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Death Penalty: The Problems of Retributive Justice Approach

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This master thesis is going to deal with the issue of the death penalty and problems within the framework of retributive justice approach. The main aim of the thesis is to demonstrate that retributive justice approach is both ineffective and unethical and that it shall not take place in any democratic society.

Firstly, overall philosophical approaches towards the death penalty are going to be presented to understand the problematics of death penalty in terms of philosophy. Secondly, retributive justice approach towards the death penalty and its problematic aspects will be analyzed in detail.

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## **Death Penalty: Problems with retributive justice approach**

### **Abstract**

This thesis deals with an issue of capital punishment, namely, but not exclusively, from the retributive perspective. The general aim is to prove that capital punishment has no place in contemporary democracies. To reach the aim, topic is analyzed first from the perspective of moral philosophy, to understand, why capital punishment is inappropriate punishment from both moral and political perspective.

### **Key words:**

capital punishment, theory of punishment, ethics, political philosophy

### **Anotace**

Tato práce se zabývá otázkou trestu smrti, zejména, ne však výhradně, z pohledu retributivní perspektivy. Hlavním cílem je dokázat, že trest smrti nepatří do současných demokratických společností. K dosažení cíle je téma nejprve analyzováno z pohledu morální filozofie, aby bylo možno pochopit, proč je trest smrti nevhodným trestem souběžně z morální a politické perspektivy.

### **Klíčová slova**

Trest smrti, teorie trestu, etika, politická filozofie

## Table of Contents

<b>Introduction</b> .....	<b>9</b>
<b>A response to wrongdoing</b> .....	<b>11</b>
Moral agency and moral responsibility.....	12
Moral luck.....	15
Determinism and free will.....	18
Response to wrongdoing- Strawson, reactive attitudes.....	24
<b>Theories of punishment</b> .....	<b>28</b>
<b>Capital punishment: Philosophical approaches to punishment in history</b> .....	<b>35</b>
Thomas Aquinas .....	36
Thomas Hobbes.....	38
Immanuel Kant .....	40
<b>Contemporary discussion against capital punishment</b> .....	<b>43</b>
An (un)just punishment, an unjust execution of an innocent .....	45
Capital punishment as legal murder .....	48
<b>Conclusion</b> .....	<b>51</b>
<b>Bibliography</b> .....	<b>55</b>

## Introduction

It is a serious question, how to approach capital punishment. Most of the democratic countries abolished capital punishment decades ago, and in those where it has not been abolished yet, it is heavily discussed. The question is deeply connected to the ethical issues of a value of human life, human rights and dignity, and also it is connected to political issues, whether any institution should possess a right to end life.

I will defend in this thesis, that capital punishment is inhumane, unethical, and no state institution should have the right to end a life of any citizen. To prove this claim, several areas connected to it will be discussed to introduce the reader to the problematic.

In the first part, the discussion will focus on the ethical issues connected to moral responsibility and responses to wrongdoing.

Firstly, issues connected to moral agency and moral responsibility will be discussed, because only responsible agents can be held responsible for their actions, blamed and finally, punished. Aristotle will be the main author providing a definition which is broad, yet precise enough, to familiarize the readers.

Secondly, in this part, situations when we have no control over will be discussed. It is important to ask whether people can be held responsible for something which was not fully in their control. The concept of moral luck will be discussed, namely by Bernard Williams and Thomas Nagel.

Then, another sub-chapter of the first part will focus on the issue of determinism and free will. The important question appears, for what could people be held responsible for, if our lives were determined, including our past, present and future actions? Therefore, it has to be resolved if we possess free will.

And finally, the last sub-chapter of this part will focus on reactive attitudes, that means, how do we naturally respond to other people's actions. In this part, Strawson's concept of reactive attitudes will be presented. It has to be mentioned, because it is important to understand how we respond to other people's actions, how we evaluate their behaviour from our reactive attitudes towards them. How we respond to wrongdoing from our personal reactive attitudes, or objective attitudes, is different, and similarly, it is different how we respond to actions of people around us, in contrast to interaction between a legal institution and a criminal.

The second part of the thesis will focus on the capital punishment and problems connected to retributivism, but also other theories.

In the third part, several examples of philosophical defence of capital punishment in history will be presented. The provision of why some philosophers were defending capital punishment will help with understanding why it should be argued against capital punishment in the present.

And finally, in the fourth part, a contemporary discussion against capital punishment will be presented, namely about capital punishment being unjust and intolerable in modern democracy, and that it may be considered an institutional murder.

## **A response to wrongdoing**

How should we respond to wrongdoing? Possibly, there exists a variety of answers, but is one of those possibilities an only correct answer to such issue? If there exist more options which could be considered appropriate than one, are they universally valid, or do they have to be modified according to the nature of wrongdoing and its context?

Most importantly, the assessed conditions must be specified to analyse the situation properly, and only after that step, a profound solution, be it the correct answer, can be found. Therefore, to elaborate about possible correct responses to wrongdoing, it must be specified from which perspective the wrongdoing will be evaluated. Possible responses to wrongdoing occur in different contexts.

If a politician, for example, acts in a way which results into harm of the citizens, a political response judging his actions which preceded such harm will follow. A political or legal response, may, however, also partially contain a moral response. Similarly, if an individual responds to wrongdoing in a certain manner, it is his personal response, which may also be a moral response. In the first part of the thesis, I will focus mainly on the moral response. Problems addressing political issues will be discussed in the second part of the thesis.

And finally, if an individual or a group of people causes harm to another, it is not now important to specify whether this harm is of physical or mental nature, since it can be both, but we evaluate it morally. It is the moral response to wrongdoing which I will consider in this part, aiming to describe how human beings respond to wrongdoing and whether some reactions and attitudes are better than others.

Therefore, it is the moral response to wrongdoing that is the key question of this part of the thesis. In order to answer which moral response to wrongdoing is appropriate, it has to be made specific what exactly wrongdoing is and similarly, the other factors which occur in a close relationship with this issue need to be specified. For a deep understanding of the concept of wrongdoing, we need to introduce questions closely tied to it. Such connected questions include the one of who can cause wrongdoing. Consequently, it is important to ask why a particular action is marked as wrongdoing, whereas under different circumstances, it is not.

Other important components of this issue are the questions which take into consideration moral agency and moral responsibility and their relations. After all, wrongdoing is something that requires a moral agent acting in a wrong way. Logically, how else could anyone be held

responsible from the moral perspective, otherwise than he has done something wrong? Therefore, we need to understand the relation between moral agency and moral responsibility to think about responses to wrongdoing.

After understanding the connection between moral agency and moral responsibility, another connection follows, that is, the connection between moral responsibility and blame. When somebody is morally responsible, a response follows to his moral decision for which he is responsible.

To find out how people respond to wrongdoing and why, and to find out which responses to wrongdoing are, in my opinion, relevant responses to wrongdoing, it is important to introduce and explain the relevant terminology that is frequently used in moral philosophy. Therefore, next sub-chapters are going to be explanatory, and the terminology described to the reader would provide him with necessary information as a guide to understanding responses to wrongdoing.

Therefore, one of my aims is to present a definition which is broad, yet precise enough, which can help us elucidate the relationship between wrongdoing and other phenomena, such as moral agency, moral responsibility, moral blame and reactions to an action which is morally wrong.

## **Moral agency and moral responsibility**

In this part, I will be discussing the necessary conditions specifying what a moral agent is. Specifying the conditions of who can be a moral agent is necessary to discuss the issue of who can and cannot be held responsible for his actions. Aristotle provides a comprehensive description of moral agency and responsibility which is more than sufficient for my purposes here.

But what does it exactly mean to be responsible for one's actions? And when it is specified who is the moral agent, the one who can be held responsible for his actions, what exactly does this moral responsibility mean? And if someone is morally responsible, what does that imply? To what extent do we treat a person that lives up to the "specified requirements of being responsible for his or her actions" from a person that falls outside that definition? The question of moral agency is significant, because it is visible that without specifying that, the underlying questions cannot be answered.

Who is the moral agent, then, and how important is moral agency in connection to wrongdoing and punishment? In fact, it is very important, because if there is no one who is capable of causing a wrongdoing, there would not be a question to be answered whether that person who could be blamed and treated for his wrongdoing.

The concept of moral agency was thoroughly discussed by Aristotle, a philosopher from ancient Greece, yet he is still one of the most important contemporary cited authors when the issue of moral responsibility is addressed. To provide the reader with the definition of moral agent, his idea is precise enough to understand who can and who, on the other side, cannot be a moral agent.

Aristotle described the necessary conditions which he considered crucial to define a being who can be a moral agent. The specification which will be presented in the following paragraphs includes the distinction between human and non-human animals, first of all. After that distinction between humans and non-human animals, he elaborated about the distinction between humans who he considered reasonable, and those who, according to him, are not reasonable human beings. If the possession of reason is, according to him, the most important characteristics of a moral agent, which beings did he consider possessing reason and why?

Aristotle is clear in his definition of moral agency, quite clearly pointing out that it is only those who act voluntarily who can be defined as moral agents, and in his view, non-human animals and children are excluded from that: “For in the first place, on that showing none of the other animals will act voluntarily, nor will children.”<sup>1</sup> Therefore, according to Aristotle, children and non-human animals do not act voluntarily. He made a distinction between humans and non-human animals first.

A necessary condition to be a moral agent which has to be fulfilled is, then, an ability to decide voluntarily, which only exists in humans, specifically in those who act based on reason. He makes a further distinction between human beings, amongst them some are enabled to make moral decisions and some of them are not, such as children and people who are mentally disabled. Animals, toddlers and fools act in particular sense, but their actions are not subject to moral judgement, because their actions are not voluntary. If a dog suddenly steals freshly cooked chicken from the table, he acts upon his desire to feed himself, and his action is

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<sup>1</sup> Aristotle, *Nicomachean Ethics*, 3.1.25-30.

motivated by instinct, not reason. If I further work with this logic, then it seems reasonable to say that only a human being can cause wrongdoing.

But this gives rise to further problems, if animals or little children act in their own way, how are their voluntary actions distinguished from those actions ascribed to those who act based on their own decisions? It may seem unimportant at first glance, if an outcome of an action of a moral agent and an animal is the same. For example, if a dog steals your food, and an adult person steals your food. But it is in fact very important to distinguish between the two. This problem will be further addressed by Aristotle. He will develop in detail the idea that voluntary action, either done by an animal or a child, does not equal an action which is a voluntary action based on reason, or as Aristotle claims, an action which is done by choice, which will be shown.

Aristotle argues that children and animals both share the ability to make voluntary choices, but he also emphasised the fact that they do not commit their actions by choice, so they do certain actions voluntarily, but they are not chosen.<sup>2</sup> Children and animals do certain actions to fulfil their desires which occurred to them in the moment, but those decisions are not motivated by their choice, but by their desires, and as creatures who are not considered rational, they cannot be blamed or judged for their actions. However, an adult who steals food from you does so by choice. We may argue that both the dog and the man are hungry, but it is only the adult man out of the two who can consider the possible consequences of his action.

