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Philosophical Conversations is designed to stimulate thought and discussion, and keep you philosophically active. The format will be the presentation of a brief position paper to which responses are encouraged. In the subsequent issues selected responses may be published in addition to a new position paper. We invite you to respond to this, our second position paper, either by contacting the author or the Department. (Address, mail and e-mail, and phone numbers and fax numbers are provided at the end of this issue).

The Death Penalty: Punishment or Emancipation

Professor Stephen Rosenbaum*

The debate over the death penalty is now focused on whether it is ever morally appropriate for the state to take citizens' lives for crimes they have committed. The ancient tradition of philosophical reflection on the death penalty suggests a more fundamental issue: Is the so-called death penalty really any sort of punishment at all? Socrates raised this question implicitly in his speech to the jury which sentenced him to death. The Epicurean, Lucretius, urged later that death is actually an end to punishments, and Julius Caesar argued before the Roman Senate, in the debate over the fate of the Catiline conspirators, that "death comes as a release from suffering, not as a punishment to be endured."

Contemporary discussants of the issue assume, often without reflection, that death is a great evil and that the death penalty is consequently the most severe punishment that could be inflicted on criminals in a civilized society. We would do well to consider closely the reasoning behind the ancient thinking. To this end, we must consider what punishment is, what the punishment of death is supposed to be, and what death is. Thinking about these questions should make us wonder just how severe a punishment death is.

The traditional way to conceive of punishments is to see them as bad things forced on people for crimes they have committed, "evils" returned by society for infractions of its laws. Fines, incarcerations, and such out-of-date punishments as tortures all fit this characterization. For the death penalty to be a punishment, according to this conception, it would have to be an "evil," something bad inflicted on people.

What exactly is the death penalty? It is not stress associated with the anticipation of being killed, for no matter how much such stress there were in a given case, the penalty would not have been administered until the convict was killed. It is not the pain or discomfort associated with the process of being killed, for we try "humanely" to administer the penalty as painlessly as possible. The penalty is not the anxiety of believing that one's life will end, since that anxiety is not sufficient for the administration of the punishment. The essence of the penalty is death, becoming dead. Unless and until a convict becomes dead, the death penalty has not been carried out.

If capital punishment is essentially becoming dead, what does that amount to? A person who becomes dead either ceases to exist or continues to exist in some manner yet unclear. Death is either the termination of one's being or it is not. If death is nonexistence, a state (so to speak) in which one cannot experience anything, good or bad, then it cannot be an evil for the one killed. On the other hand, if becoming dead is a continuation of one's existence in some form or other, then, since we do not know what sort of existence it will be, we do not know whether it will be good or bad for the one killed. Therefore, either the death penalty is not evil and not really a literal punishment, or we don't know whether the death penalty is bad, whether it really is a punishment. What kind of punishment is that? It does not seem very serious. In any case, it does not seem as serious as we are inclined to think it is.

This reasoning is initially plausible, and is furthermore capable of being supported cogently in the context of recent philosophical reflection about death and the death penalty. I believe we should thus reassess our thinking about capital punishment and whether it is justified. Unfortunately, even if one is persuaded by this reasoning, it doesn't settle definitively the most pressing questions about the death penalty. One cannot conclude from this reasoning, for example, that the death penalty is not justified. That is, one cannot conclude from the proposition that death is not a punishment that the state is not justified, under certain conditions, in taking the lives of its citizens, however unpleasant that may sound. Taking someone's life possibly could be justified even though it is not a punishment. It might, for example, be more like self-defense than like punishment.

Moreover, this reasoning might induce one to reconsider the nature of punishment. If death is not a punishment in the sense in which punishments are bads forced on criminals by the state, punishments might be conceived in quite another way. Perhaps punishments are essentially expressions of anger, filtered through the bureaucracy of a state, to ward off the social chaos of victims seeking to vent their rage without restraint. Maybe they are a form of institutionalized and ritualized revenge, without corresponding neatly to real bads.

One might alternatively consider and perhaps reconstruct the concept of bad, while retaining the idea that punishments are essentially bads inflicted for wrongs done. One might conceive of bad things as not necessarily connected with negative experience, but rather as events which would deprive one of good things one would otherwise have had. Then, although death would not be bad in the sense of leading to negative experiences, it could be bad in depriving one of future life.

Whether one reacts to the Socratic idea by criticizing the argument that the death penalty is not a punishment, by reconceiving the nature of punishment, or rethinking the notion of bad, this should place thinking about the death penalty in a new light. Philosophical argumentation is more often the beginning of deep reflection than the end.

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The following is a response to the previous *Philosophical Conversations*, "An Overlooked Argument Concerning Euthanasia" by Professor Michael Gorr. It will be followed by his response.

