Humane Killings:

An exploration of how the medicalization of capital punishment has increased its palatability

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Introduction

I became interested in the intersection between science and criminal justice at a young age. My earliest obsession was with forensics and how the brilliance of DNA technology could prove a person's innocence in a criminal trial. I was awed by the idea that science could save us from the errors of human law. But it later came to my attention that this same science was being used to kill people on death row via lethal injection. It became clear that the same flawed humans who were stewards of the law were also conductors of science. Although, I have spent most of my educational years learning about the corruption of politics, discriminatory laws, and overwhelming inequity in our legal system, these same critiques were never made about science. It always represented a perfect standard that was performed objectively and free from impurity. However, STS scholarship has taught me that nothing can abstain from bias; science, technology, and medicine can engage with society in ways that are harmful, and there is an extensive history of such.

What happens when an industry traditionally known for its ability to remedy and treat people works in conjunction with a system known to regulate and restrict those same people? Lethal injection, a skillfully designed punishment that appears to be completely removed from the carceral system, is born. In this thesis, I explore the evolution of the death penalty through its progressive journey of medicalization. I investigate why this shift occurred, who it benefits, its impact on death penalty administration, and public perception. This is framed around Michel Foucault's novel, Discipline and Punish, which analyzes the theoretical mechanisms of punishment and power. Foucault details the roles of visibility and pain in penal power. Medicine has removed these elements, to a certain extent, but has not limited the power still embedded within the punishment. In fact, Foucault's framework showcases that the distant, instantaneous,

and painless method in which we conduct executions creates a different perception of punishment altogether. I use this to argue that lethal injection particularly functions as an intentional disguise of the death penalty in order to limit public discontentment. This maintenance of public support is ultimately the reason why the death penalty has persisted for centuries. Foucault's study of discipline and punishment is encased within four general rules:

1. "Do not concentrate the study of the punitive mechanisms on their 'repressive' efforts alone, on their 'punishment' aspects alone… As a consequence, regard punishment as a complex social function" (23).
2. "Analyse punitive methods not simply as consequences of legislation…but as techniques…in the more general field of other ways of exercising power. Regard punishment as a political tactic" (23).
3. "Instead of treating the history of penal law and the history of human sciences as two separate series whose overlapping appears to have had on one or the other…a disturbing or useful effect…make the technology of power the very principle both of the humanization of the penal system and of the knowledge of man" (23).
4. "Try to discover whether this entry of the soul on the scene of penal justice, and with it the insertion in legal practice of a whole corpus of 'scientific' knowledge, is not the effect of a transformation of the way in which the body itself is invested by power relations" (23).

The first asserts that a punishment is not imposed merely for its punitive attributes, but is also heavily tied to the social climate surrounding the penal system. The death penalty is carried out by the government in accordance with the values of the public. This also means that as society creates new requirements for punitivity over time, the penal system has to continually

shift to meet those needs. The second argues that punishment is inherently political, and that there is an underlying agenda influencing how it is conducted. In the instance of the death penalty today, this agenda is the subordination of marginalized people specifically Black, poor, and mentally ill individuals. The third suggests that incorporating technology into the penal system humanizes it by creating a semblance of modernity. Medicine, science, and technology being employed for the death penalty completely conceals the idea that a killing is happening. Lastly, he notes that this overlap has caused a transformation entirely of what we deem to be punishment by stripping it of its original relation to power, in order to give it a new one. Executions become punishments in which the power lies in the fact that its punitive effects are invisible. We fail to see it as a punishment at all, and this is what allows it to continue.
Stuart Banner, an American legal historian, is also credited heavily in the beginning of this thesis. His encyclopedia of executions, *The Death Penalty: An American History*, tracks the evolution of capital punishment and captures the socio-historical perspective.

This thesis is framed around capital punishment which is highly divisive and political. Although it is largely anti-death penalty leaning, the morality of capital punishment is not what is being contested. I am choosing to focus specifically on the medicalization of executions and its implications. Similarly, this is an issue that is incredibly nuanced. I speak very little about crimes and crime victims, simply because it is not the focus of the thesis. But I want to acknowledge that violence and harm are not issues that should be taken lightly. The focus of this thesis is the structural violence occurring in the penal system through the employment of medicine. Interpersonal violence is often a direct result of structural violence. Therefore, perpetrators of crime become victims of structural harm when they enter the penal system, if not already.

It is also important to provide some information around the language that I frequently use in the thesis. I use “the state” and “the government” interchangeably, but when I refer to individual states, I distinguish them by name. I also use many different words to describe people on death row or people being executed; they are referred to as offenders, perpetrators, “the condemned”, and a term that I coined, “the executionee”. Humane is also a word used frequently throughout this thesis, by both myself and the sources I credit. However, there is no legal definition of “humane” in regards to humans. It is used almost exclusively to refer to how to slaughter animals compassionately. Therefore based on my understanding of Foucault and Banner’s notion of punishment, I conclude that it is socially constructed. The ability for a punishment to be “humane” is dependent on the social standards of the time period. “Humane” as described in the 1800s does not hold the same meaning in 2022. This is also true in regards to how the Supreme Court uses the term; an “inhumane” punishment is one that is “degrading to human dignity” and “clearly and totally rejected throughout society” (Furman v. Georgia, 1972).

Chapter I focuses on the history of the death penalty from Colonial Times to the 1960s. It details all of the execution methods that were predecessors to lethal injection. I explore the role of the spectacle, pain, and community in the early facilitation of punishment. This is followed by tracking the shift towards the removal of the audience for private, and intentionally concealed executions. I further describe the introduction of science into the penal system to satisfy a desire for pain removal. All of this serves to highlight executions becoming a process in which attempts are made to eliminate visible suffering and block the public’s participation. As a result, the meaning and purpose of capital punishment shifted from being a method communities use to protect themselves, into a way that the government can exercise control.

Chapter II is centered on the inherent political agenda that is embedded within the penal system. I explore the desire for harsh punishment, specifically in the South, and how it is targeted towards Black communities. This history of killing Black people as a fear tactic started with slavery, then lynching, and has continued with blatant racism in death penalty administration. I also discuss people with intellectual disabilities and mental illnesses as additional groups that should not be on death row but are continuously criminalized. Poor people are also most likely to be convicted of capital offenses simply because the law only pardons wealthy individuals who can afford strategic lawyers. I use all of this information to conclude that there is intentional subordination of marginalized groups through capital punishment.

Chapter III explores the medicalization of executions in the U.S. through lethal injection. It follows the history of the first lethal injection and the initial attitudes around the punishment. I argue that this completely medical approach to killing is what makes it appear "humane" because of its use of the latest technology. The three-drug cocktail that once served as the primary protocol, acts as a launching point for understanding ways that lethal injection can become botched (both visibly and invisibly). As states navigate different lethal injection protocols, the chapter investigates how prisons deal with challenges in drug shortages and how legislature shifts to meet the needs of the government.

Chapter IV explores the dialogue around physician involvement in lethal injection. The subject remains extremely controversial because of the role that medical personnel play within society. I explore the American Medical Association's guidelines in comparison to state legislature regarding physician participation. I also include first-hand accounts of medical professionals explaining why they have chosen to take part in executions. The chapter highlights

the ways in which the medical profession has been co-opted by the penal system in order to use their reputation.

Chapter V details the public's perception of executions from the 1970s to today. I discuss how punishment philosophies serve as a basis for support and opposition of the death penalty. The chapter also explores how lethal injection has played a key role in death penalty support. I examine how we are experiencing a gradual decline in support today as people learn more about the inequities in the penal system. This is further supported by media coverage in newspapers, television, and online, and its influence on the public's views.

Chapter I: The History of Capital Punishment

The death penalty in the United States has experienced a massive evolution from century to century. This chapter discusses the origins of the legal statutes that became capital offenses as well as society's attitude toward crime in the eighteenth century. It will also detail the technological methods and structures that were used to execute perpetrators of crime, starting from the gallows and ranging to the electric chair. As states differed in the development of their own protocols, there is also a history of botched executions with each new method that came to the forefront. The progression of the U.S. through the centuries from a colonial society into the nation that is recognized today, also signaled a shift overtime in attitudes toward the death penalty. This chapter discusses how a once public spectacle that involved entire communities morphed into a private phenomenon that is rarely ever seen by laypeople.

Colonial Punishment

The concept of capital punishment and the death penalty was first brought to America in the seventeenth and eighteenth centuries at the beginning of English colonization. At this time, England was experiencing a rise in the intensity of its criminal law, and had over two hundred capital crimes (Devereaux 7). In fact, there was a whopping two in three chance of being hanged (Devereaux 3). This period was nicknamed the 'Bloody Code' because of all of the executions that occurred for crimes that would be deemed trivial today. The crimes could be sorted into four main categories: robbery, burglary, "stealing in a dwelling", and forgery. Majority of these crimes did not have to include the threat of violence, and were seen as punishable when goods valued at only forty shillings (the equivalent of two euros) were stolen (Devereaux 7). It is reported that the capital offenses of the 'Bloody Code' targeted the poor, especially domestic servants, by being centered around money, goods, and property. Wealthy men in power wanted to

ensure that their properties were protected, thus to deter such crimes from occuring, England experienced a rise in executions ("Prison and Penal Reform"). These laws had great influence on how the death penalty was conducted in Colonial America.

The northern and southern colonies operated differently in this respect. New England had a strong religious underpinning due to the Puritan origins of Massachusetts and the Quaker beginnings of Pennsylvania, thus this impacted how English models of punishment were applied (Preyer 327). Statutes regarding property were more lenient, but were incredibly harsh for religious crimes. Puritan conceptions of righteousness equated crime with sin, and thus it was the responsibility of the state to act as God and provide the punishment of death. Crimes such as adultery, witchcraft, sodomy, treason, murder, and rape all became capital offenses as this was in line with biblical law. Crimes against property were handled through fines and whippings in the northern colonies, while manslaughter and other homicidal crimes were capitalized (Preyer 333). This did not change until the mid-seventeenth century when the original sense of religious mission was lost after the end of Puritanism.

Contrastingly, capital offenses in the southern colonies resembled English law with harshness regarding property. Stuart Banner notes

> "property tended to be distributed less evenly in the South than in the North which may have caused southern elites to see a need to maintain the English capital property offenses. Southerners also tended to come from regions of England that were more violent than the regions from which northerners emigrated" (7).

This historical contrast ultimately serves as the origin for the lack of standardization and uniformity that can be observed in death penalty policies in present day. While the majority of executions in the seventeenth century occurred in New England to white people, in the eighteenth century, the majority of executions occurred in the South to Black people. This was representative of the South's own 'Bloody Code' in which enslaved Black people were

specificially targeted due to expansion in the slave-labor economy, and slave owner's requesting assistance from the state in discipline (Steiker 245). Similar to the English elites' fear of losing wealth, southern colonies were fearful of slave revolts, which notably occured in 1663, 1712, and 1739 (Blakemore 2019). Enslaved people made up more than half of the population in each of the colonies and were executed at extremely high rates; for example, "In North Carolina…at least one hundered slaves were executed in the quarter-century between 1748 and 1772, well more than the number of whites executed during the colony's entire history…" (Banner 9). In fact, in southern colonies, separate capital codes were created based on one's slave status and race. This means that in Virginia, for example, Black people could face the death penalty for sixty-six crimes while white people were eligible for death for only four crimes (Steiker 248). This purposeful discrimination in criminal law ultimately functioned to remind Black people of their subordination to their white counterparts, and ensure that there was no tolerance for crime, especially if the victim was white. This sentiment continues to prevail in the racial discrimination seen in death penalty administration currently, which will be explored further in later chapters.

Deterrence was framed as the primary purpose for capital punishment as the objective was to create an example out of those who committed crimes to prevent others from following suit. Therefore, executions were highly publicized events published in newspapers and discussed throughout towns in order to garner as much attention as possible (Banner 11). A public execution functioned as a necessity because it ultimately taught a lesson in the distinction of righteous versus evil behaviors. It was not enough for people to simply know of the punishment, there had to be an audience to see it and partake in the process. Foucault analyzes executions as a sort of linkage or communication between crime and punishment. The punishment takes on a more intense form than the crime, while directly wreaking havoc on the body. He noted that this

mechanism is further strengthened when there is a visible manifestation of it. Furthermore, at that specific conjecture in history, the power of the punishment lay within the "spectacle" (57). Large crowds of over five thousand people gathered to witness executions; it was seen as a family event that parents would even bring their children to see. At the beginning of the eighteenth century, crowds had increased to over fifty thousand people, doubling or tripling the population of its respective colony; people were willing to travel long distances by foot or carriage to see hangings happen if there were not any upcoming executions in their own town (Banner 24).

Hangings were carried out as the equivalence of a church service, with a minister who delivered a sermon, the condemned person reciting a speech, and even a hymn sung by the audience at the end. Banner includes that "spectators who were close enough could ask questions of the prisoner and hope to get them answered, sometimes they could even inspect their body after the hanging was over" (26). Although the condemned person was on display, Foucault describes that the main character of public executions were the people. In addition to the deterrence component, their presence was required in order to facilitate a medium for their feelings towards crime. It aroused feelings of fear, anger, and vengeance which were directed at the condemned, inherently embedding power in the punishment. These feelings toward the condemned are immediately being associated with crime in general, which creates a society in which communities carry out justice for themselves. It is a dynamic of self-policing rooted in what Banner describes as "collective condemnation" (245), for which all of the townspeople are united against crime. This is intentional; "they must see with their own eyes. Because they must be made afraid; but also because they must be the witnesses, guarantors, of the punishment, and because they must to a certain extent take part in it" (Foucault 58). The punishment simply

could not have meaning if it was hidden. It would be assumed that it had not been carried out at all; it would be rendered powerless and thus purposeless. I also believe that Foucault's discussion of power does not only exist in the theoretical sense, but represents the physical act of torture and severity, which will be examined further as I explore execution technologies.

