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America's Lethal Dilemma: Legitimizing Old Methods of Execution in an Era of Abolition

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America's Lethal Dilemma: Legitimizing Old Methods
of Execution in an Era of Abolition

A Thesis Presented for the
Master of Arts
Degree
The University of Tennessee, Knoxville

Kyle Ward Letteney
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ABSTRACT

American capital punishment has been facing new opposition from abroad. In 2011 the European Union (EU) placed an embargo on the export of the primary lethal injection drug, sodium thiopental. Since the 2011 embargo, the 32 American states with the death penalty have been unable to obtain additional quantities of sodium thiopental and have since depleted or nearly depleted their supply, prompting a discussion of alternatives. This study analyzes that discussion. Specifically, the analysis of pro-death penalty rhetoric used by Tennessee state politicians who have recently taken steps to retain the death penalty despite the ongoing controversy surrounding the death penalty and the state's lack of executions since the 1970's. My findings indicate that Tennessee politicians creatively deploy collectivized arguments of justice, subscribe agency to inmates, and obscure history in order to make a case for reinstating once abandoned methods of execution. Themes of target reducing were also salient and expressed frequently in my findings. Politicians and criminal justice officials use discursive strategies to establish the moral permissibility of the death penalty while concealing the underlying realities of this institutionalized harm.

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CHAPTER I THE LETHAL DILEMMA

To this day America's system of capital punishment continues to bewilder the conscience of those who study its historical and cultural progression. The impact of ideology is much in evidence in the case of American capital punishment. Judith Kay (2005) invites us to think critically about the stories that depict and influence our culture's consideration of crime and punishment from the perspective of murder victim's families and ex-convicts. Kay's work is certainly a well defended indictment of our cultural story of retribution. However, Kay's analysis does not attend to the particular constructions of politicians who have taken an active stance in support of the death penalty during times of doubt and controversy.

I conducted a culturally informed analysis of pro-death penalty rhetoric used by Tennessee politicians. Compared to other southern states, Tennessee rarely utilizes the death penalty, conducting only 6 executions since 1976 (Death Penalty Information Center, 2015). However, the number of inmates on Tennessee's death row is currently at 75, suggesting, but in no way assuming that Tennessee intends to carry out more executions in the near future. Tennessee has reinstated the electric chair as a secondary method of execution if lethal injection drugs were to become unavailable. Thus, Tennessee is an exemplary participant in the current debates concerning the restructuring of the death penalty in the wake of widespread lethal injection shortages. I deployed critical discourse analysis to isolate key discursive elements used to justify the adoption of once abandoned forms of execution and explore these elements within the context of punishment, culture, and processes of ideology formation. My analysis began with what was said explicitly and progressed to reveal the implicit character of each statement. I found several key licensing themes, including narrow codifications of justice, prospects of closure, shifting agency, target reduction and obscuring history.

The thesis proceeds as follows. In Chapter 1 I will outline the current dilemma facing America's death penalty, specifically the recent European embargo of lethal injection drugs. In Chapter 2 I will present a thorough examination of the literature pertaining to culturally determined punishment practices, narrow interpretations of justice, and discourses of legitimizing harm. In Chapter 3 I will explain my methods and procedures, outlining the basic tenants of critical discourse analysis and how it will be applied to my sample of Tennessee political rhetoric. In Chapter 4 I will present my analysis of the political rhetoric itself, extracting hidden discursive devices that set out the death penalty's supposed utility. In Chapter 5 I will discuss the most salient themes of my analysis and relate my findings to punishment literature more generally. In Chapter 6 will state my conclusion and recommendations for future research.

In early 2014, the execution of Dennis McGuire in Ohio made international headlines after it was discovered the execution did not go precisely as planned. McGuire died gasping and choking during a lethal injection administered by the Ohio Department of Rehabilitation and Correction. Father Lawrence Hummer, the Catholic priest who witnessed the execution stated that "over those 26 minutes or more he was fighting for breath and I could see both of his fists were clenched the entire time....There is no question in my mind that Dennis McGuire suffered greatly over many minutes" (Ford *The Atlantic*, 2014). For the execution of Denise McGuire, Ohio corrections used an experimental two-drug cocktail of midazolam, a sedative and anesthetic, and hydromorphone, a painkiller and morphine derivative.

A few months later Clayton Lockett was executed in the state of Oklahoma. Lockett was declared unconscious ten minutes after the first of Oklahoma's new three-drug lethal injection combination was administered. Three minutes later, Lockett began breathing heavily and straining to lift his head off the pillow, groaning "Man" and "something's wrong" after officials have already declared him unconscious. Katherine Fretland of the Guardian described Lockett's final movements as a "violent struggle" as he remained strapped to the

gurney. Fretland would later state, “No one who has witnessed an execution like this has seen anything like this.” As the seconds ticked away prison officials attempted to halt the execution, but Lockett died of a heart attack a short time later.

The botched executions of both McGuire and Lockett were a direct result of a state’s ability to administer lethal injections that did not meet the U.S. Constitution’s standards against cruel and unusual punishment. This begs the question as to why state correctional agencies have been using unproven drug cocktails to execute death row inmates. The answer can be found in the growing shortage of standard lethal injection drugs due to the 2011 embargo by the European Union. The effects of this embargo are beginning to be felt across the United States. The embargo has essentially blocked American prisons from the last large-scale manufacturers of sodium thiopental, the primary drug used in standard lethal injection executions. Over the course of the last five years, pharmacies elsewhere have also declined to sell sodium thiopental for the purposes of execution, citing potential legal repercussions, medical ethics, and activist pressure.

Lethal injections have been the standard method of execution since the early 1980’s when Oklahoma and Texas became to the first states to adopt the method. Since then, the United States has executed over 1,000 death row inmates by lethal injection (The Death Penalty Information Center, 2015). While the United States has defined itself as one of the top executioners in the western hemisphere, the European Union has been busy positioning itself as a leader in the abolition of the death penalty. The European Union and the European Commission have never been silent about their stance against the death penalty, with European nations calling for a “universal abolition” and declaring that doing so would “contribute to the enhancement of human dignity and the progressive development of human rights.” Today, Europe is in a unique position concerning its role within the international community. Specifically, European laws that have made lethal injection drugs unavailable have directly influenced punishment

practices in the United States. European politicians have been known to reach out to U.S. governors and state corrections to halt future executions (Motherboard Press 2014). Initially, individual European countries moved to stop supply of sodium thiopental. At first, British officials did not want to cut supplies because sodium thiopental is considered a legitimate medical anesthetic. Activists would later convince British officials to restrict supply of the drug after they showed them that Europe's customers for the drug included American prisons. In November 2010, Britain placed an export ban on sodium thiopental citing its longstanding support for the abolition of the death penalty. The only American pharmaceutical company authorized to manufacture sodium thiopental stopped production of the drug in January 2011, just months before Europe placed its all-encompassing embargo on sodium thiopental.

Sources of sodium thiopental became a rarity in the United States, with some states exchanging supplies of the drug in order to conserve the last remaining caches. In Arkansas, corrections officials obtained sodium thiopental from an undisclosed distributor from Britain. Arkansas shared it for no cost with Mississippi, Oklahoma, and Tennessee before they were audited by federal regulators. The states involved in this exchange were in direct violation of trade restrictions and supplies were confiscated. In 2011, during the height of the lethal injection embargo, the Drug Enforcement Agency confiscated Georgia's supply of sodium thiopental after it was discovered that state officials broke several laws by purchasing and importing the drug from a British pharmacy that was operating out of the back of a driving school in London (Ford 2014).

The shortage of lethal injection drugs has led some states to consider reinstating outdated methods of execution. State legislators in Wyoming and Missouri have put forth legislation that would bring back the use of firing squads if lethal injection drugs were to be unavailable (Gentilviso 2014). Legislation in Virginia and Tennessee have proposed bringing back the electric chair as an alternative to lethal injections. Recently Tennessee passed House Bill 2476 and Senate Bill 2580, making the electric chair a viable alternative if lethal injections

were to be unavailable. This comes at a time when the European Union is considering even more comprehensive export controls on lethal injection drugs, solidifying Europe's commitment to the abolition of the death penalty.

Given the current controversy surrounding the lack of lethal injection drugs, political proponents of the death penalty must frame their retention argument in a way that satisfies both moral/retributive and practical demands. They must package capital punishment such that it continues to make sense in the culture in which it operates. Pro-death penalty rhetoric encourages people to think of the death penalty in certain ways, to adopt one perspective over the other, to maximize its legitimacy and appeal. In short, during times when the death penalty's future seems uncertain, political rhetoric reinforces its existence and its continued necessity.

My findings indicate that political advocacy for retaining the death penalty in Tennessee relies on the deployment of particular discursive devices. Specifically the use of a collectivized argument that frames the supposed utility of the death penalty as a universal truth in its ability to grant closure and justice to those affected by egregious harm. My findings also show that Tennessee political advocates of the death penalty often assign a level of agency to death row inmates by framing their death sentence as a self-imposed condition, one they chose for themselves. The effort by politicians to present death row inmates as autonomous agents is an attempt to distance themselves from being directly involved in the execution process. Obscuring history in order to mitigate the social consequences of reinstating older, outdated methods of execution was also present in my findings. Lastly, my findings depict discursive strategies aimed at reducing an offender to his or her worst act in an attempt to vilify and justify harsh and retributive punishment.

CHAPTER II

THE AMERICAN CONTEXT OF DEATH: A REVIEW OF THE LITERATURE

Language is shaped by culture. At the same time our words for things and our rhetoric shape cultural values: language permeates the ideological foundations on which many social institutions are built. While other Western nations have divisively abandoned the practice of executing inmates, the United States continues to argue for the necessity and utility of the death penalty. America has positioned itself as a nation defiant against foreign intrusion into its political spheres. As foreign commentators such as those from the European Commission call for a “universal abolition,” commentators at home are pondering what purposes the death penalty is said to serve, whether its deterrence, retribution, or bringing about closure to victims’ families. One thing is for sure, the present state of America’s system of capital punishment is imbedded within ideologies and cultural identities that reinforce its supposed purpose in our current system of justice.

In this chapter I will first briefly illuminate America’s capital punishment as it exists today and how it got that way by exposing the methods of execution that we have adopted over the decades. Secondly, I will depict the current dilemma facing the use of lethal injections and how states are attempting to circumvent these material restrictions. Thirdly, I will examine America’s culture of punishment by exposing the embodiment of America’s retributive interpretation of justice and how retribution has become embedded in Americas understanding of justice. Fourthly, I will show how the prospect of closure has been framed as an inevitable outcome after engaging in the act of execution, despite evidence that suggests otherwise. Finally, I will show how discourse of punishment and other harm suggests that language plays a definitive role in the way in which we construct what we take to be reality, especially the reality of crime and punishment.

The Present State of American Capital Punishment

Capital punishment continues to be an accessory of the United States criminal justice system, even as other Western societies have decisively abandoned it. All European Union countries have abolished the use of the death penalty. Of all the world's countries (198 total), 50 percent have abolished the death penalty; 4 percent retain it for crimes committed in exceptional circumstances (i.e., such as times of war); 17 percent of countries permit its use for ordinary crimes but have not used it for at least 10 years; and the remaining 29 percent of countries maintain the death penalty in both law and practice (Death Penalty Information Center, 2014). The United States is the only country in the Americas to have carried out executions in the year 2013. Since the death penalty was reinstated in 1976, 1,389 inmates have been executed in the United States. There are several possible explanations as to why America has retained the death penalty in an era of abolition. Public opinion surely plays a role. During the 1980's public support for the death penalty increased at an exponential rate, eventually reaching an 80 percent approval rating by 1994 (Death Penalty Information Center, 2014). Yet, public opinion is not formed in a vacuum. To a large extent the discursive construction of notions of morality and necessity explains America's "peculiar institution" (Garland 2010).

