

## ***Retributivism and Death Penalty***

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**Abstract:** In this work, we want to explain our views on the death penalty by analyzing the manifestations of philosophical theories such as retributivism, consequentialism, and deontology in the death penalty: the death penalty is immoral and can be replaced by life imprisonment without parole. Likewise, we will answer the objections to our proposed theory: why the punishment of the death penalty is excessive, and why, in the context of this excessive punishment, the death penalty cannot and did not play a role in improving the overall happiness of society as a penalty should, and why life imprisonment without parole can replace the death penalty and can play a role in improving the overall happiness of society.

**Keywords:** Death Penalty, Retributivism, Consequentialism, Life imprisonment without parole

### **1. Introduction**

Whether the death penalty conforms to modern morality has long been controversial in academic circles.

This is important because retributivism, which refers to what a criminal did deserve a similar penalty, gradually prevails nowadays, puzzles people whether to resist the murders, especially when their life rights get violated. Moreover, since such a question remained unsolved for years, some people began to pursue terrorism to defend their life rights, which may bring society to wartime, according to Hobbes. Moreover, There is no doubt that the death penalty is immoral. Therefore, anyone who says the death penalty is moral is not qualified to comment on the law.

Because the law has never been judged purely based on morality, the benchmark of legal judgment is benefits, which is beneficial to the stability of the ruling class and the stability of the ruled class. Morality is a vague thing. Every place and every person has different moral standards. The law takes an intersection. Morality refers to standards that enable people to live cooperatively in groups. It is what societies determine to be "right" and "acceptable." Sometimes, acting morally means individuals must sacrifice their short-term interests to benefit society. A sound law system

should be moral, although it does not necessarily fit individual contexts. The formulation of laws is not entirely based on moral considerations. However, this does not prevent judging from a moral point of view. A thing may not conform to the requirements of moral goodness, but it may conform to the overall interests of society. However, the death penalty has set a bottom line in the hearts of all people. If we break through it, we will lose our lives. This will make criminals who have not lost their senses think about whether it is worth it when they carry out vicious events. Whether the death penalty is justified, people who have studied law and those who have not will undoubtedly have very different ideas; People who often deal with criminals and those who can only see criminals in the news also have very different ideas. They cannot imagine that some criminals have no morality and humanity and take crime as their profession. Their existence can only bring harm and pain to society.

Only the death penalty can make criminals fear living. The death penalty is a deterrent to criminals and a comfort to victims' relatives. Therefore, morality in law is a self-contradiction, making it essential to discuss among public and private sectors.

This paper argues that the death penalty is immoral. Therefore, we should abolish the death penalty, and this is important because abolishing the death penalty will keep the sovereignty of the law (or the social contract) and the respect for human rights, which will maintain the stability of society.

Because there are differences in judgment between law and morality, morality has a personal dimension, and the law must apply to all. However, the law should not be divorced from morality, or it is an accessory of power rather than a just rule.

## 2. Background

The central conflict of whether to abolish the death penalty or not exist in how people view the property of law codes. One of the differences among arguments on abolishing the death penalty in terms of how people view law codes is between retribution and rehabilitation. The other aspect that needs to be considered is how people evaluate the outcome of the death penalty. This part could mainly divide into two: consequentialism and right-based theory. Finally, people also argue about should the utility of criminals be considered or not.

First is whether people view the law as a punishment or a chance to humanize criminals. Retribution is punishment inflicted on someone as vengeance for a wrong or criminal act [1]. People who believe in retribution will tend to support the death penalty because they believe it is a right and necessary justice that should occur for criminals. Rehabilitation symbolizes the opposite side of retribution.

Rehabilitation means care that can help you get back, keep, or improve abilities that you need for daily life [2]. In the case of the death penalty, it means providing criminals a second chance to return to society by using education and mental nursing. People who believe that rehabilitation should be the case which will oppose it since they believe that punishment is only a way of making an offender pay for the crime they committed. However, it will not change one's behavior. They want to ensure that the offender learns from their mistakes and becomes a reformed citizen. In their perspective, punishment is meaningless; improving an individual is more significant and beneficial to society. Thus, in their perspective, rehabilitation is more beneficial to society than retribution.

Right-based theory and consequentialism represent the other central area of contention. Under the rights-based theory, which holds that a democratic society must protect individuals and permit everyone to pursue their own goals, the language of rights serves as the whole phrase for ethical and political theory [3]. Believers in the right-based view attempt to defend capital punishment regardless of its results, for instance, by citing the idea of retribution. Founded on the principle of rights, The justification for the death penalty is frequently cited as society's moral duty to ensure the

welfare and safety of its members. Murderers put this safety and welfare in danger. They think that the only way society can guarantee that convicted criminals do not kill again is by putting them to death. Therefore, they consider the death sentence to be necessary.

