

Judicial Caning: A Study of Jurisprudence and Human Dignity

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ABSTRACT

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This research carries out a jurisprudential review of judicial caning in the context of criminal punishment considering the notions of justice, proportionality, and legal dignity in reference to the Malaysian legal system. The discussion critically examines the legal and philosophical underpinning that has been established under the administration of criminal punishment considering modern ideologies that relate to criminal punishment regarding notions related to punishment in retribution, deterrence, and rehabilitation. The study will further interrogate the question of how caning as a form of judicial punishment is proportionate to criminal behavior and how it might act to undermine contemporary norms of humane treatment and aspects of human rights and the respect for individual dignity. Traditional views and defenses of corporal punishment in relation to these goals of deterrence and condemnation are challenged by this assignment in line with contemporary developments in jurisprudence and its concern for autonomy and the inherent worth of the person. The analysis concludes that judicial caning presents a continued imbalance between the power of the state to punish and discipline offenders, and the rule of law to guarantee justice and the dignity of the offender. This is an important concern about the future compatibility of judicial caning with the dignity-based approach to punishing offenders.

1. Introduction

Justice is widely regarded as a complex and elusive concept, making it difficult to define with precision. Originating from the Latin term *iustus*, meaning “right,” “correct,” or “appropriate,” justice generally refers to the moral and legal framework through which

fairness is administered. Despite its long intellectual history, the concept remains theoretically contested and open to interpretation.

In modern philosophy, John Rawls reconceptualized justice as fairness, arguing that a just society must ensure equal basic liberties, permit inequalities only if they benefit the least advantaged, and guarantee fair equality of opportunity. Meanwhile, Immanuel Kant grounded justice in the principle of freedom, asserting that actions are just only if they can coexist with the freedom of all individuals under a universal law. For Kant, justice is rooted in mutual respect and the recognition of individuals as free and rational agents.

In Malaysia, judicial caning represents a controversial application of justice within the legal system. Introduced during British colonial rule, it remains a legally sanctioned form of corporal punishment, involving severe physical force that can cause lasting harm. Over time, its scope has expanded to include more than 60 offenses, affecting thousands of individuals each year. However, recent legal developments in 2025, led by Azalina Othman Said, signal a potential shift in policy, including proposals to abolish mandatory judicial caning and provide judges with greater sentencing discretion.

This discussion raises critical questions about whether judicial caning aligns with contemporary theories of justice. From a Rawlsian perspective, such punishment may conflict with fairness and equality, particularly if it disproportionately impacts vulnerable groups. From a Kantian viewpoint, the infliction of physical pain may challenge the principle of respecting individuals as autonomous beings.

2. Methodology

This study adopts a qualitative and doctrinal approach that treats law not merely as a set of rules, but as a reflection of societal values and moral choices. Legal sources such as statutes and judicial decisions are analysed to understand how judicial caning is authorised, limited, and justified within the criminal justice system. Rather than focusing solely on the technical legality of caning, this research pays attention to how courts reason about punishment, seriousness of offences, and proportionality when imposing such sentences.

Alongside legal texts, this study engages with philosophical writings and academic literature on punishment to capture the human and moral dimensions of sentencing. Theories of punishment are examined not in isolation, but in relation to lived realities. Specifically, it analyzes how punishment affects offenders, how society perceives justice, and how dignity is preserved or compromised in the process. International human rights perspectives are also considered to provide a broader ethical context. Through this reflective and analytical methodology, the research aims to bridge legal doctrine with human experience, offering a more meaningful evaluation of judicial caning as both a legal sanction and a moral act.

3. Literature Review

To determine whether such punishment is just, its legitimacy must be critically evaluated through foundational philosophical frameworks like Immanuel Kant's retributive theory and John Rawls's justice as fairness. Both philosophers belong to the liberal tradition in the broad sense, prioritizing the rule of law and the moral status of the individual over the collective aggregate of happiness (Schroeder, 2022). However,

their conceptions of what justice demands in the face of wrongdoing diverge significantly. Kant, operating within a strict deontological framework, offers a potential justification for caning based on the "principle of equality" (*ius talionis*), provided it does not cross the threshold into dehumanization (Fantasia, 2021; Schroeder, 2022). In contrast, Rawls, focusing on the structural conditions necessary for a society of free and equal citizens, provides a robust basis for rejecting judicial caning as incompatible with basic liberties and the primary good of self-respect (Follesdal, 2014; Chidi, 2025). These two positions are important to determine the extent to which judicial caning can be reconciled with the demands of justice.

3.1 Immanuel Kant's Retributivism

In *The Metaphysics of Morals*, Kant argues that judicial punishment can never be administered merely as a means to promote some other good for the criminal or for civil society (Fantasia, 2021; Hoffman, 2015). For Kant, using a human being as a tool for deterrence violates the Categorical Imperative, specifically the Formula of Humanity, which commands that we treat humanity always as an end and never merely as a means (Mfonobong David, 2019; Chidi, 2024; Fantasia, 2025).

Therefore, the only valid justification for punishment is desert. The criminal has committed a crime, and justice requires that this moral imbalance be rectified. Kant writes, "The law of punishment is a categorical imperative." If justice ceases to be done, there is no longer any value in human beings living on the earth (Chidi, 2024). This leads to the central mechanism of Kantian punishment: the *ius talionis*, or the law of retribution.

The *ius talionis* dictates the "principle of equality" as the standard for justice. Kant argues that "whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself." This is not merely a poetic sentiment but a strict guide for the quality and quantity of punishment. If one insults another, they must be insulted; if one steals, they essentially steal from themselves; and if one kills, they must die (Chidi, 2024).

If the *ius talionis* requires a punishment that is qualitatively similar to the crime, then crimes of physical violence, such as assault, battery, or rape present a unique challenge for imprisonment. Incarceration deprives a person of liberty, but it does not strictly replicate the physical pain inflicted upon a victim (Chidi, 2024).

However, the extent to which Kant justifies caning is heavily constrained by his concept of human dignity (Fantasia, 2021). While the *ius talionis* serves as the guide, it is limited by the requirement that the state must not mistreat the criminal in a way that degrades their "innate personality." Kant distinguishes between the "phenomenal" self or the biological being capable of feeling pain and the "noumenal" self or the rational moral agent. Punishment targets the phenomenal self to hold the noumenal self accountable (Jason, 2020; Fantasia, 2021). Yet, Kant explicitly opposes punishments that are "mutilating" or inherently degrading.

This creates a tension in applying Kant to judicial caning. Caning is usually administered in a way that leaves permanent scarring on the offender. This constitutes mutilation, which Kant rejects because it destroys the physical person that the state has a duty to preserve outside of capital punishment. Furthermore, normally, the act of caning often

involves strapping a grown man to a frame and beating him on the buttocks. It is viewed as stripping the offender of all dignity, reducing him to a screaming animal, it may violate the respect due to the "humanity" within him (Fantasia, 2021).

Thus, canning under Kant is not permitted. Canning cannot be administered without crossing the line into torture or permanent mutilation. It is an offence which is against the human dignity and self-respect.

