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# MORAL DILEMMAS IN REAL LIFE

*Current Issues in Applied Ethics*

by

OVADIA EZRA

*Tel Aviv University, Israel*

 Springer

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# CONTENTS

Acknowledgements	vii
Preface	ix
<b>A. INDIVIDUAL RIGHTS AND PUBLIC DUTIES</b>	<b>1</b>
1. Privacy and the Public Sphere	5
2. The Obligation of the State toward Individuals	15
3. Public Security vs. the Right to “Be Let Alone”	25
4. Freedom of Expression in Academia and the Media	37
<b>B. MEDICAL ETHICS</b>	<b>51</b>
5. Mercy Death or Killing	55
6. Donating or Selling Organs	69
7. Genetic Engineering and Reproduction	81
<b>C. PARENTHOOD AND THE FAMILY</b>	<b>97</b>
8. Rights of Relatives and Generations	101
9. Procreation after Death	115
10. Babies as Commodities	127

<b>D. PUNISHMENT</b>	<b>141</b>
11. Punishment of Sex Offenders	145
12. Punishment and Domestic Violence	157
13. Capital Punishment and the Mentally Retarded	169
Index	183

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## PREFACE

Life presents both individuals and communities with situations that demand moral and ethical deliberations. From the more general issues of universal globalization to the very specific problems of everyday existence encountered by active agents, contemporary life is replete with moral and ethical conundrums. Any thinking person is required, so it seems, to be concerned, involved, or—at the very least—conversant with the ins and outs of ethical argument. This book purports to supply ways of thinking of, perhaps even dealing with, such argument.

Applied ethics is that intellectual locale where theory meets praxis; this book is designed to make that meeting point explicit, by presenting parts of that series of issues in well-grounded philosophical formulations. As such, it hopes to serve both the academic milieu and the intellectual lay public.

The format of the book fulfills the above agenda. It begins with the general relation between the individual and society—that topos which instills ethical tension, and even conflicts, between the private and the public in our discourse. The book then segues from general to specific as it gradually narrows the ethical playing field and relates to medical ethics, the family, and the practice of punishment. In all cases of dealing with the ethical “issues” in our list, the book addresses both consensual and conventional social institutions and distortions thereof. As such it opens up the area of discussion not only to theorists and intellectuals, but also to therapists, practitioners, and other professionals who look to ethics as a “form of life”.

Before presenting the topics and structure of this book, I want to make a few comments on ethical discussions in general, and on these within the domain of applied ethics in particular. Ethical discussions are usually divided into three different levels. The highest one is called *Metaethics*. This level is that branch

of ethics which seeks to understand the nature of ethical evaluations and moral statements. It inquires into the issues of the language of ethics, the use of this language, and sometimes even examines the foundations of morality, and asks whether it has objective validity or transcendental sources. Some theorists consider even the question of how to manage ethical discussions as belonging to this domain.

The next level of discussion is usually called *Normative Ethics* to which the well-known great and comprehensive ethical methods or ethical systems belong. This domain deals with the moral principles and rules, according to which a person should live and interact with other human beings. This domain has three main essential systems: deontological (which deals with moral duties and imperatives), teleological (or consequential, which deals mainly with future utility and happiness), and virtuous (which deals with moral virtues). Such ethical methods are supposed to be universal, but there are some which are not (such as relativist ethics and ethical egoism). In any event, normative ethics as a whole is supposed to provide an answer to the general question of how human beings should live.

The third level is *Applied Ethics*, the domain expressed in this book and which deals with the ethical aspects of specific issues. Its goal is not merely a theoretical discussion about the ethical aspects of those issues, but mainly attitudes or at least to cause people to re-assess them. Of course, any part of such a discussion leans on moral principles that were formulated by the previous domain; that is, it uses normative ethical theory in order to justify or validate its arguments. However, considerations in applied ethics can be taken simultaneously from more than a single normative ethical theory, if these different considerations do not conflict or contradict each other. What should be stressed is that each discussion in applied ethics is carried out within a comprehensive ethical, social, and political worldview, within which its presumption and arguments are valid or acceptable. Thus, its conclusion can be accepted only by those who accept the foundational principles upon which these arguments are grounded, while others, who reject that worldview, will reject the conclusions it dictates with regard to specific issues.