The discursive spectacle that explains America's capital punishment is complemented by our uncanny pursuit for the "ideal" method of legal execution. This pursuit has changed with the development of new technologies and changing standards of acceptable methods of carrying-out death sentences. In America's early years we relied on rather simple and recognizable forms of execution, including hanging and firing squads which at the time were techniques used around the world (Johnson 1998, p. 43). We have since adopted more complicated forms of execution, incorporating the gas chamber, electric chair, and lethal injection into our arsenal of legally viable death instruments. All three methods are currently used in the United States, with all 32 death penalty states relying on lethal injections as their primary method of execution. Until 2009, most

states used a three drug combination for lethal injections: an anesthetic (sodium thiopental or pentobarbital), a paralytic agent (pancuronium bromide), and a compound to stop the heart (potassium chloride). Since the recent shortage of lethal injection drugs, states have adopted new lethal injection methods, including a one drug method consisting of a lethal dose of an anesthetic, including Arizona, Georgia, Idaho, Missouri, Ohio, South Dakota, Texas, and Washington. Six other states - Arkansas, California, Kentucky, Louisiana, North Carolina, and Tennessee - have announced plans to use a one-drug protocol, but have not yet carried out an execution using it. (Death Penalty Information Center, 2015).

The recent shortage of lethal injection drugs in the United States has rekindled the debate regarding the role of the death penalty in the American justice system. The federal government and dozens of states that still utilize the death penalty as a legally viable form of punishment rely on lethal injections as their primary method for carrying-out death sentences (Hood and Hoyle 2008). However, the U.S. has had to rely solely on European pharmacies to provide sodium thiopental due to the fact that U.S. pharmacies have disassociated themselves from the manufacturing and distribution of lethal injection drugs on the professed basis of medical ethics. In December of 2011 the European Commission placed a strict embargo on sodium thiopental, refusing to sell or distribute the drug for purposes of executions (Ford 2014). Some states have turned to compounding pharmacies to obtain execution drugs. Compounding pharmacies do not face the same approval process for their products as large manufacturers do, a fact that has engendered concerns about the safety and efficacy of their products. Compounding pharmacies must be licensed by their state's pharmacy board, but do not have to register with the federal Food and Drug Administration (FDA) or inform the FDA what drugs they are making (Death Penalty Information Center, 2014). South Dakota obtained pentobarbital, an anesthetic used in executions, from a compounding pharmacy for the October 15, 2012 execution of Eric Robert. The same source was likely used in the

October 30, 2012 execution of Donald Moeller in South Dakota, but the Department of Corrections did not release information on the drug. In October 2013, Texas, Ohio, and Missouri announced plans to obtain drugs from compounding pharmacies. The January 2014 execution of Dennis McGuire of Ohio was carried out using pentobarbital obtained from a compounding pharmacy. The execution of Dennis McGuire made national headlines when it was discovered that it took him over 25 minutes to die while experiencing excruciating pain. The underground nature of state government attempts to acquire unregulated lethal injection drugs is indicative of the contradictions associated with America's death penalty. These attempts to reform the death penalty to accommodate contemporary material and social contradictions is reflected in the historical progression of American execution methods.

Dieter (2008) enlightens us as to the history of the mode of execution in the United States and its significance. For much of America's history, hanging was the primary method of execution (Dieter 2008, p. 790). Hanging was a quick, informal way of putting a local wrongdoer to death, while at the same time making a public display of the consequences of violating the law. Even the most rural areas had access to a rope and a tree, making the process a readily available option for conveying a punitive and moral message to the local populace. Although hanging continued well into the twentieth century, the state of New York was the first to implement the electric chair as a method of execution in 1890 (*ibid.*, p. 791). The electric chair was not just a revolutionary way of putting someone to death; it also changed the institution of capital punishment as a whole. Instead of making a public display of executions through hanging, the electric chair brought the institution of capital punishment inside, minimizing witnesses to the process. This different style of execution represented a shift in the purpose of the death penalty, from sending a warning to the community to imposing retribution (*ibid.*, p. 791). The highly secretive undertaking of executions during this period also allowed the state to easily cover up botched executions, which occurred frequently during the era of the electric chair.

The era of the electric chair was also the era of the gas chamber, another method of execution that cloaked putting someone to death in secrecy. Both the electric chair and the gas chamber sat relatively unused during the years following World War II, with the horrors of the Nazi Holocaust still fresh in the minds of most Americans. Several decades later, the shift to lethal injections signaled not only another advance in technology, but also a change in public perception of the death penalty (ibid., p. 792). The medicalization of the death penalty placed the institution of capital punishment under an umbrella of professionalization, thus repackaging the image of the death penalty as one of meticulous medical practices. This repackaging of the death penalty allowed capital punishment to go relatively unchallenged during the 1980's and 1990's.

The switch from traditional methods of execution to lethal injection drugs was initially considered to be a more civilized method of putting someone to death, because the public and those performing the execution are saved from the unpleasant sight, sound, and smell of death. The use of lethal injection is typically associated with putting someone to sleep, rather than forcefully snuffing the life out of someone through hangings, firing squads, electrocutions, and gas chambers. However, we are seeing that lethal injections do not necessarily afford a drama-free execution, especially when they are conducted with haste and with low quality products from unregulated compounding pharmacies. The growing controversy surrounding the use of lethal injection drugs has rekindled the possibility to reinstate older, outdated methods of execution.

At the turn of the century the availability of lethal injection drugs in the United States began to dwindle due to the European embargo of lethal injection drugs, and American pharmaceutical company's unwillingness to associate themselves with capital punishment. The pressure to maintain court ordered execution dates has forced departments of corrections to seek out lethal injection drugs from loosely regulated compounding pharmacies. The poor quality of lethal injection drugs produced by compounding pharmacies have recently contributed to several highly publicized botched executions, bringing into question the

morality of lethal injections. Nonetheless, Europe's abolitionist stance has created a fascinating display of transnational policies that have affected the use of punishment in both Europe and the United States.

A Culture of Punishment

Most Americans are drawn to crime and the concept of justice in response to crime. This can easily be seen in our cultural obsession with crime dramas and real life instances of media inflated crimes that grab the public's attention. Crime has remained the focus of news coverage for decades and this certainly has had an effect on the way in which the public perceives the victims and perpetrators of crime. The idea that media's focus on crime is not necessarily tied to actual crime rates is well established in criminology literature (see for example: Garland 2010, Haney 2005, Lynch 2002, Wardle and Gans-Boriskin 2004). The persistent bias within the media that depicts crime rates as an increasing phenomenon has done nothing to calm the public's anxiety about crime. If we were to take a sober look at violent crime rates we would see a steady decrease in the rate of violent crimes from 757 violent crimes per 100,000 people in 1991 to 386 violent crimes per 100,000 people in 2011 (FBI Uniform Crime Report, 2014). The failure of contemporary media to display an accurate picture of crime tends to increase our fears and to give the impression that the nation is losing the battle against crime.

The media's portrayal of death penalty cases presents the public with an interesting interpretation of human nature, one where the causes of the violence and the redemptive potential of the perpetrator are placed explicitly at the forefront of the discussion (Haney 2005, p. 38). When the public becomes convinced that the violence presented by the media is the direct result of broken and inherently violent criminals, then the decision to take their lives becomes that much easier to swallow. This idea of the unsalvageable perpetrator is reinforced through the media's emphasis on reducing the individual in question to their most heinous act. Beginning in the latter half of the 20th century, there was a considerable shift away from depicting offenders as redeemable or capable of

growth. This was accompanied by presenting prisoners as the root cause of our social ills. Those that we label as “others” are much easier to harm and condemn to death. Even some of the most horrific instances of human suffering, including the genocides of Nazi Germany, Rwanda, Bosnia, and Armenia were fueled by this very notion of the “other.” Thus those we condemn as terrorists and criminals are isolated from their historical and social context, denied legitimacy of conditions or cause, and portrayed as irrational, if not insane (ibid., p. 39).

The media’s depiction of penal practices is certainly indicative in its ability to shape the opinions of both the public and politicians. Despite the media’s ability to shape certain cultural perceptions of punishment, it does not explain the ways in which particular values and commitments enter into the penal process and become embodied there. In other words, there still remains the question as to how cultural mentalities and sensibilities influence the institution of capital punishment. The cultural determination of punishment is in itself the embodiment and expression of society’s cultural norms.

The idea that ordinary citizens constitute an audience that bears witness to the spectacle of retributive punishment is established in Michelle Brown’s (2009) concept of penal spectatorship. Brown posits that for those of us without direct affiliation to formal institutions of punishment, a detached reality begins to define our relationship to the practice of formal punishment (p. 9). In a sense, this distance shields us from the pain that remains a fundamental feature of punishment. Brown puts forth the argument that declarations of punishment, those moments when the law is interpreted and penal judgement enacted we become divorced from the pain that is inflicted on the bodies of the punished (p. 10). There exists a barrier between the violence associated with law and that of public perception. This barrier is a façade of rational bureaucratic structures that are removed from the everyday suffering that is linked to punishment. In turn, the ordinary citizen then subscribes themselves to a remote framework from which to deny complicity. Therefore violence is rarely considered (by most) as an outcome of the deployment of punishment and that citizens consequently view a context

defined by pain as one in which pain is ignored or invoked symbolically from a distance. Brown continues by describing this distance as preventing us from recognizing the burden of punishment as a kind of cultural work requiring both purpose and deliberation which have intended and unintended consequences (p. 11). These intended and unintended effects are issues that Brown believes should be and can be interrogated relentlessly. Punishment in this sense creates one of the most perilous spaces of the human condition in its solicitation to rely upon the acts of others, to justify our ability to impose pain rather than see how we contribute to its complicated and controversial application.

In a sense, both political, economic, and organizational forms are themselves aspects of culture. David Garland (1990) argues that in order to understand the formation and social meaning of punishment it is necessary to construct a different cultural analysis that talks about culture as a dimension of social life. In other words, socially constructed sensibilities and ways of thinking have major implications for the ways in which we understand acts of punishment (p.195). Cultural patterns also structure the way we feel about offenders, not only through our formal ritual processes of punishment but also through the shaping of our sensibilities. The cultural forces which influence punishment can be thought of as symbolic forms of authentic sensibilities. The processes that exist within American capital punishment is itself supported and made meaningful by wider cultural forms and therefore grounded in society's patterns of material life and social action. The major cultural themes which present themselves in American punishment practices, including conceptions of justice, crime, religious beliefs, and attitudes towards offenders do not stand on their own as independent beliefs. As with all elements that create culture they are interconnected with larger belief systems and mentalities. To say that the culture of punishment exists in a social setting and is supported and constrained by wider cultural and structural forces, is not to undermine the creativity that permeates the realm of American punishment practices.

This assertion can be made clearer when one focuses on the distinctive cultural elements that have developed overtime within our system of punishment. Things such as the development of prison architecture, new methods of execution, and prison subcultures are products of the culture of punishment. Each specific facet which has developed within our punishment practices have been influenced by the needs and the meanings of its penal context and the practices embodied by the actors and authorities of punishment. Contained in the details of America's capital punishment is a story of place and purpose, but precisely because our system of punishment does not exist in a vacuum, these cultural meanings can be traced out in the political sphere. By doing so one can reveal the linkages which tie punishment culture to the mentalities of political actors who are in the service of maintaining the cultural artefact that is America's capital punishment.