3.2 John Rawls's Justice as Fairness

Shifting the lens to John Rawls, the justification for judicial caning largely evaporates. Rawls's project in *A Theory of Justice* is not to balance the cosmic scales of good and evil, but to define the principles of justice that rational, free, and equal persons would agree to as the foundation of their society (Chidi, 2025; Follesdal, 2014). He utilizes the "Original Position" which is a thought experiment where parties choose principles behind a "veil of ignorance," unaware of their own social status, strength, or propensity to commit crime (Chidi, 2025).

In this position, Rawls argues that rational agents would agree to two main principles. The First Principle guarantees each person the "most extensive total system of equal basic liberties compatible with a similar system of liberty for all." These basic liberties include the "integrity of the person," which encompasses freedom from psychological oppression and physical assault, as well as the right to hold personal property (Sari, 2020).

From the perspective of the Original Position, the parties would adopt a "maximin" strategy to maximize the minimum outcome. They would ask: "If I turn out to be a convict in this society, what are the limits of the punishment I would consent to?" It is highly implausible that rational agents would agree to a penal code that authorizes judicial caning (Rawls, 1999; Schroeder, 2022). While they would agree to the necessity of punishment to uphold the Rule of Law, they would favor sanctions that restrict liberty over those that violate bodily integrity through violence. The risk of being subjected to the excruciating pain and physical trauma of caning would be viewed as an unacceptable threat to one's basic rights, particularly when less invasive alternatives exist to secure compliance with the law.

For Rawls, the priority of liberty is "lexical." This means that basic liberties cannot be traded off for other social or economic gains. Consequently, the common utilitarian argument for caning that it is cheaper than prison and effectively deters crime is inadmissible in a Rawlsian court (Chidi, 2025). One cannot violate the basic integrity of the person simply because it is efficient for the state. Justice requires that the state respect the physical boundaries of its citizens, even those who have broken the law (Jason, 2020).

Rawls asserts that self-respect is the most important primary good. Without it, "nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them" (Taylor, 2003). Judicial caning is a punishment that operates through humiliation and the domination of the body (Ataner, 2006). By reducing a citizen to a state of physical agony and helplessness, often leaving permanent marks, the state attacks the very "social bases" that allow that individual to view themselves as a worthy member of the community.

In a "well-ordered society" governed by justice as fairness, the laws must reflect the mutual respect that citizens have for one another. To write a law that authorizes the beating of a citizen is to embed a principle of degradation into the basic structure of society (Jason, 2020; Chidi, 2025). Rawls argues that the "strains of commitment" must be manageable; citizens cannot agree to a social contract that might require them to endure such deep attacks on their personhood and self-respect (Jason, 2020). Therefore, judicial caning is unjust because it erodes the foundations of the specific type of social cooperation that justice as fairness seeks to build.

However, there is a second principle argued by Rawls regarding the distribution of social and economic advantages that further condemns the practice (Chidi, 2025). The Second Principle dictates that social and economic inequalities are acceptable only if they are attached to positions open to all under conditions of fair equality of opportunity and are to the greatest benefit of the least advantaged members of society.

From the perspective of fair equality of opportunity, the argument that judicial caning violates the principle of fair equality of opportunity is fundamentally flawed because it misapplies a concept of social and economic justice to the realm of criminal justice (Nicola, 2021). Fair equality of opportunity is a principle designed strictly to ensure equitable access to offices, positions, and economic goods; it is not a constraint on penal sanctions or law enforcement (Jason, 2020; Chidi, 2025).

Furthermore, under the Difference Principle the basic structure of society must be arranged to maximize the prospects of the least advantaged (Chidi, 2025). Offenders often come from the most disadvantaged socio-economic groups. By institutionalizing a practice that systematically destroys the self-respect of these individuals by stripping them of their dignity and treating them as objects of physical domination the state fails to arrange inequalities in a way that benefits the worst-off (Andreas, 2014). Instead caning deepens their disadvantage and deprives them of the essential psychological foundation needed to pursue a rational plan of life thereby violating the demands of distributive justice.

Finally, Rawls's distinction between types of procedural justice provides a critical structural argument against corporal punishment. Rawls identifies criminal trials as instances of imperfect procedural justice (Javier, 2025). While there is an independent standard for the correct outcome where the guilty should be punished and the innocent exonerated there is no feasible procedure that guarantees this result in every case. Because the judicial process is inherently fallible, errors are inevitable. From the perspective of the Original Position which itself is an instance of pure procedural justice where the fairness of the outcome is determined solely by the fairness of the setup, rational agents would be acutely aware of this imperfection (Andreas, 2014). Knowing that the legal system cannot guarantee a perfect outcome they would refuse to authorize punishments that are irreversible and permanently damaging such as caning. Thus, the inherent limits of imperfect procedural justice necessitate a penal code that allows for the correction of error which renders judicial caning an unacceptable risk for free and equal citizens to accept.

4. Discussion

4.1 How far does Malaysian law on judicial caning reflect Kantian principles, Rawlsian principles, or a hybrid of both?

4.1.1 Overview of Malaysian Law on Judicial Caning

Corporal punishment is strictly prohibited under the United Nations Convention against Torture and customary international law as judicial caning is cruel and inhuman and these may amount to torture (OMCT, 2025). Now, 175 states have ratified the Convention, placing Malaysia among a small group of countries that have yet to do so. (OMCT, 2025) In Malaysia, caning is used as a judicial punishment for criminal offences (Amnesty International, 2010).

Under common law, concurrent imprisonment is the default rule. This is because when several prison sentences are imposed in the same court sitting, they were traditionally treated as starting on the same day. This rule helps prevent double punishment when an offender faces multiple charges that may be heard separately by different judges. However, courts later developed the power to order consecutive imprisonment. This was to ensure that an offender does not escape proper punishment by having all sentences run at the same time, especially where the offences are separate and serious. Consecutive sentences are therefore used when concurrent sentences would be unjust or inadequate (Amanda Clift-Matthews, 2021).

In Malaysia, when courts consider whether whipping sentences should run concurrently or consecutively, they often focus on Section 288(5) of the Criminal Procedure Code ('CPC'). This provision states that when a person is convicted in one trial of two or more offences that are punishable by caning, the total number of strokes imposed must not exceed 24 strokes for adults and 10 strokes for youthful offenders. This section limits the total number of strokes that may be imposed regardless of the number of offences (Dato' Edwin Paramjothy Michael Muniandy, 2025). However, the CPC is silent on whether judicial caning should be executed concurrently or consecutively. This silence previously gave rise to judicial debate. Malaysian courts have consistently interpreted the law to require consecutive execution (Dato' Edwin Paramjothy Michael Muniandy, 2025).

In Malaysia, Penal Code ('PC') and the Dangerous Drugs Act 1952 ('DDA') comprise substantive criminal law. Section 376(1) of the PC is an example of substantive law. It defines the offence of rape and prescribes caning as mandatory form of punishment in addition to imprisonment. By identifying the elements of the offence and the consequences of committing it, the provision creates rights and obligations that will directly affect a person's liberty.

