

Spring 5-18-2018

# Local Media and the Lethal Injection Drug Shortage in the United States

Emily Sandercock  
esandercock@arcadia.edu

Arcadia University has made this article openly available. [Please share](#) how this access benefits you. Your story matters. Thank you.

Follow this and additional works at: [https://scholarworks.arcadia.edu/senior\\_theses](https://scholarworks.arcadia.edu/senior_theses)



Part of the [American Studies Commons](#)

---

## Recommended Citation

Sandercock, Emily, "Local Media and the Lethal Injection Drug Shortage in the United States" (2018). *Senior Capstone Theses*. 35.  
[https://scholarworks.arcadia.edu/senior\\_theses/35](https://scholarworks.arcadia.edu/senior_theses/35)

This Capstone is brought to you for free and open access by the Undergraduate Research at ScholarWorks@Arcadia. It has been accepted for inclusion in Senior Capstone Theses by an authorized administrator of ScholarWorks@Arcadia. For more information, please contact [gordonl@arcadia.edu](mailto:gordonl@arcadia.edu).

Local Media and the Lethal Injection Drug Shortage in the United States

Emily Sandercock  
Senior Thesis PS491  
May 8, 2018

Table of Contents

Introduction.....	3
Background.....	3
Literature Review.....	6
History and Culture.....	7
Political Structure.....	10
The Death Penalty in the U.S. Will Continue.....	12
The Death Penalty in Europe.....	15
Pressures on the Death Penalty.....	17
Analytic Framework.....	22
Methods.....	23
Data Analysis.....	26
Conclusion.....	46

### Introduction

The death penalty in the United States is a much studied, and a much debated, topic of research. This project will examine the issue in a new light by focusing on the way in which the recent lethal injection drug shortage has impacted public thinking surrounding the death penalty. It will do so by means of a media analysis which will concentrate on media representations of the drug shortage within local news sources. It will investigate whether the shortage is being portrayed as a cause of ‘botched’ executions, and thereby contributes to depictions of the death penalty as an ‘uncivilized’ and potentially inhumane practice, or whether it is being portrayed as an attempt by ‘outsiders’ to influence practice within localities in the United States. Each of the components of this method of investigation have been drawn from a review of the literature on the death penalty in the United States that will be conducted below. The study found when states carried out rushed executions, to avoid the expiration date of drugs which are in short supply, coverage was more likely to focus on botched executions. When states responded to the shortage by making theoretical changes to the law, for instance by allowing firing squads to be used as a method of execution, the shortage was more likely to be framed in terms of a challenge to local authority and responsibility. The portrayal of the lethal injection shortage and the likely impact on public thinking following from this is therefore dependent upon the situation in the localities where it is experienced and on the way in which decision-makers respond to it. Before discussing this, though, it is necessary to outline some background information on the current status of the death penalty in the United States, as a justification for the shape that this study has taken.

### Background

In order to discuss contemporary portrayals of the death penalty in the United States it is important to summarize current practices of it, and arguments surrounding it. According to the National Conference of State Legislatures there are currently 31 states that allow executions,

though a smaller number of these regularly carry out executions. Five states have outlawed the death penalty since 2009, though one of them, Nebraska, has since reinstated it following a statewide vote on the issue. The primary method of execution in each of these states is lethal injection, and specifically the ‘three-drug cocktail’ of sodium thiopental (sedative), pancuronium bromide (muscle relaxant, which induces paralysis), and potassium chloride (causing cardiac arrest) that was approved by the Supreme Court in *Baze v. Rees*.<sup>1</sup> It should be mentioned here that alternatives to lethal injections are legally permissible in certain states. There are 15 states that have at least one secondary method of execution, six of which provide the option if lethal injection is not viable, five if the sentence of death was passed before the advent of lethal injection, and six if the person being executed requests such an alternative method.<sup>2</sup> The vast majority of executions, however, rely on lethal injections. In 2016 there were 20 executions carried out in the United States, and lethal injections were used in all of them (Death Penalty Information Center).<sup>3</sup> The last execution by electrocution was carried out in 2013, the gas chamber was last used in 1999, the last hanging took place in 1996, and the last execution by firing squad in 1985.<sup>4</sup>

The death penalty is a contentious issue, and the arguments in favor of it, as well as those against it, must be considered in any discussion of the way in which it is portrayed and understood. Matthew Kramer outlines some of the main theories in support of the death penalty and classifies them into four categories. According to deterrence theory, the death penalty is worthwhile because it will discourage those who might commit the most serious crimes from doing so, out of the fear that they may be executed in consequence, though he writes that there is

---

<sup>1</sup> National Conference of State Legislatures, ‘States and Capital Punishment’ (February 2, 2017).

<sup>2</sup> *Ibid*, National Conference of State Legislatures.

<sup>3</sup> Death Penalty Information Center, ‘Fact Sheet’ (November 29, 2017).

<sup>4</sup> *Ibid*, Death Penalty Information Center.

a, “dearth of evidence in support of the deterrence-oriented position”.<sup>5</sup> This, though, was how John Locke, one of the philosophers favored by the founders of the United States, defended capital punishment, writing that it should, “terrify others from doing the like,” and this position is reflected in the US Constitution, which implicitly accepts capital punishment, as the 5<sup>th</sup> Amendment enumerates certain protections that must be in place when a person, “shall be held to answer for a capital, or otherwise infamous crime,” in other words, if a person is facing capital punishment.<sup>6</sup> The retributive rationale, the second which Kramer details, suggests that those who kill set themselves above their victims, and that by robbing their victims of life they create a situation which must be remedied in kind by the state. Related to this is what Kramer terms the ‘incapacitative’ argument, which defends the death penalty as a necessary means of eliminating unacceptably dangerous members of society, in order to protect the rest of society. The denunciatory justification of the death penalty, finally, favors it as an, “expression of a community’s detestation of the misdeeds for which the punishment is levied”.<sup>7</sup> This is how liberal philosopher John Stuart Mill conceived of the death penalty, writing that the perpetrators of some crimes deserve to be blotted out, “from the fellowship of mankind and from the catalogue of the living”.<sup>8</sup> Arguments in opposition to the death penalty are both older, and more modern than these. Socrates, in ancient Greece, raised the notion that justice requires more than punishment, and Clarence Darrow, in the mid-twentieth century, the idea that, “all life is worth

---

<sup>5</sup> Matthew Kramer. *The Ethics of Capital Punishment: A Philosophical Investigation of Evil and Its Consequences*. (Oxford: Oxford University Press, 2011), 9.

<sup>6</sup> John Locke. *The Second Treatise of Civil Government and A Letter Concerning Toleration*. (Oxford: Blackwell, 1948), 162 and *U.S. Constitution Amend. V*.

<sup>7</sup> Matthew Kramer. *The Ethics of Capital Punishment: A Philosophical Investigation of Evil and Its Consequences*, 12.

<sup>8</sup> John Stuart Mill ‘Society Must Return to the Death Penalty for Murder’ in Michael J. Martinez ‘Woe to the Hand That Shed This Costly Blood’: Philosophical Arguments against the Death Penalty’ in *Capital Punishment in the Twenty-First Century* eds. J. Michael Martinez, William D. Richardson, and D. Brandon Hornsby. (Lanham, Maryland: Rowman and Littlefield Publishers, 2002), 56.

saving, and mercy is the highest attribute of man”.<sup>9</sup> Albert Camus argues that the exercise of the, “excessive power of the State” poses a threat more dangerous than that of any criminal or murderer.<sup>10</sup> All of these arguments about the death penalty, or ways of thinking about it, should be kept in mind throughout this essay, as my thesis will focus on portrayals of the death penalty that inevitably draw on such ideas about it. The death penalty, in general, deserves study because of the above detailed issues of morality and state power that are contained within it. The literature review that will be turned to next will help to justify the particular direction that will be taken with this thesis, within the larger topic of the death penalty.

### Literature Review

This literature review will look at different ways of examining the death penalty in the United States, including those that concentrate on the history and culture of the country, the political structure of the country, the strength of public support for the death penalty in the United States, comparisons to other countries, and current abolitionist pressures on the death penalty. Some of the works that will be discussed here predict that the death penalty in the United States will soon come to an end, others that it is destined to persist for the foreseeable future. The purpose of the review is to ask what factors cause shifts in public thinking regarding the death penalty in the United States, and, to outline the importance of public thinking at the local level to the practice of it.

---

<sup>9</sup> Michael J. Martinez ‘Woe to the Hand That Shed This Costly Blood’: Philosophical Arguments against the Death Penalty’ in *Capital Punishment in the Twenty-First Century* eds. J. Michael Martinez, William D. Richardson, and D. Brandon Hornsby. (Lanham, Maryland: Rowman and Littlefield Publishers, 2002), 59.

