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Communication Isolation as Reported by a Group of Deaf Texas Inmates

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Abstract: *Most profoundly deaf children are born into hearing families and often are not exposed to accessible (visual-gestural) language within the home environment. Much incidental communication and instruction is missed as a result. This is a qualitative study evaluating the impact of communication barriers on ten deaf, incarcerated offenders whose primary mode of communication is sign language. Participants represent a range of ages, communication histories, and language abilities. Through interviews, participants' experiences in the home, at school, and in the prison environment were discussed. Study results indicate that common experiences of profoundly deaf, adult signing offenders are restricted early access to communication beyond routine activities, lack of signing male role models, being overlooked or faking success in school, and a need for continuing awareness and responsiveness to the communication needs of deaf offenders.*

Keywords: deaf, communication, abuse, minimal language skills, inmates, incarceration, equal access, social identities, marginalization, qualitative analyses, personal narratives

"The hearing world does not understand deafness. It defies our assumptions and undermines our paradigms. Nowhere is deafness more complex, elusive and seemingly unknowable than in the area of our language."

(LaVigne and Vernon, 2003:851)

Most profoundly deaf children are born into a unique linguistic situation (Mitchell and Karchmer 2004). Hearing loss prevents them from acquiring the naturally-occurring, spoken language of their parents. Without access to language, they are unable to fully participate in the family interactions that are so crucial to language development. Children who are deaf are at a high risk for delays in communication and language development, poor academic achievement, delays in critical thinking skills, and problems with social and emotional development because of the central role that language plays in these essential areas (Rall 2007). The purpose of this paper is to review the communication histories of ten deaf inmates who use sign language for themes relating to social isolation and its effects.

REVIEW OF LITERATURE

While many members of the deaf community share a language and a culture, their cultural identity and

psychosocial needs are not always the same. Diversity of language skills, ethnicity, gender, sexual orientation, race, and level of overall disability are as common for deaf people as they are for hearing people. For the purposes of this discussion, we will focus solely on persons who are severe-to-profoundly deaf and who rely on sign language to communicate.

Language and Social Isolation

The social dimension controls early uses of language, and the social setting in turn provides validation and confirmation of the child's effectiveness as a communicator; a skill that is referred to as communicative competence (Hymes 1972; Rice 1989). Social Identity Theory (SIT; Tajfel 1981) posits that members of minority groups achieve positive social identity by either attempting to gain access to the mainstream through individual motivation or by working with other group members to bring about social change (Bat-Chava 2000).

Deaf people may experience social rejection by both the hearing and deaf communities. This phenomenon is often termed marginalization and is hallmarked by an inability to gain acceptance and form social connections with any affiliated group. Without the support of a community of like-minded people to work together to achieve greater social change, the resulting isolation may impede the development of positive social identities for these deaf individuals. According to SIT, individuals will retain membership in a group if it contributes to their feelings of positive social identity. If group membership does not support these feelings, the individual will attempt to leave the group, either physically or psychologically. Bat-Chava (2000) stated that deaf persons may assume a hearing identity, assimilating as much as possible by attempting to learn to speak and behave as expected by hearing people.

Sign language is the aspect of the deaf community most closely identified with deafness. Deaf and hearing people who are the children of deaf parents may be native signers due to the use of sign language in the home. However, for many deaf individuals, signing is not a natively learned skill; it is a distinctly difficult task that comes to them later in life. Deaf individuals who are not born into deaf families and do not have parents or family members who can communicate with them using sign language may miss out on many early opportunities to socialize with deaf peers and adult role models. Thus, many deaf children are not given a proper grounding in any language, nor do they have any deaf role models or peers to interact with (Twersky Glasner 2006).

The Criminal Connection

Alienation and lack of intimacy are critical in the development of criminality in general, and for sexual offenders in particular (Calabrese and Adams 1990; Marshall 1989). Rokach (1983) highlighted the contribution of characterological, developmental, and familial backgrounds to the offender's feelings of alienation and social isolation. While these background experiences commonly impact criminal offenders, in this instance they can be logically extended to deaf criminal offenders.

It is widely recognized that deaf people are a misunderstood linguistic minority with unique communication needs (McClelland, Chisholm, and Powell 2001). They are more likely than hearing people to experience mental health issues and have high levels of physical and learning disabilities. Conversely, due to attitudinal and language barriers, it is much more difficult for signing deaf people to gain access to services and information about how to obtain services. Studies have shown that deaf and hard-of-hearing adolescents tend to have a more difficult time in terms of mental health than their hearing peers (de Graff and Bilj 2002; van Eldik,

Treffers, and Veerman 2004; Wallis, Musselman, and MacKay 2004).

Munoz-Baell and Ruiz (2000) state that, among those individuals who are congenitally deaf or became deaf in early childhood, the resulting language deprivation has an immediate effect on the child's ability to acquire social knowledge. Social knowledge is naturally tied to language and social meaning. A consistent lack of access to language by which to frame and define the actions of others may contribute to acting out, underdeveloped social and coping skills, a lack of emotional awareness, and the failure to develop morally in the same way as hearing children.

METHOD

This is a qualitative study of the communication histories of signing deaf individuals and the impact of communication on their status as offenders. Study participants were ten deaf individuals. The selection criterion was the regular use of sign language as a first language, and incarceration in a state prison. Written permission was sought from each inmate to review their medical files and to conduct a videotaped interview.

The interviewer was a hearing woman who has worked with signing deaf counseling clients for over ten years. Each interview was 60-90 minutes in length and conducted in sign language using open-ended questions. Ten narratives were obtained by the primary investigator and viewed by certified sign language interpreters. The certified interpreters, simultaneous to their viewing, voiced interpretations into an audio recorder. These interpretations were transcribed for analysis. Additionally, a sign language interpreter who was employed by the prison facility provided information on the language use and communication histories of the participants. Ms. Lee is a hearing adult child of deaf parents whose first language is ASL, and who has had over 20 years of experience working as an interpreter at the study site.

An ethnographic approach to data analysis was employed (Darling-Hammond 1990; Maxwell 2004). Each interview transcript was carefully reviewed for content regarding communication. During this process, several frameworks relating to communication became evident: (1) early communication experiences, (2) communication within school settings, and (3) communication during arrest and incarceration procedures. Emergent communication themes are identified as social and communicative isolation and communication barriers. The data from which these themes were comprised was triangulated using participants' narratives, corroborating data in their medical files, and through interviewer observations and consultation with the facility interpreter.

RESULTS

Demographic Information

Nine deaf men and one deaf woman incarcerated by the Texas Department of Criminal Justice agreed to participate in a videotaped interview regarding their communication experiences (See Table 1). Participants' ages ranged from 27 to 44. Four participants were Caucasian, three were African American, and three were Latino. Eight participants were profoundly deaf, one was within the severe-to-profound range, and one had a moderate hearing loss. All participants except one had experienced onset of hearing loss prior to learning spoken

language. Although several participants made verbalizations throughout their interview sessions, only two inmates had intelligible speech. Etiologies of the hearing loss in this group were predominantly unknown.

All participants demonstrated a clear preference for sign language. Each participant used American Sign Language (ASL), with the exception of three. The remaining participants used nonstandard forms of sign language, including home signs and pantomime. Listed conditions influencing these participants' lack of effective language development in ASL and/or English include developmental disabilities and isolation from communication.

Table 1. *Participants by Sex, Age, Race, Age at Onset of Hearing Loss, and Primary Language Used*

Participant	Sex	Age	Race	Age at Onset	Primary Language
01	M	27	African American	prior to age 1	ASL
02	M	37	African American	birth	nonstandard
03	M	44	Latino	unknown	ASL
04	M	39	Caucasion	birth	ASL
05	M	34	Caucasion	prior to age 2	nonstandard
06	F	32	Caucasion	birth	ASL
07	M	28	African American	prior to age 2	ASL
08	M	37	Latino	birth	ASL
09	M	38	African American	birth	ASL
10	M	30	Latino	birth	ASL

The available medical records provided basic information on participants' level of education, IQ, and the presence of other disabilities, including substance abuse (See Table 2). The Test of Adult Basic Education (TABE) is administered as part of the intake process, to assist with educational placement. The TABE is re-administered periodically throughout the period of incarceration to determine educational progress. Overall educational achievement (EA) scores are derived by combining reading, math, and language scores as measured by the TABE, and are expressed by grade level. In 2000, the average EA score for inmates in the Texas state correctional system was grade level 7.2 (Texas Department of Criminal Justice 2001). The mean EA score for participants in this study was grade level 4.9.

An average IQ score is considered to be 100 in the general U.S. population, while the mean IQ of an inmate in Texas is about 90 (Miller 2001). Deaf study participants averaged 91 on the TABE, however, the educators working within the facility stated that this was likely an underestimation, due to reading barriers in the deaf population. As deaf people generally read below the U.S. government's published standard for functional literacy (grade level 3.0), this may present unique difficulties throughout the testing process. IQ testing of deaf individuals is often based on performance scores for this reason. Five participants' medical records reflected mood disorders, ranging from depression to bipolar disorder. All participants were identified as substance abusers, either through prison health records or by self-report.

Table 2. *Participants' Educational Achievement and IQ Scores*

Participant	Test of Adult Basic Education Grade Level	Beta IQ Score	Other Disabilities
01	not available	not available	substance abuse*
02	2.9	63	psychiatric developmental substance abuse
03	9.5	116	psychiatric substance abuse
04	6.4	107	psychiatric substance abuse
05	2.9	not available	psychiatric developmental substance abuse
06	5.4	not available	psychiatric substance abuse*
07	1.5	82	psychiatric substance abuse*
08	7.3	88	psychiatric substance abuse
09	3	115	psychiatric substance abuse
10	5.5	110	substance abuse*
* self-report only			

Early Communication Experiences

The self-reports of these deaf participants indicate that for most, early communication with their parents was generally limited to gestures used for instructional, routine household activities such as eating and cleaning, as described here:

My mother and I had homesigns, like "hot dog." I wouldn't understand her signs, but when she explained them to me, I would know what her sign for hot dog meant. Mother would show me what she was cooking and I could pick out what I wanted (05).

Another participant explains, "I always got my mother to cook delicious food for me. My mother and I could communicate, as I recognized her signs and signals" (08).

With the exception of one individual who was raised in a deaf family, a number of participants reported isolation from paternal involvement in communication: "My mother learned sign language at the same time I was learning it. I have three sisters and all of them know how to sign. The only person who didn't learn was my father" (04). One participant was raised without a father in the

home, while another cited economic reasons for the lack of communication with his father: "My mother communicated with me the most, as my father worked three or four different jobs" (03).

Communication isolation in the home emerges as a key theme for study participants. Some of the isolation stems from parental confusion about what course of communication action to take with a deaf child, as described here:

The doctor told my parents not to speak Spanish with me, as I should learn English. Every time I got into trouble, my parents would have these heated discussions in Spanish, with me standing there understanding nothing (03).

One participant describes his isolation in terms of being overprotected and excluded from social activities by his parents: "I never really experienced life because my parents kept me very close to them. I always had to stay home, because I couldn't hear" (08). Another participant explains that he was isolated from the meaning and intent behind family interactions: "I don't really know what their (my parents') relationship was like. I saw some fights but I didn't know what was happening" (09).

Inappropriate communication due to parental lack of awareness that their child had a hearing loss was reported by a participant: "When I was three, my mother was talking, and then shouting at me. My mother got angry and spanked me, but my aunt had a suspicion that I was deaf. She insisted that mother take me to see a doctor" (04). Communication abuses relating to a parental lack of understanding of the meaning of hearing loss were starkest in nature:

My stepfather thought that because I was deaf I should pay attention to him and I should learn how to speechread. One time, he asked me something, but he didn't sign it. He was sitting right in front of me and my mother went behind him to tell me what he was saying. My mother was protective of me and would tell me to answer yes or no and I would do what she said. Anyway, that one day, I didn't know what he was telling me. Mom was behind him and then he turned around and saw her and he said "Get over here!" And so she had to come and sit next to him and I couldn't use her to tell me what he was saying. And he just looked at me and I couldn't understand what words he was saying. I was guessing and I would say yes or no (06).

For this group of deaf inmates, early family communication encompasses barriers such as a lack of parental experience and knowledge of hearing loss. In these offenders' reports, there was a distinct lack of medical, school, and/or social service interventions regarding the identification of hearing loss and family options for the development of effective communication. Among participants, the experience of isolation from communication and socialization is a pronounced theme, manifesting in numerous reports of family communication as restricted to activities of daily living and mothers only.

Communication within School Settings

When examining the educational experiences of these deaf participants, it should be reiterated that all but one are profoundly deaf. As such, their ability to learn spoken English is markedly less than people who have a mild-to-moderate hearing loss. As adults, sign language is the primary mode of communication used by these individuals. Several participants reported having few language skills of any kind prior to entering school, as summed up here: "When I was five, I was put into a deaf classroom. I just stood there staring in fascination at everyone. I thought it (sign language) was a game of some sort" (08). Yet another participant shared a similar experience: "I started attending a school for deaf children at age three. At the time, I had no sign language, just homesign and gestures" (04).

One participant, who attended a public high school without any accommodations (amplification, individualized instruction, or sign language interpreter), described his isolation from instructors and peers:

I was the only deaf person there. I had to sit at the front of the class and speechread the teacher. It was horribly boring and tiring. My social life was nonexistent. They moved me to a special education classroom because they thought I was mentally retarded due my speech impediments (03).

Hiding one's lack of understanding was a typical ploy: "They all thought I could read and said how proud they were of me. But I wasn't reading. I was only looking at the pictures" (09).

Another participant's description of educational coping permits a view into his potential for developing criminal behavior:

My mother always did my homework. I would bring it home and say "Do this for me, Mama." She would write it out and I'd copy it and take to back to school. At school, they had a system whereby if you earned a certain amount of academic points, you could go on a class trip. But, you had to pass the standards, and I always failed. One day, when the teacher wasn't in the room, I went up and penned in some academic points for myself on the chart. The next time they scored the literacy skills points up, I passed because I cheated. One of the teachers was so happy for me and said, "Wow, you made it!" I grinned from ear to ear, but really, I didn't even know how to write (04).

The theme of communication isolation is continued from early childhood to educational settings as participants relay misunderstandings by adults regarding their communication abilities and the resultant development of coping skills.

Communication during Arrest and Incarceration

Of these ten deaf offenders, nine were convicted of person-to-person crimes such as child abuse, child sexual abuse, robbery, and murder (See Table 3). Sentences ranged from one year to 52 years, with an average sentence of 15 years. Five offenders were known to have prior criminal convictions. One participant, who was convicted of injury to a child, expressed high levels of frustration and poor coping skills: "I hit the baby. I was mad, and I just slapped him. I thought 'What is wrong with me? What is wrong with my mind?' I got angry and I slapped an innocent three-month-old" (06).

Table 3. *Participants' Most Recent Conviction and Corresponding Sentences*

Participant	Current Conviction/s	Sentence	Known Prior Conviction/s
01	Aggravated Robbery w/a Deadly Weapon	10 years	1
02	Possession of a Controlled Substance	1 year*	1
03	Indecency w/a Child	15 years	unavailable
	Aggravated Sexual Assault of a Child		
04	Aggravated Sexual Assault of a Child	15 years	0
05	Indecency w/a Child	12 years	1
06	Injury to a Child	3 years	0
07	Burglary of Habitation	15 years	unavailable
08	Murder (parole violation)	52 years	1
09	Burglary of a Building	17 years	4
10	Aggravated Robbery	10 years	unavailable
	Burglary of Habitat		

*county jail inmate

Within the justice setting, communication and social isolation is often compounded by attitudinal and environmental barriers such as lack of assistive equipment for communication, and misunderstandings about the communication abilities and needs of deaf offenders who rely primarily on sign language. Four participants self-reported that the police had obtained a sign language interpreter at the time of their arrests. All participants reported that an interpreter had been provided by the courts, although two indicated that the dilemma of locating a qualified interpreter had caused significant delays. As one offender with addiction issues explained, "Yes, I want treatment but I have no idea when or how there will be an interpreter provided. How can a deaf person succeed if they are holding everything inside?" (09).

Additionally, several participants commented that even with an interpreter, the communication was unclear due to communication isolation and their limited knowledge of the law and justice system. As one participant stated, "They (the police) asked me did I cum on the children. I didn't know what the word cum meant. It's a simple little word, but I did not know it" (04).

Coping measures used by deaf inmates vary, as reported here: "I don't hear the bosses say 'chow time' but the hearing inmates start to move, so I figure out what to do. During count, I can't hear the bosses asking for our numbers so I lay on my bunk and put a sign on it that says, 'I'm deaf.' I write my number down for them" (01). Some accommodations are considered more effective than others:

They (prison administration) provide some signaling devices. In our houses we have an old fashioned buzzer

system. It's a panel with different lights that are supposed to flash when the buzzers go off. It has different colors so we can see what the signal means, but it never works right. It just goes off indiscriminately. This makes participation difficult for deaf inmates (03).

Communication isolation may be partly affected by the availability of accommodations and partly by the motivation and aptitudes of the offenders. For example, several offenders shared that the facility had provided a teacher who knew sign language. Consequently, they had completed or were close to completing G.E.D. work.

Deaf signing offenders are grouped in one cellblock at this facility, which provided one individual the opportunity to develop language skills: "I had never been around other deaf adults before. I learned how to sign and got better and better. American Sign Language helped me to learn what words mean and to improve my communication with others" (08). It should be recognized that deaf inmates may evidence a range of communication abilities, but the burden to ensure effective communication is on the facility and its representatives (ADA, 1990).

DISCUSSION

Most of these deaf study participants described growing up in homes evidencing typical ranges of family functioning and problems. However, the language barrier intensified their isolation by limiting communication to routine activities and exacerbating communication difficulties, particularly in the area of discipline. Key concerns contributing to social isolation as gleaned from these deaf offenders' self-reports are: lack of involvement

in parenting by fathers; deficits in parental education regarding educational and communicative choices for their deaf children; failure by the educational system to adequately evaluate deaf students' communication; development of socially inappropriate emotional coping skills by the deaf child; and a lack of awareness of communication needs of deaf adults within the justice system. Further examination of these themes is recommended for continued research in this area.

Overwhelmingly, study participants communicated primarily or only with their mothers and sisters throughout their childhoods. Role modeling as provided by fathers was restricted to observations of male behavior in the home, without the benefit of language to explain those behaviors. Those behaviors ranged from perpetrating domestic violence to absence in the home due to employment demands. Isolation from the father figure left these individuals to speculate and draw conclusions as to what his actions meant. Conversely, the female participant observed an abusive relationship between her mother and stepfather, without language. This may have contributed to her concept of the role of a wife and mother, and to the development of poor anger management skills as demonstrated by her stepfather.

Several of the participants' narratives were indicative of parental difficulty with discipline. One parent was permissive, and one was clearly abusive. Finding healthy and appropriate methods for parenting is an issue faced by many families. A notable difference is that the self-reports of these participants suggest communication as the focal point in the parent's indulgences or abuses of the deaf child. For example, the abusive stepfather was insistent that the girl speak and respond as a hearing person. This indicates a dire lack of education and awareness on the part of the parent. While this is not uncommon in any abusive home, there were a number of less intentional communications abuses by parents towards deaf children reported by these participants. This parental show of force, particularly without words, may serve to reinforce aggressive behaviors and other poor social skills.

It was during discussions of their school years that coping with poor academic skills using cheating became evident among these deaf offenders. Their parents and teachers were unaware of their lack of academic progress, and the students were passed through without learning to read. Reading is an essential skill in today's society, and it is particularly useful for a deaf person to be able to read and write for communication purposes. Without this skill, the person becomes communicatively isolated from most people.

The Texas Department of Corrections is likely advanced in comparison to other states in terms of its accommodations for deaf inmates, particularly in its policy development. Awareness training for officers and other officials regarding communication issues and needs for this population is needed on an ongoing basis.

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Methamphetamine Laboratories: The Geography of Drug Production

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Abstract: *There has been considerable public concern and legislative activity surrounding the issue of domestic methamphetamine production. What has not been extensively examined is the broader context within which domestic methamphetamine production takes place. This study utilizes geographic location data on 14,448 seized methamphetamine laboratories to document the association between the presence of methamphetamine labs and economic factors, social factors, and crime. The study shows that laboratory seizures spiked upward immediately prior to the implementation of legislation restricting access to methamphetamine precursor drugs and declined immediately after the legislation was passed, remaining well below pre-regulation levels. However, more than a third of U.S. counties reported laboratory seizures after strict precursor regulations were in place, suggesting that while the problem of local methamphetamine lab production was diminished by precursor regulation, it was not eliminated.*

The study also examined factors most strongly associated with the seizure of methamphetamine laboratories at the county level. Economic instability was not a good predictor of the presence of methamphetamine labs, nor were spatial or geographic variables. In general, counties with higher lab seizure rates tended to have a predominantly White, English-speaking population with a substantial representation of evangelical churches. Methamphetamine laboratory counties also tended to have employment based on manufacturing, a larger farm population, single-female-headed households, a higher than average property crime rate, be more racially segregated, have a population that moved into the household within the past year, and have a higher percent of occupied housing. In sum, neither traditional measures of social disorganization nor measures of civic engagement consistently predict the presence of methamphetamine labs.

