

Further Thoughts on the Death Penalty

We recently **remarked**, in regard to the World War 2 spy Augustin Preucil, that "We are, as a rule, opposed to the death penalty". More specifically, although we do not oppose the death penalty on principle, we are opposed to its use in advanced countries under present conditions. An anonymous reader asked **why**.

It is because human beings are valuable. Destroying one requires justification. We do not mean that as a pious slogan or aspiration. Even very bad people are valuable in the literal sense that their brains contain irreplaceable knowledge from which innocent people might benefit. This might range from practical information about crimes that others might be planning, to memories of the experiences and bad decisions that made them criminals (which might interest historians and psychologists in the future), to the knowledge of how to put a smile on their own children's faces.

This value is finite, but it might be large, and paradoxically, sometimes bad people are valuable precisely because they are so bad. A couple of days ago, as **Bill Whittle** put it: "two of the most malignant and cruel mass murderers, rapists and torturers to ever walk the earth have departed the planet". Saddam Hussein's sons. Since they apparently chose to die rather than be arrested, the issue of the death penalty does not arise, but suppose they had been captured alive. Surely taking such prisoners would have been much like finding a stack of fat dossiers marked "WMD Concealment Plans", "Our Agents in the US", and "Secret Deals With France". Could it be right to burn such dossiers half read, just to give some bad people "what they deserve"?

Yes, sometimes it could. Sometimes the trial and judicial execution of the tyrant is a legitimate war aim. But it also seems obvious that at other times there is more to be gained by using the information in the tyrant's brain to save lives, prevent future wars and advance human knowledge. And what is true of great tyrants can be true of petty murderers too. Moreover, if we accept that sometimes it is right to keep bad people alive precisely because they have committed terrible crimes, then we have a further argument that the death penalty should be reserved not just for exceptional crimes but for exceptional situations: for can it be right to say to two murderers: "you will be spared because an evil as great as yours needs to be studied, but you will die for your crime because it was

not evil enough”?

Fri, 07/25/2003 - 23:48 | [digg](#) | [del.icio.us](#) | [permalink](#)

Huh?

I find this post quite confusing.

I don't see any support in it for the assertion that we might want to keep someone alive indefinitely just because his crime was so evil. You have only described the value of extracting certain specialized knowledge that he might have. This is not the same thing (although there is some psychological and historical value that might correlate with this).

But, surely, this is only a reason to keep him alive *temporarily*. At some point, we're unlikely to get anything more useful from him than from a typical murderer.

And choosing to not execute some because we might not execute others as quickly doesn't make any sense to me. We want to treat people fairly, not equally. If one person deserves execution, then another person's treatment should be irrelevant.

I expected **The World's** reason to avoid executions to have something to do with our fallibility and the moral horror of executing the innocent.

by [Gil](#) on Sat, 07/26/2003 - 00:28 | [reply](#)

Reasons

Responding to Gil's comments:

I don't see any support in it for the assertion that we might want to keep someone alive indefinitely just because his crime was so evil. You have only described the value of extracting certain specialized knowledge that he might have. This is not the same thing (although there is some psychological and historical value that might correlate with this).

Well, if the psychological and historical value might correlate with the degree of evil, then it can happen that it is right to keep a criminal alive because his crime was so evil, can't it?

But, surely, this is only a reason to keep him alive temporarily.

How long is temporarily? A criminal might reveal decades years later that he had committed additional crimes (thus exonerating someone else who had been under suspicion). A researcher might want to interview all murderers in a given category, to test the theory that a certain type of childhood experience predisposes a person to murder. A historian might want to interview a tyrant

decades later to test a startling new theory about the events in

which the tyrant too part.

We want to treat people fairly, not equally. If one person deserves execution, then another person's treatment should be irrelevant.

No it shouldn't. If a penal system gives incentives to evil people to commit worse crimes than they otherwise would, that is an undesirable property.

I expected **The World**'s reason to avoid executions to have something to do with our fallibility and the moral horror of executing the innocent.

Well, the title is "Further Thoughts on the Death Penalty", not "The Complete Case Against the Death Penalty".

by **David Deutsch** on Sat, 07/26/2003 - 17:24 | [reply](#)

Who Should Pay?

Who does **The World** think should pay for keeping murderers alive for the potential research value of some of them?

Do you say that this cost should be socialized and borne by the unwilling? Today, this seems to be the only option.

