

The Incompatibility of Capital Punishment with Contemporary International Human Rights: A Comparative Legal Case for Abolition

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Abstract: The paper analyzes capital punishment through multiple analytical lenses, including historical development, questions of proportionality and fairness, execution methods, alternative sanctions, penological objectives, and compatibility of capital punishment with fundamental human rights within international legal frameworks. Using comparative legal methodology across various jurisdictions, the study evaluates capital punishment against established international standards. The research addresses four key questions: compatibility with modern human rights standards (particularly the right to life); effectiveness as a deterrent; comparative advantages of alternative punishments; and emerging trends in international legal practice. The findings reveal that capital punishment creates fundamental tension with human rights protection, treating human life not as inviolable but as subject to state jurisdiction. Research identifies a clear international trend toward restricting capital punishment and adopting alternative sanctions that better align with human dignity principles. Modern international law increasingly encourages states to abolish the death penalty in favor of alternatives compatible with human dignity and international human rights standards.

Keywords: Capital Punishment, Human Rights, International Law, Death Penalty, Abolition, Human Dignity, Right To Life, Comparative Legal Analysis

Introduction

The practice of capital punishment stands at a critical juncture in international legal discourse, representing an increasingly contested intersection between state penal sovereignty and evolving human rights norms. While historically employed as the ultimate sanction for serious crimes across diverse legal systems, the death penalty now faces mounting challenges to its juridical legitimacy. This tension stems from the progressive development of international human rights law, particularly the codification of the right to life as a foundational principle that many scholars and institutions now argue should be absolute and inviolable.

In the 21st century, capital punishment has transcended its traditional characterization as a purely domestic criminal justice matter to become a prominent issue of international concern. Currently, approximately 55 sovereign states maintain the death penalty in their legal frameworks, while over 70% of nations have abolished it either *de jure* (in law) or *de facto* (through established moratoriums on executions) (World Population Review, 2024). This stark numerical reality reflects a significant normative shift: a growing international consensus that state-sanctioned execution constitutes a fundamental violation of human rights that cannot be reconciled with principles of human dignity.

This global trend toward abolition finds expression in key international instruments. At the universal level, the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) represents the primary treaty specifically aimed at eliminating the death penalty worldwide (United Nations, 1989). Regional frameworks reinforce this commitment, most notably Protocol No. 6 to the European Convention on Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (1983), which has effectively rendered Europe a death-penalty-free zone (Council of Europe, 1983). Together, these instruments signal an emerging customary international norm against capital punishment.

Research Questions and Objectives

This paper undertakes a comprehensive examination of capital punishment through the lens of international human rights law, guided by four central research questions:

Compatibility Question: Is capital punishment compatible with contemporary international human rights standards, particularly the right to life?

Efficacy Question: Does capital punishment function effectively as a crime deterrent compared to alternative sanctions?

Alternatives Question: What are the comparative advantages of alternative punishments (particularly life imprisonment) evaluated against criteria of proportionality, reversibility, cost-effectiveness, and alignment with human dignity?

Trajectory Question: What are the emerging trends in international legal practice regarding capital punishment, and what do they suggest about the future of state-sanctioned execution?

Central Argument

This analysis advances the argument that state authority to impose capital punishment is fundamentally irreconcilable with the core tenets of human dignity and justice that underpin modern international law. The inherent right to life, we contend, must be regarded as absolute—not subject to forfeiture regardless of the nature or severity of the offense committed. This position rests on several interconnected grounds: the irreversibility of execution considering systemic judicial fallibility; the impossibility of implementing capital punishment without violating prohibitions against cruel, inhuman, or degrading treatment; the absence of credible evidence for superior deterrent effects; and the discriminatory patterns that consistently characterize its application.

