

Ethical theories on capital punishment



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Capital punishment is a moral issue that is often scrutinized due to the taking of someone's life. This is in large part because of the views many have toward the rule of law or an acceptance to the status quo. In order to get a true scope of the death penalty, it is best to address potential biases from a particular ethical viewpoint. By looking at it from several theories of punishment, selecting the most viable theory makes it a plausible case in favor of the death penalty. There is some intuitive merit to the notion that the criminals deserve unhappiness. There is also certain justifications for a criminal system to show that the special relationship between the state and its general population does not lend itself to or allow for the incorporation of the death penalty.

The utilitarian theory is meaningful in nature. Its basis concerns itself with the happiness of society. Ironically, crime and punishment are a contrast to happiness. Utilitarian's would rather have a crime-free society in order to instill that happiness, but they understand this is not possible. Instead, they endeavor to inflict as much punishment as necessary to a criminal in order to prevent future crimes from happening. Under utilitarian philosophy, any law designed to specify punishment to a criminal should be done in a manner to prevent further criminal conduct. This type of deterrence is necessary for the greater good of the society, and puts a notice out to other criminals that if they choose to commit a crime, they will also be punished. In the article "Punishment-Theories of punishment", it backs up this statement by saying "laws that specify punishment should be designed to deter future criminal conduct." Another utilitarian theory involves rehabilitation. The goal of this is to prevent future crimes as well. Inclusive is treatment for afflictions such

as drug use, and continual violent behavior. The treatment would then include educational programs to give criminals the knowledge to succeed in the job market.

It is easy for most people to imagine murderers, especially murderers whose acts are particularly vile, deserve nothing less than the death penalty. A utilitarian mindset is if the murderer is sentenced to death, it would benefit the most number of people. Because there was a discussion involving deterrence, in the article by Iqrak Sulhin titled “ Busting the Myths of the Death Penalty”, he exclaimed, “ They concluded capital punishment does not and will not have higher deterrent effects than lifelong imprisonment.” The “ they” he is referring to are researchers who had done extensive studies on the effects of execution before and after, and the effects of someone spending their entire life behind bars. While from the surface it would seem his statement is justified, the utilitarian perspective would be inclined to support this claim and thus stick with their original ideology that capital punishment is necessary provided it produces the most amount of happiness.

Another fascinating examples lies within an article done by Wesley Smith entitled “ Reject Peter Singer’s Utilitarianism as Justification for the Death Penalty.” Smith stated in the article that “ if somebody came up with convincing evidence that the death penalty was a uniquely effective deterrent-let’s say for every murderer who was executed, there would be ten fewer murders-then, as a utilitarian, I would have to accept the death penalty.” The unfortunate dilemma faced by Singer is that there is no concrete evidence that would support this. The evidence seems to suggest

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otherwise. What Smith is rationalizing is that he is opposed to the utilitarian way of thinking in justification for the death penalty. This is essentially saying that a crime of this nature (murder) produces its own punishment, and that no one, by rights of their humanity, is deserving of death. If one is going to participate in the discussion of capital punishment as an impartial observer, they simply cannot write off the humanity of a criminal. They must ignore the inclinations to dismiss a person altogether and fully consider the humanity of this person and consider the true meaning of making the decision to end their life.

It is possible to judge an argument that is based on its merit and not its context; it is also possible that certain traditions associated with the death penalty will have altered the ideas of many great theorists. The death penalty is often defended as a necessity and yet it is a remnant of some of the most unjust periods in time. Principles that exist today such as freedom, equality, rights, justice, and the value of human life is the standard for successfully arguing against capital punishment because capital punishment violates every one of these principles. In the article “ An Eye for an Eye? The Morality of Punishment” by Christopher Townsend, he brings to light this very situation when he states, “ a strict utilitarian must contemplate the punishment of an innocent as an open moral option. After the commission of some heinous crime the punishment of an innocent scapegoat might be deemed necessary to maintain the deterrent effect of the law.” In order to sponsor the death penalty one must develop a theory of justice that establishes a value to be gained by executions that overshadow the violation of moral principles.

Arguments about punishment are a disagreement about the means, and more often is a disagreement of the ends. The utilitarian justification of the death penalty can be based on experiences. It is easier to see this in the case of more than it is in the case of less. What this means is that we can all agree that no one should be punished more than they deserve, no matter how useful it is to society. A good synopsis of this can be found in the article “ On the Utilitarian and Retributive Justifications of Punishment.” It says, “ Punishing a thief by cutting off his hand is wrong, for the punishment is too severe for the crime, even if it could be proven that this punishment results in a lower incidence of theft.” While the severity of the punishment is determined retributively, a utilitarian might allow for deterrent considerations before relying upon this manner of the punishment. They would also consider rehabilitative measures to ensure the thief would not get an inclination to want to steal again.