To summarise: Aristotle, claims that the moral agent is a human who possesses reason, therefore, the one who acts is aware of the consequences which follow their actions. A child or animal cannot be defined as a moral agent, then.

Neither non-human animals, nor children or mentally incapacitated humans are considered to have a fully developed reason by Aristotle. Children, of course, are human beings, but their mental development has not reached to the level of an adult yet. Mentally incapacitated adults will never reach the cognitive capacities of average adults. Even though both non-human animals and children and people with cognitive disabilities may act voluntarily to some extent, those actions are not motivated by reason, and because of that, they do not act based on their choice.

Therefore, those who do not act according to reason cannot be held responsible for their actions and this example includes both children, ‘fools’ and non-human animals. They certainly

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<sup>2</sup> Aristotle, Nicomachean Ethics, 3.2.5-10.

have motivations for their actions. Instead of acting based on their reason, they act in accordance with that which lead them to satisfy their basic needs, such as their need to access water and food, or their need to seek shelter and safety. Therefore, to blame them for intending to harm someone else by their actions is not correct. When acting in a particular way, they are not aware of the consequences.

In summary, only human beings with reason can be moral agents. Only they are morally responsible for their actions. And if only moral agents are responsible for their actions, then it is only their actions we can react to, either to praise or blame them, not children, people with mental disabilities, or animals.

The next part of the thesis will discuss those situations in which the moral agent is not fully in control of his actions, and then, a further question will arise, which is whether under such circumstances he can be held responsible even for something which was outside his control.

## **Moral luck**

In the previous section, Aristotle helped me specify what is required to fulfil the condition of being a moral agent and what is moral responsibility. The moral agent was defined as a rational human being, according to Aristotle. Consequently, it was mentioned that non-human animals, children and people with mental disabilities do not act based on reason.

The rational human who acts based on his reason is then responsible for his actions, whether his actions are intended to help or to hurt someone, as it was argued by Aristotle. For our actions, we are either praised if we acted well, or we are blamed if we acted wrongly, however in both cases we are judged morally if we are morally responsible agents.

Both praise and blame are moral responses to right and wrong actions, praise usually follows after we morally evaluate a person who did something right, and on the contrary, we blame a person who did something wrong. At least that is the intuition of how the concept of moral praise and blame function, because it is not likely that somebody was ever praised for his wrong actions, at least morally and if the responding subject was aware that a particular action was wrong. Therefore, I will focus only on moral blame, a reaction which follows when a moral agent acts wrongly.

It is then important to investigate the situation of a moral agent who is subjected to moral blame. What is the reaction to the wrong actions of other people after we blame them for acting

wrongly? Most likely, what we notice directly on first sight is the outcome of their action which makes them seem blameworthy on first sight. We may not be aware, however, of all the factors which were the predecessors of a particular action which ended in particular result, and similarly, the motives behind their actions.

But according to what we experience in the moment we find out about the wrongdoing, whether we are those who are hurt in the first instance, or whether we become familiar with the information that someone we know became a victim of some wrongdoing, a moral response follows. People involve their judgements to form a response to wrongdoing which was caused to them or the others. If somebody acts in a way which causes harm to us and such an action was chosen by them with all their awareness that their action is wrong, we hold that person responsible for such action and our blame follows.

However, it is important to take into consideration what exactly we blame the person for. Is it the malicious intention of the person for which we blame him? Is it the outcome of such thought which resulted in action, or is it the negligence or ignorance for which we blame the person? Or is it all of the factors?

These questions are also important to answer in order to understand the relation between moral responsibility and blame. In this sub-chapter, I will present us some situations in which it is crucial to distinguish between malevolent motives and bad outcomes, or cases of negligence or carelessness, or situations which were completely outside the actor's power. What presents another difficulty when connecting moral responsibility with blame is that in some situations it is not evident if a person is blameworthy, at least before a detailed evaluation of the person's motivation and outcome of his action is presented. It is less difficult to blame someone if he acted with intention to do something wrong, and his wrong intentions resulted into harm which he planned to cause in the first place. For the purpose of this chapter, I will present theories of Bernard Williams and Thomas Nagel, two important philosophers who deal with these issues.

A moral agent may be a part of chain of events which results in an outcome for which he may be subject to moral blame. This part will discuss this issue, focusing on situations when we are not fully in control of our actions. An important theory is provided by Bernard Williams

who addresses this problem. The phenomena which he presented deals with the issue of “moral luck”.<sup>3</sup>

This theory works with an idea that we are subjected to moral judgement despite the fact that we cannot control all the factors which happen when we perform an action. Williams provides an example of a painter, named Gauguin, who, while pursuing his dream of becoming a famous painter, abandons his family and sails to Tahiti, hoping for his great success.<sup>4</sup> The major point which Williams presents is the fact that by the time of his decision, Gauguin does not know whether his project will be successful. Consequently, Williams adds that Gauguin in this example relies on a possibility which has not become reality yet.<sup>5</sup> The problem arises because of the uncertainty of the result. We do not know yet whether Gauguin will be praised in the case of his success or blamed in the case of the outcome being unsuccessful.

Williams puts an emphasis on the success and only the success which may justify Gauguin in his decision, adding that this justification will be entirely retrospective. However, if he fails, there will exist no justification for his decision.<sup>6</sup> Therefore, there are situations in which it is not directly visible whether the moral agent can be blamed. In Williams’s example, we will praise Gauguin if he manages to become a famous artist. If he succeeds, he can justify his decision by the outcome. And consequently, if his attempt fails and he does not become a successful painter, he does not have any justification for his decision to leave his family behind. However, this potential success and further justification may not be justificatory enough for everyone.

That idea is developed further, what if two people intend to act in the same way, but the outcomes are different, because some occurrences were not in their control? Then, our moral judgement would differ in each situation.

Thomas Nagel provides us with his view on moral luck which is worth considering. He claims that we lack control over more events than we think: “Where a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment, it can be called moral luck.”<sup>7</sup> If we therefore treat someone as an object of moral judgement and he is not in control of his actions, we call it moral luck. Now,

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<sup>3</sup> Bernard Williams, *Moral Luck: Philosophical Papers 1973–1980*, 1st ed. (Cambridge University Press, 1981), <https://doi.org/10.1017/CBO9781139165860>. 21.

<sup>4</sup> Williams, *Moral Luck*. 22-26.

<sup>5</sup> Williams, *Moral Luck*. 23.

<sup>6</sup> Williams, *Moral Luck*. 24.

<sup>7</sup> Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1988). 26.

the concept may seem to be too abstract to understand its meaning, however, Nagel also provides an example which describes the situation which falls into his description.

Nagel also provides an example when we are not in control of our actions, and whether we receive praise or blame depends on external factors, no matter how good our intention was: “However jewel like the good will may be in its own right, there is a morally significant difference between rescuing someone from a burning building and dropping him from a twelfth-storey window while trying to rescue him.”<sup>8</sup>

Therefore, in some situations, there are external factors which influence our future exposition to praise or blame. If I manage to rescue someone from a burning building, praise awaits. However, if I fail this attempt, blame follows, even if my motivation was to save the person.

In conclusion, there certainly are situations where we are not fully in control of the outcome of our actions. In particular cases, we can be more or less blameworthy, as in the case of Gauguin. If his attempt to become a famous painter had failed, people, especially those close to him, would not have accepted the reasoning for his decision. And similarly, if someone succeeds in saving a person from a burning building, or he fails, is not in his control, yet he will be subjected to moral evaluation. The most important thought of this chapter is the idea that not every action we do is fully in our control, and therefore, those situations we consider when moral judgement is passed.

## **Determinism and free will**

In the previous section, Williams and Nagel provided that sometimes, things are not in our control. Are we even in control of our decisions, and do we possess free will? It is important to elaborate about the issue whether all actions we make result from our free will, or our paths are predestined, or determined.

Taking this question into consideration may guide us to an answer about moral responsibility. This question analyses whether human decisions happen without their control, or if people are entirely responsible for decisions which they make, because they originate in free will. This subchapter will analyse both approaches to conclude which option is more plausible, and such an answer will be very important in discussions about moral responsibility, blame for wrongdoing and the following responses, including punishment of the ‘guilty’. In the chapter

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<sup>8</sup> Nagel, *Mortal Questions*. 25.

where moral luck was discussed, it was implied that people are not in full control of the outcomes of their apparent decisions.

Some scholars are defenders of determinism, and this term means that all events which happen, and moral decisions that we make during our lifetime, are causally determined, or predestined, meaning that we seem to have no control over them.<sup>9</sup> A defender of determinism is Baruch Spinoza who is persuaded that events in our lives are given and that we have no control over them, even though we may think of ourselves being absolutely free: “Men are deceived because they think themselves free...and the sole reason for thinking so is that they are conscious of their own actions, and ignorant of the causes by which those actions are determined.”<sup>10</sup> In other words, people are persuaded that they decide based on their free will, and they think so because they are aware of what they are doing, however, by the time of their action, they do not take into consideration that what they are doing by the moment is already determined by various independent causes.

Let us present a fictional example. What if a body builder, a non-vegan, has two options to choose his breakfast from? Either he can eat eggs or an apple. He has them both in his storage, and only them, and he chooses the apple. Theoretically, we may think that the choice to eat apple instead of eggs was fully in his control. But we have to take external factors into consideration.

What if he has a training in the gym soon in the morning? Then, he decided to eat an apple before the training, because he needs carbohydrates which function as a fast absorbed energy source. What if he decides to eat an apple simply because it was his morning appetite? Yes, it may sound as if this was his free will to decide to eat the apple, but what if in that particular moment, he was unconsciously guided by the custom that he usually exercises in the mornings, or simply, his body was craving for those carbs? Then, he was determined to eat an apple, either because he was thinking of his future workout, or his body desired the apple, which means he only obeyed his bodily needs, and he was determined to choose the apple.

And what if he did not decide to eat the apple solely because of the training? Maybe if his storage was full of other foods, he could have decided otherwise, but in this situation, he could not, because he did not shop for other food yesterday. Therefore, the bodybuilder could

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<sup>9</sup> Carl Hoefer, ‘Causal Determinism’, in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta and Uri Nodelman, Summer 2024, <https://plato.stanford.edu/archives/sum2024/entries/determinism-causal/>.

<sup>10</sup> Baruch de Spinoza, *The Philosophy of Spinoza*, vol. 2010 (Project Gutenberg, n.d.), [https://www.gutenberg.org/files/31205/31205-h/31205-h.htm#Page\\_175](https://www.gutenberg.org/files/31205/31205-h/31205-h.htm#Page_175). 175.

have thought that his decision to eat the apple was freely made, but since there were also other factors present, he was determined to eat the apple instead of eggs.