Methodology

The study employs a comparative legal methodology that examines capital punishment practices, legal frameworks, and judicial reasoning across multiple jurisdictions and historical periods. The analysis proceeds through several integrated approaches:

Historical analysis: Tracing the evolution of capital punishment across different legal traditions to identify persistent tensions between state lethality and principles of proportionate justice.

Doctrinal analysis: Examining treaty provisions, constitutional frameworks, and judicial interpretations from international, regional, and national tribunals.

Empirical analysis: Evaluating statistical evidence regarding deterrence, costs, error rates, and demographic patterns in capital punishment's application.

Normative analysis: Assessing capital punishment's compatibility with established human rights principles and evolving standards of decency.

Historical Analysis of Capital Punishment

An examination of capital punishment's historical trajectory serves several analytical purposes for this study. First, it demonstrates that contemporary concerns about arbitrariness, cruelty, and disproportionality are not recent developments but have been embedded in debates about state-sanctioned execution for millennia. Second, it reveals a recurring pattern: states have repeatedly attempted to 'reform' capital punishment through procedural modifications or changed execution methods, yet these reforms have consistently failed to resolve the fundamental tension between taking human life and respecting human dignity. Third, historical analysis illuminates how capital punishment has been instrumentalized across diverse political systems to serve state interests beyond legitimate penological objectives—from political repression to social control to religious enforcement.

This section examines three legal traditions that have significantly influenced modern jurisprudence: Roman law (foundational to Western legal systems), Chinese imperial law (representing East Asian legal philosophy), and Revolutionary French law (marking a key transition toward modern penal theory). These case studies were selected to provide geographic and temporal diversity while focusing on well-documented legal systems that have shaped contemporary approaches to criminal punishment.

Capital Punishment in Ancient Rome

Roman jurisprudence, foundational to Western legal traditions, institutionalized capital punishment within codifications as The Twelve Tables (*Lex Duodecim Tabularum*), codified around 450 BCE, enumerated specific capital offenses including false testimony in capital cases, writing insulting songs, and destroying another's crops through magic (BBC, 2024). However, the legal protection for citizens—including the right of *provocatio* (appeal to the popular assembly)—meant that capital punishment was often commuted or avoided through voluntary exile. The situation changed dramatically during the Dominate period (284-476 CE), when autocratic consolidation of power removed many procedural safeguards. The range of capital offenses expanded considerably, and execution methods became increasingly brutal, with crucifixion reserved for slaves and non-citizens, while beheading was considered a more honorable death for Roman citizens.

The Roman experience demonstrates several enduring problematic aspects of capital punishment. First, execution methods were explicitly designed to inflict humiliation and physical suffering, serving as public spectacles rather than proportionate punishment. Second, application was deeply unequal: citizens enjoyed procedural protections and more humane execution methods unavailable to slaves and foreigners. Third, the state wielded capital punishment as an instrument of political control, particularly during periods of autocratic rule. These characteristics—cruelty, inequality, and political instrumentalization—would persist throughout subsequent millennia of capital punishment practice.

Capital Punishment in Tang Dynasty China

The Tang Code (*Tanglü Shuyi*, 653 CE), one of the most influential legal codes in East Asian history, established a sophisticated five-punishment system in which death constituted the most severe sanction. The Tang Code specified approximately 233 capital offenses, including treason, rebellion, parricide, and certain forms of theft (Smithsonian Institution, 2024). Execution methods included beheading (for ordinary capital crimes) and strangulation (considered less severe as it preserved the body's integrity, an important consideration in Confucian culture). The code also provided for the Autumn Assizes, a systematic review process wherein all death sentences required imperial confirmation, establishing an early form of mandatory appellate review.

Despite these procedural refinements, the Tang system exhibited fundamental tensions. Capital punishment was theoretically reserved for the most egregious offenses, yet the expansive list of capital crimes undermined this proportionality principle. The mandatory review process, while progressive for its era, could not compensate for the irreversible nature of execution. Moreover, the system operated within a rigidly hierarchical social order where penalties varied according to social status, reinforcing rather than challenging inequality. These features illuminate a recurring historical pattern: procedural reforms cannot resolve the fundamental incompatibility between capital punishment and principles of equal justice and human dignity.

