

Determinants of the Death Penalty

A comparative study of the world

Carsten Anckar

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Determinants of the Death Penalty

The death penalty is a highly emotive subject which leaves few people unaffected and has been written about extensively. However, in spite of this, there has been no even-handed and comprehensive theory of the issue until now.

Determinants of the Death Penalty seeks to explain the phenomenon of capital punishment – without recourse to value judgments – by identifying those characteristics common to countries that use the death penalty and those that mark countries which do not. This global study uses statistical analysis to relate the popularity of the death penalty to physical, cultural, social, economical, institutional, actor-oriented and historical factors. Separate studies are conducted for democracies and non-democracies and within four regional contexts. The book also contains an in-depth investigation into determinants of the death penalty in the USA.

This book is an important reference for those studying the death penalty across political science, sociology and legal studies.

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This book is dedicated to Maja and Dag Anckar

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Preface

The death penalty is a highly controversial and much debated issue, especially in the industrialized and democratized world. This fact notwithstanding, the reader who expects to find arguments either for or against the death penalty within the frames of the present book will be disappointed. It is my firm opinion that far too many of the works related to the death penalty have been permeated with the authors' personal views on the subject. It is my sincere hope that this book will fill a lacuna in the literature on the death penalty by contributing to the empirical theorybuilding in the field. The ambition of the present book is simple and straightforward: to identify the determinants of the death penalty in the world, nothing more, nothing less.

Since this is a global comparative study, the persons to whom I am indebted are not few in numbers. Let me begin by extending my gratitude to my mentor, colleague and friend, Professor Lauri Karvonen at the Åbo Akademi University who was the one who came up with the idea of studying the determinants of the death penalty. Needless to say, the collection of the empirical material has sometimes demanded a lot of efforts. The bulk of the material has assiduously been collected by Krister Lundell and Patrik Fagerström. Not surprisingly, exact numbers of executions was extremely hard to obtain for many countries. Without the generous help of Amnesty International and especially its Finnish Head Director, Frank Johansson, the task of gathering even approximate figures would not have been completed. I also extend my gratitude to Professor Felix Bethel of the University of Bahamas for an eye-opening discussion of the death penalty in the Caribbean. Furthermore, I would like to thank Peter Burnell of the University of Warwick and Guy-Erik Isaksson and Kimmo Grönlund, Åbo Akademi, for much appreciated tips on literature and suggestions of corrections of the text. Furthermore, I wish to thank all my colleagues at the Department of political science at Åbo Akademi (no-one mentioned, no-one forgotten) for providing me with a stimulating research environment.

During the writing of this book I have enjoyed a three-year fellowship at the Academy of Finland. I am grateful to the Academy for financing the project and for giving me the opportunity to focus entirely on the book. During the same period I have enjoyed a leave of absence from my position as Senior Lecturer at the Mid-Sweden University. I especially want to thank professor Göran Bostedt for giving me the opportunity to focus entirely on this project despite difficulties in filling my vacancy.

The completion of the book has been a time-consuming effort and I thank my wife Oxana for her indulgence with my mental and physical absence. Finally, I wish to express my gratitude to my parents for providing me with the ideal milieu in which to grow up. In my childhood home, creative thinking was, and is, ever-present.

Carsten Anckar

1 Mapping the death penalty

Introduction

Ever since humanity developed the capacity to think, the relation between the individual and the society has occupied the minds of philosophers. In every society where rules are formulated, the rights of the individual must be related to the rights of the society. Logically, these rights are in a state of opposition; the more rights the individual has, the smaller the sphere of rights confined to the society and vice versa. Since the list of authors that throughout the centuries have pondered upon the relation between the individual and the society is impressive (Rousseau 1900; Locke 1967; Rawls 1971; Mill 1972; Nozick 1974; Aristotle 1991, to name but a few), it is of course an understatement to say that the literature that covers the field is abundant. With all the evidence at hand it is fair to ask what we have learnt about this relation. The answer is, unfortunately, not much. All the works cited above have left us with very few clues to the best way to arrange the relation between the individual and the state. When it comes to it, ideas of the “best” society ensue from the personal opinions of the authors.

So why then embark on a journey that evidently does not have an end? The obvious answer is to not embark on such a journey. The present work therefore does not have the ambition to dwell upon the question of how to organize the ideal society. I could easily lay down my view of the ideal ratio of the rights of the individual and the rights of the state. However, no matter what arguments I produce in favor of this ratio, they would not convince a person with another view. The aforesaid does not, however, mean that the question of the relation between the rights of the individual and the rights of the state is unimportant or impossible to grasp scientifically. It is my firm belief we need to study this relation, but we should do this by isolating interesting theoretical questions that can be answered by means of empirical studies. Within the framework of the present study I shall focus on one fundamental aspect of the relation between the individual and the state, namely the right of the state to kill its citizens.

