

# Capital Punishment at Home and Abroad: A Comparative Study on the Evolution of the Use of the Death Penalty in the United States and the United Kingdom

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EASTERN KENTUCKY UNIVERSITY

Capital Punishment at Home and Abroad: A Comparative Study on the Evolution of the  
Use of the Death Penalty in the United States and the United Kingdom

Honors Thesis

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By

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Capital Punishment at Home and Abroad: A Comparative Study on the Evolution of the  
Use of the Death Penalty in the United States and the United Kingdom

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**Abstract:** Capital punishment (sometimes referred to as the death penalty) is the carrying out of a legal sentence of death as punishment for crime. The United States Supreme Court has most recently ruled that capital punishment is not unconstitutional. As a result, states are free to abstain from using capital punishment or to use it, and it is accepted for federal crimes. In 1965, the United Kingdom eliminated the use of capital punishment for murder on a temporary basis, abolishing it permanently in 1969, and adopting two European protocols that eliminated its use perpetually for all crimes in 1998. This research investigates why two countries that were once united—where one was formerly a colony of the other—have come to different conclusions about the death penalty and its use. Additionally, what factors were the most important? Research has shown that the influence of the news media, public pressure (or lack thereof) on lawmakers, and the execution of innocent persons are the primary reasons why these two nations have reached different opinions on capital punishment. This research also proposes some implications for both abolitionists and retentionists in the United States in regards to how they may best achieve their different end goals.

*Keywords:* thesis, undergraduate research, politics, government, capital punishment, death penalty, criminal justice, law, news media, execution of innocents

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## **Introduction**

Capital Punishment is the legally authorized killing of someone as punishment for a crime<sup>1</sup>. It is often used interchangeably with the death penalty, as they mean essentially the same thing. The United States and the United Kingdom, two countries that were once united, have come to two different conclusions on the use of capital punishment. The Supreme Court of the United States has been back and forth on the issue, but most recently ruled that capital punishment is not cruel and unusual punishment. States are free to abstain from using capital punishment within their own borders, but capital punishment is accepted for federal crimes and in the states that have not abolished it. In the United Kingdom, capital punishment was eliminated in 1965 for murder, but kept on the books for other crimes, such as treason. In 1998, the U.K. officially removed capital punishment from their laws for all crimes. The U.S. and the U.K. have reached different conclusions about the use of capital punishment because the news media encourages opposite reactions via the same means, the desire for lawmakers to remain popular with their constituents is drastically more prevalent in the U.S., and the execution of innocent persons is the greatest factor in favor of abolition.

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<sup>1</sup> *Oxford Dictionaries*, s.v. "Capital Punishment."

## U.S. History of the Death Penalty

At one point in its history, the United States had a long list of capital offenses, issuing a punishment of death for crimes beyond the modern scope of first degree murder. The earliest known set of capital offenses in the United States comes from the Massachusetts Bay Colony in 1636. In this colony, one could be put to death for any of the following crimes: idolatry, witchcraft, blasphemy, murder, assault in sudden anger, sodomy, buggery, adultery, statutory rape, rape, man-stealing, perjury in a capital trial, and rebellion (including attempts and conspiracies)<sup>2</sup>. The first recorded execution in what is now the U.S. actually comes from before that; in 1608, Captain George Kendall was executed in the Jamestown, Virginia colony after being convicted of spying for Spain<sup>3</sup>. By the Revolutionary War, overall the colonies only recognized eleven capital crimes<sup>4</sup>. Death was a common sentence for so many crimes in part because of the lack of a viable alternative punishment. This wasn't addressed until the 1780s, when Massachusetts, New York, and Pennsylvania became the first states to establish penitentiaries<sup>5</sup>. New Jersey, Virginia, and Kentucky followed suit in the 1790s, narrowing their capital codes and appropriating funds for their first prisons<sup>6</sup>.

Pennsylvania was the first state to divide murder into degrees in 1794. First-degree murder, similar to today, was the only degree that would receive a death

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<sup>2</sup> Frederick Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" *Pierce Law Review* (March 2008): 585.

<sup>3</sup> "Part I: History of the Death Penalty," Death Penalty Information Center. Accessed November 23, 2015.

<sup>4</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 585.

<sup>5</sup> David Garland, *Peculiar Institution*, (Cambridge, Massachusetts: The Belknap Press of Harvard University, 2010), 114.

<sup>6</sup> *Ibid.*

sentence.<sup>7</sup> By the 1960s, most states made this division<sup>8</sup>, but southern states were the last to limit the death penalty to murder; a conviction for rape or robbery could lead to a death sentence, in theory for any defendant, but in practice for southern black defendants<sup>9</sup>.

Today executions are conducted in private, inside the prison, with a limited number and very specific makeup of witnesses<sup>10</sup>. However, at one point they were very public events, drawing large crowds and executing multiple individuals at one time. Connecticut was the first state to prohibit public executions in 1830. By 1836, Rhode Island, Pennsylvania, New Jersey, New York, Massachusetts, and New Hampshire followed suit<sup>11</sup>. The division in policy and culture between northern and southern states can be seen in various areas within the history of capital punishment. It's evident here in that northern states had a tendency to be at the forefront of death penalty reform, while southern states wanted to continue with their traditions or even increase the number of capital crimes. Many states, especially in the south, were resistant to removing executions from the public sphere, due in part to the deterrence effect it was said to have. The last recorded public execution was in 1936 in Owensboro, KY<sup>12</sup>, although the next year in Missouri, a semi-private execution did take place<sup>13</sup>.

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<sup>7</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 589.

<sup>8</sup> Ibid.

<sup>9</sup> Garland, *Peculiar Institution*, 116.

<sup>10</sup> Ibid.

<sup>11</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 588.

<sup>12</sup> "Kentucky." Death Penalty Information Center. Accessed November 23, 2015.

<sup>13</sup> Garland, *Peculiar Institution*, 116.



Michigan was the first U.S. jurisdiction to abolish the death penalty for all crimes except treason in 1846<sup>14</sup>. However, it was not the first jurisdiction to consider or propose abolition. In Louisiana in 1821, Edward Livingston proposed a revised criminal code, including a section that would eliminate the death penalty. The state legislature rejected this provision, but passed a lot of the other reforms<sup>15</sup>. A handful of states followed Michigan, only to reinstate their death penalty statutes in subsequent years. By the start of the twentieth century, four states had abolished the death penalty<sup>16</sup>.

By the end of the eighteenth century, the U.S. as well as most of Europe had abandoned “aggravated” execution methods and had generally adopted other modes of execution: hanging around the neck until dead or firing squad<sup>17</sup>. The electric chair was introduced in 1888 and first adopted for use by New York<sup>18</sup>. It was quickly challenged by capital defendants and those awaiting their execution, but the Supreme Court declared that it was a constitutional method of execution in 1890. By 1915, fifteen total states were executing individuals using this method. By 1950, that number grew to 26 plus the District of Columbia<sup>19</sup>. The gas chamber was introduced to the world in 1921 in Nevada<sup>20</sup>. By 1955, ten states other than Nevada were executing via gas chamber<sup>21</sup>.

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<sup>14</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 586; “Part 1: History of the Death Penalty,” Death Penalty Information Center.

<sup>15</sup> Garland, *Peculiar Institution*, 120.

<sup>16</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 586.

<sup>17</sup> Garland, *Peculiar Institution*, 114.

<sup>18</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 587; and Garland, *Peculiar Institution*, 117.

<sup>19</sup> Garland, *Peculiar Institution*, 117.

<sup>20</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 587.

<sup>21</sup> Garland, *Peculiar Institution*, 117.

Lethal injection was first seen in 1977<sup>22</sup>, and by the beginning of the twenty-first century was the primary method of execution in all jurisdictions that authorize the death penalty, including the U.S. military and the federal government<sup>23</sup>. Methods of execution other than lethal injection are still authorized in a few states—eight states recognizing electrocution; five states, the gas chamber; three states, hanging; and two states, firing squad—but lethal injection is the primary method of execution in each of those states<sup>24</sup>.

#### Important Cases

Most challenges to the death penalty are Eighth Amendment challenges<sup>25</sup>, which states that “Excessive bail shall not be required, not excessive fines imposed, nor cruel and unusual punishments inflicted.” After the initial reforms and development of death penalty systems in each state via the legislatures, death penalty reform in the United States happened primarily through Supreme Court cases. In *Wilkinson v. Utah*, 99 U.S. 130, 25 L.Ed. 345 (1878), the Supreme Court ruled that public shooting (firing squad) was a common means of execution, as it had been used for many years in the military to punish deserters<sup>26</sup>. The majority suggests that a severe punishment is not cruel and unusual if it was common in the past<sup>27</sup>. In *re Kemmler*, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519 (1890), challenged the constitutionality of the electric chair as a method of

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<sup>22</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 588.

<sup>23</sup> Garland, *Peculiar Institution*, 118; and “Methods of Execution,” Death Penalty Information Center, accessed November 23, 2015.

<sup>24</sup> “Methods of Execution,” Death Penalty Information Center.

<sup>25</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 590.

<sup>26</sup> *Ibid.*, 590-91.

<sup>27</sup> *Ibid.* 591

execution. The Court suggested that an execution method is not cruel and unusual if a legislature decides it is more humane than the alternative<sup>28</sup>.

*Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), was a landmark case in the U.S.'s death penalty history. Georgia's death penalty statute gave juries complete discretion in the sentencing phase of the trial, which often lead to arbitrary and inconsistent sentencing<sup>29</sup>. The Justices split 5 to 4 in favor of declaring the statute unconstitutional, and there were nine separate opinions explaining why<sup>30</sup>. Forty-two death penalty statutes across the country became invalid because of this decision, creating a moratorium. 587 people had their sentences changed from the death penalty to life imprisonment because of the *Furman* decision<sup>31</sup>. States were left with three options: (1) eliminate the death penalty in their state by not rewriting their statutes, (2) rewrite their statutes to require the death penalty for certain crimes, or (3) rewrite their statutes to impose the death penalty in a less discriminatory manner<sup>32</sup>. Seven states chose the first option and abolished capital punishment. Ten states chose to impose the mandatory sentence. Twenty-five states guided their juries in the sentencing process<sup>33</sup>.

These changes in capital punishment legislation were challenged in 1976. In *Woodson v. North Carolina*, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976), the Supreme Court decided that a mandatory death sentence was unconstitutional because it

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<sup>28</sup> *Ibid.*

<sup>29</sup> "Part I: History of the Death Penalty," Death Penalty Information Center.

<sup>30</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?"593.

<sup>31</sup> Karen Harrison and Caroline Melville, "The Death Penalty by Lethal Injection and *Hill v McDonough*: Is the USA Starting to See Sense?" *Journal Of Criminal Law* 71, no. 2 (2007): 169.

<sup>32</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?"595.

<sup>33</sup> *Ibid.*, 595-96.

did not take into consideration the facts and factors that are present in every case<sup>34</sup>. Three cases, which are collectively referred to as *Greg v. Georgia*, evaluated the three different ways state legislators decided to guide juries in determining the appropriate sentence. The Court held that the death penalty is not necessarily cruel and unusual for murder, and that states needed to provide adequate safeguards against arbitrary punishments. All three of these statutes were held to be constitutional because the Court determined the states had done just that<sup>35</sup>. In *Proffitt v. Florida*, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976), Florida's new statute had a bifurcated trial process, which separated the trial and sentence phases. The statute also provided for a list of aggravating and mitigating factors that should be considered, as well as gave the trial court judge the responsibility of sentencing and explaining his or her reasons for such a sentence in writing, which would be reviewed by the Florida Supreme Court<sup>36</sup>. *Greg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), took it one step further, bifurcating the trial process and having the Georgia Supreme Court review every sentence, looking for proportionality between the punishment and the crime<sup>37</sup>. In *Jurek v. Texas*, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976), the Texas statute had no aggravating or mitigating factors, but it did bifurcate the process and gave the jury three questions to answer to determine if the death penalty would be appropriate: (1) if the defendant's actions were deliberate, (2) if the defendant was a continuing threat to society, and (3) if it was raised by the evidence, if the defendant's conduct was an unreasonable response to provocation<sup>38</sup>. These cases ended the moratorium on capital punishment in the U.S. On January 17, 1977, Gary

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<sup>34</sup> *Ibid.*, 596.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 597.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, 598.

Gilmore was executed via firing squad in Utah, the first execution in the U.S. since *Furman*<sup>39</sup>. Interestingly enough, that year Oklahoma became the first state to use lethal injection as a mode of execution, although the first person executed via that method was not until Charles Brooks on December 7, 1982 in Texas<sup>40</sup>.

The discussion on the death penalty in the Supreme Court did not end with *Gregg v. Georgia*. In *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), the Supreme Court invalidated a statute that allowed the death penalty for a rape conviction not resulting in the victim's death because it was an excessive punishment<sup>41</sup>. This essentially abolished the death penalty for all offenses that did not result in murder<sup>42</sup>. *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), determined that if an inmate becomes insane while awaiting his execution, it would be cruel to proceed with the sentence<sup>43</sup>. *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), held that executing an individual who was mentally handicapped was also unconstitutional<sup>44</sup>. In *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the Court overturned a few of its previous decisions in deciding that it was unconstitutional to execute a juvenile<sup>45</sup>. The U.S. Supreme Court has not seen the last challenge to the death penalty. Inmates sitting on death row frequently file new habeas petitions challenging the legitimacy of capital punishment.

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<sup>39</sup> "Part I: History of the Death Penalty," Death Penalty Information Center.

<sup>40</sup> "Part I: History of the Death Penalty," Death Penalty Information Center.

<sup>41</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 598-99.

<sup>42</sup> *Ibid.*, 599.

<sup>43</sup> *Ibid.* 602.

<sup>44</sup> *Ibid.* 605.

<sup>45</sup> *Ibid.* 607-608.

### U.K. History of the Death Penalty

The first recorded execution in the U.K. was in 695 A.D. for theft<sup>46</sup>. In 1066, William the Conqueror abolished the death penalty in England. He preferred body mutilations and castrations as punishment, finding they were a greater deterrent<sup>47</sup>. Henry I reinstated capital punishment in 1108<sup>48</sup>. A variety of methods were traditionally used in the U.K.: hanging, decapitation, burning, and boiling, to name a few<sup>49</sup>. Which method of execution you received depended on your station in life; only the wealthy could be decapitated, while women were burned at the stake, and hanging was the most degrading form<sup>50</sup>. Death via guillotine ended in 1710, and burning women at the stake ended in 1790<sup>51</sup>.

By 1688, there were over 50 capital crimes in the U.K.<sup>52</sup>, which only increased up until the “Bloody Code” of 1818<sup>53</sup>. There were over 200 capital crimes under the Bloody Code, and yet hangings were relatively rare. Fewer people were executed in the U.K. at the end of the 18<sup>th</sup> century than the end of the 16<sup>th</sup> century, because the power of the deterrent was believed to be in the uncertainty of the punishment<sup>54</sup>. The Industrial Revolution and rise of Parliamentary supremacy were causes for this dramatic increase in the number of capital crimes, as the government sought to maintain control over its

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<sup>46</sup> Frederick Millett, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” *Pierce Law Review* (March 2008): 551.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> “Part I: History of the Death Penalty,” Death Penalty Information Center. Accessed November 23, 2015.

<sup>50</sup> Brian Block and John Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain* (Waterside Press, 1997) 18.

<sup>51</sup> *Ibid.*, 19.

<sup>52</sup> Millett, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 552.

<sup>53</sup> *Ibid.*, 586.

<sup>54</sup> *Ibid.*, 552.

increasing population. Similar to a problem the U.S. faced in its early days of crime and punishment, there was a lack of a sufficient alternative punishment<sup>55</sup>. The Reform Act of 1832 reduced the number of capital crimes<sup>56</sup>. By 1837, only 15 capital offenses remained on the books, which reduced further to seven in 1841 and four by 1861<sup>57</sup>. Abolition was proposed in the House of Commons in 1840—the first time it had been seriously considered by the government since William the Conqueror—but failed to pass<sup>58</sup>. In 1868, public executions were prohibited<sup>59</sup>. The general public had become dissatisfied with the spectacle that executions had become; the gallows at Tyburn could hold up to 24 criminals at one time, and there were often crowds of around 100,000 people<sup>60</sup>. The long-drop technique was introduced in the U.K. in 1760 and was the primary method of execution until abolition<sup>61</sup>. It was considered the most humane method of execution because death was instant—at least it was supposed to be. The convicted criminal dies by having his or her neck broken instead of being asphyxiated, as under the previous hanging method<sup>62</sup>.

Historically in the U.K., children over the age of fourteen were treated as adults, and thus could face the death penalty. Those between the ages of seven and fourteen could face the death penalty if malice was proven, although it was rare<sup>63</sup>. The Children Act of 1908 and the Children and Young Person Act of 1933 abolished the death penalty

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<sup>55</sup> Ibid.

<sup>56</sup> Ibid., 553.

<sup>57</sup> Ibid., 554.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., 560.

<sup>60</sup> Ibid., 555.

<sup>61</sup> Ibid., 556-57.

<sup>62</sup> Ibid., 556.

<sup>63</sup> Ibid., 22.

for everyone under eighteen years old<sup>64</sup>. The Sentence of Death (Expectant Mothers) Act of 1931 abolished the death penalty for pregnant women<sup>65</sup>.

The Labour Party formed in 1906, and had its first seats in Parliament in the 1920s<sup>66</sup>. The Labour Party earned its first majority in 1945<sup>67</sup>. In 1947, the Criminal Justice Bill (1947) was introduced into the House of Commons<sup>68</sup>. Sydney Silverman proposed adding a clause that would suspend the death penalty for five years. While the Criminal Justice Bill passed a free vote in the Commons, it failed in the House of Lords<sup>69</sup>. The government proposed a compromise: it set up a royal commission to investigate capital punishment in the U.K.. However, the scope of the royal commission's inquiries was limited to modifications of the death penalty, not abolition<sup>70</sup>.

#### Important Cases

On March 10, 1950, Timothy Evans was hanged for the murder of his baby daughter, Geraldine<sup>71</sup>. Geraldine and Beryl Evans—Timothy Evans's wife, and mother to Geraldine—were found strangled in the wash-house at their home at 10 Rillington Place, London, in December 1949, after Evans had gone into the police station and told them he had disposed of his wife down the drain<sup>72</sup>. Evans later changed his story to point at his neighbor, John Christie, saying he had performed an abortion on Beryl, and when it

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<sup>64</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 557.

<sup>65</sup> *Ibid.*, 562.

<sup>66</sup> *Ibid.*, 561.

<sup>67</sup> *Ibid.*, 562.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, 563.

<sup>70</sup> *Ibid.*

<sup>71</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 132.

<sup>72</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 564.



had gone badly, they had gotten rid of the body together. At trial, the jury was given the choice between believing John Christie—a war hero with one version of his story—or Timothy Evans—the man who had confessed and then retracted it.<sup>73</sup> The jury chose to believe Christie<sup>74</sup>.