The Guillotine in Revolutionary France

The adoption of the guillotine in Revolutionary France represents a pivotal moment in the history of capital punishment, embodying Enlightenment principles of equality and humanitarianism while simultaneously facilitating mass state killings. Dr. Joseph-Ignace Guillotin proposed the

device in 1789, arguing it would provide a swift, painless, and egalitarian method of execution, contrasting with the drawn-out, agonizing executions previously reserved for commoners while aristocrats enjoyed the privilege of beheading (Age of Revolution, 2024). The guillotine was first used on Nicolas Jacques Pelletier on April 25, 1792, for the crime of armed robbery and assault (Dirk de Klein, 2025).

The French experience reveals a profound paradox: the attempt to make capital punishment more humane and equitable ultimately demonstrated its fundamental incompatibility with these values. While the guillotine eliminated certain forms of physical torture and class discrimination in execution methods, it also facilitated the Reign of Terror (1793-1794), during which approximately 16,000 people were officially executed, with estimates of total deaths reaching 40,000. The mechanization and rationalization of execution, far from limiting its use, enabled its expansion. This historical episode demonstrates that technical and procedural reforms cannot address the core moral and legal problems inherent in state-sanctioned killing.

Contemporary Practices and Global Trends

As of 2024, the global landscape of capital punishment reflects a stark divide between retentionist and abolitionist states, with a clear trend toward restriction and abolition. According to the Death Penalty Information Center (2024), approximately 55 countries maintain the death penalty in law and practice, while 144 countries have abolished it either in law or practice. The majority of executions worldwide occur in a small number of states: China (thousands estimated but exact figures undisclosed), Iran (at least 853 in 2024), Saudi Arabia (over 170), and the United States (24 in 2024).

Within retentionist jurisdictions, execution methods vary significantly, raising distinct human rights concerns. Lethal injection, employed primarily in the United States and China, has been plagued by botched executions resulting from drug shortages, improper protocols, and lack of medical expertise (Death Penalty Information Center, 2024). Notable cases include Clayton Lockett in Oklahoma (2014), whose execution took 43 minutes and involved apparent consciousness and distress; Romell Broom in Ohio (2009), who survived a two-hour failed execution attempt; and Angel Nieves Diaz in Florida (2006), whose execution took 34 minutes due to improper needle placement. These cases demonstrate that even ostensibly 'humane' methods cannot guarantee dignity or prevent suffering.

In several Middle Eastern nations, execution methods include beheading, stoning, and hanging, often carried out in public. Iran Human Rights (2025) documented that Iran executed at least 853 people in 2024, including individuals convicted of drug-related offenses and crimes committed as juveniles, in direct violation of international human rights standards. These practices reflect not only the persistence of capital punishment but also its application in ways that manifestly violate prohibitions against cruel, inhuman, and degrading treatment.

International Legal Framework

The international legal framework regarding capital punishment has evolved significantly since the adoption of the Universal Declaration of Human Rights (1948), which recognized the inherent right to life (Article 3) while not explicitly prohibiting the death penalty (United Nations, 1948). The International Covenant on Civil and Political Rights (ICCPR, 1966) represented a crucial advancement, establishing in Article 6 that every human being has the inherent right to life and that this right shall be protected by law (United Nations, 1966). While Article 6 permitted capital punishment for the most serious crimes, it imposed significant restrictions and encouraged abolition.

The Second Optional Protocol to the ICCPR, adopted in 1989, marked a definitive shift toward abolition by committing States Parties to abolish the death penalty within their jurisdictions (United Nations, 1989). As of 2024, 90 states have ratified this protocol,

demonstrating substantial international commitment to abolition. Regional instruments have reinforced this trend. Protocol No. 6 (1983) and Protocol No. 13 (2002) to the European Convention on Human Rights have effectively eliminated capital punishment across Europe. The American Convention on Human Rights (1969) restricts capital punishment and prohibits its reintroduction in states that have abolished it (Organization of American States, 1969).

