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Against the Death Penalty

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"Can the state, which represents the whole of society and has the duty of protecting society, fulfill that duty by lowering itself to the level of the murderer, and treating him as he treated others? The forfeiture of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process." Those were the words of former Secretary-General of the United Nations, Kofi Annan, in support of a global movement calling to halt the death penalty. Annan was not alone as many others shared his sentiment. World renowned figures who were loved by many and respected by all, including Albert Einstein, Mohandas Gandhi, Pope John Paul II, and Martin Luther King Jr., also publicly stated their vehement opposition to capital punishment. However, for as many notable figures in history who openly opposed the death penalty there are just as many who strongly supported it. In the category of those who support the death penalty includes former President George W. Bush, who said, "I don't think you should support the death penalty to seek revenge. I don't think that's right. I think the reason to support the death penalty is because it saves other people's lives…I support the death penalty because I believe, if administered swiftly and justly, capital punishment is a deterrent against future violence and will save other innocent lives." President Bush is not alone in that belief, as this paper will discuss notable philosophers who share the same sentiment. Fast forward to the present day, and the topic of the death penalty remains as controversial as it ever has been.

In his book *Philosophical Problems in the Law*, David M. Adams highlights several questions and concerns people might have concerning the death penalty, and these questions reflect the sentiment of many Americans today. There are questions about the purpose of capital punishment: is it to deter crime or is it a form of retribution?[1] There are moral and ethical concerns about the death penalty as well. One such concern is whether the death penalty is administered in a racially discriminatory fashion. Another concern is the risk of a wrongfully convicted person being sentenced to death.[2] Helpful for connecting Adams' philosophical work with contemporary America, the Death Penalty Information Center (a national non-profit organization founded to provide the public with information regarding the death penalty) releases an annual review of statistics concerning the death penalty that took place in the United States that year. The most recent report analyzed 2021 and included a poll conducted by Gallup News. That poll showed that 54% of the respondents were "in favor of the death penalty for a person convicted of murder," the lowest number in half a century.[3] Poll respondents in favor of the death penalty were just recently at an all-time high of 80% in the 1990s, but a rapid decline to the most recent 54% shows an erosion for death penalty support in the United States.[4] Also included in the report was a poll conducted by the Pew Research Center, which showed that over half of those surveyed believe "black people are more likely than white people to be sentenced to death for committing similar crimes," and that 78% of those surveyed agreed that there is a factor of risk that an innocent person might be sentenced to death.[5]

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[1] David M. Adams, "The Death Penalty," in *Philosophical Problems in the Law*, ed. David M. Adams (Boston, MA: Wadsworth, Cengage Learning, 2013), 569.
[2] Adams, "The Death Penalty," 569.
[3] "The Death Penalty in 2021: Year End Report," Death Penalty Information Center, accessed February 1, 2022, https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2021-year-end-report.
[4] "The Death Penalty in 2021: Year End Report," Death Penalty Information Center.
[5] "The Death Penalty in 2021: Year End Report," Death Penalty Information Center.

With these statistics shown paired with questions and concerns from both scholars and average citizens alike, it is evident that the death penalty is a topic under significant scrutiny. The purpose of this research paper will be to put capital punishment under the microscope; utilizing statistics and reports, scholarly writings, as well as moral and ethical theories in order to answer the question so many people in America are asking: is the death penalty acceptable? Capital punishment, despite the controversy surrounding it, is still legal in over half (27 states) of the United States of America. Due to these mentioned statistics showing that the death penalty is losing public support, the cases where the death penalty is blatantly administered in a discriminatory manner, and the weak ethical arguments seeking to advocate the death penalty, capital punishment should no longer be seen as an acceptable vehicle delivering justice. This paper will advance the argument against the death penalty by analyzing relevant data and statistics, by utilizing arguments of legal theorists and philosophical scholars to point out the holes in the popular ethical arguments, and by highlighting instances where the death penalty is inadvertently perpetuating discrimination.

It is important to examine punishment in general to better understand where and how the death penalty fits in as a method of punishment. Why does society punish wrongdoers, and what goals does it hope to accomplish in doing so? David Adams has a couple of suggestions as to what the goal of punishment might be. One such goal Adams suggests is the goal of rehabilitation, where the purpose of punishment is to correct individuals who commit crimes, with the ultimate goal of sending them back into society as an individual who will not cause the same harm again.[6] Another goal of punishment that Adams proposes is the goal of deterrence, with the ultimate goal of not just deterring the specific individual from committing further crime,

[6] David M. Adams, "Punishment and Responsibility," in *Philosophical Problems in the Law*, ed. David M. Adams (Boston, MA: Wadsworth, Cengage Learning, 2013), 528.

but to deter other unrelated individuals from committing similar crimes themselves.[7] The final goal of punishment brought up by Adams is a retributive theory of punishment, where the objective is to punish criminal offenders with a degree of punishment based on the degree of the offense and only that offense.[8] These three goals (rehabilitation, deterrence, and retributivism) answer the question found above – they are the most common ends sought through the means of punishment. However, there is another consideration to be had concerning punishment as a whole – that of justification.

With three of the most common goals of punishment spelled out, the question then turns to something akin to this: "what grounds does society have to justify when and how punishment is carried out?" David Adams proposes a solution to this question, with the answer in the form of ethical theory. Adams paraphrases Professor Michael Moore explaining how punishment is justified, saying that those arguing to "justify criminal punishment tend to align themselves with one or the other two general moral and social theories…utilitarianism and deontology."[9] As arguments both supporting the death penalty and seeking to abolish it can be better analyzed with an understanding of these ethical theories, there is value in giving a brief synopsis of each theory.

