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# Killing History: The Effect of Slavery and WWII on the Death Penalty in America and Europe

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On December 18, 2007, the United Nations General Assembly voted in favor of a symbolic measure to end the death penalty around the world. With 104 countries voting yes and 54 voting no, the bill was a milestone in an ever-growing movement against the ultimate mechanism of state power (The New York Times, 2007). However, as the ranks of countries that elect to ban the death penalty as a violation of human rights rises, the United States is among shrinking company in its insistence to uphold the legal right of the state to hold power over life and death. As of February 2009, 138 countries have abolished the death penalty in either law or practice, and only 59 retain the death penalty as a function of criminal justice. Of those who officially retain it, only twenty-four used this power in 2007. Furthermore, 88% of executions now take place in China, Iran, Pakistan, Saudi Arabia, and the United States (Amnesty International, 2009). Abolitionist countries represent people from all corners of the world that seem to share little else in common: from Ireland to South Africa, from Mozambique to Romania and Mexico, the movement's momentum witnesses additional countries ending capital punishment every year<sup>1</sup>.

While the anti-death penalty stance is clearly not limited to a European mindset, Europe leads the movement. Official statements from the European Union make their position clear:

“The European Union campaigns towards the universal abolition of the death penalty. This stance is rooted in the belief in the inherent dignity of all human beings and the inviolability of the human person, regardless of the crime committed” (European Commission, 2008).

To implement this campaign concretely, the Union now requires member states to abolish the death penalty in order to join the Union. This requirement has no doubt contributed to the growing ranks of anti-death penalty states as more nations wish to gain the economic benefits of the EU.

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<sup>1</sup> Number of countries that have abolished the death penalty by year: 2004: 5; 2005: 2; 2006:1; 2007: 5; 2008: 2 (Amnesty International, 2009).

On the other side of the philosophical spectrum of capital punishment stands the United States, which now supports a minority position against a strong historical ally. Tensions between the European Union and America have played out on the world stage in negotiations over international criminal tribunals and Europe's refusal to extradite persons wanted for serious crimes in the US unless they are given absolute assurance that the person will not be put to death in the US criminal system. It is constructive to understand why each entity has made these choices in order to then understand current international dynamics between two of the world's largest powers. This paper discusses some of the cultural and societal factors that have contributed to the vast differences between Europe and the United States on this important contemporary issue.

#### The United States: Capital punishment's democratic leader

The United States has shown little sign of abandoning its claim that the death penalty can be used as an effective tool against criminals and is a just form of righting criminal wrongs. Since 1976, the states have executed 1,143 people. In 2009 alone, twenty-four persons have already been put to death as of the month of May, fourteen of which occurred in the infamous state of Texas (The Death Penalty Information Center, 2009). Though the *Furman v Georgia* Supreme Court case in 1972 offered an open window to put an end to the practice, the subsequent case of *Gregg v Georgia* four years later reaffirmed the constitutional use of the death penalty and firmly shut the window against abolition once again.

In addition to these two cases, further limitations on the use of capital punishment have been enacted by the Supreme Court in several notable cases since *Gregg*<sup>2</sup>. *Woodson v. North Carolina*, also in 1976, ruled mandatory capital punishment for any crime unconstitutional.

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<sup>2</sup> Cases chosen from collections by Menez and Vile (2004), Acker (1998), and Legal Information Institute (2008).

*Corker v. Georgia* in 1977 and *Kennedy v. Louisiana* in 2008 rejected the death penalty for rape crimes against adults in the former and children in the latter. Out of concern for those who do not have the mental capacity to be held accountable for murder, the Court ruled that those who commit rape at the age of 15 cannot be put to death (*Thompson v. Oklahoma*, 1988), as well as those with mental retardation (*Perry v. Lynaugh*, 1989) and those who were otherwise mentally incompetent at the time of the murder (*Ford v. Wainwright*, 1986). Many other various cases have modified death penalty procedure in the federal lower courts. In each instance, the basic principle of capital punishment as a form of justice has been called into question and been positively reaffirmed.

Through all these affirmations of legality, the death penalty has become extremely limited in legal scope yet at the same time further embedded in the US judicial system. In practice and policy, murder has become the only crime eligible for capital punishment in this country today. Numerous pieces of federal and state legislation have reformed the process from conviction to death in an attempt to make the convict's death arrive sooner. When defendants are sentenced to death, they regularly draw out further appeals for an average of twelve years and when their options run out, their death is a highly controlled event (Garland, 2007). By the time a convicted person reaches his or her time of death, dozens of authorities have reviewed and confirmed the decision. This intensive review, death penalty advocates insist, shows that the practice cannot be abused as it was in the past, and that those who reach death are truly "deserving" of it.

However, these limitations have not stopped the growing numbers of death row inmates. The number of people sentenced to death row *has* dropped dramatically since a peak in the late 1990s. Nevertheless, 3,309 people sat on death row in January 2008 (The Death Penalty

Information Center, 2009). Nor have these limitations erased the potential for several important errors in the system's application. First and foremost, death sentencing will never be completely error-proof, even with the admission of DNA evidence and the advancement of technology in this regard. The capacity for error has plagued death sentences since their creation, and continues into modern times (Stevenson, 2004). There will always be a certain amount of uncertainty in matters of life and death no matter how many times the decision is reviewed. Even strong supporters of the death penalty will admit this (for an interesting discussion on this seemingly moral contradiction, see Kozinski, 2004 & Pojman, 2004). Secondly, those who are put to death are disproportionately lower-income nonwhites, as I will examine shortly. Lastly, as Garland (2007) points out, the maze of laws that have been put in place to protect defendants have since meant that 66% of all capital sentences will be reversed at some point in the appeals process. Garland prefers to frame this positively, as meaning that executions are extremely rare. However, Stevenson (2004) takes another point of view: why is it that the death penalty process is so error-ridden that two-thirds of all sentences are found to be somehow flawed and reversed? Clearly, there is something strange about a procedure that is supposedly supported by undeniable, court-tested facts yet is constantly found to be faulty in individual cases. These concerns over the death penalty remain unresolved.