These legal developments reflect an emerging norm of customary international law against capital punishment. While not yet achieving universal prohibition, the trend is unmistakable: modern international human rights law increasingly regards capital punishment as incompatible with fundamental rights, particularly the right to life and prohibitions against cruel, inhuman, or degrading treatment.

Fundamental Incompatibilities with Human Rights

Irreversibility and Judicial Error

The irreversible nature of capital punishment creates a fundamental tension with the inevitable fallibility of human justice systems. Since 1973, at least 200 people in the United States have been exonerated from death row, having been wrongfully convicted of capital crimes (Death Penalty Information Center, 2024). These exonerations represent only discovered miscarriages of justice; the actual number of innocent people executed remains unknown and unknowable.

Prominent cases illustrate this crisis of legitimacy. Cameron Todd Willingham was executed in Texas in 2004 for allegedly setting a fire that killed his three daughters, despite subsequent forensic analysis demonstrating that the fire science used to convict him was flawed (Innocence Project, 2024). Frank Lee Smith died of cancer on Florida's death row in 2000, and DNA testing conducted after his death proved his innocence. These cases demonstrate that no procedural safeguards, however rigorous, can eliminate the risk of executing innocent people. The irreversibility of execution transforms every miscarriage of justice into a violation of the most fundamental human right—the right to life.

Cruel, Inhuman, or Degrading Treatment

Capital punishment inherently involves elements of cruelty that cannot be eliminated through procedural or methodological reforms. The extended period of incarceration preceding execution—often spanning years or decades—creates unique psychological suffering known as 'death row phenomenon.' Condemned individuals endure the anguish of anticipating their own execution, often without a definitive date, while observing other prisoners being taken to their deaths. International human rights bodies, including the European Court of Human Rights and the UN Human Rights Committee, have recognized this prolonged uncertainty and psychological torment as potentially constituting cruel, inhuman, or degrading treatment.

Moreover, no execution method can guarantee a dignified or painless death. As documented earlier, botched executions continue to occur even with ostensibly humane methods like lethal injection. The very act of state-sanctioned killing, regardless of method, treats the human person as an object to be disposed of rather than as a being possessed of inherent and inviolable dignity. This fundamental reduction of personhood constitutes a form of degradation that no procedural refinement can remedy.

Absence of Deterrent Effect

A cornerstone argument for capital punishment—that it deters crime more effectively than alternative sanctions—lacks credible empirical support. A comprehensive study by the National Research Council (2012) concluded that research to date on the effect of capital punishment on homicide rates is not informative about whether capital punishment decreases, increases, or has no effect on these rates. The council recommended that claims that the death penalty does or does

not affect homicide rates should not influence policy decisions until research designs can be improved.

Comparative analysis reinforces this conclusion. States and countries that have abolished capital punishment have not experienced increases in murder rates; many have seen decreases. Canada abolished capital punishment in 1976, and its murder rate has since declined by approximately 40%. Similarly, European nations that abolished the death penalty have some of the lowest homicide rates globally. This evidence strongly suggests that factors such as socioeconomic conditions, certainty of apprehension, and quality of policing influence crime rates far more significantly than the theoretical threat of execution.

Discriminatory Application

Capital punishment systems consistently exhibit patterns of discrimination based on race, socioeconomic status, and geographic location. In the United States, defendants accused of killing white victims are significantly more likely to receive death sentences than those accused of killing victims of other races, regardless of the defendant's race. Individuals unable to afford competent legal representation face dramatically higher risks of execution. Geographic disparities are equally stark: certain counties impose death sentences at rates vastly exceeding national averages, reflecting the influence of local prosecutors and judges rather than any principled application of law. These patterns of discrimination violate the fundamental principle of equality before the law. Capital punishment cannot be applied in an arbitrary manner consistent with human dignity and the rule of law. The persistent, well-documented discrimination in its application demonstrates that capital punishment systems inevitably violate equal protection principles, rendering them fundamentally incompatible with international human rights standards.