<sup>10</sup> Albert Camus ‘Reflections on the Guillotine’ in Michael J. Martinez ‘Woe to the Hand That Shed This Costly Blood’: Philosophical Arguments against the Death Penalty’ in *Capital Punishment in the Twenty-First Century* eds. J. Michael Martinez, William D. Richardson, and D. Brandon Hornsby. (Lanham, Maryland: Rowman and Littlefield Publishers, 2002), 62.

### History and Culture

Those who argue that the culture and the history of the United States has had a unique influence on the death penalty in the country mostly ground their ideas in the legacy of lynching and racism that stretches back to the years before the Civil War and the abolition of slavery, in the history of individualism, and the emphasis placed on local government following from this in the United States, and in a possible uniquely American love of violence, all of which will be explored in this section. The way in which the death penalty is currently conceived of is dependent on the history and culture of the United States, and in studying present-day notions of the death penalty it is essential to understand which aspects of American history and culture have most strongly contributed to the practice of the death penalty today.

Franklin Zimring presents evidence for the first school of thought, citing the fact that most executions in the United States today are carried out in the states that have a significant history of lynching (an extra-legal style of execution, normally carried out by racist mobs).<sup>11</sup> David Garland agrees with him on this point, writing that, “many of the same social forces that once prompted lynchings nowadays prompt capital punishment”.<sup>12</sup> John C. McAdams writes that he believes white defendants are, generally, treated more harshly in the American death penalty system than are black defendants. However, even he acknowledges that the American death penalty is shaped by racism, as, “killing one white person is treated about the same as killing multiple black people,” in terms of the likelihood of facing execution.<sup>13</sup>

---

<sup>11</sup> Franklin E. Zimring *The Contradictions of American Capital Punishment*. (New York: Oxford University Press, 2003), 89

<sup>12</sup> David Garland. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2010), 35

<sup>13</sup> John C. McAdams "Racial Disparity and the Death Penalty." (*Law and Contemporary Problems* 61, no. 4, 1998), 164 and 161.

Blackmon illustrates historical discrimination and exploitation within the criminal justice system, writing about the intersections between American legal institutions and the country's legacy of slavery. For example, he describes mines in Barbour, Alabama that relied on the labor of convicts for their operation, writing that, in normal months, an average of fewer than 20 men were arrested, but that, when the mine was in need of labor dozens of men, almost entirely black, would be arrested and charged with minor and ill-defined violations in the span of just a few days, before being sentenced to hard labor in the mines. He writes that this practice was widespread throughout the United States, and that, though it was distinctly different than the slavery of the antebellum years, it was, "nonetheless slavery-a system in which armies of free men, guilty of no crimes and entitled by law to freedom, were compelled to labor without compensation," through a process that relied upon the American criminal justice system.<sup>14</sup> The same institutional racism has, historically, likely helped to protect the death penalty in the United States.

Others have argued that other aspects of American culture have helped to uphold the death penalty in the country. Whitman describes harshness in the American justice system broadly, and places emphasis on traditions of, "resistance to state power" in his explanation for it, as localities control their own criminal justice policies.<sup>15</sup> Arguments about culture draw on ideas of violence throughout American society, Bessler mentions everything from water guns to ultra-violent videogames in his analysis.<sup>16</sup> This is the sort of societal interest in violence that Garland would likely connect to "frontier" culture, which he writes contributes to both the

---

<sup>14</sup> Douglas A. Blackmon. *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II.* (New York: Doubleday, 2008), 333 and 4.

<sup>15</sup> John Q. Whitman *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe.* (New York: Oxford University Press, 2005), 11.

<sup>16</sup> John D. Bessler, *Kiss of Death: America's Love Affair with the Death Penalty.* (Northeastern University Press. 2003), 50

continuance of the death penalty and lax gun laws in the United States.<sup>17</sup> On the other hand, Garland writes that the United States, in the past, had a reputation for mildness in punishment, as described by both Alexis de Tocqueville and Charles Dickens, and as evidenced by the fact that the United States, in the 19<sup>th</sup> century, was a leader in the abolition of the death penalty, with Michigan bringing it to an end in 1846, thanks to a small group of liberal reformers.<sup>18</sup>

The case of Michigan brings up an important point about the death penalty in the United States, that is, the variation between states, a variation that relies on the value placed in local control and governance, mentioned above and which will be detailed in the next section. This variation lends credence to the idea that the death penalty does not continue because of a uniquely American love of violence. The American political system prizes the views of regional and local communities in certain areas of policy, and this naturally leads to decisions and systems that are not uniform across a country that includes a variety of diverse regions. Garland writes that opinion polls in the countries where the death penalty has been abolished continued to show general support for public executions at the time when they came to an end, and for years after they were abolished.<sup>19</sup> It is not an abnormal love of violence that explains America's continued use of the death penalty, then, though this does not mean that all cultural explanations are irrelevant.

America's history of racism, and the way that this informs the current culture, is unquestionably a factor in the way that the death penalty is carried out, and likely relevant to the continuance of it. Also relevant is the impact that the American culture has had on the structure of the political systems and institutions in the country, which will be discussed in the next

---

<sup>17</sup> David Garland, *Peculiar Institution*, 189.

<sup>18</sup> David Garland, *Peculiar Institution*, 23 and 37

<sup>19</sup> David Garland, *Peculiar Institution*, 184

section, and which are tied to American culture in their incorporation of the will of ‘the people’ at the local level.<sup>20</sup> For this reason, and because of Supreme Court precedents that will also be discussed below, it is to localities that it is most reasonable to look for any change in conceptions of the death penalty.

### Political Structure

As has been discussed above, the cultural influences on the death penalty in the United States are important mainly because of what they mean for the structure of the political systems in the country. The variations that occur across state lines in terms of the death penalty are an integral factor to this thesis, as it is differing local reactions to the lethal injection drug shortage that will be studied below, and so it is important to understand the divergences between states, as a component of this thesis and as an important point to recognize in the continuance of the American death penalty. Zimring writes that the political structure of the United States matters most in the way that the death penalty is carried out, as in the interstate practice of the death penalty.<sup>21</sup> Garland describes more specifically the impact of America’s political system on the existence of the death penalty, “the weak-party, populist nature of American politics makes it politically difficult to enact European-style counter-majoritarian reform against the wishes of the American public”.<sup>22</sup> This is especially important, according to Garland, because the end of the death penalty in Europe was a, “counter-majoritarian” effort that was only possible because the political structures there allowed for changes that were in, “direct contravention of majority public opinion,” whether those changes had been adopted in accordance with the central

---

<sup>20</sup> Andrew Hammel. *Ending the Death Penalty: The European Experience in Global Perspective*. (Houndmills, Basingstoke, Hampshire, UK, New York, NY: Palgrave Macmillan, 2010), 218

<sup>21</sup> Franklin E. Zimring, *The Contradictions of American Capital Punishment*, 74

<sup>22</sup> David Garland, *Peculiar Institution*, 184

government or the European Union.<sup>23</sup> The death penalty could not be altered in the United States in the same way.

Other theories about the impact of the political structure on the continuing existence of the death penalty are less convincing. For instance, Hammel details the differing ways that trials proceed in the United States, compared to some of the countries of Europe. He writes about the public election of prosecutors and judges in the United States, which is not the practice in Europe, connecting this to the continuance of the death penalty, as he believes it means that the public is more involved in court proceedings.<sup>24</sup> This is less convincing because, while prosecutors and judges are vital to the way that specific trials are carried out, and whether or not the death sentence is applied in specific cases, it does not explain why the death penalty is among the choices that prosecutors may call for, or that judges may apply. In other words, it does not explain why the death penalty continues in the United States.

The Supreme Court has, in the past, ruled on the death penalty, but all of the sources which I encountered agreed that it is not likely to alter the death penalty, at least not in the near future. In that discussion, most pointed to the *Furman v. Georgia* decision of 1972 as the chance for the Supreme Court to put an end to the death penalty, as it ruled then that the death penalty was being carried out in a way that constituted ‘cruel and unusual punishment’, but a few years later, in *Gregg v. Georgia* the Supreme Court upheld the death penalty once again, thanks to changes in state-level policy that had been adopted since *Furman*. Garland believes that the Supreme Court is unlikely to make a decision to end the death penalty, because the Supreme Court will lose credibility if its judges make too many unpopular decisions.<sup>25</sup> It has had high

---

<sup>23</sup> Ibid., 197

<sup>24</sup> Andrew Hammel, *Ending the Death Penalty*, 22

<sup>25</sup> David Garland, *Peculiar Institution*, 229

profile opportunities to challenge the death penalty since *Gregg*, such as *McClesky v. Kemp*, in which the Court decided not to overrule a death penalty sentence that had a provably racially discriminatory impact, since it believed that the intent was not discriminatory.<sup>26</sup> More recently, in 2008, in *Baze v. Rees*, the Court approved the three-drug lethal injection protocol in a 7-2 decision. It seems, especially considering the current composition of the Court, that the chance for the Supreme Court to abolish the death penalty has passed. This does not mean that it would be impossible for the Supreme Court to bring abolition, only that it is unlikely to do so. The political structures in the United States, which are a result of the history and culture of the country, do mean that criminal justice policy has been designed to be acutely responsive to public opinion.<sup>27</sup> Again, for this reason, the most reasonable place to look for challenges to the American death penalty is at the level of the state. First, though, it is important to turn to the views of those who argue that the death penalty is not likely to end at all in the country. This is a view that it is vital to consider in looking at what is most likely to be impactful as a pressure on the death penalty, as it will highlight the likely barriers to bringing such pressures.