Capital punishment may be entrenched in the United States' political mainstream, but this does not mean that the death penalty is carried out with no resistance. In fact, challenges to the death penalty come in many forms around the country. High-profile cases of death-row inmates wrongfully convicted have captured the public's attention, if only for a time, to the gravity of making life and death choices and the consequences if this choice is incorrect (for an example, see Stevenson, 2004). Federal and state lower-court judges, many who have worked to discount

the death penalty through stays of execution and conviction reversals (Kozinski, 2004), have done what is possible in their position to slow the rate state executions. The death penalty has been strongly attacked outside the courtroom as well. Perhaps most significantly, fourteen states plus the District of Columbia have banned the death penalty<sup>3</sup>. In the state of Illinois, former Governor Ryan commuted the sentences of all death row inmates in the year 2000 (Ryan, 2004). After discovering new evidence that the state's death row population held thirteen innocent persons, the governor decided that the practice held too great a risk of putting innocent people to death. In Ryan's words, there was a "fatal flaw" in the system that made capital punishment "inherently unfair." Though the death penalty was not subsequently banned in Illinois, Ryan's decision sparked publicity and brought greater scrutiny to a practice that the American public still supports in large numbers.

#### Righting Wrongs: Traditional explanations for capital punishment

To those who seek an explanation for why the death penalty continues to be used in the US, several prevailing arguments are routinely suggested. The first is the assertion, supported with demonstrably flawed research by Isaac Ehrlich and Stephen Layson, that capital punishment serves as a deterrent to murder (for an evaluation of the research, see Bedau, 2004). Under this reasoning, the death penalty will prevent a number of would-be killers from carrying out their crime because of the potential consequence of their own death by the state. However, contemporary criminologists have largely come to the conclusion, based on empirical evidence, that a deterrent effect by using the death penalty is slight at best. A survey of seventy criminology experts showed that 85% believed that research does not, nor ever has, shown a

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<sup>3</sup> Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin (The Death Penalty Information Center, 2009).

deterrent effect from the death penalty (Radelet & Borg, 2000). As part of the same research project, two-thirds of 400 police chiefs and county sheriffs from around the country responded that the death penalty does not prevent murder. Professionals both studying and fighting crime have come to realize that putting murderers to death does not stop other people from murdering.

In response to the mounting evidence against deterrence, supporters of the death penalty have switched their arguments. Now they use the idea of retribution as their primary defense. Under this reasoning, putting an offender to death is the only way that justice will be achieved; it is required in order to right a criminal's wrongdoing (Radelet & Borg, 2000). In fact, according to this line of thinking, the death penalty is the *only* punishment that is proportional to the victim's death. Not surprisingly, both sides of the debate produce anecdotal stories to support or deny the retribution argument, and each argues that their support is framed out of concern for the families of the victim (for examples, see Bedau, 2004 and Kozinski, 2004). In order to debunk both common theories of deterrence and retribution, Americans must reorient its attitude toward punishment, both morally and pragmatically. Those advocating abolition of the death penalty must first argue that there is no moral element to it. However, abolitionists must also address pragmatic concerns of punishment. They must argue that there is a more effective method of punishment than death. I will discuss this dual reorientation at length in the conclusion of this paper.

#### Reflecting History: Race relations and the death penalty

Though deterrence and retribution theories may be most often cited, these justifications are not fully adequate to explain why the US continues to use capital punishment to such a degree. Crime rates have not significantly declined since it was reinstated. Imperfections in its use have been consistent, despite the many legal efforts to correct them. In the twelve states that

have banned the death penalty, murder rates have not spun out of control, contrary to the predictions of deterrence advocates (Ryan, 2004). Arguably, the death penalty's main point is to send a message without much utilitarian value. We must ask: what is the message that death penalty advocates in the United States are trying to send by putting criminals to death? Why is the United States a pro-death penalty country in both policy and popular belief, when there are obvious defects in the way in which it is carried out, alternatives to its practice, and strong challenges to its use? A deeper, more complex issue must be at stake other than the intellectual and moral pretenses mobilized by supporters. The answer, I suggest, lies primarily in the United States' historical legacy of race relations, which continues to shape the outcomes of death penalty policy and practice.

One consequence the civil rights movement was a challenge to the use of the death penalty. For the first time, in the 1960s and 1970s, facts that pointed to racial discrimination in all levels of the justice system came to the forefront in the country's consciousness. It became increasingly clear to many Americans that the death penalty was used in a racially disparate, unfair manner (Newport, 2007). Reforms to the process over many Court cases in the succeeding decades sought to resolve this uneven meting of justice. Once these issues were publicly addressed through court decisions, many Americans once again returned to their belief that the death penalty is an appropriate punishment for murder. Today, the percentage of adults who hold positive views of the death penalty is 64%; it has remained relatively unchanged since the '70s, ranging from 57% to 80% (Saad, 2008). White people favor capital punishment in far proportion than any other racial group. Even during the civil rights movement's challenges, at no point has white support dipped below a majority. In addition, higher family income is the strongest social-group variable among whites that influences death penalty support (Soss,

Langbein, & Metelko, 2003). It seems that previous reforms have reassured better-off whites, even as racial minorities continue to be unconvinced that inequities in death penalty policies have been resolved. While 70% of whites favor its use today, 56% of African Americans oppose it (Saad, 2007). At no point since 1972, when this measure was first taken, have blacks and whites agreed on the issue. The differential between both groups' approval has consistently remained at 25%-30%. Because white people remain in positions of power superior to their proportion of the population, these beliefs are reflected in death penalty policy and have continued its use.

Population composition by county has proven to reflect these views: as the percentage of black people in a county's population rises, so too does white support for capital punishment (Soss, Langbein, & Metelko, 2003). This is in line with the theory of minority threat: as the minority population in a community rises, lower- and middle-class whites feel increasingly threatened (Jacobs & Carmichael, 2002). Those in power then seek to suppress any potential racial challenge to their power and privilege. Through increased use of punishment, ranging from greater police presence to use of the death penalty, authorities ensure their hold on power by restraining and closely monitoring the actions of the minority.

This practical use of power is not the only dimension of punishment along racial lines: it is also a concrete symbol of one group's domination over another. Challenge to power, broadly defined as any action that defies authority, will be met with the greatest degree of punishment available to those with power. The death penalty, then, is also the condensation of white power against minorities as the harshest method of punishment in a demonstration of control over an individual. In other words, capital punishment is the highest degree of power available to authorities as an illustration of dominance. Not only does this symbolic aspect of the death

penalty send a clear warning to the rest of the group under control, but it has the added advantage of the claim that it guarantees justice and safety for the rest of the community.

