

## Pojman For Capital Punishment

Types of Justice: Typically, there are three reasons that justify punishment:

- (1) Retribution: The aim of punishment is to PENALIZE. Punishment is justified because the criminal DESERVES to be punished. In order to preserve justice, wrongdoers must be penalized, and rightdoers must be rewarded.
- (2) Prevention: The aim of punishment is to PREVENT CRIMES. Punishing criminals is justified because it can prevent crimes in one of two ways:
  - a. Isolation: Imprisonment keeps convicted criminals off the streets, and prevents them from hurting more innocent people.
  - b. Deterrence: The threat of punishment deters WOULD-BE criminals from committing crimes in the first place.
- (3) Rehabilitation: The aim of punishment is to REHABILITATE. Punishing criminals is justified because it reforms the criminal into a good citizen.

Pojman on Capital Punishment: Pojman argues that capital punishment is a permissible form of punishment because it is supported by (1) and (2).

(Clearly, the death penalty cannot be supported by (3)—a dead criminal cannot be rehabilitated)

(1) Retribution: This is a “backward-looking” approach to punishment. The claim is that someone who HAS killed someone else already deserves to be treated in a certain way—namely, they deserve to die.

The retributive theorist makes three claims:

- a. ALL wrongdoers deserve to be punished.
- b. ONLY wrongdoers deserve to be punished.
- c. Punishment should always be IN PROPORTION to the crime.

Basically, if someone does something wrong, they forfeit certain rights not to be harmed. Since punishment should be “in proportion” to the crime, we have a moral duty to KILL anyone who has killed someone else.

### Objections:

1. Isn't this just endorsing revenge-killing?

Reply: We must not confuse vengeance with retribution. Revenge is the act of "getting back" at someone out of anger. Retribution is the duty to right the scales of justice by meting out punishments that are in proportion to a crime.

2. Ted Bundy raped and killed 100 women. We can only kill Ted Bundy once.

Reply: In order to mete out a punishment that is "in proportion to the crime," Pojman actually suggests torture as a possible option in this sort of case. (!)

[Objections (3) and (4) are not addressed by Pojman]

3. If punishment should be "in proportion" to the crime, should we rape rapists? Should we sadistically torture sadistic torturers? Should we psychologically terrorize those who have terrorized others? This seems barbaric.
4. Pojman constantly mentions that a killer FORFEITS their right to life. He then infers—as if this is entailed by the loss of one's right to life—that someone who has forfeited their right to life DESERVES TO DIE. It might seem that he is making the claim that, if someone or something LACKS a certain negative right (e.g., the right not to be harmed), then we are OBLIGATED to do something to them (in this case, HARM them). But, this does not follow. Many meat-eaters argue, for instance, that animals do not have a right not to be harmed. But, it does not follow from this that we are morally OBLIGATED to harm them! The LACK of a duty of NON-maleficence does not entail the PRESENCE of a duty of maleficence. Similarly, it would seem that, even if a killer forfeits their right to life, it does not follow that we are OBLIGATED to kill them.

(2) Prevention By Deterrence: This is a "forward-looking" approach to punishment. The claim is that, if we regularly kill killers, then this practice will deter future people from killing others.

### Objections:

1. There is no conclusive evidence that the death penalty deters killers.

Reply: Surely, an IDEAL system of capital punishment would deter killers from killing. Imagine that, every time someone killed someone else, they were

instantly struck down by lightning. Clearly, killers would think twice before killing in this case.

Evidence is inconclusive in the actual case, because our actual situation is not IDEAL. In the ideal case, punishment was swift, public, and universal. In reality, we rarely use the death penalty (only about 1/750<sup>th</sup> of the time), punishment is slow (it takes over 10 years on average to administer the punishment), and not public. Pojman suggests that, if we made our actual practice closer to the ideal, it would CERTAINLY deter killers.

The Best Bet Argument: Pojman argues that, ultimately, even if it is possible that the death penalty is NOT an effective deterrent of killings, it is still the best bet.

Consider the 4 possibilities:

	It DOES Deter Killings	It Does NOT Deter Killings
We DO kill killers (we do use capital punishment)	(1) We save many innocent victims' lives	(2) We unjustly kill murderers
We do NOT kill killers (no capital punishment)	(3) We fail to save many innocent lives when we could have	(4) We save many guilty murderers' lives

Pojman argues that using capital punishment is the best option. Clearly, (1) is a benefit. Granted, if the death penalty does not deter killings, then we have unjustly killed murderers (2). But, Pojman claims, innocent people have a greater right to life than the guilty, so the difference between (1) and (3) is MUCH greater than the difference between (2) and (4).

Rebuttal: Pojman's "Best Bet" argument assumes that, if capital punishment DOES deter would-be killers from killing, then it is a justified form of punishment. But, perhaps it is not. In that case, "unjustly killing murderers" should be included in both options (1) AND (2).

2. Wouldn't prison deter killings just as well as the death penalty?

Reply: No. Clearly, a short sentence doesn't deter as much as a long one; and clearly death is a greater deterrent than a long penalty. There is a sort of panic that is found in cases of capital punishment that is not found in cases of prison sentences (lengthy appeals process, etc.)—this fact alone is a good indicator that the death sentence is feared more.

In any case, it certainly deters more prison murders. A dead convict cannot kill other inmates like a live one can.

Rebuttal: In response to this latter reason, can't we just put killers in solitary confinement so they do not get the opportunity to kill other prisoners?

3. The death penalty discriminates against the poor and minorities.

Reply: Evidence for this is inconclusive, and even if it WERE, it would not demonstrate that capital punishment is PRIMA FACIE wrong—the punishment might be permissible, but the way that it is carried out is not. This simply means that we need to reform our justice system to prevent this sort of discrimination.

Rebuttal: Unless the pro-death penalty people are willing to pay a lot more taxes to give people accused of murder better lawyers, it will always be the case that a poor person is more likely to get the death penalty than a rich person.

4. The innocent are sometimes mistakenly convicted and given the death penalty. (over 100 cases in the last 30 years)

Reply: It is known that allowing cars to use the roads will lead to 50,000 traffic fatalities per year. But, we allow them anyway because the benefits outweigh the costs. Capital punishment is like that.

Rebuttal: In the car case, we merely ALLOW innocent killings to occur. In the death penalty case, we CAUSE the killing of innocent to occur (DO) in order to avoid allowing others to kill innocent people. If doing harm is much worse than allowing it, then this is much different than the car case. Imagine, for instance, that someone says, "I want you to go out and murder one innocent person, or else I will murder 10 innocent people." It might be wrong to murder the one person here (i.e., if DOING harm is more than 10 times worse than ALLOWING it) even if the benefits outweigh the costs. [What do you think?]