### The Death Penalty in the U.S. Will Continue

Many of those who believe that the death penalty will not come to an end in the United States rest their arguments on the idea that the American death penalty has been constructed in a way that means it appears to be modern and humane, rather than archaic and ‘uncivilized’. That construction, and how it came to be, will be examined in this section of this literature review. The different ways in which the death penalty is conceived of and what makes some conceptions more powerful than others, are important to consider in a thesis that focuses on portrayals of the lethal injection shortage in local media. Both Zimring and LeGraw and Grodin emphasize the

---

<sup>26</sup> *McClesky v. Kemp*: 481 U.S. 279 (1987)

<sup>27</sup> Andrew Hammel, *Ending the Death Penalty*, 16

‘civilizing’ of the death penalty. Zimring writes that the advent of lethal injection as a means of execution appears to be, “both humane and efficient”.<sup>28</sup> LeGraw and Grodin describes the importance of this, in both appearance and in fact, placing more emphasis on the significance of the former.<sup>29</sup> Because of this, lethal injection allows those who advocate for the death penalty to defend it on the grounds that it is carried out in a civilized way. Radelet and Borg also write about this, arguing that public support for lethal injection as the method of execution, as opposed to other means, for Timothy McVeigh demonstrates that the public cares about the ‘civilization’ of the death penalty, to some extent.<sup>30</sup>

The involvement of the medical community in carrying out the death penalty, which will be discussed in more detail in a later section, will also be described briefly here, as it is necessitated when lethal injections are performed. This presents its own challenges to those who perform executions. LeGraw and Grodin quote a statement from the American Public Health Association (APHA) on their view of lethal injection, in which they describe it as a perversion of the, “medical knowledge, devices, and methods used by health professionals”.<sup>31</sup> However, there is not consensus in all corners of the medical community on the ethical issues surrounding the involvement of medical professionals in executions by lethal injection. Some think that there is a place for medical professionals in carrying out executions. LeGraw and Grodin outline the reasoning behind this idea, including the notion that executions are less likely to be botched, and cause pain for the inmate being executed, if they are carried out by “competent” physicians, or at

---

<sup>28</sup> Franklin E. Zimring, *The Contradictions of American Capital Punishment*, 50

<sup>29</sup> Joan M. LeGraw and Michael A. Grodin. "Health Professionals and Lethal Injection Execution in the United States." (*Human Rights Quarterly* 24, no. 2, 2002), 399

<sup>30</sup> Radelet, Michael L., and Marian J. Borg. "The Changing Nature of Death Penalty Debates,"(*Annual Review of Sociology* 26, 2000), 54

<sup>31</sup> Joan M. LeGraw and Michael A. Grodin, "Health Professionals and Lethal Injections", 409

least by those who have been trained by competent physicians.<sup>32</sup> There is thus a seeming contradiction in the role of the medical community in the process of executions by means of lethal injections. This particular contradiction is not exactly the focus of this thesis, but it is important to remember that there is some tension between the medical community and the American criminal justice in terms of lethal injections, which is a point that will be returned to below.

Garland and Zimring both highlight the reduction in the size of those who are allowed to attend executions, and the fact that the death penalty is carried out privately, as a factor in the continuance of the death penalty, writing that because executions are hidden it becomes easier to portray them as humane.<sup>33</sup> It is for these reasons that this thesis will take portrayals of the death penalty as ‘uncivilized’ as a potentially valuable arena for study. Whether or not it is portrayed as civilized will likely impact the way that the public thinks about it.

Garland raises the notion that the death penalty is likely to continue because it is not actually an archaic institution, since so many of the components of the current death penalty in the United States are recent inventions, which have been employed to make the death penalty seem more palatable.<sup>34</sup> He writes that the United States, because it executes a relatively small number of people and has layers of appeals before death penalties may be carried out, is not the complete inverse of Europe, and that the conversation surrounding the death penalty in the United States and Europe presents a, “too-stark dichotomy”.<sup>35</sup> However, there is a fundamental difference between a state that executes its own citizens, and one that does not. The idea that the

---

<sup>32</sup> Ibid., 410

<sup>33</sup> David Garland, *Peculiar Institution*, 135 and Franklin E. Zimring, *The Contradictions of American Capital Punishment*, 57

<sup>34</sup> David Garland, *Peculiar Institution*, 18

<sup>35</sup> Ibid., 21

United States has moved in the exact opposite direction of Europe, though, is also not accurate. The next section of this paper will look at how closely Europe and the United States had been on the subject of the death penalty until relatively recent years, and why there is some basis for comparison between the United States and Europe. It will argue that the current state of the death penalty in the United States is not inevitable, and that there are places to put pressure on the death penalty in this country.

### The Death Penalty in Europe

This section will look at the abolition of the death penalty in Europe very briefly, considering the aspects of that abolition which are most relevant to American executions, setting up the idea that the United States and Europe were on the same track throughout much of each of their histories, and that the current divergence is not so substantial as it may appear. It will also, though, demonstrate that any shift in the death penalty in the United States, unlike in the countries of Europe, must come with significant local consent, a point that has been discussed above, but will be further proved here, as it is an important justification of the shape of this thesis. It will focus on Europe, rather than on other countries of the world because, according to Roger Hood and Carolyn Hoyle, many of the countries that had abolished the death penalty by 2008 had done so in a way that meant, “abolition was embodied in a new constitution” in a, “movement (that) gained force as more and more countries emerged from totalitarian and colonial repression”, a situation that is not applicable to (most of) Europe and the United States, who were the ones doing the above-mentioned colonizing, and who are not in a position to be writing new constitutions.<sup>36</sup>

---

<sup>36</sup> Roger Hood and Carolyn Hoyle. "Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic", *Crime and Justice* 38, no. 1, (2009), 10 and 17

Zimring details how, in 1977, both France and the United States seemed to be on a similar path. In that year, France beheaded two homicide offenders and the United States executed its first offender in a decade.<sup>37</sup> Hammel agrees with this, though he approaches it in a slightly different way, writing that the United States and France experienced a similar decline in support for capital punishment during the 1960s.<sup>38</sup> Germany did not have an experience like that of some of the other countries of Europe, having abolished the death penalty immediately following the second World War. But at the local level, some support remains in Germany for the death penalty. In the German state of Bavaria, the death penalty law that had remained in their code even after it was abolished by the country was not eliminated until Bavaria entered the European Union in 1998.<sup>39</sup> In Hessen, another German state, the death penalty is still officially on the books.<sup>40</sup>

Here there is an important difference between a country in Europe and the United States; the death penalty ended in Europe, in a country where the death penalty was still relatively popular, in a way that is unlikely to happen in the United States. There were broadly similar levels of support for the death penalty in the countries of Europe that abolished the practice as there have been in the United States, but the political structure of Europe (from the tendency to centralize authority to the growth of the European Union) meant that countries there were able to undertake a counter-majoritarian reform that is not so possible in the United States, thanks to the emphasis on local control that has previously been discussed.

---

<sup>37</sup> Franklin E. Zimring, *The Contradictions of American Capital Punishment*, 16

<sup>38</sup> Andrew Hammel, *Ending the Death Penalty*, 13

<sup>39</sup> *Ibid.*, 170

<sup>40</sup> *Ibid.*, 170

According to Amnesty International, in 2016, 20 people were executed in the United States, the lowest figure since 1991.<sup>41</sup> This is down from a high of nearly 200 in the 1950s, lending credence to the notion that, though it has not declined to the null level of the countries of the European Union, the country has experienced a similar decline in executions. The last section of this essay will examine the pressures that may have had an impact on the number of executions in the United States, in preparation for a thesis that will look at a specific tension in specific localities.

### Pressures on the Death Penalty

Some of the pressures that have been suggested in the literature on the death penalty seem more, or less, likely to bring abolition than others. The ones that will be discussed here include legal pressure, pressure from abroad, and pressure from the medical community, before it will be argued that a sensible avenue of future study is that of the lethal injection drug shortage. All of the sources that I encountered dismissed the notion that the death penalty in the United States could be altered by international pressure. Zimring details an attempt to deprive the United States and Japan of observer status on the Council of Europe because of their continued use of the death penalty, but writes that this move is both unlikely to be carried through, and even if it is, unlikely to bring about a change in the practice of the United States.<sup>42</sup> Hood and Hoyle agree, and do not think that this form of pressure will be put into practice.<sup>43</sup> Brynes and Schabas each mention the death penalty and international customary law, both of them agreeing that the death penalty is not a violation of customary law.<sup>44</sup> This can be seen clearly in some of the decisions of

---

<sup>41</sup> The Death Penalty in 2016: Facts and figures." *Amnesty International*. (2015).

