

- **Further suggestions for your paper**

1. If helpful, feel free to browse my weekly postings <http://www.glue.umd.edu/%7Ewkallfel/Phil140Spring2007-8/index.html> , to see what may have been yours' and others' feedback on the topics discussed for the particular articles at hand. Sometimes reading others' responses may assist in helping you develop your own argument(s).
2. Quite a bit of conceptual work should take place before you sit down to write a draft, sometimes it's easiest to sketch a rough outline of what you think your argument is (mentioning what are your specific premises). Though there's no tried-and-true general way of conceiving an argument, it's obviously best to start with the question that "grabs" you the most. Then ask yourself: What is it about that question that gives me the incentive to respond to it? What are my intuitions here? Though obviously your intuitions can conflict and can be wrong, they're a good point to start when formulating your argument. (The only to know which of your intuitions you should hold fast to, and which you should toss, is to start with them and see how they stand the test of your preliminary argument-sketch/outline.)
3. Though, as your instructor Leland mentioned in class (April 16), the logical form of your argument should be the weakest necessary to support your claims (i.e. avoid sweeping generalizations, etc.) Nevertheless, in terms of style, you should state your case concisely and boldly (but in an informed fashion), the way, for example, a lawyer might argue in front of a judge.
4. If you're having trouble pinning down an argument, or you'd like to work out more what you think your argument may be, feel free to visit me during office hours (Friday 2:00-4:00pm) and/or make an appointment. Please avoid using email as a means for philosophical exchange, it's far less efficient than a conversation in "real time." In other words, please **do not** email me your argument-sketch, or outline, or lengthy passages of your thoughts, and ask me to provide written feedback.

- **Class Discussion**

Igor Primoratz and Hugo Bedau not only clearly differ in terms of the *content* of their claims, but also in the *form* of their reasoning, in the sense that what one considers inessential and fallacious, the other considers essential and salient. Their essays really appear to be an instance of two people talking past one another, so to speak.

For instance, the first argument that Primoratz dismisses is a straightforward equivocation between wrongful and justified killing (Vaughn, 273), i.e. the typical objection to the death penalty often phrased as: "Why does the State kill people who kill people to show that killing is wrong?" However, Bedau considers a version of this

argument to be a “knockdown argument.”¹ Moreover, Primoratz dismisses Cesare Beccaria’s claims, via invoking Hegel’s “[t]he state is not a contract at all,” to support his retribution-based claims (272). On the other hand, Bedau’s fundamental claims hinge on what he denotes as the M.I.P., “minimal invasion principle,”² which is derived from his reading of Beccaria.

While accusing the first argument he addresses as guilty of a simple “equivocation” Primoratz seems to be committing a few himself, in the selfsame passage. For instance:

If an abolitionist wants to argue his case by asserting an absolute right to life, she will also have to deny moral legitimacy to taking human in life in war, revolution, and self-defense. This kind of pacifism is a consistent but farfetched and hence implausible position. (Vaughn, 273)

There are two problems with this line of reasoning here: first of all, it is by no means obvious that (regardless of how ‘far-fetched’ one’s pacifism may turn out to be) that the abolitionist owes an account for other notions of what are considered by many to be other forms of justified killing (like self-defense, war, revolutions, etc): It is not as though they stand or fall based on one’s views towards the death penalty (as they obviously involve significantly diverse contexts). Furthermore, Primoratz appears guilty of a fallacy of false disjunction as well, as it is by no means clear that abolitionists ascribing to the first argument he answers to would be straight-jacketed into such an extreme rendition of pacifism he alludes to, in what appears to be a straw-man maneuver. Last of all, as indicated by Bedau’s somewhat different approach (mentioning the ‘knock-down’ argument above with similar form and content), the ‘equivocation’ only seems obvious if one accepts as a premise that capital punishment is justified killing, not murder. But this is begging the question!

Overall, the reaction among most in each section was that Primoratz adopted somewhat of a ‘buckshot’ approach (answering to a series of contrived counterarguments) but never offering much in the way of a fully and explicitly developed line of argumentation as was conversely immediately apparent in Bedau. So in general the preference was toward Bedau’s article, as his premises were clearly laid out and his points clearly and reasonably thoroughly developed (**Karuna Panitz §0206, Ashley Mondestin §0206, Erin Coco §0207, Douglas Weithoner §0207**).

