

GUSTAVUS ADOLPHUS COLLEGE

A STUDY OF CAPITAL PUNISHMENT
FROM A BIBLICAL, THEOLOGICAL, AND SOCIETAL PERSPECTIVE

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Chapter One: The History and Background of Capital Punishment

I think that the only purpose for the death penalty, as I see it, is vengeance—pure and simple vengeance. But I think vengeance is a very personal feeling and I don't think it is something that civilized government should engage in¹

-Janet Reno, Former Attorney General of the United States

Lethal injection, the electric chair, the gas chamber, hanging, and firing squad.

These are all forms of execution that have been used in the United States since 1976.

America is just one of six countries that executes people who were under the age of 18

when they committed a crime. One hundred and six nations around the world have

abolished the death penalty; and thirty of them have abolished the death penalty since

1990. Presently, thirty-eight states in the United States use capital punishment.² The

United States was just one of four countries that was responsible for 90 percent of all of

the executions in the world in the year 2001 (the other countries were Saudi Arabia,

China, and Iran), and the United States is the only NATO country that still administers

the death penalty.³ Capital punishment is a current, significant issue that many people

have strong feelings about and in the United States the Church certainly plays a vital role

in many people's views on capital punishment. Some people passionately argue for or

against capital punishment because of what the Bible says, others look at the unfairness

demographically of those directly affected, while still others consider such things as the

1. Richard C. Deiter, "On the Front Line: Law Enforcement Views on the Death Penalty," Death Penalty Information Center, February 1995, <http://deathpenaltyinfo.org/article.php?did=545&scid=45> (16 September 2006). "The Death Penalty Information Center is a non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment. The Center was founded in 1990 and prepares in-depth reports, issues press releases, conducts briefings for journalists, and serves as a resource to those working on this issue. The Center is widely quoted and consulted by all those concerned with the death penalty."

2. "Facts About the Death Penalty," Death Penalty Information Center, November 2005, <<http://www.deathpenaltyinfo.org/FactSheet.pdf>> (16 September 2006).

3. Stephen B. Bright, "Why the United States Will Join the Rest of the World in Abandoning Capital Punishment, in Debating the Death Penalty, ed. by H. Bedau, P. Cassell, (New York: Oxford University Press, 2004), 152-182.

economic costs to society. It is important to explore the current issues and what some of the debates are regarding capital punishment. The issue of capital punishment is of significance to us all because of the importance of upholding the sanctity of human life. In the United States, people continue to be executed, tragically including some who are innocent of the crime for which they have been sentenced to death. This paper will explore capital punishment through Biblical, theological, and societal perspectives and the propriety of capital punishment will accordingly be analyzed.

It is the position of this paper that the taking of human life through capital punishment can only be justified when it is necessary to restrain evil for the sake of the common good. This precludes arguments that do not take consequences into account. I intend to show that capital punishment does not effectively maintain the common good and should be abolished. To support the validity of this argument I will first present the history and background of capital punishment. The argument from the common good, as it is articulated in the Christian tradition particularly by Thomas Aquinas and Martin Luther, will be central to my discussion. I will then move from the traditional perspective and in the second chapter, I will examine contemporary Church documents on capital punishment along with Biblical and theological references still maintaining the conversation within the Christian tradition. In my third chapter, I will gather the conclusions from chapters one and two and address a broader audience exploring the societal implications of capital punishment. I will show that the common good argument is not exclusive to Christianity but is also of importance to secular society. Finally, I will readdress issues brought up in the paper and state my conclusion.

Capital punishment has an extensive history as the issue of capital punishment dates back to before Biblical times and continues to exist in society today. In fact, the very first established laws concerning the death penalty date back as far as the Eighteenth Century B.C. in the Hammurabi Codes. The code of King Hammurabi of Babylon approved the death penalty for twenty-five different crimes. Capital punishment was also used in the Fourteenth Century B.C. It was called for in the Hittite Codes. Additionally, the death penalty was administered in the Draconian Code of Athens in the Seventh Century B.C. The Draconian Code of Athens made death the only punishment for every crime. In the Roman Law of the Twelve Tablets in the Fifth Century B.C., capital punishment was also an approved form of penalty. Death sentences were administered in a variety of means. Forms of execution to carry out the death penalty have included drowning, crucifixion, burning alive, impalement, and being beaten to death.⁴

During Biblical times, the death penalty was also administered. In the Bible, God ordered the death penalty. For instance, throughout the Old Testament there are many cases in which God commanded the use of the death penalty. This is first evident with the acts of God Himself. “God was involved, either directly or indirectly, in the taking of life as a punishment for the nation of Israel or for those who threatened or harmed Israel.”⁵

4. “History of the Death Penalty, Part 1,” Death Penalty Information Center, 2005, <<http://www.deathpenaltyinfo.org/article.php?scid=15&did=410#EarlyDeathPenaltyLaws>> (16 September 2006).

5. Kerby Anderson, “Capital Punishment,” Leadership U, 5 August 2003, <<http://www.leaderu.com/orgs/probe/docs/cap-pun.html>> (16 September 2006). “Leadership U. is a project of Christian Leadership Ministries, part of Campus Crusade for Christ, International . . . Leadership University is a virtual University with a distinct focus. Our ResourceBASE contains more than 8,000 well-written, well-researched articles, essays and reviews.” Leadership U is place for “Christian Professors to boldly proclaim Jesus Christ.”

One example of this is the great flood involving Noah and the ark in Genesis 6:8. God destroyed all human and animal life except that which was on the ark. Another example involved Sodom and Gomorrah described in Genesis 18-19. Due to the horrendous sins of the inhabitants, God destroyed the two cities. In Numbers 13,14, and 16, God also administered punishments at Kadesh-Barnea and the rebellion of Korah against the Jews roaming in the wilderness. The Old Testament is full of examples and references to the taking of life by God. In a sense, God exercised the death penalty as a way to handle the sins of Israel as well as the sins of the countries bordering Israel.⁶

Taught in the Old Testament, God imposed the death penalty in the Jewish law code. Interestingly, the principle of capital punishment even came before the Old Testament law code. As found in Genesis 9:6, capital punishment is based upon belief in the sanctity of life. According the Genesis 9:6, “Whoever sheds the blood of a human, by a human shall that person’s blood be shed; for in his own image God made humankind” (NRSV). Numerous offenses that were punishable by death were set forth in The Mosaic Law. Murder was the first. God ordered capital punishment for murderers in Exodus 21. What the Old Testament described as “lying in wait” which is another term for premeditated murder was liable to be punished by death. Involvement in the occult that is found in Exodus 22; Leviticus 20; Deuteronomy 18-19 is a second crime that was punishable by death. Occult involvement included divination, acting as a medium, sacrificing to false gods, or sorcery. Thirdly, the death penalty was to be carried out against people who participated in sexual sins.⁷

6. Kerby Anderson.

7. Kerby Anderson.

Moving on to the Tenth Century A.D. in Britain, hanging became the typical method of execution. However, William the Conqueror did not permit people to be hanged or executed for any crime except during war times. This trend did not last long because under the reign of Henry VIII in the Sixteenth Century, it is estimated that as many as 72,000 people were executed. During this time period, common methods of execution included such things as burning at the stake, boiling, beheading, hanging, and drawing out and quartering. Executions were administered for such capital offences as not confessing to a crime, marrying a Jew, and treason.⁸

It is important to examine the views of capital punishment from such important religious figures as Thomas Aquinas and Martin Luther. Both of these men have important perspectives on maintaining the common good. If asked whether capital punishment is a necessary punishment for the State to enforce, St. Thomas Aquinas would likely answer the question “if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good.” The position of Thomas Aquinas would be that the State has a duty to protect the community.⁹ The following is the explanation from Thomas Aquinas about the need and legitimate use of capital punishment:

Now every part is directed to the whole, as imperfect to perfect, wherefore every part is naturally for the sake of the whole, as imperfect to perfect, wherefore every part is naturally for the sake of the whole. For this reason we observe that if the health of the whole body demands the excision of a member, through its being decayed or infectious to the other members, it will be both praiseworthy and advantageous to have it cut out of the body. Now every individual person is compared to the whole community, on account of some sin, it is praiseworthy and advantageous that he be executed in order to safeguard the common good Now the care of the common good is entrusted to persons of rank having public

8. “History of the Death Penalty, Part 1.”