Three years later, the bodies of Mrs. Ethel Christie and three other women were found at 10 Rillington Place. They had all been strangled<sup>75</sup>. Two more skeletons were eventually found in the garden, and their deaths were dated to before that of Beryl and Geraldine Evans<sup>76</sup>. John Christie was arrested and charged with the murder of these women. His defense was guilty, but insane. He testified to murdering Beryl Evans, and his defense attorney attributed every murder to Christie<sup>77</sup>. He was found guilty and sentenced to death. While there was no sympathy for Christie from the public, it raised questions about Timothy Evans's execution<sup>78</sup>. If Christie had admitted to murdering Beryl, what were the chances that two murderers with the exact same method had lived together under the same roof? The Home secretary ordered the evidence from Evans's trial reviewed and a report written, but the public was far from satisfied with it<sup>79</sup>. Another investigation and report followed in November 1955, but was still not credible with the public. In 1966, Evans received a posthumous pardon<sup>80</sup>.

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<sup>73</sup> Ibid., 565-66.

<sup>74</sup> Ibid., 566.

<sup>75</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 144.

<sup>76</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 567.

<sup>77</sup> Ibid.

<sup>78</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 145.

<sup>79</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 567.

<sup>80</sup> Ibid., 568.

In November 1952, a call to the police indicated that there were two men attempting to break in to a warehouse. The police responded, and found Derek Bentley and Christopher Craig on the roof<sup>81</sup>. After the police climbed up, one detective managed to grab Bentley, but police constable Sydney Miles ended up shot and killed by Craig<sup>82</sup>. Both Bentley and Craig were tried simultaneously, and both were found guilty of murder, even though only Craig pulled the trigger and Bentley was in police custody at the time. However, Craig was only sixteen, thus he could not be sentenced to death; Bentley, on the other hand, was nineteen. Although the jury recommended mercy, the Home Secretary did not grant a reprieve<sup>83</sup>. Bentley's appeals were denied. There were massive demonstrations, petitions, and telegrams sent to the Home Secretary, by members of Parliament and the public, but he did not budge<sup>84</sup>. Bentley was executed January 28, 1953. Bentley was eventually granted a pardon—in 1993—and in 2001, his case was reheard. It was found that there were significant errors with the judge's instructions to the jury, and his conviction was overturned<sup>85</sup>.

Ruth Ellis was the last woman in the U.K. to be executed. On April 10, 1955, she shot and killed her former lover, David Blakely, outside a pub in London<sup>86</sup>. Blakely and Ellis had a violent relationship, with frequent public screaming matches that often turned

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<sup>81</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 139.

<sup>82</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 569.

<sup>83</sup> *Ibid.*, 571.

<sup>84</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 142.

<sup>85</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 572.

<sup>86</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 163.

physical<sup>87</sup>. Her trial was incredibly one-sided—she confessed on the stand, telling the jury that she had intended to kill Blakely<sup>88</sup>. The jury was only out for 23 minutes before returning a guilty verdict, and Ruth Ellis was sentenced to hang. While there was no appeal made, her attorneys advised the public on how to petition for a reprieve<sup>89</sup>.

Petitions poured into the Home Secretary's office, some with thousands of signatures, but the Home Secretary refused. A huge crowd gathered outside the prison the night before Ellis's scheduled execution, chanting "Evans—Bentley—Ellis."<sup>90</sup> Nonetheless, Ruth Ellis was executed on July 13, 1955<sup>91</sup>.

### Abolition

In July 1953, Sydney Silverman introduced a bill to suspend the death penalty in the U.K. for five years, which was defeated in the Commons<sup>92</sup>. In February 1955, Silverman proposed another amendment, which was also rejected by the Commons<sup>93</sup>. Chuter Ede also proposed an amendment to suspend capital punishment for an experimental five years in February 1956<sup>94</sup>, which passed in the Commons, but failed in the Lords. As a response, the Conservative government proposed new legislation, the Homicide Bill, which separated murder into two degrees<sup>95</sup>. Although the U.S. had made this division for the first time in 1794, and a royal commission had proposed making this

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<sup>87</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 573.

<sup>88</sup> *Ibid.*, 575.

<sup>89</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 164.

<sup>90</sup> *Ibid.*

<sup>91</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 576.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, 577-78.

<sup>94</sup> *Ibid.*, 578.

<sup>95</sup> *Ibid.*, 579.

division in 1864 in the U.K., it had been staunchly rejected up to this point<sup>96</sup>. Under the Homicide Act, six types of murder— (1) murder in the furtherance of theft, (2) murder by shooting or explosion, (3) murder done in the course of resisting arrest or escaping custody, (4) murder of a police officer, (5) murder of a prison officer by a prisoner, and (6) murder of more than one person—were punishable by death, while all others were punishable by life imprisonment<sup>97</sup>. There were problems with the application of the Homicide Act, and it wasn't popular in Parliament or with the public<sup>98</sup>.

In December 1964, Sydney Silverman proposed the Murder (Abolition of Death Penalty) Bill to eliminate capital punishment in the U.K. for an experimental five years. It passed the Commons and went to the Lord, which in itself was a victory for Silverman and the Labour Party<sup>99</sup>. It carried in the Lords as well, and on November 8, 1965, the Murder (Abolition of Death Penalty) Act was given Royal Assent and became law<sup>100</sup>. Under this Act, capital punishment was only allowed for treason, piracy with violence, arson in dockyards, and various offenses under the Navy Discipline Act 1957, the Army Act 1955, and the Air Force Act 1955<sup>101</sup>. The Murder (Abolition of Death Penalty) Act became permanent in 1969<sup>102</sup>. Many attempts have been made to restore the death

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<sup>96</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 67.

<sup>97</sup> *Ibid.*, 579-80.

<sup>98</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 16, 83, 205, 230.

<sup>99</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 581.

<sup>100</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 249.

<sup>101</sup> *Ibid.*, 262.

<sup>102</sup> Millett, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 582.

penalty in the U.K. since 1965, none of which have succeeded<sup>103</sup>. In 1998, the Crime and Disorder Act adopted two clauses of European protocol that secured abolition in the U.K. permanently. In order to restore capital punishment, Parliament would have to denounce the European Convention on Human Rights and the treaties of the European Union<sup>104</sup>.

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<sup>103</sup> Ibid., 582-584.

<sup>104</sup> Ibid., 584.

### **Influence of the News Media**

For most individuals, the news media is a major source of information on a variety of topics, and its influence is generally persistent across demographic lines<sup>105</sup>. In terms of social issues, such as the death penalty, the news media becomes an even more prominent source of information<sup>106</sup>. Because of this, as time progresses people have a tendency to adjust their positions to conform to the media's portrayal of an issue<sup>107</sup>. In reality, this means that the news media's role is not confined to reporting facts and current events, but also extends to defining the audience's sense of reality, especially in regard to social issues. In terms of capital punishment, the impact that the media has on defining the public's perception of reality in the U.S. is quite easy to recognize. Despite capital cases being statistically rare in the U. S., they receive a great deal of attention from the news media, disproportionately more than any other criminal proceeding. Additionally, few people have real, direct contact with the death penalty. Only a small percentage of people will ever serve on a jury, and an even smaller number will be on a capital case. In the U.K., with capital punishment being abolished, there are no more capital trials. Even prior to abolition, capital cases were rare. In 1961, a government report showed that in 1960, 81.3% of murders were non-capital, leaving 18.7% of

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<sup>105</sup> David Niven, "Bolstering an Illusory Majority: The Effects of the Media's Portrayal of Death Penalty Support," *Social Science Quarterly* 83, no. 3 (2002): 681.

<sup>106</sup> Mira Sotirovic, "Effects of Media Use on Complexity and Extremity of Attitudes Toward the Death Penalty and Prisoners' Rehabilitation," *Media Psychology* 3, no. 1 (2001): 4; Jeremy Lipschultz and Michael Hilt, "Mass Media and the Death Penalty: Social Construction of Three Nebraska Executions," *Journal of Broadcasting & Electronic Media* 43, no. 2 (1999): 240.

<sup>107</sup> Lipschultz and Hilt, "Mass Media and the Death Penalty: Social Construction of Three Nebraska Executions," 250.

murders as capital<sup>108</sup>. In the period between the Homicide Act of 1957 becoming law and 1964, an average of three to four people a year were executed<sup>109</sup>. Compared to all of the other punishable crimes, the percentage of capital crimes drops even further. That low percentage means that few people have direct contact with capital cases. The media is thus highly likely to be their only source of information, causing media reports to have a disparate effect on how the public perceives capital punishment<sup>110</sup>. The news media has enormous influence in shaping societal norms on most social issues, but it's clear that it shapes it even more so on capital punishment through the disproportionate amount of attention it receives<sup>111</sup>. The news media in the U.S. and U.K. encourage opposite responses to capital punishment—retention and abolition, respectively—by depicting the issue as already being resolved, focusing discussion around the political elite, and by oversimplifying its presentation of the issue.

#### The Media Depicts the Issue as Settled

The news media in both the U.S. and U.K. casts the use of capital punishment as being resolved. It is often reported that the use of capital punishment is one of the most popular issue positions in American politics<sup>112</sup>, despite the rarity of the public's personal, direct contact with it. The media often states—whether overtly or through implication—that the American public has not only made up its mind, but overwhelmingly supports the

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<sup>108</sup> “Government Red Book, Murder,” quoted in Frederick Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” *Pierce Law Review* (March 2008), 580.

<sup>109</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 580.

<sup>110</sup> Craig Haney and Susan Greene, “Capital Constructions: Newspaper Reporting in Death Penalty Cases,” *Analyses of Social Issues and Public Policy* 4, no. 1 (2004): 133.

<sup>111</sup> Lipschultz and Hilt, “Mass Media and the Death Penalty: Social Construction of Three Nebraska Executions,” 250.