<sup>42</sup> Franklin E. Zimring, *The Contradictions of American Capital Punishment*, 39

<sup>43</sup> Roger Hood and Carolyn Hoyle. "Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic", 29 and 32

<sup>44</sup> Andrew Brynes, "The Right to Life, the Death Penalty", 32 and William A. Schabas, "International Law and Abolition of the Death Penalty." (*Washington and Lee Law Review* 55 no. 3, 1998), 812

the Human Rights Committee, which ruled in 1992 that California's use of the gas chamber as a method of execution did violate international law, as it was cruel, inhumane, and degrading, but has not made a similar decision on lethal injection, and has withdrawn from the debate to avoid the uncomfortable position of ruling on what is a, "humane" way to kill a person.<sup>45</sup> The evidence that international pressure is not likely to impact the death penalty in the United states, is compelling.

There are other groups of pressures on the death penalty in the United States that have some chance of bringing change. One of these has to do with foreign nationals who are, or who are in danger of, being sentenced to death, another with people who are residing in a country that has abolished the death penalty but committed a crime in a state that employs the death penalty and may be extradited there. This pressure has sometimes been successful, though only in specific instances. For example, Jens Soering was accused of murder in Virginia, and was tracked down to the UK in 1990, but he was not extradited back to Virginia until the prosecutors in his case agreed not to seek the death penalty.<sup>46</sup> In a similar case, there was a minor row between France and the United States after a prosecutor in the case of Zacarias Moussaoui, a French national who has since been convicted for his involvement in the planning of the 9/11 attacks, called for the death penalty. Moussaoui was not put to death in the end, but this was the decision of the jury, which convicted him on charges that meant he would serve six consecutive life sentences with no chance of parole.<sup>47</sup> So, this type of pressure has sometimes, though by no means always, been successful at curtailing the death penalty. It does not seem to be a viable technique for putting pressure on the death penalty system as a whole, because it can only be

---

<sup>45</sup> William A. Schabas, "International Law and Abolition of the Death Penalty", 811-2

<sup>46</sup> *Ibid.*, 838-9

<sup>47</sup> William A. Schabas, "International Law and Abolition of the Death Penalty", 836

brought to bear when a foreign state becomes directly involved in a case in the United States, as when one of their nationals faces the death penalty, or when someone who is accused of committing a crime in the United States that may mean they are eligible for the death penalty is not caught until they have found their way to a country where the death penalty has been abolished.

One important pressure on the death penalty, as touched upon earlier, comes from the medical community, and in particular from pharmaceutical companies that are based in Europe. The executions by lethal injection that have been carried out in the United States require a ‘three-drug cocktail,’ and one of the previously mentioned drugs in that cocktail, sodium thiopental, has become scarce, as activists alerted European countries that companies within them were allowing their products to be used in executions, and the sale of those products to the United States has been restricted.<sup>48</sup> The shortage has resulted in some botched executions, as the drugs which cause paralysis and cardiac arrest are still available, while the sedative component to the ‘three-drug cocktail’ has become scarce. Following the shortage and attempts at lethal injection mixes which do not include sodium thiopental, death row inmates have visibly gasped at air and moaned in pain during their executions, which have sometimes been prolonged for an hour or more. These do not appear to be humane executions. When these happen, they are called a botched execution, and they have been connected to the recent lethal injection shortage.<sup>49</sup>

Because of the shortage, states face a real barrier in their ability to carry out executions, one that they addressed in a couple of different ways. In Utah, Governor Gary Herbert signed a law in 2015 that allowed for firing squads to, once again, be used in executions, and 10 other

---

<sup>48</sup> Maurice Chemmah and Tom Meagher, “How the Drug Shortage Has Slowed the Death-Penalty Treadmill” (*The Marshall Project*, 2016)

<sup>49</sup> John Ericson, “Botched Execution Shows Perils of Lethal Injection Shortage” (*Newsweek*, 2014)

states have taken action in seeking alternative methods of execution.<sup>50</sup> The state of Arkansas, in April of 2017, carried out seven executions in slightly less than two weeks, as the sodium thiopental that they had stock-piled was about to expire.<sup>51</sup> The Marshall Project argues, though, that the overall impact of the planned shortage has been to limit the numbers of executions.<sup>52</sup> Jennifer Horne, at the Council of State Governments, writes that the continuation of the death penalty will be dependent on the regulations of specific states, including the lengths of their review processes and their response to lawsuits from inmates who face executions from methods that have not been used recently in executions.<sup>53</sup> She seems to imply that the shortage could have a limiting effect on the number of executions that are carried out, at least in the short term. Legendre writes that the numbers of executions in the United States have declined in the 2000s and 2010s from a recent high in the 1990s for reasons besides the lethal injection shortage and believes that the shortage has had a negligible impact on executions.<sup>54</sup> The evidence on the effect of the shortage, then, is inconclusive.

There are a few other types of pressure that are being used by organizers in their advocacy for the abolition of the death penalty, and which it may be useful to study in more detail. Amnesty International has been, “focusing on individual cases of injustice, supporting work for death penalty repeal efforts in the states, and educating campuses and communities about the fatally flawed nature of our capital punishment system”.<sup>55</sup> According to Karn, Amnesty International has, in earlier campaigns, been more successful when it concentrated on, “abstract

---

<sup>50</sup> “USA: Utah move one firing squad latest attempt to fix the unfixable.” (*Amnesty International*, 2015) and Maurice Chemmah and Tom Meagher, “How the Drug Shortage Has Slowed the Death-Penalty Treadmill”

<sup>51</sup> Ray Legendre, “With Drug Shortage, Rush to Execute” (*Fordham Law News* (2017)

<sup>52</sup> Maurice Chemmah and Tom Meagher, “How the Drug Shortage Has Slowed the Death-Penalty Treadmill”

<sup>53</sup> Jennifer Horne, “Lethal Injection Drug Shortage” (*Council of State Governments*, August 2017)

<sup>54</sup> Ray Legendre, “With Drug Shortage, Rush to Execute”

<sup>55</sup> “Abolish the Death Penalty.” *Amnesty International USA*.

principles of justice” rather than individual stories of those who have committed crimes that are not likely to make them seem particularly sympathetic.<sup>56</sup> The American Civil Liberties Union (ACLU) engages in litigation and lobbies for legislation to end the death penalty, and attempts to shift the focus to the morality of the state in carrying out executions, not the morality of those who are being executed.<sup>57</sup> Radelet and Borg also propose that the question which should be stressed is not who deserves to die, but who deserves to kill.<sup>58</sup> Brandon Garrett believes that raising awareness of what is entailed in executions is critical, though he also emphasizes environmental factors that could not be controlled by advocacy groups, such as the decline or increase in the murder rate.<sup>59</sup> It should be noted that there are disagreements within the organizations of advocates, as to what should replace the death penalty. Radelet and Borg see life without parole as a viable, and acceptable, alternative to the death penalty.<sup>60</sup> Garrett, on the other hand, sees a danger in life without parole, as it an easier sentence to pass than death, and so is more likely to be applied in cases where it is not warranted.<sup>61</sup> It may be premature to focus too closely on these later arguments, while the death penalty is still law in a majority of states in the United States. Such considerations are not irrelevant, but they are not the most important thing to consider in a discussion of the current status of the death penalty in the United States.

