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Death by Government

An honors thesis presented to the Department of Criminal
Justice,
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fulfillment of the requirements
for graduation with Honors in Criminal Justice
and
graduation from The Honors College.

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Abstract:

Capital punishment has always remained a controversial topic in society, and lately has proved to be a contributing source to the political divide in our country. Moreover, our great nation was founded on the ideals of individualism and a distaste for large government and its overwhelming powers. As a result, our founding fathers established a society in which the people rule and the individual's needs are valued higher than the rest. This paper will cover the flaws in capital punishment, and how, although it may serve a certain purpose, its potential for failure is too considerable to remain a U.S. practice. Essentially, the risks that the death penalty presents violate traditional American values and ideals.

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Introduction:

“It is better that ten guilty persons escape than that one innocent suffer.” This statement, known as Blackstone's Formulation, was asserted by Sir William Blackstone, an English judge and politician in the 18th century. Manifested in this lone sentence is an entire assemblage of morals and social standards. Blackstone is attempting to accentuate the value of respect for the individual. More than 200 years later, society is still yet to resolve the quandary that this statement intends to settle, and often fails to remain faithful to its resolution. Blackstone's Formulation can pertinantly be applied to the modern United States Criminal Justice System, namely the issue of the death penalty.

The present day criminal justice system reverts to the philosophies of deterrence, retribution, incapacitation, and rehabilitation as a general means of preventing and punishing crimes. The death penalty serves two of the four aforementioned philosophies: retribution, in that death is the revenge for the given crime, and incapacitation, in that the individual is thus being entirely removed from society. However, although death is an adequate means of achieving these two provisions, doing so puts innocent lives at risk. With respect to the death penalty, the loss of an innocent life is inexcusable, and the United States Criminal Justice System has not yet proven to be infallible in terms of determining guilt. Therefore, the death penalty's potential to take innocent lives proves to be detrimental to society and outweighs its capabilities of penalizing offenders.

Blackstone's Formulation:

The idea that it is more valuable to protect one good man's life at the expense of also preserving a number of bad ones than for them all to perish is an age old concept. This concept is one that is eternal and maintains its validity through the passage of time. In fact, documents as ancient as the bible convey the value of such ideals. In a dialogue between Abraham and “god”, discussing the destruction of a city called Sodom, found in Genesis 18:23-32, Abraham inquires “Will you sweep away the righteous with the wicked? What if there are fifty righteous people in the city? Will you really sweep it away and not spare the place for the sake of the fifty righteous people in it? Far be it from you to do such a thing—to kill the righteous with the wicked, treating the righteous and the wicked alike. Far be it from you! Will not the Judge of all the earth do right?” The Lord replies to Abraham's concern with “If I find fifty righteous people in the city of Sodom, I will spare the whole place for their sake”(Genesis 18:23-32, The New International Version). This excerpt from the bible reinforces the idea that it is not worth sacrificing the life of an innocent in order to punish those who are evil, no matter how deserving they are of such suffering. Abraham is expressing that there is no moral justification for punishing a righteous man with the same malevolence as you would a wicked man. In terms of the death penalty, this maintains the idea that risking the lives of innocent American citizens in order to more harshly penalized offenders is not in the best interest of the state. As a matter of fact, capital punishment demonstrates an extraordinary disregard for the rights of the individual, a belief that our great nation was founded upon, and human life in general.

Similarly, a number of the United States most notable and influential presidents have also demonstrated support for such values. In fact, one of the founding fathers of our great nation,

Benjamin Franklin, shows his support for such ideas through his quote "...it is better [one hundred] guilty Persons should escape than that one innocent Person should suffer." (Volokh, 1997). Moreover, on December 3rd, 1770, in a court hearing John Adams, the soon to be 2nd President of the United States, acted as the defense in the prosecution of British Soldiers involved in the Boston Massacre. Not only does Adams establish support for such principles, but he also offers the rationale behind his beliefs as he declares "We are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer...for guilt and crimes are so frequent in the world, that all of them cannot be punished...But when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me, whether I behave well or ill; for virtue itself, is no security. And if such a sentiment as this, should take place in the mind of the subject, there would be an end to all security whatsoever" (Wroth & Zobel, 1968). The rationale Adams presents in his argument intends to express that living a virtuous life will soon lose its value if those who do so are nonetheless punished along with those who do not. Moreover, he explains that there is so much evil in this world that it would be nearly impossible to treat all crimes equally, and acting otherwise would be a miscarriage of justice. Regarding capital punishment, Adams is offering the idea that it can have a reverse deterrence effect, and can inadvertently prompt citizens to devalue the importance of leading a virtuous, respectable life. Because if it is inevitable that I am going to be punished, whether I do good or bad, then why must I continue to be righteous?

