

Reading Guide #9: Capital Punishment

These reading guides are provided to assist you in your reading. I encourage you to read the material through, first, then go back to answer the questions. You are not expected to hand in written answers. You are expected to have responses ready for class discussion. Page numbers refer to Arthur, *Morality and Moral Controversies*, 7th ed.

‘The Death Penalty: *Gregg v. Georgia*’, pp 117-123.

Stewart:

1. Does the evolving nature of the Eighth Amendment (prohibiting cruel and unusual punishment) mean that its application is subjective? Explain.
- 2. In what two ways might a punishment be excessive?**
- 3. What evidence of historical and popular support for the death penalty does Stewart cite?**
- 4. What two social purposes does the death penalty purportedly serve?**
- 5. “In part, capital punishment is an expression of society’s moral outrage at particularly offensive conduct.” (118) How does Stewart defend this expression, in the Furman opinion?**
6. How does Stewart evaluate the deterrent effect of capital punishment?
- 7. Does Stewart believe that the death penalty is disproportionately severe? Explain.**
8. How do the Georgia sentencing procedures prevent arbitrary application of the death penalty?

Brennan:

9. How is the Eight Amendment an expression of morality?
- 10. What is the basis of Brennan’s rejection of the death penalty?**

Marshall:

- 11. On what basis does Marshall reject the death penalty?**
- 12. How does Marshall disagree with Stewart over the evidence of death penalty statutes for popular support of capital punishment?**
13. What does Marshall say about the deterrent effect of capital punishment?
- 14. How does Marshall respond to Stewart’s defense of the retribution argument for capital punishment? (See question 5.)**
15. Can the death penalty be used to reinforce basic moral values? Explain.
16. How are the utilitarian defenses of the death penalty insufficient?
17. What does Marshall say about the purely retributive justification of the death penalty?

Martin Perlmutter, 'Desert and Capital Punishment', pp 124-131.

- 1. Compare the utilitarian and retributivist justifications of punishment.**
 - 2. What two concepts are essential to the notion of punishment? How are they connected?**
 3. How is blame related to punishment?
 - 4. For the utilitarian, what, besides past wrong-doing, is required to justify punishment? Why is past wrong-doing insufficient to justify punishment?**
 - 5. How might the utilitarian critique of punishment lead to abandoning it?**
 6. How do the examples of promises, awards, and repayment of debts show a flaw in utilitarianism?
 - 7. Why can't deterrence, by itself, be a sufficient justification of punishment?**
 - 8. What is lex talionis? How do we still use it? Explain.**
 9. What factors determine the appropriateness of a punishment to fit a crime?
 - 10. "So, there is excellent evidence that capital punishment is not humiliating in an unacceptable way and that capital punishment is compatible with standards of human dignity." (129) Explain. What is this evidence?**
 - 11. How is punishing a wrongdoer respecting his or her integrity?**
 - 12. How is punishing a person in his or her interest?**
 13. What is wrong with the therapy model of punishment?
 14. How is the deathbed scenario a criticism of the retributive view? How does Perlmutter respond?
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Ernest van den Haag, 'The Ultimate Punishment', pp 131-136.

- 1. Why, according to van den Haag, is it wrong to link the morality of capital punishment with its distribution?**
2. What distinguishes maldistribution of capital punishment among the guilty from maldistribution among the innocent?
3. "[I]f the death penalty were imposed on guilty blacks, but not on guilty whites, or, if it were imposed by a lottery among the guilty, this irrationally discriminatory or capricious distribution would neither make the penalty unjust, nor cause anyone to be unjustly punished, despite the undue impunity bestowed on others." (132) Explain.
4. How is maldistribution a straw man for empirical reasons?
- 5. How does van den Haag argue that execution of innocents (miscarriages of justice) should not stop us from using capital punishment?**
6. How does van den Haag argue that the deterrence argument is indecisive?
- 7. "Penal sanctions are useful in the long run for the formation of internal constraints so necessary to control crime." (134) Explain. What does this mean for capital punishment?**
8. How does van den Haag respond to the allegation that the cost of a capital sentence should prevent us from using capital punishment?
9. How does van den Haag respond to the lex talionis argument?
- 10. What is the purpose of punishment? How does this show that it's not meant for revenge or for compensation?**
11. Does imprisonment legitimize kidnaping? How does this relate to the issue of capital punishment?
12. Why is retribution, as a justification for punishment, independent of deterrence?
- 13. "Thus, the death penalty can not be unjust to the guilty criminal." (135) Explain.**
14. Why can't van den Haag refute the allegation that capital punishment is excessive?
- 15. Is capital punishment degrading? Explain.**
- 16. How does the belief that capital punishment is degrading reverse the direction of causality?**

Jeffrey H. Reiman, 'Justice, Civilization, and the Death Penalty', pp 136-141.

1. **Does the justice of capital punishment entail that it should be implemented? Explain.**
 2. How does Reiman characterize progress in civilization?
 3. When can we not avoid doing horrible things to others?
 4. **“Consequently, reduction in the horrible things we do to our fellows... is an advance in civilization that we are called upon to continue once we consciously take upon ourselves the work of civilization.” (137) Explain.**
 5. What makes torture horrible?
 6. What distinguishes death by execution from normal death?
 7. **Why should we refrain from torture? How does this extend to capital punishment?**
 8. **How do Reiman and van den Haag agree on the statistics about the deterrent effect of capital punishment? Where do they disagree?**
 9. **“From the fact that one penalty is more feared than another, it does not follow that the more feared penalty will deter more than the less feared...” (139) Explain. Why not?**
 10. Why, even without the risk of capital punishment, is there a substantial risk of ending up dead as a result of criminal activity? How does capital punishment alter this risk?
 11. **How, according to van den Haag, does capital punishment work as a deterrent? How, according to Reiman, does abolishing capital punishment work as a deterrent?**
 12. **How does van den Haag’s common-sense argument prove more than necessary? What would it also justify?**
 13. **“[W]e take the amount of force a society uses against its own people as an inverse measure of its justness.” (140) Explain.**
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Ernest van den Haag, 'Refuting Reiman', pp 142-145.

1. What role do social conditions play in Reiman’s abolitionist argument?
2. **“But the criminal’s moral, let alone legal, responsibility for a crime which he committed for personal gain and could have avoided, is not diminished merely because he lives in unjust circumstances, and his crime was a predictable response to them.” (142-143) Why not? (Consider the wealth argument.)**
3. **How does van den Haag respond to Reiman’s claim that abolition represents an advance in civilization?**
4. How does van den Haag respond to Reiman’s claim that life imprisonment already provides sufficient deterrence?
5. **How does van den Haag respond to Reiman’s allegation that van den Haag’s argument entails that we should us torture as punishment?**
6. What is van den Haag preferred mode of execution? Why?
7. **How, according to van den Haag, should life imprisonment offend our moral sensibilities more than execution?**