Or, should just those who think it's worthwhile to maintain the health and confinement of murderers bear the full cost of doing so?

If it's the latter, do you expect researchers (and their voluntary benefactors) to be willing to pay for this themselves?

And again, today we don't really have a mechanism for transferring these costs to those who want to bear them. So is **The World** advocating, in the current political system, stealing from the unwilling to finance the research interests of others?

by **Gil** on Sat, 07/26/2003 - 21:16 | [reply](#)

Reductio Ad Absurdum

Gil,

You could say the same thing about the war, couldn't you?

-- Elliot Temple

<http://curi.blogspot.com/>

by **Elliot Temple** on Sat, 07/26/2003 - 22:07 | [reply](#)

Public Goods

I could, but I wouldn't.

I recognize a difference between government activities that are

necessary and sufficient to protect our liberty in ways that require force vs. engaging in all other imaginable activities that purport to provide public goods.

I can see an argument for requiring people to support (financially) the former activity to some extent (although I'd like to move away from this involuntary support as soon as possible) but I can't see any such moral argument for the latter.

by [Gil](#) on Sun, 07/27/2003 - 19:02 | [reply](#)

Harm-preventing versus Benefit-conferring

Gil is right on target when he separates government activity that seeks to prevent harm to the state and activity that seeks to confer a benefit on the state. In fact, our legal system also makes a distinction between the two. When determining if the government has performed a taking of property requiring compensation according to the Fifth Amendment, the courts have noted that when the government acts to prevent harm, no compensation is required, but when the government acts merely to create a benefit, compensation to the owner *is* required. If the same standard were applied to David's argument above, the benefit-conferring act of preserving prisoners' lives would be set apart from the harm-preventing act of the war on terror. This is why the rationale proposed for opposing the death penalty in the original post and in David's response are wrong. Were it true that there is a sufficient benefit to prolonging people's lives, it would mean that killing anyone *ever* would be a bad thing. And I doubt very much that the author believes that (killing in self-defense and in war come to mind).

If capital punishment is a bad thing, it's bad not because there is some benefit to society still to be gained in the prisoners (after all, it would be beneficial to society to ban smoking and alcohol altogether and few libertarians are arguing for MORE government restriction) but because of something else. David's rationale are utilitarian in their entirety. They are based only on how much good can be gained or how much harm can be prevented by preserving prisoners' lives. The utilitarian conception is *completely lacking* in room for human rights. The very definition of a right is something that is possessed and retained by a person *even though* such possession may not be good for society as a whole. I personally, and a great many other people, do believe in things like legal and human rights. One of them is the right to life. And unlike the rights to freedom and autonomy which can be curtailed in individuals who too greatly infringe other peoples rights (like criminals), the right to life is not one that is capable of being limited without killing the person. Thus, the object of the death penalty is not to prevent further infringement of a person of other people's rights, but to punish, to take revenge on a criminal. And I am not willing to support punishment or revenge as an object.

If the death penalty were the only solution for preventing the

infringement of others' rights, then it would serve a purpose other than revenge. But, since life imprisonment does fulfill that objective, capital punishment infringes too much upon the rights of the criminal.

by [Rob Michael](#) on Mon, 07/28/2003 - 01:30 | [reply](#)

purposes other than revenge

Rob Michael makes some important and thought-provoking points. I'd like to address one in particular: that the death penalty is immoral if no purpose is served other than revenge, and that prevention of the infringement of the rights of others is insufficient by itself, since life imprisonment can handle that.

Good as far as it goes. But there are circumstances where life imprisonment is simply not good enough. To cite a case that's surely been brought up on this site before, consider life imprisonment for convicted terrorists.

Historically speaking, terrorists under a life sentence typically do not serve out their terms; they are traded, as part of "negotiation" or under the threat of more terror. (Right now, for example, Palestinian terrorists, with blood on their hands, are being released from Israeli prisons -- in part because the United States insisted on it, as a "good-will gesture".)

It hardly needs to be said that this gives no incentive for convicted terrorists to fear a life sentence. And released terrorists have gone on to commit more crimes, over and over again.

In other words, a strong case can be made for the execution of convicted terrorists with blood on their hands. (Yes, in some cases, intelligence benefits may be gained from them; they certainly will share no secrets once they are dead. But they will likewise share no secrets if they are released... and releasing them has its own dangers.)

I am not trying to make the case for a death penalty, for I am by no means certain I have made up my own mind on the subject. I do wish to point out other possibilities than those mentioned so far in this forum.

