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Execution Workers Mental Health Policy Recommendation

1. Introduction

Conversations around the Death Penalty often focus on its morality and concepts such as retribution and deterrence. This paper considers the people who perform executions and how their work impacts them. Execution workers are people with regular jobs, placed in exceptionally stressful situations. This paper contends that staff employees should receive increased support following their role in executions due to the potential harm they face due to the state's decision to carry out executions. The stress and difficulty of these roles and the lack of support offered compared to other positions where people kill for the state's interest create an inequity faced by execution workers. The paper proceeds with background information about the Death Penalty before using Capabilities and Social Structures to examine inequities that these execution workers face. Next, it offers moral justification for a policy recommendation and responds to counterarguments before concluding.

2. Background

The U.S. Supreme Court banned the death penalty in 1972 before reversing course in 1976 and leaving it to individual states.¹ In the U.S., there are 27 states where capital punishment is legal.² That number fails to tell the whole story, as those states vary in their use of the Death Penalty. For Instance, California, Oregon, and Pennsylvania each currently have formal Governor imposed moratoriums that have halted all executions in those states.³ While those are the only states with moratoriums, in 2022, only six States performed eighteen total executions, in what was the eighth consecutive year with less than 30 executions in total. Texas and Oklahoma were the two leading states, with five executions each. Arizona was also notable with three executions, ending an eight-year hiatus.⁴ These numbers tell us that executions are not common in the United States. This consideration is relevant when to the execution process itself, categorized by insufficient training and experience and prone to mishaps, colloquially called “botched executions.”⁵ Execution workers are the members of a prison’s staff tasked with performing a role where they must both witness the execution and play some procedural role in it. This term applies to responsibilities from inserting the needle, being present as a guard, and transcribing the execution.

¹ “Gregg v. Georgia, 428 U.S. 153 (1976).” *Justia Law*, <https://supreme.justia.com/cases/federal/us/428/153/>.

² “State by State.” *Death Penalty Information Center*

³ *ibid*

⁴ “The Death Penalty in 2022: Year End Report.” *Death Penalty Information Center*

⁵ Sarat, Austin, et al. “Botched Executions and the Struggle to End Capital Punishment: A Twentieth-Century Story.” *Law & Social Inquiry* Pp. 694

3. Explaining and Applying the Capabilities Approach

Capabilities are “what people are actually able to do and to be.”⁶ A capabilities approach to execution workers would first identify a basic interest in mental health before asking whether execution workers have the Emotional capability to regulate their emotional responses stemming from participating in the taking of a life. A challenge to this is a lack of mental and physical health support following their work. While the death certificates often say “state-assisted homicide,”⁷ execution workers do not receive comparable benefits to others who kill on behalf of the country. Veterans receive free lifelong healthcare benefits for their service,⁸ and police officers have access to free counseling, with additional mandatory evaluation when they take lives on the job.⁹ Alternatively, execution workers often receive no counseling or psychological support. Only one out of twenty-six workers surveyed by NPR received any government support of this kind.¹⁰ A 2002 Comparative Study of Louisiana Execution Teams found that the work could result in “transient or persistent stress, guilt, and even depression” for some workers.¹¹ If the execution worker performs an undesirable, difficult task for the state, why should they not receive at least some commiserate support? An additional capability concern is whether individuals are able to recognize their mental health struggles and translate that into seeking help.

⁶ Sen, Amartya. *Equality of What? - Oxford Poverty and Human Development Initiative*. Pg. 218

⁷ Eisner, Chiara. “Carrying out Executions Took a Secret Toll on Workers - Then Changed Their Politics.”

⁸ Health, Mental. “Va.gov: Veterans Affairs.”