First under the microscope is utilitarianism, which is a theory grounded in the idea that "our actions, whether legislative or otherwise, should be guided by a set of prescriptions, the conscientious following of which by all would have maximum net expectable utility."[10] In his discussion of a utilitarian's take on punishment, moral philosopher Richard Brandt highlights three key facts. The first fact is that people who might be tempted to break the law can usually be

[7] Adams, "Punishment and Responsibility," 528-529.
[8] Adams, "Punishment and Responsibility," 528-529.
[9] Adams, "Punishment and Responsibility," 529.
[10] Richard B. Brandt, "The Utilitarian Theory of Criminal Punishment," in Philosophical Problems in the Law (Boston, MA: Wadsworth, Cengage Learning, 2013), 554.

deterred from misconduct through fear of punishment, ranging anywhere from a fine to the death penalty.[11] The second fact is that punishments such as fees or imprisonment can teach those who would break the law a lesson, that after such reprimand they will be less likely to cause societal grief again.[12] The third fact stems from the second fact, for even if someone who breaks the law and is imprisoned breaks the law once more after completing their prison sentence, at the very least they were unable to commit crimes while imprisoned.[13] For the utilitarian, goals of punishment include incapacitating criminal offenders, rehabilitating those incapacitated offenders, and deterring those who would seek to criminally offend society.[14] Concerning the manner of punishment accepted by a utilitarian, this is a gray area. There is a significant amount of room for differing theories, so long as they conform to the basic utilitarian principle: that whatever punishment utilized promotes the greatest amount of good and the least amount of evil, and that it does so better than any other alternative. When thinking about the utilitarian approach to punishment, the severity of the punishment is an important variable. Brandt states that "punishment should have precisely such a degree of severity (not more or less) that the probable disutility of greater severity just balances the probable gain in utility (less crime because of the more serious threat)."[15]

The proponent of a deontological take on punishment would agree with the utilitarian to a degree on this point. As the widely considered "Father of Deontology," philosopher Immanuel Kant proposed a theory of punishment referred to as "retributivism."[16] Professor of law and legal philosophy, Michael Moore, describes retributivism as the view that "punishment is justified by

[11] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[12] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[13] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[14] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[15] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[16] Adams, "Punishment and Responsibility," 529.

the desert of the offender...the good that is achieved by punishing, in this view, has nothing to do with future state of affairs, such as the prevention of crime or the maintenance of social cohesion…rather, the good that punishment achieves is that someone who deserves it gets it."[17]

While having differences, the two ethical theory-based takes on punishment have several distinct similarities. First and foremost, a critical element in administering punishment is the identification of the individual on the receiving end of punishment. Given that the retributivist theory of punishment hinges on the fact that the good achieved by punishment is only achieved when an offender is punished in a manner deserved by their crime.[18] For the utilitarian, the importance of who is on the receiving end of punishment is less black and white. However, Brandt provides clarity, stating "Misconduct is not to be punished just for its own sake; malefactors must be punished for their past acts, according to the law, as a way of maximizing expectable utility."[19] Brandt also addresses a potential critique of the utilitarian theory of punishment – the critique that a utilitarian would find it acceptable to punish an innocent person, so long as it brings about the most good. Brandt addresses this, stating that no utilitarian would advocate for the codifying of a law that would permit individuals to be punished for crimes they are innocent of – for doing so would be a "shattering blow to public confidence and security."[20] While it would be accurate to state that the retributivist places more of an emphasis on ensuring only those who are deserving of it are punished, thanks to Brandt's breakdown it is clear to see that the utilitarian has a stake in avoiding punishment of the innocent as well.

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[17] Michael Moore, "The Argument for Retributivism," in Philosophical Problems in the Law, ed. David M. Adams (Boston, MA: Wadsworth, Cengage Learning, 2013), 558-562.
[18] Moore, "The Argument for Retributivism," 558.
[19] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[20] Brandt, "The Utilitarian Theory of Criminal Punishment," 556.

The second shared attribute is the concern with severity. While they have different goals for doing so, both the retributivist and the utilitarian understand the importance of how severe punishment ought to be. Yet again, the retributivist's concern with severity is quite concrete. To the retributivist, the severity of the punishment should match the severity of the crime – nothing more and nothing less will do. The utilitarian is cautious about punishment severity as well, and Brandt breaks this down with his "cost" example. Brandt says that the "cost, in other words, should be counted along with the value of what is bought; and we should buy protection up to the point where the cost is greater than the protection is worth."[21] In other words, punishment should be severe up to when misconduct is punished, as well as to when the crime being punished is considered not worth doing by perspective wrongdoers. To summarize, while these theories of punishment may differ from one another, they share at least a significant concern in punishing those who have committed wrongs. They also share an absolute caution when determining the severity of punishment.

With these two major ethical and social theories explicated, it is now time to turn the focal point of concern to the death penalty. More specifically, this section of the paper will analyze and debate with both utilitarian and retributive arguments made in favor of capital punishment. As highlighted earlier, the goal of utilitarianism is to maximize the overall good while minimizing the amount of bad produced by a given action. When it comes to the death penalty, the utilitarian makes several arguments for the fact that the death penalty produced an amount of good to the point where it is worth the taking of a human life. The most notable among those arguments is that of deterrence, one of the three main goals aimed to be achieved by means of punishment.[22] The utilitarian holds that for the most heinous of crimes, where a life

[21] Brandt, "The Utilitarian Theory of Criminal Punishment," 554.
[22] Adams, "The Death Penalty," 571.

sentence and the death penalty are the only two viable options, the death penalty is the more efficient one. As mentioned earlier, for a utilitarian to hold a punishment justifiable it must cause the most good at the cost of the least bad, and it must be the best option in doing so. The utilitarian would argue that the death penalty is the superior choice over life imprisonment because it is both preventative and deterring in nature, to a higher degree than the alternative.[23] To avoid confusion between the two terms (prevention and deterrence), Adams defines the two as the following: prevention ensures that it is impossible for the same individual punished to commit another crime following the punishment, and deterrence discourages others from committing similar crimes.[24]

The aspect of prevention is fairly simple to debunk. Obviously, a person who suffers the death penalty would not commit any more crimes – after all, they are dead. Can the same not be said about life imprisonment without the possibility of parole? Of course, someone facing life imprisonment may have the opportunity to escape and commit further crime – which would mean the death penalty is a better preventative punishment – but how realistic is that in the modern world? Due to advancements in technology and surveillance, the odds of a prisoner escaping are minimal. In fact, between 2000 and 2019, the number of prisoners who escaped from a state or federal prison has dropped by almost half (from 5,168 in 2000 to 2,231 in 2019).[25] This significant drop in number of prisoner escapes is not due to prison populations

[23] Adams, "The Death Penalty," 571.
[24] Adams, "The Death Penalty," 572.
[25] "Number of Escapees from Prisons in the U.S. 2019," Statista, October 27, 2021, https://www.statista.com/statistics/624069/number-of-escapees-from-prisons-in-the-us/.

