THE APPLICATION OF CAPITAL PUNISHMENT:
An Analysis of the Social Impact in Saudi Arabia and the United States

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Kata Kunci: Capital punishment, Saudi Arabia, the United States

Introduction

One of the most prominent issues faced by the modern day society has been their being having gone far remote from believing in the Almighty God which consequently lead them to disobey His Laws. In regulating all aspects of their life, they have left the Law of Allah for their new regulations which they have considered much better than the Law of Allah. Data released by Amnesty International indicates that until January 2006 over half the countries in the world have now abolished the death penalty in law or practice. Amnesty International claims that from the total of 122 countries listed by the International institution, 86 countries and territories have abolished the death penalty for all crimes, 11 countries have abolished the death penalty for all but exceptional crimes such as wartime
crimes, and 25 countries can be considered abolitionist in practice: they retain the death penalty in law but have not carried out any executions for the past 10 years or more.¹

Conversely, the number of murders has gone in the opposite direction. In the USA for example, during the temporary suspension on capital punishment from 1972-1976, researchers gathered murder statistics across the country. In 1960, there were 56 executions in the USA and 9,140 murders. By 1964, when there were only 15 executions, the number of murders had risen to 9,250. In 1969, there were no executions and 14,590 murders, and 1975, after six more years without executions, 20,510 murders occurred rising to 23,040 in 1980 after only two executions since 1976. In summary, between 1965 and 1980, the number of annual murders in the United States skyrocketed from 9,960 to 23,040, a 131 percent increase. The murder rate—homicides per 100,000 persons—doubled from 5.1 to 10.2. So the number of murders grew as the number of executions shrank.²

In the last three decades, sociologists have paid greater attention to the study of the effects of the law and its potential to produce social order, rather than the study of criminals or the strategies of the police. Therefore, the questions need to answered seem to be, what is the function of the law as a moralizing and deterrent agent in society? Can the law, in itself, be an effective tool to minimize crime? This paper will examine these questions by looking at the impact of the application of the capital punishment in many countries.

This paper begins by summarizing a theoretical framework on crime-punishment relationships. The following section examines the deterrent effects of the application of capital punishment on crime in many countries, through the presentation of some statistical data. The final section presents a brief discussion and offers some generalizations, and provides a conclusion based on the experience of many countries.

Theories on Crime and Punishment Relationship

To look at the social impact of the application of the capital punishment in many countries, especially on the crime rate, it is worthwhile to summarize the theoretical framework which explains the relationship between crime and punishment. Considering the “severity” of capital punishment, this section will summarize the previous works which examine the relationships between the sanction level and the crime rate.

In this respect, the work of social scientists can be divided into two groups. The first is the group who argue that punishment has a deterrent effect on crime. The deterrence theory suggests that the severity and certainty of punishments are additive factors. Namely, when punishments are severe and administered with certainty, maximum deterrence

results. In contrast, when punishments are slight and uncertain, deterrence will be minimal. The theorists which support this hypothesis are Becker,\(^3\) Erlich,\(^4\) Fillips and Votey,\(^5\) Nagin,\(^6\) Brier and Fienberg,\(^7\) Pratt,\(^8\) and Naci Mocan.\(^9\) In other words, they argue that punishment in general creates a greater balance of happiness vs. unhappiness. From this perspective, then, capital punishment is justified if it: (1) prevents the criminal from repeating his crime, or (2) deters crime by discouraging would-be offenders.

In contrast, the second group argues that an increase in the severity of the penalty has no impact on criminal behavior at equilibrium. The defenders of this hypothesis argue that there is no evidence to support the deterrence hypothesis. According to this group, the defenders of the deterrence theory have some methodological problems in their studies. In contrast to the deterrence theorists, these theorists argue that the death penalty should be abolished even if criminals deserve death for what they did. The punishment theorists who support this hypothesis, among many others, are: Cloninger,\(^10\) Avio and Clark,\(^11\) Reiman,\(^12\) Davis and Reiman,\(^13\) Tsebelis,\(^14\) and Roger Hood.\(^15\) In brief, these theorists support the softening of sanctions and are against the severity of punishment like in Islamic Criminal Law.

**Capital Punishment in the Islamic Criminal Law**

The Holy Qur’an has clearly and repeatedly mentioned about capital punishment. In the verse 32 of al-Mâ’idah, Allah Almighty says:

“...If anyone kills a person - unless it be for murder or for spreading mischief in the land

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\(^9\) Mocan, “The Deterrent Effect.”


