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Moral Legitimation in Courtroom Discourse: A Proposal*

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Chaemsaitong, Krisda and Kim, Yoonjeong. 2020. Moral Legitimation in Courtroom Discourse: A Proposal. *English Language and Linguistics* 26.2, 25-48. Embracing the view that the legitimacy of a social practice is discursively established and negotiated, this study proposes a linguistically grounded model for moral legitimation and examines how the State (i.e., the prosecuting lawyer) justifies a death sentence. Based on the closing summation of six capital trials, the study identifies key moral legitimation strategies and reveals the State's ideology about crime and punishment. It is argued that such discursive strategies as evaluation, labelling, analogy, agency assignment, and emphasis on the victim's lost future not only alienate the person on trial from the jury and the victims but also over-emphasize the "us-them" boundaries. In effect, the State denies specific personal circumstances, as required by the law.

Key words: courtroom discourse, death sentence, legitimation, moral legitimation, strategies

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1. Introduction

It is widely accepted that language is a prime means by which social practices and associated actions are justified in both everyday interaction and public communication, so that language users can attain such communicative goals as obtaining or maintaining power and status quo, gaining social acceptance, and invalidating dissenting opinions. One high-stake discursive event where legitimation constitutes a “deal breaker” is the penalty phase of capital trials. When the State wishes to execute a citizen, it must not only convince the jury that death is proportional to the crime committed by the defendant, but also provide a reconciliation between state-sanctioned killing and unlawful killing, so that the punishment is perceived not as unrestrained private vengeance, but as a way to ensure that justice is served to the worst member of the society as well as his or her victims (Sarat and Kearns 1993). More importantly, in this phase of capital trials, the focus is not on fact-finding (that is, it is no longer in dispute whether the defendant committed the alleged crime), but rather on the moral question of how to “appropriately” punish the individual on trial—the so-called “reasoned moral choice” (*Penry v. Lynaugh* 1989). However, the point is this: the jury’s decision about who deserves to die is one that no set of legal rules can determine. The law can at best guide the jury to consider particular factors, but the decision itself is deeply personal and moral. As such, the penalty phase becomes a very critical occasion for the discursive legitimation of the impending killing through talk.

Recognizing the pivotal position of legitimation in the high-stake guilt phase of capital trials, this study pursues two main objectives. First, integrating analytical tools from Systemic Functional Linguistics and Pragmatics into a critical discourse analytic framework by Van Leeuwen (2007, 2018), the study sets out to develop a linguistically-grounded model for examining moral legitimation in courtroom discourse. Second, using the proposed framework, the study proceeds to identify key moral legitimizing strategies which the State uses to justify death, thereby providing answers to the (un)spoken question: “Why should we kill this person?”. In doing so, the study critically explores their ideological and hegemonic work,

as manifested in the closing summation of six capital trials—a prime example of argumentative discourse that represents the State’s last opportunity to persuade the jury and secure their consent to execute the defendant. To discussions of discursive legitimation, this research contributes a linguistically informed framework that enables researchers to identify moral legitimation based on linguistic cues. For scholarship on language and law, this study provides insights into the ways in which the State alienates the person on trial from the jury and the victims in the attempt to seek a death verdict against the person on trial.

This article begins by situating the penalty phase of capital trials in its legal context and presenting its discursive characteristics. After relevant literature review, the theoretical framework to be used in the analysis is developed, which will then be applied to the cases under study. Finally, predominant patterns of moralization legitimation are discussed in relation to how discursive legitimation in the closing summation serves to maintain and perpetuate the ideological nature of capital punishment.

