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AMERICAN CAPITAL PUNISHMENT AND THE PROMISE OF "CLOSURE"

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AMERICAN CAPITAL PUNISHMENT AND THE PROMISE OF "CLOSURE"

by

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Dedication

For Elyshia, Sheldon, and Simone

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AMERICAN CAPITAL PUNISHMENT AND THE PROMISE OF "CLOSURE"

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Several justifications exist for the death penalty, yet it is only recently that the concept of "closure" has come to serve as a rationale for American capital punishment. This contemporary justification promises murder victims' families that the execution of their loved one's murderer should provide them with "closure"—a contested word that typically denotes an end to the pain associated with their loved one's murder. How and when this new narrative came about has garnered little scholarly attention, particularly as murder victims' families begin to challenge closure as relevant to their healing.

The goals of the current study seek to: 1) elucidate how closure entered the American death penalty debate; 2) illustrate the myriad meanings assigned to closure, identifying how various stakeholders have trafficked in the term's use; 3) examine how closure has been used politically to legitimize death penalty practices and the state's right to take life; and 4) critically analyze claims that closure has "symbolically transformed" the American death penalty today.

The study employs discursive textual analysis of nearly 2500 American newspaper stories from 1989 to 2008, legislative hearings, legal case histories, academic and popular

sources, and archival materials from American death penalty and victims' rights groups during this twenty year period.

The findings illustrate that closure entered death penalty discourse in the late 1980s, and reached a tipping point in news coverage in 2001 with Timothy McVeigh's execution. While the term was used in nearly every way imaginable, the findings illustrate it was most prominently used in supporting secondary victims' "right to view" the executions of their loved ones' murderers and in justifying Timothy McVeigh's execution for his role in the Oklahoma City Bombing. I argue that the media's sensational portrayals of such historical moments allowed them to serve as "galvanizing events" ushering in closure as a powerful symbol in justifying the state's right to take life and the view that executions are a form of "therapeutic justice."

Despite closure being used to support certain death penalty practices, the analyses presented here provide little support for the notion that closure has "symbolically transformed" American capital punishment today as has been suggested by some scholars. Closure is a small blip in print news coverage and does not appear to resonate strongly with Americans' support for capital punishment in national opinion polls.

The study concludes with a critical examination of the role of closure as a contemporary, and empirically unchallenged, justification for the death penalty—one that serves as an empty promise for murder victims' loved ones.

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INTRODUCTION

> *Remorseless, butcherlike, proud of his evident guilt, and sane at least to outward appearances, he could not avail himself of the usual doubts or reservations. How boldly and frequently it was asserted that his death would bring 'closure."*[i]

Two days after meeting with the families of the Oklahoma City Bombing victims, then-Attorney General John Ashcroft announced at a news conference,

> I (also) met with about 100 survivors and family members on Tuesday to hear their stories and try to understand their loss. The magnitude of this case is certainly stunning. My time with these brave survivors changed me. Their lives were shattered and I hope that we can help to meet their need to close this chapter in their lives.[ii]

Making history, the Attorney General decided to broadcast Timothy McVeigh's execution to the largest group of crime victims in American history via closed-circuit television to accommodate their desires to see justice carried out by the federal government.

It had been six years since Timothy McVeigh, a decorated U.S. Army veteran, parked a Ryder truck filled with 7,000 pounds of explosives in front of the Alfred P. Murrah Federal Building in Oklahoma City on April 19th, 1995, plugged in earplugs, and ran several blocks as the truck detonated, killing and injuring children who had just been dropped off by families at day care, federal workers, and several bystanders. The attack killed 168 people total. Prior to the attacks on the World Trade Center on September 11th, 2001, it was the most significant mass killing on American soil.

The evidence against McVeigh was strong. He was picked up later that day for a traffic stop and would soon be identified by witnesses as making preparations for several weeks prior to the attack. After the press finally relented that this was a "home-grown"

terrorist attack, the public could focus on the man who prided himself on sending a message for events at Waco two years prior to the day.[iii]

Media coverage of McVeigh's trial was unprecedented. Federal prosecutors would ask for the death penalty, something that had not been done since 1963. His execution would mark the first use of lethal injection at the federal level. His main accomplice, Terry Nichols, turned himself in on the day McVeigh was identified as the Oklahoma City Bomber.[iv] The trial was lengthy, the victims were many, and they testified at length about the losses they suffered. A parade of hurt unfolded on the witness stand.

McVeigh was pronounced guilty on each of the 11 counts against him on June 3, 1997.[v] His victims would pour out of the courtroom that day with arms raised shouting, "Guilty! Guilty! Guilty!" Two days later, he would be sentenced to death and moved to a federal Supermax prison in Colorado. His subsequent appeals would be met with no success. McVeigh was set to be executed on May 17, 2001. Four days prior to his scheduled date, however, the FBI revealed that it had failed to hand over nearly 11,000 boxes of documents to McVeigh's defense team prior to his trial.

Attorney General Ashcroft would announce the delay in McVeigh's execution, from his original date of May 17th to June 11th to give defense attorneys a chance to review the thousands of pages of material. The defense team would request another delay, but this time the federal government refused to oblige and forged ahead with the June 11th execution date. Why the second delay was not allowed when McVeigh had already admitted guilt is uncertain, but one thing was for sure: the victims had already

been put through enough. Their pain and suffering, something addressed at length during his trial and its resulting news coverage, could go on no longer.

However, the delay created an anticlimactic experience for the victims and "secondary victims"[vi]—individuals whose loved ones have been murdered—who had long awaited his punishment throughout his trial. With an unprecedented number of homicide survivors (and an extraordinarily vocal and well-organized group of victims),[vii] Ashcroft had indeed already given careful consideration on how to proceed. Never before had so many victims demanded to view an execution. The federal government had no set protocol for victims who wished to view an execution. Amendments would need to be made. And, they were. The response to the Oklahoma City Bombing victims' needs had been unprecedented in many ways. Ashcroft had listened to the victims, and Congress had too. So it came as a surprise that it was now the federal government who was blocking the opportunity for closure so many of them had been promised. McVeigh's execution promised not only to restore their well-being, but would finally silence a monster the rest of America detested too.

McVeigh was executed on June 11th, 2001 in Terre Haute, Indiana. Many would argue that this execution did not appear to be about justice, deterrence, or any of the usual arguments typically heard in death penalty discussions. A new rationale would be put to use and never had it been so fervently espoused as a righteous reason to sentence an American traitor to death.

A National Trauma and a New Death Penalty Discourse

This new rationale invoked the concept of "closure"—a term typically used to describe the end of the pain and suffering of homicide survivors in the aftermath of their loved one's murder. Closure was not necessarily new in public discourse on the death penalty. As I discuss in Chapter 3, closure had been a part of this conversation for a little over a decade by the time of McVeigh's execution in mid-2001. Yet, if anything had cemented closure's place within American death penalty rhetoric, it would certainly be the news coverage of McVeigh's trial, appeals, and execution. As I discuss further in Chapter 4, McVeigh's execution would represent a tipping point for closure's presence in the news media's death penalty coverage. In the next section, I describe the beginnings of this tipping point to provide a glimpse of the varied representations of closure in the print news in the past twenty years.

The early coverage of the Oklahoma City Bombing is an excellent case in point for demonstrating the many meanings and uses afforded closure in the print news media. Within four days of the bombing, newspapers would begin to include "closure" in their coverage of the attacks. If we are to believe these reports, we would learn that "closure" would come from a prayer service held in the days after April 19th, a special memorial service for firefighters and other emergency responders, and a separate memorial for victims in the proceeding days as well. Closure would also come from the ability for rescuers and victims to walk through the rubble, and the ability to try to recover and identify any remaining victims. The Alfred P. Murrah building itself would also come to symbolize an opportunity for closure: tearing down the building would give victims

closure and allow them to not constantly be reminded of the destruction. The ability to take away pieces of the building would also give victims closure, providing them the much-needed mementos to ensure they never forgot the damage caused by the tragedy.

On the question of whether and when to demolish the building, closure could be gained from either route. The battle for demolition won (thus providing closure). As such, demolition day also provided closure as one report explained, "One hundred and fifty pounds (70 kg) of dynamite were used in the demolition, which took eight seconds. Hundreds of spectators witnessed the demolition, which was described by many as a closure to one chapter of the bombing incident."[viii] The day after the demolition, of course, would also provide a new opportunity for closure as victims and other emergency officials could now view the Murrah building in a completely demolished state and not be reminded of the events of that day. The demolition of the building also allowed loved ones to identify and recover three remaining victims in the building. This, too, provided closure.

Within days of the bombing, closure would come from both the arrest of Timothy McVeigh and the identification of "John Doe No. 2" (whom we would later come to know as Terry Nichols).[ix] McVeigh had barely been arraigned and closure seemed to be ubiquitous in the print news' coverage of the attacks and the terrorists responsible (which I describe further in Chapter 4). Despite so many opportunities for closure described above, there would be plenty of opportunities for closure to be denied as well.

In the year after the attack, victims would become outraged at the notion that the trial to be held in Oklahoma City should be moved. This move would not be to nearby

Tulsa (for which many victims said they would be willing to compromise), but out of state to Denver, Colorado. Closure now hinged on not just having a trial, but having the trial in Oklahoma City. As one victim, LaDonna Battle, shared, "Give us a chance to the go to the trial… and find, you know, some type of closure. Because right now we don't have no closure. We sat for 14 days not knowing whether our parents were alive or what. So at least give us that opportunity to have something of a closure."[x]

Closure also meant that the trial would of course have to end with a guilty verdict, something that was not perceived to be a guarantee in Denver in the minds of many victims quoted in newspaper stories. Part of this uneasiness appeared to be related to the recent outcome of the O. J. Simpson murder trial, wherein he was found not guilty, much to the chagrin of many (white) Americans. Victims were openly distrustful of Federal Judge Richard Matsch's decision to move the trial to Denver: "I think it's going to be a mess. I think it's going to cost a lot more dadgum money than it's worth," said Jim Hollingsworth, whose daughter was killed in the blast, "I'm not very pleased with our judicial system at this point. It goes into the (O. J.) Simpson deal and then this, not having the trial here, where it should be anyway." The perceived unpredictability of the outcomes of trials from the O. J. Simpson trial appeared to magnify as the trial moved to Denver, and the opportunity for elusive closure seemed farther away.

The balance between closure-seeking and having a fair and just trial seemed to balance toward placing a guilty verdict above all else. When Judge Matsch moved the trial out of concerns related to the media attention in Oklahoma City and the personal ties so many people in the city had to the numerous victims, victims sprung into action to

work to appeal the decision. When those attempts failed, they fought to be in the courtroom in Denver. For those who could not afford to travel to Denver (a 13-hour drive) regularly or take the time off from work (several people reported quitting their jobs to focus solely on attending the trial), the fight began to broadcast the proceedings to a courtroom in Oklahoma City where the victims could watch the trial every day together.

Oddly, the televised nature of the O. J. Simpson trial likely planted the seed for victims' requesting to watch the trial from the courtroom in Oklahoma City (and, in fact, the same company would supply the technology for both trials). The potential for closure to be denied from not being able to view the trial inspired death penalty proponent and University of Utah professor of law, Paul Cassell, to assist over 90 secondary victims with changing the federal rules regarding victims' viewing the trial. Their right to view was granted and it was decided that the victims could view the Denver proceedings. In honor of these victims, United Airlines created a special airfare for them to help ensure that they could travel to back and forth for the trial.[xi]

To be sure, not all victims viewed the move to Denver as a rejection of their rights or their path to "closure." Many victims quoted in the newspaper shared that they would get closure by not having to go through the process again if a mistrial was declared as a result of staying in Oklahoma City. These individuals were likely not prepared for the trial and lengthy appeals process that would await even the guilty verdict so many desired. As one report stated, "There will be no closure… until the trial of the alleged bombers Timothy McVeigh and James [Terry] Nichols, now threatening to drag on well into next year."

McVeigh's trial would begin in 1997, two years after the attacks. If the news media were to be believed up until this point with the many promises of closure offered along the way, certainly the victims and the American public would have had "closure" by this point. Even with McVeigh's trial underway, the quest for closure would continue. It became clear that the true measure of closure would now come not only from his trial, and the ability to view it, but from a guilty conviction as well. Of course, closure would also require that Terry Nichols' trial begin, and deliver a guilty verdict as well.

Given everything that was reported in the print news media by the day that McVeigh's 11 guilty verdicts would be read, certainly closure had been reached by that point. It was, in fact, what had been promised all along in so many newspaper reports prior and throughout the trial. Yet, there would be another switch with his conviction. Perhaps "bait and switch" would be more appropriate—news coverage now suggested that closure could only then come from sentencing McVeigh to death. The media's coverage in the days between McVeigh's guilty verdicts and his sentencing now insisted upon closure coming not only from a speedy decision, but a speedy execution too.

I begin with the story of Timothy McVeigh here because I argue that his attack on the Oklahoma City Murrah Building not only caused a national trauma, it helped to transform the way we think about victims, crime, and terrorism in America. Historical moments such as this allow for the formation of a new public discourse about the state's taking of life. This public discourse would invoke the pain and suffering of crime victims, and provide a new rationale to justify America's continued use of capital punishment: closure. Closure discourse could be found in many platforms, but particularly in media

coverage of these events. In the following chapters, I illustrate that the news media would help to cement "closure" as a powerful symbol in the death penalty debate, to help bring forth the idea that executions were a form of "therapeutic justice"—a form of justice I suggest is carried out by the state with the goal of influencing the emotional and psychological outcomes of legal and criminal justice practices."[xii] The goals, then, of this project seek to understand how closure joined this conversation, how it was constructed in the print news media over the past twenty years, and how it helped bolster and expand death penalty practices in America during this time.

The Organization of the Dissertation

My interest in closure as a new death penalty rationale is rather different than the question most people pose: "Does the death penalty provide closure?" Instead, I offer that this question can be answered indirectly by uncovering the origins of the "closure" rationale, and analyzing its life in the modern death penalty debate. Below I describe my approach to answering this question by answering others surrounding the promise of closure and American capital punishment.

This study takes a constructivist approach in suggesting that closure is a media-generated concept, used primarily by journalists and bolstered by the claims of criminal justice officials and death penalty supporters. Closure has been used in myriad ways in the print news media, and has been co-opted in support of expanding the American death penalty and providing a new rationale for executions. If we come to understand that the term bares little resemblance to how secondary victims conceive of their experiences and

that their voices are hardly a part of the chorus in using closure, we can work to begin to understand that the death penalty, indeed, provides no closure to victims.

The data collected for this study come from a time period where American penal policy has become increasingly punitive, "tough on crime" ideologies are deeply rooted in electoral politics, and the death penalty, up until very recently, has been actively sought, enjoying a high level of approval from most Americans. The majority of the findings are based on qualitative analyses of U.S. newspaper stories on capital punishment that pair the terms "closure" and "execution" from 1989 to 2008. These analyses are supported by the inclusion and analysis of other discursive texts on the death penalty—legislative hearings, legal case histories, academic and popular sources, and the archival materials of American death penalty and victims' rights groups. The findings presented in the following chapters examine how closure entered the death penalty debate, how the term was used to maintain and expand the American death penalty practices, and what impact its use has had in terms of legitimating state sanctioned executions. In the following paragraphs, I outline the organization of the chapters of this dissertation.

In Chapter 1, the primary goals are to introduce closure as a relatively new justification for the American death penalty, discuss the significance of understanding its role in American capital punishment discourse and practice, and offer an outline of the theoretical and methodological frameworks that inform my approach to this undertaking. This conversation focuses on the study's constructivist approach—a theoretical perspective that calls into question the idea that the news media presents an objective

reality about events, individuals, or situations (Berger & Luckmann, 1966). I focus on how the news media participates in the social construction of reality, and the construction of certain narratives about the death penalty over others. This practice is the result of competing struggles among various stakeholders who want to shape, control, and perhaps distort, death penalty debates. I argue that as a new trope in this debate, closure has received little critical attention, thus allowing stakeholders to imbue it with myriad meanings and for a multitude of uses. The term is often used in ways that bare little resemblance to what we know of homicide survivors' experiences. These discrepancies reveal the tensions between the objective realities of homicide survivors' grief experiences and the claims made by those who seek to rationalize America's continued use of capital punishment in their names. I argue in this chapter that by examining these tensions, we may be able to understand why closure became part of the death penalty debate and how it has been used.

The purpose of Chapter 2 is to provide a history of the death penalty in America, as well as an outline of the major controversies surrounding its continued use today. The United States is the only Western democracy to use the death penalty, and this chapter places this retention within historical, international, and legal context. While every other Western democracy had stopped executing people by the late 1970s, the United States was ramping up efforts to sentence and execute individuals at unprecedented numbers well into the 1990s. In the following decade however, the death penalty would be in significant decline by all metrics, including public support for the death penalty, which would reach all time lows in the late 2000s. In addition to concerns over methods of

execution, cost, fairness, and bias issues, this drop in death penalty support is likely primarily driven by media attention given to the parade of individuals who have been exonerated from death row and prisons over the past two decades.[xiii] Despite these shifts away from the death penalty, the majority of Americans today approve of the death penalty. In this chapter, I outline traditional reasons for this support in order to provide context for closure as a relatively new rationale for the death penalty.

Chapter 3 introduces the topic at hand: What does closure mean and from where did the term originate? My analyses indicate that closure was first mentioned in the print news media with the execution of serial killer Ted Bundy in 1989. From there, the closure narrative increasingly appeared in news coverage throughout the 1990s, being used by claimsmakers and journalists in a dizzying array of ways. I argue that the term has been used so much and by so many within death penalty discussion, that the term itself is a "floating signifier"—a term marked by its fluidity and ability to be called upon to take on many meanings. Drawing upon a collection of nearly 2500 news articles and a theoretical sample of archival materials over the past twenty years described in detail in Appendix A, my analyses demonstrate that there are ten "types" of closure that are found within death penalty discourses related to closure. I outline these categories with the caution that closure's status as a floating signifier does not mean to suggest that closure is based in any objective reality or attainable for that matter. In this chapter, I outline the meanings attached to these ten categories of closure and provide examples of how various stakeholders have conceived of a sense of closure as: finality, knowledge, security, justice, vengeance, death, honor, severed ties, forgiveness and collectivity.

Finally, this chapter provides an outline of some of the major criticisms leveraged against the concept of closure, found throughout discourse among scholars, abolitionists, and secondary victims.

Chapter 4 focuses on how the term was used to institutionalize death penalty practices in focusing on the political uses of closure. This discussion focuses on states' adoption of "right to view" policies and legislation that allowed victims' loved ones to witness the executions of their loved ones' murderers. Using Best's (2006) "institutional fad" framework, I illustrate how states' reliance on closure in their adoption of these execution protocols can only best be described as faddish behavior. I illustrate how particularly sensational crimes and executions allowed elected officials and death penalty proponents to align themselves with grieving victims, push forth policies in the name of their closure, and rely on a discourse that regarded executions as a form of therapeutic justice. These shifts occurred around events that became galvanizing in their ability to open opportunities for closure discourse to take hold. One such example includes the execution of Timothy McVeigh, a capital trial and execution that invoked more claims about closure than any other execution in American history. I end this discussion with some of the critiques of how these events and the subsequent faddish adoption of "victim-friendly" protocols shaped the public debate about the rights of victims and the role of the criminal justice system in meeting their needs.

In Chapter 5, I draw upon several data sources to critically examine assertions by Zimring (2003) and others (Bandes, 2008b; Berns, 2009; Mowen & Schroeder, 2011) that the modern death penalty has undergone a symbolic transformation: a system where

executions are not about retribution or revenge, but are supported in the name of victims. While the findings in previous chapters illustrate some temporally specific evidence of this, the events and usage of closure are highly. I argue that the evidence does not reflect the American capital punishment system as a whole. As a frame, examining Americans' views on the death penalty over this time illustrates that it did not resonate strongly with Americans surveyed in national public opinion polls. As a death penalty rationale, it barely registers as a reason for Americans' death penalty support today. In comparison to other death penalty frames used in the news media over the past twenty years, closure is but a small blip in death penalty coverage. In any given year, closure is included on average in about one percent of all news articles on capital punishment in the United States. It would also appear that individuals who once trafficked in the term's use have abandoned it as well in recent years—death penalty supporters and public officials have begun actively distancing themselves from the term and the various meanings they often helped to inscribe it.

Given these shifts and the knowledge that closure today is not a significant part of American death penalty discourse as it once was, what are the consequences for public officials, death penalty proponents or abolitionists, and scholars who continue to be fascinated with its use and meanings? This final chapter reiterates the main points of the arguments, provides a critical discussion of the implications of closure as a death penalty frame, and provides several areas for future research. My hope is that with a more nuanced and critical view of closure as a rationale for state killing, homicide survivors

can be supported with something more meaningful than the false promise executions may hold.

CHAPTER 1: THE PROMISE OF CLOSURE

How the fuck do I know how it affects people? Executions are something mankind has thought was appropriate since the days of Jesus Christ." Johnny Holmes, Harris County, Texas, Prosecutor who has led the nation in the death sentences.[xiv]

Introduction

The death penalty debate in America is as old as the death penalty itself. Executions have long been contested as a form of criminal punishment, and death penalty abolition movements have challenged their role in American public life for hundreds of years with varying degrees of success. These movements have aimed at exposing executions as illegitimate practices that violate both civil and human rights. This work has attacked the various rationales offered for the "need" for the death penalty throughout American history. In early America, the primary goals of executions were to punish the wicked and strike fear into audiences, through public spectacles determined to deter as many citizens as possible from committing similar acts. Over time, executions have become more private, with a shift toward justice that is not solely based on deterring the greatest number of people from crime. This shift has been rationalized within a modern death penalty debate that views retribution as a legitimate reason for retaining the death penalty. Today in the United States, the death penalty debate is fought on both moral and procedural grounds. Death penalty proponents argue that executions deter violent crime, offer the only secure form of incapacitation, and are the only right and just reaction to murder through retributive justice. Abolitionists argue that the death penalty devalues human life, does not serve as a deterrent to crime, is costly, targets the poor and persons

of color, and runs the serious risk of killing the innocent who stand wrongfully accused. As one might imagine, closure has entered this debate, and has been invoked in both sides of the death penalty debate. Death penalty proponents have argued that executions provide closure to victims' loved ones and abolitionists decry the term as nothing more than a myth purported to further state sanctioned killing. The American death penalty debate is important for closer scrutiny because essentially these arguments serve to legitimate (and delegitimate) the state's claim to a monopoly in killing its citizens.

In this chapter, I have three primary goals: 1) to situate "closure" as a relatively new justification for the death penalty—one that has appeared in the print news and death penalty discourse just over the past twenty years; 2) to illustrate the importance of critically examining closure as a rationale for the state's right to take life; and 3) to provide an outline of the theoretical framework that informs the study's constructivist and methodological approaches. I begin with an overview of the American death penalty debate, with a focus on closure as a new voice in this old conversation. Then, I focus on the importance of understanding death penalty discourse and claims made to help legitimate executions, particularly as they play out in the news media. The significance of studying these topics resides in my concern with claims made about the difficult grief and loss experiences that homicide survivors face in the aftermath of a loved one's murder. From there, I outline the study's theoretical orientation and methodological approaches by providing a discussion of the news media's role in the social construction of reality, the framing of social issues, and setting the public agenda.

The American Death Penalty Debate

Given its long history in the United States, arguments both for and against the death penalty debate are likely familiar. Proponents of the death penalty have long argued that executions serve as a deterrent to violent crime. Their arguments also focus on other utilitarian aspects (e.g., incapacitation) of its retention as a criminal punishment. There is often a moral or religious component to pro-death penalty arguments, dating back to the Code of Hammurabi and biblical interpretations of the "eye for an eye" doctrine. Retributive beliefs about punishment figure largely in Americans' acceptance of the death penalty today (Radelet & Borg, 2000); in fact, when Americans are queried about the basis for their death penalty support, they cite retributive reasons above all else (Saad, 2008; Gross, 1998).

The tone of death penalty abolitionists' arguments against state sanctioned killing also is moral, and often stated in the religious terms of redemption or penitence. Beyond moral reasons, death penalty opponents argue against the death penalty primarily on procedural grounds today, citing concerns with justice; racial, class, and geographic bias; and fairness. While some of this conversation is focused on the constitutionality of American death penalty practices,[xv] arguments about legal procedure have recently and dramatically turned to discussions of executing the innocent in the past decade. This most recent shift has moved the death penalty debate on both sides away from moral grounds, and has unprecedentedly framed the death penalty as a system fraught with error and one that potentially kills the innocent (Baumgartner, De Boef, & Boydstun, 2008; Sarat, 2005).

Debate over capital punishment dates back to its inception in the United States (Banner, 2002; Carrington, 1982; Haines, 1996). While it has been debated on moral, ethical, religious and legal grounds, academic scholarship has focused on providing assistance to legal cases. There has been a long and popular debate about the death penalty, and it is argued on several grounds. Scholarly voices have played a prominent role in deterrence debates (Radelet & Akers, 1996; Robinson, 2008); debates on the morality of the death penalty—both for and against (Bedau & Cassell, 2004; Bohm, 2007; Turow, 2003); and the social, psychological and political consequences of the death penalty at both the individual and societal level (Bowers & Pierce, 1980; Radelet, 1989; Sarat, 2001). Yet, it has only been recently that this debate has closely involved victims' loved ones, both for and against the death penalty. While their opinions on the death penalty have been traced in newspaper articles (Gross & Matheson, 2003), and in a single study using the General Social Survey (Borg, 1998 who finds they are no more punitive than people who have not lost their loved ones to homicide), very little has directly addressed their views in this debate (see, for recent exception, Acker & Karp, 2006 though).

Whether the death penalty provides solace or comfort to the loved ones of homicide victims is a new and little studied debate. How closure fits into this debate has received little attention. Scholars argue that the term may serve as a placeholder for "revenge" in arguments about the death penalty, but its essential argument—that it provides closure—is utilitarian at its core (Strang, 2004; Vidmar, 2000). In this calculus, executions are carried out with specific purposes (vary as they may): end the hurt

associated with a loved one's murder, heal the harms brought against homicide survivors, and restore their well-being. In the next section, I introduce closure as a new voice, illustrating how its elusive nature and this lack of scholarly attention have allowed it to evade neat categorization within this debate.

Closure: A New Voice in an Old Conversation

Several justifications exist for the death penalty (Radelet & Borg, 2000), yet it is only recently that the concept of closure has come to serve as a contemporary rationale for the death penalty in the United States (Bandes, 2008a; 2008b; Kanwar, 2001; Zimring, 2003). In fact, Zimring (2003) argues that the first appearance of the term "closure" in the print news coverage of the death penalty occurred just in 1989. Today, it is argued that executions provide closure—or, the end of the pain associated with the murder of a loved one, to murder victims' families (Zimring, 2003). It appears as if Americans may support this idea too. A 2001 ABC News/*Washington Post* news poll cited by Zimring (2003) found that 60 percent of respondents agreed with the statement, "The death penalty is fair because it gives satisfaction and closure to the families of murder victims" (p. 61). In this context, closure is tied to victims' satisfaction and I explore the significance of this poll's findings in greater detail in Chapter 5. However, "closure" is a contested term, having different meanings for those involved on all sides of the American death penalty debate, and we know from a handful of studies that murder victims' families often reject the term outright (Gross & Matheson, 2003; Hodgkinson,

2004; Kay, 2006; King, 2003). How, then, did closure come to signify victims' satisfaction in the American death penalty debate?

Invariably, as a new player in an important and complex debate about the state's taking of life, several questions abound around "closure." Does the death penalty provide any true solace to murder victims' families? If so, should we reform American penal policies toward healing the harm of heinous crimes? Is the legal system equipped to meet the emotional needs of victims? What do arguments about "closure" mean for the 99 percent of homicide victims' loved ones who will not receive the potential benefits of a capital trial and execution as illustrated by Pastore and Maguire (2002)? While all of these questions are ripe for investigation, this study takes a constructivist approach to questions relating to how "closure" entered contemporary death penalty discourse, how it has been framed by various stakeholders in the print news, and the impacts it has had in institutionalizing death penalty practices over the past twenty years.

My purpose in answering these questions, as I alluded to above, is out of concern about the promise of closure that is held out to murder victims' loved ones. The idea that executions serve as some form of therapeutic justice aimed at providing healing to murder victims' loved ones has received little critical attention. What we do know is that closure has enjoyed a great deal of attention in the news media over the past twenty years, as outlined by Zimring (2003) and others (Acker, 2006; Bandes, 2008b; Berns, 2009; Kanwar, 2001; Madeira, 2009; Mowen & Schroeder, 2011), yet little attention has been paid to closely and critically analyzing the content of this news coverage. Media studies has long been concerned with the news media's ability to shape and distort the

objective reality of situations and events. If closure has become a part of the news media's coverage of the death penalty—how is it being used and to what ends? Who are the individuals making claims about closure, and what are the various meanings they ascribe to the term? If closure has become so routine in news coverage of the death penalty—what are the consequences of this new rationale in support of executions? In the following section, I outline why seeking answers to these questions—the heart of this dissertation—is a goal worthy of consideration. What follows is a discussion of the importance of studying the death penalty in America and the news media, particularly as these questions relate to an understanding of the difficult experiences of homicide survivors.

The Importance of Understanding Death Penalty Discourse in America

Why should we pay attention to how the United States rationalizes its continued use of the death penalty? For one, legitimate states are not often in the business of killing their own citizens. How the United States goes about rationalizing state sanctioned executions not only to its own citizens, but internationally as well, is of concern in understanding America's approach to individual and human rights. The United States is the only Western democracy to retain the death penalty as a form of criminal punishment (Greenberg & West, 2008; Steiker, 2005a). The United States' exceptional retention of the death penalty places it among those "unsavory" states rarely claimed as American allies—Iran, Iraq, Saudi Arabia, China, and Yemen, to mention a few. The United States has not signed on to human rights documents such as Protocol No. 6 of the European

Convention on Human Rights (1982), the International Covenant on Civil and Political Rights (ICCPR) (1989), and Protocol No. 13 of the European Convention on Human Rights (2002)—instruments condemning the death penalty. The United States' refusal to join in the protection of human rights serves to delegitimate its place in the global community. It should also be noted that it is not just the case that the United States retains the death penalty solely for "extraordinary crimes"—the death penalty's use over the past three decades represents a fervor in its application. Yet, there was once a time when the United States gave up executions. For nearly a decade, the United States brought its legal practices and punishments more closely aligned with the rest of the Western, industrialized world. How this sharp departure from abolition continues to be justified, despite so many concerns about its legitimacy, provides an interesting view of American political and social values.

In the following paragraphs, my goal is to illustrate the important role that death penalty discourse—particularly as it plays out in the news media—serves as an important site for understanding how certain narratives get constructed and used to maintain death penalty practices, despite so many chips at the legitimacy of this system. The purpose in providing the following examples is to illustrate how this study's focus on death penalty discourse and the news media are particularly relevant today.

Death Penalty Discourse as a Legitimating Practice

There have been nearly 16,000 executions in the United States since 1608, not including the thousands of "unofficial executions"—lynchings—that occurred during

slavery and the Jim Crow era. Executions have typically been rationalized as a form of deterrence to violent crime or a way of maintaining the social order and racial hierarchy. However, these standard rationales (e.g., deterrence, incapacitation) have been undergoing major shifts in the United States in recent decades. Some have gone as far to say that the death penalty is undergoing a "crisis in confidence" among Americans (DPIC, 2007).

Whereas nearly two-thirds of Americans supported the idea that the death penalty deters offenders from violent crime two decades ago, less than a third of Americans do today (Jones, 2006). Most experts in criminology and criminal justice professionals reject the idea as well. Eighty-eight percent of past and present presidents of U.S. criminological societies do not believe the death penalty deters murderers (Radelet & Lacock, 2009). Similarly, a 2009 Death Penalty Information Center (DPIC) report found that a survey of American police chiefs voted the death penalty the least efficient use of taxpayers' money in reducing the violent crime rate. To be sure, Americans still value retributive reasons for capital punishment. However, the shifts away from traditional rationales may either portend the end of the death penalty (or death penalty support), or simply the development of new rationales to maintain the death penalty system.

Beyond Americans shifting away from supporting deterrent arguments for the death penalty, there is an increasing belief and a profound collection of evidence building that innocent people have been executed and the potential for further "error" is certainly likely (Baumgartner, De Boef, & Boydstun, 2008; Bedau & Radelet, 1987; 1988; Gross et al., 2005; Radelet, Bedau, & Putnam, 1992). At the time of this writing in early 2011,

nearly 140 people have been freed from death row after (collectively) spending hundreds of years behind bars as innocent people (DPIC, 2011b). While there has been a parade of individuals freed from death row, there has probably not been a wrongful conviction case that has captured the nation's attention more than the story of Cameron Todd Willingham, a man executed in Texas in 2004 for the arson deaths of his three young daughters. In September 2009, David Grann wrote a piece in *The New Yorker* that meticulously laid out the overwhelming evidence that the state of Texas had indeed executed an innocent man by executing Willingham, whose final words were: "The only statement I want to make is that I am an innocent man convicted of a crime I did not commit. I have been persecuted for twelve years for something I did not do. From God's dust I came and to dust I will return, so the Earth shall become my throne."

The overwhelming evidence in Grann's article flies in the face of claims by then-Governor George Bush and Governor Rick Perry that there is no question about the guilt of every individual that has been put to death in the state (466 at the time of this writing). Although attempts to posthumously exonerate Willingham have stalled thus far, the fact that there is a serious judicial effort underway in Texas to challenge his conviction in death is certainly a new direction for the death penalty. His overturned conviction would make him the first state acknowledged posthumous death row exoneree in the United States.