dropping either, as there were roughly several hundred thousand more inmates nationwide in 2019 as there were in 2000.[26]

Then comes the aspect of the argument that is much more clouded, the argument of deterrence. This argument can be debunked in two ways: the reality of the human condition, and the reality of statistics. Surprisingly, the more conclusive argument against the utilitarian support of the death penalty is indeed the human condition. It is easy to make the assumption that all humans are afraid of death. In fact, arguing that most humans are afraid of dying in some caused fashion does seem to be a pretty sound argument. However, the key word is "most." For those who commit less atrocious crimes, such as robbery or forgery, the majority would probably be deterred if the punishment was death. Although, this would contradict one of the key principles of utilitarianism concerning punishment – a punishment should not be more severe than what is necessary to bring back compliance with the law. That is why the punishment for those crimes is nothing remotely close to the death penalty. That being said, when a person plans and commits an act so vile as to warrant the death penalty as a possible punishment, it is not a stretch to say that that particular individual would not fall into the camp of "most" humans who are afraid of death. Or, maybe if that individual is not quite as vile in the head but is so committed to do the crime they plan, they have already accepted their own death as a possible outcome and continue with their action regardless. For those who truly do commit crimes warranting the death penalty, it is entirely possible they are much less concerned with the outcome of their own life than the average person.

[26] Jacob Kang-Brown, Jasmine Heiss, and Chase Montagnet, "People in Jail and Prison in 2020 - Vera Institute of Justice," January 2021, https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-2020-fact-sheet.pdf, 1.

The second way to counter the utilitarian argument for the death penalty is to turn yet again one of its own principles against it. For a punishment to be considered justifiable for a utilitarian, it must bring about the most good at the expense of the least bad, and it must do so better than all of the other options. So, there are two options – life imprisonment without parole and the death penalty. It should be considered common knowledge that imprisonment at all is at least a somewhat useful deterrent, otherwise society would crumble into the ruins of anarchy. However, when it comes to capital punishment, it is harder to say the same thing. In fact, it is hard to say one way or another whether capital punishment deters at all when examining the statistics. There just is not enough conclusive evidence to push the needle to either side.

It is not a complete loss though, as in *Murder, Capital Punishment, and Deterrence: A Review of the Literature*, William Bailey and Ruth Peterson provide one of the most comprehensive reviews of the available evidence. After analyzing numerous studies conducted in various fields (the law itself, psychology, sociology, economics, et cetera), Bailey and Peterson say that based upon their analysis, "we feel quite confident in concluding that in the United States a general deterrent effect for capital punishment has not been observed, and in all probability does not exist."[27]

It is important to note that when examining all death penalty literature and statistics done for the sake of determining the effectiveness of deterrence it provides, there is one often cited study used by proponents of the death penalty. Isaac Ehrlich analyzed data collected from 1933 through 1969, and concluded that for each administered execution in this period there might have been on average between seven and eight deterred murders.[28] While death penalty proponents are

[27] William C. Bailey and Ruth D. Peterson, "Murder, Capital Punishment, and Deterrence: A Review of the Literature," in *The Death Penalty in America: Current Controversies*, ed. Hugo A. Bedau, (New York: Oxford University Press, 1997), 135-156.
[28] Bailey and Peterson, "Murder, Capital Punishment, and Deterrence: A Review of the Literature," 141.

keen to present the Ehrlich study as conclusive evidence for the deterring factor of capital punishment, they are quick to dismiss the numerous studies done showing the opposite as well as the host of scholars who had grounded objections to Ehrlich's methods. In the present day one can draw a parallel of sameness between death penalty proponents taking Ehrlich's study to be conclusive with those who cherry-pick questionable studies to claim that one is better off not receiving the COVID-19 vaccination. For the same reason as rejecting the anti-vaxxer argument today, Bailey and Peterson show that there is simply too much contradictive evidence to hold the Ehrlich study as a grounded argument.

While they cited different studies countering Ehrlich's findings, Bailey and Peterson disputed several aspects of his approach. However, their biggest objection was one that even people unfamiliar with complex studies such as these can appreciate. The issue was the emphasis Ehrlich placed on certain models – his studies showed models that suggested deterrence with capital punishment and models that suggested little connection.[29] This problem could have been remedied if Ehrlich had given insight as to why he chose to emphasize certain models over the others. Unfortunately for death penalty proponents, Ehrlich gave no empirically based reasoning as to why he emphasized certain statistical models over others. To rub salt in the wound, Bailey and Peterson concluded that from their research there were no sound theoretical reasons for the choice of some models over the others.[30]

The utilitarian argument for the death penalty rests entirely on the idea that capital punishment acts as an effective deterrent, and that it does so better than the alternative (life imprisonment without possibility of parole). However, thanks to the comprehensive analysis of countless literature showing effectiveness of deterrence in capital punishment provided by Bailey

[29] Bailey and Peterson, "Murder, Capital Punishment, and Deterrence: A Review of the Literature," 142.
[30] Bailey and Peterson, "Murder, Capital Punishment, and Deterrence: A Review of the Literature," 142.

and Peterson, it has been shown that there is no conclusive evidence to show that the death penalty is the superior deterrent – in fact, there may be no significant deterrent whatsoever found in the death penalty.[31] Given that in the utilitarian theory of punishment, a requirement is that a punishment does more good at the cost of the least amount of evil (and that it does so better than any other alternative punishment), the death penalty cannot be defended by the utilitarian due to this lack of evidence. One must only look at society to see that imprisonment is at least enough of a deterrent to stop the average person from committing most crimes. Thus, in the abstract, there is far more evidence to show that imprisonment is an effective deterrent when compared to the death penalty. In conclusion, it has been shown that the death penalty has not been proven to be a better deterrent than life imprisonment. For this reason, the utilitarian argument for the death penalty crumbles.