⁹ (PSC), Program Support Center. “Assessment, Counseling, and Referrals.” *HHS.gov*

¹⁰ Eisner

¹¹ Osofsky, Michael J, and Howard J Osofsky. “The psychological experience of security officers who work with executions.” *Psychiatry* vol. 65,4 (2002): Pp. 354

Many Death Penalty States offer Employee Assistance Programs (EAP), which provide limited free counseling services before shifting to out-of-pocket.¹² While this seems like some semblance of a support system, it is limited in three regards that prevent it from addressing our capabilities concerns. These limitations are their short-term nature, the limited availability to execution workers, and their being voluntary post executions. The stated mission of the EAP is to “provide assessment, short-term counseling,” and counselors are specialized to deal with issues unique to the death penalty.¹³ With only 9.39% of Correctional Officers & Jailers qualifying as state employees, the scope of EAP aid to this demographic is limited.¹⁴ The following section will further demonstrate the need for mental health support and introduce potential additional stressors for execution workers.

4. Execution Worker Capabilities and Botched Executions

One key difference between lives taken by the military or police officers and those by execution workers might appear environmental; an execution is procedural and might seem to occur in a relatively controlled environment; the 2022 data tells a different story, with 35% of the executions botched.¹⁵ The explanations for this percentage listed by leading execution researchers include “executioner incompetence, failures to follow protocols or defects in the protocols themselves.”¹⁶ Consequences of execution work are directly related to the Emotional Capability, one of what Martha Nussbaum calls the Central Human Capabilities- capability requirements to live a dignified life. One Central Capability is Emotions, which entails “not

¹² (PSC), Program Support Center. “Employee Assistance Program (EAP).” *HHS.gov*

¹³ “Correctional Officers and Jailers.” *U.S. Bureau of Labor Statistics*, U.S. Bureau of Labor Statistics

¹⁴ “The Death Penalty in 2022: Year End Report.” *Death Penalty Information Center*

¹⁵ *ibid*

¹⁶ *ibid*

having one's emotional development blighted by fear or anxiety."¹⁷ This section connects that blight to the experience of the execution worker and examines a potentially increased stressor of botched executions. Executioner competence is in and of itself an unreasonable expectation given the task. The American Medical Association, in its code of medical ethics, limits the involvement of physicians not just regarding them performing the execution but disallowing "Consulting with or supervising lethal injection personnel."¹⁸ Moreover, the executioners themselves lack experience and training, increasing the likelihood of botched executions that cause additional pain for the executed and trauma for the workers.

Take the case study of Arizona, where even after up to eight years of death row corrections experience, no workers have experienced executions. Small teams of workers then plan the execution and perform a simulated dry run before taking a life. All three executions in Arizona were botched, with one executed man even trying to help find a vein to expedite the process.¹⁹ These executions require intravenous cannulation, which entails inserting an IV into the vein, typically on the arm.²⁰ A study on 124 army-trained nursing students demonstrated how difficult this insertion is. The study found that 53% accomplished this on their first attempt in a simulation designed to be as low-pressure for them as possible.²¹ Comparatively, execution workers have less training, sometimes only weeks to prepare, and have not self-selected into a nursing training program.

¹⁷ Nussbaum, Martha, "Capabilities as Fundamental Entitlements: Sen and Social Justice," *Feminist Economics* Pp.41

¹⁸ "Capital Punishment." *Ama*, <https://code-medical-ethics.ama-assn.org/ethics-opinions/capital-punishment>.

¹⁹ "The Death Penalty in 2022: Year End Report." *Death Penalty Information Center*

²⁰ "III. Lethal Injection Procedures." *So Long as They Die: Lethal Injections in the United States: III. Lethal Injection Procedures*, <https://www.hrw.org/reports/2006/us0406/5.htm>.

²¹ Jones, Robert S et al. "Measuring intravenous cannulation skills of practical nursing students using rubber mannequin intravenous training arms." *Military medicine* Pp.1361-6

They face additional pressures in the process, an injection in the femoral vein is agonizing to set and increases the risk of a prolonged death.²² Choosing between veins is not always an issue as much as finding any, with autopsies of one Alabama man revealing numerous puncture wounds “not in the anatomical vicinity of a known vein.”²³ Failures to find arm veins often lead to backups, including the neck or groin.²⁴ Oregon Corrections Superintendent Frank Thompson spoke to NPR about the stress he and his team experienced designing the first execution plan from scratch in 1997, after over thirty years of no executions in the state.²⁵ The worker noted that “all of us had negative results.”²⁶ This anecdote does not even refer to the excess emotional blight that botched executions may present, with potential feelings of personal responsibility regarding their inability to achieve competency in a role they are systematically unprepared for. Increased access to mental healthcare for these workers is necessary to meet their Emotional Central Capability and promote their well-being.