The Gallows

Hanging as an execution method in the colonies derived from England but was already familiarly used as a form of suicide. However, the invention of gallows in the early 1700s was introduced by the colonies; prior to this people were hung from trees (Banner 44). The gallows were often wooden structures described as having two uprights and a crosspiece for the rope (Britannica 2019). The original use began with placing a ladder against it that the condemned person had to climb with a rope around their neck before the executioner pulled it away. However, this later proved to be less than effective because the fall from the latter was examined to be too gradual to be fatal (Banner 45). As this method evolved, the condemned person stood under the gallows in a horse-drawn cart which would then be pulled away. Ultimately, the gallows were built on top of a scaffold that had a trap door which could be pulled away. "A scaffold could be built up to a greater height than a cart, and the falling trap door made it impossible for the prisoner to let himself down gradually, so his fall was more likely to reach a velocity that would kill him" (Banner 46). Although hanging is a relatively simple form of killing, the science behind the practice made it difficult to render the same results every time it was done. In order for death to be as fast and 'painless' as possible, a cervical fracture had to sever the spinal cord which relied on the force of the drop to be powerful. However this rarely happened, "most people who were hanged died more slowly, as the rope encircling their necks either cut off the supply of blood to their brains or prevented them from breathing. The loss of

blood to the brain was the least painful, producing unconsciousness within seconds. Asphyxiation, in contrast, left the conscious victim writhing and gasping through the last several minutes of life" (Banner 47).

The visual scene of watching a person struggle for their life was displeasing to the large audiences that came to watch, and as a result, spectators would sympathize with the person being killed. This was favorable for people in opposition of the death penalty as the gruesome scenes caused people to side with the condemned instead of the state. Foucault notes that this was actually a result of spectators commiserating with those who were on the gallows. As I mentioned previously, many of the capital offenses in Colonial America specifically targeted poor and Black people. The entire community was involved in the execution but wealthy, white individuals were the ones actually determining which crimes were punishable by death and by whom. Lower support for executions in the eighteenth century is explained by Foucault as people of the "lower strata of the population" realizing that it was enacted unjustly. The excessive sentences for non serious crimes such as stealing low value property greatly agitated people. For example, in a household with many domestic servants, if an item was stolen, there was no way to prove anyone's innocence. Similarly, servants could also be victims of their employers' spite, who could turn a blind eye when they were condemned and hanged (Foucault 62). I am positive that a worse reality existed for enslaved people in Southern America, especially with the practice of lynching, which once again provides context for eighteenth century slave revolts.

Spectators identified with the condemned individuals on the gallows, and realized that this same power that they were using to police their communities could also harm them. It added a humanizing element to the condemned. As a result, physical force was used to prevent unjust

executions which ultimately caused social disturbances. There were instances of condemned individuals being snatched from executioners, executioners being assaulted, and judges being abused (Foucault 60). Foucault notes that since the public played a pivotal role in punishment because of their spectator role, they also felt the responsibility to intervene (physically) when they had concerns with how the law was upheld (61). This was politically disfavorable because instead of distinguishing one group as "evil criminals who deserve vengeance", it created a sense of solidarity. In fact, as time passed even people who did not identify with those on the gallows no longer wanted to participate in executions. As the societal standards of the early nineteenth century shifted, hangings started to be too gruesome for certain groups to watch. Upper class society and women were repulsed by the idea of viewing an execution because they were regarded as having a higher moral standing and being more refined (Banner 146). This means that even the people that benefited the most from executions, and were mostly in favor, no longer wanted to take part in viewing the actual killing.

What does a penal system do when the people who gave the punishment power, reject it? An acceptable response is to abolish the punishment, but instead they decided to distance the people from it. Foucault notes public opinion as the deciding factor that overturned the ritual of public executions (60). In his first objective, he analyzes punishment as a socially constructed entity that inherently reveals the nature of what the public deems acceptable in regards to punitivity. This concept of the public having great influence on how punishment is conducted has consistently proven to be true throughout history, and will be explored more in coming chapters. The "distance" that I mentioned is a privatization that will also be discussed further, as the state was extremely intentional with the mode in which this was done. In the nineteenth century, officials controlled access to hangings more heavily. This was most likely a result of all of the

backlash. They transitioned to happening in prison yards instead of at the gallows, and people who were not able to watch from inside the fence stood beyond the gates in a large crowd (Banner 157).

The optics of pain and suffering also play a large role in the evolution of capital punishment, technology, and its privatization. Banner suggests that the ideal goal was for hangings to be as instantaneous as possible. The goal was not to inflict suffering upon death. However, it inevitably had to be this way until a better solution was found. Foucault counters with the idea that "torture" was required of the punishment in order to be a true exercise of power. Pain represents both the physical manifestation of power, and the reproduction of the crime onto the visible body of the perpetrator (Foucault 55). The community felt harmed, and that same harm had to be replicated in order to achieve vengeance. But it could not be silent, painless or hidden because then it would cease to be a punishment altogether. Foucault names this as an atrocity, "the punishment must take responsibility for this atrocity… it must reproduce it in ceremonies that apply it to the body of the guilty person in the form of humiliation and pain. Atrocity is the part of the crime that the punishment turns back as torture in order to display it in the full light of day" (56). This visibility of suffering in the form of an audience but also in the form of pain was essential to eighteenth century capital punishment. Although the government claimed that their intention was not pain, it saw no qualms with painful hangings until people raised alarm. Banner discusses some outliers in which the condemned person intentionally did not display any emotion during their execution. This was said to be an act of resistance against the state, displaying that although it had won the person's body, their spirit had not been won.

When executions shifted from the gallows to prison yards, there was an element of concealment enacted, and the entire notion of visibility and power had been flipped on its head.

Large crowds stopped gathering in the jail yards, and people depended on reading about hangings in the news instead of physically being present. People were stripped of their role in capital punishment, as it was no longer them policing each other. Now the government was doing the punishing and the people were reading about it later" (Banner 168). Communities were requesting for executions to stop altogether because it impacted marginalized members, and instead of doing so the state's solution was to hide them. What was the purpose of conducting a punishment that no one saw? Foucault theorizes that the removal of the public from the penal system is directly linked to the search for painless or "humane" methods of execution. When justice occurred on behalf of the public, communities were "responsible" for any violence that ensued (Foucault 9). However, since members of the public raised suspicions about the practices and were subsequently removed, the state now had to answer for any violence that was inflicted. Foucault notes that there was shame embedded in the act of imposing justice on the condemned man, therefore there became a desire to create distance (9-10).

Distance between punishment and the body, so that power is less physical and less exposed. Additionally, distance between the executioner and executionee, as there was shame in inflicting punishment. This distance later took on a more medical form but within Colonial America, it meant that the role of executioner lacked any professional jurisdiction. In earlier years, for some colonies the 'hangman' was also a condemned person who exchanged their death sentence to serve as executioner for a number of years (Banner 36). The duty was later passed onto county sheriffs who were responsible for assembling the gallows but placed advertisements in the newspapers for people willing to do the actual job of execution. People were deterred from the idea of being an executioner, therefore it usually was not a role that one person occupied alone, rather it was split amongst different townspeople who received no training. People

avoided the job of ‘hangman’ for fear of association with the role. The objective was to be an executioner for a moment, and then immediately go back to being a regular citizen (Banner 38). Although there was general consensus in favor of the death penalty, people still were reluctant to have an individual hand in putting the law into practice. By the late nineteenth century, people wanted to avoid the job of hangman to the point that some ‘prisoners’ created devices that allowed them to essentially execute themselves. Banner notes three separate accounts of gadgets that were invented which allowed the condemned to press a button or step on a platform which would then activate the removal of the trap door (Banner 174).

In this way, the purpose of capital punishment shifted completely. The argument for deterrence was no longer effective because only an intimate group of individuals were allowed to view executions, most likely those with government or media affiliation. This transition in the eighteenth and nineteenth centuries launched the start of the privatization of capital punishment, which later took a scientific and medical trajectory.

The Electric Chair

At the end of the nineteenth century, hangings had already received a large amount of criticism because the gruesomeness did not reflect a civilized and enlightened society. The image of suffering was now perceived as too heinous by spectators, and critics pushed for a method that was less painful and appeared less visually troubling. News articles began to detail ‘botched hangings’ for the first time discussing convulsions as horrific and barbaric, even though these same sights would not have shocked them decades before (Banner 172). Similarly, methods of reducing pain through different anesthetic techniques also rose during the mid-nineteenth century. Ether and Chloroform began to be used by physicians with increasing popularity during the 1850s to ease pain during childbirth, dental procedures, and other surgeries (Harrah 2015).

This created an understanding that pain was not inevitable and that science could lead to an answer in creating painless executions.

At the rise of the twentieth century, electricity was a novel form of technology that had been discovered. People were in awe of all that could be done with the power of current. Light, in particular, stirred up amazement as well as other electrical machinery that could produce heat and generate energy (Martschukat 2002). Physicians introduced science into the sphere of capital punishment through galvanic experiments, this involved running electrical currents through the corpses of recently hanged people to determine if they may be reanimated after death (Banner 175). This then started a series of hanged people every other year, from the 1870s, who were believed to still be alive; a notable case, "Jack Lambert was reported to have been seen walking around on the Sunday after his hanging, and was rumored to have been revived with an electric battery, brandy, and aromatic spirits of ammonia" (Banner 175). As electricity retained its popularity, researchers began to wonder if electric current had lethal effects, as they had witnessed the capability of electricity on animals and "experienced electric shocks themselves as sudden and painless and not causing any visible sign of bodily harm or mutilation" (Martschukat 909, 2002). This opened up the possibility that if an electrical charge was strong enough, it could have the ability to kill a person. Benjamin Franklin and Thomas Edison were consulted on the matter, with both attesting that it would inflict the least possible amount of pain. This was among the first time that scientists and physicians became involved with the death penalty. The inclusion of science in this process, and the dependence on doctors to be experts on death initiated the move towards medicalization.

The optics of death continued to be important when making decisions regarding electrocution, because the emphasis remained on how the execution was perceived. This is

directly linked to the social aspect of punishment; the execution had to cater to the aesthetic of the public in order to maintain their support. The popularity of electricity, in general, already provided an advantage towards its use in capital punishment, but particular details regarding *how* were still important. For example, the position best suited for carrying out the procedure. It was determined that no one could be executed standing up because they would fall on the ground after being electrocuted, "and the sight would be displeasing to spectators. They also could not be executed lying down, because spectators would have to come uncomfortably close to get a good view" (Banner 181). The emotions of spectators is what ultimately determined that there would be an electric chair because it would be the most visually pleasing.

The electric chair was highly linked to scientific progress, it represented a form of advancement that was not associated with hangings. Critics argued that it may be viewed too much in line with modernity and that people might not view it as capital punishment at all. It was a system grounded in technical knowledge that was accessible to a scarce portion of the population, "practiced by those who claim to be enlightened, civilized beings" (Banner 183), thus some worried that it would lose value as a punishment. It removed many of the human aspects that lingered with hanging, and by replacing the physical with the technological, it would make executions "humane". Foucault describes this as a sort of technologicalization of power that humanizes the penal system because of overlap between the spheres of science and law (23). The first electrocution happened in 1889 to William Kemmler, who ultimately served as an experiment for both death penalty and scientific histories. According to Martschukat, a large mass of people gathered at the prison gate, but instead of the yelling and commotion that usually happened at the gallows, the crowd was completely silent. Journalists reported that everyone spoke in a subdued way, almost as if they were in awe of this new technological advancement

(917); however, it was not exempt from its own complications. The amount of voltage of electrical current was not agreed upon prior to the execution, and after the first surge, Kemmler appeared to still be breathing. This then resulted in more surges along with his face distorting, flesh burning, and blood dripping from his face. In newspaper reports, it was described that Kemmler literally roasted to death, and that the horrific sight was far worse than any hanging (Martshukat 918).

This deterred people from the electric chair, and the death penalty altogether, yet medical and technological experts still argued that the condemned did not suffer from any pain. They claimed that Kemmler died immediately from the first electrical surge, and any movement seen after was simply the muscles reacting to the expulsion of air. Dr. Spitzka, a physician in forensic medicine, even said that the "emotional side of our nature" should not distract people from the "undeniable success" achieved during the execution (Martshukat 919). It became clear that in order to keep the electric chair as an execution method, the appearance of pain had to disappear entirely, and this could only be assured if a more detailed standard of care was applied. Executioners could only be electricians, trained specialists that understood how to operate electrical equipment in a way that is fatal but also does not create damage to the body (Banner 194). The pattern for properly executing a person via electricity was not solidified until 1928, "with short periods of higher voltages to cause instantaneous unconsciousness and death, and longer periods of lower voltages to keep the heart, brain, and lungs paralyzed without burning the body" (Banner 194). In this way, carrying out an electrocution required much more professionalization than hangings. The details were incredibly important in order for it to produce an execution that was "humane" and reflected the wants of society. In order to do this, there was distance from the body through the use of machinery and electrical current. Foucault

explains this as a death in which contact between those that conduct it and the body of the criminal is reduced to a split second. The physical confrontation is removed, and in order for the method to work "perfectly", there has to be an "invariable mechanical means whose force and effect" must be pre-determined (13).

In addition to this, the electric chair was also highly influential in the privatization of capital punishment or the "distancing" of the people. Electrocution was an event that could solely happen indoors and the machinery needed was permanent and expensive. In contrast to hangings happening in individual counties, states could not afford to purchase multiple chairs for each county, therefore all electrocutions happened in one state prison. This meant that crimes were executed at a significant distance from where they occured and local townspeople who were supposed to be deterred from crime did not have access to viewing it. Lofland argues that this transition was a deliberate act of concealment because of the decision to have one place of execution for a large region of people (281). Similarly, there was only space for a maximum of about thirty people to be spectators, this included friends and family members of the condemned but also mostly state officials. Media representatives also had regular attendance, but regular townspeople who submitted applications were often denied the opportunity to be witnesses (Banner 195). Ultimately, executions became framed as an event that one had to have status to attend, and the same people were invited to show up each time.