Accordingly, this book, whose form and structure are typical of the genre of applied ethics, starts from a deontological social democratic worldview, which tries to balance between the individual's freedom and social needs. It tries to maximize people's freedom but gives weight to considerations of social solidarity and equality. The book discusses issues that have occurred in real life and tries to present the moral principles and considerations that should be applied when dealing with such issues. Thus the specific examples, which were originally taken from the media, are only the triggers for discussion of the principal problems that are raised by these examples.

Most of the cases discussed in this book occurred in the United States, the United Kingdom, and Israel, mainly because the media in these countries is most accessible to me due to reasons of language and political culture. However, cases

similar to these occur in any society, hence the discussions are relevant to most Western societies with slight modifications. After all, the issues of privacy, medical ethics, sex crimes, or domestic violence relate to people's lives wherever they live. The point is that since these countries share similar political and social attitudes, the discussion can be most relevant to their common political and social culture.

What is important to stress about the specific cases is their role in showcasing the principal problems of each chapter. In other words, the specific cases themselves are not the essence, but are only the springboard for discussion of relevant principles and considerations. For example: when discussing punishment, the principle of *lex talionis* (the law of retaliation which is a principle of retribution) is mostly relevant, and when discussing the specific punishment of mentally retarded offenders, the principle of *mens rea* or the criminal intent required to commit the crime) is of great relevance. Although the weight assigned to such principles can be variable, any discussion about such issues should at least mention and relate to them.

The classification of the different cases in the four sections of the book is not definitive. The issue of domestic violence, for example, appears in Section D that deals with punishment although it could also be discussed in Section C that deals with the family. The issue of procreating after death is discussed in Section C, even though it is also related to Section B that deals with medical ethics. It was more important to focus on the four general categories listed below (rights and duties, medical ethics, family, and punishment) than to rigidly attempt to categorize the cases used to illustrate the overall issues.

Similarly, many principles and ideas are discussed in depth in certain chapters and then are mentioned again in later chapters, due to their relevance. Thus, for example, many of the arguments that are presented in Chapter 1 about the significance of privacy, re-appear and are elaborated throughout Section A as a whole. The same is true for the arguments against the commodification and exploitation of human beings and their organs, which are raised in Chapter 6 (in the context of selling or donating organs), and re-appear in Chapter 10 (in a different section altogether) in the context of selling babies.

However, as said before, this book follows the usual format and structure of these in the genre of applied ethics. It contains four sections:

- A. Individual Rights and Public Duties;
- B. Medical Ethics;
- C. Parenthood and the Family;
- D. Punishment.

Each section includes three or four chapters and is dedicated to a particular problem or issue that is of public concern. I devote each specific chapter within the section to explicating the ethical uncertainties and complications of a current "headline" on the public agenda. I discuss the pros and cons of competing positions

and solutions to the dilemma encountered therein, and finally offer a way of resolving the problem—even though, sometimes, imperfectly.

## **SECTION A. INDIVIDUAL RIGHTS AND PUBLIC DUTIES**

This section deals with the inherent tension between the individual and the community. A person is both an individual as well as a citizen or a member of community, and this immanent dichotomy always involves conflicts.

These conflicts may occur between individuals who have their own preferences, desires, needs and interests, and the social framework within which the individual exists, which also has its own interests. The core of this conflict is the fact that many interests of the individual are acknowledged by society as valid claims against the social framework, and thus receive the status of *rights*. On the other hand, the individual, as a member of society, has obligations to fulfill toward the social framework, and thus is considered as having *duties*. Sometimes, the rights (of society) and the duties (of the individual) conflict with each other, and we have to decide which interest is more urgent and, therefore, should prevail.

Whenever there is a conflict between the individual's interests and those of the social framework, my own tendency is to support the individual's interests and provide them with more weight than the interests of the collective framework; this arises from a belief that the state or society is innately robust and can protect its interests more efficiently than the individual. However, this preference is not absolute and when the interests of the individual are only slightly harmed while the social framework is significantly benefited, then I accept the price of a minor violation of the individual's rights—but not without reservations.

This section deals with a few different domains within which such conflicts sometimes occur.

### **Chapter 1: Privacy and the Public Sphere**

The first chapter deals with the problem of privacy and the public sphere from different points of view. It questions the immunity from, or privilege against, disclosure of private information accorded to the individual—public figures, ordinary people and even criminals—whereby it conflicts with the public interest. In this regard we deal with the question of medical confidentiality of public figures or elected representatives; exposure of the criminal records of minors who have grown up and want to be integrated into society; disclosure of names of public figures being investigated in criminal procedures, and so on. What I stress in this chapter is that there is a big difference between an ordinary person's claim for respecting his or her privacy, and the same claim when it is demanded by a public

figure. I show how the issue of privacy becomes very complicated when it clashes with the public interest.

