



UNIVERSITAT DE
BARCELONA

Replacing the death penalty with other punishments in the Islamic world

Kabir Al-Hamdouni

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TESIS DOCTORAL

Replacing the death penalty with other punishments in the Islamic world

Kabir Al-Hamdouni



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Replacing the death penalty with other punishments in the Islamic world

Sustitución de la pena de muerte por otras
penas en el mundo islámico

**Programa de doctorado en Derecho y Ciencia
Política: Criminología y Sociología Jurídico Penal**

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I appreciate all who taught me values.

All who supported my path.

All who accompanied me in this story.

All who bestowed on me their considerations.

All who taught me to think on their contrary.

I owed my special gratitude to my most cherished parents, my dearest, my gentle and inspiring tutor, and my treasured friends, who treated me like family.

To M.U.M.P.

To equality, freedom, humanity, and fourteen years of my youth that I, despite all the
obstacles and problems, devoted to them

8372. 592, 463.

Abstract/Resumen

Abstract

Despite the universal abolitionist movement against the practice of capital punishment still, countries with the most inhabitants are preserving this penalty in their penal codes. Yet, fortunately, the number of abolitionists *de jure* is growing broadly during recent years. The mentioned progress can be a consequence of the global tendency of nations towards democracy, education, enlightenment, and perhaps, tolerance, resulting from international actions aiming to increase public awareness. Regarding these facts, the objective of the thesis is to introduce alternative punishments to the death penalty in countries with a high risk of executing their citizens, using philosophical concepts, legal principles, and experience of other abolitionist countries. Discarding China, due to unreliable statistics and information, we focus on the states in the second and third rank, respectively, Iran and Saudi Arabia. Due to being followers of two different Islamic denominations, these countries

Resumen

A pesar del movimiento abolicionista universal contra la ejecución de la pena capital todavía, los países con más habitantes, mantienen este castigo en sus códigos penales. Sin embargo, afortunadamente, el número de abolicionistas *de jure* está creciendo ampliamente durante los últimos años. Este progreso podría considerarse como consecuencia de fortalecer la tendencia global de las naciones hacia la democracia, la educación, la ilustración y quizás la tolerancia, como resultado de acciones internacionales destinadas a aumentar la conciencia pública. Respecto a estos hechos, el objetivo de la tesis es introducir castigos alternativos a la pena de muerte en países con alto riesgo de ejecución de sus ciudadanos, utilizando conceptos filosóficos, principios legales y experiencias de otros países abolicionistas. Descartando a China, debido a estadísticas e informaciones poco confiables, nos enfocamos en los estados en el segundo y tercer rango, respectivamente, Irán y

share a significant part of their law that is based on *Shari'a*. Including France and Spain because of the juridical impact of the former and the democratic transition of the latter is an endeavor to find a path towards outlawing the death penalty using their proven experience and considerations and recognizing our options in reaching our objective. After dealing with cons and pros argumentations, we study the global statistics with specific attention towards our target countries. Later, we scrutinize the legal history of the four states focusing on the process of abolition in Spain and France to find and suggest a systematic judicial pattern to replace and commute the penal codes of the two other countries by proposing alternative punishments. Even though we intend to follow principally the methodology recommended by the United Nations, we also try to deal with theological, philosophical, judicial attitudes, and treaties and conventions alongside legal principles regarding the death penalty to propound the restricting policy to use this punishment. We also incorporate a set of rights and necessary information not only to protect the right of the convicted persons but also to facilitate future Arabia Saudita. Siendo seguidores de dos denominaciones islámicas diferentes, estos países comparten una parte significativa de su jurisdicción que se basa en la *sharí'a*. Por otra parte, incluimos a Francia y España por el impacto jurídico de la primera y la transición democrática pasada en la segunda. Así intentaremos encontrar un camino legal hacia la abolición de la pena de muerte utilizando las consideraciones y experiencias probadas de estos dos últimos países y alcanzar unas opciones y alternativas para llegar a nuestro objetivo. Después de abordar los argumentos en contra y a favor de la pena de muerte, estudiamos las estadísticas globales con especial atención a Irán y Arabia Saudita. Posteriormente, repasamos la historia jurídica de los cuatro estados centrándonos en el proceso de abolición en España y Francia para encontrar y sugerir un modelo judicial sistemático que sustituya y conmute los códigos penales de los otros dos países proponiendo penas alternativas. Si bien pretendemos seguir principalmente la metodología recomendada por las Naciones Unidas, también tratamos de abordar las actitudes teológicas, filosóficas, judiciales y los tratados y convenciones junto con los principios

investigations. The result that we reach is optimistically operational for countries that desire this reformation. In brief, Spain, after an unsuccessful abolition, had sufficient experience to codify laws in which the death penalty was accompanied by an alternative punishment leading to a more uncomplicated process of outlawing capital punishment through its replacement with the mentioned options. For other penalties, likewise France, it suggested the maximum sentence listed in the scale after capital punishment. Using this system and other methods of interpretation, we could propound alternative penalties for all capital crimes in IIPC. However, Saudi Arabia, due to the lack of a penal code, misses the opportunity to be treated systematically, even though we recommend some amendments towards general Islamic law. The suggestion for the mentioned country is not to sign any execution by the king as an act of mercy and pardon while imprisoning or fining the convicted to the maximum penalty after death. Eliminating any discriminatory factor regarding gender, religion, or any other feature, we would finally try to reach the statement of «the death penalty is abolished» without any reservation or additional phrase, legales sobre la pena de muerte lo que nos ayudará a proponer una política restrictiva para ejecutar este castigo. En la tesis también está incorporado un conjunto de derechos e informaciones necesario, tanto para proteger el derecho de los condenados, como para facilitar futuras investigaciones. Con optimismo, el resultado que logramos es operativo para todos los países que desean esta reforma de abolir la pena de muerte. Explicando brevemente, España, después de una abolición fallida, tenía suficiente experiencia para codificar leyes en las que la pena de muerte iba acompañada de una pena alternativa que conducía a un proceso menos complicado de ilegalizar la pena capital mediante su sustitución por las opciones mencionadas. Para otras penas, al igual que Francia, sugirió la pena máxima enumerada en la escala después de la pena capital. Usando este sistema y otros métodos de interpretación, podríamos proponer penas alternativas para todos los delitos castigados por pena capital en el código penal islámico de Irán (IIPC). Sin embargo, Arabia Saudita, debido a la falta de un código penal, pierde la oportunidad de ser tratado de manera sistemática, aunque en general recomendamos algunas enmiendas a la ley

basically because it is not necessary for a judiciary to impose an irrecoverable penalty while having other alternatives at its disposal.

islámica. La sugerencia para el mencionado país es que no estuviere firmada ninguna ejecución por parte del rey como un acto de misericordia e indulto, cuando mientras tanto se encarcela o se multa al condenado con la pena máxima después de la muerte. Eliminando cualquier factor discriminatorio en cuanto a género, religión, o cualquier otro rasgo, por fin intentaríamos llegar a un artículo en el cual se manifiesta la abolición de la pena de muerte - «Queda abolida la pena de muerte» - sin ninguna reserva o frase adicional, básicamente porque no es necesario imponer una pena irrecuperable mientras el sistema jurídico tiene otras alternativas a su disposición.

