

Mackenzie McAnear

8 May 2019

Ethics of the Death Penalty

Death Penalty, also known as capital punishment, is defined as the “execution of an offender sentenced to death after conviction by a court of law of a criminal offense” (Hood). About 2,000 women, teenagers, and men are waiting on death row in the United States. As federal and state courts have approved the death penalty law, their time is shortened, and execution is accelerating. It is unlikely that any of these executions will be on the front page, which has become a regular issue over the past decade. In fact, recent public opinion polls have shown a wide range of support for the death penalty. However, human rights defenders and citizens of the United States have condemned the immoral nature of government in the United States, which is still using capital punishment (Andre). With the growing number of people on death row, how many of them were wrongfully convicted, and should the death penalty even exist?

The death penalty was established in the United States on April 30, 1790, by the first United States Congress. The first person executed was “Thomas Bird in Massachusetts” on June 25, 1790 (ProCon). Rhode Island was the first state to “outlaw the death penalty for all crimes” in 1852 (ProCon). There were, and still are, many ways still used to kill someone. The “first US execution by gas chamber” happened on February 8, 1924, in Nevada with “Gee Jon, a member of a Chinese gang who was convicted of murdering a rival gang member” (ProCon). The last public execution was done “at 5:45 a.m. on August 14, 1936,” to Rainey Bethea who was hanged for “raping and murdering a 70-year-old woman in Owensboro, Kentucky” (ProCon). In the past,

it seems people were given the death penalty for the right reason, but in recent years that has not always been the case.

“Prosecutor declares freed Texas death row inmate Alfred Dewayne Brown innocent, paving way for state compensation” (McCullough). Brown was a wrongfully convicted for the death of a Houston police officer and a store clerk during a robbery. He was on death row for nearly a decade and he would have been executed if not for his attorney John Raley. This happened in 2015, four years ago he was set free but he was not declared “actually innocent” so he was not given compensation for being wrongfully imprisonment until March 1, 2019, of this year. Brown received “\$80,000 for each year he was wrongfully in prison, plus smaller monthly payments over the course of his life” (McCullough). This was a rightful ending to this sad story, but some innocents have not been so lucky.

It is so easy for people to jump to conclusions about a person based on their race, religion, or sexual orientation, but morals and ethics should always outweigh the biases. Some people find retribution to be problematic and flawed. It is no use to teach people that killing is wrong by killing someone. At the same time, most people on death row are not there for having taken a life, yet they are going to spend the rest of their life there anyway. When the family of Houston police officer Charles Clark heard that Dewayne Brown, the person convicted of Clark’s death, was being set free, they were furious, and for good reason. Over the years, they had accepted the fact that Charles Clark was not coming back, but their minds were at ease knowing that his supposed killer was behind bars. Even after being presented with all the facts that showed Brown was not the killer, they still wanted someone to pay. Vengeance is a tricky thing; it can seep into the dark crevasse of the mind and corrupt a persons' judgment.

Carlton Michael Gary of Georgia was convicted in 1986 of “three rapes and murders, the prosecution presented evidence of other uncharged crimes under the theory that they had all been committed by the same person” (“Executed But Possibly Innocent”). On March 15, 2018, Gary was executed “without any federal court review of substantial evidence suggesting that he did not commit the crimes for which he was convicted” (“Executed But Possibly Innocent”). It was because of improper handling of evidence that Gary was convicted. Once a person is executed, there is no going back.

The death penalty and the fear of being convicted and executed do not deter criminals. “There is no credible evidence that the death penalty deters crime more effectively than a prison term. In fact, evidence reveals the opposite. Since abolishing the death penalty in 1976, Canada’s murder rate has steadily declined and as of 2016 was at its lowest since 1966” (Amnesty). To supposedly make up for the execution, to begin with, states started using lethal injection, which is said to be humane, but because professional doctors can not break their code, the injection of “Angel Nieves Diaz” in 2006 took thirty-four minutes and two doses (Amnesty). Research done in April 2005, indicated that post mortem the level of anesthetic used on “offenders was consistent with wakefulness” (BBC).

According to the Death Penalty Information Center article, “Facts about the Death Penalty,” lethal injection is the method used most for executions since 1976. Having been used 1,316 times across thirty-two states in the United States and by the government (“Facts about the Death Penalty”). Right under lethal injection is electrocution at 160 (“Facts about the Death Penalty”). Electrocution is used as a backup to lethal injection. The older execution methods include gas chamber, hanging, and firing squad.

