

# [Ethical formalism essay](https://assignbuster.com/ethical-formalism-essay/)

Many ethical theories have been put forward concerning ethical considerations in judicial systems which include ethics of care, ethical formalism, natural laws, egoism, utilitarianism, religion and ethics of virtues among others. Passing on judgments and giving sentences to defendants is what judges in courts do although there are formalities or rather laws, rules and regulations to be followed in every judicial proceeding which is mandatory and applicable to all.

Concerns may be raised in regard to sentencing of terminally ill defendants especially when they are entitled to life sentences of which different explanations for actions taken against such people may be given depending on the theory used. A terminally ill defendant is any party who has been formally charged or accused of violating a criminal stature and he/she is suffering from an inevitably progressive illness which has no cure or rather results in death within a period of about six months.

Therefore, a terminal condition includes, but is not limited to, any prognosis by a licensed physician that the inmate has six months or less to live. Terminal illness means an incurable condition caused by injury or disease from which there is no reasonable prospect of a temporary or permanent recovery where death would, within reasonable medical judgment, be imminent regardless of the application of extraordinary life-sustaining treatment and the application of extraordinary life-sustaining treatment would only serve to postpone the moment of death of the patient.

Life sentence on the other hand implies a sentence of imprisonment for a serious crime, often for most or even all of criminal’s life. It can simply mean imprisonment until the prisoner dies. Its is through cross examination of several theories of ethics that we arrive at a conclusion whether it is ethical to give a life sentence to a terminally ill defendant considering the fact that the defendant has a very short time of his whole life remaining. The conclusion may vary according to the theory used.

For this discussion, Ethical Formalism is examined closely along with other theories of ethics as back-ups where necessary. Discussion Ethical formalism is a type of ethical theory that defines moral judgments in terms of their logical form, for example, as laws or universal prescription rather than their content, that is, as judgments about what actions will best promote human well being. It is the doctrine that certain actions are good, that is, the right thing to do or evil, that is, the wrong thing to do in and of themselves; apart from any beneficial or harmful effects they might have on individuals.

For example a person may be a serial killer but there is no justification of murder if the person is murdered as his punishment. Murder is wrong and that’s it! Many reasons may be provided for why these actions are right or wrong, there may be none which involves the effects that such actions have on individuals. “ Our moral experience is fundamentally a consciousness of the difference between Duty and Inclination, between doing what we ought to do whether we like to or not, and doing merely what we like to or not” Jansen (1934).

Concerning Ethical Formalism, it is good to ignore our inclinations, attractions or indifferences and do the acts open to our choice which we must do, no matter what our feelings in the matter might be. And since our inclinations are no guides to what we must do, then we must derive our knowledge of what our duty is from reason and everyone must know what their duties are. It is logical to argue that there is no exemption of any criminal convicted of an offence regardless of their condition. The law does not protect terminally ill defendants from legal convictions hence they should serve their sentence until they meet their death.

Still, it should be noted that they deserve to be taken care of regardless of what offences they committed. It is easy for one to have the mentality that terminally ill defendants are incapable of committing more crimes due to their conditions and forgetting that everybody must pay for their wrong doing. There are mechanisms for release of terminally ill prisoners which may vary and includes reduction of a sentence by a judge, parole, clemency or commutation of sentence, and administrative release. According to the article; ‘ Early release from prison due to age or illness’ C.

Renhart (September 28, 2000) there is the Connecticut law that allows release of inmates by Board of Parole if the inmate has a terminal condition and is physically incapable, because of his illness, of presenting a danger to society. Any terminally ill prisoner except one convicted of a capital felony is eligible. Therefore, we are justified to say that a court of law does its duty effectively through the set rules to pass judgment as appropriate according to the defendant regardless of their condition. If any Connecticut law has to apply, then it does but to the inmates and not during the judgment.

Formal requests for medical release ask judges, correctional administrators, governors, and parole boards to weigh the needs of the dying or desperately ill inmates against society’s desire for retribution, deterrence and protection. But as earlier mentioned, the sentence has to be given first. Even when the judge and the prosecutor consider the sentence to be inappropriate, they have no choice but to pass it on since they have to adapt to a uniform legislation. Although later on, some considerations addressing humanitarian concerns associated with dying inmates may be implemented.

Formal regularities have to apply to all defendants as there are no set laws concerning the prosecution of terminally ill defendants. Punishment is justice for injustice and so all criminals deserve to be subjected to correctional procedures as set by the law. Every offender is punished in accordance to the prevailing laws and rules of the land. There is no point of mercy or special considerations and in any case the correct judgment should be passed on and to the right defendant. It is a punishable offence to give a lesser sentence to a defendant who has been diagnosed as being terminally ill.

Ethical formalism is based on motive and intent of the person who performs the action (Pollock, 2004) as an illustration, a person may find an infant who has been under direct sunlight for a long time, takes it and pours cold water on it to reduce the heat and high temperatures. It then passes on. It may be interpreted that the infant died because of the cold water poured on it. Considering the fact that it died after the person’s actions, ethical formalism believes that because the person’s intention was to save the infant, his intentions were good, even though the result was bad.