5. Introducing Social Structures and their importance to Execution Workers

Social structures as used in this paper, are understood to mean structures composed of “interdependent choices” made by the people that enact them continuously.²⁷ These structures represent the interplay of what Professor Eastwood calls the “3 Rs”: relationships, representations, and rules.²⁸ Structural injustices are the harms that “come to people as a result of structural processes in which many people participate.”²⁹ Social structures and controlling

²² “The Death Penalty in 2022: Year End Report.” *Death Penalty Information Center*

²³ *ibid*

²⁴ *ibid*

²⁵ Eisner

²⁶ *ibid*

²⁷ Eastwood, *Social Structures* pp.2

²⁸ Eastwood, *Social Structures* pp.3

²⁹ Young, Iris Marion. *Responsibility for Justice*. Oxford University Press, 2015. pp.603

images contribute to execution workers experiencing harm stemming from their work and not receiving sufficient support afterward from the government. The following sections proceed by applying social structures to execution workers and considering these relationships, representations, and rules.

Social structures can explain why execution workers work in corrections. Prisons across the United States deal with a perpetual shortage of correction workers due to turnover motivated by employee dissatisfaction.³⁰ This job market explains why the corrections industry offers lucrative sign-on bonuses to attract new employees.³¹ These bonuses represent both a rule and a relationship. Rules are prescriptions and proscriptions that can exist in laws and norms, while relationships are sustained interactions between individuals.³² These sign-on bonuses represent a rule in that the employee is liable to return the money should they not fulfill the contract, and a relationship as the employer gains additional leverage if the employee cannot repay the bonus.³³ Quitting your job has a whole new meaning when it entails owing thousands of dollars you no longer have. Another relevant relationship is between the execution workers and their superiors who staff the execution teams. When staffing executions, the “bosses” of the prison identify desired personnel who can then opt-out. The decision to opt out of executions is also a decision to disappoint the person with influence over your salary and promotional opportunities. The importance of Social Structures lies in considering these additional factors that might influence their decision to participate in the execution and are not immediately apparent without context.

³⁰ Lambert, Eric G., et al. “The Relationship among Distributive and Procedural Justice and Correctional Life Satisfaction, Burnout, and Turnover Intent: An Exploratory Study.” *Journal of Criminal Justice* Pp.1-7

³¹ “Hiring Bonuses.” *Hiring Bonuses | NDCS - Nebraska Department of Correctional Services*

³² Eastwood, Social Structures Pp.3

³³ “Hiring Bonuses.” *Hiring Bonuses | NDCS - Nebraska Department of Correctional Services*

6. Controlling Images and Social Structures at Play

It seems as though a reasonable question, when examining executions, might be why the task falls upon non-medical prison personnel- as opposed to people with specific training that might drastically reduce the risk of a “botch.” While the American Medical Association’s policy does contribute to the burden of execution resulting in the prison’s workers, that does not stop states, who could hire international execution consultants, retired Physicians, or any number of potential workarounds that may reduce the likelihood of execution going poorly. The controlling image of the people executed may explain the lack of concern displayed by the state regarding the quality of executions.

After all, these people have been deemed by a court of law as undeserving to live, so much so that states will pay a premium to end their lives. California is estimated to have spent an additional 4 billion dollars since 1978 than had they sentenced death row inmates to life without parole.³⁴ States actively executing people are unlikely to exhibit tremendous regard for the execution going smoothly. However, this harms the people forced to make do with inadequate skills and training and will inevitably fail at a higher rate than professionals.³⁵ The exorbitant costs associated with the death penalty make cutting costs at the expense of workers even less justifiable.