Life is sacred, according to Islam and most other world faiths. But how can one hold life sacred, yet still support capital punishment? The Qur’an answers:

“...Take not life, which God has made sacred, except by way of justice and law. Thus does He command you, so that you may learn wisdom” (Q.S. al-An’âm/6:151).

The key point is that one may take life only “by way of justice and law.” In Islam, therefore, the death penalty can be applied by a court as punishment for the most serious of crimes. Ultimately, one’s eternal punishment is in God’s hands, but there is a place for punishment in this life as well.

The spirit of the Islamic penal code is to save lives, promote justice, and prevent corruption and tyranny. Islamic philosophy holds that a harsh punishment serves as a deterrent to serious crimes that harm individual victims, or threaten to destabilize the foundation of society. According to Islamic law (in the first verse quoted above), the following two crimes can be punishable by death: (1) Intentional murder and (2) Fasad fî al-Ardh (spreading mischief in the land).

**Intentional Murder**

The Qur’an regulates the death penalty for murder, although forgiveness and compassion are strongly encouraged. The murder victim’s family is given a choice to either insist on the death penalty, or to pardon the perpetrator and accept monetary compensation for their loss (Q.S. al-Baqarah/2: 178).

**Fasad fî al-Ardh**

The second crime for which capital punishment can be applied is a bit more open to interpretation. “Spreading mischief in the land” can mean many different things, but is generally interpreted to mean those crimes that affect the community as a whole, and destabilize the society. Crimes that have fallen under this description have included: treason/apostasy (when one leaves the faith and joins the enemy in fighting against the Muslim community), terrorism, land, sea or air piracy, rape, adultery, and homosexuality.

Actual methods of capital punishment vary from place to place. In some Muslim countries, methods have included beheading, hanging, stoning, and firing squad. Executions are held publicly, to serve as warnings to would-be criminals.

It is important to note that there is no place for vigilantism in Islam — one must be properly convicted in an Islamic court of law before the punishment can be meted out. The severity of the punishment requires that very strict evidence standards must be met.
before a conviction is found. The court also has flexibility to order less than the ultimate
punishment (for example, imposing fines or prison sentences), on a case-by-case basis.

In relation to murder, the Quran definitely encourages capital punishment (Q.S.
al-Baqarah/2: 179) to protect the life of individual. “The free for the free, the slave for the slave,
and the female for the female” (Q.S. al-Baqarah/2: 178). Due to human meanness and
injustice, many people cannot even imagine what this Quranic law says. They refuse to
accept the clear injunctions that strict equivalence must be observed - if a woman kills a
man, or a man kills a woman, or a slave kills a free person, or a free person kills a slave,
capital punishment cannot be applied. The Quran prefers that the murderer compensate
the victim’s family. Killing the murderer does not bring the victim back, nor does the
family of the victim benefit from executing the murderer. The compensation, however,
must be sufficient to be a deterrent for others. In Islam (Submission), the victim and/or
the victim’s family are the judges for all crimes; they decide what the punishment shall be
under the supervision of a person who knows the Quran.

If a thief steals a thousand dollars from you, and they put him in prison, what do
you get? If the thief has a wife and children, what is their crime? Why should they be
deprived of their father? The Quran solves this problem, as well as the problems associated
with the criminal justice systems prevalent in today’s world.

According to the Quranic criminal justice, the thief who is convicted of stealing a
thousand dollars from you must work for you until you are fully paid for the thousand
dollars you lost, plus any other damage and inconvenience the theft may have caused
you. At the same time, the thief’s innocent wife and children are not deprived of their man,
and the expensive prison system is eliminated. Imprisonment is a cruel and inhumane
punishment that has proven useless to all concerned.

Contrary to common belief, the thief’s hand shall not be cut off. Thank God for His
mercy and His mathematical miracle in the Quran, we know now that the thief’s hand is
to be marked. Marking the hand of the thief is stated in 5: 38. The chapter and verse numbers
add up to 5+38 = 43. The other place in the Quran where “the hand is cut” is found in 12: 31.
This is where we see the women who admired Joseph so much they “cut” their hands.
Obviously, they did not sever their hands; no one can do that. The sura and verse numbers
add up to 12+31=43, the same total as in 5: 38. This gives mathematical confirmation that
the Quranic law calls for marking the hand of the thief, not severing it. Additional mathematical
confirmation is provided: 19 verses after 12: 31, we see the “cutting of the hand” again.
Punishment in Islam (Submission) is based on equivalence and social pressure (Q.S. al-

The blasphemy called “Hadith & Sunna” has instituted stoning to death as the
punishment for married adulterers. This is not God’s law. As stated in Q.S. al-Nûr/24: 2,
the punishment for adultery is whipping in public; a hundred symbolic lashes. As pointed
out above, the basic punishment is social pressure and scandalizing the criminal. Whipping in public achieves this goal.