9. Brother John Raymond, “Capital Punishment: Yes or No: A Catholic Perspective,” The Community of the Monks of Adoration, <http://www.monksfadoration.org/capital.html> (2 October 2006).

authority: wherefore they alone, and not private individuals, can lawfully put evil doers to death.¹⁰

Perspectives from Luther can be found in “Temporal Authority” where Luther takes the position of a two kingdoms argument. “Here we must divide the children of Adam and all mankind into two classes, the first belonging to the kingdom of God, the second to the kingdom of the world.”¹¹ “God has ordained two governments: the spiritual, by which the Holy Spirit produces Christians and righteous people under Christ; and the temporal; which restrains the un-Christian and wicked so that—no thanks to them—they are obliged to keep still and to maintain an outward peace.”¹² Only the State has the authority to try to restrain sin and keep order for the sake of the common good. Presumably, it is not the duty of the State to wield justice for God, it is God’s authority alone to enforce ultimate justice. Matthew 5 describes the intent of Christ’s words well and “Christians should not go to law or use the temporal sword among themselves . . . Christ did not wield the sword, or give it a place in his kingdom.”¹³ It is God’s authority alone to rule over the soul. “The temporal government has laws which extend no further than to life and property and external affairs on earth, for God cannot and will not permit anyone but himself to rule over the soul.”¹⁴ Even though God gives the State the authority to enforce the common good, God still has the ultimate power. “Tell me then: How can a mere man see, know, judge, condemn and change hearts? That is reserved for

10. Thomas Aquinas, Summa Theologica, Q. 64 Art. 2-3 Pt.II-II quoted in Anthony Gonzales, “Pro-Life and Pro-Capital Punishment: Contradiction in Terms?” <<http://www.roman-catholic.com/Roman/Articles/CapitalPunishment.htm>> (2 October 2006).

11. Martin Luther, “Temporal Authority,” Luther’s Works Volume 45: The Christian in Society II (Philadelphia, PA: Muhlenberg Press, 1962).

12. Martin Luther.

13. Martin Luther.

14. Martin Luther.

God alone”¹⁵ In sum, Thomas Aquinas and Martin Luther argue that the part serves the whole and that only people designated by the State have the authority to kill to prevent any sort of vigilantism. From Luther’s perspective, capital punishment serves no purpose unless it is for the sake of the common good. Therefore, it is not justifiable unless it serves the common good.

During the next two centuries in Britain, the number of capital crimes continued to rise. By the 1700s, 222 crimes were punishable by death in Britain. Some of the crimes that were punishable by death were such things as cutting down a tree and stealing. Due to the severity of capital punishment, a number of juries would not convict defendants if the crimes were not serious. What followed were reforms to Britain’s death penalty. The death penalty was abolished for over 100 of the 222 crimes punishable by death between the years 1823 to 1837.¹⁶

More than any other country, Britain had the strongest influence on America’s use of capital punishment. When settlers from Europe settled in the new world, they brought with them the practice of the death penalty. The execution of Captain George Kendall in 1608 in the Jamestown colony of Virginia is the first recorded execution in the new colonies. The execution of Kendall was administered because he was a spy for Spain. Virginia Governor Sir Thomas Dale passed the Divine, Moral and Martial Laws in 1612. These laws provided capital punishment for even small offenses including such things as killing chickens, trading with Indians, and stealing grapes. Capital punishment laws varied from colony to colony. In 1630, the Massachusetts Bay Colony held its first execution. This execution was carried out in 1630 even though the Capital Laws of New

15. Martin Luther.

16. “History of the Death Penalty, Part 1.”

England did not even go into effect until years later. Duke's Laws of 1665 was instituted by the New York Colony. Under these laws, offenses including hitting one's parents, or rejecting the "true God" were punishable by death.¹⁷

Current societal debates pertaining to capital punishment are necessary to explore. One debate revolves around the circumstance of executing those who are in fact innocent and along with this concern, factors involving inadequate representation given to minorities and the poor are considered. By way of statistics, there have been 121 exonerations in 25 different states as of March 15, 2005. Additionally, there was an average of 2.96 exonerations per year in the 25 years from 1973 to 1998. In the five-year period from 1998 through 2003, the average number of exonerations grew to 7.60 exonerations per year.¹⁸ Many of these exonerations have been due to DNA tests establishing conclusively the innocence of those put on death row. For example, on August 9, 2004, an African-American man, Ryan Matthews became the most recent death row inmate to be freed, and the 14th death row inmate exonerated due to the help of DNA evidence. Matthews spent nearly five years on death row after he was sentenced to die in 1999 for allegedly committing a murder that happened only two weeks after his 17th birthday. The appellate attorneys for Ryan Matthews had physical evidence from his trial that was tested for DNA. The DNA results excluded Matthews, and pointed to another inmate at Angola Prison instead. Following this, based upon the DNA results and findings that the prosecution in that case withheld evidence, in April 2004, a new

17. "History of the Death Penalty, Part 1."

18. "Innocence and the Death Penalty," Death Penalty Information Center, 2005, <<http://www.deathpenaltyinfo.org/article.php?did=412&scid=6>> (16 September 2006).

trial was ordered. In June, Matthews was released on bond and was exonerated when the prosecutors dropped all charges against him.¹⁹

Capital punishment has also been divided along racial lines. From 1930 through 1980, 3,862 people were executed in the United States. Of these, 54% were black. Included in this number, 455 men were executed for rape, and 90% of those were black.²⁰ Virtually every study analyzing race and the death penalty has concluded that defendants who kill white victims are much more likely to receive the death penalty than those who kill black victims.²¹ Along with blacks, statistics involving low-income defendants are also relevant. Low-income defendants are twice as likely to be found guilty than defendants with high incomes.²² Low-income defendants typically receive court appointed attorneys who at times do not have adequate skills, funds, or time to properly represent those accused. On the flip side, supporters of capital punishment contend that great efforts have been made to prevent the innocent from being executed. Since 1973, legal protections have become so extraordinary that 37% of all death row cases have been overturned; thus more protection has been afforded to people who may be innocent. Of course, the vast majority of those who have been executed have been guilty.²³

Another aspect of the issue concerns whether or not the death penalty actually deters crime. Crime will obviously be deterred from a person that is set to be executed

19. "Innocence and the Death Penalty."

20. James McCloskey, "The Death Penalty Should Be Eliminated," in Criminal Justice: Opposing Viewpoints, ed. by S. Barbour, J. Karson, B. Leone, B. Stalcup, B. Szumski, (San Diego, CA: Greenhaven Press, 1996), 49-55.

21. David Cole, No Equal Justice: Race and Class in the American Criminal Justice System (New York: The New Press, 1999).

22. Joel Dyer, The Perpetual Prisoner Machine: How America Profits from Crime (Boulder, CO: Westview Press, 2000).

23. Dudley Sharp, "Death Penalty Paper," Justice For All, 1 October 1997, <<http://www.prodeathpenalty.com/DP.html>> (16 September 2006). "Pro-death penalty.com is a resource for pro-death penalty information and resources. Includes case info on upcoming executions, a collection of death penalty links, current news..."

because that person will no longer have any ability to again commit a crime. “Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following their previous murder convictions. Thus, executing each of these inmates would have saved 821 lives.”²⁴ Supporters of capital punishment also argue that because prisoners rate the death penalty as the most feared punishment (much more so than they rate life without parole), the effect of deterrence rises if the probability of executions increases.²⁵

However, determining whether capital punishment has a direct effect on whether or not fewer crimes are committed is a difficult argument to prove. Furthermore, those opposed to the death penalty argue that states that have the death penalty statistically have higher crime rates than those that don't.²⁶

Capital punishment is a very current and relevant issue as evidenced by the recent North Dakota murder conviction of Alfonso Rodriguez Jr. that occurred in September 2006. Convicted sex offender Alfonso Rodriguez Jr. was found guilty of kidnapping and murdering 22 year-old college student Dru Sjodin. The jury decided in favor of the death penalty for Rodriguez and it is the most recent instance of a capital punishment sentence in the state of North Dakota. In fact, it was North Dakota's first death penalty case in almost a century. “North Dakota's last execution was in 1905 and the last person sentenced to death was spared in 1915. The state no longer has the death penalty, but it is allowed in federal cases. Rodriguez was charged under federal law because Sjodin was

24. Dudley Sharp.

25. Dudley Sharp.

26. “The Deterrent Effect of Capital Punishment,” Pro Death Penalty Web Page, 14 August 2005, < <http://www.wesleylowe.com/cp.html#deter> > (16 September 2006). “This webpage is dedicated to the innocent victims of murder, may they always be remembered.” This website has a reliable and substantial works cited page.

taken across state lines.”²⁷ The federal jury reached its decision on Friday, September 22, 2006 after deliberations that lasted more than a day and a half. Referring to the death sentence, United States Attorney General Drew Wrigley said, “We hope the need does not arise for another 100 years.”²⁸ Dru Sjodin’s mother Linda Walker spoke about the Rodriguez death sentence when she said with her voice shaking, “I know it wasn’t an easy decision for the jurors, but Dru’s voice was heard today.”²⁹ Additionally, Allan Sjodin, Dru’s father made a very interesting statement after the death penalty decision was made when he told reporters, “Whatever would have happened, we would have been equally satisfied. For Dru’s sake, this needed to happen.”³⁰ Rodriguez’s defense attorney Richard Ney had “asked the jury for mercy after calling psychologists and Rodriguez’s family to talk about his childhood of poverty, abuse and exposure to farm chemicals.”³¹ After the ruling against Rodriguez, Ney said that he will ask for a new trial and stated, “Life is worthy of being saved, no matter who it is.”³²

27. Dave Kolpack, “Death Sentence for Student’s Slaying,” WashingtonPost.com 22 September 2006, < <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/22/AR2006092200584.html> > (2 October 2006).