## **Chapter 2: The Obligation of the State Toward Individuals**

This chapter deals with a more general topic: the obligation of the state toward individuals. Here we deal with the role of the state in protecting the welfare and personal security of deprived sections of society (including both citizens and residents). By “deprived” we mean children (or fetuses), mentally retarded individuals, or persons on the margins of society (minorities, fringe groups, etc.). We ask whether health and educational authorities are permitted to coerce individuals into normative forms of behavior, and whether they may desist from supplying services or basic necessities to such individuals. In this context we raise the question of the parental rights of mentally retarded people and the state’s duties to them and their children. In this chapter I try to express an instrumental concept of the state and argue that the state is obligated to provide necessary means to its residents, even in cases where the original duty to provide such means was imposed on others (their parents, for example).

## **Chapter 3: Public Security vs. the Right to “Be Let Alone”**

This chapter deals again with the problem of privacy, but from a different perspective: that of databases. This has become a burning issue since September 11, i.e. since “terrorism” made its way into public discourse as the most intimidating phenomenon to date. Thus for reasons of (purported) security, the state inquires into such issues as the question of the legitimacy of DNA data resources that may help to locate or identify criminals, and the question of trace and documentation of telephone, e-mail, and other means of communication. Our own statement, in light of the current political ambience, is that there is room for worry that authorities might abuse the populace’s concern about security and violate basic rights in so doing. Here, as in the first chapter, I tend to accept the establishment of a very specific database, but with stringent restrictions on its use. When there is a demand for a comprehensive database, I outright reject it.

## **Chapter 4: Freedom of Expression in Academia and the Media**

This chapter turns to different aspects of freedom of expression, which have characterized the ongoing debate in both academia and media. We ask about the academic freedom to express controversial views; for example, views that are couched in anti-feminist or anti-minority (call them racist) utterances in the

classroom, on campus, in newspapers, on TV talk-shows, etc. A related issue, also addressed here, is the right (or duty) of the media to broadcast offensive or extremely gory events and images on television. We inquire whether it is either prohibited or compulsory to bring such images to public awareness. Here, too, even though I try to maximize freedom of speech, and allow “hate speech” at least in academia, I do not think that everything is worthy of being visually revealed to the public. I basically object to external censorship in the media, but in certain cases I expect the media to conduct self-censorship—not in verbal reporting but in televising brutal or gory scenarios.

## **SECTION B. MEDICAL ETHICS**

Of the myriad of ethical debates going on in the present-day public discourse, it would not be an exaggeration to say that medical ethics raises the most intensive and vehement arguments. The rapid progress in technology and bio-technology has far outstripped parallel progress, if there be any, in either moral or legal studies. It seems that by the time that ethical discussion, buttressed by legal considerations, grasps and is able to deal with a medical issue—one that is usually on the frontier of scientific discovery—technological progress has already flung us forward into more complicated or acute issues. This section deals with some of these issues.

### **Chapter 5: Mercy Death or Killing**

This chapter deals with the somber question of mercy death or mercy killing. Technological advances for extending human life and maintaining acutely-ill persons on life support may be perceived as both a blessing and a curse. Alongside new hope that is sometimes acquired by an extension of one’s life-span, the preservation of a life gone awry often involves suffering for the patients and additional burdens for their caretakers. This chapter inquires, generally, into the legitimacy of both coercive treatment and abstention of such, for those who either refuse or cannot express their consent to medical care. A specific issue arising here, under the same theoretical umbrella, is the legitimacy of separating Siamese twins, when it is clear that at least one of them will die as a result.

### **Chapter 6: Donating or Selling Organs**

This chapter deals with the more optimistic but no less sensitive and complicated issue of organ donation or organ sale. The possibility of saving life or enhancing its quality by organ transplantation, and the unwillingness of (sufficient) people to donate the required organs, raises a question about the morality of selling human parts. Two difficulties are immediately encountered: First, it is clear that

poverty-stricken people are the ones most liable to risk their own health in order to procure funds. The problematics of commerce in human organs is revealed in the current chapter, most notably exemplified by kidney “donations.” Secondly, and perhaps more marked by philosophical principles, the value-laden question of the reification and marketability of the human body is analyzed through the paradigm of ovum-contributions. The first is a problem of justice; the second—one of values.