According to consequentialist theory, the results of an action determine whether it is good or bad. Utilitarianism is a significant aspect of consequentialism [4]. As a result, they give the positive outcomes of capital punishment the most excellent thought, usually concentrating on the deterrent and joy it can offer. They will select the superior solution if there are better alternatives. People tend to feel that the death penalty should be abolished based on statistics comparing incarceration costs and the death penalty because they believe imprisonment can provide more significant economic and functional benefits than the death penalty. There is still an unsolved question in this aspect: Should criminals' utility be considered? To answer this question, we should decide whether criminals should be seen as a part of our society. If he does, he should be considered involved in the social contract. Everyone in the social contract should be protected, so there should be no death forced on the criminal. What if people believe criminals are not part of the social contract? That will lead to society not having the right to judge the criminal or give any punishments since he is not in the social contract of enjoying and maintaining social peace. It is an unsolved question that leads to different results with different views.

Speaking more generally, while it is untrue, some individuals think the death penalty is less expensive than life in prison. However, those who favor its preservation believe it is vital for maintaining law and order and discouraging crime [5]. Furthermore, some also believe the death penalty should be abolished because that retribution honors the victim, helps console grieving families, and ensures that the perpetrators of cruel crimes never have an opportunity to cause future tragedy by eliminating that risk [6].

On the other side, other groups contend that it has no deterrent impact on crime, gives governments the incorrect authority to terminate human life, and perpetuates social inequalities by disproportionately targeting people of color (owing to racism) and those without access to adequate legal representation. They claim that life in prison is a more severe and affordable punishment than death. They also think that by doing this, if a case results in a mistaken judgment, there are still chances to reverse the sentence and make amends for the unfortunate criminals. Some of the reasons for the high cost of the death penalty are the longer trials and appeals required when a person's life is on the line, the need for more lawyers and experts on both sides of the case, and the relative rarity of executions (Death Penalty Information Center).

There are now 24 states in the US that permit the death sentence. Twenty-three states have eliminated the death penalty. Governor-issued moratoria have been established in California, Oregon, and Pennsylvania, stopping executions there. Americans currently support the death penalty in more significant numbers than against it: "60% of U.S. adults favor the death penalty for people convicted of murder, including 27% who strongly favor it. About four-in-ten (39%) oppose the death penalty, with 15% strongly opposed"[7]. However, what the survey reveals is unexpected: support for the death penalty is five percentage points lower than it was in August 2020. The survey was conducted on April 5, 2011, among around 5000 American adults on the Center's American Trends Panel. This represents the rising tendency of those who favor the abolition of the death sentence [8], and the reason for this is that a sizable portion of Americans have worries about how the death sentence is applied and doubt that it deters people from committing major crimes [9].

### 3. Main Argument

Our question is whether the death penalty is moral, and should we abolish the death penalty even for the worst crime? We will assume that the death penalty is immoral, and we should abolish the death penalty even for the worst crime.

We will address our position from the following two aspects.

A. We cannot guarantee that the trial process will be free from arbitrariness and discrimination.

The arbitrariness and the discrimination of society seem irrelevant to our moral reasoning. However, we can analyze why the death penalty is immoral from the perspective of different philosophical schools.

First, we must admit that there is discrimination today: racism, sexism, and sexual orientation discrimination... All these discriminations have the potential to play their part in discretion; racial inequality may play a significant role in all these discriminations.

These discriminations not only have irreversible effects on the outcome of the trial through discretion during the trial process but even have irreversible consequences for life in death penalty cases; similarly, we must also consider the contribution of discrimination to vicious cases in society. These discriminations plant the seeds of crime in the growth process of criminals and may also be the last straw that motivates them to commit crimes.

The impact of discrimination goes two ways-the. The first tells us that we share the pre-criminal causes; the second tells us that discrimination at trial makes the death penalty more immoral. I will explain this point through two examples.

First, let us imagine a scenario. An African American who grew up in a slum, because of economic reasons, he cannot guarantee food and clothing and is always worried about whether his home will be overturned; he has no conditions to receiving education, and all his cognitions about society and the world, which is "socialized behaviors," is learned from the environment in which he lived since he was a child, so those social rules that should be well-known in the eyes of ordinary people may not exist in his cognition. When he was 18, the age of civil liability, one day, a man made an insulting remark about his race, family, or upbringing. He killed the man—because his upbringing told him that if he did not resist, he would be oppressed - so what we must think about is, is this vicious case entirely the responsibility of this African American? The poor growing environment in which he was raised and the inability to receive an education were due to the government's absence in social welfare and security; the immediate reason for his killing was hearing insults about his race, family, and growing environment, and these insults It is due to the social level, that is, "us," we build these discriminations against some specific groups.