28. Dave Kolpack.

29. Dave Kolpack.

30. David Kolpack, “Rodriguez given death sentence,” The Associated Press displayed on Kare11.com 23 September 2006, <http://www.kare11.com/news/ts_article.aspx?storyid=135176> (2 October 2006).

31. David Kolpack.

32. Dave Kolpack

Chapter Two: Church Statements and Biblical References

A debate over capital punishment frequently involves Christian doctrine and teachings. To explore moral issues, the Bible is frequently used as authority by both opponents and supporters of capital punishment and each find passages in Scripture to bolster their respective positions. Much of the debate focuses on the Biblical ideals of justice and mercy. The side that supports the supposed justice of capital punishment believes that the utter disregard for life shown by some murderers can only be properly punished by death while those on the side of mercy question how a society that takes the life of another can be upholding the sanctity of life that it considers to be important.³³ Many times supporters of capital punishment make reference to the Old Testament while abolitionists and opponents of the death penalty frequently cite the New Testament and concentrate on the teachings of Jesus and forgiveness. Some Christians claim that the Bible supports capital punishment while other Christians do not believe it is right or consistent with the teachings of Christianity to have capital punishment. A problem that can arise when people use the Bible to support their position on the death penalty occurs when Biblical passages are lifted out of context. This is called proof-texting. In this way, verbiage from the Bible may be used to support a position but it may neither be accurate nor appropriate because the passage has been taken out of context.

It is important to explore Church statements from various Christian traditions since the Church certainly plays a vital role in many people's views on capital punishment in the United States. The majority of prominent religious groups including the Roman Catholic Church, American Baptist Churches in the U.S.A. and the

33. Barbara Neff, "Religious Groups and the Death Penalty," Religion News Service, 7 March 2003, < <http://www.ou.org/public/news/dpenalty03.htm> > (26 October 2006).

Evangelical Lutheran Church in America, actively oppose capital punishment while other groups such as the Lutheran Church Missouri Synod, the Southern Baptist Convention, and the National Association for Evangelicals support capital punishment by considering it to be a “moral practice, one endorsed by the Bible.”³⁴ What follows will include statements on capital punishment from the Evangelical Lutheran Church in America (ELCA), the Lutheran Church Missouri Synod, the Presbyterian Church (USA), the U.S. Catholic Bishops’ statement, and viewpoints from the Southern Baptist Convention, and the National Association of Evangelicals.

The ELCA adopted a social practice statement on the death penalty that was agreed upon “by a more than two-thirds majority vote at the second biennial Churchwide Assembly of the Evangelical Lutheran Church in America, meeting in Orlando, Florida, August 28-September 4, 1991.”³⁵ The ELCA recognizes that its members have differing points of view regarding social issues. “While the Spirit makes us one in our *faith* in the Gospel, we can and do vary in our *responses* to the Gospel.”³⁶ It is not the intention of the ELCA “to end such diversity by ‘binding’ members to a particular position. Social statements acknowledge diversity and address members in their Christian freedom.”³⁷ That being said, the following is an affirmation of the ELCA position regarding the death penalty:

On the basis of Scripture and the Lutheran Confessions we hold that, through the divine activity of the Law, God preserves creation, orders society, and promotes

34. Steve J. Varnam, “A barely tolerable punishment,” Christianity Today 39, (1995): 19. Academic Search Premier, (26 October 2006).

35. “ELCA Social Statement on the Death Penalty,” ELCA.org, 1991, <<http://www.elca.org/socialstatements/deathpenalty/>> (19 September 2006).

36. “ELCA Social Statement on the Death Penalty.”

37. “ELCA Social Statement on the Death Penalty.”

justice in a broken world. God works through the state and other structures of society necessary for life in the present age. The state is responsible under God for the protection of its citizens and the maintenance of justice and public order. God entrusts the state with power to take human life when failure to do so constitutes a clear danger to society. However, this does not mean that governments have an unlimited right to take life. Nor does it mean that governments must punish crime by death. We increasingly question whether the death penalty has been and can be administered justly.³⁸

That society is ruled by the Law and is influenced and nourished by the Gospel is what Lutheran theological tradition has maintained. Christians are described as salt of the earth and light of the world as found in Matthew 5:13-14: “You are the salt of the earth; but if salt has lost its taste, how can its saltiness be restored? It is no longer good for anything, but is thrown out and trampled under foot. You are the light of the world. A city built on a hill cannot be hid” (NRSV). Christians are called to react to violent crime in the recuperative way that Jesus taught as evidenced in Matthew 5:38-39: “You have heard it was said, an eye for an eye and a tooth for a tooth. But I say to you, Do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also” (NRSV). Jesus responded to violent crime in a restorative way not only by his words but by his actions as described in John 8:3-11:³⁹

The scribes and the Pharisees brought a woman who had been caught in adultery; and making her stand before all of them, they said to him, ‘Teacher, this woman was caught in the very act of committing adultery. Now in the law Moses commanded us to stone such women. Now what do you say?’ They said this to test him, so that they might have some charge to bring against him. Jesus bent down and wrote with his finger on the ground. When they kept on questioning him, he straightened up and said to them, ‘Let anyone among you who is without sin be the first to throw a stone at her.’ And once again he bent down and wrote on the ground. When they heard it, they went away, one by one, beginning with the elders; and Jesus was left alone with the woman standing before him. Jesus straightened up and said to her, ‘Woman, where are they? Has no one condemned you?’ She said, ‘No one sir.’ And Jesus said, ‘Neither do I condemn you. Go your way, and from now on do not sin again’ (NRSV).

38. “ELCA Social Statement on the Death Penalty.”

39. “ELCA Social Statement on the Death Penalty.”

Following the works and teachings of Jesus leads to a commitment to restorative justice for the ELCA. Such a commitment means dealing with the pain of each individual whose life has been affected by violent crime. The community is a safer place for all with restorative justice.⁴⁰ Importantly, the ELCA states:

It is because of this church's ministry with and to people affected by violent crime that we oppose the death penalty. Executions focus on the convicted murderer, providing very little for the victim's family or anyone else whose life has been touched by the crime. Capital punishment focuses on retribution, sometimes reflecting a spirit of vengeance. Executions do not restore broken society and can actually work counter to restoration. This church recognizes the need to protect society from people who endanger that society: removing offenders from the general population, placing them in a secure facility, and denying them the possibility of committing further crime (i.e., incapacitating them). Our challenge is to incapacitate offenders in a manner that limits violence, and holds open the possibility of conversion and restoration.⁴¹

Violent crime is an unfortunate reality and God gives responsibility to governments to carry out appropriate justice. Individuals oftentimes respond to violent crime as if it were solely a matter of the individual failure of the criminal. Capital punishment is the epitome of ultimate personal retribution. Importantly, the death penalty “makes no provable impact on the breeding grounds of violent crime. Executions harm society by mirroring and reinforcing existing injustice. The death penalty distracts us from our work toward a just society. It deforms our response to violence at the individual, familial, institutional, and systematic levels. It perpetuates cycles of violence. It is because of this church’s commitment to justice that we oppose the death penalty We would be a better society by joining the many nations that have already abolished

40. “ELCA Social Statement on the Death Penalty.”