**Analysis of Social Impact of the Application of Syariah Law**

Muslim countries in this context are defined as the countries in which most of the populations are Muslims. Since only some Muslim countries which apply Syariah law have availability source of data, in examining the social impact of the application of Syariah law this paper will mainly refer to the case of the Kingdom of Saudi Arabia and United States of America for comparison.

The application of non-Syariah law in many Muslim countries has a long historical background. Take Indonesia as an example. Even though Indonesia has the biggest number of Muslim citizens in the world, this country does not apply Syariah except in Nangroe Aceh Darussalam (NAD) which is in the beginning of its process. This is primarily due to the Western colonialism. Another factor in the case of Indonesia is the political domination by Western educated thinkers (nationalists) who have sought to secularize this country through their political authorities since the Soekarno’s to Soeharto’s regimes.

Muslim Middle East countries have had similar experiences. Since the Napoleonic invasion of Egypt (1798-1801), the countries of the Middle East, with exception of parts of Saudi Arabia, were directly or indirectly subjected to the force of European Imperialism. Unavoidably, in the beginning of their awakening, they adopted a Western model of progress and development, and even borrowed Western law. Until the 1970s the countries of the Muslim Middle East seemed to be embarked on a program of modernization in the Western style that would inevitably lead to ever greater secularization.

In the late 1970s, the process of islamization began in the Middle East countries. Two countries that have most seriously and systematically pursued islamization are Iran and Pakistan. In both countries it is clear that the official version of islamization pursued after the 1978-1979 Iranian Revolution and President Zia’s assumed to power in 1977, presuppose that Islam is an ideology.

Saudi Arabia is a leading country in the Middle East which has applied Syariah. In addition to the absence of factors which constrain to the process of Islamization in other Middle East Muslim countries, that being colonialism, Saudi Arabia has another conducive

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factor, that is, the presence of Ulama (Muslim scholars). Unlike other Muslim countries in this region, in Saudi Arabia, Ulama occupies prominent positions in the state’s political elite. Furthermore, Saudi Arabia was applying Islamic Law since the Prophet Muhammad era. Therefore, the Ulama’s effective role in Saudi Arabia was very conducive in maintaining the continuity of the application of Syariah law in this Kingdom.\textsuperscript{19} In this regard, Mayer\textsuperscript{20} says that “Saudi Arabia has never adopted a constitution out of respect for the classical Islamic precept that all laws are contained in the Syariah sources”.

Syariah is a theocratic system. It sets out Allah’s commands to humanity. The Syariah was divine revelation, as determined by the text of the Qur’an, supplemented by the sayings and deeds of the Prophet preserved in tradition (sunna), the consensus of scholars (ijma’), and analogical reasoning (qiyas).\textsuperscript{21}

The Syariah, for its part, was bounded on one side by administrative direction, namely by the directions of the ruling of Caliphs (siyasi) that were manifested itself in secular ordinances (the qanun, or the nizam and the marsum of the Hanbali school). The Syariah judge himself might occasionally award a discretionary punishment (ta’zir) instead of the foreordained sanctions of the sacred law (hadd, pl. hudood). On the other side, custom (’urf, ada) circumscribed the holy rules.\textsuperscript{22}

By referring to Saudi Arabia, this part will look at the impact of the application of Syariah on social life, especially on crime. Syariah criminal code is severe in manner. In fact, the severity of its punishment has a great deterrent effect on crime. The application of Syariah in Saudi Arabia, for example, was able to maintain the low crime rates in this country.

Table 1 : Homicide Rate in the Kingdom of Saudi Arabia 2000-2002\textsuperscript{23}

<table>
<thead>
<tr>
<th>Year</th>
<th>Homicide Rate per year per 100,000 Inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>0.51</td>
</tr>
<tr>
<td>2001</td>
<td>0.78</td>
</tr>
<tr>
<td>2002</td>
<td>0.92</td>
</tr>
</tbody>
</table>

Table 1 reveals very low official homicide rates in the Kingdom of Saudi Arabia. The population included in the table includes more than one-third foreign ex-patriots.


