

PHI 169 – CRITICAL REASONING

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ASSIGNMENT #3 – DUE OCTOBER 15, 2014

So far we talked about whether the death penalty deters crime and whether it is a cruel form of punishment. Besides deterrence and cruelty, another important issue is whether the death penalty discriminates against certain racial groups. The consensus is that it does discriminate against blacks. But what does that mean exactly? Further, is discrimination at all relevant for the justice (or injustice) of the death penalty? These are the questions you'll explore in this assignment. There are two parts to the assignment, PART I and PART II. Read carefully the text below and the text on the next page and answer the questions as clearly and as briefly as you can. One or two pages will suffice.

PART I. WHAT IS DISCRIMINATION?

From "Death Penalty, Still Racist and Arbitrary" by DAVID R. DOW, NY Times, July 8, 2011:

Several years after the death penalty was reinstated in 1976, a University of Iowa law professor, David C. Baldus and colleagues published a study examining more than 2,000 homicides that took place in Georgia beginning in 1972. They found that black defendants were 1.7 times more likely to receive the death penalty than white defendants and that murderers of white victims were 4.3 times more likely to be sentenced to death than those who killed blacks.

What became known as the Baldus study was the centerpiece of the Supreme Court's 1987 decision in *McCleskey v. Kemp*. That case involved a black man, Warren McCleskey, who was sentenced to die for murdering a white Atlanta police officer. Mr. McCleskey argued that the Baldus study established that his death sentence was tainted by racial bias. In a 5-to-4 decision, the Supreme Court ruled that general patterns of discrimination do not prove that racial discrimination operated in particular cases.

... Since 1976, Texas has carried out 470 executions (well more than a third of the national total of 1,257). You can count on one hand the number of those executions that involved a white murderer and a black victim and you do not need to use your thumb, ring finger, index finger or pinkie.

Well, you might need the pinkie. On June 16, Texas executed Lee Taylor, who at age 16 beat an elderly couple while robbing their home. The 79-year-old husband died of his injuries. Mr. Taylor was sentenced to life in prison; there he joined the Aryan Brotherhood, a white gang, and, four years into his sentence, murdered a black inmate and was sentenced to death. When Mr. Taylor was executed, it was reported that he was the second white person in Texas executed for killing a black person. Actually, he should be counted as the first. The other inmate, Larry Hayes, executed in 2003, killed two people, one of whom was white.

- (a) What does Baldus mean by "discrimination"?
- (b) Can you give a general definition of discrimination? Browse the web, but cite your sources. Note that a definition such as "discrimination is the unjust or prejudicial treatment of different categories of people on the grounds of race, age, or sex" is unsatisfactory. What do we mean by "unjust" or "prejudicial"? If you cannot find a satisfactory definition, explain why you could not find one.

Turn the page for part II...

PART II. IS DISCRIMINATION IRRELEVANT FOR THE JUSTICE OF THE DEATH PENALTY?

Some think that the death penalty is unjust because it discriminates against blacks. Ernest van den Haag, Professor of Law at Fordham University, disagrees. Here is an excerpt from his *The Ultimate Punishment: A Defense* (1986):

...Consideration of the justice ...of capital punishment is often conflated with objections to its alleged discriminatory or capricious distribution among the guilty. Wrongly so. If capital punishment is immoral *in se*, no distribution can affect the quality of what is distributed, be it punishments or rewards. Discriminatory or capricious distribution thus could not justify abolition of the death penalty. Further, maldistribution inheres no more in capital punishment than in any other punishment. ...

Maldistribution of any punishment among those who deserves it is irrelevant to its justice or morality. Even if poor or black convicts guilty of capital offenses suffer capital punishment, and other convicts equally guilty of the same crimes do not, a more equal distribution, however desirable, would merely be more equal. It would not be more just to the convicts under sentence of death.

Punishments are imposed on person, not on racial or economic groups. Guilt is personal. The only relevant question is: does the person to be executed deserve the punishment? Whether or not others who deserved the same punishment, whatever their economic or racial group, have avoided execution is irrelevant. If they have, the guilt of the executed convicts would not be diminished, nor would their punishment be less deserved. To put the issue starkly, if the death penalty were imposed on guilty blacks, but not on guilty whites, ...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.

Equality, in short, seems morally less important than justice. And justice is independent of distributional inequalities. The ideal of equal justice demands that justice be equally distributed, not that it be replace by equality. Justice requires that as many of the guilty as possible be punished, regardless of whether others have avoided punishment. To let these others escape the deserved punishment does not do justice to them, or to society. But it is not unjust to those who could not escape ...

Please do the following:

- (c) Identify conclusion and premises.
- (d) Summarize the main points(s) of the argument, and in particular:
 1. What does it mean that “maldistribution of any punishment among those who deserves it is irrelevant to its justice or morality”? What is the difference, for van den Haag, between *equality in punishment* and *justice in punishment*?
 2. Is the equal distribution of death penalties a necessary condition for the justice of the death penalty, according to van den Haag? Is the equal distribution of death penalties a sufficient condition for the justice of the death penalty? Explain your answers.
 3. What does it mean that “justice is independent of distributional inequalities”?
- (e) What does van den Haag mean by discrimination (or, as he puts it, capricious distribution)?
- (f) Is van den Haag’s sense of discrimination different from Baldus’ sense of discrimination? If not, explain what the difference is exactly.