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Social Class and Capital Punishment: A Theoretical and Empirical Analysis

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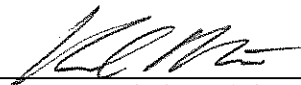
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SOCIAL CLASS AND CAPITAL PUNISHMENT: A THEORETICAL AND
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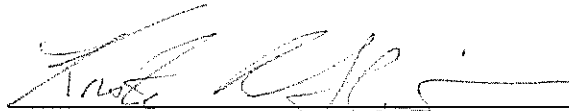
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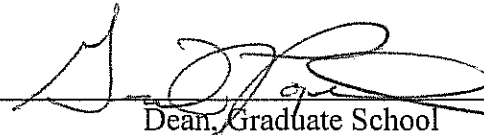
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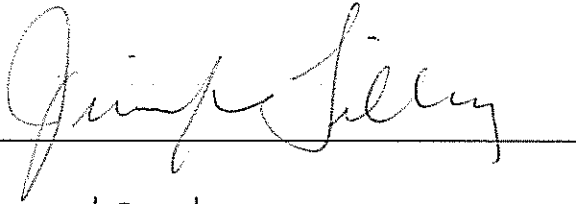


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11/27/14

SOCIAL CLASS AND CAPITAL PUNISHMENT: A THEORETICAL AND
EMPIRICAL ANALYSIS

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Submitted to the Faculty of the Graduate School of
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in partial fulfillment of the requirements
for the degree of
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DEDICATION

This thesis is dedicated to my parents
John and Dee Tilley
for their unconditional love, support, and encouragement.

ACKNOWLEDGMENTS

First and foremost, I would like to thank Dr. Kevin Minor for his guidance and support throughout this process. Without his mentoring and assistance, this would not have been possible, as would many of the other opportunities I have been presented in my young academic career. I owe much to him. I would also like to thank my committee members, Dr. Kristie Blevins, for her generosity in data sharing and assistance in writing and analysis, and Dr. Tyler Wall, for his content suggestions and critiques. Both have been very influential in crafting this work and in helping me to become a more competent researcher and writer. Furthermore, I would also like to thank my colleagues and cohort for not only their inspiration and encouragement, but also for their friendship. Finally, I would like to thank my family, friends, and the many inspirational people that I have been fortunate enough to encounter and befriend throughout my life.

ABSTRACT

While it is generally assumed that virtually all persons executed in the United States are poor, the social class – execution link has not been well documented or theorized in the literature. Far more research has analyzed the relationship of race and gender to execution. Using data on executions carried out in Texas between 2000 and 2012, individuals sentenced to death from the Supreme Court’s *Gregg* decision through 1997 in Tennessee, narrative case studies, and a content analysis of state-defined mitigating circumstances, this study provides both detailed documentation of the social class characteristics of those executed, as well as a theoretical account of the social class – capital punishment relationship. By drawing on the works of scholars such as Bourdieu, Kaplan, Haidt, Bandura, and Black, an integrated framework for conceptualizing the manner in which social class conditions capital decision making across various points of the legal process is presented. Succinctly stated, the theoretical model used to explain this relationship contends that the death penalty functions as part of a wider ideological system of power and social control. Sporadic death sentences prop up ideological imagery of justice and safety without representing the state as unduly repressive, and thus allow expendable others (i.e., the poor) to become scapegoats for the continuance of a system of subjugation. Essentially, capital punishment is influential in shaping hegemonic ideology that, in perpetuating harsh treatment of the poor, reinforces class stratification amidst *claims* of egalitarianism. Therefore, the analysis implies that social class bias should receive attention in capital punishment debate commensurate with issues such as race, gender, age, and mental functioning.

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CHAPTER 1

INTRODUCTION

It has long been argued that capital punishment is administered in a capricious and arbitrary manner (Akhtar, 2010; Bowers, 1983; Bowers & Pierce, 1980; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Paternoster, 1993; Phillips, 2009; Vick, 1995). Yet the demographic profile of death row populations is patterned rather than random. When examining death row demographics, it is rare to find women and rarer still to find middle or upper class individuals who have been convicted of capital murder and are awaiting execution. Those on death row are disproportionately male and members of an ethnic minority group. Virtually all have a relatively low social class standing and lack many of the socioeconomic characteristics that are valued within capitalist society (Akhtar, 2010; Bowers & Pierce, 1980; Brandon, 1911; Cole, 1999; Hagan, 1974; Haney, 1995; Johnson & Johnson, 2001; Reiman & Leighton, 2013). Far more variation is apparent in death row composition by both race and gender than by class. As of January 1, 2013, 63 females were on death row awaiting execution, or 2.02% of the total death row population, and 1,351 whites, or 43.17% of the total death row population (DPIC.org). Rather than being a variable in the study of death row demographics, social class is basically a constant; virtually every individual sentenced to death falls within the realm of indigence.