Keywords: Alternative penalties, Capital Punishment, Comparative law, Death Penalty, France, Iran, Penal Code, Replacement of penalties, Saudi Arabia, Shari'a, Spain, substitution

Palabras claves: Alternative penalties, Capital Punishment, Comparative law, Death Penalty, France, Iran, Penal Code, Replacement of penalties, Saudi Arabia, Shari'a, Spain, substitution

i. Abbreviations, Definitions, and Transliteration

i.1. Abbreviations

i.1.1. Abbreviations I: The Conventions and Laws

AFPC	Armed Forces Penal Code
CAT	Committee Against Torture
CDHRI	Cairo Declaration on Human Rights in Islam
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
CP	Constitutional principle
CPHRFF	European Convention for the Protection of Human Rights and Fundamental Freedoms
CRPD	Convention on the Rights of Persons with Disabilities
CRC or UNCRC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
EU	European Union
FPC	French penal code

GENCONV(s)	Geneva Convention(s)
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICJ	International Court of Justice
ICMRW	International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families
IHL	International Humanitarian Law
(I)HRL	International human rights law
IIPC	Iranian Islamic Penal Code
LAACNL	Law on Adding an Article to the Combating Narcotics Law of 1396
LCN	Law on Amending the Law on Combating Narcotics
L.O. (LO)	Ley orgánica
LPDESC	Law on Punishment of Disruptors in the Economic System of the Country
LRPTI	Law on Reducing the Punishment of <i>Ta'zir</i> Imprisonment 2020
OP	Optional Protocol

OPI	Optional Protocol I
OP2-DP	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
PROT	Protocol
SPC	Spanish penal code
SPT	Subcommittee on the Prevention of Torture
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UN	United Nation
UNCAT	United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

i.1.2. Abbreviations II: Bibliographic and Textual Acronyms

art(s).	Article(s)
Coord(s).	Coordinator(s)
dir(s).	Director(s) of movie
ed(s)	Editor(s) /edition(s)
GP	Group
n.d.	No date/ No data
par(s).	Paragraph(s)
pass(s).	Passage(s)
pg./pp.	Page(s)
princ(s).	Principle(s)
sec(s).	Section(s)
trans.	Translation

i.2. Definitions

i.2.1. Definitions I: Latin Words

de facto	In practice
de jure	By law
ex post facto law	A law which operates by after-enactments (Mansfield Burrill, pg. 447)
hors de combat	Out of war due to injuries
ipso facto	By the act or fact itself (Mansfield Burrill, pg. 634)
jus civile	Civil law
jus in bello	Laws of armed conflicts
jus talionis	Right of Retaliation
lex talionis	The law of life for life
ne bis (non-bis) in idem	Not twice (punishment) for the same (crime) or the prohibition of double jeopardy
prima facie	All things being equal
(conditio) sine qua non	An essential requirement, without which the desired result is impossible

i.2.2. Definitions II: Islamic Terms (1)

Ahl al-Hadith	Traditionalists
Ahlul Bait	Fatima, daughter of the Prophet, Ali ibn Abi Talib, and the eleven <i>A'imma</i> after him, according to Shi'a
Ahlu Sunnah	The Sunni people, regardless of the school they follow
Amd	Deliberate
(al)-Aqilah	Tribal (just the male relatives) fund
Aql	Wisdom/ Intellect
Arsh	Monetary compensation for an injury, undetermined in <i>Shari'a</i>
As-Siyar	Islamic international law (Sardar Ali, pg. 81)
Asbab al-Nuzul	Reasons for revelation
Baqy	Armed rebellion
Batin	The hidden meaning
Bayt al-mal	The public treasury (for government funds)
Efsad fi al-Ard	The crime subjected to <i>Al-Mufsid fi al-Ard</i>
Fatwa	The opinion of the muslim scholars (Kumar Singh, pg. 16)
Fiqh	"Positive Muslim Law" (Kumar Singh, pg. 12) or Islamic jurisprudence

Hajj	Islamic annual pilgrimage to Mecca, Saudi Arabia (Braswell, pg. 110)
Hanbali	One of Sunni schools of jurisprudence
Hanbalites	Followers of Hanbal
Hanafi	One of Sunni schools of jurisprudence
Haram	Forbidden
Herz	A conventionally secure and appropriate place to maintain the property from theft (IIPC, art. 269).
Hirabah, (Muharibah in Sh'ia)	A variety of crimes done by using weapons
Ihsan	The state of being married and having the partner accessible
Ijma	Consensus
Ijtihad	"Opinion of the jurists/independent reasons" (Kumar Singh, pg. 16)
Imamiyyah	Twelver
Ismaili(s)	Follower(s) of Ismaili school (A Shi'a school of thought)
Istidlal	Inference
Istihsan	Juristic preference
Istislah	Public interest

Khata	(In this thesis) homicide by mistake or accidental manslaughter (Wasti, pg. 68)
Khawarij	Another denomination of Islamic schools (different from Sunni and Shi'a Islam)
Livat	Sodomy
Mahr	An obligatory monetary portion paid by the groom and received by the bride after marriage whenever the payment is requested by the latter
Mahr al-Mithal	The portion that would be decided by judges when the quantity of <i>Mahr</i> is not predetermined
Maliki	One of Sunni schools of jurisprudence
Muharib	Combatant, warrior (with weapon)
Muhsan	A person in the state of <i>Ihsan</i>
Mufsid fi al-Ard	Corrupt on the earth
Murtad	Apostate
Musahaqah	Sexual act between women
Qatal	To kill
Qadhf	Defamation by accusation; Making unfounded, unproven, or dubious accusations of illicit or extramarital intercourse
Qiyas	Analogical reason