Stories such as these are not isolated, or pushed to back pages of newspaper coverage (Baumgartner, De Boef, & Boydstun, 2008; Niven, 2004). The increasing coverage of stories such as these are just one piece of the questioning of the death penalty

regime today. Some have called the American death penalty a dying institution (Sarat, 2008; Sarat & Martschukat, 2011). This may very well be right. In late 2008, Americans' death penalty support dropped to a thirty year low, hovering around 63 percent, paralleling pre-*Furman* levels of support (Saad, 2008). In addition, execution counts in the 2000s have dropped by roughly half to those in the 1990s. The number of death sentences has dropped significantly too, perhaps signaling a reluctance to use it as a criminal punishment. Even Texas, state leader of the American death penalty, adopted life without the possibility of parole in 2005 after much concern that the death penalty would no longer be sought. These fears may have been partially realized: death sentencing in Texas has indeed declined since its adoption.

These events are a far cry from the festival of executions and death sentences brought forth in the previous decade. Public support for the death penalty reached all time high in the early 1990s. Death sentencing and the U.S. death row ballooned to rates previously unseen before in American history. In several years during this decade, the rate of yearly executions surpassed those of some of most active death penalty decades in the 20th century. In 1999, executions peaked with 98 individuals executed in a single year—a record in the modern death penalty era. Federal legislation significantly expanded federal death eligible crimes and dramatically shortened the appeals process for death row inmates. States also changed their death penalty policies to expand their execution policies, and similarly shortened their appeals processes. It is clear from the analyses presented in this study, and the work of other scholars in this area, that many of these changes were done under the auspices of closure. In the next section, I focus on the

importance of understanding this new death penalty rationale as it has been put forth in the news with the goal of shifting death penalty practices such as the ones above.

The Importance of Examining "Closure"

In 2003, Zimring wrote that closure had become the foremost rationale for the death penalty today. Retribution had been transformed, and closure was the result: a nicer, kinder, and gentler form of retribution that would allow Americans to keep intact the utilitarian motives for the death penalty (help secondary victims) while skirting away from revenge which made the American public uncomfortable (p. 61). Indeed, as it would appear from Zimring's frequency analysis of closure in American print news media over the past twenty years, that the term has certainly received a great deal of play in media coverage. And, as others have noted, the term closure has often been used by homicide survivors themselves in the media and in scholarly research (Burns, 2006; Gross & Matheson, 2003; Madeira, 2009). Yet, it appears as if the term has many contested meanings and murder victims' loved ones often share that they loathe the term (Burns, 2006; Gross & Matheson, 2003; Madeira, 2009).

One starting place has been trying to understand victims' views on closure by examining their quotes in newspaper stories covering executions (Gross & Matheson, 2003; Vollum, 2008). Clearly, these data sources are not perfect in understanding victims' thoughts about the execution, the loss of their loved ones, or any experiences related to closure. But, these studies do reveal that closure is a common theme among victims' loved ones' statements right after the execution of their loved one's murderer.

For example, in Gross and Matheson's (2003) newspaper study of what homicide survivors say to reporters at the end of executions, many victims spoke of closure, but in conflicting ways. Victims' voices complicate the notion that executions provide closure and many victims' family members staunchly object to the idea that an execution will make them feel better, as I illustrate below.

Two recent studies featuring qualitative interviews with homicide survivors in capital cases shed further light on these issues. In Burns' (2006) dissertation work with 23 homicide survivors involved in capital cases in Oklahoma located through the state's victim advocate program, each of the respondents stated they desired closure, yet no one could state what they felt would finally bring it to them or when they would experience it. Yet, each stated that they believed some sense of finality would come from the execution of the person who killed their loved one. Yet, they clearly distinguished the end or "closure" of their case and their involvement with the offender, from the "closure" understood to be as moving past the loss of their loved ones. None of the individuals in Burns' (2006) work had experienced the execution of their loved one's murderer, but we can take clues from studies that have. Madeira's (2007; 2009) dissertation interviews with victims whose loved ones had been murdered by Timothy McVeigh in the Oklahoma City Bombing, illustrated a mix of emotions regarding their devastating losses and McVeigh's execution.

One common theme remained: an emphatic rejection that closure could ever occur (Madeira, 2009) or had occurred from McVeigh's execution in 2001. Twenty-two of the 27 respondents rejected the idea, and many gave their own ideas about what

closure meant for them. These various meanings, or some described them—points along the way of their healing, are discussed in greater detail in Chapter 3. Interestingly, if we were to follow up with Burns' (2006) respondents, we may have found similar sentiments among those who had experienced the execution of their loved one's murderer. Here, closure is something desired—something for which to be hopeful—from an execution, but proves to be a let down—a false promise—in the aftermath of one. Similarly, the respondents in Madeira's study reported that they too sought "closure" through McVeigh's execution only to end an unwanted, devastating relationship with an individual who was clearly uninvited into their lives. Some made it clear that it was not necessarily that they desired McVeigh's execution, they mostly wanted an end to his using the media as a mouthpiece to continue to harass them and devalue their loved ones' lives from behind bars.

What is evident from these recent studies is that victims' families speak of closure in very different ways than what it is often portrayed in the mass media. To date, I know of no one who has systematically analyzed the content of such articles to understand how closure has been framed in the print news media for the American public. From a constructivist standpoint, shifts in media stories' content may not be tied to any actual political or legal changes around the death penalty and may simply reflect a change "in the language of capital punishment" over the past two decades (Zimring, 2003, p. 60). Several questions arise then when taking all of this under consideration. Zimring's (2003) thesis is a good starting point: Was the death penalty framed in terms of closure as he suggests? How was closure framed in the print news? Are executions framed as

something helpful or harmful for murder victims' families? Has the framing of the death penalty and closure shifted over time? Are galvanizing events (e.g., Timothy McVeigh's execution) responsible for these shifts? Further, whose voices are represented in stories? What do victims say about closure themselves? Do they follow the same narrative scripts? And, to what persuasive end?

Little is understood of closure as a psychological concept among homicide survivors, and even less is known of the ability for the state to provide closure through executions. Yet, it appears that there are plenty of clarion calls for closure by criminal justice and elected officials in the news media. When, how, and why did these calls originate? How are we to understand claims about closure when so little is understood of the homicide survivorship experience in the first place? What little we do know suggests that homicide co-victims experience a range of symptomatology related to complicated grief and trauma. Does closure ever comport with their experiences?

These concerns drive my interest in understanding how closure came to join—and remain a part of—our death penalty discourse over the past twenty years, despite the questions and criticisms above. There are certainly reasons that help explain the politically salient nature of "closure" as a death penalty rationale. Given this, I am curious about how this idea originated, how it was framed by the news media, and what its impacts have been on the death penalty and all those involved (homicide survivors, criminal justice officials, etc.).

The answers to these questions will likely be of interest to murder victims' loved ones—those who desire something from executions or the criminal justice system and

those who rally against the very notion that the death penalty will provide them with any solace. Abolitionists may also take interest in the findings of this study. They have long rallied against any rationales in support for the death penalty, and many abolitionist groups have already adopted an anti-closure stance. Some of these groups include homicide survivors against the death penalty, or other groups who court homicide survivors to rally against the death penalty. Death penalty scholars will likely find the results illuminating in picking apart a topic that several have flirted with briefly. A handful of legal scholars have written more extensively about closure in the context of the death penalty (Bandes, 2008b; Berns, 2009; Madeira, 2009; Mowen & Schroeder, 2011; Penticuff, 2005; Zimring, 2003, and this project adds to and extends their analyses.

Understanding Secondary Victims' Experiences

Closure is an illusive concept and it invokes a new group of actors within the context of the death penalty: victims. In the case of homicide though, the actual victims who for obvious reasons cannot speak for themselves, are replaced by their loved ones and others who speak for them. Here, support for the death penalty means support for homicide survivors. In this calculus, executions do not serve the purpose of deterring violent crime, or even serving to incapacitate murderers. They are done in the names of the secondary victims and in support of their healing, with the goal of ending the traumatic grief they have experienced. This new set of actors still allows for the promotion of maintaining the death penalty, and perhaps even furthers our goal of social solidarity in that we have new faces with which we should align.

These faces are frequently part and parcel of mass media formats that document the drama and harrowing details of such heinous crimes on murder victims' families and friends. Images of murder victims' loved ones are powerful icons in the victims' rights movement, making them instrumental in the state's 'war on crime,' and for the maintenance and expansion of harsh penal policies. "Understanding the power of interpersonal identification, politicians surround themselves with victims of violent crime, or their surviving relatives" (Dubber, 2002, p. 7) and victims' loved ones involved in capital proceedings often become powerful tools in calls for the state's continued use of the death penalty. Part of this shift undoubtedly involves framing the death penalty as something to heal their harm, and executions as the only means by which to end years of their misery. Closure through executions then, in this calculus, seems a perfect candidate to help these indirect victims. Yet, little is known of closure, or the state's ability to provide any healing to murder victims' loved ones. We do know that compared to the death of a loved one to "natural" causes, the loss of a loved to homicide is a unique and "shatteringly traumatic event" (Vandiver, 1998, p. 480). The sudden, unexpected, and violent loss of their loved one is incomprehensible to many victims'; indeed, they "lose their sense that there is any justice or safety in the world; many feel that life has lost all meaning" (p. 480). They are at increased risk for Post-Traumatic Stress Disorder (PTSD), but very little else is known about the homicide's impact on survivors' emotional, psychological, and physical health (Amick-McMullan, Kipatrick, & Resnick, 1991; Rock, 1998).

Understanding these questions is important because rhetoric involving closure makes sweeping claims about the loss, grief, and recovery experiences of a group of people that experience an earth shattering loss in the aftermath of a loved one's murder. Claims about "closure"—even in contexts outside of the death penalty are largely challenged today in the death and grief literature. As a justification for the death penalty, claims that executions heal the harm of co-victims and provide them with "closure" certainly remain empirically unchallenged. Meaning that we truly have no idea what impacts the death penalty, let alone executions, have on the loved ones of murder victims. As a promise held out to murder victims' loved ones, we have no idea if executions are helpful or not. Given that homicide survivors experience an extraordinary constellation of traumatic emotions, it would be naive to assume that they would all experience involvement in a capital trial or execution in the same way.

In this section, I outlined some of the ways in which closure has been conceptualized by homicide survivors themselves. Despite their usage of their term, it appears the way it is often written about and used in the media is rather different. In fact, their usage seems to hold the complete opposite meanings than what is often portrayed in the media. As a term, "closure" did not just fall out of the sky; it was ushered in and maintained through its continued use in the news media's coverage of the death penalty over the past twenty years. In this next section, I provide an outline for the importance of studying the news, particularly as it relates to the goals of the current study in seeking to understand how closure shaped American death penalty discourse and practices.

Why Study the News?

The print news media is one starting point for understanding how closure entered the death penalty debate. As I describe below, crime and victims receive a great deal of attention in the news media. The findings presented in Chapters 3 and 4 primarily come from qualitative analyses of a collection of nearly 2500 newspaper articles over the past twenty years that focused on the death penalty and closure. This methodological approach is situated within those used in media studies to answer broad questions such as: How do certain events and situations rise and fall in news coverage? How do certain social conditions or situations become public issues? How do narratives about public issues, such as the death penalty, gain and lose traction on the public agenda? Why do certain ideas about individuals, events, or situations resonate more strongly with the public than others? In the following sections, I focus on the importance of the study of the news media in answering these questions. I begin with a discussion of the changing nature of the news media over the past few decades and how crime and victims are covered in the news.

Given the dramatic shifts the news industry has undergone in recent decades, studying newspaper articles may seem rather irrelevant in an era of a 24-hour news cycle and the wide array of news formats today. Technological shifts have shattered old news models wherein news consumers waited patiently for the 5 o' clock news or the morning paper. With the advent of the Internet and around the clock news channels, news cycles are unending. Some have argued that these recent shifts mark the decline of the news industry, and some predict the end of the news as we have known it.

Despite the major shifts for the news industry, the fact remains that most Americans get their news and information from the media, which often feature crime and victim-related stories (Graber, 1980; Monahan, 2010). American news consumers are considered "grazers" today though in that they consume news from four or more types of outlets (e.g., radio, magazines, local television, newspapers, Internet, cable, and network news) (Project for Excellence in Jouranlism, 2005). Early media scholars suggest that there is little difference in the way various formats frame public issues (Gitlin, 1980), but newspapers tend to allow for more intensive coverage of issues and are geared toward more politically informed readers (Robinson & Levy, 1996). Additionally, newspaper reporters are likely to have closer ties to criminal justice officials (e.g., police, prosecutors) because of their continuing coverage of local crime (Lawrence, 2000).

The news media have the power to shape and distort ideas and define situations to any number of topics, including the death penalty (Bandes, 2004; Cohen, 1972; Fishman, 1980; Hall, 1989; Niven, 2002). Crime stories are absorbed and more easily recalled than any other type of stories (Sherizen, 1978). Media portrayals of crime have profound impacts on Americans' emotions, including empathy and fear (Garland, 2001; Warr, 2000). If we understand Americans' death penalty attitudes are largely expressive (Gross, 1998), we can see that the media's trafficking in fear, anger, and prejudice may shape those beliefs (Lipschultz & Hilt, 2002). To further understand why the study of the news is important, I turn to a brief description of how the news covers stories on crime and victims.

Crime Coverage in the News

Significant attention is paid to stories related to violent crime and victims across media platforms and the axiom, "if it bleeds, it leads" more than accurately describes news reporting over the past thirty years (Bandes, 2004; Graber, 1980; Warr, 1980). In 2002, the only thing covered more than crime on television news was terrorism (Monahan, 2010). In newspapers, crime stories account on average nearly ten percent of all stories (Jerin & Fields, 1993; Lotz, 1991). These numbers rise to nearly a quarter when just accounting for stories related to justice (Graber, 1980).

Crime and victim-related stories make ideal news stories because they are typically event-centered, have a clearly defined location and victim, and often contain "dramatic elements of suffering, heroism and suspense" (Shoemaker & Reese, 1996, p. 122). Crime reporting has the power to develop palpable fear among audiences, even when the objective reality of their risk is very low (Warr, 2000). In fact, the disconnect between levels of fear or concern about crime and actual crime rates have been explained frequently by crime reporting (Altheide, 2002; Glassner, 1999; Williams & Dickinson, 1993).

Concerns over crime coverage often focus on the fact that editors and journalists devote the most coverage to the most violent, yet least common types of crime (e.g., homicide) (Wardle & Gans-Boriskin, 2004). Other concerns include the fact that there is sustained focus on crime coverage despite shifts in crime; the coverage presents the criminal justice and penal systems as persistently good; and crime coverage focuses on specific incidents without proper contextualization (i.e., for one's risk) (Reiner, 2002).

Further, the media amplifies events that are typically rare. Executions—events that are quite rare in relation to other forms of punishment and the rate of homicide in the United States—could potentially be perceived as a more frequent response to homicide than they are because of the media (Niven, 2002; Pastore & Maguire, 2002). Additionally, the media is able to create an "illusory majority" of American death penalty support by their coverage and use of official sources (Niven, 2002). The vast majority of political elites support capital punishment, providing a hegemonic view that the majority of Americans support the death penalty, even though the reality is far more complex (Niven, 2002).

The news sets forth a public drama, wherein victims are placed front and center of crime reporting. Given the power of the news to shape the public consciousness about any number of topics, it becomes important to understand how the media shapes "knowledge" of victims' experiences. Claims made about victims' well-being or safety may be completely detached from the reality of their lived experiences. In the next section, I explore how victims are presented as powerful symbols in the news media in an era of punitive, "tough on crime" political values and practices.

News, Politics and the Social Construction of Reality

In the previous sections, I have focused on the American death penalty debate, with the goal of situating the concept of closure within recent discussions of the death penalty. My purpose of this discussion is to illustrate that closure somehow has become—and remained—a part of American death penalty discourse despite evidence

that homicide survivors share that the term does not describe their experiences in any way. This discrepancy between victims' experiences and how their experiences are represented by journalists, politicians, or prosecutors reveals a tension between objective reality and how that reality is constructed in ways that do not match.

In the following paragraphs, I outline how the study's approach is informed by theoretical perspectives on how political issues and public discourse are constructed. As Hall suggests, "Culture is the way social life is experienced and handled, the meanings and values which inform human action, which are embodied in and mediate social relations, political life, etc." (1971, p. 6). Culture is patterned through language and serves as one of the ways of making meaning and constructing social reality. Media discourse is one piece of this language and it plays a vital role in the social construction of reality. News making is one part of representing social reality, and journalists select and filter events and process and imbue them with meanings. Their work involves the identification, categorization and contextualization to give meaning to the stories shared in the news.

The media, then, should not be viewed as a representation of our collective values and social meanings, but also as a tool for effecting culture. The news is composed of competing voices, who struggle to define and situations as they see them. The news media help to shape national public discourse on these events and the meanings they will take from this version of reality. News making relies on the active construction and inclusion of certain voices and narratives over others and a constant negotiation of

making meaning. The media in this sense, then, is "the site of a complex symbolic contest over which interpretation will prevail" (Gamson, 1992, p. xi).

The news media rely on a set of ideas and cultural symbols or images to construct meaning around them. These ideas and symbols come together to develop a public discourse, providing new ways of interpreting and making sense of current events. In creating this public discourse, the news media call attention to (or ignore) certain events or people, in a process of labeling what is important by the attention they pay to them. In this way, the media's repeated attention to certain topics legitimates particular versions of these events and exercises symbolic power of how these events will be defined (or distorted). The media participate in this meaning making to put forth a cohesive set of definitions and labels to create a specific ideology about certain topics, situations, or individuals. With the expansion of the news media into more venues and formats, this power to control and define and distort reality has grown significantly over the past several decades. Thus, their ability to shape the public's understanding of political issues has grown in importance.

The Social Construction of Social and Political Issues

A constructivist approach assumes that social issues and social problems do not exist objectively--they are produced and created through an interpretative, representational and political process to create meaning around them. This process depends on how these issues are presented, and the conditions that are highlighted. Individuals in this process are involved in a struggle to designate and define these issues

as public issues worthy of consideration. This is how issues become part of the public discourse defined as social problems. For example, the struggle to define certain social conditions (e.g., men battering their partners) as a social problem (e.g., not a private matter, but a violent crime) is one such example of this process. Therefore, social and political issues are socially constructed through processes of imbuing them with importance; they could not be issues however, without them being defined as such (Spector & Kitsuse, 1977).

Defining social issues and social problems involves a complex, ambiguous process. Individuals involved in these processes rely on a broad range of rhetorical tools—anecdotes, images, metaphors, and other discursive elements (Entman & Rojecki, 1993; Gamson & Lasch, 1983; Gitlin, 1980; Schudson, 1978; Snow & Benford, 1988). Journalists wade through these and select some to construct narratives about events or situations for public consumption through news stories. In addition, journalists typically rely on official sources to provide narratives for their stories. In crime-related stories, journalists rely on government officials, criminal justice professionals, or others involved in broader political struggles. These sources are "claimsmakers" in the sense that they struggle to ensure that their version of reality is accepted by the public. Claimsmakers argue that certain issues and events are a result of some things over others; they assign different causes and effects to situations; and use images and rhetorical devices to link events or people that may have no objective link. Claimsmakers seek to draw attention to some topics while presenting their version of reality, but also work to detract attention

from other problems or causes. In either scenario, claimsmakers benefit from the public believing their narrative.

Journalists may indeed make elite narratives seem as unequivocal fact, when in fact, they are not true. As Shoemaker and Reese (1996) warn, "do not assume that mass media content reflects an objective reality" (p. 1). Officials know they can rely on journalists to report their versions of the truth to manipulate the conditions and causes of social issues or problems. The result is that elite thinking on issues often becomes the authority on social issues and problems, and other claimsmakers must challenge this dominant paradigm while being ignored or maligned in the print news. The news media in this vein can be understood as a venue for elites' mainstream ideologies to take center stage. Therefore, we must always pay attention to whose realities are presented and whose interests are being furthered by the dominant narratives provided by the media. Doing so provides an understanding of how political issues appear on the public agenda based on how certain issues are framed.

The Framing of Social Issues

Social life is open to many interpretations in the news. The news media engage in a process of framing—"an active, processual phenomenon that implies agency and contention at the level of reality construction" (Benford & Snow, 2000, p. 614). This process is both active and dynamic; accidents in the framing of issues are nearly impossible. The influence of framing does not necessarily come from the news media's intent to persuade with its choice of images and symbols. However, their routinized

selection of certain symbols and ideas over others establish what Foucault (1973) calls "regimes of truth." They provide a guide for the public to help decipher the boundaries between good and evil; rational and irrational; and us and them. News framing helps organize social phenomena into these categories, and trains audiences to rely on these cultural scripts to make sense of new situations or individuals. Given that the news media tend to rely on the same symbols and sources repeatedly to help shape and frame these stories, there are consequences to the framing of political issues from such a narrow range of perspectives.

While the news media may not be able to tell people what to think, they certainly tell individuals what to think about (Cohen, 1972). News media act as gatekeepers, choosing which events from the day will become news, and which will not (Shoemaker & Reese, 1996). In this sense, the news media is a "dominant force in the public construction of common experience and a popular sense of what is real and important" (Schudson, 2003, p. 13). This pattern emerges by the selection of the news media to focus on some events but not others. Those stories, events or people that receive little resources and attention are bound to be marginalized from the public's view. The result is that some issues get set on the public agenda, while others are ignored, reifying their importance in the news and to the public (Protess & McCombs, 1991).

Setting the Public Agenda

By selecting what stories will receive attention, the news media is thus setting both the public agenda and the likely policy solutions that will attend to those issues and

problems (McCombs & Shaw, 1972). The policy agenda is often influenced by the conceptualization of the causes and solutions to such problems (Gamson & Modigliani, 1989). Framing, then, serves as a tool by which claimsmakers can define problems, diagnose causes, decide the moral status of events and people, and suggest solutions and comment on their likelihood of successfully solving an issue or problem (Entman, 1993). These frames are actively developed by elite claimsmakers, who serve as the primary sources for journalists. Claimsmakers' goals include disseminating their values through the media, to ensure that their version of reality is accepted as truth. Competing claimsmakers struggle to set their version of truth out there, but only sometimes do they have success.

This success, in large part, is predicated on how well claimsmakers can access and successfully use the media to share their narratives. Journalists play an essential role in sharing their narratives. To be sure, while journalists certainly rely on official sources to develop news stories, the relationship between journalists and officials is not one-sided. Officials are concerned with speaking to the public and spreading their ideas, and thus, rely heavily on journalists to communicate with the public. This symbiotic relationship is criticized for the political implication that journalists and the news media simply serve as the mouthpiece for the elite, reinforcing hegemonic ideas to the public (Gitlin, 1980; Gramsci, 1971; Fishman, 1980). Media scholars have long documented journalists' notorious over reliance on elites' opinions in their coverage of stories, even when countering or alternative narratives are available (Gamson & Modigliani, 1987; Schudson, 2003). It is no secret that journalists nearly always reflect the values and views

of the political elite (Graber, 1980; Schudson, 2003). This helps to explain why death penalty coverage in the United States has traditionally leaned so heavily toward support of the death penalty—nearly all political elites in the nation (with the exception of the Black Congressional Caucus) support capital punishment (Niven, 2004; Whitehead, 1998).[xvi]

Journalists' reliance on political elites and other officials means that it is these individuals who often become the "primary definers" of events and situations, becoming the most legitimate authority in the news (Hall et al., 1978). Thus, their versions of reality become the starting point from which all others must work to challenge their versions of events. Other criticisms claim that the dominant values of the elite will ensure that society will continue in its present form, and that the status quo will remain steadily intact. This hegemonic model of the media suggests that the dominant elite position will guarantee its acceptance by the public (Schudson, 2003). However, the news media does present competing voices, illustrating that political issues are constantly being challenged and negotiated among competing claimsmakers vying to present their version of the "truth."

While the news is one arena where these voices struggle, there is no guarantee that one of these voices will prevail, or dominate for any length of time. Dominant views do not always stay prominent, and journalists help to mediate these struggles. There are always individuals or groups who challenge elite claimsmakers' version of stories, yet they are often marginalized by journalists in the news (Entman & Rojecki, 1993; Gitlin, 1980; Lawrence, 2000). Challenging the dominant view requires that those who

challenge dominant narratives must also work "to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists" (Goffman, 1974; Snow & Benford, 1988, p. 198). This occurs with greater or lesser degrees of success, through a process of frame resonance described below.

Competing Voices and Frame Resonance

All claimsmakers realize that not all anecdotes, images, metaphors or symbols will "stick" or resonate with the public. However, we do see that certain frames tend to linger if they resonate with the broader political culture (Gamson, 1992). "Frame resonance" increases when a frame appears "natural and familiar" to audiences (Gamson, 1992, p. 135). For example, the death penalty falls within a punitive, law and order approach to criminal punishment that enjoys wide support among Americans (Beckett, 1997; Bobo & Johnson, 2004; Garland, 2001; Gottschalk, 2006). Law and order or "tough on crime" frames in America have likely enjoyed such a successful tenure because they "resonate with cultural narrations… stories, myths and folk tales that are part and parcel of one's cultural heritage" (Snow & Benford, 1988, p. 210). Retribution is at the heart of Americans' support of the death penalty and other harsh penalties, so it perhaps no surprise that popular culture and the news media reflect these values (Gross, 1998; Gross & Ellsworth, 2003; Radelet & Borg, 2000). Punitive cultural narratives abound in television and news today; they have become heavily dominated with stories of crime and terrorism over past two decades. Their story lines rely on the familiar tropes of "cops = good; criminals = bad," both resonating with and reinforcing with modern ideas

about crime and punishment. Given the dominance of these familiar narratives, it becomes increasingly difficult to challenge dominant frames that become so deeply embedded in the public consciousness.

Frame Realignment and Frame Resonance

Even if a certain frame resonates with the public during one time period, there is no guarantee that it will continue successfully with the emergence of new information or events that call the frame into question. Particularly shocking or accidental events often provide the opportunity for frame realignment or powerful counterframing (Lawrence, 2000). In Chapter 3, I illustrate how sensational crimes and executions allowed for "closure" to take root in public debate about the death penalty. Relatedly, the "innocence movement" currently underway as a result of DNA evidence in the United States is another perfect example of how sensational or accidental events provide new opportunities for framing to shift political discourse and shape public consciousness. Thirty years ago, public officials scoffed at the possibility that we could execute an innocent person on death row. Today, 73 percent of Americans believe we have executed an innocent person (DPIC, 2007). This shift can be accounted for by the unprecedented news coverage of innocence issues and a new framing of the death penalty as a system utterly likely to execute the innocent (Baumgartner, De Boef, & Boydstun, 2008; Fan, Keltner, & Wyatt, 2002). Of course, the events that led to over nearly 140 people being released from America's death row certainly changed the face of the death penalty. If the media had decided to ignore the issues surrounding their release (and the additional two

hundred plus people who have been exonerated from prison by DNA evidence), the death penalty could likely enjoy the same levels of high support it has over the past several decades. This swing in public opinion, however, could not have occurred without a realignment of death penalty framing and the introduction of a frame that resonated strongly with the public. Clearly, frames can and do shift, and the results of their resonance can be dramatic.

The Role of Counterframing

Yet, it is difficult to determine when and how a frame will resonate with the public. Transforming public opinion or cultural values is a difficult enterprise not only for elite claimsmakers, but especially for nonofficial or marginalized claimsmakers. The news media does not help in its routinized presentation of dominant prevailing cultural values bolstered by the claims of elite sources. Therefore, alternative frames must speak to the values of the public and help them make sense of their experiences, as do the frames put forth by elite claimsmakers. This process involves providing causal relationships and solutions that make sense to the public. As Beckett (1997) writes, "the viability of alternative issue frames rests primarily upon on the extent to which they help to make sense of people's experiences in ways that are compatible with popular wisdom and salient cultural themes" (p. 7; Sasson, 1995).

However difficult this endeavor may be, we do see shifts over time. The news media may slowly increase their acceptance of marginalized groups' experiences and meanings into their reporting. This growing acceptance may break down the sense of

good versus evil or us versus them that is so common in crime reporting. Recent shifts in death penalty framing also illustrate that news coverage has increasingly begun to focus more on defendants rather than solely on victims (Baumgartner, De Boef, & Boydstun, 2008). This may help to humanize defendants in capital cases and allow the public to more strongly empathize with them. This recent shift in the framing of the death penalty matters: several scholars have illustrated that the "innocence movement" has not only driven down public support for the death penalty (see Fan, Keltner, & Wyatt, 2002; Sarat, 2005; Unnever & Cullen, 2005 on public opinion decline), but the rate of death sentencing and executions as well (Baumgartner, De Boef, & Boydstun, 2008). Clearly, there are serious material consequences to how issues are framed in the news media, providing certain benefits for certain groups over others across time and space.

Reproducing Dominant Cultural Values and Manufacturing Consent

If we come to understand that social issues are socially constructed, we can see that the news media reproduces dominant paradigms through its use of resonant cultural values and symbols of the wider culture. Yet, news media do more than report or highlight the significance of events or issues. They introduce, reinforce, and legitimize certain cultural practices or political ideologies over others. The news media's cultivation of various versions of truth manufacture consent (Herman & Chomsky, 1988). There may be real and negative consequences to acting upon versions of reality brought to the public by the news, particularly those versions manufactured by political elites. Several examples from history demonstrate wide discrepancies between the conditions reported

by the news and political elites and the actual, objective conditions experienced of individuals or the details of events or situations (Merton, 1972; Spector & Kitsuse, 1977). The existence or complete absence of weapons of mass destruction said to be held by Iraq and the United States' 2003 decision to go to war there is one such recent example.[xvii] Clearly, following certain versions of the truth uncritically has dangerous consequences.

With regard to "closure," the news media and political elites may put forth an idea that legitimates the use of executions today because they allege it will "help heal the harm" or "provide closure" to the victims' loved ones. Privileging political officials' version of homicide survivors' grief and loss and the realities of their lived experiences, discrepancies may certainly persist. Over reliance on certain voices (e.g., prosecutors, death penalty proponents) pushing forth claims about "closure" may serve to obscure the broader issues at hand—does the state have the right to kills its citizens? How did the state begin to rationalize executions in the name of private citizens? When did the death penalty become a form of therapeutic justice?

The relationship between the news media, political issues, and the public is complex. Scholars have long been interested in how the news media covers political and social issues. Often this is done with the understanding that the news reflects varying interpretations of events, people and institutions. In this sense, the news offers a socially constructed portrayal of such events, filtering the many competing versions of an event to designate and define situations. Defining the death penalty affords the opportunity for constant contestation—the terms of the debate are always shifting.

Conclusion

"The media are loath to complicate the simple," meaning that differences in elite opinion in the news are rarely explored in a complicated manner (Niven, 2002, p. 675). Anything that has a sound bite quality is recycled and reproduced over and over again in media portrayals (Bandes, 2004; Gans, 1979) and surely the mantra "the death penalty provides closure to victims" is one such recent example in the framing of a complex social issue. In this chapter, I introduced closure as a relatively new rationale in the American death penalty debate, explained the significance of the study's goals in understanding closure as a new voice in this old debate, and provided an outline of theoretical and methodological frameworks that inform the study's approach in focusing primarily on how the news media has constructed closure in light of conflicting views of closure from homicide survivors themselves.

Given the power of the news in constructing social reality, it is clear that the focus on closure and secondary victims' experiences may have material consequences. For example, claims put forth by political elites or the news media may be codified into the law in order to respond to certain claims made about the emotional needs of secondary victims. Yet, there appear to be wide discrepancies in how elite claimsmakers and those who have a vested interest in continuing the death penalty, and the actual experiences of homicide survivors themselves. These tensions reveal the nature of modern death penalty discourse—the news media serve as one stage where symbolic battles about the state's right to take life often play out. It is important to understand representations of closure and victims' experiences because the claims put forth in the news media for public

consumption send powerful messages about the state's right to take life. Those messages, in turn, shape the public consciousness on the death penalty. In the next chapter, I provide an overview of the American death penalty system to highlight the historical, legal, and social contexts to the public's understanding of the death penalty and the reasons put forth in rationalizing its retention as a criminal punishment in America today.

CHAPTER 2: THE AMERICAN DEATH PENALTY

Introduction

In Chapter 1, I focused on the significance of understanding the American death penalty debate and provided the theoretical underpinnings of understanding closure within broader death penalty discourse. The primary goal of this chapter is to provide an overview of the American death penalty, in order to contextualize the role of closure within this debate and the history and practice of capital punishment in America. First, I provide a brief history of executions in the United States and situate America's continued use of executions as a criminal punishment within an international context. Second, I discuss the status of America's death penalty today, with a focus on the similarities and differences among states with and without the death penalty presently. In this discussion, I focus on the rates of death sentencing, executions, and America's death row to provide an overview of the landscape of America's death penalty practices today. Last, I introduce some of the current controversies in the "modern" era of the death penalty in America that is typically denoted by the reinstatement of the death penalty in the 1976 with the case of *Gregg v. Georgia* after nearly a decade without any executions in the United States. In doing so, I outline some of the current controversies surrounding America's use of the death penalty and focus on the reasons Americans support the death penalty. The goal of this last piece is to help place closure within American rationales for the death penalty.

Historical Trends in the United States

Since the early American Colonial period, the death penalty has been a form of criminal punishment. Crimes that were punishable by death followed the British Bloody Code closely. However, in the northern colonies, executions typically followed infractions against the moral code, which often took a religious tone. Early executions punished crimes such as adultery and sodomy, but also crimes against people and property such as burglary and murder. In the early American southern colonies, the penal code was less concerned with morality crimes than their focus on crimes involving people and property. Executions in the early Southern colonies were not only done to deter others from crime (as in the North), but also to spread a message of white dominance and to restore the racial and social hierarchy during the era of slavery (Banner, 2002). Death-eligible crimes were outlined early on in Slave Codes that created crimes that were only punishable by death for slaves. For example, in Virginia, there were 66 crimes punishable by death for slaves, and only one for whites. Some examples include destroying grain, enticing runaways, or conspiring to rape, rebel, or set fire to a house. Slaves and others convicted of disrupting the social order were often subject to super capital punishments, including being burned alive or castrated. Lynching, of course, is also part of the history of the death penalty in the United States, and thousands of black men and women faced "undocumented" executions. The difference between lynchings and hangings was often "razor thin" and carried out by "lower class rednecks" with the authority of "white quality gentlemen" (Marquart, Ekland-Olson, & Sorenson, 1994; Wacquant, 2001).

