

**PHILOSOPHY 1:
COMPARE AND CONTRAST BECCARIA AND MILL'S
VIEWS ON DEATH PENALTY.**

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ABSTRACT. An attempt is made to compare and contrast the views, with regard to the death penalty, of Cesare Beccaria and John Stuart Mill. It will be shown where the philosophers opinions agree and where they differ. This essay will deal with why crimes should be punished with the death penalty, how society can justify the infliction of this penalty, how an alternative punishment might be chosen and the problems with the actual application of the death penalty.

In most countries today, the death penalty still exists in one form or another. It is normally reserved, in Europe, for high treason and war crimes, although in America it is slightly more common. In 1764 when Cesare Beccaria wrote *On Crimes and Punishments* the death penalty was common; it was applied to many "trivial" crimes. When John Stuart Mill made his *Speech in Favour of Capital Punishment* in 1868 attempts were being made to abolish the death penalty.

The principle question asked when discussing arguments for and against the death penalty is whether the community is actually justified in taking the life of one of its members.

Both Beccaria and Mill agree that crimes must be punished: they just have different ideas about what a punishment is for and how it is best executed. Although Mill maintains that it is necessary to punish criminals and offenders in order to maintain society, he recognises that each individual has certain rights,

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“To have a right. . . is. . . to have something which society ought to defend me in the possession of. If the objector goes on to ask, why it ought? I can give him no other reason than general utility.”

UTILITARIANISM, John Stuart Mill, 1863.

However, Mill also recognises the vagueness of those rights,

“We are continually informed that Utility is an uncertain standard, which every person interprets differently and that there is no safety but in the. . . dictates of justice. . .”

“. . . a favourite contrivance has been the fiction of a (social) contract, whereby at some unknown period all the members of society engaged to obey the laws and consented to be punished for any disobedience to them. . .”

UTILITARIANISM, John Stuart Mill, 1863.

This implies that whatever is judged by the society as a whole should be taken to be definite and right but it may not be correct to violate the rights that the society has afforded the person in question. Beccaria has a simpler view about why it is right to punish people for crimes that they have committed,

“Laws are the conditions under which men, naturally independent, unite themselves in society. . . . they sacrificed one part of it (liberty) to enjoy the rest in peace and security. . . . Some motives therefore, that strike the senses were necessary to prevent the despotism of each individual from plunging society into its former chaos.”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

Despite this desire to preserve society, Beccaria wonders how much of ones liberty one actually has to sacrifice to become a member,

“The laws. . . are only the sum of the smallest portions of the private liberty of each individual. . . . Did anyone ever give to others the right of taking away his life? Is it possible that, in the smallest portions of libery of each, sacrificed to the good of the public, can be contained the greatest of all good, life?”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

Both Beccaria and Mill believe that punishments should be appropriate for the crime committed. They both believe that the death penalty is an inappropriate punishment for nearly every crime that could be committed. However, Mill believes that it is appropriate to inflict the death penalty on murderers because, in the same way as a thief should be fined or an attacker flogged, he who takes human life should forfeit their own. Mill claims that this shows regard for the life that was taken unscrupulously. Mill also thinks that the only other punishment that could be considered befitting for a murderer is imprisonment with hard labor for life. He claims, at the time he was delivering his speech, that punishments of this nature were not properly executed or maintained and therefore, they were useless. On the other hand, Beccaria, who was writing earlier, thinks that a punishment is as much, if not more, for the benefit of the society at large as the person who originally committed the crime. He believes that life imprisonment and hard labor is the correct way to punish a murderer because, not only does the criminal's conscience have no escape from what went before, as it might if they were put to death, but they serve as a constant reminder to the rest of society. He believes that controlling crime by constantly reminding people of its consequences is more effective than momentarily shocking people each time one is committed. Beccaria thinks that although the results of the death penalty are immediately discouraging, they do not stick in the minds of onlookers for very long,

“It is not the intensity of the pain... but its continuance... The power of habit is universal over every sensible being... The death of a criminal is a terrible but momentary spectacle and therefore a less efficacious method of deterring others than the continued example of a man deprived of his liberty.”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

He goes on to explain that death is obscure to many people and that, due to the “closeness”, the suffering experienced by convicted criminals is much more intense. People always believe that they can manage to escape death or that when they die they will have their religion to protect them. With the death penalty the pain is over quickly, whereas there can be no mental or physical escape from punishments inflicted in this world, and what is more, *everyone* can see this. Beccaria believes this to be the greatest deterrent to people.

Mill also believes that punishments should be

“The least cruel mode in which it is possible adequately to deter from the crime.”

SPEECH IN FAVOUR OF CAPITAL PUNISHMENT, John Stuart Mill,
1868.

but he reasons adversely to Beccaria. Mill argues that if life imprisonment and hard labor are carried out effectively then they

“... are actually more vigorous than they seem; while it is, on the contrary, one of the strongest recommendations a punishment can have, that it should seem more rigorous than it is.”

SPEECH IN FAVOUR OF CAPITAL PUNISHMENT, John Stuart Mill,
1868.

Mill believes that punishment by death makes

“... an impression on the imagination so entirely out of proportion to its real severity.”