Second, when we come to the trial. Again, under the social discrimination above, how can we make sure that there is no discrimination in the process of the trial?

So, on a societal level, we share the pressure that society puts on them; in other words, we collectively bear the cause of their crimes.

We may set a premise: everyone's happiness is the same. Under this premise, consequentialists view the death penalty as moral since they advocate that the criteria for judging whether an action is good or bad depending on the result produced the result of the action, which means it looks at what would make the most people happy, which means it is only concerned with the consequences of an act. Therefore, although the consequence of the death penalty is killing the prisoner, consequentialism would view this as moral since it helps society increase its overall happiness. By killing the prisoner, the victim's family would be happy at the justice being dispensed. The rest of society would be satisfied because they would feel safer knowing that prisoners can never escape and harm themselves or their families.

Consequentialists will also take the well-being of the perpetrator into account. However, as far as the happiness of the perpetrator is concerned, the victim's death can enhance the overall happiness of society. Because when the criminal survives, the panic he causes in society and the possibility of committing a second crime will reduce the overall happiness of society, and the decrease in the overall happiness of the society is much higher than that of the individual criminal.

We doubt that is death penalty indeed increases the maximum happiness of society. Under the

logic of consequentialism, what we do should be to improve the overall happiness of society. Arbitrariness and discrimination in discretion, as we mentioned above, and imperfection in government support measures - arbitrariness and discrimination in discretion can lead to incorrect results of trials, and this inaccuracy can reduce people's confidence in justice and trust in the judiciary, which reduces the overall happiness of society.

The consequentialist question about the second crime of criminals who do not execute the death penalty, we will give the answer and solution in the next point.

B. We believe life imprisonment without parole can replace the death penalty.

As we have mentioned in opinion A, today's judicial system is still imperfect, and the arbitrariness and discrimination in the trial process make the death penalty uncertain, which should be a deterministic sentence.

Consequentialists, however, take the deterrence theory. However, based on the possible arbitrariness and discrimination in the trial process, we might have to ask: does the consequentialist theory of deterrence work as it should?

Our answer will be "no." In thirteen of the states studied, executions at a rate below the threshold increased the murder rate through what the researcher deemed a "brutalization effect" by which capital punishment worked to devalue human life and affirm the legitimacy of retaliatory violence [10], which tells us death penalty will not solve the problem at the source. However, it will make society follow the logic of retribution because of the cruel effect. On the other hand, life imprisonment without parole, on the premise of having the same or even better deterrent effect, solves the social crime problem while alleviating society's adverse reaction to the realization effect. So, there is no guarantee that the death penalty enhances the deterrent effect on society rather than the opposite cruel effect [11].

Based on the above arguments, we can see that the death penalty can neither improve the overall happiness of society nor play the most basic deterrent effect on society, so we propose life imprisonment without parole, which we believe can replace the death penalty, and in the process of punishment avoid the social problems that may arise from the death penalty.

As Justice Brennan wrote in *Furman v. Georgia*:

*If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, it is unnecessary and, therefore, excessive [12].*

We believe that life imprisonment without parole is a better option. It is not a "one-shot deal" compared to the death penalty. Today, when the judicial system and discretion are not perfect, a penalty model with a higher error-tolerance rate can better improve the overall happiness of society and can also answer and solve the consequentialist fear of criminals' second crimes and other issues.

Also, life imprisonment without parole somehow abandons the logic of retributivism, follows the logic of "contract," and the respect for human beings. From the perspective of consequentialism, life imprisonment without parole can provide the same deterrent to society while maintaining the authority of the law, and at the same time, it can satisfy the happiness of criminals and maximize the overall happiness of society by safeguarding the human rights of criminals; From the perspective of deontology, life imprisonment without parole preserves human dignity while avoiding the causal cycle of retribution.

#### 4. Objections to the Position

Our main arguments hold on to the position that the death penalty is immoral which we should abolish. However, some questions still query our position to enable us to consider whether it is moral to abolish the death penalty.

We have three objections corresponding to our arguments.

A. The death penalty will help bring about a more stable society and alleviate racism.

To weigh whether the death penalty is moral, we cannot just consider the behavior of the death penalty itself but also think more about the social effects that most consequentialists will focus on.