If we think about the details which could have influenced his decision, it is not likely that his decision was absolutely free. And consequently, it may be said that if the factors were different, he would have chosen otherwise. The result, whether it is eating the apple, or us crossing a street in a concrete moment, may us lead to think that all we do is chosen freely.

In conclusion, determinism means that our actions are determined, and they are not willingly chosen by us, even though we may think so. If this theory is true, it will also influence our views about moral responsibility.

In theory, it is plausible to think that people are predestined to act in a particular way. In cases of moral blame, if determinism is true, what would be the point of moral blame and punishment? This is leading us to another plausible option, what if determinism is not an obstacle to free will? The position which is considering that is called compatibilism.<sup>11</sup>

Our inability to do otherwise may be more important than we think, for example we cannot choose the following and yet, by that what we have never had control over, our lives were strongly directed: People are influenced by the environment in which their upbringing took place, and similarly, they are influenced by the institutions which provided their education to them and similarly, they are influenced by the peers with whom they were surrounded. In conclusion, if we are living, or surviving under particular conditions, such conditions strongly shape our lives, including our personalities, our actions and reactions. To prove that determinism is true, or at least that compatibilism is true, prescribing us to act in particular direction, an example will be provided: that of serial killers.

These are people who murdered several other people, who we mostly know from newspapers and documentaries which inform us about the inhumane crimes they committed, or from fiction as well. They are known for their cruelty, or for the amount of people they have murdered. But since it is most likely that majority population only heard of them through newspapers and popular culture, a definition of serial murder is needed. According to Federal Bureau of Investigation, serial murder is “The unlawful killing of two or more victims by the

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<sup>11</sup> Michael McKenna et al., ‘Compatibilism’, in *The Stanford Encyclopedia of Philosophy*, Summer 2024, <https://plato.stanford.edu/entries/compatibilism/>.

same offender(s), in separate events.”<sup>12</sup> I assume that most people do not adore them, but rather contempt them for their crimes. However, there certainly exist people who are attracted to the boom of detective books and true-crime podcasts and it has to be noted, that some may even be romantically attracted to them.

. Some of us may recall a serial killer named Theodore (Ted) Bundy, a man who raped and murdered dozens of women. His decision to brutally murder those women most likely invokes feelings of contempt and fear in those who hear about it, and lack of understanding why he did so. However, Nood Syed, in her paper ‘Fear of Love’, found out, on the other hand, that instead of avoidance, fear resulted rather in romantic interest.<sup>13</sup>

Taking into consideration that a serial killer attracted women by whom he was supported, there arises a question why they did so. The female supporters could have been identified by a term ‘hybristophilia’, and American Psychological Association provides us an explanation of a word: “Sexual interest in and attraction to those who commit crimes. In some cases, this may be directed toward people in prison for various types of criminal activities.”<sup>14</sup> The question whether serial killers are determined to become such will be shortly discussed, the issue whether their female supporters were also determined will not. However, it is not excluded that the conclusion about the serial killers will also apply to them. In this moment, let us focus on the serial killers only, despite the fact that presumably, women who support serial killers are possibly also subject to moral blame.

It has been proven that a statistically significant number of serial killers were tortured mentally or physically, and they were also often sexually abused during their childhood.<sup>15</sup> Saina Munjal presented a statistic which is demonstrating the percentage of serial killers who experienced mental, physical or sexual abuse. The statistic shows that, in contrast to the regular population, serial killers experienced such mistreatment more often.<sup>16</sup>

Those people were born into particular conditions which often included physical, mental or sexual abuse, and they had no control over them. Their personalities were shaped by the surrounding environment, which was very unwelcoming to them, and I suppose that that most

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<sup>12</sup> ‘Serial Murder’, Page, Federal Bureau of Investigation, accessed 30 August 2024, <https://www.fbi.gov/stats-services/publications/serial-murder>.

<sup>13</sup> Nood Syed, ‘Fear to Love: Fear Could Explain Women’s Attraction toward Male Serial Killers’, 3 January 2023, <https://doi.org/10.58445/rars.109>.

<sup>14</sup> ‘APA Dictionary of Psychology’, accessed 29 August 2024, <https://dictionary.apa.org/>.

<sup>15</sup> Saina Munjal, ‘CHILDHOOD TRAUMA AND SERIAL KILLERS’, *International Journal of Social Science & Economic Research* 08, no. 08 (2023): 2322–42, <https://doi.org/10.46609/IJSSER.2023.v08i08.016>.

<sup>16</sup> Munjal, ‘CHILDHOOD TRAUMA AND SERIAL KILLERS’. 2324.

readers would agree on the fact that no child should ever be exposed to such treatment. Such traumatic events, which included harsh physical punishments, humiliation, sexual assault and no promise for their suffering to end soon, could have been the factors which resulted in their outburst of brutality in the future.

Therefore, in this thesis, I will not defend that pure determinism is the correct answer to the point where moral judgement and the associated punishment would be considered pointless. And neither I will defend the option that we are always free to choose our actions, because many factors may influence our future decisions. The statistics provided above demonstrated that a huge percentage of serial killers experienced a trauma, and potentially, those factors which they were not in their control determined them to become the monsters they have become. However, if they were aware of what they were doing, and no mental illness was present, which could deprive them of moral judgement, it may be implied that even though some level of compassion for them might be present, they are responsible for their actions.

Therefore, two seemingly conflicting ideas were present to co-incide. The first implying that our actions are determined, the second implying that we are free to choose our actions, meaning that we are always responsible for our decision and its consequences.

What if both options exist next to each other, and both of them coincide in terms of how people act, in a non-exclusionary way? A term which allows both determinism and free will stand next to each other, in a non-exclusionary manner, was shortly mentioned in the paragraphs above. The term allowing the fusion of both determinism and free will which is named compatibilism is presented, again.<sup>17</sup>

Compatibilism takes both options into consideration, therefore the co-existence of determinism and free will means that it may be true that people are in certain ways determined, but still, they are able to choose their actions as moral agents, and that for their actions they may be held responsible, if they acted based on their free will. One of the first philosophers to write in support of compatibilism was Aristotle, who believed that we are responsible for our voluntary actions. Humans, according to him, are free to choose among alternatives which are based on their dispositions.<sup>18</sup> For Aristotle, our actions are recommended by our dispositions in a strong manner; however, we are free to choose whether we decide to act upon those dispositions, and whether we decide to work hard to be virtuous.

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<sup>17</sup> McKenna et al., 'Compatibilism'.

<sup>18</sup> Aristotle, *Nicomachean Ethics*, 3.4.5-30.

Another defender of compatibilism is Thomas Hobbes who claims that liberty occurs if a man can do what he wills or desires.<sup>19</sup> If he wills and desires certain things and he acts upon such wills or desires, that does not necessarily mean that he acts from free will. That is a very important note, because Hobbes also admits that people do certain actions not of their free will, even though they consciously decided to act in particular manner. For example, a man decided to throw his goods from a ship because it will sink soon. He throws the goods willingly, but he only does so out of his fear, and most likely, he would never do that if the ship was not about to sink, throwing out the goods would be considered unwise otherwise.<sup>20</sup>

Therefore, Hobbes claims that fear and liberty are consistent.<sup>21</sup> In conclusion, Hobbes admits that while humans can act freely, that means choosing among alternatives, however, if humans are determined to be in an unusual situation, such as in the sinking ship, they would act otherwise, adapting to the circumstances.

He may have decided to throw his goods from the ship so it does not sink until the help arrives, on the other hand, he would never throw his goods out if he did not have to. Sometimes, humans find themselves in unusual situations and despite the fact that they make a decision, it does not necessarily mean that their decision was free.

In conclusion, this subchapter presented multiple ideas towards deciding whether humans are subjected to determinism or whether they possess free will. The most plausible answer to this issue is that people do indeed possess free will. Hard determinism would suggest that if it is true, then free will does not exist. Then, if there existed no free will, moral blame would be pointless and similarly, legal punishment. Therefore, determinism is not considered a correct response in terms of this thesis, because elaborating about punishment would be a waste of time.

However, there are certain factors which people have no control over, such as the place in which they were born and similarly, they have no power to decide into which environment they were born, and so powerless to decide whether their environment would lead to their being cherished or abused. That does not exclude our actions can be freely chosen.

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<sup>19</sup> Thomas Hobbes and J. C. A. Gaskin, *Leviathan*, Oxford World's Classics (Oxford; New York: Oxford University Press, 1998). 140.

<sup>20</sup> Hobbes and Gaskin, *Leviathan*. 140.

<sup>21</sup> Hobbes and Gaskin, *Leviathan*. 140.

It was demonstrated that a significant number of serial killers, according to statistics, were victims of mental, physical or sexual abuse earlier in life, and such an early environment could have been a factor which led to their offending. However, even those hostile conditions to which they were exposed are ultimately not an excuse from the terrible crimes which they committed later in adult life (rather, an explanation) and most people who experienced some form of abuse never become serial killers. An excuse should not take place here, because they were aware of their actions. However, an explanation of how they became who they are, may help us understand the process. And possibly, in ideal conditions, understanding could mean prevention.

Compatibilism seems to be the best description of how we function morally in this world, in which we are determined by certain conditions, yet we may be held responsible for our moral decisions. Compatibilism takes into consideration determination of our actions, yet it does not exclude free will and therefore, moral responsibility.

### **Response to wrongdoing- Strawson, reactive attitudes**

In this part of the thesis, the main aim is to address the responses to wrongdoing. It is important because particular responses are an inseparable part of human creatures, and if it is true, then they have to be taken into account, because they are a necessary component of humans.

Theories speaking about humans and their responses to harm by others are many, meaning that most of them will not be discussed in this paper. But a concise overview of possible responses is needed, because it will be useful to grasp the notion of how our responses to other's action influence our behaviour.

To introduce this issue, one of the ~~most~~ most important authors who has had the most to say about possible responses to wrongdoing is Galen Strawson in his philosophical essay *Reactive Attitudes*, which is a part of a collection of essays, *Freedom and Resentment*. He approaches the issue with the assumption that determinism and free will are not exclusive<sup>22</sup>, and if determinism is true, it does not exclude free will and exposition to moral responsibility.

In his discussion, he addresses the question of whether moral evaluations, e.g. praise and blame, are pointless or not, depending on the question of whether determinism is true or not. If determinism is true, it would be pointless to blame someone for his actions, at least for

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<sup>22</sup> P. F. Strawson, *Freedom and Resentment and Other Essays* (London: Routledge, 2008), 3.,

the 'pessimist'.<sup>23</sup> However, above was mentioned the term compatibilism, which means allowing that free will is compatible with determinism, and it will be proven by Strawson that his intuition seems plausible.