The utilitarian argument for the death penalty might have fallen apart, but there remains the retributive argument for the death penalty. The retributive theory of punishment is slightly easier to flesh out than the utilitarian one. As highlighted earlier, a retributivist would hold that punishment should be dealt only to the degree that is deserved, so long as that person is truly guilty.[32] That first element is key to understanding the retributivist theory of punishment – that punishment should match the crime. In *The Science of Right*, Kant himself states that "whoever has committed murder, must die. There is, in this case, no juridical substitute or surrogate, that can be given or taken for the satisfaction of justice. There is no likeness or proportion between life, however painful, and death; and therefore there is no equality between the crime of murder and the retaliation of it but what is judicially accomplished by the execution of the criminal."[33]

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[31] Bailey and Peterson, "Murder, Capital Punishment, and Deterrence: A Review of the Literature," 155.
[32] Adams, "Punishment and Responsibility," 529.
[33] Immanuel Kant, "The Science of Right," trans. Hastie, The Science of Right by Immanuel Kant (1790) (Marxist Internet Archive, 2003), https://www.marxists.org/reference/subject/ethics/kant/morals/ch04.htm.

There is no sameness of kind between the death of the victim and the continued life of the murderer, and because no amount of imprisonment is comparable to death, the murderer must die. In other words, when choosing between life imprisonment and the death penalty in the case of murder, the death penalty is the only correct answer. While some may argue that the retributivist argument for the death penalty is simply revenge, the retributivist would argue that answering a murder with the death of the murderer is necessary for justice. In fact, Kant would go so far to say that anything less than execution for a murderer is unfair to both the murderer and the victim. Adams paraphrases this argument from Kant, stating that, "what it means to treat a condemned murderer as an autonomous person is that society must give to that person what he or she deserves (death) – to do less would be to use that person's fate (which she has chosen) as a vehicle for our own needs."[34] That is the rebuttal made at the ready for any individual seeking to oppose the death penalty – that person is taking away from the murderer's autonomy for the sake of their own comfort. The retributivist argument for the death penalty is a simple one. If a person is truly guilty of murder, then it is an absolute necessity to sentence that person to death. Anything less than that is an affront to the autonomy of the murderer and is also a denial of justice for the victim.

After explicating the retributivist argument for the death penalty, with intuition one may be able to assume where this objection is headed. The heart of the retributivist argument is in proportionality – that the punishment must match the crime. It is precisely why they are so earnest in arguing for the death penalty because no amount of life behind prison bars could possibly equate to the loss of life. However, this strict adherence to proportionality is precisely where the retributivist argument begins to lose its persuasiveness. One would be hard-pressed to

[34] Adams, "The Death Penalty," 571.

believe that every murder is done in a manner as quickly and painlessly as capital punishment is administered. In *The Death Penalty Once More*, death penalty proponent Ernest van den Haag claims that because it is now "repulsive" to us (society), torture would not be an acceptable form of punishment.[35] Well, what then if the victim was tortured to death? If the retributivist theory of punishment demands exact proportionality, then a painful death caused must be punished by a painful death – otherwise there is no "sameness of kind." The same point is made by Adams when he uses the hypothetical of a murder by dismembering. If it is not acceptable to the retributivist to sentence to death a murderer who killed by dismembering their victim by administering execution in a similar fashion, then why is it acceptable to sentence them to death at all?[36] Van den Haag anticipates this argument in *The Death Penalty Once More*, stating that death is an acceptable manner of punishment due to the fact that when administered in a humane way, the death penalty only "hastens" the death that all humans face.[37] In *A Reply to van den Haag*, activist in seeking the abolishment of the death penalty, Hugo Bedau, points to other "inevitable" aspects of the human condition. He counters the claim made by van den Haag that the death penalty is acceptable because it only hastens what will occur naturally (death), and he does so by pointing to things such as "human disappointment, pain, loneliness, bereavement, and other forms of misery and suffering."[38] Bedau claims that in the face of such inevitable hardships all humans face, people will actively do everything in their power to remedy or minimize such calamities, even if it is miniscule in the grand scheme of things.[39] It is a reality of the human

[35] Ernest van den Haag, "The Death Penalty Once More," in *The Death Penalty in America: Current Controversies*, ed. Hugo A. Bedau, (New York: Oxford University Press, 1997), 445-456.
[36] Adams, "The Death Penalty," 572.
[37] Van den Haag, "The Death Penalty Once More," 453-454.
[38] Hugo A. Bedau, "A Reply to van den Haag," in *The Death Penalty in America: Current Controversies*, ed. Hugo A. Bedau, (New York: Oxford University Press, 1997), 457-469.
[39] Bedau, "A Reply to van den Haag," 468.

condition that van den Haag does not address when making his argument, that when faced with hardships (regardless of how inevitable or naturally occurring they are), humans have a tendency to do whatever they can to mitigate those hardships.

The retributivist argument for the death penalty rests on the need for proportional justice and punishment. If a crime is committed, then justice demands severity of punishment that has a "sameness of kind" with the crime committed.[40] The argument is a simple one: if one is guilty of murder, then that person is required by justice to be put to death – because no amount of life in prison can equate to the taking of another's life. Anything less is an offense to not just the victim, but to the murderer as an autonomous member of society.[41] In fact, to the retributivist, those who seek to fight the death penalty are simply using the chosen fate of the murderer as a tool for their own purposes.[42] For that reason, attempting to fight against the death penalty would be considered a selfish act in the eyes of a retributivist – because justice demands a matching severity of punishment. However, as pointed out in the arguments previously mentioned, the idea of proportionality that the retributivist argument for the death penalty hinges on is also the agent of its undoing. For cases such as a murderer who kills their victims in a torturous manner, their death sentence would be administered in a painless fashion. For instances where a murderer kills multiple people, it is obviously impossible to put the guilty offender to death more than once.

