

Philosophy 104, Ethics, Queens College
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Lecture Notes, November 17

I. The simple argument against capital punishment, redux.

This is the simple argument:

1. Murder is wrong.
 2. Capital Punishment is murder.
- So, Capital Punishment is wrong.

We noticed that the second premise was too strong, so we tried:

1. Killing is wrong.
 2. Capital Punishment is killing.
- So, Capital Punishment is wrong.

But then the first premise fails.

We might change “killing” to “killing a human being”, throughout the argument..

We noticed that the second premise was too strong, so we tried:

1. Killing a human being is wrong.
 2. Capital Punishment is killing a human being.
- So, Capital Punishment is wrong.

Again, the second premise is fine, but the first remains debatable.

This holds too if we take Ryan’s suggest, and add “with intent”.

We make exceptions in cases of war, and self-defense.

What about punishment? Is this an acceptable reason?

Let’s examine more closely the concept of punishment.

II. Basic defenses of punishment, generally:

Forward looking punishments are called utilitarian.

These emphasize the benefits of punishment, both to society and to the punished person.

The child is punished to make him better.

We call prisons ‘correctional facilities’, and we construct rehabilitation centers.

Rehabilitative justifications for punishment sometimes allow punishments that don’t fit the crime.

We could punish too little, if we don’t see benefits of a more severe punishment.

For example, we have little hope that repeat drug offenders will rehabilitate.

Still, does that mean they shouldn’t obey the law?

Or we could punish too much, if we think the deterrent effect would be large.

We might provoke greater deterrence by using gruesome public executions.
But that seems severe.

Backward-looking punishments are called 'retributive'.
They are based on a Kantian model.
Sometimes, we call this *lex talionis*, or law of retribution.
Retributive punishments generally require proportionality.
The classical proportionality requirement is 'an eye for an eye'.
But this can be seen as too severe.
Do we really want to rape the rapist?
There are other ways to devise proportionality.

Van den Haag: "Punishment is to vindicate the law and the social order undermined by the crime," p 141.
Is this backwards-looking or forwards-looking?
Practically, we balance these forward and backward looking justifications, imperfectly, in laws.

Next, we'll apply this general strategy, separating retributive justifications and utilitarian ones, to the specific case of capital punishment.