<sup>112</sup> Niven, “Bolstering an Illusory Majority: The Effects of the Media's Portrayal of Death Penalty Support,” (2002) 671.

death penalty. On the surface, that appears to be the case. Public polls in the U.S. generally return that the death penalty is a very popular position, with support topping 80 percent in some polls and frequently reported at around 70 percent<sup>113</sup>. However, said support is presented without any “caveats, limitations, or mention of support for alternative sentences”<sup>114</sup>. Alternative sentences are rarely part of poll questions or news reports and articles themselves. In a study that examined 4,190 U.S. articles over a five-year period, only 302 (7.2%) mention popular support for life without parole (LWOP), and only 13 articles (0.3%) mention public support for life without parole plus restitution (LWOP+R). Most newspaper articles that mention LWOP do so only as an aside or in a negative light<sup>115</sup>. Interestingly though, when poll questions that ask about an individual’s views on the death penalty begin to include alternatives—such as LWOP, or LWOP+R—the wide majority support for the death penalty begins to disappear<sup>116</sup>.

In a study by David Niven (2002), a large group of people in an airport in Florida were given one of three newspaper articles to read, and then asked questions to gauge their responses. Group 1 read a typical death penalty article that discussed its popularity in various ways. Group 2 read an article about support for life without parole plus restitution as an alternative sentence. The text of the article was identical except that “alternative sentences for the death penalty” replaced “the death penalty” in most places throughout the text. Group 3—the control group—read an article about airport renovation. The control group showed 81 percent support for the death penalty, and group 1 showed 85 percent support, consistent with typical poll results. This also

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<sup>113</sup> Ibid., 672.

<sup>114</sup> Ibid., 674.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid., 673.



suggests that the respondents have already been thoroughly exposed to positive treatment of the death penalty because reading another positive account does not actually affect their positions. Alternatively, those in group 2 were only 62 percent in favor of the death penalty. This suggests that reading about an alternative to the death penalty had a significant impact on the respondents<sup>117</sup>. Even with the media's implications, the use of capital punishment in the U.S. is far from resolved, as evidenced by the dramatically different results when poll questions include references to alternative sentences.

The news media in the U.K. has a similar problem. The British media does not encourage any sort of discussion or debate on public issues, but particularly in regards to capital punishment<sup>118</sup>. This was just as true back in 1965 as it is today. As an article from *The Guardian* newspaper—whose title itself boldly states that capital punishment is a “dead issue”—says, “Representative democracy means entrusting the government to others”<sup>119</sup> and “Good leadership means getting out ahead of the people”<sup>120</sup>. This article encourages its readers to just trust the leadership of the Members of Parliament, and to let them get it wrong a few times. Public referendums and discussion on the issue doesn't seem to matter, only trusting the leadership in Parliament. Interestingly enough Flanagan contends that if the media encouraged debate, support for abolition and the lack of capital punishment as an option would increase<sup>121</sup>. Additionally, certain British news media sources state that retentionists sympathies are contrary to reasonable thinking and are out

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<sup>117</sup> Ibid., 678.

<sup>118</sup> Eugene Flanagan, “Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis,” *Critical Discourse Studies* 7, no. 3 (2010): 180.

<sup>119</sup> Polly Toynbee, “Comment & Analysis: Ignore the Tabloids. The Death Penalty is a Dead Issue: Even in These Fevered Times, Support for Hanging is in Decline,” *The Guardian* (Aug 21, 2002), para. 4.

<sup>120</sup> Ibid., para. 5.

<sup>121</sup> Flanagan, “Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis,” (2010) 177.

of touch<sup>122</sup>. Instead of offering thoughtful arguments to counter pro-capital punishment positions, they simply offer that they're unreasonable and shouldn't enter the public arena at all. Instead, democracy means that there should be trust in elected officials to simply follow their consciences<sup>123</sup>.

### The Media Focuses on Political Elite

Various studies have shown that it is generally not an ideological or partisan media bias that causes the media to portray the death penalty as a settled issue, but rather the media's decision to focus its discussions around the range of opinions of the political elite<sup>124</sup>. The media perceives no real debate among political elite in the U.S.; thus, they have very little motivation to present the issue as one that is hotly debated. The only debate in terms of the death penalty in the U.S. centers around which candidate is going to be tougher on crime<sup>125</sup>. Compare, for example, President Bill Clinton, a Democrat, and President George W. Bush, a Republican. President Clinton helped expand capital crimes by adding nearly 60 additional categories of violent felonies that could receive a death sentence through his Crime Bill of 1994<sup>126</sup>. On the other hand, President George W. Bush upheld and defended the death penalty on multiple occasions while he was governor in Texas<sup>127</sup>. State legislators overwhelmingly support the death penalty because they perceive the general public does. Because of this appearance of a generally united front

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<sup>122</sup> Ibid., 186.

<sup>123</sup> Toynbee, Comment & Analysis: Ignore the Tabloids. The Death Penalty is a Dead Issue: Even in These Fevered Times, Support for Hanging is in Decline," para. 3.

<sup>124</sup> Niven, "Bolstering an Illusory Majority: The Effects of the Media's Portrayal of Death Penalty Support," (2002) 675.

<sup>125</sup> Ibid.

<sup>126</sup> "Bill Clinton on Crime," Bill Clinton on Crime, August 18, 2015, Accessed November 3, 2015. [http://www.ontheissues.org/Celeb/Bill\\_Clinton\\_Crime.htm](http://www.ontheissues.org/Celeb/Bill_Clinton_Crime.htm).

<sup>127</sup> "George W. Bush on Crime," George W. Bush on Crime, May 21, 2015, Accessed November 3, 2015, [http://www.ontheissues.org/Celeb/George\\_W\\_\\_Bush\\_Crime.htm](http://www.ontheissues.org/Celeb/George_W__Bush_Crime.htm).

for the death penalty—both from the public polls and politicians—the media can present the death penalty in a positive light without having to worry that a large portion of its audience will be offended or upset<sup>128</sup>.

The American news media also has a tendency to rely on “routine” source: government officials and law enforcement officers<sup>129</sup>. Between 75% and 80% of the newspapers studied cited prosecutorial sources when reporting on crime and punishment issues<sup>130</sup>. Police officers and prosecutors were cited some 1,382 times. Defense attorneys were cited only 315 times, a ratio of nearly 4.5 to 1<sup>131</sup>. Selecting the same sources repeatedly leads to a homogenization of the news rather than diversity, encouraging the simplistic perspective that leads to extreme attitudes<sup>132</sup>. News media discourse in the U.S. focuses on reassuring the public that executions are justice being served, no matter what evidence was presented at trial, nor any lingering doubts about innocence<sup>133</sup> because that is the position of political elites in this country.

In the U.K., the media also focuses its attentions on political elite, but in a slightly different manner. In the U.K., the media likes to emphasize “experts” and their opinions<sup>134</sup>. Apparently there is so much information available—thanks to the Internet and other advances in technology—that it is best to defer to what experts say<sup>135</sup>. This

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<sup>128</sup> Niven, “Bolstering an Illusory Majority: The Effects of the Media’s Portrayal of Death Penalty Support,” (2002)675.

<sup>129</sup> Haney and Greene, “Capital Constructions: Newspaper Reporting in Death Penalty Cases,” 131.

<sup>130</sup> *Ibid.*, 143.

<sup>131</sup> *Ibid.*, 138.

<sup>132</sup> Lipschultz and Hilt, “Mass Media and the Death Penalty: Social Construction of Three Nebraska Executions,” 238.

<sup>133</sup> Glenn, C. Muschert, Lee Harrington, and Heather Reece, “Elected Executions in the US Print News Media,” *Criminal Justice Studies* 22, no. 3 (2009): 362.

<sup>134</sup> Flanagan, “Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis,” (2010) 181.

<sup>135</sup> *Ibid.*

deference to expert knowledge is both normalized and promoted by the language that the media chooses when creating headlines, writing articles, and generally informing the public on current events<sup>136</sup>. This ideal is best reflected in the general public's perception of Parliament's role and how they respond to the wishes of the public—which will be discussed in detail later. It is sufficient now to say that news media in the U.K. shows great deference to judicial elites and political representatives<sup>137</sup>. We see evidence of this in another article found in *The Guardian* from 1994 when there was another vote in the House of Commons that attempted to restore the death penalty for certain crimes via two amendments to the Criminal Justice Bill. The article explained that this was the largest margin by which amendments for this purpose had failed<sup>138</sup>, and that that meant, “the return of capital punishment for murder was now inconceivable”<sup>139</sup>. Of greater interest though is the emphasis on what the political leadership did and the lack of attention for what the arguments were for each side. The Prime Minister and the cabinet (all but three cabinet ministers) “voted heavily” to not restore the death penalty via these amendments<sup>140</sup>. While there was plenty of information from the winning side on this vote, nothing was said in regards to the losing side, other than which 3 cabinet members fell on it. This just goes on to show that the professional news values in British news media intentionally frustrate inclusive and informed debate on the underlying issue here<sup>141</sup>.

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<sup>136</sup> Flanagan, “Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis.” (2010) 183.

<sup>137</sup> *Ibid.*, 186.

<sup>138</sup> Stephen Bates, “Large Defeat for Death Penalty,” *The Guardian* (Feb 22, 1994), para. 3.

<sup>139</sup> *Ibid.*, para.1.

<sup>140</sup> *Ibid.*, para. 4.

<sup>141</sup> *Ibid.*, 186.

It is important to remember that crime news is a commercial product, in both the U.S. and the U.K.. The goal is to draw readers and viewers in order to be profitable, and to always increase that profitability<sup>142</sup>. The best way for a media outlet to ensure profitability and encourage viewers and/or readers to return is to present issues in the most popular way. News media is unfortunately not judged by an objective standard of what is newsworthy, nor the validity of the perspective that it is propagating, nor how well each story educates citizens about important social problems. It is judged by how effectively it draws and keeps the public's interest<sup>143</sup>. In terms of executions, only those of infamous murderers and milestone executions garner coverage, while the rest are left out of sight, and thus out of the minds of the public<sup>144</sup>.