Alternative Sanctions

Life imprisonment, particularly life without the possibility of parole (LWOP), provides a viable alternative to capital punishment that satisfies legitimate penological objectives while respecting human dignity. LWOP ensures permanent removal from society of individuals who pose ongoing dangers, thus protecting public safety. It allows for the possibility of exoneration if new evidence emerges, unlike execution. It also avoids the unique cruelty of state-sanctioned killing while still imposing severe punishment proportionate to the most serious crimes.

Moreover, life imprisonment is significantly less costly than capital punishment. Studies consistently demonstrate that death penalty cases cost substantially more than equivalent life-without-parole cases due to the extensive appeals process, specialized legal representation, and enhanced procedural requirements. A 2016 study in Oregon found that each death penalty case cost the state an average of \$2.3 million more than a comparable murder case (Oregon Justice Resource Center, 2016). These resources could be redirected toward crime prevention, victim services, and improvements to the criminal justice system.

Life imprisonment also better serves the interests of victims' families. While some family members may initially desire execution, research demonstrates that the prolonged appeals process in capital cases often prolongs trauma and prevents closure. Many families of murder victims have advocated for abolition, recognizing that life imprisonment provides certain punishment without the years or decades of legal proceedings that characterize death penalty cases.

Conclusions

This comprehensive analysis demonstrates that capital punishment is fundamentally incompatible with contemporary international human rights law and the principles of human dignity that underpin modern legal systems. The practice fails to satisfy any legitimate penological objective that cannot be achieved through alternative sanctions while creating unique harms and violations of fundamental rights.

The irreversible nature of execution, combined with the demonstrable fallibility of human justice systems, creates an unacceptable risk of executing innocent people. No procedural safeguards can eliminate this risk, and the documented cases of wrongful convictions reveal that miscarriages of justice are not rare aberrations but systematic failures. The execution of even one innocent person constitutes a violation of the right to life so egregious that it cannot be justified by any purported benefits of capital punishment.

The inherent cruelty of capital punishment, manifest in both the death row phenomenon and the botched executions that continue to occur, violates prohibitions against cruel, inhuman, or degrading treatment. The reduction of human beings to objects to be eliminated fundamentally contradicts the principle of human dignity that serves as the foundation of international human rights law.

The absence of credible evidence for superior deterrent effects undermines the primary utilitarian justification for capital punishment. Comparative analysis across jurisdictions demonstrates that abolition does not lead to increased crime rates, while alternative sanctions like life imprisonment adequately protect public safety without compromising human rights.

The persistent, well-documented patterns of discrimination in capital punishment's application violate the principle of equality before the law. These discriminatory patterns are not incidental flaws but inherent features of discretionary sentencing systems involving life-or-death decisions.

The global trend toward abolition, reflected in international instruments, regional frameworks, and national practice, indicates an emerging norm of customary international law against capital punishment. While this norm has not yet achieved universal recognition, the trajectory is clear and irreversible.

Therefore, this study concludes that states maintaining capital punishment should abolish it in favor of alternative sanctions, particularly life imprisonment without the possibility of parole. Such abolition would bring these states into alignment with evolving international human rights standards, eliminate the risk of executing innocent people, end the cruel and degrading treatment inherent in state-sanctioned killing, address persistent patterns of discrimination, and redirect resources toward more effective approaches to crime prevention and justice. The right to life, properly understood, must be absolute and inviolable—not subject to forfeiture through state authority. Only through abolition can states fully respect human dignity and fulfill their obligations under international human rights law.

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