Therein the question arises: if it is not acceptable to administer the death penalty in ways that truly match the severity of the crime, then why is it acceptable to sentence someone to death in the first place?[43] Van den Haag gives an answer to this, one that rests on the fact that death is a natural occurrence inevitable for all humans. The death penalty, to van den Haag, only hastens

[40] Adams, "The Death Penalty," 571.
[41] Adams, "The Death Penalty," 571.
[42] Adams, "The Death Penalty," 571.
[43] Adams, "The Death Penalty," 572.

such a natural occurrence and is thus acceptable.[44] To this argument, Hugo Bedau points out the other naturally occurring and inevitable hardships faced by humanity. When faced with hardships such as suffering and loneliness, Bedau says, humans actively do their best to minimize these naturally occurring hardships.[45] Using van den Haag's "naturally occurring and inevitable" argument, then it is acceptable for individuals to subject other human beings to suffering and pain. After all, suffering and pain are naturally occurring and inevitable human experiences, and if that makes the death penalty acceptable, then surely actions that would cause such suffering are acceptable as well. In her 1985 work, *The Body in Pain: The Making and Unmaking of the World*, essayist Elaine Scarry breaks down the horrors of torture through her research and interviews with victims of torture. In the first line of the book, Scarry says that "Nowhere is the sadistic potential of a language built on agency so visible as in torture."[46] Scarry goes so far as to say that the intense pain brought about by torture is "world-destroying," and that it is even a vital component in torture meant for interrogation.[47] This world-destroying pain is purposeful, as when the pain is so severe it becomes the only thing experienced by the victim – and thus makes the questions asked by the interrogators seem much less significant than they might have previously been.[48]

When it comes to public opinion about the use of torture, a 2020 Pew Research poll showed that 48% of respondents considered torture acceptable under some circumstances.[49]

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[44] Van den Haag, "The Death Penalty Once More," 454.
[45] Bedau, "A Reply to van den Haag," 468.
[46] Elaine Scarry, "The Body in Pain: The Making and Unmaking of the World, "(New York, NY: Oxford Univ. Press, 1985), 27.
[47] Scarry, "The Body in Pain," 29.
[48] Scarry, "The Body in Pain," 29.
[49] Alec Tyson, "Americans Divided Over Use of Torture," Pew Research Center (Pew Research Center, May 30, 2020), https://www.pewresearch.org/fact-tank/2017/01/26/americans-divided-in-views-of-use-of-torture-in-u-s-anti-terror-efforts/.

However, it is important to note that the respondents were asked about the viability of torture in an anti-terrorism context. For the sake of this paper, torture is being compared to the death penalty only as a form of punishment. If the previously cited Gallup poll about American citizens' views on the death penalty is considered as well (with 54% of respondents supporting the death penalty), one can infer that the majority of the public would not support torture as a method of punishment.

If public opinion is not enough of a factor, an argument backed by the Eighth Amendment is an undeniable one. An article published by the American Bar Association discussing the Eighth Amendment states that even "in the early years of the republic, the phrase 'cruel and unusual punishment' was interpreted as prohibiting torture and particularly barbarous punishments."[50] In other words, the Eighth Amendment has always prohibited the usage of torture as a method of punishment. Even though human pain is a natural occurrence, much like death – it is not legally, socially, or morally acceptable to manually subject another human being to such an experience. If the same logic is applied to the death penalty, then van den Haag's "naturally occurring and inevitable" argument is one that should not be considered.

In summary, the retributivist argument for the death penalty begins to falter due to its own set-in-stone rule of proportionality. While there have been attempts made to remedy this issue, those arguments used have been countered with issues that remain unanswered by the death penalty proponent. For those reasons, just like the utilitarian argument for the death penalty, the retributivist argument for the death penalty also fails to persuade.

[50] "Cruel & Unusual Punishment - Conversation Starter," Americanbar.org, accessed March 30, 2022, https://www.americanbar.org/groups/public_education/programs/constitution_day/conversation-starters/cruel-and-unusual-punishment/.

Up to this point, the discussion has been mainly centered around evaluating and countering death penalty arguments from some of the leading ethical theories. To further the argument against the death penalty, it is now time to turn away from theories to real-world application and problems. The next discussion in this paper will focus on how the death penalty in America has perpetuated racial discrimination. American civil rights activist Ella Baker is quoted saying, "Until the killing of Black men, Black mothers' sons, becomes as important to the rest of the country as the killing of a white mothers' son, we who believe in freedom cannot rest."[51] That quote still holds significant relevance, as will be shown by the research and data provided.

In his writing, *Homicide, Race, and Capital Punishment*, professor of law and author of works concerning the entanglement of racial conflict and legal issues, Randall Kennedy, made three key points about the intersection of race and capital punishment. Kennedy's first key point highlights how the sentencing of a person to death as punishment is a "unique flexing of state power that inevitably reflects the society's deepest values, emotions, and neuroses."[52] Kennedy's second key point is that traditionally, the law proves itself to be "largely incapable of acknowledging the influence of racial sentiment in the meting out of punishment even in circumstances in which the presence of such bias is obvious…in no other area of criminal law have judges engaged in more obfuscation, delusion, evasion, and deception."[53] In his third and final point, Kennedy points out that standing up and addressing the racial discrimination in

[51] Ngozi Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," (The Death Penalty Information Center, 2020), https://files.deathpenaltyinfo.org/documents/reports/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf

[52] Randall Kennedy, "Homicide, Race, and Capital Punishment," in Philosophical Problems in the Law, ed. David M. Adams (Boston, MA: Wadsworth, Cengage Learning, 2013), 596-604.

[53] Kennedy, "Homicide, Race, and Capital Punishment,"596.

capital punishment is one thing, but is another challenge entirely to attempt to seek a remedy for it.[54]

In other words, the first key point is a point of reflection – the death penalty as a punishment for crime will inevitably reflect the values and ideas shared by the society in which it is administered. In this instance, the reflected value shows which type of individual society cares more about when it comes to the loss of life. The second key point is a point of willful ignorance – even when data and circumstances point to an obvious racial bias occurring, the legal system has consistently shown that it could not care less about such a proven occurrence. These first two key points are demonstrated in action by a landmark capital punishment case, *McCleskey v. Kemp*, which this paper will examine next.