If such fundamental ideals have been preached throughout history, and moreover the history of the United States, then why are we so willing to abandon not only our fellow man, but also our own word, and allow others to commit such heinous acts of hypocrisy. More

importantly, not only have some of our most respected leaders expressed analogous beliefs to that of Sir William Blackstone, but U.S. Federal Law does as well. In fact, in 1959, the findings of Supreme Court case *Henry v. United States* established that "it is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest" (*Henry v. United*, 2016). Although this statement regards the freedom of men, its validity still holds equal, if not greater, truth when regarding the life of men. Our great nation will never even begin to verge on just until we are able to respect human life.

Likewise, in another Supreme Court hearing, *In re Winship*, the majority opinion stated, "it is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned" (*In re Winship*, 1970). This finding is one of the safeties that our country has implemented in order to protect the conviction of an innocent man. This finding alone demonstrates support for Blackstones principles. Additionally, though, in a concurring opinion, Justice Harlan famously states "I view the requirement of proof beyond a reasonable doubt in a criminal case...as bottomed on a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free" (*In re Winship*, 1970). Here Justice Harlan is outspokenly revealing the reasoning behind such laws. In other words, the need for proof beyond a reasonable doubt was, in fact, instituted in an effort to protect the innocent individual from being convicted. However, even with such provisions set in law, the system falls quite far from perfect. So if we truly are a society who legally has expressed support for the individual and advocates against the conviction of an innocent man, why are we so willing to risk the murder of an innocent man on death row?

In *Glossip vs Gross*, a Supreme Court case which upheld the use of lethal injections using midazolam as being constitutional on the grounds that it does not constitute cruel and unusual punishment under the Eighth Amendment, Justice Breyer provides a dissenting opinion which outlines the major flaws with the death penalty and the process in place used to carry out executions. In his dissent, Justice Breyer states “Today’s administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty’s penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use.” (*Glossip vs Gross*, 2015). He proceeds to go into an in depth criticism of the death penalty, but the most important conclusion to take away from his tirade is the possibility that the death penalty may not be effective nor reliable. Breyer offers four serious points of consideration when debating whether or not the death penalty is worth our time. Coming from a man with an extensive background and knowledge of the United States legal system, his concerns should not be taken lightly. Likewise, he proves to be yet another well respected figure of American history and modern society that recognises the flaws with the system in place and is able to spread his beliefs on a platform big enough for the whole country to hear.

Innocence:

The United States Criminal justice system is by no means perfect, but it is our nation's best effort at a system designed to maintain order and keep its citizens safe. It is inevitable that innocent men will suffer as a consequence of attempting to discern who is guilty and who is innocent. However, the extent of what we are willing to sacrifice will reveal how far our society has come in terms of our morality and humanity. It is our duty as citizens to oversee government

action and ensure that we as a society are not suffering as a consequence. Unfortunately, the system currently in place has failed our country to an extent that is intolerable. There is no comprehensive data on how many people have been wrongfully incarcerated; however, through the analysis of numerous studies, Samuel Gross, a University at Michigan Law professor and leading researcher in the field, estimates the rate to be anywhere between 2 and 5 percent of all prisoners (Gross, 2014). In a country where nearly 2 million people are incarcerated, that means up to 100,000 of those serving time are being punished for a crime they didn't commit. Unlike traditional punishments, the death penalty imposes an irrevocable sentence. Consequently, the accuracy of a system in which the death penalty is present is of the utmost importance. If a system that has not yet proven to be certain when determining whether a man is worthy of his freedom, why should we allow that same system to determine if someone has the right to his own life?

