

# The Abolition of the Death Penalty & Does Life mean Life?

These papers explore some of the arguments for, and against capital punishment, and in doing so attempt to understand, criticise, and then apply some of the views held by eminent theorists, philosophers and criminologists such as, John Stuart Mill (1806 - 1873), Immanuel Kant (1724-1804), Jeremy Bentham (1748-1832) and Cesare Beccaria (1738 -1794). In examining their arguments, I will look to challenge both the utilitarian views, such as the death penalty as a morally justified punishment, views held by Mill and in the greater part Kant, as well as the views held by Beccaria, in his treatise, "On Crimes and Punishment", (1764), and Bentham who condoned the death penalty.

*Punishment must fit the sentiments of the law-abiding population rather than the Crime. It must be rigorous enough to strike fear in the hearts of that population but not so rigorous that that population sympathizes with the criminal. It must be rigorous enough to deter but not so rigorous that the people refuse to allow it to be imposed.* Walter Berns (For Capital Punishment) (1919-136)

I will briefly look at other issues such as, "life imprisonment" and whether it is a paradox, also prisoner categorisation, tariffs for lifers and if it is possible to, "play the system" whilst in prison.

Firstly, I will look to examine some of the argument made by Mill and Kant in support of the death penalty. Mill argued that the death penalty served as a deterrent, and as such provides, "security of life for all" John Stuart Mill (Speech-"In Favour of Capital Punishment"),(1868), conceding that although the act of the death penalty was in itself an evil treatment, it was for the greater good of all. Mill further argues that the death penalty is a deterrent, "by virtue of its ability to shock and horrify" Lloyd Steffen (Executing Justice) (1998 -54). Although Steffen makes an interesting challenge to Mill view, which is, "What if the society considering the death penalty is itself saturated with violence? What if violence is a feature of everyday experience, so that even if individuals have not been its victims directly, they have been touched by violence, have had their

*lives and lifestyles affected by the concern for violence, and even, in many cases, seek out exposure to violence for entertainment purposes?* Lloyd Steffen (Executing Justice) (1998 -54). In answer to some of this you only need to think back to 1993, and some of the views that were associated with the horrific killing of Jamie Bulger, and the views held by some and developed by the media, that the watching of violent video films and computer games was the cause of the killings. In Carol Anne Davis book, "Children Who Kill" (2004) she makes a very interesting point, stating, "*-but the facts show otherwise. Again and again, the children who killed merely enlarged on the violence that was done to them.*" A view that I can identify with, when drawing on, my practical experiences as a police detective. Mill further argues that consistency in applying the death penalty for aggravated murder by judges and juries is the only way that it will act as a deterrent. Kant supported many views held by Mill in saying, "*...that capital punishment is just retribution for a specific crime, murder.*" Lloyd Steffen (Executing Justice) (1998 -69) although Kant would oppose strongly Mill view that occasionally the innocent die, by arguing this can never be accepted as to do so would be unjust.

One case that highlights significant issues surrounding capital punishment is one of "miscarriages of justice." On the 9<sup>th</sup> March 1950 Timothy Evans was hanged for the murder of his daughter whilst living at 10 Rillington Place, his landlord being John Reginald Christie. Significantly Evans was hung for a crime that was later proven to have been committed by Christie- would the same have fallen upon Stephan Kiszko, the Guildford Four or Birmingham six, although these three cases present a further dilemma, being that a ruling of an 'unsafe conviction' is not the same as someone being innocent!

In contrast, Bentham felt given the harshness of the prison system meant that the death penalty could be seen as a less effective deterrent than prison. This argument might well have stood up in the 1800, however in the present day, with prisoners having such comforts as television and video games in their cells, and the philosophy that the penal system is not about punishment but a place for rehabilitation, I wonder if his views would be the same today? Both Beccaria and Bentham argued their opposition to the death penalty on two grounds; firstly, that the state does not possess the right to take lives, a point argued today by Amnesty International who oppose the death penalty on

grounds of human rights, namely article 3 & 5-'the right to life" and "the right not to be tortured or subject to any cruel, inhuman or degrading punishment".

The theorist's views are vital, as they are used today as the foundation upon which campaigners base their arguments. Whatever your view it is difficult for me to come down in support of one theorist, as they all make some valid argument. I will therefore sit on the fence knowing that the last execution in Britain was in 1964, when Anthony Allen and Gwynne Evans were hanged for the murder of John West. It was in the following year (1965) the, "Abolition of the Death Penalty Act" was passed, abolishing capital punishment, although requiring further ratification within 5 years. This happened in 1969, when Parliament ratified the abolishment of capital punishment for murder, which was further endorsed in 1999 when the then Home Secretary (Jack Straw) signed the 6<sup>th</sup> protocol of the European Convention of Human Rights abolishing the death penalty in the UK.