The lower social class profile of death row has largely been taken for granted in the literature. It has seldom been documented in a systematic fashion, and even more rarely has it been theoretically conceptualized. This omission has resulted in little knowledge about how class shapes the entire capital punishment process. Consequently, the implications of class bias for the justness of the system remain underappreciated. In contrast, we have much better understanding of how race and gender condition capital punishment decisions (Akhtar, 2010; Banner, 2002; Bowers & Pierce, 1980; Howarth, 2002; Luginbuhl & Burkhead, 1994).

For almost 50 years, the arbitrary and biased nature of the death penalty has been repeatedly noted by lawyers, abolitionists, advocates, and members of the Supreme Court. In his concurrence on the 1972 *Furman v. Georgia* decision, former Supreme Court Justice Thurgood Marshall stated, “It... is evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged members of society. It is the poor, and the members of minority groups who are least able to voice their complaints against capital punishment. Their impotence leaves them victims of a sanction that the wealthier, better-represented, just-as-guilty person can escape.” Since this admission and the landmark *Furman* decision, however, little has changed (Bowers, 1983; Bowers & Pierce, 1980; Haney, 1995). Capital punishment remains capricious in nature and disproportionately applied to the poor, and those who are financially capable of maneuvering throughout the legal system are still able to circumvent death regardless of their innocence or guilt (Akhtar, 2010; Brandon, 1911; Cole, 1999; Hagan, 1974; Reiman & Leighton, 2013; Vick, 1995).

Largely as a result of the preferential treatment of the wealthy over the poor, most persons prosecuted for capital murder are not afforded the legal resources necessary to adequately support their defense and are therefore subjected to harsher sanctions than their wealthier counterparts (Chiricos & Waldo, 1975; Vick, 1995). In the event that a defendant is not indigent and can initially retain private counsel, it is very unlikely that he or she will be able to maintain it as a result of the length and extreme expense of the modern capital process. Inevitable resource depletion and indigent status force most capital defendants to rely on court-appointed counsel for at least a portion if not their entire trial (Beck & Shumsky, 1997; Bright, 1994; Vick, 1995; Wheeler & Wheeler, 1980). To no surprise, then, most of those awaiting execution have never known the advantages of ample resources and a formidable defense team, and likely never will.

To solely acknowledge financial resources as separating the wealthy from the poor is to overlook a fundamental sociological truth, however. Social class goes much deeper than the ability to retain legal counsel and successfully avoid the death penalty. Those who are of lower social class are disadvantaged at every phase of the legal process (Reiman & Leighton, 2013) and face substantial disadvantage on the very basis of their socialization (Mitchell & Sidanius, 1995; Seron & Munger, 1996). Law making itself favors the behaviors of the upper and middle classes over the lower class (Cole, 2001; Jankovic, 1978; Seron & Munger, 1996). Hegemonic ideologies promote middle and upper class conceptions of what actions are and are not acceptable in terms of cultural norms and criminality. Preconceived notions of victim and offender worthiness and blame influence the attitudes and beliefs of virtually everyone involved in the capital trial process. Additionally, the discretionary power exercised by middle class legal actors of

the system, such as the police, prosecution, defense attorneys, and judges, is heavily shaped by middle and upper class conceptions of conduct (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995; DeMay, 1998; Haney, 1995; Horowitz, 1997; Phillips, 2009; Vick, 1995). Consequently, social class conditions considerations given to appropriate punishments, the worth of the defendant, and the likelihood of their redemption. Further, the judgment of lower class persons in these cases is hardly judgment by a jury of their peers, but instead by individuals from higher classes, many of whom tacitly consider themselves to be socially and morally superior (Haney, 1995; Irwin, 2005).

In order to explain the ways in which social class so fundamentally shapes the functioning of capital justice, aspects of class besides financial resources need be explored. A theoretical foundation is required that addresses multiple aspects of social class and how these impact capital punishment decisions ranging from the writing of capital statutes to actual execution. Moreover, the theoretical conception for making sense of class and capital punishment must take into account both human agency and action as well as social context. To achieve this end, the theoretical foundation of this study will consist of a combination of Bourdieu's (1986) forms of capital, Kaplan's (2012) work on ideological narrative construction, Haidt's (2001) theory of moral intuition, Bandura's (1999) theory of moral disengagement, and Black's (1989) work on the upward and downward movement of capital law. Furthermore, the work of Karl Marx on capital and class, and how these produce poverty and exploitation, will also be discussed. Unlike the present study, extant accounts of class bias in the literature often ignore or downplay human agency. Thus, an important advantage of this theoretical

foundation is its infusion of human agency, through the social psychological work of Bandura and Haidt, into the structural and cultural analyses provided by Bourdieu, Kaplan, and Black.

Taken together, then, these theories move us toward a unified explanation of the interactions between social class and capital punishment. More specifically, they serve to explain class-based lifestyles and dispositions, the ideological construction of narratives on defendant worthiness, the ways in which moral judgments are constructed and rationalized, how the process of moral disengagement works, and the general nature of the law itself in regard to values placed on victim and offender status. Since social class tends to remain relatively constant throughout one's life, these theories provide an excellent tool for understanding the conditioning role that social class has in virtually every aspect of the legal process.