## Chapter 7: Genetic Engineering and Reproduction

This chapter deals with genetic engineering and reproduction. The field of genetic engineering encompasses the (insurmountable?) gap between technological progress and the inability of the ethical dictionary to respond to issues that arise in its wake. The most far-reaching debates in this area have to do with human reproductive cloning and stem-cell research. The conflicts between scientific demands and political or philosophical misgivings and qualms, sometimes make the issue intractable. We try to offer guidelines for therapeutic stem-cell research while, at the same time, banning human reproductive cloning, thereby attempting to address both sides of the dilemma consistently. A related issue, also discussed in this chapter, is the question of creating new siblings for the purpose of using their organs (usually bone-marrow) to medically assist their brothers and sisters. It is clear that future scientific/technological developments may, nevertheless, obligate us to rethink our own judgments—in this, as in all other questions in this section.

Much of this chapter deals with the danger of leaving such acute issues exclusively in the hands of the scientific community. This danger was clearly raised by Jurgen Habermas, whose book *The Future of Human Nature* discusses this in detail when he says: “The new technologies make a public discourse on the right understanding of cultural form of life in general an urgent matter. And philosophers no longer have good reasons for leaving such a dispute to biologists and engineers intoxicated by science fiction.”<sup>1</sup> Genetic engineering challenges some of our most fundamental beliefs about morality. It enables us to control the physical basis which we are by nature, and as Habermas describes this problem, “What for Kant still belongs to the ‘kingdom of necessity’, in the perspective of evolutionary theory, changed to become a ‘kingdom of contingency’.” Genetic engineering is now shifting the line between the natural basis we cannot avoid and the “kingdom of ends.” This extension of control of our “inner” nature is distinguished from similar expansions of our scope of options by the fact that it “changes the overall structure of our moral experience.”<sup>2</sup>

<sup>1</sup> Habermas Jurgen. *The Future of Human Nature*. Polity Press. 2003. p. 15.

<sup>2</sup> Habermas Jurgen. *The Future of Human Nature*. Polity Press. 2003. p. 28.

One of the most fundamental changes of this kind, as Habermas understands it, may be the uprooting of the categorical distinction between the objective and the subjective, and this dedifferentiation “of deep rooted categorical distinctions which we have as yet, in the description we give of ourselves, assumed to be invariant. This differentiation might change our ethical self-understanding as a species in a way that could also affect our moral consciousness—the conditions, that is, of nature-like growth which alone allow us to conceive of ourselves as the authors of our own lives and as equal members of the moral community.”<sup>3</sup>

However, genetic engineering might also have very promising consequences, particularly in the domain of stem-cell research. Stem-cells “can be used to repair organic damage, to recreate parts of the human body that are diseased or malfunctioning. Thus they present us with wonderful new therapeutic possibilities, several of which have already been impressively demonstrated. Bone marrow transplants to regenerate a healthy blood system in patients with leukemia, for instance.”<sup>4</sup> This chapter deals with the dilemmas that are raised from these possibilities but its main theme is that we should restrict the research to therapeutic cloning and confine the immense potential of stem-cell research only to negative eugenics—all the while maintaining tight control over the researchers and scientists involved. Although this supervision should be, primarily, the mandate of the scientific community, the international community, and society as a whole should share the burden of monitoring the scientists. All of us should ensure that scientists do not cross the border between negative eugenics, which prevents diseases, and positive eugenics, which might genetically enhance the species which we know as *homo sapiens*, but with genetic enhancement might be changed into something else.

## SECTION C. PARENTHOOD AND THE FAMILY

Modern—or is it post-modern?—life styles have created new forms of relationships between, within, among and outside the traditional nuclear family (consisting exclusively of mother, father, and their own offspring). These new frameworks have given rise to moral rights and obligations that weaken the old patriarchal and absolutist structures of past traditional families. For example, grandparents have gained certain legal rights over their grandchildren in the United States, and single parenthood has become overwhelmingly accepted in many countries throughout the world. Another change in the traditional relations within families results from new technologies such as IVF (in vitro fertilization) sperm donation and DNA testing. These technological innovations enable widows to bear children from their deceased husband’s sperm, mothers to bear children from their deceased

<sup>3</sup> Habermas Jürgen. *The Future of Human Nature*. Polity Press. 2003. p. 42.