Procedural law criminal law can be seen through Section 286–291 of the CPC. The provisions state the guidelines governing caning, though it is referred to as 'whipping' in the provision (Harsh Mahaseth & Shifa Qureshi, 2022), in accordance with traditional British legislative terminology. These sections are classified as procedural law because they do not create the punishment of caning as shown in Section 376(1) of the PC, but they regulate how a sentence of caning should be carried out.

In Malaysia, judicial caning may be mandatory or discretionary. Malaysian courts distinguished mandatory and discretionary caning based on statutory wording. In *Mani Maran Athigharee v. PP* [2017] 9 CLJ 232, the court reaffirmed that the phrase “shall be punished with” indicates a mandatory sentence, while “shall be liable to” indicates a discretionary sentence. Mandatory caning is generally imposed for serious offences, such as voluntarily causing hurt by dangerous weapons or means as stated in Section 326 of the PC and using force or touching someone to offend their dignity or decency as stated in Section 354 of the PC. Discretionary caning applies to less serious offences, such as robbery using a weapon or trying to seriously injure or kill someone as stated in Section 397 of the PC.

4.1.2 Kantian Elements in Malaysian Judicial Caning

Kantian elements are most clearly reflected in the substantive criminal law of Malaysia. The purpose of substantive criminal law is to punish conduct that violates legal norms, and such punishment must be known in advance (Noor Shahidah Saharom, 2019). This embodies Kant’s retributive principle.

Caning can be justified on the basis of retributive justice according to Kant’s principle. While imposing punishment, inherent dignity of the offender must be respected by treating individuals as ends in themselves, not merely as a means to an external purpose. Consequently, judicial punishment may only be imposed because a crime has been committed, but not to promote the offender’s welfare or to advance the interests of society.

In the Malaysian context, the criminal justice system reflects a retributive justice. When an individual commits an offence, they will be imposed under PC. The PC provides a range of criminal offences together with their corresponding punishments. For serious crimes, sanctions such as judicial caning may be applied to offenders. Overall, it is clear that the Malaysian criminal justice system is predominantly punitive in nature, emphasising on punishment rather than on rehabilitation (Hanifah Haydar Ali Tajuddin & Haarshwaran Kumar, 2024).

In *Public Prosecutor V Roslan Bin Imun* [1999] 3 MLJ 659, Abdul Malik Ishak J held that in this case, the offence involved extreme cruelty, so caning was justified in addition to 20 years’ imprisonment. The sentence was intended to deter the offender and others from committing similar crimes in the future. The sentence was stated to deter the offender, it is clear that its severity was grounded in retributive justice. The punishment reflected the seriousness of the offence and the offender’s moral culpability.

It is also important to examine Malaysia’s legal position on whether sentences of judicial caning are to be carried out concurrently or consecutively. Under Malaysian law, whipping is not recognised as a stand-alone sentence. Instead, it functions as an additional punishment imposed alongside imprisonment. This means whipping is carried out consecutively. This reinforces its role as an enhanced deterrent rather than an alternative form of punishment. Therefore, the Parliament’s intention is clear. Treating whipping as concurrent would weaken its deterrent effect and reduce the seriousness of the punishment (Dato’ Edwin Paramjothy Michael Muniandy, 2025). This approach reflects retributive justice, which means each offence constitutes a distinct moral wrong and must attract its own punishment based on moral desert.

Moreover, mandatory caning reflects Kant's retributive theory of punishment. In *Public Prosecutor v Dato Alimikadi bin Dato Hadi* [2022] MLJU 1718, the court referred to the case of *PP v. Hassan Ali Abdul Razak* [2016] 9 CLJ 584 and held that the phrase "shall be punished with" leaves no discretion to the court. As a result, the High Court used its revisionary power to add the mandatory three strokes of whipping to the 24 months' imprisonment imposed by the Magistrate Court. In *Tun Naing Oo v PP* (2009) 3 AMR 561, the court held that the phrase "shall be liable" in Section 6(1)(c) of the Immigration Act 1959/1963 is discretionary, not mandatory. This wording enables the court to have full discretion to decide whether to impose whipping.

However, in *Muhamad Elias bin Muhamed Yusoff v Public Prosecutor* [2016] 12 MLJ 306, the court held that the phrase "shall be liable to whipping / be whipped" in Sections 392 and 397 of the PC clearly means mandatory whipping. The court referred to the case of *Public Prosecutor v Man bin Ismail* [1939] 1 MLJ 207 and approved by the Federal Court in *Jayanathan v Public Prosecutor* [1973] 2 MLJ 68. Therefore, the Sessions Court was correct in imposing whipping on the appellant. In the case of *Muhamad Elias*, the court also further referred to *Nazri bin Marzuki v Public Prosecutor* (Criminal Appeal No 42S-8-2 of 2015) (unreported) which cited that robbery, especially armed robbery, is a serious and rampant offence. The seriousness of armed robbery justifies corporal punishment. The court's decision reflects Kant's retributive theory. Although Sections 392 and 397 of the PC use the phrase "shall be liable to whipping", the court interpreted the provision as mandatory due to the seriousness of robbery, particularly armed robbery. This demonstrates that punishment was imposed because the offender deserved it.

Other than that, Kant's theory further emphasises the principle of *ius talionis* (law of retribution). The principle of *ius talionis* ensures proportionality between guilt and punishment. It prevents penalties that are disproportionate to the crime (Francesca Fantasia, 2021). By matching the seriousness of the offence with the severity of punishment, it ensures that everyone is treated equally before the law (Francesca Fantasia, 2021).

To illustrate, a thicker cane about 1.09 metres in length and 1.25 centimetres in diameter is used for serious and violent offences such as drug trafficking, grievous hurt, armed robbery, and rape. A thinner cane is used for white-collar crimes like bribery and criminal breach of trust. (Professor Dr Ashgar Ali Ali Mohamed, 2018). This reflects the principle of proportionality. The severity of the punishment can be adjusted to match the lower level of harm and moral blameworthiness of the offence to ensure the punishment is not excessive.

As cited in *Criminal Litigation Process* by Baljit Singh Sidhu, the principle of *ius talionis* was demonstrated in a number of Malaysian cases. In *R v Sargeant* [1974] 60 Cr App R 74, the court held that the idea of "an eye for an eye" no longer applies in Malaysia. However, retribution still plays a role. The sentences that judges impose must reflect society's strong condemnation of serious crimes. This principle was later cited and applied in *PP v Muhari bin Mohd Jani & Anor* [1996] 3 MLJ 116.

In *PP v William Ayau* [2005] 4 MLJ 328, initially, the Sessions Court imposed five years of imprisonment after taking into account mitigating factors such as the accused's guilty plea, young age, family responsibilities, and repentance. However, the High Court increased the sentence to 15 years of imprisonment and five strokes of caning. The court

held that the original sentence failed to reflect society's strong condemnation of rape and undermined the seriousness of the offence, especially in light of the growing number of rape cases in Malaysia. This case has demonstrated that although the literal application of *ius talionis* has been rejected in Malaysian criminal law, it still continues to uphold retribution.