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The ultimate form of punishment, the death penalty, leaves few of us emotionally unaffected. It is one of those rare questions where individuals generally have no difficulties in taking a stand, either for or against. It would also be an understatement to argue that it is an issue which is widely debated in many parts of the world. Although the literature on capital punishment is abundant, the curious reader is struck by the fact that the bulk of it is colored by arguments either for or against the use of the death penalty. A general trend is that opponents of the death penalty use philosophical, moral or religious arguments when attacking “governments which kill their citizens”, whereas proponents often legitimate the use of capital punishment by either referring to the expected coercive effect of the death penalty, or to the victim’s “right to revenge”.

It is not venturesome to state that one rarely runs across a work where this issue is treated in a neutral analytical manner. Perhaps this is only natural since we are, literally, dealing with a matter of life and death. However, within the framework of the present study, I shall not follow this tradition. On the contrary, I shall avoid all kinds of philosophical discussions of whether or not an entity, in this case the state, has the right to take the life of a human being. In a like manner, I shall, as far as possible, avoid touching upon the presumed consequences the use of capital punishment might have, for instance for crime prevention. The aim is, in fact, much simpler. The ambition is to *explain* the phenomenon or, in other words, to identify those characteristics which mark, on the one hand, those countries which make use of the death penalty, and, on the other hand, those countries that do not. It is indeed surprising to find that such a controversial issue, which has received so much attention, has been the subject of so few scientific studies.

Two time periods

We cannot overlook the possibility that different factors might have affected the choice of countries to either allow or forbid the use of capital punishment in different periods of time. Consequently, it is of foremost importance that the study be conducted in different time periods. Needless to say, the first question we have to tackle is which time periods to study. A quick look at the history of the death penalty in the countries of the world immediately reveals that we cannot go very far back in time. For one thing, availability of data concerning the independent variables is limited. For another thing – and this is more important – there is not enough variation on the dependent variable. Until recently, very few countries had abolished the death penalty. It was not until the 1970s and the 1980s that the abolitionist movement really got under way. For instance, by the year 1970 only 14 countries had abolished the death penalty for all crimes.

One time period comes naturally. It is difficult to find arguments for why we should not be interested in the present situation. Thus, one time setting will be the situation in the early twenty-first century. For determining the other time periods it is reasonable to start by taking a look at the use of the death penalty over time. The aim is to find natural cut-off points, that is, short periods of time during which a large number of states have abolished the death penalty. Table 1.1 lists the number of countries that have abolished the death penalty in each year. Data has been compiled from Amnesty International's Internet site (<http://web.amnesty.org/pages/deathpenalty-index-eng>) and from Hood (1996: 241–244). The general trend is that the abolitionist movement has spread slowly. A few countries have abolished the death penalty every five years. A closer look at the data reveals, however, that we do indeed find some periods where many states have changed their attitude toward the use of capital punishment. One such breakpoint is evident: in 1989 four countries abolished the death penalty. This number was doubled the

Table 1.1 Development of the abolitionist movement

<i>Year</i>	<i>Number of countries that abolished the death penalty completely without having reinstalled it subsequently</i>	<i>Year</i>	<i>Number of countries that abolished the death penalty completely without having reinstalled it subsequently</i>
1863	1	1979	3
1865	1	1981	2
1877	1	1982	1
1906	1	1985	1
1907	1	1987	3
1910	1	1989	4 ¹
1922	1	1990	8 ¹
1928	1	1992	3
1949	1	1993	2
1956	1	1994	1
1962	1	1995	4
1966	1	1996	1
1968	1	1997	4
1969	1	1998	6
1972	1	1999	3 ²
1973	1	2000	2
1976	1	2002	2
1978	1	2003	1
		Total	69

Notes

1 Including Slovenia and Croatia, which abolished the death penalty in 1989 and 1990 respectively, but did not receive their independence until 1991.

2 Including East Timor, which abolished the death penalty in 1999 but did not receive its independence until 2002.

4 *Mapping the death penalty*

following year, after which the trend slowed down again. With the evidence at hand, it seems natural to use the mid-1980s as a cut-off point. Since some countries constantly tend to change their attitude toward the death penalty, the points in time need to be specified further. Therefore, values on the dependent variable reflect the situations on 31 December 1985 and 31 December 2000.