Although the electric chair proved to be a successful method of execution and doctors were certain that it was painless, many electrocutions after Kemmler still created a spectacle. It was somewhat impossible that anyone could have extremely high voltages of electric current running through their body without showing some degree of physical movement. However, since medical experts continued to assert that the condemned individuals were unconscious, and

electricity had promised society a merciful killing, there was not any room to interpret these events differently. Spectators agreed that while it was difficult to watch, it was still more humane than hangings had been. The goal was simply to have each method facilitate less pain than the last, or at least have the appearance of such. Thus because the public had no qualms with electrocution, (i.e., the few that were able to view it), the electric chair persisted into the majority of the twentieth century.

Gas Chamber

Two other methods of execution rose to prominence during the reign of the electric chair: lethal gas and firing squad. Capital punishment was carried out on a state-by-state basis, as it has always been, thus while northern and southern states used the electric chair, states in the west adopted the gas chamber. Although it was not officially used as an execution method until the twentieth century, the concept of gasses having lethality originated in the 1850s. Claude Bernard and Carl Scheele, chemists at the time, conducted experiments on the effect of gasses on the blood, as they had witnessed poisoning outcomes on animals who breathed in carbon monoxide. This was further explored in 1874, when gas chambers were used in London to solve an animal overpopulation problem through asphyxiation with carbon dioxide (Christianson 25). As states transitioned from hanging and legislators were thinking through possible alternatives, lethal gas was proposed along with electricity. However, there was more favor for the use of an electrical device because it was perceived as a more powerful deterrent to crime, and legislators did not yet have faith in gas technology (Christianson 30). Lethal gas was not used to poison and kill humans until WWI, in which chemical warfare became a significant threat to the U.S. Army creating the need for Chemical Warfare Service to produce weapons. It was re-introduced as an execution method in 1921 after a Nevada governor signed the Humane Execution Bill, it was

believed that lethal gas was more humane than any other execution method. Although in battle many soldiers had experienced excruciating pain from gasses, officials were adamant that "the poor soldiers on the battlefield had suffered more because of low concentrations and other conditions, whereas a lethal chamber would provide highly concentrated doses in an enclosed space, thereby ensuring a quick and painless death" (Christianson 63). The bill made Nevada the first state to require lethal gas to end human life.

The first person to be executed by hydrocyanic gas was Gee Jon in 1924. It had been multiple years since anyone had been on death row in Nevada, and being a Chinese immigrant, Gee allegedly committed a crime at a time when prejudice against Asians in the West was extremely high. The first execution by gas appeared incredibly gruesome, just like all the methods that had come before it; the condemned sat in the "death chair" for several minutes before his head repeatedly flung back and forth in slow motion for forty minutes (Christianson 82). Nonetheless, it was deemed a success as physicians asserted that the individual experienced instantaneous unconsciousness, while their body could still create convulsions as a natural, biological response. As time went on and more became understood about gas chambers, a routine sequence was discovered that time stamped each step of the execution process. Executioners knew the exact moment the condemned would become unconscious, followed by their head falling forward, then back, until muscular movement and respiration stopped (Banner 202). In contrast to the electric chair, because of its routine and clinical nature, prison employees were able to take on the role of executioners simply by gaining experience. Banner notes that it was easy to take on this role because "technology served as a buffer between the condemned prisoner and his executioners, reducing the distaste experienced by the latter. Death by lethal gas was more mechanical, which made it less personal" (Banner 204). Once again technology,

particularly chemicals, served as a mode of distance in order to create the semblance of "humaneness".

The introduction of the gas chamber signifies that there was a push for the inclusion of science all across the U.S. A technique that had formerly only been used by the military during warfare had now become commonplace in Nevada's carceral system. The goal was to utilize technology in a method that removed physical torture from the body, and while electricity was popular in the east, chemicals gained traction in the west. There was also a continuous intention to shift away from a public audience which is represented in the "chamber" aspect. Lofland describes this transition as "from a highly personalized to a highly impersonalized place; from an open definition of the condemned's personal identity at the place of his particular crime to an obscured and generalized treatment of him at a centralized place where everybody and anybody and hence 'nobody' is executed" (281). It was a process that had to happen behind a sealed door with specialized equipment; large quantities of hydrocyanic gas had to be pumped into steel cylinders and dispensed with a mobile fumigation unit (Christianson 77). This means that executions only happened in one central location in the state. The "death house" was a former prison barbershop with two windows that allowed for spectators to see, but this was limited to less than ten people.

Firing Squad

Firing squad existed almost exclusively in Utah. The firing squad was a practice that was inspired by Mormon Doctrine of blood atonement, which stated that some sins were too heinous to be atoned by Christ, and therefore condemned people had to atone for their sins by shedding literal blood (Banner 203). In 1850, prior to Utah becoming a territory, the provisional state of Deseret, controlled by officials of the LDS church, created the capital codes. Murder was to be

punished by being shot, hung, or beheaded, and the offender was allowed to choose which option they preferred (Gardner 13). It was the first American territory to adopt such methods, hanging was used exclusively in other jurisdictions, and shooting was only employed for military executions. When Utah officially became a state in 1896, all of these statues carried over with the exception of beheading. Hangings were the only method of execution that was allowed but did not fulfill the blood atonement rite. It was viewed by Mormons as a secular method of capital punishment that was chosen if a person did not want to atone for their sins, but was kept legal by the state because it was against Mormon belief to force blood atonement (Gardner 14). This is an additional example of how the values of the society impact how punishment is carried out.

Execution by firing squad usually commenced by blindfolding the condemned person in order to conceal the identity of the executioners. A target is then placed on their heart and the firing squad, consisting of four to five members, all shoot at the same time (Banner 203). One of the shooters usually receives a gun with a blank in order to provide a diffusion of responsibility so that no one knows who fired a fatal round (Crime Museum 2008). Firing squad was the most preferred method of execution; out of the forty-four executions that took place in Utah before 1972, only six of them were hangings ("2 More Inmates", 1960). A notable botched firing squad execution was Wallace Wilkerson in 1879, who refused to be blindfolded or strapped to the chair. Reports state, "The guns fired; four heavy slugs tore into the condemned man. With the impact, Wilkerson leaped out of the chair and jumped forward five or six feet. He crashed to the dirt and turned his head downward to his chest. 'Oh, my God! My God! They have missed,' he screamed" (Friedersdorf 2015). The bullets did not hit his heart, thus he was struck by four more bullets, and writhed on the ground while twenty spectators watched. Wilkerson was not pronounced dead until twenty-seven minutes later.

Firing squad was the first execution method deemed as more “humane” than hanging without implementing any scientific developments. Yet it has remained the most rare method to be adopted, perhaps because of this same fact. Although death by firing squad was regarded as instant and painless, it did not gain popularity in other parts of the country because its appearance was unsightly in the most obvious way. The sight of blood, which could not be conjured by any other execution methods, could not be manipulated to be perceived as free from suffering.

The nineteenth and twentieth centuries marked the separation of the role of pain and the public in capital punishment. It became an event where attempts to minimize pain were made and were successful enough. While simultaneously prison officials felt they needed to keep executions private from the outside world. The original purpose of deterring crime was forgotten as executions were no longer a communal activity for the benefit of the people, but rather the state was in control of every aspect of the killing. Banner describes this as “the professionalization of punishment” (206) in which technology shifted capital punishment into a sphere that involves a small amount of specialists and machinery that needs to be operated in specific conditions with particular equipment. This combined with physically limiting the amount and type of people that can be present created a death that was done within the terms of the state. This privitization sets the foundation for capital punishment as it is known today in its primary form of lethal injection.

Chapter II: The Political Value of Human Life

The death penalty is not a punishment that has ever been free from bias. Foucault's second theoretical rule states that punishment should be seen not just for its punitive characteristics, but also as a political tactic (23). Therefore, if the punishment is disproportionately affecting specific groups of people, it is the result of the state intentionally choosing to enact structural violence. In addition to racial bias, the Equal Justice Initiative (EJI) also cites error, inadequate counsel, and arbitrariness as reasons why the death penalty is flawed. It is not my intention to reveal these qualities as means to debate morality, but rather to show that these patterns of inequity are inherently political. It is the penal system's means of subordinating particular groups of people. The EJI regards the death penalty as a direct descendant of former lynching pratices; researchers have documented nearly 5,000 lynchings in 11 states from 1877 to 1950 ("Lynching in America", 2017). These "executions" are rarely ever considered in national death penalty data because many of them occured "unoffficially" (i.e., without the involvement of the state).

Racial Violence

Banner notes the South was already more harsh than the North during colonial times; therefore as violent punishments became employed for slaves, white southerners became acclimated to violence in general (143). In fact, white southerners were more comfortable with public violence as hangings continued to remain public years after northern states had moved them to jail yards (Banner 145). Public executions did not become outlawed in the South until a 1936 hanging in Kentucky that created an unpleasant disturbance. Spectators, in search of a souvenir, ripped pieces of the hood from the condemned person's face before he was even pronounced dead ("The Last Hanging" , 2001). Nonetheless, if this represents how

state-sanctioned executions were carried out, one can only imagine how Black executionees were treated in the Antebellum South.

The EJI describes it as racial terrorism used to enforce subordination and segregation ("Lynching in America", 2017). These acts were tolerated by state officials and were conducted in response to acts that actually were not crimes at all. The "Lynching Era" from 1877 to 1950 was characterized by lynchings of Black men accused of sexual assault of white women, lynchings based on minor social transgressions such as speaking to white people without "proper" formalities, and lynchings based on mere allegation of a crime ("Lynching in America", 2017). This desire for brutality and vengeance against Blacks did not simply disappear with the rise of state-ordered executions in 1915, it instead became embedded within the system. Clearly, there were no legal ramifications for these acts of racial terror; in fact, "of all lynchings committed after 1900, only 1 percent resulted in a lyncher being convicted of a criminal offense" ("Lynching in America", 2017). Post-lynching era in 1950, the South's population of Black people dropped to 22% which seems to primarily be the result of Black people being executed in 75% of the executions that occurred in the South ("Lynching in America", 2017).

These extreme racial disparities were not challenged until the case of Furman v. Georgia in 1972. The Supreme Court ruled that the death penalty was in violation of the eigth amendment because existing laws constituted cruel and unusual punishment (Furman v. Georgia, 1972). This was the first time it was acknowledged that there is an overwhelming racial difference in death penalty administration and that this was not by chance. Thus, a moratorium on executions was incited in 1972. However, the ruling on Furman did not establish that capital punishment in itself was a violation of the 8th amendment, but rather that the previous methods used were inhumane. The moratorium ended in 1976 with Gregg v. Georgia. This ruling concluded that the 8th

amendment could be interpreted flexibly because it "evolves with standards of decency" (Gregg v. Georgia, 1976). Therefore capital punishment for the crime of murder was not invalid because retribution and deterrence could be possible benefits. States who still valued the death penalty used the time during the moratorium as an opportunity to brainstorm new methods of execution i.e. lethal injection. However, even with new technology, the inequalities of the death penalty still persist. Black people make up only 13% of the nation's population, yet represent 43% of the death row population and 34% of those executed ("Race and the Death Penalty", 2022).

Further Death Row Inequities

People with intellectual disabilities also face inequity on death row by the mere fact that they should be exempt. Intellectual disability is defined by significant limitations in general mental capacity as well as social and conceptual skills; an entirely separate condition from mental illness (American Association on Intellectual and Developmental Disabilities). Prior to 2002, an estimated minimum of 44 people with an intellectual disability had been executed (Keyes et al., 2002). In Atkins v. Virginia, the Supreme Court officially banned the execution of people with a "mental handicap" because they were believed to be lacking in areas of reasoning and judgement, that make the enactment of capital punishment disproportionately severe (Atkins v. Virginia, 2002). However this did not represent a complete victory because individual states were given the power to decide what constitutes an intellectual disability, and many of them created very narrow definitions that still permit such executions to happen. For example, a law review article reported that between the years of 2002 and 2013, only 7.7% of people on death row raised intellectual disability claims ("Continuing Issues"). This percentage is most likely not an accurate indication of the amount of people with clinical diagnoses of developmental delays, but rather only those whose lawyers decided to make the claim. Out of that 7.7%, the total

‘success’ rate of these claims are only about 55%. However, states that intensely deviate from clinically accepted methods of determining intellectual disabilities, such as Florida or Georgia, have success rates ranging from 11% to zero (“Continuing Issues”). In 2015, a condemned man whom state mental health experts unanimously agreed was intellectually disabled, was executed in Georgia. Prior to this, at the time that his appeal failed in the Georgia Supreme Court, the U.S. Supreme Court declined to intervene stating: “federal law mandates that this federal court leave the Georgia Supreme Court decision alone — even if we believe it incorrect or unwise” (“Continuing Issues”).

In a similar vein, people with mental illnesses (e.g., PTSD, bipolar disorder, and schizophrenia) are also vulnerable within the carceral system. Mental health experts estimate that at least 20% of people on death row today suffer from serious documented mental illness (“Position Statement 54”). Lastly, many people end up on death row simply because they are in vulnerable positions with inadequate resources. Wrongful convictions are a result of police misconduct, coerced confessions, and false accusations from witnesses promised incentives to name a few. This is coupled with the fact that many people cannot afford adequate legal counsel, and death penalty states do not require capital defense attorneys to meet training and experience regulations (American Bar Association, 2003). As more investigations have been launched regarding death penalty cases, more people are being exonerated and released from death row. According to EJI, for every nine people executed, one is exonerated, and this is a direct result of official misconduct as 87% of black exonerees are victims of misconduct (Dunham 2017).

However, it is important to note that many of these inequalities are specifically occurring in southern states, as eight in ten executions occur in the South (“Executions by State and Region”, 2022). This means that whether or not a person is sentenced to death row is primarily

based on where they live. In fact, since its reinstatement in the ‘70s, “only 2% of the counties in the U.S. have been responsible for majority of the cases leading to executions” (Dieter, 2013). The lack of standardization in capital punishment, originating from its inception, has created a dynamic in which particular groups of people are severely targeted. There is a political agenda at work that has created a system in which officials feel the need to impose such a severe penalty no matter how vulnerable the offenders in question are. I have no doubt that it stems from the histories of violence that permeate through poor and Black communities, and the desire to oppress by physical removal and harm. In the end, what does excessive and inequitable use of the death penalty do for society? Deterrence as an argument for punitivity is invalid because there is no credible evidence that proves the death penalty has this effect. Statistics have continued to prove that an increase in executions has no impact on crime rate (American Civil Liberties Union, 2011). Once again, a punishment, no matter how harsh in nature, cannot deter people from a crime if it is concealed from public view. This means that punitive power has long been ripped from the hands of the public and given to the state. Furthermore, it is crystal clear to distinguish which lives the state values and which are considered disposable.