<sup>4</sup> Gordon Graham. *Genes*. Routledge. London and New York. 2002. p. 159.

son's sperm, or simply allow infertile couples to bear children from sperm or egg donations of strangers.

Thus, this section is devoted to some of the issues that have arisen due to these changes, such as the rights of adults born as a result of donated insemination and the rights of grandparents and other extended family members *vis-à-vis* the parents. Our attempts to navigate between the conflicting claims of different parties of the extended family sometimes raise very complicated issues, and these issues are examined here.

## **Chapter 8: Rights of Relatives and Generations**

The presupposition of dealings in rights of family matters has always been that parents are the ultimate authority in anything having to do with (their own) children. However, the waning of traditional norms brings about challenges to this assumption. In this chapter we address the rights of relatives beyond the nuclear family. The first issue discussed in this chapter are grandparents who insist on their rights in seeing, meeting, or maintaining contact and relationships with their grandchildren against the will and preferences of the parents (who are the grandparents' children). The issue of grandparents' rights has become accepted in US Courts as all 50 states have laws that acknowledge such rights, at least to some extent. My view regarding this issue acknowledges and respects these rights and includes them within the large framework of rights within the family. In my opinion, though grandparental rights are subordinate to parental rights, they should still exert considerable weight when there is a conflict. Of course, the decisive consideration in resolving the conflict of parental rights with rights of grandparents should remain the children's welfare.

The second issue of this chapter relates to the controversial case in year 2000 of the Cuban child rescued from drowning and brought to the US where his mother's relatives claimed custody over him against the claim of the Cuban father (the mother drowned in the attempt). Although the boy was rightly returned to his father in Cuba, this case exposed some ugly aspects of American society though ultimately, the superior status of parental rights over the rights of other extended family members was maintained.

The third issue discussed in this chapter is a new law in Britain which allows children who will be born in the future of sperm-donations to reveal the identity of their biological fathers, who will no longer have the right to anonymity. Apparently this decision equates the rights of children who were born from sperm or egg donations to those of adopted children, who can see the adoption files when they turn 18 and become adults. (This will affect only future donors and children, and not those in the past whose anonymity will still be maintained.) In this chapter I discuss how such a law changes sperm and egg donations within the concept of biological parenthood.

## **Chapter 9: Procreation After Death**

A more complicated issue that relates to parenthood and family is the desire of parents or spouses who have lost loved ones to use the deceased's sperm in order to create a new generation of that same family. There are a number of subtle moral dilemmas: often, it is not technically possible to obtain informed consent of a dying man. Also, a child produced from the sperm of a deceased man, will be the biological grandchild of the man's parents who will raise him as their child, causing a skip-over or a confusion of generations. Finally, there is the dilemma of bringing a child into the world as a 'monument' to a deceased family member.

This chapter deals with two different requests, each with its own complexity.

The first case is the request of a young widow to use the sperm of her deceased husband to have his child. Although the sperm was harvested from the husband before his tragic and unexpected death, he was not able to give informed consent as he was unconscious. However, his parents and the widow's parents all gave their consent and agreement to support the young widow in raising the man's biological child.

The second case is the request of parents to use the sperm of their dying son to create another child; in this case, the dying son was able to give his consent. The moral issue here is of a child born to much older parents who might not be able to take care of him appropriately over the long term, and might even need the new child to take care of them due to their advanced age.

## **Chapter 10: Babies as Commodities**

The dimensions of global trade between rich and poor countries—certainly a direct consequence of current globalization—has both transcended traditional state boundaries as well as transformed anything and everything into objects of trade and commerce. That human beings have been used as commodities is familiar in our history: witness slavery and prostitution. However, the extension of this regrettable phenomenon to babies is one of the most objectionable aspects of our new global form of life and thought. What started as a generous movement of international adoptions, with well-meaning motivation and intention, has deteriorated into a capitalistic profit-making venture in which babies are no more than a means of maximizing profits. In this chapter we endeavor to pose, and answer, queries about the ethical implications of the tragic move from adoption to baby-commerce.

The specific case is a story about an adoption agency in San Diego that first offered twin girls for adoption to a couple from California and then took the babies back shortly afterwards to offer them to a couple from Britain, who evidently paid more than the first couple. The whole story was exposed after the babies arrived at the new home in Britain. This story ended after 4 years, when the twins were finally restored to the custody of their biological mother. But the entire case raises the

specter that children are becoming just another form of merchandise for sale in the Internet, as “paid adoption” may cross the line into actual baby commerce. This chapter discusses the meaning of commodification of human beings in general, and of children in particular.