\textsuperscript{21} Andersen, et al., Politics and Change, p. 52-53.


\textsuperscript{23} Adapted from http://en.wikipedia.org.
who are generally attributed with a higher crime rates than native Saudis. If we look at the average number of murders, under one a year in every 100,000 population is certainly very low.

Table 2: Number of Murders in the Kingdom of Saudi Arabia Compared to other Countries in the World Which Apply State Law 2002

<table>
<thead>
<tr>
<th>Countries</th>
<th>Homicide Rate per year per 100,000 Inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAUDI ARABIA</td>
<td>0.92</td>
</tr>
<tr>
<td>South Africa</td>
<td>47.80</td>
</tr>
<tr>
<td>Colombia</td>
<td>65.80</td>
</tr>
<tr>
<td>Mexico</td>
<td>13.04</td>
</tr>
<tr>
<td>United States</td>
<td>5.60</td>
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</tbody>
</table>

To strengthen the truth of the deterrent effects of the application of Syariah law on crime rates in Saudi Arabia, Table 2 compares the crime rates of Saudi Arabia with four countries which apply state law. Table 2 shows that the murder rate in Saudi Arabia is the lowest among the five countries. These data, clearly indicate the deterrent effects of the application Syariah on crime in Saudi Arabia.

The deterrent effects of the severity of Syariah criminal law on crime will much clearer if the crime rate of Saudi Arabia where Syariah law is applied compared to world rates. Table 3 shows this comparison.

Table 3: Crime Rate in the Kingdom of Saudi Arabia Compared to World Rates (per100,000), 1975

<table>
<thead>
<tr>
<th>Countries</th>
<th>Murder</th>
<th>Property Crime</th>
<th>Sexual Offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saudi Arabia</td>
<td>1.0</td>
<td>1.4</td>
<td>5.0</td>
</tr>
<tr>
<td>World Rates</td>
<td>3.9</td>
<td>908.5</td>
<td>24.2</td>
</tr>
</tbody>
</table>

Table 3 indicates that for murder, the world rate is about four times the rate in Saudi Arabia. For property crimes, the world rate is about six hundred fifty times the rate in Saudi Arabia. And for sexual offences, the world rate is about five times the rate in Saudi Arabia. Clearly, Table 3 indicates the deterrent effects of the severity punishment of Syariah criminal code on crime rate in the Kingdom of Saudi Arabia. This finding strongly supports the previous study which argued that punishment has deterrent effects on crime.

Discussion and Generalization

This paper has approached the deterrent effect of punishment in Islamic Criminal Law. It has been suggested that this study supports the deterrence theory. In most literature, crime has generally been considered as either the consequence of existing social conditions or the outcome of a traditional calculation by a predator which chooses crime as a utility-maximizing career. As a result, these approaches propose either an improvement in social conditions or an increase in penalties or punishments as a means to reduce criminal activity. Though the severity of punishment in Islamic Criminal Law which is applied in Saudi Arabia shows a deterrence affect on crime rate, I would not necessarily argue that punishment is the best or only way to control crime. But rather argue that punishment is only part of large, more complicated factors which cause the low crime rate.

The severity of punishment in Islamic Criminal Law is often misinterpreted by some scholars, especially Western scholars. To understand correctly the perception of severity of punishment in Islamic Criminal Law we must examine in its Supernatural-Social frame of the principle of Qishash. Such a frame, assuring the will of God, totally relieves any concern among Muslim believers concerning the severity of punishment, particularly since it ensures justice to all offenders. Unlike in the Western contemporary judicial system in which discrimination a common feature of this system, the Islamic judicial system places all offenders subject to the same treatment. Richard Quenney illustrates how the contemporary Western judicial system works:

Obviously judicial decisions are not made uniformly. Decisions are made according to a host of extra-legal factors, including the age of the offender, his race, and social class. Perhaps the most obvious example of judicial discretion occurs in the handling of cases of persons from minority groups. Negroes, in comparison to whites, are convicted with lesser evidence and sentenced to more severe punishment.26

Syariah law is applied equally to all citizens. This assertion is suggested in the Qur’anic verse: “Lo! The noblest of you, in the sight of Allah, is the best in conduct (Q.S. al-Hujurât/49: 13).” Also the Prophet says: “The Arab is not more worthy than the Parsian, and the red is not more deserving than the black, except in godliness.” The second relates to a saying by the Prophet in which he stated that if his own daughter, Fatima, committed theft, her kinship ties to him would not save her legal punishment.28

The equal treatment of offenders within the Islamic Judicial system is applied in both theory and practice. In 1981 for example, Saudi Arabia’s Islamic Judicial Court executed

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28 Ibid., p. 512-513.
a Royal princess of the Kingdom with her lover who were convicted of adultery. The case was later made into the widely known movie feature, “Death of a Princess.”

