


Psychological Aspects of Social Issues

Chapter 10
Capital Punishment


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Outline/Overview

- o Recent milestones/statistics
- o Punishment – elements and aims
- o Pro & con arguments
- o Writings
- o Current literature
 - Problems w/capital punishment
 - False confessions
 - Innocents convicted
 - Recommendations to minimize problems

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Recent capital punishment milestones/statistics

- o 1972 Capital punishment ruled cruel & unusual
- o 1976 upheld for murder
- o 2002 no MR executions (Atkins v Virginia)
- o 2005 no executions of < 18 years (Roper v Simmons)
- o In 2007, 42 (down from 53 in '06) executions in the US
 - All men, 28 white, 14 Black
 - Two methods of execution
- o Worldwide executions (the company we keep)

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Aims of Punishment

- Retribution – "just desserts" giving people what they deserve.
- Prevention – ensuring that offenders are less likely to repeat their offense.
- Deterrence – discourage others from committing crimes.
- Reform – punishment will get people to conform to rules.
- Does execution meet these criteria?

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Summary of abolitionist and retentionist arguments

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| <ul style="list-style-type: none"> ○ Against 1. Every life has dignity and worth 2. Class and racial bias 3. Innocent people can be executed 4. Compromises the judicial system | <ul style="list-style-type: none"> ○ For 1. It is a deterrent 2. Executed murders cannot ever kill again 3. Ultimate crime requires the ultimate punishment 4. Shouldn't have to support murders for life |
|--|--|

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Writings: Ernest van den Haag

- Argues in favor of CP
- Addresses several arguments against CP
- Distribution
 - Conflates morality of CP with arguments about alleged biases in application.
- Miscarriage
 - Executing the innocent – "rare"

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• • • | van den Haag (cont.)

- Deterrence
 - While evidence is equivocal at best, if even some people are deterred & thus innocents spared, it is worthwhile.
- Other issues
 - relative costs, suffering, legitimizing murder
- If only 1 murder per year is deterred, execution of murderers is warranted.

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• • • | Jeffrey Reiman

- Against CP
- Concedes that CP is a just punishment for murder
 - “lex talionis” permits
 - proportional retribution
- Kantian and Hegelian analyses
- CP is just “not right”
 - inconsistent with a civilized society
- Even though it may be just, abolishing is part of “civilizing mission”

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• • • | Igor Primoratz

- Defending CP
- Only the death of the murderer can be viewed as proportional.
- Dismisses “right to life” as a universal
- Conviction & execution of innocents means we must do everything possible to reduce future instances
- Racial & economic inequities in CP, are symptoms of general problems in CJ system

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● ● ● | Hugo Adam Bedau – The Minimal Invasion Argument

- Against DP
 - cannot know which murderers will kill again
- No evidence for deterrence
- “Poor man’s justice”
- State should always use the least restrictive or invasive means of accomplishing goal
 - “invasions by the government of an individual’s privacy, liberty & autonomy (or other fundamental value) are justified only if no less invasive practice is sufficient to achieve an important societal goal”

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● ● ● | Bedau – Formal argument against CP

- 1. Punishment is justified only if it is necessary as a means to some socially valid end.
- 2. The death penalty is more severe, more invasive, than long term imprisonment.
- 3. Long term imprisonment is sufficient as an invasion of individual liberty, privacy, and autonomy (and other fundamental values) to achieve valid social goals.
- 4. Society ought to abolish any lawful practice that imposes more violation of individual liberty, privacy, or autonomy (or other fundamental value) when it is known that a less invasive practice is available and sufficient.
- Morality dictates the upper limits of punishment

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● ● ● | Conviction of innocents

- Problems with CP
- Related factors?
 - Poor legal defense
 - Police and prosecutor misconduct
 - Eye witness misidentification (Memon et al, 2002)
 - False confessions in 15-25% of innocent defendants overall
- After conviction – death sentence more likely due to demeanor - Antonio (2006)

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Central Park Jogger 1989

- female jogger beaten senseless, raped, and left for dead, with multiple skull fractures, she lost three quarters of her blood
- survived, was and is amnesic for incident
- within 48 hrs, solely on the basis of police-induced confessions, five boys, 14 to 16 years old, were arrested for the attack
- All tried, convicted, and imprisoned
- No physical traces at all of the defendants

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Innocence Project-False Confessions

- 223 post conviction DNA exonerations
- 17 were on death row
- 30+ murder convictions overturned
- Chain of events leading to false confessions
 - Preinterrogation interview
 - Determining innocence or guilt
 - Claims (85%) vs. reality (only slightly better than chance)
 - Miranda
 - Interrogation

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Miranda Warnings

- Interrogation - confrontational and guilt presumptive
- designed to elicit confession
- roughly 80% of suspects waive rights
- even when confronted by a hostile questioner most innocents agree to questioning
- Example
- open minded investigators? NOT!
- confirmation bias contribute to errors by investigators as well as forensic examiners

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False confessions in US

- 125 proven cases, 1971-2002
- 93% males.
- 81% involved murder, 8% rape, 3% arson.
- Exonerated by: Real perpetrator identified – 74%, new scientific evidence – 46%
- Young – 63% < 25 years old, 32% < 18
- 22% MR, 10% diagnosed MH
- Sometimes innocents simply come forward and confess: Lindburgh case/Henry Lee Lucas
- We are more interested in “compliant false confessions”

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Compliant false confessions

- induced through interrogation
- Salem Witch trials, 1692, 50 women confessed
- can be internalized, even when false.
 - two examples
- young children especially at risk
 - example

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How are false confessions elicited?

- fatigue and sleep deprivation
- heighten susceptibility to influence
- impair decision making abilities in complex tasks
- typical police interrogations last < 2 hrs.
- documented false confession cases found on avg. = 16.3 hrs, 34% 6-12 hrs. and 39% 12-24 hrs.

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Strong assertions of guilt

- once isolated, interrogators confront with strong assertions of their guilt
- communicates futility of resistance
- present suspects with evidence of guilt – e.g., fingerprint, blood or eyewitness ID
 - regardless of whether it really exists
- lying about evidence increases risk of false confession and internalization

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Minimization tactics

- inference of leniency
- actions were:
 - accidental
 - spontaneous
 - provoked
- a confession is damning evidence in the eyes of a jury
- convictions in vast majority of cases

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Recommendations to minimize false confessions

- 1. Time limits, with breaks for rest and meals
- 2. Eliminate presentation of false evidence
- 3. Eliminate implied minimization
- 4. Videotape all interrogations, showing both suspect and interrogator

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