The Fatal Promise: Prospects of Closure and Justice

Punishment is as much an act as it is the manifestation of discourse that depict punishment as a means to an end. The narrative of punishment in the United States abides by the ethos that, revenge is a natural and inevitable outcome of criminal behavior. The idea that one's honor can be restored by fighting back permeates the American narrative of punishment. Not only does the American narrative of punishment facilitate the continuous use of punishment to rectify evils, it also seeks to establish the way in which we punish those that have wronged us. By American standards punishment should be painful, it should demoralize and alienate those that are perceived as being the cause of our social ills. This mentality is Calvinist in nature, the idea that a person is inherently evil and the only way to cleanse them is through pain and eventual death. This is best illustrated in Mosaic Law stating "Thou shalt not suffer a witch to live," depicting the inherent evil in those who have defied social standards and their inevitable purification through pain and suffering (Exodus 22:18).

It is not surprising that most Americans believe that the death penalty will stop the cycle of violence and bring the victim's family relief and closure. After all, the person who committed the initial harm is no longer alive, therefore unable to offend again. Judith Kay (2005) believes that these hopes for closure and peace by means of executions leave another family wounded, mourning the loss of a family member killed at the hands of the state (p.6). The myth here is the depiction of acceptable violence as rejuvenating the bonds of a community against those labeled as evil. The rationale for violent punishment is rooted in the stated mandates of community restoration, social cohesion, and protection of the community against the prospect of future violence. However, it is not the violence that bonds a society, but the myth of what violence affords us. In other words, American punishment practices posit that it is morally permissible to harm criminals because retribution is closely related to bringing satisfaction to victims' families. However, it would be inaccurate to say that all victims of violence find comfort in violence being carried out in their name. Many survivors of violence or families of murder victims would be reluctant to tell you that the death penalty brings about closure, because for them what murder took away from them can never be brought back (ibid p.39). Despite the lack of proof that executions bring about real closure, Americans still refer to closure as a major factor for engaging in punishment. In April 2001 a poll statement by ABC and the Washington Post asked readers if they agree with the statement "The death penalty is fair because it gives satisfaction and closure to the families of murder victims." A total of 60 percent of the respondents said they agreed with the statement (Zimring 2004, p.61). The overwhelming public support for the death penalty on the basis of closure complicates two realities. First, some families do not want the death penalty in the name of a murdered family member, and therefore the exercise of state power runs counter to the wishes of the victim's family. Second, often, though not always, the victim and perpetrator come from the same family, thus a family is destroyed in the name of that family (Kay 2005, p.54). In this way the

victim and their families are essentially re-victimized by those claiming to be acting in the service of closure.

In contemporary discourse the idea of closure is loaded with social, political, and cultural meaning. Jody Madeira (2013) expresses a particular interest in the extent to which closure is identified with capital punishment, the idea that victims' families require the death penalty to heal (p. 39). Madeira argues that closure's cultural appeal is undoubtedly magnified when it is coupled with the cultural figure of the crime victim and the persistent hold on the American imagination that assumes death is a means to an end. Madeira is concerned herself with how family members and survivors of murderous violence regard closure and describe the coping process. While conducting interviews with victims' family members and survivors of the 1995 Oklahoma City bombing, Madeira found that the overwhelming majority of victims emphasized that the stereotype of closure as a finality never occurs (p. 42). Participants in Madeira's study were adamant that closure could never occur because what was lost could never be regained. The few interviewees who discussed Timothy McVeigh's execution as a moment of closure did not define closure explicitly as coping or healing through testimony or witnessing the execution. Instead, they spoke of duty or responsibility to testify, and of a personal need to see that justice was done. Madeira indicates that this doesn't mean that participation in legal proceedings was not tied to closure, but instead shows that legal proceedings in and of themselves did not define the boundaries of the closure process (p. 45). According to Madeira, legal proceedings created a duty to self or a beloved victim to attend legal proceedings or witness McVeigh's execution and provided a venue in which those duties could be met. However, Madeira posits that closure must be understood as a reflexive process that necessitates appreciating the independent relationship between emotion and memory work (p. 50). Effective memory work necessitates processes of creative judgement, assessing, evaluating, balancing, concluding, stabilizing, and fixing events. Closure as reflexivity allows victims to regain control by creating a narrative of a murder's

aftermath, which according to Madeira, may well aid them in adjusting to their new status and its implications (p. 53). In short, Madeira believes the process of closure does not mandate that institutions such as the criminal justice system and mass media bring victims' a sense of restoration, but that victims can heal themselves, if only institutions can provide them with the means to do so.

America's punishment practice reinforce the propensity of the state to re-victimize those it claims to be protecting. Although the state declares itself the victim during a criminal trial, it relies on keeping a victim's family in a constant limbo of victimhood. Families are forced to wait years for the promise of closure through an execution that may or may not occur. The repeated promises from the state only reinforces one's status as the victim by encouraging them to focus on their anger instead of focusing on how to find some sense of peace in light of their current situation. In this way, the rationale behind the use of capital punishment is to shift blame and shame instead of providing the tools that could help victims and their families see themselves as something more beyond their victimized status.

Despite the state's role as the coordinator of retribution on behalf of victims, it must be understood that retribution by its formal definition is inherently neglectful of the victim. Rather, punishment is portrayed as being in direct benefit of the state, who is the self-proclaimed victim in criminal trials. Nonetheless, the state presents itself as a compassionate agent that kills for the relief of victims and their families. The state's perceived compassion for the victim is itself an act that encourages families to help the state secure its prosecution of the defendant. By doing so the state can make the claim that retribution does not create new victims. However, this exploitation of victims of violence and their families for the sole purpose of justifying the state's role as punisher undermines the wishes of those most affected by the events that led to the capital trial. For the families of murder victims, closure is not a clear cut concept and by no means is it guaranteed, especially through the conventional avenues of closure as defined by the state.

The true task of those reeling from the murder of a loved one is to hold together the splintered self and fractured life (ibid., p. 150). This can be accomplished by constructing a narrative that is true to those affected by violence. When such a story is told it can help families of murder victims look towards the future instead of reliving the pain and suffering in the court room. Narratives of healing cannot be forced on a person in the form of victim impact statements, but must be constructed by the individual through a process of transformation. A process of transformation can take the form of genuine human acknowledgment by the perpetrator and an offer of dignity to survivors and a validation of their experience (ibid., p. 151). In this way, survivors and perpetrators can construct a narrative that pays homage to the humanity of both, by neither reducing the perpetrator to their worst act nor reducing a victim to a simple functionary of the state. Of course, transformation is not a static term that means the same thing for everyone. That is why we must construct avenues of transformation that can be tailored to the needs of survivors and perpetrators without the false promise of closure through retribution. From this perspective, true closure can never be achieved because the term implies “getting over it” and this is sometimes impossible for the loved ones of a murder victims, but the prospect of restoring humans to themselves and others is the only true stop to the cycle of victimization that the death penalty affords.

Legitimizing Harm

Prior analyses of the discourse of punishment and other harm suggests that language plays a definitive role in the way in which we construct what we take to be reality, including the reality of crime and punishment. In particular narratives of punishment affect a society’s understanding of justice. The popular narrative used by proponents of the death penalty is that the offender has caused pain and that causing him/her pain will set matters straight. If pain does not set that person straight, at least it served as a strong indicator that their actions were unacceptable according to some established standard.

Societies and cultures tell stories according to which punishment is an appropriate and fitting reaction to crime. Within the United States these stories resonate in the halls of justice and in the commentary of cable talking heads to the point that pain through punishment seems like an obvious 'must' for wrongdoers. Lakoff (2002) states that the conservative moral narrative reflects a very profound preference of retribution over restitution as a form of justice (p. 205). In this regard it should come as no surprise that the conservative ethos supports the death penalty. The counter narrative proposed by abolitionists places a strong emphasis on the concept of empathy leading to concerns of fairness of the death penalty process. Concerns for empathy and fairness have led abolitionists to adopt a narrative whose paramount concern is that of state overreach and abuse of a state's power to punish. Today we see pro-death penalty politicians attempting to transcend barriers that have obstructed the United States ability to carry-out executions. These barriers represent the inherent social and material contradictions that have plagued America's use of the death penalty resulting from international pressure to abolish the practice all together. American politicians who still support the death penalty's utility and function are finding themselves using discourses of legitimation to substantiate their argument that frames the death penalty as a still culturally relevant practice.

Narratives of the death penalty are themselves major dividing lines between abolitionists and retentionists. As Lakoff (2002) suggests, supporters of the death penalty frame their narratives in a way that portrays the "Nation as Family" metaphor, thus subscribing the government as the parental figure who is meting out punishment (p. 209). Thus, retentionists depict the state as having full authority to rectify social ills via punishment, just as parent do. With the retentionist narrative depicting the government as a parental figure, a very unsettling comparison can be made. The lack of punishment limits in the family narrative would make it morally permissible for a parent to kill their child in the name of discipline. If retentionists want to abide by the familial narrative of the

state then they must abide the notion of the state functioning like a murderously abusive parent.

The act of punishing or inflicting harm as an equalizer is in itself a communicative generative process through which meaning, value, and culture are constituted and reconstituted. Punishment and the allocation of harm is one of the many ways that serves as an interpretative framework through which people evaluate conduct and apply moral meaning to their experiences. Garland (1990) argues that painful punishment acts as a regulatory social mechanism in two distinct ways: it regulates conduct directly through the physical medium and social action, but it also regulates meaning, thought, and attitudes (p. 252). In this way, harm through punishment communicates meaning not just about the crime and punishment but also about power, authority, legitimacy, normality, morality, personhood, and social relations. The semiotics of punishment are a part of an authoritative, institutional discourse which attempts to organize our moral and political understandings of harm. Convicted offenders appear to form the most immediate audience for the rhetoric of punishment, being directly implicated in the harms acted against them. However, as Garland points out there appears to be an even more distinctive audience of professionals who staff and dictate our system of punishment (p. 262). It seems that in modern punishment practices the professionals who are directly involved in the act of harm form the most attentive and influential audience in the practice of capital punishment. A more punitive rhetoric can redefine an actor's role as one that maintains the death penalty's function and utility, in doing so, it can encourage both political and legal actors to adopt a rhetoric that manipulates the fears, anxieties, and insecurities of their public audience. Therefore, by representing harm as a desirable outcome may be received and internalized by the public as a whole.

Punishment also seems to create a center or a strategic location where power, identities, relationships and life or death decisions are made. This center may attract the attention and sometimes the imagination of members of society depending on their place in the social order and their ability to make things

happen in a commanding way. Therefore, it is something more than the mere act of putting an inmate to death that draws attention to the process of the death penalty. Instead, it is the perceived importance of the institution and its ability to draw upon the drama that is often afforded by the act of putting someone to death. Garland (1990) states that the drama of punishment acts out a psychic conflict between instinctive drives and their repression which most adults experience to some degree (p. 275). Politicians have discovered that discourses of harm and punishment are useful in persuading public attitudes because they touch upon deeply rooted anxieties and ambivalences which individuals often experience. The rhetorical meanings projected by America's death penalty today convey a multiplicity of understandings. However, there are instances where patterns emerge and dominant themes are expressed in the discourse of punishment and harm. This is especially true during times when the institution of capital punishment is directly confronted by its social and material contradictions. As a result of the current dilemma facing America's capital punishment, politicians must deploy language that reaffirms harm as a cultural and social necessity.