It is also important to point out that the practice of almost exclusively executing the poor is not historically invariant. While the poor have always been the disproportionate target of capital punishment, traditionally, state-sanctioned executions were also carried out against members of higher social classes (Whitman, 2005). In Europe during the seventeenth and eighteenth centuries, nobles, aristocrats, and members of the monarchy were sentenced to death at a comparable rate to peasants and ordinary townspeople, with the only notable difference between the classes being the method of execution that was used (Whitman, 2005). Appropriate methods were determined based on the social class of the accused and ranged from the guillotine to hanging. Persons of higher social class were typically granted mercy and put to death in a way that was deemed humane and dignified, such as the guillotine, whereas persons of lower social

class were granted less mercy and dignity and were often put to death by hanging (Whitman, 2005). This pattern began to change, however, after the establishment of the American colonies where hanging emerged as the preferred method of execution for all classes. Gradually, though, death began to be more and more reserved for persons of lower social class, ultimately exempting those with financial means almost entirely. This is something with which theory needs to reckon. A key question that emerges, one that is important for understanding social class and capital punishment in contemporary society, is what specifically changed and why did this shift occur?

The broader contextualization that will be used to situate this study is the mass incarceration movement spanning from the 1970s through present day. A great deal of work has examined factors that have contributed to mass incarceration, as well as its manifestations and consequences (e.g., Garland, 2001; Irwin, 2005; Simon, 1993; Wacquant, 2010; Western & Pettit, 2004). The most prominent of these manifestations include the rising rates of imprisonment, the administration of longer criminal sentences, and the increased contact of minority populations with the criminal justice system (Clear, 2009). Of particular relevance to this study, though, is the revivification of the death penalty. To illustrate, the peak year for capital punishment in the modern era (since 1977) was 1999, wherein 98 individuals were executed. In a continuance of this trend, 2000 was the second highest year as 85 individuals were executed (DPIC.org). Through mass incarceration and “get tough” political ideology, the harsh criminal sanctioning of street and violent crime, such as capital murder, has largely become hegemonic, or common sense and taken for granted, within American culture. As will later be shown, this trend has disproportionately affected individuals from the lower social class through

an almost exclusive targeting of their actions and behaviors in terms of the criminal law and what crimes are considered appropriate for the death penalty.

The impact of social class on capital punishment is worth studying because while it is well known, and essentially taken for granted, that most persons executed are poor, little attention is paid to why this is so. More fundamentally, with the exception of Kaplan (2012), few researchers have empirically examined the social class-capital punishment relationship. By contrast, discrepancies in the administration of the death penalty concerning race are more often addressed and questioned (Baldus, Pulaski, & Woodworth, 1983; Blevins & Blankenship, 2001; Bowers & Pierce, 1980; Bright, 2008; Cole, 1999; Luginbuhl & Burkhead, 1994; Seron & Munger, 1996; Western, 2004). As such, a temptation can arise to prioritize one variable (race or class) over the other. However, the epistemological framework of reference for this thesis is that it is extremely challenging, and makes little sense, to prioritize one variable, race or class, over the other in terms of potency in shaping capital punishment decisions. In fact, it could be misleading, if not detrimental, to do so; depending on circumstances, one variable could overshadow the other. Considering this, the purpose of this study is not to pit class against race in a contest of causal prioritization. Furthermore, the focus of this study on class is not at all intended to detract from the salience of race, but rather to examine the factor of the two (i.e., social class) that has been under examined relative to the other (i.e., race). It makes at least as much sense to give social class, a largely ignored constant, the same consideration that other demographic variables, such as race, have been given. From the standpoint of the capital punishment literature, then, studying the

relationship of social class to the death penalty addresses a glaring void in existing knowledge.

The purpose of this study is to empirically investigate the relationship between social class and capital punishment and to account for this relationship theoretically. From a policy perspective, social class should be questioned as a basis of classifying individuals for capital punishment just as variables like race, gender, age, and mental competency are. This study will employ a mixed methods approach consisting of both qualitative and quantitative data. It will use quantitative data on the social class characteristics of individuals executed in Texas between 2000 and 2012. The Texas data will be supplemented by a dataset of similar characteristics on individuals sentenced to death from the *Gregg* decision through 1997 in Tennessee. Qualitative data will consist of seven narrative case studies on selected individuals who were executed in 2013, an examination of state-defined mitigating factors for capital cases, and an extensive review of the literature that will cover topics such as social class, concentrated disadvantage, prosecutorial and judicial discretion, and the media's influence on public perception of both the defendant in capital trials and also of capital punishment itself.

CHAPTER 2

LITERATURE REVIEW

The influence that social class has in contemporary American society, whether displayed implicitly or explicitly, is all but undeniable. Systems of social stratification legitimize ranking people, based on their overall worth and contributions, and provide for the unequal distribution of resources among them (Kerbo, 2006). Virtually every social institution is to some degree biased in favor of those who occupy the highest ranks of the social class structure (Reiman & Leighton, 2013; Seron & Munger, 1996). The socioeconomic status of these individuals affords them a certain degree of privilege over those who hold less power and influence. This disparity, consequently, results in the unfair treatment, limiting of opportunity, and lack of political and economic power that is characteristic of the lower and impoverished classes of society.