Though it is an important distinction, race does not act alone as a defining characteristic of states with the death penalty. Economic inequality is another significant contributor. As Jacobs and Carmichael (2002) show in their statistical analysis, states with higher levels of economic inequality combined with a greater proportion of African Americans are much more likely than states with lower income disparity and fewer African Americans to employ the death penalty. This fact is consistent with theoretical explanations that argue that punishment policy is shaped by “the menace of an economic underclass” (Jacobs & Carmichael, 2002). Marxist theorists conceive punishment as a way for those in power to control a large, economically stratified society. Without repressive means of keeping order, such as the death penalty, elites’ positions are in danger, they say, as those at the bottom of the economic ladder become aware of their condition and seek to change the way society is organized. Thus, according to this perspective, the death penalty is an index of the degree to which whites feel threatened by a growing minority population<sup>4</sup>.

The racial dimensions of the death penalty are most apparent in the South<sup>5</sup>, where the death penalty is most prevalent. In order of the number of executions since 1976, the top eleven states are in the American South, nine of which were formally part of the Confederacy and two

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<sup>4</sup> However, it would be a mistake to attribute white support to racial repression and inequality alone. Other personal characteristics of a person may make them individually more likely to support the death penalty and deserve to be motioned, though I am not choosing to elaborate on these. As Soss, Langbein, and Meteko’s (2003) research identifies through previous survey methods combined with census records, self-described conservatives and Republicans, those who favor individualist perspectives, higher-income individuals (as mentioned above), and those who more strongly believe in authoritarianism also help to explain why whites support the death penalty in such strong numbers.

<sup>5</sup>The Southern region is defined here according to FBI regional categories and includes the following states: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Maryland, West Virginia

informally associated with it<sup>6</sup> (The Death Penalty Information Center, 2009). Out of the total number of executions since 1976, approximately 89% have taken place in the South (Stevenson, 2004). Debunking a deterrence claim, the FBI's annual crime report for 2007 found that the South endures the highest violent crime rate in the country at just over 43% of total recorded incidents. More importantly, 45.8% of all murders took place in the South (Federal Bureau of Investigation, 2008). Given the South's troubled track record on racial matters from the slavery era to today, these numbers suggest that the death penalty reflects something deeper than deterrence or retributive theories and has much more to do with race.

As the aforementioned poll numbers of support for the death penalty show, the effects of the death penalty used as a tool against minorities is reflected in the disparity of support that white and black people give the practice. This difference on views of capital punishment arguably comes from the degree of exposure to these policies and the criminal justice system in general. Several studies have found that cities with larger minority populations pour more financial resources into police protection and prison systems and experience higher arrest rates than do areas with a smaller minority population (Jacobs & Carmichael, 2002). As a consequence of increased police scrutiny in minority neighborhoods, it is therefore more likely that minority-perpetrated crime will receive more attention and that those offenders will be prosecuted. It should come as no surprise, then, that 42% of death row inmates nationwide are black, 11% are Hispanic, and 45 % are white (The Death Penalty Information Center, 2009). These proportions do not reflect these groups' actual numbers in the total population<sup>7</sup>, meaning

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<sup>6</sup> In descending order of number of executions: Texas, Virginia, Oklahoma, Missouri, Florida, North Carolina, Georgia, South Carolina, Alabama, Louisiana, Arkansas.

<sup>7</sup> According to the US Census of 2000, African Americans composed 12.06% of the population, Hispanics 12.55% and Whites 69.13%. (Social Science Data Analysis Network).

that it is more likely for an individual African American to directly or indirectly experience capital punishment than an individual white person.

In 1987, the Supreme Court was confronted with these facts in the case of *McCleskey v. Kemp* (Menez & Vile, 2004, pp. 419-420). The attorneys for the accused man, McCleskey, argued that racial bias had unfairly affected the application of the death penalty in Georgia, where he was sentenced. In a 5-4 vote, the Court rejected this defense. Though they accepted the statistical data, the justices decided that it was irrelevant. In order to use racial bias as a defense, the majority placed the burden on the defendant to prove that this bias was a factor in their *individual* case, not just a context that surrounds the United States' justice system (Radelet & Borg, 2000). With this case, the Court ruled that a systemic pattern could not be used as a general argument against the death penalty. In essence, the Supreme Court was condoning racially discriminatory practices. Contemporary statistics show that this tremendous burden of proof, as expected, has not stemmed racial bias in capital sentencing. In response to this criticism, some supporters of the death penalty have openly admitted that mistakes will always be committed by a system run by imperfect humans, including racial bias in sentencing and capital punishment. As they put it, discriminatory consequences do not make the US system of laws and practices wholly unjust or worthy of abolishing by themselves (see Pojman, 2004).

#### Discriminatory Effects: Economic inequality and the death penalty

Why are these racially discriminatory practices possible and even acceptable in our society? As Kaplan (2006) explains, American cultural ideas of what constitutes success or failure in a person's life influences America's exceptional punishment practices. According to the implications of conservative social policies that developed in the late 20<sup>th</sup> century, individuals possess worth based solely on individual strength and resolve to win or lose in a

laissez-faire economic market. Essentially, these policies, which increase poverty due to laws that favor those with wealth, have formed an “executable class” of people. These are poor citizens who have utterly failed in life according to the standard established by the individualist, pull-yourself-up-by-your-bootstraps rules of conservative economic policies. The “executable class” is a group that does not have what society has determined to be the qualities required to achieve equality as a human being. Thus, they are excluded from any idea of deserved human rights. This situation bears resemblance to a basic principle of the eugenics movement in Germany, “Lebensunwertes Leben,” or Life Unworthy of Life. Motivated by a fear of “degeneration,” the belief that the health and strength of the Aryan race would be fatally compromised by the genetically sick, the Nazis ordered the medical killing of this group of people. “Unworthy life,” however, soon came to include Jews, gypsies, homosexuals, the disabled, and criminals, who all came to be considered a threat to the race. The medical practices of Euthanasia became the model for Genocide, which also deemed millions of individuals to be beyond any amount of value<sup>8</sup>.

While other Western democracies have banished the death penalty, the US continues to justify its use by the same logic as the “life unworthy of life” rationale that underlay the eugenics movement. If these people, who have already been deemed “failures,” commit the worst crime of murdering someone else, they then lose their right to life – the worth of which had already been in question. Taking these people’s lives serves the interest of the rest of society by “cleaning up” the population. According to Kaplan’s (2006) account of capital punishment,

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<sup>8</sup> Though I am not directly equating the philosophy of capital punishment to the ideology of National Socialism, the parallel bears contemplation. In both Nazi Germany and the American punishment system, a group of people have been determined to be without any significance to the rest of the population and thus executable. In a nation that trumpets the idea of individual human rights as America does, this conflict between values and the practice of capital punishment should be questioned. While our country admonishes other nations for blatantly ignoring human dignity, we must not forget that we, too, have faults.