The death penalty in America has always faced opposition, and abolitionists have argued more and less successfully over time against its use. After the U.S. Civil War, many of the super capital punishments were abandoned, and many states in the North de-capitalized their criminal codes. In the South however, several states kept their capital statutes intact, with crimes other than murder such as rape, still punishable by death well into the Twentieth Century.

The biggest period of state-sanctioned execution activity in the United States was the 1930s. The number of executions dropped precipitously in the late 1960s, largely in part due to the growing U.S. Civil Rights movement. The NAACP's Legal Defense and Educational Fund (LDF), traditionally focused on racial discrimination, prioritized the death penalty and waged a legal battle against glaring racial disparities and the unequal treatment of black defendants (Gottschalk, 2006). Their efforts set forth a series of cases paving the way for the landmark decision, *Furman v. Georgia* (1972), that invalidated 40 states' death penalty statutes because the administration of death was done in an arbitrary, capricious, and discriminatory fashion (Banner, 2002). Four years later, several states would work to reinstate their death penalty statutes with new sentencing guidelines aimed at reducing the arbitrary and capricious application of death sentences.

The United States was not alone in the world in its abolition; the drop in executions during this time period paralleled that of several Western European nations who stopped carrying out executions or abolished the practice altogether after the Second World War. Despite this shared abolition during this time period, the United States would soon come to divert sharply away from the abolition of these Western allies. In 1977, the

United States marked its first execution in nearly a decade with the firing range execution of Gary Gilmore in Utah.

International Death Penalty Trends

A tide of abolition began in Western Europe after the Second World War, with defeated nations overturning their death penalties earlier than the victors of World War II. This shift, particularly among the defeated nations, may in part be related to disgust at the atrocities and mass killings involved with the war. Undoubtedly, regime changes and legal reforms were coupled with this distancing themselves from a bloody, totalitarian history. It is during this time that a human rights framework came into being for the death penalty issue, with Amnesty International at the forefront of this movement in the 1970s.

While the rest of the Western industrialized world has been working toward abolition, the United States shifted away from this trend in the 1980s and 1990s after it reinstated the death penalty in 1976. Today, the United States is the only Western democracy to continue the use of the death penalty as a criminal punishment. The last execution in Western Europe was in 1977, a Tunisian farm worker executed in France. The United States not only has the death penalty as an available legal punishment, but also is among a handful of countries around the world that actively have both death sentences and executions each year.

As of 2009, 95 nations have abolished the death penalty completely and 35 nations are abolitionist in practice (i.e., they have death penalty laws on the books, but have not executed anyone in recent history). Of the 58 countries that currently have the

death penalty, 18 nations carried out executions in 2009. The United States is among those with the most active death penalty systems, following Iran, Iraq, Saudi Arabia, and China (for which there are no clear data on the exact number, but it is thought to be in the thousands) in the number of executions carried out in 2009. China again leads the world in death sentences (again, number unknown), but we do know that the 106 sentences in the United States in 2009 follows Iraq (at least 366), Pakistan (276), Egypt (at least 269), Afghanistan (at least 133), and Sri Lanka (108).

The last decade has followed the sharp rise in abolition around the world, with an additional 23 countries removing it from their laws. For the first time in modern history, there was not a single execution in all of Europe and the former Soviet Union in 2009. It is clear that the world is moving toward abolition, albeit slowly. While the United States has seen slight declines in both sentencing and executions since the mid-1990s, it is clear that the histories of some U.S. states align more closely with the abolition of Western Europe.

The Landscape of Capital Punishment in America

While it appears that the United States has diverted wholly from the abolition of Western Europe, we can see upon closer examination that many states have followed in these footsteps. After the Civil War, some states did not reinstate their death penalty statutes at all. Often those states that did restricted its use to a fraction of the earlier offenses punishable by death. Geography and history play distinct roles in understanding states' retention of the death penalty; states in the Southern region of the United States

have kept the death penalty alive today, accounting for the most sentences and executions in the United States. In fact, two southern states, Texas and Virginia, account for more than half of all of these in the modern era.

Today, 34 states have the death penalty. Since 1976, executions have been carried out in 36 states and by the federal government. A handful of these states have only had a single execution (Connecticut, Idaho, New Mexico, Colorado, New Mexico, South Dakota) since this time.

In 2009, 11 states considered repealing the death penalty. The cost of the death penalty is a primary concern as the economic downturn has opened the door for states to reevaluate their commitment to the death penalty given its significant costs that involve not only the costs of capital trials, but the automatic appellate process that is resource-intensive and can span many years, if not decades. In February 2011, Illinois abolished their death penalty formally. In March 2009, New Mexico became the 15th state to abolish the death penalty, following New Jersey in 2007 and New York in 2004. New Mexico Governor Bill Richardson, a once avid death penalty proponent, shared, "I'm struggling with my position, but I definitely have softened my view on the death penalty." He went on to call the cost of the death penalty, "a valid reason in this era of austerity and tight budgets" (DPIC, 2009). Colorado and Maryland also cited costs in their push for abolition. Colorado was one vote short of repeal, and Maryland restricted death penalty legislation rather than complete abolition, making it very difficult to impose a death sentence. In addition, the Connecticut Senate and House both voted to repeal the death penalty, but Governor Jodi Rell vetoed the bill.

Other states reconsidered their method of execution. Although the three cocktail lethal injection method was constitutionally upheld in *Baze v. Kentucky* (2008), the method continued its share of problems. After several grueling hours trying to insert an IV needle into Romell Broom, Ohio Governor Ted Strickland had to halt his lethal injection execution. Weeks later, Ohio adopted a new one-drug protocol that involves a dose of the first drug, sodium thiopental, at approximately 14 times the amount normally given. Washington became the second state to adopt this protocol in early 2010. The lethal injection protocols in California, North Carolina, Maryland, and Kentucky were under review at the year end in 2009. In early 2011, several states have reported running out of sodium thiopental after its maker, Hospira, switched to an Italian manufacturer who refused to make the drug if it was to be used for executions. With the shortage, states have been reevaluating their execution protocols or procuring drugs from illegitimate sources. In March 2011, in a strange twist of fate, the Georgia Department of Corrections was raided by the Drug Enforcement Agency (DEA) for smuggling illegal executions drugs into the country. In April 2011, the Texas Department of Criminal Justice came under fire for sourcing lethal injection drugs under the name of a hospital that had closed 30 years earlier (Ward, 2011). Clearly, many changes are underway for methods of executions and these states.

Another way of understanding the differences among states is to examine what happens to inmates after conviction. In some states, inmates may wait upwards of 20 years before being executed. The wide expansion of the death penalty sentencing throughout the 1990s has created a backlog given the automatic appeals process. The

national average from conviction to execution in the United States is a little over ten years. The appellate process overturns 68 percent of all convictions (Liebman, Fagan, & West, 2000). There is wide geographic variation however. In some states and jurisdictions, most death sentences are upheld, while in others, most are invalidated under federal review. These differences in sentencing and appeals create varied death rows among states. As illustrated in the Table 2.1 below, nine states have death rows with more than 100 inmates.

State	Inmates	Ranking
States and jurisdictions with more than 100 inmates on death row		
California	690	1
Florida	403	2
Texas	342	3
Pennsylvania	225	4
Alabama	200	5
Ohio	176	6
North Carolina	169	7
Arizona	129	8
Georgia	108	9
States and jurisdictions with 21 to 99 inmates on death row		
Tennessee	92	10
Oklahoma	86	11
Louisiana	84	12
Nevada	78	13
South Carolina	63	14
Mississippi	60	15
US Government	58	16
Missouri	52	17
Arkansas	43	18
Kentucky	36	19
States and jurisdictions with fewer than 20 inmates on death row		
Oregon	33	20
Delaware	19	21
Idaho	18	22
Indiana	17	23
Virginia	16	24
Illinois	15	25
Nebraska	11	26
Connecticut	10	27
Kansas	10	27
Utah	10	27
Washington	9	30
US Military	8	31
Maryland	5	32
Colorado	3	33
South Dakota	3	33
Montana	2	35
New Mexico*	2	35
New Hampshire	1	37
Wyoming	1	38
Total Death Row	*3,279*	
Source: DPIC, 2010		

Table 2.1 Size of Death Row by State and Jurisdiction, July 1, 2009

While states such as California have a huge death row population, the state has only carried out 13 executions. Texas, on the other hand, has a large death row, with an active rate of execution, having carried out 447 executions between 1976 and 2009. Maryland, Colorado, South Dakota, Montana, New Mexico, New Hampshire and Wyoming have fewer than five inmates on death row.

States' varying rates of executions also reflect these geographic differences, and we can see that Southern states have dominated executions both prior to and post-*Furman*. From the period 1608 to 1976, Virginia, Georgia, North Carolina, Texas, and Alabama were the top five states, having executed a total of 4474 individuals, or about 30 percent of all executions for the time period. Since 1976, Texas, Virginia, Oklahoma, Florida, and Missouri have led the nation in executions. Texas and Virginia alone account for nearly half (46 percent) of all executions since 1976, hence the reason we often focus on these states as exceptional in their actual use of the death penalty. As these data show, it not that the United States as a whole is so exceptional, it may be that a handful of states are exceptional in their retention and use of executions. For example, Texas alone accounts for 37 percent of all executions in the United States in the post-*Furman* era, and leads the nation in executions each year.

1608-1976	Executions	1977-2009	Executions
Virginia	1277	Texas	447
New York	1130	Virginia	105
Pennsylvania	1040	Oklahoma	91
Georgia	950	Florida	68
North Carolina	784	Missouri	67
Texas	755	Georgia	46
California	709	Alabama	44
Alabama	708	North Carolina	43
South Carolina	641	South Carolina	42
Louisiana	632	Ohio	33
Total Executions	*8626*	*Total Executions*	*986*
Source: DPIC, 2010			

Table 2.2 Top Ten Execution States, Pre-*Furman* and Post-*Furman*

In contrast, several states have not executed a single person since *Furman*, they include: Alaska, Washington, DC, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

Within states, there are geographical disparities between "rich" and "poor" counties and their ability to mount capital trials (Dieter, 2008). These differences may also fall along urban versus rural lines, but not always. There are, of course, geographical outliers, whose prosecutors seek the death penalty so frequently that they outdo nearly all counties in the United States. Two notable examples include Houston (Harris County) prosecutor Johnny Holmes, Jr. known as the "Texas Terminator" and Philadelphia's "Deadliest D.A.," Lynne Abraham (Langton, 1999; Rosenberg, 1995; Steiker, 2005a).

These within state variations may also have racial impacts on disparities depending on the demographic profiles of individual counties' residents, and this has been true historically and today.

Capital Punishment in the Pre-*Furman* Era

To understand the modern death penalty era, it may be helpful to understand its historical underpinnings in the United States. This history has been rife with controversy, and attempts to right the wrongs of the death penalty can be seen both in the legal and social history over the past half century.

Although executions were not as common as they were in the 1930s, the 1950s were a decade marked by a high rate of executions. While in the 1930s, the average time spent on death row was six weeks, this increased to five months in the 1950s (Marquart, Ekland-Olson, & Sorenson, 1994). An increasingly active death penalty and a lengthening appeals process meant the need for additional housing for death row inmates. Despite this high death penalty activity in the 1950s, the next decade would witness a slowing of death sentences and executions. The growing U.S. Civil Rights Movement is credited with decreasing the use of the death penalty, and executions virtually ceased in the late 1960s (Donohue & Wolfers, 2006). This was a move spearheaded by the NAACP's Legal Defense and Educational Fund, who actively sought to erase the death penalty from American life.

It was clear during this time that racial disparities both in the sentencing for sexual assault and murder were grossly biased against black defendants. As early as

1941, Guy B. Johnson noted the likely effects of the relationship between the race of the defendant and the race of the victim. Data collected from this period carefully documented the racial disparities and race of the defendant effects in explaining discriminatory sentencing of black men, particularly those accused of sexual assault of white women. Wolfgang and Riedel (1973) conducted one of the most comprehensive studies on racial discrimination in the death sentencing to conclude: "Far from being 'freakish' or capricious, sentences of death have been imposed on blacks, compared to whites, in a way that exceeds any statistical notion of chance or fortuity" (p. 133).

In 1967, an informal moratorium was placed on executions up until 1972 when the U.S. Supreme Court would cement the moratorium in deciding that the death penalty was unconstitutional as it was being practiced, in *Furman v. Georgia.* The 5-4 decision handed down argued that as it was currently practiced, the death penalty in America was unconstitutional because it was administered in a capricious and arbitrary fashion. Capricious—in that very little distinguished cases wherein the details looked similar but the outcomes were very different. Arbitrary—in that differentness was structured in a way that extralegal factors such as the race of the offender or the race of the victim (the former being more pronounced at the time) determined the outcome for death sentencing.

The *Furman* decision left the door open for states to revise their death penalty statutes. As James Acker put it, the response after *Furman* was "fast, furious… and bordered on hysteria" (Acker, 1996; Gottschalk, 2006). Georgia was first to revise their statutes, Texas second. The future of the death penalty resided in five cases, all decided on the same day. Three would be group together as *Gregg v. Georgia* (1976) wherein the

U.S. Supreme Court green lit capital punishment. The *Gregg* decision found that under these new statutes (brought forth also by *Proffitt v. Florida* and *Jurek v. Texas*), the death penalty did not constitute cruel and unusual punishment, and did not offend "evolving standards of decency" as questioned in *Furman*. Two other cases, *Roberts v. Louisiana* and *Woodson v. North Carolina*, deemed that "mandatory" capital sentencing schedules and the inability to admit mitigating evidence during the sentencing phase were unconstitutional.

The new sentencing schema created a bifurcated system and allowed for mitigating evidence to be presented for defendants. As Gottschalk (2006) explains, "The courtroom in capital cases was no longer just a site to determine guilt or innocence in a particular case. Rather, it provided a dramatic stage to magnify the suffering of all victims, the immortality that taints all offenders, and the fundamental antagonism between victims and offenders. This was a unique outcome in other Western countries" (p. 218). Here the early stage is set for the drama of victims versus offenders in the courtroom.

Thirty-five states would adopt death penalty legislation to revise the arbitrariness of their statutes, leading Justice Stewart to conclude, "All of the post-*Furman* statutes make clear that capital punishment has not been rejected by the elected representatives of the people" in *Gregg*. *Furman* was significant not only for its overturning of states' death penalty statutes, it set a precedent that public opinion on the death penalty was a legitimate consideration in the creation and maintenance of penal policy (Gottschalk, 2006). The ruling made public sentiment about the death penalty (or, the public's

"evolving standards of decency") the political terrain where the terms of the death penalty would be fought in the years to come.

The Aftermath of *Gregg*: The Modern Death Penalty Era

After *Gregg*, it was believed that the death penalty would experience an onslaught of sentences and executions. But, there was a slow trickle in the last years of the 1970s. The number of death sentences grew considerably though in the next decade, and public opinion polls demonstrated that support for the death penalty would reach record highs in the 1990s (Gottschalk, 2006). While the rest of the Western world was abolishing the death penalty, capital punishment in the United States was about to experience a renaissance. Death penalty scholars point to a few culprits in the hastening of sentences and executions.

In the late 1970s, an Oklahoma state senator was looking to revamp the state's execution protocol to avoid the costs of having to repair the state's broken electric chair. This produced the birth of modern lethal injection. Lethal injection was not a novel idea however. In fact, a Virginia slave was executed via lethal injection, although the details of the cocktail used are unclear (Denver, Best, & Haas, 2008). Lethal injection had also been considered in review electrocution as a new potential method in 1888. The arguments regarding this new method sounded eerily familiar to those made during the introduction of other methods historically: lethal injection would be "more humane," "painless from start to finish," and would be a less physically and visually traumatic experience than electrocution (Banner, 2006; Denver, Best, & Haas, 2008). The timing of

this shift in the late 1970s also coincided with a Dallas news reporter's nearly successful push to begin filming executions (Marquart, Ekland-Olson, & Sorenson, 1994).

Several appeals against the new method were mounted. All failed. Texas would become the first to use lethal injection to kill Charlie Brooks, Jr. on December 7th, 1982. Some authors argue that 1983 marked a shift toward the courts being more accepting of "imperfection" in the system (Smith, 2000).[xviii] The pace quickened with executions in the early 1980s.

During this time, Chief Justice Warren Burger complained that the appeals process was so burdensome that it was virtually impossible to execute anyone. This helped arguments that said the courts were favoring defendants over victims' justice. This critique came on the heels of a growing victims' rights movement that had steadily gained traction in the late 1970s and had begun forging a legislative path to ensure the rights of crime victims beginning in the early 1980s. The idea that appeals blocked victims' access to justice would later help to reinforce "the unfounded belief that the imposition of the death penalty would bring about 'closure' and thus provide considerable psychological comfort to victims' families" (Bandes, 2000; Gottschalk, 2006, p. 226; Vandiver, 1998).

Two major cases involved victims and the death penalty, setting forth significant changes in the way we viewed capital trials. In *Booth v. Maryland* (1987), the Supreme Court decided that victim impact evidence would not be admissible during the sentencing phase of capital trials. There were serious concerns about shifting sentencing decisions away from the defendant and toward the victim and also about prejudicing juries toward

death. Four years later, in a surprise move, the justices overturned the *Booth* decision in *Payne v. Tennessee* (1991), allowing for the inclusion of victim impact evidence in capital trials. This opened the floodgates for victim involvement in capital trials.

The death penalty flourished in the 1990s. One of the main culprits was the Antiterrorism and Effective Death Penalty Act (AEDPA) signed into law by President Clinton in 1996. The law severely restricted death row inmates' habeas corpus petitions (del Carmen et al., 2005) and cut off federal funding for capital resources centers devoted to representing indigent capital defendants (King, 2003). This was in part to speed the appeals process up. The AEDPA severely restricted the length of time for appeals available to persons sentenced to death. This not only extended considerable latitude to states' death penalty decisions, but also marked a shift in thinking that the administration of the death penalty should be of national concern (Smith, 2000; Steiker & Steiker, 1998).

This created a system that speeds up the appeals process and here we begin to see claims about victims made in terms of why we need to speed up this process. In an era of tough on crime politics, we also witnessed the expansion of the federal death penalty (Acker & Lanier, 1998). During the 1990s, there were about 300 death sentences on average every year, growing America's death row to 3500, making it the largest death row population in U.S. history (Smith, 2000).

The height of executions in 1999 proved hard to maintain. In the 2000s, the number of executions and death sentences dropped significantly, in some years by more than half (DPIC, 2005). Even in the "capital of capital punishment," Harris County, Texas only

had two death sentences in 2005 (DPIC, 2005). In the same year, Texas adopted life without the possibility of parole.

In the decade after America's most productive death penalty years, the slowing of sentences and executions would be coupled with serious issues concerning the execution of innocent individuals on death row. In the 2000 Presidential election, then Governor George W. Bush told NBC's Meet the Press that "there was no need to [for such a] halt in Texas because he was 100 percent sure that everyone who was executed in Texas during his tenure as governor was guilty" (Hitchens, 2002, p. 2). Bush was largely criticized for his statement, and journalists set out to prove him wrong. Interestingly, their work shed light on several questionable cases wherein the evidence for innocence was rather strong.

Current Controversies: The Erosion of the Death Penalty?

Several Supreme Court cases have chipped away at the death penalty system, reflecting a growing discomfort with executing the vulnerable. In 2002, *Atkins v. Virginia* would declare it unconstitutional to execute the "mentally retarded" (or, "intellectually challenged") in that a national consensus had developed against it (Schabas, 2004). Justice Scalia would dissent in saying that it would turn death sentencing into a "game" wherein the conditions of "mental retardation" could readily be feigned. Three years later, *Roper v. Simmons* (2005) would make it unconstitutional to execute individuals who were juveniles at the time of their crime, thus vacating these juveniles' death sentences. The boundaries of acceptability for executions are shrinking in whom the United States is willing to execute. In 2008, the Supreme Court would rule that

Kentucky's four-drug lethal cocktail was a constitutional method of execution in *Baze v. Rees*. Despite upholding the method, *Baze* helped set forth a seven-month informal moratorium, the longest since the pre-*Furman* era. In the following section, I outline some of the major death penalty issues currently being debated.

Cruel and Unusual? Methods of Execution

Every state with the death penalty uses lethal injection as the primary method of execution (DPIC, 2011c). A handful of states have other methods (e.g., hanging, firing squad) available as back up methods. A legal win that would find lethal injection unconstitutional as an execution method would likely win that defendant a backup method for their execution. Over 1000 individuals have been executed via lethal injection since its first use in 1982 (DPIC, 2011c).

Texas was the earliest adopter of the lethal cocktail, and Charles Brooks was the first person to be executed using this method in 1982. Opponents of lethal injection have argued that this has sanitized executions, even medicalized them (Johnson, 1998; Lifton & Mitchell, 2000)—even to the point where victims' loved ones who witness execution call into question the seeming peacefulness of the inmate's death. In 1995 however, an article in the *Lancet* called into question the painlessness claimed by death penalty proponents and legislators of the cocktail. Using data from death row inmates' autopsies, they found that the thiopental range (for the first drug, the anesthetic/barbiturate) was too low for it to have the desired effect. For individuals who weighed more or metabolized the drug faster, the drug would have worn off by the time the second drug (a paralytic

that prevents the condemned from moving or speaking during the execution) was administered and the inmate would likely have experienced excruciating pain and a burning of their internal organs (but would be unable to express such pain because of the paralytic).

The method was upheld in 2008 in *Baze v. Rees* but California is currently reconsidering their lethal injection protocol for concerns about the method and the lack of review the method underwent when it was hastily adopted by California. Beginning in late 2009, states have been rushing to adopt new methods, including a one-drug cocktail. In 2010, a nationwide shortage of the sodium thiopental has raised serious questions about this protocol and the rush for states to adopt new methods in less than open reviews.

Fairness and Bias

The American justice system is premised on the idea of fairness and equal protection under the law. The accused have the right to due process and the right to a fair trial, and the right to have representation. Historically and today though, we see grave injustices when it comes to the administration of the death penalty. There are a few different ways that bias plays a role in the application and administration of the death penalty.

Opponents of capital punishment have long called into question its fairness and constitutionality, contending that it discriminates against the poor and racial and ethnic minority members. These questions were the hallmark of *Furman*, as the Supreme Court

had to decide whether or not the death penalty violated the Eight Amendment protection against cruel and unusual punishment. It was decided that as it was currently practiced, it was administered in a "capricious" and "arbitrary" fashion. The bifurcated trial and other protections created through states' new sentencing guidelines were put in place to reduce bias. Did it work?

We see a shift, whereas prior to *Furman*, the race of the defendant (holding for all other reasons) was the strongest factor that explained death sentencing for crimes such as rape (Wolfgang & Riedel, 1973). After *Furman*, we have learned that racial bias still exists, but the race of the defendant does not play as significant a role in detecting bias. Today, the race of the victim is more significant in illustrating racial bias. Individuals who murder white victims, are significantly more likely to receive the death penalty than individuals who kill anyone else. This is true for both black and white offenders, but particularly strong for black offenders who kill white victims. Clearly, racial and ethnic bias still exists, despite the safeguards *Furman* was to correct.

Capital Punishment as a Deterrent to Crime

During the 2000 presidential election, then Texas Governor George W. Bush called the death penalty a deterrent to crime (Turow, 2003). Deterrence has received the most scholarly attention in determining if capital punishment restrains people from committing murder, therefore reducing the potential number of homicide victims through deterrence. Proponents of its deterrent impacts cite that the death penalty serves to give murderers pause before committing particularly heinous crimes. The logic does not typically apply

to the large majority of murders wherein the perpetrator and the victim know each other and the murder is a result of an intense quarrel that escalates toward lethal violence ("crimes of passion").

In the 1970s, debates focused on the deterrent impacts of executions on crime, particularly on that of the crime of homicide (Ehrlich, 1975; 1977). These early econometric studies were decisively challenged on their methodological weaknesses (Blumstein, Cohen, & Nagin, 1978; Passell & Taylor, 1977) and several scholars since have concluded that there is no clear evidence to suggest that the death penalty is any more effective than life imprisonment (Donohue & Wolfers, 2006; Peterson & Bailey, 1998). The deterrence rationale was recently resurrected in the scholarly literature (Dezhbakhsh, Rubin, & Shepherd, 2003; Dezhbakhsh & Shepherd, 2006; Mocan & Gittings, 2003), quickly stirring debate about the ability of executions to save innocent lives through deterrence (Berk, 2005; Donohue & Wolfers, 2006; Fagan, 2005) or incapacitation (Steiker, 2005b; Sunstein & Vermuele, 2005).

The empirical evidence on deterrence has been mixed and the debate has certainly been impassioned on both sides. Early on, comparisons of homicide rates among states with and without the death penalty shed doubt on the existence of a deterrent impact of death sentencing (Sellin, 1967). Others compare U.S. homicide rates with those of Canada to illustrate that while U.S. homicide rates have moved in "virtual lockstep," the United States' response has been dramatically different with Canada's last execution occurring in 1962 (Donohue & Wolfers, 2006).

In the mid-1970s, two studies published by economist Isaac Ehrlich received a great deal of attention as they illustrated significant deterrent effects on homicide (Ehrlich, 1975; 1977). Specifically, Ehrlich (1975) provided a national time-series analysis to claim that each execution saved eight lives. The findings generated considerable public and legal debates, in addition to several social scientists challenging his methods and his findings. The National Academy of Sciences issued a subsequent report outlining that the evidence in support of the death penalty's deterrent effects was "unpersuasive" (Blumstein, et al., 1978). Other larger reviews of these data have disputed the findings (Bailey & Peterson, 1997; Peterson & Bailey, 1998; Donohue & Wolfers, 2006).

This debate was resurrected in the early 2000s with a handful of papers arguing that capital punishment, using new data and new methods, is a deterrent to homicide (Dezhbakhsh, Rubin & Shepherd, 2000; Mocan & Gittings, 2003; Zimmerman, 2004). Leading some (Sunstein & Vermuele, 2005) to argue that the death penalty is morally required for the protection of life. Evidence in support of the death penalty's deterrent effects is also openly supportive of maintaining or expanding the death penalty (Donohue & Wolfers, 2006). A re-analysis of this data suggests that these findings are inconclusive, and that the data available are unlikely to be able to answer these questions with certainty (Donohue & Wolfers, 2006).

Donohue and Wolfers (2006) argue that if the death penalty was sufficiently powerful to deter murder and drive down murder rates that it would emerge across all states. Others argue that the death penalty serves as a deterrent through its incapacitating

effects (van den Haag, 1998), which opponents argue the same effects are achieved through punishments that remove the offender from the public for the rest of their lives.

Some questions arise to challenge the proponents of deterrence theory: Why do states with the death penalty have the highest levels of homicide? What acts as a social control against murder in states without the death penalty then? (Smith, 2000). Why does the United States have a higher rate of homicide than other nations (particularly in Western Europe) that have abolished the death penalty? (LaFree, 1999 for cross-national comparison of murder rates as cited in Smith, 2000). Even if there is a significant deterrent effect, it may be that the amount of variation in the crime rate is too negligible to detect (Katz, Levitt, & Shustorovich, 2003).

Similarly, the death penalty is so rarely applied for homicide that it is nearly impossible to disentangle any shifts in the homicide rate (up or down) from the large shifts in the homicide rate caused by other factors each year (Donohue & Wolfers, 2006). In addition, given punitive shifts toward longer sentences, increased adoption and sentencing of life without with the possibility of parole, and harsher penalties, these may also affect shifts in deterrence policies (Donohue & Wolfers, 2006). Finally, there is no conclusive evidence that executions either increase or decrease homicides, and other crimes (Donohue & Wolfers, 2006). We find among criminology scholars and criminal justice professionals (e.g., police chiefs) that they rarely find the death penalty to be an effective deterrent to crime (Radelet & Lacock, 2009).

Costs of the Death Penalty

Popularly, we hear many complaints of using tax dollars to provide "three hots and a cot" to inmates. Death row inmates are no exception here in that popular rhetoric surrounding the death penalty calls for expedient executions so that we can stop wasting taxpayer money providing for their care before their executions. However, the death penalty is more costly than sentencing an individual to life without the possibility of parole. Often appeals are named as the single culprit for the substantial costs involved after a death sentence. However, costs for the initial trial drive the costs for death sentences high as well.

Several reports on costs are available, each calculated in varying ways. In Texas, the *Dallas Morning News* (Hoppe, 1992) reports that the average death penalty case costs $2.3 million dollars, about three times the cost of imprisoning someone in a maximum-security prison for 40 years. In Maryland, a commission on the death penalty cited costs as one of the reasons they were considering ending it in 2009. Each death sentence costs the state $3 million dollars, and the state has spent $186 million between 1978 and 1999 on death penalty cases (Urban Institute, 2008). Maryland has executed five people during this period.

In North Carolina, in the most comprehensive death penalty cost study to date, the death penalty costs $2.16 million dollars more than the costs of sentencing defendants to life imprisonment (Cook, 1993). In Florida, the death penalty has cost taxpayers $51 million a year over what it would cost to sentence would-be death row defendants to life without the possibility of parole. The *Palm Beach Post* (Date, 2000) estimates that the

state has spent $24 million for each of its 44 executions since 1976. Before it overturned the death penalty, a report in New Jersey found that the state had spent over $250 million dollars on the death penalty. The state had not executed a single person since 1983 (DPIC, 2011a). In California, the *LA Times* reported that the cost per execution to the state was a quarter of a billion dollars (DPIC, 2011a).

Costs have opened the door for elected officials to turn toward abolition in the name of their constituents' interests. In the tight economic climate, governors and others can recommend abolition perhaps more safely than in years past, and this has certainly become a major part of death penalty rhetoric in the modern era.

Wrongful Convictions and Executing the Innocent

Only half of Americans believe that the death penalty is applied fairly (CNN/USA Today/Gallup poll) (DPIC, 2007). In addition, nearly eight in ten Americans believe that an innocent person has been executed in the United States, and nearly half (46 percent) believe that an innocent person on Texas' death row was executed during then-Governor Bush's tenure (DPIC, 2007). In 2003, Illinois Governor George Ryan called for a moratorium on executions because of the state's dismal rate of wrongful convictions for death row inmates. He vacated Illinois' death row after 12 executions and 13 people found innocent (Hitchens, 2002).

Thirty years ago, charging that the death penalty swept innocent victims into its system was a "political fantasy." With nearly 140 individuals exonerated from death row, that fantasy appears to be a grim reality. The availability of DNA evidence has certainly

played a significant role in exonerating individuals from death row (and the criminal justice system). Looking at the cases of DNA exonerations, the most common factors leading to a wrongful conviction involve eyewitness misidentification, improper forensics, false confessions, and governmental misconduct.

The Texas Defender Service released a 2000 report that detailed over 160 cases of official misconduct in the handling of capital cases (King, 2003). The problem has garnered so much attention that a bipartisan effort to pass the *Innocence Protection Act* was created to provide DNA testing for individuals with credible innocence claims who did not have access to DNA testing during their trials (King, 2003). At the time of this writing, 138 individuals have been exonerated from death row as innocent people the state was ready and willing to kill. As discussed in the previous chapter, how the media covers this issue is incredibly important to understanding Americans' declining support for the death penalty.

Americans' Views on the Death Penalty

People rely on moral, religious, economic, practical and emotional grounds to shape opinions on the death penalty (Schabas, 2004). Whereas public opinion death penalty support hovered below 50 percent of the population from 1936-1966 (Erskine, 1970), support for the death penalty grew in its absence. Prior to *Furman*, public opinion was very low but post-*Furman* in the absence of the death penalty, support grew for the death penalty as it has done in other nations post-abolition (e.g., Sweden, France, England as

described in Steiker, 2005a). Throughout the 1990s, public opinion polls demonstrated widespread support for the death penalty among Americans.

Public Opinion Data

The majority of scholarly knowledge on Americans' attitudes on the death penalty comes from public opinion polls, most of which only ask a few closed-ended questions (O'Neil, Patry, & Penrod, 2004). This tactic has received due criticism for this simplistic approach, with scholars arguing that death penalty opinions are indeed much more complex than sets of these questions allow for (Bowers, Vandiver, & Dugan, 1994; Ellsworth & Ross, 1983; Williams, Longmire, & Gulick, 1988). Two long-term surveys provide a good understanding of how death penalty beliefs have shifted over time, the General Social Survey and Gallup polls.[xix] Death penalty support is based on emotional grounds. It is expressive, not rational or logical (Ellsworth & Gross, 1998). People care strongly about the death penalty but care to know nothing about it (Bohm, 1998). Below I briefly describe some of the key factors in understanding Americans' support for the death penalty.

Complexities of Support

Americans support the death penalty but when provided additional options such as life without the possibility of parole, we find that death penalty support actually declines. We also find that respondents in public opinion research often give contradictory answers. People often stand in support for the death penalty but often disagree with its administration when given the details (Williams, Longmire, & Gulick,

1988). Overall, we find that many Americans want punitive responses to crimes such as murder. Often because they do not trust the government or do not feel that when people say LWOP they mean it. Do all Americans feel the same? No, as we can see from public opinion research, not everyone supports the death penalty, or for the same reasons.

