

### ***Problems for a utilitarian position***

Will there be more happiness if, for example, we leave non-renewable resources such as oil for future generations to use? The difficulties for utilitarianism are difficulties about establishing facts about, for example, which generation will get the most benefit from oil. Since we cannot be absolutely certain about the answer to that, perhaps it doesn't much matter which generation uses it.

In relation to pollution, we might have to sacrifice some of our pleasurable activities now in order to ensure greater happiness for others in the future. Remember that utilitarianism requires us to consider the welfare of not only those we know, but of the whole population of the world, and of all possible future generations.

### ***Problems for rights theorists***

It seems strange to talk about the rights of people, or animals, who don't yet exist, so perhaps an ethical approach based on rights is not appropriate in environmental ethics.

Despite these problems, both for utilitarianism and for rights theories, the idea of our duties to future generations does not seem totally absurd. If we believe that there will be people living on earth in 200 years time, it seems unfair that we should consider only our own comfort and welfare now.

### **Further reading**

Attfield, R. (1983) *The Ethics of Environmental Concern*, Oxford: Blackwell.

Leopold, A. (1966) *A Sand County Almanac*, New York: Oxford University Press.

Singer, P. (1993) *Practical Ethics*, 2nd edn, Cambridge: Cambridge University Press, chapter 10.

### **Capital punishment**

#### ***Justifications for punishment***

What justification could there be for using punishment at all, whether it is capital punishment or any other kind?

Consequentialist theories justify everything in terms of consequences, so they justify punishment by its consequences. Non-consequentialist theories focus mainly on the idea of retribution – i.e. requiring someone to pay the appropriate penalty for his or her crime. Consequentialists focus either on the deterrent effect – the way in which punishing one person deters others

from committing the same kind of crime, or on the reformatory effect of punishment – i.e. punishing someone in order to ensure that they will behave better in the future. Thus the three possible types of justification for punishment are retribution, deterrence, and reform.

In relation to capital punishment, reform cannot apply, so retribution and deterrence are the two main justifications.

### ***Retributivist view on capital punishment***

This relies on the *lex talionis* (law of retaliation) ‘an eye for an eye and a tooth for a tooth’. It involves the claim that punishment rightly involves paying back the offenders by making them suffer in the way their victims suffered. Thus we are to punish the taking of life by taking the life of the person who has committed the crime. So capital punishment of murderers is required.

It is assumed that the person is responsible for the action – it would not be appropriate to punish those who didn’t know what they were doing or couldn’t help doing it.

Retribution involves the idea that punishment is an expression of the moral attitudes of the community. The execution of a murderer expresses a view about the seriousness of murder. However, this differs from a consequentialist view that executions will have the *effect* of making people believe that murder is a serious crime. The retributivist view maintains that murderers ought to be executed even if executing murderers does not make people regard murder as serious. A retributivist view is presented by Kant (1785) in *The Foundations of the Metaphysic of Morals*.

### ***Objections***

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(i) Why use the death penalty if it has no beneficial results, especially since it is such a drastic thing to do? Utilitarians would ask why we should increase the suffering in the world if we are not going to achieve anything by it? Of course this comment won’t make retributivists change their minds, because they will just deny the claim that it is the effect of punishment which matters.

(ii) If each execution is to be justified by the fact the person executed deserves it, you have to know that you are executing the right person. Perhaps the retributivist will say that we almost always get it right. However, there have been many cases of miscarriages of justice.

(iii) The idea of retribution only shows us that we have a **right** to punish the person, not that we have a **duty** to do so. It implies merely that someone who has done something wrong to someone else, cannot complain of unfair treatment if that same thing is done to them. This shows us that we are entitled to execute murderers, not that we must execute them. It remains open to us to forgive them, or to punish them in some way which we think will be socially useful.