A potential objection to the analysis of execution worker harm might be that participation in execution work is designated as voluntary. Workers could quit, and it is illegal to fire them from their corrections employment if they elect to recuse themselves from the

³⁴ “Loyola of Los Angeles Law Review.” *Costs of Capital Punishment in California: Will Voters Choose Reform t* by Judge Arthur L. Alarcón and Paula M. Mitchell, <https://digitalcommons.lmu.edu/llr/vol46/iss0/1/>.

³⁵ “The Death Penalty in 2022: Year End Report.” *Death Penalty Information Center*

process.³⁶ Past execution workers have described an environment where participation was considered mandatory for promotion opportunities.³⁷ A Department of Corrections Director directly responsible for assigning corrections workers to execution worker duties said execution workers who struggle mentally with their role are “in the wrong profession.”³⁸ This quote is one example of how relationships can lead to harm for execution workers, depending on the workplace dynamic. While this is not a direct confession that the view informed other aspects of the employee experience, the person believed by their superior to be in the wrong profession does not seem to be a likely candidate for promotion. Coercion or undue concern over employment conditions stemming from this relationship and impacting a decision to participate in executions amounts to structural injustice.

This same objection of voluntarily incurring harm could apply to members of the military who voluntarily enlist in the army or police officers. In either instance, in the capacity of public service, individuals are harmed. As the other groups receive more support, the voluntary objection is, by itself, insufficient. Another relationship to consider is between the execution workers and the inmates. Execution workers from within the prison are primarily the staff working on death row.³⁹ This proximity likely results in some personal familiarity between worker and inmate, introducing a consideration of a potential personal relationship between them that may impact how the worker processes the execution.

³⁶ “South Carolina Execution-Team Members Talk of Debilitating Emotional Toll of Capital Punishment, Former Warden Calls Death Penalty 'Inequitable'.” *Death Penalty Information Center*

³⁷ *Do Ex-South Carolina Death Row Staff Support Death Penalty? - the State.*

³⁸ “South Carolina Execution-Team Members Talk of Debilitating Emotional Toll of Capital Punishment, Former Warden Calls Death Penalty 'Inequitable'.” *Death Penalty Information Center*

³⁹ Osofsky, Michael J, and Howard J Osofsky. “The psychological experience of security officers who work with executions.” *Psychiatry* vol. 65,4 (2002): 354

7. Representation of Veterans, Police Officers, and Execution Workers

Representations are “shared schemes of categorization.”⁴⁰ Regarding mental health issues, representation is binary. Someone has PTSD, Depression, or another mental health issue- or they don’t. While people can have these conditions while never receiving a diagnosis, there is a catch-22 when there is a lack of evidence because people are not being evaluated and thus are undiagnosed. Industry stigmas can compound the difficulty of identifying these issues discussed less openly. These difficulties motivate identifying commonalities between Veterans, Police Officers, and Execution Workers. These are each male-dominated fields, valuing masculine traits with controlling images of physical and mental strength. All three potentially involve taking human life. There is a crossover between the fields; in Michigan, nearly 20% of corrections workers are veterans, suggesting the industries attract similar people.⁴¹ Veterans and Police Officers differ in that there are many more of them than execution workers. With only eighteen executions last year, we are talking about no more than a few hundred execution workers in the United States.⁴² This difference adds a policy benefit, as there are many people and much more research.

Numerous studies on veterans and police officers examined the effect of killing on mental health outcomes. Each of the following conditions has been demonstrated in a peer review study to have a p-value of 0.1 or greater, representing a 99% chance that killing does contribute to these outcomes in veterans: PTSD, Alcohol Abuse, Peritraumatic disassociation, and current violent behavior.⁴³ A 2011 study on police officers after their first three years of

⁴⁰ Eastwood, *Social Structures* Pp.3

⁴¹ Nick Kipper, *Capital News Service*. “Military Service A Pipeline to State Prison Jobs.” *The Sault News*

⁴² “The Death Penalty in 2022: Year End Report.” *Death Penalty Information Center*

⁴³ Komarovskaya, Irina et al. “The impact of killing and injuring others on mental health symptoms among police officers.” *Journal of psychiatric research* Pp.1332-6

service found that officers that had either taken a life or seriously injured someone on duty were statistically significantly more likely to have PTSD symptoms than those who had not.⁴⁴ These associations between killing and negative mental health outcomes make the relative deficit of mental health support provided to execution workers all the more troubling. Additional considerations in the following sections further analyze the stigmatization of mental health issues and treatment in these fields. This association and plausible correlations of mental health impact around killing inform the subsequent policy recommendations.