Correlates of Support

Support for the death penalty is significantly more likely among men than women (Bohm, 1991; Keil & Veto, 1990; Sandys & McGarrell, 1994); Republicans than Democrats or Independents (Zeisel & Gallup, 1989); and among individuals with higher family incomes (Bohm, 1991; Longmire, 1996; Vogel, 2003). Perhaps the strongest and most well documented differences in death penalty support are racial. White Americans, with little exception, are significantly more likely to the support the death penalty than are Black Americans (Bohm & Vogel, 1994; Sandys & McGarrell, 1994; Ziesel & Gallup, 1989). More recent research in this area suggests that White Americans' support of the death penalty is influenced by subtle or aversive racism (Aguirre & Baker, 1993; Barkan & Cohn, 1994; Russell, 1996; Lynch & Haney, 2000). Racial animus, in fact, may be the most powerful explanatory variable for death penalty support among Whites (Unnever & Cullen, 2007a; 2007b).

Social Context of Support

Death penalty support among Americans is often thought to be universally high, however there are significant community level variations in support for the death penalty (Baumer, Messner, & Rosenfeld, 2003). Individuals who live in areas with larger

populations are less likely to support the death penalty (Baumer, Messner, & Rosenfeld, 2003). Americans who live in areas with higher local rates of homicide, a larger proportion of Black American residents, and a more conservative political climates are more likely to support the death penalty. At the state/regional level, individuals who live in the southern and western regions of the United States are more likely to support capital punishment (Baumer, Messner, & Rosenfeld, 2003).

Americans' views on the death penalty are complex, far more complex than this discussion illustrates. We do know that the majority of (white) Americans support the death penalty and their reasons for support have been the subject of many long-term and recent studies. In the next section, I focus on some of the rationales that shape Americans' reasons for supporting the death penalty.

Theories of Punishment: Death Penalty Rationales

By definition, crimes represent wrongs committed against the state and society at large. Punishment for those crimes, by contemporary design, is done today in the name of the state, rather than imposed to vindicate the interests of individual victims (Acker & Mastrocinque, 2006; Garland, 1990; Sarat, 2001). Various justifications have been offered to justify state sanctioned executions in the post-*Furman* era. The purposes served by executions are often categorized as utilitarian (i.e., deterrence, incapacitation) or retributivist (e.g., restoration, retribution) (Radelet & Borg, 2000). These theories generally focus on whether the death penalty deters murder and whether or not the death penalty is a moral response to the punishment of certain crimes. Here, I focus mainly on

deterrence and retribution for two reasons: 1) they have received the most popular and scholarly attention in the past three decades (Weisberg, 2005) and 2) deterrence as a rationale offers an excellent comparison for the contemporary course of closure.

Purposes of Punishment for the Death Penalty

Punishment seeks to change behavior or deter certain behaviors through conditioning with aversive stimulation or outcomes (Vidmar & Miller, 1980). Punishment serves to distance "us" and "them." It identifies the offender as the enemy of law-abiding citizens (Mead, 1918) and places the offender outside of the group. It is a status degradation ceremony that reaffirms boundaries between those who follow shared values and norms and those who do not (Garfinkel, 1956). Utilitarian perspectives are concerned with serving a legitimate purpose and outcome for punishment. Several purposes for the death penalty exist: deterring an individual or general population from offending; rehabilitation to reform the offender (although rehabilitation seems contradictory for a person whose life will soon be ended by the state); restoration of the victim(s); incapacitation to render the offender from harming again; and retribution to "get back at the offender" (Burnett, 2002, p. 4). The closure doctrine may reside somewhere between restoration and retribution.

"Retribution is a passionate reaction to the violations of a rule, norm, or law that evokes a desire for punishment for the violator" (Durkheim, 1964, p. 85-86; Vidmar, 2000). It invokes the public's "instinctive wish" to punish people who commit heinous acts (Ezorsky, 1972; von Hirsch, 1986). A retributivist punishes not for any other reason

than that the offender deserves it (Moore, 1995 in Reamer, 2005). Retributivists punish for the sake of punishing, because punishment is just and right, regardless of the good or harm that may come (Tunick, 1992). In this sense, "the world is better, morally speaking, when the vicious suffer" (Ezorsky, 1972, p. xviii).

Condemning the offender is another retributive function of punishment. The process includes a public statement stating the offenses against the victim(s) and the violations toward the broader society (Feinberg, 1970). It also includes shaming the offender for their offense. Among victims, particularly as the victims rights movement strengthened, we see a call for public condemnation of the offender and an acknowledgment of the wrongs committed against victims.

Public opinion surveys have examined Americans' reasons for supporting the death penalty and we find that these reasons have shifted over time (Radelet & Borg, 2000). Whereas in 1985, 62 percent of Americans believed that the death penalty acted as a deterrent to violent crime, this number had dropped to little more than half (51 percent) by 1991, and dropped to 47 percent by 1997 (Gallup & Newport, 1991; Gross, 1998). "Recognizing the weaknesses in the deterrent justification, advocates of capital punishment have shifted their focus to retribution, and this is surely being manifested in recent opinion surveys" (Schabas, 2004, p. 312). This shift toward retribution concurred with the U.S. Supreme Court nullifying states' abilities to impose the death penalty for crimes other than murder (Bedau, 2008).

Despite the recent attention these rationales have received, the American support for the idea that the death penalty is an effective deterrent has declined significantly over

the past two decades (Acker, 2006; 2007; Gross, 1998; Radelet & Borg, 2000). Compared to the 1980s wherein two-thirds of Americans believed the death penalty was a deterrent, in 2004, only 35 percent of Gallup Poll respondents stated they supported the idea (Bandes, 2008b; Jones, 2003; Sundby, 2006). Yet, as Bandes (2008b) writes, "instead of withdrawing support for the death penalty, the populace simply shifted rationales" (p. 17). Simply put, declining beliefs about deterrence do not appear to have had any effect on death penalty support generally (Gross, 1998).

Retribution, Closure, and the Death Penalty

That an execution of an offender could bring about good for the victim's loved ones is a new idea, one that has coincided with the development of the victim rights movement. "If victims were once forgotten, hidden casualties of criminal behavior, they have now returned with a vengeance, brought back into full view by politicians and media executives who routinely exploit the victim's experience for their own purposes" (Garland, 2001, p. 143).

The media play a major role in bringing the public into support for victims, and thus, the death penalty. The need for revenge presents itself throughout narratives about victims, and many supporters of the death penalty use these narratives to help the public identify with victims and their loved ones (Brettschneider, 2001).

In these narratives, terms like "justice" and "closure" are paired, providing a new purpose for punishment (Acker & Karp, 2006). Punishment is not about retribution or revenge, but about providing redress for murder victims, and their loved ones. The goal

of punishment here is to provide solace to victims' surviving loved ones. This is a new purpose of punishment.

Conclusion

The goal of this chapter was to provide an overview of the American death penalty, both historically and today. It is clear from this discussion that the United States' continued use of executions as a form of criminal punishment places the nation out of step among Western democracies who long ago abandoned the practice. It is also clear that it is not just that the United States retains the death penalty in its legal code, but that it actively seeks death sentences and executions. During the 1990s, death sentences, executions, and the population of death row ballooned to unprecedented levels. Yet, it would be unfair to argue that each state within the United States is driving forth this push for executions. By several measures, states within the southern region of the United States have accounted for the overwhelming majority of the death sentences and executions in the pre- and post-*Furman* eras. For example, states such as Virginia and Texas, which I discuss further in Chapter 3, have accounted for more than half of all the executions in the United States since the death penalty was reinstated in the 1976.

The differences among states reflect a growing discomfort with many of the major issues concerning the practice of the death penalty today. Indeed, the rate of death sentences and executions has been on a significant decline since 1999. States and their citizens are increasingly concerned with issues related to the methods of execution (i.e., is lethal injection a humane form of death?), fairness and bias, the purposes of punishment

(i.e., does the death penalty deter violent crime?), and the execution of the innocent. Illinois, New Mexico, and New Jersey have recently abolished executions, and other states are strongly reconsidering the practice. The issue of innocence has created a "crisis in confidence" among Americans (DPIC, 2007) as a growing list of individuals has been exonerated from death row. They serve as living, speaking reminders that the system is certainly not infallible and may be broken beyond repair.

In sum, controversies around the death penalty do not occur within a vacuum. Narratives around the state's right to take life, the faces of death row exonerees, and significant costs to maintain the death penalty have received wide coverage within the American news media over the past decade. As one will recall from the discussion in Chapter 1, how the news chooses to focus on these issues plays a major role in shaping the American death penalty. Americans have typically supported the death penalty for reasons related to its ability to deter crime or incapacitate offenders. In recent decades, belief in these reasons has declined, and Americans' views on the death penalty have hardened toward more retributive reasons for support. Closure serves as a new reason to support the death penalty, yet it is unclear if closure as a death penalty rationale is more related to retribution or revenge, or is more similar to utilitarian purposes for executions (as in, it heals the harms of victims). In the next chapter, I focus on the meanings of closure to understand how scholars and stakeholders alike have conceived it of over the past twenty years.

Chapter 3: The Birth of Closure:
A New Death Penalty Rationale

Introduction

"Closure, that's what we're looking for," said schoolteacher Melinda Moses in Lake City, Florida, "We want it over with, and yes, we want him dead." The day was January 24, 1989 and after a lengthy wait and many delays, Ted Bundy was to be executed via electrocution in the nearby town Starke. Theodore "Ted" Bundy was a man who confessed to killing nearly 30 women in the 1970s. He was described as a charming, handsome, and articulate young man who had preyed primarily upon college-age women (Reamer, 2005). I was nine years old when Bundy was executed. Growing up as a child in Florida, I remember listening to the radio on the days his scheduled executions would be stayed. The adults around me, I recall, were frustrated and horrified as details of his crimes grew with every delay. It seemed as if the entire state had breathed a collective sigh of relief upon his execution. In this chapter, I explore the "collective" aspect of the closure discourse by focusing on how the term has been used in the past twenty years, and by whom. Specifically, I focus on the various meanings of closure put forth by scholars and in print news articles to explore how the term has used among various stakeholders such as concerned citizen above.

While I am sure there were many citizens who shared similar sentiments to Melinda Moses quoted above, the schoolteacher's statement is one of the first mentions of closure in the print news media regarding executions and the death penalty.[xx] From

there, "closure" would make its way slowly into newspaper stories over the next few years, trickling in here and there in news coverage of the most shocking crimes of the next decade. While many of the statements regarding Bundy's execution contained the garden variety retributive statements (and perhaps even the more vengeful, such as Lake City Mayor Gerald Witt's comment, "When he's gone, there'll be a lot of people shaking hands, exchanging high-fives and all that because they finally killed the bastard"), the desire for "closure" would become a new way of viewing the purposes of executions in the coming years. Drawing upon a qualitative analysis of newspaper articles and other archival materials described in Appendix A that focused on closure and executions over the past two decades, I describe how closure has been described in the scholarly literature, providing examples—such as the ones above—to illustrate how various stakeholders have trafficked in its use, and outline some of the criticisms that have been laid against closure's entry into death penalty discourse.

A Constellation of Meanings: "Types" of Closure in the Death Penalty Context

Closure has several meanings, and nearly all are contested. From where did closure originate? How did it enter death penalty lore? Some argue that closure is a term imported from the world of psychiatry (Hodgkinson, 2004). Others tout it is as simply pop-psychology (Goldberg, 2003) or a "New Age buzz word drawn from the world of family therapy" (Kirn, 1998, n.p.). In this formula, the idea that closure equals catharsis "has been mostly created by a society desperate to believe that even the worst wrongs can be righted" (Goldberg, 2003, p. 2). In psychology, we see the term "cognitive closure"

which refers to a need "conceived of a desire for definite knowledge on some issue and the eschewal of confusion and ambiguity. It is considered proportionate in magnitude to the perceived benefits of closure and the costs of lacking closure" (Webster & Kuglanski, 1997). Others have conceptualized cognitive closure as "the need for any firm belief on a given topic, as opposed to confusion and uncertainty" (Jost, Kay, & Thorisdottir, 2009, p. 267). Interestingly, social psychology research has illustrated a strong positive correlation between the need for cognitive closure and support for conservative ideologies, including support for the death penalty (Jost, Kruglanski, & Simon, 1999). Namely, adhering to this ideology reflects a strong and unequivocal desire for swift and punitive action (Jost, Kay, & Thorisdottir, 2009).

Despite these mentions of closure in the psychology literature, there has been little consensus among scholars or psychologists on the definition of closure. Indeed, it seems as if "closure is a term with no accepted psychological meaning" (Bandes, 2008b, p. 2). Several scholars have noted the lack of an all-encompassing definition of closure, but it seems that we are left with an umbrella term with a "constellation of meanings" (Bandes, p. 3). Here I attempt to illustrate the various meanings ascribed to closure by recent scholarship, with the recognition that this is not comprehensive nor perhaps the best use of scholars' time in trying to delineate "types" of closure.

For example, Armour and Umbreit (2007) cite "emotional closure" and "legal closure." Similar to the stance of Madeira (2009), I view these distinctions as false categories with the acknowledgement that scholars do use these terms to discuss closure within the death penalty context. I address the importance of ignoring these semantic

differences in Chapter 5, wherein I critically examine claims by death penalty supporters who argue today they have always meant closure in the "legal" sense, not the "emotional" sense.

That being said, below I categorize ten "types" of closure as they have been discussed in the academic literature. This list is meant in no way to suggest that the treatment of closure in the categories below means that closure is rooted in some objective reality. Closure is treated as something tangible, real, and therefore achievable. This treats closure as a dummy variable—one either has closure or does not. This naive view treats closure as an end point, when in fact closure may be a process (Madeira, 2009). This view also serves to complicate the experiences of those who feel they may never reach "closure" or for who "closure" is assumed, but never realized. For each of the categories below, I provide examples from the newspaper stories coded and analyzed in this chapter. As one can see, most of these meanings are offered from the viewpoint of secondary victims, but it is clear from my analyses that secondary victims do not have a monopoly on the "benefits" of closure.

Closure as finality: A set of emotions often loosely connected to each other: peace, relief, justice, and finality (Magee, 1983); a sense that a chapter of one's life has come to an end; a sense of finality in trying to put the murder behind them (although many survivors report feeling guilty for "moving on" (Vollum, 2008). It may refer to a stage of healing or the ability to begin healing, or the end of healing (Hodgkinson, 2004). Others suggest that it denotes the end of grief, a claim that many homicide survivors adamantly abhor as there is no bringing back their family member (Gross & Matheson,

2003). It may or may not be tied to certain events in legal proceedings, such as the end of a trial. As one mother shared after an execution of her daughter's murderer, "It's not the end because you never stop grieving for a child but it does have a final ring to it," said Joyce Smith, of Amarillo. "I want to know he won't harm another woman's daughter."

Closure as knowledge: The sense that one finally has the answers about their loved one's murder. This could come about from victim-offender mediation, personal exchanges with the offender, learning through the trial the details or circumstances surrounding their loved one's death, statements made to the media, or from the final words of the condemned (Rock, 1998; Sprang, McNeil, & Wright, 1989; Vollum, 2008). This sometimes takes the form of locating missing persons, unearthing crucial details even after a case has grown "cold." Families of victims of Kenneth Allen McDuff in Texas argued that the "real" closure would come from finding their daughter, Colleen. As the prosecutor in the case, David Counts, said: "Even after the trial, my job won't be complete because we haven't found her yet." Similarly, knowledge gained through DNA or other evidence is said to allow new opportunities for closure. As Justice for All victims' rights group member Ellen Levin shared on collecting DNA profiles from offenders would allow us, "to take the guesswork out of 'who done it''… and will be a tremendous boon to crime victims' families, bring closure to their grief and allow them to heal."

Closure as security: It may involve the incapacitation or removal of the offender as a threat from their lives and the lives of others (Guerra, 2004). This sense of safety may result from a life sentence without the possibility of parole, a death sentence, or an

execution. For several years, Wanda Sweat received letters from the man who murdered her mother. The letters demanded that she forgive him and "get on" with her life. As she has shared, "I'm always petrified. I'm afraid I'm going to be killed with a knife. It's a nightmare that won't stop. Until he's dead, I won't have closure." Closure for her would necessitate his execution to stop his harassment. Sometimes knowing that a person cannot harm others is enough as Prosecutor Wick Cooper said of Monica Johnson, the mother of a young child, Kendrick Johnson, killed by his father who was sentenced to life in prison: "She is happy he's off the streets and won't be able to this to any other children."

Closure as justice: A sense that certain wrongs have been righted that may be rooted in a retributive or just deserts ideology. This may involve private action or actions by the criminal justice system that involves an arrest, a guilty conviction, a death sentence, or an execution (Bandes, 2008b; Berns, 2009). For example, after the execution of Cecil Lucas, the son of one his victims summed up, "Cecil Lucas was a cold-blooded killer. He was sentenced to die. Tonight, he died. Justice has been served." Similarly, victim Beverly Mitchell shared after the death sentence of her brother's killer: "This sentence won't bring back my brother Scott, but justice was served. This has been the longest four years and seven weeks of my life. With the Lord's guidance, our family and Scott's friends can now have closure." This sense may result from the legal aspect of a case, including the end of the appeals process or the end of the offenders' life via execution (Armour & Umbreit, 2007). As death penalty proponent and Justice for All member Dudley Sharp has stated, "Is the death penalty closure? Of course. For those who

have lost loved ones to murder, the execution of the murderer definitely brings closure. The execution is closure to the legal process" (Sharp, 2009).

This form of closure is often invoked in light of perceived injustices or roadblocks to closure through justice. For example, Texas Attorney General Greg Abbott's press releases often refer to this type of closure in light of executions being stopped or slowed down. When the Supreme Court halted executions while it decided on the question of lethal injection in *Baze v. Rees*, his office stated, "In wake of today's decision, the Office of the Attorney General will take the legal action necessary to bring closure to these victims" (Moore, 2008). More recently, in response to a Houston judge's decision to declare the death penalty unconstitutional, the statement in response read: "We regret that the court's legally baseless order unnecessarily delays justice and closure for the victim's family—including her two children, who witnessed their mother's brutal murder." Interestingly that closure has been mostly abandoned, yet this office still uses it (Abbott, 2010). In the Attorney General's version of closure, justice can only be brought about by executions.

Closure as vengeance: In a more critical light, closure is nothing more than a new term for vengeance, a transformation of retributive or vengeful values into a new term that makes the American public feel better (Zimring, 2003). Criticisms within this view of closure typically originate from individuals against the death penalty who claim that vengeance and closure cannot exist together. A Catholic priest who was arrested during one execution protest said, "I certainly sympathize with Ms. Wood's family, and I know it hurts. But I'm not sure that this really brings closure. It's only vengeance." Murder

Victims' Families for Reconciliation member Maria Hines, whose police officer brother was killed in the line of duty in 1989, shared: "I have observed other murder victims' family members who are filled with vengeance. They, including some members of my own family, say that when the person who did this to their loved one is killed, they will feel better and will find closure. To say, however, that vengeance and closure can exist together is a contradiction in terms, because the other side of the coin of vengeance is anger and, as long as we are holding onto our anger, our grieving isn't over."

Closure through vengeance can also be viewed from statements made by victims who argue that the state's punishment is not good enough. These views are often expressive, seek punishments with no upper limit, and are critical of the state as a detached actor. For example, during a heated courtroom exchange, one victim shouted at his wife's killer who was not sentenced to death, "Cowards like you attack defenseless women who weigh 107 pounds. Cowards like you attack women when no one else was home. It's unfortunate that I could not stand and watch you take your last breath with a needle in your arm." Similarly, another victim from Florida, Erlinda Aligada shared, "I want to see him die. I want to see him squirm." One mother shared about her daughter's murderer, "We have absolutely no compassion for her. We won't have closure until she's swinging from the gallows. We want her to die in the same way as Jamie."

Closure as death: The sense that only death will end the events that have unfolded in the aftermath of homicide. This may mean the death of the offender via execution. It may also mean needing to see or be a part of the offender's execution (Berns, 2009; NCVC, 1998). One of the first "victim witnesses"—individuals permitted

to view the executions of their loved one's murderer stated, Elizabeth Harvey said of her watching her daughter's murderer's execution Louisiana in 1984, "I kept being told that it was going to be so awful. His death was not near what my daughter went through. He had his last meal, his friends all around. I wish I could have said goodbye to my daughter, served her her favorite meal. I had to see that it was really over. I had to know no one was going to hurt like we do again."

Offenders and their loved ones may also sense that their death is the only thing to bring an end to their ordeal (e.g., "volunteering"—offenders dropping their appeals and asking the state for the right to die). For example, death row inmate Terry Clark repeatedly asked for redemption and in 2001 stated at his last court hearing before his execution date was set, "I would like to take the opportunity to apologize once more to the victim's family, the Gore family. They need closure. I need closure, too, your honor. There is no excuse for what I did." Lastly, secondary victims may acknowledge that nothing but their own death will bring a close to their experiences. The statement from a victim of the Oklahoma City Bombing, Darlene Welch, whose 4-year-old niece was killed was shared frequently throughout news reports after McVeigh was sentenced to death in 1997: "There is no such thing as closure for people who lost family in the bombing. The only closure is when they close the lid on my casket."

Closure as honor: This may involve the sense that one has honored the life of the victim, or that the victim's life has been honored in death. It may involve a guilty verdict or a status ceremony wherein a trial exalts the victim's loved one (Bilz, 2007). This could involve speaking publicly about one's experiences (Bandes, 2008b) or relaying one's

sense of deep loss as part of a victim impact statement or a statement made to the media (Lifton & Mitchell, 2000). This may also involve being at certain events in the place of the victim (e.g., in the death chamber) or honoring a loved one's memory through memorializing their life or creating positive works to come out of the individual's death. In making something positive out of tragedy, one father shared of his son's murder: "The only closure to this whole thing is going to be my own personal and my wife's personal joy within ourselves," he said. "I don't think condemning somebody to death would bring closure to me. Seeing some laws and things changed, getting out there and helping young people, that would add closure."

Closure as severed ties: In this sense, closure may represent the end of an unwanted relationship with someone clearly and often uninvited into one's intimate life (Madeira, 2007; 2009). In 1996, one of the first Texas victim witnesses shared after the execution of her loved ones' murderer: "Tomorrow, I'm going to the cemetery and tell Kara and Mark, 'He's gone.'" Interestingly, closure as severed ties is one of the ways in which the Texas Department of Criminal Justice described the work of victim advocates preparing victim witnesses for viewing the execution of their loved one's murderer in 2001: "If victim witnesses are disappointed that the inmate did not suffer the way their loved one did (a common reaction), explain that the execution may not provide emotional closure, but it will sever the lengthy connection they had with the inmate. Furthermore, it guarantees that they will no longer have to worry about the inmate escaping or being released due to a reversal of the sentence or an appeal." Here, too, one can see themes of closure as security.

A sense of closure as severed ties may come from cutting a person out of one's life; the end of contact with a person via continued correspondence or that person speaking through the media; or through an execution. For example, when Marilyn Clark viewed the execution of her brother's killer, Robert Alton Harris, she reported shifting her views of him as the "smirking jerk" she had continued to see on television after he faced her and apologized right before his execution via lethal gas. "I felt peace. And I felt for Harris that he was at peace. I have justice. I have finality. I have closure. I know Harris is somewhere else, and he's OK. And I know for damn sure that I'm ok." Her experience is also closely related to closure as death, in that it was the only way for her to sense that her life would no longer be interrupted by his media appearances.

Closure as forgiveness: It may involve the sense that a victim has been able to forgive the offender, or the ability to empathize with the offender even if not their actions. This may or may not involve an offender admitting guilt, expressing remorse, or sincerely apologizing (Bibas, 2007; Vollum & Longmire, 2009; Vollum, 2008), sentiments often sought during what Gross and Matheson (2003) call a "hallmark execution." As one victim explained after the execution of her loved one's murderer, "I do forgive his soul, but not his deed, and I hope he has gone to heaven. As for his last words I am going to say he was sincere," Griffith added, "It brought a measure of closure. It's not a recurring thing that is going to keep coming up and bring up bad memories. It's done. It's finished." One victim's father, Raymond Martinez, asked his community to forgive his son's unknown murderer, "I ask that we forgive this man because if we don't, we won't ever have peace; we won't ever have closure."

Closure as collectivity: This is the sense that as a community, *we* have closure rather than focusing on the closure of individuals closely related to a murder. This type of closure is most typically invoked in events where there have been mass victims, or harm at profound levels (e.g., terrorist attacks). This sense of closure at the communal or collective level, or seeking closure for "us" rather than them, may be at odds with the experiences of individuals who do not believe in closure or think that executions provide closure. In criticizing the idea of closure through executions, David Kaczynski, brother of Ted Kaczynski who was known as the Unabomber serial killer, stated, "When you have a terrible act of violence, the need is to heal the wounds, both on a communal and individual level," Kaczynski says. "The adversarial setup of the justice system - the way there is a clear effort to keep the family members of both sides from communicating for fear of compromising that supposedly impartial process - is counterproductive to the healing process. We need a new paradigm."

The corollary criticism rings true too. That is, the criminal justice system may rule in a way that at the state level makes sense, but not to the victims who are hurt or disillusioned by these attempts at closure. For example, Parole Board Chairman Walter Ray wrote in the state's denial of a death sentence: "We have the deepest sympathy for the family of Aleta Bunch and especially for her mother, Mrs. Carolyn Bunch. The pain and devastation that Williams caused this family can never be erased. By making sure Williams will remain in an 8-foot-by-10-foot cell for the rest of his life with absolutely no hope for parole, we hope that the certainty of our decision will give Mrs. Bunch the

closure she so deserves." The potential for the denial of closure in this sense is perhaps elevated in that so many actors are attempting to seek their own sense of closure.

Closure as a Signifier

While these categories are in no way exhaustive or reflective of any "true" closure, they may be one way of understanding closure as an umbrella term, one that eludes ownership by any single set of stakeholders. I argue that this quality leads to its popularity; as a "chameleon term," journalists and others can use it in untold ways. The examples above illustrate that closure can by used in ways that are directly contrary to each other. In some ways, closure may be best understood as what Levi-Strauss (1950) coined: an "empty signifier"—a term that has the potential to assume a multitude of meanings, signifying something vague or unspecified, or nothing at all. The term itself becomes a signifier of the signified. Put simply, the term takes on so many meanings that it may have become meaningless.

Yet, it is clear from the quotes above that closure holds some sort of meaning for who use it. Victims struggle to make sense of their traumatic experiences, holding out for balance to be restored or life not to be continuously defined by daily struggle. Offenders attempt to provide meaning to their deaths in volunteering to be executed, or offering condolences to victims' loved ones in their final words (no matter if they fall on deaf ears). Political and criminal justice officials borrow the term to rationalize their part in violating one of the major, universal moral imperatives of not killing. In this sense, the term itself then may not be as meaningless as the term "empty signifier" suggests. If we

are to take this stance, Stuart Hall's (1997) notion of the "floating signifier" may be more appropriate. Therefore closure may be come to understood as a "discursive construct," a term that has a meaning that is never fixed, never stays the same, and is static among those who use it. The meanings ascribed to closure come from the process and relations built in representing its various definitions.

Closure: A Constellation of Criticisms

Criticisms abound about the closure doctrine. Even some of the most adamantly pro-death penalty scholars do not find closure to be a worthy goal of the death penalty. For example, Louis Pojman (2004) writes, closure, "is not a sufficient argument for the death penalty in that it doesn't always bring a 'cathartic sense of relief' though some families do express satisfaction that the murderer has been executed" (p. 54). Arguments against the idea of closure are linked to other criticism aimed more generally at the death penalty and the lengthy criminal justice proceedings. In this section, I outline some of the major criticisms of the logic of closure.

Closure as Harmful to Secondary Victims in Capital Cases: Given the protracted nature of capital trials and the subsequent automatic appeals, which only a fraction of the time end in executions, closure may intensify harm to victims' loved ones (Lifton & Mitchell, 2000). Co-victims may find that the trial invades their privacy, derides their loved one, and is under the constant scrutiny of the news media (Acker, 2006; Gross & Matheson, 2003). There is typically about a decade between the end of the trial and an execution (Bonczar & Snell, 2003). The time that victims' loved ones endure capital

trials has not been examined, but what little we do know suggests that this is an emotional roller coaster (Burr, 2003; Vandiver, 1989; 2003; 2006). Between reversals and retrials, victims have no guarantee that their investment in any of these activities will produce a desired execution (if desired in the first place).

Further, the trial process is disruptive (Hoffman, 2003) and often discloses painful details of their loved one's murder. It may also serve as a form of secondary victimization. It may also be harmful to hear their loved one's worth be challenged by defense attorneys who try to mitigate the loss or focus on the losses of the defendant's family members.

Closure as Harmful to Secondary Victims in Non-Capital Cases*:* The thrust of these arguments suggest that closure offers a false promise to murder victims' survivors, ultimately producing more harm than good. Closure ignores the 99 percent of families whose loved ones will not have their death avenged by the death penalty. Others argue that the vast resources devoted to the maintenance of the death penalty could be better used to tend to the service needs of victims.

Closure Not a Worthy/Legitimate Goal of Punishment: There are concerns that closure is not a worthy or advisable goal of the criminal justice system. In these arguments, the legal and criminal justice system view seeking victim's satisfaction as an illegitimate goal for criminal punishment (Sarat, 2001). Even if it was a legitimate goal of the death penalty, there are several policy implications of allowing closure to direct American criminal justice policies. Further, scholars argue that the legal system is ill-equipped to help victims (Bandes, 2008a).

Slippery Slope Problems with Closure: The potential for error increases if we speed up the appeals process and do away with the protections that have helped to exonerate nearly 140 individuals from death row (Acker, 2006). We risk compromising procedural safeguards in the rush to provide speedy "closure" to victims' families (Acker, 2006). To provide maximum closure, we would certainly need to expand the use of the death penalty to beyond the one percent of homicide cases wherein a death sentence is handed down (Acker, 2006). Additionally, we may shift from individual to societal closure, so that we all heal the harm by viewing executions or making them more of a public spectacle as we have seen victim witnesses invited into execution chambers to help their healing (Janicik, 2000).

There are obvious concerns if we were to find that executions provided all victims' families with the healing and sense of finality they needed to help in whatever way they need. But, we have no studies on closure's ability to do anything for victims' loved ones. In fact, as others have argued above, the promise of closure may be harmful to victims for the aforementioned reasons.

Closure is Not Empirically Sound: The idea that the death penalty can provide "closure" to victims' loved ones involves complex issues that have yet to be studied (Vandiver, 1998). Despite its ubiquitous nature, even as a newcomer in this debate, it has not endured any systematic scrutiny. The handful of studies that have focused on victims who have been involved in capital proceedings have indicated that they do not find closure to be attainable, nor real.

Closure as a False Promise: Simply put, closure may be a false promise, put forth by claimsmakers who only have an interest in continuing the death penalty, with very little regard for the actual emotions and experiences of secondary victims. State actors may hold out this promise (e.g., police who proclaim they will find the killer, prosecutors who seek death sentences, victim advocates who assist on execution days) to victims although there is no closure to be found. This may intensify and revictimize survivors' sense of loss following pivotal moments promised to hold closure, only to find that their anticipation is met with further emptiness and sorrow (Henderson, 1998; Prejean, 1993).

Conclusion

This chapter focused on the various meanings of closure that get put forth in news articles. While I find categorizing "types" of closure problematic, in that it renders "closure" as something that is real, tangible, and open to many uses, I outlined ten ways in which closure has been conceptualized throughout my analyses. I provided illustrations of each of these "types" from scholars and examples of individuals who have used the term over the past twenty years as captured in the print news. These ten categories include a sense of closure as: finality, knowledge, security, justice, vengeance, death, honor, severed ties, forgiveness and collectivity.

My analyses of scholarly, popular, and print news sources illustrate that claims about closure are not limited to the domain of secondary victims. It is clear that closure gets used to describe a closure for "us" as in a collective closure, one at a communal or societal level. This type of closure could clearly be at odds with the type of closure

sought by secondary victims themselves. A perfect example includes prosecutors who call for "our closure" through the execution of offenders in which secondary victims have no desire for their loved one's murderer to be put to death (e.g., homicide survivors against the death penalty or those who feel that other forms of punishment are much more harsh). There are also examples of offenders—those who are typically portrayed in the news media directly at odds with secondary victims and criminal justice officials—using closure in their desire to drop their appeals and hasten their death through execution. There were also those offenders who invoked closure in their final statements—making sense of the end of their lives by hoping it provided them, their own loved ones, or the loved ones of their victims closure (see also Rice, Dirks, & Exline, 2009). There were also those among the condemned who outright rejected the term, very similar to the sentiments of secondary victims who do not believe in any of the ten versions of closure above.

These discrepancies reveal the fluidity of closure; making it a term Stuart Hall could consider a "floating signifier." In sum, this chapter sets forth the many ways in which closure has been conceptualized in the past two decades. In the next chapter, Chapter 4, I illustrate how these various meanings have been co-opted in support of executions. Specifically, I focus on how closure was used to push forth "right to view" legislation that would allow victims' loved ones to view executions.

CHAPTER 4: THE POLITICAL USES OF CLOSURE: THE RIGHT TO VIEW EXECUTIONS

Introduction

In Chapter 3, closure was described as a term with many meanings. In this chapter, I explore how those varied meanings have allowed it to be used for a variety of purposes related to punishment and the death penalty. My analyses of closure within print news media and the archival materials of death penalty and victims' rights groups over the past twenty years illustrated the ways in which closure has been used to support death penalty practices. In this chapter, I focus on the primary area wherein closure discourse has been most prominent in the past two decades: the push for the right for secondary victims to be able to view the executions of their loved one's murderer, or "right to view" policies. I suggest that particularly heinous crimes such as serial or mass killings became galvanizing events in that the news media's coverage of them was unprecedentedly sensationalized. Others have attributed this shift in the news to the fascination and the "birth" of the serial killer in the 1980s. I argue that it is within this context and a growing interest in victims' rights, that closure could take root within American death penalty discourse.

