

Philosophy 104, Ethics, Queens College, Spring 2005
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Lecture Notes, May 11

I. Utilitarian defenses of capital punishment, continued

There are three general strategies for utilitarian defenses of capital punishment:

- 1) Deterrence of others
- 2) Deterrence of the offender
- 3) General social benefits

In our last class, we looked at 1).

Since there is no clear evidence that capital punishment is a deterrent, we have to rely on a priori argument, like van den Haag's common sense argument, or the best-bet argument.

Reiman denies that we should accept such a priori reasoning in important matters.

He urges that since there is no clear evidence of the deterrent effect on others, we can not support the death penalty on this basis.

A retributivist, like Perlmutter, thinks the deterrence question is irrelevant, of course.

Deterrence by itself can not be a sufficient defense.

For, deterrence might justify executing an innocent person

Perhaps the other two strategies can support capital punishment.

2) Deterrence of offender

Certainly, capital punishment achieves this.

But there are easier, less severe ways of doing this, ones that create less pain.

A utilitarian wants to minimize pain.

Reiman points out that capital punishment involves submission and psychological pain, pp 137-138.

van den Haag thinks that life imprisonment causes more pain, even though it is preferred, p 144.

Stewart, quoting Powell, in Furman, p 118, says we can not abolish capital punishment just because lesser punishments may suffice.

3) General social benefits

Most importantly, some people claim that capital punishment prevents vigilantism and anarchy.

Stewart claims, in Furman, that people generally believe that some crimes deserve death, p 124 (in Perlmutter's article.)

This amounts to the claim that people want revenge, and so we had better give it to them, lest they act on their own.

Blood thirst does not seem an appropriate defense of social policy.

It is irrational, emotional behavior.

It may be understandable, but it should not be the basis for public policy.

We should comfort the victims, but this can't be the only way to achieve finality, closure, and acceptance

II. Utilitarian defenses of capital punishment, summary

The utilitarian focuses on deterrence, but there's no clear deterrent effect.

So, he can rely on commonsense reasoning, and the best-bet argument.

The common sense argument isn't very compelling, as Reiman noted.

If we are going to execute some one, we should have real evidence of the benefits.

Any benefits have to be weighed against the bad consequences of capital punishment:
Effects on the condemned's family, who are innocent.
Effects on executioners.
Inculcating bloodlust in our society.

Given the failure of the three strategies to support capital punishment, except on an apriori basis, it looks like the utilitarian can not really defend the death penalty.

Recall also that there are basic problems with utilitarian defenses of punishment, in general.
Punishment necessarily entails harming the wrongdoer.
Harm involves increase of pain, or decrease in pleasure.
Utilitarians want to increase pleasure, and decrease pain.
So, the only possible utilitarian defense of punishment is one where the long-term benefits outweigh the short-term harms.
But, it's possible, in any particular case, that there will be no long-term benefits.
Consider un-reformable prisoners, and stubborn children.
If we are utilitarians, we should adjust our standards: reform, rather than punish.
We do, in many cases, shift from criminality analyses to mental/emotional problem analysis.
When behavior is caused by mental or emotional defect, such as addiction, then we do not consider the person responsible.

Still, it is unlikely that we would abandon the notion of punishment altogether.
We only believe that we can punish when the person is responsible.
Remember that to deter crime, we may not need to punish the guilty.
We can punish any one, to set an example.
The basic problem with utilitarian defenses of capital punishment is that utilitarians look to reform, protection, and deterrence as justification, but these are not the essence of punishment, which must be backwards-looking, p 127.
So, let's look at the retributive case for capital punishment.

III. Retributive, or Kantian, justifications of capital punishment

The retributive defense concerns desert.
Lex talionis: the punishment must fit the crime.
Perlmutter, a retributivist, argues that wrongdoers deserve their punishment.
Indeed it is their right, and interest, to be punished, p 129.
It is in their interests to be treated as members of the moral community.
This is an Hegelian, or Kantian, notion.
Recall that for Kant, the essence of morality is universalization.
So, if a person murders, he is actually willing his own death.

Call this 'eye-for-an-eye' policy a 'strict lex talionis'.
Van den Haag discusses this.
The strict policy has no obvious application for people who commit multiple murders, or poke out three eyes.
Further, it is too severe, since we do not want to rape the rapist.
The question is whether capital punishment is too severe, as well.

We have a problem, for the retributivist, in the absence of a strict lex talionis, of how to match punishments to crimes.
Let's say we have two lists: we can order serially both punishments and crimes.
(We'll ignore the problems here of ranking crimes; e.g. which is worse, grand larceny or minor assault? etc.)
The question is how to match the punishments with the crimes.
Surely there are punishments beyond which one can not, morally, abide.
E.g. raping the rapist, cutting off limbs, torture.
The Eighth Amendment to the U.S. Constitution prohibits cruel and unusual punishment.
This just embodies our intuition that certain punishments are too severe.

The big question becomes where to draw the line between acceptable punishments, and ones which we will not allow.

Van den Haag argues that capital punishment can not be unjust, since the criminal asked for it, p 135.

Again, notice the Kantian presumption.

Van den Haag, oddly, urges shootings, rather than injection, in order to maintain the dignity of the executed, p 144.

This does not help us answer the question of where to draw the line.

Stewart argues that we can avoid the problem of cruelty by making sure that a penalty isn't too painful, or grossly out of proportion, p 118.

Again, this is no help with where to draw the line.

Reiman argues that the justness, in the Kantian sense, of a punishment doesn't entail that we should implement it, p 136.

We should not do horrible things, like torture.

Capital punishment is just another horrible thing we can do.

It is always cruel and unusual.

Abolition of the death penalty is a mark of civilization.

Brennan agrees that it is too severe, and below the acceptable limits required by human dignity, p 121.

Perlmutter says that it's consistent with dignity.

Van den Haag responds to Brennan, p 135, and alleges that the criminal is the source of the degradation.

The criminal who is degrading himself.

The retributive case thus seems to turn on how we interpret 'dignity'.