41. “ELCA Social Statement on the Death Penalty.”

capital punishment.”⁴² In addition, the ELCA recognizes the unfair nature of capital punishment. “Despite attempts to provide legal safeguards, the death penalty has not been and cannot be made fair.”⁴³ The judicial system is far from being perfect and is inherently flawed and a human life is far too important to risk executing when the person facing execution may in fact be innocent. “Since human beings are fallible, the innocent have been executed in the past and will inevitably be executed in the future. Death is a different punishment from any other; the execution of an innocent person is a mistake we cannot correct.”⁴⁴ As previously discussed, the ELCA takes a variety of issues surrounding capital punishment into consideration and concludes that it is not a justifiable form of punishment, does not do anything to maintain the common good, and the ELCA concludes: “It is because of this church’s concern regarding the actual use of the death penalty that we oppose its imposition. The practice of the death penalty undermines any possible moral message we might want to ‘send.’ It is not fair and fails to make society better or safer. The message conveyed by an execution, reflected in the attention it receives from the public, is one of brutality and violence.”⁴⁵

Whereas the ELCA takes a strong stance against capital punishment, the Lutheran Church—Missouri Synod (LCMS) considers capital punishment to be a moral practice that is endorsed in the Bible. The LCMS is in favor of the death penalty based on its understanding of Scripture. The LCMS stated its position on the death penalty in 1967 and said, “that capital punishment is in accord with the Holy Scriptures and the Lutheran Confessions Therefore, be it Resolved, That The Lutheran Church—Missouri

42. “ELCA Social Statement on the Death Penalty.”

43. “ELCA Social Statement on the Death Penalty.”

44. “ELCA Social Statement on the Death Penalty.”

45. “ELCA Social Statement on the Death Penalty.”

Synod declares that capital punishment is in accord with the Holy Scriptures and the Lutheran Confessions.”⁴⁶ Even though capital punishment is in accord with Scripture according to the LCMS, their statement goes on to state:

This does not mean that everyone who belongs to the LCMS or is a member of an LCMS congregation is conscience-bound to support the death penalty. Individuals within the LCMS may, for various valid reasons, object to the usefulness and fairness of the death penalty as it is being used or considered within a particular governmental system. Although it is clear from Scripture that the government has the God-given right to use the death penalty, the LCMS has not taken the position that the government must use this right if it determines that some other form of punishment would better serve society at large at a particular time and place.⁴⁷

At first glance it may seem that the LCMS is completely in favor of capital punishment; however, an important component of their statement is that even though it is clear from the Bible that the government has the God-given right to administer capital punishment, “the LCMS has not taken the position that the government must use this right if it determines that some other form of punishment would better serve society at large at a particular time and place.”⁴⁸ Presumably, there are superior alternative punishments such as life in prison without parole. Importantly, if capital punishment is not the best form of punishment to serve the common good then it should not be administered according to the Lutheran Church—Missouri Synod.

The Presbyterian Church, like the ELCA, is outwardly opposed to capital punishment. Presbyterian General Assemblies have been concerned not only with capital punishment, but also for those who are imprisoned. The most significant Presbyterian policy statements over the past forty years have come in the years 1959, 1977, and

46. “The Death Penalty,” The Lutheran Church Missouri Synod, 2006, <<https://www.lcms.org/pages/internal.asp?NavID=2112>> (19 September 2006).

47. The Lutheran Church Missouri Synod.

48. The Lutheran Church Missouri Synod.

1978.⁴⁹ The 171st General Assembly in 1959, “believing that capital punishment cannot be condoned by an interpretation of the Bible based upon the revelation of God’s love in Jesus Christ,” asked Christians to “seek the redemption of evil doers and not their death,” and said that, “the use of the death penalty tends to brutalize the society that condones it.”⁵⁰ Eighteen years later in 1977, the 189th General Assembly called upon its members to do the following:

- a. Work to prevent the execution of persons now under sentence of death and further use of the death penalty;
- b. Work against attempts to reinstate the death penalty in state and federal law, and where such laws exist, to work for their repeal;
- c. Work for the improvement of the justice system to make less radical means available for dealing with persons who are a serious threat to themselves and to the safety and welfare of society.⁵¹

One year later in 1978, the General Assembly went on record saying, “Capital punishment is an expression of vengeance which contradicts the justice of God on the cross.”⁵² This is a profound statement because when vengeance is what capital punishment is classified under, it is hard for any Christian or any Christian Church to support the death penalty since vengeance is in such contradiction to any of Jesus’ pronouncements or teachings. The Presbyterian Church (U.S.A.) made the most current statement regarding capital punishment in 1985 and it reaffirmed prior positions and declared, “its continuing opposition to capital punishment.”⁵³

The Catholic Church is also strongly opposed to capital punishment and “in 1974, out of a commitment to the value and dignity of human life, the U.S. Catholic

49. Capital Punishment, Presbyterian 101, <<http://www.pcusa.org/101/101-capital.htm>> (18 October 2006).

50. Presbyterian 101.

51. Presbyterian 101.

52. Presbyterian 101.

53. Presbyterian 101.

Conference, by a substantial majority, voted to declare its opposition to capital punishment.”⁵⁴ The public debate over capital punishment conjures up values of utmost importance: “respect for the sanctity of human life, the protection of human life, the preservation of order in society, and the achievement of justice through law.”⁵⁵ Catholic teaching has recognized the principle that “the state has the right to take the life of a person guilty of an extremely serious crime, and that the state may take appropriate measures to protect itself and its citizens from grave harm, nevertheless, the question for judgment and decision today is whether capital punishment is justifiable under present circumstances.”⁵⁶

Among other justifications for capital punishment that are frequently used, that of retribution is interesting to focus on from the perspective of the Catholic Bishops. Retribution has to do with “the restoration of the order of justice which has been violated by the action of the criminal. We grant that the need for retribution does indeed justify punishment. For the practice of punishment both presupposes a previous transgression against the law and involves the involuntary deprivation of certain goods. But we maintain that this need does not require nor does it justify taking the life of the criminal, even in cases of murder.”⁵⁷ It is imperative to remember Jesus’ example of forbearance in the face of evil as evidenced in Matthew 5:38-42 and Jesus’ forgiveness of injuries as is recorded in Matthew 18:21-35. It is socially destructive and morally inadequate to let criminals go unpunished, but the punishment must have limits and be decided on by

54. “U.S. Catholic Bishops’ Statement on Capital Punishment,” *Frontline: Angel on Death Row*, 2005, <<http://www.pbs.org/wgbh/pages/frontline/angel/procon/bishopstate.htm>> (18 October 2006).

55. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

56. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

57. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

moral objectives that go further than imposing injury on the guilty.⁵⁸ “Thus we would regard it as barbarous and inhumane for a criminal who had tortured or maimed a victim to be tortured or maimed in return. Such a punishment might satisfy certain vindictive desires that we or the victim might feel, but the satisfaction of such desires is not and cannot be an objective of a humane and Christian approach to punishment.”⁵⁹

The U.S. Catholic Bishops evidence their concern for the common good in the statement: “We believe that the forms of punishment must be determined with a view to the protection of society and its members and to the reformation of the criminal and his reintegration into society (which may not be possible in certain cases).”⁶⁰ This viewpoint is in direct accordance with Thomas Aquinas’ statement from Summa Theologica, TT-II, 68, 1: “In this life, however, penalties are not sought for their own sake, because this is not the era of retribution; rather, they are meant to be corrective by being conducive either to the reform of the sinner or the good of society, which becomes more peaceful through the punishment of sinners.”⁶¹

The U.S. Catholic Bishop’s statement reflects the belief that the imposition of the death penalty is not justified in the following statement:

We maintain that abolition of the death penalty would promote values that are important to us as citizens and as Christians. First, abolition sends a message that we can break the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime Second, abolition of capital punishment is also a manifestation of our belief in the unique worth and dignity of each person from the moment of conception, a creature made in the image and likeness of God Third, abolition of the death penalty is further testimony to our conviction, a conviction which we share with the Judaic and Islamic traditions, that God is indeed the Lord of life Fourth, we believe that abolition of the death penalty is most

58. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

59. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

60. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

61. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

consonant with the example of Jesus, who both taught and practiced the forgiveness of injustice and who came ‘to give his life as a ransom for many’ (Mark 10:45).⁶²

The U.S. Catholic bishops clearly state that it is not their belief that the abolition of capital punishment is a simple solution to the problems of violence and crime but that important changes are needed in the correctional system. The final declaration of the Catholic Bishop’s statement beautifully sums up their call to society: “We urge our brothers and sisters in Christ to remember the teaching of Jesus who called us to be reconciled with those who have injured us (Matthew 5:43-45) and to pray for forgiveness for our sins ‘as we forgive those who have sinned against us.’ (Matthew 6:12) We call on you to contemplate the crucified Christ who set us the supreme example of forgiveness and of the triumph of compassionate love.”⁶³

Two religious organizations that support capital punishment and believe it is in accord with Scripture are the National Association of Evangelicals and the Southern Baptist Convention. Bill Merrell, vice president of the Southern Baptist Convention, says that, “capital punishment is both appropriate and permitted by God.”⁶⁴ Scott Croft, a member of Capitol Hill Baptist Church, a church that belongs to the Southern Baptist Convention said, “capital punishment is sanctioned in the Old Testament and affirmed in the New Testament.” Croft also said that the death penalty is “a stand for human life” that expresses the value and dignity of every human being.⁶⁵ Southern Baptists along with other biblical Christians, take the Scriptures to be determinative and normative in any question of Christian faith or practice. The Southern Baptist Convention pronounces,

62. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

63. “U.S. Catholic Bishops’ Statement on Capital Punishment.”