2. The Penalty Phase and the Closing Argument

Capital trials in the U.S. courtroom feature a bifurcated procedure, consisting of the guilt phase and the penalty phase. Similar to ordinary criminal trials, the guilt phase requires the jury to weigh evidence presented during witness examination, and judge culpability accordingly. Should the defendant be found guilty, the penalty phase follows. In most states, the penalty phase entrusts the same set of jurors, who have found the defendant guilty in the previous phase, with the task of hearing and weighing aggravating circumstances against mitigating ones before rendering a sentence recommendation (either death or life imprisonment without parole). In the sentencing phase, jurors are asked to carefully consider the defendant’s life, character and background, and to use empathy (rather than mere factual undertaking, as done in the guilt phase) before a death verdict is rendered (Henderson 1988, Vartkessian et al. 2014:7). This separate sentencing phase is, in principle, a procedural safeguard against arbitrary imposition of death

sentence, which is believed to provide “guided discretion” to the jurors, so that the sentencer hears only information relevant to the question of penalty without prejudicing the defendant on the question of guilt. However, in practice, any facts can be presented and argued to be relevant in such a way that supports (or undermines) death sentence (Sundby 2015).

Delivered before the presentation of aggravating and mitigating circumstances, the summation in the penalty phase is the “dramatic highpoint of the capital trial” (Burt 2008:903). This discursive event is adversarial and argumentative in nature, and goes beyond summarizing the facts and evidence previously presented in the testimony phase, to proffer arguments emphasizing morality, justice and human motivation for the committed offense (Costanzo and Peterson 1994). Both sides need to persuade the jurors so that they agree with how the recommended sentence will serve the interests of society and why a specific sentence is consistent with widely held legal and moral principles. The State gets to offer the summation first, followed by the defense. Legal scholars believe that this last address to the jury can determine the outcome: “[r]egardless of the evidence, whichever attorney can send a trier off to deliberate with the most ringing and eloquent soliloquy will emerge victorious” (Bergman 1989:222).

3. Theoretical Background

3.1. Discursive Legitimation and Moral Legitimation

Legitimation in this study is conceptualized as the discursive process of justifying the reasonability of a social practice, including its existence and the basis for its adoption and maintenance. As long as there is struggle for power, legitimation prevails. As a means by which a more powerful social group secures “more or less active agreement, acceptance, compliance or at least tacit consent” (Rojo and Van Dijk 1997:528) from the less powerful group, legitimation contributes to “a discursively created sense of acceptance in specific discourses” (Vaara, Tienari and Laurila 2006:793). As an example, consider how the

prosecutor constructs the defendant's killing as lawless by asking the jurors to visualize a gruesome scene: "Think about the violence, the horrific nature of the crime where [victim] was laying in her bedroom with her throat cut in the last few moments of her life when she's bleeding away, and her brain is still functioning, this defendant is chasing her four-year-old girl through the house to cut her through and murder her" (Case 3). Through the explicit negative evaluative markers (such as "horrific" and "violence") and starkly polarized labels ("this defendant" vs "her four-year-old girl"), the State positions the victim sympathetically as a vulnerable person, while representing the defendant as a fully conscious agent acting on his own free will.

In analyzing discursive legitimation, Van Leeuwen's model of legitimation (2007, 2018) proves to be insightful, as it quite comprehensively theorizes the various ways speakers can attempt to provide answers to the (un)spoken question: "Why should we do this?" (Van Leeuwen 2007:105). Three major categories of strategies are proposed that can be employed to legitimate a certain practice: 1) moral legitimation, which consists of oblique references to moral values, 2) authority legitimation based on the status and endorsement of people, institution, tradition or other sources that bestow that power, and 3) rational legitimation, which appeals to the utility and reasonability of the action, with references to goals, effects or a natural order of things. The model is flexible enough to be applied to different kinds of discourse, including politics (Reyes 2011, Mirhosseini 2017), public policy (Van Leeuwen and Wodak 1999), media (Tiainen 2017), climate change (Lefsrud and Meyer 2012), organizational management (Vaara, Tienari and Laurila 2006), as well as sports and health sciences (Qvarfordt, Hoff, Backstrom and Ahmadi 2019).