(iv) Nor does the idea of retribution imply that the punishment we give to murderers must be the same as they have done to their victims. It certainly requires that the worst crime is given the worst punishment which we ever give, but it will be consistent with retributivism if we say that the murderer has deserved execution, and couldn't complain of injustice if that's what he or she got, but that nevertheless the most severe punishment which we mete out is life imprisonment, so murderers will get life imprisonment.

If the *lex talionis* is taken strictly, it requires that rapists should be raped and that torturers should be tortured. But we would regard these kinds of punishment as morally unacceptable, so we don't have to take the *lex talionis* strictly, in any context. This view is expressed in Reiman (1985), and in the extract from an article by Michael Dummett in Exercise 2.

### ***Utilitarian view on capital punishment***

For the utilitarian, what justifies punishment is the consequences of the punishment. Critics often point out that this would justify punishing people who had committed no crime, provided that punishing them had the effect of deterring others from committing crimes. The reply is that utilitarians would never condone that, because allowing such things to happen would not be conducive to the general happiness. Assuming that utilitarians would not punish the innocent, they must ask what is the most effective way of treating criminals, what will have the best results. The death penalty would not be ruled out in principle, (nor would it necessarily be confined to cases of murder) but if it were believed to have worse effects than other forms of punishment, then it would not be right to use the death penalty.

What good consequences might it have? It would certainly be a totally effective means of preventing the criminal from re-offending, but there might be other ways of preventing re-offending, and there might be some crimes where the likelihood of re-offending was very small (for example, killings motivated by jealousy). It might work as a deterrent, making others less likely to commit murder.

Utilitarians do not rely simply on counting up the numbers of lives saved by having the death penalty. They must take account of the awful nature of the penalty, and the effects it has on those who have to carry it out, and on the families of the murderers. They would also have to consider the possibility of execution of the innocent, and the insecurity which this leads to. Some claim it makes jurors less willing to convict, thereby perhaps making it less likely that the innocent would be executed, but also making it more likely that those who are guilty would not be punished at all.

Utilitarians need to know first and foremost what the deterrent effect of the death penalty is. Two kinds of argument are put forward about deterrence.

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(i) *Statistical evidence*

We can compare murder rates before and after the abolition of capital punishment, and murder rates in different countries (or different states of USA), one of which has death penalty, whereas the other does not.

The results of these comparisons don't show a correlation between the absence of the death penalty and a higher murder rate, so they do not provide evidence that the death penalty deters murderers. Some would say that neither do they show that the death penalty does not deter murderers, so if they show neither one thing nor the other, we should rely on our intuitions.

(ii) *Intuitions*

One argument, which you saw in Exercise 3, about the deterrent effect of the death penalty goes as follows:

**Reason 1: Those offered a choice between execution and life imprisonment, will choose life imprisonment.**

Therefore,

**Intermediate conclusion: They fear death more than they fear life imprisonment.**

And

**Reason 2: People are most deterred by what they most fear.**

Therefore,

**Main conclusion: The threat of the death penalty is more of a deterrent than the threat of life imprisonment.**

### ***Criticisms of the above argument***

The following criticisms are offered by Reiman (1985).

From the fact that people fear death more than they fear life imprisonment, it does not follow that the death penalty will deter them *more*. The threat of life imprisonment might be awful enough to deter many potential murderers. (This challenges the move from reason 2 to the conclusion.)

Criminals are not deterred by risk of death from armed police. In the USA, there is already a substantial risk to criminals of being killed by police while committing a crime, but the crime rate is still high. (This challenges the truth of reason 2.)

Potential murderers may not believe they will be executed, since they may not be thinking rationally, or they may think they will not be caught. (This challenges the move from the reasons to the conclusion, by pointing out that it relies on the dubious assumption that potential murderers believe they will be executed.)

Torturing to death would be more feared than painless death, therefore in order to achieve maximum deterrence, we should torture murderers before we kill them. (Attempts to undermine the argument by showing that it has further implications, which may be regarded as unacceptable.)