The dependent variable

At first glance, the classification of the dependent variables seems obvious. A state either allows capital punishment or does not. The natural thing would therefore be to treat it as a dichotomous, nominal variable. However, a more thorough investigation reveals that countries where capital punishment is allowed differ in many respects, and that further classification can, and should, be done. Amnesty International has, for an extensive number of years, systematically collected data from all countries in the world concerning the use of the death penalty and the organization classifies countries into four categories. The categorization is based on the one used in the regularly conducted surveys on the death penalty undertaken by the United Nations (1975, 1980, 1985, 1990, 1995, 2000). The most distinguished authority on comparative studies of the death penalty, Roger Hood, follows this classification in his worldwide studies (Hood 1989, 1996, 2002). The four categories are as follows (the quotations are from Schabas 1997a: 239–243).

Category 1: countries that are abolitionist for all crimes

This category includes “countries and territories whose laws do not provide for the death penalty for any crime”.

Category 2: countries that are abolitionist for ordinary crimes only

This category includes “countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances such as wartime”.

Category 3: countries that are abolitionist de facto

This category includes “countries and territories which retain the death penalty for ordinary crimes but can be considered abolitionist in practice in that they have not executed anyone during the past ten years or more, or in that they have made an international commitment not to carry out executions”.

Category 4: countries that are retentionist

This category includes “states that retain and use the death penalty for ordinary crimes”. Countries included in this category have, as a rule, carried out executions during the last ten years.

The term “retentionist” can be construed as emotionally charged. Contrary to Amnesty International and Roger Hood, the present study does not take a stand in the debate of whether or not capital punishment should be abolished. I therefore choose to use terms which differ from the one mentioned above. Instead of “retentionist”, I use phrases such as “states that make use of the death penalty”, “states that apply the death penalty”, “states where capital punishment exists” and so on. Applying the classification above means that the dependent variable would be structured in terms of three dichotomous variables. The scheme of classification is illustrated in Figure 1.1.

Dichotomy 1

A first distinction comes naturally; the death penalty is either allowed or not in the penal code of the country. In cases where the law provides for the use of the death penalty, further distinctions can be made.

Dichotomy 2

Another distinction is made between countries where the death penalty is applied under normal circumstances and countries where the use of the death penalty is restricted to times where “special circumstances” prevail. In most cases “special circumstances” refer to a state of war or serious conflicts.

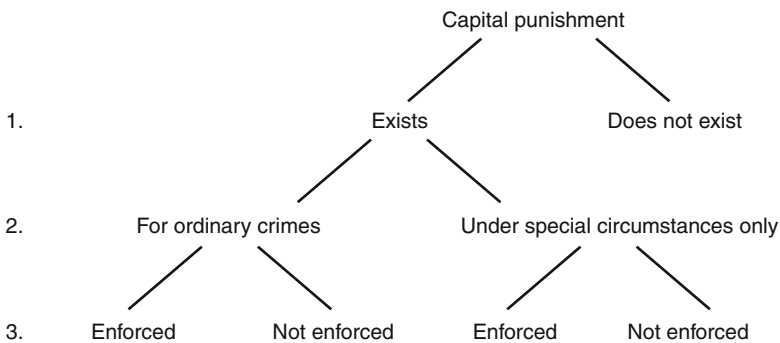


Figure 1.1 Structure of the dependent variable.

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Dichotomy 3

In many countries, the constitution provides for the use of capital punishment both under normal and special circumstances. It is therefore relevant to distinguish between cases where death sentences are carried out and where death sentences are not enforced. The distinction can, in principle, be made separately for countries that make use of capital punishment under special circumstances only and countries that make use of it under normal circumstances.

A few remarks should be made about the category that consists of states that allow capital punishment under special circumstances only. In theory, it is possible to make a distinction between states that carry out death sentences and states that do not carry out death sentences in practice. However, this distinction can only be made theoretically, since there is not enough empirical evidence on how states act under special circumstances. In order to be able to make this distinction, one needs to have evidence for how each state treats the question of the death penalty “under special circumstances”, such as in times of war. Furthermore, this evidence should not be dated very far back in time; preferably the evidence should not be older than, say, ten-to-fifteen years. This distinction is therefore irrelevant for the present study.

The first methodological question we have to tackle is how to treat the dependent variable. At first it seems obvious that it is a multi-nominal variable. The dependent variable has four categories: states can forbid the use of the death penalty in all its forms; states can allow the use of the death penalty under special circumstances; states can allow the use of the death penalty, but in practice abstain from implementing death penalties; and states can make active use of the death penalty. However, it is not unreasonable to treat the dependent variable as a discrete variable. It is possible to rank the categories on a scale which measures the willingness to apply the death penalty. This, however, can not be done in a totally uncontroversial manner. The two extreme values are unproblematic. States that do not allow the use of the death penalty under any circumstances are given the lowest value, whereas states that allow and make use of the death penalty are given the highest value. The two intermediate categories are more difficult to rank. Should we consider a state that allows the death penalty but where death sentences are never carried out as more or less willing to kill its citizens than a state that allows the use of the death penalty under special circumstances only?