Moral legitimation forms the focus of this study. As Abramson (2004:199) points out, "capital punishment rests on not a legal but an ethical judgment---an assessment of the 'moral guilt' of the defendant". In other words, the death sentence cannot be prescribed by a rule of law, but is instead "an ethical judgment expressing the conscience of the community as to whether an individual has lost his moral entitlement to live" (Abramson 2004:119). Scholars have also noted that capital punishment is justified in terms of the "appropriate" punishment for the

worst crime and criminal (Gross 1993, Ellsworth and Gross 1994). As a result, the defendant and his actions will need to be constructed as counter-normative to socially-acceptable moral principles and beyond forgiveness. Finally, in most states, jurors are asked to weigh aggravating and mitigating factors. However, the metaphorical image of weighing only provides an objective-sounding veneer, when in fact it is impossible to, even with the most finely calibrated laboratory scale, “weigh” the abuse that a defendant suffered at the hands of an alcoholic father against the victim’s suffering inflicted by the defendant. Owing to these reasons, the State inevitably relies in large part on a set of morally-based typologies such as good and evil, victim and villain (Sarat 2002).

As regards linguistic manifestations of moral legitimation, Van Leeuwen (2007, 2018) proposes that moral legitimation is most explicitly invoked by evaluation, which conveys the speaker’s stance towards a social actor or his action (Hunston and Thompson 2001). Evaluation can most obviously be expressed through adjectives and their grammatical variants. For example, when a lawyer describes a crime as *cold-hearted*, *heinous*, *deliberate*, he exploits the moral force associated with these expressions, so that he can avoid setting out any arguments. Interestingly, as Bednarek (2006) points out, the assessment of whether something or someone is good or bad exists along a continuum, ranging from low intensity (as in *a crime*), medium intensity (as in *an assassination*) to high intensity (as in *a slaughter*). In addition to evaluation, Van Leeuwen (2007, 2018) also points out that moral legitimation can be performed through analogy or comparison. A speaker justifies the target social practice by describing it in terms of another social practice. Therefore, instead of saying a social practice is “good”, speakers justify it with “because it is like another activity”, which is associated with positive values. Grammatically, an analogy or a comparison can be signaled by “like” or “as”.

3.2. Synthesized Model for Moral Legitimation

While Van Leeuwen’s original model, presented above, is insightful, it leaves room for further refinement. We propose that moral legitimation can also be

achieved through labeling. Selecting a particular reference term, the speaker defines and assigns a category to the referent and, in doing so, depicts him as normal/deviant and innocent/evil, as Becker (1966:9) puts it, “the deviant is one to whom the label has been successfully applied”. Previous studies have shown convincing evidence that reference terms do more than just referencing work. Clark (1992) exposes extreme negative labeling and refers to it as “fiend naming”. When criminals are referred to as monsters, for instance, they appear so evil and alien that they cannot fit into human kind and society. In contrast, victims are often labelled positively with what is called “angel naming”, evoking more empathy and concern from the interlocutor (Nevala 2016).

In addition to naming choices, a number of influential analyses (e.g., Trew 1979, Clark 1992, White 2006) have shown that assigning moral blameworthiness to an actor can be accomplished through clausal configurations, known as transitivity (see Halliday 1994). Blame is conditioned by the degree to which an actor is represented as playing an active, agentive role, performing a material process (i.e., a transitive verb in traditional grammar) that affects another social actor. The speaker can also mention and list a criminal’s negative behavior to emphasize his wickedness (Macagno 2014). On the other hand, Tabbert (2015) shows that victims are presented in the recipient role (i.e., as a grammatical object) and that the more people are affected, the more evil the criminal appears.

Finally, to moralize the killing practice, the State also aggrandizes the aftermaths or effects of the defendant’s actions on the victim and family. This makes the impending killing appear not as a settlement for a personal vendetta, but as a proportionately measured response. From an experiential psychological point of view, this in turn results in high personal relevance and greater attitude change (Petty and Cacioppo 1986). In increasing the personal relevance of the message, the State urges jurors to identify and sympathize with the victims and their families, enumerating to the jury what happened to the victims and their families after the crime. This emphasis on the effects can be linguistically realized through verb phrases that express hypothetical everyday situations or actions that the victim and family would otherwise be able to fulfill, implicated in the use of irrealis modals such as *will*, *would* or *to* infinitive

The moral legitimation strategies proposed above are summarized in the table below, with examples from the data under study.