In the recent cases, in *Public Prosecutor v SHY* [2025] MLJU 3518, Kan Weng Hin J stated that the old idea of strict retaliation (*lex talionis* / "an eye for an eye") has been modified to suit a more humane and progressive society.

Moving forward, as addressed in Research Question 1, Kant's justification of caning is strictly limited by his concept of human dignity. Brennan J's opinion in *Furman v. Georgia*, 408 U.S. 238, 1972 is notable because it reflects a strongly Kantian concern for human dignity. He argued that the core meaning of the constitutional ban on "cruel and unusual" punishment is that punishment must not be so severe as to degrade human dignity. If a punishment violates this prohibition, the state would be inflicting punishment that is inhuman and uncivilised.

In Malaysia, caning is generally carried out in private under civil law. However, under Syariah law, public caning has been imposed in some cases. On 20 November 2024, the Terengganu Sharia High Court sentenced Mohd Affendi Awang to six strokes of caning under the Sharia Criminal Offences (Takzir) (Terengganu) Amendment 2022 after he pleaded guilty for the third time to the offence of khalwat. The court ordered the punishment to be carried out publicly at a mosque in Kuala Terengganu. The Malaysian Bar strongly opposes public caning as it increases humiliation and anguish experienced by the punished individuals. This undermines the dignity of the individual and can be seen as violating Article 5 of the FC. (Malaysian Bar, 2022) The practice of public caning under Syariah law conflicts with Kant's dignity principle by exposing offenders to humiliation. In contrast, the Malaysian Bar's opposition to public caning reflects Kantian concerns for human dignity.

Under Malaysian civil law, the caning of women is prohibited. Caning is also prohibited for men who fall within certain age and health categories. In addition, Malaysia has undertaken international obligations under the Convention on the Rights of the Child to ensure that children are not subjected to caning. These measures are the positive first steps in the journey towards a total prohibition against caning as a form of punishment for all persons, regardless of age or gender (Malaysian Bar, 2009).

However, these exemptions are grounded in medical reasons rather than human dignity. In *Yong Vui Kong v Public Prosecutor* [2015] SGCA 11, the court stated that women are exempted from caning because they are less able to physically endure it. Men and women have clear physical differences and Parliament was allowed to consider this when making the rule.

4.1.3 Rawlsian Elements in Malaysian Judicial Caning

Applying Rawls's 'veil of ignorance' to Malaysian judicial caning reveals immediate conflicts with the principle of equal basic liberties. Rawls suggested two principles that emerge from the theory behind a veil of ignorance. The first principle is the equal basic liberties. Everyone has the same basic rights and freedoms. Everyone must have equal access to these rights (Cut Maya Aprita Sari, 2020).

Rawls' first principle protected the basic liberties like bodily integrity which guarantees respect for human dignity. However, judicial caning conflicts with the principle because it directly interferes with bodily integrity. According to Article 3 of the European Convention on Human Rights ('ECHR'), degrading treatment and punishment are prohibited because they violate human dignity (John Vorhaus, 2021). In Malaysia, judicial caning is still imposed as a form of criminal punishment. Thus, this practice is inconsistent with the first principle.

In the second principle, Rawls accepts that society will have inequality, but only if two conditions are met. The first limb of the second principle illustrates fair equality of opportunity. For instance, jobs, positions, and opportunities must be open to everyone fairly. Regardless of whether they are born rich or poor or into a certain social class, people with the same talents and effort should have the same chances. The second limb of the second principle illustrates the difference principle. Inequality is allowed only if it benefits the least advantaged people in society (Sampurnaa Dutta, 2017).

These ideas suggest that distributive justice should be treated as pure procedural justice. The aim is to design a social system with fair procedures, so that any outcome produced by the system is considered just as long as it falls within an acceptable range. This idea can be better understood by comparing pure procedural justice with perfect and imperfect procedural justice (John Rawls, 1999).

Imperfect procedural justice can be seen in a criminal trial. It is crucial to note that even when the law is properly followed and the trial is fair, mistakes can still occur. This means an innocent person may be convicted and a guilty person may be acquitted. These errors are referred to as miscarriages of justice and can arise from limits of any legal procedure rather than from misconduct. Imperfect procedural justice exists when there is a clear standard for a correct outcome, but no procedure can ensure that it is always achieved (John Rawls, 1999).

Rawls's imperfect procedural justice can be examined through Malaysian procedural criminal law. For instance, Section 288 of the CPC stipulates that the number of strokes must be explicitly stated in the sentence under procedural criminal law on judicial caning. For adults, the maximum number of strokes is 24 for adults and the maximum number of strokes for youthful offenders aged between 18 and 21 is 10. The cane used must not exceed half an inch in diameter. (Baljit Singh Sidhu, 2015) However, the procedures cannot eliminate the possibility of harsh or unjust outcomes despite these regulations. This will reflect Rawls's imperfect procedural justice.

In *Public Prosecutor v Hadi Bakhshi Kheimeisari Aliasghar* [2021] 3 MLJ 259, the Court of Appeal overturned a whipping sentence imposed in error due to the trial court's non-compliance with mandatory procedural requirements, illustrating Rawls's concept that lawful frameworks remain vulnerable to imperfect procedural justice.

Similarly, in *Public Prosecutor v Sayed Shahrman bin Wan Ahmad Hussein* [2025] 1 MLJ 457, the Court of Appeal set aside a whipping sentence that fell below the statutory minimum due to a drafting error in the charge, further demonstrating how human fallibility creates imperfect procedural justice.

In *Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2022] 1 MLJ 1, the court stated that in very rare cases, the court has an obligation to correct the error when a

final judgment has caused grave injustice. In such situations, ensuring justice and maintaining public confidence in the justice system is more important than finality or certainty of judgements. The court's decision recognised imperfect procedural justice. Although the Malaysian legal system is governed by structured procedures, judicial decision-making is not immune from error and such errors may produce unjust outcomes.

4.1.4 Summary

In summary, whether Malaysian law on judicial caning is purely Kantian or Rawlsian, it adopts a hybrid approach. Kantian principles are reflected in substantive criminal law which focuses on retributive punishment for wrongdoing. However, this approach is limited by Kant's concern for human dignity as shown by restrictions on caning. In contrast, Rawlsian principles can be mainly seen through procedural criminal law through imperfect procedural justice. There are clear statutory rules on how judicial caning should be imposed, but these procedures cannot completely prevent procedural and legal errors in sentencing. This requires corrective action by the courts.

The Malaysian criminal justice system currently focuses on punishment and retribution (Hanifah Haydar Ali Tajuddin & Haarshwaran Kumar, 2024). Thus, it is clear that Rawlsian principles operate primarily as criminal procedural law on judicial caning. Kantian retributive justice remains the dominant foundation of judicial caning in Malaysia as it is imposed to punish moral wrongdoing rather than to rehabilitate offenders or promote social welfare.