Another theory to consider involves incapacitation. The use of incapacitation as a justification for punishment can be intrinsically troublesome in both theory and practice. The use of the three-strike rule effectively says the criminal will be punished three times over. There is an inherent risk with incapacitation because some individuals who are constituted as menaces to society would not have gone on to commit more offenses. Leslie Torres wrote an article called “ Capital Punishment from Ernest Van Den Haag’s Viewpoint.” In this article, she mentions, “ Unlike keeping the criminal alive through life imprisonment, it would be a better choice to end their existence.” This is a concerted statement, considering that while someone is confined to a prison cell, there is still a possibility that the criminal could be a

candidate for rehabilitation. There is the dilemma with someone sentenced to life without parole, thus eliminating any possibility of the aforementioned rehabilitation. In determining the proper course of action from the difference of life imprisonment to capital punishment, it might be evident to consider the former over the latter.

The question behind this dilemma now rests upon just how much time is prudent for punishment as long as the death penalty is not considered as an option. Since the concept revolves around utilitarianism with respect to rehabilitation, deterrence, and incapacitation in order to prevent future crimes, determining the length of the sentence has proven to be quite difficult. There are federal guidelines that aid in the determining factor, but because every case is different and unique at the same time, understanding the variables is what create the difficulty. This very situation is highlighted in the article entitled “ Theories of Punishment and Mandatory Minimum Sentences” by David Muhlhausen. In the article, Muhlhausen mentions, “ The goal of tailoring treatment to the characteristic of offenders resulted in widely different sentences that generated a sense of unfairness by the general public.” Remember, utilitarianism is concerned with the best action that promotes the overall happiness. If the public is unhappy, then the length of the sentence must be adjusted accordingly to meet these terms.

Think of it like this; a just sentence is a proportionate sentence. What this means is a sentence is appropriate to the offense while taking into consideration the factors such as a person’s life circumstances. Judges impose sentencing, and every case presents unique scenarios and circumstances. In order to achieve proportionality, one must find the right

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balance that depends on competing sentencing philosophies: utilitarianism or retributivism. Because utilitarianism has been discussed throughout thus far let us take a look at retribution. Consider the word “retribution”, and the first thing that generally comes to mind is vengeance, especially for a wrongful or criminal act. Retribution in the case of criminal offenders carries a separate definition. This is also called “just deserts”. The concept of retribution is not necessary because the focus it is not righting a wrong, it is actually preventing future acts. Here is something even more compelling; the virtuous (society) deserves to be happy, and the vicious (criminals) deserve to be unhappy. Retribution implies a sort of proportionality. Alan Gershel said it best in his article titled “In Sentencing; Utilitarianism vs. Retributivism,” with “it should not be at the expense of proportionality especially when the crime is particularly serious. Unfortunately, the voices of victims, as well as the impact a particular crime may have had on the public’s legitimate need to feel secure sometimes gets lost in the debate.”

A problem with the requirement for proportionality and equality is that it would require a tradeoff for good behavior that drives someone to punish, which would then propel another person to reward. A counter to this point may be that people’s bad decisions (behaviors) keeps others safe. This should not matter in a purely retributive system because controlling behavior is not the aim of retribution. This is also mentioned in the article “Punishment-Theories of Punishment” when it says, “retribution against a wrongdoer is justified to protect the legitimate rights of both society and the offender. Society shows its respect for the free will of the wrongdoer through

punishment.” Whether it be incarceration, rehabilitation, or capital punishment, what is best for society is best for the happiness of that society.

The debate of the death penalty is more than just a debate of who is deserving of death, but more so a question that pertains to political and moral implications for the victims, those that impose punishment, and the offender. There is a notion of justice in the idea that the good deserve happiness while the bad deserve punishment. There is a distinction between who deserves that punishment and who can rightfully be punished. While standing by the notion of the good deserves good and the bad deserves bad, we are not forced to assume it is equal in any particular regard. The general notion does not exclude the possibility of proportionality rather than equality. The law requires equal proportions of harm doled out against a criminal in a manner that best suits the crime. This theory would not eliminate the death penalty, except only to limit its use to those extreme cases or circumstances of monstrous criminals. This would then have a dual effect of satisfying the demands of justice while also conveying the necessary majority happiness of society through utilitarianism.

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