Islam as a system which gives an equal treatment not only to people from different race, class and color, but also to people from different religion. There is no reason for non-Muslim to fear of living under Islamic State (Syariah law). The non-Muslim who lives in an Islamic State and enjoys all their human rights which are enshrined in the Syariah are called Ahl al-Dzimmah or Dzimmis, the convicted people. The Dzimmis living in an Islamic State are guarantied the protection of their life, property and their honor exactly like that of a Muslim. The rights given to a Dzimmis are of an irrevocable nature. It becomes every Muslim’s religious duty to protect life, property and honour of a non-Muslim since it forms a part and parcel of his faith.29

The Islamic state would not be fanatic and intolerant of minorities since Islam is the most tolerant of religions. For example, ‘Umar Ibn al-Khatthab, the second caliph, had asked on his deathbed that his successor should take care to protect the Dzimmis. The Qur’an itself called for religious tolerant: “You have your religion, I have mine (Q.S. al-Kâfîrûn/109: 6).”

Another factor which needs to be considered is the historical background in which Islam has been developed. Islam has descended in Saudi Arabia where its old tribes practiced causal killing of raids and counter-raids over trivial matters. In this situation, Qishash (the law of equality) is culturally accepted as a plausible method to prevent greater retribution against the offender or his family and tribe. In fact, history has proved the magical power of Syariah in deterring the continuity of causal killing in trivial matters in the Arabian tribal community. Is this prevention method not applicable in the contemporary modern world in which the machine gun and any other tools to kill other persons are within easy access and the criminal’s mode operation is more sophisticated? Consider modern terrorism, or how often kidnapping occurs in our society. During October 1992, the South Australia’s Police had been busy in efforts to find out who kidnapped a 12-year-old woman, Rhianna Barreau.30 By giving this example, I am not suggesting that the government of Nangroe Aceh Darussalam must apply Syariah Criminal Law in the way that Saudi Arabia applies to prevent the crime wave in the region, but I am suggesting to reconsider about the movement from repressive to recitative in our criminal law.

Moreover, in terms of the Supernatural-Individual frame, which is determined by the personal conscience of believers31 capital punishment is not perceived as a means to

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frighten the “believers” but rather as a necessary by-product of justice mechanism ordained to deter a climate of lawlessness and social disorganization. It is also important to know that capital punishment seems to be an act of mercy to those with a strong tendency to commit crime, because when compared with long-term prison sentences which in time lose their effectiveness, the execution of “bodily penalty” (flogging and cutting the hand) offer clear advantages. It allows the criminal to resume his work almost immediately, to support himself and his family, and to serve as an act of penance and remission. More important, the execution will prevent the individual from committing the same crime in the future, serving as a stern warning to others.

Concluding Remarks

Based on the above discussion, some very general conclusion and loose trends become evident. First, Punishment in Islamic Criminal Law has been, and remained, foreign to the majority of Moslem people, more importantly to Western mind; second, in many Muslim countries including Indonesia, the position of Syariah law has been substituted by a set of positive laws which are based on a social contract between the ruler and the ruled, as a result of the Western colonialism; third, the continuity of the application of Syariah Criminal Law in Saudi Arabia has been able to keep the level of crime to a low rate, but on the other hand, in many countries which apply positive laws which are based on a social contract between the ruler and the ruled, the crime rate is high; forth, the harsh punishment in Islamic Criminal Law is mainly intended to deter crime, not to punish the criminal and Islamic criminal law puts all offenders subject to the same treatment, and punishment in Islamic Criminal Law can only be awarded to the criminals in a society where the Islamic ideal of social justice has been achieved; and most importantly, Syariah (Islamic Law) protects and guarantees the life, property and all human rights of non-Muslim who lives under Islamic State exactly like that of a Muslim.

Bibliography