The United States Justice System has access to a plethora of sophisticated testing methods, technologies and innovations. The same system is also plagued by the inherent necessity of the role of human beings in the process of trying and sentencing alleged criminals to the death penalty. A variety of factors including but not limited to; prosecutorial misconduct, jury tampering, political agenda, and police mishandling have led to the conviction of innocent people. Since 1973, 161 people have been exonerated and freed from death row, most recently the exoneration of Gabriel Solache on December 21, 2017. There have been 1,450 people executed since 1976 (Death Penalty Info Center, 2017). There is no way to be certain how many were wrongly convicted because lawyers and the media usually focus their attention on

protecting people that are still alive rather than already dead. Even a single execution of an innocent person illustrates the fact that capital punishment is inherently broken.

Imagine waking up to the smell of smoke filling your lungs and intense heat radiating from the flames that surround you. You run outside to call for help, but by the time you get outside the fire has already engulfed the house in its entirety. The feeling of helplessness is as strong as the inferno that has overtaken your home as you realize your three little girls are still inside. Well this is the story of Cameron Todd Willingham, an American man executed for the alleged murder of his three daughters. As if the loss of three children isn't heartbreaking enough, imagine being blamed and placed on death row for it (Willingham v Texas, 1992). Willingham was prosecuted based off of arson theories that have since been repudiated by scientific advances. In fact, a 48 page report conducted by A Peer Review Panel Commissioned by the Innocence Project, found that “none of the scientific analysis used to convict Willingham was valid” (Innocence Project, 2006). Unfortunately, Willingham had already been executed before these bogus assumptions were found to be conjectured based on false pretenses. It is needless to say that nobody would wish this kind of evil on another being, so why do we allow our government to inflict such harm on our fellow Americans?

A study conducted by Samuel R. Gross, an American lawyer and a Professor at the University of Michigan Law School, aims to uncover the true rate of innocent defendants amongst all people sentenced to death since 1973. One of the most substantial findings from his study is that “4.1 percent of defendants who are sentenced to death in the United States are later shown to be innocent...” (Gross & O'Brien & Huc). In other words, one in every 25 people on

death row are later found to be innocent. This puts into perspective the real rate of innocence on death row and how grave of an issue it truly is.

Unlike most other studies, Gross accounts for the portion of the populations who had been taken off death row yet still remains in prison. Goss's study observes 7,482 death-sentenced defendants from January 1973 through December 2004. Of the group observed, it was found that "12.6% of these defendants had been executed, 1.6% were exonerated, 4% died of suicide or natural causes while on death row, 46.1% remained on death row, and 35.8% were removed from death row but remained in prison after their capital sentences or the underlying convictions were reversed or modified" (Gross & O'Brien & Huc). This uncovers a major drawback in innocent rates of death penalty statistics. Most statistics predominantly focus on those who are either exonerated or executed, which really only comprises slightly over 14% of death row inmates. Essentially, the innocence of more than one third of the defendants on death row is never being accounted for because their life is no longer on the line, only their freedom is. How are we to know whether or not those who have been removed from death row for legal reasons really are the culprit of their allegedly committed crime?

Adversarial Process *insufficiencies of the Criminal Justice system in terms of the death penalty:*

Regarding the Criminal Justice System, the people of the United States have put their full trust in a system based around the adversarial process. This consists of two opposing advocates who are responsible for providing support for their respective side in an effort to achieve justice in the given legal proceeding. This system is based off a number of idealistic assumptions. For example, the system operates with the expectation that each side is equally capable; however, there are a number of factors that can influence the effectiveness of this process, being efficiency

of the defense council, police misconduct, misinformed jurors, etc. Like all legal proceedings, death penalty cases struggle with these deficiency.

A study led by James S Lieberman, a Professor of Law at Columbia Law School, came out with the astounding statistic that “68% of all death verdicts imposed and fully reviewed during the 1973-1995 study period were reversed by courts due to serious errors” (Lieberman, 2000). Foremost, this demonstrates an enormous flaw in our criminal justice system. A system which posses the legal right to take a life needs to be a precise as possible, if not perfect. Lieberman’s findings prove that our justice system has not yet reached, or even begun to approach, perfection.