Narratives of harm also play a significant role in helping us understand why we inflict and support harm against prisoners. Lois Presser (2013) argues that stories of disciplinary harm contributes to our willingness to punish with such intemperance (p. 89). In order to make her claim, Presser draws from two sources of data: qualitative interviews and court cases. In her study, thirty individuals from the state of Tennessee were asked to discuss their attitudes concerning several harmful practices, including incarceration and execution. From the sample of thirty interviewees, twelve or 40 percent, viewed the death penalty as an inappropriate form of punishment (*ibid.*, p. 89). However, no one from her sample opposed the idea of imprisonment, thus confirming that everyone supported penal harm to a certain extent. Some of the interviewees embraced "an eye for an eye" where punishment should reflect the offender's act of violence (*ibid.*, p. 93). Presser asserts that when "having to" take certain

harmful action aligns with being licensed or licensing oneself to do harm against a reduced target, the result is likely to be harm (ibid., p. 107). In this way, harm serves a function to protect against the continuation of criminal acts. The story of harm casts the punisher as the rectifier of society's evils. In other words, the punisher is defined by the harm he or she produces and is justified by his or her role as the doer of justice. What keeps the punisher in his or her role is a discursive system that implies a certain power hierarchy that is meant to instill a sense of powerlessness within the disciplined subject. In doing so, society can reduce a condemned individual to their lowest form of utility, thus making harm against that person a much more palatable undertaking.

CHAPTER III

METHODS

Critical discourse analysis (CDA) is a way of assessing spoken and written language with broader power arrangements in mind. The approach has roots in critical linguistics which appeared in the late 1970's in the work of Roger Fowler, Robert Hodge, Gunter Kress and Tony Trew (Machin and Mayr 2012). CDA allows us to study "how power relations are exercised and negotiated in discourse" (p. 272). A key idea is that through language, certain kinds of practices, ideas, values, and identities may be promoted and/or naturalized. In my analysis I implemented critical discourse techniques in order to reveal the institutionalized use of language that depicts Tennessee's death penalty in certain ways.

Thus, CDA provides an analytical foundation upon which to examine ideological forces perpetuating public policies (Machin and Mayr 2012). According to Fairclough and Wodak (1997), CDA is concerned with revealing linguistic techniques that reinforce certain hegemonic ideas including linguistic patterns that sustain power and injustices. Critical discourse analysis has been used to convey power relations in a variety of context, including the subjugation of so-called nature by humans. Thus, eco-critical discourse analysis seeks to critique discourses of consumerism and nature, which either encourage ecological destruction or encourage relationships of respect and care for the natural world (Stibbe 2012).

My research method embodies the tenet of CDA as a way to reveal how Tennessee politicians ascribe meaning to capital punishment through the deployment of particular discursive devices that sustain its supposed necessity. By revealing these discursive strategies we can better challenge these political and ideological investments.

Data: Context and Collection

Tennessee lawmakers have joined the conversation pertaining to the reinstatement of older methods of execution. In April 2014, Tennessee representative Dennis Powers introduced House Bill 2476 that would make the electric chair the state's secondary method of execution if lethal injection drugs are unavailable at the time of a scheduled execution. The bill passed both the house and the senate with very little resistance with representatives voting 68-13 in favor of the measure to reinstate the electric chair. House Bill 2476 and Senate Bill 2580 were both initiated as a response to the European embargo of lethal injection drugs and the increased stigma attached to retrieving lethal injection drugs from loosely regulated compounding pharmacies. Under this bill, lethal injection would remain the preferred method of execution but in the event that the drugs needed were to become unavailable or if lethal injections were to be deemed unconstitutional, the state of Tennessee would have the electric chair on standby.

For the purposes of my analysis I transcribed audio and video recordings of the Tennessee House Committee's debate and enactment of House Bill 2476 and Senate Bill 2580. The audio and visual recordings of the Tennessee House sessions and House-Civil Justice Sub Committee are publicly available at the Tennessee General Assembly's website (<http://www.capitol.tn.gov/>). My data derives from one and a half hours of recorded video of the Tennessee House-Civil Justice Sub Committee's debates of House Bill 2476 that occurred on the 19th and 26th of March 2014, accompanied by an additional hour of footage of the Tennessee House Session-66th Legislative Day (April 16th, 2014) that enacted into law House Bill 2476 as The Capital Punishment Enforcement Act. Three statements that I used in my analysis derived from committee members' personal websites and local media sources covering the events that followed the bill's enactment into law.

My transcription method involved listening and watching the House Committee sessions while taking verbatim quotes by hand in a notebook, as the

Tennessee House Committee members discussed and debated the details of House Bill 2476. The statements used in my analysis were chosen in the context of House Committee debates. Specifically, I chose to include responses to statements that actively challenged the bill on moral or ethical grounds. I also included statements from senators who voiced their commitment to seeing House Bill 2476 enacted into law and any relevant dialogue that I thought would fit in the context of my study. I isolated just over 500 words of relevant statements depicting responses to challenges and expressions of support. The statements that did not make it into my sample included political jargon associated with House Committee members discussing amendments to the bill, revising its language and grammar, and motions to vote on the proposed amendments. I did not include discussions of the amendments in my sample because the context of the revisions were not about challenging the bill outright, but rather about ensuring consistency and thoroughness of the bill before it was put up for a vote in the General Assembly.

Analysis

The process of constructing a rich description of the way in which death penalty advocates are attempting to restore abandoned execution techniques involves bringing together strands of data and linking them to one another. Isolating the discourse of death penalty advocates and examining them as separate instances would make for a weak analysis, but when direct quotations from pro-death penalty politicians and legal actors are compared alongside one another, a more plausible argument pertaining to how discourse upholds systems of harm can be established.

For my analysis I assessed the use of modality, hedging, nominalization, and presupposition in the discourse of the political and legal actors who are involved in the ongoing discussion concerning the future of the death penalty. According to Fairclough (2003), modality concerns the expression of the speaker's, or writer's commitment to what they say. This is accomplished through

hedging (I believe/think/suppose), modal verbs, and modal adjectives (Machin and Mayr 2012, p. 186).

Hedging can be used to implement strategic ambiguity within spoken or written claims (Machin and Mayr 2012, p. 192). Hedging is used by a speaker to avoid specific or committed language, while simultaneously giving the impression of being detailed and specific. The strategy of hedging allows the speaker or writer to dilute the force of their statements in an attempt to avoid any responses that may challenge their statement. For example, a politician can either say “Some people think that global warming is a hoax” or “I think that global warming is a hoax.” The former avoids direct commitment to the statements by failing to address who these people are and what relevance they have to the statement, while the latter places a higher level of commitment by placing oneself in the statement. Nominalization and presupposition strategies are ways of concealing agency and responsibility (ibid., p. 135). Nominalization techniques conceal agency through the use of noun construction for active processes, such that agency is placed in the background of a statement or left out completely (ibid., p. 137). For example, a news headline can either say “A demonstration against the war took place on campus” or “Students demonstrated against the war on campus.” The former simply refers to ‘a demonstration’ without subscribing agency to who is participating in the demonstration, while the latter includes the agents, the students themselves, therefore changing the nature of the statement all together.

Presupposition techniques are used to present information through generalized assumptions, by presenting an ideological evaluation as a non-contested fact, rather than a personally formulated opinion. Through the use of presupposition, speakers and writers are able to present their opinion as a universalized “given,” when in fact their statement is highly contestable (ibid., p. 153). For example someone might say “American culture is under threat by immigration.” This assumes that there is such a thing as a definitive culture in

America, despite the differences and change in American culture that has existed for centuries.

The gathering of statements from the Tennessee House Committee's discussion of House Bill 2476 involved several viewings of both the House-Civil Justice Sub Committee and the Tennessee House Session-66th Legislative Day discussions. After taking word-for-word transcriptions of significant statements either in defense or in favor of the bill, I assessed the use of presupposition, modality strategies, and hedging techniques that avoid committed or specific language. On three separate occasions I re-watched the House committee sessions and re-wrote all of the quotes that I planned to use in my analysis to ensure that my transcriptions were accurate and consistent. Any relevant information pertaining to the ongoing lethal injection dilemma, including news coverage of adopting alternative methods of execution were stored in the citation management software Zotero for future reference. The same software was used to organize and store my article and book references, including my transcribed statements from the Tennessee House Committee.

My research utilizes an inductive approach, moving from specific observations to broader generalizations. I began my research with my observation of the Tennessee House Committee's discussion of House Bill 2476, followed by uncovering patterns in the speech of committee members that either supported or defended the enactment of The Capital Punishment Enforcement Act (House Bill 2476) into law. The patterns that were revealed in my selected statements were then explored further in the context of related literature on discourse, punishment, and the death penalty to support my tentative hypothesis that language can be creatively deployed to legitimate once abandoned methods of execution during times of doubt and controversy.

CHAPTER IV

DISCOURSE ANALYSIS OF TENNESSEE PRO-DEATH PENALTY RHETORIC

The institutional forms of cultural practices of today's death penalty articulate the social field from which they emerged. They embody its forces, including its cultural commitments and political components. These forces create functions and are used to meet needs, to serve purposes, and to affirm values in ways that draw them back into the social field from which they emerged, reconnecting them with ongoing political struggles and advancing interests of specific groups and individuals. Through analysis I isolated rhetorical fragments that allow the death penalty to make sense in contemporary America despite its extensive social and material contradictions. The discursive themes that emerged in my analysis include narrow interpretations of justice, prospects of closure, shifting agency, target reduction and obscuring history. In my sample of quotes from Tennessee politicians and legal actors, all express a level of support for the continued use of the death penalty. However, the most salient theme in my analysis was the use of target reduction to justify harm against death row inmates.

Narrow Codifications of Justice

Political and legal actors are in a position to interpret for the rest of us what it means to do justice. Punishment in the United States cleaves to the idea that revenge is an appropriate response to criminal behavior. In my sample, the theme of narrow codifications of justice subscribes to the rules of retribution, that certain people deserve to be punished harshly, namely those responsible for knowingly and seriously harming others. The politicians in my sample referenced the death penalty as a crucial component to the justice paradigm, by framing justice as an inevitable outcome after engaging in the execution of an inmate.

Michael Rushford, president and CEO of the Criminal Justice Legal Foundation, an organization that helps litigate in support of the death penalty voiced his outrage at the Tennessee state government in an interview conducted by a local Tennessee news source for not speeding up the process of scheduling execution dates for death row inmates. In the following statement, Rushford addresses Tennessee's decision to postpone scheduled executions.

It's really kind of a slap in the face to state voters and to the victims who wait for justice, when a politician can stop the entire process (Rushford 2013).

Rushford constructs his statement to express a level of certainty that the lethal injection dilemma is in fact a failure of politics, and not the legal system. Rushford is in a sense attempting to place sole blame on the political system for delaying justice. This presupposes that debate is a failure of the political system, especially if what is in question directly affects the operational status of the death penalty in Tennessee. By utilizing language that expresses a high degree of certainty, Rushford is able to make the claim that delayed executions are equivalent to a physical assault on voters and victims who wait for justice. In this way, Rushford is able to apply the offender status to skeptical politicians who do not want to adopt controversial alternative execution methods. This connection presupposes two things. First, it implies that justice can only be mediated through capital punishment and that other avenues towards justice simply do not apply in this case. Second, it assumes that a clear majority of people in the state of Tennessee who support the death penalty. Beginning in the 1990's there have been varying degrees of support for the death penalty in Tennessee, with signs indicating a growing distain for the death penalty among Tennessee residents (Whitehead, 1998).

