

The Death Penalty and Capital Punishment

Chapter 9

Learning Objectives

- After reading this chapter, you will be able to:
 - 10.1 Evaluate the ethical issues involved in the death penalty.
 - 10.2 Explain the different theories of punishment that could be used to support or oppose the death penalty, and articulate your own position.
 - 10.3 Analyze Sister Helen Prejean's Aristotelian argument against the death penalty.

Early History

- European (especially English) settlers influenced our nation's use of the death penalty
- First recorded execution: Captain George Kendall Jamestown, Virginia, 1608
- First woman executed: Jane Champion, 1632
- Crimes punishable by death: stealing grapes, striking your Mother or Father

Colonial Times

- Cesare Beccaria's 1767 essay: *On Crimes and Punishment*
- Thomas Jefferson's proposed bill
- Dr. Benjamin Rush, founder of the Pennsylvania Prison Society, challenged the use of the death penalty
 - brutalization effect: having a death penalty actually increased criminal conduct
- 1794: Pennsylvania abolishes the death penalty for all offenses except first degree murder

19th Century

- 1846: Michigan abolishes death penalty for all crimes except treason
- Most states retained death penalty rights
- Some states expanded crimes punishable by death (especially crimes committed by slaves)
- Introduction of discretionary death penalty statutes
- 1888: New York builds the first electric chair

Early 20th Century

- 1924: cyanide gas as a more humane form of execution
- 1920-40s: resurgence in death penalty after a short-lived lull
 - Criminologists wrote that the death penalty was a necessary social measure
 - Prohibition and the Great Depression
 - More executions in the 1930s than in any other decade in American history

Mid-Late 20th Century

- 1950s: public opinion turns against capital punishment
- 1940s: 1,289 executions
- 1950s: 715 executions
- 1967-1977: voluntary moratorium
- January 17, 1977: moratorium ends with execution of Gary Gilmore by firing squad
- Also in 1977: Oklahoma became the first state to adopt lethal injection as a means of execution

Constitutionality

- Prior to the 1960s: Fifth, Eighth, and Fourteenth Amendments were interpreted as allowing the death penalty
- Early 1960s: suggested that the death penalty was "cruel and unusual" punishment

Other Laws

- 1994 - President Clinton signs the Violent Crime Control and Law Enforcement Act expanding the federal death penalty
- 1998: Northwestern University National Conference on Wrongful Convictions and the Death Penalty

Death Penalty

- 59 prisoners were executed in the USA in 2004, bringing the year end total to 944 executed since the use of the death penalty was resumed in 1977.
- Over 3,400 prisoners were under sentence of death as of January 1, 2005.
- 38 of the 50 US states provide for the death penalty in law.
- The death penalty is also provided under US federal military and civilian law.
- The use of the death penalty in the United States has been on the decline for more than 2 decades.
- At present, only 27 countries world-wide still employ capital punishment.

Theories of Punishment

- Punishment is the deliberate limitation or revocation of rights and liberties by the government, and, as such, it must be justified.
- There are 4 contemporary theories for the justification of punishment by the state.

Theories of Punishment

- RETRIBUTIVE THEORY
 - Direct
 - Proportional
- FORFEITURE THEORY
- DETERRENCE THEORY
- REFORM/ REHAB THEORY

RETRIBUTIVE THEORY- Lex Talionis (an eye for an eye)

- **Direct Retributivism** - says that a person committing a crime ought to be punished for the crime by having the same crime inflicted upon them; literally, an eye for an eye.

State sanctioned what?

- Yet this is not practical. If a murder kills your father, are we to kill his father, is a rapist to be raped?
- It simply is not practical to employ this type of Retributivism.

Proportional Retributivism

- Claims that a person should be punished in a way proportional to the crime they committed.
- Punishment should be equal to the crime committed.
- We are going to inflict pain and suffering to an equal degree upon them. The rapist is not going to be raped, but he is going to suffer in a equal degree.

Forfeiture Theory

- This theory states that although we have certain positive rights within society, when we violate laws and violate the rights of others, then we forfeit our own rights.
- As such, we must be punished for these violations, and the state has the right, obligation and duty to see that we are punished.

Deterrence Theory

- This theory claims that punishing criminals deters others from committing the same crimes.
- Punishment is justified only if it has a deterrent effect. If punishment did not deter future crimes; then, there would be no reason to punish people.

Reform Theory

- This theory claims that the goal of punishment is to reform criminals.
- If the punishment does not have such an effect then it is not justified.

Mixed Theories

- It is possible to mix elements of the different theories and claim that together they justify punishment.
- The argument of unfairness is as clear as it is challenging: There are no rich people in death row, and the vast majority of executed criminals are black or Hispanic. Another major complicating element in recent decades has been the advent of DNA evidence.
- It turns out that as many as 5% of the criminals executed have been proven to be innocent and that percentage still applies to today's death-row inmates.

Sister Helen Prejean, "Would Jesus pull the Switch? Uhm, no..."

- Sister Helen Prejean—a Catholic nun perhaps best known for the book, play, opera, and film *Dead Man Walking*—forgoes the Catholic Church's usual antideath penalty position from a Divine Command or Natural Law argument, opting instead for a powerful Aristotelian argument in her article "Would Jesus pull the switch?"
- In other words, Sister Helen knows how to back this argument up with biblical references; the answer to "What would Jesus do?" is not likely to be "Torture and kill the guy." A virtuous person would not do that.

Kant... Hang them high!

- "Even if a civil society were to be dissolved by the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in his public violation of justice."
—Immanuel Kant, *The Metaphysics of Morals* (1797)

The American Civil Liberties Union (ACLU)

- "The death penalty in America is a broken process from start to finish. Death sentences are predicted not by the heinousness of the crime but by the poor quality of the defense lawyers, the race of the accused or the victim, and the county and state in which the crime occurred. From 1976 to 2015, 1,392 executions occurred in the United States, and 995 of them took place in the South. Time and time again, we have proven that the criminal justice system fails to protect the innocent and persons with serious mental disabilities and illnesses from execution. Even the administration of executions is utterly flawed: Every method of execution comes with an intolerably high risk of extreme pain and torture."