First, the death penalty's primary influence on society is its deterrence. When a state or government decides to use the death penalty, in many cases, it is because the death penalty would prevent the next series of serious crimes. People care most about their death, and when something threatens their life, they will get incessant fear, and that thing will always be a yoke for people to open, to step into death. In this way, if people know they will die because they kill, they will stop killing others to keep their lives.

Secondly, many murder cases are due to racial discrimination. So, when judging these cases, we can put all racialists to death to warn people not to be racist with the price of blood. However, if we abolish the death penalty, we will intensify racism. The death penalty has always been the most profound way of executing people; if we do not use such a way to treat discriminating cases, citizens may think we do not give enough focus and do not care about people. Of course, we cannot suppose the same scenes if we do not use such a widely-regarded, cruel way to punish the murders, but we could imagine that there will be lots of parades and retaliatory behaviors from black people happen. The results it causes will not only be the loss of economy and stability but also leaves worse impressions on some white people, which will aggravate the discrimination.

So, after listing the consequences of not deducing the death penalty, we will hold on to the opposite opinion. We seem to break up the Declaration of Human Rights [13]. However, we pave the way for a long-term holding on our position.

B. The death penalty complies with most people's compassion and empathy to help establish justice.

The death penalty will not enable people to be revanchism, but instead make people feel full of justice in their country, which will improve the prestige of a country.

Firstly, if we wonder whether people's sympathy or their malice will be destroyed or increased, we should clarify what they think about when facing these murder cases. Tracing back to the 20th century in Europe, World War II, we regarded many commanders as prominent murderers. We put them to death whatever of the verdict of countries or suicide like Hitler, Vlasov, and so on. The execution of these commanders or videlicet, an enormous murder, is from countries, and courts convict the crimes. However, the decision is affected partly by citizens' public opinions, and most people do not deny such a decision. Accordingly, we can know that people will not forgive and permit the existence of a large murder. The reason why people largely agree with the execution is partly from the fear of another large-scale massacre, the fear of hurting their own lives. Therefore, by allowing the execution of extensive murders, people will also permit the verdict of little murders when considering their lives. So, it is wrong to say that executing the death penalty is opposed to public opinion or exaggerates people's malice.

Moreover, deontologists always advocate that human rights are inalienable [14] and that we should not kill anyone, especially on a legal level. However, how can the innocent victims killed by murderers enjoy their life rights? Their death is against their rights and will. The murderers even have a chance to have lawsuits to help defend themselves. So, considering the rights lost by victims, it will also violate deontology. Since we can never weigh the value of the lost rights of both sides and so make clear that it is worth killing the murders as a 'pay-back' for victims in a deontology way, it will always become a paradox if we solve such a problem by arguing 'inalienable human rights'.

C. Life imprisonment will not be enough to replace the death penalty on the side of victims' families.



We should consider two aspects to compare the effects of these two different ways of punishment. The first effect is for the stability of society (will the rest of the citizens enjoy more benefits from such a punishment?), while the other is for the victims' justice (could the victims accept such a punishment).

For the first aspect, some may argue that the death penalty will have less deterrence. Before answering this question, we can first talk more about life imprisonment. To some murderers, putting them into prison may decrease their influence on society for a short while, but they will affect the other prisoners. Loneliness will bring people fears, and murderers, after they are alone, will think about what they do. In many cases, murderers would still have their reason in mind, so they are thirsty for forgiveness. However, since the crimes they committed are not worth it and the price is too high to overwhelm what they want, murderers, in most cases, will not forgive themselves. Extreme insanity needs places to relieve, and according to psychiatrists [15], fear sometimes leads people to kill others. In this way, it will even have some murder cases in jails, and at the same time, once this kind of thing happens, the other prisoners will all have their fear, and the chaos in jail will seem inevitable. As a result, we should not allow life imprisonment; in this case, the death penalty will be the best way.

More importantly, many prisoners still have their families, and by hearing their love is killed by a murderer who will never own his free life, they will parade and protest with no doubt. Accordingly, there will be a considerable disorder that will cause lots of death and loss again. Thereby, the evil influence of imprisonment will lead us to pursue the death penalty.

For the second aspect, the victim's family, will they accept the existence of the murderer who killed their love? If they fall in abolishing the death penalty but agree with it, will we follow their will? If we put the murderers to death, will we say that it is not moral since we just follow the victims' legal will? If we do not put murderers to death to leave the pain to the victims' families, is such a way moral as we state? These questions will always put us thinking.

