George Wright’s Metaphysical Argument against the Death Penalty

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Abstract

The debate on the morality of the death penalty is as old as human civilization. There is good reason to believe that the debate will continue unabated, even if abolitionist dream of a universal eradication of the penalty is realized. Those who advocate for the retention of the punishment - retentionists – support their position with a variety of arguments; the two most prominent are the argument from retribution and the argument from deterrence. Opponents of the death penalty – the abolitionists – have also adduced strong arguments to support their campaign for its total abolition. This paper will examine a major abolitionist argument. Arguably, the omnibus case against the death penalty is the argument constructed around the unique sacredness or uniqueness of human life. I refer to this line of reasoning as the metaphysical argument against the death penalty. In this paper I will undertake a comprehensive and critical review of R. George Wright’s statement of the metaphysical argument. My conclusion is that while the argument is plausible, indeed valid, as Wright states it, it is philosophically unsound, because the premises from which Wright purports to derive his abolitionist conclusion are composed of, at best, contingently true or worse, out rightly false propositions.

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Introduction

Abolitionist arguments against the death penalty come in various forms, targeting different aspects of the institution of punishment in general and the death penalty in particular. While some abolitionists have targeted the traditionally espoused rationales for the death penalty, others have focused their ire at the processes in the administration of a typical death penalty regime. For example, abolitionists have sought to portray retributivism, a traditional rationale for the death penalty, as an ignoble craving for revenge, the hangover of a primitive and base human instinct, perhaps tolerable in the early days of human civilization but utterly unbefitting of a sophisticated modern age. Or, as Jeffrey Howard has summed it up, albeit without necessarily endorsing the view, “many people criticize retributivism on the grounds that it is nothing but a pointless quest for barbaric revenge”.\(^1\) In like manner, abolitionists have deployed considerable amount of intellectual resources to argue that the death penalty does not deter. In other words, that deterrence, another traditionally defended aim of the death penalty, is nothing but a grand illusion, a time-honoured testament to society’s corporate wishful thinking.\(^2\) On the other hand, the aim of abolitionist attack on the administration of a typical death penalty regime has been to show that the different stages in the process are objectionable, either by being inherently unjust, for example by being biased against racial, sectarian, or socio-economic minorities;\(^3\) by being inefficient, because, as abolitionists argue, it is prone to potentially horrifying mistakes, resulting sometimes in botched executions\(^4\) or worse, outright miscarriage of justice, i.e., when an innocent person is executed;\(^5\) or because it is excessively costly and as such wasteful in the expenditure of time, money and other resources.\(^6\)

Arguments of these varieties, deployed by abolitionists against the teleology or the protocols of the death penalty, do not address what R. George Wright calls “the basic moral justifiability of the death penalty.” The metaphysical argument (my own label) is designed to do just that. The metaphysical argument is designed to show that even if the death penalty is confirmed to have strong retributivist value, and it is shown to serve as a potent deterrence, and it is in addition shown to be flawlessly administered in a particular jurisdiction, such that it is unassailable in practice and in aim, it would still be morally objectionable, “even in principle”.

I found a plausible statement of a typical metaphysical argument in Wright’s well-researched article, “The Death Penalty and the Way We Think Now” (Wright, 2000, 533-5840).\(^7\) The metaphysical argument is constructed around what Wright identifies as the mystery of human life. If it is successful, the metaphysical argument would present the strongest case yet against the death penalty. It is an omnibus attack on the death penalty; it is conceived as the ultimate game changer in the debate on the morality of the death penalty. If the metaphysical argument succeeds, all other considerations in the age-old debate would become otiose. It would not matter whether the death penalty can be shown to serve some compelling retributivist ends,
nor whether the punishment can be shown to have verifiable deterrence value, nor, for that matter, would it matter how scrupulously and meticulously a society is in observing the requirements of the due process in the administration of its death penalty laws. The death penalty would be inherently morally wrong and as such impermissible period. That would be because human life is so uniquely valuable that it should not be extinguished under any circumstances.

My objective in this paper is to subject the metaphysical argument as defended by Wright to critical review. Wright’s presentation of the argument is the most comprehensive and articulate statement I could find. My conclusion is that the argument is deeply flawed on several fronts. Therefore, it cannot, on its own, be used to establish the moral impermissibility of the death penalty. The remainder of the paper consists of a comprehensive critique and rejection of Wright’s metaphysical argument against the death penalty.

Wright’s Metaphysical Argument against the Death Penalty

Wright opens his case against the death penalty with a poignant, indeed provocative, complex interrogatory: suppose the death penalty processes were flawless (Wright, 2000, 534) and suppose also that “a defendant clearly deserves the penalty of death, and such a penalty would be fair, just, and not violative of the defendant’s right” (Wright, 2000, 564), “could the death penalty itself, under our social circumstances, be morally objectionable?” (Wright, 2000, 534). Wright’s answer to this question is unequivocally in the affirmative. “Ultimately”, Wright submits, “we will conclude that the death penalty is, under our social circumstances, not morally justifiable even in principle” (Wright, 2000, 535). Wright’s paper is extensively researched; it is long and very complex, with the different sections hanging together like so many pieces of an elaborate jig-saw puzzle. But if we cut through the details of Wright’s illustrations, analogies, modifications, qualifications, etc., it is clear that his case against the death penalty is anchored on what he considers to be the uniqueness of certain basic human rational, intellectual and emotional capacities. It is Wright’s contention that each rational human being is uniquely endowed with the capacity for “consciousness, a distinctive self-consciousness, a continuing personal identity, and perhaps even a standard sort of freedom of the will…” (Wright, 2000, 539). Wright adds that these capacities which we could characterize as the salient elements of the human nature, are “embodied in unique, incomparable, and irreplaceable form in every rightly convicted defendant” (Wright, 2000, 539). This has to be so, because the determination of the element of mens rea in the trial of a criminal conduct involves the testing of the adequacy of each of the listed capacities in the defendant. These characteristics, Wright continues, “are incomparably and irreplaceably valuable … not merely because of their unique embodiment and relation to the person, but because they are deeply, permanently, and inescapably mysterious in basic ways, entirely unlike anything else in the natural order” (Wright, 2000, 539). Wright
concludes that the “the preservation of these unique values overrides even the assumed desert or fairness of a death penalty, at least as long as other not substantially less appropriate punishments are available” (Wright, 2000, 539).