American values of egalitarianism and individualism have produced a double-edged sword of a class of “losers” who by “losing” demonstrate their unworthiness. They are considered by the mainstream to be so utterly hopeless and marginal that “they deserve whatever punishment comes their way, including and especially execution” (p. 164). Arguably, this cultural logic can be extended to other harsh surveillance and punishment practices around the country, including determinate sentencing like Three Strikes laws and instances of increased police scrutiny and brutality. Each instance centers on ideas of failure and the loss of respect that comes with breaking cultural rules.

Under these ideas of individualism and the types of punishment that they determine, it theoretically doesn't matter what race the criminal is. Each new situation of criminality is considered neutral and applicable to the ideal of individual determination. In fact, we know that minority groups in the US face economic challenges that proportionally far exceed those of whites which make them far more likely to “fail.” 25% of African Americans and 20% of Hispanics are in poverty while the rate of non-Hispanic whites in poverty is about 8%. Fewer than half of each minority group own homes, compared to 75% of whites (Crain & Kalleberg, 2007). 25% of black and Hispanic households have no financial assets available, compared to 6% of white families (Oliver & Shapiro, 2007). 19% of blacks live in neighborhoods with concentrated poverty, in which significant numbers of adults are unemployed, have dropped out of the labor market, or have never entered it. Furthermore, African American wages are far below those of whites as well as Hispanics: for the bottom quarter of the earnings distribution for the years 2000 through 2004, African American male wages averaged \$1,078 while comparable male Hispanics earned \$9,623 and white males earned \$9,843 (Wilson, 2007). Perhaps these

numbers reflect the fact that only 55% of African Americans and 53% of Hispanics graduate from high school, compared to 78% of their white counterparts (Orthner, 2007).

As Brown et al. (2003) describe in detail, these staggering comparisons (and many more like them in other areas of existence) create a life subjected to far more crime and subsequent punishment, producing even harsher and more stunted economic opportunity as the person with a criminal record attempts to re-enter the marketplace. Though crime *is* a problem among minority communities, as Brown et al. suggest, we should not forget the context that creates this situation nor the price we ask many people to pay through punishment. When, as in the state of California, black men are five times more likely to be in state prison than in state college, there is a problem that must be confronted. As crime and poverty intertwine in a person's life in a downward spiral, the death penalty becomes part of this equation when it is statistically more likely for a murder to occur as a result of any number of potentially dangerous situations that arise from desperation and lack of economic options. I am not suggesting, however, a causal relationship between poverty and committing the crime of murder and subsequently facing the death penalty – this would be a spurious assumption to make. Being poor does not necessarily push people to lose all compassion and rational thought, though it is psychologically possible for this to happen in some individuals, poor or wealthy. What I am suggesting is a correlation between these two things: each state's death row is overrepresented by poor minority individuals, many of whom have a previous criminal background. Statistical analyses clearly indicate a cycle of poverty and violence, as Brown and many others have discussed. It is an unfortunate reality that having a record of jail sentences is a strong predictor of future criminal behavior, many times sparking an escalation of violent criminal activities. Hence, as punishment is meted out on these individuals, it becomes more likely that they will end up on death row later in life.

### Slavery and Lynching: The death penalty's predecessors

In addition to systemic conditions in the United States that help to explain our death penalty policy, Kaplan (2006) suggests that the American punishment system has actually come to *replace* the system of slavery that owned the lives of millions of Africans. The link connecting slavery and punishment is presented in the 13<sup>th</sup> Amendment, which abolished slavery in 1865: “Neither slavery nor involuntary servitude, *except as punishment for a crime whereof the party shall have been duly convicted*, shall exist within the United States” (emphasis in original, Kaplan, 2006, p. 161).

As Dayan (2007) documents, the connection between slavery and harsh punishment has a long history in this America’s lax interpretation of the Eighth Amendment phrase “cruel and unusual.” In fact, through a study of Supreme Court cases interpreting the minimal needs of slaves and the amount of force that could be used against them at the owner’s discretion, one can see the significant history of case law that supports the mistreatment of persons considered less-than human in our society. Dayan carefully describes the transition between slavery and the use of the prison system to control ex-slaves, from the post-13<sup>th</sup> Amendment rulings right down to contemporary support for harsh (yet Constitutional) treatment of prisoners under the Rehnquist Court. As she describes it, prisoners have become the new category of persons “dead in law” where slaves used to exist (p.46). They are substandard bodies without minds (p. 90).

An equally important feature of the slavery-punishment connection must be recognized in the social hierarchy that slavery created. Unlike Europe, where most citizens can identify with living a life on the bottom of the economic ladder in at least some point in their ancestry, white Americans cannot identify with life on the bottom of the American social order (i.e. with African slaves). Although the legal institution of slavery was abolished after the Civil War, the

ideological foundation on which it was established, the presumed inferiority of blacks, persisted. The racial divide became the foundation of a dual system of justice. The hierarchal assumptions that connected post-emancipation punishment with slavery made it much easier to imagine offenders as nearly subhuman. Harsh, degrading punishment – including the death penalty – made sense to a society unable to shed its dehumanizing images of the people it had enslaved.

Punishment in the legal system was not the only mechanism designed to implement racial hierarchy: in place of slavery rose the Jim Crow laws of the South. With these laws also came the informal punishment system of lynching, characterized by extralegal accusations of wrongdoing by whites against blacks followed by the brutal death of the “offender.” Lynching had the silent endorsement of the justice system and political leaders who turned a blind eye to the practice and those who perpetrated it. Under Jim Crow, African Americans were the victims of both a culture that severely devalued them and a justice system that denied any wrongdoing against them.