4.2 Is judicial caning defensible as a just punishment in contemporary Malaysia in light of evolving human-rights norms?

This research question is explored in terms of an investigation of justice in sentencing, rather than determining that judicial caning amounts to a human rights violation. Contemporary jurisprudence supports a clear divide between legality of punishment and its rational basis. A sanction may be legally provided, yet not comply with evolving notions of justice.

Instead, contemporary models of punishment apply the justice standard to three overlapping concerns: (i) the purpose of punishment, (ii) proportionality, and (iii) human dignity as a jurisprudential value (Duff, 2023). Justice, as Rawls clarifies, focuses not on the observance of positive law, but on the just terms of social institution (Rawls, 1999).

Thus, the concern lies in determining whether judicial caning fulfills the concept of just punishment.

4.2.1 Legal Validity and the Question of Sentencing Justice

Judicial caning is a legally recognized form of punishment within Malaysia, with procedures outlined in the CPC.

Nevertheless, judicial caning is permitted within Malaysia's penal system is not the full extent of its justice evaluation (Amnesty International, 2010). Modern theories of punishment clearly distinguish legality and justice. According to preeminent scholarship

on jurisprudence, a form of punishment can be permissible under the law but nonetheless defective under principles of proportionality, fairness, and human dignity (Duff, 2023).

Thus, rather than readdressing the legal aspect of judicial caning, it is necessary to determine whether a legal punishment remains a form of just punishment within modern sentencing principles.

4.2.2 Purpose of Punishment and the Justice of Caning

To determine whether judicial caning continues to be a legitimate and fair form of punishment, it is first necessary to consider how the use of judicial caning relates to each of the recognised purposes for punishing people - Retribution, Deterrence and Reformation or rehabilitation (Mahaseth & Qureshi, 2022).

a. Retributive Justice

While judicial caning reflects retributive disapproval for serious crimes (Bahtar et al., 2018), contemporary Kantians argue it must not degrade the offender's dignity as a rational moral agent.

Under common law, culpability is assessed objectively based on the seriousness of the act and harm caused. In *R v Ball* [1989] Crim LR 730, the Court of Appeal held that the defendant's mistaken belief does not affect whether the act created danger. Culpability depends on how a reasonable person would assess the risk, not the offender's personal perception. Thus, punishment is based on the objective seriousness of the offence, excluding the offender's subjective beliefs or intentions.

However, contemporary Kantians argue that retributive punishment must not degrade the offender's dignity as a rational moral agent as excessive humiliation or physical punishment may exceed proportional deserts.

b. Deterrent Justice

The concept of deterrence supports punishment to prevent future crime by discouraging the public through fear (general deterrence) and discouraging offenders from reoffending (specific deterrence) (Chalfin & McCrary, 2017). In Malaysia, judicial caning is often justified as having a deterrent effect, particularly for serious offences (Hussin, 2020).

However, contemporary research questions this assumption. Studies show that certainty of punishment, rather than severity, is more effective in preventing crime (Tonry, 2011). Thus, caning lacks strong empirical support as an effective deterrent. Accordingly, while deterrence remains a key sentencing objective, reliance on judicial caning for this purpose is increasingly questioned.

c. Reformatory Justice (Rehabilitation)

Reformatory justice aims to rehabilitate and reintegrate offenders into society. Modern sentencing theories also focus on the future goals of punishment. These goals include

addressing the root causes of offending behaviour, as well as integrating offenders back into the community after they serve their sentences (Duff 2001).

Judicial caning, as a strict and short-term method of punishment, does not focus on rehabilitation. Unlike custodial sentences with educational or therapeutic programmes, it offers limited opportunity for reform and is ineffective in reducing recidivism.

Although caning may be less disruptive than imprisonment, this only makes it a punitive alternative rather than a reformative measure. The Kantian perspective emphasises that punishment must respect humanity by preserving the opportunity for reform (Fantasia, 2021).

4.2.3 Proportionality as a Requirement of Just Punishment

Proportionality refers to the principle that links the severity of punishment with the seriousness of the crime and the offender's culpability (Hadi Dachak, 2021). It serves as both a moral and legal limit on state punishment and is central to both Kantian and Rawlsian conceptions of justice.

Judicial caning can inflict extreme physical suffering and long-term harm. Therefore, stricter standards apply when assessing whether such punishment is proportionate. While severe punishment may be justified for serious violent crimes, its use for less serious offences raises concerns of excessive suffering (Ashworth & Horder, 2013).

Under Malaysian law, caning is subject to limitations on the number of strokes, categories of offenders, and medical supervision (Criminal Procedure Code, Section. 286–291). However, procedural safeguards alone do not ensure proportionality. There must be a substantive relationship between the severity of the crime and the punishment.

Judicial caning may breach proportionality where the suffering imposed exceeds the seriousness of the offence.

4.2.4 Human Dignity as a Jurisprudential Value

Jurisprudential dignity inquiry takes the form: Does punishment treat offenders as persons with inherent dignity?

According to Kant, every person has intrinsic value and cannot be treated merely as a means (Abakare, 2020). Corporal punishment raises concerns of humiliation and objectification of the offender's body. It may also create obedience through fear rather than moral understanding, conflicting with dignity (Torto, 2023).

Physical punishment can contradict modern understandings of dignity, regardless of cultural acceptance (Mayisela, 2017). Contemporary sentencing theories reinforce this by placing respect for dignity above the state's power to punish. Tonry argues that punishment should not cause unnecessary suffering or degrade individuals, regardless of justification (Tonry, 2018).

In addition, contemporary research also links physical punishment to increased aggression and negative behaviour (Pan et al., 2024), further suggesting incompatibility with dignity.

These concerns make it increasingly difficult to justify judicial caning, as it inherently conflicts with treating individuals with dignity. Even if considered “deserved,” the infliction of physical punishment creates tension with modern human rights standards grounded in dignity.

4.2.5 Rawlsian Justice and Fairness

Rawls’ approach examines whether punishment can be justified to all citizens as free and equal individuals. Justice depends not only on legality, but on whether institutions are reasonably acceptable (Rawls, 1999).

Through the “Original Position” and “Veil of Ignorance,” individuals assess systems without knowing their own position, ensuring fairness and equal moral value (Rawls, 1999).

Judicial caning raises concerns, as punishment involving extreme physical pain is unlikely to be accepted under this perspective. Rawls rejects inflicting severe harm on individuals to achieve broader social goals, as all persons have an inviolable claim against such treatment (Rawls, 1999).

Justice as fairness also requires public justification and equal respect, limiting the state’s power to impose coercive punishment (Follesdal, 2014).

Thus, judicial caning is difficult to reconcile with Rawlsian justice due to concerns over fairness, equal respect, and public justification.

4.2.6 Evolving human-rights norms as context

Domestic criminal law is not replaced by international human rights law, but it remains an important factor in shaping global standards of “humane” or “just” punishment.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits torture and cruel, inhuman or degrading punishment (Convention against Torture 1984, Article 1; Article 16). While it recognises that lawful sanctions may involve suffering, it requires States to create ways to prevent those instances (Convention against Torture 1984, Article 1(1); Article 10–13; Article 16(1)).