An Overlooked Argument Re-examined

Robert Brunette**

In "An Overlooked Argument Concerning Euthanasia" Professor Gorr attempts to weaken the "slippery slope" objection to legalized assisted euthanasia by drawing an analogy between killing in self-defense and voluntary assisted euthanasia. The slippery slope objection is characterized as "the fear that no matter how carefully we try to draft a law allowing euthanasia only in narrowly allowed circumstances, the risk is too great that the law will eventually be widened in unacceptable ways." The self-defense reply is "if nearly everyone supports the legalization of killing in self-defense, despite [many well-known risks], then....why isn't the case for allowing voluntary euthanasia even stronger...?"

I believe there are three problems with the self-defense analogy. First, voluntary assisted euthanasia is much more susceptible to abuse than killing in self-defense. Second, the analogy does not really address the slippery slope objection. Third, the two acts are very different on the moral level and are not at all analogous.

One of the most important practical differences between killing in self-defense and voluntary assisted euthanasia is their susceptibility to governmental or institutional abuse. Killing in self-defense is, by its nature, always an individual (or very small group) reacting to an extreme situation. It is difficult to imagine the government or a private agency coercing people into killing in self-defense, because there is little or no value in doing it and there is even less opportunity. It is much easier to imagine the government or a private agency coercing assisted euthanasia, because one can see the value in eliminating people who use significant social resources without making a contribution and one can easily imagine the opportunities. So on a practical level, the slope is much more slippery for voluntary assisted euthanasia than it is for killing in self-defense, making the analogy rather weak.

The second problem with the self-defense analogy is that it does not really address the slippery slope objection. Properly stated, the slippery slope objection says that acts such as voluntary assisted euthanasia improperly devalue human life. That is, human life is given less value than relief from pain and suffering, and there is concern that it could easily be devalued further. The self-defense analogy, as presented, attempts to answer only practical aspects of euthanasia and ignores this deeper objection.

If the killing in self-defense and euthanasia are compared on this deeper level, two key differences emerge. First, when killing in self-defense, the intention of the act is to preserve one's life; an unintended result of the action may be the injury or death of the attacker. In other words, the emphasis is on self-defense rather than on killing. When administering euthanasia--whether to oneself or to another-- the intention is to end a life. But even if one argues that the intention when killing in self-defense is to take a life, it is still being done to preserve another life. Thus killing in self-defense does not reduce the value of human life in the same way the euthanasia does. These two differences make the two acts very different and not at all analogous from a moral perspective.

To summarize, the analogy is weak on a practical level, because voluntary assisted euthanasia is more susceptible to abuse than is killing in self-defense. It fails to address the real slippery slope objection, which is the moral concern for the value of human life. Finally, when the two acts are compared on a moral level, they turn out to be very different and not analogous at all. For these reasons I believe that the killing in self-defense analogy does not answer the slippery slope objection and does not strengthen the position of those who favor legalizing euthanasia.

**Robert Brunette graduated from ISU in 1978 with a degree in Philosophy and Psychology. He is the husband to Barbara and father to Nathan, 11 and Ben 9, and lives in Freeport, IL where he is involved in his church, local education improvements, and the bicycling club. While awaiting his imminent appointment as philosopher-king, he is employed at Honeywell's MICRO SWITCH division as a Principal Technical Analyst responsible for the division's data and voice networks.

Reply to Brunette

Michael Gorr

Bob Brunette's insightful reply to my essay on euthanasia raises three apparent difficulties for my attempt to draw an analogy between the legalization of euthanasia and the legalization of self-defense. I'll begin with the second. He claims that the self-defense analogy is irrelevant because it fails to address the point of the slippery-slope objection, which is that "acts such as voluntary assisted euthanasia improperly devalue human life." But this is incorrect. The real point of the **slippery slope** objection is that, **even if** voluntary euthanasia **is** morally acceptable in some cases, we should nevertheless not legalize it because the risk of **abuse** is too great. There are, of course, **other** arguments against legalizing euthanasia that involve the devaluation claim, but it was not my purpose to address those in my essay. [Just for the record, though: most supporters of legalized euthanasia reject the view that bare physical survival is so important that it should always trump all other considerations. On the contrary: the principal argument in support of legalizing voluntary euthanasia is that this is required if we are to respect what **is** morally most important, viz., the autonomous choice of the individual involved.]

Since Brunette's third objection presupposes the thesis I have just rejected (that euthanasia reduces the value of human life), it does not require separate discussion. His first objection, however, seems to me to have some real force. He is surely correct in noting that euthanasia is much more susceptible to **governmental** abuse than self-defense is because, as he points out, it is difficult to see what would motivate a government into pressuring people to kill in self-defense. However, the risk involved in legalizing self-defense that I was calling attention to is **not** that such a law may be abused by government but that it may be abused by **individual citizens**. It remains to be shown whether that difference is so significant that it undermines my argument.

In closing let me express my appreciation to Bob Brunette and to everyone else who wrote in response to my essay. [The quality of those responses, by the way, was very high and suggests that the philosophy department must be doing a pretty good job in teaching critical reasoning skills!]

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