## 5. Answers to Objections

Our objections are opposite to the main arguments with three statements. However, there is also some weakness in our objections. Therefore, I will reiterate that the death penalty, in what cases is immoral, and I will refute each of them to strengthen my arguments.

### A. Fighting violence with violence will always be wrong.

We consider whether the death penalty is moral because we cannot accept the killing itself. Such a way will disturb people's everyday living, and according to religions, God also gives the worst consequences to killers but not lets them die directly. In this way, if we allow the death penalty, it will also contradict our beliefs. For the murderers' families, the death penalty will again bring another pain. The key to executing people is to bring society more stability and happiness. The death penalty should be allowed in both aspects.

### B. We should advocate the correct value instead of following with people even when wrong.

Among all the cases, we should keep the basic rule in mind that physical killing, which is permitted by law, will always be wrong. When a person kills others, he will become a serial killer after recognizing the final consequence, which he will be put to death. The seemingly justified way will bring society more potential danger in this case. At the same time, people advocate the death penalty, mainly because most of them do not recognize the impacts that imprisonment without parole will bring to people. The loss of freedom and loneliness will have both physical and mental effects, which will be a kind of prolonged torture, so it will be enough to comfort the victims and their families.

C. Life imprisonment would prevent the chaos in jails by giving some particular grounded ways.

The share of the same jail cell would bring some chaos, considering some murderers with talent as leaders. We can divide prisoners into different kinds and put them in different places. However, some deontologists would argue that the prisoners would earn a peaceful life. They will pay less effort and energy but still get enough supplies, the price of which would not be so fair. To answer such a doubt, we should clarify that loneliness is the most significant punishment for imprisonment without parole. People could not stay in a highly silent house for 45 minutes from the experiment of Orfield Labs in Minnesota. We could not make such a house for prisoners like the experiment, but the same point as the laboratory is loneliness. The mental punishment would be more severe than other kinds of punishment. In this way, the seriousness of imprisonment will be crueler but more humanitarian than the death penalty.

## 6. Conclusion

In current society, the topic of the morality of the death penalty has never failed to attract the public's attention, yet there is still no final verdict on whether it should be executed has been made. This paper considered different backgrounds of the discussed topic; on this base, the authors defended their stance by using reduction to absurdity, stating supportive evidence, and contradicting three mainstream opposite perspectives. First is the influence subjectivity has on the impartiality of the jurisdiction. Secondly, the protection law should give to the fundamental equaled human rights of survival, and finally, the goal of the death penalty -- to let the criminals truly repent, realize the harmless and injustice of their misdeed, and finally transform the individual spiritually. At the same time, a negative example of others, violating the standard rule of the whole society, could be made to reduce the overall crime rate in the society, make the society conducive to people's cooperation, and protect citizens' everyday lives from the human rights of everyone being trespassed. Although the appliance of the death penalty depends on specific cultural backgrounds, also, in the point of death penalty supporters, The core of retributive justice is that punishment should be imposed on the offenders themselves[16]; still, utilizing pure Retributivism in the general law of punishment is not acceptable, since all citizens have given up their rights to revenge subjectively to sign up a social contract. Every human being should share the fundamental equal human rights, which is to survive without others' interference. Furthermore, replacing the death penalty with other imprisonments could soothe the conflicts between the government and criminal groups. There is a chance to moralize them, though it is tiny.

This study is devoted to proving its effect on shaping the morality concept of modern jurisdiction that law should be set based on the goal of maximizing total social value. It also strikes the typical expression of Retributivism on designing a law, using consequentialism and deontology perspectives in formulating jurisdiction. Life imprisonment is considered a substitution for the death penalty applied in all applicable charges. Based on former research [17], the death penalty could not reduce the total cost of social sources. Instead, life imprisonment without parole could be more effective in decreasing the social crime rate while alleviating the adverse reaction of society to the realization effect.

Although this study has objectively discussed the morality and feasibility of the death penalty from both sides, it lacks solid data support. Since the concrete execution in applicable law is set depending on specific cultural backgrounds and some special considerations, data that show the apparent correlation between the execution of the death penalty and the social crime rate could only be found in some specified areas, which are not representative to get a general conclusion through the evidence. Extending studies such as whether it is entirely proper to replace the death penalty with lifelong imprisonment or something that could reflect on the death penalty's influence on total



social value and considerations of remedial work after abolishing the death penalty could be conducted. Finally, in any case, my argument is, at most a philosophical attempt to address problems. How to apply it to the practice of the legal system is a question to be tackled in a future project.

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