Moreover, the study proved that, “76% of the reversals...were because defense lawyers had been egregiously incompetent, police and prosecutors had suppressed exculpatory evidence or committed other professional misconduct, jurors had been misinformed about the law, or judges and jurors had been biased” (Lieberman, 2000). These statistics are evidence that innocent lives are, in fact, at risk when dealing with death penalty trials. The adversarial process simply is not secure enough to produce the consistency of outcomes needed when handling citizens lives.

Death Qualification: *insufficiencies of the Criminal Justice system in terms of the death penalty:*

Being that the stake is so high, the United States Criminal Justice system has attempted to put into place a more reliable, meticulous system of trials for offenders facing the death penalty. Traditional trials consist of a jury who determines guilt vs innocence and a judge who subsequently decides the punishment. Death penalty cases, however, rely primarily on the jury of peers for determining both guilt and punishment. This process consists of two separate trials,

one for the jury to establish culpability, and a second for them to elect one of two punishment options: life without parole or capital punishment. Although an attempt to enhance the proceedings, the way in which death penalty trials have been constructed proves to ultimately prevent the highest level of justice from being achieved.

The death penalty trial system relies heavily on the jury to determine the fate of a man. Because of this, it is imperative that all jurors are unbiased and sound minded. Like all trials, the jury is selected through a process called *voir dire*, which means “to speak the truth.” This is where both the defense and the prosecution are given the opportunity to question the selected jurors and determine any biases or unfit candidates. Where death penalty trials differ lies in a process called “death qualification.” Essentially, this is a process unique to capital trials in which venirepersons concede their personal beliefs regarding the death penalty. All jurors who outspokenly oppose the death penalty are to be relieved of duty. The major drawbacks of the death qualification process are that it often promotes the assumption that the defendant is guilty, fails to sufficiently brief jurors on their capabilities and duties, and is not consistent with the U.S. Constitution.

The process was first recognized in 1986, after the ruling supreme court case *Lockhart vs McCree* determined that it did not violate a defendant's 6th amendment rights to exclude jurors who refuse to impose the death penalty. The argument presented by Justice Rehnquist was that the state should only have a legitimate interest in impanelling jurors who are willing to "properly and impartially apply the law to the facts of the case at both the guilt and sentencing phases of a capital trial" (*Lockhart v McCree*, 1986). The rationale behind requiring death qualification, despite there being an available alternative, is not to be ignored. From the perspective of Justice

Rehnquist, why would we allow those who disagree with a law to be the ones to apply it into practice? On the surface this question holds great validity, but after thorough inquisition, the answer appears simple for those who value justice over legality. Foremost, as American citizens, it is our first amendment right to outspokenly disagree with any matter that we please; government run facilities and procedures may not oppress and discriminate its own people for simply exercising one of their fundamental rights. Moreover, not every legal practice is just; take the 19th century Jim Crow laws, for example. In order for us to progress as a society we must constantly be incorporating the opinions of all our citizens. By removing the beliefs of a certain subgroup of the population and barring them from participating in paramount legal procedures due to such beliefs imposes a significant limit on our society's ability to move forward. The willingness to only consider opinions analogous to our own is simply a reaffirmation of what we already believe, and disallows us the essential progress that follows from incorporating varying perspectives that each hold their own significant truth.

The principle concern of the death qualification process is its failure to remain consistent with the constitution. Foremost, along with the previously discussed violation of the first amendment, the sixth amendment of the US Constitution states “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...” (U.S. Const. amend. VI). The idea of an impartial trial is completely eradicated by the implementation of death qualification. This process immediately disregards the value of unbiased jurors, and only elects those predisposed to certain values of retribution and lex talionis, ultimately creating a jury with distinct bias and deliberate exclusion.

Moreover, according to the findings of *Duncan v. Louisiana*, 391 U.S. 145, 155-56, the jury was created and exists "to prevent oppression by the Government" and to "protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority" (*Duncan v. Louisiana*, 1968). In other words, it is the jury's duty to achieve justice for our society regardless of the circumstances; in fact, it is their absolute right to do so. The Sixth Amendment ensures each citizen the right to trial by jury, in which the jury is the sole determinant of his or her guilt. According to *Sullivan v. Louisiana*, 508 U.S. 275, 277, the sixth amendment insinuates that, in any and all trials, the judge does not possess the power to alter the verdict in favor of the State or to override the jury's verdict, "no matter how overwhelming the evidence" (*Sullivan v. Louisiana*, 1993).