Chapter III: “Humanizing” the Penal System

The earliest use of medicine for the purpose of killing dates back to 1939 in Nazi Germany. Hitler created a program intentionally mislabeled as euthansia called T-4 that served as a form of “mercy killing” for terminally ill “patients”. T-4 was responsible for the creation of “killing centers" disguised as hospitals in several cities in Germany and Austria (Friedlander 89). The victims were traditionally people with non-fatal disabilities such as epilepsy or encephalitis before later introducing children who were physically “handicapped” and juvenile delinquent teens (Groner 69, 2002a). Primary care physicians registered patients for the program in which intravenous injections delivered fatal drugs. It was referred to as “final medical assistance” to save patients from “unnecessary suffering”; a “procedure to alleviate what they perceived to be the burdens imposed upon society by chronic illness and disability” (Groner 70, 2002a). Years later during the Holocaust, lethal injection was utilized by SS physicians to kill ailing Auschwitz “prisoners”. The medicalization of capital punishment officially commenced with the introduction of lethal injection. It is currently the most commonly used form of capital punishment in the U.S. with 27 states that still retain the death penalty, mostly in southern and

western states (*Figure 1*).

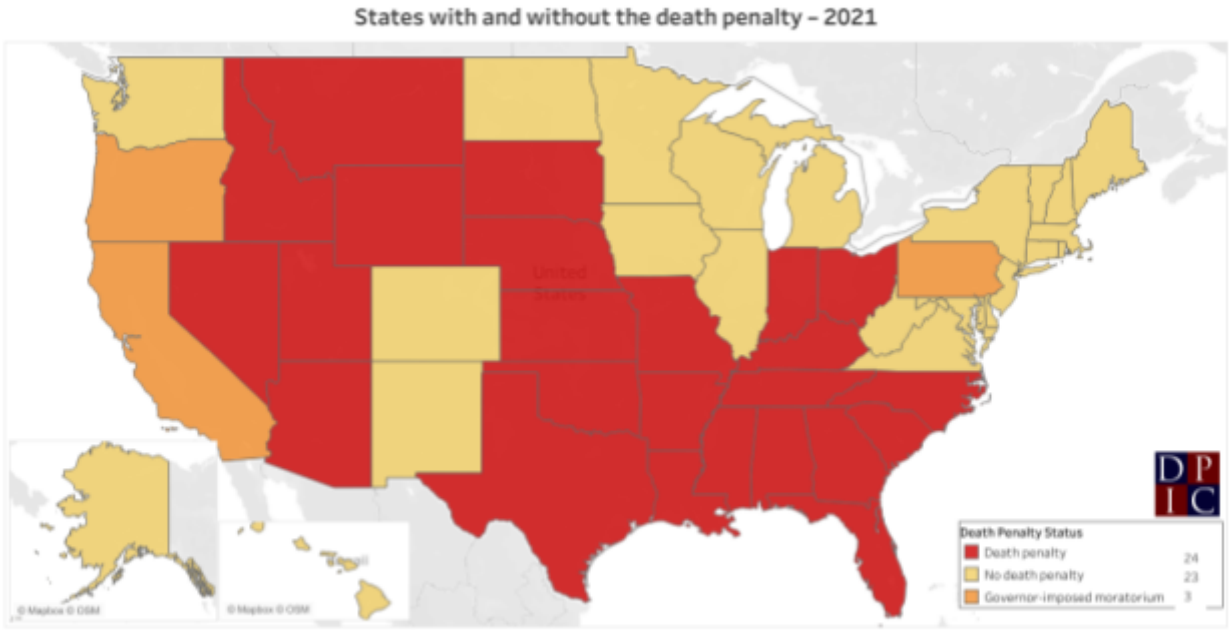

Figure 1. The Death Penalty status of every U.S. state

Source: The Death Penalty Information Center, 2021

Medicine as a Solution to Executions

Medicalization refers to a process by which nonmedical issues become "treated" with medical interventions (Conrad 4, 2007). Executions function within this scope because there is no medical necessity to have them done through an intravenous administration of drugs. The jurisdiction of medicine expanded to accommodate this event (Conrad 24). The rhetoric of healing had long been associated with the death penalty from its inception. Chauncy Graham compared execution to "the cutting of a Wart or a Wen from the Body, an operation that does not only free it from that troublesome deforming Excrescence, which to the Loss of the whole… but it may prevent the Growth of many more, that would in Proportion, rob the Body of proper Nourishment" (Graham 1758). Execution was the 'surgery' that cut the 'tumor' of crime from society to facilitate 'healing' within the community. This rhetoric is still somewhat used today.

On the Polunsky Prison website, a facility in Texas that conducts executions, many of the executionees' last statements included wishes that their death would bring healing to the families of their victims ("Allan B. Pollunsky Unit (TL)") .

Medicalization rose to prominence in sociology as a critique of the rise in overmedicalization or the ways in which problems have been inappropriately medicalized (Conrad, 2007). This is a result of the fact that medicalization is socially constructed, and in many instances the medical profession does not need to have any involvement (Conrad, 1992). In other words, if society dictates something as an illness that requires 'curing', then that is how it will be framed regardless of any medical expertise. For example, in regards to alcoholism, physicians did not start to perceive it as a disease until the social movement, Alcoholics Anonymous, framed it as such (Conrad, 1992). This does not mean that all forms of medicalization are negative, but specifically in the case of the death penalty, there are malicious implications. The creation of lethal injection suggests that people who commit capital offenses are society's "disease", and because they are "incurable", the only suitable "treatment" is death. One of the primary issues of (over) medicalization is that it focuses the problem on the individual rather than the social environment, so that instead of having collective solutions, there are individual medical interventions (Conrad, 1992). This mirrors the way in which our penal system also works and thus makes medical executions seem intentional.

It essentially functions as a medicalization of deviance, in which society has declared only particular behaviors as natural, and all other behaviors need to be treated in order to follow the norm again. This was notoriously done with homosexuality, which was classified as a psychiatric disorder by the American Psychiatric Association for decades until demedicalized in 1978 (Conrad 99 med of soc). Medicalizing the death penalty is society and the state's way of

asserting that people on death row exhibit abnormal behaviors, despite how they may have gotten there. Because of the major iniequites that are present in death penalty administration, there is actually a specifc group of people who have been separated as being “untreatable” and having behavior that is too defiant to cure. Largely capital offenses committed by Black, poor, and/or mentally ill people are the ones deemed worthy of execution, and perhaps this suggests that people at this particular intersection of identities need to be medicalized.

This sets the background for lethal injection use in the U.S. prison system, which began only forty years later in 1982. A moratorium on executions occurred between 1972 to 1976. Simultaneously, Oklahoma’s electric chair became damaged and repairs were estimated to cost $50,000, which the state was not willing to spend on its death row population. A professor of anesthesiology then advised an Oklahoma state senator that if the technique for inducing anesthesia was modified, it could be used for killing (Groner 890, 2008). He primarily used his experience as a patient to assure that it would be a humane execution method. It was appealing to the state senate reportedly because “repairing the electric chair would cost $50,000, building a gas chamber would cost $250,000, and the equipment for lethal injection cost $10” (Denno 2007). There are no reports of the state consulting any other expertise before writing it into Oklahoma law in 1977, which was directly followed by Texas. In fact, the legislation was intentionally vague with no specifications in drug types or amounts, and no instructions regarding record-keeping. All critical decisions regarding the implementation of lethal injection were left to prison officials (Sarat 51). As it was adopted in other states, most followed this pattern and did not seek guidance from the medical community in terms of how laws should regulate the procedure.

The first lethal injection did not occur until 1982, as there were discussions about the role of health professionals in the process and whether a contention of cruelty still remained. This established that because lethal injection represented a new level of scientific modernity, any issues that could possibly arise from it would undoubtedly be better than what had come before. Foucalt alludes to this in his third rule of the new tactics of power stating that the overlap between the fields of medicine and law "humanized" the penal system by making it professionalized (23).

Once lethal injection was finally used for the first time, it instantly became popular across the nation. From 1982 to 1999 (the "peak" execution year), the number of executions increased over fifty times as much. The annual execution rate increased to 98 per year, and since 2000, 97% of executions were performed by lethal injection (Groner 1, 2002a). To observers and prison employees it looked no different from a medical procedure. One asserted "...intravenous tubes, a cot on wheels and a curtain for privacy - the well-lighted cubicle might have been a hospital room", another said it looked similar to "closing your eyes and going to sleep" (Groner 67, 2002a). The optics of the execution remain an important factor in determining its "humaneness"; no other method of capital punishment had mimicked a familar scene or been compared to an activity as peaceful as sleeping. Lethal injection essentially created the semblance of a patient receiving care as opposed to an inmate being killed, and by this standard, an execution that was "easy" to watch did not prompt any critique. What purpose does it serve to make killing look like it is entirely something else? Foucault marks this introduction of medicine into the penal system as the "art" of being discretionary in the way that "pain" is inflicted (8). It is an art because there is manipulation and harm done unto the body that is invisible to witnesses. It is a suffering that is subtle and subdued because it is "painless" (Foucault 8). The painlessness,

not coming from an actual removal of pain (which will be explored shortly), but rather the state's ability to draw attention away from the body through the use of medicine.

A method of killing that uses instruments to interact with the body, rendering that there is no human touch, means that the law is being applied "not so much to a real body capable of feeling pain as to a juridical subject" (Foucault 13). Therefore allowing them to claim that the human body is an "unavoidable object of state punishment", and that it was never their intention for punishments to remain physical (Garland 768). David Garland, a professor of sociology and law, counters this with the assertion that the standard for modern liberal state punishment is a complete severance from the body. Yet in the U.S., mass imprisonment and capital punishment dominate the penal system, while nonphysicial penalties like fines and restitution are severely underdeveloped (Garland 768). Therefore lethal injection is a method that allows for punishments to remain corporeal, during a time of great adversity to corporealism.

Botched Executions

Lethal injection requires a three-drug cocktail using an anesthetic to induce unconsciousness, a paralysis agent for asphyxiation, and a toxic agent to stop the heart (Welsh 4). The first drug, sodium thiopental, is a short-acting anesthetic that does not have any pain-relieving properties. In the traditional context, it renders a patient unconscious for a few minutes in order for the airway to be controlled and longer acting agents can build up to a therapeutic level (Groner 892, 2008). The second drug, pancuronium bromide, is a muscle relaxant that paralyzes all skeletal muscles in the body. This includes the ability to breathe, and because it is considered poisonous, if administered without ventilatory assistance, "the recipient will die of asphyxiation while appearing completely serene due to the paralysis" (Groner 893, 2008). The third drug, potassium chloride, causes cardiac arrest when concentrated in the

bloodstream. It is typically only used in high doses to stop the heart during open-heart operations, but even in this case, the heart is supported by a bypass machine so that it is not fatal (Groner 893, 2008). “Intravenous potassium chloride, even when given in therapeutic doses in the clinical setting, can be quite painful and can cause a burning sensation in the arm in which the drug is infused. The concentration of potassium chloride used for lethal injection is many times higher than the concentration that has been known to cause pain in the hospital setting” (Groner 894, 2008). In understanding how these drugs are used in clinical settings, it is quite simple to anticipate how executions conducted with this cocktail could be less than pleasant. The sodium thiopental puts the condemned person to “sleep” while the pancuronium bromide paralyzes them, all the while potassium chloride is causing an immense amount of pain and burning, but it is virtually undetectable because no movement can be made. Visually, observers see a person simply closing their eyes and dying, but in reality the condemned person may be helplessly in pain until their death. If this is simple for a lay person to understand, why have states not considered this? Primarily because the optical illusion of “humaneness” is enough for the state even if it does not scientifically match. Secondly, it is obvious that this method was not rigorously tested before adopted into legislation (like all new medical procedures), thus exposing that the state is comfortable with using people on death row as experimental subjects for drugs whose actual course of action on the body is uncertain.

In fact, this oversight may be the reason why lethal injection has the highest rate of botched executions than any other method of capital punishment (Sarat 2014). In many cases, technicians have had a difficult time finding a vein to insert the IV for inmates who have a history of drug abuse or are overweight. This is commonly called “needle torture” as individuals endure long periods of having a needle poked and proded in their arm in order to dispense the

drugs. There have also been reports of the intravenous catheter expelling drugs from the condemned's arm and spraying them into the death chamber or being inserted incorrectly to make the fluids build up underneath the skin instead of flowing to the heart (Groner 896, 2008). Aside from IV complications, the drug cocktail has caused adverse reactions that included a number of inmates convulsing violently, gagging, and jerking against their restraints. These scenes are far from the peaceful sleeping that the state expected to come from this method when it was first initiated.

It is also important to note that although these accounts seem like historical mishaps from the '80s, lethal injections are still being botched today. The most recent event was in October of 2021 with John Grant of Oklahoma; a media witness confirmed "Grant's body shook and jerked nearly two dozen times before vomit spurted from his mouth and spilled down his neck" (Peiser 2021). This type of occurrence is not rare for our present day in age, according to a list compiled by Colorado Professor, Michael Radelet, a botched lethal injection occurred annually between 2014 to 2018. The medicalization of capital punishment that was supposed to make it fast, "humane", and painless continuosly fails to meet this purpose. In addition to these visual and immensely obvious failures of lethal injection, there are also gruesome occurrences that are invisible. Autopsy reports of people who have been executed across a number of states show that "post-mortem concentrations of thiopental in the blood were lower than that required for surgery in eighty-eight percent [and] forty-three percent inmates had concentrations consistent with awareness" (Groner 899, 2008). Thus, even when executions are not known to be botched there is the overwhelming possibility that suffering still took place.