I focus in this chapter on how political officials and death penalty supporters harnessed the power of these moments to use closure to enact changes within death penalty practices. As I discussed in the opening pages of this dissertation, this culminated in 2001 with the execution of Timothy McVeigh. McVeigh's execution served as a

perfect illustration of how closure became an important discursive tool within the pro-death penalty movement in America. I argue that the adoption of "right to view" policies can best be described as an "institutional fad"—an enthusiasm for what appears to be an innovative solution to an institution's problem (Best, 2006; Denver, Best, & Haas, 2008). Here, the "problem" was that that secondary victims had been denied the opportunity for closure, because they had been blocked from death chambers. The solution, offered by those in support of the death penalty, was the passage of "right to view" policies across the United States. I begin this discussion with an overview of institutional fads.

Institutional Fads

Shifts in death penalty practices across the years have been explained by many factors—changing tides in the etiology of crime, technological changes, or the adoption of new policies in the name of progress or maintaining humane executions. As others have argued elsewhere (Denver, Best, & Haas, 2008; Sarat, 2001), institutional shifts with the death penalty may reflect more faddish behavior. Institutional fads—"relatively short-lived enthusiasms"—are found across many fields (Best, 2006). Like regular fads, they are cyclical in nature, first appearing as an innovative solution to an institution's problems, one that is then encouraged by certain claimsmakers and then adopted as a solution, before being abandoned, often in favor of some new innovation. The cycle is surge, urge and purge.

To provide an example, scholars have focused on the adoption of new methods of executions as illustrative of this faddish nature within the practice of the death penalty

(Denver, Best, & Haas, 2008). It first begins with states that may have some sort of issue with their method of execution that requires a solution. For example, Oklahoma in the late 1970s had a broken electric chair that required repairs. Rather than fixing the electric chair, an Oklahoma legislator simply looked for another method of execution (which would become lethal injection). This "solution" gets adopted by one state (in this case, Oklahoma developed the three-drug cocktail and Texas was the first to use it in 1982), then other states learn of this innovative solution and adopt the same method of execution too.

To illustrate, since 1982, every death penalty state in the United States has adopted lethal injection as their primary method of execution. Supporting the idea of this quick adoption of death penalty practices—faddish behavior—is the lack of review in the adoption of new methods of execution (Banner, 2006). With each new innovation in the machinery of death in the United States—new forms of hanging, electrocution, lethal gas, and lethal injection—arguments made by claimsmakers for their adoption have been nearly identical. Each new method has promised to be more humane and painless than the one it was replacing. Here, the "purge" cycle is evident—states discard their methods of execution in order to adopt newer, more humane methods.

With the advocacy of said innovations, of course, the "surge" cycle requires the denial that this new method is just as faddish as the previous solution. Proponents argue that the solutions are long-lasting, represent some sort of progress, and further the interest of the institution. This is evident in the recent adoption of new forms of lethal injection. Despite the overwhelming evidence that the same rhetoric has been used throughout

America's death penalty history, new methods of execution (e.g., Ohio's adoption of a one drug cocktail in late 2009; the fast adoption of pentobarbital in early 2011 among states who ran out of lethal drug sodium thiopental) are always adopted under the guise of innovation and progress. Institutional fads are typically recognized as such after the final cycle (purge) has been completed and the fad has been abandoned.

The Criminal Justice System and Institutional Fads

How do institutional fads take hold? Each institution has its own constellation of actors, social networks, cultural practices, and structural arrangements that help to shape its adoption of fads. These include the channels through which novelties can be spread, the popular rhetoric used to invoke the idea of progress, and the nature of the advantages that may lead people to adopt new innovations (Best, 2006; Denver, Best, & Haas, 2008). Of course these qualities will vary among institutions, but we do find that the criminal justice system is particularly susceptible to faddish behavior for two reasons described by Denver, Haas, and Best (2008):

> Institutions are most open to fads when two structural arrangements exist (Best, 2006). First, decentralized organization allows innovations to gain a purchase at many alternative locations within an institution…. Second, the diffusion of innovations is fostered by social networks that connect the people in the various organizations that make up the institutions. News that one organization has adopted a novelty can spread via popular news media, but also via the institution's trade press, professional associations, and other channels, so that individuals find it relatively easy to remain apprised of developments throughout their institutions (p. 230-231).

The criminal justice system—particularly the practice of the death penalty—exhibits both of these qualities. The death penalty is decentralized in that its adoption is decided at the

state level and varies greatly between and within these jurisdictions (e.g., outlier counties such as Harris County, Texas provide one example of a within jurisdiction difference). Hence one of the reasons why it is argued that it will be nearly impossible for the United States as a whole to rid itself of the death penalty, because individual states such as Texas, will likely never abolish the practice on its own.

Second, criminal justice and corrections departments often mirror the practices of each other. The recent and rapid adoption of new forms of lethal injection spurred by the sudden end of the manufacture of sodium thiopental illustrates that states certainly look to each other in their adoption of new practices. For example, states such as Arizona, Arkansas, Mississippi, Oklahoma, California, Tennessee, and Texas that have run out of this drug have engaged in execution "drug swapping" (DPIC, 2011d) to ensure that their executions can continue on schedule. In another example, when Ohio adopted a one-drug lethal cocktail after a botched and failed execution of Romell Broom in September 2009, the state of Washington rapidly adopted the method despite not having any immediately apparent similar problems. In the next section, I illustrate how the institutional fad framework applies to the closure and the adoption of "right to view" policies across the United States in the 1990s.

Institutional Fad Model: Victims' Needs, Closure, and the "Right to View" Executions

With regard to the issue of closure, victims, and the "right to view" legislation, the institutional fad cycle is evident. I describe these three parts below and provide a model within Table 4.1 below.

Institutional Fad Model	"Right to View" Adoption
Problem ("Surge")	Galvanizing Events, Sensational Media Coverage of Hurt Victims
Solution ("Urge")	Viewing Executions Provides Victims "Closure"
New Solution ("Purge")	"Right to View" and "Closure" Falling Out of Favor

Table 4.1 "Right to View" Adoption as an Institutional Fad

First, there exists a social problem: secondary victims are argued to feel a great injustice from being blocked from viewing the execution of their loved one's murderer (who, for the most part, is statutorily granted the right to have his loved ones in attendance). Problems such as this paint the criminal justice system as uncaring to the needs of victims, a long-time criticism of the early victims' rights movement begun in the 1960s and 1970s.

Second, an innovative solution is suggested to address the needs of these secondary victims whom the state is harming with its lack of concern over their feelings: allow secondary victims to witness executions because it will help heal their harm and provide closure. This, of course, allows states, and public officials, to align themselves with secondary victims. Not just within the criminal justice system, but within the news media

as well, providing a perfect opportunity for a public expression about their care for victims and their tough-on-crime, law-and-order stance.

The solution is adopted, after a great deal of encouragement among actors within social networks who convince others that they, too, should adopt these solutions. In this case, I find that states' adoption of "right to view" policies shifted once Texas—death penalty "innovator" in the United States—welcomed "victim witnesses" into the death chamber. Other states quickly followed in what could be described as a "social cascade."

Third, the innovation is abandoned in the end for some other new innovative solution to the "problem." Some may question that this last part has not yet occurred for "right to view" policies in the United States, but I illustrate at the end of Chapter 5 how even states such as Texas are beginning to rethink the soundness of these policies and have distanced themselves from the idea of "closure." This may serve as preliminary evidence that the United States is on the cusp of a new way of supporting secondary victims. What those "solutions" are may be remain to be seen, but the point of this section is to illustrate that death penalty practices can certainly be understood within an "institutional fad" framework.

Structural Arrangements of Institutional Fads: The Victims' Rights Movement

Institutional fads not only rely on claimsmakers and social networks to define problems and offer solutions, they "depend upon cultural and structural arrangements. Culturally, an institution must be 'involved in a movement of change, with people ready to revise or discard old practices, beliefs, and attachments, and poised to adopt new social

forms; there must be this thrust into the future'" (Blumer, 1969, p. 286 as cited in Denver, Best, & Haas, 2008, p. 230). I argue in the following section that this social movement underway was the victims' rights movement that had begun in the 1970s and gained strength throughout the 1980s and 1990s. Below, I illustrate how the victims' rights movement provided the perfect storm for the closure doctrine to be used in the push for new death penalty practices—particularly the right to view executions.

Specifically, I argue that certain heinous crimes and executions served as galvanizing events that provided new opportunities to shift death penalty discourse (or, frame realignment). The media's focus on the victims of these particularly heinous crimes (typically serial or mass killings) allowed their hurt to become front and center and claims to be made about their needs as victims. Pro-death penalty claimsmakers (some victims, most not) seized this opportunity to offer the "right to view" solution to secondary victims' problem of not being able to view the executions of their loved ones' murderers.[xxi] Citing the need for victims' closure, several states adopted this solution and opened their death chambers to victim witnesses throughout the 1990s. The "right to view" solution culminated in 2001 with the execution of Timothy McVeigh. Since that time, closure and "right to view" policies have increasingly been called into question, despite the fact that victim witnesses frequently attend executions today.

In the next section, I offer a brief overview of the American victims' rights movement to provide context for understanding the structural arrangement that allowed for closure to take root within death penalty discourse, and how it became part and parcel of arguments in support of "right to view" policies.

The Rise of the Victims' Rights Movement

With escalating crime and movement toward disrupting the social order, the 1960s hosted the early beginnings of the American victims' rights movement. It was during this time that conservative, "law and order" politics began as a backlash against what many viewed as the promotion of offenders' rights over those of victims (Elias, 1986; Tobolowsky, 2001). The victims' rights movement coincided with two seemingly at-odds movements: the conservative surge in American politics and the beginnings of the second wave feminist movement. The call for victims' rights drew together politically disparate groups to mobilize to place victims' rights over those of offenders (Carrington, 1982; Gottschalk, 2006). It grew significantly in the 1970s, and then exploded with legislative help in the 1980s.

Legislation designed during the 1970s sought restitution, compensation, and the coverage of medical and other costs associated with being a crime victim. The Reagan Administration pushed early and hard to focus on victims' rights, creating the President's Task Force on Victims of Crime in 1982 (Elias, 1986; *President's Task Force on Victims of Crime: Final Report,* 1982). On its heels, the 1982 Omnibus Victims of Crime Act and the 1984 Crime Victim Assistance Act were adopted (Dubber, 2002). In addition, Congress also passed in 1982 the Federal Victim and Witness Protection Act (VWPA) that provided witness protection, restitution, and fair treatment for federal victims and witnesses of violent crime. In doing so, a new relationship between victims and the criminal justice system was forged: "The Congress finds and declares that… without the

cooperation of victims… the criminal justice system would cease to function" (Kelly, 1984, p. 21 in Burns, 2006, p. 19).

States quickly followed the path forged by Congress and set forth a flurry of new rights to victims including restitution programs; the ability to attend court and parole hearings; access to information regarding the defendant including release dates; and protections against harassment or intimidation by the defendant (Mosteller, 2003; Roland, 1989; Spungen, 1998; Tobolowsky, 1999; 2001). By 2000, victims' rights amendments had been adopted by 32 states (Mosteller, 2003). Each U.S. state that currently retains the death penalty has some form of allowing juries to consider victim impact evidence (Blume, 2003; Mosteller, 2003).

Several scholars point to the inclusion of victim impact evidence (VIE)—statements that allow for victims to document the harms and losses they experienced as victims, or co-victims in the case of homicide, as a result of the defendant's actions—in trials as the cornerstone of victims' rights and victims' inclusion in criminal justice proceedings (Henderson, 1985; 1998; Logan, 1999; Nadler & Rose, 2003).

In the next section, I illustrate how the victims' rights movement relies on the public's identification with their experiences and their pain. It is this identification that has allowed for victims' needs in the capital context to take hold.

Identifying with Victims

The victims' rights movement relies on the public to be able to identify with the suffering of victimization (Dubber, 2002). Some victims' rights movements have been

more retributive, while others have been more restorative (Barker, 2007). Unlike victims of natural disasters, victims of violent crime suffer at the hands of someone else. The public cannot only empathize with their suffering, but have someone at which to lash out. Regarding retributive support for violent crime victims, Dubber (2002) explains, "The political power of the victims' rights movement stemmed from the identification with the victims of violent crime as new cultural icons. Narratives of the suffering of actual victims allowed the mass of potential victims to experience that suffering as their own, through identification. Having vicariously experienced the pain of crime, the public could then vicariously experience the victim's cry for revenge. Thus consolidated into a community of vengeful victims, the public turned to the state for the manifestation of its communal hatred" (pp. 4-5).

But, it is not just any crime that will suffice for maximum identification—it is the victim of serious crime. The victim must be a person, not an impersonal corporation, institution, or the state. The victims' rights movement would focus instead on interpersonal crime, and violent crime against innocent victims. Here, "homicide clearly occupies the center of the crime university invoked by the victims' rights movement, around which all other crimes revolve" (Dubber, 2002, p. 180). But, the victims of homicide are no longer around to share the injustice of their suffering, therefore the victims' rights movement relies on the victim's survivors to share their sorrow, outrage, and intensity of their loss. Without their public expression of pain, the victims' rights movement is left without victims to push its message.

And share they do. The victims' rights movement uses stories that are horrifying and aberrational to draw sympathy for their loss, at the hands of evil (Sarat, 2001). The victims' rights movement wants to make victims "the symbolic heart of modern legality" (p. 35). The news media plays a crucial role in the sharing of these stories, and pro-death penalty claimsmakers are important storytellers in offering narratives around the needs of victims and solutions we should offer to them. In the next section, I focus on this problem definition process to show how the public came to understand that secondary victims—at least those involved in capital cases—were unable to have closure because they were being blocked from viewing the executions of their loved ones' murderers.

Surge: Heinous Acts and Victims' Needs for Closure

The institutional fad cycle begins with a problem that needs a solution. As I described earlier, the problem presented within the push for victims' rights to view executions was that victims were being denied closure because they were denied the right to view the execution of their loved one's murder.

Throughout my analyses of the print news articles on closure and executions, it was clear that the majority of the articles written between the period 1994 to 1997 involved states' push for the "right to view" legislation and policies. This coverage began with this push in states such as Illinois and Oklahoma. For reasons I describe in the next section, closure was invoked in this news coverage because of sensational executions of murderers in these states that captured the nation's attention. Additionally, Virginia's (failed) legislative push for the right to view executions was in 1994 coverage.[xxii] In

1995, news coverage invoking closure focused on Texas' adoption of the "right to view" execution policy. In the years after that, articles covered the several states that changed their "right to view" policies. Closure was also invoked most widely in the year 2001 with discussions on the right for the many victims of Timothy McVeigh to view his execution.

In this section, I argue that particularly heinous crimes and the executions of serial and mass murderers invoke closure discourse because they are highly sensationalized in the news media. This extended media coverage, something rare in the coverage of executions, allowed for these moments to become galvanizing events—opportunities for claimsmakers to reframe death penalty discourse. Closure was a major part of the way in which pro-death penalty claimsmakers framed these highly sensationalized moments. Their argument was that victims' rights—and closure—were being denied. In the following section, I discuss the roles of galvanizing events in the institutional fad cycle.

Galvanizing Events and the Opportunity for a New Discourse

While most executions in the United States today receive very little, if any, attention beyond the obligatory mention on the day of the execution, the executions of high profile cases such as serial killers, Ted Bundy, Richard Ramirez ("The Night Stalker"), or John Wayne Gacy received unprecedented coverage. These stories gripped the nation, and were a part of the "birth of the serial killer" that occurred within the media in the 1980s and 1990s (Kudlac, 2007; Reamer, 2005).

It was clear in my analyses of newspaper stories throughout the mid-1990s, that the large majority of them involving closure were around well-publicized executions, often involving serial killers or mass murderers. This should come as no surprise to death penalty scholars and activists who lament the lack of press coverage for most executions. My analyses illustrate that closure pops up around particularly sensational crimes and killers. These events become galvanizing in that public officials begin a rallying cry in the names of victims and these calls often involve closure. Such examples in my analyses included serial killers Ted Bundy, John Wayne Gacy, and mass murderer and terrorist, Timothy McVeigh (echoing other media reports of death penalty coverage, see Kudlac, 2007 for example). Their crimes involved mass casualties and shockingly gruesome details.

I argue that it is these executions that allowed for closure to become heightened in media coverage, and perhaps somewhat, in the public's mind. Why would such events require a discussion of closure? As one editorial written on the heels of the O. J. Simpson trial explained why we needed guilty verdicts in such sensational cases:

> Verdicts, particularly those in high profile, inflammatory cases, must provide closure and catharsis after the grueling ordeal. They must reassure us that justice has been done, that it is all behind us, that we can now rest… That is why Americans welcomed the conviction of Lindbergh baby kidnapper and murderer Bruno Richard Hauptmann. It relieved the national anxiety and put an end to a national tragedy. And that is also why, for more than 30 years, we have debated the circumstances surrounding the death of President Kennedy. By murdering suspected assassin Lee Harvey Oswald, Jack Ruby denied us the trial that could, theoretically, have brought both closure and catharsis (Gabler, 1995).

It appears as if cases that draw high levels of media attention require greater attention to restoring justice, meaning that promise must occur. Here, the idea of "closure as collectivity" is evident. Sensational crimes and executions become galvanizing events in that they are "hot moments" (Levi-Strauss, 1966)—critical events that serve as arbiters for change. They provide opportunities for new discourses to appear or images to take hold.

Galvanizing events such as these are also "critical discourse moments" that expose media discourse as hypervisible because of their heightened and extended coverage during these times. Journalists jump on these events because as stories, they can provide an opportunity for long-term news coverage. They also allow for a multitude of voices, and claimsmakers are able to offer stimulating commentary for long periods (Gamson, 1992). It is within these historical moments that competing sides struggle fervently to offer their versions of events or their solutions to the problems. In the following section, I provide some examples of two galvanizing events that allowed pro-death penalty activists to begin to define victims' needs in terms of closure.

Galvanizing Events: Sensational Crimes and Executions

The news media has often been criticized for covering executions as carnivals, obscuring larger questions surrounding state sanctioned killing from the public view (Kudlac, 2007; Lipschultz & Hilt, 2002). This in turn protects the death penalty from being scrutinized too critically by the public (Haines, 1992). One such highly

sensationalized execution was that of John Wayne Gacy, a man convicted and executed for killing over 30 boys, before burying them at his home in Illinois (Reamer, 2005). After his arrest, the profoundly disturbing details of Gacy's luring young boys into his home with promises of employment and care were deemed utterly reprehensible by the media and accordingly condemned by the public. It came as no surprise then that he was sentenced to death. As his execution date approached though, Illinois was unprepared for the sheer number of victims who desired to seek justice through viewing his execution.

The media's coverage of Gacy's execution is telling of the new place that closure would hold within discussion of victims' rights to view executions. Prior to his execution, viewing Gacy's execution is said to provide closure for all of those involved—police, prosecutors, trial witnesses and the families of Gacy's victims. Yet, his many victims' family members were unable to view Gacy's execution, which was covered extensively in the print news media. Prosecutor William Kunkle says of his own ability and desire to view Gacy's execution, "[it] will provide closure. It is my obligation as a prosecutor" (White, 1994).

Despite much publicity and legal wrangling surrounding the execution of serial murderer Gacy, family members were not allowed to view his execution but were able to watch news coverage from the Illinois corrections' basement. This set of viewers would have stood witness to a botched execution. The lethal chemicals solidified in the tubing, thus clogging the IV into Gacy's arm, blocking the drugs from reaching his body. As Gacy's face began to turn blue, the blinds were hastily drawn, and the tube was replaced before the curtains were re-opened ten minutes later. During his execution, a male

witness who refused to identify himself gave the thumbs up sign to another male witness. The entire process took 18 minutes and was later said to be the fault of inexperienced prison officials who needed a simple lesson of "IV 101" to have avoided the problem (Fornek & Rodriguez, 1994; Karwath & Kuczka, 1994; Radelet, 2010).

It would be executions such as Gacy's that would come to serve as galvanizing events that opened the doors for new policies to come about as the large number of secondary victims and their needs came to the fore of media attention. There was so much outrage of Gacy's victims being treated like second-class citizens that in the years following, Illinois changed their protocol to allow secondary victims to view executions via closed circuit television (Barnes, 1996; Domino & Boccaccini, 2000). These policies typically involved the logistics of allowing victims to view executions wherein there were several victims. While Louisiana had allowed victims' loved ones into the death chamber beginning with a 1984 execution, it would not be until a decade later that other states would tackle the same decisions. This sense that closure would be denied was a regular theme of such debates around these decisions.

One such state would be a death penalty leader—Texas. While Texas leads the nation's death penalty in many ways, I focus on its adoption of "right to view" policies in this chapter because it is illustrative of the power of a handful of vocal voices that brought forward a movement against offenders and towards finality. Unlike the case of Gacy, the event that paved the way for victim witnesses in Texas would involve the killing of two victims, illustrating that mass casualties are not always necessary for closure to enter death penalty discourse.

The galvanizing event that led the way of Texas to allow victim witnesses involved the brutal rape and murder of two teenage girls, Elizabeth Pena and Jennifer Ertman in June 1993, who happened upon a gang initiation. The details of this horrific crime set forth a flurry of action among death penalty supporters, victims' rights groups, and legislators to push forth changes that would allow victim witnesses in the death chamber once it was realized that their families would be barred from watching the execution of the five murderers who were sentenced to death. Part of this was a result of the outrage expressed by pro-death penalty groups in the state, namely, Houston-based Justice for All, that only the offender's family was allowed to view executions.

In the next section, I illustrate how events such as these began to increasingly invoke closure discourse, and claims that victims' need for closure was routinely being denied by the criminal justice system. At the time of Texas' adoption of a "right to view" policy, only five states had "right to view" protocols for victims. After Texas adopted a "right to view" policy, other states would soon begin to push to allow victims' families into the death chamber. I argue that the closure gave public officials in support of the death penalty the language by which they could appeal to victims' rights and the public, in shifting the terms of the debate. What followed was a social cascade of death penalty states amending their execution protocols to open the doors of the death chamber to secondary victims who wished to view the executions of their loved ones' murderers.

Urge: Victims' "Right to View" Executions and Closure

In the previous section, I gave examples of some sensational crimes and executions that paved the way for changes in states' execution witness protocols. Throughout the 1990s, "right to view" legislation and policies were adopted across states. This shift was framed as both "victim-friendly" and something that would certainly provide closure to homicide survivors in capital cases. Throughout media coverage in the mid- to late-1990s, calls for this policy shift were largely bolstered by claims of closure put forth by political officials and death penalty supporters. These claims were in support not only of the death penalty, but also of victims participating in executions. This new discourse helped to cement the idea that victims' needs were an important part of rationalizing the death penalty. Closure helped to institutionalize their presence in the death chamber across states.

Denver, Best, and Haas (2008) explain how these social cascades occur, "Because the individual states enact and administer their own capital punishment policies, these claims may be advanced in multiple arenas by approaching lawmakers in different states, improving the prospect that at least one legislature will decide to try a new method. Then, once one state adopts a new method, policymakers in other states can observe how the innovation actually works, and if they decide to adopt it, the new method spreads" (p. 234).

States adopted these policies with little review of how executions impact victims or little understanding of what closure actually meant, with the majority following Texas' shift in 1995. I focus on Texas here because it illustrates the power of a handful of

claimsmakers' ability of invoking victims' closure to pass these policies, even with setbacks as I describe below. The next section focuses on three ways in which closure was used in "right to view" claims: the case of Texas, examples of other states who followed Texas' lead, and the "right to view" fight for Timothy McVeigh's execution. But, I first begin with a discussion on why "right to view" protocols even became part of the death penalty debate.

Why the "Right to View" Executions?

Desires to view executions are often expressed by victims' loved ones, and are often shaped by their beliefs about the death penalty. Victims' families generally state that they want to shift. They want something to change. They may view the execution as an opportunity for closure (Goodwin, 1997). They may desire to have certain psychological needs met. Of course, in the media, these are often construed to illustrate that all crime victims are outraged, seeking vengeance, and want tougher law enforcement (Henderson, 1985). Some have argued that victims' families want "physical proof" that the murderer has indeed been executed (Domino & Boccaccini, 2000). Some want to be present in the death chamber to represent their loved one, similar to the notion of closure as honor. As one Texas mother said, "It's the last thing we can do for the girls... It's not going to be easy, but it may help us" (Goodwin, 1997, p. 589).

My analyses of "right to view" legislation illustrates that it was often pro-death penalty "victims rights groups" (even in the absence of actual secondary victims) helped to shape states' adoption of these laws and policies. While several states have adopted

"right to view" legislation, I focus on Texas to illustrate how closure helped to institutionalize this practice in the "capital of capital punishment."

Victims versus Criminals: A Zero Sum Game

This conservative victims' rights movement developed to pit crime victims against criminal offenders. This game of good versus evil simply became a matter of choosing sides as the, "implicit assumption is that anything that is bad for offenders must be beneficial to victims" (Gottschalk, 2006, p. 11).

Pro-punishment victims' rights groups helped to create a zero-sum calculation, justifying taking away the rights and liberties of criminals as they were unable (or unwilling) to understand any competing moral protests (Barker, 2007, p. 626). These same groups argued that offenders enjoyed a paradise of rights, protections, and freedoms in comparison to those of victims. Pro-punishment victims' rights organizations play into the war on crime that has been waged on the behalf of victims, against criminals. "To be pro-victim was to be anticrime, and vice versa" (Dubber, 2002, p. 1).

With regard to the death penalty, the goal of the pro-punishment lobbies is to repersonalize the criminal justice system so that the prosecutor (among others) must choose an alliance between with the victim or the offender (Sarat, 2001). In fact, punishment has become a primary way, "to express solidarity with the victim. It is a way of saying to the victim and his or her family: 'You are not alone. We stand with you, against the criminal'" (Fletcher, 1995, p. 203 in Acker & Mastrocinque, 2006, p. 152). In the capital context, the right to view an execution may be the very last way that a political

official can align himself or herself with the victim. Their loved one's murderer has already been sentenced to death and presumably has exhausted his appeals, a cynical view of pro-death penalty activists and politicians suggests that this is the last way for them to capitalize on victims' pains and needs.

The Right to View Executions: The Case of Texas

While Texas leads the nation's death penalty in many ways, I focus on its adoption of "right to view" policies because it is illustrative of the power of a handful of vocal voices that brought forward a movement against offenders and towards finality. As I described above, the murder of two teenage girls galvanized death penalty supporters and politicians to rally for the cause of allowing their families to view the executions of the five men sentenced to death.

In Texas, the Victim Services Division (VSD) of the Texas Department of Criminal Justice (TDCJ) handles the preparation of victim witnesses for each execution. Prior to 1995, only relatives and friends of the condemned inmates, select media members, and criminal justice officials were able to attend executions (Marquart, Ekland-Olson, & Sorensen, 1994).

In 1995, according to TDCJ, "victim survivors and victim advocacy group members—their plea was that the [Texas] Board [of Criminal Justice] allow victim witnesses the opportunity to view executions. While many felt not all executions would have victim witnesses, they at least wanted the option to attend. It was voiced that attending an execution might assist in the healing process" (Guerra, 2004). With the new

provision for victim witnesses, TDCJ created a victim witness preparation process under the VSD.

Andrew Kahan, head of the Houston's victims' assistance office at the time of the murders of Ertman and Pena argued, "From the victims' perspective, it is equal opportunity, and for those who choose to take it, it will be closure" (Liebrum, 1994). Allowing victim witnesses to enter the death chamber was at first a legislative matter, but it failed abruptly (Liebrum, 1994). As Kahan (1995) described, "The House subcommittee passed HB 285 unanimously and sent the bill for a final vote by the House. What happened next remains a mystery to this day. What appeared to be an easy train ride to law suddenly stalled in a grinding halt." After the bill failed, death penalty supporters contacted their "ace up our sleeve" lawyer Allan Polunsky, chairman of the Texas Board of Criminal Justice, about the right to be present at sentencings, parole board hearings and executions, he had lawyers draft a policy, now in place (Kahan, 1995). As he shared, "not all families will want to be present. But for some, it will bring some psychological and emotional closure." TDCJ's allowing victims' families to witness executions was explicitly said to be done to help "assist with the healing process" (Guerra, 2004; TDCJ, 2008).

In February 1996, Texas allowed Linda and Jim Kelley to view the execution of their children's murderer, Leo Ernest Jenkins (Goodwin, 1997). Thus, a new era of victim witnesses in Texas was born. Today, anywhere from 60-80 percent of executions in Texas are viewed by the victims' loved ones (M. Odom, personal communication,

February 20, 2007). This number has increased over the years since 1996, the year the first executions were attended by victims' families.

The "right to view" legislation in Texas is a TDCJ policy and not a legislative act. Several states in the following years adopted "right to view" legislation similar to that of Texas. In states such as Texas where support for the death penalty is seen as a "cultural truism" and the practice of the death penalty is highly active, victims' loved ones may come to expect that the death penalty is a standard response to homicide. They may be hurt and disillusioned when they find this not to be true, and particularly so when the death penalty will not apply in the case of their loved one's murder. Below I outline some of the ways in which "right to view" policies have been criticized in light of their promises of closure.

A Shift in Discourse: Invoking Closure to View Executions

In this section, I provide a handful of examples outside the ones I have provided previously to illustrate the various ways in which closure was used in support of the right for victims' to view executions. As one can see from this rough timeline, the voices quoted are sometimes from victims themselves, but often those who are not victims. It is clear throughout, that secondary victims' pain is often invoked in their absence, raising important questions about their true needs.

1993

In Washington, Westley Allen Dodd's execution would be the first execution by hanging in the United States since 1965. Dodd chose the execution method over lethal

injection for his crime of hanging a child, 4-year-old Lee Iseli and killing two brothers, Cole Neer (11-years-old) and William Neer (10-years-old), saying he wanted to be similarly punished. The victims' families were allowed to attend, despite the ACLU's appeals to the Washington Supreme Court. Iseli's mother, Jewell Cornell, states on viewing the execution, "I believe that it will help me heal. It's a closure. It'll never, ever, ever be over but I think it will help me heal and I can go to be at rest and so can Lee."

1994

A Virginia bill passed the Health, Welfare and Institutions Committee on February 1, 14-5 after much debate over its propriety. The bill is sponsored by Delegate Robert F. McDonnell (R-Virginia Beach), who says, "This was a vehicle for healing." The bill would allow up to three family members per victim in the death chamber, with a maximum of six.

Margaret Lanham, mother of Wilma Gay Harvey, urges lawmakers to allow her to watch the execution of her daughter's murderer, David Mark Pruett. The parents of another woman, Debra Clark McInnis, murdered by Pruett argue they should be allowed to watch him die. Her father, Earl Clark said, "For me, this is not about vengeance; vengeance is something I would have done with my own hands. I see this as closure."

The Virginia bill was opposed by several people, including Delegate Jay DeBoer (D-Petersburg) who states, "I've got great sympathy for the families of victims. But I don't see that this bill does a darn thing except provide a very gruesome spectacle for reasons of revenge. What's the next step, allowing the families to push the button?"

The Virginia bill underwent debate in the House, where it was argued that the policy to not allow victim witnesses to attend unfairly denies them psychological "closure" for their grief and need for "healing." Delegate Robert McDonnell, sponsor for the Virginia bill, states he does not understand fully why anyone would want to witness an execution, but states the case for the Pruetts, "the scales of justice tilt in favor of the feelings of the victim's family."

Another Virginia lawmaker opposes the bill, saying the House debates in January, "the next thing they'll [families] want to do is pull the switch." This statement prefaces two amendments to the bill that were designed to kill it.

Interestingly, the addition of two amendments intended to kill the bill were defeated: They included an amendment introduced by Richard L. Saslaw that would allow victims' families to pull the switch during the execution. He stated, "If the crime is that brutal, that murderous, let the relative pull the switch. It doesn't require any special attention training."

The other, introduced by Joseph V. Gartlan (D-Fairfax), would have allowed victim's families to choose either lethal injection or the electric chair as the method of execution for the condemned. Gartlan stated that lethal injection was not violent enough to impart a proper sense of closure: the family could choose the electric chair and "watch while smoke may emit from the person's body as it literally burns from the influence of the electrical current."

The Virginia bill passed the Virginia house 59-40 in February and moved to the Senate. In March, the Virginia Senate kills the execution-viewing bill, failing 21-20.

"Some may call this healing, or closure, but I call it revenge of the worst kind, vengeance sanctioned, upheld and perpetrated by the code of Virginia," stated Elliot S. Schewel (D-Lynchburg). He continued, "Like a family seated around a table at Thanksgiving, this bill would allow relatives to drink to the death of a human being and then feast on his carcass."

In Washington, Superintendent Tana Wood gathers an execution witness list for Charles Campbell. Seventeen people are selected, including the victims' families. Viewing the execution was said to bring "closure" to all the "years of uncertainty and controversy" for the case's prosecutor Seth Dawson who wants to attend. Under current WA law, the prosecutor and judge must be invited to the execution.

In Washington, the victims' families of murderer Charles R. Campbell attend his execution and the media widely reports that they "will feel a sense of closure and a sense of security." They view his hanging at the Washington State Penitentiary. The prosecutor in the case said this "would be a major turning point in their recovery" after waiting 12 years for his execution.

1995

The death penalty in New York was reinstated and the new protocols provided that the corrections commissioner would select any six victim witnesses for the execution. Their identities were to remain anonymous in the time leading up to the execution.

1996

Senator Brooks Douglass, homicide survivors and the author of Oklahoma's right-to-view bill stated, "It is not retaliation or retribution that I seek in witnessing the execution of the man who killed my parents. It is closure. Closure on an era of my life which [sic] I never chose to enter. Closure on years of anger and hate" (as quoted in Goodwin, 1997, p. 589).

In his push to allow victim witnesses, Senator Douglass declared, "There is no other party that has more to benefit from seeing the killer executed than a family member." Here, we can clearly see that executions are shifting toward being something beneficial to victims' loved ones. His declaration was both a criticism of current policy that allows the condemned's family and other witnesses (state and media), but denies these to those who would clearly benefit the most.