McCleskey v. Kemp is considered a landmark capital punishment case for several reasons. On one hand, it was a case that appealed on the grounds of both the Eighth and Fourteenth Amendments.[55] On the other hand, the reason why it has a place in this paper's discussion is because of the unprecedented use of statistics to argue that racial bias is apparent in the administration of the death penalty.[56] The study was led by Professor David C. Baldus, who specialized in the application of statistics to legal issues. The Baldus study included data from over 2000 murder cases between 1973 and 1979, and contained information from items such as police reports, prison files, and parole board records.[57] The Baldus study highlighted three major findings, with the latter two tying in directly with the first and second key points made by Kennedy. The first finding of the Baldus study showed there was "neither strong nor consistent" evidence pointing at the race of the defendant being a determinant factor in death penalty

[54] Kennedy, "Homicide, Race, and Capital Punishment,"596.
[55] "McCleskey v. Kemp," Oyez, https://www.oyez.org/cases/1986/84-6811.
[56] Kennedy, "Homicide, Race, and Capital Punishment,"597.
[57] Kennedy, "Homicide, Race, and Capital Punishment,"597.

administrations.[58] While that finding may be comforting to some, it is with the second major finding of the study where things become more complicated. The second finding of the Baldus study showed that out of all variables that could potentially influence the administration of the death penalty (such as minor prior convictions, method of murder, age, etc.), none came close to having as much influence as the race of the victim.[59] Even when accounting for the 39 other nonracial variables that were statistically likely to sway the outcome, the Baldus study found that defendants who killed a white person were 4.3 times more likely to be sentenced to death than defendants who killed a black person. This is a variable nearly as influential as prior violent convictions (such as armed robbery, rape, and even murder).[60] The third major finding of the Baldus study accounted for when the variable concerning the victims' race was most relevant. On the scale of aggravated homicides, the victim's race was the biggest factor in the cases that make up the majority "middle." These cases were in the middle of the "least" and "most" aggravated murders, since the "least" aggravated murders would usually not get the death penalty regardless, and the "most" aggravated murders would usually get the death penalty regardless.[61]

Going back to Kennedy's three key points, this blatant racial disparity in death penalty administration forces one to consider the first point. That first point being that in sentencing a person to death, the values and ideas of society are reflected. As the Baldus study showed, the race of the victim is a variable nearly as influential as violent prior convictions – with that variable heavily favoring white victims. The unfortunate state of societal values as reflected by death penalty administration is as clear as it is harrowing - white lives are viewed as more

[58] Kennedy, "Homicide, Race, and Capital Punishment,"597.
[59] Kennedy, "Homicide, Race, and Capital Punishment,"597.
[60] Kennedy, "Homicide, Race, and Capital Punishment,"597.
[61] Kennedy, "Homicide, Race, and Capital Punishment,"597.

valuable than black lives (4.3 times more valuable, when considering the Baldus study). These statistical findings of the Baldus study give further reason to take to heart the Ella Baker quote – because as it currently stands, "killing…Black mothers' sons" is not nearly as important to America as the "killing of a white mother's son."[62]

Backtracking to Kennedy's second point – that those who find themselves on the judicial bench are willfully ignorant to the influence of racial biases and sentiments, even when faced with undeniable data – the decision of *McCleskey v. Kemp* was that very point in action. United States Supreme Court Justice Powell gave the opinion of the majority, and his reaction to the Baldus study shows all too well the willful ignorance of the judicial system Kennedy discusses. Justice Powell states, "At most, the Baldus study indicates a discrepancy that appears to correlate with race. Apparent disparities in sentencing are an inevitable part of our criminal justice."[63] Justice Powell goes so far to claim that dealing with matters of racial bias in the death penalty's administration is not a problem for the court to remedy, saying that "McCleskey's arguments are best presented to the legislative bodies. It is not the responsibility—or indeed even the right—of this Court to determine the appropriate punishment for particular crimes."[64] Indeed, in Kennedy's words, "the legal system has shown itself to be largely incapable of acknowledging the influence of racial sentiment in the meting out of punishment, even in circumstances in which the presence of bias is obvious."[65] The ultimate decision of *McCleskey v. Kemp* and the opinion provided by Justice Powell prove Kennedy's second point through and through.

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[62] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty."
[63] "*McCleskey v. Kemp*, 1987: A Racially Disproportionate Death Penalty System Is Not Unconstitutional," in *The Death Penalty in America: Current Controversies*, ed. Hugo A. Bedau, (New York: Oxford University Press, 1997), 254-267.

[64] "*McCleskey v. Kemp*, 1987: A Racially Disproportionate Death Penalty System Is Not Unconstitutional," 261.
[65] Kennedy, "Homicide, Race, and Capital Punishment," 596.

Revisiting Kennedy's third and final key point, the difficulty in finding a remedy for the issue at hand – because if even having those on the judicial bench acknowledge such a problem is an extreme difficulty, facing the problem with a solution is an even more ferocious beast. Kennedy breaks down why proposing a solution to the racial bias in death penalty administration by offering the only (what he found to be) two viable solutions to the issue. The first proposed solution to combat the rampant racial disparity in capital punishment administrations would involve "purposefully securing more death sentences against murderers of blacks."[66] While Kennedy only suggests what the end-state looks like for the first potential solution, one can begin to see why that would be nigh impossible in application. For example, consider affirmative action in the college application process as an analogy. A 2019 Pew Research poll showed that of the respondents, 73% stated that race and ethnicity should not be a considered factor when it comes to which students should or should not be admitted.[67] In other words, it appears that the sentiment of many Americans is that there should be "racial blindness" in the college application process. Now, if that sentiment is held for something like college admissions, it stands to reason something akin to that sentiment would be even stronger for something as significant as the death penalty. In other words, the first solution provided by Kennedy (that there should be a purposeful seeking of death penalty administrations for the murderers of black people) would more than likely be vehemently opposed by the public. The second solution proposed by Kennedy is one that would have significantly greater support than the first solution (as expressed in the beginning of the paper) – that to combat the racial bias found in death penalty

[66] Kennedy, "Homicide, Race, and Capital Punishment,"601.
[67] Nikki Graf, "Most Americans Say Colleges Should Not Consider Race or Ethnicity in Admissions," Pew Research Center (Pew Research Center, September 18, 2020), https://www.pewresearch.org/fact-tank/2019/02/25/most-americans-say-colleges-should-not-consider-race-or-ethnicity-in-admissions/.

administrations, the answer is to "relinquish the power to put anyone to death."[68] Kennedy proposed his first solution to the racial bias in the death penalty understanding that it would not be received well by the public, and thus would never be feasible. However, as an alternative solution Kennedy suggests the abolishment of the death penalty.