Within Malaysia, caning, particularly public caning, has been criticised by SUHAKAM (Malaysian Human Rights Commission of Malaysia) as contrary to dignity and the rule of law, reflecting internal normative opposition rather than purely external criticism.

4.2.7 Summary

Judicial caning is still a legal punishment in Malaysia, but its justification is increasingly limited. While it may be defensible within a narrow retributive framework based on proportionality, it does not align with reformatory goals, human dignity, and justice as public reason. Legal validity alone is insufficient to establish just punishment.

Judicial caning is better assessed under Article 16 of the Convention against Torture rather than under Article 1. Although it inflicts physical injury and suffering, it results from the lawful execution of a sentence and therefore does not meet the definition of torture under Article 1. However, Article 16 prohibits cruel, inhuman or degrading punishment, including treatment that is legally authorised. As such, judicial caning generally falls within this category, particularly where it causes severe pain or public humiliation.

Consequently, the evolving standards of human rights under the Convention Against Torture (CAT) and the domestic criticisms of institutions such as SUHAKAM do not affect the legality of judicial caning in Malaysia, they challenge its moral and legal legitimacy, contributing to increasing scrutiny under contemporary standards of dignity, proportionality and justice.

5. Recommendations

This section builds on the earlier analysis using Kantian and Rawlsian frameworks and the evolving conversation about human rights. It suggests ways to make Malaysia's continued use of judicial caning more in line with ideas of justice, fairness and human dignity. It ensures punishment is still morally acceptable in a modern democratic society.

5.1 Reinterpreting Kantian Retributivism through Human Dignity

In contemporary Malaysia, Kant's principle of *Ius talionis*, can be reinterpreted not as a literal equivalence of suffering, but as moral accountability constrained by human dignity (Media, 2024). Contemporary Kantian scholars contend that punishment must reaffirm the offender's rational agency while preserving their personhood. Malaysia should thus implement a dignity-consistent retributivism that maintains proportional moral culpability without the use of corporal punishment (Khattab, 2024; Admin, 2024). Comparative approaches support this reinterpretation. For instance, Germany's Federal Constitutional Court has ruled that even serious criminals have "inalienable dignity". This led to the end of corporal punishment and the start of proportional custodial penalties based on rehabilitation and social reintegration (München (n.d.)). Malaysia could similarly associate moral desert with responsibility rather than suffering.

Practically, changing to sentencing could replace caning with structured custodial sentences or community-based punishments like restorative conferencing or rehabilitative service orders (Ab Aziz et al., 2022). This preserves accountability, while upholding the duty to treat individuals as ends in themselves (Mohamad et al., 2024).

5.2 Integrating Rawlsian Fairness into Sentencing Institutions

According to Rawl's idea of justice as fairness, sentencing should prioritize institutional fairness and equal respect ahead of efficiency or deterrence (John Rawls (Standard Encyclopedia of Philosophy/Spring 2024 Edition), 2021). Establishing a Sentencing Guidelines Commission, similar to the United Kingdom, would promote consistency and transparency (About Sentencing Guidelines, n.d.). These changes are in line with Rawl's ideas about fair processes and the "social bases of self-respect". This strengthens legitimacy and aligns Malaysia's system with liberal democratic values.

5.3 Embedding Human Dignity as a Constitutional Principle

The courts and lawmakers in Malaysia should make it clear that human dignity is a guiding principle in criminal sentencing. Article 5 of the Federal Constitution protects personal freedom, but dignity has not been officially recognized as a constitutional standard (Media, 2024). Comparative jurisprudence demonstrates that the integration of dignity into judicial reasoning enhances constitutional accountability. For example, the German Federal Constitutional Court, Article 1 of the Grundgesetz (Germany 1949 (Rev. 2014) Constitution - Constitute, n.d.), the South African Constitutional Court in *S v Makwanyane & Another*, 1995, and the India Supreme Court in *Francis Coralie Mullin v Administrator, Delhi* (Deshpande, 2022), have all recognized dignity as the foundation of rights protection. This acknowledgement would establish a constitutional foundation for reaccessing corporal punishment practices as possibly at odds with Malaysia's dedication to humane justice.

5.4 Progressive Reduction and Eventual Abolition of Judicial Caning

As global and domestic human rights standards change, Malaysia should stop using corporal punishment and move towards nonviolent forms of punishment. This method is in line with what SUHAKAM and international human rights frameworks say, which is that judicial caning is "cruel, inhuman, or degrading treatment" (Media, 2024). A gradual change in the law, starting with end of caning of nonviolent crimes such as immigration-related violations, property crimes without physical harm, or drug possession cases where no violence occurred, would protect Malaysia's sovereignty and show that it is a moral leader in the development of human rights in Southeast Asia.

5.5 Promoting Rehabilitation and Restorative Justice

Malaysia should improve its system of rehabilitative and restorative justice. Restorative justice emphasizes fixing harm and reintegration, while promoting accountability. Mechanisms such as victim-offender mediation, community conferencing and supervised rehabilitation orders have been associated with lower recidivism. These approaches can be integrated into existing probation systems and be adapted from regional practices such as Singapore's restorative programmes (Chan, 2013). This reflects Kantian respect for moral agency and Rawlsian fairness, shifting from restoration rather than degradation.

5.6 Encouraging Regional and International Dialogue on Penal Reform

Malaysia should engage ASEAN and Commonwealth dialogues on humane punishment. By participating in interjurisdictional exchange, Malaysia can learn from examples like Singapore's restorative justice practices (Juvenile Issue, n.d.), and United Kingdom's abolition of corporal punishment (Section 65 of Criminal Justice Act). Such involvement would show a commitment to change moral standards and strengthen Malaysia's position as a responsible global actor.

In summary, these recommendations collectively advocate for a transition from a retributive, punitive justice model to a dignity-focused, equitable framework that honours the philosophical legacies of Kant and Rawls while conforming to modern human rights standards.

6. Conclusion

In Malaysia, the continued application of judicial caning exposes a critical tension between statutory penal frameworks and contemporary jurisprudential theories of justice. While the domestic legal system largely relies on retributive and deterrent justifications for corporal punishment, these rationales increasingly conflict with both Kantian and Rawlsian paradigms. From a Kantian perspective, although retributivism demands proportional punishment for moral wrongdoing, the physical mutilation and profound humiliation inherent in caning violate the foundational requirement to preserve the offender's human dignity and rational agency. Similarly, through the lens of Rawlsian justice as fairness, authorizing extreme physical violence compromises the inviolable basic liberties of citizens and fundamentally threatens the social bases of self-respect, especially within a legal system demonstrably susceptible to imperfect procedural justice.

Addressing this jurisprudential dissonance necessitates a progressive shift toward a sentencing framework based on dignity that aligns with evolving global human rights standards. As previously recommended, redefining moral accountability without resorting to corporal punishment, such as by integrating structured custodial sentences and expanding restorative justice programs, would satisfy the demands of justice while preserving bodily integrity. Furthermore, embedding human dignity as a guiding constitutional principle and establishing a formalized sentencing commission would mitigate procedural inequities and promote institutional fairness. The recent legislative proposals to abolish mandatory sentencing and expand judicial discretion mark a highly encouraging pivot away from rigid punitive models toward a more equitable and rehabilitative approach.