The various entities that comprise the criminal justice apparatus, such as the courts, the police, and correctional agencies, evidence this trend. The trend is apparent not only when looking at the type of individual that is typically arrested, prosecuted, and imprisoned, but also in examining the language used in the creation of the criminal laws themselves (Reiman & Leighton, 2013). The legal process, as a whole, exerts a certain degree of bias in terms of individual treatment, and also as to whom, or which populations, it targets and effectively seeks to control (Wacquant, 2010). While factors such as race, age, sex, and the socioeconomic status of the defendant should be legally

irrelevant, studies have shown they can actually have a significant effect on the overall treatment of an individual by the courts and criminal justice system (Akhtar, 2010; Hagan, 1974; Western & Pettit, 2004).

The notion that the criminal justice system is biased in favor of some over others is not new (Akhtar, 2010; Bohm, 2011; Bowers, 1983; Bowers & Pierce, 1980; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Paternoster, 1993; Phillips, 2009; Vick, 1995; Western & Pettit, 2004; Whitman, 2005). Many researchers have noted that those with the least power in society, such as racial minorities and the poor, often bear the brunt of the state's efforts to enforce social control (Jankovic, 1978; Reiman & Headlee, 1981; Seron & Munger, 1996; Western & Pettit, 2004). This has not always been the case, however, in that traditionally, efforts by the state to exert social control through violence were carried out against individuals from the lower, as well as the higher, social class (Whitman, 2005). As such, during the seventeenth and eighteenth centuries, European nobles, aristocrats, and members of the monarchy were criminally sanctioned and sentenced to death at a comparable rate to peasants and ordinary townspeople. The only notable difference in the treatment of these individuals was the method in which they were executed, with persons from the higher social class being shown more lenience and mercy than those from the lower social class (Whitman, 2005).

A conflict perspective of the criminal justice system holds that an individual from the lower social class is, in the event that he or she is tried and found guilty of a crime, much more likely to receive a harsher criminal sanction than someone belonging to the middle or upper class of the social class structure (Chambliss, 1969; Chiricos & Waldo, 1975; Vick, 1995). Additionally, criminal sanctions have been shown to be proportional

to the social distance between those who are receiving the sanction and those who are acting as the agents of social control (Jankovic, 1978). Thus, the greater the social distance between legal actors and offenders, the greater the criminal sanction may potentially be (Jankovic, 1978). This becomes particularly true when examining the characteristics of those who receive death sentences over those who do not, where collectively, such sentences are concentrated among persons belonging to the lower social class (Akhtar, 2010; Chiricos & Waldo, 1975; Hagan, 1974; Jankovic, 1978).

The linkage between social distance and criminal sanctioning becomes most evident when examining the individuals who are typically arrested, which tend to be the poor and racial minorities, and the types of crimes that are most often prosecuted, with street crime being far more vigorously targeted than white collar or corporate crime (Reiman & Leighton, 2013). Disproportionately, individuals from impoverished backgrounds are more readily confined to not only prisons and jails, but also to dilapidated urban neighborhoods that foster disorder, social chaos, and criminal activity (Sampson, 2003; Western & Pettit, 2004; Wacquant, 2010). This disadvantaged group collectively shares similar demographic and socioeconomic features, as well as socialization patterns and experiences, and are subjected to a more heavy-handed form of scrutiny by the state compared with their wealthier counterparts. Persons from this group have been described as suffering from “concentrated disadvantage,” and are severely limited in their opportunities and resources, due largely to a lack of neighborhood social cohesion and collective efficacy (Sampson, 2003). The same neighborhoods that are considered high in concentrated disadvantage, and that are characterized by poverty, residential instability, female-headed households, immigrant heterogeneity, and

dilapidated housing, also disproportionately suffer from high rates of crime, including capital ones, violence, mental illness, and forms of abuse characteristic of the death row population (Haney, 1995; Sampson, 2003).

Differences in the knowledge, resources, and socialization patterns of individuals belonging to the lower social classes, versus those belonging to the higher social classes, are only further exacerbated by the institutional biases of the legal process itself (Seron & Munger, 1996). Crimes of the societal elite, or corporate and white collar crimes, are often overlooked or not treated as criminal at all, while conversely, the actions and behaviors of those belonging to the lower social classes are overly criminalized (Reiman & Leighton, 2013). This discrepancy takes the focus off of the behaviors of those who hold considerable power and control within society. It also creates, with the aid of the mass media, a perceived dangerous surplus population, some members of which constitute what Spitzer calls social dynamite (Spitzer, 1998), which the general public is told to fear and which then become “otherized” (Garland, 2001). The policing of street crime, over corporate or white collar crime, thus becomes justified as it is marketed as a necessity and a major social problem that needs to be adequately addressed (Reiman & Leighton, 2013). Essentially, the law serves to legitimate the authority and actions of the powerful, enabling them, as well as the state, to carry out a wide latitude of actions for achieving their desired ends (Seron & Munger, 1996; White & Van Der Velden, 1995).