Notwithstanding the complexity of Professor Wright’s discussions, the logical structure of his argument against the death penalty is fairly easy to decipher. Stated in propositional form, the argument is this. Premise 1: The death penalty is morally wrong, unjustifiable and thus impermissible even in principle, except/unless in circumstances where other not substantially less appropriate punishments are unavailable. (This is because when a person is executed, pursuant to a judicial determination, those unique and irreplaceable qualities are extinguished)

Premise 2: In the present circumstances of societies such as the United States of America and, presumably, other industrialized democracies of Western Europe, it is not the case that other not substantially less appropriate punishments are unavailable. Conclusion: Therefore, in societies such as the United States and the industrialized democracies of Western Europe, the death penalty is morally unjustifiable and as such is impermissible even in principle. Let us take one further expository step by rendering the argument in inferential schema. First, we symbolize the constituent propositions as “p” and “q” respectively. Thus,

P : The death penalty is morally unjustifiable and impermissible even in principle
q : Other not substantially less appropriate punishments are not unavailable
(In the circumstances of societies like the United States and others like it, it is not the case that other not substantially less appropriate punishments are unavailable)

The argument form is this:

(1) P ∨ q
(2) ¬q
Therefore (3) p
That is, {((P ∨ q) · ¬q) → p}

With its logical structure thus distilled, it is easier to evaluate the strength of Wright’s argument. To begin with, we must concede that what we have here is a valid argument form. But important and cheering as this may be for Wright, it is also the case that mere formal validity although a necessary first hurdle, is never sufficient for an argument to deliver the truth of its conclusion. More is required: the argument has also to be sound. In other words, it must also be the case that each one of the propositions that compose the argument, namely the premise(s) and the conclusion, is independently verified to be a true statement. When subjected to this further (epistemological) test, Wright’s argument becomes less convincing. A critical examination of the grounds on which Wright purports to assert the truth of the constituent propositions of his argument shows that neither the major nor the minor premise is necessarily true.

I start with the minor premise. It asserts that it is not the case that other not substantially less appropriate punishments are unavailable in the contemporary circumstances of the U.S. and
U.S.-like societies. Prima facie, it would seem that to say that a form of punishment is not substantially less appropriate is not to say that it is substantially appropriate; it is an even further cry from saying that a form of punishment is not substantially less appropriate to saying that the punishment in question is perfectly or uniquely appropriate. While being not substantially less appropriate measures the degree of the inappropriateness of the punishment, being substantially appropriate measures the degree of its appropriateness. Being perfectly appropriate on the further hand is a situation approximating one hundred percent appropriateness. Given the principle of double negation, one might concede that to say that it is not the case that other not substantially less appropriate forms of punishments are unavailable is but a logically clumsy way of saying that other not substantially less appropriate forms of punishments are available in the circumstances of the societies under reference. But even if that is true, it still does not amount to the claim that other substantially appropriate forms of punishments are available in those societies. In any case, the content of the minor premise of Wright’s argument is not a double negation, it is a triple negation.

Without pausing to dispel this lingering logical muddle, let us proceed on the assumption that what Wright wants to assert is that other substantially appropriate forms of punishment are available in the designated societies. The pertinent questions to pose at this point are:

1) how does Wright measure the appropriateness or otherwise of a punishment? In other words, appropriateness and the opposite inappropriateness are normative categories, pointing to the existence of some standard or the other to determine their respective contents. What is that standard in this context?

2) Specifically, what other substantially appropriate forms of punishment, i.e., other than the death penalty, would Wright suggest are available in the circumstances of his designated societies?

3) What characteristics do the U.S. and U.S.-like societies possess which would enable them to device other substantially appropriate forms of punishment, other than the death penalty, to sanction traditional death penalty crimes?

Wright’s answer to the first question, so far as I could glean it from the article under review, is quite interesting. It turns out that the factors that qualify a form of punishment as substantially appropriate are precisely the same penological objectives which abolitionists have traditionally sought to assail. The first is the requirement that the punishment be appropriately measured to serve the end of justice. Thus, when Wright talks about the “assumed desert or fairness of a death penalty”, it is obvious that he was alluding to this element of justice. This, let it be noted, is the import of classical retributivism. The second factor is that the punishment be of the form that effectively protects the society from the criminal’s further crimes. This is precisely the import of what we may describe as direct or primary deterrence.
Perhaps we should reiterate, in fairness to Wright, that, to begin with, his case against the death penalty is not based neither on the rejection of the death penalty’s supposed retributivist nor on the deterrence objectives. Also, as we have seen above, some abolitionists base their opposition to the death penalty on the problems they claim to see in the administration of a typical death penalty regime, problems such as the prospect of botched executions, or even the more horrifying prospect of a miscarriage of justice leading to the execution of an innocent person. Wright’s *metaphysical* argument would sidestep such considerations too. The summary of his argument is worth being quoted in full. According to Wright,

> The basic problem with capital punishment is not one of denigration, but of extinction. A unique, irreplaceable locus of immense mystery and value, in the form of a particular consciousness, self-consciousness, and active free will, is simply annihilated, however dignified the method. It is not as though capital punishment turns consciousness into some humiliating shadow of its former self. Rather it utterly abolishes a conscious self. To go from existing to not existing need not be degrading. But going from existing to not existing does entail the complete loss of whatever value was associated with the existing thing. It is the intentional and otherwise unnecessary destruction of the value that cannot be justified, however severely or painfully we may punish the evil defendant (Wright, 2000, 568).

