

The Death Penalty: A Utilitarian Perspective

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One of the most famous trials of the twentieth century is that of Nathan Leopold and Richard Loeb. Both young men were highly intelligent, both from very wealthy families, and both faced the death penalty for killing a neighborhood boy. Loeb was obsessed with crime, and wanted to prove that the perfect crime could be committed. With his acolyte, Nathan Leopold, they murdered the young boy Bobby Franks in cold blood. It was their lawyer, a very famous orator by the name of Clarence Darrow who delivered “the most eloquent attack on the death penalty ever presented in an American courtroom” (Linder, 1997). His oration focused on a utilitarian principle: death is always wrong, and it adds more evil to evil. In a powerful section of his speech, Darrow proclaimed that if the government is not more humane than the abhorrent act of his clients, then he is sorry that he has lived so long. Utilitarianism can be used in both support and opposition of capital punishment, but, as I will point out, the utilitarian supporters make an untrue assumption. There are other schools of thought that support the death penalty as well. Immanuel Kant has long opposed the utilitarian objection to the death penalty, but his deontological support of it fails in three fundamental ways. The rights-based proponents of capital punishment claim that criminals forfeit their rights once a crime is committed, but I will argue that this is a skewed representation of the rights of people. The utilitarian *objection* to the death penalty is the most solidly grounded argument.

The fundamental utilitarian philosophy is perhaps one of the simplest doctrines in existence. It asserts that the morality of all actions should be judged on the basis of whether they promote the greatest happiness for the greatest number of people. There is a balance of pain and pleasure in the universe, and according to Jeremy Bentham, these two extremes are our sovereign masters. Our actions either add to the pleasure of this scale, or tip it in favor of pain. A person who commits a capital offense greatly adds to the pain of the community, ergo subtracting from the pleasure. In essence, it tips the scale in favor of pain. The question must be asked: is the scale made balanced again by another killing? The most logical utilitarian doctrines dictate that the death penalty adds more pain to this volatile balance; however, utilitarianism can have many interpretations.

Some who professed utilitarianism were proponents of capital punishment, namely John Stewart Mill. Those who use utilitarianism to support the death penalty often focus on deterrence. If people are deterred from committing capital crimes because of the death penalty, that will subtract from the pain from the community. In order for this argument to be effective, however, it must be shown that the death penalty is a deterrent. Some recent statistics seem to support the idea that capital punishment is an effective deterrent; but in the article “The Death Penalty: No Evidence for Deterrence,” the authors show how these statistics are simply not credible. One such faulty statistic showed that the number of murders decreased when executions increased. To the trained logician, it is easy to point out that this fallacy, known as the questionable cause fallacy, implies that capital punishment could be the only reason for the decline in murders. It is an obvious fallacy because correlation does not indicate causation in all cases – fewer

murders in a certain time period could be, and very likely are the result of many factors. To single out one factor, such as the death penalty, in order to support an argument is both dishonest and illogical. It is commonly known that statistics with questionable credibility can easily be used in to support any side of a given issue, which is why we must be careful when using them. By examining their credibility, more equitable statistics can be used in support of an argument. Credible statistics from the Death Penalty Information Center indicate that states that do not have the death penalty have been shown to have had *fewer* murders in the last decade, and in 2005, the murder rate in non death penalty states was an astounding forty-two percent lower than the murder rate in death penalty states. Even if we account for a large margin of error, and for the questionable cause fallacy in these statistics, they are a powerful reminder that deterrence should not be a factor in considering whether to support capital punishment. In addition to a skewed utilitarian support of the death penalty, the school of deontology strongly supports it, while opposing the utilitarian objection.

Deontology is, simply stated, the philosophy of duty. A person is required to be moral because it is their duty, and moral duties are discovered through reason. One of the great supporters of capital punishment, and a deontologist, was Immanuel Kant. Kant supported the death penalty and strongly influenced the development of penal law in the sixteenth century. He was also very much against the utilitarian objection of capital punishment. He maintained that those who commit capital crimes have a duty to be punished by death, and to deny this duty is to deny reason. In Kant's famous essay "The Science of Right," he clearly states his opposition to utilitarianism:

The penal law is a categorical imperative; and woe to him who creeps through the serpent-windings of utilitarianism to discover some advantage that may discharge him from the justice of punishment (Kant, 1790).

The deontological support of capital punishment fails in three important ways. First, the dictum *to deny a duty to die is to deny reason* would be a true statement if dealing with rational beings; however it can be safely assumed that many who have committed capital crimes are not rational beings. This begs the question: are irrational beings capable of having reason, and therefore duties? Second, deontological support of the death penalty is incompatible with Kant's "practical imperative," which dictates that we should never use people as a means, but always as an end. Is the death penalty not using a person as a means of retribution? A third failure of deontology is the conflict of duties. If a person has a duty to die, who has the duty to carry out the execution? We must return to the utilitarian objection to the death penalty for a correct moral compass.

A third school of thought, rights-based ethics, seems to correlate with deontology in its support of capital punishment. In a rights-based view, we are all born with certain inalienable rights, such as the right to pursue happiness, the right to life, and the right to liberty. These are called liberty rights, and they are endowed to each person at birth. Those rights which we are not born with, but which are given to us are called welfare rights. Welfare rights might include giving housing to the poor, or money to the disabled. According to some rights-based ethicists like Ayn Rand, only liberty rights are true rights. The right to life is perhaps the most important of the liberty rights. A rights-based

ethicist would argue that those who commit capital crimes, such as murder, take away someone else's right to life; therefore that person forfeits his or her right to life and should be executed. A rights-based defense of capital punishment is not practical. It is too difficult to determine who has rights, who can forfeit rights, to whom those rights are forfeited, or even which rights are forfeitable. Once again, we must return to the utilitarian objection of capital punishment for moral guidance.

The utilitarian opposition to capital punishment is the most sound and logical philosophy. An evil deed added to another evil deed does not cancel one of those deeds, but adds them together and tips the pain/pleasure scale in favor of pain and suffering. A pro-death penalty utilitarian perspective, like that of John Stewart Mill assumes that deterrence is a result of the death penalty. All other things equal, the majority of statistics simply do not agree with this assertion. Deontology denies the utilitarian opposition to capital punishment by asserting that it is a criminal's duty to die in the name of justice and reason, but it is clear that most criminals who commit capital crimes are not rational beings. A rights-based view supporting the death penalty creates a tangled web of confusion and unanswered questions: who has rights? Which rights can be forfeited? To whom are they forfeited? The death penalty is wrong for many reasons. Clarence Darrow understood this when he gave his exceptional speech before a court of law in the trial of Leopold and Loeb. Those two men were not sentenced to death, but life in prison. Because of the humanistic mercy of the court, and the pleading of Clarence Darrow, Nathan Leopold was able to teach in the prison school, master twenty-seven foreign languages, work as an x-ray technician at the prison hospital, and contribute to the research of malaria. When he was finally released from prison, he led a life of humanitarianism (Linder, 1997). Although these things do not excuse the crime, they do show that rehabilitation is possible, and that greatly adds to the good of the universe.

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