

Philosophy 104, Ethics, Queens College, Spring 2006
Russell Marcus, Instructor
email: philosophy@thatmarcusfamily.org
website: <http://philosophy.thatmarcusfamily.org>
Office phone: (718) 997-5287

Lecture Notes, May 10

I. Quiz: Describe the Best Bet argument.

II. Retributive, or Kantian, justifications of capital punishment

Van den Haag argues that capital punishment can not be unjust, since the criminal asked for it, p 135.
Again, notice the Kantian presumption.

Van den Haag, oddly, urges shootings, rather than injection, in order to maintain the dignity of the executed, p 144.

This does not help us answer the question of where to draw the line between acceptable and unacceptably severe punishments.

Stewart argues that we can avoid the problem of cruelty by making sure that a penalty is not too painful, or grossly out of proportion, p 118.

Reiman argues that the justness, in the Kantian sense, of a punishment does not entail that we should implement it, p 137.

We should not do horrible things, like torture.

Capital punishment is just another horrible thing we can do.

It is always cruel and unusual.

Abolition of the death penalty is a mark of civilization.

Brennan agrees that it is too severe, and below the acceptable limits required by human dignity, p 121.

Perlmutter says that it's consistent with dignity.

Van den Haag responds to Brennan, p 135, and alleges that the criminal is the source of the degradation.
The criminal who is degrading himself.

The retributive case thus seems to turn on how we interpret 'dignity'.

III. Capital punishment: a summary

The death penalty is unnecessary as a deterrent to the criminal, since we only execute prisoners in custody.
We could prevent them from escaping, and having pleasant lifestyles in prison.

Stewart defends the death penalty since it was deemed acceptable by the Framers, and by legislators today, p 118.

A similar defense is made by Perlmutter, p 128.

Marshall argues that people's desire for the death penalty is no indication of the moral rectitude of the punishment.

The American people don't know enough about the punishment.

If they did, they would reject it, p 121.

There needs to be a (morally and factually) informed citizenry.

There are further pragmatic questions:

Can the government be trusted to handle it?

The Court's Furman decision, 1972, argued that capital punishment was illegal since it was applied in a "freakish and wanton manner".

But in *Gregg v Georgia*, 1976, it reversed itself, allowing capital punishment as long as the jury is guided and mitigating circumstances are considered.

Scott Turow has a recent book, *Ultimate Punishment*, on the decision of the governor of Illinois to suspend capital punishment.

Perlmutter and van den Haag see it as a question of justice.

Though van den Haag sees deterrence as sufficient practical justification.

Reiman grants the justness of the death penalty (assuming a strict *lex talionis*) but argues that deterrence has not been proven, and that it works on the other side.

That is, Reiman argues that abolition actually creates a greater deterrence.

We can try to determine the deterrent effect.

Van den Haag argues that common sense dictates that a more feared penalty must serve as a greater deterrent.

Reiman notes that this entails that we should implement death by torture.

Van den Haag responds that this is repugnant, but so may be capital punishment, to some.

Durkheim quote, 140.

IV. Marriage

Bennett writes that, "It is an honorable estate...", p 313.

His concern is with both 1) the strength of the institution; and 2) the definition of marriage, p 313.

Here is a more precise definition, which I will call the Standard (liberal) Conception:

Marriage is lifelong union between a man and a woman, who freely choose each other, often affirmed in a religious context, recognized by the state. It is generally, though not inevitably, expected that married couples of childbearing age will have children, and that children are to be raised within these families.

That is, marriage is a

1) lifelong union between

2) a man and a woman,

3) who freely choose each other,

4) often affirmed in a religious context, and

5) recognized by the state.

6) It is generally, though not inevitably, expected that married couples of childbearing age will have children, and that

7) children are to be raised within these families.

V. Challenges to the standard conception

There are challenges to each clause of the standard conception.

Either we have to give up the standard conception, or we have to show why the challenges should be unsuccessful.

1) Lifelong Union

Divorce is probably the most threatening challenge to the standard conception, because it is so popular.

The rise in divorce in the United States coincided with women's liberation and the rise of no-fault divorce laws.

No-fault divorce means that either party can sue for divorce, without justifying their desire to divorce in court.

New York State is one of very few states without no-fault divorce.

No-fault divorce laws freed women to leave abusive and unequal marriages.

But, it has had a devastating effect on marriage.

Now, about half of marriages in the United States end in divorce.

Just consider the new phrase 'trophy wife'.

Divorce is sad, but can be better than a bad relationship, especially if the relationship turns abusive.

Divorce is an odd kind of challenge, since people who divorce may at the same time express that they had hoped for a lifelong union, and may still look for one.