Our second question, we may recall, is specifically what other substantially appropriate form(s) of punishment – other than the death penalty – would Wright suggest are available in the circumstances of his designated societies? Wright’s answer to this question, in essence, is, “some forms of life imprisonment and solitary confinement” (Wright 2000, 538). Wright claims that once he expands “the understanding of the range of possible life sentences and the nature of solitary confinement, the logical appropriateness of such sentences becomes evident” (Wright, 2000, 538). As Wright sees it, the belief that punishments other than the death penalty are necessarily less appropriate, “reflects a failure of the social imagination” (Wright, 2000, 538). Once we turn social imagination loose to contemplate the rich possibilities in this regard, “we can come to appreciate that such sentences may even amount to more severe punishments, in the degree of duration of pain and suffering intended, than the death penalty” (Wright, 2000, 538). For example, Wright proposes,

> … [the] dangerous and infectious murderer” – the type that might continue to kill even while in prison, thus constituting a serious and present danger to other inmates, staff and visitors to the prison facility, “could today be affordably placed into partial or virtually total isolation, temporarily or permanently, and be publicly denounced if not subjected to corporal punishment, or permanently, and be publicly denounced if not subjected to corporal punishment, all falling short of the death penalty (Wright, 2000, 555).
It is Wright’s contention that sentencing a dangerous and incorrigible murderer, for example, to a lifetime in prison, instead of executing him, would enable society to loosen or tighten the penological screws on him, as the need arises. If we must, we could subject a “bad man” to “perpetual conscious torment” (Wright 2000, 584). In principle, Wright says, … solitary confinement could, if otherwise appropriate, be imposed only up until it resulted in substantial destruction of the identity, self-consciousness, or free will of the prisoner. At that point, perhaps the life term prisoner in solitary confinement could be allowed a degree of “virtual” reality or interactive Internet access, just short of any risk or harm to any other persons (Wright, 2000, 572).

Wright is confident that by deploying the resources of modern cyber technologies, penologists in particular and human societies in general can get a prisoner in solitary confinement to a point where he could be considered socially dead literally, while remaining physically and mentally alive (Wright, 2000, 574). For Wright, this is better than capital punishment.

Next, we consider Wright’s answer to our third question. According to Wright, for a society to qualify for the abolition of the death penalty, on the application of his argument, the society must possess two important characteristics: it must be materially wealthy and technologically very advanced. Wright claims that for a society to be primed for the abolition of the death penalty, it must possess “an enormous economic surplus available for discretionary use, beyond mere subsistence” (Wright 2000, 534, fn. 7). For such a materially well-endowed society, substantially appropriate criminal sanctions, other than the death penalty, would not be “prohibitively expensive” (Wright 2000, 534). Secondly, Wright submits that the ready availability of advanced technologies for communication and other uses would facilitate the administration of “varieties of solitary confinement as alternative to the death penalty” (Wright, 2000, 534).

No doubt, Wright is of the firm conviction that the U.S. and U.S.-like societies possess these two endowments in sufficient quantities and quality. Perhaps this very optimistic assessment of the economic and technological conditions of these societies should not be disputed, especially coming as it is from an astute observer of the socio-economic life of the United States (and invariably an active participant therein too, being, as we say here in Africa, a son of the soil). Equally indisputable, however, is the fact that there is an overwhelming majority of societies in our contemporary world struggling at different stages of development or underdevelopment (depending on one’s perspective) that possess neither of these two endowments of the required quantum of material wealth and technological know-how.

Starting from my own native Africa, I can report emphatically, albeit unhappily, that there is not a single nation state on the African continent today sitting on the sort of “enormous economic surplus” and or the technological resources required by Wright for the soundness of his argument against the death penalty and the viability of his proposed alternative penal
arrangement to be intuitively self-evident. Nigeria, the most populous nation in Africa and the one with the largest economy also, ironically, bears the unenviable distinction of being the poverty capital of the world. Clearly, Nigeria would not qualify for the implementation of Wright’s penal model. Nor, for that matter, would the Republic of South Africa, arguably the most technologically advanced nation and the second largest economy on the continent. I do not know whether the Republic of South Africa, as yet, possesses the technological know-how to turn a person into a “virtual” human being. But even if it has the technology, surely South Africa cannot boast, in the face of pervasive and festering poverty, among large segments of its population, to have at its disposal excess economic resources for “discretionary use”.

One conclusion that we can safely draw at this stage in the discussion is that the applicability of Wright’s argument and the viability of his alternative proposal to replace the death penalty is very limited in scope. At best, only a handful of nations, looked at without proper detail about large swaths of poverty stricken citizens in such countries, would satisfy the conditions that would support the total abolition of the death penalty. The overwhelming majority of the nations of the world would not make the cut. Does this then mean that these nations, clearly in the majority, must now eagerly await the time when their respective economic and technological situations would have improved sufficiently to enable them to join Wright’s merry band of elitist abolitionists states? And while they wait for the requisite improvement in their economic and technological fortunes, what do they do with pathologically violent moderate persons who commit capital crimes? In other words, do such developing or underdeveloped societies just go ahead and abolish the death penalty anyway, or do they retain it?

This unfolding dilemma is clearly not a particularly happy place for an abolitionist like Wright to be in. He cannot, in good conscience, advocate that these under-resourced societies abolish the death penalty right away, since they would lack the resources – surplus wealth and technology – to mount alternative forms of punishments that would be not less substantially appropriate than the death penalty. Nor can he admonish such societies to continue to apply the death penalty in the meantime, until they can safely abolish it; that should be a bitter pill for an abolitionist to swallow. But to counsel the retention of the death penalty in such societies (albeit in the interim) would be to suggest that criminals who deserve the death penalty in poor societies are lesser humans than their counterparts in the economically and technologically developed nations. Or, which amounts to the same thing, to say that whereas all human beings (more specifically the subset of humans who commit death-penalty-deserving-crimes) are entities with a unique, mysterious and irreplaceable value, some are more unique, more mysterious and more irreplaceable than others. It may be true that criminal justice systems are often jurisdiction specific. However, a principled endorsement of, or opposition to, a form of punishment based on the possession of traits deemed to be universally and invariably shared by all human beings cannot afford to be so blatantly parochial.
More fundamentally, let us inquire into the purported appropriateness of Wright’s alternative form of punishment to replace the death penalty. We recall that for Wright, as indeed it must be for everyone, the appropriateness of a form of punishment is a function of at least two considerations, individually necessary, perhaps jointly sufficient. The first is the requirement of justice, or as Wright might put it, the consideration of desert, i.e., the need to see that the punishment is deserved. The second consideration is that the punishment effectively prevents the offender from having the opportunity to repeat his criminal conduct. In this regard, it is pertinent to bear in mind that the individuals we are dealing with here are perpetrators of particularly egregious crimes, such as “dangerous and infectious murderers”, to cite Wright’s own example, the repetition of whose criminal conduct society must do all that is humanly possible to prevent.