<Table 1> Model of Moral Legitimation Strategies and Linguistic Cues

Strategy	Linguistic cues	Examples
Evaluation	Use of evaluative expressions to signal personal stances towards and appraise the actions of the defendant	[Victims] received that <u>devastating</u> shotgun blast that was put to her head.
Labeling	Assigning a certain category to the referent through a naming label, signaling explicit or inferable attitudes	[defendant] eliminated a <u>family</u> from this earth.
Analogy	Use of <i>like, as</i> , or comparative constructions	People all over the world have <u>problems. They don't go out and commit murder.</u>
Assignment of agency and victimhood	Representing the defendant as an agent of socially unacceptable material verbal processes (and related grammatical variants), and representing the victim as recipient of such processes	Three individuals were <u>murdered by [defendant].</u>
Emphasis on the effects of impact on the victim's lost future	Expressing hypothetical situations that the victim and family otherwise would be able to fulfill, including irrealis modals such as <i>will, would</i> or <i>to</i> -infinitive	Neither [victims] <u>provided, allowed the opportunity to grow and develop into adults.</u>

The proposed model of moral legitimation above possesses at least five major strengths. First, it enriches Van Leeuwen's model by identifying more specific ways of moral legitimation. Second, as a linguistically-oriented model, it pays close attention to the linguistic cues employed in the message, with tools from Systemic-Functional Linguistics and Pragmatics. Third, while relying on linguistic cues, it is not limited to considering only certain grammatical forms, thereby refusing a one-to-one correspondence between the form and the function. Instead,

it provides leeway for analysts to identify legitimizing practices that can be achieved through different linguistic expressions in context. Fourth, if deemed necessary by the analyst, this model makes it possible to extract quantifiable linguistic evidence, thereby allowing cross-linguistic comparison across a data set. Finally, this model can be adopted for the analysis of other kinds of courtroom discourse, especially where moral legitimation is concerned.

4. Data and Methodology

The closing summations by the State under study are drawn from the official transcripts of six capital trials, all of which involve multiple killings (see Appendix for the cases). The closing arguments are collected from different court counties in Indiana (USA), and each was delivered by a different lawyer, so as to ensure that the patterns found therein are not idiosyncratic. The trials all occurred within a relatively contemporary time frame, from the year 2000 to the present, during which there have been no significant changes in the legislature or positions of the Supreme Court regarding death penalty, which otherwise might affect the linguistic patterns.

Methodologically, to explore the lawyers' repertoires of legitimizing strategies, we manually went through the entire trial transcripts 'hunting' for instances of moral legitimization, using linguistic and contextual cues. Moral legitimation discourses were then classified and cross-checked for inconsistencies. Authorial attitudes, which indicate neutral, positive or negative stances of the presenter, were also taken into account in this step. We also looked for characteristic patterns and considered how moral evaluation discourses are pragmatically motivated in relation to the speaker's goals, how they are indexical of the underlying ideologies of each side, and how such a choice may create potential effects on the jurors' perceptions.

5. Findings

5.1. Evaluation

Based on the data, we have first and foremost observed the use of explicit evaluative lexis, through which the defendant's intents, motives, and acts are explicitly appraised. Using evaluative adjectives such as "cold, calculated" or noun "cover-up", as in (1), the State denies the possibility that the defendant's acts result from provocation and frames them as a cruel and conscious immoral acts. This explicit evaluation is subsequently complemented by the assignment of agency, in which the defendant performs the material processes of planning and attacking another social actor ("tip-toed", "opened the door", and "flicked on the light"), so that the crime is evaluated explicitly again, as "horrific" and "deserving of death".

- (1) It was cold, calculated cover-up. He tip-toed into Donna's room, opened the door, and flicked on the light real quick to see the positioning of her body...I would challenge you to think of a crime that is more horrific than that and more deserving of death penalty than the facts in this case. (Case 3)

Another frequent evaluation category has to do with free will, evidenced in (2). Qualifying material process verbs such as "killing" or nouns such as "murder", the repeated use of the "intentional" or "deliberate", along with their grammatical variants in a short stretch of discourse, discursively positions the defendant as entirely accountable for his pre-meditated acts.

