

Does the death
penalty's deterrent
value outweigh its
negative factors
argumentati...

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



I intend to discuss the use of the death penalty as a deterrent and the moral and societal implications that may have. Is the death penalty a deterrent and if so what can be learned from death?

Socrates was famously executed by the state for corrupting the youth and although he had the opportunity to escape his fate he chose to stay because he felt that he owed his life to his government.

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 your 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 state 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.

Beccaria (1764) critiques the utilitarian point of view on punishment 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?

Hobbes was a believer in the social contract theory. He believed that society was created through a mutual agreement of people coming together to help one another survive. Therefore the state had power over you, because you agreed that it should as a means of governing a people fairly and it goes without saying you would never agree to be executed. In other words you would never enter an agreement allowing another party to forsake your human rights.

When you live in a society you naturally agree to obey by its laws, and you receive rights such as the right to life, so another person does not have the right to end your life and you do not have the right to end theirs and because you agreed to live in that society and have those rights to life why should the

government be able to disavow those rights?

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; surely no one should have the right to kill anyone.

" What says the law? You will not kill. How does it say it? By killing!" -Victor Hugo, author of *Les Misérables*

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. Another fault Hobbes points out in terms of the death penalty is that the sovereign is not allowed to be executed by his people.

The theory is if the people have come together to elect and decided as a group to give that person power over them, they are then responsible for whatever their sovereign may do. Executing the sovereign would go back on your decision.

" Institutions and practices need to be acknowledged by the individual as deserving his allegiance and consideration as essential to his own self-realisation - provided they continue to act as means to the common good and not as impediments to it"

(Green. 1986, pp 6-7)

T. H Green 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).

" Imposition of the death penalty is arbitrary and capricious. Decision of who will live and who will die for his crime turns less on the nature of the offense and the incorrigibility of the offender and more on inappropriate and indefensible considerations: the political and personal inclinations of prosecutors; the defendant's wealth, race and intellect; the race and economic status of the victim; the quality of the defendant's counsel; and the resources allocated to defense lawyers." -Gerald Heaney, former appellate judge

Law professor David Baldus from the University of Iowa discovered during the 1980s Georgia's prosecutors sought the death penalty for 70 % of black defendants with white victims, but for only 15% of white defendants with black victims. In short the death is too final a solution to guilt which is unclear. The definition of crime is fluid as new laws are created every day; human beings are not objective enough to hold the power over life and death.

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.

Bibliography;

Green, T. H. (1882). *Ethics, Metaphysics, and Political Philosophy*. Mander, W. J. & Dimova-Cookson, M. Oxford University Press, (2006).

Plato (1509) *Phaedo*

Schmallegger, F. (2012). *Criminology today: An integrative introduction* (6th ed.). Upper Saddle River, NJ: Prentice Hall.