In despite of all of these known risks, the Supreme Court has continued to affirm that lethal injection is a constitutional and humane form of execution. In the 2008 case of Baze v.

Rees, petitioners in Kentucky filed a suit stating that lethal injection violated the 8th amendment because the protocol is administered improperly. This followed the same logic of reasoning that the sodium thiopental creates a substantial risk of severe pain when followed by the other chemicals. However, the courts replied that the "constitution does not demand the avoidance of all risk of pain", and that such a claim must present an "objectively intolerable risk of harm" (Baze v. Rees, 2008). Therefore because there has been a population of executionees that have "tolerated" the current protocol, by not showing outward displays of discomfort, the claim was denied. It is important to note that the goal of the petitioners was not to abolish the death penalty by any means, but rather to persuade the courts to adopt an alternative procedure. This was met with the reply that "safer alternatives finds no support in this Court's cases" because it would "embroil the courts in ongoing scientific controversies beyond their expertise" (Baze v. Rees, 2008). In many ways the critiques of lethal injection are no different than the critiques of its predecessor, the electric chair. It was a method that produced visible strain within the body, but remained acceptable because it was assumed that nothing better existed. People had overwhelming trust that the electric chair was the best thing that science could produce at the time. In fact it took 80 years from the first electrocution in 1890 to the moratorium in 1972 before a new method was introduced. This makes me posit that it will take much longer before a similar shift with lethal injection occurs, because it does undoubtedly well in manipulating death. Baze v. Rees is an example of the state once again claiming, "this is the best that we can do". In fact, now that the predominant method of execution is extremely medical, they now can use the excuse that medicine is beyond their scope of knowledge. Even though the idea to combine medical and legal jurisdictions was solely their doing.

Drug Shortages and State Secrecy

Aside from this phenomenon, there are additional issues with drug suppliers that continue to make lethal injection unsafe. For the last decade, there has been a shortage in the drugs that are required for the protocol, primarily due to companies refusing to manufacture them after recieving heat from death penalty opponents. Sodium thiopental has been the most scarce as no domestic company has produced it since 2009, and physicians have switched to using Propofol (Vivian 2013). Compounding pharmacies have been used as an alternative to combat this problem. These pharmacies combine, mix or alter drugs to fulfill specific needs, however they are not required to register with the FDA and do not have FDA approval for their products (Caplan 2016). Texas, Georgia, and Missouri are the only three states that have used compounding pharmacies to carry out executions, yet Texas performs half of the executions in the country (Vivian 2013). The only requirement to use drugs from these sources is to be licensed by the pharmacy board in the individual state, where oversight has been lax (Caplan 2016).

The alternative is to use other sedatives such as midazolam, pentobarbital, or propofol to accomplish the same task. In eight states, protocols have even switched to single-drug methods in which a large dose of one drug is used to initiate death. There are grounds for concern regarding pentobarbital; in clinical settings, it has limited FDA approval in small doses to treat seizures, but most physicians no longer administer to people because of its habituating effects (Vivian 2013). Similarly, as Missouri announced plans to use propofol as their single drug, critics noted that this was the same drug responsible for killing Michael Jackson. One argued, “If administered incorrectly, propofol could lead to serious and painful muscle contractions. This will be sort of a brute force approach where you give them enough and they die” (Vivian 2013).

As drug shortages happen, prisons are not concerned with the safety of any of the products used, but rather are desperate to gain a supply of any drug that will accomplish the job. How does a "safe" and "humane" procedure allow such a large margin for risk and harm? Lethal injection mimics a medical protocol to make it appear standardized and controlled, but medical recommendations are not being taken into consideration. Similarly, there does not appear to be any routine execution instructions, as different states are allowed to use any formula and drugs without having any specifications that apply universally.

In 2013, Pfizer blocked the sale of its drugs for use in capital punishment after it acquired the manufacturer Hospira, this ban included pancuronium bromide, propofol, and sodium thiopental (Dyer 2016). The Italian and British governments then refused to allow exports of drugs for use in capital punishment for fear that their company names would be released to the public as drug suppliers for capital punishment. This sparked the enactment of the Lethal Injection Secrecy Act in Georgia, which protects the identity of companies or individuals who supply drugs in any capacity for use in capital punishment. This law has been critiqued by attorneys and judges questioning how the efficacy of the drug can be determined if the source of it is unknown. The Georgia Attorney General rebutted, "Once that compounding pharmacy's identity is revealed, how will the Department of Corrections ever get another compounding pharmacy to sell to us?" (Vivian 2013). A more appropriate question to ask is why is the solution to resort to secrecy? When the source of drugs is kept hidden, it makes it impossible to critique the origin if the supplier is determined to be problematic.

Georgia and states with similar laws like South Carolina and Texas, want to "protect" identities because they know that the public will scrutinize these individuals. But if there is truly nothing to critique then how come the public is not allowed to be privy to this information?

Similarly, if compounding pharmacies choose not to supply drugs to prisons (which would be the most beneficial in preventing botched executions), then states need to find an alternative source to obtain these products. An additional layer of secrecy exists in which states intentionally withhold information about the types of drugs and dosages used until near the time of execution, "Such delayed disclosure leaves insufficient time to develop a robust challenge to the particular drug combination and to build a case of substantial risk of harm" (Fan 450). Drug specific critiques of lethal injection were raised in 2015 in the case of Glossip v. Gross. Oklahoma death row offenders posited that a 500mg dosage of midazolam will still cause them to feel pain when the additional two drugs are administered. However, the courts upheld their conclusion because the eighth amendment "requires a prisoner to plead and prove a known and available alternative" (Glossip v. Gross, 2015). The Supreme Court is more than aware that a better alternative has not yet been discovered, and they have found a way to remove responsibility from themselves and place it on a condemned person to make their own executions "safe".

As drug shortages continue and secrecy grows around suppliers, The Texas Tribune is currently keeping inventory of the state's supply. Texas has been able to maintain an adequate supply of drugs by extending the expiration date of the doses in stock (McCullough 2018). As of December of 2021, there are thirteen doses of pentobarbital in stock for Texas' one-drug protocol. There are three executions scheduled to happen in 2022 in March, July, and August; however, all thirteen doses are set to expire on February 10, 2022. This means that all three executions will not have doses available for their scheduled date. The natural solution would be to push back the execution date until an adequate supply is obtained, but Texas is known to take other measures. A similar situation occurred in 2018, when the Department of Corrections stated that they were in possession of enough drugs to carry out all their remaining executions for the

year, even though a number of drugs were set to expire. A Texas official repeatedly expressed that they were adequately prepared for the upcoming executions but maintained secrecy and refused to report if new drugs would be purchased (McCullough 2018). In 2017, drugs set to expire were "removed from stock, and, on the same day, the same number of vials were added back to the inventory with an expiration date set for exactly one year in the future…[and] no recorded purchase of additional drugs. The expiration dates were apparently changed after the department retested the drugs' potency levels" (McCullough 2018). This process of using expired drugs for executions only poses an additional risk to individuals on death row, and increases the chance of a botched execution. This is especially troubling because Texas executes significantly more people than any other state in the nation and it is probable that they are not the only state to use this tactic.

According to Propublica, this practice does not have any legal ramifications because some drugs do have a shelf-life that can be extended. The dates that the FDA lists on medications are simply the point up to which their effectiveness can be guaranteed (Allen, 2017). However, hospitals rarely (if ever) extend expiration dates, it is common practice to throw these medications away without a second thought. It is a practice that produces a lot of waste and costs a lot of money, some may say unnecessarily, but it is the result of practicing extra caution. These are the types of safeguards that exist within the healthcare and pharmaceutical industry to keep patients safe. Texas choosing to extend expiration dates shows that the level of caution and care that are applied towards patients are not considered in regards to people on death row. Once again, safety is not at the forefront; the goal continues to be to save money and follow-through with execution dates no matter the circumstance.

Legal professor, Mary Fan, argues that practices that allow for there to be an ongoing supply of lethal injection drugs should be honored. She asserts that the drug secrecy act is crucial for harm reduction in executions, and that if this statue did not exist, the government would have no other choice than to resort to past execution methods (Fan 432). This is not entirely inaccurate; South Carolina still currently uses the electric chair, Utah is reconsidering the firing squad and Oklahoma reconsiders nitrogen gas in response to the pending shortage (Dyer). This is a legal resolution because technically former methods of execution have not been stricken down as impermissible (Baze v. Rees, 2008). The ability of states to regulate their own execution methods, allow for regions with higher affinities for punitivity to bring back methods formerly seen as inhumane. But would society allow this to happen? It seems hard to decipher. One on hand, people have grown accustomed to thinking of the death penalty as a method in which a condemned person is "put to sleep". However, today, executions are much more concealed than they were in the 1900s; therefore, once again, people cannot critique what they cannot see. This dilemma has essentially created the perfect storm in which either way, people on death row cannot escape harm.

These horrific behind-the-scenes details leave us to question, why were executions medicalized in the first place if "patient" care was not going to be prioritized? The Supreme Court asserted that "any incidental pain…could be characterized as a possible discomfort or suffering necessary to a method of extinguishing life humanely" (Welsh 7). They also maintained that cruel and unusual "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society" (Welsh 7). Outside of the correctional context, medicalized killing still remains controversial in modern day. Active euthanasia, or physician-assisted suicide, is still banned in most countries, and only legal in five U.S. states. This is because of the

simple fact that regardless of medicine, there is no foolproof solution to kill someone without the presence of pain. In fact, at one point in time, there was an overlap in the drugs that were used for both executions and euthanasia. However, the two practices differ slightly because legally "aid-in-dying drugs" have to be ingested by the patient and cannot be given intravenously like lethal injection (Dear 2019). Pentobarbital and another barbiturate were originally being used for euthanasia, but of course, the same refusal to manufacture it from pharmaceutical companies affected its availability. Therefore doctors tried to recruit a myriad of other drugs to painlessly and quickly kill patients; they settled on the DMP mixture which are high doses of morphine, diazepam, and propranolol (Dear 2019).

Similar to the origins of lethal injection, this process was completely experimental as there were no clinical drug trials, but the difference is that patient participation was consensual. Patients knew that the effectiveness of these drugs had not yet been known, and they were in control of deciding whether to opt-in or not. As execution methods have changed throughout history, all of it has been experimental: from the electric chair to gas chambers to lethal injection. People on death row have never been able to give consent for being test subjects. Is this one of the liberties that have been lost along with their life? Does the state now own their body to test on and kill in whatever manner it pleases? I use the comparison of euthanasia because it is an example in which death has been medicalized not by the state but by the actual medical profession, albeit a small amount. It is managed drastically different than lethal injection with extensive regulations and safeguards that make it incredibly inaccessible. Yet, with executions, there is an incredible amount of leniency to complete the same task. The level of concern wavers when it comes to people on death row, once again signaling society's lack of care for people who's marginalization landed them in such circumstances. There have been many "botched"

deaths during euthanasia protocols, notably with one death taking eighteen hours, and others where patients felt their throats burning (Dear 2019). However, once again, these issues are cushioned by the fact that as physicians learned more about these side effects, patients were given choice in how to proceed. They were not promised a "humane" death that could not be delivered. It seems that legislators and government officials simply do not care that this process has become extremely unsafe and disorganized. It is not enough to assert the truth that is self-evident, there is no such thing as an execution that does not impose harm, and rather than use that reasoning to abolish capital punishment, it is inversely used to allow the barbarity discussed in this chapter.

In contrast to the arguments that have been presented in this chapter, one may wonder: does society even value harmlessness within the death penalty? The abscence of torture and visible suffering has been a long-term demand made by society since the nineteenth century. Americans have historically stayed in support of the death penalty throughout history, and to maintain this, the state made accommodations to execution protocols. However, there has not been a push for the complete removal of pain or harm. The U.S. Supreme court has made this clear. The lack of alternatives has been stated as a reason, but perhaps another unsaid reason is the fact that many do not believe offenders deserve painlessness. Fan slyly raises this through her mention of Juan Carlos Chavez's death penalty suit. Chavez "kidnapped a nine-year-old boy at gunpoint, anally raped him, verbally taunted and terrorized him, shot him to death, dismembered his body, discarded his body parts in three planters, and then filled those planters with concrete… Chavez filed a lawsuit claiming that he may experience unnecessary pain when the State of Florida executes him by lethal injection" (Fan 443). This detailed account of Chavez's crime begs the question, why should he (and other death row offenders) receive a harmless death when

his victim did not? I do not believe that many death penalty supporters would argue for such a cause. In some ways, the medicalization served society's need of not wanting to feel uncomfortable while watching executions. It is about not being able to stomach visual displays of suffering, but still wanting it to be present invisibly. Although, we do not want to participate in the atrocity of the punishment, we can only conceptualize punishment as an action that is done unto the body (Foucault 9).

Chapter IV: Physician Participation

Physicians have a complicated history with capital punishment that started long before the use of lethal injection. Dr. Joseph Guillotine, a surgeon in France, originally developed the design for the guillotine even though he was an opponent of the death penalty. This device was a wooden post with a crossbeam that held a blade to decapitate the condemned person by slicing through their neck. Although the machine never made its way to the U.S., it was recorded as a moment when a physician created an alternative execution approach that was more "humane" and "painless" than hanging (Baum 53). Foucault notes that it gave this impression because it allowed for death to be carried out in a "single moment with a single blow", so instantaneous that it barely touched the body (13). Guillotine never actually acted as the executioner but his invention remained France's primary method of capital punishment until it was abolished in 1981 (Britannica). Similarly, American physicians were responsible for advocating for electrocution as an alternative to hanging, and two notably supervised its first use (Baum 53). It seems that historically, the link between the death penalty and physicians has always been for the purpose of limiting the amount of suffering that a condemned person experiences. Somehow, their willingness to tend to people in their death, with pure intent, has been co-opted by the state in order for killing to have a humane appearance in medicalized forms.