Ultimately, the legitimacy of a modern criminal justice system rests not merely on its capacity to enforce the law, but on its unwavering commitment to upholding the inherent worth of every individual. The transition away from judicial caning is not a concession of legal authority, but rather a necessary evolution toward a more humane, civilized, and robust legal order. By unequivocally rejecting physical violence sanctioned by the state in favor of proportional and humane sanctions, Malaysia has the profound opportunity to elevate its jurisprudential standards and ensure that the pursuit of justice genuinely respects the freedom and humanity of all its citizens.

Ethics Approval and Consent to Participate

This study did not involve human participants, and therefore ethics committee/IRB approval and informed consent were not applicable.

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References

- Ab Aziz, N., Mohamed, N., Hussin, N., & Samsudin, N. (2022). Restorative justice in the child justice system: Implementation in other jurisdictions. *Malaysian Journal of Social Sciences and Humanities*, 7(6), e001561. <https://doi.org/10.47405/mjssh.v7i6.1561>
- Abakare, C. O. (2020). Kantian ethics and the HESC research: A philosophical exploration. *Predestinasi*, 13(2), 79–92.
- Admin, A. (2024, October 23). *Whipping is torture: Suhakam urges Malaysia to end corporal punishment*. Aliran. <https://m.aliran.com/civil-society-voices/whipping-is-torture-suhakam-urges-malaysia-to-end-corporal-punishment>
- Amnesty International. (2010). *A blow to humanity: Torture by judicial caning in Malaysia*. Amnesty International Publications. <https://www.amnesty.org/ar/wp-content/uploads/2021/06/asa280132010en.pdf>
- Annuar, A. B., & Rumaling, M. K. B. (2025). Behind the cane: A systematic review of corporal punishment among children in Malaysia. *Malaysian Journal of Paediatrics and Child Health*, 31(51), 42–53.
- Ashgar Ali Ali Mohamed. (2014). *Malaysian legal system*. CLJ Publication.
- Ashworth, A., & Horder, J. (2013). *Principles of criminal law* (7th ed.). Oxford University Press.
- Bahtar, M. F., Hamzah, N., & Hashim, N. (2018). The relevancy of caning as a form of criminal punishment in Malaysia. *Journal of Legal Studies*, 5(2), 45–62.
- Baljit Singh Sidhu. (2015). *Criminal litigation process*. Sweet & Maxwell.
- Bhandari, S. (2014). The ancient and modern thinking about justice: An appraisal of the positive paradigm and the influence of international law. *Ritsumeikan Annual Review of International Studies*, 13, 1–41.
- Chalfin, A., & McCrary, J. (2017). Criminal deterrence: A review of the literature. *Journal of Economic Literature*, 55(1), 5–48. <https://doi.org/10.1257/jel.20141147>
- Chan, W. C. (2013). Family conferencing for juvenile offenders: A Singaporean case study in restorative justice. *Asian Journal of Criminology*, 8(1), 1–23. <https://doi.org/10.1007/s11417-011-9122-y>
- Choong, D. E. J., Ngu, A. C. C., & Althabhwani, N. M. (2022). The moral and legal permissibility of the death penalty. *Legal Network Series*, 1, 1–25.
- Clift-Matthews, A. (2021). Aggregated caning and the risk of double or disproportionate punishments. *Singapore Academy of Law Journal*, 33, 1205–1223. <https://journalonline.academyPublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal/e-Archive/ctl/eFirstSALPDFJournalView/mid/495/ArticleId/1687/Citation/JournalOnlinePDF>
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984.

Criminal Procedure Code.

Dachak, H. (2021). The principle of proportionality of crime and punishment in international documents. *International Journal of Multicultural and Multireligious Understanding*, 8(4), 684–688.

Dangerous Drugs Act 1952.

Datuk Seri Anwar Ibrahim v. Government of Malaysia & Anor, [2022] 1 MLJ 1.

du Plessis, G. A. (2017). *S v Makwanyane and Another case* (S Afr). In *Max Planck Encyclopedia of Comparative Constitutional Law*. Oxford University Press. <https://oxcon.oup.com/display/10.1093/law-mpeccol/law-mpeccol-e566>

Duff, A. (2023). Legal punishment. In E. N. Zalta & U. Nodelman (Eds.), *The Stanford Encyclopedia of Philosophy* (Summer 2023 ed.). Stanford University. <https://plato.stanford.edu/entries/legal-punishment/>

European Convention on Human Rights.

Fantasia, F. (2021). Kant on punishment: Between retribution, deterrence and human dignity. *Short Symposium – Kant on Punishment*, 463–488.

Fiveable Content Team. (2025). *Socrates' views on justice, virtue, and the good life*. Fiveable. <https://fiveable.me/ancient-greek-political-thought/unit-5/socrates-views-justice-virtue-good-life/study-guide/mf14ELtwqaJzFbdV>

Follesdal, A. (2014). John Rawls' theory of justice as fairness. In G. Fløistad (Ed.), *Philosophy of justice* (pp. 311–328). Springer.

Freeman, S. (2019). John Rawls. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy*.

German Constitution 1949 (rev. 2014). Constitute Project. https://www.constituteproject.org/constitution/German_Federal_Republic_2014

Hadi Dachak, H. (2021). The principle of proportionality of crime and punishment in international documents. *International Journal of Multicultural and Multireligious Understanding*, 8(4), 684–688.

Hakeem, I., & Ijaya, H. (2018). Law as a means of serving justice in Nigeria. *Pandecta*, 13(1), 1–9. <https://doi.org/10.15294/pandecta.v13i1.14262>

Harsh Mahaseth, H., & Qureshi, S. (2022). The legality of caning in Singapore. *UUM Journal of Legal Studies*, 13(2), 51–76. <https://doi.org/10.32890/uumjls2022.13.2.3>

Hussin, N. (2020). Punitive justice in Malaysian criminal law. *Malayan Law Journal*, 3, 1–15.

Ijaiya, H., & Ijaiya, H. (2018). Law as a means of serving justice in Nigeria. *Legal Network Series*, 1, 1–24.

Ikwuamaeze, T. B., & Dukor, M. (2022). John Rawls' concept of justice: A philosophical evaluation. *OWIJOPPA*, 6(1), 65–80. <https://www.acj.org/index.php/owijoppa/article/view/2800/2760>

International Commission of Jurists. (2024, May 9). *Malaysia must reject caning, an archaic, inhumane form of punishment*. <https://www.icj.org/malaysia-must-reject-caning-an-archaic-inhumane-form-of-punishment>

Khattab, A. (2024, May 9). *Malaysia must reject caning, an archaic, inhumane form of punishment*. International Commission of Jurists. <https://www.icj.org/malaysia-must-reject-caning-an-archaic-inhumane-form-of-punishment>

Lacey, N. (2021). Criminal justice and social (in)justice. *Current Legal Problems*, 74(1), 33–58.