This section of the paper unpacked Randall Kennedy's three main points regarding racial bias in the administration of the death penalty. The first point, that sentencing someone to death reflects society's values, is tied directly into the Baldus study. Reviewing over 2000 murder cases and all types of accompanied reports and facts, the Baldus study's most relevant finding showed that in the majority of murder cases, a murderer of a white person is (as previously mentioned) 4.3 times more likely to be sentenced to death than the murderer of a black person. This reflects an unfortunate value of American society – that white lives are (4.3 times) more valuable than black lives. The second point, that the legal system is consistently willfully ignorant when it comes to matters of racial bias, is made painfully obvious in the decision of *McCleskey v. Kemp*. The statistical findings of the Baldus study were shrugged off, and not given much more than an afterthought. The final point made by Kennedy highlights the difficulty in formulating a solution for the racial discrimination in the application of the death penalty. Kennedy proposes two solutions – either the legal system goes out of its way to sentence more murderers of black people to death or get rid of the death penalty as a form of punishment altogether. Given that the first option simply would not work in our society (based on most of the public's views on something like affirmative action and using race as a determinate factor), the only realistic solution that Kennedy provides for the racial discrimination apparent in the death penalty is to simply abolish it entirely.

[68] Kennedy, "Homicide, Race, and Capital Punishment,"601.

One of the senior research directors of the Death Penalty Information Center, Ngozi Ndulue, discusses today's racial disparities in the death penalty in *Enduring Injustice: the Persistence of Racial Discrimination in the U.S. Death Penalty*. Given that the previously mentioned Baldus study was conducted over forty years ago, Ndulue breaks down statistics from as recent as 2020. While the information and statistics are not surprising given what was learned through the Baldus study, it is still important to discuss – as it is proof that almost half a century later, the racial bias witnessed in the death penalty has only gotten worse. Ndulue makes it a firm point to compare black-white interracial murder statistics since 1976, and the numbers are alarming. In the U.S. since 1976, there have been 295 black defendants sentenced to death for the murder of a white person – and only 21 white defendants sentenced to death for the murder of a black person.[69] While the victim in a murder case seems to be one of the most prominent variables in death penalty sentences, Ndulue points out several other factors that might have a lesser degree of influence. A 2019 Death Penalty Information Center study showed that across the United States, 95% of elected prosecutors are white.[70] Furthermore, in six of the remaining twenty-seven states where the death penalty is still an administered punishment (Arkansas, Idaho, Nebraska, South Dakota, Tennessee, and Wyoming), 100% of elected prosecutors are white.[71]

The issue of jury selection is another one of the lesser factors that contributes to racially disproportionate death penalty administrations, as shown by a study conducted in South Carolina. Jury selections in South Carolina death penalty cases from 1997 to 2012 were analyzed in this study, and it was found that 51% of potential black jurors were excused for cause – a stark

[69] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," 29.
[70] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," 37.
[71] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," 37.

contrast to the 33% of potential white jurors excused for cause.[72] From the overwhelmingly dominant racial majority of white prosecutors to jury selection, racial bias is apparent in every stage of death penalty cases.

Ndulue quotes professor of law Alexis Hoag, where in *Valuing Black Lives: A Case for Ending the Death Penalty*, she states that "Capital punishment is supposed to be reserved for those who commit the 'worst of the worst' crimes. Instead, because of bias, prejudice, and racism, it is disproportionality reserved for those charged with killing white victims."[73] This quote reflects the sentiment shared by social science researchers, court observations, and more - and leads Ndulue to a dark and apparent conclusion. The reality, Ndulue states, is that America is "not a 'post-racial' nation. Overt racism continues and is evident in cases across the country that are being litigated today."[74] This traces back to Randall Kennedy's first main point, that the administration of the death penalty is a reflection of societies' deepest values and ideas. Forty years after the Baldus study was concluded, the reflected value of society is still apparent – white lives are viewed as more valuable than black lives.

The racial disparities in death penalty administration simply cannot be ignored. What the Baldus study uncovered regarding Georgia death penalty cases in *McCleskey v. Kemp* persists even today, as evident in the statistics compiled by Ndulue. From the skin tone of the victim, to the prosecution, to even the jury selection – all backed by intensive research and studies – there is a clear racial bias when it comes to when the death penalty sentence is given. Regardless of the societal implications of these findings, Baldus discusses the constitutional implications at the end of his study. Baldus remarks that these racial discrepancies (especially in the victim) should be

[72] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," 39.
[73] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," 34.
[74] Ndulue, "Enduring Injustice: The Persistence of Racial Discrimination in the U.S Death Penalty," 33.

seen as Eighth Amendment violations, stating that "our analyses suggest that Georgia's death-sentencing system is tainted by the influence of arbitrary and capricious factors, notably the victim's race and the place where the defendant is prosecuted."[75]

With the previously cited Gallup poll showing that the public support for the death penalty in America is at a fifty year low, concerns regarding the viability of the death penalty begin to surface. The evidence and arguments are clear: the death penalty should no longer be considered an acceptable form of punishment.

This paper examined pro-death penalty arguments from two prominent ethical theories – utilitarianism and deontology – and found that neither one of them were able to persuade. For the utilitarian, the core of any punishment related argument rests entirely on the fact that the form of punishment being advocated promotes the most good for society. Thus, utilitarian death penalty advocates would seek to argue that capital punishment promotes the most good for society (as opposed to life imprisonment) due to the idea that it is the most effective deterrent for capital crimes. However, as seen by the comprehensive analysis of literature curated by William Bailey and Ruth Peterson, there is no substantial evidence that proves beyond reasonable doubt that the death penalty is a greater deterrent than life in prison. Therefore, given that the death penalty has no empirical evidence behind the idea that it promotes the most good in society (by being the greatest deterrent of capital crime), the utilitarian argument in favor of the death penalty fails by its very own standard. For the retributivist (or deontologist), punishment must match the crime. There is no ulterior motive to punishment, unlike the utilitarian there is no aim to promote societal good through punishment. It is only out of respect for both the victim and perpetrator as

[75] David C Baldus, Charles Pulaski, and George Woodworth, "Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience," Northwestern University School of Law Scholarly Commons (Journal of Criminal Law and Criminology, 1983), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6378&context=jclc, 731.

autonomous members of society that those who commit crimes must be punished with severity deserved of their crimes. In other words, the death penalty argument from a retributivist relies on the idea that punishment must be proportional to the crime – the individual who wrongfully takes a human life must be punished by the loss of their own life. However, much like the utilitarian, the retributivist argument for the death penalty fails by its own standards. For someone that murders more than one person, they of course cannot be put to death more than once. For someone who takes a life in a particularly brutal and grotesque fashion, they cannot be sentenced to death in the same way – as stated by the American Bar Association article, the Eighth Amendment would not allow such a punishment. Therefore, given that death penalty administrations in many cases cannot satisfy the requirement of proportionality, the retributivist argument for the death penalty fails by not meeting its own strict guidelines.