Quranic	Related to/ from <i>the Quran</i>
Rajm	Stoning
Riddah	Apostasy
Sab-e-Nabi	Insulting the Prophet
Sariqa	Robbery
Shari'a	"A sacred law incorporating principles desired by God" (Bravmann, 17)
Shafi'i	One of Sunni schools of jurisprudence
Shafi'ites	Followers of Shafi'i
Shi'a	Followers of <i>Ahlul Bait</i>
Shub i Amad	Quasi-intentional
Shura	Consultation
Shurb Khamr	Drinking alcohol
Sunnah	Reports about the deeds and decisions of the Prophet
Surah	A quranic chapter
Tabi'un	A generation after <i>Sahabah</i>
Tafkhiz	Secual acts between men without penetration
Taqlid	Imitation

Twelvers	Followers of <i>Ahlul Bait</i> : Ali, and eleven <i>A'immah</i> after him, including Sadiq
Ulema	Scholars
Urf	Customs
Wahy	Revelation
Zahir	The apparent meaning
Zahiri	One of the Islamic schools of jurisprudence, probably Sunni one
Zani/ Zania	A man/ woman convicted of adultery
Zaydi	One of Shi'a schools of jurisprudence
Zina	Adultery

a) Definitions II: Islamic Terms (2): Including Singular and Plural Form of the Words

Singular	Plural	Definition
Ayah	Ayat	A quranic verse
Diya	Diyyat	Monetary compensation for an injury or death, determined in <i>Shari'a</i>
Faqih	Fuqaha	Islamic Jurist
Hadd	Hudud	Punishment /crime defined by <i>Shari'a</i>
Hadith	Ahadith	Oral and written narrated <i>Sunnah</i> of the Prophet
Imam	A'immah	Leader
Madhhab	Madhahib	A school of <i>Fiqh</i>
Munafiq	Munafiqun	Hypocritical false Muslims (Massignon, pg. 179)
Mujtahid	Mujtahidun	A legislator who deduces a verdict from <i>the Quran</i> and <i>Sunnah</i> , centrally those of early Islam
Mushrik	Mushrikun	Polytheists, "unbelievers who associate other objects of worship with God" (Dallal, pg. 109)
Sahabah	Sahabi	Companions of Muhammad
Ta'zir	Ta'zirat	Punishments/crimes not being defined in <i>Shari'a</i> ¹

¹ Also, see *The Princeton Encyclopedia of Islamic Political Thought*.

i.2.3. Definitions III: Other Terms

Jefe del estado	Here, General Franco
Auto-da-fé	An inquisitorial ritual hold for public penance
Sati	Self-immolation or burning the wife of a deceased husband in the same fire of his cremation (the funeral)

A simple guide to read the text:

1. The books and laws - as much as possible - come with their original name to help the investigators in consulting the very sources.
 2. The words in *italic* are any other language than English - or Spanish in its case-, the title of books or sometimes, conventions or treaties when referred to the context. The name of authors and the titles of treaties or conventions - if not speaking about the text - is not coming in *italic*. Besides, some quotation marks - mainly single ones - are used only for the emphasis purpose.
-

i.3. Transliteration and transcription

Latin alphabet	Example in Persian or Arabic Alphabet	Original Example	Latin transcription
A	ا	البخاري	Bukhari
	أ	أحمد	Ahmad
	مُ	محمد	Muhammad
	ع	يعقوب	Ya'qub
B	ب	البخاري	B ukhari
C/S/SH/TH	ث	ثقة	Th iqah
	س	المسند	Al-Musnad
	ص	الصحيح	S ahih
	ش	الشرح	Sh arh
D/DH	د	محمد	Muhammad
	ذ	تَهْدِيب	Tah dh ib
E/I/Y	إ	الإسلام	I slam
	ى	الصحيح	S ahih

	◌ِ	مِنْ	Min
F	ف	أَلْفَقِيهِ	Faqih
G/GH	غ	الصغرى	Al-Sughra
H	ح	محمد	Muhammad
	ه	أَلْفَقِيهِ	Faqih
	ة	ثقة	Thiqah
J	ج	الجامع	Al-jami'
K/KH	ك	الكافي	Kafi
	خ	البخاري	Bukhari
L	ل	الإسلام	Islam
M	م	محمد	Muhammad
N	ن	المسند	Al-Musnad
O/U	ُ	مُحَمَّد	Muhammad
Q	ق	أَلْفَقِيهِ	Faqih
R	ر	البخاري	Bukhari
T	ت	تَهْذِيب	Tahdhib

	ط	الطوسي	Tusi
V/W	و	بابويه	Babawaih
Z	ز	الرازي	Razi
	ض	يَحْضُرُ	Yahduru
	ظ	النظام	Al Nizam
None / Tašdīd	ّ	محمّد	Muhammad

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CHAPTER I. INTRODUCTION

1.1. Introduction

Over the course of centuries, the death penalty, with a religious and cultural background, was not unique but the most long-lasting and sometimes publicly preferred punishment to separate a criminal from society, of course, before creating prisons (Kronenwetter, pg. 87). Despite being generally accepted during all history of humanities, not ignoring scholars that anciently opposed it, nowadays capital punishment is a debatable issue, whether politically or socially, due to its irrecoverable and cruel character and lack of evidence on having a deterrent feature. On the social side, the augmentation in people's consciousness about the law by recognizing their rights due to democratization and being able to participate in their destiny had changed the balance scales in favor of universal abolitionist movements. On the political side, by reforming the judicial system and signing conventions and treaties, more than half of the countries in the world have abolished this punishment, even though,

1.1. Introducción

A lo largo de los siglos, la pena de muerte, con un trasfondo religioso y cultural, fue el castigo más duradero y, a veces, preferido públicamente para separar a un criminal de la sociedad, por supuesto, antes de crear cárceles (Kronenwetter, pág. 87). A pesar de ser generalmente aceptada durante toda la historia de la humanidad, no se puede ignorar a los filósofos que ya, antiguamente, se opusieron a ella. Hoy en día la pena capital es un tema discutido, ya sea política o socialmente, por su carácter irrecuperable y cruel y la falta de evidencias sobre su capacidad de disuadir. En el aspecto social, el aumento de la conciencia de las personas sobre la ley al reconocer sus derechos debido a la democratización y poder participar de su destino habría cambiado la balanza a favor de los movimientos abolicionistas universales. En el plano político, con la reforma del sistema judicial y la firma de convenciones y tratados, más de la mitad de los países del mundo han abolido este castigo. Sin embargo, todavía hoy, los países con más población se encuentran en

still, the states with more population are in the retentionist group³. el grupo retencionista⁴.