After viewing the execution of his parents' murderer, Senator Douglass shared: "I was happy... Witnessing the execution was an assurance that this is over."

1997

In North Carolina, an amendment was passed to allow the victim's family to witness the execution. Two members of the victim's family are recommended by the district attorney in the county of conviction. In cases with multiple victims, the warden will ask the district attorney to recommend two members from each additional victim's family. If the family does not wish to witness the execution, the district attorney may appoint additional witnesses to fill those seats.

1999

In Montana, HB53 was passed, allowing three victim witnesses to view executions. In Kansas, SB343 becomes law, allowing for victims' family members to attend, but also protecting their identities. The bill provided for the confidentiality of executioners and witnesses (the witnesses may self identify, but they cannot reveal others' identities).

2001

Ohio passes legislation that allows not more than three persons to view the execution. Those individuals are designated by an immediate family member of the victim.

While not a comprehensive list, the following states have "right to view" policies, or had them prior to their abolition of the death penalty: Alabama, California, Delaware, Florida, Georgia, Illinois, Kentucky, Montana, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, and Washington.

In the next section, I focus on an execution that "right to view" claims about closure abounded: the execution of Timothy McVeigh, who was sentenced to death at the federal level. His execution would serve as the first federal execution since 1963.

Timothy McVeigh's Execution and the Right to View

"It has been said that all of Oklahoma was a victim of the bombing. Can all of Oklahoma watch?" The question, unlike the requests above, originated from a letter from Timothy McVeigh, where he was staying in a federal prison, awaiting his execution for his role in the Oklahoma City Bombing that killed 168 people and injured hundreds

more. His request for Oklahomans' "right to view" his execution was quickly denied. Despite the many calls for victims' right to view executions above, it is clear that these requests can only be made by certain voices and under certain conditions.

Despite several death penalty states adopting "right to view" legislation and amending their death penalty statutes, the federal government had no set protocol for allowing victims into the death chamber. McVeigh requested that his execution be televised to survivors and all Americans. While it was clear throughout the victims' rights rhetoric in the previous sections that individuals clearly wanted to view executions, under no uncertain terms was their right to originate from a "self fashioned martyr."

Prior to 9/11, the attack was the worst mass murder in American history. McVeigh was found guilty of conspiracy to use a weapon of mass destruction, use of a weapon of mass destruction, destruction by explosives, and eight counts of first-degree murder.

As I have described in the Introduction, Timothy McVeigh's execution received more news media attention than any other execution in American history, echoing the findings of Kudlac (2007). It became clear over time that the true measure of justice in his case would hinge on whether or not the victims would be satisfied with the outcome, and their needs for closure would be met (Sarat, 2001).

Over 250 victims' loved ones and bombing survivors requested to view McVeigh's scheduled execution. Calling the Oklahoma City Bombing survivors the "largest group of crime victims in our history," then-Attorney General John Ashcroft decided to broadcast the execution via closed-circuit television and increased the number of victim witnesses to be allowed in the death chamber. After meeting with the victims'

groups, he cited the "personal circumstances of the absence of closure [in victims' families]."

On June 11, 2001, Timothy McVeigh was executed via lethal injection in Terre Haute, Indiana. Over 200 victim witnesses and survivors watched the execution via closed circuit television, in addition to two dozen witnesses who viewed the execution "up close." After McVeigh's execution, then-President Bush stated, "the victims of the Oklahoma City Bombing have been given not vengeance, but justice" (Skaret, 2002, p. 350). In the discussion that follows, I provide an overview of how closure appeared in news coverage of McVeigh's trial and execution. In doing so, I illustrate how closure worked in tandem with coverage of his case and fell off significantly after the month of his execution in June 2001.

No other event has galvanized the closure argument more than the execution of Timothy McVeigh in 2001. Since his attack on the federal building in Oklahoma City in 1995, his victims dominated the media coverage in ways unprecedented. As illustrated in Figure 4.1, thousands of newspaper articles covered his case. The spikes in 1997 and 2001 represent print news reporting during his trial and his execution four years later. In the year of this execution alone, 2001, there were nearly 10,000 articles on McVeigh. Out of all newspaper articles on capital punishment in 2001, McVeigh would be included in 39 percent of them. In 1997, 43 percent of all capital punishment articles written in American combined news sources mentioned Timothy McVeigh. So, four in ten articles on the death penalty in 1997 and 2001 focused on his case. No other capital defendant

has garnered this type of attention in the news.[xxiii] As one can see in Figure 4.1 though, coverage of McVeigh plummeted in the years following his execution.

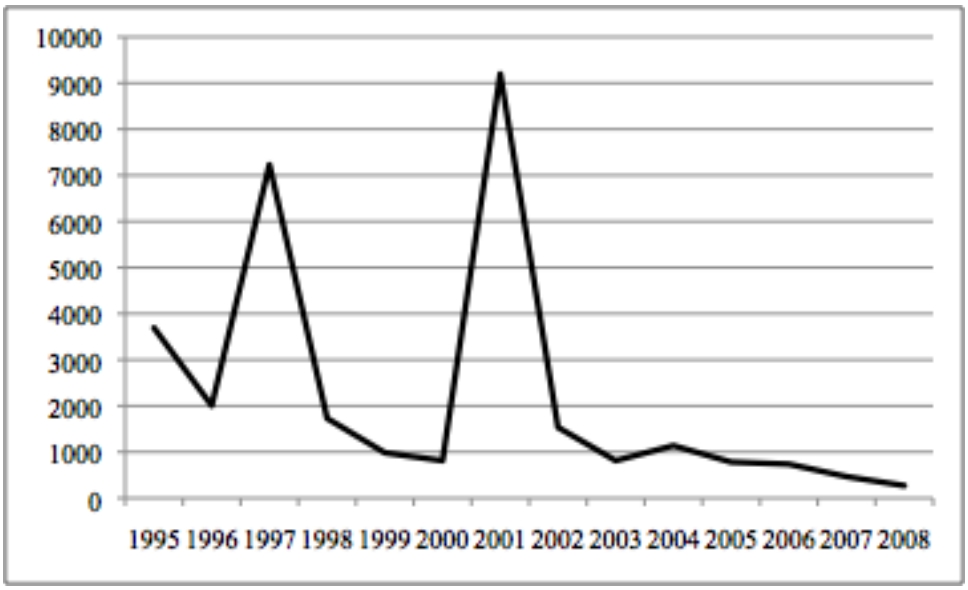

Figure 4.1. Timothy McVeigh Coverage, Total Articles by Year, 1995-2008

Figure 4.2 details this drop more significantly. Where there were roughly 3000 articles on McVeigh in June, the month of his execution, by July there were only 354 articles that contained his name. His name quickly fell out of news coverage. It is clear that coverage does increase three months after this execution, and this reflects coverage of the attacks on the World Trade Center on September 11, 2001 that invoked his name. Figure 4.2 illustrates that despite the widespread coverage of McVeigh in the months prior to and certainly the month of his execution, media coverage of him drops nearly nine fold. While he may not have left the public consciousness, he certainly was no longer a significant media target in death.

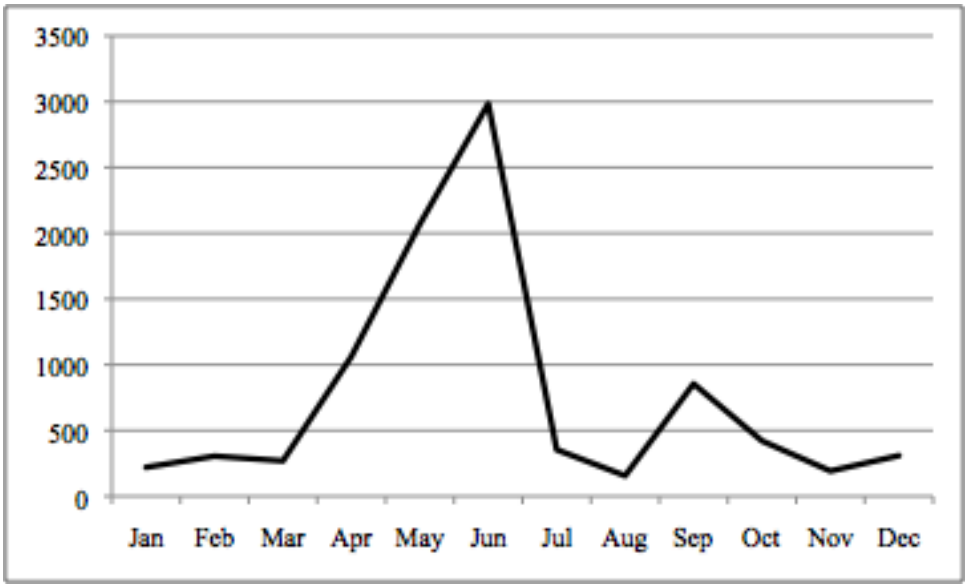

Figure 4.2 Timothy McVeigh Coverage, Total Articles by Month in 2001

How does closure figure into the coverage of McVeigh's trial and execution? Newspaper articles pairing the term "closure" with McVeigh's name peak in June 2001, as do articles focused on closure in coverage of McVeigh's trial as Figure 4.3 below details. In these articles, one can see that articles pairing closure and coverage of McVeigh peak in 2001, with over 600 articles.[xxiv]

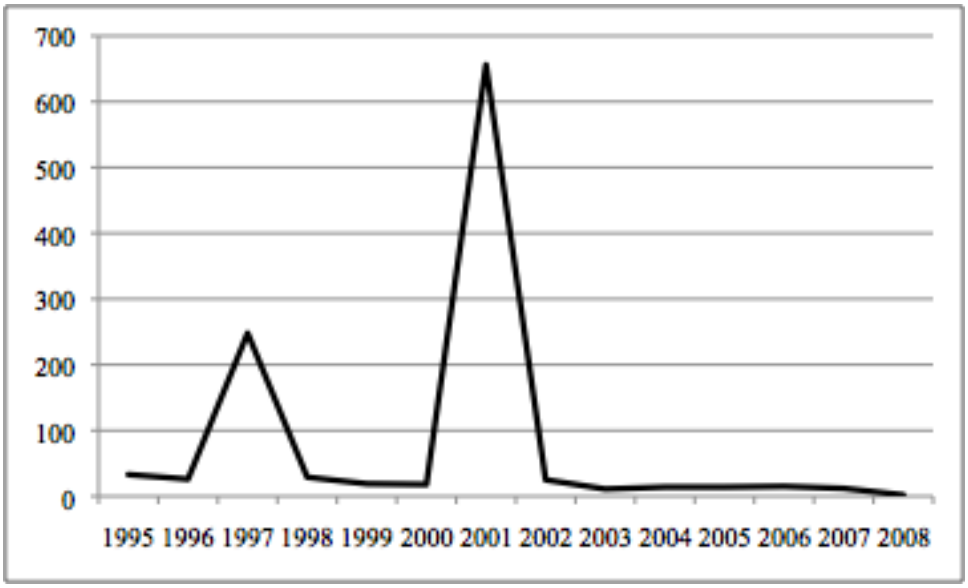

Figure 4.3 News Articles with "Closure" and "Timothy McVeigh" by Year, 1995-2008

What is clear from these figures is that McVeigh and discussion of closure drop off significantly—nearly disappearing—among the sea of news articles on the death penalty. This is clear not only looking at the yearly data, but the monthly data as well. I explore these drops further in Chapters 5 and 6. For the purposes of this chapter, these drops may help to signify the "purge" part of the institutional fad cycle. Additional analyses illustrate that discussions of closure not only dropped because the coverage of McVeigh dropped off, but also dropped off and stayed out of news coverage throughout 2008.

The decision to allow McVeigh's execution to be viewed by the victims' loved ones and survivors came under heavy criticism, from scholars and activists alike. "While all of us respond compassionately to the suffering of the victims of crime, none of us, most especially the attorney general of the United States, should put aside the detached, rational assessment of evidence and the careful balancing of concerns that is essential if

policy is to serve the national interest" (Sarat, 2001, p. xii). Further, "The attorney general failed in his responsibility to insure that criminal punishment does not degenerate into vengeance and that national policy does not become group therapy" (Sarat, 2001, p. xii). With regard to victims, his announcement spreads a message that healing requires victim participation, and offers the illusion of government-sponsored closure through execution (Lithwick, 2006).

Such highly publicized executions, Sarat argues, should be done to help us as a society recognize and understand what it means to have a state that executes its citizens. It should not become an exercise in satisfying crime victims. The law is rational, and no matter what tremendous suffering has been inflicted, vengeance and therapy are not the goals of penal policy. These critiques, and others, are further discussed in the next section.

Purge: Criticisms of Allowing Victim Witnesses

As I described in the previous section, "right to view" legislation has not come without its critics. Abolitionists, scholars, journalists, public officials, and victims criticized the idea that victims' participation in executions should provide them any solace or comfort. While the institutional fad framework requires typically that a new solution to the issue of helping victims heal has already been named, rendering the former out of touch and useless, I am not arguing that support for it has completely waned. There is clear evidence that closure has fallen out of print news coverage, and has been heavily criticized by vocal secondary victims opposed to the death penalty. With

regard to the right to view executions, I discuss in the next chapter some specific ways in which I suggest as if this practice is being slowly abandoned. But, these shifts are occurring within broader tides of abolition across states. Below, I provide an outline of the ideological criticisms that would help to support such a "purge" in this institutional fad.

Several people have found fault with allowing victim witnesses into the death chamber. "There is a burgeoning practice of permitting the families and friends of homicide victims to witness the execution of 'their' murderer. The decision to extend this 'right' to those who survive the victim was arrived at after vigorous campaigning by the pro-punishment victims' lobby and is justified on the grounds that the condemned are allowed to invite witnesses to their execution and such a spectacle would provide an invaluable opportunity to the families and friends of victims for 'closure'" (Hodgkinson, 2004, p. 57).

While very little research has looked at the impacts of viewing execution, what we do know from research on media members who have viewed executions, is that they experience feelings of detachment and dissociation with their feelings and avoidance of thinking about the execution. Indeed, some media witnesses have reported that their support for the death penalty decreased after viewing the execution. Indeed, we do not know if it is an increase in empathy for the inmate, or if it is just viewed as a grisly spectacle all together. But, viewing executions undoubtedly transforms witnesses. Below I outline some of the major criticisms of "right to view" practices.

First, retributivists argue that allowing victim witnesses to view the execution of "their" murderer is a violation of retributive theory of justice. The purpose of the criminal justice system is not to punish offenders on behalf of victims. Rather, the criminal justice system acts on behalf of society as a whole, to restrict and punish an offender using their monopoly on formal criminal sanctioning. The victims' rights movement's push for victim witnesses to help them achieve "closure" infringes upon the values of retributive punishment, as it is not intended to be utilitarian. It is not a tool intended to provide psychological healing for victims' loved ones. If any measure of closure is obtained, it is meant for the community, as retributive punishment restores social equilibrium and stability (Skaret, 2002).

Second, it has been argued that the greatest potential for harm may be for those families who are unsure whether or not they should attend the execution. As Goodwin (1997) suggests,

> Holding out the right to attend the execution implies some value attached to the exercising that right. When combined the public's endorsement of capital punishment and the family's vulnerability during a time of grief, a statute guaranteeing a right to attend may effectively persuade the families to attend. After a murder, the victim's family often searches for meaning and acceptance by the community (p. 592-593).

Others have argued that the focus is not on the victim in executions, but rather on the inmate. As one victim's loved one reflected, "Everyone would get to meet James Free, get to know James Free. I wanted people to remember that Bonnie Serpico was a real person" (Brownlee et al., 1997, p. 3).

Placing such huge significance on the execution date may also hinder victim's healing, creating a long-awaited date for which victims can believe their healing will begin. Given that the average time between conviction and execution is ten years in Texas, this period of waiting is by no means short (TDCJ, 2008). Many people make it clear that they know that the execution will not bring their loved one back, "if it brought my daughter back that would be one thing, but it's not going to" (Brownlee et al., 1997, p. 4).

Third, the method of execution may also play a role in victims' expectations. In Delaware and Washington, victim witnesses have viewed hangings, rather than executions via lethal injection. We find that lethal injection executions can be a let down, not related to closure reasons, but because the method did not inflict adequate suffering. After witnessing the execution of Robert Lee Willie, Vernon Harvey commented, "Know what they should've done with Willie... They should've strapped him in that chair, counted to ten, then at the count of nine taken him out of the chair and let him sit in his cell for a day or two and then strapped him in the chair again" (Goodwin, 1997). Similarly, brother Danny Roberts recalled, "My brother suffered terribly when he died. I really wanted to see them bring [Patrick Rogers] into the room and strap him down. They should have let us see a little bit of the terror in Roger's face that my brother must have felt" (Brownlee et al., 1997, p. 5). Narratives such as these probably reflect more closely revenge than retributive justice. State executions done therefore will likely never satisfy victims' desires for punishment. Not that this may have bothered the individuals quoted above, but victim witnesses may be confronted with a botched execution. If they are

expecting a flawless execution, this may be a problem. It may also be the case however, as in the execution of John Wayne Gacy, victim witnesses may be pleased when it appears the execution is inflicting pain. As mentioned earlier, when the second chemical in Gacy's lethal injection execution jelled blocking the third, two men who did not wish to be identified flashed each other a thumbs up when Gacy had turned blue and the curtains were drawn by execution officials.

Finally, some victims have expressed being let down after finding the condemned's final words to be unacceptable. Victim Daniel Velcheck said of his brother's murderer after his execution: "It doesn't quite mean so much to say you're sorry when you're about to die. I don't believe him. I thought I saw a smile on his face before he closed his eyes. He was only sorry he was getting killed." Victim Charlotte Stout attended the execution of the man who raped and killed her daughter. She hoped, "I wanted to be to be there in case Coe, at the last minute, expressed remorse." Coe, in his final moments, looked up and said, "I forgive you Charlotte Stout, for helping the state murder me."

Conclusion

This chapter set out to provide an overview of the political uses of closure. In doing so, I focused on one of the primary ways in which the logic of closure was invoked in death penalty discourse over the past twenty years: states' adoption of "right to view" legislation that opened the doors of death chambers to secondary victims. The logic was as follows: 1) secondary victims were denied closure because they were blocked from viewing executions; 2) the ability to view the execution of their loved one's murderer

would certainly heal their harm and provide emotional closure; 3) states should act on behalf of victims by inviting victims into a world where they could receive solace in the form of closure.

And, states did adopt this solution to the problem that was presented to them by death penalty proponents (who sometimes were, but were most often not, secondary victims themselves). The result was that several states adopted "right to view" policies. This discussion culminated with the execution of Timothy McVeigh, wherein federal public officials argued that the goal of executions was to provide victims with closure. This is a far different death penalty rationale than those that have been typically offered historically in the United States. This new rationale promoted executions as a form of therapeutic justice, something we know very little of, particularly in the capital context.

Yet, these shifts have not been without vocal critics who decry the idea of closure in the first place, but particularly that the viewing of executions that they understand as pure vengeance, plain and simple. It was clear though that the union between victims, closure, and the "right to view" discourse in the news media declined significantly with McVeigh's execution in June 2001. In the next chapter, I explore this drop or "purge" further in light of claims that closure has symbolically transformed the death penalty today.

CHAPTER 5:
THE SYMBOLIC TRANSFORMATION OF THE DEATH PENALTY?

Introduction

In the previous chapters, I have illustrated the multitude of meanings given to closure and some of the various ways it has been used by stakeholders on all sides of the death penalty. It is clear from the examples of the passing of "right to view" legislation and the execution of Timothy McVeigh described in Chapter 4 that closure has served to justify death penalty practices, such as institutionalizing victims' right to view executions, in significant ways. In this chapter, I take up the issue of whether examples such as these suggest that the modern death penalty in America has undergone a "symbolic transformation" as suggested by Zimring (2003) and others (Acker, 2006; Bandes, 2008b; Berns, 2009; Mowen & Schroeder, 2011).

This symbolic transformation thesis argues that the death penalty—particularly executions—is done in the name of victims and out of concern for their closure. It is certain that death penalty discourse has taken on a language of therapeutics, and that calls for the death penalty do cite the need for victims' emotional satisfaction, as I demonstrated with the examples provided in the previous chapter. In this chapter, however, I call into question the symbolic transformation thesis in critically examining the extent to which this discourse has taken hold of the American death penalty system and cemented itself into the public consciousness. Drawing upon public opinion data,

additional collections of print news media data collection sources, and a major shift in the discourse of closure (i.e., the abandonment of closure by those who once trafficked in its use), I argue that closure as a death penalty rationale has indeed not "symbolically transformed" the death penalty in the manner that has been suggested by some scholars.

The Symbolic Transformation Thesis

How did the term "closure" enter the lore of American capital punishment and transform the face of state sanctioned executions? Zimring (2003) argues that the shift was not the result of any legal or criminal justice events, but a change "in the language of capital punishment" found in media stories over the past two decades (p. 60). It is during this time that "closure" debuts in the print news in 1989. His quick frequency analysis of combined U.S. print news sources from 1986 to 2001 indicates that the words "closure" and "death penalty" do not surface together until 1989 and only a handful of news articles a year contain the two terms together in the five years following. However, by 2001, Zimring reports that there is a "meteoric rise" to more than 500 death penalty news stories discussing closure, more than double what appeared for the year 2000.

What helps to explain this meteoric rise? The explanation put forth by Zimring (2003) and the one examined in this chapter, is that the death penalty has undergone a "symbolic transformation" in the past two decades. The thesis is as follows: rather than being viewed as an extreme display of state power, he argues that the rise of the victims' rights movement shifted the death penalty away from a public response to crimes against

the state, but to a personalized, privatized symbol and prerogative of crime victims. He explains:

> This symbolic transformation of execution into a victim-service program provides three powerful functions for the death penalty in the United States. First, it gives the horrifying process of human execution a positive impact that many citizens can identify with: closure, not vengeance. Second, this degovernmentalization of the rationale of the death penalty means that citizens do not have to worry about executions as an excessive use of power by and for the government…. The third function of the transformation of execution into a victim service gesture is that it links the symbolism of execution to a long American history of community control of punishment. The United States is not far removed from its age of vigilante punishment, and the nostalgia for many of the symbols and sentiments of punishment as a community rather than a government enterprise is quite powerful in many parts of the modern United States (Zimring, 2003, p. 62).[xxv]

Zimring (2003) documents this focus toward private interests with the Supreme Court's decision[xxvi] to allow victim impact evidence in capital trials during the sentencing phase and states' widespread adoption of victim rights' legislation and policies.[xxvii] Despite these shifts however, Zimring argues that as a society we still share a collective and deep discomfort with viewing state sanctioned killing in terms of private revenge.[xxviii]

Thus, the argument suggests that closure was born to help mitigate Americans' uneasiness with seeking vengeance through executions. In fact, Zimring (2003) states that the introduction of "the evocative term 'closure' was a public relations godsend" (p. 58). No longer would executions be about revenge, they would be compassionately carried out for victims and done in the name of their healing. As such, Zimring argues that the psychological concept of "closure" breathed new life into the American death penalty while the rest of the Western world focused on abolition. He argues that this "spontaneous reframing of executions closure in the 1990s demonstrated the ability of

language and language alone to alter public perceptions" (p. 63). Yet, in Chapter 4, we learned that this reframing of the death penalty did not occur spontaneously, it concurred with the sensationalized coverage of incredibly heinous crimes and acts of mass murder that received unprecedented levels of attention in the American news media. In this sense, closure did not arise out of any specific belief system, but out of the news media's coverage of very specific events.

The symbolic transformation thesis and the frequency analysis (particularly the jump in articles in 2001) cited above have been picked up not only by scholars (Acker, 2006; Bandes, 2008b; Berns, 2009; Mowen & Schroeder, 2011) but by death penalty activists as well (White, 2009). While this assertion seems to have received a great deal of attention, how and under what circumstances this symbolic transformation in America occurred has been undertheorized and assertions (by Zimring and other scholars) about the nature of closure have yet to be thoroughly scrutinized.[xxix] In the following section, I analyze the symbolic transformation thesis by examining closure within the American print news, in comparison to other death penalty frames, its resonance in American public opinion polls, and by looking at how the term is used today (about a decade after Zimring's assertion).

Closure in the Print News: How Much Coverage has it Received?

Each year in the United States, thousands of stories on capital punishment appear in the print news. From 1989 to 2008, there were 272,417 articles with the index term "capital punishment" in U.S. combined news sources.[xxx] As one can see from Figure 5.1

below, death penalty coverage grew significantly throughout the 1990s, peaked in 2001, and has slowly declined over the past decade. In 1990, there were 4,125 articles on capital punishment. A decade later, this number grew five fold, with 20,032 articles. Death penalty coverage peaked in 2001 with 23,089 articles, reflecting the extensive coverage of Timothy McVeigh's trial. June 2001—the month of McVeigh's execution—accounts for the highest number of articles per month (3,684) during these twenty years. In the month proceeding McVeigh's execution, capital punishment coverage drops by half to 1,574 articles.

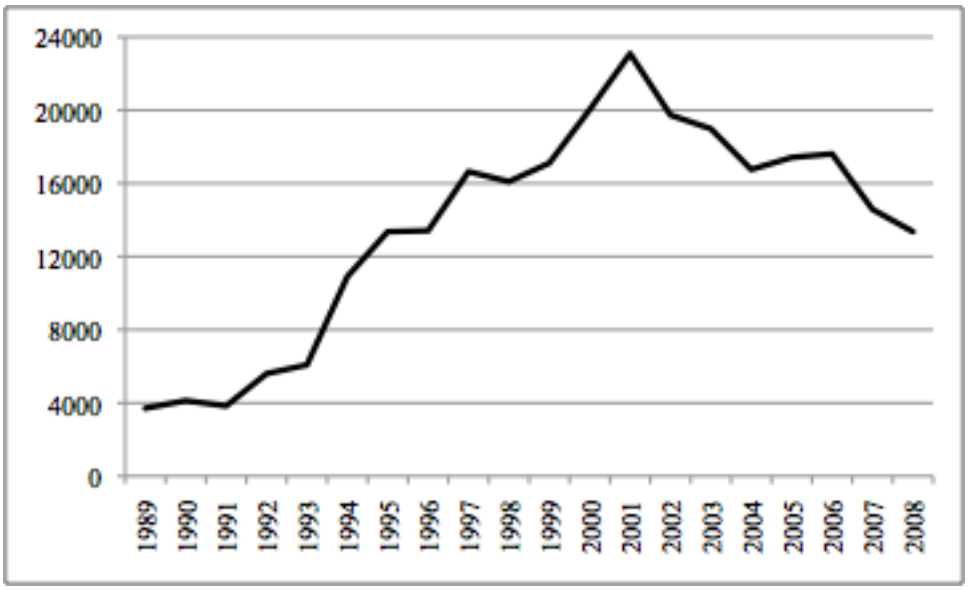

Figure 5.1 Total U.S. Newspaper Articles by Year on Capital Punishment, 1989-2008

Several legal scholars have noted the rise of closure in the print news during the past twenty years, and Zimring's (2003) frequency analysis of the number of articles pairing the terms "closure" and the "death penalty" during this time is often cited in the literature on closure. Zimring found that the first use of closure in the capital punishment

context was in 1989. As I discussed in Chapter 3, closure entered death penalty discourse actually prior to this date if one search's beyond U.S. newspaper stories at the time. Scholars also point to the peak in his frequency analysis—2001—as the year where closure is mentioned in about 500 news articles. This is in some ways a tipping point for closure—with coverage of McVeigh's execution—closure peaks in the print news. Yet, Zimring's analysis ends with the year 2001, likely because of the timing of writing his book, *The Contradictions of American Capital Punishment*.

Despite several scholars using his analysis of closure as a starting point for their own claims and research on closure, it does not appear that scholars have standardized for the total number of articles on the death penalty for this time period. Essentially meaning that closure could simply be rising and falling regularly with capital punishment coverage in the U.S. news. Claims then regarding closure as becoming a more prominent death penalty frame and rationale for execution could then be called into question without understanding this relationship. Using the total number of articles on capital punishment in U.S. newspaper stories in Figure 5.1, I examine how closure figures in capital punishment coverage over this time. I find that in any given year in the past two decades, "closure" and "executions" are paired in less than one percent of all U.S. newspaper stories on capital punishment in all but three years during this time period.

As Table 5.1 illustrates, 2001, 2007 and 2008 are the only years in which closure is included in more than one percent of newspaper articles dedicated to capital punishment. For the year 2001, the year with highest percentage of closure coverage during this twenty-year period, closure coverage only occurs in less than three percent of all capital

punishment stories during that year. This may hardly constitute the "meteoric rise" suggested by Zimring (2003) when we standardize for the total number of articles on capital punishment. If we are to believe that closure has symbolically transformed the death penalty, and it is with the help of a shift in the ways the news media frames the purposes of executions, then perhaps one could expect that closure would perhaps receive more than the limited coverage suggested from the data above. These data reveal that closure's presence in the news is quite limited over the past two decades, despite its rise within the 1990s.

Year	Percent	Year	Percent
1989	0.05%	1999	0.85%
1990	0.00%	2000	0.92%
1991	0.00%	2001	2.69%
1992	0.07%	2002	0.67%
1993	0.15%	2003	0.87%
1994	0.31%	2004	0.79%
1995	0.34%	2005	0.80%
1996	0.72%	2006	0.88%
1997	0.91%	2007	1.05%
1998	0.84%	2008	1.38%

Table 5.1 Percentages of Articles Pairing "Closure" and "Execution" in US Newspaper Stories, Combined Sources, 1989-2008

The argument could also be made that perhaps death penalty frames (such as deterrence, incapacitation, cost, retribution) enjoy the same level of coverage. Their limited or shifting coverage over time would certainly help to contextualize these findings on closure. While the current study did not examine the rise and fall of other

frames in the U.S. newspaper stories included in the analyses here, there have been other excellent studies that have traced these (and other) death penalty frames to understand how they shift in various ways over time. In the next section, I describe the work of scholars who examined how the issue of innocence has been framed since 1960 by examining *New York Times* coverage of the death penalty.

How Does Closure Compare to Other Death Penalty Frames?

In the last section, I outlined the amount of coverage closure has received as a death penalty frame in the past two decades by examining a collection of U.S. newspaper stories from LexisNexis' U.S. newspaper, combined sources database. The above analyzes closure by itself as a frame, and does not trace closure's rise and fall with other death penalty frames that may help to provide further evidence of why closure as a frame has shifted over time. Given the limited coverage of closure in those articles, I sought to understand if perhaps closure was given coverage in other ways.[xxxi]

However, there have been studies that have traced the rise and fall of death penalty frames during this time. Specifically, I am referring to Baumgartner, De Boef, and Boydstun's (2008) study published in *The Decline of the Death Penalty and the Discovery of Innocence*. Their work is based on a carefully collected and coded dataset of *New York Times* abstracts that focused on capital punishment. Their comprehensive content analysis project coded every single abstract from 1960 to 2005 on the death penalty. All of the 4300 abstracts were coded with an eye for understanding death penalty framing, revealing over 60 death penalty frames. Their coding traced these frames over

time, and they developed an innovative method they call "evolutionary factor analysis" to understand which death penalty frames were most powerful at various points during this time period.[xxxii]

Given that Baumgartner, De Boef, and Boydstun (2008) provided public access to their dataset, I hoped to use their data to understand the impact that closure had on the same variables they were interested in: public support of the death penalty, death sentencing, and executions. My assumption was that closure would have had some impact on these factors if it had indeed become such a powerful, dominant narrative through the death penalty's symbolic transformation over the past two decades. If it had powerfully transformed the death penalty as it was suggested, I had hoped to be able to show exactly how it was driving death penalty practices. For example, I hypothesized that closure's increasing appearance as a death penalty frame in the print news could drive up the rate of death sentences or even executions.

Yet, I was surprised when I found no "closure" frame among the 60-plus death penalty frames they discovered and coded in 4,300 *New York Times* article abstracts. For the decades prior to the 1989, this was not surprising. However, in the decades where closure was said to have taken root within the American death penalty and served as *the* contemporary rationale for the death penalty, closure was curiously absent among the frames they uncovered.

What I did find were two codes that focused on victims' families. Not one to be deterred, I decided to search the same 4,300 article abstracts using methods identical to the ones employed by Baumgarter et al.,'s (2008) research team.[xxxiii] Searching through

the *New York Times*' article abstract database of articles on the death penalty for the time period 1960 to 2008, I only found four articles that included the term closure. Using their methods, this means that closure appeared in the *New York Times*' coverage of the death penalty in .0009 percent of their articles over the past half century. Interestingly, the tone of these articles is anti-closure and anti-death penalty. For example, the headline of Frank Rich's (2001) skeptical article, "It's Closure Mongering Time" wherein he disdainfully dismisses closure and the action so then-Attorney General John Ashcroft: "to promote the fiction that such closure is attainable is, as our attorney general would put it, to be a co-conspirator in Mr. McVeigh's assault on America's public safety and upon America itself" (p. A23).

Again, these findings seriously call into question that closure has gripped and transformed the modern American death penalty by offering a new framing of executions. Closure's absence in the *New York Times*' coverage of the death penalty was surprising to me and I was concerned that perhaps it was just an artifact resultant of focusing only on the abstracts. My thinking was that perhaps closure was not the feature of the abstract, but would be tucked away in the full content of the *New York Times*' articles on capital punishment.

Yet, again, I was surprised to find that even when I searched the full text of the articles for the *New York Times* (again, from 1960 to 2008), I found a total of 15 articles that included closure in the 4,300 articles that had been written on the death penalty. Even with widening the net to examine the full content of the *New York Times*' death penalty coverage over the past 50 years, closure only appeared in .003 of the articles. To

reiterate the findings above, it appears as if closure barely registers in death penalty coverage in one of—if not *the*—nation's premier newspapers.