Rushford presupposing justice as a facet of the death penalty is itself a narrow codification and therefore of discursive significance. Rushford's draws a connection between delayed executions and delayed justice, as if they are interchangeable concepts. According to Rushford, victims and voters are being denied satisfaction because politicians are slowing down a highly controversial process. However, it would be inaccurate to say that all victims of violence find comfort in violence being carried out in their name, a possibility that fails to resonate with Rushford. Many survivors of violence or families of murder victims would be reluctant to tell you that the death penalty brings about closure, because for them what murder took away from them can never be brought back.

Rushford takes for granted the multi-dimensional aspect of justice and instead opts for a narrow interpretation of justice and satisfaction as inevitable outcomes afforded by the death penalty. By pointing to the democratic process as being neglectful of victims and voters, Rushford is able to undermine other views of justice that may not abide by his retributive understanding of justice. Rushford is standing by the popular conservative notion of "swift justice," or justice without delay. The debate taking place between politicians concerning the controversial use of lethal injections is seen by Rushford as a road block to performing executions and therefore justice. The ability to circumvent these democratic barriers is precisely what Rushford wishes to accomplish by framing any political discussion on the matter of executions as a "slap in the face" to those who wait for justice.

Despite Rushford's dissatisfaction with Tennessee politicians, plenty of Tennessee politicians take his point. In April 2014, Tennessee representative Dennis Powers introduced House Bill 2476 that would make the electric chair the state's secondary method of execution if lethal injection drugs are unavailable at the time of a scheduled execution. With House Bill 2476, Powers wanted to provide Tennessee with an alternative

method of execution so that scheduled executions can be performed with or without lethal injection drugs. Despite receiving opposition from other committee members, Powers stood by the measure by framing his argument within the strict legal context of the death penalty, characterizing the death penalty as an infallible, permanent fixture within the Tennessee criminal justice system. In the following statement, Powers addresses the Tennessee House Committee in an attempt to justify support for his bill to reinstate the electric chair.

What seems barbaric is someone that's been on death row for 29 years. This is really not about the death penalty. The death penalty is already the law in Tennessee. This is about how we do it (Sen. Dennis Powers 2014).

Powers utilizes several discursive strategies that portray his argument in a passive manner, including presupposing what is considered “barbaric” and expressing a high degree of certainty that his bill “is really not about the death penalty,” thus suggesting that the law upholding the death penalty should not be questioned or critiqued during times of uncertainty. Instead Powers calls for swift measures to uphold the death penalty without meaningful reflection. By dismissing opposing views, Powers’ is able to dictate the direction of the House Bill 2476 discussion and therefore undermine any intelligible debate concerning the role of the death penalty and the appearance of its social and material contradictions. Powers further solidifies his commitment to sustaining capital punishment in the following statement to the House Committee.

We're wanting to make sure that these people on death row go ahead and get the just sentence that they deserve (Sen. Dennis Powers 2014).

Powers presupposes that death is a “just” sentence and the people on death row deserve the punishment that has been prescribed to them. The fact that Powers resides in a position of authority enables him to define the death penalty as a “just” act by superimposing his narrow interpretation of justice on the state of Tennessee as a whole. Powers’ argument is launched within the legal context of the death penalty exclusively. He has no business for its evaluation outside of the legal codes that sustain it.

We tend to take for granted language’s ability to depict people as an individual or as a group. If people are depicted as a group, we can make certain assumptions about collectivized sentiments and ideas. Often in political rhetoric, speakers will refer to ‘our’ wishes in order to distance themselves from their own statements. The use of a collectivized argument to justify one’s narrow codification of justice is a powerful discursive device that distorts the level of support for the death penalty. Instead of individualizing language, politicians often collectivize their language to convey a more powerful message of the supposed utility and necessity of the death penalty.

The ability to communicate narrow interpretations of justice is further demonstrated by Powers’ use of the collectivized statement, “we’re wanting to make sure that these people on death row go ahead and get the just sentence that they deserve.” Instead of referring to himself directly, Powers begins his statement with the collective contraction “we are” in an attempt to distance himself from his own statement by framing it as a shared belief among an undisclosed number of people.

In some cases, Tennessee state politicians attempt to distance themselves from a retributive label by mitigating their intentions of retaining the death penalty. During the House Committee discussion of House Bill 2476, Senator Dennis Powers responded to a motion by Senator Darren Jernigan who questioned the adoption of the electric chair as an alternative to lethal injections, believing that such an adoption constitutes an unnecessarily harsh form of punishment. In his rebuttal, Senator Powers states “we’re not talking about an

eye for an eye, cutting off someone's hand if they steal something or anything like that." Even as the proprietor of House Bill 2476, Senator Powers wants to distance himself from his statement, by again using the collective contraction "we are" in order to remove himself from complete responsibility. By collectivizing his statements, Senator Powers is able to hide the agent and those affected by his statement since our vision has been channeled and narrowed. Both Senator Powers and Michael Rushford rationalize their narrow codifications of justice by framing the death penalty as an unquestionable instrument of justice and by framing any distain for the implementation of new execution methods as a direct infringement of justice as a disservice to victims. In my sample, the particular narrow interpretations of justice afforded by the death penalty were framed within the context of providing closure to victims and their families. The discursive theme of closure deserves further inquiry because of its significance in framing the death penalty as being inherently pro-victim, an assumption that is not supported by my analysis.

Prospects of Closure

Embedded within notions of justice that frame violent retribution as rejuvenating undertaking is the idea that punishment will bring about closure to those most affected by egregious violence. My speakers portray the theme of closure as only possible via the death penalty since the person who committed the initial harm is no longer alive, therefore unable to offend again. What discourse reveals is the myth that depicts acceptable violence as rejuvenating the bonds of a community against those labeled as evil. The rationale for violent punishment is rooted in language that exemplifies the idea of community restoration, social cohesion, and protect the community against the fear of future violence. However, it is not the violence that bonds a society, but the myth of what violence affords us. In other words, American punishment practices posit that it is morally permissible to harm criminals because retribution is closely related to bringing satisfaction to victims' families. This is further represented in

Senator Powers' statement referring to inmates receiving the "justice sentence they deserve."

Again, we can see in Powers' statement a very clear interpretation of a "just" sentence as defined within the context of death. Here, Powers views the state as a compassionate agent that kills for the relief of victims and their families. The state's perceived compassion for the victim is itself an act that encourages families to help the state secure its prosecution of the defendant. By doing so the state can make the claim that retribution does not create new victims. However, this exploitation of victims of violence and their families for the sole purpose of justifying the state's role as punisher undermines the wishes of those most affected by the events that led to the capital trial. Powers is forgetting that justice and closure are not clear cut concepts and by no means are they guaranteed, especially when justice has already been defined for the victim. The true task of those reeling from the murder of a loved one is to hold together the splintered self and fractured life (Kay 2005, p.150). This can be accomplished by constructing a narrative that is true to those affected by violence. When such a story is told it can help the families of murder victims look towards the future instead of reliving the pain and suffering through a singular definition of justice. Narratives of healing cannot be forced on a person in the form of victim impact statements, but must be constructed by the individual through a process of transformation. Powers' strict interpretation of justice denies the possibility for these healing narratives to transpire because according to him the only "just" conclusion to violence is the perpetuation of violence via the death penalty.

I will return to Senator Powers later on in my analysis, but for now I wish to address a comment made by Senator Ken Yager, a co-sponsor of House Bill 2476 and Senate Bill 2580. The following statement came from Senator Yager's professional website where he expresses his view on the current state of Tennessee's death penalty, including his frustration with a lack of commitment by the state to execute those currently on death row.

Those on death row have committed 'the worst of the worst' crimes committed in Tennessee. Return to a system that endlessly denies justice to victims of heinous crimes is 'cruel and unusual' to victims and their family and friends who suffer much pain and psychological trauma due to the nature of these heinous crimes (Sen. Ken Yager 2014).

In Senator Yager's statement there are distinct references to a narrow interpretation of justice that frames the death penalty as a necessary precondition to closure. According to Yager, Tennessee's decision to delay scheduled executions is a direct act of denying justice to victims and their families. Despite the state's role as the proprietor of victim retribution, it must be understood that retribution by its formal definition is inherently neglectful of the victim. Rather punishment is portrayed as being in direct benefit of the state, who is the self-proclaimed victim in criminal trials. Nonetheless, the state presents itself as a compassionate agent that kills for the relief of victims and their families. The state's perceived compassion for the victim is itself an act that encourages families to help the state secure its prosecution of the defendant. By doing so the state can make the claim that retribution does not create new victims. Yager fails to consider the possibility that the state is, in fact, re-victimizing the families of murder victims by denying them agency in the process of justice. Yager believes that what is "cruel and unusual" is the failure to carry-out executions in the name of the victims, but perhaps what is truly cruel and unusual is that both revenge and retribution are morally bankrupt because they replicate atrocious behavior rather than model effective, nonviolent, and helpful ways to respond to offenders' and victims' needs.

When Yager mentions a "return to a system that endlessly denies justice" he presupposes that no other avenues for closure exist outside the death chamber. By framing opposition for the re-installment of the electric chair as being neglectful of the victim, Yager is able to portray the death penalty as being in the

service of victims despite the state's ability to sideline those who were directly affected by the murder of a loved one. Yager's statement depicts alternatives to the death penalty as a "return" to a system that denies justice, therefore framing non-death penalty initiatives as regressive. By framing the death penalty as progressive, Yager is able to frame opposition to the death penalty as being out of touch with current trends. In this way, Yager's attempt to impose his view of closure onto victims of egregious violence by framing the death penalty as being a forward thinking initiative is inherently neglectful of the multi-dimensional avenues with which people may find a sense of closure during times of deep sorrow and loss.

Shifting Agency

Politicians who are in the business of justifying the continued use of the death penalty in the United States often deploy discursive strategies that shift or conceal agency. By doing so, specific people are removed and therefore responsibility for the action has been removed. Since language can be used to displace specific actions, it can be counted, described, classified, and qualified through a nominal group, but this would mean that causality is now of secondary concern. In my analysis I found speakers often shifted agency onto death row inmates in an attempt to distance themselves from being attributed to their eventual execution. I also discovered that speakers shifted agency to a higher power, by framing God as the ultimate agent and themselves as a humble servant to its will.

In a previously mentioned statement, Senator Powers ascribes a level of agency to those on death row. By stating that inmates on death row should "go ahead and get the just sentence that they deserve," Powers is expressing a degree of impatience with the condemned: they ought to and can but are failing to "go ahead" and do something. The agency that is afforded to the condemned inmates by Powers in turn minimizes his direct involvement in the process of executing inmates.

Agency is also assigned to God, as though executing prisoners is a project carried out on another's behalf. In the following statement Senator Powers responds to Pastor Representative Johnny Shaw's claim that we should be cautious about "doing God's work" by imposing new death penalty legislation. The license in this case is the power to judge and kill people if necessary. Lois Presser (2013) frames the license to harm offenders as a procedural and moral dimension, where agents of the criminal justice system stress procedural license (p. 97). However in the case of Senator Powers, his notion of serving a higher power relates more closely with Pressers' concept of a moral license to do penal harm as it coincides with retributive principles that frame the offender as deserving harm. In Powers' statement he depicts a perceived mutual relationship between his actions to secure the death penalty and the agency to God.

