Chapter 17

Death Penalty

17.1   *Dead Man Walking*

17.1.1   Questionnaire

1. What is the significance of the flashback scene of a group of children beating an opossum according to you?

2. Does the movie suggest that capital punishment works as a deterrent?

3. Does the movie suggest that capital punishment is unfairly distributed among the members of the society?

4. Does the movie suggest that capital punishment can promote a form of peace of mind for the victims?

5. Does the movie suggest that punishment can promote a form of rehabilitation for the criminal?

6. Does the movie suggest that capital punishment is a just retribution for the criminal's offense?

7. At one point Poncelet's lawyer says: " All we have to do is to present you as a person." What do you think he means by this?

8. In what ways do Sister Helen's motives come into question? Do you think she is right in choosing to help Poncelet?

9. What is Poncelet's explanation for why he is on death row? Does his explanation change? How?

10. What would you say is the most difficult moral judgment Sister Helen faces? Why?

11. What, above all, does Sister Helen seem to want to accomplish as Poncelet's spiritual advisor? Do you think she is right in doing so? Do you think she achieves her goal?

12. What are some of the ways that the film portrays denial as a moral failing?

13. Note anything not mentioned above that particularly strikes or moves you in the film..

17.1.2 Discussion

All involved are "persons" :

- Matthew: gradually becomes a person in the Kantian sense of a responsible agent. Sister Helen gradually brings him to the point when he takes full responsibility of his crimes, while he first blamed politics, drugs. poverty, Vitello's influence etc.

- The victims: Constant reminder of the horror of the crime: the kids, the parents, their suffering

The violence within us all :

- The oppossum scene

- The violence in the girl's dad's words and thoughts (regrets to not have taken a gun and killed Poncelet himself + "This is not a person... Gods mistake.")

Different views on Punishment : does the movie promote any? Maybe rehabilitative at the end. In all cases, the movie shows both sides:

- Deterrent, Securing the streets: yes.... but increased hatred

- Retributivism: yes (they deserve it) ... but unfair distribution, influence of politics, race, poverty and social circumstances

- Reconciliation (Victims' peace0: yes (they can't stand the idea of him being still alive when their kids are dead).. but hatred still there at the end in Dad's mind

- Rehabilitative: yes (Poncelet admits the crime at the end, and become a full person in Kantian sense)... but this is just before he dies ! (unless we believe in salvation, no much to get out of this)

⟶ *The movie does not take any stance, but promotes a clear view of the issue: wherever you stand, you should not wear blinders.*

The practical issue :

- Unfair distribution: Vitello had enough money to avoid death penalty / the influence of politics / the problem of race

- Facing the suffering: the hypocrisy of lethal injection: there is no clean way to kill

- What about killing innocent people: the Governor: If there is no obvious proof that he is innocent, then I won't do anything – what is normally to be proved is guilt, not innocence! What is worse: not killing guilty people or killing innocent people?

- The "I am just following orders" argument: what do you think of these kinds of ways to justify one's actions?

Conclusion – So, what do you think? Was killing Poncelet the right thing to do? Here are some of the various questions that you need to answer in order to take a stance:

- Does he *deserve* it?

- Will it *serve* him, the victims, or the society?

- Are these reasons sufficient to *justify morally* that we inflict pain and death on a human being?

17.2   Homework

Readings : RTD 24,25, SLB 17

Study Questions :

1. Explain the utilitarian view on punishment.

2. What is Kant's objection to the utilitarian view on punishment?

3. What is Kant's view on punishment? What are the two conditions which make punishment right according to Kant?

4. Bedau suggests that the death penalty is unfairly applied and shouldn't be applied because of this. Provide some reasons for thinking so. Why does van den Haag think that the death penalty should be applied anyway?

5. Bedau thinks that the death penalty should not be applied because it is irreversible. What is his argument in support of such a claim? What is van den Haag's counter-argument that it should be applied anyway?

6. Bedau thinks that the death penalty doesn't act as a deterrent. Provide reasons for thinking he's right. Why does van den Haag think that is should be applied anyway?

7. Bedau thinks that the death penalty is excessive and contrary to human dignity? Why? Why does van den Haag think he's wrong on this?

Discussion Questions :

1. What do you think is the purpose of us punishing criminals?

2. To what extent do you think the saying "an eye for an eye" provides adequate justification and guidance for punishment?