Now, when we examine critically the details of Wright’s alternative to the death penalty, it seems clear that these two criteria of substantial appropriateness are on a collision course with each other. Given the uniquely depraved nature of the type of conducts being punished in these cases, e.g., murder in the first degree, terrorism and other forms of crimes against humanity, the consensus is that society should do all that it can to deter the repetition of such crimes; at the very least, to deter the criminal in the particular instance from repeating his/her crime, and, if possible, to deter other potential perpetrators of such crimes too. In doing this we have to be mindful not to run afoul of the requirement of justice; we must, therefore, impose on the offender no less and no more than the punishment he/she deserves. Retentionists have always maintained that the execution of the convicted criminal upon due conviction, satisfies these considerations of appropriateness of punishment. Even if it does not fulfill any other purpose, the execution of the convicted criminal would effectively and permanently deter him or her from repeating his or her crime.

When abolitionists, like Wright, reject the option of the death penalty, the only reasonable alternative is life imprisonment without the possibility of parole. But since some inmates on life imprisonment – lifers as they are called in the world of penology – might continue to kill while in prison (the surprise is that many more of them do not, having nothing to lose anyway) they must of necessity be put in solitary confinement. Once the death penalty is totally abolished, life in prison without the possibility of parole would become the ultimate punishment. But even in solitary confinement, some might still pose grave danger to any person who has any direct contact with them. There is, therefore, the need, according to Wright, to reduce such human contacts, if need be, to zero, in order to reduce the risks associated with them to zero. The goal here of course, is to accomplish by other means, the absolute degree of direct especific deterrence, which the execution of the convicted criminal would have accomplished.

It is at this stage that Wright considers the deployment of the resources of advanced cyber technologies as not only desirable but an urgent necessity. With such technologies ready to use at
bearable costs to a society, Wright reckons, the death penalty should become totally unnecessary. For anyone to still consider the death penalty necessary in a situation where such technologies can be readily deployed, Wright claims, is for such a person to be not fully aware of the capabilities of advanced cyber technologies. In his view, the range of feats that could be accomplished by such technological devices is limited only by the paucity of social imagination in general and penological resourcefulness in particular.

**Social Imagination**

In my view, our problem is not a limitation in social imagination. The real problem, on the contrary, is that when we unleash social imagination to roam freely over the phenomenon (much as astrophysicists might deploy a sophisticated machine to probe the structure of a distant planet) the images we receive by way of feed backs are haunting and disturbing. What we see, in the mind’s eye, so to say, is a lonesome creature hunched up in one corner of his/her prison cell – less euphemistically his/her cyber cage – muttering incoherent things to no one in particular, all day long, and perhaps because of chronic insomnia, all night long. The creature has the physical form of a human being. He/she is clad in a straight-jacket, for not only would society not execute him/her for whatever heinous transgression got him/her into his/her wretched predicament, should he/she, in fleeting moments of intermittent sobriety, wish to free him/herself from his/her life of unrelieved misery, society would not let her kill herself either. So, while at it, a steel helmet is permanently jammed on her head: meet George Wright’s virtual human. From here on, I will refer to this character as virtual human.

It could be said that this haunting portrayal of the virtual human’s condition may seem to be an overdramatization of the envisaged scenario. In reality, an abolitionist might claim, we may not have the need to resort to such extreme measures of incapacitation and threat-containment, since many capital offenders, i.e., the candidates who otherwise would qualify for the death penalty but who will now be punished with life imprisonment without the possibility of parole under the Wright model, would not pose such rabid existential threat to others who come in contact with them while incarcerated. While this may indeed be true, it is also the case that there is the possibility, and for that matter not a remote but a life possibility, that some of them would pose such extreme and present existential danger to others. Let us, to begin with, be constantly cognizant of the demographic we are dealing with. By definition anyone who would duly qualify for the death penalty would in all likelihood be the worst among the worst offenders.\(^\text{11}\) Moreover, the phenomenon of homicides committed by hard core criminals while incarcerated is not a mere theoretical postulate; there have been many reported incidents of such jail house killings either of fellow inmates, prison officials, or other individuals who have cause to visit the facilities. So, to assuage society’s apprehension about the existential threat that these
violent and often depraved offenders might pose, we would have to be provided some reliable principle (or at least a method) to deploy in sorting out who among the worst of the worst is worse than the others. Having tasted blood, so to say, who among these violent criminals is likely to snap and kill again, even while in prison? In the absence of such a principle or method to do the sorting, prudence would counsel that we treat all lifers like the virtual human.

The virtual human would, of course, have to be attended to by computerized mechanized robots, robo-“prison personnel”. This, presumably, is why availability of advanced cyber technologies is a precondition for Wright’s abolitionist scheme. Programmed automata will provide all of the virtual human’s needs: her food and drink will be delivered to her by a robo chef, her health care needs will be taken care of by robo doctors and robo nurses. Robotics can be programmed to serve as the virtual human’s robo friends, providing her with robo companionship and warmth. This way, we would have eliminated the virtual human’s direct interactions with other human beings and by the same token, presumably eliminated the existential threat that he/she might pose to others.

Suppose we proceed on the assumption that Wright’s high-technology-driven prison facility is a viable option for warehousing dangerous criminals. Where does that assumption lead us? At best it would satisfy only one of the two minimum necessary conditions which, as Wright acknowledges, or should acknowledge, must be satisfied by an appropriate punishment regime: we would thereby have secured the permanent deterrence of the inmate from further criminal activities. But while effective and permanent direct primary deterrence is a necessary condition for the appropriateness of a punishment in this context, it is not sufficient. There is also, as Wright would readily concede, the second and equally necessary requirement of justice. For a punishment to be appropriate, not only must it deter, it must also be deserved. The question now is whether being reduced to the condition of a virtual human being could ever be considered the just desert even for the vilest and most incorrigible offender.