One other thought. It has long been my view that, by violating the rules of civilized conduct in a society, a criminal to some degree is relieved of the privileges of that society. (For example, a consistent traffic offender may have his license revoked, and have to do without a luxury his fellows take for granted. A more serious offense might be punishable by imprisonment; the criminal's right to freedom is temporarily revoked.)

A more serious punishment (one rarely used in the West anymore) would be eviction -- revocation of one's citizenship, and forcible relocation outside the nation's borders. (Perhaps one reason this is no longer used much is the question of where to send them. Once it could safely be assumed that territory outside one's own borders was lawless no-man's-land; this is no longer true, and forcing one's

own malcontents on others, friend or foe, has consequences.)

The pattern is simple: by violating the rules that hold our society together, one has given up claim to enjoying the privileges of that society. Ideally, such privileges should be withheld in proportion to the crime that was committed; more serious crimes would result in fewer rights held by the criminal.

Apply this to the death penalty. Under what circumstances would a criminal have violated the rules of civilized society to such a degree that, not simply his liberty, but his life, becomes forfeit? What crimes would justify such a response? And if you believe that NO crimes warrant that response, why not?

respectfully yours,
Daniel in Medford

by a reader on Mon, 07/28/2003 - 20:19 | [reply](#)

Do we have rights?

Great post Daniel. You've touched on some issues I wanted to address, but didn't for lack of time. You wrote that it may be right to execute convicted terrorists (and maybe other so-called political prisoners). But, to be perfectly clear, support for the death penalty in that instance is contingent upon the failure of a life-sentence without possibility of parole to take a criminal out of society. Even I would support capital punishment in that specific situation.

You correctly note that rights are denied to criminals, often in proportion to their crimes. I mentioned this in my comment, "Harm-preventing versus Benefit-conferring," when I noted that denial of the right of freedom and right of autonomy are central to our justice system. Those rights can be ignored for a set amount of time or indefinitely (in a life sentence) depending on the nature of the crime. But the right of living is, in my opinion, very different from one of autonomy and freedom simply because the any neglect of that right *simultaneously* and *permanently* denies every other right possessed by a human. Society when imprisoning someone is collectively saying to the criminal, "We no longer recognize your right of autonomy because you infringe too much on the rights of others and by your captivity for so many years such infringement will be prevented and deterred in the future." The key here is that the right is still possessed by the criminal even though he has lost the recognition of that right by his community. When society executes someone, it is denying the *very* existence of the right of

living (and concurrently every other right possessed

by that person).

Human rights are not something that are contingent upon society. They are possessed by fact of our humanity, not because we belong to a particularly liberal civilization. The Founders knew that rights weren't something bestowed by a government. In fact, they were so concerned that strong government would infringe upon rights that some of them insisted on a Bill of Rights that limited government action. I cannot emphasize enough that I am human and therefore in possession of human rights. Were we to deny a person's human rights we would in actuality be denying their humanity. We would be saying to that person, "You are no better than the beasts."

by a reader on Tue, 07/29/2003 - 13:36 | [reply](#)

Good knowledge, maybe good future too

Even very bad people are valuable in the literal sense that their brains contain irreplaceable knowledge from which innocent people might benefit.

I used to think that murderers' lives should be spared because they had the *potential* to reform and lead good lives after their jail sentence was over (which might benefit the lives of others, but let's not go there..)

Of course, in believing this I was assigning moral worth on the basis of possible futures rather than on present status. So in that respect my understanding was no better than that of the "pro-life" gene freaks!

by [Tom Robinson](#) on Sat, 08/02/2003 - 00:10 | [reply](#)

Death Penalty, Costs, Regulations

I'm a bit out of place here, not being a libertarian, but I have a few comments.

Re **Who Should Pay?** Imposing death is a cheap, quick and easy way of dealing with an individual who presents a problem, so it's always a temptation, even the first resort rather than the last. There is always a political constituency for any proposal to expand the use of death as a solution. And any use of death which is legitimized tends to outgrow the limits the original enactors had in mind. The end state of progress in that direction could be horrific.

Back in the 1970s, opponents of legalized abortion predicted that it would lead to euthanasia and other more casual applications of death. Those of us, like myself, who believed in a woman's right to control her own body disputed this. But it looks like the abortion precedent has indeed emboldened other advocates of death. Some are pushing to open the door to the horror of widespread legal euthanasia, by way of so-called "physician assisted suicide". And

the death penalty for criminals is reaching new heights of popularity in America.