---

<sup>56</sup> Alexander Karn, *Invitation to an Execution: A History of the Death Penalty in the United States* (Albuquerque, New Mexico: University of New Mexico Press, 2010), 121

<sup>57</sup> Beddau, Hugo Adam. “The Case Against the Death Penalty” (ACLU. First published 1973, last updated 2012)

<sup>58</sup> Michael L. Radelet and Marian J. Borg. "The Changing Nature of Death Penalty Debates", 53

<sup>59</sup> Garrett, Brandon. *End of Its Rope: How Killing the Death Penalty Can Revive Criminal Justice* (Cambridge, Massachusetts: Harvard University Press, 2017)

<sup>60</sup> Michael L. Radelet and Marian J. Borg. "The Changing Nature of Death Penalty Debates", 47

<sup>61</sup> Roger Hood and Carolyn Hoyle. "Abolishing the Death Penalty Worldwide: The Impact of a ‘New Dynamic’", 55

### Analytic Framework

One valuable place to search for any potential change to the death penalty within the United States is in the most recent form of pressure that has been applied to it, that is, in the recent sodium thiopental shortage. The full effect of that drug shortage is still uncertain, and so it is a worthwhile avenue of study. The effect of that shortage may be considered from a variety of directions, one of which is the effect that it has had on public thinking. Public thinking is a vital factor in the consideration of the American death penalty, and so it is sensible to investigate the pressure of the drug shortage through this lens. In this case, I will use a media analyses to operationalize an examination of public thinking, as the media may both reflect and influence the thinking of the public. If the shortage leads to an increase in stories about ‘botched executions,’ then it is likely it will also contribute to conceptions of the death penalty as ‘uncivilized’. The current practice of the death penalty still relies, in part, on classical arguments of deterrence, retribution, incapacitation, and denunciation. However, as has been shown above, in its current form in the United States, the death penalty relies also on an appearance of ‘civilization’, as an institution that has been made humane in the modern age. On the other hand, if it is portrayed as an instance of ‘outsiders’ interfering in a controversial policy in the United States, it is likely to differently impact perceptions of the death penalty, and, as this may challenge conceptions in the United States of criminal justice as an arena of policy belonging most appropriately under local control, it is not likely to lessen support for it, and may even have the opposite effect. Throughout my analysis, I will discuss the implications of these two frames, and examine which of them predominates, emphasizing what this may imply about the effect of the shortage and the strength of support for the death penalty within localities in the United States. It is possible that another frame will emerge through my study of media representations, and if that happens it will

be necessary to incorporate such a frame into my analysis. As has been demonstrated in the literature review above, it is local perceptions and portrayals that are most relevant in terms of criminal justice generally, and in terms of the death penalty particularly, and so this thesis will focus on representations at that level.

### Methods

Media analyses have traditionally been utilized in examining public thinking, and media portrayals do have an effect on perceptions of issues that are portrayed in the media. This is true at the local level, in terms of controversial issues, and as regards the legal system in the United States. For example, Zavestoski, Agnello, Mignano, and Darroch demonstrate the influence of local media representations on local thinking surrounding environmental issues, Perla finds that media frames have effected public opinion on controversial military interventions, and Baird and Gangl that media portrayals of the Supreme Court as apolitical are connected with positive public opinion of that body.<sup>62</sup> The media is an important reflector and influencer of public opinion, and so a media analysis is a useful means of examining what images the public may be exposed to, as well as what perceptions they are likely to have internalized. This may not be as direct a measure of public opinion as a poll or a survey, but it will still be useful as an indicator of trends in local thinking. In *Doing News Framing Analysis: Empirical and Theoretical Perspectives*, Paul Brewer and Kimberly Gross warn that one danger of the approach is that, “it may overstate causal factors,” but write that shifts in framing generally correspond with shifts in

---

<sup>62</sup> Stephen Zavestoski, et al. “Issue Framing and Citizen Apathy toward Local Environmental Contamination.” (*Sociological Forum*, vol. 19, no. 2, 2004), 255–283.

Héctor Perla “Explaining Public Support for the Use of Military Force: The Impact of Reference Point Framing and Prospective Decision Making.” (*International Organization*, vol. 65, no. 1, 2011), 139–167.

Vanessa A Baird, and Amy Gangl. “Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness.” (*Political Psychology*, vol. 27, no. 4, 2006), 597–614.

public thinking.<sup>63</sup> Public thinking should be differentiated from public opinion, the first of which may be more difficult to measure but is nonetheless powerful. It does not necessarily derive from public polling data but may be intuited from signs in the locality in question, in this case from the media of the locality. Causal factors will not be at issue in this study, and correlation between public thinking and media reports will be enough to ensure that it is valuable. Media analyses have also been successfully used in the past to study public perceptions of the death penalty, though from a different direction than will be taken in this thesis. The article ‘Media Framing of Capital Punishment and its Impact on Individual Cognitive Behavior,’ for instance, found that ‘innocence frames’ which emphasize flaws in the justice system had a greater impact on changes in thinking than did the ‘morality-based frame’ that they examined.<sup>64</sup> A media analysis, therefore, has a history of being useful in studying perceptions of the death penalty specifically, and so is likely to also be useful in answering the question of this thesis, that is, regarding perceptions and frames of the recent lethal injection drug shortage.

In order to ensure that I gather a manageable amount of data, I will look at media sources from four different state, within one city in each of those cities. The states that will be examined are Arkansas, Utah, Mississippi, and Texas. Each one of these states regularly carries out the death penalty, and each have had to face the death penalty drug shortage, ensuring that there will be coverage of the issue in local media in each of these states. These specific states have been chosen because the controversies and responses to the death penalty drug shortage within them are typical of states that carry out executions, and these controversies mean that coverage of the shortage will

---

<sup>63</sup> Paul Brewer and Kimberly Gross ‘Studying the Effects of Issue *Framing* on Public Opinion About Policy Issues: Does What We See Depend on How We Look?’ in D’Angelo, Paul, and Jim A. Kuypers. *Doing News Framing Analysis: Empirical and Theoretical Perspectives*. (New York: Routledge, 2010), 172.

<sup>64</sup> Frank E. Dardis, et.al. “Media Framing of Capital Punishment and Its Impact on Individuals Cognitive Response” (*Mass Communication and Society*, vol. 11, no. 2, 2008), 115-140.

be extensive, giving this analysis stories to focus on, and an opportunity to examine frames of the shortage and the response. When the death penalty drug shortage is covered in the media, it is because some controversy surrounding it has emerged, the framing of the controversy illuminates something about reactions to the shortage, and so is the main avenue to study the lethal injection drug shortage in the media. Arkansas became embroiled in controversy during the spring of 2017 over the rate at which the state was carrying out executions, after planning to execute eight people over a two-week span. Mississippi and Utah have both discussed resurrecting methods of execution that had previously been eliminated and have since been questioned. Texas is included as the state which carries out the greatest number of executions. Within these states, I will pull media from each of their capitals, as the capitals are likely to both have a sufficient number of media sources to analyze and are likely to cover issues of the legal system, since this is where state laws are debated and decided. In Little Rock, the media sources that I will analyze are the *Arkansas-Democrat Gazette*, *North Little Rock Times*, KATV, Fox 16, THV11, and Arkansas Matters. In Salt Lake City, the *Salt Lake Tribune*, *Deseret News*, KUTV, fox13now, and KSL, in Austin, the *Austin-American Statesmen*, *The Austin Chronicle*, KXAN, KVUE, Fox7, and KEYE, and in Jackson at *The Clarion-Ledger*, *The Northside Sun*, WAPT, WJTV, and MSNewsNow. Each of these outlets make their stories available online, either as video segments or as web-based counterparts to stories that appeared in print. A combination of these video and print sources will be used in my analysis, to make sure that a full sense of the coverage is conveyed. I will then assign one particular frame to each of them, excluding any duplicates and then comparing the number of times that each frame is used, before finally discussing the implications of the more common frame. I will identify the news stories and features by whether or not they include a mention of the death penalty drug shortage, excluding any in which this mention is incidental to the story in

question. There may be variation across the states that will be studied, and if this is so, it will have to become a factor in my final analysis. I will collect data from the time since the death penalty drug shortage began to take effect, in the range of 2014-2015, to the present, and predict that the frame of 'botched' executions is likely to be the more common frame but believe that this study will be worthwhile even if this is not the case.

### Data Analysis

This data was gathered by means of a keyword search for "lethal injection shortage" on the websites of each of the newspapers and television stations that are included in this analysis. The results of the collection are presented below, separated by city and by outlet. This study included 154 news stories for analysis. The stories are arranged in the order that they were written, in case there is any change in them over time that might be important to discuss. Of these stories, 26 were excluded from the analysis as either mentioning the "lethal injection shortage" in a manner that was incidental to the story in question or were written outside of the time frame of this analysis, 9 of them discussed "both sides" to the extent that it was not possible to assign them a frame, 20 presented the shortage as a result of "outsider" policy, 52 as a "problem to be overcome", and 47 as a cause of "botched executions".

There are a few notes to make about the way in which this analysis was carried out that should be mentioned before the major findings are presented. The first of these is that the frame of "outsider interference/influence" was applied in cases where the most recent drug shortage was covered, though it also includes instances where federal courts or multinational companies were the most immediate cause of a shortage. For example, this frame was applied to stories in which federal courts made decisions in opposition to local responses to the shortage. This means that, while the shortage originated outside of the country, some of the stories that are included in the frame focus on decisions that were made inside of the United States, but outside of the

localities that are a part of this media analysis. The frame of “problem to be overcome” was applied to stories where discussion focuses on the shortage as a problem, whether or not it is a problem that is successfully being solved. Often, but not always, this frame fit best when alternatives to scarce lethal injection drugs were being debated in or passed through state legislatures. The “botched execution” frame includes stories about alternatives to lethal injection executions that have been debated or approved, when those stories focus on the suffering that these alternatives may involve. They most often, however, fit on stories that covered specific executions, in which specific people were in danger of suffering a botched execution. As a final note, some of the stories that were published in these localities discuss the lethal injection drug shortage in other parts of the United States but were still factored into the local analysis. This is because coverage of the way in which a different locality is reacting to the same situation helps to illuminate how the shortage is being portrayed and viewed in the original locality. The excluded stories are still listed below. They, particularly the ones that were published pre-2014, sometimes mention a lethal injection shortage that came before the one in question here and was not a result of policy outside of the United States. Others detail the rates of execution in the United States or the events of specific executions. They provide media context that hopefully helps to situate the stories specifically under consideration within the wider story of this issue.