Essentially, these precedents provide the jury with the power and right to override laws the they perceive as unjust through a process called jury nullification. Jury nullification is best defined in *United States v. Moylan*, which states "If the jury feels the law is unjust, we recognize the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by a judge, and contrary to the evidence..." (*United States v. Moylan*, 1969). Although the power of jury nullification has been upheld in a number of court cases and is supported by the U.S. Constitution, death penalty proceedings fail to adhere to such standards. For example, the death qualification process eliminates all jurors who outspokenly disagree with the law at hand. In effect, this creates a biased jury, one without the potential to exercise its right to jury nullification. Not to say that a man guilty of murder should walk free due to the fact that some of his jurors don't believe in the death penalty, but establishing an already biased jury not only violates the constitution, but also eliminates one of the safeties our founding fathers put in place

to prevent any miscarriages of justice. This consequently, puts the defendant in death penalty cases at a disadvantage, and, likewise, increases the chances of putting an innocent man to death. Moreover, it is the citizens (jurors) absolute right to exercise such beliefs, especially when doing so could minimize the execution of an innocent.

Robert J. Robinson, an assistant professor at Harvard University, conducted a study in order to determine the effect that the death qualification process has on jurors and any biases that may consequently arise. Robinson's study was conducted over a four year period and consisted of 1,829 psychology students from Stanford University and San Jose State University. Robinson focuses mainly on how various subgroups of the population were affected by the death qualification process and reoccurring beliefs within these subgroups through his analysis of his subjects responses to questionnaires.

One conclusion Robinson drew from the study is that the process has the tendency to exclude certain demographics of people. One group that was overtly handicapped was the Latino/Hispanic community. It was found that Hispanic participants were significantly more likely to be excluded from death penalty trials than any other ethnic group (Robinson, 1993). This proves to be a major disadvantage for any Hispanic defendant in that he would be less likely to receive a true "jury of his peers." Likewise, the exclusion of any person based off of race proves yet another flaw in the capital punishment system.

Moreover, it was uncovered that the participants who were deemed excludable tended to be more knowledgeable of death penalty trials and displayed higher levels of compassion. In this case, the excludables were more aware of the potential of wrongful conviction and the possibility of an innocent person making it to death row (Robinson, 1993). Consequently, excluding this

subgroup of people could potentially increase the risk of executing an innocent citizen.

Essentially, the death qualification process is eliminating a like-minded group of people, which fosters an environment where the defendant is more likely to be convicted, regardless of factual evidence.

Similarly, those excluded proved to value deterrence and rehabilitation rather than retribution and incapacitation (Robinson, 1993). Removing this way of thinking from juries establishes an imbalance within the jury, due to the fact that it only incorporates the opinions of those whose interests lie on one extreme end of the punishment spectrum.

Robinson also observed that death qualified jurors were more likely to assume that the defendant is guilty prior to hearing any evidence presented (Robinson, 1993). This basically demonstrates that the death qualification process has the proclivity to choose jurors with a predisposition to convict the defendant.

A just, impartial jury would consist of a random assortment of varying opinions. Failing to incorporate all perspectives creates a bias; in this case, one favoring the imposition of the death penalty. In effect, the death qualification process tends to favor jurors who are more concerned with crime control and incapacitation rather than due process and rights of the individual. This presents a major disadvantage for the defendant in that juries in death penalty cases are often lacking an entire demographic of the population, being those who value due process.

Similarly, John H. Blume, a professor at Cornell Law School, led a study in order to uncover the shortcomings of the death qualification process. Blume observed and obtained data from a body of jurors from South Carolina who sat in on various capital cases. A major finding

of the study is that many jurors believe the death penalty is mandatory for murder. In fact, “32% of jurors believed that the law *required* them to impose the death penalty if they believed the defendant would be dangerous in the future, and 41% believed that they would be *required* by law to impose death if they believed the evidence proved the defendant’s conduct was heinous, vile or depraved” (Blume & Eisenberg & Garvey, 1993). Essentially, this demonstrates that jurors are not sufficiently briefed on specific death penalty laws and are occasionally misinformed on their capabilities or options. In any given case where the defendant’s life is on the line the jury has the authority to impose an alternative punishment of life without parole. It is a grave injustice to not maintain a well informed jury in a case where the defendant could potentially be put to death.