Strawson presents to us an idea, or a concept, of attitudes which naturally occur in humans in situations where we morally respond to someone else's action. Those attitudes he divided into two categories. The first one includes our objective attitudes, and his definition reads as follows: "To adopt an objective attitude to another human being is to see him, perhaps, as an object of social policy; as a subject for what, in a wide range of senses, might be called treatment; as something certainly to be taken account, perhaps precautionary account, of; to be managed or handled or cured or trained; perhaps simply to be avoided, though this gerundive is not peculiar to cases of objectivity of attitude."<sup>24</sup>

Maybe, the reader grasped the notion of impersonality which seem to occur in this definition of an objective attitude. Seeing another human being as an object of social policy, or a subject of our management or training, does not seem a proper way to interact with others; it lacks something humane. Also, Strawson admits that an objective attitude is not an attitude which is sustainable in the long term, because something is missing: "The objective attitude may be emotionally toned in many ways, but not in all ways: it may include repulsion or fear, it may include pity or even love, though not all kinds of love. But it cannot include the range of reactive feelings and attitudes which belong to involvement or participation with others in inter-personal human relationships; it cannot include resentment, gratitude, forgiveness, anger, or the sort of love which two adults can sometimes be said to feel reciprocally, for each other."<sup>25</sup> The emotions occurring are only, let be said, notions of them, and not all of them, but feelings included in inter-personal human interaction are missing.

Strawson adds to the issue, that humans tend to fall towards objective attitudes if a person towards who those attitudes are felt, is somehow incapacitated or immature, for example a neurotic, or a child. However, he also mentions that humans tend to have the objective attitude to a human who is not in any manner incapacitated or immature for several purposes: "as a refuge, say, from the strains of involvement; or as an aid to policy; or simply out of intellectual curiosity."<sup>26</sup> That note is extremely interesting, because to me it seems that evaluation of other

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<sup>23</sup> Strawson, *Freedom and Resentment and Other Essays*. 1.

<sup>24</sup> P. F. Strawson, *Freedom and Resentment and Other Essays* (London: Routledge, 2008). 9.

<sup>25</sup> Strawson, *Freedom and Resentment and Other Essays*. 9-10.

<sup>26</sup> Strawson, *Freedom and Resentment and Other Essays*. 10.

human's actions, can be used in that impersonal manner, specifically from the point of 'aid to policy', by the institutions which are, for example, punishing criminals, in a figurative sense. I said 'by institutions', but what are they? Nothing else than other humans, however from a detached position, punishing from the position of some authority. However, personal attitudes are not present, or should not be, if someone punishes from the position of legal authority. Then, an objective attitude takes place here, and involvement of deep human emotions is missing. Strawson himself admits that objective attitude will not sustain for a long term: "Being human, we cannot, in the normal case, do this for long, or altogether."<sup>27</sup>

If objective attitude is missing those features, and we cannot do it in the long-term, there must necessarily exist other attitudes which included those missing features typical for interpersonal relationships, those which include strong emotions, not just small notions of them. Isn't it the emotions which necessarily participate in what makes a human, distinguishing us from robots, or institutions which should keep some form of distance?

He claims that there exist two main options, gratitude and resentment, accordingly to whether we perceive the particular act as an act of good will, or on the contrary, ill will. Those responses he named as 'reactive attitudes', the polar opposites being gratitude and resentment.<sup>28</sup>

Another important thought which Strawson provides is targeting towards our reactive attitudes and how they change if there are other conditions present in somebody's action. Those conditions may include for example compulsive behaviour, innate incapacity, insanity, or other less serious variations of psychological illness, or there exist factors which opting for other choice would not be morally acceptable or would be a requirement which is too much for ordinary man, according to Strawson.<sup>29</sup>

Most likely, humans would respond differently if an insane person committed a crime, for example, during a psychotic episode, compared to a crime committed by a sane person. In the first case, our feeling of resentment would be lower, and we may also feel some amount of compassion to the criminal. In the other case, our resentment would be more intense, we may even feel hatred towards him, and compassion for a person who deliberately hurt the other would be close to non-existent.

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<sup>27</sup> Strawson, *Freedom and Resentment and Other Essays*. 10.

<sup>28</sup> Strawson, *Freedom and Resentment and Other Essays*., 6-7.

<sup>29</sup> Strawson, *Freedom and Resentment and Other Essays*, 3.

To conclude Strawson, he provided us a background of reactive attitudes which describe attitudes which are present during inter-personal interaction, even though, some attitudes may be more detached from intense emotions than others, such as the objective attitudes which were mentioned first. There are different types of interactions, and differently we respond to the ones who are the closest family and friends, and in a different way we respond to those who are not related to us in any way.

## Theories of punishment

This chapter will present the reader with different purposes of punishment. If we punish a wrongdoer, there has to be a reason why he is being punished for his action in a particular manner. A description of different purposes of punishment will be useful to understand why some purposes of punishment cannot be considered ethical in modern society and why they should be abandoned, and other ways should take their place instead.

In theory, we will be speaking about a person who fits into a definition of the moral agent. That is a person who is an adult, fully developed cognitively, who can be blamed, judged and punished for his actions. What is the correct response to his wrongdoing in terms of theory of punishment? It will be demonstrated in this part, that punishment and its execution can be applied based on different purposes and that some purposes of punishment are worse than the others.

Firstly, it is important to divide multiple theories of punishment into categories, so they may be understood systematically, in a way. Theories of punishment are divided into two basic categories. This classification describes those various theories of punishment from the point that they work with time differently, prescribing importance either to the past, or the future.

It may seem too abstract on the first glance; someone has committed a crime in the past, for which he is punished in present, it may be an intuition. However, it will be shown that this distinction in time is crucial to understand why different purposes, or theories of punishment belong to one or the other category, and what is their practical impact.

The first category includes the theories of punishment which are described as forward-looking, or, generally speaking, utilitarian. Utilitarian theories of punishment, according to Internet Encyclopedia of Philosophy, justify punishment if it brings any good, and that good can be understood as the benefits to society.<sup>30</sup>

By the time the particular punishment is used, we are looking to the future consequences of such punishment, which is, for example, a prevention of future crimes, or, in other words, what is valued are the consequences of punishment.<sup>31</sup> Those consequences may include, for example, prevention of committing similar offences in the future, meaning that the individual

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<sup>30</sup> Kevin Murtagh, 'Punishment | Internet Encyclopedia of Philosophy', accessed 29 August 2024, <https://iep.utm.edu/punishme/>.

<sup>31</sup> Gregg D. Caruso, 'A Non-Punitive Alternative to Retributive Punishment', in *The Routledge Handbook of The Philosophy and Science of Punishment*, ed. Derk Pereboom (Routledge, 2022). 355.

will not commit a similar crime again, consequently, it may deter the others to commit similar crimes, which may benefit society as a whole.

In contrast, the second category which includes the theories of punishment is deontology. The deontological outlook, and a backward- looking or, in other words, backward-looking theories of punishment, have something in common.<sup>32</sup> According to Lee, backward-looking theories of punishment are not interested in the future consequences of the punishment, even if those could benefit society, for example by reducing crime rates to some extent. The purpose of punishment here, for backward-looking theories, is to punish the criminal for what he did in the past, and punishment is considered deserved.<sup>33</sup>

Consequently, Caruso provides his explanation of why retributive punishment is related to backward-looking: “One of the most prominent justifications of legal punishment, historically and currently, is retributivism, according to which wrongdoers deserve the imposition of a penalty solely for the backward-looking reason that they have knowingly done wrong.”<sup>34</sup>

Two basic categories into which theories of punishment are divided were presented, that is forward-looking, or utilitarian theories of punishment on one hand, and the backward-looking, or deontological theories of punishment, on the other.

In the following text, different sub-types included in the two basic categories will be explained. Firstly, different utilitarian, or in other words, forward-looking theories of punishment, will be explained.

One of the utilitarian theories of punishment, which may correspond with a forward-looking approach, is the deterrence theory. The word itself intuitively inserts that this theory justifies a punishment for the purpose of deterring crime. The issue is whether it deters the criminal himself, or the others who are aware of the fact that they would be punished if they committed a crime. Michael S. Moore distinguishes between special deterrence and general deterrence, specifying that special deterrence aims to deter the criminal from committing more crime, whereas general deterrence aims to punish an offender which in fact deters the others

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<sup>32</sup> Hsin-Wen Lee, ‘Consequentialist Theories of Punishment’, in *The Palgrave Handbook on the Philosophy of Punishment*, ed. Matthew C. Altman, Palgrave Handbooks in the Philosophy of Law (Cham: Springer International Publishing, 2023), 149–69, [https://doi.org/10.1007/978-3-031-11874-6\\_7](https://doi.org/10.1007/978-3-031-11874-6_7). 1-3.

<sup>33</sup> Lee, ‘Consequentialist Theories of Punishment’. 1-3.

<sup>34</sup> Gregg D. Caruso, ‘A Non-Punitive Alternative to Retributive Punishment’, in *The Routledge Handbook of The Philosophy and Science of Punishment*, ed. Derk Pereboom (Routledge, 2022). 355.

from committing crime.<sup>35</sup>The term deterrence signifies that deterrence theory aims to deter crime, to lower its rates or to prevent it. By doing so, sometimes harsh punishments may be used. Imagine that particular crime happens too often in a fictional country, and the authorities are trying to solve this issue. To lower the number of this crime, the criminals will be exposed to a punishment which is considered extremely disproportional to the crime.

What if, for example, people in that fictional country steal bread very often? Then, authorities may decide to burn the thieves of bread publicly. The others will have a notion of what could have happened to them if they also stole bread in the future. Not only that the citizens directly see what happens to those who offend the law, they also see the excruciating pain of the one who is being punished and by that notion of pain, they are deterred to steal bread in the future. An example which was provided is exaggerated in order to be understood easily. It may seem, on the first sight, that the disproportionality of punishment would deter future crimes significantly. In theory, deterrence may lower the crime rates by punishing in a way which is significantly disproportionate to the crime which it desires to deter.

However, it does not mean that this type of punishment in fact lowers the crime rate or that people will not rebel against it by public riots which may in extreme situations lead to coup d'état. Firstly, potential benefits were presented, those included a decrease of crime rate. Perhaps there are disadvantages which will negotiate that possible benefits are worth it, including the public riots in extreme cases. The possible disadvantages will be presented later, so they can be compared to other theories of punishment and their benefits and disadvantages.

Other utilitarian theory of punishment is incapacitation. Michael S. Moore provides a description of this punitive theory: "Incapacitation is the simplest of theories, because, as the name suggests, the good that punishment achieves is that it incapacitates an offender by doing something to him that prevents him from committing further crimes."<sup>36</sup> To punish a criminal means to prevent him from committing more crime in the future, which also means that in case of prevention of the criminal to commit more crimes, there occurs the benefit of protecting the society as a whole. Contrary to deterrence theory, incapacitation does not focus on lowering the crime rates by demonstrating the harsh consequences of one's crime.

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<sup>35</sup> Michael S. Moore, *Placing Blame: A Theory of the Criminal Law*, 1st published in paperback (Oxford ; New York: Oxford University Press, 2010). 84.