### ***Reasons for opposing capital punishment***

#### ***(i) The absolutist view – capital punishment violates the right to life***

The absolutist position says that capital punishment is wrong because killing is wrong. An objection to this is that there are some circumstances in which killing is not wrong, notably killing an aggressor in self-defence. The difference between killing in self-defence and murder is that the person killed in self-defence is not innocent. The murderer is not innocent, so killing a murderer is, in the relevant respects, like killing in self-defence, and unlike murder. So capital punishment is not necessarily wrong.

#### ***(ii) Capital punishment risks killing the innocent***

We surely have enough examples of miscarriages of justice to make us believe that execution of the innocent is a real possibility if capital punishment is used. This is a problem for retributivists, because they would believe they had done something wrong if they executed an innocent person. They would probably respond by saying that we have to make sure that our system of justice is foolproof.

Utilitarians would say that if the institution of capital punishment really did deter murderers, then the unfortunate fact that sometimes the wrong person was executed wouldn't count against the rightness of capital punishment. In order to minimise suffering, they also should aim for a justice system in which miscarriages of justice were unlikely to occur. But if they did occur, that wouldn't by itself show that capital punishment was wrong.

But one argument against capital punishment says that because it is wrong to kill an innocent person, and because there is such a risk if you use capital punishment, and because you cannot make reparation for your mistake, then capital punishment is wrong.

### (iii) *Utilitarianism*

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There could be a utilitarian argument against the death penalty, if there were good evidence that the consequences of having the death penalty were worse than those of not having it.

### (iv) *The death penalty is uncivilised*

This view is presented by Reiman (1985), who starts by conceding that murderers deserve the death penalty, on the grounds that it is our right to pay someone back in kind for what they have done to others. But even though they deserve it, we should not do it, because refusing to do horrible things to people, even when they deserve it, is a mark of how civilised we are. He points out that the principle of retribution means that torturers deserve to be tortured, but that the fact that we do not torture them both 'signals the level of our civilisation and, by our example, continues the work of civilising'. The greater the number of horrible things which we put into the category of things which our level of civilisation forbids us to do the better. So if execution is especially horrible, then it too should be something which civilisation demands we don't do. Reiman concedes that if there were overwhelming evidence that the death penalty deters murderers, then it may be right to use it, but in the absence of such evidence, it is not right to do so.

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This position rests on a claim that the death penalty is especially awful. You need to assess this claim. In Exercise 9, you considered a condemned man's account of preparation for execution. Do cases like this show that the death penalty is especially awful? Would its awfulness depend on the method of execution?

### Further reading

Glover, J. (1977) *Causing Death and Saving Lives*, London: Penguin, chapter 18.

- Honderich, T. (1976) *Punishment*, Harmondsworth: Penguin.
- Mill, J.S. (1986) 'Speech in Favour of Capital Punishment' (1868), in P. Singer (ed.) *Applied Ethics*, Oxford: Oxford University Press.
- Reiman, J. (1985) 'Justice, Civilisation and the Death Penalty' *Philosophy and Public Affairs*, vol. 14, no. 2.
- Sorell, T. (1987) *Moral Theory and Capital Punishment*, Oxford: Blackwell.
- Van den Haag, E. (1983) *The Death Penalty: a Debate*, New York and London: Plenum.

## Ethics and war

Two questions need to be considered in relation to the morality of war:

Can it ever be right to engage in war (including intervention in wars between other countries or groups)?

Are there any ethical limits to the ways in which wars should be conducted?

### The concept of a just war

Given that war involves violence, can it ever be right to fight a war?

#### Pacifism

One response – that of pacifism – would be that regardless of the reasons why you may want to fight, no matter how unjustly or cruelly you have been treated, it is wrong to go to war, because war involves killing, and killing is wrong.

But if killing in self-defence is justifiable for the individual, why should it not be justifiable for a country? The most obvious example of a just war seems to be one in which a country fights in self-defence, resisting the aggression of another state or country.