Keywords: methamphetamine, laboratories, drugs, stimulants, drug production, drug crime, geography, precursors, rural, drug seizures

INTRODUCTION

Methamphetamine is a powerful central nervous system stimulant, part of a larger family of stimulant drugs that includes amphetamine, cocaine, methylphenidate, ephedrine and ecstasy. The general effects of all stimulant drugs are the same, although the effects of methamphetamine last longer, and the drug is more potent (i.e., it takes a smaller amount to generate the same effect) than other drugs in this category. The methamphetamine user rapidly develops a tolerance for the drug, requiring

increasingly large doses to achieve the same effect. Common physiological effects include intense feelings of well-being and confidence, paranoia, appetite suppression, extended periods of wakefulness, and an accelerated heartbeat (cf. Weisheit and White 2009). Unlike heroin or cocaine, methamphetamine can be easily and inexpensively manufactured within the U.S. with little equipment, few supplies, and almost no expertise in chemistry. The production process creates its own set of unique problems for the environment and the community.

A BRIEF HISTORY

Methamphetamine was first synthesized in 1919 and for decades, was legally manufactured as a drug erroneously thought to be safe and nonaddictive. Early recreational users of the drug found it easy to get from doctors or from supplies diverted from the licit market. In response to concerns about the drug's abuse, drug makers withdrew injectable methamphetamine from the market in the early 1960s, leaving users without a ready supply of the drug (Miller 1997:116). As a result of this unmet demand, the first illicit methamphetamine laboratories emerged in San Francisco in 1962 or 1963, perhaps with the help of some legitimate chemists (Brecher 1972; Smith 1969; Miller 1997). Eventually, methamphetamine production made its way along the entire west coast from San Diego to Washington State. From there, production moved eastward so that today methamphetamine labs have been found in every state.

Concerns about Meth Labs

While methamphetamine has been around for nearly a century, the rise of domestic methamphetamine laboratories has added a sense of urgency in responding to the problem. Methamphetamine laboratories pose environmental and health risks that transcend the effects of the drug on the user. Apartment residents may be killed or injured by a meth lab explosion in the adjoining apartment, children in homes where meth is cooked may be exposed to toxic chemicals and to meth itself, hotel guests may be injured by toxic chemical residue from the previous tenant's meth lab, children may be burned or seriously injured by the meth trash dumped along the roadways near their homes, and emergency responders may be sickened when they enter a lab site. Further, producing one pound of methamphetamine generates five to six pounds of toxic waste (Hargreaves 2000), waste that may contaminate the ground or water supplies. Thus, meth labs pose a type of threat to innocent citizens that simple drug use does not.

Ways of Cooking and the Government's Response

There are hundreds, perhaps thousands, of recipes for manufacturing methamphetamine, but most is produced in one of three processes – P2P, Red Phosphorous, or Anhydrous. The P2P method, as the name implies, is based on the chemical P2P (phenylacetone or phenyl-2-propanone) and methylamine (a derivative of ammonia). Both the Red Phosphorous (aka Red P method) and Anhydrous (aka Nazi or Birch method) are ephedrine/pseudoephedrine reduction methods. That is, they take ephedrine (a decongestant found in many cold medicines) and remove an oxygen molecule to produce methamphetamine. These ephedrine reduction methods are substantially simpler to do and rely on chemicals

commonly found in agricultural communities.

Originally, much of the methamphetamine produced in the U.S. was made with the P2P method. In February of 1980, the U.S. government placed restrictions on P2P and more carefully monitored the sale of methylamine. As P2P became more difficult to obtain, the ephedrine reduction methods became more popular (DEA n.d.). As producers moved to the use of ephedrine in over-the-counter pill form, states began enacting legislation to limit precursor chemicals. California was the first, with its legislation going into effect in January of 2000. Other states followed California's lead. In 2005 alone, 35 states enacted legislation to restrict the sale of ephedrine and pseudoephedrine, with another 6 states enacting legislation in 2006 (National Alliance for Model State Drug Laws 2006). By the end of 2007, only 7 states had no such law, and each of those states was in the Northeast, where methamphetamine production had not yet taken hold. These laws generally regulated the display of ephedrine products, restricted who could buy and sell such products, the amount that could be sold within a specific time frame, and the manner in which ephedrine products were packaged.

The *Combat Methamphetamine Epidemic Act of 2005* was the federal government's response to the use of over-the-counter pills to manufacture methamphetamine. Taking effect in early 2006, the law required those who purchase such pills to provide a photo ID and sign for the purchase, and limits the amount that can be purchased each month. Perhaps as a reflection of the level of public concern about methamphetamine laboratories, the title of the federal act includes the word "epidemic."

Efforts to control precursors and to increase penalties for the manufacture of methamphetamine have undoubtedly played a role in reducing the number of domestic methamphetamine laboratories, though the precise extent of that impact is unclear. The 2009 *National Methamphetamine Threat Assessment* report indicates that the number of domestic methamphetamine laboratories increased in 2008 (National Drug Intelligence Center 2009). One state, Indiana, saw a 31 percent increase in the number of methamphetamine laboratories seized between 2007 and 2008 ("Indiana Sees Surge in Meth Production" 2009).

THE SOCIAL CONTEXT OF METHAMPHETAMINE PRODUCTION

While there is a large body of research on the physiological effects of methamphetamine and on the drug's effects on behavior (cf. Weisheit and White 2009), there has been surprisingly little research on methamphetamine laboratories. What has been done focuses primarily on the environmental impact of the chemicals used in methamphetamine production (e.g., the

series of studies by John Martyny and his associates (2004a; 2004b; 2004c; 2005a; 2005b).

The effect of precursor regulation on overall levels of methamphetamine consumption is much debated. Using data from California, one the first states to implement precursor restrictions, Cunningham and Liu (2003) argued for the effectiveness of these measures, noting that methamphetamine-related hospital admissions had gone down following legal restrictions to access to precursors. Reuter and Caulkins (2003) raised doubts about these claims, noting that other measures suggested no effect of these regulations. For example, following precursor regulation, the price of methamphetamine in California went down, when there should have been shortages of the drug that drove prices up. Similarly, there were no sharp reductions in the reported use of methamphetamine by newly admitted jail inmates.

In a 2005 study, Cunningham and Liu returned to the issue by examining the association between various efforts to limit access to precursors and arrests for methamphetamine in California between 1982 and 2001. They found that restrictions affecting large-scale producers led to a reduction in the number of arrests for a short period, followed by a rebound. Restrictions affecting small-scale producers had no impact on the number of methamphetamine arrests.

Interviews with methamphetamine users and cooks in Arkansas and Kentucky found that local production did decline after restrictions on the sales of pseudoephedrine, to be at least partially replaced by imported methamphetamine. Interestingly, the cooks in this study did stop cooking but attributed this to concerns about arrest, family pressures, and health concerns – not to the difficulty in obtaining pills (Sexton et al. 2008).

In what is perhaps the most detailed study to date, Dobkin and Nicosia (2009) considered the impact of a major disruption in the supply of precursors on a variety of methamphetamine-related indicators in California. In the months immediately following this disruption, the price of methamphetamine rose from \$30 to \$100 a gram, purity dropped from 90 percent to less than 20 percent, hospital admissions declined by 50 percent, treatment admissions declined by 35 percent, felony arrests for methamphetamine possession fell by 50 percent, misdemeanor arrests for methamphetamine possession fell by 25 percent, and the percent of arrestees testing positive for methamphetamine declined by 55 percent. All of these changes occurred with no evidence that users were switching to other drugs. Unfortunately, the impact of this major precursor disruption was short lived as new sources of precursors were identified. “Price returned to pre-intervention levels within four months while purity, hospital admissions, drug treatment admissions and drug arrests recovered to near pre-intervention levels over eighteen months” (Dobkin and Nicosia 2009:325).

Only one study examined the association between the

county-level presence of methamphetamine laboratories and broader social and economic factors. Weisheit and Fuller (2004) examined simple bivariate correlations between the presence of a methamphetamine laboratory in any of 102 counties in Illinois and a host of social factors. They found that the presence of a methamphetamine laboratory was not associated with the property crime rate, violent crime rate, the delinquency petition rate, or the drug arrest rate. However, methamphetamine laboratories were associated with the rate of reported child abuse and neglect, teen births as a percent of all births, the truancy rate, and the percent of youth living in poverty. Methamphetamine laboratories were also associated with several economic variables, including the median household income, the per capita property tax rate, and the percent of homes without a telephone. The study by Weisheit and Fuller is suggestive. It is limited, however, in that it only considers the pattern in one state and only considers bivariate associations. This study extends the work of Weisheit and Fuller by using a large national data set and by going beyond simple bivariate associations.

THE CURRENT STUDY

This study expands on prior research using local single-state samples (e.g., California and Illinois) by drawing upon a national data base of seized drug laboratories and linking that data base with data on crime, economic factors, and social factors in the local communities where the labs were found. The analytic aims of the study are avowedly exploratory and descriptive, i.e., to empirically document regional and national patterns in the presence of methamphetamine laboratories, to describe the changes associated with precursor regulations, and to establish an empirical risk-factor profile of communities with methamphetamine laboratory problems. Following an empirical description of the distribution of clandestine laboratories across the U.S., the study utilizes national-level data to examine: (1) trends in methamphetamine laboratory seizures in recent years both nationally and regionally, (2) changes in the number of laboratories associated with the passage of state and federal regulations restricting access to ephedrine-based precursors, and (3) patterns of association between social, physical, and economic characteristics of counties and the presence of methamphetamine laboratories.

The Data

This study utilizes several sources of data, including the DEA’s *National Clandestine Laboratory Registry*, crime data from the *Uniform Crime Reports*, social and economic data from the U.S. Census Bureau, data from a national survey on religion, data on the proximity of major highways to each U.S. county, and data on the location of

prisons and Indian reservations in counties.

The *National Clandestine Laboratory Registry* is maintained by the DEA with information supplied by agencies throughout the United States (DEA 2009). The data include the state, county, city, address, and the date on which each lab or lab waste dump site was discovered. The data set includes 14,448 cases from January 2004 through September 2008. As with any official count of crime, the data are not a complete listing of all laboratories. Having said that, no data set exists that is a more comprehensive compilation of clandestine laboratories. The data do not distinguish clandestine methamphetamine laboratories from other clandestine drug laboratories but it is likely that nearly all of the laboratories are related to methamphetamine. A 2002 study of narcotics agents who respond to clandestine drug laboratories found that 88 percent of the labs they entered were methamphetamine labs (Burgess et al. 2002). Further, figures provided by the 2008 Annual Report of the Office of National Drug Control Policy (ONDCP n.d.) show that 98-99 percent of seized labs are small-scale operations.

Each methamphetamine lab seizure listed in the National Clandestine Laboratory Registry was recorded in a Microsoft Excel spreadsheet by the date of the seizure and its geographic location. The street address, city, county, and state of each lab seizure were recorded along with the Federal Information Processing Standards (FIPS) codes for county and state. From a separately created file of state precursor regulation implementations – obtained from the National Association of Chain Drug Stores (NACDS 2008) – we added the effective date of precursor regulation/prohibition for the state in which the lab seizure occurred. For states with no state-level restrictions, the date on which federal restrictions went into effect was used (March 9, 2006). Using this precursor regulation date, each lab seizure was coded as either a pre- or post-regulation event. These basic lab seizure data were then imported into SPSS for data file management and statistical analysis and then merged with additional information regarding the state and county where the lab seizure occurred. These additional data included: (a) state-level methamphetamine use rates from the National Survey of Drug Use and Health for 2002 through 2005 (SAMSHA 2006); (b) geographic region and metropolitan area codes from the U.S. Census Bureau (2008); (c) Rural-Urban continuum codes and Rural Typology codes from the Economic Research Service of the U.S. Department of Agriculture (Economic Research Service 2003; 2004).

The individual lab seizure data also were aggregated by counties and by states to yield two additional data files containing lab seizure frequencies and rates at the county and the state levels. Using the state+county FIPS codes, additional variables were merged with the county-level data file to provide a more detailed description of the community context where the lab seizures occurred. In addition to the basic data for lab seizure information,

variables on ecological, economic, demographic, and residential conditions in the lab seizure counties were extracted from the *County-City Data Book 2000* (U.S. Department of Commerce 2003) and from the *County Characteristics, 2000-2007* data file distributed by the Inter-University Consortium for Political and Social Research (ICPSR 2007). County-level crime and arrest rate data were obtained from the *Uniform Crime Reporting Data* for 2003, 2004, and 2005 and were averaged across those three years (FBI 2005; 2006; 2007). Information on presence of prisons or state correctional institutions in counties was obtained from the American Correctional Association's *Directory of Juvenile and Adult Institutions* (ACA 2000). Dates when state-level precursor regulations took effect were obtained from the National Association of Chain Drug Stores website (NACDS 2008). Data on county-level church attendance rates were available from the Association of Religious Data Archive (ARDA 2002). Data on Indian Reservation locations in counties were obtained from the Census Bureau's *Boundary and Annexation Survey* for 2006 (Census Bureau 2006). Presence of interstate highways in counties in 2000 was provided by Professors Tom Ricketts and Randy Randolph of University of North Carolina.

Analytical Strategies

While the problems of methamphetamine production are fairly widespread, they are not universal. Almost half (46.3%) of the counties in the United States reported no methamphetamine labs in the 4½ year interval between January 2004 and July 2008 according to the National Clandestine Lab Register (DEA 2009). And of counties reporting any lab seizures, the majority reported only a few (1 to 3 seizures) during this time frame. At the other extreme, a small fraction (about one-tenth of the counties who reported having any local meth labs) reported 20 or more lab seizures, and ten counties reported more than 100 meth labs seized during the period (up to 330 seizures reported in the most intensive county). Thus, the problem of local methamphetamine laboratory production, while widely found, is highly variable across states and across counties within states. Such variability raises several questions: What makes some communities more prone to methamphetamine lab problems than others? What have been the effects of increased precursor regulation by state and federal governments on the levels and patterns of local meth production?

At present there are no explicit theoretical models for predicting community-level patterns in methamphetamine production. A few theories (mostly derived from a Social Disorganization or Strain framework) have addressed the social distribution of drug use patterns; however, these do not deal with methamphetamine specifically (for which use or abuse patterns are generally quite different from other types of drugs) nor do they deal with the topic of drug

production (which evinces very different social dynamics from the phenomenon of drug use). Most methamphetamine research is focused on individual users, behaviors, and treatment effects, with little attention to community-level patterns.

Rather than testing a specific theoretical model, the conceptual approach used here follows the analytical framework adopted by the Centers for Disease Control and Prevention (in U.S. Department of Health and Human Services) in their studies of violence, disease, and other health-related problems. Drawn from a variety of sources (e.g., Bronfenbrenner 1979; Dahlberg and Krug 2002; Garbarino 1978), this perspective is called the *Social-Ecological model*, but despite the label, it is not in itself a specific causal/predictive model of particular outcomes. Rather, it is a broad orientational framework to guide the study of and prevention of a wide variety of harmful social problems – including illness, disease, drugs, violence, and other illegal behaviors. According to this model, harmful social practices invariably entail complex social dynamics that must be addressed at a number of levels of analysis and studied in terms of many different causal factors operating cumulatively or interactively. This approach is avowedly inductive, theoretically non-partisan, and comprehensive (i.e., “casting a wide net” for theory and policy development), rather than parsimonious, theoretically-focused, and aimed at confirming or testing specific theoretical models.

This study is intended to fill in the gaps in empirical knowledge about the prevalence and patterning of methamphetamine lab problems in the United States, and it entails two distinct tasks. The first part of the analysis focuses on empirically documenting national and regional patterns of methamphetamine lab seizures, with special attention on the impact of stronger precursor regulations on the numbers of meth labs reported by police. The second part of the analysis is to identify those community-level variables most consistently predictive of meth lab seizures. In practical terms, this part of the analysis is aimed at identifying community risk factors for the presence of local methamphetamine labs.

Analysis began by identifying a wide range of plausible or potentially relevant community-level predictor variables for methamphetamine lab problems. These were drawn from various popular or journalistic accounts of local meth production processes (e.g., Owen 2007) and from analyses of community-based models of crime and drug problems more generally. In casting a wide exploratory net, 63 plausibly relevant variables were included in the data for this study (see Appendix A for a complete listing). For manageability, these were divided into four conceptual groups that served as heuristic themes for classifying the variables. These four groups are not presented as mutually exclusive or theoretically discrete categories, since some variables plausibly could be included in several categories. Our classification included:

- 1) *Ecological factors* (16 variables), that include both geographic attributes of the counties' locations (e.g., land area, inter-state highways, urban proximity) and demographic attributes of the counties' populations (e.g., population composition by race, population density; education levels);
- 2) *Economic factors* (20 variables), that include both the levels of economic activities or resources (e.g., income levels, poverty levels, and employment levels) and the characteristic forms of economic activities (e.g., manufacturing, farming, and service-sector employment);
- 3) *Subcultural/Lifestyle factors* (11 variables), that include religious and political values, degree of urbanism, levels of local crime and deviance within the communities. Church membership rates are included here as plausible indicators of the strength of community institutions of informal social control and community lifestyles. Separate measures of church membership rates in mainline denominations and evangelical denominations were also included, because models of community based on Civic Engagement or Social Capital theory have argued that mainline denominations will be more responsive to social problems in their community than will evangelical denominations (e.g., Lee 2006; Putnam 2000);
- 4) *Social Disorganization/Community Engagement factors* (16 variables), that include those factors seen as weakening or strengthening the social/institutional fabric of the community (e.g., population instability, ethnic heterogeneity, family disruption, political and civic participation).

The number of county-level variables from these sources is considerable – an analytic “embarrassment of riches.” The analytical strategy applied here to bring some order to the inductive process is the Social-Ecological model used by the Centers for Disease Control and described above. Some predictor variables may be highly correlated with other variables that measure similar ideas (e.g., percent of population living below poverty level and median household income, $r = -.79$). To identify a parsimonious and nonredundant set of predictor variables while reducing the number of variables to a manageable size, the analysis of community-level predictors proceeded in several steps.

First, bivariate correlations were computed between all predictor variables and the dependent variable. Variables showing at least moderate correlations ($r = .10$

or larger) with lab seizure rates were retained, while those showing negligible associations were dropped from further consideration. Next, to eliminate redundant indicators of common or closely related constructs, multiple regressions were carried out within each of the four heuristic groups of variables, with lab seizure rates as the dependent variable and all predictor variables retained in the first step as the independent variables. Variables with standardized partial regression coefficients (betas) of at least .10 within each group were retained to reflect those variables with the largest unique predictive relationship to lab seizure rates while controlling for collinearities among similar indicators. Finally, a single overall multiple regression (with the logged county-level laboratory seizure rate as the dependent variable) was estimated using all variables in the four conceptual groupings retained in the first two data-reduction steps. This provides an omnibus identification of the individual risk factor variables most predictive of higher meth lab seizure rates to answer the following question. What are the specific social, economic, and ecological risk factors that characterize communities or areas where meth labs appear?

