

Is the death penalty fair term paper examples

[Law](#), [Death Penalty](#)



Abstract

This essay will outline the nature of the death penalty in terms of its birth and its ideals and how this translates in terms of the democratic process. Such philosophers and social reformers as T. H Green, Beccaria, Hobbes and Jeremy Bentham to discuss the benefits and negative factors of the death penalty in terms of its effectiveness as a deterrent and assess whether or not it's value as a deterrent outweighs these negative factors. This process will inevitably lead me to the conclusion in which I hope to establish the fairness or notion of equivalency of the death penalty.

Is the death penalty a deterrent and if so what can be learned from death? More importantly is the death penalty fair? It seems illogical to kill someone for killing; it cannot be fair to take an eye for an eye because it's a never ending vicious circle of hypocrisy.

Capital punishment in the U. S is a democratic decision created by governments elected at the individual state and the federal levels which is of course not prohibited by international laws.

United states citizens in most cases in the majority of states have chosen to keep the death penalty acting of their own free will utilizing their elected representatives. (McGraw-Hill, 2012)

The American judicial system has extensive measure in place to make sure the death penalty is always the last resort and is not applied in an arbitrary way. The supreme has on numerous occasion support the idea that the death penalty conforms to the U. S constitution, never the less it can only be carried out as the result of extensive court proceeding establishing whether or not it is the accurate recourse following exhaustive appeals. (Shafritz

2012)

Of course it is also crucial to safeguard the right of the accused, although the nature of the crimes committed and the victims cannot be forgotten.

While it is important to ensure that the rights of the accused are properly safeguarded, we cannot forget about the nature of the crimes committed and the victims .

Socrates, one of the most famous philosophers in history was executed. It is recorded in his last dialogue the Phaedo that he had the chance to escape his fate but instead chose to stay and drink the hemlock intended to kill him. The reason he did this was to show his gratitude to Athens for all they had bestowed upon him.

He may have felt that way because in those times the Grecian government basically fed and clothed you, so it stands to reason you might owe a debt of gratitude to you government. The rationale is they gave you your life thus they have the right to take it away.

Socrates believed he owed the state for all that was bestowed upon him by it so the debt of gratitude he owed amounted to an obligation to obey the law. In theory he could have just left and lived somewhere else or decided to change the laws but he didn't which is why he accepted his execution (by extension ' we' can do the same).

In utilitarian terms gratitude wouldn't come into it but you would accept that if disobeying the law would subtract the positive things the states bestows and thus reducing happiness significantly. So unless the happiness of breaking the law greatly increased happiness for yourself and for the greatest number more than the displeasure of losing the beneficial effects of

the law and the state.

“ Act utilitarian calculations, as Bentham suggests, may lead us to conclude that we ought to obey but they may lead us as well to conclude that we ought to disobey on some other occasions” (Simmons 1979, p48)

Bentham says moral actions are those which produce, the most happiness for the greatest number of people, so it's not as simple as just killing someone who has killed. You first need to calculate the pleasure over the pain caused. So although the victim's family might be happy the killer and the killer's family will not be, so you have to take that into account.

Is there enough gratitude in the world to accept death? And to a greater extent should moral reflection be reducible to a calculation? Utilitarianism reduces people to mere pleasure calculators; we become almost like robot pigs, only caring about pleasure but first working out how to get the most. Can conviction which is interpreted as moral identity, be reduced to simple calculations? (McGraw-Hill, 2012)

Utilitarianism claims to uncover the logic of moral beliefs, they also see fit to sacrifice people to the greater good which is against common ideas of morality. This contradiction makes it an insecure foundation for the political obligation to obey the law and thus undermines the ethics of the death penalty.

Although the rationale for sacrifices can be seen in many political decisions, going to war for example accepts the sacrifice of many innocent lives to fuel it but is still seen as an acceptable tactic by the government to protect our country.

The idea of human resources was proposed by Raymond Miles. His theories

proport that each individual person is an untapped well of resources. He believed that each and every person was incredibly valuable in terms of the labour they could produce if they managed to try and tap into those resources. (Shafritz 2012)

“ These resources include not only physical skills and energy, but also creative ability and the capacity for responsible, self-directed, self-controlled behavior.”

Miles, R. E. (1965). Human relations or human resources? Harvard Business Review, 43(4), 148-157, pg. 150.

This in relation to the death penalty is fairly simple, as the prison population is a highly active work force of cheap labour, and in fact a large portion of everyday products we use are manufactured by people in correctional facilities. It's fairly obvious where this is going; How can they produce if they're dead, if someone is dead they're resources are gone, they're no longer useful, they no longer have purpose, all their potential is gone. Why kill someone when you can utilize them in a positive way and give them some sense of purpose? (Shafritz 2012)

“ The murder that is depicted as a horrible crime is repeated in cold blood, remorselessly” Beccaria (1764)

The bloody code is seen as barbaric and entirely based on vengeance which today is seen as immoral and today these give way to informed and expert intervention. Foucault uses Beccaria to illustrate the fact that to torture or to punish someone publicly is to take on the role of the criminal but lack the passions of the crime.

It stands to reason that it's impossible to set an example that murder is

wrong by committing murder publicly in cold blood. Beccaria (1764) actually critiques the utilitarian point of view on punishment (which is retributivist, you enact an equal amount of suffering on the criminal as he/she caused) in ‘On crimes and punishment’.

Beccaria suggests that capital punishment is not necessary as a deterrent. Long-term imprisonment is transient so it is a more powerful deterrent whereas execution is permanent. Basically how can you deter people from crime if they’re dead?

