends that the human life should not be tampered with, rather the state should look for a better means of punishing criminal rather than killing them.

Finally, the study recommends that more job opportunities should be created for jobless youth. Looking at the society, particularly Nigeria one would notice that there is poverty, hunger, and lack of jobs for her citizen, it is also noticeable that most university graduates who have passed through difficulties to go through school are joblessly roaming the streets, which has made some of them to commit crime. It is believed that if the individuals or graduates in the country are employed or trained in some basic skills, it will go a long way to reduce the rate of crime. Due to the increase in unemployment in the country the youth have involved themselves in criminal activities such like kidnapping, armed robbery, and suicide bombing in the name of religions, all to make sure that they meet up with their responsibilities. Therefore, the research call on the government and other private organizations to create job opportunities for her citizens to keep

them away from the streets which will lead them into committing crime that can lead to capital punishment.

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