

# *Equality versus Justice in Punishment*

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DEATH PENALTY, RAISE YOUR HAND.**

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## *Does Equality Matter at All?*



# Let's Consider van den Haag's Argument About the Death Penalty

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**Assumption:** "Guilt is personal. The only relevant question (*in evaluating guilt*) is: does the person to be executed deserve the punishment?"

**Assumption:** A punishment is just or moral just in virtue of the fact that it is given to those who are guilty of the crime for which they are punished.

**Intermediate conclusion:**  
"Maldistribution of any punishment among those who deserves it is irrelevant to its justice or morality."

**Assumption:** The maldistribution of the death penalty can justify its abolition only if maldistribution is relevant to morality or justice.

**Conclusion:** "Discriminatory or capricious distribution thus could not justify abolition of the death penalty (*specifically*)."



# A Key Point in van den Haag's Argument is that the Equality of Punishment Does Not Matter for the Justice of the Punishment

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*NB: Equality of punishment is the opposite of discrimination. Equality of punishment means that punishment is not discriminatory.*



# Equality of Punishment in Probabilistic Terms (using Baldus' Definition)

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**Equality of punishment** across different racial groups means that, *everything else being equal*, the **probability of being punished is the same** for blacks, latinos, and whites.

For example, consider a white, black, and latino person, each guilty of the same crime. If, everything else being equal, they each have the same chance of being convicted and punished, that would mean punishment is equal and non-discriminatory.



# Justice of Punishment

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- ❖ **Justice of punishment** means that as many as possible of the guilty are punished, although some guilty people might still escape punishment.



# Is Equality of Punishment Sufficient or Necessary for the Justice of Punishment According to van den Haag?

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# Equality Not Sufficient for Justice

**TASK:** Describe a situation in which there is equality (no discrimination) in punishment, but no justice of punishment. This would show that equality is not sufficient for justice, because there can be equality without justice.

Consider a situation in which punishment is distributed equally among 20 guilty people, although 80 other guilty people are randomly let go without justification.

*In this case, there would be equality of punishment but no justice of punishment because many guilty people have been let go.*



# Equality Not Necessary for Justice

**TASK:** Describe a situation in which there is justice of punishment, but there is no equality (i.e. there is discrimination) in punishment. **This would show that equality is not necessary for justice, because there can be justice without equality.**

Consider a situation in which as many of the guilty as possible are convicted and punished. But, as it turns out, most of those who are punished are blacks and latinos. It was simply too difficult to convict and punish the guilty whites, so they escaped punishment.

*In this case, there would be justice of punishment but no equality of punishment because punishment is not equally distributed among racial groups.*