8. Policy Justification

The twenty-seven state death penalty states have insufficient institutional mental-health support for these execution workers. Execution workers should receive subsidized mental health support after taking a life as part of their service to the state. A moral justification for this is Contractualist ideas that challenge those who oppose this mental health support to justify their position to execution workers who experience adverse mental health symptoms and conditions following executions. The following section proceeds to define Contractualism and apply it to execution workers before proposing specific policy recommendations and then performing an ethical analysis of those same recommendations.

9. Contractualism as Applied to Execution Workers

Contractualism is an approach to moral judgment that offers a standard for the treatment of people. Contractualists consider decisions by asking, can we reasonably reject this? Moral

⁴⁴ *ibid*

principles are the basis for these rejections. This section will proceed to explain why we can reasonably reject a lack of subsidized mental health support for execution workers, with appeals to fairness and to alternatives that offer a more justifiable distribution of the burdens associated with executions in the United States.

The military offers free mental health support through Veterans Affairs for “service-connected issues.” This resource is both free and long-term in nature.⁴⁵ Police officers have Employee Assistance Programs (EAP). The EAP is also available to some execution workers. EAPs offer limited free counseling services before shifting to insurance/out-of-pocket if employees wish to continue using the service.⁴⁶ The reason why most execution workers do not receive this resource is that they lack the state employee designation. If we can accept that executing people is among one the least desirable roles people can perform for the state and that state employees do receive mental health support under this designation, then it seems morally objectionable for the execution workers not to receive it- especially since there are not so many executions workers such that this would represent a great financial burden for the state.

If an execution worker and a road maintenance worker knocked on your door, forcing you to consider who was more likely to need mental health support due to their work for the state, what would your answer be? Not to pick on road maintenance workers- or to imply that there is nothing else consequential about being a state employee, but this does seem to be an argument for making all execution workers state employees or offering them services independently of the EAP system. When the execution workers perform a lethal injection, they are not doing so out of a personal desire to kill an individual. Instead, it is an amalgamation of

⁴⁵ “Depression Treatment for Veterans.” *Veterans Affairs*, <https://www.va.gov/health-care/health-needs-conditions/mental-health/depression/>.

⁴⁶ (PSC), Program Support Center. “Assessment, Counseling, and Referrals.” *HHS.gov*

state laws, prosecutor and judge and jury decisions, and medical ethics that shifts this burden primarily to them. Putting aside whether this is in and of itself morally objectionable, this is coupled with gross neglect of institutional support for the execution workers put in this position. A 2002 Comparative Study of Louisiana Execution Teams found that the work could result in “transient or persistent stress, guilt, and even depression” for some workers.⁴⁷ A contractual would view this as not the most justifiable distribution of burdens.

10. Policy Recommendations

Providing the execution workers with an EAP or equivalent service seems to be a strong initial step to at least meet the burden of “fairness.” This compares execution workers to other instances of people killing for the state. To specify what exactly the EAP offers, it is a limited number of free sessions, with the number varying by state. To give two examples, Virginia offers four,⁴⁸ and Texas six.⁴⁹ These specialists are often not trained for specific counseling associated with taking lives.⁵⁰ However, the specialists do have expertise in general counseling to help execution workers process some of the negative emotions stemming from their work.

An additional policy recommendation is to make one or more of the initial sessions mandatory to alleviate any misgivings the execution worker might have either towards counseling or being someone who “needs” counseling. This policy recommendation is informed by research surrounding the other two groups discussed, military and police, that indicates a stigma around seeking help. This stigma was so severe that around 60% of military officers experiencing mental health difficulties did not seek help and the process was said to be

⁴⁷ Osofsky, Michael J, and Howard J Osofsky. “The psychological experience of security officers who work with executions.” *Psychiatry* vol. 65,4 (2002): 354

⁴⁸ “Employee Assistance.” *DHRMWeb*, <https://www.dhrm.virginia.gov/employeebenefits/employee-assistance>.