I agree with you it's not our job to judge; that's God's job to judge.
Our job is to arrange the meeting (Sen. Dennis Powers 2014).

Framing one's moral justification within a religious context is not a unique discursive strategy. Powers' use of religion to push an agenda holds a lot of political weight in Bible belt America. Often politicians use religious imagery to convey their intentions. The significance of Powers' statement comes from its ability to establish an ultimate and unchallengeable notion of God's will by transferring agency over to a higher power. According to Powers' and many other religiously driven politicians, justice is a concept best interpreted through the Christian Bible. The idea of conflating punishment with religious text is all too familiar, not only within Christianity but also other World religions as well. First, I would like to point out Powers' interpretation of our duty to serve God's wrath. What Powers is failing to take into consideration is the religious pluralism that exists in contemporary America. In this way, Powers is presupposing a narrow

notion of justice interpreted through Christian text. Powers may interpret Christian text as one of retribution and vengeance, but this is not how everyone interprets Christian text or any other religious text for that matter. For example, according to Jewish faith the Torah strictly warns us against taking revenge: “Don’t take vengeance and don’t bear a grudge against the members of your nation; love your neighbor as yourself” (Leviticus 19:18.). If anything, Powers’ use of religion to justify the carrying out of violence parallels more closely with statements made by radical religious groups who rely on violence to push social and religious agendas.

Powers’ also assumes the role of God’s secretary, “arranging the meeting” between those we despise (those on death row) and that which we fear (death). In this regard, Powers has removed himself and others from direct responsibility for putting people to death under his bill. Senator Powers’ places himself in an unquestionable position of power by self-ascribing himself as the doer of God’s will. In this way, if anyone were to question Senator Powers they would be questioning the will of God. Anyone can wield power under the unsubstantiated claim of God’s agency over moral rule. Therefore Powers is able to remove any sense of agency on his behalf and transpose agency onto God’s demand for retribution.

In another attempt to minimize his own involvement in the execution of inmates, Senator Powers posits that there exists agentive prisoners who have willingly fortified their lives by taking another. In the following statements Senator Powers distances himself from the act of condemning death row inmates by framing their execution as a personal choice.

When you’re talking about the worst of the worst offenders that are on death row right now, there are 75 men and 1 woman that have given up their right to life by taking someone else’s life (Sen. Dennis Powers 2014).

Powers' assignment of responsibility is not supported by deterrence literature. Often, violent crimes are committed under emotionally stressful circumstances when the perpetrator has little time to reflect on the possible consequences of his or her actions. Michael Radelet and Traci Lacoock (2009) conducted a survey of criminologists in the country and found that the overwhelming majority did not believe that the death penalty is a proven deterrent. Eighty-eight percent of the criminologists surveyed did not believe the death penalty acts as a deterrent to homicide, which puts into question Senator Powers' notion that death row inmates made a rational choice by engaging in the taking of someone else's life.

Powers fails to consider the socially determined and culturally situated circumstances that have created the very conditions that make it permissible to take the life of an inmate. Framing death row inmates as autonomous agents of their own fate suggests that a criminal can only be summed up or determined by their vices. Distinguishing an inmate from their vices signals an important difference between saying they have "given up their right to life" versus saying "their right to life was taken away." The former affirms that inmates pose the capacity to self-determine the outcome of legal proceedings while the latter suggests that an external agent has denied the inmate's right to life. Powers utilizes the former in an attempt to transpose agency onto the offender, thus saving himself from becoming the external agent who denies an inmate's right to life.

Retributivists and avengers like Powers insist on painful penalties because they recognize that failure to respond to evildoers would be unacceptable. Both revenge and retribution rest on the assumption that holding people responsible for their action is a needed form of human respect. Viewing people as responsible presumes a connection between actions and the person's moral agency. By ascribing agency to death row inmates, Powers perceives himself as treating inmates as responsible moral agents, not as powerless victims. Powers discursive project views particular responses – such as suffering and death- as

merely conventional agreements about ways to express outrage and holding someone accountable.

Target Reduction

Political and legal actors often engage in reducing convicts to their lowest function as a means to justify harsh treatment against them. Revenge and retribution feed off the view that some people are inherently evil. This idea of the unsalvageable perpetrator is reinforced by the media's (Haney 2005). Beginning in the latter half of the 20th century, there was a considerable shift away from depicting offenders as redeemable or capable of growth concomitant with blaming offenders for many of our social ills. Those that we label as "others" are much easier to harm and condemn to death. According to Lois Presser (2009) agents of penal harm reduce their target by denying the complexity of those who commit crime, characterizing them as existing only as a criminal (p. 95). The speakers in my analysis offered several cases of target reduction as a means of depicting death row inmates as some of the worst people around, by denying them legitimacy of conditions or cause, and portraying them as irrational, if not insane. Consider for example the following statement by Senator Ken Yager to the Tennessee House Committee.

Those on death row have committed 'the worst of the worst' crimes committed in Tennessee (Sen. Ken Yager 2014).

Senator Yager presupposes that those who reside on death row have committed are the greatest harm-doers around. It is certainly easy to point at the actions of an individual and reduce them to their most heinous act without examining the underemphasized harms that affect the public on a much larger scale. In no way am I attempting to diminish the harms that were perpetrated by those on death row, I am simply pointing out that what we consider as "the worst of the worst crimes" are not necessarily related to the most egregious harms committed in our

society. Take for example the 2008 Kingston Fossil Plant coal fly ash slurry spill. This event was marked by an 84-acre solid waste contamination area at the Tennessee Valley Authority's Kingston Fossil Plant in Roane County, Tennessee. Over 1.1 billion US gallons of coal fly ash traveled across the Emory River causing a mudflow wave of water and ash that covered 12 homes, pushing homes off their foundation and caused some damage of 42 residential properties (Knoxville News Sentinel, 2009). The cause of this ash spill was a poorly maintain containment dike, indicating that this disaster was preventable. Compared to conventional crimes the allocation of harm in this case is much more widespread, not only for the residents whose homes were destroyed during the ash flood, but also the environmental harm that is still visible to this day. We can also look at destructive natural resource extraction strategies in the same light, including mountain top removal which has left Appalachian communities in utter disarray. For example, mountain top removal has desecrated family burial sites in favor of extraction efforts, leaving Appalachian graveyards soaked with mining fluids and runoff, defiling both Appalachian culture and history (Maples & East 2013). Again, these actions will not be defined as true harms in the eyes of the law. My point here is to show that what we define as "the worst of the worst crimes" is subjective. We cannot truly say that those on death row have wronged society to such an extent that they deserve death given the incalculable amount of human suffering created by underemphasized harms such as those of government and corporate actors. By referring to the crimes committed by death row inmates as the "worst of the worst," Senator Yager distracts us from the underemphasized harms in society and advocates for the demonization of death row inmates as major sources of harm in our society.

Senator Ken Yager's notion that death row inmates constitute "the worst of the worst" is also shared by his colleague Dennis Powers. Referring back to Senator Powers' response to Senator Darren Jernigan who questioned the adoption of the electric chair as an alternative to lethal injections, Powers was able to deploy a similar target reduction strategy as Senator Yager. The following

statement is in reference to Senator Powers' response to Senator Jernigan's initial hesitation to reinstate the electric chair.

No, I'm not saying an eye for an eye. I'm saying there are certain crimes, the worst of the worst offenders, that's what we are talking about (Sen. Dennis Powers 2014).

If Powers is not explicitly saying that his proposition to reinstate the electric chair is an "eye for an eye," then what is he saying? Here, Powers is attempting to mitigate the harm that he has put forth by steering his response in a direction that conjures up images of "the worst of the worst offenders." Again, by shifting the focus of the conversation to the harms committed by those on death row Powers is able to portray inmates as bad and only bad. The notion that inmates are bad by nature is rooted in the premise that the causes of violence lies within the individual and that failure to regulate violent tendencies also is the fault of the individual. These premises justify a public policy that absolves the collective of any responsibility for contributing to violence and abandons the deeply held American belief that all people are created equal. By framing death row inmates as products of their own being, Powers is able to reduce inmates to the status of "other," therefore denying them purpose of existence and character.

During the final House Committee hearing in April 2014, House Representative Richard Floyd personally expressed his gratitude to Senator Powers for creating and proposing the bill that would reinstate the electric chair as the state's secondary method of execution. His appreciative comment to Senator Powers was framed in a way that expressed the deserved suffering of inmates on death row, also conflating "executed" with "murdered" to describe three murders that occurred in his County.

Just in our County over the weekend we had three people executed (murdered), it seems to be a recreation of the weekend just to find somebody to kill. Some of these people who have committed these atrocious crimes never afforded their victims a painless death or any sympathy or empathy in any way. I want to thank you (Senator Powers) for this bill (Rep. Richard Floyd 2014).

It is unusual to hear Senator Floyd use the term “executed” when referring to the act of murder. I was puzzled when I heard Floyd mention that three people were executed in his county while knowing that the last execution in the state of Tennessee occurred in 2009, leading me to believe that what he meant by “executed” was actually in reference to murder. Senator Floyd’s attempt to label murderers as executioners strikes me as odd because he communicates support for the execution of inmates and yet demonizes executions performed in other contexts. Floyd’s failure to make a distinction between executioner and murderer does his statement a disservice by comparing the two as the same. Therefore, contradicting his efforts to sustain the death penalty in Tennessee by denying legitimacy to both murderer and executioner.

Senator Floyd presupposes that those who have engaged in murder gained some sort of pleasure from it by framing murder as a weekend recreation “just to find somebody to kill.” By framing murderers as those who find enjoyment out of their action, Floyd is able to construct the identity of death row inmates as inherently broken individuals, hell-bent on killing just for the fun of it. Senator Floyd’s ability to reduce offenders to compulsive killers makes it that much easier to justify their executions at the hands of the state. According to Floyd’s depiction of death row inmates, human worth rests entirely on moral merit. In other words, humans have no worth independent of what they do. By reducing inmates to their behavior, Floyd is able to deny any sense of humanity to “these people who have committed these atrocious crimes” and permits treating them as if there is no humanness left in them. Significantly, when murderers kill, they fail to see the

humanity of their victim and this remains true for those who advocate for executions and engage in target reduction as a means to deny humanity to the offender. A lack of discerning vision enables murderers and executioners to kill. While bystanders like Senator Floyd endorse execution without recognizing who they are harming in the process.

Obscuring History

Like all historical patterns of social action, the structures of modern punishment have created a sense of their own inevitability. The way people speak about the history of punishment in the United States can influence our perceptions of punishment in the present. Politicians often make references to important historical dates and events as a means to justify their intended initiatives. The historical development of punitive forms of punishment did not take the trajectory suggested by Durkheim (1895). Instead of being an emergent property of an evolving social solidarity, penal forms were the contested outcome of an ongoing struggle between different social forces and different visions of society (Garland 1990, p. 48). When politicians speak of punishment as a fixed historical process without giving respect to the fluidity of punishment practices over the centuries, their ability to portray outdated forms of punishment as still socially acceptable becomes a real possibility.

On January 3rd, 2014 Andrew Smith representing the Tennessee Department of Corrections for the Tennessee Attorney General's Office, responded to a reporter's comment concerning the state's intentions to conceal the source of their lethal injection drugs. In the following statement, Smith argues that secrecy has always gone hand in hand with executions and that concerns about state secrecy deserve no further attention.

The State's interest in keeping this information protected is well settled. It's codified by statute. It is centuries old. The process of having executioners wearing hoods at executions has been around since the Middle Ages (Smith 2014).