<sup>36</sup> Michael S. Moore, *Placing Blame: A Theory of the Criminal Law*, 1st published in paperback (Oxford ; New York: Oxford University Press, 2010). 84.

Incapacitation prevents the guilty individual from committing more crime in the future. For example, if a serial killer is imprisoned, his freedom of movement is restricted in order to protect the majority from him- if he is imprisoned, there will be no more victims murdered by him, if there is no opportunity to commit more crimes on the other inmates, for example. But even in prison, such dangerous person may be simply incapacitated by solitude. Of course, the benefit of this theory is only legitimate until a criminal manages to escape from prison or other facility, which may present a serious disadvantage. However, there is no need to kill the criminal and consequently, society is protected. To some, this theory of punishment may not be right. The one who committed horrendous crimes is imprisoned, indeed, however, some may think that this type of punishment is simply not enough, and that the criminal deserves more serious punishment.

The third utilitarian, theory of punishment is restoration or rehabilitation. The purpose of punishment is to rehabilitate the criminal so he may be changed, and, in the future, he may be integrated back into the society. For example, if somebody sprayed graffiti on the wall, he would not be imprisoned or he would not simply pay a fine, but he would be sent to clean the wall he destroyed. That person will experience how difficult it is to clean it and possibly, he would realise that his behaviour was wrong, so he will never do it again. The purpose of rehabilitation is not to publicly humiliate the criminal, but to show him the right path. By doing so, the punishment helps the criminal to reintegrate into society which also benefits of it by lower crime rates.

However, Michael S. Moore distinguishes between two possible approaches to rehabilitation: “First, imagine that what is done is to place offenders in extraordinarily awful places of detention, with harsh treatment by inmates and guards. Here, non-dangerousness is achieved because such offenders either become ‘penitent’, or they are no longer willing to commit crimes because they are unwilling to risk again such awful treatment.”<sup>37</sup> In this sense, criminal reaches rehabilitation through experience discomfort which would prevent him from committing future crimes. In this sense, it may be thought that this variant of rehabilitation has something in common with deterrence, namely self-deterrence from committing more crime.

Also, the opposite approach to rehabilitation has to be presented by Moore: “For comparison, imagine that the same level of non-dangerousness can be achieved if prisoners are placed in much nicer facilities, with kinder personnel. Imagine further that the second such

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<sup>37</sup> Moore, *Placing Blame*. 85.

programme, although much more expensive than the first, not only makes the offender non-dangerous but also makes him a flourishing, happy, and self-actualizing member of our society.”<sup>38</sup> In comparison to the harsh treatment of the first approach to rehabilitation, it seems that both the individual and society are benefited. The individual is enabled to live as an adequate, equal, member of society, whereas society is ensured that this person no longer wants to be a criminal. If it was possible, I would consider this second option more plausible, because the criminal is being treated as a human being.

To conclude utilitarian theories of punishment, they are not used to point out to the crimes which were committed in the past. Utilitarian theories of punishments take into consideration possible benefits if a punishment is applied. Their purpose is to influence the future, either by deterring people from committing crime, protecting the society from those are considered dangerous, or to enable the criminal his future reintegration.

The other category which will be discussed is the backward-looking theories of punishment. Those theories do not consider the future, let it be prevention of the crime, protection of society from the criminal or returning him back to the society. On the contrary, it focuses on the past, on the crime which was committed. Even if there exist benefits to the individual or the whole society, those benefits are not taken into account. The purpose of punishment which belongs to this category is retributive theory of punishment.

This entire thesis is focused on the retributive punishment and the problems which arise with it. Findings which will be presented may show that even if retributive may sound plausible on the first sight, it is not the right type of punishment in the end. And consequently, its weak points will lead us to consider other types of punishment to be better which were mentioned above in the utilitarian theories of punishment.

Firstly, then, a definition of a retributive punishment has to be presented. Simplified, a retributive punishment is based on the conception of ‘an eye for an eye’, that is a concept of punishment which is so ancient that it was described in the Holy Bible.<sup>39</sup> From the concept of ‘an eye for an eye’, we can understand that the offender shall receive a similar amount of pain he has caused. Such concept is known for millennia, and it insists on the premise that an

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<sup>38</sup> Moore, *Placing Blame*. 85.

<sup>39</sup> Holy Bible. Exodus 21:24. (NIV).

offender deserves to be imposed to a similar amount of pain which he has caused. Also, the retributive punishment often works with an idea that punishment is deserved.<sup>40</sup>

Several methods were used to end a life of a criminal in the Middle Ages. For example, methods which were frequently used was hanging.<sup>41</sup> For noble men, beheading was usually used.<sup>42</sup>

In this time period, also other retributive punishments were used to punish the criminals, many of them were not used to end a life of the sinner, even though the life of the sinner could have ended soon after, namely due to infection. For example, thieves were often punished by mutilation, so they often ended with their hands or genitals cut off.<sup>43</sup> Cutting off the limb of a thief does not sound as a punishment which is proportional to the crime which happened, but it was used. Consequently, even if cutting the hand off did not kill the criminal directly, he experienced excruciating pain and also, infection could occur and end his life later on.

Retributive punishment is often criticised, because its opponents may argue that imposing the same amount of harm is no longer necessary, which is also my point of view. Why would it be a necessity to hang criminals, if they may be imprisoned instead, or possibly rehabilitated? There are several options provided, and they were listed above. But also, it has many defenders, who may present various arguments which may seem plausible at least on the first sight, as will be shown.

In conclusion, the aim of this chapter was to introduce theories of punishment to the reader, to demonstrate that there exist two main classes of punishment, utilitarian and deontological.

The first one included the forward looking or utilitarian theories of punishment, and it was described that those theories are aiming to the future, either to the benefit of the criminal, the society as a whole or both. The punishment was not focused on the crime, which was committed in the past, even if it was an extremely horrendous one. The focus of punishment was on the future consequences either to the individual who is punished, or society as a whole. The punishment was used to deter others from criminal activity which would in the end lower the

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<sup>40</sup> Alec Walen, Edward N. Zalta, and Uri Nodelman, 'Retributive Justice', in *The Stanford Encyclopedia of Philosophy*, Winter 2023, <https://plato.stanford.edu/entries/justice-retributive/>.

<sup>41</sup> William Andrews, *Medieval Punishments: An Illustrated History of Torture* (New York: Skyhorse Publishing, Inc., 2013). 7.

<sup>42</sup> Andrews, *Medieval Punishments*. 54.

<sup>43</sup> Andrews, *Medieval Punishments*. 67.

crime rates, or to incapacitate the criminal so he cannot commit more crime, or to rehabilitate the criminal so he can return as a functioning individual to the society. Utilitarian theories of punishment included deterrence, incapacitation and restoration or rehabilitation.

The second class included the backward-looking theories of punishment, often related to deontology, and on the contrary, those are not focused on the future consequences, even if those would benefit the individual or the society as a whole, that is not taken into account for backward looking, or deontological theories of punishment. The future destiny of the criminal is irrelevant. If a crime was committed, the punishment is focused on the crime which happened in the past. Retributive punishment prioritizes that the similar amount of pain is inflicted on the criminal. Therefore, it should be proportional. If a punishment for a murderer is capital punishment, that is considered just. The next chapter will present the reader with information considering the history of capital punishment mainly in the retributivist sense, and consequently, the problems arising with retributive punishments will be discussed.

## **Capital punishment: Philosophical approaches to punishment in history**

In history, there existed various methods of how to treat a wrongdoer who was found guilty of a crime. While punishing a criminal, several methods and types of punishment were used depending on the severity of his crime, to reach justice.

For example, in situations when crime could be reconciled by a financial compensation, a compensation to the victim could function as the proper legal punishment.<sup>44</sup> Such compensation was ordered to restore the loss of the victim, which was caused by the perpetrator's action, if it was thought by the authorities that such punishment is accurate to restore justice.

In other situations, if a man was proven guilty of committing a serious crime, he could be sentenced to death. The issue is, of course, the perspective from which particular crimes are considered so serious that no other type of punishment was enough to be inflicted upon the wrongdoer to restore justice.

Philosophical attitudes towards justice and capital punishment were evolving as philosophers provided criticisms of past practices which included various revisions of thoughts of the others and their own and as societies were changing.

Therefore, the most important aim of this chapter is to investigate the meaning of capital punishment in history and how the usage of capital punishment reflected the approach towards justice. Historically, capital punishment was used as a punishment for various crimes and different practices were used to end a life. How to treat people who committed crimes was specified by legislation of that state. However, what is the most important about the use of capital punishment in the past are not the specific methods of executions and description of the bloody details, but the fact that capital punishment served a specific purpose. Despite the fact that there existed a spectrum consisting of how capital punishment could have been executed, the importance which is dedicated to this thesis is devoted to the purpose of punishment. Why exactly was it thought that capital punishment adequate? Why was it a capital punishment instead of a different legal punishment and why it was so important to punish the criminals for their wrongdoings by death instead of using other reactions to their crimes? The issue which

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<sup>44</sup> 'Wergeld (n.)', in *Online Etymology Dictionary*, Retrieved August 12, <https://www.etymonline.com/search?q=wergeld>.

will be discussed is the purpose of punishment and reasons of why exactly it was used instead of other practices.

To include some important examples of legal systems in which capital punishment was included, the Code of Hammurabi has to be mentioned, because it is the first historical artefact recorded which contains written laws and legal sanctions for violating the laws which was preserved until today. The Code of Hammurabi specifies how to treat those who violated the law, and death penalty is often used.<sup>45</sup>

Many ancient states included capital punishment into the criminal law. However, how a just punishment was understood could be very different from contemporary perspective, and similarly, what was considered as a crime for which one morally and legally deserves death, is very different now, at least in contemporary Europe. I assume that the crucifixion of Jesus Christ, a prophet of significant importance for the Christians, is a necessary part of general knowledge, at least in Christian countries. And similarly, the execution of Socrates, a famous philosopher from the ancient Greece, is a very important milestone in philosophy.

Therefore, this chapter aims to describe the relation between capital punishment and philosophy of the past. For the purpose of my thesis, I will include mainly the philosophers of the past who were defenders of capital punishment, because in order to defend the claim that capital punishment is not right, it is important to understand, why it was, to some, justifiable and right, even though, even defenders could have provided the examples in which it would not be considered an adequate response to a crime.

## **Thomas Aquinas**

In the Middle Ages, religiosity was a crucial factor influencing both the public life and the private affairs of the citizens. The foundation of justice was standing on the philosophical conception of divine law. The conception of divine law implied that all human beings, and that included the clerics, the king, and the regular citizens and peasants are all subjected to the will of God.<sup>46</sup> Despite the fact that the king possessed the main political authority and source of power, even he was a subject to god's will.

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<sup>45</sup> 'Early History of the Death Penalty', Death Penalty Information Center, accessed 29 August 2024, <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>.