Levy, D. A. (2022). Optimizing the social utility of judicial punishment: An evolutionary biology and neuroscience perspective. *Frontiers in Human Neuroscience*, 16, 967090. <https://doi.org/10.3389/fnhum.2022.967090>

- Longley, R. (2022, June 29). *What is retributive justice?* ThoughtCo. <https://www.thoughtco.com/what-is-retributive-justice-4779580>
- Malay Mail. (2025, August 12). *Azalina puts 'quick-win' criminal law reforms on the table, including end to caning.* Malay Mail.
- Malaysian Bar. (2009). *Press release: Abolish whipping for any offence.* <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-abolish-whipping-for-any-offence>
- Mani Maran Athigharee v. PP*, [2017] 9 CLJ 232.
- Mayisela, S. (2017). Corporal punishment: Cultural-historical and socio-cultural practices of teachers in a South African primary school. [Doctoral thesis, University of Cape Town].
- Mayisela, S. (2017). *Corporal punishment: Cultural-historical and socio-cultural practices of teachers in a South African primary school* [Doctoral dissertation, University of Cape Town].
- Media. (2024, December 23). *Press statement No. 35-2024: Public caning in Terengganu: A violation of human rights and the rule of law.* SUHAKAM. https://suhakam.org.my/2024/12/press-statement-no-35-2024_public-canning-in-terengganu-a-violation-of-human-rights-and-the-rule-of-law/
- Mohamad, M. S., Razak, M. A., Sarnon, N., & Mohamed, M. H. (2024). Exploring rehabilitation and reintegration efforts for ex-offenders: A case study of Malaysian initiatives. *International Journal of Academic Research in Accounting, Finance and Management Sciences*, 14(4), 1194–1206.
- Movahedi, A., Azadbakht, F., & Ranjbar, I. (2024). The foundations of the Universal Declaration of Human Rights from the perspective of Kant and Rawls with a focus on justice. *Legal Studies in Digital Age*, 3(4), 105–114.
- Muhamad Elias bin Muhamed Yusoff v. Public Prosecutor*, [2016] 12 MLJ 306.
- München, K. V. E. (n.d.). *Kiener-Verlag | Dignity and the German Constitution.* Kiener Verlag e.K. <https://www.kiener-verlag.de/ueber-uns/nachrichten/news-single/article/dignity-and-the-german-constitution.html>
- OMCT. (2025). *Malaysia: Whipping is torture – End judicial corporal punishment.* <https://www.omct.org/en/resources/statements/malaysia-whipping-is-torture-end-judicial-corporal-punishment>
- Orji, C. P., & Nwagbara, R. G. (2024). Kant's conception of capital punishment and its implications on Nigerian contemporary cultural societies. *IGWEBUIKE: An African Journal of Arts and Humanities*, 10(3), 110–123.
- Pan, Y., Ma, J., Sun, Y., & Zhang, L. (2024). Associations between corporal punishment and aggressive and violent behaviour: A systematic review and meta-analysis. *Frontiers in Psychology*, 15, Article 1323784. <https://doi.org/10.3389/fpsyg.2024.1323784>
- Parliamentarians for Global Action. (n.d.). *Malaysia and the death penalty. Penal Code.*
- PP v. Muhari bin Mohd Jani & Anor*, [1996] 3 MLJ 116.
- PP v. William Ayau*, [2005] 4 MLJ 328.
- Professor Dr. Ashgar Ali Ali Mohamed. (2018). *Rationale for Syariah whipping.* New Straits Times. <https://www.nst.com.my/opinion/letters/2018/10/418929/rationale-syariah-whipping>
- Public Prosecutor v. Dato Alimikadi bin Dato Hadi*, [2022] MLJU 1718.
- Public Prosecutor v. Hadi Bakhshi Kheimeisari Aliasghar and another appeal*, [2021] 3 MLJ 259.
- Public Prosecutor v. Sayed Shahrman bin Wan Ahmad Hussein*, [2025] 1 MLJ 457.
- Public Prosecutor v. SHY*, [2025] MLJU 3518.

- R v. Sargeant*, [1974] 60 Cr App R 74.
- Rawls, J. (1999). *A theory of justice: Revised edition*. The Belknap Press of Harvard University Press.
- S v. Makwanyane and Another*, CCT3/94, [1995] ZACC 3, 1995 (6) BCLR 665, 1995 (3) SA 391, [1996] 2 CHRLD 164, 1995 (2) SACR 1.
- S v. Makwanyane and Another*, CCT3/94, [1995] ZACC 3.
- Sampurnaa Dutta, S. (2017). Rawls' theory of justice: An analysis. *IOSR Journal of Humanities and Social Science*, 22(4), 40–43.
- Sari, C. M. A. (2020). Rawls's theory of justice and its relevance in analyzing injustice on ethnic phenomenon. *Journal of Ethnic and Cultural Studies*, 7(3), 210–219. <https://www.ejecs.org/index.php/JECS/article/view/497/pdf>
- Schroeder, A. J. (2022). *Kant's retribution: A framework of punishment consistent with liberal democracy* [Master's thesis, Boston College]. Boston College University Libraries.\
- Sentencing Council. (2025). *About sentencing guidelines*. <https://sentencingcouncil.org.uk/about-sentencing/about-sentencing-guidelines>
- Steffen, J. R. (2020). Moral cognition in criminal punishment. *British Journal of American Legal Studies*, 9, 143.
- SUHAKAM. (2024). *Press statement No. 35-2024: Public caning in Terengganu: A violation of human rights and the rule of law*. <https://suhakam.org.my/2024/12/>
- Superkalam. (2025). *Understanding the theory of justice by Plato*. <https://superkalam.com/upsc-mains/topics/theory-of-justice-by-plato>
- Tan Sri Abdul Khalid bin Ibrahim v. Bank Islam Malaysia Bhd.*, [2012] 7 MLJ 597.
- Thirumalai Chemicals Ltd v. Union of India and Others*, [2011] 6 SCC 739.
- Tonry, M. (2018). Punishment and human dignity: Sentencing principles for twenty-first-century America. *Crime and Justice*, 47, 119–143.
- Torto, T. (2023, September 7). *Caning is a dangerous form of discipline*. Medium. <https://medium.com/age-of-empathy/caning-is-a-dangerous-form-of-discipline-2951ddcc0b21>
- Tun Naing Oo v. PP*, (2009) 3 AMR 561.
- Udoudom, M. D., et al. (2019). Kantian and utilitarian ethics on capital punishment. *Budapest International Research and Critics Institute-Journal*, 2, 28.
- Vorhaus, J. (2021). Bringing people down: Degrading treatment and punishment. *New Criminal Law Review*, 24(3), 433–466. <https://tinyurl.com/mr2w2k4u>
- Yong Vui Kong v. Public Prosecutor*, [2015] SGCA 11.
- Yong, N. (2023, April 3). *Malaysia ends mandatory death penalty for serious crimes*. BBC News. <https://www.bbc.com/news/world-asia-65160091>