It seems that Wright had been laboring all along, under the unsupported and perhaps unsupportable assumption that the virtual human is a human being nonetheless. This assumption raises the metaphysical question: Who is a human being? The answer to which quesiton must involve the elucidation of the many dimensions of the beingness of a human, the physical, mental, intellectual, emotional, social, legal, spiritual dimensions. In other words, a human being is not reducible to just Aristotle’s featherless biped. Wright has suggested that “some forms of solitary confinement can amount to a literal death of society, while still teaching the offender whatever lesson society may wish to impart more effectively than would the offender’s physical or mental death” (Wright, 2000, 574).

Evaluation
Let us for now gloss over the dubious utility of whatever lessons society might be interested in imparting unto the virtual human. More problematic is Wright’s presumption that one could be socially dead “literally”, while remaining mentally and physically alive. For how long can a human being remain mentally alive in the state of permanent, literal social death? If, as I would contend, the answer is, “not very long”, then can a socially and mentally dead human still be considered a full-fledge human being, just because he would qualify as Aristotle’s featherless biped? Under extreme solitary confinement and all but total isolation from human contact, it is most likely that the prisoner might lose his mind, self-consciousness, autonomy or free will. Thus, that unique, inviolable, irreplaceable mystery of human existence, which Wright considers to be of ultimate or supreme value, would be destroyed and lost after all, if his cyber-technologies-driven alternative scheme of punishment is put into use. In the final analysis, what Wright’s alternative form of punishment would do will be to save an offender from instant execution upon conviction for a heinous crime, only to condemn him to death by painful installments. From the point of view of desert/justice, this form of punishment which involves killing by installment cannot be considered substantially appropriate, when the offender can be put out of his misery by a quick and infinitely less painful execution.

Under the sort of life sentence that Wright suggests, complete with total isolation made possible by the deployment of cyber technologies, what we are left with would not be a full-fledge human being; what would be left in that cyber cage would be a mere shell of a human being. Wright might insist that it is altogether desirable to keep warehousing that shell of a human being, because a shell of a human being is better than no human being at all. That insistence would be the result of a systematic metaphysical error that permeates the whole of Wright’s argument against the death penalty. By combining the phenomena of consciousness, self-consciousness, and the capacity for free will or autonomy of action, Wright, by a curious philosophical alchemy, succeeded in creating a truly frightful phantom, namely, that “unique, irreplaceable embodiment of the deepest and most valuable mysteries in the common human experience” (Wright, 2000, 561). This is a mere phantom, for it refers to nothing real. Perhaps even more astonishing is Wright’s erroneous belief that the creature left in the cyber cage continues to be a credible embodiment of those quintessential attributes of consciousness, self-consciousness, and capacity to exercise freewill, which he identifies with human nature.

Instructively, it is this phantom that Wright props up again and again (Wright, 2000, 544-580), to make a case for the inevitable overridability of the death penalty, nay even the most uniquely deserved death penalty (Wright, 2000, 580). But whereas phantoms do not die, since they exist only in the imagination of their creators to begin with, human beings are susceptible to death, in whole or in part, for human beings exist in reality. And how mysterious can a mortal be! In other words, if a mere mortal is mysterious, what would the immortal be? Once this phantom of a deeply mysterious thing wrought from the combination of consciousness, self-
consciousness, and the agency of free will is exposed for what it is – a mere phantom - the major premise of Wright’s argument would be fatally undermined. The motivation to search for an alternative substantially not less appropriate form of punishment would no longer be present in circumstances where the determination has been made by a society that the death penalty is uniquely appropriate. After all, it is to protect the “life” of this phantom that Wright proposes an alternative form of punishment which paradoxically would fall short of physical death but which, as Wright readily admits, “may amount to more severe punishment, in degree and duration of pain and suffering intended and imposed, than the death penalty” (Wright, 2000, 538).

There are indeed strong indications that Wright does not take the idea of desert and by extension justice seriously. In a bid to show that desert is always overridable, Wright offers a couple of analogies. The first is meant to show the overridability of a deserved reward, the second purportedly shows the overridability of a deserved punishment. I do not consider the first analogy strictly relevant to the issues in contention here; I will summarily examine the force of the second.

Wright asks us to suppose that a student’s academic paper deserves a failing grade. But now suppose that obtaining a failing grade means that the student in question would be made an involuntary human sacrifice. In addition, we are to suppose that the awarer of the grade knows this to be the cruel fate that awaits the student, should the student be awarded a failing grade. “In such a case,” Wright submits, “not giving the deserved penalty in the form of a failing grade, is not merely permissible, but morally required” (Wright, 2000, 563). More to the point, Wright asks us to suppose that as a universal and unalterable law of nature, even the most deserved failing grades cause serious cardiovascular damage. In that situation, Wright concludes, “there would arise a moral imperative to devise some viable alternative system of student evaluation for use in all cases” (Wright 2000, 564). He adds, for emphasis, that “the fact that a given student’s failure was due entirely to that student’s own free, deliberate, and premeditated decisions would, in such a case, not change the result” (Wright, 2000, 564). From this analogy, Wright extrapolates that,

… even if a defendant clearly deserves the penalty of death, and such a penalty would be fair, just, and not violative of the defendant’s rights, the state could still be invariably and uniformly barred, under standard social conditions, from imposing such a penalty by independent moral considerations of the sort discussed thus far (Wright, 2000, 564).