3. Which arguments in favor of death penalty do you find the most convincing? the least convincing? Why?

4. Which argument against death penalty do you find the most convincing? the least convincing? Why?

17.3 The Morality of Punishment

Four views on punishment : One distinguishes four types of moral justifications for punishment: deterrence, rehabilitation, reconciliation and retribution:

1. **Retribution** – Paying back as a matter of justice.
2. **Deterrence** – Punishment inhibits further crimes.
3. **Rehabilitation** – Punishment makes people change.
4. **Reconciliation** – Punishment relieves victims and bring back peace in the society

According to Rachels, the most common view in the US right now is the rehabilitative view: we think criminals as people to be treated. What do you think?

Utilitarianism vs Duty Theory on punishment : In agreement with their respective principles, utilitarians and kantians are not going to adopt the same in the above options:

- Utilitarianism takes that punishment is right when it promotes as a consequence the general welfare. So, utilitarians advocate the deterrence, rehabilitation and the reconciliation theory of punishment.
- Duty Theory takes that punishment is right when it allows us to treat people as ends and not as mean only. We'll see that this implies that only the retributive theory of punishment is acceptable for kantians.

Let us see this in more detail

17.3.1 The utilitarian view on punishment, and its criticism by Kant

The utilitarian view on punishment

Deterrence, Rehabilitation and Reconciliation are defendable from *a utilitarian point of view*:

- Remember the two main elements of utilitarianism:

  1. Suffering is bad, Avoiding suffering is good

  2. What is right to do is to do whatever brings the best consequences, and promotes the general welfare

  How does it apply to the issue of punishment?

- By itself, any kind of punishment, which involves suffering, is bad from an utilitarian point of view

- Punishment can thus be justified *only if the beneficial consequences outweigh the suffering it causes*

- The ways in which punishment could have good consequences : keep the streets secure, discourage misbehavior in other people, satisfy the victims, and potential rehabilitation of the criminals.

⟶ *According to utilitarianism, punishment is right* only if *the consequences outweigh the suffering caused.*

Kant's criticism of the utilitarian view

The utilitarian approach to punishment is incompatible with human dignity: it treats people merely as means, it does not treat them as rational beings.

- Deterrence and Reconciliation: using people as means only

- Rehabilitation: violation of autonomy!!!

  An attempt towards rehabilitation is "the attempt to mold people into what we think they should be. As such, it violates their rights as autonomours beings." (EMP p.136)

  In other words, we do not respect people's autonomous decision to act in particular ways when we try to rehabilitate criminals

- According to Kant, the only way to morally justify punishment is in terms of retribution. Let us see how Kant's retributive view of punishment.

⟶ *Kant and advocates of duty theory reject the utilitarian view on punishment because it involves a violation of the second form of the Categorical Imperative. That is to say, it involves treating people as means only and disrespecting their autonomy.*

17.3.2   Kant's retributive theory of punishment

Retribution and Responsibility – Kant maintains that we must punish criminals in order to treat them as ends in themselves. How can this be? In short: *by punishing them we treat them as responsible for their actions.* In more detail:

Why punishing is being respectful? – argument 1 :
P1. Human beings are rational, autonomous agents
P2. As such, they make free decisions
P3. As such, they are responsible for their actions
CC. So: to treat them with respect is to treat them as responsible for their deeds
Compare with: animals, deranged people. – not responsible, not punished ("training for animals")

⟶ *The retributive theory of punishment takes it that it is right to punish people because only this way do we respect their being rational autonomous beings.*

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What to think about argument 1 :

The more you think criminals have control over their actions, the more you will be attracted by the argument. If, by contrast, you think that criminals are at least in part victims of circumstances, then the argument won't be convincing to you.

Why punishing is being respectful? – argument 2 :

P1. Human beings are rational, autonomous agents

P2. As such, they have access to the moral law

P3. Hence, when acting, they are implicitly decreeing: this is the way I can will that anybody be treated

P4. This includes themselves!

CC. We can apply the rule to him : in doing so, we are respecting his judgment about how people should be treated.

Kant: "His own evil deed draws the punishment upon himself" (quoted by Rachels p. 139)

⟶ *The retributive theory of punishment takes it that punishment is right because we respect the criminals' choice of which rule should be applied between humans*

What to think about argument 2 :

This seems spurious. It does not seem right to apply a maxim just because someone else applied it. If the maxim is not universalizable, then the action is not right.