This pattern of relations under the system of lynching did not end when the act was finally banned. In fact, as Garland (2007) elaborates, the death penalty has now come to be the system that has replaced lynching. From slavery to lynching to the death penalty, this country has continued to find new ways to control the minority population. At first glance it may seem that lynching is very different from capital punishment. The death penalty is a strictly legal procedure; it is not a brutalized, violent media event for the supposed benefit of the victim in the name of justice, and it is not openly racialized. The death penalty is a sanitized, state-sanctioned procedure with a claim to neutral justice. However, Garland cautions us that we should regard today’s death penalty “not as [an] institutional accident or [an] arbitrary feature but instead [a] carefully crafted cultural form, the result of a definite historical process” (p. 456). In other

words, the death penalty can be understood as the mirror image of lynching, as Garland metaphorically describes it. Substantively, many of the same social forces that characterized lynching now characterize the death penalty. Lynching was heavily concentrated in the same states that now carry out the highest number of executions; it is driven by local politics and imposed by juries “in accordance with popular judgments of dangerousness and desert” (p. 458); it is justified in terms of providing justice for the victim; and it is still used on perpetrators who are perceived to be too “evil” for any other more “lenient” punishment. Garland reminds us that this does not make the two practices equal in all respects. What this comparison does, however, is provide a context for the American system of capital punishment and the means to compare this country to other Western democracies. Both of these are crucial in order to understand the capital punishment in America. In light of this perspective, the death penalty becomes less the necessary justice for criminals of heinous crimes that its supporters claim, and more an institutionalized practice that carries tremendous historical baggage.

The election of President Obama was hailed as a turning point in race relations for this country. Still, the election of a black president cannot be used as proof that all forms of racial discrimination have been erased – they have not. Each day, persons of color pay the price for American rejection of human rights in favor of an individualized approach that masks deep economic inequality, discrimination, and a troubled history of race relations that reverberates through today’s justice system. As I have attempted to show, this rejection often comes in the form of the death penalty in the South, which is quick to punish offenders by taking away their very existence. The death penalty is not simply a neutral form of supposed justice, as its supporters argue, but the continuation of a society structured according to racially biased beliefs and the laws that followed from them. The death penalty in America serves only the interests of

those whose power might be threatened without this tool of control. Rather than airbrush the inherent racism of the death penalty away, we must seek to end the practice in order to realize equality and justice under the law, regardless of racial or economic background.

### The European Union: Abolition as identity

The European Union's position on the death penalty is the ideological opposite to that of the United States. As referenced at the beginning of this paper, the EU's words in official documents are uncompromising in establishing its foremost values. For over ten years, Europe's leaders have championed the claim that the death penalty is a violation of this asserted human dignity – a violation of human rights. Thus, the practice is banned in all member states by executive or legislative action when the charter is ratified for the nation's membership in the Union. Since 1998, the EU charter has reflected this prominent focus on human rights in many other stances against questionable practices, including torture and gender equality (Peshkopia & Imami, 2008). Significantly, the EU has singled out the death penalty as an item of special importance in the charter. In a list of several serious banned practices, Europe has prioritized the death penalty as its first explicit target<sup>9</sup>. Why is it that the EU has chosen capital punishment as its first object of reform, from among the myriad of human rights abuses that occur throughout the world every day? The answer, as in the United States, lies in the cultural history of Europe and the Western European democracies which led the establishment of the organization.

From Schmidt's (2007) point of view, the difference between the US and Europe stems from the basic groundwork of their differing governing ideologies. The US was founded on a radical principle for its day: "universal" political rights; although, of course, this was a meaningless assertion at the time for anyone who was not a propertied white male. Nonetheless,

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<sup>9</sup> Human trafficking, racism, torture, and the rights of children, minorities, indigenous peoples, and the disabled are all listed after the death penalty as rights that the EU champions (European Commission, 2008).

the seeds of a democratic culture were planted during the country's early history and a democratic and egalitarian sensibility soon became a consistent feature of American political culture and argument. Not surprisingly, a strong impulse to protect the ideal of American values as universal developed as this political culture grew in strength. This partly explains the often highly charged moral character of policy disputes in both US domestic and foreign policy. In contrast, most of Europe during the same time period was based on "ethnic affiliations, war and common history" (p. 123). Hence, policies were based on "state self-interest and realpolitik" rather than a nationwide claim to morality. The strongest exception, of course, became the Soviet Union, which challenged the ideological principles of Western democracy in general and the United States specifically. Letting the US take the lead in combating the Soviets' value system, Western Europe chose to follow in the American slipstream, continuing to be more concerned with self-preservation than the ideological fight. Schmidt's assertion is that even during the height of the Cold War Western Europe was, for the most part, uncomfortable with articulating a moral identity.

However, as Schmidt (2007) further chronicles, this no longer seems to be the case today. The modern European Union has established its own identity as utterly separate from the United States. As the Cold War ended and the world was no longer focused on the fight between the two lone superpowers, the EU regularly began to speak out on moral issues, a fight waged politically through the extension of enticing membership benefits and negotiations with other countries. Wanting to distance itself from the political power of the US in the post-Cold War era, the newly formed body sought to create its own ideological identity through picking a pet project that could be engaged in both foreign and domestic policy realms. Thanks to the work of Amnesty International's long-standing and influential campaign against capital punishment, the

death penalty had already become an identified human rights issue in Europe and lay ready for the organization to adopt its cause. The European Union used the moral banner of human rights, previously the rhetorical claim of the United States, as the primary argument against the death penalty. Since then, Europe has invoked capital punishment against the United States as a way to morally distance itself from the US, especially as the moral image of America has drastically declined around the world in the wake of torture, the Iraq war, and extraordinary renditions.

While there are many other countries which have yet to ban capital punishment in addition to the US, the latter has become the point of contrast for Europe's more "advanced" position.

Essentially, Schmidt explains, the EU has created a continent-wide sphere of moral superiority on an issue practice that has become a prominent feature of the organization's identity in the world.

Although European politics has shown greater willingness to take on moral issues, anti-death penalty adherence is largely a position taken only by elite leaders. Many citizens are not yet convinced to take this position. As *The New York Times* reported, support for the death penalty varies across the continent from a low percentage in Scandinavia to 65% in Britain – numbers that are very similar to national polls in the United States (*The New York Times*, 2001). In Eastern Europe, anti-death penalty sentiments are even shallower than in Western Europe (Peshkopia & Imami, 2008). If it were not for the requirement of EU membership, it is unlikely that these previously Soviet countries, including Russia, would have taken the same steps against the death penalty. In fact, the leader of Belarus has recently come out in open opposition to the ban with the full backing of 80% the country's population in a nationwide referendum. However, it is noteworthy that these statements and actions have not pushed Belarus or other countries to leave the EU umbrella based on the opposition. Faced with this portion of contrary

public opinion, the EU itself has admitted that anti-death penalty laws have not resulted in a groundswell of universal support across its area of control. On the other hand, there have not been any popular revolts against these decisions by the elites, either. As many scholars have suggested when writing about European popular opinion, it seems that most citizens don't have strong enough feelings on the issue, even if they do disagree, nor are they motivated to back up these feelings through action in order to swing EU decision-makers in the opposite direction.