#### The Media Oversimplifies Issues

Despite the variety of strategies to punish crime—and the variety of opinions on which strategies are most effective—the media in both countries presents capital punishment in a simplistic and sensational format<sup>145</sup>, fostering limited extreme thinking. Media sources in general have a tendency to distort reality and simplify it<sup>146</sup>, but when the news media repeatedly simplifies issues in their reporting, it changes the arena in which discussions on capital punishment can take place. Sotirovic concluded that media

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<sup>142</sup> Haney and Greene, “Capital Constructions: Newspaper Reporting in Death Penalty Cases,” 145.

<sup>143</sup> Ibid.

<sup>144</sup> David Dow and Bridget McNeese, “Invisible Executions: A Preliminary Analysis of Publication Rates in Death Penalty Cases in Selected Jurisdictions,” *Texas Journal on Civil Liberties & Civil Rights* 8, no. 2 (2003): 150.

<sup>145</sup> Flanagan, “Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis,” (2010) 181.

<sup>146</sup> Lipschultz and Hilt, “Mass Media and the Death Penalty: Social Construction of Three Nebraska Executions,” 241.

reports that provoke a simplistic or emotional response encourage extreme positions, while frequent exposure to complex issues can lead to more complex thinking<sup>147</sup>.

The news media in the U.S. fosters under-developed and extreme positions. Media coverage of executions in the U.S. focus almost exclusively on the role of the state in carrying out the execution, as well as events at the scene (the prisons). In contrast, the news media in the U.K. often shifts the issue to one of political party loyalty, thereby presenting an opinion without actually engaging in the deeper discussion<sup>148</sup>. In both countries, the larger social issues and debates about capital punishment are essentially ignored<sup>149</sup>. Studies have shown frequent exposure to the same stimuli leads to more extreme attitudes and these extreme attitudes lead to less complex discussions<sup>150</sup>. Because of this, the public develops viewpoints that mirror that lack of complexity<sup>151</sup>. Supreme Court Justice Thurgood Marshall recognized this in 1976, stating in his opinion in *Furman v. Georgia* that public opinion polls that ask about the death penalty were “misleading” because the average American was ignorant of basic details of the debate<sup>152</sup>. Instead, the average American has a viewpoint that is both extreme and entirely based off of the opinions that the news media perpetuates. However, the impact of the news media in this arena goes beyond the public’s ability to form an opinion; they also

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<sup>147</sup> Sotirovic, “Effects of Media Use on Complexity and Extremity of Attitudes Toward the Death Penalty and Prisoners’ Rehabilitation,” 17.

<sup>148</sup> Flanagan, “Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis,” (2010) 186.

<sup>149</sup> Lipschultz and Hilt, “Mass Media and the Death Penalty: Social Construction of Three Nebraska Executions,” 250.

<sup>150</sup> Sotirovic, “Effects of Media Use on Complexity and Extremity of Attitudes Toward the Death Penalty and Prisoners’ Rehabilitation,” 2

<sup>151</sup> Ibid.

<sup>152</sup> Niven, “Bolstering an Illusory Majority: The Effects of the Media’s Portrayal of Death Penalty Support,” (2002) 672.

impact individuals' willingness to express their opinions<sup>153</sup>. When support for any position, but especially the use or disuse of the death penalty, is presented as a public consensus, few people are willing to challenge it. Those who disagree are left to debate their peers in academic classrooms and research papers, if they voice their divergent opinions at all. In American society in particular, views on crime—and specifically on capital punishment—are applied through decisions as voters and, perhaps more importantly, as jury members<sup>154</sup>. Since *Furman v. Georgia*, the modern capital trial process is bifurcated with a phase for determining guilt and a phase for issuing a penalty. The members of the juries that issue a guilty verdict in capital trials return to issue a penalty for the convicted individual, meaning that it is individual people deciding if a person will be executed or sent to prison<sup>155</sup>. As discussed earlier, capital cases are statistically rare in the U.S. , and were rare leading up to abolition in the U.K.. So while the direct impact on the death penalty via jury votes is minimal, expression of opinions through voting is still very real and a very powerful way that a significant portion of the public makes decisions related to the use or disuse of capital punishment.

### Implications

There are three general implications when a policy is believed to have more support than it really does: popular ideas are supported in politics, there are social risks with an unpopular opinion, and popular opinions appear inevitable<sup>156</sup>. Whether the use of capital punishment is open for discussion is greatly dependent on how the media presents

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<sup>153</sup> *Ibid.*, 678.

<sup>154</sup> Haney and Greene, “Capital Constructions: Newspaper Reporting in Death Penalty Cases,” 130.

<sup>155</sup> *Ibid.*, 132.

<sup>156</sup> Niven, “Bolstering an Illusory Majority: The Effects of the Media’s Portrayal of Death Penalty Support,” (2002) 675.

it. If its use (or disuse) is inevitable, then there is little point in being active in the political process and in discussion; there is little point in protesting, debating, or even thinking about it. Because few Americans are exposed to possible alternatives, public support becomes a self-perpetuating myth<sup>157</sup>. Although there are circumstances in the U.K. that do make the return of capital punishment highly unlikely, if not impossible, the same theory applies. If the public believes that it's disuse is inevitable, then it will be. According to Niven, "we invest less thought, interest, and energy in matters that are unchangeable, and the more popular an issue, the more unchangeable it seems"<sup>158</sup>. Yet, if the media implies that varying viewpoints on an issue is valuable, there is more debate and discourse<sup>159</sup>. The use of the death penalty in the U.S. is not inevitable, as shown in the differences in poll results when alternatives were introduced<sup>160</sup>. If the media would present public opinion on the death penalty in a more accurate and realistic manner, acknowledging that there are viable alternatives, then real discussion could ensue. Without a realistic portrayal, those who oppose the use of capital punishment, or even are unsure, are pushed aside and presented with seemingly overwhelming evidence that their views are vastly unpopular<sup>161</sup>. The news media in general has great influence in modern society. It has "the institutional power to foreclose on the credibility of certain courses of action and to assert the plausibility and hence legitimacy of others"<sup>162</sup>. Although the U.S. and the U.K. have come to different conclusions about the death penalty up to this point

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<sup>157</sup> Ibid., 683.

<sup>158</sup> Ibid., 675.

<sup>159</sup> Ibid., 679.

<sup>160</sup> Ibid., 678.

<sup>161</sup> Ibid., 678-9.

<sup>162</sup> Flanagan, "Death Penalty Discourses, the Printed Media, and the UK Public Sphere: A Critical Analysis," (2010) 187.



in history, the media was and continues to be a driving factor and has great impact in each country.

### **Influence of Popularity with the Public**

The U.S. and U.K. have histories of great public support for the death penalty. As discussed earlier, public opinion polls consistently return that it remains popular with Americans, and its popularity with the majority of the British public lingered well after abolition became the law<sup>163</sup>. And yet, abolition did occur in the U.K., and one factor in that was how the legislators perceive their need to be popular with their constituents. The desire for members of the legislature to remain popular with their constituents is drastically more prevalent in the U.S. than in the U.K. due to major differences in the perceived accountability of the lawmakers, the party support systems, and the penal code systems.

#### The Accountability of Lawmakers

There are major differences between the U.S. and the U.K. in terms of the perceived accountability of the lawmakers. In the U.S., members of Congress and state legislatures are expected to be sensitive to the wishes of their constituents. Legislators devotedly watch for indicators of public opinion, especially on issues that are controversial, have overwhelming support, or a lack thereof<sup>164</sup>. Capital punishment in particular seems to draw extra careful attention from legislators, even more so than other issues within criminal justice and the penal system<sup>165</sup>.

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<sup>163</sup> Frederick Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" *Pierce Law Review* (March 2008), 625.

<sup>164</sup> David Niven, "Bolstering an Illusory Majority: The Effects of the Media's Portrayal of Death Penalty Support," *Social Science Quarterly* 83, no. 3 (2002): 682.

<sup>165</sup> Craig Haney and Susan Greene, "Capital Constructions: Newspaper Reporting in Death Penalty Cases," *Analyses of Social Issues and Public Policy* 4, no. 1 (2004): 131.

In the U.S., candidates for political office are in constant campaign mode—sometimes referred to as a permanent campaign<sup>166</sup>. Elections occur pretty frequently in the U.S., depending on the office, and so moments after a politician is elected, he or she is beginning the next campaign cycle. There is no “off-season,” where American politicians can ignore public opinion without fearing serious consequences. So when public opinion polls consistently return that an overwhelming majority of Americans support capital punishment, legislators naturally fall in line. After all, in American politics, the will of the people reigns. This idea of the legislator deferring to the public’s will is engrained deep in American culture<sup>167</sup>. Our country was founded on the ideas of the “common man” and faith in the people<sup>168</sup>. Even though the average person is not the one sitting on Capitol Hill, there is still this widely-held notion that those who are there are submissive to what their constituents want. When the constituents want capital punishment, the legislators make efforts to ensure it. Anti-elitism, majority opinion, and plain speaking “carry a special weight in American political debate and cultural life”<sup>169</sup>. Although there are *de facto* American elites—as there are in every country—any politician that hints at an elitist attitude, whether intentional or not, can spell disaster<sup>170</sup>. These ideals manifest in a commitment to a form of democracy that emphasizes direct participation, based almost entirely on the will of the people, more so than other Western democracies<sup>171</sup>. The U.S.’s commitment to retaining capital punishment is justified by

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<sup>166</sup> Richard S. Katz and William J. Crotty, *Handbook of Party Politics* (London: Sage, 2006), 354.