There is something unseemly about this analogy which draws a parallel between the actions of violent and depraved criminals to the rebellious antics of weak students and likens the award of failing grades to the imposition of criminal sanctions. And maybe we need not be too concerned for now about the pedagogic integrity of an academic system where no student is allowed to fail. There may yet be an alternative way to remedy that anomaly. I intend to show presently that even if the analogy was perfect, it still would not advance Wright’s case against
the death penalty. First, as I have argued above, the social conditions which Wright describes as “standard” do not qualify as standard at all, if we test his abolitionist thesis on a global scale. Clearly, standards which only a handful of nations are able to satisfy are anything but standard. As for the “independent moral considerations” which Wright alluded to in the quoted passage, the most salient of those considerations is the transcendental metaphysical postulation that when consciousness is mixed with self-consciousness and the capacity to exercise freedom of the will, the result is a “deeply mysterious” thing – the essence of humanity – instantiated in the life of each and every human being, which harbours some inherent value, not to be extinguished for any reason. That idea of a deeply mysterious essence of human life is, in my view, a mere phantom.

Now, to further test the force of Wright’s analogy, let us ask, what would happen to the young scholar whose life we save by not awarding him his deserved failing grade. With the violent and irredeemable criminal, we know what Wright’s alternative penal model might turn him into: condemned to a lifetime of incarceration under an extreme form of isolation and total denial of human contact, he could become a virtual human. For Wright’s analogy to be complete, not only may we not permit the failing but unfailed student to go scot free (and perhaps keep failing away); just as a life of untrained freedom and impunity is not the lot of dangerous and infectious criminals, being condemned to living happily ever after cannot be society’s response to the antics of an irresponsible laggard. So, we would have to visit the student with some alternative sanction, to register society’s deep displeasure with his/her failing ways.

Suppose then that instead of awarding our student his well-deserved failing grade and letting him suffer the cardiovascular damage that (by definition) would end his life once and for all, we infect him with some painful and debilitating disease, say an incurable strain of leprosy. We are, of course, in no doubt that this disease would ravage and degrade his body and in due course his mind, one little finger or toe at a time, culminating ultimately in his physical death. In the interest of public health, the infectious laggard would have to be kept in isolation, because leprosy is a highly contagious disease. Which one of us if put in the position of the student would not plead to be awarded the deserved failing grade, thereby settling for the attendant instant death by cardiovascular arrest, if what our handlers propose to us as a substantially appropriate alternative treatment is the clearly crueler fate of death by painful installments? By the same token, which one of us, having been convicted of a capital offense would prefer to be spared the deserved death sentence and the date with the executioner, all the while subjected to treatment and considerations as a full-fledged human being, only to be condemned to a life of solitary incarceration as a virtual human? Surely, it would be preferable to die once and for all, than for a self-conscious human being to be turned into “some humiliating shadow of its former self”, as Wright might put it, which almost certainly life imprisonment in a cyber cage would do to virtual human. The fact that Wright actually uses the referent “its’ former self” to describe the state of the new human being speaks volumes about this experimental penal recommendation.
As J. S. Mill aptly stated the matter in his parliamentary speech of April 21, 1868, while making a rejoinder to the “philanthropists”, the leading abolitionists of the time:

… what comparison can there really be in point of severity, between consigning a man to the short pang of rapid death, and immuring him in a living tomb, there to linger out what may be a long life in the hardest and most monotonous toil, without any of its alleviations or rewards – debarred from all pleasant sights and sounds, and cut off from all earthly hope... (John Stuart Mill, 1868, 2).

On that occasion, Mill had admonished his fellow parliamentarians and the rest of the English society to bear in mind that what the execution of a criminal convict can do, at most, is to hasten his death: “the man would have died at any rate” (Mill, 1868, 2). In view of the unalterable fact of human mortality, Mill, the crown prince of utilitarianism, emphasizes that, “it is not human life only, not human life as such, that ought to be sacred to us, but human capacity of suffering is what we should cause to be respected, not the mere capacity of existing” (Mill, 1868, 3).

Other than classical utilitarianism, those who espouse retributivist sentiments on punishments have sometimes expressed grave concern that the so called humanitarian approaches to crime and punishment, which purport to extol the virtues of mercy above those of justice have, more often than not, ended up doing more harm than good to the interest of the criminals who are the intended beneficiaries of the mercy. No matter how well meaning they may be, no matter how noble their intentions are, theirs, as C.S. Lewis once pointed out, is almost always the precious balm that breaks the head it is intended to massage. Often, as in this case, the humanitarian medicine of mercy and compassion is more painful and deadlier than the underlying retributivist disease.

At this stage, Wright could point out that his own abolitionist scheme was not motivated by misplaced compassion. We are not, on the Wright model, preserving the virtual human’s life as an act of mercy. Wright could remind us how he openly contemplated that the punishment to be endured by the lifer in the cyber cage might indeed be more severe than the punishment of death (Wright, 2000, 538). But then, we must ask what purpose and whose interest would be served by the imposition of this potentially more severe form of punishment, if in the final analysis the prisoner is left worse off. Surely, it cannot be said that the interest of the society that is better served. Presumably, society would be contented, perhaps even happier, with the “lesser” punishment by death.

And yet Wright would by no means suggest that the virtual human should be kept alive for no useful purpose other than as an object of torment. Indeed, as I have reported at several points in this essay, Wright has identified at least two purposes he reckons would be served by keeping the virtual human alive. The first is for the virtual human to be available to receive whatever moral education society might wish to impart unto him/her. The second is the more fundamental and by the same token more compelling need to preserve the unique and
irreplaceable value instantiated in the humanity of the virtual man. I examine the genuineness of each of these reasons in turn, for the veracity of Wright’s argument would hinge on the sustainability of these twin efforts.

The first, that is, the educational motif, is the weaker of the two. We can dispense with it fairly quickly. Surely, it is highly disingenuous to suppose that any meaningful lessons could be imparted to a human in the wretched state the virtual human would be in. Presumably, the lessons society should wish to impart to the virtual human would be lessons about respect for the sanctity of human life and the inculcation of the associated skills of empathy to feel other people’s pains and suffering. But these are the same lessons which society would have had ample opportunity to teach her/him in his formative years, when he/she was a more malleable minor and under more auspicious circumstances too. But these are lessons which evidently the virtual human, for his/her part, would have failed to learn, values he/she would have failed to imbibe, with disastrous consequences for everyone. It stretches the bounds of credulity to suggest that the prisoner in the cyber cage would now be more receptive to these teachings in his/her desperate state as virtual human than he/she would have been as an impressionable youngster.