Back to previous example: rape the raper and torture the torturer?

Consequence: Two Principles for punishment :

The Two Principles :

1. **Frist Principle:** People should be punished *because and only because they have commited a crime*

2. **Second Principle:** People should be punished *in proportion to the seriousness of the crimes* they have committed

Understanding the first principle – The first principle tells us that:

1. Punishment is morally justified only for guilty people.

2. Even in the case of guilty people. the reason why we are morally justified to punish is nothing else than the crime itself (politics, race or social peace should not be considered)

Understanding the second principle – lex talionis "an eye for an eye"

- What the rule does not mean: If we take the rule literally, then it seems that we would have a justification against human rights, these very rights that we are trying to secure with Kant: would it be justified to rape the raper? torture the

torturer? Obviously, the rule must mean something else than the mere replication of the crime on the offender.

- What the rule really means, and why it was progress at the time: limitations on punishments. When the rule was formulated for the first time, what it really meant was that:

1. no excessive punishment should be applied

2. we should have a scale of punishment, corresponding to the scale of offenses

$\longrightarrow$ *The meaning of the lex tallionis is *not* that we should pay back criminals in inflicting them with the exact same pain that they inflicted on their victim. Rather, it means that various punishment should correspond to various crime and that no arbitrarily excessive punishment should be applied.*

17.3.3   Conclusion on the morality of punishment

We have seen that there are mainly two ways in which we can think about punishment:

1. The utilitarian way is in terms of the consequences: deterrence, reconciliation, rehabilitation.

2. The kantian way is in terms of principles: respect for the criminal's autonomy – retribution

It remains to see how this applies to death penalty.

17.4   The Case of Death Penalty: Law and Facts

17.4.1   Is Death Penalty cruel? Short history of the interpretation of the 8th amendment

The 8th amendment forbids cruel punishment.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

So, is death penalty cruel? The answer is not obvious:

- There is an obvious sense in which death penalty *is not* the cruelest punishment: torture, for example, is more cruel.

- That said, there is a sense in which death penalty *is* the worse of all punishment: because it is irreversible.

Some history of the answers that were given to this important question:

1972 Furman vs. Georgia – The court ruled yes, mainly on the the grounds that it failed to be consistently applied: it would be acceptable only if it was assured that it would not be administered in a capricious or discriminatory manner. Death sentences are cruel and unusual when people who are guilty of the same crimes do not get the same punishment.

1976 Gregg vs Georgia – The court ruled no, mainly because the change in the law, which was taken to assure "the judicious and careful use of the death penalty". Death penalty is not *always* cruel and unusual.

2005 Roper vs Simmons – Chistopher Simmons was sentenced to death when he was only 17 – Does the execution of minor constitute a cruel and unusual punishment? The court ruled yes.

⟶ *Questions for us:*
- Is the fact that death penalty is not consistently applied an argument against it?
- Is death penalty cruel by itself?
- Why do we think that killing minors is too cruel? What does it imply for non-minor criminals?

17.4.2 The problem of wrongful conviction: the facts

The following is mostly quoted from `www.innocenceproject.org`

Facts on Post-Conviction DNA Exonerations :

There have been 223 post-conviction DNA exonerations in the United States since 1989. That is to say, 223 people who had been convicted were found to be innocent on the basis of a DNA investigation.

- The first DNA exoneration took place in 1989. Exonerations have been won in 32 states; since 2000, there have been 158 exonerations.

- 17 of the 223 people exonerated through DNA served time on death row.

- The average length of time served by exonerees is 12 years. The total number of years served is approximately 2,754.

- The average age of exonerees at the time of their wrongful convictions was 26.

Races of the 223 exonerees:

138 African Americans

59 Caucasians

19 Latinos

1 Asian American

6 whose race is unknown

The true suspects and/or perpetrators have been identified in 88 of the DNA exoneration cases.

Pre-Conviction DNA exoneration :

- Since 1989, there have been tens of thousands of cases where prime suspects were identified and pursued – until DNA testing (prior to conviction) proved that they were wrongly accused.

- In more than 25 percent of cases in a National Institute of Justice study, suspects were excluded once DNA testing was conducted during the criminal investigation (the study, conducted in 1995, included 10,060 cases where testing was performed by FBI labs).