<sup>167</sup> David Garland, *Peculiar Institution*, (Cambridge, Massachusetts: The Belknap Press of Harvard University, 2010), 176.

<sup>168</sup> *Ibid.*, 175.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*, 176.

<sup>171</sup> *Ibid.*, 175.

legislators as obedience to the will of the people<sup>172</sup>. Because the will of the people is expressed through action or inaction by the legislatures, “a heavy burden rests on those who would attack the judgment of the representatives of the people”<sup>173</sup>.

While it is the legislators who respond to public opinion, most challenges to the use of the death penalty has been found in the U.S. Supreme Court, as well as where these changes usually occur first. Article I of the Constitution establishes legislative supremacy, a fundamental canon of statutory interpretation, which holds that the actions of lawmakers are usually given preference over the actions of judges<sup>174</sup>. The nine justices of the U.S. Supreme Court are not supposed to respond to public pressure; although some sources claim the Court is far more sensitive to popular opinion than they want to acknowledge,<sup>175</sup> whether they do or not is beyond the scope of this discussion. However, what is clear is that the Supreme Court responds to the legislatures.

There are a variety of cases that demonstrate the Supreme Court’s responsiveness to Congress and state legislatures, but even limiting the cases to those specific to capital punishment produces a myriad of evidence. First, in *Coker v. Georgia*, the Supreme Court held that the rape of an adult could not result in a death sentence if the victim was still alive. The Court based this decision on—and cited in its opinion—a recent trend in the state legislatures. After *Furman v. Georgia* invalidated 42 death penalty statutes across the country, thirty-five states changed their laws on capital punishment to try to

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<sup>172</sup> Ibid., 141-42.

<sup>173</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 596-97.

<sup>174</sup> Nicholas Parker, “The Road to Abolition: How Widespread Legislative Repeal of the Death Penalty in the States Could Catalyze a Nationwide Ban on Capital Punishment,” *Legislative & Policy Brief* 5, no. 1 (2013): 69.

<sup>175</sup> Haney and Greene, “Capital Constructions: Newspaper Reporting in Death Penalty Cases,” 132.

conform to what the Supreme Court had said. Only three of those thirty-five included rape as a capital offense in their new statutes<sup>176</sup>. Next, in *Tison v. Arizona*, the Supreme Court concluded that the death penalty for a murder in furtherance of a felony, when there was no intent to kill, was constitutional<sup>177</sup>. Again, the Court looked at how state legislatures viewed this issue and based their decision at least in part off of that<sup>178</sup>. In *Atkins v. Virginia*, the Court held that it was unconstitutional to give a mentally handicapped person the death penalty, overturning *Penry v. Lynaugh*<sup>179</sup>. After *Penry*, sixteen states changed their laws to ban the execution of the mentally handicapped<sup>180</sup>, making the total number of U.S. jurisdictions to do this eighteen states plus the federal government by 2002. The Court noted this trend in the *Atkins* opinion and concluded that this showed a national consensus of legislatures<sup>181</sup>. Finally, in *Stanford v. Kentucky*, the Court upheld the death penalty for juveniles because a majority of the legislatures allowed it<sup>182</sup>. In 2005, when the Court overturned *Stanford* with *Roper v. Simmons*, it noted the change in legislative opinion as one reason to do so. There was now a national consensus within the U.S. against the use of the death penalty for juveniles, as seen by the acts of legislatures<sup>183</sup>. Interestingly enough, the Supreme Court has also cited the popularity of the death penalty not through polls, but *in the state legislatures* as proof that

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<sup>176</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 598-99.

<sup>177</sup> *Ibid.*, 601.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*, 604.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*, 605.

<sup>182</sup> *Ibid.*, 607.

<sup>183</sup> *Ibid.*, 608.

Americans support the death penalty, and that it is not unconstitutional for that reason<sup>184</sup>. The Supreme Court justices cite an “evolving standard of decency” in many of these cases, which comes from their interpretation of the Eighth Amendment. The Eighth Amendment prohibits excessive punishments, but what exactly that is comes from current standards, not the standards at the time the Constitution was written<sup>185</sup>. The best indicators of contemporary values are what the various state legislatures say on an issue, but particularly on capital punishment<sup>186</sup>. The Court set out that it is not the number of states to agree on a particular issue, but rather a consistent direction of change<sup>187</sup>.

In the U.K., on the other hand, the legislators view themselves as political trustees. Political trusteeship is a philosophy in which political representatives view themselves as accountable to their own conscience instead of to the desires of the people they represent<sup>188</sup>. This idea is particularly evident with social issues such as capital punishment<sup>189</sup>. The political elites—Members of Parliament being first among them—determine what social position the country should have as a whole in regards to the use of capital punishment, feeling no accountability to the positions and viewpoints of their constituents<sup>190</sup>. Apart from when the public votes in the general election, there is a lack of public participation in this process<sup>191</sup>.

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<sup>184</sup> Niven, “Bolstering an Illusory Majority: The Effects of the Media’s Portrayal of Death Penalty Support,” (2002) 683.

<sup>185</sup> Parker, “The Road to Abolition: How Widespread Legislative Repeal of the Death Penalty in the States Could Catalyze a Nationwide Ban on Capital Punishment,” 72-73.

<sup>186</sup> *Ibid.*, 73.

<sup>187</sup> *Ibid.*, 74.

<sup>188</sup> Eugene Flanagan, “Death Penalty Discourses and the U.K. Polity: A Critical Analysis.” *Journal Of Language & Politics* 11, no. 4 (2012): 526.

<sup>189</sup> *Ibid.*, 527.

<sup>190</sup> *Ibid.*, 526.

<sup>191</sup> *Ibid.*, 526-528.

When abolition first passed in the U.K., it did not come because there was a public outcry for a permanent moratorium on the death penalty; while there were issues with the penal system (specifically with the execution of certain individuals) that the public was aware of and actively upset over, they weren't calling for abolition. Abolition came to the U.K. because parliamentary representatives felt that the death penalty could not and should not exist in their democracy<sup>192</sup>. They were willing to ensure that it was eradicated with or without the support of the masses<sup>193</sup>. Despite all of the problems that country had faced with the application of the Homicide Act 1957, after abolition in 1965 many public opinion polls showed that the enfranchised masses wanted capital punishment restored; even in 1998 when the U.K. adopted the two European Protocols that abolished it permanently, the public was not behind them<sup>194</sup>.

For the U.K., this is a typical breakdown for social-political issues like the death penalty. Members of Parliament justify acting without the backing of the public because of this idea of political trusteeship<sup>195</sup>. The election system reflects this political trusteeship. A general election must be held every 5 years<sup>196</sup>. Currently, there are two situations that would trigger an election prior to the expiration of those 5 years: (1) a Motion of No Confidence is passed by a simple majority and 14 days elapses without a Confidence Motion passed, or (2) a Motion for a general election is passes two-thirds of the total number of seats (including vacant seats)<sup>197</sup>. However, prior to Fixed-term

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<sup>192</sup> Garland, *Peculiar Institution*, 141.

<sup>193</sup> *Ibid.*

<sup>194</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 625.

<sup>195</sup> Flanagan, "Death Penalty Discourses and the U.K. Polity: A Critical Analysis," (2012) pg 529.

<sup>196</sup> U.K. Parliament, "General Elections," November 20, 2015,  
<http://www.parliament.uk/about/how/elections-and-voting/general/>

<sup>197</sup> *Ibid.*

Parliament Act 2011, the Prime Minister could call a general election at any time within the five-year period for a number of reasons, including when he or she was confident that his or her party would win a majority of seats<sup>198</sup>. Encouraging this role of trusteeship in political representatives encourages a deference to the elite<sup>199</sup> and an emphasis on expert knowledge<sup>200</sup>. This is in stark contrast to American culture, where the public not only refuses to defer to experts, but thoroughly distrusts those who set themselves apart from the common man<sup>201</sup>.

### The Political Party Support Systems

Political parties look very different between the U.S. and the U.K. There are a different number of major parties with different names and different ideologies. However, the most important difference between those found in the U.S. and those in the U.K. is the role that they play. In the U.S., we generally think of our political parties as powerful and significant factors in elections. In reality though, American political parties are weak compared to the rest of the world. Of all of the funding that politicians get, most of it is not from the parties themselves, but from private donors<sup>202</sup>. Prior to the invention of the primary process, party leaders would select their candidate instead of the people<sup>203</sup>. Because of this lack of power political parties have, they cannot effectively insulate American politicians that make decisions contrary to public sentiment<sup>204</sup>. American politicians are more vulnerable to changes in public sentiment than politicians around the

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<sup>198</sup> Ibid.

<sup>199</sup> Flanagan, "Death Penalty Discourses and the U.K. Polity: A Critical Analysis," (2012) 537.

<sup>200</sup> Ibid., 530.

<sup>201</sup> Garland, *Peculiar Institution*, 175.

<sup>202</sup> Ibid., 163.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.



world<sup>205</sup>. Elected officials at every level—from local city and county governments, to national legislators—must then respond and be aware of what their constituents expect. When polls repeatedly return that the death penalty is drastically popular in the U.S., and that there is little to no “protection” for politicians if they go against the wishes of their constituents, it is no surprise that legislators are not only reluctant to abolish capital punishment, but usually come out in support of it. Almost every politician wants to be seen as being “tough on crime,” and supporting the death penalty—or at least staying silent on the matter—is one effective way to do so. American political parties also have to cooperate with their comrades across the aisle more so than in other countries, even other Western democracies. In countries like the U.K., a solid majority in the national legislature will allow the majority party to pass most legislation that it wants, with or without support of others<sup>206</sup>. The American political process involves many veto points and other safeguards to actually prevent them from ignoring public opinion on important issues, but it causes the national government to be unable to make swift, decisive action in most aspects of domestic policy (it should be noted that certain executive powers creates a different scenario entirely)<sup>207</sup>.