64. Barbara Neff.

65. Barbara Neff.

“God Himself authorized capital punishment specifically for murder (the unauthorized taking of human life) after the Noahic Flood, validating its legitimacy in human society (*Whoever sheds man’s blood, by man his blood shall be shed. For in the image of God He made man.* Genesis 9:6). In authorizing capital punishment for murder, God states that it is precisely *because* He made man in His own image that *He* requires this punishment.”⁶⁶ It is because all people are created in the image of God that they should be treated with dignity. British Christian thinker C.S. Lewis, “made a valuable contribution in reminding us that to be punished, however severely, because we indeed *deserve* it, is to be treated with dignity consistent with being created in the image of God.”⁶⁷

The National Association of Evangelicals, like the Southern Baptist Convention, supports the administering of capital punishment. Richard Cizik, Vice President of governmental affairs for the National Association of Evangelicals, an umbrella organization for fifty-one denominations representing over 40,000 congregations, believes “the value of human life is undermined if no crime, however heinous, deserves the death penalty The sacredness of human life is related to the punishment one receives for having taken it.”⁶⁸ The following is the statement pertaining to capital punishment by the National Association of Evangelicals:

The NAE supports the use of capital punishment. If no crime is considered serious enough to warrant capital punishment, then the gravity of the most atrocious crime is diminished accordingly. It follows then that the attitude of criminals will be affected. From the biblical perspective, if capital punishment is eliminated, the value of human life is reduced and the respect for life is correspondingly eroded.

66. Bill Merrell, “Capital Punishment: What does the Bible Say?” *SBC Life*, September 2001, <<http://www.sbclife.net/printfriendly.asp>> (26 October 2006).

67. Bill Merrell.

68. Barbara Neff.

The National Association of Evangelicals believes that the ultimate penalty of capital punishment should be retained for premeditated capital crimes.⁶⁹

While it is relevant to include Christian based arguments in the capital punishment debate, it is also essential to include a broader audience in this debate. Accordingly, it is instructive to explore the societal implications of capital punishment and examine the proposition that the common good argument is not exclusive to Christianity but is also of importance to secular society.

69. "Capital Punishment," National Association of Evangelicals, <<http://www.nae.net/index.cfm?FUSEACTION=editor.page&pageID=99&IDCategory=8>> (26 October 2006).

Chapter 3: Current Societal Implications

One area of law more than any other besmirches the constitutional vision of human dignity The barbaric death penalty violates our Constitution. Even the most vile murderer does not release the state from its obligation to respect dignity, for the state does not honor the victim by emulating his murderer. Capital punishment's fatal flaw is that it treats people as objects to be toyed with and discarded One day the Court will outlaw the death penalty. Permanently.⁷⁰

-William J. Brennan, Jr., retired Supreme Court Justice, 1996

When I think of the thousands of inhabitants of Death Rows in the hundreds of prisons in this country My reaction is: What's taking us so long? Let's get that electrical current flowing. Drop those pellets [of poison gas] now! Whenever I argue this with friends who have opposite views, they say that I don't have enough regard for the most marvelous of miracles - human life. Just the opposite: It's because I have so much regard for human life that I favor capital punishment. Murder is the most terrible crime there is. Anything less than the death penalty is an insult to the victim and society. It says . . . that we don't value the victim's life enough to punish the killer fully.⁷¹

-Award-winning Chicago journalist Mike Royko

As my jail bus pulled up to the front gate, I felt a number of things: curiosity, dread, anger, and an enormous amount of tension. I can remember two things that kept running through my head. I suspect that it was my sub-conscious babbling under the stress I felt. One thing that kept running through it was a paraphrase of that line in the Wizard of Oz, *'You're a long way from home now, Toto!'* And that was alternated with scolding myself for the mess I had managed to get into. When I walked through the gates and entered the inner prison, I felt the hairs on the back of my neck stand up and I felt a chill deep inside of me that wasn't related to the weather. I felt as if I had stepped back in time one hundred years. It was really an eerie feeling.⁷²

-Dean Carter, June 6, 1995. An inmate on Death Row in San Quentin, CA prison.

While so many factors need to be considered, it is important to evaluate whether capital punishment is an effective and appropriate sentence for severe crimes. In this

70. Richard C. Dieter, "Twenty Years of Capital Punishment: A Re-evaluation," Death Penalty Information Center, June 1996, < <http://www.deathpenaltyinfo.org/article.php?did=543&scid=45>> (16 November 2005).

71. "The Morality of Capital Punishment," Pro Death Penalty Web Page, 14 August 2005, <<http://www.wesleylowe.com/cp.html#moral>> (16 November 2005).

72. Dean Carter, "Column 2," Deadman Talking, 6 June 1995, <<http://www.deadmantalking.com/engels/frame.htm>> (16 November 2005).

regard, it is relevant to consider whether capital punishment is a deterrent, if minors should be considered for capital punishment, if the benefits outweigh the costs, if it is a moral punishment, and whether it is a prejudicial form of punishment as evidenced by statistics involving minorities, specifically African Americans, as well as the poor.

Whether the death penalty is a deterrent to severe crimes is a question that deserves further exploration. Defenders of the death penalty argue, “The death penalty’s incapacitative benefits come from preventing the individual murderers who are apprehended and executed from killing again.”⁷³ Criminologists refer to specific deterrence and general deterrence. The above quoted argument is an example of specific deterrence. General deterrence is understood as, “More significant benefits come from the death penalty’s restraining effect on the much larger pool of persons who are potentially murderous Evidence for capital punishment’s general deterrent effect comes from three sources: logic, firsthand reports, and social science research.”⁷⁴ According to Paul Cassell, “Logic supports the conclusion that the death penalty is the most effective deterrent for some kinds of murders—those that require reflection and forethought by persons of reasonable intelligence and unimpaired mental faculties.”⁷⁵ Professor James Q. Wilson is in agreement with the deterrent argument as he has explained:

People are governed in their daily lives by rewards and penalties of every sort. We shop for bargain prices, praise our children for good behavior and scold them for bad, expect lower interest rates to stimulate home building and fear that higher ones will depress it, and conduct ourselves in public in ways that lead our friends and neighbors to form good opinions of us. To assert that ‘deterrence doesn’t

73. Paul G. Cassell, “In Defense of the Death Penalty,” in *Debating the Death Penalty*, ed. by H. Bedau, P. Cassell, (New York: Oxford University Press, 2004), 183-217.

74. Paul G. Cassell.

75. Paul G. Cassell.

work' is tantamount to either denying the plainest facts of everyday life or claiming that would-be criminals are utterly different from the rest of us.⁷⁶

It is Cassell's view that "Our entire criminal justice system is premised on the belief that increasing penalties increases deterrence."⁷⁷ The death penalty is the ultimate punishment and is reserved for first-degree murder cases. According to Cassell, it is not an answer to talk about the fact that murders continue to happen in America with the death penalty in place. "The salient issue is not whether the death penalty deters *every* murder, only whether it deters *some* murders. Logic suggests that at least some potential murderers will be deterred."⁷⁸

Besides logic, firsthand reports are also utilized as evidence by proponents of deterrence. Those who believe capital punishment increases deterrence use firsthand reports from victims as well as criminals to support their logical intuition that capital punishment deters. For instance, Senator Dianne Feinstein recently described her experience of the sentencing of a woman in the 1960s that was convicted of first-degree robbery:

. . . I saw she carried a weapon that was unloaded into a grocery store robbery. I asked her the question: 'Why was the gun unloaded?' She said to me: 'So I would not panic, kill somebody, and get the death penalty.' That was firsthand testimony directly to me that the death penalty in place in California in the sixties was in fact a deterrent.⁷⁹

A second example is taken from an instance in New York City that followed the 1972 Supreme Court's Furman decision that temporarily suspended capital punishment. In this instance, John Wojtowicz along with another criminal took eight bank employees

76. James Q. Wilson, Thinking About Crime, (rev. ed. 1983), 121, quoted in Paul G. Cassell.

77. Paul G. Cassell.

78. Paul G. Cassell.

79. Dianne Feinstein, 141 CONG. REC. S7662, (5 June, 1995), quoted in Paul G. Cassell.

hostage and made threats about killing them before they were halted by FBI agents.