<sup>46</sup> Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province (New York: Benziger Brothers, 1947), I-II, q.91, art.5. <https://www.ccel.org/a/aquinas/summa/home.html>.

Therefore, the structure of the state and its political hierarchy, as well as the division of power were constructed in terms of the divine law, and similarly, the relations between citizens, whether their status in society and public life, or between the relatives in the private life, were directed by the divine law.

The society of the Middle Ages and its functioning hierarchy was dependent on the Christian God and His rule. The division of power between the social classes was a system functioning on the foundation of divine authority. In this setting, each individual and his attachment to particular social class were bound to the authority of classes above him.

To understand the relationship between legal punishment which was decided by the past authorities and the divine law, according to which the just punishment was specified, it is very important to explain what information philosophers provided either to defend or oppose capital punishment.

Thomas Aquinas was one of the most influential philosophers of the Middle Ages and his works include, amongst other serious questions, the question whether death penalty is justifiable. It may be familiar from our history classes that some people were sentenced to death for crimes which would not even be considered illegal, and therefore non-punishable in the twenty-first century. Let alone the fact that if those crimes were not considered illegal, they no longer can be described as crimes.

However, it is interesting to analyse why exactly some actions were considered so bad that those who acted should have been punished by death.

The philosophical work which I consider to be so important that in no exception it should be omitted, is his work *Summa Theologica* in which he provided important answers to the questions which were related to the issues of morality and justice and also the question of punishment for a diverse spectrum of sins.

To fully understand Aquinas and his thoughts I will shortly summarize how he worked with his thoughts in *Summa Theologica*. Firstly, he addressed a question, ‘whether it is sinful to kill sinners’.<sup>47</sup> After addressing that question, he moved to some present objections to the question itself which often included references to the Bible or Augustine. Aquinas, in the first objection, implies that it is always a sin to kill a sinner.<sup>48</sup> According to the second objection, he

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<sup>47</sup> Aquinas, *Summa Theologica*, II-II, q. 64, art. 2.

<sup>48</sup> Aquinas, *Summa Theologica*, II-II, q. 64, art. 2.

says that according to the divine justice, sinners are kept alive for repentance.<sup>49</sup> His reasoning is supported by Ezechiel 33:11 where the major thought of the text implies that the god himself wants the wicked to turn away from evil to live a different life.<sup>50</sup>

The objections he presented against killing the sinners are based on the foundation of the Bible and such objections include the fact that a conflict which was firstly opened by the criminal shall not be resolved by the victim. Another thought present in the second objection simply claims that the human law is still subjected to the divine law. According to the divine law, the sinners should be allowed to repent and to live a better life instead of being killed.

His own answer to the question whether it is sinful to kill a sinner, is based on the question whether the sinner presents a danger to society as a whole. If there is a part on the human body decaying, it is then right to make an excision of that rotting part and consequently, it is right to kill a sinner if he presents a danger to society as a whole.<sup>51</sup>

To conclude Aquinas's main thought on executing sinners, he mentioned that sinners may be kept alive if they do not present a danger to society, being enabled to seek repentance. However, if the sinner is dangerous for society, similarly as an infected limb, that limb should be excised and the sinner killed.

## Thomas Hobbes

It was spoken in this thesis, that capital punishment is used to punish criminals who are found guilty of a crime according to the legislation of the state. The authorities may be for example the king, the church, or the parliament...Law is a result of political system, and political issues from philosophical perspective are discussed by political philosophy. One of the most influential political philosophers is Thomas Hobbes, who contributed to the discussion on social contract theories.

In *Leviathan*, he provides a detailed approach to social contract, from a naturalist perspective. According to him, without established rules, men are constantly in the state of war against each other.<sup>52</sup> What is the connection between the state of nature, and legal punishment? I will firstly mention Hobbes's reasoning of why some form of social contract is needed. If there is no establishment of rules to which people are bound to obey, there exist no crime. If there is

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<sup>49</sup> Aquinas, *Summa Theologica*, II-II, q. 64, a. 2.

<sup>50</sup> Holy Bible. Ezechiel 33:11. (NIV).

<sup>51</sup> Aquinas, *Summa Theologica*, II-II, q. 64, a. 2.

<sup>52</sup> Thomas Hobbes and J. C. A. Gaskin, *Leviathan*, Oxford World's Classics (Oxford ; New York: Oxford University Press, 1998), 84.

nothing defined as crime, also punishment and seeking any form of justice is non-existent, as he writes: “Where there is no common power, there is no law: where no law, no injustice. Force, and fraud, are in war the two cardinal virtues. Justice, and injustice are none of the faculties neither of the body, nor mind.”<sup>53</sup> Therefore, without an official system of rule, justice is unreachable.

Laws are created to be obeyed by the people, and laws define what is and is not considered a crime and consequently, they define the punishment for crimes. Hobbes provides an idea that social contract is resulting from the people’s desire to seek self-preservation. Two important concepts lie behind that.

Firstly, natural right, is: “the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life.”<sup>54</sup> Each man has the freedom to protect his own existence, it is given to him by his nature. Secondly, the natural law, is: “a precept, or general rule, found out by reason, by which a man is forbidden to do, that, which is destructive of his life.”<sup>55</sup> If it is natural for humans to protect themselves, and consequently, they are forbidden to do what is destructive for themselves, it is necessary that humans seek some form of agreement which results in peace.<sup>56</sup>

In this point, I am getting closer to the question of punishment, which is a part of social contract on which people agreed. If a person is a member of society which agreed on particular laws, it may seem logical that a criminal is executed if he was aware of the punishment. David Heyd comments on Hobbes, that even though the system of laws has been established, the natural desire of self-preservation prevails, even if the punishment, given by the authorities, is considered just, such in the case of execution of a criminal.<sup>57</sup> It is then important to ask, whether Hobbes agrees with capital punishment, and if he is, whether such agreement is not inconsistent with the natural tendency for self-preservation.

Hobbes elaborates further on this issue, and he logically assumes that if a person decides to commit a crime, and he is aware of it, then that punishment is deserved: “Whosoever voluntarily doth any action, accepteth all the known consequences of it; but punishment is a known consequence of the violation of the laws, in every commonwealth; which punishment,

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<sup>53</sup> Hobbes and Gaskin, *Leviathan*, 85.

<sup>54</sup> Hobbes and Gaskin, *Leviathan*, 86.

<sup>55</sup> Hobbes and Gaskin, *Leviathan*, 86.

<sup>56</sup> Hobbes and Gaskin, *Leviathan*, 87.

<sup>57</sup> David Heyd, ‘Hobbes on Capital Punishment’, *Vol. 8*, History of Philosophy Quarterly, 1991, no. No. 2 (April 1991): 119–34, pp. 120-121.

if it be determined already by the law, he is subject to that.”<sup>58</sup> The decision to commit crime, knowing that punishment awaits, necessarily implies that whoever acts in that manner, deserves punishment. At least this is implied by Hobbes. However, there may exist an incoherence between the deserved punishment, which violates the life of the criminal, and a natural desire for self-preservation. In *De Cive*, Hobbes emphasizes the effort of humans to preserve themselves, and no social contract can force them.<sup>59</sup> That would, however, require another paper to discuss this issue. To conclude, Hobbesian contract theory is founded on the basis that humans naturally seek peace, if possible, to preserve themselves. Philosophising, if there exist inconsistency between natural desire to survive, and being exposed to punishment which was agreed on, unfortunately, I will not include. But to conclude Hobbes, it may be said that if someone commits a crime, a punishment is deserved, at least from the perspective of social contract.

## **Immanuel Kant**

Another defender of capital punishment, who I think should be included in this chapter, is Immanuel Kant, because his defence of capital punishment stands on an interesting ground. In the defence of capital punishment, but not only of that, also in favour of punishment in general, he stands on the basis of the proportionality of punishment for the crime.

The proportionality of punishment means that everyone should receive what he deserves. Intuitively, it may seem that receiving proportional punishment is sometimes impossible, especially if class distinction is present, if a victim of a crime is not a rich person, but the poor, and the rich person is the offender. However, Kant finds an example of how to apply retributive punishment even to those, who on the first glance, seem unpunishable: “Thus, for example, the imposition of a fine for a verbal injury has no proportionality to the original injury, for someone who has a good deal of money can easily afford to make insults whenever he wishes. On the other hand, the humiliation of the pride of such an offender comes much closer to equaling an injury done to the honor of the person offended; thus the judgement and Law might require the offender, not only to make a public apology to the offended person, but also at the same time to kiss his hand, even though he be socially inferior.”<sup>60</sup> By violating pride

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<sup>58</sup> Hobbes and Gaskin, *Leviathan*, 194-195.

<sup>59</sup> Thomas Hobbes and Sterling P. Lamprecht, *De Cive or The Citizen* (New York: APPLETON-CENTURY-CROFTS, INC., 1949), <https://ia601300.us.archive.org/17/items/deciveorcitizen00inhobb/deciveorcitizen00inhobb.pdf>. 39.

<sup>60</sup> Immanuel Kant and John Ladd, *Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*, 2nd ed (Indianapolis: Hackett Pub. Co, 1999). 139.

of the rich, retribution comes in place, and he is given what he deserves. This example may seem rather humorous, imagining that the poor gets his justice by an insult of a person who is socially superior to him. But here, Kant described very well the principle of a deserved punishment, even if serious crime was not committed.

Now, a more serious example of retributive argument is presented, on his approach towards capital punishment, which is no less interesting than the first one. If a murder is committed, there exists, according to Kant, no other possibility to punish the offender, because there does not exist an equation between death and staying alive, even if the life of a criminal was the most terrible for the rest of his days and similarly, there is no equation between murder and retributive punishment if the criminal is not executed.<sup>61</sup> Kant is very certain about the ends of a criminal. However, what is his justification of retributive punishment, except of the willingness to apply a proportional punishment?

On the first sight, it may be thought that since retributive punishment is deserved, and a similar amount of pain is inflicted towards the criminal, that a criminal should be exposed to some other form of suffering, for example, some form of torture, if he, for example, murdered several people in an extremely cruel manner. However, Kant has never argued for an unnecessary infliction of pain to the criminal despite the fact, that according to him, capital punishment is deserved.

To clarify that, it has to be said, that Kant, as an advocate of retributive punishment, only desires what is deserved, and nothing else: “But the death of the criminal must be kept entirely free of any maltreatment that would make an abomination of the humanity residing in the Person suffering it.”<sup>62</sup> It is quite an interesting point which he made. Despite the fact that he defends retributive approach to punishment and is an advocate of execution of a criminal from the retributive approach, he, in no way, wants to violate the humanity of a criminal. It is the humanity which resides in him, which is the cause, that he, being punished, even by death, is still considered a human being, not an animal to be slaughtered.