Considering that there is always "a diversity of opinion regarding the law" (Hartjen. pg. 38) and perceiving the process of law-making and -reviewing as "a continuous process [...] as a response to social influence operating in societies at various points in time" (Gibbons. 27), the death penalty always had its adherents or opponents. Belonging to the latter, this thesis is dealing with providing the judicial way by suggesting alternative punishments to replace this repressive penalization in the Islamic countries which bear the *Shari'a* system. In brief, the necessity for a juridical and penal revision to be able to abolish this penalty and make life a universal right, legally prescribed for all people without any prejudice or reservations, motivated the writer of this thesis in dealing with the mentioned issue, intending to establish equality between

Considerando que siempre hay "diversidad de opiniones sobre el derecho" (Hartjen. Pág. 38) y percibiendo el proceso de elaboración y revisión de leyes como "un proceso continuo [...] como una respuesta a las influencias que operan en las sociedades en varios momentos" (Gibbons. 27), la pena de muerte siempre tuvo sus adeptos y sus oponentes. Perteneciente a este último, esta tesis trata de proporcionar la vía judicial sugiriendo castigos alternativos para reemplazar esta penalización represiva en los países islámicos que se rigen por la *sharí'a*. En suma, la necesidad de una revisión jurídica y penal para poder abolir esta pena y hacer de la vida un derecho universal, legalmente establecido para todas las personas sin ningún prejuicio o reserva, motivó al autor de esta tesis a abordar el tema mencionado. Con

³ There exist evidences that in many currently progressed and retentionist countries such as England, two centuries ago, the death penalty was a habitual punishment for children of even seven years of age of any gender (Koestler, pp. 35-37). However, international covenants restricted the practice of this punishment from less than a century ago.

⁴ Existen evidencias de que, en muchos países, actualmente progresistas, fueron retencionistas como Inglaterra en la que, hace dos siglos, la pena de muerte era un castigo habitual para los niños, de incluso siete años de edad de cualquier género (Koestler, págs. 35-37). Sin embargo, los pactos internacionales restringieron la práctica de este castigo desde hace menos de un siglo.

women and men, and generating just a unique and authentic legal article; «the death penalty is abolished» regardless of gender, race, religion, or any other possibility that leads to discrimination or commentaries.

The importance of the thesis is the legal dangers that threaten the progress of our future, looking at all human beings as one body, into reaching a permanent democratic society where the law is the highest supporter and protector of humankind and is the source of justice and the basis of equality and peace. On the other hand, the terrifying statistics prepared by Amnesty International are sufficient for any scholar who looks for the welfare of the societies to commence the journey of discovering a way to resolve the most significant issue in penology, which is not especially finding criminals but not killing them in the name of justice and law. When a society approaches this point, where there is no risk of legally murdering guilty or innocent persons for pleasing the community, the priority in criminology and penal code will be altered and converted to how to prevent the crimes and reduce the benefit of committing offenses in people. In other words, when the law does not perpetrate any evil for its

la intención de establecer la igualdad entre mujeres y hombres, nuestro objetivo será llegar a un artículo legal único y auténtico, en el cual quede abolida la pena de muerte independientemente del género, raza, religión o cualquier otra posibilidad que dé lugar a discriminación o comentarios.

Por tanto, la importancia de la tesis se centra en los peligros legales que amenazan el progreso de nuestro futuro, mirando a todos los seres humanos como un solo cuerpo, para llegar a una sociedad democrática permanente donde la ley en general sea protectora de la humanidad y la fuente de la justicia y la base de la igualdad y la paz. Por otro lado, las aterradoras estadísticas elaboradas por Amnistía Internacional (AI) son suficientes para que cualquier académico que busque el bienestar de las sociedades emprenda el camino de descubrir una forma de resolver el problema penal más trascendente que es matar delincuentes en nombre de la justicia y la ley. Cuando una sociedad se acerque a este punto, donde no hay riesgo de matar legalmente a culpables o inocentes para complacer a la comunidad, la prioridad en criminología y en el código penal se verá alterada y convertida en cómo prevenir los delitos y reducir el beneficio de cometer delitos en personas. En otras palabras, cuando la ley

interest, it will not permit others to do so. Thus, we need the experience of the other countries that get good results by reforming and later empowering the rule of law. And, that is because not only societies in all history were culturally influenced by each other, but also they legally inspired one another through the social progress that they made by altering their codes. Therefore, the methodology of this thesis will be the comparative approach, by which we use the data of France and Spain, not to imitate or use the same punishments to change and abolish the death penalty in Islamic states but to find a way as a guide and a suggestion, which lead us to make our unique route towards it. In the following, we will discuss all these, specifically.

no perpetra ningún mal para su interés, no permitirá que otros lo hagan. Por tanto, necesitamos la experiencia de otros países que obtienen buenos resultados con reformar y luego potenciar el imperio de la ley. Y eso se debe a que no solo las sociedades durante toda la historia fueron influenciadas culturalmente unas por otras, sino que también se inspiraron legalmente unas a otras, a través del progreso social que lograron reformando sus códigos. Por tanto, la metodología de esta tesis parte de un enfoque comparativo, a partir de la normativa de Francia y España, no para imitar o utilizar las mismas penas con la finalidad de cambiar y abolir la pena de muerte en los estados islámicos, sino para encontrar una guía y una sugerencia, que nos lleven a encontrar nuestro único camino hacia ella. A continuación, discutiremos todos estos aspectos específicamente

1.1.1. Difficulties and restrictions

The most problematic feature regarding this issue is a perceptible decrease in resources and studies that happened after the total abolition of the death penalty from the European legal codes. On the

1.1.1. Dificultades y restricciones

La característica más problemática con respecto a este tema es una disminución perceptible de recursos y estudios que se produjo después de la abolición total de la pena de muerte de los códigos legales

other hand, political restrictions, religious bias, and Taboos around this issue in Islamic countries resulted in the lack of official investigations and researches. However, we used these limitations to strengthen our research by scrutinizing and analyzing first-hand texts alongside consulting international studies and recognized resources.

Por otro lado, las restricciones políticas, los prejuicios religiosos y los tabúes en torno a este tema en los países islámicos dieron como resultado la falta de investigaciones oficiales. Sin embargo, usamos estas limitaciones para fortalecer nuestra investigación al analizar en profundidad los textos de primera mano junto con la consulta de estudios internacionales y recursos reconocidos.

1.1.2. The Importance of the thesis

The more important the life of a human being is, the more significant this thesis would be. Thus, the importance of this thesis is due to its attempt to defend the right to life for all people due to the unequal respect that countries show towards the value of human beings and the mentioned right around the world. In an explicit explanation, depending on where a person is born or live, they can face different legal injustices - like being penalized with the death penalty, even though being innocent.