As mentioned earlier, when lethal injection was first discussed in the '70s, not many physicians were consulted about any of the technical aspects of the procedure. The state expanded executions into the medical jurisdiction, which essentially created a mandate for medical professionals to participate (Conrad 210). Participation can be defined in a myriad of ways within the context of lethal injection. Preparatory actions happen close to the execution date such as a pre-execution physical that determines what dosages are needed based on the

condemned person's medical records or how certain conditions could interfere with the execution process. Technical preparation happens right before the execution, and includes preparing syringes with lethal solution or inserting the catheters. Supervisory actions happen during the execution and could consist of starting the flow of the drugs or monitoring the vital signs of the offender. Lastly, the conclusory actions occur after the execution such as pronouncing death (Baum 52). There are medical professionals that range in the amount of involvement that they have in the process, with some only doing conclusory actions while others perform every part of the procedure.

Violating Medical Ethics

In 1982, at the country's first execution by lethal injection, two Texan doctors agreed to attend only to pronounce death. However once they were assumed to be a part of the "team", they were persuaded to identify the best injection site and give advice about the chemicals, which they refused to do (Gawande 1223). In 1992, The Council on Ethical and Judicial Affairs of the American Medical Association (AMA) published guidelines against physicians participating in executions because it violates medical ethics. Article 2.06 of the Code of Medical Ethics states, "A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution" (Gawande 1223). There are specifically eight actions that are disallowed: administration of the lethal drugs, starting intravenous lines for the purpose of giving lethal drugs, inspecting lethal injection devices, ordering lethal drugs for the prison pharmacy, supervising personnel that give the lethal drugs, selection injection site for lethal drugs, monitoring vitals during executions, and determining death during the execution (Farber 2914). Pronouncing death remains unacceptable because the physician is not allowed to revive the condemned if they are found to still be alive. The two

acceptable actions are: providing a sedative to calm the condemned's anxiety (if requested) and providing a certification of death after another person has already announced it (Gawande 1223). The American Nursing Association (ANA) also has a similar ban, yet the American Pharmaceutical Association allows pharmacists to provide execution medications (if done voluntarily).

Although these guidelines are present, they have been completely ignored by the states who have created their own regulations. In 2006, a California judge found evidence from recent execution logs that many of the people executed had not stopped breathing before the paralytic was administered. He then ordered the state to have an anesthesiologist present in the death chamber to determine the condemned's level of unconsciousness. This was opposed by the American Society of Anesthesiologists, yet two willing participants were found until they later pulled out (Gawande 1221). It appears that the government wants medical professionals to participate. All but one of the 24 death penalty states explicitly allow physician participation, while 13 of them require it ("Breach of trust", 1994). This raises the question, how can a practice be prohibited and simultaneously required without any consequences? Georgia and North Carolina have laws that claim the physicians who participate in executions are not practicing medicine and therefore cannot be disciplined by any state medical boards (Black 2779). Additionally, states do not disclose the identities of physicians that participate in executions, similar to the statutes that protect drug suppliers. However, in some instances their identity is revealed through media investigation or states will produce them in court to vouch for the legitimacy of lethal injection.

Once again, I raise the critique, if this practice is allegedly benevolent, why is there secrecy? Mary Fan asserts that historically, the identity of an executioner has always been

anonymous to ensure that people would be willing to do the job (451). Secrecy served a purpose in the nineteenth century to protect *lay people* who wanted to fulfill a responsibility to their *community*. However, the concealment of executions has ensured that justice is far removed from the public and only controlled by the state. This desire for secrecy only adds to further concealment because executioners are now anonymous vessels fulfilling a bureaucratic assignment (Lofland). This anonymity almost acts as an erasure of the executioner role. No one can identify who specifically is carrying out these procedures, and thus it simply looks like a task that is passively done, and therefore 'no one' is actively doing. The government pushes for physicians' involvement despite the AMA's guidelines because it relies on the image of the medical industry. The medicalization of the death penalty functions to remove it from legal scrutiny and place it under scientific lens, therefore allowing it to be free from moral and punitive judgements that it otherwise would have been privy to (Zola 489). Therefore, now lethal injection is being analyzed through an objective, morally neutral lens because medicine has shielded it from legal critique.

Foucault discusses this new role of executioner as "anatomist of pain", in which the presence of doctors act as a reassurance to society that "the body and pain are not the ultimate objects of its punitive action" (11). Thus rendering any pain that does occur within these contexts as inevitable, because who better to stop pain than a physician. But how did doctors become the ultimate experts on death when their entire profession is the antithesis of this? Foucault claims that doctors are "agents of welfare", and therefore also alleviators of pain (11), which asserts that if they are able to have this role for those trying to stay alive, it should also transcend for those on their way to death.

The AMA and similar societies can make guidelines but they are separate from the licensing boards that actually police the medical profession. According to legal scholar, Lee Black, disciplinary actions are reported to the National Practitioner Data Bank (NPDB), which can lead to practice privileges being denied, membership from societies to be revoked, and even de-licensure. However, medical licensing boards usually address illegal activities committed by physicians; thus since executions are legal and many states legally require the presence of physicians, licensing boards are unlikely to take action against those who participate (2780). This has made the AMA appoint their own investigation committee to decide if physicians who participate should have their membership revoked, however this will have minimal consequences on physicians because the AMA has no legal authority (Groner 904, 2008). Yet again, the state has made a practice that otherwise would be unethical, legal by ignoring medical governance.

Voluntary and Coerced Involvement

Aside from the legal implications, it is also important to understand on a moral level why physicians choose to play a direct role in capital punishment. Dr. Atul Gawande, anonymously interviewed a few death row physicians to find this answer. "Dr. A" is a primary physician that was approached by a patient who also was a warden at the state prison. He was told that doctors were needed to assist with executions and told that he would not deliver the injection, but simply monitor cardiac rhythyms. When asked by Gawande why he wanted to go there, Dr. A said that he knew about the crimes that some of the "killers" had committed, one included the kidnapping, raping and strangling of an 11 year-old girl. He expressed, "I do not have a very strong conviction about the death penalty, but I don't feel anything negative about it for such people either. The execution order was given legally by the court" (Gawande 1224). At his first execution, he participated exactly in the way that he expected, by monitoring heart rhythms

behind a curtain, concealed from the condemned and witnesses, until death occurred. However, as Dr. A became involved in more executions, and situations started to go awry, he was asked to step in by the prison staff. He felt responsible for the procedure simply because he understood that his role was to help; this led to him placing IVs, inserting catheters and allegedly instructing for extra doses of drugs to be given. The latter is alleged because Dr. A was likely ashamed to admit this action, but the information was obtained by the interviewer from a reliable source.

Gawande notes, "He had agreed to take part in the executions simply to pronounce death, but just by being present, by having expertise, he had opened himself to being called on to do steadily more, to take responsibility for the execution itself. Perhaps he was not the executioner. But he was darn close to it" (1225). This is a prime example of the ways that physicians are essentially coerced into performing capital punishment. Although Dr. A did not have any objection to the death penalty and willingly chose to participate, this is not the role that he initially agreed to. He crossed professional boundaries that were not intended. According to Dr. Jonathan Groner, this phenomenon has been occurring since the beginning of lethal injection; when Illinois conducted its first lethal injection, three resident physicians were offered cash payments to attend (Groner 910, 2008). It is also apparent that many physicians feel indifferently about capital punishment, which ultimately may make it easier to coerce them into participating in more direct ways. A survey conducted in 2000 reported that 57% of physician respondents can either favor or oppose the death penalty depending on the circumstances, while there is signficantly less percentage of physicians that are always in opposition (Farber 2914).

Gawande also interviewed a nurse who worked in a prison, he assisted with one lethal injection which was the first to be carried out by his state. The nurse explained that no one in his state was competent about what would be required. The warden was going to use the Texas

protocol, and thought that it was simple enough for him to do even though he had never started an IV before. The nurse questioned Gawande, “Are you, as a doctor, going to let this person stab the inmate for half an hour because of his inexperience? I wasn’t. I had no qualms. If this is to be done correctly, if it is to be done at all, then I am the person to do it” (1227). He then spoke to the state nursing board, which concluded that he was allowed to do everything except administer the drugs. Thus, the nurse arranged for the drugs to be supplied, did a dry-run with the lay person responsible for pushing the drugs, and rehearsed with the guards how to bring the prisoner out and strap him down. Groner describes this as medical professional ambiguity, in which medical staff are allowed to be present, yet are still able to claim that their presence is not participation. Therefore asserting that no ethical misconduct occurred (912, 2008). However, anyone can attest that supervising and rehearsing an execution before it happens, is indeed participation. In the end, all that was left for physicians on the scene to do was pronounce the person dead.

The Hippocratic Paradox

This situation is particularly significant because it proves that even when physicians are not willing to participate, other medical professionals with experience can organize the procedure. This nurse felt that he had an obligation as a medical personnel to ensure that the execution happened in a competent fashion after witnessing the degree of carelessness to which the prison was willing to undertake. This is discussed further by Dr. Kenneth Baum who asserts that although the medical profession is framed as an entity that should preserve life at all costs, sometimes circumstances call for a different role entirely. He explains, “This is a patient who is going to die. By the time physicians become involved in the actual execution process, prisoners have exhausted all appeals and the state has assigned an execution date... Condemned death row inmates are, for all practical purposes, terminally ill patients, albeit under a nontraditional

definition of the term, and deserve to be treated as such. Therefore, physicians should do what any compassionate physician would do for a dying patient—preside over the condemned's final moments to minimize complications and suffering, and maximize the patient's comfort until the end of his life" (Baum 61). This claim suggests that regardless of a person's stance on the death penalty, people on death row are essentially equivalent to hospice patients and if medical staff were to remove themselves from this process, there is a risk of even greater emminent harm for those being executed.

As discussed throughout this thesis, the government is adamant about retaining the death penalty and will twist it to take on as many forms as it needs in order for it to appear "safe". It is glaringly clear that there is a lack of concern for our death row population, thus Baum argues that deserting them at a time when they are most vulnerable would be antithetical to the ideals of medicine (62). While the AMA has established that physicians should do less, Baum is arguing that it is their medical responsibility to do more, similar to how the aforementioned interviewees operated. In fact, he specifically names many of the actions listed as prohibited by the AMA, and asserts that these are things an ethical physician would do. This is actually in concordance with physician beliefs. A 2000 survey found that out of the eight actions disallowed by the AMA, 53% of respondents approved of five or more of them, while 34% approved of all eight disallowed actions. Interestingly, only 20% of respondents felt that none of the actions were acceptable (Farber 2913). This signifies that there may be a core belief that suggests that a physician's responsibility is to the "patient" regardless of political interest and the AMA.

However, although these actions are being done to embody nonmaleficence, the issues at-hand still remain. Choosing to participate in a system that knowingly perpetuates harm, with the intent to reduce such harm, often backfires. This is especially true when an individual's role

is undefined, and they are left to decide what position they want to occupy. In essence, rather than doctors believing that they are the "good apples" aiding in alleviating the injustice within the penal system. They should rather recognize the penal system as a "bad barrel" in which the environment causes people to conform to the social roles they are expected to play ("Demonstrating the Power", 2004). This is the premise of the Zimbardo theory, in which "good" people can become perpetrators of immoral behavior simply as a situational effect. Similarly, it is important for physicians to realize that even in their desire to do "good", individuals cannot incite change over an entire system with a history of decades of harm. Physicians having an active and deliberate role in executions, simply takes the instrument of killing out of the state's hands and puts it in theirs. Groner describes this as the 'Hippocratic Paradox', in which it is unethical for medical professionals to participate but also unethical if they do not, in both scenarios the state is the only one that wins as they have the benefit of using medicine as its proxy. Groner states, "The situation is structured so that even when doctors themselves refuse to take part, their professional authority is claimed by technicians who carry out the injections. With this diffusion of responsibility, the corruption also becomes amorphous. More than just individual doctors, medical practice in general becomes tainted and corrupted in the extreme" (76). Evidence of this was discussed earlier, through the use of expired drugs and experimental protocols that will now be conflated with medicine.

Although capital punishment is the grand scheme of the state, they have a scapegoat to attach their crimes to. The state keeps its distance from the act, entrusting it to others, under the seal of secrecy (Foucault 10). Foucault notes that those who carry out the penalty tend to become an autonomous sector; in which they govern themselves so that their involvement appears to be of their own choice. It is an intricate and intentional practice in which medicalization distanced

the law from executions, but forced the medical profession into scope without assigning any regulation. Doctors are then forced to create and re-imagine such a protocol. In the end, medicine becomes co-opted so that punishment now sits within the sphere of medical jurisdiction. Gawande, who is actually in support of the death penalty, agrees with these sentiments: “To have the state, take control of these skills for its purposes against a human being — for punishment — seems a dangerous perversion. Society has trusted us with powerful abilities, and the more willing we are to use these abilities against individual people, the more we risk that trust. The public may like executions, but no one likes executioners" (1228). He similarly asserts that as medical abilities advance, government interest in these skills will also increase, thus it is important to protect the integrity of these practices. However, it may already be too late. Capital punishment is now associated exclusively with lethal injection, which in turn is correlated with medicine. The semblance of safety and harmlessness have already permeated through how our nation perceives the death penalty.

Chapter V: Public Perspective

The last official public execution was in 1965, and prior to that executions had already taken a shift towards privatization. In the same way that execution technology has evolved over time, the public's perception of the death penalty has also seen some shifts. As mentioned previously, capital punishment started as a public event that involved active participation from a crowd and was heavily publicized in news platforms. Today, only a select group of individuals are allowed to view an execution: the victim (if alive), relatives of the victim, relatives of the condemned, and prison wardens. In particular states such as Arkansas or Virginia, there needs to be additional volunteer witnesses with no connection to the case to ensure that "the execution was conducted in the manner required by law" (Evans 2017). Aside from these instances, it is unlikely that the average American has had the opportunity to witness an execution in their lifetime. Similarly, there is not much media coverage on executions, for reasons that will be explored later in this chapter. It is likely that there is little to no discourse in the average American's daily life about the death penalty, since it is invisible to the public sphere. Yet individuals still hold strong beliefs regarding their support or opposition to the practice. How have waves of different levels of exposure, impact people's views on the death penalty?