To conclude Kant, he is definitely a defender of capital punishment from a retributivist perspective, because he thinks of punishment being deserved, and similarly, according to what was presented, it should be proportional, even though, not always literally, should inflict a

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<sup>61</sup> Kant and Ladd, *Metaphysical Elements of Justice*. 139-140.

<sup>62</sup> Kant and Ladd, *Metaphysical Elements of Justice*. 139-140.

similar amount of harm on the criminal. However, unnecessary suffering should not take place in punishment, for the sake of the dignity, even of the worst criminal.

## Contemporary discussion against capital punishment

In the previous part, the readers were presented with some important philosophers of the past, who provided their arguments defending capital punishment. In case of Thomas Aquinas, it was concluded that in some situations, it is possible to keep the criminal alive, if he does not present a potential danger to society, enabling him to seek repentance.

In case of Thomas Hobbes, it was concluded that since social contract is a result of agreement, the punishment is deserved, if person commits a crime, and punishment for a crime was agreed upon by that society.

In case of Immanuel Kant, it was concluded that capital punishment from a retributivist perspective is deserved, however, Kant also justified capital punishment on the foundation that punishment should never contain attributes which are inhumane and not dignifying, such as torture, even if the crime itself was horrendous.

Aquinas, Hobbes and Kant provided ideas justifying when a capital punishment can be applied on a criminal. A question whether such punishment is acceptable for certain crimes requires more detailed investigation, however, in contemporary philosophical perspectives, to find out whether there exists justification for it in present democratic society.

I would defend the claim that the capital punishment is old fashioned and that the main problem with this type of punishment is that it is unjust, highly ineffective and irreversible, which is the main problem when sentencing an innocent person. However, there exist many different approaches defining what is effective means and reasons for punishment. And consequently, if capital punishment is considered just by some theories, it is important to ask, if it is right. I will do my best to persuade the readers, that capital punishment has no place in democratic society and no theoretical benefits would exceed the wrongness behind it.

Since the twentieth century, the usage of capital punishment declines worldwide.<sup>63</sup> The European Parliament provided a statistic in which it is evident, that several countries in the world became abolitionist. In terms of EU, they insist on the protection of human rights, and all the member states abolished it, due to European Convention on Human Rights.<sup>64</sup>

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<sup>63</sup> 'Death Penalty: Key Facts about the Situation in Europe and the Rest of the World', Topics | European Parliament, 25 February 2019, <https://www.europarl.europa.eu/topics/en/article/20190212STO25910/death-penalty-in-europe-and-the-rest-of-the-world-key-facts>.

<sup>64</sup> 'Death Penalty'.

That speaking for European countries, protection of human rights of its citizens is significant, and the Convention includes the right to life as the first human right mentioned in the list: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”<sup>65</sup> From this standpoint, no capital punishment is legitimate, because it was agreed on that it is not, and no institution has the right to deprive anyone of his life, which is the most valuable, no matter of the crime which was committed.

I absolutely agree with this claim, because no institution shall possess the power to punish people in a way which is cruel, degrading human value, and most importantly, irreversible. Therefore, I will defend in this part of my thesis, that the system, or let me say, approach against capital punishment implemented by the European countries, is right and countries who still use capital punishment for several reason, should abolish it.

There exist not many democratic countries which still incorporate capital punishment into their legal system, and which actively enforce it. World Population Review provides a map of the current situation, that means, which states abolished capital punishment, or suspended it, and which countries still enforce it in 2024. More and more countries join the abolitionist states, with Kazakhstan and Papua New Guinea being the most recent.<sup>66</sup> Also, it is clearly visible, that most democratic countries are the abolitionists, compared to the number of states which are considered rather authoritarian, or totalitarian, such as Saudi Arabia, North Korea or China, and still enforce capital punishment. One of the democratic countries which still enforce the use of capital punishment, are the United States of America.

It is strange, that in 2024, the USA stand on this map next to the totalitarian countries, which certainly abuse executions to silence political opponents, because I may assume that capital punishment should be understood as a violation of human rights, as it is, for example, understood by the EU.

It is the violation of human rights, namely the right to life, which troubles me here. I have two objections against capital punishment, considering the right to life. Firstly, even if a criminal is found guilty of the crime, his being executed is still a violation of his right to life.

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<sup>65</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5, 4 November 1950, <https://www.refworld.org/legal/agreements/coe/1950/en/18688> [accessed 29 August 2024].

<sup>66</sup> ‘Countries with Death Penalty 2024’, accessed 29 August 2024, <https://worldpopulationreview.com/country-rankings/countries-with-death-penalty>.

Despite the fact that punishment could be understood as deserved, from a retributivist perspective, violation of human rights brings no justice.

Secondly, no one should be punished unjustly. If an innocent person is executed, not only that his human right to life was violated, but he was also imposed to unnecessary suffering, which should not take place neither in the case of a guilty, nor the innocent. Even if there were benefits originating from executions of the guilty, these do not outweigh the loss of an innocent life. Both objections will be discussed in the next part.

### **An (un)just punishment, an unjust execution of an innocent**

As I said only a few paragraphs above, this part will discuss arguments against capital punishment from a retributivist perspective on the basis that firstly, execution of a guilty criminal is still a violation of his human rights, even if it is considered right from the retributivist, and secondly, if an innocent person is sentenced to death, no possible benefits of those who were executed as guilty, could justify killing an innocent human being.

I will now focus on the first objection, that even if capital punishment could be justified by a retributivist, it is still a violation of human rights, and such violation has no place in democratic society. To move closer to the solution of this problem, it is important to remind what is the foundation of retributive punishment.

According to Michael S. Moore: “Retribution is the view that we ought to punish offenders because and only because they deserve to be punished. Punishment is justified, for a retributivist, solely by the fact that those receiving it deserve it.”<sup>67</sup> The justification of a retributivist is founded on the grounds that punishment is deserved, that is the ultimate criterion which necessarily has to be present if punishment should be inflicted. If a retributivist justifies punishment in situations where it is deserved, and only where it is deserved, and other factors are not important for the sake of punishment, such as benefits which are justificatory for utilitarians, then, how to persuade a retributivist that a murderer shall not die?

A retributivist may say that criminals are, by their criminal activity, depriving others from what the criminals themselves enjoy, and that is unfair, according to Thom Brooks.<sup>68</sup> If this is right, it does not necessarily speak in favour of retributivism, because non-retributive punishment exist as well, and can be used to restore that situation. For example, a vandal can

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<sup>67</sup> Moore, *Placing Blame*. 153.

<sup>68</sup> Thom Brooks, ‘Making Punishment Fit The Crime’, in *The Routledge Handbook of The Philosophy and Science of Punishment* (Routledge, 2022). 23.

be sent to wash off the graffiti that he sprayed on a newly painted wall, instead of being put to prison for a month.

It is only an example of a non-serious misconduct, however. What about people who commit the most horrendous crimes, such as rape, torture, or murder? Does it mean, according to Brooks, that those criminals also ‘enjoy’ something, for example, a murderer life, which he took away? Brooks himself writes that this is unclear, instead, he thinks that we would think that murderers and the alike, in fact, harm themselves through criminal activity, choosing what is evil and makes their characters rotten.<sup>69</sup> Brooks is not sure about this assumption, that rapists and murderers are enjoying any benefits from criminal activity, and neither am I. It may be considered unfair, that somebody has taken life of another, attacked his dignity, and his right to life, but imposing a capital punishment from the perspective of deserved punishment changes nothing to the better. The crime has happened, and imposing execution for the sake of retribution cannot change what happened in the past.

Not only that capital punishment cannot return what has happened in the past, it negatively affects the future, that is, the future of the criminal, which will soon end, and possibly, the future of how we value human life, if it is enforced. Ending a human life is no longer considered right by the most democratic countries. I mentioned that most democratic countries abolished capital punishment. On the website of The Diplomatic Service of The European Union, we may find a justification for abolition of death penalty in the states of the EU: “The death penalty is incompatible with human dignity and the inalienable right to life. It violates the right to live free from torture or cruel, inhuman or degrading treatment or punishment. There is no evidence to suggest that it acts as a deterrent to crime.”<sup>70</sup> The state institutions provide a necessary protection of human rights of their citizens, which is the right to life. Execution of a criminal is nothing but a protection of his human rights. Therefore, capital punishment is not an adequate method to combat crime, if it is considered inhumane, and the state should protect the right to life.

It may be implied, that countries which use capital punishment, protect their citizens from the criminals. However, even if all criminals were executed in one moment, and their lives were violated for the sake of the future of the rest, crime will never disappear.

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<sup>69</sup> Brooks, ‘Making Punishment Fit The Crime’. 23.

<sup>70</sup> ‘Abolition of Death Penalty and Fight against Torture | EEAS’, accessed 30 August 2024, [https://www.eeas.europa.eu/eeas/abolition-death-penalty-and-fight-against-torture\\_en](https://www.eeas.europa.eu/eeas/abolition-death-penalty-and-fight-against-torture_en).

With every incoming generation, there would be new criminals born, and killing the murderers would not prevent murders from happening. Those few distorted human beings are not to be scared from such consequence. It is proven that countries which enforce capital punishment do not dispose with lower crime rates compared to those who use other types of punishments, according to ACLU.<sup>71</sup> Therefore, the inefficiency of death penalty in terms of protecting society was also proven, as it does not lower the crime rates, and it does not increase safety of the majority.

To conclude the first objection, execution of a criminal is still a violation of his human rights. Institutions of the state shall protect human rights of their citizens, and imposing capital punishment means imposing harm, at least to the countries of the EU, and I agree that this perspective is correct.

Also, it was not proven that capital punishment, on the other hand, serves as means to protect the wellbeing of the society, that means, protecting citizens from criminal activity. It was demonstrated both by The Diplomatic Service of the European Union and ACLU, that using capital punishment does not lower crime rates.

The second objection to capital punishment is that if an innocent person is sentenced to death, no possible benefits of those who were executed as guilty, could justify killing an innocent human being. However, in the first objection, it was demonstrated that capital punishment does not deter crime. Lowering crime rates could have been considered a benefit, but it was proven that this benefit is non-existent.

Therefore, the only thing which remains to be presented as an argument against capital punishment in this part, is the fact that execution of an innocent is not impossible. I claim that even a single innocent person executed is enough to abolish capital punishment. Human creatures are not flawless, and neither are institutions, because they are governed by them. I can imagine that in authoritative or totalitarian states, executions of innocent people are not an exception. However, how many innocent humans are executed in democratic countries which still enforce capital punishment, such as the United States of America? It may be thought that a democratic state will adopt some precautionary mechanisms to prevent that from happening. Despite this assumption, Sarah C. P. Williams claims that about 4 percent of the sentenced may

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<sup>71</sup> 'The Death Penalty: Questions and Answers', *American Civil Liberties Union* (blog), accessed 1 August 2024, <https://www.aclu.org/documents/death-penalty-questions-and-answers>.

be innocent.<sup>72</sup> This number may be lower than in totalitarian regimes (from which I don't expect an honest statistic), however, it is not close to zero. For that reason, capital punishment should be abolished, because it puts the rightful citizens in danger.