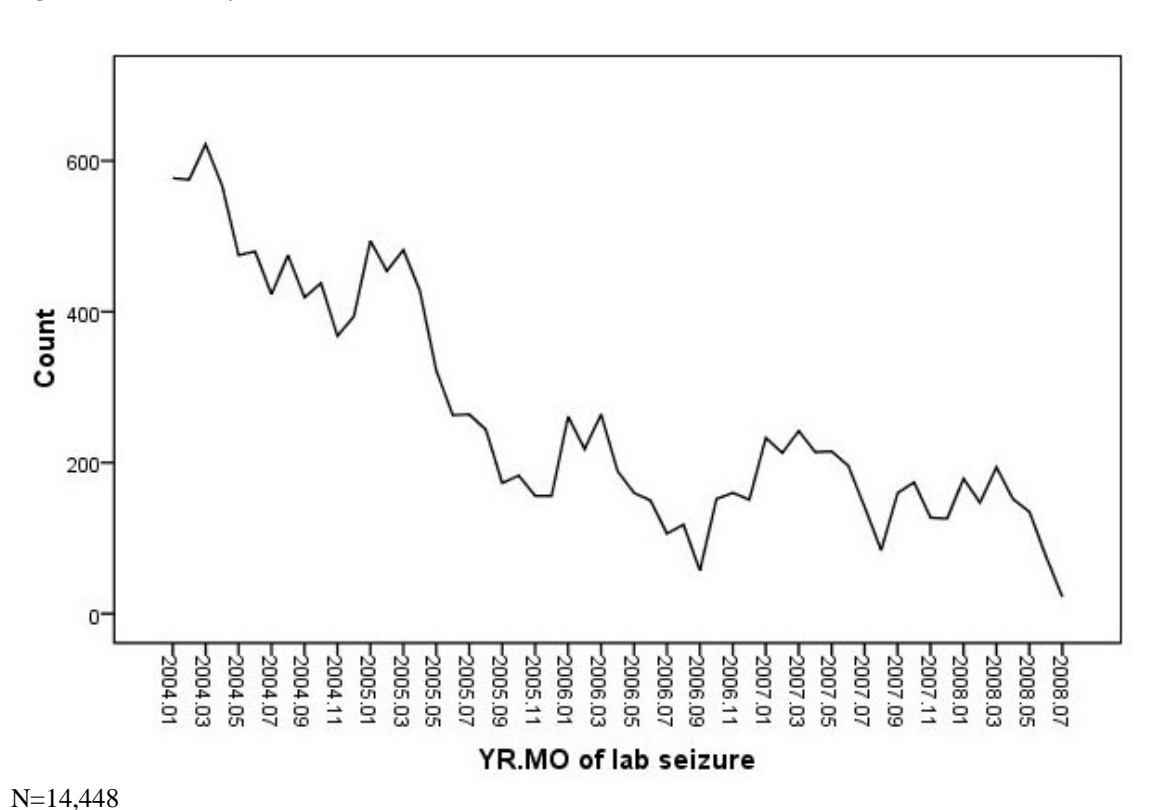
RESULTS

Laboratory seizure data allow for analysis down to the street level. However, other data of interest seldom allow for analysis at that level of detail. Also, aggregating up to the county, state, regional, and national levels provides a much more comprehensive picture of methamphetamine production. The discussion begins with an examination of national-level patterns and then moves to regional, state, and then county units of analysis, depending upon the variables under consideration.

National-Level Patterns

The number of laboratory seizures declined over the time period covered by these data. Figure 1 not only shows this decline but also indicates an interesting pattern. While the general trend is one of decline, there are several periods of rebound, and these periods follow a pattern. For each of the years under study, there is a small bounce-back followed by decline early in the year, around March. While the pattern is clear, the reasons for the pattern are not.

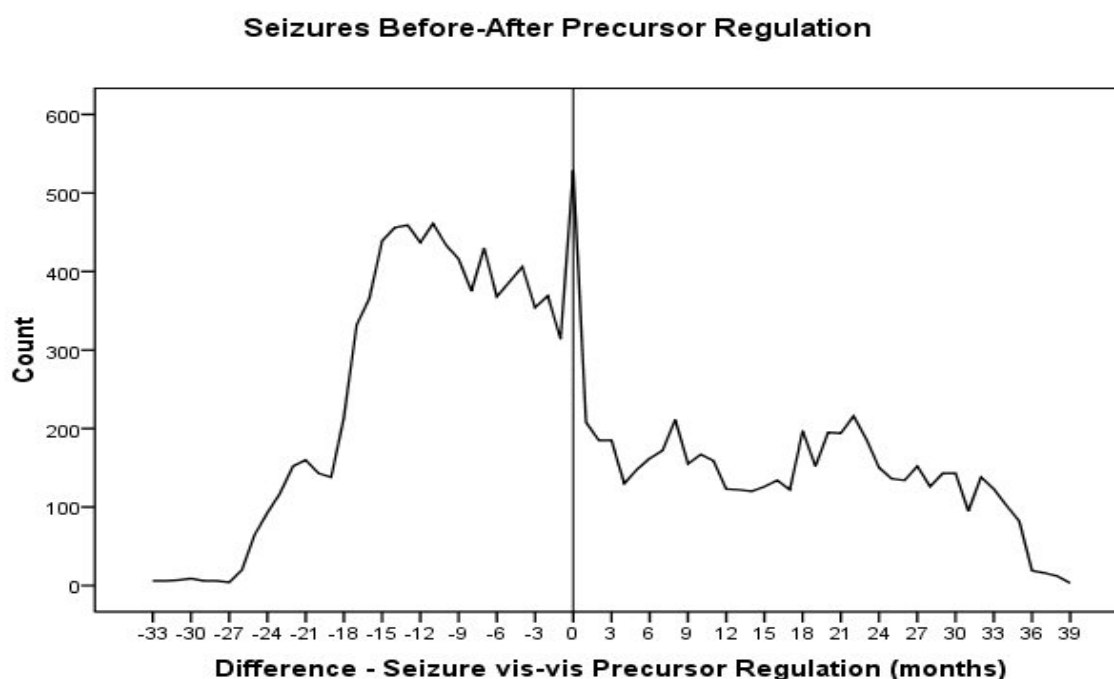
Figure 1. Laboratory Seizures in the U.S. (2004-2008)



Precursor laws. In an effort to stop domestic methamphetamine production, a number of states passed laws restricting access to over-the-counter medicines containing ephedrine, with most of these laws passed in 2005 and federal legislation becoming effective in March of 2006. When the federal precursor law went into effect, seven northeastern states had no state-level legislation and thus were regulated by the federal guideline. The empirical impact of precursor regulation is displayed in Figure 2, which shows the number of seizures in the months before and after state-level legislation, with numbers on the horizontal axis representing the time difference (in months) between date of each seizure and the date of precursor regulation in the state where the seizure was made. Negative numbers indicate seizures occurring prior to regulation while positive numbers denote seizures after state regulation was implemented. Where states had no

laws ($n=7$) or where state law went into effect after federal law ($n=12$), the federal date was used as the effective onset of regulation. The graph line in Figure 2 shows a sharp drop in seizures in the months immediately following passage of the law, with two minor spikes 8 months following passage and again in the 18-23 month period after passage, with the figures dropping substantially after that. These results reveal a very pronounced “intervention effect” in which precursor regulations dramatically and immediately reduce the number meth labs found by police; this effect persists for at least three years following the intervention. This pattern represents a national pattern applying to all the regions of the U.S. and differs sharply from the negligible and short-lived intervention effects of precursor regulation reported in earlier studies of California data (Cunningham and Liu 2003, 2005; Dobkin and Nicosia 2009).

Figure 2. Frequency of Lab Seizures Before-and-After State Precursor Regulations



^(a) Negative numbers represent occurrence of Lab Seizures before State Regulation of Precursors was implemented in that state; positive numbers represent lab seizures occurring after state regulation of precursors. All states whose precursor regulations were passed after federal implementation of precursor regulation were assigned the date of the federal precursor law (rather the date of their own post-federal implementations).

^(b) California cases have been excluded from this graph, due to the uncommonly early implementation of the California regulation, which means that all California cases are necessarily post-regulation due to data set limitations. Arkansas was the next state to implement regulations in March of 2005.

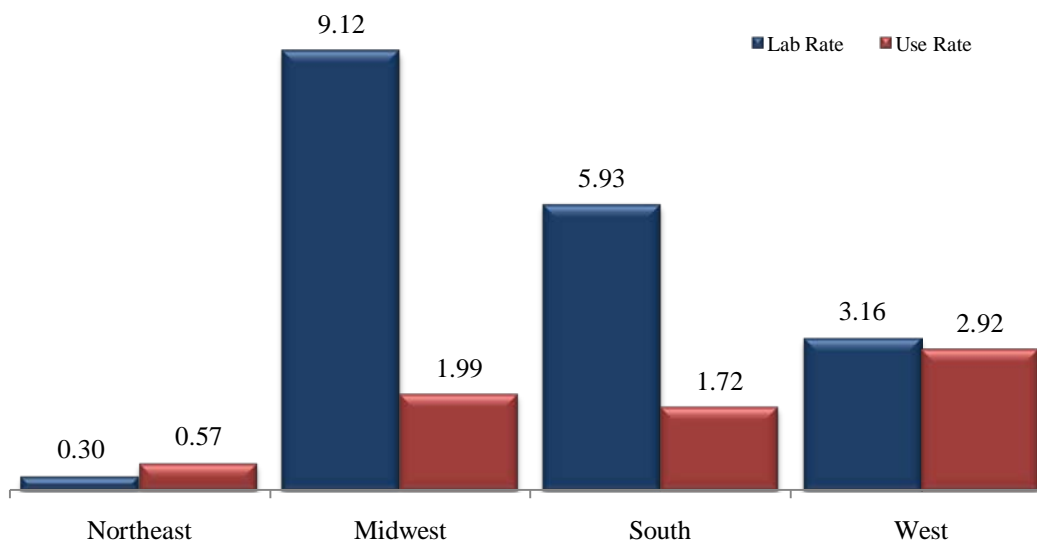
Several additional things about Figure 2 are worth mentioning. First is that lab seizures had begun to decline about a year before the laws went into effect, reflecting perhaps aggressive enforcement, public education, and/or the drug undergoing a natural cycle of decline. Second is the sharp upward spike that corresponds precisely with the passage of state regulations in the month before their implementations. The reasons for this are unclear, but it may be that meth cooks were particularly active in securing precursors in advance of restrictions, and this heightened activity drew the attention of authorities. Third is that while seizure levels dropped noticeably after restrictive laws were passed, they were still relatively high for several years following legislation. These findings are particularly interesting in light of recent reports from some Midwestern states that the number of laboratory seizures in

the first half of 2008 have exceeded the numbers for all of 2007 (Bauer 2008; Halladay 2008; Huchel 2008), a pattern not seen in our national level data. Figure 2 suggests that efforts to curb access to precursors have had an impact on domestic methamphetamine production, suppressing it but not eliminating it.

Regional-Level Patterns

Methamphetamine use and production first began at high levels in the West and from there spread eastward. Consequently, it is expected there will be regional variations in the extent to which laboratories have been seized. Figure 3 shows that laboratory seizures are not evenly spread throughout the U.S. but are most heavily concentrated in the Midwest and South. If measured by

Figure 3. Methamphetamine Laboratory Seizure Rates and Use Rates



laboratory seizures, methamphetamine production has almost no foothold in the Northeast, which accounts for 19 percent of the country's population but only 1 percent of the meth lab seizures (164 seizures out of 14,448 nationwide). The smaller proportion of seizures in the West, when compared with the Midwest and South, might be accounted for by the influx of methamphetamine from Mexico, replacing domestic manufacturing in that region. Unfortunately, laboratory seizure data do not go far

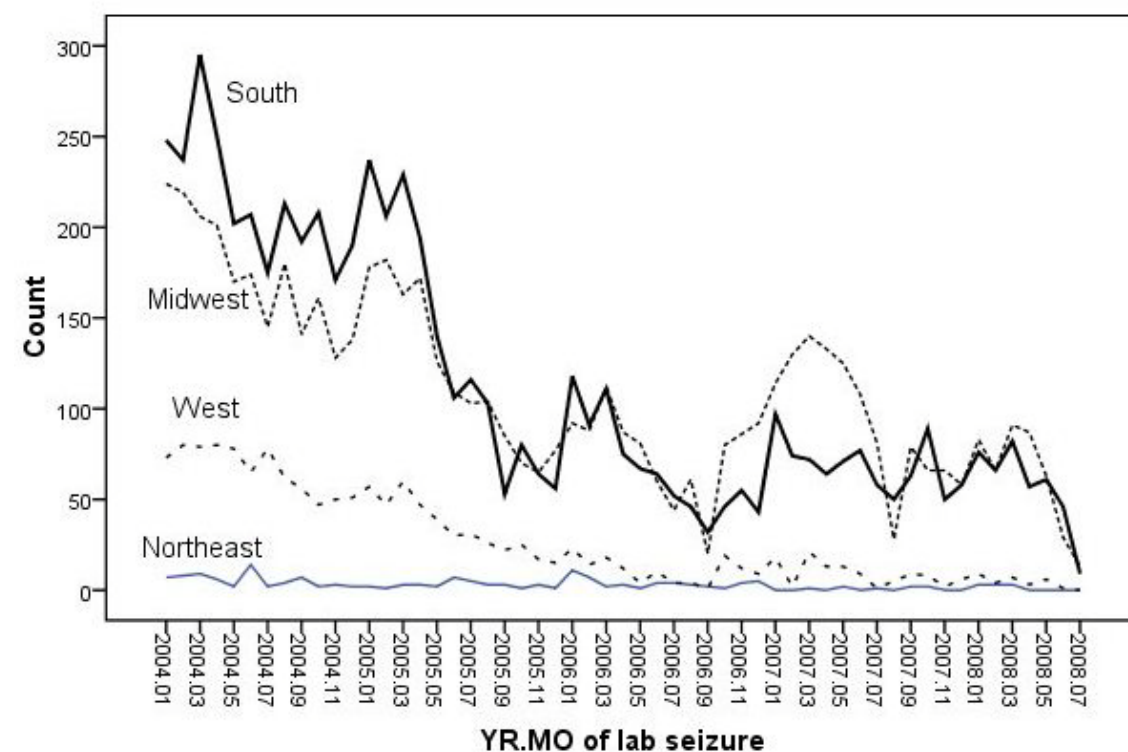
enough back in time to test this idea. It is possible, however, to compare regional variations in laboratory seizures with regional variations in self-reported methamphetamine use by drawing on data from the National Survey on Drug Use and Health. These data show that while the seizure rate in the West is about half that of the Midwest and South, self-reported use rates are about 50 percent higher in the West than in the Midwest or South. This is consistent with the idea that domestically

produced methamphetamine is being replaced by methamphetamine imported from Mexico in the West, and/or that in the West numerous small laboratories have been replaced by a smaller number of super labs.

An examination of when laboratory seizures occurred can also illustrate regional variations in the introduction of methamphetamine production. Figure 4 shows the pattern of methamphetamine laboratory seizures for each of the

four major regions in the U.S. As the figure reveals, the highest rates and the most dramatic reductions in seizures are in the South and Midwest. The Northeast, where relatively few labs had been found, shows almost no change over time. Unexpectedly, laboratory seizures in the Midwest were actually more frequent one year after federal precursor legislation than in 2006 when that legislation took effect. Further, the general pattern of

Figure 4. Region Trends in Lab Seizures



N = 14,448

decline is similar in the South, Midwest, and West. Most striking about these regional trends is the extent to which the patterns of peaks and valleys are similar across regions.

State-Level Patterns

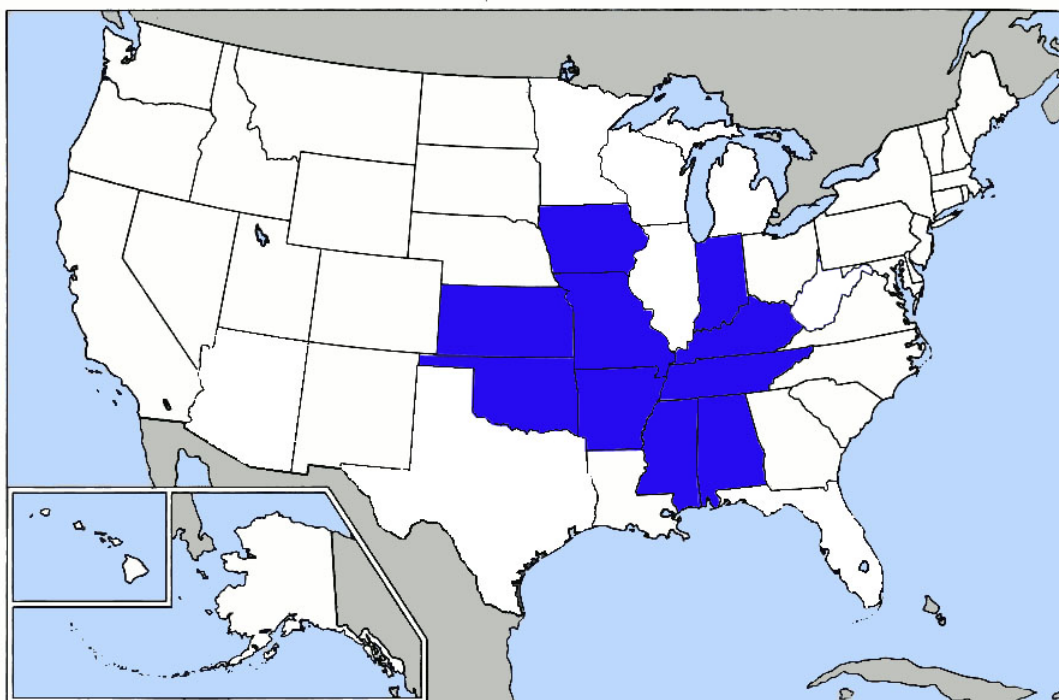
An analysis of state-level patterns of laboratory seizures reflects the prominence of the Midwest and South as locales for methamphetamine production. Table 1 and

Figure 5 both show the ten states with the highest laboratory seizure rates. The table shows that the states with the highest seizure rates are all in the Midwest and South, and several of those in the south border the Midwest. It is also interesting that the top ten states for laboratory seizures are contiguous. That is, there are no states in the top ten that do not touch at least one other state in the top ten.

Table 1. Top States for Lab Seizures 2004-2008

State	Seizure Rate*
Missouri	37.16
Arkansas	32.54
Iowa	19.30
Tennessee	17.38
Indiana	15.64
Kentucky	15.24
Alabama	13.32
Oklahoma	11.61
Kansas	10.86
Mississippi	10.72

*Rate per 100,000 people.

Figure 5. Ten States with the Highest Seizure Rate per 100,000 People

It is possible to aggregate methamphetamine laboratory seizure data at the state level and compare the seizure rate (per 100,000 people) with the reported rate of methamphetamine use in the past year by those ages 12 and over, as reported by the National Survey on Drug Use and Health. At the state level, the association between laboratory seizure rates and methamphetamine use rates is substantial ($r = .39$) but far from determinate. This suggests that while local use and production of methamphetamine are related, they represent rather distinct social processes and that models describing the geography of drug use may be of limited use in explaining the differential distribution of laboratory seizures.

County-Level Patterns

While it is useful to know national, regional, and state variations, analyses at these levels may mask important local variations. It is at the county level that we have the richest variety of data that can be combined with seizure data, and at which one might expect the most valid picture of the issue. The specific dependent variable used in the county-level analysis and comparisons was the *logged lab seizure rate* for each county – computed as the natural logarithm of the ratio of number of lab seizures reported in each county during the 2004-2008 data period divided by the census estimated population of the county in 2005. (A constant of 1.0 was added to the seizures/population ratio before taking its logarithm to insure that zero scores would be equal to zero seizures.) Using seizure rates, rather than counts, controls for the large effect of population size on incident counts and allows for direct comparisons between counties of widely different population sizes. Using the logarithm of the seizure rate (rather than the unmodified rate) is a common transformation for a highly skewed variable, providing a dependent measure that is much more

uniformly distributed and less affected by a few extremely large values. However, even with the log-transformation, one distributional anomaly remains: namely, the unusually high proportion of cases with a value of zero (the 46% of the counties who reported no lab seizures between 2004 and 2008). This results in a zero-inflated or “left-censored” dependent variable for which ordinary statistical estimates may be less suitable or biased. To assess this possibility, we duplicated all the multiple regression estimations in the analysis using Tobit analysis (a statistical variant of ordinary linear regression usable with censored dependent variables). The additional Tobit analyses simply confirmed and duplicated the findings reported with ordinary least square regression, yielding the same pattern of significant and insignificant variables as well as comparable levels of R^2 . In this paper, we report only the ordinary regression results here, in the interest of greater familiarity and readability of findings.

Our attention turns first to the impact of precursor regulations at the county level. An examination of these data finds that while 43.8 percent ($n=1,351$) of the counties reported labs before precursor restrictions went into place, more than one third of the counties (1,123 of 3,083 or 36.4%) reported labs after these laws took effect (See Table 2). This suggests the problem persists to a considerable extent. The impact of precursor regulation can also be seen by considering whether counties reported meth labs before and after the passage of precursor regulations. Table 2 shows that of the 1,351 counties reporting meth labs before these laws took effect, more than half (61.6%) still reported labs after these laws were in place. Further, of those 1,732 counties reporting no methamphetamine labs before precursor regulations took effect, 291 (16.8%) reported meth labs after precursor regulations went into effect.