Punishment Philosophies

Individuals may justify punishment based on two philosophies: retributivism and utilitarianism. Retributive theory refers to a world in which people act only in accordance with ways that it would be permissible for everyone to act in. Thus, the wrongdoing must be balanced in order for justice to be achieved (i.e., an eye for an eye) (Yamamoto 1284). Contrastingly, Utilitarian philosophy is focused on the overall well-being of the group rather than individual rights. Thus, the concern is with preventing future offenses in order to maximize the good of

those affected (Yamamoto 1284). Although these are represented as two distinct concepts that cancel the other out, laypeople engage with these theories in ways that are nonexclusive. In 2016 psychology scholars, Yamamoto and Maeder, created a Punishment Orientation Questionnaire to understand the principles that people engage in when they consider punishment. It contained four factors: prohibitive utilitarianism, prohibitive retributivism, permissive utilitarianism, and permissive retributivism. In these cases, prohibitive refers to the prohibition of capital punishment as opposed to the permission of capital punishment. Prohibitive retributivism focuses on a preference for avoiding the punishment of innocent people. On the other hand, prohibitive utilitarianism argues that punishment should focus on positive benefits rather than transgression. Permissive retributivism is associated with the need for punishment to enact revenge on the offender. While permissive utilitarianism is the willingness to punish for the sake of deterrence and protecting the public (Yamamoto 1292). Unsurprisingly, individuals scoring high in the permissive category identified with conservatism and other political beliefs that favor traditionalism. Similarly, people with permissive orientations are more likely to vote for death and also more willinging to suggest that they are suited for capital jury duty. This indicates not only an inclination to give out punishment but also a desire to be involved in its administration (Yamamoto 1292).

The reasons for permissiveness are based on deterrence and vengeance with items such as “Crimes that receive a great deal of publicity should be punished severely, even if the crime was not severe, so that society knows there is a strong response”. As well as, “It is more important to punish a guilty person because he deserves it than it is to punish him to benefit society” (1288, table 2). Yamamoto concludes that the overlap in utilitarian and retributive justifications proves that those who are inclined towards punitivity will draw from a variety of reasonings to support

this viewpoint. These punishment philosophies are helpful in understanding the root of death penalty support versus opposition. It seems that vengeance is a strong response to crime that may have a lesser possibility of being swayed. This is because some people may view the value of revenge higher than fairness or equity. In fact, a belief that a condemned person "deserves" to be executed no matter the circumstances, may trump any potential of unfairness in the system.

Death Penalty Support through the Decades

Americans' views on the death penalty usually originate from moral or religious sentiments which do not change rapidly overtime (Baumgartner et al. 184). However, *Figure 2* shows a large amount of fluctuation in death penalty support throughout the past nine decades. There was a large decline that started in the '60s which ultimately led to the moratorium in 1972. Electrocution was the primary execution method during the years of decline, and lethal injection gained popularity in the 1980s. Death penalty support hit its peak at 80% in the late 1990s, while the number of executions also peaked (all by lethal injection). From this data two claims can be deduced: public opinion has direct impact on death penalty administration and the medicalization of capital punishment has increased its longevity by increasing public support. If lethal injection had not been discussed during the time of the moratorium, I do not believe that the death penalty would have lasted as long as it has. However, because it is a method of punishment that conceals killing, it garnered more support and allowed capital punishment to continue. These claims will be explored further throughout the chapter, as well as the decline that starts to happen in the

2000s.

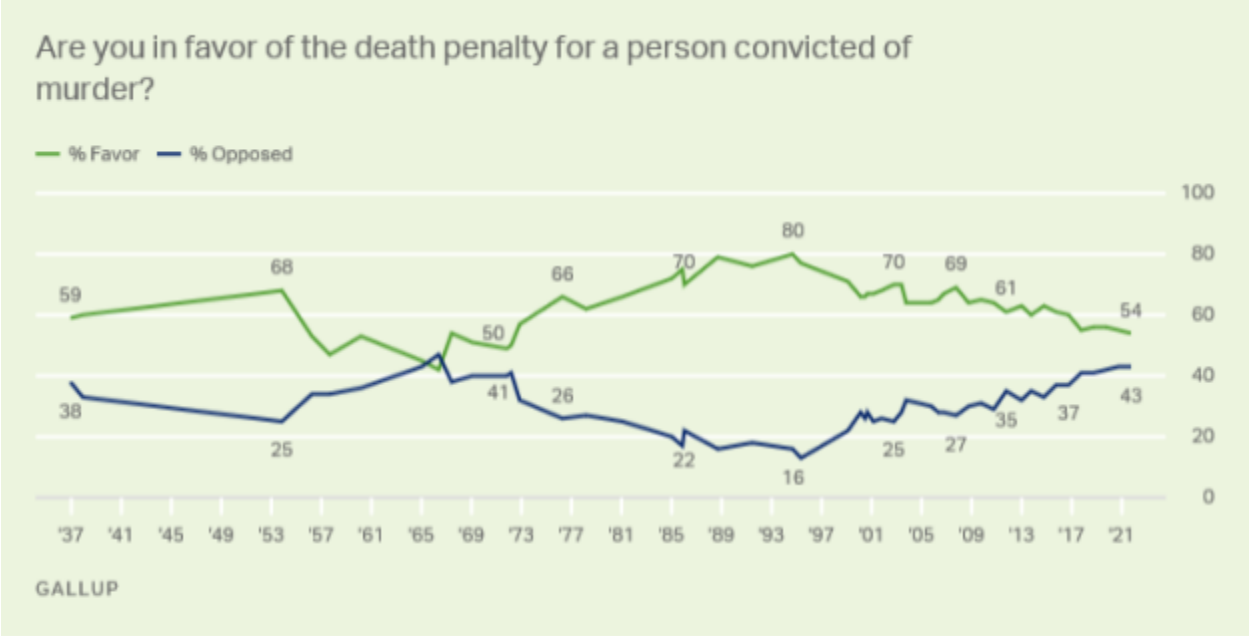

Figure 2: Death Penalty Support from 1937 - 2021

Source: Gallup News, 2021

Death penalty support is currently at its lowest point in history at 54% (*Figure 2*). However, it has been extremely gradual; there has been a 26% decrease over 26 years (from 1995 to 2021) as compared to a 28% decrease over 14 years (1953 to 1967). This means that it has taken double the amount of time to show the same amount of decrease in support that was experienced 70 years ago. The slower decline is most likely a result of lethal injection being introduced. Lofland notes, "relative to state executions, it may be suggested that they rise and fall as a function of how they are done and not merely because they are done. To the degree they persist, they do so by means of the concealment strategy explicated" (294). It received the highest amount of support because it is medical, and therefore makes it difficult for such views to shift. However, *Figure 2* proves that throughout history Americans have not been completely rooted in their views of the death penalty. But what kind of messaging insights change overtime?

Death penalty support in the late 90's was described as a "renewed enthusiasm" and "fascination with the details" of executions. A report published in the late '90s exploring America's views on punitivity detailed that people believed punishments of the time were too mild and were interested in seeing harsher ones (Kury, Ferdinand 1999). It is no coincidence that this demand for harsher punishments occurred shortly after the introduction of lethal injection and at a time when the U.S. experienced a peak in executions. This call for an increase in punitivity likely meant that Americans were seeking punishments that were more severe than a prison sentence, and as a result more people were sentenced to death row. The General Social Survey of 1990 reported (unsurprisingly) that there were regional differences in punitive perspective between southern states and the rest of the U.S. with variables including: racial prejudice, religiosity, and political conservatism (Kury 377). One can imagine that if the entire U.S. at the time was more punitive than it is today, then this means that southern states were at their peak level of harshness. In 1999, Texas and Virginia were both leading execution states breaking records for most executions in a single year, which still holds to date ("The Death Penalty", 1999).

After the late '90s, death penalty support dropped to 70% in the early 2000s, which still represents an overwhelming majority. In 2004 legal scholar, Robert Bohm, conducted a study to understand why there was such a large proportion of death penalty support and whether informing the public would change their views. This was based on the Marshall Hypotheses, in which Thurgood Marshall stressed that the constitutionality of the death penalty weighed heavily on the public's opinion. He believed that "whether a punishment is not excessive and serves a valid legislative purpose, it still may be invalid if popular sentiment abhors it" (Furman v.

Georgia). This further aligns with the idea that the public sets the standard of what is perceived as “humane”. Marshall also asserted that support of the death penalty is rooted in lack of knowledge. The public is incredibly misinformed about how frequently the death penalty is used, which manner it is decided, and what alternatives are available to jurors (Bohm). However, Marshall believed that if people became informed, there would be a decline in death penalty support. Bohm tested this theory through students who enrolled in a semester long death penalty class, and questioned them upon completion to see if their support wavered. His findings were that even though death penalty support declined once subjects were informed, this reduction was not enough to produce death opposition in the majority. It was also noted that when subjects changed their perspective, it was largely due to racial discrimination or the execution of innocent people (Bohm 308).

In fact, white support of the death penalty exceeded Black support in every category. White participants were more likely to agree that society had the right to get vengeance and that the death penalty was more effective in preventing murder than life imprisonement. On the other hand, Black participants were more likely to agree that family members of victims will seek revenge if execution does not happen and acknowledged the danger of poor and innocent people being executed (Bohm 322). From these findings it can be deduced that people are less likely to support a system that they can see is unjust, especially if that injustice has the potential to impact them personally. An overwhelming white support of the death penalty may be rooted in unwavering trust that our criminal justice system operates well, and even if taught otherwise, learning about a phenonmenon is different from seeing or experiencing it. Bohm also discusses attitude polarization as a finding of this study. When subjects both favoring and opposing the death penalty are presented with studies that either confirm or disprove their beliefs, they are

temporarily swayed but ultimately revert to their former beliefs (Bohm 309). Therefore, although many people are ignorant about the death penalty, consistent messaging is needed in order to have long-term effects on their beliefs.

Lethal injection facilitates a specific role in the public's opinion on the death penalty as well. This is illuminated in a New York Times article interviewing execution witnesses. Gayle Gaddis, the mother of a victim, had always believed that the death penalty was right, and her opinion did not waver when she saw her son's murderer being executed. She stated,"I went in the room, and I saw him strapped on that gurney. Then I couldn't watch it. They gave me a chair, and I just turned it the other way" (Blinder 2017). But within that same breath also expressed that she did not find the punishment harsh enough, "It didn't hurt him: I would have liked to have stoned him to death or something horrible. He just got a shot like you were going to have some surgery. It was too easy, for all of the pain he caused my family all of these years" (Blinder 2017). There is somehow both a desire for punishment to be harsh but an uneasiness accompanied with physically seeing that punishment being doled out. This ultimately points back to the benefits that have come with the medicalization (and privatization) of capital punishment. People are able to support it in theory, while the lack of its visibility shields any queasiness that may come from actually watching it. Then, the optics of lethal injection incite the feeling that this is not a punishment, it is only a procedure. Thus, any claims that try to argue suffering either: remain unheard because it is invisible or fall on death ears because people have a desire to see suffering in punishment. This brings forth the contradicting truth of American society: we want people to suffer in punishment, but the visual of such suffering is too uncomfortable. Lethal injection has managed to give the "best of both worlds" by concealing suffering exceptionally well. This leaves people like Gaddis, a permissive retributionist who

values revenge, unsatisfied. But is this sentiment true amongst all of the general public regarding lethal injection?

A 2015 YouGov poll surveyed 1,000 people on their views regarding the death penalty and methods of execution. 66% of participants either strongly favored or somewhat favored the death penalty, and that same 66% also responded that they did **not** view lethal injection as a cruel or unusual punishment (Moore 2015). The question that is now raised becomes: do supporters of the death penalty simply find all execution methods favorable because they support death irrespective of how it is done? It turns out that the method of execution does have an impact on people's support of death overall. When questioned about hanging, gas chamber, electric chair and firing squad, over 50% of participants found them each to be cruel and unusual, with an additional 15% being unsure. This means that lethal injection **does** appear to be more humane than any of its predecessors (because of it is medical), and impacts support of the death penalty. The only discrepancy lies with race as discussed with previous polls. Black people were the most likely to be unsure of their opinion of the death penalty with 35% as opposed to White and Hispanic groups with 7% each. Similarly, Black people were the only racial group with the majority believing that lethal injection **is** cruel and unusual at 42%, compared to Whites at 13% and Hispanics at 27%. They also displayed the most uncertainty regarding its constitutionality with 18% of Blacks responding "unsure" in comparison to 15% of Whites and 11% of Hispanics (Moore 2015). This trend continued for every method of execution with Black participants regarding them as cruel and unusual at significantly higher rates than each of the other two racial groups. These results continue to illuminate the fact that although medicalization has created the optic that lethal injection is humane, Black people are able to still see the injustice that occurs

because of their knowledge and experience with racial discrimination in the criminal justice system.

In 2021, there has been a decline in death penalty support to less than 60%. Although this still represents a majority, it is also the lowest death penalty support has been in the last forty years. In reference to the previous YouGov poll from 2015, what changed over the six years to cause a decline? It is clear that changing people's opinions on capital convictions is not an easy feat, and many still see lethal injection as constitutional. However, America has become more racially conscious over the years and more willing to be critical of the criminal justice system. According to a survey conducted by the Pew Research center, 78% of respondents believe that there is some risk that an innocent person will be put to death. 21% of people think that there are adequate safeguards to prevent this from happening (Pew Research Center 2021). This means that a significant portion of death penalty supporters are able to acknowledge that this risk is present, but do not believe that it is substantial enough to change their views regarding the death penalty. This follows the utilitarian mindset that potential risk of harm to individuals is merely a "side effect" in order to ensure that those who are condemned do not escape punishment.