2) One Man, One Woman

We will discuss two different challenges to this clause: gay marriage and plural marriage.

3) Choosing One's Partner

Arranged marriages are the challenge, here.

With the exception of this clause, we could call the standard conception traditional.

Distinguish arranged marriages, in which people choose to have others, like their family members, choose their partners, from forced marriages, in which a partner is subjugated.

In an arranged marriage, one still has some measure of free choice.

In some societies, in India and in Japan, for example, arranged marriages are common.

Free choice can be scary.

Arranged marriages probably have lower divorce rates, but it is not clear whether the spouses are happier.

Happiness is difficult to judge.

Still, only a small minority of those who experience a liberal society will choose this option.

Does this mean that love marriages are better than arranged marriages?

Or is this just the nature of free choice?

4) Religious Sanction

Many people get married in secular ceremonies, at courthouses, for example.

People whose lives center around religion tend to see secular ceremonies as a challenge to marriage.

People who are not religiously oriented tend to see secular ceremonies as a challenge to religion, but not as mitigating their commitment to their marriage.

Our concern here is primarily with state recognition of marriage.

The challenge of single-sex, or gay, marriage is generally aimed at the secular definition, first, for example.

This may be because there is greater hope of shifting the law than changing the religion.

5) State Recognition

Marriage, historically was a private affair, of the family, or of the community.

For the moment, put aside the question of religious sanction.

Still, there are certain state-sponsored incentives (taxes, social approval) to marriage.

In fact, many states recognize 'common law marriages'.

These may eliminate the religious element, and also remove the requirement of marrying in front of a judge or other representative of the state.

The requirements for common law marriage vary.

You must live together, for a time, which varies according to state and individual situation.

You must present yourselves to others as a married couple. Some ways of doing this are by using the same last name, referring to one another as husband or wife, and filing a joint tax return.

You must intend to be married (as opposed to being in a long engagement).

In the U.S., every state is required to recognize as valid a common-law marriage that was recognized in another state. Common law marriages are recognized by Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Montana, New Hampshire, Ohio, Oklahoma, Rhode Island, South Carolina, Texas, Utah and Washington D.C.

6) Having Children

The increase in the divorce rate and longer life expectancies mean that there are more childless marriages.

Still, even among couples with women of child-bearing age, in places like NYC, women choose to have children later.

This has contributed to the increasing demand for fertility technology.

This technology raises interesting ethical issues, related to genetic engineering.

But these are not really issues for marriage.

The real issues for marriage have to do with raising children.

7) Raising Children

Of course, some children are raised in single-parent homes by necessity, due to tragedy, for example.

Many others are raised by single parents as a result of parental choice.

If there is any argument for the immorality of divorce, it probably reduces to the effects of divorce on child-raising.

Similarly, the arguments against single-sex marriage probably hide an implicit (or explicit; see Bennett's article) worry about child-raising.

But that issue has already been generally resolved.

States have generally recognized that children need loving, caring parents in any form.

So, gay couples are allowed to adopt and rear children, though it is still not as easy to adopt as it is for heterosexual couples to do so.

Of course, there is little the state can do, in many cases.

Adoptions are complicated, and often very difficult.

Richard Posner argues that we could simplify this process, and make it more fair, by allowing people to sell babies.

We will discuss one other issue involving child-rearing:

There is a general supposition that any married, or even unmarried couple, may have or raise children.

Hugh LaFollette argues that we should license parents.

Bennett worries about the strength of the institution of marriage.

The Bennett/Sullivan and Joseph readings focus on the second challenge to the standard conception.

First, we focus on single-sex marriage, and then on polygamy.

Then, we will look at some of the issues raised for the sixth and seventh clauses.

VI. Single-Sex Marriages

Is there anything to be said against single-sex marriage?

Bennett's discussion focuses on:

- 1) whether other changes to marriage might be made; and
- 2) the alleged promiscuity of gay men.

Bennet's concern about other changes to the definition seems irrelevant to the issue of gay marriage.

He writes, "Having employed sexual relativism in his own defense, [Sullivan] has effectively lost the capacity to draw any lines and make moral distinctions."

The structure of this argument is:

Allowing single-sex marriage is sexual relativism.

Allowing men to marry goats is sexual relativism.

We shouldn't allow men to marry goats.

So, we shouldn't allow sexual relativism.

So, we shouldn't allow single-sex marriage.

Compare the previous argument with:
Killing a mosquito is killing an animal.
Killing a human is killing an animal.
We shouldn't kill humans.
So, we shouldn't kill animals.
So, we shouldn't kill mosquitos.

It should be clear that the argument I attributed to Bennett is fallacious.