

## The Philosophy of Ethics as It Relates to Capital Punishment

Nicole Warkoski, Lynchburg College

The study of ethics as a whole, particularly in regard to philosophy, is composed of many nuances, which are the subject of disagreements between philosophers and those who study them. When the fundamental thoughts and theories of ethics are applied to the emotionally charged issues of today, the ethical debate takes on even more weight, creating an even more nuanced philosophical landscape. Take, for example, the debate regarding capital punishment: is such a form of punishment morally acceptable? Burton Leiser, who looks at the issue from a Kantian, retributive point of view, would argue that it is. Immanuel Kant, who discusses the philosophy of ethics in his work, *Grounding for the Metaphysics of Morals* (1785), argues in favor of the ideas of reason and “duty,” under which heading he prescribes retribution as a form of justice for one's crimes. Hugo Adam Bedau, in contrast, argues from an inarguably utilitarian standpoint that it might not be. Utilitarian ethics is a method taken from John Stuart Mill, whose aptly named work, *Utilitarianism* (1863), recommends that—regardless of any idea of duty or justice—the consequences of any action should be examined fully in order to provide the greatest amount of good for the greatest number of people. Comparing the arguments presented by Burton Leiser (based on Kantian ethics) and Hugo Adam Bedau (based on utilitarian ethics) makes it clear that Bedau, who stands against the death penalty, presents a much stronger argument. By looking at the shared topics in each of the texts, particularly the idea of retribution, capital punishment as a deterrent, and the reality of an imperfect legal system, we might discover why the death penalty is, in fact, not necessarily morally permissible.

Leiser, who focuses much of his argument on the idea of retribution, begins his text

by quoting Justice Potter Stewart, who upheld the death penalty in the Supreme Court. Leiser notes that the Justice said that “capital punishment 'is an expression of society's moral outrage at particularly offensive conduct,' and that even though this function may be unappealing to many, 'it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs,'" (688). Leiser then goes on to argue that, if the legal system does not continue to administer justice in this way, there will be an increase in so-called vigilante justice, in which citizens administer that justice to offenders without the support of the legal system. Leiser then develops the idea of human dignity, saying that “retributive justice does not deny the wrongdoer's worth and dignity. It assumes it, and makes no sense at all unless the wrongdoer is regarded as a human being capable of making his own decisions, acting upon his own volition, and deserving moral praise or blame for what he does” (690). He uses this notion to support the idea that capital punishment, in line with the Court's ruling, is not a form of cruel and unusual punishment, and thus is not against the Eighth Amendment or (as a result) unconstitutional.

The rest of Leiser's argument, as quoted in the text, is essentially his opinion on the nuances—on who should and who should not be subject to capital punishment—without very much evidence as to why he sets those distinctions in place, other than that the criminals who have committed serious crimes “deserve” it on grounds of retribution. He says this, or something like this, more than once: “Only the most heinous offenses against the state and against individual persons seem to deserve the ultimate penalty” (691), “Perpetrators of such crimes as genocide ... deserve a penalty no less severe than death” (691); “Treason, espionage, and sabotage, particularly during times of great danger (as in time of war), ought to be punishable by death” (692), and so on—this list is by no means exhaustive—until it seems he is merely listing the things he believes warrant capital

punishment on the grounds of retribution. As a whole, Leiser constructs his argument without much (if any) distinction as to why these crimes are the worst, or any explanation as to what makes a murder “particularly vile, wanton, or malicious” (692), and thus deserving of the death penalty. His entire argument is based in the idea of retribution, and not much more.

Bedau, on the other hand, tackles the idea of retribution in his examination of capital punishment, while still leaving room to discuss other matters. For the sake of this essay, however, it makes sense to look at retribution first, because that is essentially the whole of Leiser's argument. Bedau, after examining this idea of retribution himself, effectively sums up the problem with Leiser's argument in a single sentence, saying “Some murders seem improperly punished by death at all; other murders would require methods of execution too horrible to inflict; in still other cases any possible execution is too deliberate and monstrous given the nature of the motivation culminating in the murder” (701). Essentially, Bedau argues that there are far too many small distinctions to be made between crimes, especially when dealing with human life, to effectively differentiate between them from an unbiased, purely retributive standpoint. (When Leiser tried to do this, for example, he merely made a list of things *he* found might warrant capital punishment; someone else's list could easily be very different from Leiser's.) Of course, the fact of these nuances does not ask us, the reader, to disregard the death penalty altogether; just because something is too difficult to feasibly accomplish does not make it immoral; it simply makes it illogical.