Table 2. *Counties Reporting Meth Lab Seizures Before and After Precursor Regulations*

Lab Seizures After Regulation	Lab Seizures Before Regulation		Total
	Yes	No	
Yes	832 (61.6%)	291 (16.8%)	1123
No	519 (38.4%)	1441 (83.2%)	1960
	1351 (100.0%)	1732 (100.0%)	3083
Note: All 58 California counties are excluded because of the uncommonly early implementation of the California regulation (January 1, 2000), which means that all California cases are necessarily post-regulation.			

MULTI-VARIATE ANALYSIS

Following the data-reduction steps outlined earlier yielded a final set of 20 independent (predictor) variables at least moderately correlated with meth lab seizure rates. These variables were entered into a single overall multiple regression equation with the (logged) laboratory seizure rate as the dependent variable. The regression results are displayed in Table 3, which reports the partial regression coefficients (both standardized and unstandardized) along with accompanying statistical information (standard errors,

t-statistics, and p-levels). For purposes of this analysis, the important information in Table 3 is contained in the column of standardized regression coefficients (labeled β), which allow a comparison of the different variables all expressed in the same metric (standard deviation units). Also, because the data set effectively includes the population (of all counties in the U.S.) rather than a sample, the number of coefficients estimated from the data is fairly large, and the number of cases used in the regression is large ($N = 2,455$), analysis of results relied on substantive criteria of “significant associations” rather than

Table 3. Regression of the Logged Meth Lab Seizure Rates on Final Subset of Variables

Variables	b	S.E.	β	T	P
Economic Variables					
Manufacturing as % of All Employment	.026	.004	.141	7.04	<.001
Per Capita Income (in \$1000s)	-.012	.006	-.051	-2.02	.044
Ecological/Population Variables					
% Speaking Foreign Language in Home	-.028	.004	-.197	-7.80	<.001
% White in Population	.019	.007	.196	2.90	.004
% of Adults with a High School Degree or More	-.003	.007	-.015	-.040	.688
% of Population Under Age 18	-.004	.012	-.008	-0.35	.728
Subcultural/Lifestyle Variables					
% of Congregations That Are Evangelical	.014	.002	.195	7.48	<.001
Disorderly Conduct Arrest Rate (per 1000)	-.068	.011	-.115	-6.07	<.001
Property Crime Rate (per 1000)	.010	.003	.104	3.88	<.001
Violent Crime Rate (per 1000)	.021	.016	.033	1.27	.205
Dissimilarity Index (Black-White by residence)	.005	.002	.045	2.41	.016
Social Disorganization/Civic Engagement Variables					
% of Population that is Farm Population	.035	.006	.161	6.00	<.001
% Single Female-Headed Family Households	.035	.014	.132	2.41	.016
% Moved into Household in Last Year	.040	.016	.122	2.42	.015
Racial Diversity Index	-.888	.397	-.117	-2.24	.025
% Housing that is Occupied (vs. Unoccupied)	.017	.003	.108	4.99	<.001
% of Housing that is Owner-Occupied	.016	.007	.079	2.19	.029
% of Eligible Voter who Voted in 2004	-.011	.005	-.064	-2.13	.033
Population Change from 2000 to 2005	-.012	.005	-.055	-2.17	.030
% Lived in Different House in 1995	.010	.010	.051	0.99	.319
Overall $R^2 = .248$; $N = 2,455$					

conventional null-hypothesis-testing criteria. For our purposes, a variable was considered to have a significant predictive relationship with the lab seizure rates when its β -coefficient was .10 or greater.

As Table 3 shows, nine of these variables were no longer substantively significant when entered as part of the group. Among *economic factors* variables, only the presence of manufacturing jobs was significant, and among *ecological factors*, only speaking a foreign language in the home (negative association) and the percent of the population that was White were significant. Among *subcultural/lifestyle* factors, there was a positive association between lab seizure rates and the rate of property crime and between seizure rates and the presence of evangelical churches. However, arrest rates for disorderly conduct were significantly but negatively associated with lab seizures – i.e., higher arrests rates with lower lab seizure rates. Finally, there were five variables from the *social disorganization/civic engagement* factor that were associated with lab seizure rates. There was a positive association between the lab seizure rate and the percent of the population living on farms, the rate of female-headed family households, the percent of households who had moved within the past year, and the percent of the housing units that were occupied. The laboratory seizure rate was negatively associated with the county's racial diversity. That is, lab seizures were more prevalent in those counties with the least racial diversity (i.e., most uniformly nonminority). All together, these variables accounted for 25 percent of the variance in laboratory seizure rates across U.S. counties.

DISCUSSION

Most illicit drugs present two serious problems for society. First are the many consequences of drug use for the user, the community, and society as a whole. Second is the violence that accompanies the business of drugs that are transported across national borders through elaborate networks. Methamphetamine contributes to both problems, but in many parts of the country it presents another serious problem, namely the social and environmental damage that comes from domestic methamphetamine production. This study has focused on geographic patterns of production and correlates of the patterns associated with this latter problem.

Overall, these results confirmed that the distribution of methamphetamine laboratories is not random and displays notable regional variation. While use is most prevalent in the West, laboratories are more likely to be seized in the Midwest and South. The results also provide notable and robust evidence that legal regulations to restrict access to precursors, particularly ephedrine-based products, have reduced substantially the number of local domestic meth

labs (contrary to the findings of earlier studies in California), but has not ended domestic production.

The multivariate analysis of county-level correlates of meth lab seizures also proved revealing. The summary picture from these results is that local methamphetamine labs are more likely to be reported by police in counties or areas with rather different characteristics from typical drug problem communities. For one thing, *economic disability*, which figures very prominently in most theories or models of crime and drug problems, was not a prominent factor in predicting communities with more meth lab incidents. Unemployment rates and poverty levels were negligibly correlated with meth lab rates; personal and household income levels showed slight negative bivariate correlations with meth lab seizures, but these variables dropped out in the multivariate analysis. The only persistent economic variable to predict meth lab prevalence was the predominance of manufacturing in the county's employment profile: namely, higher percentages of manufacturing employment correlated with higher rates of meth lab seizures. Beyond this, economic variables were surprisingly absent from the final list of significant predictors of meth lab incidents.

In terms of *ecological factors*, spatial or geographic variables all proved unimportant in explaining or predicting counties with meth lab problems. Despite their intuitive plausibility, such factors as land area, population density, interstate highways, and natural scenic resources were negligible predictors of which counties had meth lab seizures. Only the demographic population composition variables were consistently correlated with and predictive of meth lab seizure rates; and here the empirical patterns were dramatically different from the demographic patterns normally associated with higher drug problems. Notably, counties with high rates of meth lab seizures tend to be racially homogeneous populations of largely white, native-born residents. In contrast, racial heterogeneity and higher percentages of foreign-born, non-English-speaking residents were noticeably correlated with lower rates of meth lab incidents across counties. The larger the proportion of racial minorities and the greater the mixture of ethnic groups in the county population, the lower the prevalence of meth labs. This is consistent with reported patterns of methamphetamine user characteristics, who are predominantly white (Weisheit and White 2009).

Regarding *subcultural/lifestyle* factors, property crime rates, arrest rates for disorderly conduct, and the percent of churches that are evangelical were significant predictors of laboratory seizures. However, violent crime rates and racial residential segregation measures (Black-White dissimilarity index) were not associated with the number of labs seized. It may seem paradoxical that one of the strongest, most consistent correlates of meth lab prevalence is prevalence of evangelical churches in counties, either in terms of membership rates in

evangelical churches or percentages of evangelical congregations among county churches. This finding is not predicted by any conventional theory of drug use or production, but it is predicted by recent versions of Social Capital theory, arguing that different kinds of church memberships reflect different kinds of social bonds and have different aggregate effects on the community-level exercise of social control. Thus, the finding is consistent with some prior research on community-level crime patterns (Lee 2006, 2008) and not as anomalous as it might appear. To be clear, this aggregate level analysis applies only to county-level patterns and does not suggest that members of evangelical churches are more heavily involved in the manufacture of methamphetamine.

Overall, the conceptual frameworks of *social disorganization* and *civic engagement* do not provide consistent predictions of meth lab problems. Contradictory to basic social disorganization premises, racial diversity and low household occupancy rates are negatively correlated with meth lab problems, while economic disadvantage and long-term population change are negligibly correlated with meth lab seizures. Of social disorganization indicators, only community rates of family disorganization (e.g., percentages of single-female-headed family households) or short-term population transience (i.e., immigration within the past year) were positively correlated with meth lab problems. On the whole, classical social disorganization theory does not predict meth lab seizures in counties. The results were similarly mixed and occasionally contradictory for civic engagement theory, which predicts lower rates of crime and social problems in communities which have higher rates of voluntary association, civic participation, farm-based population, and local small-scale capitalism. Overall rates of church membership or of voter election participation (both posited as key indicators of civic engagement) were essentially uncorrelated with meth lab rates. In contrast, some other components of civic engagement – such as percent of the population living on farms, percent of residents owning their own homes, or percent of labor force that is self-employed – were correlated with lab seizure rates in directions opposite to the predictions of civic engagement theory.

In sum, the counties with the highest rates of meth lab seizures by police are counties with homogeneously white, native-born, stable populations with higher levels of persons employed in manufacturing, living outside urban areas, and belonging to evangelical churches.

While precursor regulations have noticeably reduced the number of meth labs discovered by police, there is no evidence that the problem of domestic methamphetamine production will go away soon. In fact, while the number of laboratories seized by the police went down after restrictions were placed on the purchase of ephedrine-based cold medicines, nationally the numbers are now growing (National Drug Intelligence Center 2010).

Controlling the problem is important because it has implications for the environment and for innocent people exposed to chemical residue from these labs.

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Appendix A. Social and Economic Variables by Theoretical Framework

Economic Factors

- *Per Capita Personal Income
- *Median Household Income
- *Social Security Beneficiaries, Rate Per 1,000
- *Manufacturing Employment as % of all Employment
- *Percent of Personal Earnings from Manufacturing
- *Percent of Total Earnings that are Farm Earnings
- *Farming-Dependent County (dichotomy – ERS typology)
- *Manufacturing-Dependent County (dichotomy – ERS typology)
- *Housing-Stressed County (dichotomy – ERS typology)
- Percent of People of All Ages Below the Poverty Level
- Unemployment Rate
- Farm Employment as Percent of All Employment
- Retail Employment as Percent of All Employment
- Service Sector Employment as Percent of All Employment
- Percent Change in Median Household Income from 2000-2003
- Low-Education County (>25% of adults w/out a high school equivalent) (dichotomy – ERS typology)
- Low-Employment County (<65% of adults employed) (dichotomy – ERS typology)
- Persistent Poverty County (>20% in poverty in 1980, 1990 & 2000) (dichotomy–ERS typology)
- Population Loss County (population decline from 1980-2000) (dichotomy – ERS)
- Retirement Destination County (dichotomy – ERS typology)

Ecological Factors (Geographic and Demographic)

- *Regional dichotomies (Midwest, South, West, Northeast)
- *Natural Amenity Scale
- *Percent of Population = White
- *Percent of Population = Foreign-born
- *Percent of Population = Young (under 18 years old)
- *Percent of Population with High School Education or higher
- *Speaking a Foreign Language in the Home
- Urban Influence Scale
- Presence of Interstate Highway (dichotomy)
- Presence of Prisons (dichotomy)
- Population Density
- Land area (of county)
- Percent Commuting Outside County to Work
- Percent of Population = Hispanic
- Percent of Population = Elderly (65 years old and older)
- Racial Segregation by Residence (Dissimilarity Index)

Subcultural/Lifestyle Factors

- *Disorderly Conduct Arrest Rate
- *Rate of Membership in Evangelical Congregations per 1,000
- *Percent of Congregations that are Evangelical
- *Dissimilarity Index (segregation of Blacks and Whites within county)
- Property Crime Rate
- Violent Crime Rate

Drug Arrest Rate DUI Arrest Rate Offenses Against Family Arrest Rate Percent Voting Republican in 2004 Presidential Election Rate of Membership in All Churches (& Synagogues) per 1,000
Social Disorganization/Civic Engagement Factors *Percent of Housing Units = Occupied *Percent of Housing Units = Owner-occupied *Racial Diversity (Heterogeneity Index) Percent Population change 1900-2000 Percent Population change 2000-2005 Percent of foreign in-migration in past year Percent of resident born in the state Percent of residents who moved in last year Percent of residents who lived in different house 10 years ago Percent of single female-headed family households Voter Participation Rate (eligible adults who voted in 2004 election) Rate of Membership in Mainline Denomination churches per 1,000 Percent of the county population = farm population Percent of farms = small (less than 50 acres) Percent of farms = large (greater than 500 acres) Percent of employment = self-owned
<p>Note: This appendix provides a listing of all variables initially considered in the analysis. Those variables preceded by an asterisk (*) are variables that have a significant bivariate correlation with the county's rate of laboratory seizures. Other variables are either not correlated with the rate of seizures or are highly correlated with one of the marked variables and thus are redundant with that variable.</p>

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The Waiver and Withdrawal of Death Penalty Appeals as "Extreme Communicative Acts"

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Abstract: *Since Gregg v. Georgia, 428 U.S. 153 (1976)—the Supreme Court case that permitted the resumption of capital punishment in the United States—1203 executions have been carried out. One hundred and thirty-four (134) executions have involved "volunteers" of all races—individuals who waive or withdraw appeals at a point when viable claims still exist in their cases. This paper explores the power struggle between the State and the condemned over the timing and conditions under which an inmate is executed. It begins with a discussion of current public opinion about the death penalty and the ways in which the death penalty has been resisted. Next, it describes capital defendants who elect execution over life imprisonment and considers some of the reasons proffered for waiver and withdrawal. This paper then contemplates whether some instances of "volunteering" should be regarded as "extreme communicative acts" (Wee 2004, 2007)—non-linguistic communicative acts that are usually associated with protest, especially in the context of a lengthy political struggle (such as hunger strikes, self-immolation, and the chopping off of one's fingers). In so doing, this paper weighs in on the larger questions of who ultimately controls the body of the condemned and what governmental opposition to waiver and withdrawal may reveal about the motives and rationale for the death penalty. This paper also furthers research on how the prison industrial complex is resisted and how State power more generally is negotiated.*

Keywords: death penalty/death row; hunger strike; power; protest; resistance; self-immolation; volunteer; waiver; withdrawal

INTRODUCTION

According to the 2008 year-end report by the Death Penalty Information Center (DPIC), a research and anti-death-penalty advocacy group, use of capital punishment in the United States has continued to wane (Death Penalty Information Center 2008; see also Moore 2008). State and federal courts executed thirty-seven inmates in 2008—a fourteen-year low. The thirty-seven executions also represent a continued downward trend from a peak of ninety-eight in 1999. In addition, state and federal courts sentenced 111 criminal defendants to death in 2008, the lowest number of per annum condemnations in three decades. Most significantly, the lull in executions defied expectations that more inmates would be put to death after the U.S. Supreme Court's 2008 ruling in *Baze v. Rees*, which upheld Kentucky's method of lethal injection and

ended a *de facto* eight-month moratorium (from September 2007-April 2008). Instead, twenty-five executions were stayed in the aftermath of *Baze v. Rees*, as courts wrestled with issues involving mental illness, actual innocence, and ineffective assistance of counsel. The case of Troy A. Davis, in particular, has attracted international attention because seven of the nine witnesses against the Georgia inmate have recanted their testimony (Brown 2008a).

This is not to suggest that the country as a whole is uniformly moving in the direction of abolition. A Gallup poll conducted in October 2008 revealed that a majority of the public still supports the death penalty, although the numbers are down—64 percent of those surveyed indicated that they were in favor of the death penalty for a person convicted of murder in comparison to 69 percent in 2007 (Saad 2008). In the aftermath of a Georgia jury's

failure to agree on the death sentence for Brian G. Nichols, who killed four people in an Atlanta courthouse escape in 2005, Georgia legislators have begun lining up to introduce bills that would end the requirement of a unanimous jury verdict for a death sentence (Brown 2008b). In December 2008, a New Hampshire jury issued the state's first death sentence in almost fifty years (Zezima 2008). And in 2008, the U.S. Supreme Court declined to expand the death penalty to non-homicide offenses, striking down Louisiana's death penalty for the rape of a child in *Kennedy v. Louisiana*, yet its decision in *Medellín v. Texas* the same year allowed a foreign national from Mexico to be executed in Texas, despite a ruling by the International Court of Justice entitling him to review and reconsideration of his U.S. state-court conviction.

Still, Richard C. Deiter, executive director of DPIC and author of the year-end report, claims that the drop in executions shows that the popularity of the death penalty is declining: "Revelations of mistakes, cases reversed by DNA testing, all of these things have put a dent in the whole system and caused hesitation. I don't think what is happening is a moral opposition to the death penalty yet, but there is greater scrutiny applied to the death penalty that wasn't there before" (as quoted in Moore 2008). Similarly, Stephen B. Bright, director for the Southern Center for Human Rights and currently a lecturer at Yale Law School, asserts that the Gallup poll results are misleading and that distrust of the death penalty is much higher: "To get 12 people to decide to kill somebody is a difficult undertaking. People are overwhelmingly in favor of the death penalty when the Gallup poll calls. But when you ask them in a courtroom to actually impose the death penalty, a lot of people feel very uncomfortable" (as quoted in Brown 2008b). While Deiter and Bright may be correct that more people are expressing reservations about the death penalty as a result of concerns about innocence, disproportional imposition (racial and geographic), inept representation, failure to deter murder, and cost, most of the resistance to the death penalty comes from outside the prison walls—from capital defense attorneys to organizations working to end the death penalty (such as Amnesty International-U.S.A., DPIC, the National Coalition to Abolish the Death Penalty, the Quixote Center, the Religious Organizing Against the Death Penalty Project, and the Southern Center for Human Rights) to small, church-based groups opposed to the death penalty on moral, spiritual, or religious grounds.¹

In this paper, I examine what I refer to as "intramural" death penalty resistance—resistance from the very individuals who have received capital sentences and who are now sitting on death row. My focus, however, is not on their litigation (such as the cases mentioned above) or their writing in opposition to the death penalty (see, e.g., Abu-Jamal 1995; see also Davis 2001), but to a form of opposition that, at first blush, may seem like the antithesis of death penalty resistance: "volunteering"—when

individuals waive or withdraw appeals at a point when viable claims still exist in their cases (see, e.g., Bonnie 1988, 1990a, 1990b, 2005; Brisman 2009a; Harrington 2000, 2004; Strafer 1983; Urofsky 1984; White 1987). Granted, there are instances in which a death row inmate's volunteering would constitute acquiescence, rather than resistance, such as where the prisoner feels persistent guilt and sorrow about the crime(s) committed (Brisman 2009a; Harrington 2000) or where the prisoner feels that his appeals are hopeless and that he would rather die than grow old in prison. Likewise, volunteers suffering from mental illness (Brisman 2009a; Brodsky 1990; Cunningham and Vigen 2002) or "Death Row Syndrome" (also known as "Death Row Phenomenon") – "the theory that the mental stress of prolonged exposure to death row can cause incompetency in inmates" (Blank 2006:749) – would also not qualify as death penalty resisters. But the prisoner who volunteers to seize control over "the roller-coaster experience of the habeas appeals process" (Harrington 2000:850) or who positions his volunteering as a rebuff to the State (Brisman 2009a) might well be considered a death penalty resister.

This paper seeks to cast doubt on the depiction of all volunteers as "docile bodies" in either normative or Foucauldian terms (Brisman 2008a; see also Brisman 2009a). To substantiate the argument that some volunteers are not "docile bodies"—that some instances of volunteering may constitute a form of death penalty resistance—this paper contemplates death penalty volunteering in light of linguist Lionel Wee's (2004, 2007) concept of "extreme communicative acts" (ECAs)—non-linguistic communicative acts that are usually associated with protest, especially in the context of a lengthy political struggle (such as hunger strikes, self-immolation, and the chopping off of one's fingers). While Wee's discussion of ECAs is essentially an analytical exercise in the pragmatics of communication, this paper argues for a more capacious conception of ECAs, the goal of which is to contribute to an understanding of how resistance to the death penalty, to the prison industrial complex, and to State power, more generally, may be negotiated by the very persons at whom tremendous State powers are wielded. Because, as this paper contends, volunteering evokes ECAs and features thereof, treating volunteering as an ECA can encourage a greater movement of resistance and stronger linkages between death penalty inmates and extramural opponents (who sometimes appear to be fighting separately the same sources of power). Linking death penalty volunteering to ECAs can also open the lines of communication between death penalty resisters and those who in engage in ECAs in the name of other causes. Drawing connections between death penalty resisters and other activists working for social justice carries with it the potential for the individual groups to better articulate their messages, improve understanding of their core issues, expand their numbers, and broaden their techniques for

protest (see generally Eisinger 1973:26).