Before the United States ever existed, capital punishment was used in 7th century BCE Greece “under the laws of Draco” for “murder, treason, arson, and rape” (Hood). However, Plato argued that it should have only been used on those who were unable to be rehabilitated (Hood). Other philosophers throughout history have argued against and for capital punishment. In the article “Capital Punishment: Our Duty or Our Doom?” authors Claire Andre and Manuel Velasquez quote Immanuel Kant, who argued that if someone had committed murder, then they must die.

In this case, there is no substitute that will satisfy the requirements of legal justice. There is not sameness of kind between death and remaining alive even under the most miserable conditions, and consequently there is not equality between the crime and the retribution unless the criminal is judicially condemned and put to death. (Andre and Velasquez)

Kant is very straight forward in this quote, yet as logical as this may seem, it does not justify sentencing a person to death, even those who commit murder have “an inalienable human right to life” (BBC).

The counter-argument to this is that a person can forfeit their rights as a human through their actions; therefore, “murderers forfeit their right to life” (BBC). So if a person goes on a killing spree they have forfeited their rights, but the only way for a victim to save their own life is by killing the attacker. It is a double-edged sword, and the philosopher and theologian Thomas Aquinas made this point,

Therefore if any man is dangerous to the community and is subverting it by some sin, the treatment to be commended is his execution in order to preserve the common good...

Therefore to kill a man who retains his natural worthiness is intrinsically evil, although it may be justifiable to kill a sinner just as it is to kill a beast, for, as Aristotle points out, an evil man is worse than a beast and more harmful. (BBC)

What Aquinas is saying is that in specific contexts, an evil act such as killing can turn into a good act like “killing to repair the violation of justice done by the person killed, and killing a person who has forfeited their natural worthiness by killing” (BBC).

The death penalty has been around in other countries besides the United States and ancient Greece. In China, it was used as punishment for crimes. “In the 18th Century BC, the Code of King Hammurabi of Babylon codified the death penalty for twenty five different crimes, although murder was not one of them” (Reggio). The first recorded instance of the death penalty being used was in “16th Century BC Egypt” (Reggio), a supposed nobleman was accused of doing magic and ordered to take his own life. The idea of the death penalty has also evolved over the centuries. Back then, the nobilities were ordered to take their own life while the peasants and enslaved people were executed with an ax by someone else. William the Conqueror was an unusual case, he believed that killing was wrong except in war. He ordered that no one should hang or be executed “for any offense,” yet he “allowed criminals to be mutilated for their crimes” (Reggio). As time progressed, the death penalty has become less harsh and geared toward more specific crimes such as treason, espionage, murder, large-scale drug trafficking, rape, or attempted murder of a witness, juror, or court officer in certain cases (“Crimes Punishable”).

When people justify something, they do it to persuade someone to accept it, but who is being persuaded when justifying the death penalty? It cannot be the perpetrator because they can

do nothing about it. Then, the people being persuaded are the public; they know deep down that something could be wrong, that the person convicted did not do it, or that they do not deserve the death penalty because of the crime they committed. Instead of speaking up they dampen their ideas and thoughts down to their subconscious. The stereotypes and biases keep the people content and justified that the person convicted obviously deserved it. No matter how it is put, capital punishment is killing, and murder is always wrong. Five different ethical theories are tested to see if they can prove that the death penalty is morally and ethically wrong: relativism, utilitarianism, egoism, deontology, and virtue ethics.

Relativism is odd because it believes that the death penalty is both moral and immoral at the same time. Relativism is an extreme kind of Individualism that is the idea that everyone's "actions are determined by, or at least take place for, the benefit of the individual, not of society as a whole" ("Determining Morality"). Moral relativism can be viewed as only the self existing, which is the theory of Solipsism, yet it can also be viewed as "cultural relativism" (Determining). When a problem arises where two people's or cultures' beliefs directly contradict each other, moral relativism would say that both are correct, making it impossible for anything to be immoral. This theory makes the morality of the death penalty vary depending on who is asked.

A utilitarian theorist would view the death penalty as moral, making utilitarianism flawed. Utilitarianism is designed to make the largest number of people happy. So, if a murder was executed, then the victim's family would be happy. The same outcome cannot be said if the murderer was sentenced to life in prison because society's happiness would diminish. This

ideology ties utilitarianism “to the consequences of the practice being best for the total happiness of the society” (Hoag).

Egoism also views the death penalty as a moral act. “Egoism states that all individual conduct has a motivation. This primary motivation is self-interest” (“Determining Morality”). Since the primary interest in egoism is the self, then this makes everything fair game. It makes any crime okay, even if it results in the death penalty. Egoism “looks at the motivation as the sole determinate for morality” and makes an act moral if it suffices “one’s own self-interests” (“Determining Morality”). Egoism also makes life in prison an alternative to the death penalty. It is for all these self-centered reasons that egoism does not prove the death penalty to be ethically or morally wrong.