In the U.K., political parties are much stronger and more present. When any party has a strong majority, they can generally push legislation through without the need to cooperate with other political actors<sup>208</sup>. Additionally, because of the way these electoral systems are set up, parties in nations like the U.K. have the capacity to bring about new or different legislation that may not even have the support of the general public. The

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<sup>205</sup> Ibid.

<sup>206</sup> Ibid., 157.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

majority party can usually rely on broad support for other policies, and can usually avoid an election for a number of years<sup>209</sup>. The abolitionist movement in the U.K. saw this transpire; the Labour Party was strongly pro-abolition, and once they had a significant enough majority in both houses of Parliament, they were able to eradicate the death penalty in the U.K. without public support. The Labour Party was protected from public backlash through the electoral system.

### The Penal Code Systems

Penal codes between the U.S. and the U.K. look very different, causing criminal reforms to come through different processes. The U.S. set up their criminal justice system to run primarily through the states<sup>210</sup>. While the federal government can prosecute for federal crimes, the majority of prosecution occurs through state court. Thus, the penal code in the U.S. comes from each individual state and local democratic process<sup>211</sup>. Interestingly enough, the offices that have direct contact with the criminal justice system are elected positions in most states. Positions like jailer, district attorney, State (or Commonwealth) attorney, and police chief are chosen by the people of that jurisdiction. A higher proportion of death penalty states have offices such as these as elected positions<sup>212</sup>. The individuals running for these offices try to align themselves with the viewpoints of the constituents in their area, which usually translates to promising to be “tough on crime,” harsher sentencing laws and prison policies, and capital punishment<sup>213</sup>. General electoral politics have an impact on a system that is supposed to be separate from political ideologies, one that instead is supposed to pursue justice above all else. In the

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<sup>209</sup> Ibid., 184.

<sup>210</sup> Ibid., 143.

<sup>211</sup> Ibid., 187.

<sup>212</sup> Ibid., 165.

<sup>213</sup> Ibid.

U.K. we see the opposite. Their penal code is national,<sup>214</sup> creating a very different dynamic. The national parliament has the power to regulate criminal penalties and enact legislation to set the penal code, not local city or even state governments.

### Implications

Because of all of these differences—perceived accountability of the lawmakers, the party support systems, and the penal code systems—enacting nation-wide criminal justice reform looks different. Particularly when this reform may not be popular with the constituents, lawmakers in the U.S. are severely limited in their options. The U.K. and other Western democracies can enact counter-majoritarian reform for the entire country through the national legislature. If the political elites believe in a cause of conscience, they can usually pass it with or without the support of their constituents. This is how abolition has become the law in many nations around the world<sup>215</sup>. This is simply not an option for the national legislature in the U.S.. The legislators are far too accountable to the public's will to go against majority sentiment in such a brash way, which is reinforced by the lack of party support they have and by the penal system itself. As a result, American abolitionists have had a hard time organizing and enacting reform on a national level, and they will most likely continue to have those problems.

The Supreme Court is really the only means by which there can be national reform that is counter to the majority public opinion<sup>216</sup>. The justices are charged with upholding the ideals and rights found in our federal Constitution, and as an unelected institution, are not accountable to the whims of public opinion. However, the Supreme Court is incredibly hesitant to make such a move. We saw them do it in landmark cases

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<sup>214</sup> Ibid., 185.

<sup>215</sup> Ibid., 186.

<sup>216</sup> Ibid., 185.

such as *Brown v. Board of Education*, but they are limited by a plausible interpretation of the law. The Warren Court was known for passing reform counter to public sentiment through Court opinions, and their credibility with the American public deteriorated significantly<sup>217</sup>. In terms of acting without the support of the public, advocates for abolition will have to find other means by which to affect change in the United States, as discussed in more detail later.

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<sup>217</sup> *Ibid.*, 223.

### The Impact of the Execution of Innocent Persons

As of November 2015, there have been 1,421 people executed in the U.S. alone<sup>218</sup>. As of October 2015, there have been 156 people awaiting a death sentence whom have been exonerated<sup>219</sup>. Based on these figures, between 1976 and 2015, at least 10.98 % of individuals in the U.S. who were convicted of a capital crime were actually innocent. Exoneration rates have been on the rise. Between 1973 and 1999, an average of 3.03 people were exonerated every year. That number has gone up to an average of 4.29 people exonerated every year between 2003 and 2013<sup>220</sup>. While those numbers seem small—only three to four people per year—“executing even a single innocent person would represent an ultimate miscarriage of justice.”<sup>221</sup> Additionally, the U.S. has a high rate of arrests for serious crimes. Even a small error in convictions would result in thousands of innocent people going to jail for, or being executed for, a crime they did not commit<sup>222</sup>. Despite these increases in exonerations, the media coverage has remained essentially the same<sup>223</sup>. Executions actually receive about three times more coverage in the news media than exonerations do, which is analogous to safe plane landings receiving three times as much coverage than plane crashes<sup>224</sup>, and yet it’s clear that that is not the case.

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<sup>218</sup> “Number of Executions by State and Region Since 1976,” Death Penalty Information Center, last modified November 20, 2015, accessed November 23, 2015.

<sup>219</sup> “Innocence and the Death Penalty,” Death Penalty Information Center, last modified October 13, 2015, accessed November 23, 2015.

<sup>220</sup> *Ibid.*

<sup>221</sup> James R. Acker, “Actual Innocence: Is Death Different?” *Behavioral Sciences and the Law* 27, no. 3 (2009): 304.

<sup>222</sup> C. Ronald Huff, “Wrongful Convictions: The American Experience,” *Canadian Journal Of Criminology & Criminal Justice* 46, no. 2 (2004): 109.

<sup>223</sup> David Niven, “Bolstering an Illusory Majority: The Effects of the Media’s Portrayal of Death Penalty Support,” *Social Science Quarterly* 83, no. 3 (2002): 24.

<sup>224</sup> *Ibid.*, 25.

The idea that innocent people are convicted by the U.S. justice system is more widely accepted today than it was previously<sup>225</sup>. Since the mid-1990s, there has been increasing attention on the flaws in the judicial system that could lead to an innocent person being convicted<sup>226</sup>. Cases where the defendant claimed innocence have always been contestable, but as DNA evidence becomes more reliable, the innocence frame itself has become more credible<sup>227</sup>. It has been suggested that this could be the development in criminal justice that will change the popularity of the death penalty<sup>228</sup>, and that it could be the most powerful argument for abolition<sup>229</sup>. Because executing an innocent person is unpopular across the board<sup>230</sup>, the innocence frame has already changed the debate about capital punishment in a way that no other framing of the issue has been able to do<sup>231</sup>. Why is this frame so successful? Executing an innocent person—the wrong person—is not a popular idea, thus there is really no logical counterargument to wanting to eliminate the execution of innocent people<sup>232</sup>.

The idea that innocent people are executed is convincing for those who support its conclusion—that capital punishment is wrong—but also for those who disagree<sup>233</sup>. This is particularly meaningful because people tend to focus on evidence that supports their

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<sup>225</sup> Acker, “Actual Innocence: Is Death Different?” 300.

<sup>226</sup> Frank Dardis, Frank Baumgartner, Amber Boydstum, Suzanna De Boef, and Fuyuan Shen, “Media Framing of Capital Punishment and Its Impact on Individuals’ Cognitive Responses,” *Mass Communication & Society*, 11 (2008): 125.

<sup>227</sup> Jay D. Aronson and Simon A. Cole, “Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States,” *Law and Social Inquiry* 34, no. 3 (Summer 2009): 609.

<sup>228</sup> *Ibid.*, 604.

<sup>229</sup> *Ibid.*, 608.

<sup>230</sup> Dardis, Baumgartner, Boydstum, De Boef, and Shen, “Media Framing of Capital Punishment and Its Impact on Individuals’ Cognitive Responses,” 117.

<sup>231</sup> Aronson and Cole, “Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States,” 604.

<sup>232</sup> Dardis, Baumgartner, Boydstum, De Boef, and Shen, “Media Framing of Capital Punishment and Its Impact on Individuals’ Cognitive Responses,” 134.

<sup>233</sup> *Ibid.*, 118.

opinions and conclusions, not on that which counters it effectively<sup>234</sup>. Yet, this accusation that the U.S. justice system regularly makes factual errors about someone's innocence has opened minds in a way that other challenges to the system have failed to do<sup>235</sup>. The execution of innocent persons is the most influential factor for abolition in both the U.S. and the U.K., despite the resistance in the court system, because of the impact on the public and the response of the government.

### The Court System

The U.S. Court system appears to generally oppose exonerations and the process of deciding if one should be exonerated post-conviction. There is an emphasis in the adversarial system on process, not necessarily on finding the truth<sup>236</sup>. Prosecutors have an incentive to obtain and maintain convictions, not just because their professional advancement can depend on it, but because the credibility of the prosecutor's office as a whole relies on maintaining a certain level of credibility<sup>237</sup>. When convictions are overturned, that undermines the credibility of both the individual prosecutor and the prosecutor's office. The Court is also reluctant to further exoneration efforts because the state has an interest in finality. Finality in cases is supposed to deter criminal activity<sup>238</sup>. Closing cases quickly that are not overturned or challenged presents an image to the public and to potential criminals that the justice system will find and punish all criminal activity. Finality also establishes stability. If convictions are constantly under attack, then

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<sup>234</sup> *Ibid.*, 119.

<sup>235</sup> Aronson and Cole, "Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States," 604

<sup>236</sup> Huff, "Wrongful Convictions: The American Experience," 113.