In conclusion to the second objection, if the state attempts to protect human rights of the citizens, it shall not, under any circumstances, present a danger for those who it shall protect. If the state recognizes protection of human rights to be just, then, it should not inflict what is unjust.

### **Capital punishment as legal murder**

In this chapter, my aim is to prove that capital punishment, especially from the perspective of retribution, but not only, is not an adequate response even to the most serious crimes, because I will defend the claim that legal authorities should not be allowed to take away a life of a citizen for the reason that it may be understood as an institutionalized murder.

Why? As the institutions and law are established to protect the well-being of majority, which was implied in the previous part, preserving the human rights of the citizens, which includes the right to life, it is contradictory that they should be allowed to take a life away.

It is intuitive that legal authorities are those who legitimately punish those who committed a crime which was defined by the law. There exists a legal framework, and the whole system is constituted on the basis of some form of a social contract. Therefore, it may be understood that people agreed on the system which is also capable of enforcing law. If there is a general agreement that a criminal should be executed for a crime which is defined as mortal, is it then a legitimate punishment? My answer is, no, because capital punishment can be abused, and it may equal to institutional murder.

Capital punishment and its definition may be understood as institutional murder, hidden in the most noble thought of protection, much more dangerous for the majority. I am not the only person in the world who sees the inefficacy and potential harm. Cesare Beccaria is accusing institutions of committing murder, attacking their citizens without scruple: *“Is it not absurd, that the laws, which detect and punish homicide, should, in order to prevent murder, publicly commit murder themselves?”*<sup>73</sup> He finds such act rather ironic and highly hypocritical.

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<sup>72</sup> ‘More Than 4% of Death Row Inmates May Be Innocent’, accessed 30 August 2024, <https://www.science.org/content/article/more-4-death-row-inmates-may-be-innocent>.

<sup>73</sup> Cesare Bonesana Beccaria and Voltaire, *An Essay on Crimes and Punishment. By the Marquis Beccaria of Milan. With a Commentary by M. de Voltaire.*, New ed., vol. 1872 (W. C. Little and Co., 1764), [http://files.libertyfund.org/files/2193/Beccaria\\_1476\\_EBk\\_v6.0.pdf](http://files.libertyfund.org/files/2193/Beccaria_1476_EBk_v6.0.pdf). 53.

The institution, claiming the obligation to protect the folks, is causing them the same harm as the criminals.

Beccaria also criticised public executions, because they may cause other effect than preventing crime, or benefiting society in any other way, and that is compassion felt for the executed: *“The execution of a criminal is, to the multitude, a spectacle which in some excites compassion mixed with indignation. These sentiments occupy the mind much more than that salutary terror which the laws endeavour to inspire; but in the contemplation of continued suffering, terror is the only, or at least, the predominant sensation.”*<sup>74</sup> In modern times, however, it is very unlikely to witness an execution, unless a person lives in a country, most likely totalitarian, where such practice is done to scare political opponents. The intention to discourage people from committing crime may have the opposite effect. The suffering of the executed brings our emotions to the surface. Instead of obedience and respect for law, distrust and contempt increases. Such act may result into public unrest in extreme cases, which is a very interesting argument.

Therefore, another argument against capital punishment is that it does not cause wrongdoing to the criminal only, but the whole society. In extreme cases, institutions abuse their power against the citizens. It may be argued against this claim that it would not have happened in society which is just, and its law is based on just principles. But both history and presence are persuasive enough to consider this argument. One example from presence is the civil unrest in Iran which begin after a female citizen, Mahsa Amini, was murdered by morality police.<sup>75</sup> It is a sad demonstration of government abusing powers which were believed to protect its citizens, while interested to do the exact opposite.

According to the findings from previous arguments, it is to be concluded that capital punishment does not bring benefits to the well-being of the whole society, nor does it bring them protection from wrongdoing. In fact, the institutions may be the cause of wrongdoing. Fear does not prevent people from committing crime and executions are not just because there is a chance of executing of innocent person, and it may destabilise the whole society, because

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<sup>74</sup> Beccaria and Voltaire, *An Essay on Crimes and Punishment. By the Marquis Beccaria of Milan. With a Commentary by M. de Voltaire.* 52.

<sup>75</sup> Charmaine, ‘More Protesters in Iran Have Been Sentenced to Death as Political Unrest Continues’, CNBC, 22 November 2022, <https://www.cnbc.com/2022/11/17/more-protesters-in-iran-sentenced-to-death-as-political-unrest-persists.html>.

people feel rather compassion than contempt for the executed, and in extreme situations, institutions start to abuse their power.

Therefore, capital punishment should be abolished under all circumstances.

## Conclusion

The general aim of my thesis is to provide evidence speaking against capital punishment, trying to demonstrate that such practice is inhumane and should not take place in modern society.

At the beginning, I decided to provide terminology which is often used in moral philosophy in connection to punishment. That is mainly moral agency, moral responsibility and blame.

By Aristotle, it was defined who is a moral agent, therefore one who can be blamed for his actions, and consequently, to bear consequences, which can also be a punishment, either from moral perspective, legal perspective, or both. It was found that only a human, who is neither a child, nor fool, can be moral agent. Consequently, animals are not capable of moral agency, either. However, even a rational human being who commits a crime, shall not be executed, because it is violating his right to life.

In the part considering moral luck, it was shown by Williams and Nagel that sometimes there are external factors over which we have no control. Williams's example of a famous painter, Gauguin, was presented in order to put emphasis on the notion that even if we have a certain aim, we have no control over the outcome. It is the outcome of our action, which subjects us to moral condemnation. And consequently, Nagel's example of a person who attempts to save another from the fire in the building, in the case of success, will be morally praised and if he fails, he may be blamed for the outcome his attempt despite the fact that the aim to save the person was the same. It again shows that over something in our lives, we have no control, but still, we are subjected to moral evaluation.

In the part where determinism and free will were addressed, it was shown that it does not necessarily mean either-or dynamics. If determinism was true, what would be the point for any punishment? Since punishment exists, it may be assumed that some form of free will is present, for which we can be held accountable both morally and legally. It was shown that determinism can exist in a relationship which is not exclusionary, and that theory is called compatibilism. It was demonstrated that by some factors we are influenced, for example, serial killers were often exposed to child abuse of different kinds, which affected their personal development and future actions. However, since compatibilism allows that humans despite this fact possess free will, it may not be said that they should be excused from any form of punishment.

In the next chapter, Strawson's reactive attitudes were presented. Reactive attitudes are a set of attitudes which humans use during inter-personal interactions. However, it was found

that not all reactive attitudes are the same. For example, it was found that objective attitudes are missing something intrinsically human, something, which is part of us, and that interaction from the perspective of objective attitudes may be impersonal. It was shown by Strawson that this amount of impersonality is not sustainable in the long term. The other set of attitudes presented were our personal reactive attitudes, which contain deep emotions which naturally occur when we are morally evaluating others and their good or ill will, and those are gratitude and resentment. However, from the point of view of interaction between legal institution and a criminal, holding objective attitude may be necessary, because some level of neutrality and impersonality is needed.

In the following chapter, theories of punishment were introduced and discussed. There are two major groups of punishments. The first contains punishments which are justified by the utilitarian perspective, and that is focusing on the possible benefits of punishment which also justify its use. Those utilitarian theories of punishment are deterrence, incapacitation and rehabilitation. Since these theories justify punishment because of the consequences, the main importance is in the benefits which punishment enables, such as the lowering of crime rate in case of deterrence theory. In case of incapacitation, the possible benefit is the protection of society and the fact that the criminal does not have to be killed in order not to present danger to society. And in case of rehabilitation, it was shown by Moore that we can either rehabilitate a person through experiencing difficult conditions, for example in a dirty prison, that the criminal never wants to return. Or, on the other side, rehabilitation could be understood as a way to reintroduce the criminal to society by positive and supportive environment.

On the other side, deontological, or retributive punishment, does not put any emphasis on possible future benefits of punishment. On the contrary, it is in a sense backward looking, because what matters is the fact that the punishment is deserved, that thought has been included even in the Bible.

In the following chapter, approaches defending retribution were evaluated from the perspective of philosophers in history. Firstly, Aquinas claimed that sometimes it is possible to let the criminal live, so he could repent, however, if the criminal resembled of a disease spreading across the body, it should be cut off. Therefore, Aquinas approved capital punishment, but not necessarily in all situations, provided that the criminal should repent from his crimes, if the does not present danger to society.

Secondly, Thomas Hobbes was mentioned. He, as a contractarian philosopher, presented a theory of what is the reason that laws exist. He claimed that in the state of nature, human creatures are in the state of war, fighting against each other for self-preservation and resources.

However, humans also naturally seek peace, because that means self-preservation and safety, and so the social contract resulted into the beginning of the states. Since people agreed on the laws, those who disobey them deserve punishment. However, it is not sure whether his living in the state and obeying laws would correspond with our natural desire of self-preservation when the punishment would be imposed. Several perspectives of defending capital punishment were presented, even though not all of them were absolute advocates of it, with the only exception of Immanuel Kant. He insisted that capital punishment is deserved and therefore just, and that a criminal must be executed. However, he admitted that no criminal, even if executed, should ever experience torture or any inhumane treatment. However, that does not seem very plausible, because capital punishment itself may be understood as inhumane and cruel.

The next chapter and its sub-parts provided contemporary state of capital punishment in the world. Most of the democratic countries abolished capital punishment, and there was one very good justification of abolition presented. It is the one that, living in a state means that the state protects its citizen, and that protection includes protection of human rights, namely the right to life. However, the democratic USA stand on the map of enforcing countries next to, for example, authoritarian and totalitarian regimes.

Therefore, even if capital punishment from retributive punishment is understood as deserved, violation of human rights is not deserved and definitely not just. Execution of a criminal is still a violation of human rights, if it is understood that the state shall protect its citizen. Therefore, capital punishment is not justifiable. Consequently, it was shown that capital punishment does not present any benefits to society. For example, capital punishment does not deter crime, and countries with capital punishment do not have lower crime rates.

Another important argument against capital punishment is the chance of executing an innocent citizen. Again, that is a violation of human rights which the states shall protect, not, on the other hand, put rightful citizens in danger.

And consequently, capital punishment can be understood as an institutionalized murder, which was stated by Beccaria. He claimed that it is absurd that states which should detect and punish crime, commit murders themselves. He further implies that public executions, bring no benefit to the society. On the contrary, seeing the criminal suffer may actually have the opposite effect than to lower crime rates. It may be said that capital punishment is not that often public, as it was in the times of Beccaria, however, it still happens. That was shown by the case of Masha Amini, who was murdered by religious police. That is enough proof that capital punishment may be abused by the state, and therefore, it is a reason, important enough, to conclude that capital punishment should be abolished.



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