- About half of the people exonerated through DNA testing have been financially compensated. 25 states, the federal government, and the District of Columbia have passed laws to compensate people who were wrongfully incarcerated. Awards under these statutes vary from state to state.

- 33 percent of cases closed by the Innocence Project were closed because of lost or missing evidence.

Leading Causes of Wrongful Convictions – These DNA exoneration cases have provided irrefutable proof that wrongful convictions are not isolated or rare events, but arise from systemic defects that can be precisely identified and addressed. For more than 15 years, the Innocence Project has worked to pinpoint these trends.

- **Eyewitness misidentification testimony** was a factor in **77 percent** of post-conviction DNA exoneration cases in the U.S., making it the leading cause of these wrongful convictions. Of that 77 percent, about 40 percent of cases where race is known involved cross-racial eyewitness identification. Studies have shown that people are less able to recognize faces of a different race than their own. These suggested reforms are embraced by leading criminal justice organizations and have been adopted in the states of New Jersey and North Carolina, large cities like Minneapolis and Seattle, and many smaller jurisdictions.

- **Limited, unreliable or fraudulent forensic science** has played a role in **65 percent** of wrongful convictions.

In over half of DNA exonerations, the misapplication of forensic disciplinessuch as blood type testing, hair analysis, fingerprint analysis, bite mark analysis, and morehas played a role in convicting the innocent. In some cases, forensic scientists and prosecutors presented fraudulent, exaggerated, or otherwise tainted evidence to the judge or jury which led to the wrongful conviction. Three cases have even involved erroneous testimony about DNA test results.

- **False confessions and incriminating statements** lead to wrongful convictions in **25 percent** of cases. More than 500 jurisdictions now record interrogations to prevent false confessions.

False confessions are another leading cause of wrongful convictions. Twenty-five percent of cases involve a false confession or incriminating statement made by the defendant. In 35 percent of those cases, the defendant was 18 years old or younger and/or developmentally disabled. The Innocence Project encourages police departments to electronically record all custodial interrogations in their entirety in order to prevent coercion and to provide an accurate record of the proceedings. More than 500 jurisdictions have voluntarily adopted policies to record interrogations. State supreme courts have taken action in Alaska, Massachusetts, Minnesota, New Hampshire, New Jersey, and Wisconsin. Illinois, Maine, New Mexico, and the District of Columbia require the taping of interrogations in homicide cases.

- **Snitches** contributed to wrongful convictions in **15 percent** of cases.

Another principal factor in wrongful convictions is the use of snitches, or jailhouse informants. Whenever snitch testimony is used, the Innocence Project recommends that the judge instruct the jury that most snitch testimony is unreliable as it may be offered in return for deals, special treatment, or the dropping of charges. Prosecutors should also reveal any incentive the snitch might receive, and all communication between prosecutors and snitches should be recorded. Fifteen percent of wrongful convictions that were later overturned by DNA testing were caused in part by snitch testimony.

$\longrightarrow$ *How does this information influence your view on death penalty? Is the wrongness of killing innocent people outweighed by the rightness of killing guilty people?*
   Let's look at the argument in more detail

17.5   The argument from unfair distribution

There is no question that the death penalty is unfairly applied. There is a question of whether this constitute an argument against death penalty altogether.

The Bias :

  Race – It is not so much the race of the convict (difficult to prove that the conviction is unfair in this case) than the *race of the victim.* Even after the amendments post Furman, the bias remains. *The capital punishment is much more likely to be given when the victim is white.*
  "Our criminal justice system essentially reserves the death penalty for murderers (regardless of their race) who kill white victims"

  Gender – Women receive death penalty much less often than men

  Socioeconomy – "There ain't no poor on death row".

Bedau: The Argument from Unfair Distribution – goes like this:

  - P1 If punishments are not applied fairly to all, they are unjust

- P2 Capital Punishment (CP) is not applied fairly to all
- CC: CP is unjust

An example (from Nathanson): Several students cheat on an exam. The professor decides to

1. fail all the cheaters
2. fail one of them only
3. fail male cheaters only

Would it be better to fail no one than to fail only one, or only the males cheaters?