Smith's statement obscures both historical and ethical considerations. Smith attempts to mitigate the negative connotations of state secrecy by framing them within a trans-historical argument. By framing secrecy of information as a "well settled" tradition that is "codified by law" and is "centuries old," Smith presupposes that these attributes of the state are taken for granted and stable when in fact these traits are highly contested. State secrecy and written law have been debated topics for centuries and the role of the executioner has certainly changed over the course of history. Historically the executioner and the state made executions a public spectacle, where it was made clear to the public who ordered the execution and who was being put to death. Beginning in the 20th century, executions changed from a public spectacle to a more institutionalized and secretive undertaking strategically hidden from public view. This historical transition is absent in Smith's statement.

Senator Powers' proposition to reinstate the electric chair conjured up reactions from other senators interested in finding alternatives to the standard lethal injection. During the House Committee's deliberation of whether or not to put House Bill 2476 up for a vote, Senator Kent Williams was surprised that several states still utilize firing squads as a viable option for executions. His reaction was not one of shock, but of bewilderment as to why Tennessee was not considering such a measure. The following statement exemplifies Senator Williams' process of rationalizing the utility of firing squads as an alternative to lethal injections.

Yeah I didn't realize that there were still two states in the union that use firing squads. You know, that would probably be the easiest way to take somebody out, just shoot them in the back of the head, they basically wouldn't feel anything. I still don't know why we got away from hanging (Sen. Kent Williams 2014).

Senator Williams expresses a rather straightforward utilitarian argument to explain his support for firing squads. The fact that it only took two states in the union to convince Senator Williams that firing squads are an appropriate method of execution suggests that the idea wasn't far from his mind. Senator Williams puts forth several very distinctive references to the morbid realities of human history. By passively suggesting that we should "just shoot them in the back of the head" is to ignore the implicit genocidal reference that comes with such a statement. The practice of shooting prisoners in the back of the head is not only very impersonal, because the shooter may be kept from knowing the identity of their victim and vice-versa, it has also been commonly used as a way to systematically exterminate victims of genocide. We can look to the genocides of Nazi Germany, Bosnia, Rwanda, and Armenia and the horrors currently being perpetrated by Islamic extremist groups and see similar methods being implemented. Senator Williams fails to consider the historical implications of his statement, believing that because the firing squad is in the service of the state that atrocity crimes are no phantom backdrop. Senator Williams also expresses befuddlement regarding "why we got away from hanging." Again, the lack of historical reflexivity in this statement is striking. One hundred years ago, the formerly slave-owning southern states of America attracted worldwide criticism as they participated in hundreds of racially motivated public lynchings and burnings at the stake. At these notorious events, crowds of townspeople observed what transpired, often adding to the violence that was being carried out against the accused. Following the lynching and burning, the mutilated body would often be displayed for all to see (Garland 2012, p.12). I cannot say

whether Senator Williams is ignorant to these historical events or if he cares too little to make these connections. As such, he ignores the racialized state of contemporary punishment in the United States and particularly in Tennessee, a matter which I take up in my discussion chapter. One thing is for sure based on Senator Williams' statement: the former tradition of lynching appears to be within his conception of acceptable practices.

CHAPTER V

RESULTS AND DISCUSION

The texts that I examined in the previous chapter tell a story of punishment as a social necessity and pain and suffering as an inevitable outcome of justice. The discourses channeled in these statements have been assessed within the context of critical discourse analysis, revealing discursive themes of narrow interpretations of justice, prospects of closure, shifting agency, target reduction and obscuring history. I have assessed fragments of meaning by examining each statement on its own without addressing how they relate to one another within the larger framework of American capital punishment. In this chapter I wish to make explicit the predominant themes of the previous chapter and explore their meaning as they relate to punishment literature more generally.

Based on my analysis in the previous chapter the most predominant themes permeating the Tennessee retention argument, narrow interpretations of justice that frame pain and suffering as an appropriate payment for one's offense and prospects of closure, claiming that death is an infallible equalizer. I will return to the additional themes of closure, agency, target reduction, and obscuring history later in this section, as they also illustrate important discursive themes that allow the death penalty to continue to make sense in contemporary America.

For the purposes of exploring the predominant themes of notions of justice and promises of closure I will refer to Friedrich Nietzsche's second essay in *The Genealogy of Morals*. Here, Nietzsche posits that society and morality serve the purpose of making us predictable, which in turn serves the purpose of allowing us to make promises (Nietzsche 1913(2003), p. 35). These promises are rooted in following society's norms and rules. Such a responsibility of the sovereign individual is therefore manifested by a "conscience." Nietzsche then makes the claim that the concept of guilt and bad conscience has nothing to do with accountability or immorality, rather punishment is a form of reprisal. If someone failed to fulfill a societal promise (i.e. following society's norms and values) then

they were in debt to society. Nietzsche uses the example of the creditor harming his debtor in order to compensate for a failed payment (ibid., p. 39). In terms of Tennessee politicians, it appears that they perceive those on death row as debtors. For instance, Senator Denis Powers wants to make sure “that these people on death row go ahead and get the just sentence that they deserve,” thus giving the impression that death row inmates are in debt to society. Nietzsche’s argument that the debt could be balanced by submitting to punishment, cruelty, and torture has been adopted by Powers and other Tennessee politicians on the basis that submitting to pain is in itself a debt payment to society and therefore a reaffirmation of their ideological interpretation of justice. Nietzsche proceeds with his depiction of submitting one’s self to punishment and cruelty by noting that with the barbarism of older cultures, there was also a significant presence of cheerfulness that came with cruelty in punishment. In contemporary society many of us have come to see suffering as an argument against life, though creating suffering was once considered a great celebration of life. Nietzsche suggests that our pursuit for suffering is, on one hand, a revolt against all of our instincts, and, on the other hand, a revulsion against the senselessness of suffering. For neither the ancient religions nor the Christians was suffering depicted as senseless, there was always a sense of joy or justification for subscribing someone to pain and suffering. Nietzsche asserts that we invented the concept of God so that there was some all-witnessing presence to insure that no suffering ever went unnoticed (ibid., p. 43). This is depicted in Senator Powers’ comment, “it’s not our job to judge; that’s God’s job to judge.” This statement suggests that a perceived presence of an all-powerful overseer is enough justification to implement punishment through suffering. In other words, what is significant to us about punishment is not the act itself, but the meaning that we attach to it. For Senator Powers, the significance of punishment is the fulfillment of God’s wishes by transposing agency onto God and seeing himself as a servant in that fulfillment. Since the meaning of punishment is independent of the act itself, we can understand punishment as embodying a subjective

meaning. Therefore, conventional wisdom views society in terms of things and deeds rather than forces and wills, hence we are unable to distinguish between the meanings of punishment from the deed itself, and assumes the deed has always held a consistent meaning in society. Nietzsche points out that while our moral concepts have shown that notions of punishment and justice have been around for a long time, these ideas have, unnoticed by us, taken on very different meanings depending on those who are interpreting them. In the case of Senator Powers who frames his moral justification for reinstating the electric chair within the context of serving a higher power is, in a sense, able to interpret the meaning of justice and punishment according to a particular ideological position.

Prospects of closure were also major themes used to frame the death penalty in a particular way. Many of the statements that I analyzed expressed the prospect of closure for victims' families via the death penalty. For instance, Michael Rushford's frustration with halted executions in the state of Tennessee is framed within the context of denying justice and closure to the families of murder victims. Rushford states that "It's really kind of a slap in the face to state voters and to the victims who wait for justice, when a politician can stop the entire process. Senator Ken Yager also makes a direct connection between the carrying out of executions and closure for families, arguing that delayed executions is equivalent to denied justice. Senator Yager posits that a "Return to a system that endlessly denies justice to victims of heinous crimes is 'cruel and unusual' to victims and their family and friends who suffer much pain and psychological trauma due to the nature of these heinous crimes," and yet fails to consider the potential re-victimization of victims and their family and friends by the state. In both statements there is an emphasis on the victim and a de-emphasis on the offender. It would be inaccurate to make the assumption that death penalty supporters such as Michael Rushford and Ken Yager are in the direct service of the victim, while abolitionists are inherently anti-victim. Those who subscribe themselves to the pro-retention argument, view the death penalty

as if it were civilization's last chance to remedy the wrongs afforded to victims' families and friends.

In contrast, those wishing to abolish the death penalty see the United States reluctance to move forward with other developed nations as a disservice to both victim and offender. In one way or another, the abolitionist tends to subscribe victim status to all parties, in an attempt to highlight the idea that larger social forces are at least partially responsible for the production of violence (Kay 2005, p. xviii). Both Michael Rushford and Senator Ken Yager position themselves within the service of the victims by instead of merely denouncing the murderous behavior, they denounce certain people as essentially evil by undermining societies role in the reproduction of violence, in favor of adopting punitive and vengeful motives to steer the criminal justice system in a particular direction. For Rushford and Senator Yager, punitive and vengeful outcomes must be secured for the families of murder victims, but this is closure as defined by actors who are not directly invested in the healing of those affected by murder. Politicians are certainly not experts on closure and often believe that closure is a clearly defined outcome of punishment. However, as we have discussed in previous chapters, the idea of closure is not an objective reality. The clouded vision that Rushford, Yager and the other Tennessee political actors have put forth ensures the subordination of those affected by murder in that they are denied the tools to define closure for themselves. In this way, if a person is not allowed to recover from violence, they may support violence as a solution, not because they fully believe that violence will bring them closure, but because that was all that was afforded to them at the time. Only when genuine human needs are denied through strict interpretations of closure do people succumb to the narrative of violence as a means to an end.

Both Senator Denis Powers, Ken Yager, and Richard Floyd deployed strategies of target reduction in order to depict death row inmates as a lesser group, that which deserves the death penalty. All three speakers framed death row inmates as the "worst of the worst," depicting inmates as inherently broken,

violent beings who know nothing other than the ability to carry-out violence. The ability to reduce an offender to his or her worst act is indicative in the ability to condemn an inmate to death. This implies a biological determinist view of death row inmates or an unsalvageable person who has succumbed to their predisposition to violent crime. Cesar Lombroso (1911) was one of the first criminal anthropologists to claim that criminals were born and not made (p. 306). Lombroso suggested that criminals were easily identified by their physical appearances and deceptive personalities. These pseudoscientific claims justified the belief that all humans are not human, since some are genetically predisposed to crime. The idea of cultural determinism or environmental determinism appears absent in the statements made by Senator Powers, Yager, and Floyd, instead they accept the genetic or innate basis of criminal behavior, almost in terms reminiscent of Lombroso as a means to reduce inmates to a primitive group. Biological determinism posits that nature is determinative and causative (Kay 2005, p. 126). The biological determinism argument has also had a major impact on the mental health system. Not only do legal actors such as judges and prosecutors and death row inmate themselves think of some people as inherently evil, but so do many people. The image of a reduced offender defined as inherently broken or predestined to commit more violence shapes how we handle criminals and is reflected in political discourse that aims to maintain system of punishment like the death penalty. The speakers that I have mentioned in my study hold a belief that some people are bad by nature and that eliminating defective individuals would inevitably solve our social problems.