If they’re dead they’re not suffering. It’s a harsh punishment but it can only be carried out once and how can you learn not to commit crime if you’re dead? Nietzsche also believed that punishment is a memory exercise, you do something bad, you’re punished and you remember not to do the bad thing again but again how can you remember when you’re dead?

Beccaria would certainly agree that the death penalty is not fair because it lets the offender off too easily, death is easy, punishment should be hard and there should be an overarching goal of reform, we should be trying to teach people that what they’ve done is wrong, rather than just erasing them as a threat to others. (McGraw-Hill, 2012)

Put simply if an ordinary person is not allowed to kill surely it’s hypocritical for a government to be allowed to kill its citizens; fairness would dictate that the right to take a human life should belong to no man. (Shafritz 2012)

In these terms the death penalty is not a deterrent because you’re not setting a moral example, because on one hand you’re saying it’s wrong to kill and on the other you’re saying it’s not wrong to kill if it’s the government that has decided to kill you, thus legitimising murder.

" A criminal who, having renounced reason hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or tyger, one of those wild savage beasts with whom men can have no society nor security." And upon this is grounded the great law of Nature, " Whoso sheddeth man's blood, by man shall his blood be shed."

John Locke

John Locke was also a believer in the social contract theory but he takes the exact opposite approach, it's his belief that when someone enters into the contract of the society they agree not to commit crimes such as murder.

Everything outside of the contract of society is in the state of nature, without law where everyman fends for himself.

Therefore if they commit a crime such as murder they are in direct breach of that contract, hence they are now outside that contract in a state of nature at the level of an animal. Since the offender is at the level of an animal they are not above just being put down like an animal, it's almost a duty to put down someone that is an animal.

Hobbes was quoted as saying that life outside of society in the state of nature was brutish and short, which Locke also as a supporter of the contract theory also held so he preferred banishment in lieu of execution because he naturally assumed life as an animal a kin with death.

Foucault argues that in ways that are often subtle and thereby seemingly invisible such as control of information, individuals are under constant surveillance and regulation, leading to normalization and acceptance of such systems. This is where this idea of docile bodies comes in from his larger

work Discipline and Punish.

Docility is a notion that highlights the point in which “ the analyzable body and the body than can be manipulated” are connected, Foucault uses this to illustrate the means in which individual people within their bodies are at the mercy of institutional regulation. The body is focused on specifically by Foucault, as the sight of the aforementioned regulation, more specifically “ as object and target of power” historically (Foucault 1975).

Foucault argues “ A body is docile that may be subjected, used, transformed and improved” bodies are confined spatially (i. e in a prison cell), partitioned as to divide people and to maintain “ order and discipline.” (Foucault 1975).

“ The individual body becomes an element that may be placed, moved, articulated on others.”

Foucault (1975)

T. H Green a philosopher and social reformer argued that the death penalty is essentially holding a gun to someone’s head and telling them to be good or die thus defeating the point. If being good has to be reached through coercion rather than choice it is inherently wrong.

Green’s deep religious belief leads him to believe that people should be given the choice to be good and then should choose it on their own, although the choice always boils down to heaven or hell which as a choice is a fairly simple one between happiness and suffering (T. H Green 1882).

Today’s punishment has experts to rationalise and justify itself whereas the bloody code only had vengeance in mind and vengeance essentially is its own rationale. Our system uses scientific principle and good intentions to justify the punishment and control of people.

“ The body now serves an instrument or intermediary: if one intervenes upon it to imprison it, or to make it work, it is in order to deprive the individual of a liberty that is regarded both as a right and as property. The body, according to this penalty, is caught up in a system of constraints and privations, obligations and prohibitions. Physical pain, the pain of the body itself is no longer the constituent element of the penalty” Foucault

Things like deaths in custody are rationalised and subverted; they are seen as sad tales of bad communication or bad coordination (McKelvey 1977).

Mistakes are seen as bad people in a good system which takes all culpability away from the system we rely on. It's as if we need these experts to reassure us every day that the government always works in our best interests even when it's killing us, or locking us up, we need that reassurance.

Foucault points out the necessity of a doctor present at executions to do the opposite of what they are tasked i. e. end life instead of saving it and this is all rationalised away as they are there to prevent the victim from feeling pain. Foucault is obviously parodying the bloody code where pain was the point of the death and now it's painless and private and no longer a spectacle the taking of life is now justified. (Shafritz 2012)

“ All punishment is mischief; all punishment in itself is evil.” Jeremy Bentham

Technically it's still murder it's just a lot less messy, obviously still by no means justified. You can't necessarily take away a person's right to life and expect it to be the only recourse. Intentions are from reality it's not the systems professed aims at fault but their imperfect realisation. (Shafritz

2012)

Penal reform rhetoric is always claiming moves towards enlightenment and belief in progress but the gap between rhetoric and the truth is enormous. Benevolence when it comes from this system always goes wrong because they constantly have to weigh conscience and convenience they're trapped in that constant hard place of trying to do the best and easiest thing which obviously is pretty bad coming from a system we trust so implicitly (Rothman 1971).

The definition of crime is fluid as new laws are created every day; therefore human morality is not objective or accurate enough to properly judge when someone has the right to take another's life.

The use of the death penalty is also a very cynical deterrent, it completely eliminates the possibility of offender reform and criminal investigation is not an exact science for all the 'bad' people you kill, there will inevitably be a handful of 'good' people killed by mistake or through negligence/racism/sexism and other personal bias. (McGraw-Hill, 2012)

In conclusion in light of the imperfections of the legal systems and the permanence of death not to mention ill conceived notions of equivalent trade in punishment, the death penalty can never be interpreted as fair. It is completely illogical to kill and expect to set an example that killing is in fact wrong.

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