Wojtowicz said the following while threatening the hostages:

I'll shoot everyone in the bank. The Supreme Court will let me get away with this. There's no death penalty. It's ridiculous. I can shoot everyone here, then throw my gun down and walk out and they can't put me in the electric chair. You have to have a death penalty, otherwise this can happen everyday.⁸⁰

Since 1976, the year the death penalty was reinstated in the United States, deterrence advocates have continued to argue the death penalty's deterrent effect. Alan Dershowitz, a Harvard Law Professor and also a fierce opponent of capital punishment conceded the existence of deterrence in a 1995 debate, "Of course, the death penalty deters some crimes, that's why you have to pay more for a hitman in a death penalty state, than a non-death penalty state."⁸¹ Another pro-deterrence argument has been made when addressing the importance of preventing murders inside prisons. Director of the U.S. Bureau of Prisons, Norman Carlson, has testified, "in the case of someone serving a nonrevokable life sentence, execution is the only sanction which could possibly serve as a deterrent We must impose the death penalty on prisoners sentenced to life who murder guards or other inmates in order to bring some semblance of security to our Federal prison system."⁸² Cassell argues, "In short, those serving a sentence of life without parole (often offered as a substitute for capital punishment) have a 'license to kill' without the availability of a death penalty."⁸³

80. Recounted in Frank Carrington, Neither Cruel nor Unusual, (1978), 96, quoted in Paul G. Cassell.

81. Debate among Professor Paul Cassell, Professor Alan Dershowitz, and Wendy Kamenar on the death penalty (Harvard Law School, 22 March, 1995), quoted in Paul G. Cassell.

82. Paul G. Cassell.

83. Paul G. Cassell.

Finally, Cassell argues that statistical analysis supports the deterrent effect. It is suggested by Cassell that an appropriate measure of a deterrent effect comes from evaluating the experience of states that have had capital punishment laws over time. In this regard, one can compare what certain states' murder rates were in the years 1986-1976, which was a time in which nobody was executed, with what the murder rates were in time period between 1995-2000. Various senators including Senator Hatch commented on such statistical information. "The five states showing the greatest relative improvements are in order, Georgia, South Carolina, Florida, Delaware, and Texas. All these states have aggressive application of the death penalty."⁸⁴ Emory University Economics Professors Hashem Dezhbakhsh, Paul Rubin, and Joanna Shepherd have published the most thorough analysis of the American death penalty data to date. The researchers from Emory scrutinized data for 3,054 American counties between the years of 1977-1996 and controlled such variables as judicial and police resources dedicated to crime, economic indicators, and other potential influences on the rate of murder.⁸⁵ "The Emory researchers found that, in general, murder rates fell as more murderers were arrested, sentenced, and—most important for present purposes—executed. In particular, they concluded that each additional execution during this period of time resulted, on average, in 18 fewer murders."⁸⁶

From a different perspective, there are of course those who argue that the death penalty does not deter crime. According to Lynne Abraham, a Philadelphia District Attorney who is famous for being one of the most notorious prosecutors in favor of the

84. Paul G. Cassell.

85. Paul G. Cassell.

86. Paul G. Cassell.

death penalty acknowledges that the death penalty is not a deterrent.⁸⁷ Research has also been conducted on this issue and as documented in Joel Dyer's book, The Perpetual Prisoner Machine, study after study has shown that the death penalty does not work as a deterrent to murder.⁸⁸ Hugo Adam Bedau addresses the question of whether the death penalty deters and points out, "Common sense assures us that punishments generally serve to deter some persons from some crimes on some occasions. There is no reason to think that the death penalty is an exception."⁸⁹ However, the imperative question is how much does the death penalty actually deter? Bedau states, "The question that death penalty advocates need to answer is this: 'Does the death penalty deter *as well as or better than* imprisonment?' To date, no one has even tried to determine the extent to which imprisonment is a deterrent to murder. For all we know, it is as good a deterrent as death, or even better."⁹⁰

A significant consideration that has to do with deterrence deals with the rationality of the criminal. There exists, of course, a basic logic that convinces reasonable people. "If an act is punishable as a crime, then the punishment should be severe enough to cancel out the potential gain that a person considering the crime might expect. It follows that the more severe the punishment, the more people would be deterred from the commission of criminal acts. This reasoning assumes that potential criminals are rational men . . . I contend that the rational criminal man, if he exists at all, seldom commits murder, and when he does, his crime is usually impossible for police to

87. James McCloskey.

88. Joel Dyer.

89. Hugo Adam Bedau, 'An Abolitionist's Survey of the Death Penalty in America Today,' in Debating the Death Penalty, ed. by H. Bedau, P. Cassell, (New York: Oxford University Press, 2004), 15-50.

90. Hugo Adam Bedau.

detect.”⁹¹ It is also necessary to consider that capital punishment is not the sole determinant of the incidence of crime. Rather, “The number of murders certainly depends as well on the proportion of young males in the population, on income distribution, on education, on the proportion of various races in the population, on local cultural traditions, on the legal definition of murder, and on other such factors.”⁹² Despite a large amount of deterrence research on both sides, Ernest van den Haag points out, “one cannot say that the statistical evidence is conclusive. Nobody has claimed to have *disproved* that the death penalty may deter more than life imprisonment.”⁹³ The issue remains that it is nearly impossible to be able to prove that capital punishment does in fact deter crime, thus making the argument in favor of the death penalty deterring crime quite weak. A strong argument against deterrence however is that, “The South, which has carried out 85 percent or the nation’s executions since 1976, has the highest murder rate of any region in the country. The Northeast, which has the fewest executions by far—only 3 executions between 1976 and the end of 2002—has the lowest murder rate.”⁹⁴ Capital punishment does not appear to be much of a deterrent at all as evidenced by such statistics.

A long-standing debate in this country has centered on whether or not minors who are certified to stand trial as adults and are convicted should be subject to the death penalty. William Schultz, a Unitarian minister and executive director of Amnesty International points out, “We deem that juveniles are not mature enough to vote, to serve

91. John P. Conrad, “Does Deterrence Need Capital Punishment?” in The Reference Shelf Capital Punishment, ed. by T. Draper, (New York: H.W. Wilson Company, 1985), 79-92.

92. Ernest van den Haag. “The Deterrent Effect of the Death Penalty,” in The Reference Shelf Capital Punishment, ed. by T. Draper, (New York: H.W. Wilson Company, 1985), 131-134.

93. Ernest van den Haag.

94. Stephen B. Bright.

on juries, to buy alcohol or cigarettes, and occupy most government jobs, but we deem them mature enough to be executed.”⁹⁵ In fact, the United States is part of an extremely small minority of nations that permit children to be executed. Since 1990, 18 people have been given the death penalty for crimes that they committed when they were 17 years old or younger.⁹⁶ The only other nations that executed children during the time period between 1990 and 2001 were “the Congo, Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen.”⁹⁷ Currently, in Texas on death row there are 27 juvenile offenders. Texas thus leads the nation with the most juvenile offenders on death row. Twenty-two states specifically have laws allowing the death penalty on those who have committed capital crimes as juveniles.⁹⁸ On the other hand, some people such as John Lofton from the American Conservative Caucus believe that everyone, regardless of their age, should be executed if they murder someone. Interestingly, Lofton believes that anybody who commits a murder should die. He is strongly rooted in Biblical ideas and thinks that God supports the death penalty. He explains that it is not that he necessarily wants the death penalty for kids, rather he believes that the punishment, including death, should fit the crime regardless of how old one is.⁹⁹

95. Ellen James, “Amnesty sets goal to ban minors on death row,” Pittsburgh Tribune-Review, 23 January 2003, <http://www.pittsburghlive.com/x/search/s_114258.html> (20 October 2005).

96. Ellen James.

97. Amnesty International, “Death Penalty Developments in 2001,” available at <http://web.amnesty.org/rmp/dplibrary/nsf> cited in Stephen B. Bright.

98. Ellen James.

99. Owen Poindexter, Fred Valez, Ben Abelson, Valencia Bruce, Diamond Budansingh, Llana Novick, Tamerra Thompson, “Kida and the death penalty: A conservative view,” New York Amsterdam News 89, (1998): 22. Academic Search Premier, (20 October 2005).