George R. Stewart, in a famous passage of the novel *Earth Abides*, tells of a post-apocalyptic community which votes unanimously to put a miscreant to death. He portrays this decision as the beginning of "the state". But the difference between that isolated and vulnerable settlement and our current society, with its elaborate justice system and prisons, could hardly be greater. Apart perhaps from certain wartime situations described elsewhere on this page, it is hardly ever "necessary" for us to kill a convicted criminal.

Moreover, to give our judges and juries and governors the authority to put a person to death is, in my view, deeply corrupting to the political system.

Re **Harm-preventing versus Benefit-conferring**: This isn't an accurate statement of the law on this point. Ordinarily, government actions under the police power (i.e., laws or regulations to protect the public health, safety and welfare) may have economic consequences to individuals, but they are not owed any compensation. Government action to take real estate require compensation to the property owner under the 5th Amendment.

(Obviously police power actions are usually harm-preventing, and taking real estate is usually benefit-conferring, but that is not the distinction between the two concepts. For example, a regulation may promote a benefit, or eminent domain can be used to abate a hazard.)

The *Pennsylvania Coal* case in 1922 created the concept that a regulation may equal a taking of real estate, invoking the 5th amendment compensation requirement (or an invalidation of the regulation). Subsequent cases clarified that mere diminution in value of a property (e.g., by zoning it for residential rather than commercial use) is not a 5th Amendment "taking". Indeed, it is rare for property owners to successfully claim a regulatory taking.

Moreover, there are many other kinds of economic interests, besides ownership of interests in real estate, which may be negatively affected by a regulatory action. You could have a warehouse full of valuable widgets which a new regulation suddenly makes worthless. A traffic control order could make a street one-way and put your gas station out of business. A restaurant inspector could force you to spend hundreds of thousands of dollars buying new refrigerators. None of these have even the theoretical basis for a legal claim against the government for compensation. Nor should they.

by [Larry Kestenbaum](#) on Sat, 08/02/2003 - 06:07 | [reply](#)

Some are pushing to open the ...

Some are pushing to open the door to the horror of widespread legal euthanasia, by way of so-called

"physician assisted suicide". And the death penalty for

criminals is reaching new heights of popularity in America.

What bad is there in euthanasia? I for one, find it horrifying that such measures are illegal.

There are groups of people who are freezing human bodies after death, to enable their revival at a later time, when their bodies can be fixed and revived. If I were to catch a dangerous brain destroying disease now that would surely lead to my death in say a year, I would rather take my chances with cryonics now than wait my brain and self to rot for the whole year (after which there would probably be nothing left to save of me).

So the true horror is that euthanasia is illegal.

by [id](#) on Mon, 08/04/2003 - 10:32 | [reply](#)

Euthanasia, Suicide and All That

Voluntary euthanasia is the same thing as suicide with a little help. Involuntary euthanasia is the same thing as murder. These two categories of "gentle death" should be opposed just as suicide and murder are opposed. The grounds used to justify voluntary euthanasia are often capable of supporting involuntary euthanasia. For example, proponents of voluntary euthanasia say that it will save medical resources, the financial resources of the families involved and relieve suffering. These justifications also hold true for compulsory euthanasia.

There are several objections to those justifications. The first and most obvious is that the role of medicine is to preserve life, not to prevent suffering. In fact, many life-preserving medical techniques are quite painful. Were we to decide that our system should be one of pain-prevention, then there is no longer a reason to pursue uncomfortable treatments that may yet save lives -- the underlying justification for such treatments (like chemotherapy or even a simple colonoscopy) is lost.

A second objection is that in establishing the legitimacy of voluntary euthanasia, we also establish an expectation that the elderly and infirm will choose that option. After all, euthanasia will be regarded as a positively moral action that preserves the dignity of the person, prevents the suffering of age or disease, prevents the prolonged suffering of the family, and ultimately saves money and medical resources. All these justifications for euthanasia leave the elderly and infirm that do want to prolong their lives with no way of saying so that is not regarded as selfish.