- (2) The defendant committed murder by intentionally killing [name]. He's already been found guilty of murder. And we you've heard in the evidence, how that murder was an intentional murder. We talked about the intent that it takes to take the shoe lace out of [victim]'s shoe, and take that shoelace and deliberately remove it and tie it around her neck. We talked

about the intent that it takes to cut off the straps of her overalls, and after cutting those off, to tie them around her neck. We talked about how taking those and tying them is a deliberate and intentional act. (Case 6)

Example (3) shows evaluation that presents itself as a metadiscursive move. The prosecutor signals his stance towards an upcoming statement, which graphically details the defendant's killing process. Finally, as (4) shows, evaluative expressions also occur when the State asks the audience to remember the victims and their sufferings, towards the end of the speech. It is worth pointing out that the evaluative lexis in these examples are called for to differentiate the defendant's killing from state killing, although in fact state killing can also be described in these very same terms. However, there is conspicuously no mention of how the impending execution is also intentional, deliberate, and calculated in the prosecution's discourse.

(3) He cut [victim] almost completely in two while she was still alive, including reaching---and this is a sickening part here---reaching through the front of her abdomen and cutting her backbone. (Case 4)

(4) Think of the sheer terror...the sheer terror of their [victims'] last minutes as they died. (Case 5)

5.2. Labeling

Moralization is also triggered by naming choices, which are known to position referents in different categories, including in-group/out-group or intimate/distant members of society (Nevala 2016). Some reference terms straightforwardly signal negative moral evaluation of the defendant. As (5) shows, these terms can range from entrenched categories, such as "manipulator" to a post-nominally qualified category, such as "a young man sneaky in his behavior". These labels provide clearest evidence of how labels can construct offenders based on ideological views of the speakers.

- (5) He is a manipulator. The defendant is a manipulator, make no mistake. When he was at the youth home, the United Methodist youth Home, he was described as a young man sneaky in his behavior. (Case 2)

In the majority of the cases, however, a reference term may not in and of itself signal moral evaluation, but when juxtaposed with another label in a specific context, provides moral legitimation by way of textually-constructed “opposition” (Tabbert 2015:103). For example, in (6), the person on trial is ascribed a legal identity and status in the courtroom through the term “defendant”, and so other identity aspects are made irrelevant to the sentencing decision. For example, he could have been a good son at home or a hard worker, but those identities are excluded from the discourse. Note how this label stands in stark contrast to references to the victims, including personal names and the categorized term “human being”. Proper names give a unique identity and create solidarity to a social actor, while the noun phrase “human being”, bound to moral values in this context, is loaded in its implication that the defendant’s act of homicide is an unforgivable practice, in much the same way as the pro-life’s classification of a fetus as a “human being” in condemning the practice of abortion (Macagno and Walton 2014:3), both practices exploiting a human’s life as the basis for moral justification. The use of the legal category for the person on trial and emphasis on the personhood of the victims reveal quite clearly that for the State, the person to be executed is a legal category, not a person or “us”, that is being tried for life.

- (6) The defendant without thinking about his family, without thinking about the people that came in here and testified who are also devastated by this heinous act, and chose to do what he did to three human beings, Beth Kubsch, Rick Milewski, and Aaron Milewski, three human beings. (Case 5)

Similarly loaded reference terms are shown in (7), where the State describes the victims using familial terms (“mother”, “children”, “family”) to emphasize not

only their relationships but also to transform the impact of the crime from an individual to a group phenomenon. This is also known as indirect victimization (Shapland and Hall 2007:179). The person on trial, in contrast, is referred to formally by his last name, thereby being positioned at a distance from others. Example (8) shows the use of age-related terms for moral legitimation, including “teenager”, “young adult”, and “thirty-two-years old”. These “inference-rich” categories (Sacks 1992:40) make relevant the unspoken norm of age and conscience, thereby underlining the State’s ideological basis that the offender should have known better, and it was in his power to simply not commit the crime by his adult judgement.