This paper also highlighted the racial issues found in capital punishment sentences. Through the Baldus study and the compilation of statistics from Ndulue, there is a clear racial bias (related to the victim) that sways which murder cases become death penalty cases. Even for murder cases with similar situations, levels of brutality and aggression, and other near identical factors, the race of the victim is empirically backed to be a factor nearly as influential as previous violent convictions. In other words – a murderer of a white person is significantly more likely to be sentenced to death than the murderer of a black person, even if all other considerations that would prompt a death penalty sentence are similar. This fact not only reflects the issues of systemic racism in America but is also considered to be a violation of the Eighth Amendment – by legal scholars such as Baldus himself. A discrepancy as problematic as the racial bias in death penalty sentencing can only be remedied in one realistic way. If Americans do not wish for race to be a determinant factor in matters such as college applications (as seen by the previously

mentioned Pew Research Study), it stands to reason that Americans would oppose the legal system actively seeking to sentence more murderers of black people to death. Since that is not an option, legal professor Randall Kennedy proposes the only realistic solution to combat the perpetuation of racism carried out by the death penalty – to be rid of capital punishment altogether.

The death penalty should no longer be considered as a form of punishment in the United States. With a purely ethical theory-based perspective, arguments for the death penalty consistently fail by their own standard. In practice, the death penalty has very real implications. Since the death penalty is one of the most extreme perpetuators of racism in America, the pursuit of equity should be reason alone to abolish it in its entirety. However, there is more to the argument than just one of social justice. Given that the death penalty has no empirical evidence to show that it is a better alternative to life imprisonment, that even the most prominent ethical theories fail to make convincing arguments in favor of it, and that it continues to foster racial discrimination and bias – the death penalty should be abolished immediately.

Bibliography

Adams, David. “Punishment and Responsibility.” In *Philosophical Problems in the Law*, edited by David Adams, 528-531. Boston, MA: Wadsworth, Cengage Learning, 2013.

Adams, David. “The Death Penalty.” In *Philosophical Problems in the Law*, edited by David Adams, 568-573. Boston, MA: Wadsworth, Cengage Learning, 2013.

Bailey, William and Peterson, Ruth. “Murder, Capital Punishment, and Deterrence: A Review of the Literature.” In *The Death Penalty in America: Current Controversies*, edited by Hugo Bedau, 135-156. New York: Oxford University Press, 1997.

Baldus, David C, Charles Pulaski, and George Woodworth. “Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience.” Northwestern University School of Law Scholarly Commons. Journal of Criminal Law and Criminology, 1983. https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6378&context=jclc.

Bedau, Hugo. “A Reply to Van den Haag.” In *The Death Penalty in America: Current Controversies*, edited by Hugo Bedau, 457-469. New York: Oxford University Press, 1997.

Brandt, Richard. “The Utilitarian Theory of Criminal Punishment.” In *Philosophical Problems in the Law*, edited by David Adams, 553-557. Boston, MA: Wadsworth, Cengage Learning, 2013.

“Cruel & Unusual Punishment - Conversation Starter.” Americanbar.org. Accessed March 30, 2022. https://www.americanbar.org/groups/public_education/programs/constitution_day/conversation-starters/cruel-and-unusual-punishment/.

Graf, Nikki. “Most Americans Say Colleges Should Not Consider Race or Ethnicity in Admissions.” Pew Research Center. Pew Research Center, September 18, 2020. https://www.pewresearch.org/fact-tank/2019/02/25/most-americans-say-colleges-should-not-consider-race-or-ethnicity-in-admissions/.

Kang-Brown, Jacob, Jasmine Heiss, and Chase Montagnet. “People in Jail and Prison in 2020 - Vera Institute of Justice,” January 2021. https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-2020-fact-sheet.pdf.

Kant, Immanuel. “The Science of Right.” Translated by Hastie. The Science of Right by Immanuel Kant (1790). Marxist Internet Archive, 2003. https://www.marxists.org/reference/subject/ethics/kant/morals/ch04.htm.

Kennedy, Randall. “Homicide, Race, and Capital Punishment” In *Philosophical Problems in the Law*, edite2d by David Adams, 596-604. Boston, MA: Wadsworth, Cengage Learning, 2013.

"*McCleskey v. Kemp*." Oyez. Accessed April 2, 2022. https://www.oyez.org/cases/1986/84-6811.

"*McCleskey v. Kemp*, 1987: A Racially Disproportionate Death Penalty System Is Not Unconstitutional." In *The Death Penalty in America: Current Controversies*, edited by Hugo Bedau, 254-267. New York: Oxford University Press, 1997.

Moore, Michael. "The Argument for Retributivism." Story. In *Philosophical Problems in the Law*, edited by David M. Adams, 558–62. Boston, MA: Wadsworth, Cengage Learning, 2013.

Ndulue, Ngozi. "Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty," September 2020. https://files.deathpenaltyinfo.org/documents/reports/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf.

"Number of Escapees from Prisons in the U.S. 2019." Statista, October 27, 2021. https://www.statista.com/statistics/624069/number-of-escapees-from-prisons-in-the-us/.

Scarry, Elaine. *The Body in Pain: The Making and Unmaking of the World*. New York, NY: Oxford Univ. Press, 1985.

"The Death Penalty in 2021: Year End Report." Death Penalty Information Center. Accessed February 1, 2022. https://deathpenaltyinfo.org/state-and-federal-info/state-by-state.

Tyson, Alec. "Americans Divided Over Use of Torture." Pew Research Center. Pew Research Center, May 30, 2020. https://www.pewresearch.org/fact-tank/2017/01/26/americans-divided-in-views-of-use-of-torture-in-u-s-anti-terror-efforts/.

Van den Haag, Ernest. "The Death Penalty Once More." In *The Death Penalty in America: Current Controversies*, edited by Hugo Bedau, 445-456. New York: Oxford University Press, 1997.