This paper begins with an overview of Wee's notion of ECAs. It describes three central features of ECAs and then discusses some of the examples of ECAs offered by Wee. With this foundation, the second part of this paper assesses volunteering under Wee's conception of ECAs. This section demonstrates that while volunteering stretches the bounds of the features of ECAs, as set forth by Wee, it does so without harming the overall metaphor. The second part of this paper thus argues that death penalty volunteering can be viewed as a type of ECA—one that simultaneously represents a symbolic non-linguistic communication *and* social resistance. The paper concludes (in the third part) with suggestions for how an assessment of death penalty volunteering as an ECA can foster greater interest in death penalty resistance by those on death row and can help link death penalty resistance to resistance to social and political injustice(s) more generally.

WEE'S CONCEPT OF EXTREME COMMUNICATIVE ACTS

"Speech acts" specifically refer to linguistic communication (see Searle 1969); "communicative acts" comprise both linguistic and non-linguistic communication (Wee 2004). Wee identifies a subset of non-linguistic communicative acts, which he refers to as "extreme communicative acts" (ECAs). These devices, by which illocutionary force is boosted rather than attenuated, aim to "maximize the likelihood of achieving the perlocutionary goal" (2004:2163).² According to Wee, ECAs possess a number of features:

First, ECAs are typically associated with protests, particularly in the context of a political conflict (and usually a lengthy political struggle at that).³ Prior protests are "typically verbal," Wee explains (2004:2171), "so that the recourse to ECAs becomes the climax of a series of increasingly strident expressions of protest."

Second, ECAs "occur 'late' in the interactional sequence, that is, after a number of less dramatic expressions of protest have already been employed" and are typically "seen as a 'last resort' when other, less extreme, forms of protest have failed" (2004:2163, 2166). The actors—those performing or committing the ECAs—"all seem to feel that the addressees have failed to behave in a manner that recognizes the actors' rights and legitimate expectation, and these actors consequently want the addressees to do something or to refrain from doing something" (2004:2162 n.4). As Wee (2004:2172) further explains:

an ECA is not something one resorts to in the first instance. To immediately embark on a hunger strike, for example, just because one's initial demand is not met would be seen as overreacting. The hunger strike, as an ECA, must

be seen as an act that is resorted to precisely because earlier and less dramatic expressions of protests were unsuccessful. And this, I suggest, is a crucial component of how ECAs work as boosters of illocutionary force. The context for the use of ECAs includes earlier expressions of the strength of the actors' commitment to a disputed position, and crucially, these earlier expressions must have failed to achieve their perlocutionary goals.

That the dramatic expression occurs late in the interactional sequence after "normal channels of communication have broken down" relates to a third property of ECAs—they "involve some form of self-inflicted harm, which can sometimes be fatal" (2004:2169, 2163). Wee acknowledges that ECAs bear a close resemblance to the notion of martyrdom. The difference, according to Wee, is that with martyrs, the suffering is usually imposed on them by others. The suffering experienced by the actors engaging in ECAs, on the other hand, is self-inflicted, although those engaging in ECAs (particularly those undertaking hunger strikes) try to present themselves as having exhausted all other avenues of redress and thus having no alternative but to engage in the ECA. Wee stresses the importance of self-infliction because self-infliction helps express the strength of the actors' own commitment to a specific position. Notwithstanding this distinction between martyrs and actors engaging in ECAs, the crucial point is that the suffering, whether imposed or self-inflicted, "is intended to evoke sympathy for the sufferer, particularly from those not directly involved in the political struggle, and this might even spur these others to take up the cause on the sufferers' behalf" (2004:2171-72). To explicate these properties of ECAs, Wee offers three examples: hunger strikes, self-immolation, and the chopping off of one's fingers.

Hunger Strikes

Although the term "hunger strike" may seem self-explanatory, the act of depriving oneself of food or food and drink does not by itself constitute a hunger strike (Wee 2004; see also Brisman 2008b). As Wee (2004:2168, 2170-71) explains, abstaining from food is not a hunger strike if it is part of a dietary regime or a sign of anorexia; "[f]or it to count as a hunger strike, there must be some 'issue' which the striker is protesting against ... A hunger strike ... is no longer a hunger strike if one were to be deprived of food against one's own will." In the same vein, an individual depriving himself of food for the purpose of apocarteresis—suicide by starvation—whether as part of a religious ritual or to hasten death in the face of a terminal illness would not constitute a hunger strike (see Radford 2002; see also Wilford 2002).

While self-starvation dates back hundreds of years, the hunger strike as a political weapon is only slightly more than 100 years old, having been undertaken as both individual displays of opposition and as part of a collective efforts to protest a situation or event or to bring about some sort of change (Brisman 2008b; see also Hamill 1981). Examples of the former include Gandhi, famous for using the hunger strike as a means of calling attention to his various campaigns; Nelson Mandela, who fasted in opposition to apartheid; Nabil Soliman, who refused to accept food from the Immigration and Naturalization Service (INS) because he believed doing so would constitute acceptance of his “illegal detention;” Saddam Hussein, who fasted four times to protest his trial and the level of security afforded his defense lawyers; and Gary Gilmore, the first volunteer, who gained international attention for his demand that his death sentence be fulfilled and who undertook a twenty-five day hunger strike to protest the delay of his execution (Brisman 2008b). Examples of politically driven collective hunger strikes include a hunger strike by Attica prisoners in 1971 in honor of George Jackson, the revolutionary prisoner in California, who was murdered by guards during an escape attempt, as well as hunger strikes by Palestinians to oppose their treatment by their Israeli captors, and detainees held at the American military prison at Guantanamo Bay, Cuba, in protest of the conditions and length of their confinement (Brisman 2008b). Wee (2004, 2007) offers two examples of collective hunger strikes: 1) the 2001 hunger strike by prisoners in Turkey to protest their transfer from dormitory-style prisons to newer facilities with individual cells on the grounds that the move would leave them isolated from other prisoners and vulnerable to torture—a hunger strike noteworthy for its long duration, number of deaths, and fact that it was also undertaken by former inmates and individuals outside prison who had no direct connection with the inmates in the new prisons (see also Brisman 2008b); and 2) the hunger strike in the early 1980s led by Bobby Sands, in which he and other members of the Irish Republican Army (IRA) fasted to protest the British government’s treatment of them as “criminals,” rather grant them Special Category Status (i.e., as “political prisoners” or “prisoners of war”).⁴

Several aspects of hunger striking distinguish it from other ECAs. First, while “one can embark on a hunger strike for a number of reasons” (Wee 2004:2165) and to varying degrees (e.g., abstention from food and drink, abstention from food only, abstention from food but with ingestion of liquids, salt, sugar, and vitamin B₁), the hunger strike is, as evidenced by the examples above, a popular tool of protest for prisoners. Indeed, it is “[o]ne of the few weapons available to prisoners” (Powell 1983:714) and “one of the few ways in which a person without access to weapons or poisons can make a life or death decision” (Oguz and Miles 2005:170). In contrast to Wee’s other examples of ECAs, while prisoners often fashion shanks

out of metal, they are unlikely to be able to locate or craft a knife sufficiently heavy enough to sever digits; they are even less likely to be able to obtain a sufficient amount of flammable liquid in order to engage in self-immolation (although many prisoners do smoke and have access to matches or the equivalent).

Second, while a hunger strike entails depriving oneself of food, thereby satisfying the self-inflicted property of ECAs in a way that deprivation of food against one’s own will would not, hunger strikers (especially those in prison) are occasionally force-fed in order to prevent permanent damage or death. Whether the method employed is nasogastric tube feeding, intravenous feeding, or percutaneous endoscopic gastrotomy is irrelevant; each is physically invasive and poses various degrees of medical risks (Brisman 2008b). Although the *hunger strike* remains the ECA, not the force-feeding, the hunger striker who is fed against his will may find the fact of force-feeding to accentuate his commitment to the cause and to further boost the illocutionary force of his action.

Third, while hunger strikes, as noted above, most often “occur ‘late’ in the interactional sequence ... after a number of less dramatic expressions of protest have already been employed” (Wee 2004:2163), there is some disagreement as to whether they should be seen as a “last resort.” Wee (2004:2171) implies that they are and points to the fact that “the IRA prisoners decided on the hunger strikes only after they felt that their demands for political status were being ignored”—a position that is strengthened when one considers that Sands and nine other hunger striking IRA prisoners died. Anderson (2001:44), on the other hand, observes that:

[a] hunger strike might seem to be an act of ultimate desperation, a weapon of last resort for the powerless, but the reality is a bit more complex. Politically motivated hunger strikes tend to occur in a very specific kind of society and at a very specific time: namely, in places with a long history of official repression, but where that repression has gradually begun to loosen. If it is the institutionalized nature of abuse that fuels the strikers to such extreme action, it is the cracks of liberalization that lead them to believe that such a course might shame the government into change—and often they are right.

Thus, for Anderson, whose work predates Wee’s and thus does not engage the notion of ECAs, the hunger strike need not be something that someone or some group engages in when all else has failed and when there is little hope or recourse, but rather a catalyst timed to make the push across the goal-line. The difference, then, between Wee and Anderson is subtle, but important. Both see the hunger strike as coming late in the interactional sequence—and potentially, the last expression. But

whereas Wee couches it in terms of despair, Anderson regards the hunger strike as far more calculated.

Finally, all ECAs also gain some of their potency from the amount of time involved in the action. But whereas self-immolation and the chopping off of the tips of one's fingers are powerful for their immediacy (and irreversibility), hunger strikes are slower endeavors that build strength as communicative acts as the strikers lose their physical strength. Each day that a hunger striker abstains from food places a greater burden on those in power to act in response. As Wee (2007:65) explains, "while the strikers gladly ascribe intention to themselves for initiating the strike, they impute intention for the consequences of the strike to the authorities and absolve themselves of any responsibility for the suffering they experience." Hunger strikers, self-immolators, and those who chop off their fingers all attempt to portray their actions as unavoidable—these actors feel and wish to convey that they had few, if any, options other than the ECA. But only with the hunger strike are institutional authorities likely to be held responsible for the death or permanent damage to the actor (Wee 2007).

Self-immolation

Although the dictionary defines "self-immolation" as "a deliberate and willing sacrifice of oneself" (Webster's 2002:2060), it is most commonly associated with suicide by fire. Despite the pain self-immolators must endure, lighting oneself on fire, like hunger strikes, has been a popular method of protest.⁵ For example, in 1996, Kathleen Chang, a Philadelphia performance artist, who called herself "Kathy Change" to emphasize her commitment to political and social change, set herself on fire on the University of Pennsylvania campus "to protest the present government and economic system and the cynicism and passivity of the people" (Change 1996; Fisher 1996a, 1996b; Matza and Gibbons 1996; Pereira 1997). In 2006, to offer another instance, Malachi Ritscher, a musician and anti-war activist, self-immolated along the Kennedy Expressway in Chicago, Illinois, to protest the war in Iraq (Newbart 2007; Roeper 2006). But perhaps the most famous incident of self-immolation occurred on June 11, 1963, when the Buddhist monk, Thich Quang Duc, burned himself at a busy intersection in Saigon, Vietnam, to protest the American-backed South Vietnamese regime of Ngo Dinh Diem and its policies on religion (Halberstam 1963a, 1963b, 1965). American journalist and photographer Malcolm Browne captured the image of Duc's self-immolation—a picture that shocked the world and helped bring attention to the Diem regime and United States involvement in Vietnam. Shortly afterwards, President John F. Kennedy proclaimed that "no news picture in history has generated so much emotion around the world as that one" (quoted in Moon 2008). Self-immolation by Buddhist monks, as well as U.S.

presence in Vietnam, however, would continue (see "Newsmen Beaten by Saigon Police" 1963).

Wee's (2004) own example is from February 1999, when a number of Kurds living in Europe set themselves ablaze after Turkish agents arrested the Kurdish rebel leader, Abdullah Ocalan, who had been conducting an international search for political asylum (see also Cohen 1999; Sharkey 1999; Wee 2007). The Kurdish self-immolators were demanding Ocalan's release, which might raise the question of whether their actions could be considered a "last resort," coming at the tail end of a prolonged (and failed) interactional sequence. But as Wee (2004) explains, the 1999 Kurdish self-immolations must be seen in light of Kurdish outrage at Western governments' attitudes toward the plight of Turkey's Kurdish minority—a struggle that arguably stretches back to the 1920s when the Treaty of Sèvres promised a homeland to Kurds (see Cohen 1999; Sharkey 1999)—leaving little doubt that these acts or more broadly, self-immolation *as protest*, constitute an ECA.

What is perhaps most striking about self-immolation, which has been referred to as "a kind of noble death by protest" (Fisher 1996b) and as the "ultimate protest" (Pereira 1997:6), is its finality. According to William P. Harmon, a religious studies professor and expert on religious attitudes toward public suicide, "There are few forms of political statement more impressive than deliberately setting yourself on fire ... When someone does it, essentially they are saying, 'I gave my life.' The act itself makes it very clear what the lines are between the committed and the uncommitted" (quoted in Sharkey 1999:4).

Wee would actually disagree with Pereira and Harmon's descriptions of self-immolation on two counts. First, Wee (2004) claims that a self-immolator need not give his or her life and that one could boost illocutionary force by burning just a particular part of the body, such as a hand. Strictly speaking, burning one's hand would not constitute self-immolation, which, as noted above, means "a deliberate and willing sacrifice of *oneself*," not "a deliberate and willing sacrifice of *part of oneself*." Wee (2004:2169) contends that "it is not clear that burning oneself completely counts as a stronger form of self-immolation than burning just a particular body part." Arguably, however, self-immolation has a corollary in the "internal scale" of the hunger strike whereby "a hunger strike without food or drink is possibly more powerful than one where the striker drinks but does not eat" (2004:2169). That is, burning a particular body part is a potentially less powerful gesture; it is less shocking and damaging, for example, than self-immolation where the protestor expects (and hopes) to die.

Second, Wee claims that ECAs as a category of communicative acts lack "contrastiveness" or "paradigmaticity"—"where different linguistic devices represent competing possibilities that can be chosen from a

fairly delimited set” (2004:2168). Thus, Wee asserts that ECAs differ from pitch and volume—both linguistic devices that may be employed to increase the force of speech acts—and thus “ECAs, even if taken together, do not form a paradigmatic set where a decision to engage in self-immolation . . . might be said to convey a stronger boosting of illocutionary force than . . . a hunger strike” (2004:2168). But ECAs do possess paradigmaticity and a decision to engage in self-immolation can convey a stronger boosting of illocutionary force than a hunger strike where one abstains from food and drink (which in turn, can convey a stronger boosting of illocutionary force than a hunger strike where one refrains from consuming only food). Indeed, some hunger strikers have threatened self-immolation if their demands were not met (Shorto 2007); some self-immolators have undertaken hunger strikes before engaging in self-immolation (Apple, Jr. 1966; Halberstam 1963c; Langguth 1965; see generally Smith 2001).⁶ While certain actions may carry greater currency in some cultures than in others—for example, Charans, a caste in India, are revered for their readiness to perform self-immolation, whereas Change’s self-immolation was viewed by some as offensive and obscene (Pereira 1997)—a hunger strike where the striker drinks is undoubtedly less powerful an image or statement than self-immolation.

Perhaps Wee rejects the paradigmaticity of ECAs, as well as an internal scale to the ECA of self-immolation, in order to stress that ECAs always boost and never attenuate illocutionary force—a point with which I would agree. My purpose in arguing that ECAs may in fact constitute a paradigmatic set and that setting oneself on fire possesses an internal scale is not to engage in linguistic (and discursive) debate. Rather, my intention is to demarcate the boundaries of and explore the degree of elasticity in Wee’s notion of ECAs in order to best contemplate the waiver and withdrawal of death penalty appeals as a type of ECA—which I examine in Part II after the following section’s discussion of Wee’s third example of an ECA: the chopping off of one’s fingers.

Chopping Off of One’s Fingers

On August 13, 2001, twenty Korean men, all dressed in black, lined up in front of the Independence Gate in Seoul, Korea (a former prison for independence fighters during Japan’s colonial rule of Korea) to protest Japanese Prime Minister Junichiro Koizumi’s planned visit to Yasukuni Shrine—a Shinto shrine located in Chiyoda, Tokyo, honoring Japan’s war dead. The men, members of the “Save the Nation” organization, shouted, “Apologize, apologize!” for offenses they claim the Japanese had committed against the Korean people, and denounced Prime Minister Koizumi’s decision to make the trip to the shrine (as well as his refusal to order revisions to middle-school textbooks that Korea had officially criticized for

largely dismissing Japanese colonialism and militarism in northeast Asia). Wielding heavy knives, the men chopped off the tips of their little fingers and bandaged them with pieces of the Korean flag. One of the protestors then gathered all the tips in another flag and folded it in front of the group (Kirk 2001).

According to Wee (2004; see also 2007), the chopping off of finger tips constituted a form of protest in the context of a political conflict—ongoing anti-Japanese sentiment in Korea stemming from Japan’s occupation of Korea from 1910 until Japan’s defeat in World War II in 1945⁷—thereby satisfying the first property of ECAs. The actors also chopped off the tips of their own fingers—the third feature of ECAs. With respect to the second property of ECAs—dramatic expression late in the interactional sequence or as a last resort after normal channels of communication have broken down—Wee explains that the this incident occurred only after numerous attempts had been made to dissuade Prime Minister Koizumi from visiting the shrine. Wee acknowledges that the chopping off of finger tips might have been more of an expression of the actors’ outrage at a forthcoming offensive event than an attempt to redress perceived wrongs, as was (and is often) the case with hunger strikes and self-immolation. But Wee does not completely negate the possibility of a perlocutionary goal motivating the act, positing that self-mutilation could (also) have been an effort to discourage future visits to the Yasukuni shrine. In fact, this potential interpretation becomes more salient when one considers the Korean gangster ritual of severing fingers in order to show loyalty to the leader of the gang (Kirk 2001).⁸ Kirk (2001:A8) reports that in the case of the finger tip-chopping protesters, the acts “demonstrated [their] loyalty to their country.” It is possible, then, that the finger tip-chopping boosted the illocutionary force of protesting, but did *not* constitute a last resort. Rather, the reference to Korean gangster ritual could have been intended to foreshadow Save the Nation’s abandonment of peaceful protesting and turn towards gangster-type violence.

Wee does not ponder the possibility of Save the Nation turning to threats, intimidation, and forms of interpersonal violence to make its point. Wee does, however, briefly consider whether suicide bombings constitute ECAs and clarifies that such “acts of terror” do not because “[a]n important feature to bear in mind is that ECAs involve *only* harm to the actors themselves, not to any others, and most certainly not to innocent bystanders. Acts of terror, in contrast, deliberately target innocents” (2004:2162n.3; see also 2007:73n.1). In so doing, Wee reveals some of the bounds of his conception of ECAs—something I explore in the next section of this paper as I turn to a discussion of death penalty volunteering as an ECA.

VOLUNTEERING AS AN ECA

As noted above, Wee's ECAs possess three main features: 1) ECAs are typically associated with protests, particularly verbal protests in the context of a political conflict (and usually a lengthy political struggle at that); 2) ECAs occur later in the interactional sequence—often as a last resort—after normal methods and avenues of communication have broken down; and 3) the harm suffered by the actor is both self-inflicted and limited to the actor. I consider each of these features in turn, highlighting where volunteering constitutes an ECA under Wee's formulation and extending Wee's conception where it does not.

Is Volunteering Associated with Protest?

Since *Gregg v. Georgia*—the 1976 U.S. Supreme Court case that permitted the resumption of capital punishment in the United States⁹—1203 executions have been carried out, 134 of which have involved “volunteers” (about 11%).¹⁰ The stated reasons for volunteering—for waiving or withdrawing appeals at a point when viable claims still exist in cases—have ranged from guilt and remorse to perceptions of justice and fairness to avoidance of death row conditions to depression and suicidal urges to macho and hypermasculine notions of pain and death, where the volunteer wishes to die in a “blaze of glory” (Strafer 1983:875n.56; see also McClellan 1994:214).