(7) It’s the appropriate penalty when you look at aggravating circumstance in this case. The aggravation relative to the multiple killing circumstance that three individuals were murdered by Mr. Isom. Those individuals were a mother, and her two children. That in fact those three individuals are family. Multiple killing dictates, tells us Mr. Isom eliminated a family from this earth. (Case 1)

(8) If this was a teenager or a young adult, you know, he hadn’t had much time to get out of that parental environment. He hadn’t had much time to break away from those horrible things that happened in his childhood. And if he were much younger than he is, maybe you give more weight to this...He was thirty-two when he committed these horrible crimes. Thirty-two. He wasn’t sixteen or eighteen or twenty. He was thirty-two years old. (Case 3)

5.3. Analogy

A consistent characteristic pattern of analogy in the data is the State’s juxtaposition of the defendant with others who are claimed to share similar backgrounds, but who “choose” to not commit the crime. This comparison not only constructs the defendant as deviant from other people with the same

backgrounds but also effectively discounts individual circumstances of the person on trial. In (9), the defendant is compared to his grandmother, who, like the defendant, also suffered abuse as a child. Note that this exemplary individual is labelled and evaluated positively, as a willful agent who opted to make “good” decisions and became a “good person”.

- (9) Norma survived the abuse and the torture that she was subjected to as a child and she chose to make good decisions and she became a good person and she raised a family. (Case 2)

The basis of comparison also extends to the majority of societal members. Example (10) shows aggregation, or the use of statistics (“millions and millions and millions”) for emphatic purposes, thereby casting the person on trial as an anomalous subject worth eliminating.

- (10) This is not the first person that’s ever had a tough childhood. There’s millions and millions and millions of kids that are in horrific environments. Lots of them in this community. And they don’t commit this kind of crime. (Case 3)

A similar comparison is created in (11), in the form of a reversed-polarity question, which seeks to pragmatically assert the opposite: namely, “This is not the first guy that had a tough childhood”. In (12), in contrast to “people all over the world”, it is only the defendant who went out and committed murder. In addition, first-person plural pronouns can also serve as a comparison basis to morally alienate the person on trial. The pronoun “we₁” grounds as a collectivity the defendant, jurors, and other human beings, thus “people all over the world”, all of whom has their own problems to deal with. Subsequently, however, the State shifts the reference of “we₂” to include only the defense as well as the defendant, as it is the defense and the defendant who, in the State’s opinion, use the “abuse excuse” to avoid the death sentence. Through this comparison with people in general and the metadiscursive term “excuse”, the State sidesteps individual

circumstances of the defendant, rendering them weightless and irrelevant.

(11) The abuse excuse. And that's really what it is. He had a tough childhood. Well, is this the first guy that ever had a tough childhood?...Did you hear anything, anything that diminishes the culpability of this kind of crime? Anything? (Case 4)

(12) We₁ all have our problems. When are we₂ going to stop using the abuse excuse to legitimize rape, murder, and confinement of an 18-year-old girl? People all over the world have problems. They don't go out and commit murder. (Case 5)

5.4. Assignment of Agency and Victimhood

Granting agency allows the State to morally legitimize a death sentence by portraying the defendant as an agent affecting others, thereby creating a perpetrator and victim. This agency and victimhood is not merely a descriptive summary of the defendant did to the victim, but appears to constitute the key factor in deciding whether an individual on trial should live or die. This is evidenced in (13), which occurs at the outset of the speech. While the prosecution acknowledges the purposes of the penalty phase, violent material processes (i.e., “abducted, raped and strangled to death”) are presented that seemingly straightforwardly answer the question of whether he deserves a death sentence. This point is emphasized in the metadiscursive expressions: “I would like to get back...to the real issue at hand. And the real issue at hand...is”.