The need for introducing alternatives, which is one of the most claimed problems of the retentionist countries, the number of

1.1.2. La importancia de la tesis

La importancia de esta tesis se fundamenta en el intento de defender el derecho a la vida de todos los seres humanos, considerando que el valor del ser humano y el derecho mencionado no es igualmente respetado en todas las latitudes. Dependiendo donde nace y vive una persona, pueda enfrentarse con diferentes injusticias legales, entre ellas, ser castigada con la pena de muerte, incluso siendo inocente.

La necesidad de introducir alternativas, que es uno de los problemas más reclamados de los países retencionistas, la cantidad de inocentes que esperan ser ejecutados en el corredor de la muerte, los

innocents waiting for their execution on the death row, the ignored legal principles, and the human rights, alongside the desire to empower democracy, and the rule of law, are the other essential features that make this study unavoidable.

principios legales y los derechos humanos que son ignorados, junto con el deseo de empoderar la democracia y el estado de derecho, son las otras características esenciales que hacen necesario este estudio.

1.2. Questions

Some of the topics to which the thesis tries to respond are not new but primarily introduced by the UN⁵. They deal with 1) statistical and practical issues to answer questions like: How many death penalties are pronounced every year? And, which countries have the highest rate of executing the citizens, and what methods are they using? 2) Sociological issues: What are the given arguments in favor or on the contrary to the death penalty, which made the retentionist countries able to preserve this penalization? And, 3) the legal issues: For what crimes, and in what situations the death sentence is pronounced and how? And what was the regime of punishment in abolitionist

1.2. Preguntas

Algunos de los temas a los que la tesis intenta responder no son nuevos, sino que fueron introducidos principalmente por las Naciones Unidas⁶. Trata de: 1) Cuestiones estadísticas y prácticas para responder preguntas como: ¿cuántas penas de muerte se imponen cada año? y ¿qué países tienen la tasa más alta de ejecución de ciudadanos y qué métodos están utilizando?; 2) Aspectos sociológicos: ¿Cuáles son los argumentos a favor o en contra de la pena de muerte, que hicieron que los países retencionistas pudieran preservar esta sanción?; y 3) Cuestiones legales: ¿Por qué delitos y en qué situaciones se dicta sentencia de pena de muerte y cómo? y ¿cuál fue el régimen de castigo en los países abolicionistas que la

⁵ See Departamento de Asuntos Económicos y Sociales, pg. 8.

⁶ Véase Departamento de Asuntos Económicos y Sociales, pág. 8.

countries that replaced it?

Besides, we will try to answer some technical juridical subjects like what conventions, treaties, guarantees, and resolutions internationally do support the right to life, and when and where can they be referred? Some theological issues like what is the religious attitudes towards this punishment will be answered, specifically by scrutinizing Christianity and Islam. The history and its related topics also have a significant influence on this thesis. Our questions and responses will be divided into two parts of antiquity and then the experience of the pattern and target countries. To answer them, respectively, we will study the abolished and still in used methods, and later, the historical events in the four defined countries when the practice of the death penalty was restricted or increased in the case of being existed.

The other questions are if we can justify the abolition by referring to the objective of punishment? If the detainees have any rights? What are the judicial principles

reemplazó?

Además, trataremos de dar respuesta a algunos temas técnicos jurídicos como ¿qué convenciones, tratados, garantías y resoluciones a nivel internacional apoyan el derecho a la vida?, y ¿cuándo y dónde pueden ser remitidos? Algunas cuestiones teológicas como cuáles son las actitudes religiosas hacia este castigo serán respondidas, específicamente, al analizar en profundidad el cristianismo y el islamismo. La historia y los temas relacionados también tienen una influencia significativa en esta tesis. Nuestras preguntas y respuestas se dividirán en dos partes: la antigüedad y a continuación la experiencia de los estados que nos sirven de modelo (Francia y España) y la situación en Irán y Arabia Saudita. Para responderlas, respectivamente, estudiaremos los métodos abolidos y aún en uso, y posteriormente, los hechos históricos en los cuatro países definidos cuando la práctica de la pena de muerte fue restringida o incrementada en el caso de haber existido.

Las otras preguntas son si podemos justificar la abolición refiriéndonos al objetivo del castigo. ¿Cuáles son los principios judiciales que pueden restringir

that can restrict the practice of the death penalty? And finally, what are our means for informing people and convincing them to join the abolitionist movements?

la práctica de la pena de muerte? ¿Los detenidos tienen algún derecho? Y finalmente, ¿Cuáles son nuestros medios para informar a la gente y convencerla de que se una a los movimientos abolicionistas?

1.3. The objective of the thesis

The general objective of the thesis is to reach a position of having alternative penalization for all capital crimes and making the imposition of the death penalty unnecessary. Therefore, we divide our studies into two levels of restricting the practice of capital punishment using philosophical, legal, historical, and theological arguments and theories to serve all countries that desire to make a moratorium on the abolition of the death penalty, at least for ordinary crimes. And in the second step, we will deal with finding alternatives punishment to replace the mentioned penalization that will serve the Islamic countries in general, and Iran and Saudi Arabia, in specific. The final objective will be to have a bill with the statement of «The death penalty is abolished for all crimes» without any other reservation that makes the law

1.3. El objetivo de la tesis

El objetivo general de la tesis es llegar a la posición de tener una sanción alternativa para todos los delitos castigados con pena capital y hacer innecesaria la imposición de la pena de muerte. Por lo tanto, dividimos nuestros estudios en dos niveles de restricción de la práctica de la pena capital utilizando argumentos y teorías filosóficas, legales, históricas y teológicas para que sirva a todos los países que deseen hacer una moratoria para la abolición de la pena capital, al menos para los crímenes ordinarios. Y en el segundo paso, nos ocuparemos de buscar alternativas de castigo que sustituyan a la mencionada penalización que pueda servir en los países islámicos, en general, y en Irán y Arabia Saudita, en concreto. El objetivo final será contar con una propuesta legal con el enunciado «Se abroga la pena de muerte para todos los

discriminatory.

Thus, our intention is not only abolishing this punishment in penal codes but also constitutionally due to the risk of reintroducing this punishment in the case of having reservations or being among the abolitionists *de facto*. For example, Gambia had carried out no executions from 1998 to 2012⁷, when it executed nine citizens before going to a moratorium (Schabas; 2019, pg. 227)⁸.

delitos» sin ninguna otra reserva que haga discriminatorio el derecho.