## Little Rock, Arkansas

Arkansas-Democrat Gazette

Date	Title	Frame
September 27, 2010	Some US executions held up by drug shortage	Exclude
November 8, 2010	Drug to execute shared by state	Exclude
January 21, 2011	US drug maker discontinues key death penalty drug	Exclude
January 22, 2011	Execution-drug firm calls halt	Exclude
March 6, 2011	Execution drug-supply, potential trouble ample	Exclude
July 22, 2011	State forfeits its execution drug supply	Exclude
August 21, 2011	Dearth of vital drugs spurs dash	Exclude
October 3, 2013	Texas names supplier for execution drugs	Problem to be overcome
October 8, 2013	Missouri to go on with 2 executions	Botched executions
October 12, 2013	Missouri propofol execution off	Botched executions
January 18, 2014	Slow Ohio death adds to concerns about lethal injections	Botched executions
May 1, 2014	Oklahoma sets review of execution	Botched executions
March 11, 2015	Utah bill for firing squad as execution backup passes	Problem to be overcome
April 26, 2015	The quest for lethal injection drugs	Botched executions

April 30, 2015	Justices hear execution-drug arguments	Both sides
June 30, 2015	Drugs Ok for executions, high court rules	Problem to be overcome
August 14, 2015	State obtains lethal drugs, paves way for executions	Problem to be overcome
September 9, 2015	Hutchinson sets 8 execution dates after 10-year gap	Problem to be overcome
September 30, 2015	Nine inmates on death row cite pain risk	Botched executions
October 17, 2015	Executioner's drug expiring in 8 months	Outside interference/influence
October 21, 2015	Justices stay 8 executions; today's 2 off	Botched executions
October 22, 2015	State seeks waiver on order to reveal lethal-drug shortage	Outside interference/influence
December 17, 2015	Number executed at lowest since '91	Both sides
May 14, 2016	Pfizer blocks use of its drugs in lethal injections	Outside interference/influence
June 25, 2016	AG to wait for executions edict	Both sides
July 14, 2016	Set executions before Jan. 1, governor says	Problem to be overcome
December 11, 2016	Inmate's coughs, heaves, raise execution questions	Botched executions
December 25, 2016	30 US death penalties in '16 fewest	Exclude
April 11, 2017	American Bar Association: 'Troubled' by Arkansas' multiple execution plan	Botched executions
April 12, 2017	2 inmates seek execution stays from Arkansas High Court	Botched executions

April 13, 2017	2 firms seek to prevent drugs' use in Arkansas executions	Outside interference/influence
April 21, 2017	Arkansas Supreme Court upholds state's lethal injection law	Problem to be overcome
April 21, 2017	Arkansas Justices clear stops on lethal injections	Problem to be overcome
April 30, 2017	Lethal drug expires; no state executions for now	Outside interference/influence
May 7, 2017	Death Penalties Tailing Off in US	Exclude
August 23, 2017	Drugmaker criticizes product's use as killer	Outside interference/influence

## KATV

Date	Title	Frame
September 29, 2010	Shortage of Lethal Injection Drug Not Affecting Arkansas	Exclude
July 24, 2013	UPDATE: McDaniel addresses legislators on executions	Exclude
March 30, 2014	Ark. AG hopeful calls for return of electric chair	Problem to be overcome
June 30, 2015	Victim's family urges state to resume lethal injection	Problem to be overcome
September 9, 2015	Arkansas governor sets execution dates for 8 inmates after 10-year gap	Problem to overcome
September 18, 2015	Arkansas execution plan may use UK firm's drug	Problem to be overcome
September 18, 2015	British company challenges state's execution plan	Outside influence/interference
April 13, 2017	Drug Companies Say Arkansas may have	Outside interference/influence

improperly acquired lethal  
injection drugs

FOX16

Date	Title	Frame
April 20, 2017	Special Report: Arkansas Executions and Debate over Lethal Injections	Botched Executions

THV11

Date	Title	Frame
April 4, 2017	All eyes are on Arkansas as executions for 8 people draw near	Outside interference/influence
April 10, 2017	Doctor says execution drug Midazolam 'won't prevent pain' for seven death row inmates	Botched executions
April 10, 2017	Stop the execution madness in Arkansas: John Grisham	Botched executions
April 11, 2017	American Bar Association 'troubled' by Arkansas' multiple execution plan	Botched execution
April 11, 2017	Arkansas has never used midazolam, the sedative at the center of execution debate	Botched execution
April 11, 2017	Midazolam is the sedative at center of execution debate	Botched executions
April 12, 2017	Lawsuit over Ark. lethal injection process continues	Botched executions

April 15, 2017	Five different lawsuits could prevent, affect scheduled executions	Problem to be overcome
April 17, 2017	Ark. Supreme Court block execution of two inmates on Monday	Both sides
April 17, 2017	Lawyers: don't rush Arkansas executions decision	Both sides
April 17, 2017	Gov. Hutchinson asks US Supreme Court to overrule Ark. Supreme Court ruling blocking Monday execution	Problem to be overcome
April 18, 2017	Drug company refiles injunctive relief, asks Arkansas to return execution drug	Outside interference/influence
April 19, 2017	Arkansas attempting historic execution pace	Both sides
April 19, 2017	Arkansas court gives OK to execute inmates, upholds secrecy	Problem to be overcome
April 19, 2017	Federal judge blocks the Arkansas execution of 8 inmates	Botched executions
April 20, 2017	Damien Echols returns to Arkansas, calls upcoming executions 'conveyer belt of death'	Botched executions
April 20, 2017	Two drug manufacturers ask to join execution case, offer 'unique insight'	Outside interference/influence
April 20, 2017	US Supreme Court denies inmates' request for stay of scheduled executions	Botched executions

April 23, 2017	'Assembly-line' execution effort in Arkansas fuels opposition	Botched execution
May 13, 2017	Arkansas Official: State has drugs to conduct 8 executions	Problem to overcome
August 28, 2017	Independent investigation requested after Williams 'lurched, convulsed' in last execution	Botched executions
November 8, 2017	New York company identified as maker of drug used in Arkansas executions	Outside interference/influence

## Totals-

Botched Executions-21

Problem to be Overcome-16

Outside Interference/Influence-12

Exclude-10

Both Sides-5

## Salt Lake City, Utah

## The Salt Lake Tribune

Date	Title	Frame
January 28, 2014	Issues with lethal injection prompt states to consider older methods	Botched executions
February 18, 2014	Europe's hostility to capital punishment at root of U.S. execution drug shortage	Outside Interference/Influence
May 17, 2014	Bring back firing executions, Utah lawmakers says	Botched executions (both sides)
July 25, 2014	Transcript shows concerns during Arizona execution	Botched executions
March 12, 2015	With execution drug shortage, Utah's not the only state with its eye on the firing squad	Botched executions (both sides)
March 24, 2015	Utah governor signs 55 bills into law, brings back firing squad	Botched executions
October 23, 2015	Documents: Arkansas tried to illegally import execution drugs	Outside interference/influence

## Deseret News

Date	Title	Frame
February 27, 2010	Drug shortage forces states to reevaluate the death penalty	Exclude
September 17, 2010	Some US executions held up by shortage of drug	Exclude
December 16, 2010	Oklahoma set to execute inmates with substitute drug	Exclude

December 16, 2010	US set to execute man with drug used on animals	Exclude
January 11, 2011	AP Enterprise: FDA helps states get executions drugs	Exclude
January 21, 2011	US company stops making key death penalty drug	Exclude
March 16, 2011	Texas death row inmate gets reprieve	Exclude
April 5, 2011	Texas halts execution: some concerned new death penalty drug may cause 'excruciating pain'	Exclude
May 17, 2014	Utah lawmaker: Bring back firing squad executions	Botched executions
July 24, 2014	Challenges, drug shortages, mark US executions	Outside interference/influence (both sides)
July 25, 2014	States' use of execution drugs varies widely	Outside interference/influence
August 4, 2014	Two states conduct executions using single drug	Botched executions
March 18, 2015	Victim's widow supports Utah efforts to bring back firing squads	Outsider interference/influence (both sides)
March 19, 2015	Gov. Herbert 'leaning toward' signing firing squad bill	Problem to be overcome (both sides)
March 25, 2015	Critics worry firing squad will tarnish Utah's image	Botched executions
June 29, 2015	Justices uphold use of drug implicated in botched executions	Both sides
April 21, 2017	Arkansas plans first execution since 2005, plans 3 more	Problem to be overcome