(13) This is the part of the trial when the defendant is afforded an opportunity to come here and explain to you the problems he may or may not have... that would cause you to possibly want to spare his life...But ladies and gentlemen, I would like to get back, if I may, to the real issue at hand. And the real issue at hand in this case is that this man seated over here, [name], abducted, raped and strangled to death an innocent 18-year-old

girl named [name]. And the real issue is should he die for what he did? And ladies and gentlemen, he should. (Case 6)

In addition, the attribution of agency represents the defendant as having complete control and autonomy over his acts. This is made clear in the noun “choice” (based on the verb “to choose”). In (14), although admitting that the choice not to kill is “harder” due to a “tough background”, which can undermine a death recommendation, the State is quick to dismiss such a factor and insists on the defendant’s autonomy. Similarly, in (15), dismissing other factors that may contribute to the defendant’s criminal acts, the State relies on the ideology of individualism and freewill. In these cases, the defendant’s behavior is entirely explained---quite simplistically---by the exercise of his volition, thereby glossing over other causes as minimally relevant. Consequently, the defendant becomes the sole cause of the murder and a self-made evil that is only suitable for lethal state intervention.

(14) [Defendant] has earned the right to be sentenced to death. Because of the choices he made...to commit those horrible acts of violence that you know about....And because he had a tough background, it was harder for him to make choices. He still had a choice. He wasn’t compelled to do anything. So what? a harder choice to make. It was a harder choice to make not to cut the throat of a woman. (Case 3)

(15) Tabula rasa means clean slate. Everyone of us are born with a clean slate and it’s by the choices and decisions that we make in life is how that slate is filled up. He chose to do drugs. He chose to be sober but he also chose what he did on [date]. It was his choice. (Case 2)

Finally, the assignment of agency and victimhood can create emotional appeals. Appeals to emotion are known to have the capacity to affect reasoning and skew the opinion of the addressee regarding the social practice at issue (Macagno 2014; Macagno and Walton 2014). In the data, the creation of fear is most common,

when the prosecution describes and asks the jurors to imagine what was done to them in a disturbing and graphical way, thereby inviting them to re-live the victim's experience. From a legal standpoint, such a description is permissible and considered proper in urging jurors to appreciate the circumstances of the crime and its aftermath, as well as the fear and emotions of the victims. However, a question can be raised about the prosecutor's intention in presenting the questions in (16) during a jury closing summation. Neither do these statements remind the jury of the major points to be considered, nor do they help make an informed sentencing decision and enhance proportionality. These audience-oriented interrogatives trigger an emotional mode (sadness, retribution, pain, and fear) in the jurors by foregrounding the victim's vulnerability and helplessness, or assigning, in Van Dijk's term "stereotypes of passivity and helplessness" to these individuals (2009:12). In stark contrast, it is worth pointing out that the scene of the impending execution and the defendant's feelings are silenced by the State.

- (16) What did it sound like when he took the hammer and crushed [victim's] skull? At what point did she cover herself up with her little hands...?
(Case 2)

5.5. Emphasis on the Effects of Impact on the Victim's Lost Future

Instead of focusing on the past or present aspects of the defendant, his actions, or the victims, this particular strategy makes relevant hypothetical situations. By relying on consequences that would otherwise (not) occur in the future, the State can connect the past, present, and future, as the present is represented as the period that requires the jury to make a decision about the immediate action of killing, which is related to a cause that occurred in the past. In other words, the cause of the present problem is in the past, and it now necessitates a death sentence to compensate for that lost future. In the data, moral legitimation projects lost opportunities according to what the victims usually did in the past and what they could otherwise (not) do, if it had not been for the defendant's crime. The lost opportunities are grammatically realized by infinitive clauses indicating actions to

be fulfilled as in (17), irrealis modals as in (18), or implicature as in (19), when we are told that life was take away and, along with it, other opportunities. Logically speaking, when someone loses his or her life, it is impossible to carry on daily routines or pursue any goals, and the jury can be expected to already know this fact. It is thus only the case that such a presentational strategy is exploited so that the death sentence stands as natural, necessary and, often, the only way to “fix” the (irremediable) past. What is more, the focus on those lost opportunities allows the State to deviate the appropriate attention from the present phase of the trial, which is to closely examine the life of the individual on trial in all aspects, moral and experiential vicissitudes.