Así, nuestra intención es promover la abolición de este castigo en los códigos penales y también constitucionalmente por el riesgo de reintroducir esta pena en el caso de tener reservas o estar entre los abolicionistas *de facto*. Por ejemplo, Gambia no había llevado a cabo ejecuciones entre 1998 y 2012⁹, cuando ejecutó a nueve ciudadanos antes de ir a una moratoria (Schabas; 2019, pág. 227)¹⁰.

1.4. The methodology

We study the methodology in two parts, as follows.

1.4. La metodología

Estudiamos la metodología en dos partes, como sigue.

⁷ Consult the *Death Penalty Database* in Cornell Law School.

⁸ Not including the abolition in the constitution can increase the chance of reintroducing the death penalty with the changing of political parties (Ancel, pg. 31).

⁹ Véase *the Death Penalty Database* en Cornell Law School.

¹⁰ No incluir la abolición en la constitución puede aumentar las posibilidades de reintroducir la pena de muerte con el cambio de partidos políticos (Ancel, pág. 31).

1.4.1. The general methodology: Choosing of Countries

As mentioned before, the principal objective of this thesis is to propound a solution for the claimed problem of the first ranking countries in executing their citizens that was not having alternative punishments to replace the death penalty. The restrictive policy of China in declaring the number of executions that made our study incomplete specifically, in the section of statistics alongside controversial information, lead us to discard this country.

The other two countries at the time of starting this investigation were Iran, in second place, which usually was followed by Saudi Arabia. Whereas the first and second mentioned states are preserving their position virtually for decades, the third state is changing its place between third to sixth. Considering that both countries enjoy an Islamic penal code based on *Shari'a*, alongside their prominence to be the strict followers of two Islamic schools, Shi'a and Sunni Islam, we focused our aim to propound alternatives to restrict and then outlaw the death penalty from the Islamic codes in general. Tracing the French Napoleonic code as the basis of the modern Iranian

1.4.1. La metodología general: Elección de los países

Como se mencionó anteriormente, el objetivo principal de esta tesis es proponer una solución al problema reivindicado de los primeros países en la ejecución de sus ciudadanos que no contaban con penas alternativas en sustitución de la pena de muerte. La política restrictiva de China al declarar de manera incompleta y ambigua el número de ejecuciones que hicieron, nos ha llevado a descartar este país al no poder incluir datos específicos en el apartado de estadísticas.

Los otros dos países en el momento de iniciar esta investigación eran Irán, en segundo lugar, en el número de ejecuciones, seguido por Arabia Saudita. Mientras que China, según AI, e Irán mantienen su posición durante décadas, Arabia Saudita varía su posición que se desplaza del tercero al sexto lugar y viceversa. Teniendo en cuenta que ambos países cuentan con un código penal islámico, basado en la *sharí'a*, junto con su prominencia por ser los seguidores estrictos de dos escuelas islámicas, el islam chií y sunita, enfocamos nuestro objetivo en proponer alternativas para restringir y luego abolir la pena de muerte de los códigos islámicos en general.

law, and the one which also impacted Saudi Arabia, and the process of transition and democratization in Spain, we entered these countries to this investigation as the patterns of abolition. Besides, the other determinant factor was parliamentary abolition and the history that they experienced towards reaching this status. Therefore, we will use not only black letter methodology by studying and analyzing primary sources, technical information, legal rules, and statute but also comparative one that is necessary to comprehend the judicial issues of the other judiciaries and find a way to reach our objectives.

1.4.2. Specific Methodology

Systematically and purposive to reach our objectives, and determined to answer all the above questions, we divided the thesis into seven chapters, in which, after the introduction as the first part, the second one deals with the general studies and statistics. Studying this chapter helps the reader to inform about the long and endless history of the death penalty

Rastreando el código napoleónico francés, como base de la ley moderna iraní, y el que también tuvo repercusión en Arabia Saudita, y el proceso de transición y democratización en España, incluimos a estos países en esta investigación como modelos de abolición. Además, el otro factor determinante fue la abolición parlamentaria y la historia que vivieron para alcanzar este estatus. Por lo tanto, utilizaremos no solo la metodología de *Black Letter*, al estudiar y analizar fuentes primarias, información técnica, normas legales y estatutos, sino también comparativa que es necesaria para comprender los temas judiciales de los otros poderes judiciales y encontrar la manera de alcanzar nuestros objetivos.

1.4.2. Metodología específica

De manera sistemática y con el propósito de alcanzar nuestros objetivos, y decididos a dar respuesta a todas las cuestiones anteriores, dividimos la tesis en siete capítulos, en los que, tras la introducción como primera parte, la segunda trata de los estudios generales y la estadística. El estudio de este capítulo ayuda al lector a informarse sobre la larga e interminable

alongside its methods of practice, meanwhile understanding why statistically it is meaningful and vital to work on this issue and precisely on the specified countries by this thesis.

Having two groups of studying, Spain and France as patterns, and Iran and Saudi Arabia as targets, we start the research from principle facts of criminology and punishment and then restrict it to be able to respond to the previously mentioned questions.

The third chapter is dedicated to philosophical attitudes and propounded thoughts to find a theory, which helps us in systematizing and introducing an analytical theorized replacement for the death penalty. Then, we study capital punishment within the International, European, and International Islamic Law alongside scrutinizing conventions, treaties, protocols, guarantees, and resolutions, terminating the chapter analyzing the arguments given in favor of or against abolition, briefly mentioning the situation of women in legal codes.

In the fourth chapter, the theological attitudes towards the death penalty will be

historia de la pena de muerte junto con sus métodos de práctica, indicando al mismo tiempo por qué estadísticamente es significativo y vital trabajar en este tema y precisamente en los países incluidos en el análisis de esta tesis.

Teniendo dos grupos de estudio, España y Francia como modelos, e Irán y Arabia Saudita como objetivos, comenzamos la investigación a partir de los hechos principales de criminología y el castigo y luego la restringimos para poder responder a las preguntas mencionadas anteriormente.

El tercer capítulo está dedicado a las actitudes filosóficas y los pensamientos propuestos para encontrar una teoría, que nos ayude a sistematizar e introducir un sustituto teórico y analítico de la pena de muerte. Luego, estudiamos la pena capital dentro del Derecho Islámico Internacional, europeo e Internacional profundizando en las convenciones, tratados, protocolos, garantías y resoluciones. Para terminar, analizamos los argumentos en favor o en contra de la abolición, y mencionamos brevemente la situación de las mujeres en los códigos legales.