### Life Sentence

What does a life sentence mean? is it simply a paradox that superficially buys the public confidence but fails to deliver?

**The notion of a bargain with the public that there would be substitution of very long sentences, as a quid pro quo for abolition is nonsense.**

Sir Louis Blom-Cooper QC

Earlier this year the media pounced on headlines such as, "*52 life prisoners released after six years*". (news.bbc.co.uk), Is this what we understand to be a life sentence? When you relate this to retribution, it is hard to see how such short sentences served in prison are either in the spirit of the life sentence passed or in the interest of the public. It is worth considering the following, "does the early release of lifers reduce prison numbers, the 'Achilles Heel' in the labour government, or is that a short-sighted cynical view?"

In going back to the question, "what does a life sentence mean", we have to draw the distinction between, "the passing of a life sentence" and "serving life in prison", the two are distinctly different.

There are different types of life sentences, 'mandatory', which if convicted for murder is the only sentence which a court can pass, and 'discretionary' which is the maximum penalty that can be passed for other serious offences such as attempted murder, manslaughter, rape and armed robbery. The third category is, 'automatic life', where by the court must pass a sentence of life on persons convicted for a second serious violent or sexual offence (although the court has discretion here, which is often used). One further category relates to persons under 21 years whose detention for murder is referred to as, 'Detention during Her Majesty's Pleasure', and considered in a similar way to that of discretionary cases. These key categories are crucial as they are used when considering release.

Another important term to understand is the 'tariff', this is in principal the part of the sentence that must be served in prison. For mandatory lifers this is set by a Home Officer Minister after considering the views of the trial judge and the Lord Chief Justice, for all other lifers the sentence is either set by the trial judge or the Lord Chief Justice. There is also a short tariff that can be set which is for three years or less.

All lifers are given a, 'life sentence plan', which is aimed at addressing identified offending behaviour through a structured programme, remembering that all life sentences are indeterminate.

Parole differs as well, for discretionary and automatic lifers the first review is normally set 3 years before the tariff ends, when the Parole Board will consider each case upon evidence submitted by prison staff and from an interview held with a member of the Parole Board.

The purpose of this first review is to give consideration to a move to an open prison, being one step closer towards eventual release. There is then a second review, which takes place on, or around the date the tariff ends. It is at this stage that a mandatory lifer is able to appear before the Discretionary Lifer Panel (DLP) of the Parole Board and present oral evidence in support of their release. (although a pilot scheme in the Prison Service is considering dispensing with the oral hearing when they are not necessary).

Importantly all lifers that are released remain on licence, what differs is any requirement to remain in contact with probation, and under supervision.

So that sounds to me like a well thought out and applied process for considering parole, in assessing risk and suitability for release. Then again, may be not! let's take a recent high profile case to show this, the murder of London banker, John Monckton who was stabbed to death at his home by Damien Hanson, who had been released early from a prison sentence for attempted murder, and who within four months of his release had murdered Mr Monckton. If we consider prison as rehabilitation, rather than punishment and retribution you may say that perhaps Hanson slips through or even, '*played the system*'. However with the true details of his case, namely that Hanson was assessed as 90% likely to re offend (violent crime) yet he was released going on to kill. Surely this is an anomaly?, he was assessed as likely to re offend, which he did, murdering just 4 months after his release -so given this I ask, "*why was Hanson released and does this give us confidence in the parole system?*"

### Conclusion

So what does the 'life' sentence and tariff offer us today given that Capital Punishment is not a consideration? We only need to look at recent high profile cases such as the murder of Sarah Payne by Roy Whiting and the murder of Holly Wells and Jessica Chapman by Ian Huntley who have had their tariffs set at 50 years and 40 years respectfully keeping them behind bars until they are in their 70's, if indeed they are ever released. So surely this brings with it confidence in the criminal justice and penal system? Well yes, but what about the non high profile cases where an offender receives a life sentence but is released after a few years or even months. I have highlighted the case of Damien Hanson who was serving a sentence for attempted murder and even though he was considered 90% likely to re offender was released on licence and within 4 months of his release killed. This to me presents some serious concerns and disparity, in which cases that receive public awareness and scrutiny through media attention are dealt with harsher than those that do not. After all is any one person's life more valuable than another's, such as a middle class housewife and a prostitute?

Mark Williams-Thomas

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