(17) Neither provided, allowed the opportunity to grow and develop into adults. Their lives were terminated on August 6, 2007. (Case 1)

(18) [victim] will never laugh or talk to her son Aaron again. She will never be able to call him up on the phone and hear him tell her about his schooling. He'll never be able to watch T.V. He'll never be able to take a walk in the park. He'll never see another sunset...And multiply that by three times. (Case 5)

(19) [victim] was a young girl who had a cat, I mean, all the things she had, a cat, a car, she lived at home with her parents, she had a part time job at Walmart, she was going to school, she had a boyfriend. All those things...none of it compared to the most important thing she had and that is the life in front of her at age 18. More than anything else, that is the most important thing that [victim] had. This man took it away from her. Should an individual convicted of murder...be treated any less, be given any less of a fate than that man gave to [victim]? (Case 6)

6. Conclusion

This study synthesizes the existing literature and proposes a linguistically-grounded model of moral legitimation, consisting of five main strategies. The analysis has also demonstrated how the proposed model can be used to identify patterns of legitimizing strategies in the closing summation of capital trials by the State. The findings show how the State relies to a high degree on moral legitimation, perhaps to the extent of over-emphasis, to differentiate the violence inflicted by defendants from that of the punishment it encourages the jury to impose, both of which involve killing. Broadly speaking, this differentiation is accomplished by foregrounding the brutal and indiscriminate violence of criminality as well as its consequences, and juxtaposes these issues with the passivity and helplessness of the victims. While these characteristic findings are based on a limited number of cases and are not obtained from frequency counts, we believe that they effectively testify to which moral legitimation strategies commonly occur in this particular setting, and we doubt that we would be led to propose more linguistic strategies of moral legitimation, despite additional data.

In a more critical vein, these moral legitimation strategies---be it evaluative expressions, opposing reference labels, use of transitivity patterns, analogy or emphasis on lost future---appear to do next to nothing to help the juror form a guided moral decision, let alone satisfactorily explain why death is better suited for the person on trial than a life imprisonment recommendation. On the contrary, it is more likely that what these moral legitimation strategies do is create death-inclined jurors. For one reason, evaluative expressions, negative representation of the defendant and stigmatized images of the victims and their sufferings that the State marshals to justify a death sentence can satisfy any murder and murderer, thereby constituting a vague criterion for a death recommendation and offering no help in guiding the jury to make an informed decision. In stark contrast, no similar evaluative terms or labels are found in the State's discourse that describes the killing process and the agent who carries out that state-sanctioned action, when in fact punishment by death by its very nature involves deliberately inflicting deprivations and hardships on persons that, if

inflicted by private citizens, would be crimes. This emphasis (or in our opinion, over-emphasis) on the morality of the defendant and his actions, on the one hand, and the exclusion of the morality of the death sentence itself, on the other, come to be instrumental in swaying the juror's attitudes about the person on trial. Additionally, while the value of capital punishment has been argued by scholars for centuries (albeit without any consensus), including issues such as racial discrimination in death sentences or whether capital punishment has deterrent effects), it is in reality attorneys who plead for death or lifetime imprisonment without parole. As we see above, state attorneys rarely talk about those scholarly issues; instead, attorney "arguments" are ideographic and designed to create social distance between the jury and the victims on the one hand, and the person on trial on the other, thereby intensifying alienation between the "us" and "them" groups.

The primary objective to theorize a model of moral justification in the courtroom comes at the cost of having to leave unexplored the defense's moral legitimization work, given space limitations. A continuing project is underway to compare how the opponents of the death sentence, namely, defense attorneys, fare in moral legitimization in comparison to the State.

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Appendix

- Case 1: State of Indiana vs Kevin Isom (2013)
- Case 2: State of Indiana vs Daniel Wilkes (2007)
- Case 3: State of Indiana vs Frederic Baer (2005)
- Case 4: State of Indiana vs Roy Ward (2000)
- Case 5: State of Indiana vs Wayne Kubsch (2000)
- Case 6: State of Indiana vs Michael Overstreet (2000)

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