#### Self-defence

Is retaliation to an attack really the same as self-defence – is it really like one individual killing another in self-defence? One view that it is sufficiently like self-defence to justify war in response to aggression is presented by Walzer in *Just and Unjust Wars* where he talks about 'the legalist paradigm'.

This is the idea that the relations between states and countries can be understood as analogous to the relations between individuals. We apply the notions of crime, punishment, self-defence to individuals, and we can apply them to countries as well. We must accept the right of countries to defend themselves militarily when they are attacked. If this is what it is to engage in a

just war, it follows that aggression must have occurred in order for a war to be just. The side which starts the aggression cannot be acting justly. As Walzer says, a war cannot be just on both sides.

### ***Problems with the concept of a just war***

#### **(i) What counts as aggression?**

According to Walzer, what constitutes aggression is 'Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another'. This definition assumes that any country has a right to its territory, and a right to self-determination or self government.

In some cases it will be fairly clear that actions count as aggressive – e.g. armies marching over borders, shooting people who protest or resist. The problem cases will be those where a judgement has to be made about the threat of force. What constitutes a threat, and how imminent does the attack have to be in order to justify a country being the first to take military action?

Some judgement has to be made on the basis of the actions of a country and its leaders. Military preparations, verbal threats, insults might be taken as indicators, but they can't necessarily justify making a pre-emptive strike.

One example shows the difficulty of interpreting military preparations as evidence of imminent attack. During the Cold War period, Americans claimed that Russia's actions in building up nuclear arms were evidence of Russia's intention to attack, whilst at the same time insisting that their own build up of nuclear arms was solely for defensive purposes. The fact that a country is increasing its armaments does not necessarily imply that it has aggressive intentions.

It is impossible to come up with a formula for deciding in all cases which country is the aggressor. But from the fact that a particular country is the first to use military action, it does not follow that that country is the aggressor and that the country which has merely been making threats is innocent.

#### **(ii) Is the analogy with self-defence appropriate?**

First, military aggression is not necessarily a threat to the *lives* of those attacked, e.g. one country may violate the borders of another by crossing them with armed forces, but may not kill anyone, provided there is no resistance. If it were right to kill members of the armed forces in such circumstances, this could not be because it was a case of self-defence. The justification for killing in self-defence is that those who try to kill others forfeit their own right to life if the person attacked must kill them in order to survive.

Second, the justification for killing in self-defence involves the idea that the attacker is responsible for creating a situation in which there is an inescapable choice between two lives, so that if anyone should be killed it should be the



attacker. But perhaps soldiers fighting in wartime are not responsible for the situation they are in.

Norman (1995) says that the self-defence justification works if individuals literally have to fight for their lives (e.g. in confrontation with individual attackers), but then that is not because it is analogous with self-defence, but because it *is* self-defence. Most killing in wartime is more like retaliation or pre-emptive strike than self-defence.

(iii) Can intervention be justified?

There are two kinds of circumstance in which intervention may be considered: first, going to the assistance of a country which has been attacked, by taking military action against the aggressor; second, taking military action inside a country in which there is civil war or revolution.

In the first kind of case, if the country which has been attacked has a right to self-defence, then why shouldn't it be right for others to assist them in their defence? Would we accept that in cases of self-defence in general?

An example of the second kind of case is provided by the recent conflict in Bosnia. Some politicians said that Britain should not intervene in Bosnia because intervention would not achieve the aim of ending massacre. But supposing intervention did have good consequences, would it be right to intervene?

If other countries had taken military action on Bosnian territory, or tried to impose a political solution by threat of force, then they would have been intervening in the domestic affairs of what was formerly Yugoslavia. Walzer sets out John Stuart Mill's position on intervention, which says that states are to be treated as self-determining, even if their citizens don't have political freedom. A state can't be self-determining if someone else comes in and imposes a solution. So the citizens have to be left to conduct their struggle without assistance from outside.