⟶ *It seems that whether one is treated justly or not depend on how other are treated and not solely on what one deserves.*

van den Haag: counter-arguments : "Guilt is personal" (RTD p.231)

- P1 The fact that some escape punishment does not make the guilty less guilty
- P2 It is just to punish guilty people
- Cc: CP for the guilty is never unfair, regardless of unfair distribution

    "To put the issue starkly, if the death penalty were imposed on guilty black, but not on guilty white, or if were imposed by a lottery among the guilty, this irrationally discriminatory or capricious distribution would neither make the penalty unjust, nor cause anyone to be unjustly punished, despite the undue impunity bestowed on others." (RTD 232)

⟶ *This is an interesting point: What does make punishment just: whether you are guilty, or, even if you are guilty, whether every other guilty gets treated the same? If you are guilty, are not you guilty and hence deserving to be punished, whatever happens to the others? That the distribution is unfair does not make the personal punishment unfair. Van den Haag seems to have a convincing argument on this one.*

17.6 The arguments from the miscarriages of Justice and irreversibilty

There is no doubt that miscarriages of Justice are inevitable, and that death is irreversible. The question is whether it constitutes a good argument against death penalty

The Facts : about 57 people who were *proved* to be innocent were killed between 1900 and 1985 (Bedau and Radelet 1987) – plus all the exonerated... what if we had not DNA? What about the cases in which DNA analysis is not an option (loss of evidence etc.)?

Bedau: The argument from the necessary miscarriages of justice :

- P1 Miscarriages of justice are inevitable
- P2 Because Miscarriages of justice are inevitable, we should not apply irreversible penalties
- P3 CP is irreversible
- CC: we should not apply death penalty

$\longrightarrow$ *Bedau's idea is *not* to suppress all punishments just because there will necessary be some mistakes (that would be absurd). The idea is that death is definitive, and hence, no correction will be possible if we realized we made a mistake. It is terrible to spend 10 or 20 years in prison when you are innocent, but you still can be freed. There is no return option for a dead innocent.*

van den Haag counter-argument – Here is basically what van den Haag answers to the concern of wrongful conviction: so be it: that innocents will be executed is the cost of doing business. According to van den Haag, the beneficial consequences outweigh these considerations.

> "[...] for those who think the death penalty just, miscarriages of justice are offset by the moral benefits and the usefulness of doing justice" (RTD 232)

So, his argument is:

- P1 Miscarriages of justice are inevitable: some innocents will be killed
- P2 If the moral benefits of an activity outweigh the costs, one should permit the activity (example: building construction)
- P3 The moral benefits of capital punishment outweigh the costs that result from the miscarriages of justice
- CC: CP should be permitted

$\longrightarrow$ *This argument works *only* if we can show that capital punishment indeed has beneficial consequences and/or moral benefits. Is it the case?*

17.7 Deterrence or Brutalization?

Empirical Findings not Conclusive :

- Some have claimed that CP can save 7 or 8 lives a year (Errlich 1975)
- Some have claimed that the number of capital crimes increases after an execution (Bowers and Pierce 1980)

To make up our minds, we can also compare :

- the amount of capital crimes in western countries with and without CP: French, British and Canadians much less likely to get killed by crime than the average American

- One can compare contiguous states in the USA: North Dakota (no CP) vs South Dakota (CP): one has CP, the other has not: no less capital crimes in the state with CP.

Minimally, the conclusion from empirical data is that nothing shows clearly that CP is an effective deterrent. If anything, they suggest that it is not.

That said, Bedau does not rely on findings: rather, he gives an analysis of why CP cannot be an effective deterrent.

Bedau: the argument that CP is not an effective deterrent :

- P1 For a punishment P for a crime C to be an effective deterrent:

    a. P must be swiftly and consistently administrated after C

    b. C must be an action which requires deliberation

- P2 CP is *not* swiftly and consistently administrated

- P3 Most murders are *not* the result of deliberation

- CC: CP cannot be an effective deterrent to murder

$\longrightarrow$ *While we could consider that a change in our ways of doing justice could answer the concern that CP is not applied quickly enough and consistently enough, it seems that nothing can change the fact that* a vast majority of murderers did not intend to murder*, did not deliberate before they acted, and hence do not even think about getting punished by CP.*

van den Haag: counter-argument :

1. admits that no empirical finding is conclusive

2. believes that CP is an effective deterrent in the long run for every body

3. believes that it will be for the few who considers deliberately murders – and hence may save some innocent lives

That said, according to van den Haag, the most important is not deterrence: what is important is to know whether CP is just or not. van den Haag thus takes a kantian standpoint. If it is just, then it should be applied whether or not it is a deterrent. If it is unjust, then it should be applied whether or not it is a deterrent. So, is it the right thing to do, from a kantian point of view?