Nonetheless, there is more recognition that there is inequity in how criminal cases are handled. 56% of Americans believe that Black people are more likely than white people to be sentenced to death row after being convicted of similar crimes. Black people were the most in support of this viewpoint at 85%, but Hispanic and white people were also in agreement at 61% and 49% (Pew Research Center 2021). This may be a result of the rise in anti-death row advocacy groups and racial activism, particularly BlackLivesMatter and the Innocence Project. This survey also came only months after the civil unrest and racial protests that happened at the height of the pandemic. A person's educational background also determines whether or not they

are able to see racial bias within death row administration. People with bachelor's degrees were more likely to believe that Black people were treated differently than their white counterparts compared to those with no college education. However, despite multiple groups acknowledging this injustice, everyone remains in agreement that the death penalty is morally justified. This viewpoint remained in the majority for every racial group, and even 25% of death penalty opposers agreed that it was morally justified (Pew Research Center 2021). "Morally justified" is a bit of a vague term, it could perhaps be alluding to the death penalty being "humane" or consitutonal. If this is the case, then I do believe that some of these responses are tied to the fact that lethal injection is currently a primary method. It is not possible to make judgements about the punishment without taking into account how the punishment is performed. "How people do things, the style in which they do things is virtually as important as what they do" (Lofland 293). As far as support within racial categories, Black people had the lowest with an even 50/50 split, followed by Hispanic adults at 53%, and Asians and Whites at 63% (Pew Research Center 2021).

Overall death penalty polls can be difficult to compare to each other overtime because of the discrepency in how questions are asked. The Gallup Poll in *Figure 2* is one of the only examples in which a group of participants are asked the same question over a long span of time. Public opinion can vary slightly depending on how options are presented. For example, the YouGov results differ from the Pew Research data because in one scenario participants were given the option to mark "unsure" instead of being required to be decisive. Death penalty scholars, Baumgartner et al. note that support falls when "1) respondents can select alternative punishments, especially when coupled with some form of restitution to the victim's family; 2) the crime committed is not murder; and 3) the defendants in question are juveniles or mentally

[ill], or, in many cases, simply when a defendant is named" (171). This is why death penalty support is percieved as high on public opinion polls because they focus on support in abstract or theoretical ways. Foucault notes that this is the consequence of a hidden punishment. "It leaves the consciousness of more or less everyday perception and enters that of abstract consciousness; its effectiveness is seen as resulting from its inevitability, not from its visible intensity" (Foucault 9). People end up knowing little about the realities of the punishment administration, and accept it as a part of everyday life that cannot be seen but trust that it is executed adequately. However, when people are asked to consider their views regarding particular cases and critique whether each specific court procedure can be flawless, results can differ (Baumgartner 184).

Impact of Public Opinion

Public Opinion on capital punishment remains crucial because it impacts sentencing and legislation. If a decline in support has led to a moratorium once in history, our current decline can also lead to the end of the death penalty. Similarly, a high level of public punitivity in the late '90s correlated to more juries being in support of the death penalty and more people being sentenced accordingly. This is undoubtedly a fact because of the skyrocket in lethal injections that occurred at this time. In the most direct way, juries play a pivotal role in deciding whether people are sentenced to death. Although juries are supposed to be unbiased and outside variables should not impact their decisions in court, research shows that this is not always guaranteed. Voir dire, which is supposed to be a process used by attorneys to eliminate jurors with biases, has been characterized as extremely ineffective (Rogers et al. 13). A large amount of the questions asked only require a one-word answer, and typically do not share any information relevant to the pending case. In fact, researchers in a 2019 study of capital juror attitudes found that "in over two thousand replies by members of the jury panel, only twice did a prospective juror fail to give

the expected response" (Rogers et al. 13). This disturbing observation reveals that jurors choose to be untruthful if they feel that their true views on a subject may be unconventional. They may feel pressured to respond with answers that align with the majority. This is extremely crucial when it pertains to capital cases because it is a matter of life or death for the defendant.

According to the Capital Jury Project, each juror vote can make a 15 to 20% difference in the likelihood of a death sentence, which means that one juror (with the exception of extremes) denying their views during voir dire can strongly impact a conviction (Roger et al. 27). In the same 2019 study on juror attitudes, it was observed that on capital jury questionnaires (CJQs), one-third of participants were willing to misrepresent their responses (18). This occurred in two methods: denial and deception; the former is a neutral approach that masks any views, and the latter is an active promotion of an opposite viewpoint. Both support-life and support-death groups had misrepresentation rates ranging from 35 to 44%, with more willingness to engage in denial rather than deception. On average, denial was likely to occur 26% of the time, while deception was likely to occur 16% of the time. In some ways, it is hopeful to know that there is a smaller percentage of people willing to blatantly lie, but this does not dismiss the fact that a sizable portion are feigning neutrality when they actually have strong viewpoints. There were some CJQ statements that were exceptions. "I would always vote for the death penalty if in a case where the law allows me to" had the lowest misrepresentation rate at 32%, while "There are a number of crimes for which I believe the death penalty is an appropiate punishment" had the highest rate at a whopping 64%. These results convey that if the death penalty is offered in a case, people are more likely to be truthful about their votes, however when deciding which crimes are worthy of the death penalty, many are not comfortable with expressing their true views. This study reveals that the public's perspectives of capital punishment inform what

happens in court rooms, and even when it is assumed that certain biases are removed, there is still misrepresentation.

Media Coverage of Executions

The aforementioned studies on the American public have illuminated the reasons behind people's death penalty support or lack thereof. However, there is an additional element that influences people's perspectives with the death penalty. The media that people consume daily colors their views of executions, and the way that these stories are told by news platforms can either confirm preconceived notions or challenge them. Crime makes up 7% of newspaper reports and 20% of local television news (Jacoby et al., 2008). Geography, amount of victims, and opposition are the three biggest factors that constitute the number of reports about executions. Executions that happen in non-southern states receive more media coverage than those in the south, which is a result of the fact that executions in the south are more common. The number of victims also matters, as cases with multiple victims receive more coverage than cases with a single victim. Lastly, if an execution involves a protest such as a demonstration outside of a prison, it also receives more coverage (Miller & Hunt, 2008).

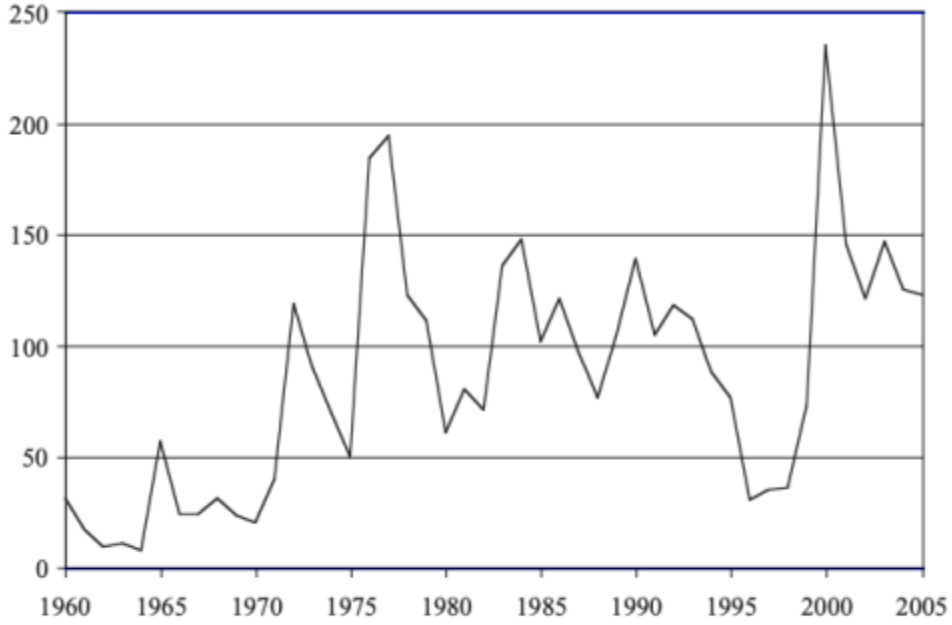

Figure 3: The number of stories on capital punishment in the *New York Times Index*, 1960 to 2005.

Source: Baumgartner, 2008

Leading up to the moratorium, the New York Times consistently published stories with a tendency to be anti-death penalty, classified by arguments against morality or efficacy. From 1972 to 1977, morality became a prominent issue that consumed the media because the constitutionality of the death penalty was being highly debated (Baumgartner et al., 2008). The end of the moratorium was marked by a significant increase in pro-death penalty stories. These were usually framed around state legislature and new capital laws that were claimed to be constitutional. In the time period of 1977 to 1990, the New York Times reported a record-breaking amount of coverage on executions. Additionally, the executions of offenders who killed the most people received the greatest coverage, as well as crimes that were extraordinarily harmful (Miller & Hunt, 194). Some reporters claim that the violence in these articles are ultimately what makes them newsworthy and attracts viewers towards the content. According to Jacoby et al. (2008) stories that "incorporate violent conflict, involve well-known persons, include graphic imagery, and allow for the reinforcement of traditional cultural values

are preferred over more complex stories that may challenge the reader to reconsider widely held beliefs" (169). This is somewhat true as news is designed to cultivate interest from viewers, and journalism tactics are a reflection of how society engages with particular topics. However, there is an additional agenda at play because during the '90s, execution coverage experienced a sharp decline. This coincidentally overlapped with the "execution boom" that occurred later that decade, and the most pro-death penalty abstracts that the New York Times had ever published (Baumgartner 117). This means that while a record-breaking number of executions were happening in the U.S., the New York Times drastically reduced their coverage of them, but the stories that were published were in favor of the death penalty. What is the impact of cutting down the level at which capital punishment is discussed only to highlight circumstances with the most gruesome offenders?

This is not unique to newspapers but also occurred on TV networks as well. According to Jacoby et al., from 1977 to 1983 (the "in-between" period after the moratorium but before lethal injection) a very few number of executions happened annually, therefore each one was reported on at least one TV network (174). However, when an increase in executions started to happen in 1984, the number reported in the media declined. Less than seven percent of executions were reported by TV networks during the entire 1990s. In terms of duration of coverage, the median length of network TV news reports were a brief 140 seconds per execution (Jacoby et al. 2008). This confirms that executions became concealed from the public's view, perhaps not intentionally because one can imagine that it would be difficult to report every single execution on television at a time when nearly 100 happened per year. However, there was deliberateness in the choice of executions that were being covered.

It created the narrative that only heinous murders who serially kill people are executed, which is blatantly untrue. Miller & Hunt note that there are usually clear distinctions for how the victim is portrayed compared to the offender (209). The condemned are presented as "criminals" who are frequent lawbreakers, while victims are presented as innocent. In some circumstances what the article mentions about the victim's identity can be insignificant because *any* discussion of the victim usually elicits a pro-death tone (Baumgartner et al., 123). This does not mean that the portrayal of a blameless victim is wrong, but rather why was it the predominant presentation that was seen? Although there are undoubtedly cases in which both parties have a criminal past, the media's discussion of a victim incites sympathy from the public. This type of media coverage not only affirms death penalty supporters' views that execution is deserved, but also may cause people who do not have concrete opinions to be complacent with the death penalty. The "villain/victim" storyline neglects the fact that there are people on death row because the criminal justice system decided to prosecute them unjustly. Additionally, it erases the possibility that not all "victims" are innocent, especially if a homicide was committed due to self-defense.

In the early 2000s, there was a dramatic spike in the amount of coverage on the death penalty in the news (Figure 2). This surpassed the prior peak in coverage from the late 1970s and 1980s, and remains to be the most substantial rise in news history. The 2000s signified the introduction of the "innocence frame", which centered DNA testing and the possibility of wrongful convictions (Baumgartner 133). A large amount of news also focused on the moratorium in Illinois that was initiated by pro-death penalty governor, George Ryan. Cook County (Chicago) stands out because of a whopping 15 wrongful convictions, which is more than double the amount of any other U.S. county ("DPIC: Special Report", 2021). The county became a national example of corrupt police practices due to the fact that all of these convictions

were a result of a false confession or coercion. This later led to Illinois' repeal of capital punishment in 2011 and influenced other counties to investigate patterns of misconduct. As a result, anti-death penalty leaning news was consistently in the press. According to the Death Penalty Informaton Center, 2000 may have been the most important year in changing American views of capital punishment. The rise in exonerations throughout the decade contributed to the slow decline in support that is present today.

Conclusion

The penal system has created a way to transform punishment altogether and give it a new definition of power. The power to punish through executions used to belong to communities. Groups of people who were directly affected by crime were able to seek justice on the gallows. Today, the average person knows nothing about which people are on death row or the crimes they have committed. But, the state maintains that these punishments are being done to deter crime. Executions used to be acts that were gruesome, and bloody with condemned individuals showing audible and visible signs of discomfort. It was incredibly clear each time a person was being hanged that they were on the verge of encountering death. Today, death is conducted with a needle. A condemned person dies by being put to sleep, and if they are lucky, it is painless.

However, this method of killing completely disguises the fact that killing is being done. It makes the public believe that executions are harmless processes, and the state gets away with doing whatsoever they desire. I am not proposing that the U.S. should refer back to former methods of punishment or execute people publicly again. But rather that the concealment and deception occurring today is intentional. Concealing an act that is supposed to be for the benefit of an entire society suggests that a wrong is being committed that no one should be privy to. Society being conditioned to believe that killing is a peaceful act prevents them from being able to point out the flaws within the penal system. It allows for more Black, poor, mentally ill, and intellectually disabled people to be put on death row without protest. The death penalty can only remain legal if there is public support for the current methods that are being used. As the public shows a gradual decline in support, a possibility for a nationwide moratorium could be on the horizon once again. But, the longer that death penalty support remains in the majority, the more that marginalized communities are put at a disproportionate risk.

Support for the death penalty as it currently stands makes the public complicit in the inequities of the penal system. I cannot assert that the U.S. will ever be close to death penalty aboltion. Medicalization is a strong tactic that has managed to maintain support for decades now. There is no guarantee that history will not repeat itself, and as opposition increases, a new method of execution could be developed. The medical and scientific industries are now inextricably linked to the death penalty, and as one field progresses, the other will follow. But I conclude with this: the public is complacent in the government's practices, and until we demand for such secrecy, discrimination, and manipulation to be eliminated, the death penalty will live on.

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