#### Death Aversion: Europe's cultural response to war

But to dismiss the significance of the anti-death penalty movement in the European Union by saying abolition is simply the realm of the elites is to misread the situation. Historical events are more important in explaining the shift toward human rights consciousness of the continent, making Europe an unsurprising place to take up the cause against the death penalty. The primary event shaping this awareness is World War II, a tragedy that decimated European infrastructure and morale, and ended millions of lives. Though the war occurred decades before the anti-death penalty movement gained much traction, the trauma of war dramatically altered European culture. Unlike Americans, who did not face such severe sacrifices or face-to-face combat in the homeland, Europeans could not escape the violence that engulfed the continent for six years, just twenty years after the ravages of the First World War. With families torn apart by death, houses, roads, and bridges demolished, entire ethnic groups displaced, and populations attempting to recover from brutal German occupation, the European frame of mind was profoundly affected by the war and its aftermath<sup>10</sup>.

Robert Jay Lifton, a psychologist, has studied in depth the effects of war on individuals and society. Through research with survivors of the bomb at Hiroshima, veterans of the Vietnam

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<sup>10</sup> See Mazower (1998) for a discussion of World War II, the destruction that resulted from it, and the actions that the continent has taken afterwards to repair the damage.

War, and survivors of the Holocaust, Lifton (1988) developed his theory of “death immersion,” the process one goes through in the aftermath of a traumatic event involving death. This process is associated with post-traumatic stress disorder in individual survivors, but death immersion also includes the recovery phase of trauma when the person attempts to make sense of the event. Survivors must create meaning in light of the experience, and try to personally figure out how to fit into the world of the living after being immersed in death. In addition, they must contemplate larger issues of human connectedness. Survivors may yet be locked into guilt which prevents resolution: the image continually recurs in their mind, making them question their actions when they were in the midst of the experience. The survivor mentally re-enacts the experience with different actions to discover different outcomes, such as “preventing others from dying, taking bolder action of any kind, experiencing strong compassion and pity, or perhaps suffering or dying in place of the other or others” (p. 20). The problem is that the survivor is haunted by these reworked images that can neither be truly re-enacted nor put aside. Herein lies the potential for “moral growth through suffering.” As Lifton puts it bluntly, survivors of trauma have a choice: they can either remain locked into this suffering of continually reliving the experience or use it as a point of growth and insight.

Though Lifton has focused mainly on individual survivors, this concept of death immersion and the process of recovering from it can be applied to whole countries as well. Just as an individual must grapple with the psychological consequences of trauma, so too must societies collectively as they try to rebuild their country. After being surrounded by destruction and death, people as well as countries must figure out what this trauma means for the future – they must “look backward as well as forward in time” (Lifton, 1988, p. 28). This means that a re-formulation of the event must take place so that new significance can be created out of it and

ensure that the rest of one's existence is not itself devoid of meaning. Without this, unresolved conflicts will plague the survivors with "death anxiety, death guilt, psychic numbing, and immobilizing anger" (p. 26). In Europe, the experience of death immersion produced a re-formulation of the meaning of World War II that resulted in changed perceptions of the meaning of society and the role of the state through the creation of the EU. Rifkin (2004) has put it thus:

Unlike past states and empires whose origins are embedded in the myth of heroic victories on the battle-field, the EU is novel in being the first mega governing institution in history to be born out of the ashes of defeat. Rather than commemorate a noble past, it sought to ensure that the past would never again be repeated.

Part of the way European leaders sought to ensure a new order, conscious of their cataclysmic recent history, involved creating a strong welfare state, and later, aboliting the death penalty.

In Schmidt's (2007) explanation, the war informed Europe's international relations and spurred the development of the EU with the newly formed integration of the continent in shared experience. Linking with Lifton's idea of death immersion, Schmidt asserts that the brutal, inhumane destruction of the war actually "ingrained in Europeans a reluctance to sanction violence or use force to settle disputes more generally" and instead focus on negotiation and rehabilitation (p. 132). Surrounded with destruction after the war, Europeans decided that they needed an emphasis on human rights in all areas of life, through the organization of the EU and the willingness to relinquish a certain amount of sovereignty through membership. A primary element of the present Union is the abolition of capital punishment. A consensus in the face of incredible destruction forced Europe to decide that this was the only way that they would redress the experience of World War II.

### Europe's Dream: The welfare state and abolition

The concept of international human rights was not the only commitment that took hold in postwar Europe. As Europeans grappled with reformulating the trauma, something else emerged from the experience: the new "European Dream" (Rifkin, 2004). In contrast to what is commonly known as the "American Dream," the European version of freedom "is found not in autonomy but in embeddedness." The European Dream is not as intensely individualized as the American Dream, and attends more to the welfare of those less fortunate and attempts to expand this vision to others through diplomacy, economic assistance, and aid. Problems are viewed more systemically in an interconnected world.

This dream is reflected throughout the European Union's proposed constitution. The original text states that the organization is committed to a *social* market economy (emphasis mine), protection of the environment, the promotion of peace to combat social exclusion and discrimination and the promotion of social justice, protection, equality between the sexes, and solidarity between generations, among many other values. Though much of this proposed constitution reflects the United States' Bill of Rights and the Declaration of Independence, much more of it contains concepts that are alien to American political culture at such a high level of governance.

The necessity of a universal welfare policy becomes abundantly clear in order to fulfill much of Rifkin's suggested European Dream (2004). Immediately after the war, in fact, the need for strong welfare policies was nearly taken for granted in countries across the continent that had to deal with war-created poverty and a decimated economy. Individual countries began to implement free healthcare provisions, state pensions, and food, housing, and equal education programs in an attempt to provide a safety net that would strengthen their economies and ensure

the same for future generations (Mazower, 1998). In a tangible sense, Europeans rejected the American Dream's ideology of individualism in exchange for the idea that people had to work together, and even to sacrifice, for the benefit of the entire nation and continent. By the time the EU gained more members and power in the decades following its establishment in 1951, the concept of the welfare state had become integral to EU policies and is now reflected in the proposed Constitution. The nationalism that had helped push the continent into the chaos of two world wars was subdued by revenue-sharing projects and the implementation of additional welfare programs across the EU's authority. With these welfare state ideas cemented into the European belief structure through policy, the abolition of the death penalty was seen in the 1990s as a natural progression in the need for human rights across all aspects of society. Abolition went to the "very heart of their new dream" (Rifkin, 2004).