17.8 Is Capital Punishment morally justifiable from the kantian point of view?

17.8.1 Should a Kantian be in favor in death penalty?

Is CP proportionate to the crime? :

Bedau: CP is not proportionate to the crime – some of its victims are not murderers (drug trafficking, kidnapping, espionage, treason)

> Camus (RTD 245): "For there to be an equivalence, the death penalty would have to punish a criminal who had warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months"

van den Haag: heinous crimes – there are certainly some crimes that are so heinous that it would warrant the practice.

⟶ *Granted, not all convicts on death row have committed a crime equivalent to the death we inflict on them. That said, there are enough heinous crimes to reject this type of argument.*

Is CP compatible with the dignity of the executed convict? :

Bedau: There is a limit to severity – Death penalty is inhumane and anachonistic — this a the general assessment of most of western countries outside of the United States

van den Haag: Kantian argument – "Execution, when deserved, is *required* for the sake of the convict's dignity" (236)

Is this convincing?

- Remember what we've said about the rule "an eye for an eye": it was not supposed to tell us to apply a punishment equivalent to the crime, but rather to have a scale of punishment, corresponding to the scale of offenses. So, the rule cannot be used simply to say that whoever killed deserves to be killed. What then?

- In addition to this, remember that, according to Kant, punishment are rights only if the guilty are punished, which we know is not case for death penalty.

⟶ *It does not seem that Kant's view can completely justify the application of death penalty. Commitment to duty theory only commits us to apply punishment in proportion to the crime. That is to say, the murderer should receive a strongest punishment than the robber – but nothing says that the murderer should be murdered and the robber robbed. The question over the righteousness of death penalty remains open.*

17.8.2 Is CP compatible with the dignity and moral integrity of the executors?

This is one last argument to consider. Even if we were to grant that the murderer deserves to be murdered, and that the raper deserves to be raped: is it what *we* should do?

Consider the quotation from Coretta Scott King:

> "As one whose husband and mother-in-law have died victims of murder and assassination, I stand firmly and unequivocally opposed to the death penalty for those convicted of capital offenses. An evil deed is not redeemed by an evil deed of retaliation. Justice is never advanced in the taking of a human life. Morality is never upheld by a legalized murder."

- The argument from retribution, when taken litterally, seems to have absurd consequences:

  - Is it right to rape a raper? torture a torturer? Would it be right to put Nazis in camps, naked and with no food, and make them work until they die of exhaustion and starvation? Would it be right to put nazis in gas chambers?

  - One last example: Darfur: if you are a Dinka , and if an Arab has raped / murdered / mutilated all the members of your family, are you justified to rape / murder / mutilated all the members of his family?

  $\longrightarrow$ *There must be a point beyond which engaging in such action would diminish us morally. There must be some actions that we would not want to be engaged in.*

- The question is, of course, whether or not death penalty enters in the category of punishments which diminish us. There is at least one sense in which it seems to diminish us: it is an act of despair, the admittance that no hope is left (hence the increased cruelty when it is applied to minors).

17.9 Conclusion

There are two very different questions concerning death penalty:

1. A practical question, which is whether or not the way in which we apply death penalty is just

2. A theoretical question, which is whether or not inflicting death is right.

The theoretical question – Regardless of the practical matters of application, in and by itself, is CP the right thing to do?

From the utilitarian point of view – Consequences and welfare

Death penalty and rehabilitation : obviously a dead end (literally)

Is death Penalty an effective deterrent? – unclear – but even if so: would a deterrent effect justify innocent killings?

Death Penalty and Reconciliation – unclear – justice vs vengeance

From the Kantian point of view – Retribution and Dignity

For the convicted murderer – murderers deserve to be murdered – required by their dignity as free agents?

For us – Is CP unworthy of us? The argument from retribution cannot justify any kind of punishment. The question is where we want to put the line between the punishments which diminish us and the ones which don't .

The practical question – Does the practical condition of application of CP make it wrong?

Death Penalty not justly distributed? – true, but it is not clear that it follows from this that capital punishment is not right.

The problem of wrongful conviction – What can justify that we kill innocent people?