<sup>237</sup> Meghan J. Ryan, "Remedying Wrongful Execution," *University of Michigan Journal of Law Reform* 45, no. 2 (2012): 274-275.

<sup>238</sup> Ryan, "Remedying Wrongful Execution," 276-77.

the public cannot rely on the system<sup>239</sup>. If someone repeatedly has his or her conviction overturned, reinstated, or questioned, then the decisions reached in court become unreliable. Capital cases in general increase the risk of a wrongful conviction. In order for a case to become capital in the U.S., murder must be involved, and it usually involves aggravated murders<sup>240</sup>. The public puts pressure on the police to make an arrest, which can close investigations prematurely. High stakes can cause prosecutors to focus solely on a conviction instead of on justice. Pretrial publicity and fears of turning loose a murderer can pollute the “impartial” judgment of jurors<sup>241</sup>.

The U.S. Supreme Court itself has rejected hearing claims of actual innocence from inmates. When they analyze appeals under the Eighth Amendment, they never cite to the defendant’s possibility of innocence<sup>242</sup>. In *Furman v. Georgia*, of the nine separate opinions that were written, only Justice Marshall mentioned innocence<sup>243</sup>. In *Herrera v. Collins*, the Supreme Court denied a second federal habeas petition that was made based on new evidence showing the defendant’s actual innocence<sup>244</sup>. The Court held that a defendant cannot simply present new evidence showing innocence, but would have to show that he or she did not receive a constitutionally fair trial<sup>245</sup>. They went on to say that after a conviction, the presumption of innocence disappears, and that only a “truly persuasive demonstration of actual innocence” could convince the Court to accept the

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<sup>239</sup> Ibid., 276-77.

<sup>240</sup> Acker, “Actual Innocence: Is Death Different?” 299.

<sup>241</sup> Ibid., 299-300.

<sup>242</sup> Frederick Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” *Pierce Law Review* (March 2008), 631.

<sup>243</sup> Aronson and Cole, “Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States,” 608.

<sup>244</sup> Millet, “Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?” 611.

<sup>245</sup> Ibid.



petition<sup>246</sup>. In fact, no one in the U.S. who has been executed has ever been formally exonerated<sup>247</sup>, in part because there is no legal proceeding that is capable of finding someone actually innocent<sup>248</sup>. The judicial system is not a fact-finding lie detector; it is only as infallible as the judge, the attorneys, and the jury charged with finding what is true and what is not.

In the U.K., the case of Timothy Evans was seen by the public as a failure of the Court system<sup>249</sup>. John Christie had been the Crown's main witness against Evans, and yet Christie admitted later at his own trial to murdering Evans's wife and daughter<sup>250</sup>. There was much debate over the case in the Commons after Christie's trial, even a few public inquiries made and reports written<sup>251</sup>. Yet the government was very hesitant to admit that it had made a mistake or to overrule what the Court had decided. Eventually the Crown did grant Evans a posthumous pardon<sup>252</sup>, but not until 16 years after Evans had been executed<sup>253</sup>.

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<sup>246</sup> Ibid., 612.

<sup>247</sup> Ryan, "Remedying Wrongful Execution," 273.

<sup>248</sup> Aronson and Cole, "Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States," 609-10.

<sup>249</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 568.

<sup>250</sup> Brian Block and John Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain* (Waterside Press, 1997) 144.

<sup>251</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 254; Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 568.

<sup>252</sup> Ibid., 255.

<sup>253</sup> Ibid., 155.

## The Public

A strong majority of Americans suspect that an innocent person has been executed<sup>254</sup>. According to one study, three-quarters of Americans believe that an innocent person has been executed in the last five years<sup>255</sup>. This belief that innocent people are being executed is more likely to cause someone to change his or her support from retaining the death penalty to abolition<sup>256</sup>, and thus is perhaps the greatest possibility abolitionists have for changing public opinion<sup>257</sup>. The number of individuals who oppose capital punishment because of the execution of innocent persons is also growing. One study found that in 1991, only 11% of death penalty opponents raised the innocence as an issue, while in 2003, that had risen to 25%<sup>258</sup>. This is an area for change in the U.S. Abolitionists have the chance to alter public opinion by increasing the visibility of the data about exonerations, and by convincing the public that innocent people have been executed here<sup>259</sup>.

In the U.K., that was how abolition got a foothold. It was a combination of three murder cases that changed the attitude about capital punishment in the U.K.<sup>260</sup>. The trilogy of Timothy Evans, Derek Bentley, and Ruth Ellis created a public outcry that

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<sup>254</sup> James D. Unnever and Francis T. Cullen, "Executing the Innocent and Support for Capital Punishment: Implications for Public Policy," *Criminology & Public Policy* 4, no. 1 (February 2005): 14.

<sup>255</sup> *Ibid.*, 24.

<sup>256</sup> *Ibid.*, 7, 24-25.

<sup>257</sup> *Ibid.*, pg 4; Aronson and Cole, "Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States," 608.

<sup>258</sup> Unnever and Cullen, "Executing the Innocent and Support for Capital Punishment: Implications for Public Policy," 7.

<sup>259</sup> *Ibid.*, 25.

<sup>260</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 564.

forced Parliament to respond<sup>261</sup>, even if the response wasn't necessarily what the public had expected.

### The Response of the Government

Many of the states that have abolished the use of the death penalty have done so because of concerns over executing innocent people. In 2000, Illinois Governor George Ryan created a moratorium on the death penalty<sup>262</sup>. Thirteen inmates had recently been exonerated, causing the governor to question the effectiveness of the justice system<sup>263</sup>. In 2007, the New Jersey legislature abolished capital punishment in part because of fear of execution innocent persons<sup>264</sup>. In 2009, New Mexico Governor Bill Richardson signed a law abolishing the death penalty<sup>265</sup>. Governor Richardson had been pro-death penalty, voting in favor of capital punishment during his time in Congress, but a growing number of exonerations and evidence of innocence had changed his mind<sup>266</sup>. Concerns over innocence have sparked many official commissions in various states around the U.S.<sup>267</sup>, including in Massachusetts under Governor Mitt Romney and in Wisconsin<sup>268</sup>. While the U.S. has not had any miscarriage of justice cases similar to Evans, Bentley, and Ellis in the U.K., there is still cause for concern. It's quite possible that if more states began to investigate innocence issues, it will lead the abolitionist charge as it did in the U.K.<sup>269</sup>.

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<sup>261</sup> Ibid., 631.

<sup>262</sup> "Illinois," Death Penalty Information Center, accessed November 23, 2015.

<sup>263</sup> Ibid.; Acker, "Actual Innocence: Is Death Different?" 299.

<sup>264</sup> Acker, "Actual Innocence: Is Death Different?" 308.

<sup>265</sup> Aronson and Cole, "Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States," 605.

<sup>266</sup> Nicholas Parker, "The Road to Abolition: How Widespread Legislative Repeal of the Death Penalty in the States Could Catalyze a Nationwide Ban on Capital Punishment," *Legislative & Policy Brief* 5, no. 1 (2013): 86.

<sup>267</sup> Acker, "Actual Innocence: Is Death Different?" 308.

<sup>268</sup> Ibid., 300.

<sup>269</sup> Millet, "Will the United States Follow England (and the Rest of the World) In Abandoning Capital Punishment?" 629, 632.

The U.K. Parliament acted in response to cases like that of Timothy Evans, Derek Bentley, Ruth Ellis, and many more<sup>270</sup>. It was the public unrest caused by executing innocent people that spurred Parliament to action<sup>271</sup>. Many of the times that Sydney Silverman attempted to introduce bills into Parliament were after another execution of a potentially innocent person<sup>272</sup>.

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<sup>270</sup> Ibid., 564.

<sup>271</sup> Block and Hostettler, *Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain*, 223-24.

<sup>272</sup> Ibid., 145.

### **Overall Implications**

The U.S. and the U.K. have responded differently to capital punishment. The three main factors have been the influence of the news media, the pressure for lawmakers to remain popular, and the execution of innocent persons. This research has demonstrated that the news media in the U.S. has an impact on public opinion. Public opinion has a dramatic impact on legislators, both at the state and national level. While the public does not influence the U.S. Supreme Court—where most changes to capital punishment has occurred—the Supreme Court is in fact influenced by changes in the state legislatures. In the U.K., however, this is not the progression that ensues. The news media may influence public opinion, but the legislature does not respond to public opinion on conscience issues such as capital punishment. In the U.K., the legislature shapes the media, who in turn eventually sways the public.

The execution of innocent people, or at least people who it was believed should not have been executed, sparked change in the U.K.—namely the convictions and executions of Timothy Evans, Derek Bentley, and Ruth Ellis. While the public was upset and called for change following each of these three cases, they were not necessarily calling for abolition, as public opinion polls showed that the death penalty was still popular after these instances. Yet, Parliament responded by advocating an abandonment of the death penalty. The execution of innocent persons created change in the legislature, the news media followed behind, and eventually the public was swayed.

In the U.S., because of the differences in influence and in all of these important areas discussed herein, it is highly unlikely that abolition could occur in the same manner. It is my contention that the public would have to step out in front of the news media to

cause change. There would need to be a public outcry against executing innocent persons—or any persons—to make a difference and cause the news media to respond. If the news media reported that public opinion had overwhelmingly changed, state legislatures would rush to follow. When there is consistent change in one direction, and when a sufficient number of states abolish the death penalty, the Court will most likely determine that under an evolving standard of decency, capital punishment is no longer acceptable in the U.S., and thus is unconstitutional. Conversely, retentionists need to find a way to fix the systematic flaw of executing innocent people. If it is not addressed, it will be the downfall of capital punishment in the U.S., just as it was in the U.K.

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