⁴⁹ “Welcome to THR EAP.” *Home Page*, <https://www2.texashealth.org/eap/>.

⁵⁰ (PSC), Program Support Center. “Assessment, Counseling, and Referrals.” *HHS.gov*

“stigmatizing” in a 2014 study on police mental health.⁵¹ Moreover, the research introduced in Section 7 established that killing increased the risk of veterans and police officers experiencing mental health issues.

To reiterate the policy recommendation there ought to be at least an equivalent to the EAP standard of mental health service; and an additional compulsory component in order to combat a plausible stigma around electing to utilize offered mental health. By removing the onus from the worker, the policy eliminates the consideration of individual weakness or character deficiencies as reasons why they are in these initial sessions of counseling. The hope is that this initial exposure might shift attitudes on the individual and institutional levels, making the workers more comfortable with either themselves or their peers continuing to seek additional mental health support as needed.

11. Policy Ethical Analysis

There are ethical criticisms surrounding offering EAP-level mental health treatment and making mental health treatment compulsory. These are primarily financial and personal freedom concerns. It is difficult to calculate the extent of this financial burden, as part of the additional tax burden might be offset by potential savings associated with people having better mental health outcomes. However, for argument's sake, let's consider it solely as an additional tax burden. Nozick might argue that if the execution worker performs their role with access to knowledge surrounding his lack of mental health support, they are not entitled to subsidized

⁵¹ Papazoglou, Konstantinos, and Brooke McQuerrey Tuttle. “Fighting Police Trauma: Practical Approaches to Addressing Psychological Needs of Officers.” *SAGE Open*, vol. 8, no. 3, 2018, p. 215824401879479., <https://doi.org/10.1177/2158244018794794>.

mental health treatment. Nozick refers to an “entitlement conception of justice”,⁵² where people presume they are entitled to some form of equal treatment in comparison to a separate standard, much like this argument does by comparing execution workers to the military and police.

The more substantial ethical and moral concerns related to this idea of compulsory mental health counseling. This could be seen as a violation of personal liberty, people might have traumatic histories associated with their experiences in counseling, and it seems potentially different to have the support that is tax-funded (when people want it) and that is tax dollars spent whether people want it or not. Utilitarianism might apply if we assume there are some subset or people that would genuinely be worse off for receiving counseling, in addition to it being an expense, then compulsory counseling would be suboptimal. Nozick could again pose an objection based on it being a violation of individual liberty both in the case of the execution worker and whoever is being made to foot the bill.⁵³

While these objections do have their merits, they are less objectionable than the alternative of execution workers facing an undue amount of suffering as a consequence of the state’s decision to execute a person. Moreover, the counseling cannot be fully considered to be “compulsory” as the individual worker retains the option to opt out of being an execution worker without any legal employer recourse in prisons. It also might be a necessary concession to assume that someone might have more harm as a result of this policy, but presumably, many more would see at least some benefit from the counseling services that they receive.

12. Conclusion

⁵² Nozick, Robert. *Anarchy, State, and Utopia*, Blackwell, Oxford, 2017, pp. 103–103.

⁵³ Nozick, Robert. *Anarchy, State, and Utopia*, Blackwell, Oxford, 2017, pp.102-107

As evidenced by a capabilities approach, social structural analysis, and moral arguments, Execution workers should receive more subsidized mental health resources than they do at this time. This will require policy reform including but not limited to subsidized counseling. It seems worthwhile to consider compulsory components to at least the initial stages of this counseling due to potential stigmatization acting as a deterrent and leading to execution workers who do need mental health services opting out of even free counseling. At this time there is a need for additional research to be done to fully evaluate the scope of this issue, as we need more information on a quantitative level to understand just how much reform is needed to try and treat these execution workers with as much dignity and regard for their well-being as possible as they continue to do this undesirable task for the state.

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