En el cuarto capítulo, se examinarán las actitudes teológicas hacia la pena de

examined, considering catholicism as the dominant historical religion in France and Spain, and Islam in Iran and Saudi Arabia. In the section on Islam, due to being related to the topic, we will profound more on studying the Islamic denominations, and jurisdictional sources, punishments and their methods, capital crimes, and the quranic verses. Dealing with *Shari'a*, the segment refers to the shared criminal and penal codes between all Islamic countries. Later, after studying a brief legal history of Iran and Saudi Arabia, the thesis focuses on capital punishment within *lex lata* of the mentioned countries and the past historical law of Spain and France until the abolition.

The objective of Chapter V is to scrutinize the judicial reformations and abolition of the death penalty in France and Spain alongside *de lege ferenda* regarding Iran and Saudi Arabia. Due to being concerned with writing a final bill supported by legal theories and rights, we also study the codification and recodification, the legal principles, the minimum guarantees, the rights of the condemned person, legal responsibility, and modern alternatives for penalization. Regarding the issue of

muerte, considerando el catolicismo como la religión histórica dominante en Francia y España, y el islamismo en Irán y Arabia Saudita. En el apartado sobre el islam, por estar relacionado con el tema, profundizaremos más en el estudio de las denominaciones islámicas y las fuentes jurisdiccionales, los castigos y sus métodos, los delitos castigados con la pena de muerte y los versos coránicos. Al tratar con la *sharíá*, el apartado se refiere a los códigos penales compartidos entre todos los países islámicos. Posteriormente, tras estudiar una breve historia jurídica de Irán y Arabia Saudita, la tesis se centra en la pena capital dentro de la *Lex lata* de los países mencionados y el pasado histórico de la legislación española y francesa hasta la abolición.

El objetivo del capítulo V es analizar las reformas judiciales y la abolición de la pena de muerte en Francia y España desde la perspectiva *de lege ferenda* en relación con Irán y Arabia Saudita. Intentando redactar una propuesta final sustentada en el derecho y teorías legales, también estudiamos la codificación y recodificación, los principios jurídicos, las garantías mínimas, los derechos de condenados, la responsabilidad legal y las alternativas modernas de penalización. En

changing the punishments, as a condensed analysis of all the above chapters, we will try to introduce alternative penalties and ultimately a legal statement using the principles of law, philosophy, and Comparative Law, mostly as reductive patterns to punishment. Finally, a bill containing some legislative opinions will be included.

Chapter sixth will briefly deal with education and art and their influence on social joining to the abolitionist movements and the permanent outlawing of the death penalty, not ignoring suggestions for future researches. In the same section, we will briefly propound a new attitude towards the morality and immorality of punishment.

Sequentially, the conclusion will be added as the last chapter in which all the questions are answered.

cuanto al tema del cambio de castigos, como un análisis condensado de todos los capítulos anteriores, intentaremos introducir penas alternativas y, por el último, un enunciado legal utilizando los principios del derecho, la filosofía y el Derecho Comparado, principalmente como patrones reductivos al castigo. Finalmente, se incluirá una propuesta con algunas opiniones legislativas.

El capítulo VI abordará brevemente la educación y algunas manifestaciones artísticas y su influencia en la vinculación social con los movimientos abolicionistas y la ilegalización permanente de la pena de muerte, sin dejar de lado sugerencias para futuras investigaciones. En la misma sección, propondremos brevemente una nueva actitud hacia la moralidad y la inmoralidad del castigo.

Secuencialmente, se agrega la conclusión como último capítulo en el que se responden todas las preguntas.

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**CHAPTER VI. SOCIAL AND EDUCATIONAL
ABOLITION OF THE DEATH PENALTY**

The process of the permanent universal abolishment of capital punishment is not only the fruit of the human rights movements in a country but also a result of a change in the governmental and political currents of thought. That is to say, the amendment in the French penal system in Foucault's time is not just the product of the social movement in France but also the legal modification in Austria that was started a long time before by Joseph II, the emperor of the Holy Roman Empire, which later was pursued by his successor, Leopold II, who tried to abolish this penalty.

Also, by detecting the historical and sociological path among the countries resulting in the abolition of this penalty, whether they reintroduce it or not, it is understandable that the successful progress of this process depends on the morality based on which the society represents itself. The more the human being is recognized by its essence of making mistakes, the more tolerating society appears toward its wrongdoings and even crimes. The more this being is seen as a necessitous one, the more pity he receives from the social judgments, and consequently from the juridical ones.

The reason to say all these is to enter the discussion of why also the religious and more restrictive societies are demanded to be more tolerant toward humanity, and in this case, toward people who commit capital offenses. Besides, it is predictable that if any of our targeted countries, whether Iran or Saudi Arabia, accepts a change in their legal code, even though a little one, the other countries also modify or be more soft toward these changes, by considering these two countries as their reference models.

6.1. The cultural modification and Arts

For centuries or even thousands of years, every individual in society was and is educated to be the impulsive follower of a unique discipline of morality. From the age of enlightenment to now, various legal movements targeted the juridical systems, aiming to reform them, which showed its success in amending punishments.

The question, still, is whether the culture of punishment in society changes after any amendment in the law, or these modifications are after it. Can a society depart from its comfort zone with ease? And how is it possible to move it into a better-desired position? Fortunately, nowadays, mass media as the source of mass education can be found, frequently, in the hands of reformists, who make society more fortunate by using these sources as an instrument of humanitarian reformation.

Cinema, as one of the most prominent industries in our contemporary era, was one of these sources (Toia, pg. 106) to be used for mass enlightening and awakening.

The movie, *We Are All Murderers*⁵⁴⁰ opened a new horizon in front of the eyes of French people, the one which was as prominent to provoke people's sentiment and take the discussion of justice and capital punishment another time to the assembly.

Dead Man walking was another movie that showed the people the possibility of being wrong about the myth of incorrigibility of the offenders by putting the public in the place of a nun who starts a weird emotional relationship with a capital offender.

Succeeding the release of the gamely movie, *The Stoning of Soraya M.*⁵⁴¹, the stoning, as the penalty by which the heroine of the story is punished to death, became the central point of discussion in many juridical gatherings and student meetings. Even though not at first, later and gradually, the movie was as influential to enforced the Iranian justice system review another time the most dreadful medieval punishment, still retained in the penal code by then.

⁵⁴⁰ *Nous sommes tous des assassins* (1952)

⁵⁴¹ سنگسار ثریا م. (2008)

After that, the movie *Hush! Girls Don't Scream*⁵⁴², despite all its legal insufficiency, took the danger of the death penalty into the house of every family who has got a daughter, trying to normalize the face of a murderer who can be of the female gender, a victim, and innocent.