It could be argued that the content and tone of the *New York Times*' coverage differs greatly from that of smaller, more local newspapers.[xxxiv] However, scholars have documented that coverage of the death penalty is more convergent than divergent in the framing of death penalty issues when comparing mainstream and regional papers. These findings suggest that newspapers such as the *New York Times* and the *Houston Chronicle* (for example) do not differ greatly in their coverage of the death penalty (Niven, 2002; 2004). This is even true in coverage of smaller, more local newspapers in the southern region of the United States, where we might expect to see differences in coverage where the majority of executions and sentences have occurred throughout American history and today (Niven, 2004).

It could also be argued that more mainstream newspapers do not cover local executions, so these low numbers reflect a lack of coverage on executions in general. Indeed, most executions do not receive any sort of significant coverage in even local newspapers (Kudlac, 2007). Yet, if mainstream newspapers primarily feature those sensational executions described in Chapter 3, we might expect in fact that closure would appear more frequently given the highly sensationalized, "public spectacle" executions mainstream news articles typically cover. I simply do not find that though. Even when I standardized for these differences in controlling the amount of coverage devoted to the death penalty by looking at the total number of newspaper stories, I found very little difference in the amount that closure appears in the news. For the period 1989 to 2008,

U.S. newspaper articles on capital punishment included the closure frame in less than one percent of all articles on average (.91). For the same period, the *New York Times*' coverage of capital punishment included closure in .003 percent of its articles.

The near absence of closure as a death penalty frame in the *New York Times*' database prevented me from using Baumgartner, De Boef, and Boydstun's (2008) evolutionary factor analysis method to pinpoint the impacts closure has had as a death penalty frame over the past twenty years. As such, I could not ascertain how closure as a death penalty frame impacted Americans' support of the death penalty, the rate of death sentences, or the rate of executions. Closure did not appear to "load" as an important death penalty frame (at least in the *New York Times*) at any given time during the past twenty years. These findings, again, call into question the significance of closure as a force transforming the modern death penalty in America.

Another key point to mention here is that Zimring's (2003) analyses, and my own offered here, focus on the frequency of closure, and not necessarily the tone of the few articles that show up every year (roughly 100 between 2002 and 2008). Closure's coverage in newspapers over the past twenty years has been quite limited, and that is said without an even closer examination of the tone of those articles. For example, that coverage could not be in support of the logic of closure, or even in support of the death penalty. My own preliminary work in this area, which I discuss as a future area of research in Chapter 6, suggests to me that even at the height of closure coverage in 2001, there were plenty of articles that included an outright rejection of the term and its many meanings. Again, the suggestion that closure has transformed or expanded the modern

death penalty into something done in the name of victims, or with fervor, is not well-supported in these data.

In summation, it is difficult to draw conclusions about the impact that closure has had in symbolically transforming the death penalty. Scholars have made claims about closure's ability to shape public opinion, expand modern jurisprudence, and place victims at the heart of the death penalty debate. It is difficult to see how this could all occur without a powerful reframing of the death penalty within the news media. Closure simply does not dominate as a frame within death penalty coverage, even in comparison to other frames, anywhere over the past two decades. Therefore, claims that it has shifted the public's view of executions as something to be done in the names of victims, are also called into question. In the next section, I focus on public opinion in the United States to understand how and if the closure frame (however limited in the newspaper articles described above) has resonated or transformed Americans' reasons for supporting the death penalty.

Does Closure Figure into Americans' Support for the Death Penalty?

If the death penalty has been symbolically transformed as a result of the closure frame, we might expect that Americans' public opinion polls would demonstrate this resonance. In this section, I ask: how does closure fit into Americans' beliefs and support of the death penalty? Do Americans support the death penalty because they believe it provides closure to victims' families? As discussed in Chapter 2, the death penalty in America has long enjoyed public support. Americans' approval of the death penalty

peaked in 1994, when 80 percent of Americans surveyed by Gallup supported executions for those convicted of murder (Jones, 2006). That level of support has dropped in recent years, and only 64 percent of Americans support the death penalty today (Newport, 2010). While there are excellent longitudinal sources of data available to track Americans' support of the death penalty over the past century, public opinion surveys often are not able to fully capture the complexity of Americans' reasons for supporting the death penalty (Gross, 1998; Radelet & Borg, 2000; Steiker, 2005a). Very rarely do national level surveys ask respondents qualitative, open-ended questions about their beliefs about the death penalty. Below, I explore public opinion polls that have focused on Americans' reasons for death penalty support, closure being among them.

One of ways that scholars have argued that the death penalty has undergone a symbolic transformation is by illustrating that Americans support the death penalty for reasons relating to closure and victims' satisfaction. In his seminal work on closure, Zimring (2003) used an ABC News/*Washington Post* poll to demonstrate how Americans' views on the death penalty had shifted toward closure:

> The semi-official status of "closure" as the presumed public benefit of executions was confirmed in April 2001 when the notion of closure was identified as a central objective of the death penalty system in the following ABC News/*Washington Post* poll statement: "The death penalty is fair because it gives satisfaction and closure to the families of murder victims." A total of 60 percent of the respondents agreed either strongly or somewhat with that sentiment, 37 percent disagreed, and only 4 percent expressed no opinion (Langer, 2001; Zimring, 2003, p. 61).

To contextualize this conversation, here are the results of the question with disaggregated answers: 30 percent agreed strongly, 30 percent agreed somewhat, 22 percent disagreed

strongly, 15 percent disagreed somewhat, and four percent expressed no opinion (Langer, 2001).

Zimring's use of this polling statistic has often become the starting point for other scholars' examination of closure and claims about its importance in death penalty discourse. For example, Peterson Armour and Umbreit (2007) write: "The death penalty, though rarely implemented, is touted as bringing "closure" to family members of homicide victims. This belief is popularly held as evidenced by a survey cited by Zimring, which found 60% of participants 'agreed either strongly or somewhat' that capital punishment brought closure to homicide families" (p. 3).

Similarly, Bandes (2008b), writes: "Frank Zimring found that prior to 1989, the terms "closure' and "death penalty" were never mentioned together. They were linked once in 1989. Starting in 1993, the mentions grew geometrically to more than 500 in 2001. In 2001 an ABC News/*Washington Post* poll asked whether the death penalty is fair because it gives closure to the families of murder victims, and 60 percent agreed with this statement strongly or moderately" (p. 2). In addition, Madeira (2009) shares: "Before 1989, closure was never mentioned by the media in conjunction with the death penalty; in that year, the terms were used together once. Beginning in 1993, however, the degree to which closure was identified with the death penalty grew exponentially to 500 times in 2001, when an ABC News/*Washington Post* poll found that 60 percent of respondents strongly or moderately agreed with the statement that the death penalty was fair because it gave closure to murder victims' family members" (p. 3).

These scholars' statements, in turn, serve as catalysts for additional research on closure that originate with Zimring's symbolic transformation thesis. For a recent example, Mowen and Schroeder (2011) share, "As discussed by Bandes (2008), closure was relatively unknown and hardly ever used within the justice system prior to the 1990s" (p. 70).

What might explain the results of this oft-cited poll above? Zimring (2003) explains, "This sharp expansion in the association of "closure" with capital punishment is not the result of any legal or criminal justice events external to the media stories" (Zimring, 2003, p. 60). Yet, as I argued in Chapters 3 and 4, the association of closure and the death penalty arose out of several legal and criminal justice events: the executions of serial killers such as John Wayne Gacy or the crimes of mass murderers such as Timothy McVeigh are just two examples.

While Zimring suggests that there is no link between the rise of closure and Americans' support of it with any real or actual events, I would like to draw our attention to some important pieces of information to counter this claim. First, the date of this ABC News/*Washington Post* poll opens eight days after then-Attorney General John Ashcroft announced a significant death penalty event: the execution of Timothy McVeigh. On April 12, 2001, Ashcroft declared to the nation: "Unless a Court intervenes, the execution is expected to proceed as scheduled at 7:00 a.m. on May 16, 2001" (Ashcroft, 2001). Given that the poll above was taken eight days after the announcement of McVeigh's execution—during a time of unprecedented media coverage of McVeigh, his hundreds of victims, and his long awaited impending execution. Indeed, the results of this poll

illustrating support for closure may be related to at the very least the most major execution the United States had had in the modern death penalty era.

Second, do other public opinion polls reflect these findings? If we look at the handful of polls done closely to McVeigh's execution, we find some limited support: A Princeton Survey Research poll conducted May 10-11, 2001 (six days prior to McVeigh's first scheduled execution) asked respondents, "The following are some reasons why people say they support the death penalty. How much effect, if any, do they have on your own views toward the death penalty?" Twenty-seven percent of respondents said, "It will provide some comfort, consolation for the loved ones of the victims" (28 percent said "some," 32 percent said "none.")

The same survey above also asked respondents, "The families of the victims can watch McVeigh's execution on closed-circuit TV. [Do you] think watching the execution will: "Bring closure; help move on with their lives" (38 percent); Add to their bad memories about what happened (31 percent); Won't have much effect with way (21 percent).

A Gallup, Inc. survey announced two days prior to McVeigh's first scheduled execution asked: Do you think the execution of McVeigh will or will not help the families of the victims cope with the tragedy and reach "closure?" 53 percent said it "will" and 40 percent said it "will not" (Jones, 2001). So, within days of McVeigh's execution—arguably the most significant execution in United States history—we do find that Americans give limited support to the idea that executions provide closure to

victims' families. In searching for other polls related to Americans' views on victims and closure, I found very little attention to these issues, which I describe in the next section.

Finally and interestingly, very little—if any—public opinion work has focused on closure and the death penalty since McVeigh's execution. The closest polling I could find related to these topics were three Gallup polls between 2000 and 2003 that asked respondents for their qualitative responses about their top reason for supporting the death penalty. The results are summarized here:

> 1) Zero percent of respondents asked the open-ended question, "Why do you favor the death penalty for person convicted of murder?" say that it "would help/benefit families of victims" in a Gallup Poll conducted February 14-15, 2000.
>
> 2) One percent of respondents asked the open-ended question, "Why do you favor the death penalty for person convicted of murder?" say that it "would help/benefit families of victims" in a Gallup Poll conducted February 19-21, 2001.
>
> 3) Two percent of respondents asked the open-ended question, "Why do you favor the death penalty for person convicted of murder?" say that it "would help/benefit families of victims" in a Gallup Poll conducted May 19-21, 2003.

In short, national public opinion polls do not provide a great deal of support for the notion that Americans' death penalty views have undergone a significant transformation from retribution to closure. In the years that Gallup has asked Americans their primary reasons for supporting the death penalty, anywhere from zero to two percent of respondents mention murder victims' families in their responses.[xxxv]

So, perhaps even at the time in history when we would expect Americans to be supporting victims through closure and the death penalty at its height in news coverage, only one-two percent say they are concerned with the benefits it provides to families of

victims. In the year prior to that, zero percent claim victims' loved ones as their primary reason for support. It is also interesting to note that rather than a utilitarian perspective on "benefiting the families," Gallup considers closure to be a form of retribution. This might help to explain why Gallup gets cited as illustrating wide support for closure, when in fact, it is simply not the case as the polls above show. For example, Mowen and Schroeder's (2011) justification for examining closure: "the public's continued support of capital punishment on the grounds of retribution, justice, and closure (Jones 2006)" (p. 70).

To summarize, given these data (or lack thereof), I find that closure, at least in these polls, is quite rare among the primary reasons for Americans' support of the death penalty. The ABC News/*Washington News* poll cited by Zimring (2003) and used by other scholars appears to be an anomaly among polls of Americans' views on the death penalty. Undoubtedly, the high support to the question is an artifact of the unprecedented news coverage (both print and television) surrounding McVeigh's execution.

As I described in Chapter 4, this coverage included "closure" in positive ways, in support of the death penalty, perhaps to make sense of McVeigh's execution. Most polls that specifically focus on the death penalty, such as the National Opinion Research Center's (NORC) General Social Survey (GSS) or Gallup polls, do not show wide support for the death penalty because of victims or for closure. Of course, these questions are ripe for further exploration, and the use of additional polls (and qualitatively-oriented public opinion data) would certainly be helpful in this endeavor.

I would like to end with the point that if closure were such a hot button issue that has "symbolically transformed" the death penalty today, we might expect that closure would be featured more regularly in American public opinion polls on the death penalty. The fact remains though that Americans' public support of the death penalty does not feature closure—or even concern for victims' satisfaction and well-being—prominently at all, thus again calling into question the power of closure as a death penalty frame that has symbolically transformed American capital punishment. In the next section, I question how closure has been treated since its heyday in 2001 with the execution of Timothy McVeigh.

Has Closure been Abandoned in the Death Penalty Debate?

In Chapter 3, I cautioned scholars against categorizing "types" of closure with a warning about the role of semantics within American death penalty discourse. In this section, I provide several examples of the ways in which closure, and its many meanings, have been manipulated today by claimsmakers who 1) "play semantics" in their continued use of the term; 2) invert the history of the term and its usage; or 3) have abandoned the term altogether, distancing themselves from their previous—and frequent—usage. I argue that this inversion of the history of closure illustrates that even those who once espoused closure and exalted it as a lofty goal of the criminal justice system now realize that it has lost its political currency.

As I have illustrated in the previous chapters, news coverage of closure drops off significantly after the execution of Timothy McVeigh in 2001. While it is not the focus of

the current project to explore this decline, I do discuss the drop in greater detail in the next chapter. In my analyses of the print news and other archival materials during this time, it is clear that though that the tone of coverage on closure and executions has changed significantly. Those who once trafficked in the terms use appear to have distanced themselves from it. What was once so proudly held out to victims seems to have undergone an identity crisis among those who frequently used it—typically death penalty supporters and criminal justice officials. In the next section, I illustrate some of these changes, documenting the ways in which closure appears to have been increasingly abandoned by its "friends" since its heyday in 2001.

It is clear throughout my analyses, especially those presented in Chapters 3 and 4, that death penalty supporters and victims' rights groups (often one in the same) used closure frequently in their organization's materials, statements to the press, and legislative pushes for the expansion of the death penalty practices. Throughout this time, closure was always linked to the emotional well-being of victims, and executions were said to be the only thing (in addition, of course, to viewing executions) that would be able to heal their harm.

For example, when Justice for All, a pro-death penalty organization in Texas, approached then-chairman of the Texas Board of Criminal Justice, Allan Polunsky, about the right to be present at executions, he shared with the media upon drafting the policy: "Not all families will want to be present. But for some, it will bring some psychological and emotional closure." Similarly, Justice for All member and city victim advocate Andy Kahan, said of the push to the right to view executions during this time, "From the

victims' perspective, it is equal opportunity, and for those who choose to take it, it will be closure" (Liebrum, 1994). At the time, as I described in Chapter 4, this organization was pushing for victims to have the right to view executions. Clearly, psychological and emotional closure—the type that is typically used to denote the end of victims' pain and suffering—is invoked in the statements above.

Contrast the statements above to those recently made by the past president of Justice for All, Dudley Sharp, in 2009:

> The confusion with "closure" is when some imply that execution can bring psychological or emotional closure to the devastation suffered by the murder victim's loved ones. I know of no victim survivor who believes that execution could bring that type of closure. How could it? No punishment can, nor is that the intention. *The concept of emotional "closure" via execution is, often, a fantasy perpetrated by anti death penalty folks, just so they can denounce it, with a talking point, as in: "Those supporting capital punishment claim that closure is a major reason to support the death penalty - but there is no closure"* (Sharp, 2009, emphasis added).

Here it is argued that abolitionists invented the closure doctrine, all so that they could feasibly, years down the road, point at death penalty scholars and poke holes in an argument that they apparently never made. It is clear from the analyses throughout this study that pro-death penalty organizations such as Justice for All played a crucial role in not only trafficking in the term's use as a form of therapeutic justice, but in using the term in institutionalizing death penalty practices. This reality is a far cry from the notion that "anti-death penalty folks" invented the term closure.

These claims not only invert history, they argue further that abolitionists invented "emotional" closure, when in fact, those death penalty supporters who did use closure

were referring to "legal" closure the entire time, something today that may seem more palatable given the widespread lack of support for closure and the increasing visibility of "Not in My Name" campaigns among homicide survivors against the death penalty such as those in Murder Victims' Families for Reconciliation (MVFR) or Murder Victims' Families for Human Rights (MVFHR).

In addition to this inversion of history and semantic claims over the intended meanings of closure, I also found additional examples of those who were once heavily invested in closure and supporting victims through executions now distancing themselves from the term. This has been clear not only among those in states that have recently abolished their death penalties, but also in states considering abolition today. Even those practices, such as the "right to view" policies, that were put into place with the help of closure discourse have been questioned in recent years.

Take, for example, these contrasting statements offered regarding Texas' "right to view" practices. In 1995, Attorney General Dan Morales stated, "If it helps bring some closure to the tragedy and trauma experienced by the victim's family, then we must allow it."[xxxvi] The Texas Department of Criminal Justice's website formerly included the language of healing in describing the purposes of viewing executions and the adoption of victim witness policies (TDCJ, 2001); today, even the description of how "right to view" legislation came about has softened.[xxxvii] Yet, as early as 2006, the Texas Department of Criminal Justice's Victim Services Division (the division that assists victims in viewing executions weeks prior and after a scheduled execution date) had on their website: "We

realize there is no such thing as closure. The execution process is long, painful and often times frustrating" (Guerra, 2006).

In 2009, this division's newsletter had the inset: "There is no closure; there is only the process of healing" (Texas Department of Criminal Justice, p. 8). In the same publication, there was a call for assistance in evaluating their long-standing practices of victim witness policies:

> A decade has now passed, and the TDCJ-Victims Services Division is again reviewing the policies and procedures to determine how they might be improved even more. If you have ideas about this, especially if you have witnessed an execution, please let us know your thoughts and feelings; because you just never know when they may effect a policy change. In addition, we would welcome good empirical follow-up research on the process so we can be sure our policies are in the best interests of victims (TDCJ, 2009).

These statements do not necessarily illustrate a complete turnaround in their stance on "right to view" policies, but they do reflect a growing concern with the promises such policies have made to victims over the past 15 years. It may also be telling that in the "capital of capital punishment" that a thoughtful reflection on closure, victims, and execution procedures is currently underway.

This promise has also been reconsidered in the growing abolitionist movements in many states in the past five years. Illinois, New Mexico, and New Jersey have abolished their death penalties since 2007. Colorado, Maryland, and Connecticut have also come very close to dismantling their death penalties. It was clear throughout my analyses of these states' materials and various commission reports that victims' closure (or, lack

thereof) was a theme. A reversal of course in discourse on victims' closure was certainly underway.

For example, the Maryland Commission on Capital Punishment reported in 2008: "Death penalty cases are more costly than non-death penalty cases and take a greater toll on the survivors of murder victims" (Department of Legislative Services, 2008). Similarly, the New Jersey Death Penalty Study Commission in 2007 reported: "death penalty appeals hurt(s) victims, drains resources and creates a false sense of justice" and "Replacing the death penalty with life without parole would…. provide finality for victims' families" (p. 61). The plight of murder victims' families was also of concern in the abolition of New Mexico's death penalty in 2009 and in discussions of Connecticut's push to end executions in the same year as well. In comparison to death penalty rhetoric throughout the 1990s, closure has begun to be more widely questioned, even among those from whom we might not expect it.

Conclusion

Much of the work on closure originates with Zimring's frequency analysis of articles pairing closure and the death penalty from 1989 to 2001. Several scholars have uncritically examined this growth to mean that closure has, at least in some ways, taken hold of the death penalty in America—symbolically transforming the reasons we have and support executions today. I argue that much of the scholarly work on closure follows in this path, much like that of my dissertation early on, may be working from a data artifact. That is, the frequency analysis and polling statistic discussed in this chapter, and

found throughout contemporary scholarship on closure, may reflect "methodological idiosyncrasies," rather than the reality of closure's actual presence and impact on the American death penalty over the past twenty years.

Far from symbolically transforming American capital punishment, I argue: 1) closure was hardly mentioned in the mountain of death penalty coverage over the past twenty years; 2) as a death penalty frame, it does not appear to register largely at all in comparison to other death penalty frames mentioned in newspaper stories over the two decades; 3) it does not appear to figure largely at all within Americans' reasons for supporting the death penalty, suggesting it has not resonated as a death penalty frame; and 4) that individuals who once trafficked in the term's faddishness have considerably distanced themselves from the idea of closure as it has been used over the past twenty years.

The data presented in this chapter illustrate that closure is but a small blip in death penalty coverage in U.S. newspapers. Over the past twenty years, closure has been mentioned in less than one percent of all U.S. newspaper stories on the death penalty.

When we consider its coverage in premier, mainstream newspapers such as the *New York Times*, we find that it is nearly nil. That coverage is also found to be critical of the closure doctrine. Headlines from this coverage call into question the notion that the death penalty provides closure to victims' loved ones. From 1989 to 2008, closure is mentioned in four *New York Times* abstracts in coverage on the death penalty. That number grew to 15 when I examined the actual content of *New York Times* articles on the death penalty.

Meaning that over the past twenty years, closure has appeared in less than one tenth of a percent of the coverage of the death penalty in the nation's premier newspaper.

Illustrating exactly how the framing of issues impacts public opinion is no simple task. Public opinion on the death penalty is complex, and it would be very difficult to point to all the factors driving Americans' support for the death penalty. Americans' retributive support of the death penalty has long been documented in the modern era, particularly as Americans have lost faith in deterrent arguments over the past few decades. Yet, some frames are very powerful in shaping public opinion, as we have seen with the innocence frame of the death penalty.

If closure has symbolically transformed the death penalty, this would likely also be reflected in Americans' reasons for supporting the death penalty. Because of the limited polling methods available in understanding the depth and breadth of Americans' public opinion on the death penalty, teasing out the nuances between support that is retributive or based on closure is difficult. Yet, when we ask open-ended, qualitative questions of Americans so that they can explain why they support the death penalty, victims and their satisfaction barely registers. It is not even among the top reasons for Americans' support at the aggregate level.

The latest polling data I have seen available for this time period was in 2001 and 2003, a time period surrounding McVeigh's well-publicized execution. This was a time in which death penalty coverage and public discourse around closure peaked in the print news, and likely other media formats as well. Yet, only two percent of Americans report that victims' satisfaction is the primary reason why they support the death penalty.

While these data are in no way complete, they do call into question the idea that the modern death penalty in America has been symbolically transformed. In the next chapter, I provide several avenues for future research for scholars to systematically set about answering these questions.

CHAPTER 6: CONCLUSION

Introduction

Closure is not really for victims, it is for us. It serves in part as an ideological apparatus that allows the state to rationalize its continued taking of life. The primary goal of this study was to understand how closure came to join death penalty discourse and understand its life in the modern American death penalty debate, as produced in the print news media. My theoretical and methodological approaches were informed by a constructivist framework that calls into question the assumption that narratives within the death penalty debate are based in some sort of objective reality. I turned my focus to discursive texts to understand how certain claims about closure—a new death penalty rationale with little clear understanding or agreed upon definitions—shaped death penalty discourse and impacted death penalty practices in the United States over the past twenty years. This approach led to qualitative analyses of a collection of nearly 2500 American newspaper articles that focused on closure and capital punishment along with a theoretical sample of discursive materials related to closure. These included academic and scholarly sources, legislative transcripts, legal case histories, and a collection of archival materials from death penalty and victims' rights groups over the past twenty years. To be clear, the majority of the analyses presented within this study came directly from the print news articles, and were supported secondarily with this collection of archival materials.

Goals of the Research

I began this dissertation with an overview of the American death penalty. It is clear that the United States is an outlier among Western democracies in its retention of executions as a form of criminal punishment. How we rationalize this contentious love affair with the death penalty is of importance for our place within the global human rights regime and for our own understandings of we go about rationalizing the state's killing of its own citizens. These factors raise important questions about the legitimacy of executions today, and what they mean not only for those directly involved with executions, but for us as a society. In the past decade, the United States' use of death sentences and executions has decreased dramatically, and several states have abolished the practice altogether. Despite these shifts, the majority of Americans today support the death penalty. Americans' death penalty views are complex, and how closure fits into their belief systems is unknown and addressed as an area of future research in the next sections. Hence, this is one of the reasons the goals of the study here are of importance.

Summary of the Study's Findings

In my analyses of these discursive texts, I found that closure entered the death penalty debate in the late 1980s and grew in newspapers' coverage of the death penalty throughout the next decade. I attempted to understand how the term had been conceptualized during this time, and sought to know what impacts—if any—it had had on death penalty practices as a discourse in service of the death penalty. It is clear from my analyses of claimsmakers' use of closure that the term has been manifested in death penalty discourse in a myriad of ways. In Chapter 3, I outline ten "types" of closure that

have been apparent throughout death penalty discourse involving closure. I provide these categories with the warning that these "types" do not suggest that closure is based in any sort of objective reality, is reflective at all of homicide survivors' experiences, or is even a state that is attainable (as it is often presented in the news media). These ten types focus on a collection of emotions, situations, events, or conditions that allow individuals to make claims about it. Closure in this sense has been conceived as a sense of: finality, knowledge, security, justice, vengeance, death, honor, severed ties, forgiveness, and collectivity. With that collection of meanings and illustrative quotes from various stakeholders, I also offer a host of criticisms that have been leveraged against the closure doctrine by scholars, abolitionists, criminal justice officials, and secondary victims themselves.

With this understanding that stakeholders have used the term to mean whatever they would like, I sought to understand how the term had been effected in death penalty discourse—that is, what were the political uses of closure? In my analyses of these discursive texts, I found that closure was primarily called upon to rationalize "right to view" execution protocols—policies and legislation that opened the death chamber to secondary victims who desired to witness the execution of their loved one's murderer. In this sense, closure was espoused as a form of therapeutic justice. The argument suggested that not only could executions provide closure to victims' loved ones, but that viewing them would provide even further opportunity for closure. In this sense, closure was almost always referred to as a sense of healing or an end of pain associated with their loved one's murder.

Contrary to popular belief, my analyses illustrated that it was rarely secondary victims joining in the chorus for the right to view executions (or even trafficking in the terms use positively). Those who invoked closure in the push to view executions were primarily death penalty supporters, organized around "victims' rights" even in the absence of victims. States listened to these calls, and bought into the closure rationale put forth by pro-death penalty claimsmakers. They adopted "right to view" legislation in the names of victims, engaging in an institutional fad (Best, 2006) that will likely come under fire and be discarded in the near future for some other way to support victims.

My last chapter, I demonstrate that the abandonment of the closure doctrine (and perhaps the death penalty practices it helped to institutionalize) may be nearer in the future than we may have imagined a decade ago. Part of my argument originates from my careful look at the assertion put forth by a number of scholars who suggest that closure has transformed the American death penalty. This thesis suggests that executions are now carried out in the names of victims, and that Americans support the death penalty because they are in support of victims. I found four pieces of evidence to call this assertion into question. Briefly, I found that 1) closure barely registers in the print news media's coverage of the death penalty. It enjoys placement within less than one percent of the thousands of death penalty articles written in the United States in just about any given year over the past two decades; 2) in comparison to other death penalty frames (e.g., innocence, retribution, deterrence), closure does not register among news framing of the death penalty in the nation's premier newspaper, the *New York Times*; 3) in terms of Americans' reasons for supporting the death penalty, closure—let alone victims—barely

is mentioned among the reasons Americans report they support the death penalty. From 2001 to 2003, a time when closure coverage was peaking in American newspapers, anywhere from zero to two percent of Americans cited concerns with victims' satisfaction as why they support the death penalty; and finally, 4) those who once trafficked in the term's use as a form of therapeutic justice, have significantly distanced themselves from the term, even inverting history to suggest that they never used the term in the ways that it has been exposed as problematic today. In summation, I argue against the idea that closure has somehow symbolically transformed the death penalty in any significant way.

With all that being said, what does all of this mean? In the following sections, I focus on the implications of my findings and encourage scholars to undertake critical work in this area. In doing so, I outline several areas for future research, both in light of the shortcomings of this research and the need for quality work that provides real answers to questions around the experiences of homicide survivors. Throughout this work, I discovered so many tensions between what is said of their experiences and the objective realities of their wants and needs. What we have offered to them—closure—is a promise about us, not them. Clearly, as I describe below, further research is needed to address their needs as secondary victims.

Implications

Zimring (2003) asserts that the rationale of closure has only been a part of our discourse for about twenty years. By and large, these two decades have allowed closure

to remain unchallenged as a justification for American capital punishment. It appears to have been co-opted by those on all sides of contemporary death penalty debates, and even adopted by some victims' families themselves. Some data suggest that Americans support the idea that the death penalty provides closure to victims' loved ones, yet it appears as if this support is quite limited to the time period surrounding Timothy McVeigh's execution and a period when closure was more frequently invoked in news coverage (despite how limited it was). To date, not a single social science study has empirically evaluated or challenged the assumptions put forth by the closure rationale. Yet, it is apparent that it has guided both legal and policy shifts over the past twenty years.

However, I argue that studies that attempt to test the "closure hypothesis" are not necessarily needed. If we understand that closure was put forth in the media with the help of those interested in supporting the death penalty, and not victims, we likely will understand the term means very little to victims themselves. Asking secondary victims if certain criminal justice events, such as executions, provide closure will likely result in the same answers we have received from this study: no. Closure seems to be based in the fictions we tell ourselves to justify state killing. Despite this, this is certainly not to suggest that understanding the experience of homicide survivorship is not important. It is of crucial importance to understand their experiences, and come up with real solutions that not only reduce their harm, but also prevent violent crime in the first place.

The assumption that guided the current study is that the rationale of closure is good for the death penalty but bad for victims. Similar to how the introduction of lethal injection sanitized state killing (Marquart, Ekland-Olson, & Sorensen, 1994) and the end

of lynching attempted to deracialize bodies through "legitimate" forms of state execution (Kaufman-Osborn, 2006), it has been argued that closure has shifted the death penalty's purpose from vengeance to healing the harm of secondary victims. Given that the American death penalty is applied to only 1-2 percent of all homicides in the United States, only a small sliver of individuals could potentially benefit from its promises. An execution may be helpful to some, but it may also exacerbate the grief of the vast majority of individuals who do not receive the ultimate penal sanction in the name of their loved one. Further, given the nature of capital proceedings and the lengthy appellate process, it is unlikely that the process brings any easy or quick relief of the difficult emotions loved ones go through (Kay, 2005; King, 2003).

I argue that the state—the governing body that sets forth penal practices and the ideological apparatus by which to maintain a monopoly on their right to take citizens' lives—shapes individuals' desires for harsher penalties or desires to witness executions. We see that the public and the media often "feed the furor" around execution time, suggesting that a family that does not participate in viewing the execution is failing their loved one (Goodwin, 1997). The power of victims' rights groups in pushing a pro-punishment agenda should be of concern as the state moves in lockstep to satisfy their cries for harsh penalties. Further, we should be concerned when the state, through their penal policies, begins to shape the expectations of survivors. Particularly when what they have to offer becomes limited and narrow in scope, and becomes a "one size fits all" response to violent crime victimization.

Despite not finding widespread support for the idea that closure has breathed new life into the death penalty as some scholars have suggested, there was evidence of specific cases and executions where closure rhetoric was introduced and used to institutionalize death penalty practices. The legal system has embraced the concept of closure through the inclusion of victim impact evidence and the acceptance that closure is something the criminal justice system should help victims attain (Bandes, 2008b; Kanwar, 2001). Victim impact evidence has shaped the expectations of survivors, criminal justice professionals, and jurors. Survivors expect to feel better about their involvement in the process but often feel worse (Goodrum & Stafford, 2001) or experience secondary victimization (Burns, 2006). Criminal justice professionals, such as police and prosecutors, often promise that offenders will be "brought to justice" but survivors are often disillusioned and hurt when their expectations of the criminal justice system are not met (Burns, 2006; Goodrum & Stafford, 2001).

Further, the rationale of closure leaves jurors involved in capital cases two options: a death sentence to "honor" victims or not (Bandes, 2008b). In fact, jurors may be more likely to give death sentences when the victim is the center of capital proceedings (Myers & Arbuthnot, 1999), clearly having impacts on capital proceedings and jurors' decisions (Nadler & Rose, 2003). Recent empirical evidence illustrates these implications very well: jurors "who viewed victim impact evidence and those who actually imposed a death sentences were significantly more likely to think that a sentence of death would help the victim's family find closure or help them recover from their loss" (Paternoster & Deise, 2011, p. 154). So, even if American public opinion polls do not

illustrate widespread support for closure, those who are death-qualified jurors sentencing people to death may very well fall into the category of those individuals convinced of calls for closure—and the various meanings it may be given within trial proceedings and beyond (e.g., closure as death, closure as justice, closure as collectivity).

The concept of closure has untold meanings for everyone involved in the process, but particularly for survivors (Acker, 2006; 2007; Bandes 2008b; Hodgkinson, 2004). Organizing the criminal justice and legal systems around a concept with little clear shared understanding involves problematic assumptions about victims' healing, reifies the concept as something attainable, and assumes that a capital proceeding is an appropriate place to facilitate certain emotional outcomes for victims (Bandes, 2008b). The importing of closure into these institutional frameworks has changed both the "ideological" and "concrete" parts of the legal system and "survivors have been promised that they will feel 'closure,' and come to expect that they will and should feel it, and legal actors have come to believe they should help deliver it" (p. 11). The media's role in creating these expectations and shaping the discourse surrounding the death penalty in America should no longer be ignored.

Lastly, the closure rationale assumes that all victims desire the harshest penalties and that grief among this group is the same for all included. Nothing could be further from the truth given the various complicated grief, loss, and recovery experiences among victims. Additionally, capital proceedings and executions for individuals decidedly against the death penalty may be particularly traumatizing or they may be blocked from participating in proceedings entirely (Cushing & Sheffer, 2002; Kay, 2005; King, 2003;

MVFR, 2008). If we understand that closure was a term generated to further the interests of those keen on keeping the death penalty in place, we can perhaps see how the energy devoted to that endeavor may well be better served by helping victims in real ways. We should also strive to protect—not further victimize—homicide survivors.