In terms of capital punishment and its modern use, legally biased and disproportionate treatment is frequent and magnified as those with substantial means are often able to successfully elude execution (Akhtar, 2010; Bohm, 2011; Bowers, 1983; Bowers & Pierce, 1980; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead,

1994; Phillips, 2009; Vick, 1995). Social dominance theory offers an interesting perspective on this disparity between the classes and serves to illustrate the effects of class-based privileges that often accompany occupying a higher social stratum. Social dominance theory is a general theory of group relations that states that societies are predisposed to form social hierarchies based on the social ideology and institutional behaviors that are prevalent within the society (Akhtar, 2010; Mitchell & Sadanius, 1995). The social dominance model also maintains that there are three main factors which determine the social hierarchy of a given society: behavioral asymmetry, individual discrimination, and institutional discrimination, with institutional discrimination being mainly responsible for the differential treatment of groups within society (Akhtar, 2010; Mitchell & Sadanius, 1995). It follows then, by applying this model to contemporary society, that capital punishment is affected by the social status of the offender, as well as the victim, and is utilized as not only an instrument for controlling crime, but also as a means for maintaining the rigid boundaries of the social class structure (Black, 1989; Mitchell & Sadanius, 1995; Phillips, 2009).

While social dominance theory is a useful tool, it does not provide a significant analysis of the genesis of hierarchy for the purposes of this research. As such, an understanding of how the impoverished and surplus population is produced, via capitalism, is required. It is precisely here where Marxist theory, as referenced in Chapter 1 and elaborated in Chapter 3, comes into play. In short, the nature of capitalism is such that it produces poverty and a surplus population of the poor through the exploitation of the lower class (Lanier & Henry, 2010; Spitzer, 1998). Essentially, then,

the law functions as a tool of the ruling class, enabling them to exploit the lower class through labor, and a way to balance the contradictions inherent to capitalism.

Distinctions between social classes are sustained and reinforced predominantly by those who have an interest in maintaining these separations (Reiman & Headlee, 1981). The concept of social class has been well researched and has resulted in numerous stratification schemas, studies, and theorizations attempting to explain why class divisions exist and what the implications of socioeconomic status are, especially in relation to the criminal justice system (Bergman & Joye, 2001; Cirino, Chin, Sevcik, Wolf, Lovett & Morris, 2002; Farnworth, Thornberry, Krohn, & Lizotte, 1994; Kerbo, 2006).

The use and development of the death penalty has also been thoroughly documented in the literature. This research has resulted in numerous historical examinations, analyses of execution methods and purposes for executing, and arguments concerning disparities in extra-legal factors such as race, gender, age, mental illness, and mental competency (Banner, 2002; Bohm, 2011; Johnson, 2006; Garland, 2010; Garland, Meranze, & McGowen, 2011; Sarat, 2001; Whitman, 2005; Zimring, 2003). Research on the social class-capital punishment relationship, however, has been significantly lacking. There are limited studies attempting to document or explain social class and the impact that it has on the capital punishment process. The following sections provide a brief summary of several different aspects of capital punishment that have been the subject of past research, such as extra-legal factors, ideological narratives, and discretion. Additionally, indigent defense counsel and the media and public perception will also serve to highlight existing studies relevant to the present research.

Studies of Capital Punishment

Since the landmark *Furman* and *Gregg* decisions, which ruled on the constitutionality of the death penalty under the Eighth and Fourteenth Amendments, were handed down by the Supreme Court in 1972 and 1976 respectively, numerous studies have been conducted on the use of the death penalty in the modern era (Akhtar, 2010; Bowers, 1983; Bowers & Pierce, 1980; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Paternoster, 1993; Phillips, 2009; Vick, 1995). Broad approaches focusing on the system as a whole, as well as those focusing more narrowly on the states, have been taken (Bowers, 1983; Bowers & Pierce, 1980). Studies have focused on everything from regional distributions of death sentences to average amounts of time spent on death row (Bohm, 2011). While it has been found that the average amount of time between being sentenced to death and being executed has significantly increased since *Furman*, due mostly to “super due process” protections established by the Supreme Court, states and regions active in executing have remained relatively constant over time (Bohm, 2011).

Numerous studies examining the arbitrary nature of the death penalty reach the conclusion that, even under post-*Gregg* practices, capital punishment is administered in a disproportionate and capricious manner (Bohm, 2011; Bowers, 1983; Bowers & Pierce, 1980; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Paternoster, 1993). Biases related to social class, race, and gender are shaped by judicial and prosecutorial discretion, resource availability to the defense, and the perception of the defendant portrayed by the media and other court room actors in relation to the general public. Substantial evidence exists that capital punishment is administered in an economically

discriminatory way (Kaplan, 2012), that even-handed administration is lacking (Johnson & Johnson, 2001), and that capricious and biased practices are largely attributable to actions of judges, the prosecution, and the jury (Luginbuhl & Burkhead, 1994; Paternoster, 1993). Regardless of what the specific source of bias may be, however, it is largely agreed that irrelevant extra-legal factors should not have an impact on legal decision making.