Yet, while the lack of education and sensibilization in many countries with religious or traditional law is observable, it is hoped that the mass media, as mentioned before, become an instrument not only to entertain but also to what is more needed, that is social awakening and as its consequence cultural reformation⁵⁴³.

6.2. The abolition of capital punishment from the Educational system

Even though in many countries the death penalty has been abolished, society and the educational system still remain its memories through educative games that offer to children (Wright, Betteridge and Buckby, pp. 111- 112). An example of this claim is Hangman⁵⁴⁴, a funny game used by teachers in schools, and also online pages to teach the spelling of the words (Chakraborty, pg. 217). Speaking about the game, the student has limited chances to guess, and with each miss would have his painted representatives closer to death. Now, the question is whether executing somebody is as adventurous or fun as being educational? Isn't there any way for the other alternative games to replace it? Wouldn't it be possible that this game is an introduction to a psychological fantasy that seeing the act of hanging an individual is considered as a kidding or play where the person lost his life for being deserved to it in consequence of several mistakes, where he, in fact, was striving to choose the best remaining options? Undoubtedly, the permanent abolition of the death penalty will happen, only when our children do not learn to punish an error by killing the wrongdoer, a goal that never will be accomplished while having a system

⁵⁴² هیس! دخترها فریاد نمی زنند (2013)

⁵⁴³ Also, see *Las artes contra la pena de muerte* by Vicente Martínez.

⁵⁴⁴ To get brief virtual information about this game's instruction, see Figure I. Hangman Game' in this thesis.

where the student comes to the result that he can be hanged by his teacher with each mistake, the fact that results in his conservative ideas, causing him neither accept any errors nor forgive any misdemeanor. Obviously, schools are not only socializing the children - through teaching them how to act and decide in society - but also discipline them through penalizing the students who, regardless of their capabilities and intellectual qualities, can not satisfy the requirements of passing the prepared exams or tests. The teacher punishes the students at school, and that is how and where the children learn the punishment⁵⁴⁵.

Therefore, looking for other educational alternatives or plays which can help society by directing the children to a brighter future would be desirable⁵⁴⁶.

6.3. The immorality of morality in punishments

The morality of punishment can be studied considering various aspects around the righteousness of penalization, and if it is ethical to make someone be misbehaved, whether the purpose of punishment justifies the means, and if so, what kind of methods are justifiable. Can punishment morally educate and really lead to a moralistic rectification? Is it ethically permissible to punish an innocent person, and why? Can the death penalty, whether being morally acceptable or not, be justified as a moral act? The other question that faces us to other profound issues is whether morality is absolute or relative? In the case of affirming the first option, why we consider the essence of an act differently depends on targeted societies, and if contrary, why we cannot endure the actions that happen against us? Besides these, several others responded and unanswered

⁵⁴⁵ Thus, even though still remarkably influential, the family has less influence than schools - because of the private penalization of the former and the long hours that the students pass in the latter.

⁵⁴⁶ Other alternatives for hangman are ‘parachute spelling game, melting snowman, spaceman, and swimmer’. Besides, International Amnesty is managing some projects to educate the youngsters about the death penalty. See *Els Drets Humans*.

relevant questions that cannot be proposed here due to the limitation of the scope of this research.

One of the suggestions for future studies given by the current thesis is to study the relationship between the morality and philosophical and psychological aspects of punishment in another dissertation. Still, here, the intention to speak about the righteousness of punishment is reaching the point that the penalization is immoral if done without any measure, limitation, justification, or indeed in case, it did not be revised from time to time to be improved or change based on social needs.

In fact, looking behind, over the centuries, the methods of punishment are changing their characteristics and concept from a moral act to an admirable immoral one up to pure unethical act leading to its abolition.

The penal systems have invented thousands of methods for punishing individuals during history and guaranteed them by persuading people to accept their divinity, making them admit and endure the penalties as just, moral, obligatory, and unchangeable.

The concept of the harsher the punishment was, the more saintly and divine it was considered leads our critical thinking to result that nobody and nothing could justify a barbaric penalization but the divinity and heavens. The recent abolition of numerous of these methods, which nowadays are recognized as inhuman or medieval, can assure us that there are a lot of morally acceptable immoralities. Based on the philosophical concepts, also, we can assume that the punishment, per se, is among those admirable immoralities, which are necessary for society and its long-lasting life.

Comprehending that society, due to its needs, enjoys various nonmoral values and acknowledges them as bearable, among those, sanctioning, I add two concepts of acceptable and tolerable immoralities to the admirable iniquity relating to punishment. To explain it more, penalization for justice is admirable in general, and in particular capital punishment, even though being regarded as an immoral act was, and in some states still is, not only admissible but also endurable for the community. However, the death penalty will be totally unethical, intolerable, with no means to be justified, if the condemned person was innocent, the punishment was not revised and improved based on the current situation of society, nor agree in proportionality with the crime, neither

personalized regarding the condition of the crime scene, offender and victim, besides, in case of endangering democracy and fundamental liberties and human rights, like freedom of expression, and based on many other ifs and buts.

6.4. Suggestions for upcoming researchers

Even though all efforts of this investigation are to abolish capital punishment, still, this subject has the unlimited capacity to be studied politically, that is to say, from the people's point of view, despite its controversiality in non-democratic countries, especially those which penalized the political or social opinions by death or imprisonment, likewise our target countries. Still, the modern judicial system is a connection point between people and their government. In our contemporary era, by giving power to the state or the people, the law determines the relation between them. A democratic state alongside the parliament, which represents the people and is bound to the received votes, enjoys as much authority as the society gives them.

Thus, the act of legal enactment or abolishment, and law and judicial codes, altogether describe the society and its people, or in a better phrase, the collective attitude to which the majority of representatives in the parliament belong. Therefore, the abolition of the death penalty in democratic countries must be first estimated and be accompanied by people's will and intention. Yet, the dark side of this coin refers to reintroducing this penalty that is fortunately forbidden constitutionally, attempting to survive the country from the marsh of revenge and misery. The question remains when society outlaws the same constitution and rewrites a new one. Is society educated enough to accept the abolition of the death penalty as a permanent value, considering that it was historically one of the defined symbols of justice? Is its abolition regarded as a part of morality in the community? How and why? Is it possible for a society to renounce as many conventions and covenants that it signed before to enjoy the international concessions? Are legal principles converted to the inseparable piece of the judicial culture? And all and all, do people permit the state to take radical control another time? Why? And what are the reasons?

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