To my knowledge, none of the 134 volunteers have specifically stated a desire to waive or withdraw death penalty appeals on the stated grounds of death penalty protest.¹¹ This does not mean that a death row inmate has not volunteered solely or primarily to express opposition to the death penalty in general or as applied to him. Making a decision that will effectively end one's life is arguably the most difficult and emotionally trying choice an individual can make—regardless of the circumstances under which the individual must make the determination. Emotions, as Calhoun (2001) points out, are incredibly difficult to observe, analyze, and assess—a task that is further complicated with a restricted population, such as death row inmates, who are hardened over their years in prison and conditioned not to expose their emotional states. Thus, it is entirely possible that a death row inmate has indeed regarded his volunteering as an manifestation of opposition to the death penalty in general or even as applied to him.¹²

Although a specific example of a death row inmate volunteering solely or primarily to express opposition to the death penalty is lacking, death penalty volunteering can constitute a more general form of protest. A death row inmate may possess multiple motivations for volunteering and may emphasize one over another depending on circumstances and the progress (or lack thereof) of his proceedings or to prove that he is competent to waive or withdraw his appeals (Brisman 2009a).¹³ Protest could be

one of those motivations, as is the case with those who position their volunteering as a rebuff to the State. In other words, given the State's interest in preserving life and preventing suicide, safeguarding the integrity of the proceedings and the legal profession, and protecting the interests of the inmate's family (see, e.g., Harrington 2000; McClellan 1994; Strafer 1983; White 1987), the volunteer might regard the waiver or withdrawal of his death penalty appeals as an anti-State position (see Brisman 2009a; see generally Brodsky 1990; Harrington 2000, 2004).

The volunteer could also possess a commitment to a specific, political position that predates his incarceration (and/or may regard his crime(s) in political terms, i.e., as a comment on class structure or socio-economic status). He might consider his volunteering to be part of that political struggle—a battle that he waged through public demonstrations (e.g., marches, rallies, picketing), written demonstrations (e.g., petitions, letter writing campaigns), civil disobedience, and direct action before his incarceration, and which may include the crime for which he received the death penalty.

Even with an example of a death row inmate volunteering to express opposition to the death penalty in general, as applied to him,¹⁴ or to communicate something about a cause unrelated to the death penalty (although this may well exist), volunteering does not meet the first requirement of an ECA as set forth by Wee. Wee might claim that whether volunteering constitutes a form of protest is different from whether volunteering represents an ECA. While ECAs are associated with protest, not all acts associated with protest constitute ECAs. For Wee, what might lead him to disqualify volunteering as an ECA is the range of reasons for which one can volunteer. According to Wee (2004:2169), ECAs lack “contextual flexibility,” where the same act can boost or attenuate illocutionary force depending on the context. In contrast to speaking with a softer volume, which could boost or attenuate illocutionary force, ECAs are always and only boosters: “One would be hard-pressed to find cases where hunger strikes or acts of finger-chopping are used as attenuators of illocutionary force. ECAs, then, serve to boost, never to attenuate, features of the illocutionary act such as the actors' commitment to their demands, their claims of entitlement to their demands being met, and their claims that the addressees of the ECAs are indeed obligated to meet these demands” (Wee 2004:2170). Thus, while the possible reasons for hunger-striking or chopping off one's finger tips are fairly broad, they are *too* broad in the context of volunteering. In other words, because volunteering could be an act of acquiescence to State power *or* an act of protest—as an attenuator or as a booster of illocutionary force (whereas the hunger strike can only be considered a booster), Wee would categorically reject the waiver and withdrawal of death penalty appeals as an ECA.

Although ECAs lack “contextual flexibility” (they are always and only boosters) whereas volunteering possesses some “contextual flexibility” (it can boost or attenuate illocutionary force), some flexibility with respect to the “contextual inflexibility” feature of ECAs is necessary because prisoners are limited in their means, methods, and opportunities for protest.¹⁵ Such an elastic conception of ECAs still fits the general premise and spirit of his argument. Accordingly, we can consider volunteering as an ECA when the death row inmate volunteers to express his opposition to the death penalty or some other cause.

Does Volunteering Occur Late in the Interactional Sequence or as a Last Resort?

At first blush, volunteering meets this standard in a fairly straightforward way. Volunteering can be viewed as akin to self-immolation, whose power as a communicative act derives, in part, from its finality. Because a communicative act cannot occur after death (although other members of the struggle will likely continue to engage in communicative acts), the volunteer can be likened to the self-immolator, but only if less dramatic expressions of protest have been attempted and have failed. While this is certainly possible, the difference is that many individuals sentenced to death attempt to waive or withdraw their appeals. Bonnie (1988:1380), drawing on anecdotal evidence, notes that “a significant proportion of defendants charged with capital murder express a preference for a death sentence at some point during the course of interactions with their attorneys.” Most of these defendants, however, tend to change their minds again and express a preference to fight the conviction and/or sentence. Indeed, many defendants (who later become inmates) wind up changing their minds numerous times about the desirability of post-conviction relief.¹⁶

If this stopping and starting of the appeals process is an expression of uncertainty or waffling on the part of the death row inmate, then volunteering does not constitute an ECA according to Wee’s criteria. As noted above, engaging in an ECA reveals “the strength of the actors’ commitment to a disputed position” (Wee 2004:2172). Or as Professor Harmon claims in the context of self-immolation, “[t]he act itself makes it very clear what the lines are between the committed and the uncommitted” (quoted above and in Sharkey 1999:4). Thus, if an ECA is an expression of commitment to a cause, then waffling on the part of the death row inmate undoubtedly undermines the communicative power of volunteering and therefore does not possess the spirit of the second feature of ECAs. The issue is not so much whether the death row inmate who changes his mind does so out of uncertainty or as a ploy and part of his protest,¹⁷ but the fact that ambiguity would exist. Part of the force of an ECA is its clarity of commitment to a particular cause so that the communicative act boosts illocutionary force. The fact that

one can waive and file and withdraw and resume for potentially very different reasons implies that volunteering cannot be said to occur late in the interactional sequence or as a last resort—at least not in all cases.

Is the Harm to the Volunteer Self-Inflicted?

Although hunger-strikers occasionally receive assistance with their protest (especially late in their protest with the ingestion of liquids, salt, sugar, and vitamins) and self-immolators are sometimes doused in petrol by supporters, the harm that the actors experience is still self-inflicted. Such is not the case with death row inmates who volunteer. They do not pull the triggers of the firearms of the firing squad, flip the switch on the electrical chair, or inject the “cocktail” of sodium thiopental, pancuronium bromide, and potassium chloride. While a strict reading of this feature would disqualify volunteering as an ECA, it is important to remember why the “self-inflicted” feature of ECAs exists. As noted above, an individual who is deprived of food, burned at the stake, or mutilated would not be engaging in an ECA not simply because the suffering is imposed by someone else, but because the *choice* to suffer is not his to make. Essentially, it is one thing to suffer harm or die for a cause at the hands of an oppressor; it is quite another matter—and a much stronger statement of the actors’ own commitment to a specific position—if the harm or death is self-inflicted.

What, then, of the death row inmate who commits suicide days or hours before his scheduled execution—especially if the inmate does so to beat the State to the punch, so to speak? Putting aside the fact that death row inmates are usually placed on “suicide watch” and closely observed in the short time before their executions, therefore making suicide difficult to accomplish, what renders volunteering closer to the spirit of an ECA is its role in the power dynamics between inmate and State. As Wee (2004:2173) asserts, “there is an asymmetrical power relationship where the actor who engages in an ECA is in the position of lesser power.”

While a prisoner’s suicide possesses the potential to boost illocutionary force, particularly if he is able to publicly convey his purpose and reason for suicide, the statement is stronger if the inmate undercuts the State’s heightened interest in preventing its system of justice from being transformed into an “instrument of self-destruction” (*Faretta v. California* (Burger, C.J., dissenting)). In other words, the State has an interest in preserving life and preventing suicide. The volunteer is better able to undermine the State’s legitimacy by waiving or withdrawing his death penalty appeals and forcing the State to commit the act than by directly ending his life himself.

One way to better understand why volunteering, rather than suicide, may more closely resemble an ECA, is to recall Wee’s (2007:65) comment, noted above, that “while

the [hunger] strikers gladly ascribe intention to themselves for initiating the strike, they impute intention for the consequences of the strike to the authorities and absolve themselves of any responsibility for the suffering they experience.” With suicide, the inmate bears some responsibility, as do the guards and prison authorities for not monitoring the inmate more closely. With volunteering, the inmate ascribes intention for the consequences of the execution to a wider range of individuals and institutions. Not only do prison authorities bear some responsibility, but so does the State as a whole, as evidenced by the contentious debate over whether defense attorneys should honor the condemned’s wishes and desire for personal autonomy (see Bonnie 1988) or disregard the would-be volunteer’s request and continue with the duty of zealous defense (see Strafer 1983; White 1987). Thus, the volunteer, like the hunger striker, may be able to impute intention for the consequences of the waiver or withdrawal of appeals to the State and absolve himself of any responsibility for the suffering he experiences, even if the actual harm is not self-inflicted.

In sum, the waiver and withdrawal of death penalty appeals does not fit within Wee’s current conception of ECAs. But as I have suggested, Wee’s formulation is a bit too rigid. Under certain circumstances, volunteering evokes ECAs and features thereof and his notion of ECAs should be modified to allow for greater flexibility. In the next and final section, I propose that conceiving of volunteering as an ECA can open the lines of communication between death penalty resisters and those who in engage in ECAs in the name of other causes.

IMPLICATIONS AND FUTURE DIRECTIONS

At the turn of the millennium, Lilly (2002:326) wrote that “[r]esistance to the death penalty in the US is experiencing a renaissance unseen since its 1960s heyday.” Lilly (2002:330) concluded, however, that this resistance, combined with “domestic doubt and international pressures,” was not enough to abolish capital punishment for two reasons. First, death penalty resistance has not reached the status of a “movement,” such as the civil rights or anti-war movements of the 1960s to 1970s. “Today it seems that death penalty resistance is a one-off subject that struggles to get attention in the face of dropping crime rates and the economic attractiveness of prison growth” (Lilly 2002:331). Second, Lilly (2002:331) drew a link between approval of the death penalty and support for the right to bear arms, rationalizing that endorsement of the latter contributed to the perpetuation of the former: “capital punishment still has core appeal in a nation with more guns *per capita* than any nation in the world.” Yet, he posited that private prison growth in rural areas might

eventually lead to a preference for life without parole in order to ensure that these facilities remain filled.

Lilly is correct that death penalty resistance does, indeed, lack the benefit of “movement” status. It neither possesses “enduring, concerted action, often carefully planned and supported by formal organization”—integral features of social movements, according to Calhoun (2001:48)—nor has death penalty resistance succeeded in joining forces with or piggy-backing on other social justice causes to achieve its desired results. Part of this failure may be due to the lack of resistance by death row inmates (or other inmates, for that matter), because, as Eisinger (1973:15) points out, “[p]rotest is not likely to occur in extremely closed (repressive) systems.” Death penalty resistance may also lack the benefit of movement status because of inadequate attention to resistance by prisoners facing the death penalty, the overshadowing of intramural resistance (i.e., death row inmates’ resistance) by those operating outside prison walls (where such intramural resistance exists), or some combination thereof.

While intramural resistance—resistance from the very individuals who have received capital sentences and now are sitting on death row—may take multiple forms, in this paper, I call attention to certain instances/aspects of “volunteering” by considering whether the waiver and withdrawal of death penalty appeals constitute ECAs—non-linguistic communicative acts that are usually associated with protest, especially in the context of a lengthy political struggle. Although the theoretical exercise demonstrates that volunteering does not possess the features of ECAs as set forth by Wee (2004, 2007), I argue for a more elastic application of Wee. I suggest that by recognizing similarities in these forms of resistance—between ECAs and “volunteering as death penalty protest”—death penalty opponents may also acknowledge similarities in sources of injustice and the sources of power to be resisted. Indeed, as Eisinger (1973:26) contends, “protest action is frequently successful as a strategy for mass mobilization. Protest may be undertaken primarily as a recruiting activity for organizations, for it is a way of cutting through communal apathy and attracting membership through its sheer excitement. Protest also helps ... manipulate constituents’ understanding of issues...” This is not to suggest that everyone on death row should suddenly drop their appeals, or even that were they to do so it would constitute a collective ECA, although the death penalty in the United States might undergo serious transformation if the more than 3,300 individuals on death row simultaneously waived or withdrew their appeals.¹⁸ But conceptualizing volunteering as protest and grouping “volunteering as death penalty protest” with other ECAs—essentially, recognizing similarities between volunteering and other *means* of protest—may help improve understanding of death penalty resistance and its affinity to organized opposition to inequities in the criminal justice

system, and, more broadly, to other forms racial, economic, and social injustice.

What role do criminologists play in this process? Criminologists, especially those working in a critical or radical vein, have done an admirable job exposing injustices in the legal system and in society at large (see, e.g., Chambliss 1973; Chambliss and Zatz 1993; Chesney-Lind 2006; DeKeseredy 2004; DeKeseredy, Alvi, Schwartz, and Tomaszewski 2003; Gabbidon and Taylor Greene 2005; Gordon 1971, 1973; Matthews and Kauzlarich 2000; Mauer and Coyle 2004; Michalowski and Carlson 1999; Quinney 1977). But they have devoted significantly less attention to how these injustices have been resisted (*cf.* Brisman 2007; Brisman 2009b; Ferrell 1993). By looking at intramural death penalty resistance and by linking various forms of resistance (regardless of whether the concept of ECAs is employed), criminologists can play a vital role in bringing about some of the changes and reforms they purportedly wish to see.

Endnotes

¹ Although outside the scope of this paper, there has been significant scholarly debate about the United States' retention of capital punishment (see Garland 2005; Monkkonen 2005; Whitman 2005; Zimring 2005; see also Garland 2002). For an overview of this debate and the reasons proffered for retention, see Kaplan (2006).

² The *locutionary* mode of an utterance refers to what is actually said, and the *perlocutionary* mode refers to what is achieved by the utterance. In contrast, the *illocutionary* mode refers to what is intended by the utterance. The *illocutionary point* of an utterance is the speaker's basic purpose in making that utterance, such as to assert something, to promise or commit to doing something, to get someone to do something, to express an attitude towards or an emotion about something, or to bring about a state of affairs with the utterance. The *illocutionary force* consists of the illocutionary point of the utterance and certain background beliefs or attitudes that must accompany that point. An *illocutionary act* refers to a speech act consisting of the propositional content of the utterance (i.e., the constant meaning of the sentence or clause) and the illocutionary force (which is subject to change) whereby the speaker asserts, demands, suggests, promises, or vows. A *locutionary act*, then, is the act of uttering something. A *perlocutionary act* is a speech act that produces an intended or unintended effect in the person to whom one is speaking as a result of the speaker's utterance—in other words, an act that is performed (see, e.g., Austin 1975; Crystal 1980, 1985; Searle 1969, 1976; Searle and Vanderveken 1985).

³ Wee (2004) acknowledges that there may be ECAs with forces other than that of protesting, but he limits his discussion to non-linguistic communicative acts involving

actors whose perlocutionary goals are associated with protest.

⁴ Prisoners granted "Special Category Status" were not required to wear prison uniforms or to perform otherwise compulsory prison work (Brisman 2008b; Mulvihill 2001; Silver 2005). There is some debate as to whether Sands' aim was to achieve "Special Category Status" or generate international publicity (see, e.g., Downie 1981), although the two are not mutually exclusive. Sands' hunger strike was recently the subject of the major motion picture, *Hunger* (McQueen 2008).

⁵ Note that not all instances of self-immolation involve protest. For example, *suttee* or *sati* is "the act or custom of a Hindu widow willingly cremating herself or being cremated on the funeral pile of her husband as an indication of her devotion to him" (*Webster's* 2002:2304).

⁶ In at least one instance, an individual intending to join a group hunger strike self-immolated instead, claiming beforehand that the hunger strike had "achieved no results" and that the situation had grown more desperate (Mishra 2005).

⁷ There are no formal diplomatic ties between South Korea and Japan, although the two countries did sign the Treaty on Basic Relations between Japan and the Republic of Korea in 1965 in an effort to work towards the establishment of formal diplomatic ties. Korean-Japanese relations remain tense in part because of territorial disputes regarding the Liancourt Rocks and repeated visits by Japanese politicians to the Yasukuni Shrine (see, e.g., Onishi 2006).

⁸ Wee (2004) suggests that there might be a cultural dimension to ECAs, whereby certain groups prefer specific ECAs. But one should not take this to mean that particular ECAs are the province of specific groups—a point with which Harman (quoted in Sharkey 1999) might agree. As Harman explains, "the practice [of self-immolation] springs from no single cultural tradition and shares ancient philosophical origins with religious sacrifices and martyrdom, including the crucifixion of Christ" (see Sharkey 1999). Indeed, Ocalan, the Kurdish rebel leader, is known to have called his followers' attention to the Vietnamese Buddhists' use of self-immolation as a method of protest (Cohen 1999).

To offer another illustration, in 2002, the French performance artist, Pierre Pinoncelli, cut off the tip of one of his own fingers at an exhibition at an art museum in Cali, Columbia to protest the kidnapping of French-Colombian politician, Ingrid Betancourt, by the guerrilla group, the Revolutionary Armed Forces of Columbia—People's Army (*Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo* or "FARC") (BBC News 2002; de la Durantaye 2007; Riding 2006; Umpster 2006). Pinoncelli, who donated the severed finger to the museum,

explained that “[t]he idea was to share in Colombia’s violence. Indrig Betancourt symbolises the courage of all those fighting against corruption, and that is why I am rendering her homage” (quoted in BBC News 2002). Note that Pinoncelli’s performance did not achieve its perlocutionary goal because she was never voluntarily released by FARC; Betancourt, who was taken hostage on February 23, 2002, was rescued on July 2, 2008—six years, four months, and nine days after her abduction (Romero 2008).

⁹ In 1972, following a five-year moratorium on executions, the United States Supreme Court held in *Furman v. Georgia*, 408 U.S. 238 (1972), that Georgia’s death penalty statute violated the Eighth Amendment’s prohibition against cruel and unusual punishment. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the United States Supreme Court upheld Georgia’s newly-passed death penalty statute and ruled that the death penalty did not always constitute cruel and unusual punishment. Gary Mark Gilmore, a volunteer executed by firing squad on January 17, 1977 was the first person put to death after *Gregg* (see *Gilmore v. Utah*, 429 U.S. 1012 (1976); see also Brisman 2009a).

¹⁰ As of May 11, 2010. Visit the Death Penalty Information Center’s “Searchable Execution Database,” <<http://deathpenaltyinfo.org/executions>>, for the most recent figures.

¹¹ I refer to volunteers as males because of the 134 volunteers, only three have been women: Christina Riggs, executed by lethal injection in Arkansas on 5/2/2000; Lynda Lyon Block, executed by electrocution on 5/10/2002 in Alabama; and Aileen Wournos, executed by lethal injection in Florida on 10/9/2002.

¹² Future research could entail qualitative study of death row inmates and their attorneys (especially “capital cause lawyers”) focusing on the impetus for volunteering and the possibility that volunteers could intend the waiver or withdrawal of appeals as a form of protest against the death penalty.

¹³ The standard used to determine whether an individual is competent to waive or withdraw one’s death penalty appeals and forego any further legal proceedings was first set forth in *Rees v. Peyton*, where the Supreme Court indicated that courts must evaluate “whether [the prisoner] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises” (*Rees v. Peyton*, 384 U.S. 312, 314 (1966)).

¹⁴ Note that volunteers have indicated both opposition to and support for the death penalty. For example, in *Comer v. Stewart*, the inmate explained that his decision to

withdraw his appeals grew out of a lengthy process of introspection whereby he came to regret his actions, to recognize the hurt he had caused many people in his life, and to accept and participate in the punishment awarded for his crime. Acknowledging a debt to the friends and family of his victim, as well as a desire to spare his own family and friends ongoing pain, Comer declared: “I started thinking about my victims, thinking about everything. It’s just time to end it now... I’ve been saying for a year-for, you know, the last couple of years, at least, I killed this guy...I stuck a gun in the guy’s ear, pulled the trigger...” Comer did not express a true desire to die, nor did he indicate support for the death penalty in general as a form of punishment. But in his arguments to the district court, he indicated his wish to waive his appeals and expedite his death sentence because he accepted the finality of his punishment—reasons that the district court found persuasive. In contrast, the death row inmate in *Hamblen v. State*, 527 So.2d 800, 802 (Fla. 1988), expressed no reservations about capital punishment as a matter of course. But like Comer, Hamblen agreed with its imposition in his own case. To the best of my knowledge, in neither situation was the death penalty as a political or penological issue the stated reason (or even a stated reason) for volunteering.