A further current issue that is deserving of research deals with whether the benefits of capital punishment outweigh the costs. J. Budziszewski, Professor of Government and Philosophy at the University of Texas at Austin, claims that capital punishment has an economic benefit because of the greater expense to feed and house all of the criminals sentenced to life in prison.¹⁰⁰ Opponents of the death penalty dispute such a claim and point out that the costs associated with capital punishment are staggering. Those against capital punishment argue that with a price tag of a couple of million dollars per execution, it makes more economic sense for society to use life in prison without parole rather than death as the ultimate sentence and some statistics support that position. In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. Similarly, the death penalty in North Carolina costs \$2.16 million more per execution than a non-death penalty murder case with a punishment of imprisonment for life.¹⁰¹ Economics aside, Helen Prejean, a Roman Catholic sister known for her work against capital punishment, firmly believes, “we must persuade the American people that government killings are too costly for us, not only financially, but—more important—morally. The death penalty *costs* too much. Allowing our government to kill citizens compromises the deepest moral values upon which this country was conceived: the inviolable dignity of human persons.”¹⁰² Additionally, the continued practice of capital punishment by the United States is costly to our international relations. “The retention of capital punishment in the United States draws

100. J. Budziszewski, “Capital Punishment: The Case for Justice,” First Things: A Monthly Journal of Religion and Public Life (2004):39-45. Academic Search Premier, (20 October 2005).

101. “Facts About the Death Penalty.”

102. Sister Helen Prejean. Dead Man Walking, (New York: Vintage Books, 1994), 197.

harsh criticism from throughout the world Felix G. Rohatyn, who saw the people of Europe firsthand during four years as U.S. Ambassador to France, found that ‘no single issue evoked as much passion and as much protest as executions in the United States.’”¹⁰³

The death penalty certainly affects the relationships the United States has with other countries. Canada and Mexico, along with other countries, have strongly protested when the United States has executed their nationals. Also, “Canada, Mexico, and most European countries will not extradite suspects to the United States if they are subject to capital punishment and will not assist in the prosecution of people facing the death penalty. Just as the United States could not assert moral leadership in the world as long as it allowed segregation, it will not be a leader on human rights as long as it allows capital punishment.”¹⁰⁴

Reasonable minds differ over whether the death penalty is a morally permissible punishment or whether it is cruel and unusual punishment. Louis P. Pojman believes, “The death penalty as punishment for the most serious crimes is morally justified.”¹⁰⁵ Pojman believes that those who have committed heinous crimes deserve death and should be given the most painful punishment possible. Pojman elaborates:

I fail to see that death in the electric chair is either ‘immoral or unconscionable.’ After all, the criminal has committed a heinous act of violence with malice aforethought. I would argue that the electric chair, far from being unconscionable, is completely justified. Painless lethal injection, which is the process of choice in many states, seems too good for someone who in callous disregard for his victim shed innocent blood. Hanging or the firing squad or a painful electric shock seem more fitting to most acts of murder.¹⁰⁶

103. Stephen B. Bright.

104. Stephen B. Bright.

105. Louis P. Pojman, “Why the Death Penalty Is Morally Permissible,” in Debating the Death Penalty, ed. by H. Bedau, P. Cassell, (New York: Oxford University Press, 2004), 51-75.

106. Louis P. Pojman.

Pojman speaks about white-collar crime and corporate scandals and the CEOs of such corporations as Enron and WorldCom who actively ruined the pension plans of their employees. In that regard, Pojman asserts:

The leaders of these large companies probably did more overall harm to their employees than a murderer. While it is evil to take the life of one innocent person, it is also grossly evil to destroy the pension plans of thousands of employees due to greed and dishonesty, while securing millions of dollars for oneself. The cumulative effect of such deliberate deception and disregard for one's employees may be worse than that of the single murder. If the death penalty is an appropriate punishment for those who commit treason, it is applicable to business executives who violate the public trust and undermine faith in our economic system. In applying the death penalty to white collar crimes, we would be applying it more fairly.¹⁰⁷

Are white-collar criminals really *deserving* of death? This seems to be an excessive argument that most reasonable people would disagree with. However, Pojman also argues that, "Intentionally taking the life of an innocent human being is so evil that absent mitigating circumstances, the perpetrator forfeits his own right to life. He or she deserves to die."¹⁰⁸ Pojman does not find it evil or wrong to take the life of another; rather, he believes it is the most acceptable and necessary punishment.

Pojman further addresses the difference between two terms that he considers to be very different: retribution and revenge. He contends that retribution is often confused with revenge. Reverend Desmond Tutu has stated, "to take a life when a life has been lost is revenge, it is not justice."¹⁰⁹ Pojman disagrees and says about Tutu's statement, "This is simply false."¹¹⁰ Pojman also explains the difference between vengeance and retribution. "Vengeance signifies inflicting harm on the offender out of anger because of

107. Louis P. Pojman.

108. Louis P. Pojman.

109. Louis P. Pojman.

110. Louis P. Pojman.

what he has done. Retribution is the rationally supported theory that the criminal deserves a punishment fitting the gravity of his crime.”¹¹¹ It is claimed that “retributivism is not based on hatred for the criminal Retributivism is the theory that the criminal *deserves* to be punished in proportion to the gravity of his or her crime, whether or not the victim or anyone else desires it.”¹¹²

In reality, a criminal will never truly receive a punishment “fitting” the gravity of his crime because the State will never do such things as abduct, rape, or murder a criminal. “Capital punishment has no place in a decent society that places some practices, such as torture, off limits—not because some individuals have not done things so bad that they arguably deserved to be tortured, but because a civilized society simply does not engage in such acts.”¹¹³ Susan Jacoby maintains and Helen Prejean agrees, “that the retribution which society metes out should be *measured*. Her objection to capital punishment is that such “eye-for-an-eye” retribution is as excessive as the original crime it punishes.”¹¹⁴ It may be argued that society needs some sort of satisfaction to avoid vigilantism; however, a punishment as severe as the death penalty is not the answer. Rather, life in prison without parole is a superior alternative.

Capital punishment also brings out the ugliness of society. “When death sentences are carried out, small groups of people gather in execution chambers and watch as a human being is tied down and put down. Some make no effort to suppress their glee when the sentence is carried out and celebrations occur inside and outside of the prison. These celebrations of death reflect the dark side of the human spirit—an arrogant,

111. Louis P. Pojman.

112. Louis P. Pojman.

113. Stephen B. Bright.

114. Sister Helen Prejean.

vengeful, unforgiving, uncaring side that either does not admit the possibility of innocence or redemption or is willing to kill people despite those possibilities.”¹¹⁵

Pojman additionally argues that the death penalty is necessary to prevent vigilantism. He claims that people “have a sense of outrage and passion for revenge directed at criminals in their crimes.”¹¹⁶ He even compares the passion for revenge to be parallel with the sexual appetite present in marriage. Pojman explains, “Failure to punish would no more lessen our sense of vengeance than the elimination of marriage would lessen our sexual appetite. When a society fails to punish criminals in a way thought to be proportionate to the gravity of the crime, the danger arises that the public would take the law into its own hands, resulting in vigilante justice, lynch mobs, and private acts of retribution. The outcome is likely to be an anarchistic, insecure state of injustice. As such, legal retribution stands as a safeguard for an orderly application of punitive desert.”¹¹⁷ Such an argument seems to be more of a fallacy than anything else. States in the United States, such as Minnesota, that do not have capital punishment along with multiple countries around the world do not experience such rampant vigilantism that Pojman speaks about even though such places do not enforce capital punishment. His argument is that of slippery slope when he claims that without the death penalty all of these horrible, vigilante acts will occur. This in my view is not true; the justice system prevents such acts and capital punishment is not a necessary solution to prevent vigilantism.

115. Stephen B. Bright.

116. Louis P. Pojman.

117. Louis P. Pojman.

Finally, and arguably most importantly, prejudicial inequalities such as racial biases and the poor need to be readdressed. As discussed in chapter one, one's race and economic situation does make a difference and because of this, more minorities and impoverished people are found guilty and sentenced to death.