Finally, by categorizing voluntary euthanasia under "medical care" we give it the illusion that a doctor can help in the decision to die. The term "physician assisted suicide" reveals how necessary the medical caregiver is to the act. Proponents of voluntary euthanasia say that it is their own decision to make, but clearly that decision cannot be made alone. It isn't hard to imagine the scenario where an elderly patient asks her doctor of many years to help her die,

that she misses her husband. (The asking in itself makes the act not just her own) The doctor refuses, saying that he is a life-preserver, not a bringer of death. (Here, too, the act could not be her own, he must help) Fine, she says, I will *find a doctor who will kill me*. And here we see the reality of the situation. She would not die but for the actions of another person. And a new market has opened, one in which death doctors are sought out not because of their skill at preserving life or even their skill in medically preventing suffering, but because they have been given legal authority to deal death. That authority to deal death has very little, in reality, with preventing suffering and a great deal to do with providing a legal method of opting out of life.

by **Rob Michael** on Mon, 08/04/2003 - 17:00 | [reply](#)

suicide

"The grounds used to justify voluntary euthanasia are often capable of supporting involuntary euthanasia. For example, proponents of voluntary euthanasia say that it will save medical resources, the financial resources of the families involved and relieve suffering. These justifications also hold true for compulsory euthanasia."

To translate, **some** of the arguments used to justify.....etc etc.....valid example.....and this concludes to: **some** of the supporters of euthanasia are idiots. however, if you want to win the argument, you need to do more than counter **some** rival theories.

"The term "physician assisted suicide" reveals how necessary the medical caregiver is to the act. Proponents of voluntary euthanasia say that it is their own decision to make, but clearly that decision cannot be made alone."

The term "plumber assisted toilet-repair" reveals how necessary the plumber is to the act. Proponents of voluntary toilet-repair say that it is their own decision to make (as long as they can pay for it), but clearly that decision cannot be made alone.

anyway, suicide is a "victimless crime" right? what's your counter to the standard point of "If there is no victim, how can it be a crime?" (works with euthanasia too, but **not** compulsory euthanasia)

-- Elliot Temple

<http://curi.blogspot.com/>

by **Elliot Temple** on Mon, 08/04/2003 - 18:18 | [reply](#)

Suicide and Euthanasia

This is a great issue to use to test whether somebody takes individual rights seriously.

If you think that people have individual rights to their lives and to pursue their goals without the permission or approval of others, then you must acknowledge their right to make an informed

decision to choose death; and that physicians assisting them are

helping, not hurting, their patients (because their job is not to prolong life; but, rather, to help their patients solve their health-related problems by their own lights).

If not, then you really think that people are slaves of the state, or society, or the religious or some other tyrants.

The right to die is fundamental. If you don't have it, then your life does not belong to you; your existence is under the control of others.

Gil

by **Gil** on Mon, 08/04/2003 - 20:42 | [reply](#)

Body Mechanic

Gil above stated it very eloquently: it's a simple matter of self-ownership, which to me is self-evident. the objector's arguments against physician-assisted suicide is based on assumptions underpinned by nothing more than tradition at best.

as the owner of my body, what i want from a doctor is for them to be a facilitator of my will regarding the physical aspect of my life. not a moral captor holding me hostage to society and whatever it is from which i might be seeking to deliver myself, but a physical service provider: a body mechanic - and i decide when i get scrapped, not the mechanic.

i wouldn't advocate forcing anyone to assist, but it being illegal is morally indefensible. the line between vice and virtue is one which can only be drawn by the individual. to do so robs individuals of the ability to make moral decisions "by their own lights", as Gil put it. some prioritise pain minimisation over longevity and that is the individual's right, as it is to define the acceptable parameters. this right is a fact, the denial of which is simply the denial of it, not a moral pillar. indeed for the reasons given above it's the opposite.

regarding the death penalty i'm in the human-fallibility camp. i'd have no qualms if convictions were 100% accurate but the only person who can be absolutely certain whodunnit is the victim..

by susan28 on Wed, 09/12/2007 - 01:00 | [reply](#)

I am in agreement

I am in agreement with the general article and with Gil about the horror of applying the death penalty to an innocent person.

One other reason I would put forth for avoiding the use of the death penalty is that it requires someone else (not someone who is a murderer) to do the killing. It seems like there would be some increased risk that the innocent killer would come to have less regard for human life and also might be more prone to having some emotional or psychological problems.

I suppose one way to avoid this would be to have only death row

inmates doing the actual killing. Perhaps by allowing one of the inmates to stay at the 'end' of the row, so to speak, so long as they were willing to perform the deed? That seems pretty twisted... nevermind.

Becky

by **Becky Moon** on Thu, 09/13/2007 - 17:07 | [reply](#)

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