What makes things complicated is the fact that we ought to know how countries act in those situations labeled “special circumstances”. Theoretically, in these situations, a country that allows the use of the death penalty under special circumstances may either choose to make use of the

death penalty or not. Similarly, a country that has a penal code that allows the death penalty but where death sentences are not carried out can choose between upholding this policy under these “special circumstances” or starting to implement death sentences. If a country that does not allow the use of capital punishment for ordinary crimes implement death sentences under special circumstances and a country where death sentences are not carried out for ordinary crimes also upholds this policy under “special circumstances”, we would indeed say that the former country was more willing to kill its citizens than the latter one. The problem is, of course, that we know very little about how states act under special circumstances. Another problem is that different states within the categories may choose different strategies. In other words, we are unable to answer this question on the basis of empirical evidence.

In order to answer the question we must instead consider how high the threshold for implementing the death sentences is. If a constitution does not allow the use of the death penalty, death sentences can never be imposed and much less carried out in reality. At least in peacetime, the threshold for reintroducing the death penalty is much lower in countries that are *de facto* abolitionist than in countries where capital punishment is forbidden except under special circumstances, since, in the former category, no change in the penal code is required. Also, it is important to emphasize that all countries that are *de facto* abolitionist automatically retain the death penalty under special circumstances as well. Thus, one could argue, countries classified as *de facto* abolitionist are one step closer in implementing death sentences than countries where capital punishment is allowed under special circumstances only. Now, empirically it is not difficult to find examples of countries that have reverted to making use of capital punishment after a long period of no executions. For instance, in 1993 the Philippines reinstalled the death penalty after having abolished it in 1987. It therefore seems natural that countries where capital punishment is allowed only under special circumstances are given a lower value than countries that are *de facto* abolitionist.

On the whole, the categorization makes sense. However, for analytical purposes it can be refined. Thus, the category consisting of countries that are *de facto* abolitionist will be merged with the category of countries that make use of the death penalty. The four categories are thus reduced to three. The reasons underlying this decision will be discussed momentarily. In addition to this major alteration of the dependent variable, I shall split up each of the three categories on a ten-degree scale.

Let us begin with the category of countries that apply and use the death penalty for ordinary crimes. Certainly, there is a marked difference between a country that has executed, say, one person for murder in a period of ten years and a country that regularly executes people for a wide

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variety of crimes, such as drug trafficking or rape. Therefore the category made up of countries that make use of capital punishment is divided into separate categories with reference to the number of executions carried out. However, operating with the exact number of executions carried out in a country is not possible. Data on the number of executions in each country is often unreliable to say the least. States that make use of capital punishment are often unwilling to reveal the exact number of executions that have taken place. Beginning from the 1960s, the United Nations has conducted several surveys on the use of the death penalty. However, a large number of the countries have been reluctant to give out information on the amount of executions. As Hood (1996: 67) notes: “[t]hose countries which are known from other sources to make the greatest use of executions were precisely those who most often failed to reply with the details requested by the United Nations”. The surveys conducted by the UN cannot be used within the framework of this study. Instead, I shall rely on other sources. The most reliable source on numbers of executions is Amnesty International’s yearly reports. It must, however, be emphasized that the figures Amnesty International provides are highly unreliable as well. For many countries it is nearly impossible to know the exact number of legal executions that have taken place.

Since data is often unavailable and/or unreliable, there is no point in operating with an assumed number of executions that has taken place. This could endanger the validity of the categorization. However, at the same time, it is necessary to account for those variations in the use of the death penalty which exist among countries that make use of it. If a country has executed, say, one or two persons in a limited number of years, it seems more than correct to separate it from a country that executes hundreds of individuals every year. I shall proceed by ranking the countries in terms of the extent to which they make use of the death penalty. Since the number of executions can vary a lot within countries we should focus on a time period of several years rather than concentrating on one year only. I have therefore chosen to calculate the average number of executions during a time period of ten years.

The absolute number of executions cannot in itself be used as an indicator of the willingness of a country to kill its citizens. The amount of executions must be related to the population of the country as well (see, for example, Hood 1996: 73). If, for instance, the Bahamas and China, both of which make use of the death penalty, execute the same number of persons each year it would indeed be fair to say that the former used the death penalty to a much higher extent than the latter, given the huge difference in size between the two countries. The obvious solution is to divide the number of executions that have taken place in a country with the size of the population. However, this strategy suffers from one serious short-