I would also argue that both Senator Yager and Senator Powers care little about whether or not an inmate experiences pain during the execution process. Especially since the House Bill that they both support argues for the reinstatement of the electric chair, a more explicitly brutal and violent way of putting someone to death compared to lethal injections. Many share this view including Alex Kozinski, a federal appellate judge in California and a supporter of the death penalty, who made a statement last summer calling out the death penalty

charade for what it is. Lethal injections he wrote, are “a misguided effort to mask the brutality of executions by making them look serene and peaceful.” But executions “are brutal, savage events, and nothing the state tries to do can mask that reality. Nor should it” (The New York Times, 2015). Judge Kozinski believes that if we as a society want the state to carry out violence in our name, then we should be willing to face the brutality that is being committed on our behalf. What separates Judge Kozinski from Senator Yager and Powers is the fact that while Judge Kozinski wishes to expose the violence associated with the death penalty, Senator Yager and Powers want to adopt a more brutal method of execution while still maintaining the same level of anonymity.

The theme of obscuring history appeared less frequently in my sample. However, obscuring history did help explain the statement made by Andrew Smith of the Tennessee Attorney General’s Office. In terms of the discursive significance of Smith’s statement, he frames secrecy of information as a “well settled” tradition that is “codified by law” and is “centuries old.” In this way Smith makes a dialectical connection between history, tradition, and the state’s role as executioner. According to the work of James Whiteman (2005) it becomes apparent that Smith is referring to America’s strongly held antistatist tradition which allows us to conclude that nothing may be forbidden by the state unless it is defined as evil. In Smith’s case this includes the state withholding information about sources of lethal injection drugs under the cloak of protecting the public from the evils on death row. The ability for the state to define what constitutes as “evil” evokes notions of the quasi-Christian attitude that has permeated United States policy for much of its existence (p. 201). The fact that Smith references executioners wearing hoods as a well-established tradition within execution culture is in itself symbolic. Before the controversy over lethal injections began, state’s often made little attempt to conceal their efforts in obtaining lethal injection drugs. Sources were registered with the federal government and were heavily regulated. Now that the procedure has become controversial with new restrictions on access to lethal injection drugs, the process of obtaining them has

become shrouded in secrecy, with states failing to notify the federal government of their sources. In this way, the state as executioner only wears the hood of anonymity when their methods of execution are brought into question. One of the historic functions of the execution hood was to protect the executioner from the stigma of being associated with the actual act of killing. In the case of Smith's statement, the lines are blurred as to whom is wearing the hood. Is the state acting as the executioner or subscribing that role to the anonymous sources of controversial lethal injection drugs? Maintaining a degree of anonymity of the individual directly involved in the execution process cannot and should not be conflated with the concealment of the larger institutional forces associated with the death penalty. By doing so, it would be easy to fall into a sense of complacency regarding a state's lack of transparency of its method and practice of execution. Even though the obscuring history was the least represented component in my analysis, it does serve a function in concealing the changing nature of the death penalty across historical lines.

Obscuring history was also a theme that appeared in Senator Kent William's statement regarding the use of firing squads as an alternative to lethal injections. William's mentioning that it would probably be easier to "just shoot them in the back of the head" conjures up images of the systematic executions of past genocides, where the executioner was spared any context of their victim. As I mentioned in the previous chapter, the act of shooting prisoners in the back of the heads saves the shooter from knowing the identity of their victim and vice-versa. Senator William's bewilderment regarding "why we got away from hanging" is also an example of obscured history. The fact that Senator William's fails to reflect on the racial and historical context of lynching and appears to support an array of alternatives to lethal injections suggests that the way in which we put inmates to death is of little concern to Senator Williams.

Senator Williams also ignores the racialized nature of punishment in the United States and in Tennessee more specifically. The racial connotations depicted in senator Williams comment reinforces the extent to which United

States punishment practices are designed to degrade and target specific populations defined largely by race. African Americans make up 43 percent of Tennessee's death row population, but only 17 percent of Tennessee's total population. More than 1 in 4 black inmates condemned to death in Tennessee from 1977 to 2001 were sentenced by all-white juries. In Shelby County, where 1/3 of Tennessee's death penalty convictions arise, public defenders have caseloads that are 3 to 4 times larger than the national average (American Bar Association, 2007). Michelle Alexander (2010) posits that in an era of colorblindness, it is no longer socially permissible to use race explicitly, as a justification for discrimination, exclusion, and social contempt. Rather we use our criminal justice system to label people of color "criminals" and then engage in all the violence we supposedly left behind. Alexander suggests that it is perfectly legal to discriminate against criminals in nearly all of the same ways that it was once acceptable to treat an African American. Once labeled a felon, the old forms of discrimination suddenly apply, including employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunities, denial of public services, and exclusion from jury service (p. 2). We have not ended the racial caste system in America; we have simply redefined it and America's death penalty remains deeply imbedded within the laws, policies, customs, and institutions that have sustained such a system for decades.

In summary, It is important to understand the arguments calling for the abolition of the death penalty, but it is equally if not more important to understand the arguments calling for its retention and use. Garland (2010) observes that capital punishment in contemporary America is as much about discourse as it is about death, and as much about cultural politics as about the punishment of crime. He states "To understand today's American death penalty, we must try to see its moral power, its emotional appeal, and its claim to be doing justice. We must strive to see in it what its supporters claim to see and not dwell exclusively on its injustices and pathologies" (Garland 2010, p. 7). Analyses like the foregoing has brought to the surface several predominant discursive traits that help explain

how politicians use language to convey a certain reality of the death penalty. This reality is upheld by framing discursive devices such as narrow interpretations of justice, prospects of closure, shifting agency, and obscuring history within a collectivized language that allows capital punishment to continue to make sense in the culture in which it operates. The creative deployment of language also allows capital punishment to adapt to changing social and political environments. What is unique about America's death penalty is its ability to stay relevant by adopting older, outdated forms of execution and framing such regression as progress. More generally, my findings may provide a basis with which to better illuminate how justice, morality, and retribution are portrayed in democratic America.

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

The death penalty has positioned itself within American society as a symbol of justice. A symbol that many Americans have projected their fears of victimization, perceptions of justice, and beliefs about the existence of an objective evil and the value of vengeance as a means to an end. The findings of this study suggest that a drama free abolitionist movement is highly unlikely in the United States. Especially when the language used to legitimate America's capital punishment is deployed in such a way that it resonates with highly valued ideas of justice and closure. Under these circumstances, the more predominant the death penalty becomes in public debate, the more likely that policy makers will actually take active steps towards abolition. However, if political rhetoric is there to reinforce the utility of the death penalty in American culture without an equally powerful counter narrative then the possibility for comprehensive reforms towards abolition becomes less of a reality.

With the European Union pressuring the international community to abolish the death penalty, the United States has positioned itself as a defiant punisher. Despite a widely popular effort to remove the death penalty from western criminal justice systems, the United States has defied the status quo by deploying language that reaffirms that supposed necessity of the death penalty in American culture. Lawrence Sherman's (1993) defiance theory, though forged in the context of a would-be punished person defying a punisher, can help explain the United States unwillingness to recognize the European embargo of lethal injection drugs. Sherman's theory exemplifies the extent to which fair treatment and social bonds contribute to perceptions of legitimacy. That defiance occurs when the receiver of the sanction defines the sanction as unfair, the receiver is poorly bonded to the sanctioning agent, the sanction is stigmatizing, and the receiver refuses to acknowledge the shame of a particular sanction (p.460). In this way, pro-death penalty politicians in the United States perceive Europe's

embargo of lethal injection drugs as an unfair overreach into American domestic policy. The refusal to recognize the legitimacy of Europe's abolitionist stance has generated defiance among politicians who want to see the death penalty remain a fixed component of our justice system. By reinstating the electric chair, Tennessee has circumvented material restrictions in favor of an older, outdated method of execution that can remain independent from European influence. The creative use of language by Tennessee politicians and legal actors to justify this transition is inherently defiant and serves to establish the United States as an exception from the influences of international law.

It is important to note that my findings are limited by the scope of my study. My focus on specific public statements made by Tennessee politicians and legal actors restricts my ability to comment on how language is used in other states to legitimate the death penalty. Also, the discursive devices that were discovered in my analysis are specific to my sample of political statements. This is not to say that discursive themes of narrow interpretations of justice, prospects of closure, shifting agency, target reduction and obscuring history are absent in other discourses. However, my findings do indicate that the institution of capital punishment relies on the creative use of language in order to make citizens, voters, jurors, and policy makers think about the death penalty in certain ways.

The politicians in my study have implemented linguistic gymnastics to convey notions of justice and promises of closure as an inherent attribute of the death penalty. In this way, Tennessee politicians and legal actors have a certain authority in the use of language that legitimates the reinstatement of once abandoned forms of execution. The regression back to older methods of execution is an indication that the death penalty is reaching its logical conclusion, in that, reforming the death penalty to combat contemporary opposition has motivated an activist population to bear witness to the immoral and uncivilized practice of state executions. The highly publicized botched executions of Clayton Lockett and Denise McGuire brought to the forefront images that served as a counter narrative to that which has been portrayed by pro-death penalty

politicians and legal actors. Even with the creative use of political rhetoric to reinforce the death penalty's supposed necessity, a counter narrative is steadily growing as the contradictions of America's capital punishment become more profound. These contradictions are rooted in the false promises of politicians and legal actors who claim that vengeful, retributive justice as meeting the needs of those affected by murder. If anything, the narrative of harm is only reinforced when violence is used as a remedy for violence.

We should focus our efforts on creating a new narrative of justice, a narrative that helps people heal their wounds and move beyond their habits. People exposed to murderous violence need a sustained system of attention and care, instead of a system that prioritizes the state's interest over their own. The denial of the appropriate tools to reach some kind of comprehension of the events that have transpired complicates the narrative justice by forcing strict definition of closure to be generalized to each situation. The dated argument for harsh and dehumanizing justice practices has little place in developed Western thought, subscribing ourselves to the desire to get even only encourages us to reside in a constant state of victimhood. Instead of using language to reform systems of harm to meet contemporary challenges, perhaps language can be used to restore civic trust in meeting the needs of those affected by crime. This means providing the offender with the necessary assistance to acknowledge the harm done, making amends, expressing remorse, and committing themselves to the service of remedying their harm. Thus, vengeance is not a necessary moral response to harm, but one that results in further deprivation of both victim and offender. This new narrative of justice attempts to look beyond the narrowness of justice as we have defined it. The satisfaction that survivors of violence crave is not a vengeful desire to see those that have wronged them suffer, nor is it the sense of duty that is often associated with punishment. Rather, fulfillment derives from the ability to overcome the alienating effect of crime by meeting the needs of survivors and perpetrators in ways that do not subscribe to the continuation of harm.

Further research is needed in order to determine whether the discursive devices present in Tennessee's death penalty rhetoric can be found in the rhetoric deriving from other death penalty states. The lethal injection dilemma is not specific to the state of Tennessee with other death penalty states, including Missouri, Oklahoma, Texas, Arizona, and Georgia discussing the possibilities of reinstating once abandoned forms of execution to combat lethal injection shortages and controversies. Comparing retention rhetoric from other states would allow for a comparative sample of discourse that could be used to make explicit the similarities and differences in the use of language to legitimate the institution of capital punishment between states. An analysis of abolition narratives would also add to the discussion of whether or not counter narratives are expressing similar discursive and semiotic themes as a means of denouncing the adaption of capital punishment to contemporary controversies. Finally, there is a need for more research on how language can be used to construct new meanings of justice and closure that are divorced from the popular notions of vengeance, retribution, and subordination. Restorative and transformative justice literature can assist in this pursuit and can act as a foundation to show that, in fact, we can move beyond systems of harm and free ourselves from the myth that the death penalty affords us.

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