Program evaluations of victim assistance and restorative justice programs would certainly help to provide an understanding on how best to attend to the needs of homicide survivors. Some scholars and criminal justice professionals advocate the use of restorative justice principles to assist with victims' healing. Some co-victims have reported that focusing on their own experiences and feelings, rather than being preoccupied with the murderer's punishment, has been helpful in their paths to healing (King, 2003; Pelke, 2003). Of course, discussing restorative justice in the context of the death penalty does not include the restoration of all actors if indeed the offender will be executed. Victims also report the need for crisis support, counseling, and improved training for the criminal justice professionals who have been abruptly thrust into their lives (police officers, victim advocates, defense prosecutors, and judges) (Henderson, 1998; Rock, 1998; Spungen, 1998).

In my own ethnographic work with homicide survivors, so many of them have shared that the ways in which the police notified them of their loved one's death was "botched" in that they learned from the media or from officers they felt handled the situation callously. Others that I have talked with, primarily families of color, have stated that the police and prosecutors seemed to care very little about their loved one's disappearances and/or murders. In some cases, that disinterest also extended to arresting

and convicting their loved one's murderer. Thus, newspaper reports filled with prosecutors and police claiming closure for victims call into question for whom these calls for "justice" are made. Is closure discourse exclusively reserved for white victims? While these racial and ethnic differences have been explored in a very limited way (see, Goodrum & Stafford, 2001), this is an area of research that deserves serious critical attention so that we may attend to the needs of all victims and not just those who are most vocal or believe in and rely on the state for justice. Victims' rights legislation may also compound the harm of criminal justice involvement because the enactment of these provision often lags or is difficult to navigate, even with the assistance of victim advocates. Individuals may become wary of or develop a form of legal cynicism about the system when their needs and/or rights are not met.

This dissertation considers closure as a death penalty rationale like any of the others offered over the past thirty years. Just as other rationales have experienced varying popularity over time, closure is certainly the same. What has set closure apart from other rationales is the fact that it has gone empirically unchallenged for nearly two decades. This work serves to discredit the notion that closure exists in the ways it is often portrayed—as an end to secondary victims' hurt, pain, and suffering. If we are concerned with co-victims' well-being, research would be well suited to seeking what actually helps attenuate the complicated grief experiences of homicide survivors.

Limitations

Every study comes with its weaknesses and limitations, despite how much a scholar tries to strengthen the claims made by their research. In the following discussion, I first focus on the methodological challenges I faced in this project (which reflect those often found in media studies) and then move on to issues related to the scope of using newspapers articles as my primary unit of analysis. One of the main challenges of drawing conclusions from news stories is that there is often no objective reality from which to draw. Understanding homicide survivors' experiences of "closure" requires a very different study. One that I would argue should not involve "closure" at all in making sense of their grief, loss, and recovery experiences.

Yet, understanding how closure was used and co-opted politically is something that can be corroborated through other sources. With that in mind, I have attempted as much as possible to explore the validity of news reports by reading legislative transcripts, using online sources, and speaking with people actively involved in the death penalty debate in a variety of settings that I describe in greater detail in Appendix A. This is one of the primary reasons that I used theoretical sampling (Strauss & Corbin, 1998) in gathering as much information directly about closure as possible. I could collect data specific to certain events, situations, or individuals in order to corroborate the details of what was being covered in the news. There, of course, were differences in the tone of articles depending on the sources I used. For example, the tone of an article could quickly become apparent in the terminology used to refer to a person who has killed someone: "cold-blooded murderer" versus "the defendant." Despite my attempts to pay attention to

these issues, it still is difficult to ascertain whether journalists reported stories and events accurately.

Relatedly, understanding the intentions and motivations of journalists and their sources is nearly an impossible task. The patterns that journalists use to uncover and report certain events and stories do lend some knowledge of journalistic norms, however limited. Examining news articles for nearly twenty years and examining more than one set of data (e.g., *New York Times* Abstracts, 1960-2005 as Baumgartner, De Boef, & Boydstun, 2008 did), also allows for some understanding of the norms of journalistic coverage and media framing. While my analyses demonstrate to me that criminal justice officials such as prosecutors often use closure in support of the death penalty, it is difficult to ascertain officials' intent in using closure without perhaps in-depth interviewing or ethnographic work with them. There was enough data from criminal justice officials alone to write a separate paper on their views on closure and their role in "helping victims" versus acting impartially on behalf of the state.

This study also heavily relied on a collection of U.S. newspaper articles in LexisNexis Combined Sources, which does not typically include articles from wire services. With shrinking budgets, newspapers today rely more heavily on wire services such as the Associated Press or United Press International than ever before. Originally, I had examined data in both newspaper and wire services (which using the same procedure yielded roughly 300 more articles than the sample I used which included a total of 2493). This cumbersome collection obscured the "actual" coverage of closure I hoped to uncover, so I decided to collect the data without the wire articles. The wire articles

though raise an interesting question about media framing and frame resonance that needs to be explored: are certain articles—stories, narratives, ideas—about the death penalty more likely than others to be picked up by newspapers? If the media are able to persuade the public not only in the symbols and values they continuously present, but in their repetition alone, is it also possible that the active selection of certain death penalty articles over others would amplify this process? This raises questions about the selection of stories based on their framing of events: Are wire stories with a pro-victim, pro-closure bent more likely to be picked up by newspapers? If so, how might this have shifted over time?

My methodology included a focus on searching for the term "closure" throughout newspaper articles over the past two decades. This method follows original work in this area, but it fails to recognize that perhaps once "closure" became a "bad word" in the language of therapeutic justice (when the project is recognized as a failure), that the terms used to frame executions or the death penalty may have shifted. For example, terms such as "solace," "relief," were often used in conjunction with describing the goals of closure. It is possible that during this time, closure may have declined in frequency analyses while others terms took its place, but essentially imbued the same meanings about victims' healing and the purpose of executions. With the power of Boolean searching in LexisNexis, scholars can see how these terms are paired and trace this over time. I would not be surprised to find that other words have come to operate in the same way that closure once had, even though it may never reach the status that closure enjoyed at its peak in newspaper coverage around Timothy McVeigh's execution.

Beyond methodological questions, I need to include a discussion on the shifting nature of the news given this project's focus on the print news, what some have referred to as a dying form of communication (Monahan, 2010; PEJ, 2005). The news industry has undergone two major shifts in recent decades. First, the news industry shifted to a for-profit model, with news divisions increasingly having to concern themselves with generating profits for shareholders. Second, technological shifts have shattered old news models wherein news consumers waited for the nightly news or morning paper. With the advent of the Internet and 24-hour news channels, news cycles are unending. This second shift in the news industry has created problems for profitability, and newspapers have been financially hurt by the explosion and availability of around-the-clock news. These shifts have changed the ways consumers get their news. Some have argued that the print news is dead, and the devastating financial losses reported by major news organizations in the United States in recent years (e.g., *Los Angeles Times*), it is hard to disagree. Others have predicted the end of the news as we have known it. At time of this writing, the *New York Times* just announced a subscription pay site for their online content, calling into serious question this model of the news.

So, limiting the scope of my study to primarily analyses of newspaper stories certainly restricts the types of conclusions I am able to draw. For example, declines in closure in the print news may not correspond in any way to the coverage or usage of closure in television news. In fact, given that television and cable news industries must draw viewers in through dramatic storytelling to maintain ad dollars, closure may continue to figure prominently in stories focused on crime, victims, and the death penalty.

Yet, this study's focus on newspapers allows me to only speculate in drawing conclusions on how closure is framed in other news formats. Tracing closure—and its various meanings—across news formats is certainly a worthy goal of scholarly consideration. Having lived in Texas for the past several years, I can say that it seems I hear "closure" mentioned in local news broadcasts nearly every time the state has an execution. Colleagues who are aware of my interest in closure frequently share how they cannot seem to escape the term, "It gets used everywhere! I hear it all the time now!" Which is precisely the point I am drawing here—it really does get used everywhere, and in every way possible.

Of course, being in the "capital of capital punishment" likely shapes death penalty discourse and coverage here in Texas (most notably the frequency of executions to cover in the news), but it also raises interesting questions about geographic differences in closure coverage. Future research would be well-suited to looking at the types of rationales offered—closure, and others—across the United States. In my analyses, articles that invoked closure were typically referring to executions in death penalty states, but many were not, illustrating that closure gets used in far more ways than describing just executions. Some of the articles I analyzed focused on executions elsewhere in the world (e.g., Saddam Hussein's, for example), and it was interesting to note that American journalists and pundits frequently cited closure 1) as a reason to have his execution and 2) as something that would certainly come to the victims involved (or, in the case of Hussein, his many victims who would soon receive "mass closure"). This speaks greatly to the notion of "closure as collectivity" I described in Chapter 3. It begs the question, has

closure served as a rationale for executions elsewhere in the world? Has America's use of the term traveled or been borrowed by other nations who retain the death penalty? Do those nations "need" closure as a rationale as it appeared we may have? This study only comments on American print news coverage of closure and the death penalty, but I would certainly be curious to see if this narrative exists in any similar shape or form elsewhere in the world. Its presence or absence raises interesting questions about the "need" for such a death penalty rationale during a time of growing international abolition.

Given these limitations, I strongly encourage scholars interested in closure to trace its life as a death penalty rationale in a variety of news formats. The Vanderbilt television archive is certainly one starting place in understanding how closure may have been framed over the past twenty years by the television news media. The differences may be striking. Although I have searched for other evidence of this, it is quite possible that closure arrived on the news "scene" long before 1989 in the world of television. While closure appears to be on the decline in newspapers in the 2000s, it is very possibly enjoying a great deal of coverage on television or cable news with its increased need for quick, sound bites.

At the time of this writing, I had been working on dissertation edits when it was announced on May 1, 2011 that Osama Bin Laden, the man said to have masterminded the September 11th attacks in New York City in 2001, was killed while hiding in Pakistan. On the evening of the announcement, television news coverage of the responses to his "execution" literally exploded for lack of a better term. On networks such as Fox News and CNN, closure discourse abounded, often with the term being used more than

ten times in one minute. On Twitter, a social media site that allows individuals to give status updates or share their thoughts in 140 characters or less, I calculated that closure appeared in a "tweet" every second. Meaning that one person every second on Twitter, was discussing Bin Laden's "execution" as a form of closure for the victims' of 9/11. This trend lasted for hours. Similar to the arguments made above, the secondary victims of the September 11th attacks were rarely stating that they had finally found this elusive closure. Twitter's closure coverage consisted primarily of statements among those hopeful that his death would bring closure (in its many variants) to the victims. Given the rapid shifts in how the public receives and interacts with information, particularly with the explosion of social media, is certainly an area ripe for future research in framing, frame resonance, and setting the public agenda. In the next section, I continue this discussion by providing areas for future research that are certainly worthy of further consideration regarding closure.

Future Research

As described in Chapter 4, there is a significant decline in closure coverage in the news after the execution of Timothy McVeigh. The month of his execution is the highest peak for closure coverage, and just as he died, the use of closure appeared to as well. While I focused a bit on this decline in articles in the current project, this decline certainly requires further attention in the future. Given my preliminary analyses on these data and this time period, I hypothesize that there are three things to help explain this

decline. In this section, I devote attention to this decline and outline a future research agenda in this area.

I attribute this drop and change in tone to three things: 1) the attacks on 9/11 that occur three months after McVeigh's execution, thus that creating a whole new public drama and set of victims for which closure did not really quite fit given that we did not anyone to blame; 2) the growing voice of the anti-death penalty homicide survivor movement which really gets a lot of press and their anti-closure frame gains currency; and 3) the rise of the innocence movement and media coverage of innocence. As a death penalty frame, it literally eclipses all others in terms of coverage and driving public support down.

First, three months to the day after McVeigh was executed, 9/11 occurred. The devastation and brought many of the same national insecurities about terrorism and crime front and center in the news media. 9/11 surpassed the casualties and scale of the Oklahoma City Bombing, creating more secondary victims than any other attack in the nation's history. As others have written, 9/11 sets forth a new "public drama" with a new group of victims that would become the focus of the news and television for months to come (Monahan, 2010). "Mass closure" would seem to be a perfect fit for 9/11 discourse given the sheer number of victims and dramatic heroism. Closure does appear in some of the discourse around 9/11 victims in the news, however, there is a marked difference in how officials come to speak of it.

One such example comes from the National Center for Victims of Crime (NCVC), a victims' rights organization that speaks of closure throughout their website's

online materials for victims (including homicide survivors) (NCVC, 1998). Their interview with psychiatrist Dr. Frank Ochberg is telling of the shift away from closure in 9/11 discourse. Nearing the year anniversary of 9/11, he shared, "Closure is a bad word, overused five or 10 years ago, and people in my world are not using it anymore, because it falsely implies an end to something doesn't end. You don't get closure on trauma, tragedy, the impact of human cruelty, and you do grow, you do get sadder and wiser and you do, more often than not, get the opportunity to help fellow travelers. Closure is a myth, but progress is not" (Kaplan, 2002).

While the above is just one example of this departure, future research could also seek to understand how closure gets used around major events such as 9/11. What types of crimes invoke the closure narrative? Or, where and when does closure never enter a public debate? Was a broader change underway in the way we discuss victims, crime, and terrorism, or were the conditions of 9/11 so different that a new discourse was required? Now that Osama Bin Laden has been killed nearly a decade after the attacks on 9/11, there was an instant, dramatic shift and closure—perhaps laying somewhat dormant under the discourse surface for these many years—could be called upon to powerfully shape the discourse surrounding his execution.

Second, in the 2000s, it appears as if homicide survivor groups against the death penalty begin gaining traction in shifting the terms of the debate around closure. Using their experiences, their narratives provide a powerful counterframe to attempts to rationalize executions in the name of victims. Quite simply, "don't kill in my name" and "closure is a myth" allow homicide survivors to rely on the strength of their experiences

(however traumatic) to argue against the death penalty (King, 2003). These groups have turned this experience and their decision to counterframe using the language of the primary definers' use of closure on its head. They are actively engaged in using what Snow and Benford (1992) call collective action frames—"action oriented sets of beliefs and meanings that inspire and legitimate social movement activities and campaigns" (Gamson, 1992, p. 7). Their narratives complicate the idea that all homicide survivors desire the harshest penalties, or are in agreement that the death penalty will heal them. Their experiences are difficult to contend with if we desire to treat them with the same interest afforded other victims of violent crime in the news.

My preliminary analyses show that their voices are a part of the execution coverage of McVeigh, and their message is increasingly included in media coverage of the death penalty thereafter. In my conversations with members of murder victims groups opposed to the death penalty (e.g., MVFR, MVFHR), it should be noted that they lay claim to the "victories" of states like New Jersey and New Mexico abolishing their death penalties both in conversation and in their materials such as newsletters, press releases, and blogs. Understanding their strategies in successfully engaging the media as grassroots organizers are likely of importance to social movement scholars and activists. My work with these groups is that closure is an active component of developing an "injustice frame." Closure has become a part of several specific campaigns aimed at dispelling myths about closure, and these campaigns seek to recruit homicide survivors (with different beliefs on the death penalty or in various stages of grieving) to draw them to the

abolition movement and build new meanings around what it means to be a homicide survivor against the death penalty.

As victims that do not fit the typical mold of those who politicians and prosecutors can rely on to further their push for executions, the experiences of homicide survivors against the death penalty are important for scholars interested in social movements, counterframing, and frame resonance. Finally, and related to the last point, these are individuals who do not seem to fit the portrait of the punitive, "bitter" victims that seek and desire the death penalty that so often get included in the news coverage of the death penalty (after an execution, for example). Similar to how their voices have been banned from courtrooms across the nation, their stories are certainly hard to come by in the news. I argue that this has shifted somewhat in recent years, but understanding how and why are important questions not just for media scholars, but sociologists interested in the sociology of health, emotions, and identity.

Lastly, it is hard to understate the power that the innocence movement has had on news coverage of capital punishment in America. Further, it would be impossible to say that the innocence movement (and its coverage) has not changed the face of the modern death penalty as we know it. My discussion of Baumgartner, De Boef, and Boydstun's (2008) impressive undertaking in Chapter 5 provides hard (and sophisticated) evidence for how the innocence movement has driven down public support, the rate of executions, and the rate of death sentences over the past decade. Given its impact in changing news coverage as well (i.e., focusing more on defendants than victims; shifting the tone of articles against the death penalty rather than for it), it is certain that the innocence

movement has shifted the terms of the closure debate in the news. Some scholars argue that closure emerged as a death penalty rationale in response to the innocence movement (see Berns, 2009), but my analyses suggest that closure emerges and peaks prior to the innocence movement emerging in any significant way. Future research would be well-suited to exploring how these frames shift in tandem over time, and how the innocence movement has shifted the terms of the debate not just about closure, but about the death penalty as a whole. My own sense is that the innocence movement and news frames on the innocence movement eclipse each and every other death penalty frame during the 2000s. Whether and if this will be able to be sustained is yet to be seen, but the innocence movement is changing the terms of the debate as nothing has before. While I want to encourage scholars to focus on the issue of innocence, I am also of the mind that focusing attention solely on questions regarding procedure may cause scholars to neglect other questions (for example, issues surrounding continued racial bias and inequality).

Conclusion

Much of the rhetoric involving closure today suggests that closure is something you either have or you do not. Within this vein, murder victims' loved ones are instructed to seek closure through any means necessary. In their search for healing, closure as a goal likely adds to their indescribable suffering and harm. Any claims made about murder victims' loved ones' healing should be weighed with extraordinary care, particularly as those claims serve the interests of the state, the media or death penalty activists. The road to closure may indeed be a process rather than an outcome, yet we should take care in

imbuing closure with additional meanings to fit contemporary narratives about life, death and trauma. The ability for the term to come to mean any number of things allows for it to remain an empty promise for victims' loved ones. It is time that we reconsider claims about closure, in order to strike toward policies and practices that can attend to their incredibly difficult grief, loss, and recovery experiences.

Appendix: Methods

Data Collection: U.S. Print News Articles

The primary purpose of this research was to understand how "closure" entered American death penalty discourse and examine the impacts it has had since being first used in the print news media in 1989. To meet this goal, I analyzed media framing of the American death penalty, with a particular focus on the framing of executions as something that would provide victims' loved ones with "closure." To accomplish this, I examined U.S. newspaper articles by searching the LexisNexis Academic database.

The LexisNexis database U.S. Newspaper Stories, Combined Sources includes newspaper articles from newspapers across the United States. In addition to local newspapers (e.g., *The Houston Chronicle* in Texas, *The St. Petersburg Times* in Florida), this collection also includes well-regarded and mainstream national newspapers such as the *New York Times* and the *Los Angeles Times*.

The large bulk of the research here draws upon a collection of articles from 1989-2008 that had the index term "capital punishment" that included both the words "closure" and "execution" in U.S. Newspaper Stories, Combined Sources in the LexisNexis Academic database (using a similar procedure as Zimring, 2003 pairing the term "capital punishment" or "death penalty" and "closure"). All told, there were 2492 stories found that met the criteria for the time period above. Articles that contained "closure" but were not directly related to the death penalty or executions were removed from the analysis.

For example, several articles discussed the closure of "military bases" or prisons such as San Quentin in California and these were dropped from the database. Similarly, articles on "road closures" were also dropped from the analyses.

To understand this smaller subset of death penalty articles within a broader context, all articles with the index term "capital punishment" were searched in the U.S. Newspaper Stories, Combined Sources database to ascertain capital punishment media coverage from the time period 1989-2008. During the time period, there were 272, 417 articles in the U.S. Newspaper Stories, Combined Sources in the LexisNexis database that included the "capital punishment" index term. These data were collected by month and were used to standardize for the amount of attention "closure" received in the news in comparison to all of the coverage the death penalty received during this time in newspapers.

Newspaper coverage peaked in the year 2001 and overall, there were 23,089 newspaper articles during that year. This peak in coverage was related to the extensive coverage of the execution of Timothy McVeigh. During June 2001, the month of his execution, there were 3684 articles with the "capital punishment" index term.

To understand how the media covered the case and execution of McVeigh, all articles with "Timothy McVeigh" were searched as well using the U.S. Newspaper Stories, Combined Sources database (without the "capital punishment" index to be sure to include articles before his trial wherein the death penalty was sought). These numbers were collected by year from 1995-2008 and by month in 2001 to illustrate that coverage

of his case peaked in 2001 with 9197 articles and in coverage for the month of his execution (June 2001) with 2984 articles, or 32 percent of all the articles that year.

Content Analysis

Content analysis enables both quantitative and qualitative analyses of data (Krippendorff, 2004; Weber, 1990). Preliminarily, categorical and thematic coding focused on:

Measurement—the frequencies of key words (e.g., "closure") in news reports over time (i.e., by year) and the frequencies of concordant key words (e.g., articles that contain "closure" and "capital punishment") as described above;

Representation—examining who uses (e.g., sources in the articles such as criminal justice officials, family members, or the author, etc.) key words (e.g., "closure") and how they are used (e.g., executions bring closure, do not bring closure, or closure does not exist, etc.) as described in the next section; and

Indication—make inferences on whether the article supports or challenges the idea that executions provide closure or if the article "objectively" presents the concept as something contentious or unknown (Weber, 1990) as described in the next section.

The 2492 newspaper articles were collected, read, and thematically coded primarily by myself. However, a smaller subsample of 345 articles (a stratified random sample for each year, 1989-2008) was coded by a group of six undergraduate research assistants who focused on understanding how various stakeholders used closure, and if the content of the stakeholders' comments on closure were "pro-closure" or "anti-closure." For the years, 1989 to 1995, each article was coded; 1996-2008, each fifth article was coded). These

were the instructions given to the research assistants in determining a pro- or anti-closure stance: "Closure tone refers to the direction or implication of an article with regard to "closure"--whether the article reports on activities or opinions that support or advance the idea that closure exists, is something that can be attained by victims' loved ones, and on the other hand, activities or opinions that deny the existence of closure, or argue that victims' loved ones will not get closure." These instructions closely follow the coding instructions in Baumgartner, De Boef, and Boydstun's (2008) study of the tone of death penalty articles.

These findings were presented in Chapter 3, and allowed for us to draw conclusions about the media's use of closure in the absence of actual quotes from stakeholders. These findings revealed that out of all stakeholders to speak of closure in the subset of news articles, journalists were the most likely to use closure more than anyone else. Out of the 345 articles, 103 of them cited the author as the source of using "closure." This is nearly a third of the subset, or 30.2 percent, supporting the finding that closure was largely generated by the media, and not the result of any overwhelming use by victims claiming a pro-closure stance. This helped to illustrate how and whether the assumption that executions provide "closure" has been media-generated (e.g., written largely from the perspective of journalists), elite-driven (e.g., using quotes of criminal justice professionals or politicians who are often used as sources), interest-group driven (e.g., including quotes from spokespeople representing various groups); victim-driven (e.g., the selective use of quotes from execution attendees) or something else entirely.

Theoretical Sampling on Closure in the American Death Penalty Debate

In addition to the newspaper articles examined above, I used a form of theoretical sampling (Strauss & Corbin, 1998) to focus thematically on information relating closure within death penalty discourse over the past twenty years. In doing so, I collected archival materials (primarily online) from the following organizations: Death Penalty Information Center, Murder Victims' Families for Reconciliation (MVFR), Murder Victims' Families for Human Rights (MVFHR), Parents of Murdered Children (POMC), Justice for All (JFA), Criminal Justice Legal Foundation (CJLF), Sentencing Law and Policy, Equal Justice USA, Campaign to End the Death Penalty, Texas Coalition Against the Death Penalty (TCADP), Texas After Violence Project (TAVP), and the Texas Moratorium Network (TMN). I also collected and analyzed legislative hearings, legal case histories, and academic and popular sources that invoked the term closure. Throughout these materials, I focused on the representations of closure (e.g., who was using closure) and the meanings given to the term by various stakeholders to infer beliefs about closure by those who invoked the term in these materials or their narratives around the death penalty.

While not formally included in the analyses in this project, I should also mention that I have conducted informal observations for the past several years in Austin, Texas, the state's capital and a well-known hub for death penalty activism and legislative action. I attended events held by Texas Moratorium Network, Students Against the Death Penalty (UT Austin student organization), Journey of Hope, Coalition to End the Death Penalty, Texas After Violence Project, and the major conferences of the Texas Coalition Against the Death Penalty. I also attended several death penalty protests at the Texas

Capitol, many on the days of executions. In addition, I was fortunate for the dedication of The University of Texas at Austin School of Law to invite some of the most renowned death penalty experts and lawyers in the United States to their yearly death penalty conferences and speaker events. I attended these as well. Lastly, I have attended many of the hearings relating to posthumous exonerations that have been in Austin courtrooms (e.g., Cameron Todd Willingham).

In collecting observational data, I spoke with several death penalty activists, scholars and capital defense attorneys in Austin. I also spoke with homicide survivors involved in both capital and non-capital cases and with family members of death row inmates throughout Texas. For some, executions had already occurred, for others, not. For some events, I asked permission to take pictures to capture attendance numbers and the mood of event attendees. While I conducted no formal interviews, I came to know several individuals within the Austin anti-death penalty community quite well over the years of attending events and inviting speakers into my *Capital Punishment in America* course taught at The University of Texas at Austin. Over time, my vigorous note-taking (via hand and when possible, by laptop) became viewed less suspiciously over time and on occasion I was asked to share my notes with other attendees (I obliged these requests and viewed them as institutional records). I know of only one incident where I was mistaken for a reporter, and this was a question asked of me by one of the board members of the Texas Coalition Against the Death Penalty.

While the analyses of these observations are not formally addressed in any length in this project, the knowledge gathered from my discussions and fieldnotes from these

events have certainly informed the project and even the topics on which I chose to focus on in my analysis of newspapers.

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McCleskey v. Kemp (1987)
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People v. Williams (1996)

Proffitt v. Florida (1976)
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U.S. v. McVeigh (1998)
Woodson v. North Carolina (1976)

Chapter Notes

[i] Hitchens, 2002, p. viii

[ii] Attorney General Ashcroft's Statement Regarding the Execution of Timothy McVeigh, Department of Justice Press Release (2001).

[iii] In 1993, federal agents raided the Branch Davidian complex in Waco, Texas that resulted in a 50-day standoff and the deaths of federal agents and the leader of the Branch Davidians, a Protestant sect/cult accused of illegally stockpiling weapons.

[iv] While seeking the death penalty was authorized for both McVeigh and Nichols, the jury would eventually deadlock in sentencing Nichols. He would be later sentenced to life in prison.

[v] McVeigh was found guilty of conspiracy to use a weapon of mass destruction, use of a weapon of mass destruction, destruction by explosives, and eight counts of first-degree murder (of federal agents).

[vi] By "secondary victims," I am referring to the loved ones of individuals who have been murdered. I view these individuals as those tied by blood, marriage, adoption, fictive kinship, friendship, or romantic love. Throughout this project, I use this term interchangeably with the terms: "victims," "indirect victims," "co-victims," "murder victims' loved ones," etc.

[vii] Please see Madeira 2007; 2009 for an overview of victim organizing around the Oklahoma City Bombing.

[viii] World News Digest, 1995

[ix] May & Merzer, 1995

[x] Romano, 1996

[xi] Romano, 1996

[xii] This term is loosely related to but distinct from the concept of "therapeutic jurisprudence"—the study of the law that "focuses on the law's impact on emotional life and psychological well-being" (see Wexler, 1999; Wexler & Winick, 1996). Therapeutic jurisprudence has typically been used to examine mental health and drugs courts, prison mental health care, or the law as therapy.

[xiii] 138 individuals have been exonerated from America's death row at the time of this writing in early 2011.

[xiv] Holding, R. (1993, August 16). Texas County proud to be capital of capital punishment. *The San Francisco Chronicle,* A3.

[xv] These discussions typically revolve around the Eight Amendment's prohibition against "cruel and unusual" punishment.

[xvi] Whitehead (1998) found that nearly 95 percent of state legislators support the death penalty.

[xvii] Despite several reports that Iraq had weapons of mass destruction, in 2005, the Central Intelligence Agency released a report that showed Iraq was in possession of no weapons of mass destruction prior or during the war.

[xviii] Toward the end of the 1980s, the US Supreme Court made a landmark decision in *McCleskey v. Kemp* (1987) regarding racial bias, arguing that despite overwhelming

evidence that the system was plagued by racial bias, an individual would have to establish that discrimination played a role in their individual case. Setting this as the standard of evidence would make it nearly impossible for someone to claim racial bias in their case.

[xix] *General Social Survey* (GSS)—full probability sample of non-institutionalized American adults conducted each year since 1972 by the National Opinion Research Center (NORC) at the University of Chicago. Questions about the death penalty such as, "Do you favor or oppose the death penalty for persons convicted of murder?" have long been a part of the survey, making it easy to track opinion over long periods. For the years 1988-1991, it also addressed the experiences of individuals who knew homicide victims—individuals who should, under the logic of closure, be more supportive of capital punishment (Borg, 1998). *Gallup Polls*—Gallup, Inc. has conducted several probability sample telephone interviews (using Random Digit Dialing) with thousands of American adults on their death penalty views. Of particular interest to this study is their questioning of those who support the death penalty on *why* they support or oppose capital punishment for those convicted of murder (e.g., deterrence, retribution).

[xx] Prior to that, on June 1st, 1988, secondary victim and member of Murder Victims' Families for Reconciliation (MVFR) argued, "Closure to me is finding out how to heal, it's not… 'we've closed the casket, we've dug the grave.'"

[xxi] In some ways, this order of events may seem like critiques of pharmaceutical companies said to invent new diseases in which their drugs conveniently treat.

[xxii] Although legislation in Virginia to push for victim witnesses failed in 1994, the Virginia governor signed "right to view" legislation into law by an executive order in the next year.

[xxiii] The coverage of Saddam Hussein's execution in 2006 is one of the only executions I can find that has even remotely similar coverage devoted to it. Interestingly, closure is used in the collective sense to describe how the his mass victims should feel after his execution by hanging. I discuss this briefly in Chapter 6.

[xxiv] Because these were not articles specifically discussing the death penalty, these numbers are elevated beyond those of what I found looking at closure within articles specifically on capital punishment.

[xxv] Zimring (2003) theorizes that the role of vigilantism perpetuates Southern states' harsh punishments as a communal ritual for victims and that this partially explains the resurgence in executions in the 1990s. It should be noted that this vigilante hypothesis has been tested by Messner, Baumer, and Rosenfeld (2006) and met with little empirical support.

[xxvi] *Payne v. Tennessee* (1991) overturned the Supreme Court's original decision to prohibit the admission of victim impact evidence in capital trials at the sentencing phase in *Booth v. Maryland* (1987).

[xxvii] By 2000, 32 states had adopted victims' rights legislation (Mosteller, 2003) and much has been written on the controversial roles and rights of victims garnered from

victims' rights movements (Dubber, 2002; see also Callihan, 2003 for an organized collection of articles on the victims' rights movement related to capital trials).

[xxviii] In recent Gallup polls on death penalty attitudes, half of the respondents said they supported the death penalty because the offender "deserved it" citing the just deserts logic of "an eye for an eye" because the punishment "fit the crime" (Jones, 2003). Yet, when asked directly if "revenge" or "retribution" are good reasons to execute someone, support drops off significantly (Gross & Ellsworth, 2003).

[xxix] Zimring (2003) also theorizes that the role of vigilantism perpetuates Southern states' harsh punishments as a communal ritual for victims and that this partially explains the resurgence in executions in the 1990s. An excellent discussion and test of this assumption—with mixed support—can be found in Messner, Baumer, and Rosenfeld, 2006.

[xxx] Found through LexisNexis.

[xxxi] These questions arose for me in light of the fact that I had standardized for the rate of closure's coverage in the news, finding that the increase in coverage was still quite small as the figure above demonstrated.

[xxxii] Their method is explained in detail in Chapter 8 of their book, *The Decline of the Death Penalty and the Discovery of Innocence.* Essentially the method is a rolling factor analysis and is very useful for scholars interested in understanding the power of certain frame narratives on variables such as those in their study: public opinion on the death penalty, death sentencing, and executions.

[xxxiii] Their appendices provide very detailed instructions on how to replicate their findings.

[xxxiv] I am grateful to students in my *Capital Punishment in America* course at The University of Texas at Austin for reminding me that the *New York Times* is considered a "commie rag" in some circles.

[xxxv] It should also be noted that this qualitative question was asked in 1991 and the results are as follows: 1) Zero percent of respondents asked the open-ended question, "Why do you favor the death penalty for person convicted of murder?" say that it "would help/benefit families of victims" in a Gallup Poll conducted June 13-16, 1991.

[xxxvi] It should be noted that Texas' current Attorney General, Greg Abbott, frequently invokes closure in his press releases. The most recent I mention I have found is in 2010.

[xxxvii] In 2001, TDCJ's description of the adoption of "right to view" legislation on their website said: "In late 1995, victim advocates and survivors met in Austin, Texas with several members of the Texas Board of Criminal Justice, the nine member oversight board for the agency. Their aim was to petition the Board to allow a capital murder victim's family the opportunity to view the execution of the offender. Many survivors at the meeting testified that viewing the execution would contribute to their healing process." In early 2011, the description reads: In late 1995, victim survivors and victim advocacy group members appeared before a panel of Texas Board of Criminal Justice members in Austin, Texas. Their plea was that the Board allow victim witnesses the opportunity to view executions. While many felt not all executions would have victim

witnesses, they at least wanted the option to attend. It was voiced that attending an execution might assist in the healing process. The first execution allowing victim witnesses was on February 3, 1996. Allowing victim witnesses the opportunity to view an execution is a Texas Board of Criminal Justice Rule, and not mandated by law." This shift also illustrates the shifting nature of death penalty narratives and history.