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Kramer's Purgative Rationale for Capital Punishment: A Critique

John Danaher

Abstract Matthew Kramer has recently defended a novel justification for the death penalty, something he calls the purgative rationale. According to this rationale, the death penalty can be justifiably implemented if it is necessary in order to purge defilingly evil offenders from a moral community. Kramer claims that this rationale overcomes the problems associated with traditional rationales for the death penalty. Although Kramer is to be commended for carving out a novel niche in a well-worn dialectical space, I argue that his rationale falls somewhat short of the mark. By his own lights, a successful justification of the death penalty must show that death is the minimally invasive, most humane means to some legitimate moral end. But even if we grant that his rationale picks out a legitimate moral end, there are at least three alternatives to death, either ignored or not fully considered by Kramer, which would seem to satisfy that end in a less invasive, more humane manner.

Keywords Death penalty · Capital punishment · Purgative rationale · Matthew Kramer

Introduction

The death penalty is the ultimate punishment. To kill another human being is *prima facie* wrong,[1] so if the state is going to implement a system of capital punishment, it needs to ensure

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[1] Note I use the term "prima facie" in an epistemic sense here, not a moral one. In other words, I am claiming that, at a first glance or initial level of inspection, to kill another human being is wrong. Further scrutiny may reveal this to be mistaken. This clarification is necessary since I am engaging with the work of Matthew Kramer, who has written extensively about the different uses of the term "prima facie" in ethical discourse and the tendency for this to confuse. See Kramer "Michael Moore on Torture, Morality and the Law" (2012) 25 *Ratio Juris* 472–495.

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