In fact, when looking at Bedau's argument as a whole, much of what he says does not seem to claim that capital punishment is immoral. Rather, he is pointing out the logical issues behind arguments that might try to claim that capital punishment *is* moral. Already, he has pointed out the flaw in the argument of retribution; in addition, he takes on the idea

of deterrence, claiming from the start that “in general, our knowledge about how penalties deter crimes and whether in fact they do—whom they deter, from which crimes, and under what conditions—is distressingly inexact” (695). More importantly, he notes another distinction that Leiser failed to even acknowledge in his argument: the possibility of imprisonment. After introducing this idea, Bedau points out that there is no way of knowing the level of effectiveness of the death sentence in regard to deterrence, and (perhaps more significantly) whether it is more effective at deterring criminals than life imprisonment. Where Leiser might argue that revoking capital punishment would see an increase in vigilante justice, Bedau points out that

Clinical psychologists have presented evidence to suggest that the death penalty actually incites some persons of unstable mind to murder others, either because they are afraid to take their own lives and hope society will punish them for murder by putting them to death, or because they fancy that they, too, are killing with justification, analogous to the justified killing involved in capital punishment. (696)

This explanation cements the notion that there is no way of knowing whether retiring the use of capital punishment is more likely to cause murders or prevent them. Bedau is not arguing that one outcome is more likely than the other, but his argument does render this idea of deterrence worth examination. The truth of the matter, as Bedau points out, is that we have no way of knowing whether deterrence is a legitimate defense of capital punishment, and thus both defenses—retribution and deterrence—have been called into question.

Leiser, on the other hand, simply takes these defenses for granted; the only time he acknowledges deterrence in his argument is when he says, “Arguing that the traditional

justifications for capital punishment (deterrence and retribution) were sufficiently well founded” (691). The problem here, as Bedau points out, is that those justifications are *not* necessarily well founded. When these basic building blocks of Leiser's argument, deterrence and retribution, are challenged in the way that Bedau challenges them, the logic behind his argument falls apart. The authority he grants himself, by way of this logic, to choose who deserves the death penalty and who does not, no longer holds true, and Leiser's argument is rendered invalid.

Nevertheless, Bedau is not yet finished. As he wraps up his examination of the idea of deterrence, he alludes to yet another point. He says, “The most we can do is weigh the risk for the general public against the execution of those who are *found* guilty by an imperfect system of criminal justice” (697). Near the end of Bedau's argument, as quoted in the text, he revisits this extremely problematic factor in regard to capital punishment. He points out how much more likely it is that a black man, or an otherwise marginalized member of society, will be sentenced to the death penalty. While the definition of capital punishment, as it stands, does not imply that it will necessarily be more likely to affect the minority groups in society, it is nonetheless a reality in the United States that murderers who come from these groups are much more likely to be sentenced to death. As a result, it is not the worst of the worst that come to face death at the hands of the legal system, but just the most unfortunate of the worst. Bedau offers up many reasons that land a person in that predicament, almost all of them the result of poverty or marginalization. He lists everything from having a poor defense at trial and the lack of funds for an appeal, to being an immigrants or strangers in their community and members of a “despised” racial minority. “In short,” Bedau writes, “the actual study of why particular persons have been sentenced to death and executed does not show any careful winnowing of the worst from the bad” (698).

After having disproven the ideas of deterrence and retribution, it is this idea that drives home Bedau's argument. Since the common defenses of capital punishment have been rendered weak under Bedau's examination, his issue of our imperfect legal system is enough to empower his argument when he states, "A system like this does not enhance respect for human life; it cheapens and degrades it. However heinous murder and other crimes are, the system of capital punishment does not compensate for or erase those crimes. It only tends to add new injuries of its own to the catalogue of our inhumanity to each other" (702).

In conclusion, Bedau's argument, on the whole, is much stronger and more effective than the one Leiser presents. Retribution and deterrence have for so long been used as defenses for capital punishment that Leiser sees it acceptable to use them—without question—as his own defense, once again. Bedau, however, manages to dismantle these factors and display why they do not make sense, while simultaneously pointing out the reality that, on the contrary to what is portrayed by supporters of the issue, capital punishment is not a fair or equal way of administering justice in our society.

#### Works Cited

Bedau, Hugo Adam. "No, the Death Penalty Is Not Morally Permissible." *Philosophy: The Quest for Truth*. 8th ed. New York: Oxford UP, 2012. 693-702. Print.

Kant, Immanuel. "The Moral Law." *Philosophy: The Quest for Truth*. 8th ed. New York: Oxford UP, 2012. 528-536. Print.

Leiser, Burton. "The Death Penalty Is Permissible." *Philosophy: The Quest for Truth*. 8th ed. New York: Oxford UP, 2012. 536-544. Print.

Mill, John Stuart. "Utilitarianism." *Philosophy: The Quest for Truth*. 8th ed. New York: Oxford UP, 2012. 688-693. Print.