¹⁵ Prisoners are both physically and politically limited in their means, methods, and opportunities for protest. For a discussion of the interrelationship between political environment variables and political behavior (including protest), see Eisinger (1973).

¹⁶ It is impossible to specify the number of defendants charged with capital murder who express a preference for a death sentence during the course of their trials or to pinpoint exactly the number of inmates on death row who indicate a desire to halt post-conviction proceedings. But as numerous commentators and courts have noted, it is by no means uncommon for defendants and death row prisoners to request a waiver or withdrawal of their appeals. For a discussion, see Brisman (2009a); Harrington (2000, 2004); White (1987); see also *Smith v. Armontrouth*, 812 F.2d 1050, 1052 (8th Cir. 1987); *State v. Dodd*, 838 P.2d 86, 103 (Wash. 1992) (Utter, J., dissenting).

¹⁷ The stopping and starting of the appeals process could be a ploy on the part of the individual sentenced to death. The appeals process in capital cases is remarkably costly, complicated, and time-consuming—even without the death row inmate changing his mind. The death row inmate could very well maintain commitment to his cause throughout, but simply use the switching back and forth as a form of protest—as a way of throwing a monkey wrench in the wheels of the criminal justice system.

¹⁸ An even more extreme scenario—and one even more likely to result in the transformation of the death

penalty—would entail the more than 3,300 individuals on death row simultaneously waiving or withdrawing their appeals at the same time that all capital defense attorneys went on strike and/or refused to take any new cases. I am indebted to Paul Kaplan for suggesting this scenario.

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Victimless Deviance: Toward a Classification of Opposition Justifications

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Abstract: *Attitudes toward victimless deviance, predominantly drug use and various sexual behaviors, are explored using data from forty-nine semi-structured in-depth interviews with participants from various social and cultural backgrounds. The central question addressed is why people oppose these behaviors. The study explores perceptions of the nature and the consequences of these behaviors and the normative principles based on which people form opinions of opposition. The results support that opposition to victimless deviance is structured based on three normative principles: the libertarian principle (opposing harm to others), the paternalistic principle (opposing harm to self), and the moralistic principle (opposing harmless wrongdoing). Arguments justifying these oppositions are presented in a classification of opposition justifications. Particular emphasis is given to moralistic oppositions.*

Keywords: crime seriousness, victimless deviance, drug use, sexual deviance, libertarianism, paternalism, moralism, harm to others, harm to self, harmless wrongdoing

INTRODUCTION

Since its conception, victimless crime, and more inclusively, victimless deviance, has been a controversial issue in normative philosophy and criminal law. Various theses and arguments have emerged in an attempt to resolve a fundamental question regarding the limits of the law and more broadly social norms: should society control, through prohibition or other means, behaviors that do not harm others?¹ The difficulty of this question is reflected in the debates on prohibition of victimless behaviors. Serious disagreements remain regarding "conflict crimes" or *mala prohibita*, i.e., criminalized behaviors that according to a substantial proportion of the population should be decriminalized. Different views regarding this matter are supported by arguments based on a number of distinct ideological orientations and on a spectrum of perceptions of the nature and consequences of the behaviors in question. In this respect, criminological research has not investigated victimless crime to a satisfactory degree. For example, why are people expected to "just say no" to drugs (both as potential users and as opinion holders)? Is it because of the perceived harmful consequences of drug

use, and if so, what are these consequences? Or is it because using drugs is "just wrong"? And then, what does this mean?

This study presents elements of the debate on the control of victimless behaviors at the level of individual opinion. It attempts to classify *opposition justifications*, i.e., arguments used to justify the disapproval of these behaviors. The research question addressed is *why* do people oppose victimless deviance such as drug use, sexual deviance, gambling, and other similar behaviors. The question focuses on the *thinking* involved in forming an opinion. The study does not address the etiology of opinion formation in the usual sense (i.e., identification of psychological and social correlates of attitudes).

PERCEPTIONS OF DEVIANCE AND NORMATIVE PRINCIPLES

Criminological research on deviance perceptions has predominantly dealt with the measurement of perceived crime seriousness. It has shown that the perceived seriousness of a deviant act is predominantly a function of

its perceived consequences. In surveys of perceived seriousness, acts causing physical harm are invariably rated as the most serious, followed by acts causing property loss or property damage, while victimless crimes are generally rated as the least serious (Sellin and Wolfgang 1964; Rossi et al. 1974; Rossi and Henry 1980; McCleary et al. 1981; Cullen, Link, and Polanzi 1982; Blum-West 1985; Wolfgang et al. 1985; Warr 1989).² In addition, victimless behaviors tend to produce more disagreement than agreement with respect to seriousness perceptions (Newman 1976; Evans and Scott 1984; Miethe 1984; Carlson and Williams 1993). In the absence of victimizing consequences, the perceived seriousness of victimless crimes depends predominantly on perceived immorality (Newman 1976; Evans and Scott 1984). This finding is consistent with the broader conclusion that perceived seriousness is a function not only of perceived harmfulness but also of perceived wrongfulness (Blum-West 1985; Warr 1989; Curry 1996; O'Connell and Whelan 1996). However, "victimlessness" does not appear to be a unidimensional factor (Abrams and Della-Fave 1976). Many behaviors, for example, are subject to the application of religious morality (Al-Thakeb and Scott 1981; Evans and Scott 1984; Stylianou 2004a).

Attempts to link seriousness perceptions (how serious an act is) to "control attitudes" (whether an act should be controlled or not) have been presented by Stylianou (2002, 2004b), who studied justifications of control (why should society control victimless behaviors) using survey and interview data. These studies supported earlier conceptualizations of perceived harmfulness and perceived wrongfulness as components of perceived seriousness. In addition, they showed a link between individual opinion and normative philosophical principles.

Continuing this line of inquiry, the present study uses a normative philosophical conceptualization in an attempt to classify opposition justifications. At the highest level of abstraction, this classification reflects three distinct normative models, each corresponding to a fundamental liberty limiting principle: libertarianism, paternalism, and moralism. A brief presentation of these models follows.³

Libertarianism rests on the principle that the only legitimate justification for restricting one's freedom to pursue pleasure is to protect others. Thus, any behavior violating others' rights should be controlled. By definition, victimless behaviors fall outside the limits of justifiable control. According to *paternalism*, in addition to protecting others, individual freedom must be limited for self-protection. Victimless behaviors must then be controlled if they are harmful to the person involved in them. *Moralism* endorses control for the protection of others and the actors themselves, but supports, in addition, that society can legitimately exercise control on behaviors that are inconsistent with certain other ethical principles. These principles concern the character of the actor (virtue ethics) or the ethical essence of the behavior (behaviors can be

intrinsically right or wrong, regardless of their consequences).⁴ According to the moralistic view, victimless behaviors that fall outside the normative boundaries of an endorsed ethical system should be prohibited because, even if victimless at the individual or societal level, they are intrinsically wrong. A fourth type of opposition justifications containing elements of all three principles above has also emerged from the data in the present study: harming the community or society in general in indirect ways, such as by not contributing to common welfare. As it will be shown in the results, this type may or may not be considered as corresponding to a distinct liberty limiting principle.

METHODOLOGY

The data have resulted from 49 semi-structured, in-depth interviews, conducted by two teams of senior psychology students coordinated by the author. The teams were trained through a four-credit course titled "Research Experience," which was offered in the form of a workshop on in-depth interviewing. The methodological orientation and the level of the course allowed high expectations with respect to measurement validity and the substantive utility of the interviews. The majority of the interviews met these expectations. The substantive aim of the interviews was to investigate perceptions of victimless deviance.

The participants (22 females and 27 males) were selected by the research teams based on availability, on campus and elsewhere. The majority of the participants were college students. In terms of cultural background, the sample consisted of 30 "locals" (inhabitants of the country in which the study was conducted, typically children of two local parents, without significant exposure to other cultures), 14 "foreigners" from various countries, and 5 "hyphenated-locals" (typically children of one local and one foreign parent, with significant exposure to another culture—all had lived in another country for a significant amount of time). The ages of the participants at the time of the interviews ranged from 19 to 58, with a mean of 28 and a median of 25 years.

Although the sample is not representative of any population, using it in the present study can be justified based on at least two considerations. First, the research design is based on the assumption that basic elements of normative culture are to some degree internalized by the majority of a population, and almost certainly by relatively conventional members of society, such as college students. Thus, these participants can be quite useful as informants of culture. Additionally, crime seriousness research has utilized student samples extensively and has shown overall consensus across demographic groups regarding the perceived seriousness of crime (Stylianou 2003). Still, the purpose of the study is to identify and classify (not to quantitatively measure or estimate) opposition justifications.

In the beginning of each interview, the participants were given a printed list of *focal behaviors* and were asked to state their opinion regarding how society should respond to each, based on a scale of four options: criminalization as a serious crime, criminalization as a non-serious crime, informal discouragement (through education and the media), and no reaction. Participants' answers on this scale were then used by the interviewers as a trigger for in-depth discussion on the justification of the expressed opinions. The interviewers were trained to use extensive probing, including "interview control questions" (Stylianou 2008). The focal behaviors included drug use (e.g., alcohol, cigarettes, cocaine, heroin, LSD, marijuana, ecstasy), protected sexual acts between consenting adults (e.g., pre- and extra-marital sex, homosexuality, polygamy, incest, prostitution), and other acts (e.g., gambling, suicide, driving without wearing seatbelt).

The product of the interviews is a text file containing about 3,800 answers by the participants. The text was coded and analyzed by the author. The coding and the construction of the concept map were performed in a two-way inductive-deductive conceptualization. Broad categories of statements reflecting normative principles at the highest level of abstraction were specified a priori (deductive direction), while the coding and classification that followed were predominantly of inductive nature. The results are presented in a tentative classification containing all empirically detected justifications for the control of the focal behaviors.

RESULTS

At the highest level of abstraction, there are four types of opposition to victimless deviance. The first three types correspond to the normative principles of libertarianism, paternalism, and moralism. These categories are labeled "Harm to Others," "Harm to Self," and "Harmless Wrongdoing," following Feinberg (1984, 1986, 1988). The fourth type includes opposition justifications related to community welfare in a manner not fitting the other three types. Within each of these types, justifications were further classified inductively. The presentation of the results is divided in four sections and numerous sub-sections representing these categories.

Harm to Others

According to the libertarian model, the only legitimate justification for the restriction of behavior is to prevent harm to others. Many participants emphasized this idea. In fact, many participants made such statements even if later they would add additional restrictions. In some instances, the expression of this idea was very clear:

I don't care what other people do. If it's not bothering

anybody else then they can do it. It might bother [others] because it's a taboo, but it doesn't actually harm them in any way, so it's fine.

There is a distinction here between being "harmed" and being "bothered" which is instrumental in distinguishing between libertarian and moralistic arguments.

Since almost all focal behaviors are victimless, perceptions of harm to others were not expected to prevail in the data. Contrary to this expectation, several participants referred to a variety of perceived harms. Almost without exception however, these harms do not result from the focal behaviors themselves. For example, a common argument against prostitution was that prostitutes are exploited by pimps (which means that pimps, not prostitutes, harm others). Similarly, many participants argued that driving under the influence of drugs is dangerous for others (which means that *driving* while intoxicated, not simply being intoxicated, is dangerous for others). The primary conclusion of the analysis of oppositions based on the "harm to others" principle is that, almost without exception, these oppositions rest on a confusion between the behavior itself and other elements perceived to be inevitably caused by the behavior. Still, to be safe and to offer a more complete empirical account, perceptions of harm to others (those that are more strictly relevant to the focal behaviors), are listed below in several categories.

First, according to many participants, drug addicts who cannot afford their drugs often resort to *instrumental crime*, typically property crime or prostitution, but even violent crime:

Some drugs, like heroin are very addictive and expensive [...] possibly leading [users] into crime like theft or prostitution, and that's what is bad about using and becoming addicted, not the actual act of taking the drug.

With heroin people kill. The addiction is so bad that people will do many bad things to get their drug.

Second, beyond involvement in instrumental crime, many participants said that drug users are more likely to resort to *expressive crime*, typically violent, as drugs may either directly cause violent behavior or enhance it as catalysts:

Most of the times, someone who is drunk exerts violence on members of his family.

When you are drunk, you might kill somebody. You didn't know what you were doing because you were drunk.

Assuming that *illegal trade* is a victimizing behavior

(as the discussion is about harms to others), another connection between drugs and crime is the inevitable support of this trade by drug users:

LSD is classified as a hard drug, so I think that it should be considered a crime, because using it would imply that you are buying it, which means that you are supporting the trade of this thing and all the consequences of drug trafficking.

Fourth, participants argued that drug users cause *psychological harm* to others, particularly their loved ones. This concern was very common in the data:

[Heroin] messes you up and you're not going to be in your right mind and you're going to destroy people around you also. At the end of the day you're going to die [and] leave people behind you that tried to help you. They're the ones that are going to be so sad. What's the use of them living like that and watching you die?

A fifth way in which drugs are harmful to others, according to one participant, is through harming the economy directly by increasing *treatment costs*:

I will have to pay for that person to get medical treatment. It's coming out of my pocket, right? [...] I'm paying taxes from which some money goes for these persons to be treated.

Finally, another participant specifically targeted prostitution arguing that married men who visit prostitutes may end up getting divorced by their wives, which, in turn, *victimizes children*:

I just feel bad about it when there are children. I think they are the real victims in that case.

In conclusion, it can be observed that most of these perceived victimizing consequences are not direct or inevitable. For example, robbing others to get a fix is clearly a victimizing act, but the cause of it is not heroin addiction per se. Similarly, the issue of psychological harm to others is debatable, since it is often not blameworthy (e.g., psychologically harming one's parents by being gay). For the purpose of this study, it is important to emphasize that the mere existence of these perceptions is an important aspect of public opinion in support of the control of victimless deviance.⁵

Harm to Self

Opposition justifications reflecting the paternalistic model of control, i.e., favoring the control of self-harming behaviors, were the most prevalent in the data:

If I was the lawmaker, I would like to protect people from harming themselves, if they don't know the harm that they are doing to themselves.

From what I hear on TV, drugs like cocaine and heroin can be very addictive and can eventually cause death. So, I guess they should be prohibited.

The various types of perceived self-harm induced from a vast amount of relevant data are presented next in three categories: physical, psychological, and social life harm.

Physical harm. This category includes perceived harmful effects on the actor's physical well being. First, is the risk of *death*. The risk of fatal injuries associated with driving under the influence of drugs and driving without seatbelt as well as the risk of death by drug overdose or chronic use were the most frequently cited in this category:⁶

I'm not a medical doctor but in most cases the result of using drugs is death.

OK, ecstasy, you have a pill and your heart stops. Boom. They take you to hospital and tell your relatives that you are dead.

Heroin, ecstasy and LSD are hard drugs. I know for sure that they will create serious problems and if the use is continued, for sure it will cause death.

People taking hard drugs die from overdose after three to five years and if not, their brain becomes heavily damaged.

Second, almost equally prevalent was the reference to *chronic damage*. Typically, participants referred to the destruction of brain cells (see also last quote above):

They say that one cigarette takes five minutes of your life. Imagine smoking 40 cigarettes a day. [...] Drugs are worse. They destroy your brain cells, your blood, everything. The whole body shuts down with drugs.

Third, many participants referred to the danger of *physical dependence*:

If a person begins using [drugs], then without noticing it, he or she gets used to it and then the body seeks for these substances.

Heroin and LSD are physically addictive. [...] For all the rest you can just do what you want.

Fourth, some drugs were said to cause short-term, yet considerable *physical impairment*. The following example

is about heroin:

I have never tried it for myself really, so I can't really say, but seeing people who do it, it's like you are completely incapable of doing anything for a prolonged period of time.

Finally, two participants said that LSD, in particular, could cause *hallucinations* even to ex-users:

People who have used LSD in the 60s, some of it, left over in their spines, crystallized and when the crystals become liquid again, they get hallucinations.

I know a guy who used LSD like twice, well maybe more, but the thing is that after ten years he is still getting trips even though he stopped it.

Psychological harm. Psychological harms include acute and chronic effects on the actor's mental and emotional condition. The first type refers to *unpleasant feelings* resulting from drug use or sexual promiscuity. This can be a short-term effect, or it can develop into a lasting problem, such as depression:

I also had bad experiences regarding drugs, it was the experience of my friends who were using drugs, they were not happy about the whole thing.

[Marijuana] changes your mentality, [...] so, if you smoked the entire day, you could be really depressed.

I do believe that when a girl matures, she will feel sexually attractive and blah, blah, blah, but at least she should know that the person she is going to sleep with is worth it. Now they just have sex with anyone. And I think this could cause a lot of trauma for her in the future. She'll probably regret it.

A second perceived psychological consequence is an *altered perception of reality*. According to a significant number of participants, drug users often experience paranoia, loss of control, "departure from reality," not being one's "real" self, not thinking rationally, not knowing "what's up," avoiding real problems, etc:

Because it wouldn't be them. They would be led by something else, led by a drug, not by themselves; instead of saying to themselves 'I don't need that.'

People who are taking heroin or crack have this sense of being in a surreal environment. People actually believe that the ground is... that they can jump from the next flat like a bird.

Third, a few participants said that drug use causes changes in one's *value system* (and even in one's

personality):

I think it would change their character. A person that drinks everyday is not themselves. [...] Slowly-slowly they start developing into someone else.

In the long term [drugs] will cause changes in your ideas and values and the structures you believed before. Your behavior with other people, with your family will be changed.

Finally, most of the participants in the interviews mentioned *psychological dependence* as a consequence of drug use, sex, and gambling:

Everything, you try, a drug, you stick to it. You try sex, you want it more and more, you like it, you cannot do without it.

Even if it's just for fun, I know people that spent every single penny on casinos, [...] people completely out of control, like they were sick or something.

Social life harm. This category refers to perceived harmful effects of victimless behaviors on the actor's social life. In the analysis, it was often difficult to separate this type from psychological harm, since social consequences are often the result of psychological conditions. It was also often difficult to separate this type of perceived self-harm from perceived harm to others.

One of the perceived effects of drug use, which is psychological in nature but problematic in social life, is *amotivation*, a lack of motivation for work and other productive activities. This was mentioned by two participants:

Why is a person taking drugs? Maybe if they have a lot of money and they can afford to do that, they do not want to put effort into anything.

If someone gets addicted, then it can interfere with his or her personal life. For example the person might not be on time at work, or might not want to do things that he or she did before.

A second related issue is *compromising potentials*. In this respect, some people may end up in a state described by one participant as "miserable." Drugs are believed to make people think only about drugs:

If you would lock yourself up in the room and smoke, smoke as much as you like, I don't care. But I would discourage it because again it's addictive, it lessens your experience of the world.

A similar argument was presented for prostitution:

People should always try to give the best chances to themselves, in order to become the best they can be. If you enslave yourself in prostitution, no matter what other qualities you have, you may never have the chance to work on them and become something better for yourself, as well as for the society.

Third, many participants supported that some of the focal behaviors could cause significant *impairment in social relationships*:

I have a friend who has been smoking marijuana since he was 14, and now he's 24 and he's not sane. Basically he smokes so much every day that all day he's depressed. He becomes nervous and attacks his mother. [...] He could not have a normal relationship with a girl because every day he was out of himself.

Imagine a girl who engages in this job [porn actress], she cannot be a nice mother as well. [...] She cannot have those emotions anymore, because she gave her soul, her existence, her body for a price. [...] Every single part of her would be changed.

A fourth concern, presented by a few participants, is that the social life of the deviant individual will be damaged by the *reaction of others*:

Like alcoholics, [...] it will ruin their lives because they won't be able to socialize properly in society. They're misfits. They're out of place. That's how society sees them.

It's their problem in the sense that people will laugh at them [...]. If they can tolerate people making fun of them, I don't mind. You cannot make society not laugh at men who are dressed as women.

This is the way they see it, the one who plays in a pornographic movie is more unethical than the one who watches it.

Finally, most of the participants highlighted that some of these behaviors have *economic consequences*:

It's very expensive, any drug. If you get addicted to any drug, it's gonna cost you a lot of money.

When you go to gamble, you gamble everything. You gamble [all] your life. You can never win.

In conclusion, participants supported that the focal behaviors should be controlled by law or otherwise, based on the perceptions of self-harm presented in this section. These statements clearly reflect the paternalistic model of control. Further, it can be observed that many of these

perceptions are exaggerated impressions of the self-harming consequences of victimless deviant behaviors.⁷

Harmless Wrongdoing

In addition to opposition to behaviors that are harmful to others or to the person involved in them, moralism endorses opposition to behaviors that violate certain ethical standards. The nature of moralistic opposition differs from the previous types in that it does not rely on consequentialist arguments. Moralistic attitudes are often not easily identifiable, even by the person who holds them. One participant told the author in another series of interviews:

I don't look at drug use from a moral perspective. I look at it separately, you know. Or, maybe, I look at drug use from a moral perspective, [...] maybe there is some moral aspect in me that thinks that it's wrong.