The process leading to a death sentence is so unfair and influenced by so many improper factors and the infliction of death sentences is so inconsistent that this punishment should be abandoned. The exoneration of many people who spent years of their lives in prisons for crimes they did not commit—many of them on death rows—has dramatically brought to light defects in the criminal justice system that have surprised and appalled people who do not observe the system every day and assumed it was working properly. The average person has little or no contact with the criminal courts, which deal primarily with crimes committed against and by poor people and members of racial minorities. It is a system that is overworked and underfunded, and particularly underfunded when it comes to protecting the rights of those accused.¹¹⁸

Economic factors come into the equation because most people facing the death penalty cannot afford to hire a lawyer on their own so that a defendant is then typically provided with a court-appointed attorney. “While many receive adequate representation (and often are not sentenced to death as a result), many others are assigned lawyers who lack the knowledge, skill, resources—and sometimes even the inclination—to handle a serious criminal case. People who would not be sentenced to death if properly represented are sentenced to death because of incompetent court-appointed lawyers.”¹¹⁹ It is a troubling and pathetic statistic that, “Over 100 people condemned to death in the last 30 years have been exonerated and released after new evidence established their innocence or cast such doubt on their guilt that they could not be convicted.”¹²⁰ After 30 years of evaluating and examining capital cases as a federal appellate judge, Gerald W. Heaney declared that he was “compelled . . . to conclude that the imposition of the death

118. Stephen B. Bright.

119. Stephen B. Bright.

120. Stephen B. Bright.

penalty is arbitrary and capricious.”¹²¹ He came to the conclusion that “the decision of who to live and who shall die for his crime turns less on the nature of the offense and the incorrigibility of the offender and more on inappropriate and indefensible considerations: the political and personal inclinations of prosecutors; the defendant’s wealth, race, and intellect; the race and economic status of the victim; the quality of the defendant’s counsel; and the resources allocated to defense lawyers.”¹²² The Canadian Supreme Court recognized, “courts will always be fallible and reversible, while death will always be final and irreversible.”¹²³

The role of racial bias associated with capital punishment is astounding. “In the 38 states that have the death penalty, 97.5 percent of the chief prosecutors are white. In 18 of the states, all of the chief prosecutors are white.”¹²⁴ Such statistics are disappointing and it also seems incredibly unfair that “In the South, where the death penalty is most often imposed and carried out, over half the victims of crime are people of color, well over 60 percent of the prison population is made up of people of color, and half of those sentenced to death are members of racial minorities. Yet people of color are seldom involved as judges, jurors, prosecutors, and lawyers in the courts.”¹²⁵ African Americans are actually victims of half of the murders that are committed in the United States. “In Georgia and Alabama, for example, African Americans are the victims of 65 percent of the homicides, yet 80 percent of those on death rows are there for crimes

121. Singleton v. Norris, 108 F.3d 872, 874-75 (8th Cir. 1997) (Heaney, J., concurring), cited in Stephen B. Bright.

122. Singleton v. Norris, cited in Stephen B. Bright.

123. United States v. Burns, 2001 SCC 7 (Can.), cited in Stephen B. Bright.

124. Stephen B. Bright.

125. Stephen B. Bright.

against white persons.”¹²⁶ On October 16, 2000, a study was released pertaining to the use of the death penalty in the state of Texas. “Among other egregious examples of injustice, the pattern of racial bias stood out: Although almost a quarter of all Texas murder victims were black men, only 0.4% of those executed since the reinstatement of the death penalty were condemned for killing a black man. And Texas has never executed a white man for killing a black man.”¹²⁷ According to David Cole, virtually every study of race and the death penalty has concluded that defendants who kill white victims are much more likely to receive the death penalty than those who kill black victims.¹²⁸ The most extensive study of racial disparity in the death penalty was conducted by Professors David Baldus, George Woodworth, and Charles Pulaski. They studied 2,484 homicide murder cases in the state of Georgia between 1973 and 1979 and found that black defendants charged with killing white victims received the death penalty over 20 percent of the time. The following statistics called “the Baldus study, indicates how death-sentencing outcomes correlated with the defendant/victim racial combination among all cases in the study:

Black Defendant/White Victim:	21 percent (50/233)
White Defendant/White Victim:	8 percent (58/748)
Black Defendant/Black Victim:	1 percent (18/1,443)
White Defendant/Black Victim:	3 percent (2/60).” ¹²⁹

126. Stephen B. Bright

127. Richard C. Dieter, “A Response to the Initial Report of the United States for the United Nations,” speaking at the International Convention on the Elimination of All Forms of Racial Discrimination on October 17, 2000, Death Penalty Information Center, <<http://www.deathpenaltyinfo.org/article.php?scid=18&did=537>>

128. David Cole, No Equal Justice: Race and Class in the American Criminal Justice System, (New York: The New Press, 1999).

129. David C. Baldus, George Woodworth, “Race Discrimination and the Death Penalty: An Empirical and Legal Overview,” in America’s Experiment With Capital Punishment, ed. J. Acker, R. Bohm, C. Lanier, (Durham, North Carolina: Carolina Academic Press, 1998), 385-415

Even if black and non-black defendants were treated consistently and fairly in the United State's system of death sentencing, there are major "concerns about the substantial over representation of blacks on death row in America (12 percent of the nation's civilian population versus 40 percent of the death row population). Many citizens consider it insensitive and unseemly, if not immoral, for a country, with our historical record on slavery and race discrimination, to persist in using a punishment that is administered and controlled almost exclusively by whites and serves no demonstrated penological function, but has a profound adverse impact, physically, psychologically, and symbolically on its black citizens."¹³⁰ "The history of race discrimination and the death penalty in this century has been a tale of denial and avoidance by state and federal courts, Congress, and state legislatures. As a result, the civil rights movement, which has hardly touched the American criminal justice system in general, has almost completely bypassed the core discretionary decisions of the American capital sentencing system."¹³¹ In fact, the legal system in the United States "remains the institution that has been least affected by the civil rights movement."¹³² For a nation who supposedly values equality and justice for all, the criminal justice system is a sad commentary.

130. David C. Baldus, George Woodworth.

131. David C. Baldus, George Woodworth.

132. Stephen B. Bright.

Conclusion: Why the United States Needs to Eradicate Capital Punishment

This paper has examined capital punishment through a Biblical, theological, and societal standpoint and makes apparent that capital punishment is problematic for a variety of reasons and is not an acceptable or justifiable form of punishment. In sum, the death penalty does not serve the common good and is an unfair and morally reprehensible punishment.

From a Christian perspective, Martin Luther and Thomas Aquinas make the argument that only the State has the authority to kill if it is for the sake of the common good. However, capital punishment does not serve the common good and is detrimental to society. Only God has the true authority to enforce justice and in contrast, the State only has the authority to try to restrain sin and maintain order for the sake of the common good. In my view, the taking of human life through capital punishment cannot be ethically justified because it is God's authority alone to enforce justice through the ultimate penalty of death. Mainline Christian Churches such as the Evangelical Lutheran Church of America, the Catholic Church, and the Presbyterian Church among others recognize the many negatives of the death penalty and strongly oppose capital punishment. Capital punishment is totally inconsistent with Jesus' pronouncements and teachings found throughout the New Testament. It is important for Christians to recognize the destruction of capital punishment and understand that the death penalty cannot ever be justified if one lives by and adheres to the Biblical teachings of God's love as evidenced through the revelation of Jesus Christ.

Christianity aside, there are numerous very negative societal implications of capital punishment. It is clear that capital punishment is not a deterrent, it is extraordinarily costly, it is an immoral, reprehensible form of punishment, and it demonstrates extreme prejudicial biases toward minorities, specifically African Americans, and the poor. Capital punishment is in no way a fair form of punishment, as some people, particularly the poor and minorities, are not given the same opportunities in our court system. Also, the abolition of the death penalty would make a lot more sense economically as the United States would save millions and millions of dollars. Additionally, I disagree with those who argue that capital punishment is needed to provide a form of satisfaction to the families of crime victims. I believe that any such feelings of gratification from having a person executed offer only a hollow form of relief. Taking another's life will never bring back the life of the loved one that was lost and two wrongs will never make a right. "The American people must ask what kind of society they want to have and what kind of people they want to be."¹³³ Do we, the American people, want a vengeful, hateful, and unjust society that condones capital punishment? What we should have is humility, honesty, courage, compassion, and decency.¹³⁴

Stephen B. Bright eloquently states such goals when he says:

We should have the humility to admit that the legal system is not infallible and that mistakes are made. We should have the honesty to admit that our society is unwilling to pay the price of providing every poor person with competent legal representation, even in capital cases. We should have the courage to acknowledge the role that race plays in the criminal justice system and make a commitment to do something about it instead of pretending that racial prejudice no longer exists. And we should have the compassion and decency to recognize the dignity of every person, even those who have offended us most grievously.¹³⁵

133. Stephen B. Bright.

134. Stephen B. Bright.

135. Stephen B. Bright.

I am confident that one day, the people of the United States will recognize the horrible detrimental effects of capital punishment and come to the conclusion that “like slavery and segregation, the death penalty is a relic of another era, and that this society of such vast wealth is capable of more constructive approaches to crime.”¹³⁶ Capital punishment serves no constructive purpose and I completely agree with James McCloskey, author of The Death Penalty Should Be Eliminated when he says, “It is the mark of a higher civilization when a country finally chooses to eradicate forever from its heart and soul the damnable practice of killing for vengeance.”¹³⁷ The time has come and is long overdue for the United States to join the rest of the civilized world and abandon capital punishment in its entirety.

136. Stephen B. Bright.

137. James McCloskey.

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