To recapitulate, a major disadvantage of the death qualification process, and the jury selection process in general, is that it deliberately excludes a large portion of the population, resulting in an unfair trial. A defendant could have a completely different case outcome if one or two of the jurors in his or her case were replaced. Consequently, the current system proves to be subjective and inconsistent. Moreover, the aforementioned studies demonstrate a high presence of misinformation, or lack of information, being spread throughout juries which further defiles the virtue of court proceedings.

Execution of its purpose:

On July 2, 1976 in a 7-to-2 decision, the Supreme Court held that a punishment of death did not violate the Eighth and Fourteenth Amendments under all circumstances. This decision was a result of the famed case *Gregg v. Georgia*, which essentially held that the death penalty is, in fact, constitutional (*Gregg v. Georgia*, 1976). Although constitutional, is the death penalty

absolutely necessary? The presumed purpose of any given law is to save or enhance lives. In the case of the death penalty, this is attempted through the achievement of a greater status of incapacitation and deterrence. In determining whether or not the death penalty is necessary, is it imperative to consider if it fulfills its purpose.

Cesare Beccaria, one of the forefathers of criminology, in an excerpt from his essay, “An Essay on Crimes and Punishments” he describes the importance of celerity of punishment when he states “The more immediately after the commission of a crime a punishment is inflicted, the more just and useful it will be. It will be more just, because it spares the criminal the cruel and superfluous torment of uncertainty, which increases in proportion to the strength of his imagination and the sense of his weakness; and because the privation of liberty, being a punishment, ought to be inflicted before condemnation but for as short a time as possible” (Beccaria, 1819). Generally, the modern day criminal justice system achieves this aspect of deterrence with regulations such as the 6th amendment which ensures a speedy trial. However, when regarding the death penalty, America proves to be completely ineffective and unreasonable in its timing of sentencing and execution, essentially nullifying its deterring effects.

Statistics from the US Department of Justice conclude that death-row prisoners in the U.S. typically spend more than a decade awaiting execution; a number of prisoners have even been on death row for over 20 years. (Snell, 2014). This demonstrates to the public that you will not be effectively punished for upwards of two decades after having committed a crime deserving of capital punishment. Moreover, in terms of incapacitation, death row inmates are already spending a substantial amount of time in prison, which not only fails to be an orderly administration of justice, but proves that the execution of the given inmate is not urgent,

otherwise his execution would need to be immediate. In other words, if the execution date can be prolonged for upwards of two decades, then how imperative could the death penalty truly be, especially when doing so also puts innocent lives at risk?

Similarly, Beccaria also argues that it is not the severity of punishment, that deters, but rather the certainty of punishment. In other words, he is stating that a criminal is more likely to be discouraged from committing a crime if he/she know that he/she will be caught, as opposed to being threatened with a harsher punishment (the death penalty) but with a reasonable chance that they will not be charged (Beccaria, 1819). Our Criminal Justice system throughout history has generally done an adequate job in achieving this aspect of deterrence; however in recent years America's homicide clearance rate, the percentage of solved crimes that lead to arrest, has fallen considerably. In fact, "...[the rate] dropped from around 90% in 1965 to around 64% in 2012, according to federal statistics." (FBI, 2012). This proves a major failure of our governments law enforcement, but relates to a similar problem within the legal system: the death penalty. The certainty of receiving the death penalty for committing a crime deemed worthy of such is nowhere near the level it needs to be to actually achieve deterrence.