Extra-Legal Factors and the Criminal Justice System

Collectively, extra-legal factors have been the subject of many social science inquiries related to the death penalty (Akhtar, 2010; Bohm, 2011; Bowers, Foglia, Giles, & Antonio, 2006; Brandon, 1911; Hagan, 1974; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Mitchell & Sidanius, 1995; Seron & Munger, 1996). Most investigations agree that while these factors, such as race, class, and gender, should have no bearing on legal decision making, they ultimately prove very influential in shaping the discretionary power exercised by judges, prosecutors, the police, and trial juries (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995; DeMay, 1998; Horowitz, 1997). While effects may be marginal in some cases, the personal attributes of offenders have been shown to influence decision making at virtually every stage of the legal process (Hagan, 1974), such that biases can accumulate across successive stages of decision making. Factors that should be legally irrelevant favor the white and the rich over the poor and minorities, and influence legal, and especially capital, processes. This notion was addressed by one study using a conflict perspective, which found that when sanctions are imposed, the most severe are administered to the lower class (Chiricos & Waldo, 1975). Another study more skeptical of the conflict perspective determined that the legal

system should be characterized not as class-transcending, but as an expression of class interests and their protections (Jankovic, 1987). Both agreed, however, that lack of evidence that whites and the rich are treated more harshly than minorities and the poor is hardly a coincidence in regard to the legal system.

Aside from the particular characteristics of a given defendant, both in capital and non-capital cases, many have cited the law itself as being biased in favor of those with higher social class standing (Brandon, 1911; Cole, 2001; Cooney, 1997; Haney, 1995; Reiman & Leighton, 2013). It has been argued that law promotes inequality from the top down, as well as from the bottom up, and that the legal profession is largely premised on a social class hierarchy (Cole, 2001; Seron & Munger, 1996). It has also been suggested that not only is social class a significant factor in the treatment of individuals by the criminal justice system, but it is also impacted by social control itself in that social control is organized in such a way that it differs on a class by class basis (Seron & Munger, 1996). Through both policing tactics and welfare programs, those belonging to lower social classes and less privileged groups experience a special kind of “governing the poor,” from which persons of means are often exempted (Simon, 1993; Cohen, 1985; Sampson & Laub, 1993; Seron & Munger, 1996; Wacquant, 2010). In essence, our legal system and hegemonic conceptions of criminality are structured in a way that excludes a variety of harmful actions typically committed by persons of means, while over exaggerating and magnifying less harmful actions that are characteristic of the poor (Reiman & Leighton, 2013).

The criminalization of certain harmful behaviors over others is comparable to a management scheme that allows the state to not only reproduce class disparities, but also

to legitimate them through the portrayal of criminalizing behaviors universally across all social classes (Reiman & Leighton, 2013; White & Van Der Velden, 1995). In staying with the same premise of disproportionate applications of the criminal law, equality and equitable justice have proven to be elusive (Cole, 1999). While the criminal justice system espouses equality under the law, the administration of the law itself is based on the exploitation of inequality. Our criminal justice system is dependent upon inequality and discrimination, based on race, class, gender, and age, among other things, in order to function and remain operational (Cole, 1999). Without these disparities, the most privileged members of society could not enjoy the disproportionate protection of constitutional liberties that they do, and the trend of mass imprisonment, mostly of the underclass, could not be sustained or justified from a policy perspective. The tension that exists between protecting constitutional rights and protecting citizens from crime has essentially resulted in two systems of justice, one for wealthy and educated persons and one for poor and uneducated persons (Cole, 1999). Thus, the treatment of a criminal offender is affected not only by their status and particular characteristics, but also by the status and characteristics of other legal and non-legal actors involved with their case. The character and status of the victim, for example, has been shown to weigh heavily on the punishment, judgment, and amount of law that is deemed appropriate and necessary to remedy legal discrepancies in capital cases (Phillips, 2009).

Murder Stories: Ideological Narratives on Social Class and the Death Penalty

A review of the literature revealed only two empirical studies that have explicitly addressed the relationship between social class and capital punishment. The first examined occupational status (Harries & Cheatwood, 1997), while the second analyzed

the education level of individuals who had previously been executed (Marquart, Ekland-Olson, & Sorensen, 1994). Findings from the former revealed lower status jobs to be significantly overrepresented among these individuals, and findings from the latter revealed over 90% of these persons to have had less than a high school education. Aside from these studies, and with the exception of one study on the ideological narratives of capital punishment, little research has explicitly addressed social class and the death penalty. *Murder Stories: Ideological Narratives in Capital Punishment*, investigates the use of legally-constructed narratives of causation in order to illustrate the hegemonic qualities of the “American Creed” in capital murder trials (Kaplan, 2012). Through a discussion of competing explanations on the use, development of, and reasoning for capital punishment, in addition to a discussion of its predominate exclusivity to the lower social class, the author draws attention to what he refers to as the American Creed. This creed refers to the hegemonic ideologies that serve to simplify conceptualizations of murder, execution, human agency, and the human mind in order to fundamentally disadvantage defendants in capital cases (Kaplan, 2012). The American Creed consists of a constellation of values that include liberty, egalitarianism, individualism, populism, and laissez faire, and supports the notion that “American exceptionalism” is largely responsible for the continued use of capital punishment in contemporary American society (Kaplan, 2012; Poveda, 2000; Steiker, 2002). The American Creed extends the notion of equality among available opportunity to all, while simultaneously tolerating extremes of economic inequality and justifying them based on American culture and meritocracy (Kaplan, 2012; Poveda, 2000).

