

Reconsidering the Legitimacy of Capital Punishment in the Interpretation of the Human Right to Life in the Two Traditional Approaches

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Abstract : There are debates around the legitimacy of capital punishment, i.e., whether death could serve as a proper execution in our legal system or not. Different arguments have been raised. However, none of them seem able to provide a determined answer to the issue; this results in a lack of instruction in the legal practice. This article, therefore, devotes itself to the effort to find such an answer. It takes the perspective of rights, through interpreting the concept of right to life, which capital punishment appears to be in conflict with in the two traditional approaches, to reveal a possibly best account of the right and its conclusion on capital punishment. However, this effort is not a normative one which focuses on what ought to be. It means the article does not try to work out which argument we should choose and solve the hot debate on whether capital punishment should be allowed or not. It, again, does not propose which perspective we should take to approach this issue or generally which account of right must be better; rather, it is more a thought experiment. It attempts to raise a new perspective to approach the issue of the legitimacy of capital punishment. Both its perspective and conclusion therefore are tentative: what if we view this issue in a way we have never tried before, for example the different accounts of right to life? In this sense, the perspective could be defied, while the conclusion could be rejected. Other perspectives and conclusions are also possible. Notwithstanding, this tentative perspective and account of the right still could not be denied from serving as a potential approach, since it does have the ability to provide us with a determined attitude toward capital punishment that is hard to achieve through existing arguments.

Keywords : capital punishment, right to life, theories of rights, the choice theory

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