Ethical formalism also believes that what is considered to be wrong is wrong no matter what. For example one can not claim she executed another person because he was evil or a murderer, such a claim is not justifiable since there is no justification for murder according to ethical formalists and so there is nothing good that can come from a person taking another persons life intentionally. If a defendant has committed a crime, it is a wrong. He therefore deserves to be subjected to a just, humane and effective penal system regardless of whether he is terminally ill or not.

If a defendant has been convicted of murder, for example, life imprisonment may be the only sentence which a court can pass for that offence and this applies to all defendants. The final judgment has to be passed on in accordant to the penal codes. It is of importance if we looked at the ethical formalism theory in comparison with other ethical systems that support the topic. They give a clear picture of the theory and its application. These systems together with ethical formalism are known as deontological ethical systems and are concerned with the nature of an action that is being judged.

If the action is considered to be inherently good, even if the action has bad consequences than it can be defined as good. (Pollock, 2004). These include religion and natural law in addition to ethical formalism. Most of the materials are based on Ethics of Crime and Justice Pollock, J. M 2004. In Religion, which is another ethical system, we notice that it is the most widely used source of individual ethics. People believe in God who is our supreme being and is all knowing and so what is morally good is what is defined by God.

We trust in God and follow his guidelines with expectation of his will to be done. We are guided by the Ten Commandments to live a good life and to achieve a greater good among ourselves and serve as a guideline on which to live. Actions are judged mostly on the intentions of the actor and even though it may have grave consequences, if the intention of the actor was good, then God sees it as morally good. Ethical formalism is closer to Religion since they both hold that actions may be charged mostly on the intentions of the actor.

In religion for example, if a person decided to give to the out of the kindness of their heart, it is deemed as being a good act but, if the person does it with the intensions of gaining something else, then this is wrong to God. And so Religion supports the topic being discussed by Ethical formalism. Even though there is a continued struggle within religions, to figure out God’s will, they all have the same general concepts of good and evil, and what is right or wrong. People are then judged according to their actions and their intentions.

The natural law holds that what is good is what is evil. It is natural for one to have self defense in effort to save ones live, and then this is considered to be a natural reaction and therefore seen as a good action. Natural laws much like religion in that the acts are judged based on situation. Giving life sentence to a terminally ill defendant may be an ethical thing to do since it is just too natural to punish a criminal and not just giving any form of punishment, but giving the appropriate punishment.

Therefore the conditions of the defendant may be handled under different sections but not at the prosecution level. Egoism is another ethical system which believes that whatever it takes to achieve personal happiness is considered moral. For example a child may decide to tell his parents a lie after coming home late having attended a friend’s party. He knows very well that his parents can not encourage or tolerate such a thing as coming late in the night of a young son. So cheating makes the child happy since he has escaped punishment from his parents.

Under this ethical system, lying may be considered as moral since he is not punished but because it makes him happy, it is considered to be moral. Anther illustration is that of a student who attends an International University to obtain their degree, but they can find no time to study or do their work so they employ someone else who does not attend the University, to do their work for them. Under the egoism ethical system, this person would consider the choice to be moral based on the fact that they will gain their degree, even though it is considered cheating.

But, because it made them happy, it is considered to be moral. There are also other ethical systems which are the opposites of the ones discussed above and are referred to as The Teleological ethical systems. These systems judge the consequences of the act rather the act itself. It believes that if the action results in what is considered good and that the end result will justify the reason that the act was committed in the first place. These include utilitarianism, ethics of virtue, and ethics of care. Two of them are discussed below.

Utilitarianism view holds that what is good is determined by the consequences of the action. If it can be shown that an action benefits the greater amount, then it is good because it outweighs the small amount of harm that the action has caused. For example, a lion may escape from the park and get to the nearby village causing fear and harm to the villagers. Because of this, the villagers may decide to kill the lion which is a crime in itself and violation of the set rules concerning protection of the wildlife.

Even though the state values the lion as an attraction site for tourists who benefit the country by bringing in foreign exchange, the villagers are justified in their action as they did what they had to do to save their fellows from attack. In this concern, giving a life sentence to a terminally ill defendant may be seen as less effective and wastage of Government funds since the person can not be productive and besides he may not be able to commit any more crimes hence may not be a threat to the society. As discussed above, the ethical formalists see it differently from the utilitarianisms.

Ethics of virtues looks on the person who is committing the act rather than judging the act or consequences. It believes that in order for something to be considered a good act then the person must be a good person with virtues such as compassion, honesty, humility, courage, and devotion. If a person holds such virtues, they are good people and will do good. If a person has had good reputation all through and is know to be a morally upright person, even if he commits an offence, people not just disbelieve it, but will also deny the fact since they can not imagine of that good person being associated with anything evil.

Therefore in regard to this issue, a terminally ill person may be pardoned due to his condition since there is no point of worry because the person is not seen as a threat to the society and again may not be able to commit any crime. Conclusion To sum up, we note that it is ethical to give a terminally ill defendant a life sentence since the law has to apply to all defendants regardless of their condition in accordance with the offence committed and that terminally ill defendants should not be given any special treatment when it comes to sentencing.

Formal requests may be made with the concerned parties in regard to terminally ill inmates but this does not affect the sentencing of such people. Ethical formalism, which is based on motive and intent of the person who commits the action defines moral judgments in terms of their logical form rather than their content hence it is reasonable to give life sentence to a terminally defendant since there is no justification of the offence committed and what is wrong is wrong. So the person should get his/her sentence accordingly and as they deserve it.