

Emilie Zink-Wright

Dr. Catherine Griffith

PHIL-P140

5 March 2018

### Capital Punishment

Ernest van de Haag would argue that lethal injection does not violate the Eighth Amendment. Determining whether or not a punishment is cruel or unusual requires looking at two questions: one, is the punishment fitting for the crime, and two, does the punishment incur an unnecessary amount of suffering? In response to the first question, van de Haag is quite clear in “The Ultimate Punishment” when he says, “[death] is the only fitting retribution for murder I can think of” (CMP, pg. 220). He does not directly discuss lethal injection as the means in carrying out that punishment, but since it produces the result he would likely not find an issue with it as it relates the question one. As for question number two, van de Haag would respond by saying that lethal injection does not cause more suffering than is necessary. He believes that the purpose for a punishment is the retribution the punishment provides, and does not take into consideration the suffering of the one being punished. The closest he comes to discussing suffering and how it should impact a potential punishment is saying that the principle of *lex talionis* was given limitations “to restrain private vengeance, not the social retribution that has taken place” and that “unlike the murderer, the victim deserved none of the suffering” (CMP, pg. 218). Based on these statements, it is reasonable to conclude that van de Haag would believe that any suffering that might come from lethal injection would not be unnecessary.

Reiman would answer the above questions differently, and would determine that lethal injection is in violation of the Eighth Amendment. In consideration of our first question, whether or not the punishment is fitting for the crime, Reiman would argue that it is an appropriate punishment in some cases. He states in “Against the Death Penalty” that the death penalty can be warranted for some murderers when the punishment is viewed through the *lex talionis* principle, which he believes has “an undeniable element of justice” (CMP, p. 222). While he views the punishment as fitting in some instances, Reiman believes that the death penalty is a punishment that causes unnecessary suffering. According to our textbook, Reiman thinks “the death penalty is like torture...as such it is too horrible to be used by a civilized society” (CMP, pg. 220). Lethal injection can cause more suffering than other execution techniques, so it certainly causes unnecessary suffering.

I agree with Reiman that the death penalty, including lethal injection, is an appropriate punishment in some cases. However, I believe that our criminal justice system is too subjective and too flawed for the sentence to be a reasonable option. Viewed through one of Kant’s categorical imperatives, the death penalty is not warranted, since I could not wish that it were a universal law. However, I believe that lethal injection could cause unnecessary suffering. Therefore, I believe that lethal injection does violate the Eighth Amendment.

From a utilitarian perspective, lethal injection and any other form of the death penalty is not a moral punishment because it results in unhappiness and pain for the majority of the parties involved. The convicted murderer would generally be happier with a life sentence without parole than with a death sentence. The family of the convicted murderer would likely prefer that their family member remain in prison, where they could at least write letters, speak on the phone, and potentially visit. Victims’ families sometimes want the murderer to receive the death penalty, but

in many more cases they would be happier if the murderer received a lifetime sentence. The victim is already dead, so they have no possibility for happiness. As our textbook discusses, utilitarians condone punishment only when good consequences come out of the punishment, “such as rehabilitation, protection of society, and deterrence of crime” (CMF, pg. 201). Capital punishment does not meet the requirements of those means of justification, which means it does not bring about good consequences. Therefore, it cannot be justified from a utilitarian standpoint.

A counterargument is the principle of *lex talionis*, which requires that the criminal’s punishment is the same as the crime they committed. Under our current legislation, I believe that this is an erroneous argument. The only time this principle is brought up is to justify capital murder. Punishments, and the principles behind those punishments, should be consistent for any crime. Our legislation does not require that someone who beat their victim with a fireplace poker be beaten with a fireplace poker, nor does it require that someone who stabbed their victim be stabbed. If these punishments were in place, this argument might hold up; as our legislation stands, however, this argument falls short.