There were however some critical responses to Bedau, directed mostly toward his claims that lifetime imprisonment (*pace* Bentham) was not at least as cruel or as brutal as the death penalty, if not more. **Joseph Hall §0203** pointed out an inconsistency in what appears to be a fallacy of composition, in Bedau’s use of evidence in which he claims that “it is sufficient by way of a reply to point out that those in the best position to know [i.e. those on death row] behave in a manner that suggests otherwise.”(279) **Hall** objected to the fact that the evidential claims were obviously based on those who had not

¹ As he writes (n. 2, p. 281, Vaughn): “A strong candidate for an argument equally as concise ...is the ‘knockdown argument’ offered by Stephen Nathanson....’You accept and respect for human life as fundamental values; the death penalty is inconsistent with these values; therefore, based on your own values, you ought to reject the death penalty.”

² “Invasions by the government of an individual’s privacy, liberty, and autonomy...are justified only if no less invasive practice is sufficient to achieve an important social goal.” (278)

experienced a life sentence in full, but (though perhaps being on death row for years) Bedau assumes that those experiencing portions of their incarceration time are qualified to the same conclusions for the entire term; i.e. that they'd still feel the same way in the even that they served out a life sentence.

Daniel Loveland §0203 in addition pointed out that the methodology in the studies Bedau briefly alluded to was lacking (239): For the fact remains that the attempted suicide rate is kept artificially low just because *all* possibilities for self-inflicted harm are methodically removed: death row inmates are placed on suicide watch and are not allowed personal items (like ties) which could induce the possibility of self-inflicted harm. So all things being equal, **Daniel's** point is the attempted suicide rate among death row inmates is far higher than that of the general populace, thus undercutting Bedau's claims that "[f]ew death row prisoners try to commit suicide and fewer succeed." (279) Moreover, as I pointed out, the gist of the passage's claims (279) can be construed in a different fashion, not necessarily reflecting what Bedau presumes as the lesser of the evils (life time incarceration). It could very well be that such empirical studies are ultimately focusing on a *survival instinct* on the prisoner's part that has perhaps little or nothing to do with a continued desire for life—much less (to quote Primoratz) "[a]s long as the murderer is alive, no matter how bad the conditions...there are always at least some values he can experience and realize." (271) To put it another way, to quote William Barrett:³ "We live by the same instincts that keep the rat struggling in its cage when caught." That the rat continues to 'struggle' does not in and of itself convey the notion that it's always more "humane" to keep it caged for life than it is to kill it (for whatever reason).

Moreover, regarding the issue of lifetime imprisonment, the disanalogy with the death penalty was questioned by **Paul Henry §0106**, concerning the issue of "irreversibility." Whereas a miscarriage of justice is clearly irreparable or irredeemable in the case of an execution, it doesn't follow that someone unjustly imprisoned for years on end has also suffered irreversible damages.⁴ While this objection would not affect Primoratz's claims (since like van den Haag he argues that the issue of miscarriages of justice is separate from the issue concerning the moral status of the death penalty⁵) it does sound somewhat of a cautionary note against Bedau's somewhat facile endorsement of life incarceration falling in the scope of the MIP, but not the death penalty. **Brandon Farley §0103** echoed this point by mentioning on the one extreme (versus the Tokie Williams case on the other extreme) lifers who seem to exhibit no capacity for reform often exploit the system in their favor, thus earning the hackneyed title that prisons are "crime schools." Like some of the points raised last week (April 11) based on these issues some may take a pragmatic or consequentialist stance in favor of the death penalty, or at least in favor of it when used as a punishment on 'moral monsters.'

³ *The Illusion of Technique: The Search for Meaning in a Technological Civilization* (Harvard U Press, 1978)

⁴ The documentary film *After Innocence* details such cases.

⁵ "Errors of justice do not demonstrate the need to do away with capital punishment; they simply make it incumbent on us to do everything possible to improve even further procedures of meting it out." (Vaughn, 275)