#### A Changing World: Globalization and the death penalty

However, the rest of the world has obviously not bought into Europe's vision of societal order based on universal human rights and a strong welfare state. As Europe went on with its work to make the continent a more socially just place, a new phenomenon took hold of the entire world and is now threatening this vision: globalization. With the relaxing of trade laws as part of the conservative-minded shift in both Europe and the US beginning around the 1980s, the global economy was transformed. As corporations find it cheaper to move their production to countries with lower labor standards and cheaper prices, the Western world finds itself with fewer moderate-wage jobs and more demands on social services as wealth inequality grows. Though globalization has certainly negatively affected both the US and Europe, its consequences have not been uniform in each place. As Federici and Caffentzis (2001) explain, the "balance of power between citizen-workers and the state" in Europe ensured that even as globalization

pressured the economy, citizens were better protected than in the sparser United States' safety net (p. 110). In fact, they note that this difference in the worker-state relationship harkens back to the historical consequence of slavery in the US. While the US was busy for more than half the 20<sup>th</sup> century maintaining an apartheid-like state even after slavery ended, Europe was working during the same time period to defeat fascism and rebuild after war – part of which was, of course, the creation of the welfare state. Hence, by the 1990s when many developing countries, such as India and the former Soviet Union, opened their doors to foreign capital, Europe was far better equipped to handle the effects on its workforce than was the US.

Federici and Caffentzis (2001) further develop the claim that this situation has much to do with why the United States has continued to employ the death penalty while the European Union has continued to do its part to abolish it in increasing numbers of countries. Without the same commitment to social welfare equality which existed in Europe, the United States was more easily persuaded to adopt conservative, neoliberal policies that further eroded an already sparse safety net system. In contrast, though much of Europe saw an increase in conservative ideology in governance during this time as well, the welfare state had already become so entrenched into the psyche of Europeans that dismantling the system proved to be limited by popular political opinion (Mazower, 1998). The connection to the death penalty, they suggest, is that the same neoliberal policies that were employed to encourage globalization also created the need to use harsh criminal punishments against the American people in the face of increased poverty (this is the economic threat theory I have referenced in my discussion of American capital punishment, above). In order to protect their position as elites in an increasingly economically stratified society, American leaders chose to use the death penalty as a primary mechanism to control the population. In other words, Lyndon Johnson's War on Poverty was

traded for neoliberal policies that waged war against the poor and necessitate repressive mechanisms (Federici & Caffentzis, 2001, p. 101). On the other side of the Atlantic, with its established welfare state firmly in place, Europe's leaders did not have to employ this type of control against those angry about their position in society when globalization hit their economy. As Federici and Caffentzis explain, it is only "the construction of an alternative to globalization and, specifically, the construction of a non-exploitative alternative to capitalism that can fully dissipate the threat of [and necessity for] legal murders" (p. 102).

#### Colluding Factors: Immigration, the economy, and the death penalty

Though it may be easy for liberal-minded Americans to paint a picture of Europe as socially and morally superior to the last three decades of conservative policies in the US, it must be acknowledged that this glossy picture is not without its imperfections. As part of the ideal of the nation-state, a distinctly European concept of the 18<sup>th</sup> century, countries in this continent have long projected individual images of themselves as cohesive groups of people joined together through common culture and a unified political body (see Chapter 2 of McMillin, 2007 for a discussion of this concept). Though these nations were not purely homogenous, immigrants who were perceived as distinct and threatening "others" did not immigrate in large numbers. This situation is no longer true. As African, Asian, and Middle Eastern countries have been hit by devastating wars and dire economic plights, Europe has been bombarded with immigration pressure with economically displaced people from other countries. Previously "lily-white" European cities are now a mixture of colors and cultures, and large enclaves of immigrants can be found in them.

This development has thrown European countries into a previously unknown experience in which tremendous numbers of people now seek Europe for both economic opportunity and the

safety net it provides. The promise of a “more prosperous and secure future and respect for human rights” that European politicians have provided for their own citizen workers now also applies to increasing numbers of “foreigners” in their countries (Federici & Caffentzis, 2001, p. 110). The result of this promise under changed immigration conditions is economic strain on welfare and worker-rights policies, which, as the United States has witnessed, are beginning to test the commitment of European elites to the welfare state. The native population often perceives immigrants to be resisting assimilation, which fuels hostilities and encourages the justification to deny immigrants welfare benefits. In some countries, this situation has flared into violence against these perceived “foreigners.” In Italy, for example, police brutality against black persons reflects the violence that African Americans continue to experience today. Last year’s Italian election, which hinged on the right-wing promise of “security” (read: security against immigrants), sent a message to the nation’s police that tougher treatment was needed to control perceived threats (Randall, 2009).

The declining economy is increasingly influencing this highly charged anti-immigration sentiment (Federici & Caffentzis, 2001). As Europe, and indeed the rest of the world, responds to the declining global economy, there is a likelihood that decision-makers will choose to jeopardize Europe’s commitment to universal social welfare policy as a solution to both budget problems and increased immigration. In a strategy that directly ties economic concerns with the threat of “foreigners,” legal immigration has also been severely limited and further restrictions placed on citizenship for those who manage to enter these countries. The result of these restrictions has been to turn previously legal immigration into mass *illegal* immigration. Ironically, the very limitations intended to reduce the strain on the welfare state have furthered pressure on economic resources that are already under additional scrutiny in tighter budgets.

Political responses to a troubled economy may not be strictly limited to the welfare state and immigration, however. It is possible that economic concerns will spread further into policy decisions and cultural attitudes that threaten the EU's commitment against human rights abuses. As Federici and Caffentzis (2001) suggest, Europe's anti-death penalty stance could be the ultimate victim of the economic downturn. Already, we are witnessing the potential for right-wing groups to manipulate the voting population through fear of violent attacks and immigrants. As more immigrants refuse to accept the "starvation deals" that neoliberal globalization has pushed onto poor countries and continue to knock on Europe's door, the situation becomes more tense by the year (p. 112). If it is not checked, the authors suggest that the resolution to this tension might be the resurrection of the death penalty as a control mechanism against the perceived and real dangers associated with impoverished immigrant communities as they become more and more poverty-stricken – just as it was revived against minorities in the United States in the 1976 decision of *Gregg v. Georgia*. In the same way that racism feeds the use of the death penalty in this country, xenophobia could similarly influence European policy. In response to this prospect, Federici and Caffentzis suggest, Europe's anti-death penalty movement must unify with the anti-globalization movement to fight for the rights of the Third World. Only this joint endeavor to improve the lives of those in developing countries will stem the tide of immigrants seeking a better economic existence (p. 113). As the writers emphasize, the universal competition that is imposed by neoliberal ideology must not be allowed to crowd out the principle and expansion of universal human rights.