## KUTV

Date	Title	Frame
June 24, 2014	Utah Lawmaker Says He'll Push for Death by Firing Squad	Problem to be overcome
March 23, 2015	Governor signs law making Utah only state with firing squad	Problem to be overcome
October 21, 2015	State's cite Utah's firing squads while debating death penalty methods	Problem to be overcome
March 10, 2016	Utah lawmakers have until day's end to vote on death penalty	Problem to be overcome

## Fox13now

Date	Title	Frame
November 20, 2013	Serial killer Joseph Franklin executed after hours of delay	Exclude
July 24, 2014	Arizona lethal injection with new drug took almost 2 hours	Botched execution
February 4, 2015	Firing squad bill narrowly survives committee	Problem to be overcome
March 10, 2015	Firing squad bills passes the Senate, heads to governor for signature	Problem to be overcome
March 17, 2015	Pressure mounts on governor to veto firing squad bill	Problem to be overcome

## KSL

Date	Title	Frame
February 9, 2011	Utah and other states search for lethal drugs	Exclude

March 10, 2015	Lawmakers vote to make Utah only state with firing squad	Botched executions (both sides)
March 11, 2015	Utah votes to retain firing squad for planned executions	Problem to be overcome (both sides)
March 11, 2015	Vote for firing squad shows frustration with drug shortages	Problem to be overcome (both sides)
March 12, 2015	Brother of man executed by firing squad calls it brutal	Botched executions
October 20, 2015	Execution drug shortage makes some think of firing squad	Problem to be overcome
March 2, 2016	Utah Senate narrowly passes death penalty repeal	Exclude
March 11, 2016	Utah keeps death penalty despite strong push to abolish	Problem to be overcome

Totals-

Problem to be Overcome-13

Exclude-11

Botched Executions- 10

Outside Interference-5

Both Sides-1

## Austin, Texas

Austin-American Statesman

Date	Title	Frame
April 1, 2014	Herman: Drugs, death, and the OU game	Problem to be overcome
March 19, 2014	Texas finds new execution drug supply	Problem to be overcome
October 23, 2015	Texas execution drug shipment seized by federal authorities	Problem to be overcome
October 23, 2015	Texas sought unapproved lethal injection drug	Problem to be overcome
December 7, 2016	Alabama to execute man condemned when judge overrode jury	Botched executions
December 8, 2016	Alabama inmate coughs, heaves 13 minutes into execution	Botched executions
May 3, 2017	Oklahoma's once busy death chamber to stay quiet much longer	Exclude
August 20, 2017	Expert: Arkansas may have reliable source of execution drug	Problem to be overcome
August 24, 2017	California seeks new one-drug execution method	Problem to be overcome
November 17, 2017	Nevada seeks to use untried execution drugs including opioid	Botched executions (both sides)

The Austin Chronicle

Date	Title	Frame
March 30, 2011	TDCJ Violating Federal Drug Laws?	Problem to be overcome
March 20, 2015	Death Watch: A Drug Shortage, few pharmacies willing to supply executioners	Problem to be overcome (both sides)
March 20, 2015	TDCJ Re-Fills Drug Supply	Problem to be overcome
KXAN		
Date	Title	Frame
March 19, 2014	Texas finds new execution drug supply	Problem to be overcome (both sides)
April 30, 2014	Texas won't change its plans after botched OK execution	Botched executions (both sides)
January 3, 2017	Paxton sues FDA for delaying import of death penalty drug	Problem to be overcome
KVUE		
Date	Title	Frame
September 14, 2016	Texas sees an unusual lull in executions	Exclude
December 15, 2016	In an unusual year for death penalty, Texas didn't have the most executions	Exclude
December 20, 2016	Georgia leads nation in number of executions as Texas slows	Botched executions
KEYE		
Date	Title	Frame

September 18, 2015	Arkansas plan may use UK firm's drug	Problem to be overcome
April 14, 2017	Judge halts plan to execute 8 inmates in 11 days	Botched executions (both sides)
April 15, 2017	Judge halts Arkansas plan to execute inmates by end of month	Exclude

Totals-

Problem to be Overcome- 11

Botched Executions-6

Exclude-4

Jackson, Mississippi		
The Clarion-Ledger Date	Title	Frame
March 29, 2017	Mississippi assembly opts for firing squad	Problem to be overcome
April 14, 2017	Execution plan can be kept secret, Mississippi Supreme Court says	Problem to be overcome (both sides)
August 16, 2017	Mississippi says it has execution drugs amid secrecy fights	Problem to be overcome (both sides)
WAPT		
Date	Title	Frame
April 20, 2015	Suit says Mississippi lethal injections are unconstitutional	Botched executions
January 27, 2016	Death penalty may be changed	Problem to be overcome
January 27, 2016	Firing squad, electrocution could be considered for Mississippi executions	Problem to be overcome
March 29, 2016	Lawmakers consider firing squad bill	Botched executions (both sides)
June 28, 2016	Appeals court opens way for Mississippi to resume executions	Problem to be overcome
June 29, 2016	ACLU against Hood's execution alternatives	Botched executions
August 11, 2016	Mississippi Supreme Court questions suit over execution drug	Both sides
February 9, 2017	Electrocution, firing squad, gas chamber could be added to execution methods	Problem to be overcome

June 16, 2017	Execution dates could soon be set for 2 Mississippi inmates	Both sides
August 17, 2017	Mississippi may resume executions with new drug supply	Botched executions
November 9, 2017	State lawyer says disclosing information could hurt Mississippi lethal injections	Problem to be overcome

## WJTV

Date	Title	Frame
August 13, 2015	Arkansas could resume executions soon after buying drugs	Botched executions
October 23, 2015	Documents: Arizona tried to illegally import execution drug	Outside Interference/Influence
October 23, 2015	Feds confiscate lethal injection drugs imported by 2 states	Outside Interference/Influence
October 28, 2015	Federal judge wants Arizona to identify its lethal injection drugs	Outside Interference/Influence
January 21, 2016	Alabama carries out 1 <sup>st</sup> execution in more than 2 years	Botched executions
January 22, 2016	California eyes 1-drug executions amid debate	Botched executions (both sides)
February 3, 2016	Lacking execution drugs, Virginia eyes the electric chair	Both sides
March 10, 2016	Last-minute changes for death penalty repeal	Exclude

October 3, 2016	Ohio plans January execution using 3-drug combo	Botched executions (both sides)
December 2, 2016	Alabama inmate seeks execution stay from US Supreme Court	Botched executions
December 10, 2016	Advocates call Alabama execution an 'avoidable disaster'	Botched executions
February 8, 2017	Mississippi considers firing squad as method of execution	Problem to be overcome (both sides)

## MSNewsNow

Date	Title	Frame
December 1, 2016	Court rules against inmates in Mississippi execution case	Problem to be overcome
February 8, 2017	Mississippi considers firing squad as method of execution	Problem to be overcome (both sides)
February 9, 2017	Lawmakers consider firing squad among execution alternatives	Botched executions
March 2, 2017	Mississippi may use gas chamber, electrocution for execution	Problem to be overcome
October 23, 2017	Appeals option drags out Mississippi death penalty cases	Botched executions

## Totals-

Problem to be Overcome-12  
 Botched Executions- 10  
 Outside Interference/Influence-3  
 Both Sides-3  
 Exclude-1

The introduction to this data analysis raised the possibility that there may be some change over time in the coverage of the lethal injection shortage. This does not appear to be the case, although that may only be because the period of analysis is relatively short, only around three years. It is possible that media narrative on an issue such as this may shift in a more gradual manner. The number of frames that were applied to news stories in each of these cities were relatively consistent. In other words, there was no city where one frame totally predominated, and the others were non-existent. However, there was some variation across the cities that is worth highlighting. In cities like Jackson, Mississippi and Salt Lake City, Utah most of the coverage focused on attempts by lawmakers to find alternatives to lethal injection executions, in order to circumvent the shortage. Because of the way in which the state is reacting to the shortage, most of the coverage has been concerned with the shortage as a problem to be overcome. These cities have been debating and passing laws that would allow them to utilize means of execution other than lethal injection. No one has yet actually been executed by means of a firing squad or the electric chair following from these changes to state law though, and so there has been little discussion of the shortage in connection with botched executions. On the other hand, in Little Rock, Arkansas, the state reacted to the lethal injection shortage by planning eight executions in around two weeks. Some of those executions were covered as botched executions, both within and outside of Little Rock, Arkansas. Because botched executions were actually happening, not just a theoretical possibility, they became headline news. Again, the reaction of the state to the shortage contributed in great part to the coverage of the shortage as a cause of botched executions. The state decided to carry out executions on a greatly accelerated schedule, before their remaining store of lethal injection drugs were set to expire, resulting in

rushed and botched executions. These botched executions happened to actual people, they were not just a theoretical possibility, and they were covered as such in Little Rock media.

