

Philosophy 104, Ethics, Queens College, Spring 2006  
Russell Marcus, Instructor  
email: [philosophy@thatmarcusfamily.org](mailto:philosophy@thatmarcusfamily.org)  
website: <http://philosophy.thatmarcusfamily.org>  
Office phone: (718) 997-5287

Lecture Notes, May 3

I. Quiz: How does Shapiro criticize the “standard view” of addiction?

II. Drugs summary

Shapiro argues that cigarette addiction is due to an unhealthy attitude toward smoking.

The unhealthy attitude can be traced to set and setting.

He does not address how we can change that.

And he does not offer assurances that we will not have similar unhealthy attitudes toward currently illegal drugs.

Shapiro urges a lessening of paternalism, since we can handle more than we have, as long as we adjust the social context appropriately.

Goodin urges greater paternalism in the form of laws banning cigarettes, as well as stronger drugs, since we can not handle the liberty we have.

For both Goodin and Shapiro, then, the decision to criminalize or legalize a substance should be based on utilitarian calculations, not on idealism about liberties, as Szasz had urged.

Society struggles to defend freedoms when social welfare is opposed.

Compare with the limitations on our freedoms imposed since the terrorist attacks of September 11, 2001.

III. A simple argument against capital punishment:

1. Murder is wrong.

2. Capital Punishment is murder.

So, Capital Punishment is wrong.

You might disagree with the second premise.

If so, you can replace ‘murder’ with ‘killing’.

But then you need to change the first premise, in order for the conclusion to follow.

That is, this is not a valid argument:

1. Murder is wrong.

2. Capital Punishment is killing.

So, Capital Punishment is wrong.

If we change the first premise, too, we get:

1. Killing is wrong.

2. Capital Punishment is killing.

So, Capital Punishment is wrong.

But killing is not always wrong.

Consider killing a harmful bacteria or insect, for example.

We can try to resolve this problem by changing ‘killing’ to ‘premeditated killing of a human being’:

1. Premeditated killing of a human being is wrong.
  2. Capital Punishment is premeditated killing of a human being.
- So, Capital Punishment is wrong.

But this argument rules out waging war.

One can hold this position, as Quakers do, but it is a difficult position to maintain.

Some wars seem justified, e.g. WWII.

The simple argument just does not look like it will work.

We will have to see if punishment, like waging a just war, is an acceptable reason for killing a human being.

We will start by examining more closely the concept of punishment.

Then, we will apply these general observations to the specific case of capital punishment.

#### IV. Basic defenses of punishment, generally:

Forward looking punishments are called utilitarian.

These emphasize the benefits of punishment, both to society and to the punished person.

The child is punished to make him better.

We call prisons correctional facilities, and we construct rehabilitation centers.

Rehabilitative justifications for punishment sometimes allow punishments that don't fit the crime.

We could punish too little, if we don't see benefits of a more severe punishment.

For example, we have little hope that repeat drug offenders will rehabilitate.

Still, does that mean they shouldn't obey the law?

Or we could punish too much, if we think the deterrent effect would be large.

We might provoke greater deterrence by using gruesome public executions.

But that seems overly severe.

Backward-looking punishments are called retributive, and are based on a Kantian model.

Sometimes, we call this *lex talionis*, or law of retribution.

Retributive punishments generally require proportionality.

The classical proportionality requirement is an eye for an eye.

But this can be seen as too severe.

Do we really want to rape the rapist?

The eye for an eye principle is some times difficult to extend.

What do we do with some one who has murdered more than one person, for example?

Similarly, what punishment applies to a poor person who steals a million dollars?

There are other ways to devise proportionality.

So, punishment can be justified in either forward-looking (utilitarian) or backward-looking (retributive, or Kantian) ways.

Van den Haag writes, “Punishment is to vindicate the law and the social order undermined by the crime,” p 134.

Is this backwards-looking or forwards-looking?

In practice, we balance the two types of justifications, imperfectly, in laws.

Now, we will apply this general strategy to the specific case of capital punishment.

First, we separate retributive justifications and utilitarian ones.

Then, we will look to a resolution.

Utilitarian defenses of punishment focus on deterrent of others, deterrent of self, and general social benefits.

We examine these three cases in turn.

## V. Utilitarian defenses of capital punishment, Part I: Deterrence of others

The Court (Stewart) says whether capital punishment deters is inconclusive, p 119.

Marshall quotes the UN on the lack of evidence of deterrence, p 121.

Van den Haag concedes that there is no clear deterrent effect.

But he thinks that it creates a more subtle kind of deterrence, establishing social norms, pp 133-134.

Also, he argues that common sense tells us that it must deter.

This is a kind of a priori argument, an argument independent of the evidence.

Reiman rejects the common sense argument, p 139:

1. The less feared penalty may already deter all who can be deterred.
2. Criminals already face a substantial risk of death die while committing their crimes.
3. Any social norms that might be created by instituting a death penalty might better be set by refusing to execute even the most heinous criminals.

van den Haag says that this argument is vague and unpersuasive, p 143.

4. If the more feared penalty deters more, then we should torture prisoners, but we don't want to do that.