“... while it inspires more terror, is less cruel in actual fact than any punishment that we should think of substituting for it.”

SPEECH IN FAVOUR OF CAPITAL PUNISHMENT, John Stuart Mill,
1868.

Given that, for the crime of murder, Mill had already proposed life imprisonment and hard labor as the only alternative, he concluded that the death penalty was the only appropriate punishment.

Conversely, Beccaria believed that the punishment of slavery

“... is more terrible to the spectator than to the sufferer himself; for the spectator considers the sum of all his wretched moments whilst the sufferer, by the misery of the present, is prevented from thinking of the future.”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

Beccaria and Mill argue opposite cases with almost exactly the same argument and reasoning.

Both philosophers address the problems with regard to using the death penalty as a punishment. Beccaria argues that throughout history the death penalty has failed to work effectively and when the penalty is implemented it just exposes hypocrisy and contradiction,

“Is it not absurd, that the laws, . . . should, in order to prevent murder, publicly commit murder themselves?”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

Mill had already argued, earlier in his speech and in Utilitarianism, that punishing someone with their own crime was acceptable. His problem with the death penalty was that it is an irreparable punishment: if an innocent person is mistakenly sentenced to death then there is no reprise. There is no possibility of correction or compensation. Mill believes that it is not possible to overcome this problem if the courts are not favourable to the innocent. However, Mill thinks that the courts in

his country follow the maxim “It is better that ten guilty people should escape than that one innocent person should suffer.” Mill also believes that the seriousness of the implications of the punishment mean that judges and juries will be especially careful in analysing the case properly. Therefore, less people will be wrongfully convicted in the end. Equally, more people may wrongfully be released. Without the death penalty, innocent people can be pardoned retrospectively and guilty people will not get away with their crimes on the basis of doubt. Mill points out that one of the reasons for ensuring that the death penalty is reserved for only the most serious crimes is that if the punishment is deemed too hard, then judges and juries will refuse to enforce it by failing to convict guilty people. The effect of this will be that people will start to believe that they can get away with crimes, even if they are caught. The punishment will no longer carry the same magnitude of deterrence against the crime.

Despite his opposition to the penalty, Beccaria does present one case where he believes that the death of a citizen may be deemed appropriate. Beccaria believes that when the accused has enough power and influence to be able to endanger the security of an entire nation, i.e. the ability to incite a revolt and overturn the government, then this person may be put to death. Beccaria points out that this would only ever be the case when a nation is already in a state of anarchy or very near to disorder. If the society is working such that people spend their time and money on pleasures rather than survival and authority then there is never a valid case for expunging the life of any citizens.

Later on in *Of Crimes and Punishments*, Beccaria once again proposes a case where a criminal may be killed. He says,

“...in perpetual slavery, every criminal affords a frequent and lasting example; and if it be necessary... criminals should often be put to death.”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

Beccaria proposes that this technique be used in order to demonstrate the power of the law to its subjects. However, this becomes useless after a short while as people become accustomed to it. Beccaria does not follow this argument through: he does not say when, or why it should be used, although one assumes that it is to maintain order when things are beginning to fall into disarray. He does not say which criminals should be killed: should one just be picked at random and executed as the rest of society falls apart. - Perhaps a bit like a particularly gruesome hostage situation.

In both examples, Beccaria makes his arguments for the death penalty seem slightly unreasonable and slightly desperate when compared to his arguments against the penalty.

Both Beccaria and Mill believe that the death penalty was over used in the time in which they were living. Disparity occurs between how they believe that murder should be punished. Disparity in their arguments also occurs in what each of them believes to be the reason why criminals should be punished. Although their arguments oppose one and other in principle in these two areas, they both provide the same reasons for their beliefs,

“There is (an) advantage in the punishment of slavery, which is, that it is more terrible to the spectator than to the sufferer himself.”

OF CRIMES AND PUNISHMENTS, Cesare Beccaria, 1764.

“There is not, I should think, any human infliction which makes an impression on the imagination so entirely out of proportion to its real severity as the punishment of death.”

SPEECH IN FAVOUR OF CAPITAL PUNISHMENT, John Stuart Mill,
1868.

Beccaria argues that criminals should be punished in order to prevent them doing anymore harm to society and to actively discourage other

people from committing the same crime in the future. He thinks that the death penalty is an ineffective and barbaric way of punishing criminals and upholding society and its laws.

Mill believes that punishments should be designed such that the hardship inflicted on the subject is minimal but the message to the rest of society is a strong deterrent. He believes that the death penalty is the most humane way of punishing criminals and that the effect upon the observers is appropriate.

Both Beccaria and Mill agree that the death penalty loses its effect if it is over used or used inappropriately; i.e. when a less severe punishment would suffice.

Beccaria does not believe that anyone has the right, under the social contract, to take the life of another person for any reason. Mill argues that there is no social contract and society must be maintained by "strong" punishments. Beccaria believes that understanding of the laws and a fear of the consequences of breaking them will maintain society. i.e. Both philosophers agree that in the end the punishments will hold the society together. - They just disagree on which is the most deterring punishment.

This preference will, of course, vary from person to person and therefore, the appropriateness of the death penalty with respect to maintaining a society is linked only to the nature of the people it is trying to protect.

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