I turn to the second, and at least prima facie more compelling, reason Wright seems to have for wanting to keep the virtual human alive, namely, to preserve a unique and irreplaceable thing of value. In a way, I have argued that Wright’s idea of a “unique, irreplaceable embodiment of the deepest and most valuable mysteries in the common human experience” refers to nothing in reality. I have argued that the idea is a phantom. But for what it may be worth, let us explore the value motif a little. The concept of value is one of those grand old concepts with application in various aspects of life and across many academic disciplines – from economics to physics and any number of disciplines in-between. In philosophy, “value” is a highly contested concept, admitting of various conceptions. Be that as it may, there is at least one salient feature of value and a derivative one, on which many commentators seem to agree on. The salient feature is that value is a relative, or perhaps, relational category. Value is not subsisting out there as a datum of nature; if an object, say x, has value, it could only be in relation to a subject, say y. Deriving from this salient feature is that value can be either positive or negative. Thus, whether x can be considered to have positive or negative value for y must depend on how x impacts y’s being. This seems to be the core of the truth in the time-honoured cliché, one human’s meat is another’s poison. Clearly, to a person allergic to horse meat, horse meat would be rank poison, whereas the same horse meat would be savored by someone else as the ultimate delicacy. The point is that a thing could be taken as having value for the person who regards it as an object of desire as it could be for another who regards as an object of aversion. In one case a positive value, in the other the value would be negative.
Let us apply this insight to the case of the virtual human. The pertinent questions to ask are obvious: (1) for whom does the life of virtual human have value? (2) What sort of value would it be? By collapsing the two questions into one, we may ask, for whom would the life of virtual human be considered to have any modicum of positive value? For whom, in other words, would virtual human’s life have anything other than a negative value? I answer, for no one at all. That being the case, I cannot think of anyone who should consider virtual human’s life worth preserving. Surely, abolitionists like Wright who suggest imprisonment for life without the possibility of parole, under extremely traumatic and dehumanizing conditions, as a substitute for the death penalty, cannot simultaneously proclaim that they consider the lives of such lifers as positively valuable. It is awkward, to say the least, to profess to positively value an entity on whom one is willing to impose a form of punishment worse than death.

Conclusion

Let us summarize the discussion up to this point. Subjected to critical scrutiny, it is my contention that Wright’s metaphysical argument against the death penalty is seriously flawed at several points and on several scores. The core import of the argument can be couched in form of an alternation: the death penalty would be unjustifiable and hence morally wrong even in principle, except/unless in situations where alternative not substantially less appropriate, more inhuman, insidiously horrendous and crueler punishments are unavailable. In the present circumstances of industrialized western democracies, such as the United States and the nations of Western Europe, it is not the case that not substantially less appropriate forms of punishment are unavailable. I have suggested that we take a charitable reading of this minor premise of Wright’s argument to mean that substantially appropriate alternative forms of punishments are available in these industrialized democracies of the west. But the presumed availability of the substantially appropriate alternative punishments in these societies is, in turn, a function of two cardinal factors, each of which is a necessary condition, possibly both jointly sufficient. The factors are (1) the availability of surplus economic resources and (2) a high level of technological capability.

The first problem with this argument is the implicit inherently limited applicability of its conclusion and hence the limited viability of the proposed alternative model of punishment. Wright’s penal scheme is viable only in the special circumstances of technologically advanced and economically buoyant societies. Perhaps this would not have posed much of a problem for Wright, except that the trait which he identifies as making the death penalty inherently morally impermissible is a universally shared human trait, it is what Wright conceives as the unique human nature itself. Human nature is neither conferred nor enhanced by material wealth or technological acuity, nor is it diminished by the absence of these material acquisitions. The idea of a superhuman might make sense as an allusion to the prodigious possession of certain human
endowments, physical strength, intellect, agility, etc.; the idea of superhuman nature is meaningless. As the Yoruba would say, *ibi kii ju’bi; bi ase bi eru ni a bi omo* (we are all born equally human, the slave is no less a human being than the freeborn).\(^\text{14}\) So, Wright cannot appeal to the uniqueness of human nature to justify advocacy for the abolition of the death penalty in some nations of the world but not in others. Even the so-called wealth as measure of humanity is bogus, as the USA is the most indebted country in the world.

Furthermore, the minor premise of Wright’s argument is actually false. To be considered substantially appropriate, a form of punishment must have (at least) two indispensable elements. First, it must provide effective direct deterrence against the continuing predation on society by the particular criminal, possibly also indirect deterrence against other potential criminals too. Second, the punishment must satisfy the requirements of justice – it must be fair, proportional and deserved. Wright’s proposed alternative punishment of life imprisonment facilitated by the deployment of advanced cyber technologies, which are to enable very minimal or even zero human contacts with the inmate might satisfy the first of these two elements of substantial appropriateness, but only at the expense of the second.

In any case, by rejecting the phantom of a mysterious human nature created by Wright, we would thereby eliminate the rationale for the major premise of his argument. Revealing that phantom for what it is renders the desperate search for an alternative to the death penalty unnecessary, where it is deemed substantially appropriate or better still uniquely appropriate. In conclusion, although Wright’s *metaphysical* argument against the death penalty is valid in form, it is logically unsound, for it is composed of false premises.

Of course, the rebuttal of the *metaphysical* argument would not necessarily put abolitionists out of business. Abolitionists could resort to other lines of attack on the death penalty. For example, as I have indicated in the introductory section of the paper (see especially foot notes 1 to 6 and the preceding texts), they could seek to undermine the traditional justifications for the death penalty, such as the need for retribution or the imperative of deterrence. While at it, abolitionists could also seek to exploit the logistical difficulties that typically confront the administration of death penalty regimes. Thus, even if the retentionist prevails on the problematic nature of the metaphysical argument for the abolition of the death penalty, as I think he does, the debate on the morality of the death penalty would rage on unabated. The retentionist would hardly have the luxury of savouring the sweet aroma of this occasional and limited victory; for he must engage the opponents of the death penalty on those other thematic fronts.