## **SECTION D. PUNISHMENT**

Several decades of theoretical discussion concerning the concept and social function of punishment within society have yielded a number of important principles, leading to a reasonable understanding of punishment. These principles are explicated in this section, and include: the proportionality principle (in which the punishment must fit the crime), elements of deterrence (as in the consequential or utilitarian approaches), and humane treatment of convicts. However, several marginal and problematic situations still remain where additional considerations must be entertained, situations that vex the ethicist bent on making theory adhere to praxis. One acute problem in the current practice of punishment is that it is imposed by imperfect legal systems, whose obligation is first and foremost toward the rule of law, and not necessarily to moral or ethical considerations. This may cause distortions in the implementation of punishment, such as overly lenient penalties (in domestic abuse, for example), and exceedingly severe ones (such as the death penalty for the mentally retarded). I examine the complexity of these issues in the different cases I bring up in this section.

### **Chapter 11: Punishment of Sex Offenders**

This chapter first discusses general characteristics of punishment as a whole as the background for the expectations we have for the punishment of sex offenders. These characteristics include the proportionality principle in which the punishment must fit the crime. However, I take into consideration that our usual guidelines regarding punishment are somewhat insufficient when we discuss punishment for sex crimes, due to the propensity of these types of crimes to arouse extreme emotional reactions.

I discuss two aspects of punishing sex offenders. The first deals with the outrageously mild punishments that are meted out to sex criminals in Israel, both in length of incarceration and in severity of punishment (sometimes minimized to community service), particularly to teenage sex offenders. This strikes at our deepest instincts regarding the proportionality principle in which the punishment must fit the crime. It also begs the question whether the tacit acceptance of society of these mild punishments, indicates that society accepts these values and norms behind the punishments involved. Do most people agree that men are superior to women, and that violence is a legitimate means for achieving men’s goals and

desires? If society itself does condemn such offences, then it follows that the courts that represent this society, should impose much more severe penalties for sex crimes.

The second aspect deals with the offering of plea bargains by the prosecution, in which curative treatment to the sex offender is a stipulation for reduced punishment. It is a relatively new idea of mitigated punishment pending the criminal's consent to chemical castration. In this case I argue that rehabilitation is not part of the prosecution's role as a legal authority.

## **Chapter 12: Punishment and Domestic Violence**

Domestic violence is not just a sub-category of violence in general. It is inherently complex because there is an unclear border or thin line between punishment (disciplining children) and actual violence (beating children). Another problem is that when the offender is a parent, for example, then punishing him or her is likely to harm the family at large, such as by taking away their means of support. These complex issues are often used by the authorities as an excuse to abstain from pursuing and punishing offenders. Consequently, they renege on their two obligations—to punish criminals and protect the weak. I present the argument in this chapter that the privileges of autonomy and non-interference generally accorded to the family by the State, are privileges that are conditional on the proper functioning of the family. When domestic violence rears its head, these privileges of autonomy are cancelled and the family is, indeed, subject to State control and interference.

The second problem, more specific to Israel, is the intolerable laxity with which domestic violence is treated by institutions in Israel, most notably by the legal and law enforcement systems. In general, the legal system in Israel exhibits outrageous clemency toward criminals in general, and for domestic violence in specific.

## **Chapter 13: Capital Punishment and the Mentally Retarded**

In this chapter I focus not on the general debate regarding capital punishment, but on applying the death sentence to mentally retarded or mentally ill criminals. One of the most relevant terms for discussing the legal and moral accountability of the mentally retarded is that of *mens rea* (intent required to commit the crime). I argue that this notion of diminished responsibility should preclude the imposition of capital punishment on mentally retarded and mentally ill people, without entering into the ideological dispute regarding capital punishment *per se*.

Examples are given to illustrate the troublesome phenomenon of Texas courts that are not much swayed by the impaired mental condition of offenders when

deciding to impose capital punishment on them. I conclude that even those who support capital punishment should demand that it be imposed not only on those who deserve the most severe penalty allowed by society, but also those with the highest level of *mens rea*. Thus when trying mentally retarded or insane criminals, their mental state should be considered as a mitigating factor in reducing the death penalty to life imprisonment.