From detailing the prosecutorial and defense narratives of trials for persons facing capital murder charges in California, the author illustrates that many of those involved in litigation and legal decision making have a limited ability to resist the discourses of the Creed and hegemonic American ideologies. These ideological discourses convey what it means to be an offender, and conversely what it means to be a victim, in a way that constructs judicial, jury, and media perceptions that favor the prosecution over the defense (Kaplan, 2012). Defendants, subsequently, are left fundamentally disadvantaged at every stage of their capital trial due largely to preconceived notions about criminality that are taken by many to be true and that are reinforced by both the court and the media. These reinforced perceptions are left largely unquestioned and are assumed by most to be true regardless of their actual legitimacy.

As previously noted, those convicted of capital murder and sentenced to death are overwhelmingly poor. As a result of this, typical life experiences characteristic of living in poverty, such as physical, mental, and emotional abuse, parental neglect, mental illness, chronic stress, and drug and alcohol use, are shared among many capital defendants (Haney, 1995). In order to widen the gap between persons of the lower and middle class and create an increasingly apparent social distance, prosecution in capital cases typically follows a pre-described narrative that fashions the defendant in an unfavorable light and attributes demonic qualities to their character (Kaplan, 2012). This narrative makes condemning capital defendants to death morally acceptable and also justifies their punishment as fair and the only way in which they can atone for their harmful actions. The typical prosecutorial narrative follows the format of the victim as the protagonist, whose “steady state” and placid world is disrupted by the trouble of the

defendant, with the only redress for this infraction being death (Kaplan, 2012). The ultimate lesson from this is that retribution is the only way in which society can give the victim's family what they deserve and respond to the irreprehensible act of the defendant (Kaplan, 2012). By framing the defendant as evil, an animal, and as the killer of the innocent and respectable victim, a powerful message is conveyed to the jury that the defendant is subhuman and unworthy of redemption or life (Kaplan, 2012). Through these ideological narratives, the author asserts that the prosecution is effectively able to assign individual accountability solely to the defendant, thus sourcing both the crime and the trial to their heart, mind, and soul (Kaplan, 2012). Justice becomes equivalent to capital punishment.

While the prosecution relies heavily on notions of the American Creed like individualism and populism in constructing their narratives against the defendant, the defense also relies on the Creed in order to appeal to the sentiments of the jury. Revenge, diminished autonomy, and the possibility of resistance play into these narratives, as concepts used by both the prosecution and the defense, to both support and directly challenge the notions of the American Creed and what it means to be a victim and an offender. Whereas prosecutorial narratives typically play off of the Creed to attribute all blame to the defendant and to their criminal action, defense narratives tend to focus on context, using concepts of the Creed such as individualism, populism, egalitarianism, and libertarianism to appeal to the jury (Kaplan, 2012). An important point to take away from the author's argument on the hegemonic qualities of the American Creed is that through its ideologies and pervasiveness, the Creed permeates virtually every aspect of society and thus cannot be effectively challenged by either the prosecution or the defense.

The only real difference between the defense and prosecution's narratives in capital cases, then, is the version of (i.e. the "spin" on) the Creed that they employ (Kaplan, 2012).

Prosecutorial, Judicial, and Jury Discretion

In addition to the way in which society is structured to maintain rigid class boundaries, the individuals within these classes are often times largely responsible for the disparate treatment that takes place within the criminal justice system, especially in regard to capital punishment. Public officials, such as law makers, the police, judges, and prosecutors, for example, typically come from the middle or more affluent classes of the social structure, whereas individuals who are apprehended and prosecuted for serious street crimes, such as capital murder, come disproportionately from the lower or impoverished classes of the social structure. As a result, there is usually a great deal of social distance between the legal actors of the court and the defendant, which ultimately makes it much easier for them to otherize that person and impose a death sentence. A problematic situation frequently emerges in terms of the discretion that is allotted to these individuals and used in legal decision making (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995; DeMay, 1998; Horowitz, 1997; Wheeler & Wheeler, 1980).

Poverty, and the socioeconomic status of an individual, has been shown to exert a substantial influence on the death penalty, both before capital cases are prosecuted and during the trial process (Johnson & Johnson, 2001; Vick, 1995). This is largely due to the fact that capital cases are incredibly high stakes, in terms of both prestige and credibility for the state, as well as much more expensive than noncapital cases to litigate

(Akhtar, 2010; Bohm, 2001; Johnson & Johnson, 2001). Since the decision of whether a death sentence will be sought rests solely with the prosecution, the socioeconomic status of the defendant, as well as the likelihood of securing a conviction, play heavily on decisions to charge capitally or with a lesser crime. Those who come from positions of poverty are often times far less capable of retaining quality legal representation than those who are from the more affluent classes of the social structure and are thus judged by the state to be a much easier case to prosecute and secure a conviction against (Johnson & Johnson, 2001). Prosecutorial discretion, then, is largely responsible for the disparity between the social classes of those who are prosecuted for capital crimes and those who are not.