\(^1\) Jeffrey Howard, “Death Penalty: Is Capital Punishment Morally Justified?”, *http://theconversation.com/death-penalty-is-capital-punishment-morally-justified-4290*, p.2. Some other critics of the retributivist defense of the death penalty have been more nuanced in their engagement. For a thoughtful, even if, in my view, ultimately not totally
convincing case against retributivist justification of the death penalty, see, Claire Finkelstein, “Death and Retribution”, *Criminal Justice Ethics*, Summer/Fall 2002, pp.12-21

2. Again, while this terse summary captures the core of abolitionist attacks on the deterrence rationale for the death penalty, it does not deny the richness of some anti-deterrence commentaries. See, for example, George Schedler’s sophisticated analysis in, “Capital Punishment and Its Deterrent Effect”, in Richard A. Wasserstrom (ed.), *Today’s Moral Problems*, New York: Macmillan Publishing Co. Inc., 1979, pp. 552-560


4. Human undertakings are endemically prone to error. Execution of convicted felons is no exception. Expectedly, abolitionists have seized on the occasional instances of executions gone badly – the phenomenon of botched executions. On this, see, for example, Aaron Sarat, Aubrey Jones, Madeline Sprung-Keyser, Katherine Blumstein, Heather Richard, Robert Waver (eds.), “Gruesome Spectacles: The Cultural Reception of Botched Executions in America, 1890 – 1920”, *British Journal of American Legal Studies*, vol. 1, Issue 1 (Spring 2012), pp. 1 – 30. The American Civil Liberties Union (ACLU) has also compiled instances of botched executions. See the ACLU’s “The Case Against the Death Penalty” (revised in 2012), available at their website, http://www. Aclu.org. Similarly, there were eye-witness reports that the execution of Ken Saro-Wiwa, leader of the Movement for the Survival of Ogoni People (MOSOP), in Nigeria, on November 10, 1995, was botched. It took five attempts on the day of Saro-Wiwa’s execution before he was eventually executed by hanging. On the plight of Saro-Wiwa and eight of his fellow MOSOP activists, see, *Ogoni: Trials and Travails*, published by a Nigerian NGO, the Civil Liberties Organization (CLO), Lagos, 1996, pp. 170 – 173.

5. There have been heated disagreements about the actual frequency of wrongful executions. For example, in the United States, where there is better record-keeping, while the ACLU has reported several such cases, see, the ACLU’s “The Case Against the Death Penalty” (cited in full in footnote 4 above) other commentators have disputed the veracity of the ACLU’s claim that innocent persons are frequently executed in the United States. For example, after a careful review of alleged instances of wrongful executions cited by abolitionists, Paul G. Cassell has come to the conclusion that “abolitionists have been unable to find a credible case of an innocent person who has actually been executed in recent years [although] they have provided several credible ‘close call’ cases…”(Paul G. Cassell,

A thriving sub-specialty in law and economics has developed on the economics of the administration of capital punishment, tracking the costs from the trial of capital crimes suspects to the eventual execution of convicted death penalty inmates. States in the U.S. sometimes commission such studies to obtain findings from social scientific research as critical inputs in the reviews of their criminal justice policies, especially on the cost/benefit analysis of the capital punishment. Recent works on this theme include, Carol S. Steiker, and Jordan M. Steiker, “Costs and Capital Punishment: A New Consideration Transforms an Old Debate”, *University of Chicago Legal Forum*, vol. 2010, Issue 1, pp. 117 -164; John Roman, Aaron Chalfin, Aaron Sundquist, Carly Knight, and Askar Darmenov, “The Cost of the Death Penalty in Maryland”, a Research Report from Urban Institute Justice Policy Center (March, 2008); Marla D. Tortrice, “Costs Versus Benefits: The Fiscal Realities of the Death Penalty in Pennsylvania”, *University of Pittsburg Law Review*, vol. 78 (Summer 2017), pp. 519 - 555

The title of Professor Wright’s article is quite instructive. Fully Explicated, its import is this, the death penalty and the way we in the United States and U.S.-like societies think now, in the twenty first century. Presumably, Wright’s argument against the death penalty would not have worked in the U.S. and U.S.-like societies say a quarter century ago, and, as we shall see later, the argument might not work in less materially and less technologically endowed societies even today, two decades deep into the twenty first century. I should note, in passing that Wright’s implicit specification of the type of society in which his case against the death penalty is applicable is not unusual. In developing his theory of civil disobedience, Professor Rawls had similarly appended a caveat emptor: “this theory”, Rawls warns, “is designed only for the special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur” (Rawls, John. *A Theory of Justice*, Cambridge Mas.: Harvard University Press, 1971, p.363). Rawls might as well have named the society with the ideal conditions for the application of his theory of civil disobedience: the United States in the second half of the twentieth century.


In comparison, Rawls’s caveat on the applicability of his theory of civil disobedience would not be vulnerable to this objection, because living in a nearly just society is neither a natural nor a universal human characteristic.

In most cases these two requirements would not be sufficient. There may be other factors or considerations such as cost effectiveness, cultural convenience, etc, that must go into the determination of the substantial appropriateness of a form of punishment.

The presumed socio-political context is, of course, a robust democratic polity with a fair and meticulous criminal justice administration.

We should acknowledge here the Judeo-Christian theological underpinning of the idea of man as a special being (the crown jewel of God’s creation, specially made, with pomp and circumstance on the sixth and last day of creation), set apart from the other aspects of the natural order and commissioned to exercise dominion over everything else in nature (Genesis 1: 26 -30). This cosmological narrative is almost exclusive to the traditional worldview of western civilization. In comparison, the traditional cosmologies of other cultures do not privilege human beings with such hierarchical primacy in the scheme of nature. For example, traditional African cosmological accounts typically locate man firmly in the vortex of the natural order; man is not to be conceived as being apart from, but rather as a part of nature.

14. This notion of the basic equality of human nature is exemplified in the American Declaration of Independence (made in Congress on July 4, 1776) when it claims to take as a self-evident truth, the proposition that all men are created equal. The same sentiment was replicated in Article 1 of the United Nations Universal Declaration of Human Rights (proclaimed by Resolution 217A, of the General Assembly, on December 10, 1948).

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