A study conducted by John J. Donohue III, a professor at Yale Law School, and Justin Wolfers, a professor at the Wharton School of Business, aimed to evaluate the death penalty's effectiveness in terms of deterrence. They argue that "...of the 3,374 inmates on death row at the beginning of the year [2006], only 65 were executed. Thus, not only did very few homicides lead to a death sentence, but the prospect of execution did not greatly affect the life expectancy of death row inmates" (Donohue, J. J., & Wolfers, 2005). That means less than two percent of homicide offenders were put to death. Essentially, the rate of execution for inmates convicted of

homicide is so low that it would be unreasonable to assume fear of execution would be a sufficient preemptive measure in thwarting even the most coherently reasoned criminals.

Similarly, there can be found a noticeable inconsistency within our system of capital punishment. In 2003, the FBI recorded that “...there were 16,503 homicides (including nonnegligent manslaughter).” But of those 16,503 murderers, only 144 were sentenced to death (FBI, 2012). Generally speaking, it is a sheer injustice to punish some offenders more harshly than others for a the same crime. And in terms of deterrence, this inconsistency in the system would likely not have any effect on a criminal's actions in that the certainty of actually getting the death penalty, based off these 2003 statistics, is less than 1%.

Even Though the death penalty has been repeatedly upheld as constitutional, it does not adequately fulfill its expected objective. Therefore, it proves to do more harm to society than good, in its tendency to put innocent lives at risk, and serves no beneficial purpose.

Potential Alternatives:

If federal law was to declare the death penalty as nugatory and thereby remove it in its entirety, then there would need to be an alternative solution for punishing offenders of that caliber. The most logical alternative to the death penalty would be life without parole, or LWOP, sometimes even referred to as death by incarceration. It is currently the most extreme punishment an offender can receive aside from directly being put to death. LWOP is essentially locking the offender up and throwing away the key. The prisoner is in for life without the possibility of ever being released. In effect, this completely removes the offender from society, ensuring that he can and will not reoffend. Moreover, in theory, it is a reasonable punishment for death penalty level offenses, in that the offender will subsequently lose all of his freedoms for

the remainder of his existence and will be left to rot away with only the presence of his fellow dishonorable, reprehensible inmates to keep him company.

One major benefit of not executing a potentially innocent inmate is that they will have time to protest their false incarceration. In other words, rather than being executed subsequent to being falsely convicted, these unfortunate beings will be given hope and potential to regain their freedom, and when put in such an ill-fated, hapless position as these innocent men and women are, hope is the most meaningful thing we as a nation can afford them for our systems inaccuracy and for the wrongful confiscation of their freedoms. Moreover, LWOP eliminates the looming idea of execution from these victims minds. I would imagine the constant thought of execution for a crime you didn't even commit is draining, shameful, and most importantly, torturous.

Another significant benefit of LWOP as opposed to capital punishment regards the cost. On the surface it may seem like the death penalty is more cost effective in that killing a person eliminates all of their daily expenses like food, shelter, healthcare, etc. But in reality, putting someone to death is a costly process. An article authored by Jack D'Aurora, a member of the Behal Law Group, does an incredible job of highlighting some of the most costly death penalty procedures. The article ultimately concludes that in death penalty cases the costs run higher because "... all the lawyers, judges, and other personnel will put more hours into preparing, trying, and reviewing the issues, given that a life is at stake...hearings are attended, at a minimum, by three assistant attorneys general, three attorneys for the inmate, the Lucasville prison warden, the director of the Department of Rehabilitation and Correction, counsel and other officials from the department, the judge and his two law clerks" (D'Aurora, 2012). The

mere presence of these people at death penalty related events costs a ton because as long as they are on the clock, they need to be paid, and these people wages are provided by either federal or state government. In other words, our taxpayer dollar are being used to fund an unnecessary, expensive procedure. Moreover, these hearing can last for a number of days which only intensifies the costs of the practice. D'Aurora then goes on to explain, "The judge estimated that he and his staff spend 40 to 60 hours per month on some aspect of the death penalty....recent cases took an average of 21 years between sentencing and execution date...the cost likely is millions per case...life sentences without parole would serve us much better..." (D'Aurora, 2012).