### Conclusion: The United States' path to abolition

In this discussion of the United States' and European stances on the death penalty, we have seen that their positions have developed inside the context of each polity's history and the culture it has produced. I have argued that the United States' history of slavery and the subsequent pattern of race relations have played significant roles in the country's current use of capital punishment. In Europe, World War II and the focus on universal human rights and the welfare state have been the primary factors in the European Union's path to abolition. The question many scholars are now asking is whether or not the United States will eventually abolish the death penalty as well. Will this country follow the path of Europe and come to realize the circumstances that underlie current policy, or will the death penalty, supported by both courts and the American public, continue unabated?

Some authors assure us that the United States is on the path to abolition and will one day end capital punishment. Bedau and Garland, two primary scholars in this debate, are among those taking this position. Citing the gradual decline in the number of executions in this country, each scholar claims that the limitations enacted at the federal level foretell the potential end of the practice. They argue that a long-term, historical understanding of abolition requires advocates to be patient. After all, as Radelet and Borg (2000) remind us, a century ago, only three countries stood in the abolition column. At the time of the *Furman* decision in 1972, the list had grown to nineteen. Today, more than thirty years later, the number has jumped to 138. Radelet and Borg claim that this trend of abolition will reach the United States sooner or later through pressure from both outside the country and from the states within the country that have abolished the practice. Summarizing Garland's argument, Greenberg and West (2008) urge readers to remember that "cultural supports for capital punishment are historically contingent and

can change over time” (p. 332). In other words, while we can expect American culture to change eventually, we cannot expect this change to occur overnight and suddenly create the conditions for abolition. Rather, Garland proposes, the United States is simply lagging behind Europe (Kaplan, 2006, p. 164). The process of abolition takes time, but we will get there.

Bedau (2004), on the other hand, argues that the US needs a philosophical re-orientation that can negate deterrence and retribution as rationales for capital punishment. If the supposed rational basis for current executions can be weakened through alternative rational arguments, then the US will no longer be able to cling to these explanations as justification for executions. Bedau’s philosophical proposal gives the “minimal invasion” argument, derived from liberal democratic theory:

Given a compelling state interest in some goal or purpose, the government in a constitutional democracy built on the principle of equal freedom and human rights for all must use the least restrictive means sufficient to achieve that goal or purpose (p.32).

The philosophy of minimal invasion still assumes that it is a valid goal to use punishment to achieve justice against a person who commits murder. However, the means to carry out this goal must change. Under minimal invasion, “the death penalty is more severe – more invasive – than long-term imprisonment, which is sufficient as an invasion of individual liberty, privacy, and autonomy to achieve valid social goals” (p. 33). “Minimal invasion” holds that putting someone to death is too high a cost for society to pay, and that imprisonment serves the same punishment purpose just as effectively as the death penalty (p. 35). This theory also retains support for the *idea* of retribution. Its retributive argument, however, holds that justice can still be achieved without imposing a death sentence. If reformers can convince Americans through the minimal invasion argument that the extreme punishment of death isn’t necessary, the United States will join the ranks of abolitionist countries.

In a nation that has supported the death penalty since its birth, and which has not experienced death immersion as has Europe, the minimal invasion philosophy may be a more realistic goal for abolitionists to expect in the short term. However, the adoption of this philosophy should not be the end-point of the transformation. In order to become a more just society, we need to develop a commitment to the rehabilitation of offenders rather than rely on a purely retributionist concept of justice. As briefly mentioned earlier, Rifkin (2004) has explained that this is the view Europeans are more likely to embrace. Rather than simply throwing criminals in jail and claiming that this will “fix” them, many European countries work to rehabilitate individuals back into society (De Wree, Beken, & Vermeulen, 2009). While Americans are literally running out of physical prison space as our justice system relentlessly employs “get tough on crime” policies, Europeans have no such crowding. Punishment must be balanced with the promise of socially supported individual change and eventual reintegration into society. Jail time alone is not a solution to crime. Examples of rehabilitation efforts include schooling, counseling, building emotional and intellectual skills, and other sorts of human development that the individual may need. All these efforts focus on an “orientation toward change” in the offender to prevent future criminal activity (De Wree, Beken, & Vermeulen, 2009, p. 115). If our justice system were to implement these strategies in a systemic way, perhaps the cycle of violence described by Brown et al. (2003) can be reduced.

Finally, rehabilitation must also include an effort to bridge the gap between victim and perpetrator. This step would not necessarily involve a direct relationship between the victim and the perpetrator, but rather will occur between society, which is also a victim of the crime, and the perpetrator. As De Wree, Beken, and Vermeulen (2009) review, repairing the offender’s bond to society is a necessary precondition to successful rehabilitation and crime prevention. Though

building positive relationships may be difficult, “when such bonds have been established the chances that their life course will change drastically are increased, and positive changes are initiated” (p. 116). If the person is successfully rehabilitated into society, the claim that the death penalty is needed in the face of a serious crime will be reduced as the public witnesses the positive results arising when ex-offenders form positive bonds in the community. Such a system will help the United States realize that the death penalty is not in line with the goal of universal human rights.

However, philosophical realignment and rehabilitation efforts alone will not provide the conditions for abolition of the death penalty. Abolition ultimately requires a continuing examination of the history and culture that have led us to the current policies. Unless the United States overcomes its long history of racism that supported so many ugly practices in the past, the death penalty’s philosophical arguments will continue to hold sway over many who may not consciously realize their true roots. As this paper has demonstrated, slavery and lynching may be gone, but their justifications live on in the form of the death penalty. Prejudice must be addressed head-on as a *real* continuing issue in this country with demonstrable effects in millions of lives, rather than a taboo relic of the past. Europe, too, must carry the responsibility of continually educating its population. If the commitment to human rights that the EU adopted after World War II is to remain secure, Europe’s elites must convince citizens that the principle of abolition should be supported across all spectrums of society rather than remain an elite position. Furthermore, a growing immigrant population should not receive blame and destroy progress. Without understanding the effects of death immersion that have supported so many of the continent’s social reforms, Europeans may lose sight of the real purpose that such a commitment to human rights represents. Ending the death penalty in the United States and

preventing its resurrection in Europe will be a long-term struggle that will necessarily engage the historical and cultural forces I have discussed in this paper.

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