In some instances, the participants stated their moralistic beliefs clearly. Elsewhere, moralism was implied by the absence of a rational explanation. Here are three examples of statements that were coded as representing the moralistic principle:

I think it's really good to have a relationship with a girl or a guy and that's what would be a healthy sex life. What I don't like is people who sleep around and don't think it's wrong. They don't have any morality.

[Prostitution] wouldn't be a sign of a good society.

Yes, but, I don't know, I don't know, I don't want to talk anymore about this subject. But you can proceed by just having you know that here I was not being objective and that I had moral and subjective values considered in order to answer these questions.

Moralistic oppositions are based on the perceived immorality of the focal behaviors. Perceptions of immorality were typically stated in the form of *binary oppositions*: positive versus negative, right versus wrong. On the negative side, the participants described the focal behaviors as "evil," "sick," "artificial," and "perverted":

I still wouldn't allow [sex change operation]. In the psychological sense, that person has a problem or identity crisis. In the religious aspect of it, there's evil in that person that's telling them to do that to themselves.

Because I'm a man, I think that two guys having sex is sick.

The way [homosexuals] talk, the way they dress, the way they behave, I don't know. It's not normal, I can say. It's sick. It's artificial.

I believe that porn is something that makes the world more perverted. If you got access to these movies, it keeps giving food to your perversion.

Beyond the detection of such binary oppositions, the analysis predominantly focused on substantive ideas. The classification yielded the following categories.

Normative authorities. According to almost all participants, it is immoral to go against a well-established normative authority. Three such authorities were identified in the analysis: nature, religion, and society/tradition. First, most participants expressed their objection to behaviors or conditions that deviate from what *nature* has intended:

I think nature has created us to engage in sex with one person and not ten.

[Homosexuality] is against natural norms, not only social norms.

Committing suicide is similar to homosexuality; it's against nature, natural norms.

Religion was the second most prevalent justification for opposition to most sexual behaviors. The following examples are illustrative:

[About striptease and prostitution] My religion is Islam and we believe that the beauty and everything related to that [...] is not supposed to be shown off before marriage [...]. This beauty, which women have, hair and face and the shape of body, is a valuable gift by God. They do not have the right to abuse it.

I mean that marriage is a ceremony for heterosexual people because this is how our religion presents it. The bible does not mention anything about a marriage for homosexuals.

My religion is saying that if a human is doing something for joy, that this thing is taking him out of consciousness, he or she may do wrong things... may kill someone, may drive fast and put others in danger, many things. So, even rationally, my religion's point of view could be really proven.⁸

The third authority is *society/tradition*, i.e., the contemporary dominant culture including traditional values that still prevail:

[People] take drugs [marihuana, LSD, ecstasy, heroin] to get out of the reality. The essence is to get out of the reality.

Interviewer: But people who drink alcohol are also escaping reality.

Yes, but it's considered to be a more socially acceptable way of escaping reality.

I know that a lot of philosophers were homosexual, but I don't know, for me, it's not good, [...] they are not accepted by the majority and I'm the kind of person who accepts what the majority is doing.

What the majority says and believes I think is the normal act. If one day the majority says homosexuality is OK, I say homosexuality in that period of time is normal.

Although belonging to the society/tradition principle, family values form a distinct category:

[People have] sex as hobby. Then in the [near] future we are not having the healthy family structure. People do not follow that anymore, they don't care about that anymore.

A one-night stand between a heterosexual couple could proceed to become something more serious like a relationship or family, or even living together with no problems. But for a homosexual couple, they may fulfill their desire for one night or a certain period of time following that night, but it won't proceed to become anything.

The same applies for arguments against polygamy, specifically the argument that polygamy and love are inconsistent.

If you do the same thing, which you do with her or him, with other people, it means that you shared the value with others and it's like breaking the value.

If a man sleeps with someone else and knows that his wife is sleeping with someone else as well, what kind of love is it?

I don't think that can happen. To really love somebody, it's when two people are connected and they feel each other like that. They're so close to each other. To have five, six people doing that, I think it's impossible.

Antihedonism. Although almost all participants stressed the individual's right to pursue pleasure, many also expressed antihedonistic attitudes, i.e., an opposition to pleasure (or to too much of it) *per se*. First, participants

opposed behaviors that people do “*just for fun*.” This is the purest type of antihedonism, as it rejects pleasure as an end in itself:

You get *high* with marijuana, so I don't think it's right.

[When God condemns] prostitution, He doesn't mean getting paid to have sex, He means having sex for the joy of it.

Gay people, I think they are like that because of biological or [...] genetic differences. I don't like however when people who are not gay do so for experiment, to challenge their senses, or I don't know what for.

A second objection rests on the understanding that sexual behavior ought to be accompanied by certain *emotions*:

People started to act more close to their instincts, like animals. No emotions, no feelings except [...] satisfaction [...]. People [are] losing the only valued thing they have, feelings.

I believe that sex is an act of sharing emotions and mutual feelings between two people. I can't see how three or more people can have this sharing of emotions.

Similarly, a third objection targets sexual contacts taking place outside a *romantic relationship*:

Sex is not just an act to have fun or to have pleasure. It's what keeps two persons together when they want to be together.

My opinion of [...] clients of prostitutes is not high. It's their choice, OK, but, it's an artificial human relationship [...]. The only thing that is involved is sex, that's all, it's just a drive, the need, it's not a relationship, it's a one-way relationship.

Fourth, the principle that sex is only for *procreation* was advanced by some participants:

[Some people] don't have sex unless they are going to have children, which is the normal thing to do.

[Sex without the prospect of procreation] doesn't fulfill its purpose of existence.

Finally, *excessive involvement* in a behavior also elicited opposition in the interviews. The following example shows how this opposition can be justified in a

pro-pleasure fashion (while, by definition, it is restrictive of pleasure):

Nothing should be done every day, except eating, because everything for me is losing its point. You don't enjoy it. Just like a cigarette, you enjoy it sometimes. After some time it just becomes a habit and you don't really enjoy it. The same thing will be with marijuana, if you use it every day. It just becomes a habit and you won't have the buzz [...]. Just like with sex, if you do it every day, it might start being just usual normal process. When you do it occasionally, [...] every time, I believe, you enjoy it.

Virtue. The conviction that people should pursue a virtuous life underlies the opposition to various behaviors. The following categories resulted from a relaxed classification of a wide variety of statements of this type. First, some participants said that some of the focal behaviors are *degrading*, *disrespectful*, or *humiliating*:

I think that getting drunk is something that shows lack of respect to yourself and to your body.

A person who pays to have sex with a prostitute [...] should be given more self-confidence by the education system, for him to find a mutual relationship, even if that's a one-night stand, rather than to feel that they should pay for the services. [...] It is degrading to a person to do that.

Seriously, by paying a prostitute to have sex with her, you humiliate yourself.

Second, two participants said that some of these behaviors are *meaningless*:

I believe that two similar sexes should not [...] have sex [...]. It's meaningless.

I find it idiotic, very stupid [...] to go to see a woman holding a pole, doing all of those things. [...] Stupid, like, for what? Why would I watch it? [...] It's not like going to the opera or something, it's not a beautiful thing in itself.

Third, several participants said that virtue is also threatened when individuals get involved in behaviors that are inconsistent with *human superiority* over other species.

Well, like today everyone sleeps with everyone. [...] We have now group sex, sex everyday with a different person, [...] no more romance, just sex, and even worse, wild sex.

Interviewer: And why is it bad?

Well because we are different from animals, because we have feelings and logic.

Having orgies is a bit of an animalistic behavior.

Finally, according to one participant, using drugs to get high is a *cheap* way to pursue pleasure:

Sticking a needle into your body is just harsh for me in a sense that you are willingly putting something in your body to get a cheap high. The whole idea of this sort of high is cheap.

Normality. In justifying their opposition to some of the focal behaviors, many participants faced obvious difficulties. In the absence of a rational explanation, a “convenient” justification was labeling a behavior “abnormal.” In fact, one participant admitted that judging something as abnormal is inevitably subjective:

That’s the very difficult part. Difficult question. Normal and abnormal is completely subjective. Each person has something that defines it for himself. But, you can’t actually ask me that question because what I think normal is normal for me.

Many participants presented perceptions of abnormality as justifications for their disapproval of some of the focal behaviors:

It’s not normal because of the society, and, by nature, it’s male and female, it’s not group sex. Even if you say that this is protected group sex, it’s OK, but I don’t think it’s normal because by my... for me, it’s not normal, I don’t know...

It is abnormal for me. [...] I could never think of two women being together. What is the purpose of this?

Morality. Moralistic thinking was also expressed by terms such as “immoral” or “unethical.” These terms describe victimizing behaviors too, but, in that case, a sufficient condition for an immorality judgment is victimization. For victimless behaviors, the argument of immorality is moralistic:

[Incest] is immoral and unethical. Simple as that. It’s just known.

It’s not desirable, let’s say immoral, to be a prostitute.

[About homosexuality] I just hate it. That’s my personal opinion. Basically it’s just a moral thing for me. I just don’t like to see it. I guess I’m saying it’s immoral.

Reality. As stated earlier, another perceived problem with some of the focal behaviors is that they are means of detachment from conventional reality. Departure from reality was included in earlier categories as a potentially harmful state of consciousness. Here, departure from reality is perceived as bad in itself. Although not very clearly a moralistic argument, the way participants articulated this opposition mostly resembles the moralistic type:

Like he is always waiting to reach that stage [high on drugs] again. It would be the only wish [...], waiting to forget every matter again. I don’t believe that we should forget everything. And, as I said, these people want to forget their reality.

If someone offers you LSD, just to feel different from normal, as a person we should think ‘do I need to go through it?’ Those are basic ‘stabilities,’ as I call them, everyone has his own role, the teacher is teacher, the priest is priest, police is police.

Beauty. The esthetic dimension of some of the focal behaviors was also a point of reference in a quasi-moralistic way. The binary opposition of beauty versus ugliness, used both literally and metaphorically, was common in the data. Some behaviors are seen as “dirty,” “disgusting,” “ugly,” or “anti-esthetic”:

The prostitute’s job is less attractive than that of the cleaning lady. [...] It’s dirty, you cannot wash yourself clean after that.

We are becoming more like animals, actually some even imagine sex with animals, it’s disgusting.

Sex is private. It’s an act for only two persons. Two people are more than enough, for me. Then it becomes a kind of orgy and I believe it’s a bit anti-esthetic.

If you take the example of my country, Byelorussia, you see lots of people who [...] are drunk every day, and this is kind of disgusting for others. [...] It’s not nice for other people in other words.

Just because it is. The most powerful illustration of a moralistic justification is perhaps the absence of justification. Moralistic oppositions were often expressed in statements of the type “it’s wrong just because it is” or equivalent. This type of justification, which was presented in various ways by the majority of the participants, is of great importance in the study of normative culture and, since this study has paid particular attention to it, it is illustrated with several examples:

You know, may be drinking everyday does more damage than smoking marihuana once a week, but the point is that I'm against drugs and that's that.

I still think that anything above one man and one woman, a third person, is wrong. I know you're trying to get me to analyze it, but I don't know how to analyze it.

Don't ask me to explain this, because I cannot. I mean this is my opinion, my way of thinking. It is an interpretation that I cannot explain. Sorry.

Interviewer: But what's wrong with [same sex couples adopting children]?
What do you mean what's wrong with it? That's how I feel.

I've never tried [drugs], I don't even know exactly what we are talking about here, but anyhow, I'm against drugs, you know, [...] I don't like it, I'm not going to accept it, I'm not even going to listen to staff like 'marijuana is OK,' and I have heard it many times. There is nothing to say on this, I just don't approve drugs.

In the case of group sex, it's just the act of sex and nothing more. It's just not right.

The theoretical importance of this type of justification is stressed further in the last section of the paper.

Community Welfare

In this last type of justifications, participants expressed concern about the community, local or global. In this respect, any behavior that adversely affects the well being of the community, including failure to promote community welfare, is subject to opposition. Consistent with John Stuart Mill's classic approach, Smith (2002) classifies these arguments as appealing to the "no harm to others principle" indirectly, but supports that they do not qualify for criminalization under that principle. Smith (2008:92, 226 fn 44) further suggests that an obligation to support the provision of public goods might be considered as a distinct liberty limiting principle. These arguments can also be conceived as paternalistic because by not contributing to the well being of a group, the individual member of the group is indirectly harmed. Finally, there is a moralistic element here as well, namely, the idea that it is intrinsically wrong to not contribute to society as much as one can.

According to several participants, individuals have an obligation to be productive, to help others, and to contribute to societal well-being. Some of the victimless behaviors used as stimuli in this study were perceived as

impediments for such contribution:

I just don't see anything positive. What value, what contribution does it give to society, dancing and taking your clothes off?

[Heroin] has the highest chance for the user to separate himself from real life and society [...] in the sense of not doing your responsibility, not finding your role in society. That will hurt you and your society even more. Because you will stop from benefiting society. You would be a complete loser without any productive role.

We have a role in the society to play and if we will decide because of freedom to change roles, or play a scene from another play then we are losing our purpose, and the theatre of society is lost.

A different argument within this type is that some behaviors may be tolerable in small frequencies, but problematic if prevalent, thus, they should be prohibited to all:

Those who get engaged in watching [pornographic] films are individuals who have difficulties in their social life. [...] We must try to guide our society in a way to have less and less of [this]. [...] I don't like something like this to be a norm where I live, in my society.

It's like when the English people say 'one rotten apple will affect a box of healthy apples.' One rotten apple, one wrong act, pervert act like this, may be enough to destroy many aspects of a society. It should be stopped.

SUMMARY AND DISCUSSION

Based on a normative conceptualization and using data from in-depth interviews the present study investigated why people oppose victimless deviance. The results were presented in a classification of opposition justifications. Arguments were grouped in three major categories corresponding to libertarian, paternalistic, and moralistic models of behavior control. A fourth category, corresponding to the principle of community welfare, was also presented.

With respect to the libertarian model, although the behaviors discussed in the interviews were predominantly victimless, some perceptions of harm to others were detected in the data. Under the paternalistic model, three types of perceived self-harm were defined: physical, psychological, and social life harm. Arguments of the moralistic type were based on the understanding that, even if victimless, some behaviors are still "wrong," because

they are in dissonance with nature, religion, or social/traditional values, or because they are negative in essence vis a vis positive conceptions of pleasure, virtue, normality, morality, reality, and beauty. Moreover, some acts are perceived as simply wrong without clear justification or with no justification at all (statements of the type “just because it is”).

The study is based on the assumption that participants’ statements reflect elements of normative culture. To the extent that this assumption holds, it can be concluded that the cultures that these participants represent contain these normative elements as part of their discourse on social control. Although the prevalence of these ideas has not been investigated in this study, the evidence presented suggests that at least some people, and, by a reasonable speculation, significant numbers of people in many societies, think in these ways.

An implication of these results in the study of normative culture is that judgments of some victimless deviant behaviors are to a certain extent constructed in an irrational, negativistic way. What we see manifesting in these interviews seems to be the product of a socialization process that aims primarily at maintaining a culture of opposition and control, rather than cultivating rational, evidence-based thinking. This conclusion is predominantly supported by the detection of moralistic oppositions, which are by definition non-rational and non-consequentialist. The premise that some things are “just wrong” is the primary illustration of this mode of thinking. These oppositions are hidden in normative culture and, therefore, they are less visible in popular discourse. Additionally, even when participants present the more widely circulated harm-based arguments, their perceptions are often inaccurate or simply false, as they are at odds with the social (and even the biological and chemical) reality of victimless deviance. Overall, a socialization process aiming predominantly at the internalization of norms, and to a lesser degree, if at all, at the justification of norms, seems to underlie these outcomes (a process that can be termed “internalization without justification”).

The above conclusion is consistent with observations in the debates on criminalization of victimless behaviors (see Meier and Geis 1997), predominantly drug use (see Goode 1997). Consider for example that, in Western democracies, the criminalization of drugs is typically justified as a paternalistic measure. Although this justification is usually good enough for the public sentiment, its current application produces an inconsistency: some drugs that evidently cause serious harm are allowed, while other drugs that cause significantly less harm are prohibited. This inconsistency, like other contradictions in the culture of drug use and control (Blackman 2004), must be resolved or neutralized in order to allow for justifications of corresponding policies to be digested by public opinion. This study suggests that this neutralization is done in two ways. First,

drug use and other victimless behaviors are explicitly defined by dominant institutions as “wrong,” by virtue of religion, nature, or tradition, or simply as “just wrong.” The prevalence of moralistic elements in the present study supports this conclusion. In the case of drugs, society tends to reproduce a culture of control (Garland 2001) around the idea that the use of certain drugs is wrong, no matter how harmful these drugs are. The connection between this idea and the drug war slogan “Just Say No” is obvious.

However, plain moralism can fail. Indeed, in most Western societies, it may no longer be culturally or politically fashionable to condemn a behavior as “immoral” or “just wrong” without rational justification. Thus, the harms are brought back in, exaggerated, or simply invented. This is the second method of neutralizing the paternalistic inconsistency of differential criminalization. The presentation of perceptions of harm in this study supports that the justification of behavior control contains a good deal of harm construction.

The observation that attitudes toward victimless deviance contain moralistic elements is also consistent with the conflict/labeling approach to deviantization (Becker 1963, Gusfield 1963, Ben-Yehuda 1990). According to this theoretical perspective, the prevalence of moralistic thinking is a manifestation of moral domination, which is achieved predominantly through socialization and internalization of traditional, religious, and other elements of common morality. The dominant way of thinking about victimless deviance is also strengthened by the construction of social problems around these behaviors. Of particular interest is the connection to moral panics (Jenkins 1992, 1994, Goode and Ben-Yehuda 1994, Thompson 1998). Such connections can help in filling part of the theoretical vacuum in the study of perceptions of crime seriousness (Rossi and Henry 1980, Stylianou 2003).

The present study has explored ways of thinking about victimless deviance and its control. In an effort to understand why people oppose victimless behaviors, a classification of empirically detected opposition justifications was presented. This investigation can be expanded in various directions, including in-depth investigation of attitudes and perceptions of agents of social control, the content of socialization, and the economic and political context of social control.

Endnotes

¹ In this study, victimless deviance is defined as deviant behaviors or conditions that do not violate others’ rights (i.e., they do not harm others at all or they do not harm others against their will). Meier and Geis (1997) present a more elaborate discussion on the definition victimless crime.

² For a review of research in the area of perceived crime seriousness, see Stylianou (2003).

³ The normative models are presented here very briefly in order to save space. A more elaborate review of these models can be found in Smith (2008) and Feinberg (1984, 1986, 1988). For more extensive discussions and debates, see Luper-Foy and Brown (1994) and De Greiff (1999).

⁴ According to one view (Devlin 1965), the criterion for deeming a behavior immoral is the disapproval of the great majority. Although this view has been influential in political terms, the majority criterion is neither necessary, nor a sufficient condition for a moralistic position. Moralistic principles held by minorities can be accepted (e.g., religious fundamentalism), and moralistic principles endorsed by the majority can be rejected (e.g., materialism) by the moralist thinker. Often however, the maintenance of common morality (what the great majority approves) over individual freedom is viewed as a legitimate operation of social control institutions.

⁵ The only way mentioned by the participants in which drugs can *directly* harm persons other than the user is through *secondary smoke*. As one participant put it: "I would feel sorry for somebody who is a heroin junkie but I would not feel angry at them for making my life worse, but for smokers, I would feel sorry for them because they are smokers but I would also be angry, if I was to inhale that smoke." This perceived harm is definitely not a matter of false or biased perception. Analytically speaking however, smoking in the presence of others is not a victimless behavior and therefore opposition to it does not belong in the list of oppositions presented in this paper.

⁶ One participant said that drugs can cause death indirectly because dependency can lead to suicide.

⁷ The hypothesis that the use of 'softer' drugs leads to 'harder' drugs, known as *gateway theory*, and the fact that certain drugs produce the expected high only if taken at increasingly larger doses (*tolerance*) were also mentioned by the participants as harmful effects of drugs. These are not independent effects however (the question is still what's the problem with hard drugs or more drugs).

⁸ This statement contains a clear illustration of moralistic thinking justified in rational terms: the consideration of victimizing consequences that *may* result from activities people do for "joy," justifies opposition to *all* behaviors of this kind.

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