Another study conducted by Nick Petersen, an assistant professor at the University of Miami with a Ph.D. in Criminology from University of California, Irvine, and Mona Lynch, a criminologist and Professor of Criminology and Law at the University of California, Irvine, aimed to evaluate the various costs of the death penalty and alternative punishments in an effort to determine the most cost effective form of discipline. The study focuses on the costs of the death penalty in the state of California, and was conducted in 2012 when the death penalty there was still active. The annual cost for death penalty ranking offenders was estimated to be \$137.7 million. The most astonishing conclusion from the study was that by replacing the death penalty with LWOP, costs would drop to only \$11.5 million annually for offenders of the same degree (Petersen & Lynch, 2012). That means 126.2 million taxpayer dollars are being wasted on a pernicious, ineffective means of punishment. It is essential to put to use every single taxpayer dollar that is being stripped from the hands of our working people. A government that so

carelessly handles the money provided to them by their citizens is neither righteous nor admirable.

Statutory Reforms:

It is vital to acknowledge that the death penalty is a very effective form of punishment in theory. It completely eradicates the possibility of reoffending, it is powerful in its retributive properties, and it should be a strong deterrent to most rational minded beings who generally aren't seeking out death. Consequently, if it was to be discovered that there is a foolproof way of determining one's culpability, it is safe to say that opposition to the death penalty would dramatically decrease. With that being said, it is only fair to account for such possibilities, and to not rule out the potential that capital punishment may, in fact, possess.

In May 2004, Mitt Romney, the former governor of Massachusetts, proposed a blue-ribbon panel which offered recommendations for an infallible death penalty procedure. Foremost, Romney suggested that we only execute the worst of offenders. Those who meet his criteria must be of the likes of cop killers, terrorists or serial killers. Some other suggestions he offered were to provide the defendant with high quality defense lawyers, to warn juries about the questionable standard of confessions, and to incorporate and value eyewitness identifications and testimonies by jailhouse snitches. Moreover, he expressed significant worth in requiring scientific evidence to corroborate guilt. Most notably, he proposed that rather than sentencing being based on "beyond a reasonable doubt" death sentences should be based on a "no doubt" standard of proof (Hoffman & Bieber & Barton, 2004). Romney regards his proposal as the most secure means of operating under a death penalty statute; however, even he acknowledges the possibility of human error as he states "A 100 percent guarantee? I don't think there's such a

thing in life. Except perhaps death — for all of us..." This morbid yet au fait statement demonstrates that it is not his knowledge that is lacking, but his priorities that are. In fact, he lacks total consideration for the individual thereby rendering his priorities too distant from acceptable traditional American values.

Although Romney's proposition would be a step up from current death penalty procedure, it is guaranteed that his additions would not truly qualify the US capital punishment system as infallible. Most of what Romney offers is simply just enhancing our current system of operations. In other words, he doesn't suggest anything vastly different from the way we operate now. For example, harshening criteria for who qualifies for the death penalty may lower the number of people on death row in general, but it has no effect on potentially innocent victims on death row. Moreover, ensuring that defendants have high grade defense attorneys may slightly lower the chances of an innocent man being convicted, but by no means will it completely solve the problem. Essentially, although Romney's ideas would serve to tighten our loose death penalty system, they would not be influential enough to deem capital punishment as an effective, necessary, and most importantly, infallible means of punishment. It may not be until we are able to travel back in time and see the past first hand that the death penalty will be rendered infallible, but until then it is better that we keep our fellow Americans safe rather than commit acts which we may later regret.

Conclusion:

The confiscation of one's life as a method of punishment is a practice that has been utilized throughout history. Some may argue that it is barbaric, while others deem it just. In either case, I presume it to be universally agreed upon that it is unacceptable for our government to take the life of an innocent civilian. Being that the death penalty, in effect, has and continues to put innocent lives in the hands of a substandard, inadequate system, it is essential that we reweigh our values and reconsider our implementation of such values. No man deserves to lose his freedoms, and more so his life, at the expense of another's mistake, so it is time we as a nation make it absolutely certain that our government will not possess the legal right to murder one of its own citizens. Best described in the words of former U.S. Representative for Texas's 22nd congressional district Ron Paul, "It is not surprising that the government wastes so much time and money on such a flawed system. After all, corruption, waste, and incompetence are common features of government programs...Given the long history of government failures, why should anyone...think it is a good idea to entrust government with the power over life and death?" (Paul, 2015).

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