There are two problems with this. Not only does it seem extremely harsh to say that no matter what is happening to the inhabitants of a country, no one should go to their assistance, but also it seems to be much too simplistic a model to apply to something like the conflict in the former Yugoslavia. Is a state to be defined by the boundaries of the territory it occupies, or by the ethnic group to which its members belong, or what? The result of failing to intervene could be that some ethnic groups may be wiped out.

### ***The conduct of a just war***

If we accept that there can be such a thing as a just war, it doesn't follow that there are no moral restrictions on the kinds of things one may do in a war.

*Absolute prohibition on the killing of non-combatants*

This is a view that there are absolute restrictions on the character of the violence which it is morally acceptable to use. For example, the Geneva Convention says:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives....The civilian population as such, as well as individual citizens, shall not be the object of attack.

Deliberate killing of non-combatants is not morally acceptable, even if it is going to have good consequences in the long run, but this is often ignored (the allied bombings of German cities in World War Two, and dropping atom bombs on Hiroshima and Nagasaki are examples where innocent civilians were deliberately killed).

Unlike a utilitarian view, this absolutist position is interested in the character of the individual's action, not in the final results. So it would forbid the killing of innocent people, even if by killing some innocent people you might believe that you are going to reduce the number of deaths in the long run (the kind of justification sometimes given for Hiroshima). Problems:

## (i) Fuzzy distinctions

The position relies on distinctions between combatants and non-combatants, and between military and non-military targets. If combatants means members of the armed forces, it includes cooks, drivers, as well as people who use weapons, and it excludes workers in munitions factories and politicians (who might be equally, or more, 'responsible' for deaths).

Is a bridge which has strategic importance, but is regularly used by civilians a military or a non-military target? Or an air-raid shelter used by both civilians and military?

## (ii) Why is it morally acceptable to kill a combatant, but not to kill a non-combatant?

Is it because non-combatants are innocent? If innocent means 'not guilty', why should we think that soldiers who are fighting for a just cause are guilty? Or does innocent mean 'harmless', as opposed to harming?

## (iii) Can the idea of self-defence justify the killing of soldiers?

If so, it would be morally acceptable to kill only those who pose a direct threat to one's life. This would rule out, for example, surprise attacks on troops.

(iv) Killing civilians is using them as a mere means

This Kantian view is put forward by Nagel (1972). Can it really defend a moral distinction between killing soldiers and killing civilians? Why should we think that when soldiers are killed, they are not being used as a mere means?

### ***The doctrine of double effect as a justification for civilian deaths***

The doctrine of double effect is sometimes applied to the bombing of military targets in which civilians might be killed (e.g. bombing munitions factories).

The doctrine says: it is sometimes permissible knowingly to bring about as a side effect of one's actions something which it would be impermissible to bring about deliberately.

This permits some civilian deaths to be brought about as a result of bombing military targets, provided the intention is merely to destroy the military target. (See our discussion of problems with this doctrine in Chapter 5.)

### ***Utilitarian view***

#### ***Just war and intervention***

Utilitarians must consider the consequences of going to war, or of intervening in a war. Armed combat might bring about the best result, so utilitarians could believe that some wars and some interventions were justified. Strictly speaking, of course, utilitarians should consider the welfare of everyone involved, and not just the welfare of their own country. Because results are difficult to predict, it is sometimes suggested that utilitarians could consistently take a pacifist position. This would be what Glover calls contingent pacifism (Glover, 1990: 258).

#### ***Contingent pacifism***

The pacifism of the utilitarian is contingent upon what is believed to be the result of not taking a pacifist line. It is a view that the consequences of not going to war will never be as bad as the war itself would be. Or it might involve the view that even if in a particular case the results would be better if one went to war, it is still better to have a pacifist policy, because the policy of never resorting to military force will do less harm in the long run.