

What is the strongest argument in favor of capital punishment? What is the strongest argument against capital punishment? Which consideration is stronger and why?

Amongst a vast number of arguments made on the subject of capital punishment for murder, the best that stands in favor of capital punishment is Ernest van den Haag's view of the 'best bet'. While van den Haag actually makes a number of well-presented statements in capital punishment's defense, none of the others are quite so persuasive. Van den Haag states that punishments exist as a threat to deter crime, and those punishments that are carried out are justice for crimes that were not deterred. The punishment delivered is the cost of the crime, and it is argued that the higher the cost of the crime, the less likely someone is to commit it. Therefore, the thought of facing death would be assumed to deter potential murderers who would not be persuaded away from the crime by life imprisonment.

Yet there is no way of knowing for sure that such people exist, and this is where van den Haag's "best bet" comes into play. It is the best bet to assume that there must be at least one person who would be deterred by a death penalty when life in prison would not stop him from committing murder – making this assumption does not, in van den Haag's view, result in any detriment to society and it *may* prevent murders. "Execution of those who have committed heinous murders may deter only one murderer per year. If it does, it seems quite warranted." (van den Haag, 150) It's difficult, on the face of it, to argue against such a thing – murder is inarguably immoral and anything that prevents murder must therefore be a good thing.

Conversely is the compelling argument made by justices Marshall and Brennan in their dissent against the decision made in *Gregg v. Georgia*. The justices declare that the

death penalty is not something that should be tolerated in a civilized society. Living is the most basic of human rights, and to take life away is to deny the human worth of a person – who may be a criminal, but is still human. It is erasing all human dignity to declare that someone is worth so little that they do not even *deserve* to live out a life in prison. The justices argue that capital punishment is cruel and unusual, and therefore a violation of the 8th Amendment to the Constitution. Brennan observes that the 8th Amendment indicates the system of punishment must only dole out such punishments that recognize a person's worth as a living, thinking being and must not violate his human dignity.

The justices outline the wrongness of capital punishment on the grounds of the Constitution and of simple humanity. Jeffrey Reiman expands upon this argument in his rebuttal to van den Haag. Reiman points out that just because we *can* kill a man does not mean we *should*, and that some punishments are simply too brutal to be given. The 8th Amendment has made torture illegal, and so, Marshall, Brennan and Reiman would argue, why should capital punishment – which could be seen as a form of torture – be excused? Van den Haag's argument is a slippery slope, as Reiman pointed out in his writing. If deterrence is an argument in favor of the death penalty, it would also be an argument in favor of torture – a slow and painful death by torture might yet deter a criminal who would not be deterred by the threat of humane execution.

Contrasting the views of Marshall, Brennan, Reiman and van den Haag, it is easy for me to agree with Reiman and the justices. However compelling the best bet argument is on the surface, it falls apart upon examination. The simple fact that something *may* stop a crime does not make it the right response. In my reading of what the 8th Amendment entails, it is easy to see how Brennan and Marshall would identify the death penalty as

cruel and unusual. The deterrence argument does not actually invalidate the fact that capital punishment lessens a human's worth, and being a criminal does not in fact make a human less human. As discussed in class, there is no proof of validity in the case of van den Haag's argument; an assumption must be made that a potential killer being deterred by the death penalty is just as likely or more likely as being deterred by death in prison. There is no evidence to back up this claim. Conversely one does not need further substantiating evidence to say that ending a life is wrong – murder is, after all, what the death penalty is being proposed as a deterrent of in the first place.

The argument presented by van den Haag is therefore one that sounds good but is in fact clumsy on examination, especially as nothing indicates that the death penalty is a deterrent at all, let alone enough to make the best bet argument valid. Where there is no evidence that the death penalty is a valid deterrent, there *is* evidence that it is a maladaptive contribution to the judicial process, and is used in capricious and arbitrary fashions.

Employing the death penalty has the risk of executing the innocent, something which van den Haag would argue is excusable; I disagree. Executing the innocent is a form of murder, and using murder as a deterrent for murder almost seems laughable. Brennan and Marshall's dissent papers carry a firmer quality argument that appeals to the most basic of principles: that humans have rights, and that foremost amongst these rights is the right to continue on living. Dignity is something owed to every human, if not every living thing. The employment of the death penalty is removing that dignity by killing. It is an the action resting on the premise that people who commit murder are worth so little

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that they should not be permitted to take up space on this Earth. This is in violation with not just the 8th Amendment of the Constitution but of the most basic of human ethics.