



Do these death penalty justifications hold up?

OPINION

By Michael Bradley

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Whichever way you look at it, capital punishment raises questions with no easy answers and we ought not shout each other's viewpoints down, writes Michael Bradley.

The Inquisition, an institution of the Catholic Church which was tasked with rooting out heresy and which freely used torture to extract confessions, is thought to have taken as many as 5,000 lives.

However, technically it didn't actually kill anyone. When a heretic had been condemned, they were handed over by the Inquisition to secular authorities to be burned at the stake, because the Church obviously couldn't shed people's blood.

It's a neat illustration of the complexity that attends the question of capital punishment. The impending executions of Andrew Chan and Myuran Sukumaran have brought the issue back to life in Australia. Although capital punishment is never likely to be re-introduced here, plenty of people are not opposed to it.

The arguments are worth exploring. Whatever position you adopt, the gravity demands that it is reasoned.

Punishment of any kind requires justification. The conventional theories underpinning criminal punishments are retribution, rehabilitation, specific deterrence and general deterrence. Most societies rely on a mix of these in determining what is appropriate. Each has a solid basis in ethics and logic and can be argued for or against on those grounds.

The simple argument for retributive justice is found in the biblical "eye for an eye" (e.g. Leviticus 24:19-21 - "he that killeth a man shall be put to death"). A combination of ultimate pragmatism and hard core morality, this principle attracts a lot of support, and many Christians cite it as justification for the death penalty in murder cases. Adopting it on religious grounds, however, is immediately problematic, as the eye for an eye rule is contradicted by both the 5th Commandment (also a problem for Jews) and pretty much everything Jesus ever said.

In fact, Jesus expressly rejected the eye for an eye doctrine and saved an adulteress from being stoned with the words "Let whoever is without sin cast the first stone". Still, plenty of Christians have found their way around these problems, and it can't be said that they're necessarily wrong on the basis of a 2,000-year-old text, any more than they can be sure they're right.

Abolitionists, on the other hand, mostly just say that capital punishment is "wrong", meaning that none of us has the right to make that call. There are blurred lines here too, once we start admitting necessary exceptions (self-defence, war). Either way, taking the moral approach is tricky, but at least saying nobody should be put to death "because it's wrong" has the benefit that nobody dies.

The pragmatic component of retribution draws in the other theories of punishment, particularly deterrence. A dead person cannot do more harm. If we all agree that an Ivan Milat must be removed from society permanently because we are entitled as a society to not accept the risk which he presents, then what is the point of locking him up forever? This logic assumes that rehabilitation is unachievable, or rather that we are not prepared to give it a chance. While the evidence suggests that very few people are incapable of rehabilitation altogether, most of us would agree that we are justified in not taking the chance in the most extreme cases. Therefore, death penalty proponents argue, we might as well kill them. Some make the additional points that it saves a lot of money, and that it is arguably less cruel.

The problem with the pragmatic approach is that it assumes boundaries which don't exist. No two people will ever agree where the line should be drawn on which individual cases justify capital punishment and which don't. This necessarily calls into play value judgements about culpability and prospects for rehabilitation, which are entirely subjective. That means that we would inevitably be executing people in circumstances where there's no agreement about whether that's right in the particular case. Apart from the risk of executing innocent people (it's estimated that this has happened about 50 times in the US since 1974), there simply is no way of objectively determining which of the guilty ones should be put to death.



PHOTO: There is no evidence that executing murderers in any way deters would-be murderers. (AFP)

That leaves general deterrence - the idea that the death penalty acts to dissuade others from committing crime. Countries with capital punishment reserve it for the worst crimes, and murder is always on the list. There is no evidence that executing murderers in any way deters would-be murderers. Statistically, there's no correlation, and anyway we know that almost all murders have motivations which are unlikely to be affected by fear of the likely punishment. So it doesn't work for murder.

Does it work for other crimes, such as drug dealing? Some Asian countries, such as Singapore, believe very strongly that it does. Zero tolerance for drug crimes and extreme punishments including death are, they say, responsible for keeping drug dealers out. It's not easy to be sure, because some other countries in Asia with similar tough laws have had much less success in controlling drug dealing. It could be that other factors, such as police resourcing and the level of corruption within the enforcement and judicial systems, have a more significant effect than the actual punishments meted out.

In the end, whichever way you look at it, capital punishment raises questions with no easy answers and we ought not shout each other's viewpoints down. I personally oppose the death penalty in all circumstances, for two reasons. I can't find adequate comfort in any of the usual justifications. And, throughout history, it has ended innocent (or, as with Chan and Sukumaran, potentially redeemable) lives as well as guilty ones, but we don't yet know how to give life back.

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Topics:prisons-and-punishment

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Dove:

16 Mar 2015 8:49:03am

I don't trust governments with speeding tickets or transparent tendering. I'm certainly not going to trust them with my life or anyone elses

Reply Alert moderator

Mitor the Bold:

16 Mar 2015 9:33:16am

That's the killer argument. I don't trust any government to do anything for the reasons they claim, or to do anything with a view to equity or fairness. I've seen with my own eyes children being publicly sacrificed as a deterrent to asylum seekers, and the very same proposers of these policies crying crocodile tears about drownings at sea. I've seen signature 'watch my lips' policies jettisoned because of poll numbers, and I've seen a war fought for lies about non existent weapons of mass destruction. Give these guys permission to execute people? Don't make me nervously laugh, while keeping my dual nationality up to date.

Reply Alert moderator

Realist1:

16 Mar 2015 8:57:29am

So Singapore is a success in keeping drugs out, but others Asian nations are not. So the two questions I have are, 1 Why is Singapore a success, and 2 is the death penalty is punishment or deterrent. this article dancers around it expressing an opinion, but until that fundamental question is answered then the debate shall continue

Reply Alert moderator

agaras:

16 Mar 2015 9:41:48am

Answered: Should read the whole post Realist1

"It could be that other factors, such as police resourcing and the level of corruption within the enforcement and judicial systems, have a more significant effect than the actual punishments meted out."

Reply Alert moderator

Peter of Melbourne:

16 Mar 2015 10:24:19am

agaras maybe you should read the entire comment
"this article dancers around it expressing an opinion"

your replying with the quote