The fourth theory, Deontology, also known as Kantianism, was created by Immanuel Kant, focusing on the moral or immoral “intentions or motives behind action” (“Determining Morality”). Deontology is often described as “duty based ethics” because people believe that ethical rules are “bound by duty” (“Determining Morality”). This theory is flawed because it only looks at the intentions of actions, not the action itself or the consequences that come with it. Deontology can make good intentions lead to unintentional bad outcomes. The same could be said for bad intentions leading to a good outcome which is not morally right. People who study Deontology view the death penalty as being wrong by nature and a violation of the rights people have to live.

The last philosophical theory, virtue ethics, is the only one out of all five theories that find the death penalty to be ethically and morally bad. Created by Aristotle, virtue ethics “uses the motivation, the act itself, and the consequences to decide morality” (“Determining

Morality”). The motivations for the death penalty are “punishment, retribution, and deterrence” (“Determining Morality”). The first leads to a positive outcome: a bad person getting punished for a bad crime. By executing said criminal, they are then deterred from ever committing a crime again, fulfilling the last motivation. It is a universal law that killing is supposed to be wrong, yet it is used when a criminal kills. “The consequence of capital punishment, death, does not only affect the prisoner who is losing their life, but also the person performing the execution” (“Determining Morality”). Because professionals cannot perform the execution, someone else must do it, and in the process, they could be scarred for life. Since one of the three motives is negative, the death penalty as a whole is immoral, making virtue ethics the one true theory to take down the death penalty.

Killing is wrong in every sense of the word; therefore, killing a killer will do nothing to deter the criminals who still roam the streets. A solution to this problem could be life in prison without parole. They will have to live with the fact that they killed an innocent for the rest of their life. Because of all the pain it causes and the innocent people who are executed, the death penalty has no business existing in modern times. It may give the family of the deceased some comfort in knowing that the killer is dead, but it does nothing for the moral or ethical laws of the universe.

Works Cited

- “The Case Against the Death Penalty.” *American Civil Liberties Union*, 12 Dec. 2012, www.aclu.org/other/case-against-death-penalty.
- Amnesty International. “Five Reasons to Abolish the Death Penalty – Amnesty International Australia.” *Amnesty International Australia*, Amnesty International Australia, 9 Aug. 2018, www.amnesty.org.au/5-reasons-abolish-death-penalty/.
- Andre, Claire, and Manuel Velasquez. “Capital Punishment: Our Duty or Our Doom?” *Markkula Center for Applied Ethics*, Santa Clara University, 2015, www.scu.edu/ethics/focus-areas/more/resources/capital-punishment-our-duty-or-our-doom/.
- BBC. “Ethics: Capital Punishment.” *BBC*, BBC, 2014, www.bbc.co.uk/ethics/capitalpunishment/.
- “Crimes Punishable by the Death Penalty.” Crimes Punishable by the Death Penalty | Death Penalty Information Center, Death Penalty Information Center, deathpenaltyinfo.org/crimes-punishable-death-penalty.
- "Determining The Morality Of Capital Punishment Philosophy Essay." UKEssays.com. 11 2018. All Answers Ltd. 04 2019 <<https://www.ukessays.com/essays/philosophy/determining-the-morality-of-capital-punishment-philosophy-essay.php?vref=1>>.
- “Executed But Possibly Innocent.” *Death Penalty Information Center*, Death Penalty Information Center, 2019, deathpenaltyinfo.org/executed-possibly-innocent#Gary.
- “Facts about the Death Penalty.” *Death Penalty Information Center*, Death Penalty Information Center, 29 Mar. 2019. deathpenaltyinfo.org/documents/FactSheet.pdf.

Hood, Roger. "Capital Punishment." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 14 Mar. 2019, www.britannica.com/topic/capital-punishment.

Hoag, Robert. "Capital Punishment." *Internet Encyclopedia of Philosophy*, Internet Encyclopedia of Philosophy, <https://www.iep.utm.edu/cap-puni/>. Accessed 13 Apr. 2019.

McCullough, Jolie. "Prosecutor Declares Freed Texas Death Row Inmate Alfred Dewayne Brown Innocent, Paving Way for State Compensation." *The Texas Tribune*, Texas Tribune, 1 Mar. 2019, www.texastribune.org/2019/03/01/alfred-dewayne-brown-innocent-death-row/.

ProCon.org. "Historical Timeline of the Death Penalty." *ProCon.org*. 6 Mar. 2019, <https://deathpenalty.procon.org/view.timeline.php?timelineID=000025>.

Reggio, Michael H. "History of the Death Penalty." PBS, *Public Broadcasting Service*, 1999, www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/.