When botched executions are actually happening, the coverage tends to focus on the botched execution themselves, not whether or not the shortage is a problem to be overcome or a result of outside decision-makers. The coverage of the shortage, therefore, seems to be dependent on the reactions of the cities and states in which the shortage is having an impact. When changes to the law are the reaction of the state, that is changes to theoretical executions in the future, the coverage tends to focus on the shortage as a 'problem to be overcome' or as a consequence of 'outsider interference or influence'. When the reaction of the state is to carry out actual executions in spite of the shortage, the shortage tends to be covered in terms of the potential for botched executions. The implications of which frames are most common have been discussed in previous sections and so, at least from the evidence of this media analysis, it would seem that cities in which the state responds to the shortage by rushing executions the resulting narrative may challenge the notion that executions have become humane in a modern age. However, the narratives that the shortage is a 'problem to be overcome' or a result of 'outsider interference/influence', combined were most common. This is likely because most states, at least so far, have not reacted to the shortage by rushing executions, but by deciding on theoretically possible means of carrying out executions in a way that avoids the issue of the shortage. These decisions resulted in media narratives that do not raise questions about whether or not executions are humane but picture the lethal injection shortage as an issue of local control. This may change if an actual execution by means of firing squad or electric chair is carried out against the wishes of the condemned, but that has not happened so far, making this necessarily conjecture.

### Conclusion

A media analysis at the local level is a particularly useful means of conducting a study of the American death penalty, as the death penalty relies on a system that integrates public opinion into the justice system. The lethal injection drug shortage, also, deserves study, as the effect of it is ambiguous and it is still in the process of being fully realized. The literature review of this thesis has attended to the cultural and the political institutions of the United States that mean the death penalty has endured in the country, determining that the death penalty is differently protected in the country. This does not mean that it will inevitably persist, but that it is not likely to end in the same way that it did in other parts of the world. The appearance of 'civilization' has been a factor, among others, in the continuation of the death penalty in the United States, and so any possible shifts in that appearance are deserving of attention. The lethal injection drug shortage was studied here in terms of local media and public thinking in four state capitals. Most of the coverage framed the shortage as either a 'problem to be overcome' or as a result of 'outside interference/influence'. In Arkansas though, where there were specific cases of botched executions, not just discussions about changes to the law that could theoretically result in botched executions. There, the shortage was covered in ways that challenged the perceived 'civilization' of the death penalty. Depending on how decision-makers continue to respond to the shortage, and whether or not there are more specific instances of botched executions, the coverage may shift in this direction. At this point, however, that is merely speculation, and therefore a potential avenue for future study.

### Bibliography

- “Abolish the Death Penalty.” *Amnesty International USA*.  
<https://www.amnestyusa.org/issues/death-penalty/abolish-the-death-penalty/>
- Balkan, Gordon, Morris, ed. *Invitation to an Execution: A History of the Death Penalty in the United States*. Albuquerque, New Mexico: University of New Mexico Press, 2010.
- Baird, Vanessa A., and Amy Gangl. “Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness.” *Political Psychology*, vol. 27, no. 4, 2006, pp. 597–614.
- Baze v. Rees: 553 U.S. 35 (2008)
- Blackmon, Douglas A. *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II*. New York: Random House. 2008.
- Beddau, Hugo Adam. “The Case Against the Death Penalty” *ACLU*. First published 1973, last updated 2012.
- Bessler, John D. *Kiss of Death: America's Love Affair with the Death Penalty*. Northeastern University Press. 2003.
- Brewer, Paul and Kimberly Gross ‘Studying the Effects of Issue *Framing* on Public Opinion About Policy Issues: Does What We See Depend on How We Look?’ in D'Angelo, Paul, and Jim A. Kuypers. *Doing News Framing Analysis: Empirical and Theoretical Perspectives*. New York: Routledge, 2010.
- Brynes, Andrew. “The Right to Life, the Death Penalty: An International and Australian Perspective.” *New South Wales Faculty of Law Research Series* 66 (2007).
- Camus, Albert. ‘Reflections on the Guillotine: An Essay on Capital Punishment,’ Fridtjof-Karla Publications. 1960.
- Chemmah, Maurice and Tom Meagher. “How the Drug Shortage Has Slowed the Death-Penalty Treadmill.” *The Marshall Project* (2016).
- D'Angelo, Paul, and Jim A. Kuypers. *Doing News Framing Analysis: Empirical and Theoretical Perspectives*. New York: Routledge, 2010.
- Dardis, Frank E., et.al. ‘Media Framing of Capital Punishment and Its Impact on Individuals Cognitive Response’, *Mass Communication and Society*, vol. 11, no. 2 (2008): 115-140.
- Death Penalty Information Center, ‘Fact Sheet’ (November 29, 2017)  
<https://deathpenaltyinfo.org/documents/FactSheet.pdf>
- Ericson, John. ‘Botched Execution Shows Perils of Lethal Injection Drug Shortage’ *Newsweek* (2014).
- Furman v. Georgia: 408 U.S. 238 (1972)
- Garland, David. *Peculiar Institution: America's Death Penalty in an Age of Abolition*.

- Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2010.
- Garrett, Brandon. *End of Its Rope: How Killing the Death Penalty Can Revive Criminal Justice*. Cambridge, Massachusetts: Harvard University Press, 2017.
- Gregg v. Georgia: 428 U.S. 153 (1976)
- Hammel, Andrew. *Ending the Death Penalty: The European Experience in Global Perspective*. Houndmills, Basingstoke, Hampshire, UK, New York, NY: Palgrave Macmillan, 2010.
- Haynes, Chris, Jennifer Merolla, and S. Karthick Ramakrishnan, *Framing Immigrants: News Coverage, Public Opinion, and Policy*, New York: Russell Sage Foundation, 2016.
- Hood, Roger, and Carolyn Hoyle. "Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic"." *Crime and Justice* 38, no. 1 (2009): 1-63. doi:10.1086/599200.
- Horne, Jennifer. "Lethal Injection Drug Shortage" *Council of State Governments*, August 2017.
- Kramer, Matthew. *The Ethics of Capital Punishment: A Philosophical Investigation of Evil and Its Consequences*. Oxford: Oxford University Press. 2011.
- Locke, John. *The Second Treatise of Civil Government and A Letter Concerning Toleration*. Oxford: Blackwell, 1948.
- Legendre, Ray. "With Drug Shortage, Rush to Execute." *Fordham Law News*. (2017).
- LeGraw, Joan M., and Michael A. Grodin. "Health Professionals and Lethal Injection Execution in the United States." *Human Rights Quarterly* 24, no. 2 (2002): 382-423. <http://www.jstor.org/stable/20069609>.
- Martinez, Michael J. 'Woe to the Hand That Shed This Costly Blood': Philosophical Arguments against the Death Penalty' in *Capital Punishment in the Twenty-First Century* eds. J. Michael Martinez, William D. Richardson, and D. Brandon Hornsby. Lanham, Maryland: Rowman and Littlefield Publishers. 2002.
- McAdams, John C. "Racial Disparity and the Death Penalty." *Law and Contemporary Problems* 61, no. 4 (1998): 153-70. doi:10.2307/1192433.
- McClesky v. Kemp: 481 U.S. 279 (1987)
- National Conference of State Legislatures, 'States and Capital Punishment' (February 2, 2017) <http://www.ncsl.org/research/civil-and-criminal-justice/death-penalty.aspx>
- Perla, Héctor. "Explaining Public Support for the Use of Military Force: The Impact of Reference Point Framing and Prospective Decision Making." *International Organization*, vol. 65, no. 1, 2011, pp. 139–167.
- Radelet, Michael L., and Marian J. Borg. "The Changing Nature of Death Penalty Debates." *Annual Review of Sociology* 26 (2000): 43-61. <http://www.jstor.org/stable/223436>.
- Schabas, William A. "International Law and Abolition of the Death Penalty." *Washington and*

*Lee Law Review* 55 no. 3 (1998): 797-846.

“The Death Penalty in 2016: Facts and figures.” *Amnesty International*. (2015).

“USA: Utah move one firing squad latest attempt to fix the unfixable.” *Amnesty International*. (2015).

U.S. Constitution., Amendment V.

Whitman, John Q. *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe*. New York: Oxford University Press, 2005.

Zavestoski, Stephen, et al. “Issue Framing and Citizen Apathy toward Local Environmental Contamination.” *Sociological Forum*, vol. 19, no. 2, 2004, pp. 255–283.

Zimring, Franklin E. *The Contradictions of American Capital Punishment*. New York: Oxford University Press, 2003.