While prosecutorial discretion can be seen as a staple of the criminal justice system, it can also be quite problematic and dangerous in that a single individual or small group is entrusted with the sole responsibility of determining whether or not to seek death against someone believed to have committed a crime (Bright, 1994; Horowitz, 1997). American prosecutors can largely be characterized as possessing unrestrained power in that they have to follow few procedural laws in determining what offense, what degree of an offense, or the number of counts with which to charge someone, or whether or not they will negotiate a plea bargain (DeMay, 1998; Horowitz, 1997). It is easy to see how individual biases may potentially play a substantial role in the way justice is administered in a specific jurisdiction. Numerous factors, such as political elections, financial budgets, victim or family member desires, and media coverage or public outrage, have the potential to affect the ultimate decision regarding the fate of a certain individual (Bright, 1994; DeMay, 1998; Horowitz, 1997). Additionally, other forms of arbitrariness, such as

race, gender, and political and subjective judgments have also been shown to impact the decision of a prosecutor in what penalty to seek against a defendant (DeMay, 1998).

In addition to the prosecution and defense counsel, the judge, and the discretion allotted to him or her, also plays a major role in whether or not a defendant will be sentenced to death (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995). Judicial decisions in capital cases have increasingly become a campaign tactic in both judicial and non-judicial elections, which has led to judges being increasingly pressured to avoid decisions that may be unpopular with the public (Bright & Keenan, 1995). Additionally, the desire for a judge to keep his or her seat on the bench during an election year, the desire for a promotion into a higher court, and/or personal biases or political affiliations may also have a substantial effect on judicial integrity and decision-making as related to capital murder cases (Bright & Keenan, 1995). This notion of legal discretion also extends to members of the jury who each exert a significant amount of discretion in reaching legal decisions relevant to the defendant in capital cases (Bowers, Foglia, Giles, & Antonio, 2006; Luginbuhl & Burkhead, 1994). With the above points being considered, it is difficult to argue that unrestrained discretion in the criminal justice system, and especially in cases related to capital punishment, is not a potentially biased and even dangerous form of power.

Indigent Defense: The Disadvantages of Court Appointed Counsel

Providing defendants with competent legal counsel is essential to ensuring fair and equitable treatment under the law. As stated by former Supreme Court Justice Hugo Black in *Gideon v. Wainwright*, “Reason and reflection require us to recognize that in our

adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.” Whether obvious or not, the defense provided to those classified as indigent has an impact on virtually every aspect of their capital trial (Beck & Shumsky, 1997; Bright, 1994; Phillips, 2009; Vick, 1995; Wheeler & Wheeler, 1980). Defense counsel plays a significant role in not only the outcome of the trial, but also in the prosecutor’s initial decision as to whether or not they will seek death against a defendant for a capital crime (DeMay, 1998). Those who lack the financial resources necessary to retain counsel, which is the vast majority of capital defendants, often have little choice as to the quality of legal counsel that they will be provided by the court. Ineffective assistance of counsel is a common claim by defendants who have been convicted of capital murder and who are appealing their death sentence. Often, defense counsel appointed by the court or secured through a public defender agency fails to properly investigate many aspects of the defendant’s case and prior life that could increase their favorability and serve as mitigating circumstances in their case (Bright, 1994; Haney, 1995; Vick, 1995). Also, these attorneys often lack the financial resources necessary to mount optimal defenses for their clients, such as in the case of needed investigations, psychological testing, and experts or witnesses (Bright, 1994; Haney, 1995; Vick, 1995).

Indigent defendants often find themselves at the mercy of public defenders or court appointed counsel who are inexperienced, particularly in capital litigation, underpaid, overworked, and lacking the necessary resources to adequately defend their clients (Beck & Shumsky, 1997; Bright, 1994; Haney, 1995; Phillips, 2009; Vick, 1995).

Inadequate legal representation is pervasive in jurisdictions that account for the majority of the death sentences carried out in the United States, with the American Bar Association acknowledging inadequate counsel at capital trials as being one of the principal failings of the capital punishment system in the United States today (Bright, 1994). It has been shown that indigency of defendants is a relatively good indicator as to whether or not a district attorney considering the possibility of asking for the death penalty in a capital murder trial will do so (DeMay, 1998; Johnson & Johnson, 2001). Research has also demonstrated that the death penalty is more likely to be sought by the prosecution and imposed by the courts against those who have court appointed counsel over those who privately retain legal counsel (Beck & Shumsky, 1997; Wheeler & Wheeler, 1980). Since the decision of the prosecution as to whether to seek death can largely depend upon what they feel their chances are of securing a conviction, the defense counsel, as well as his or her experience and resources, may ultimately be the determining factor between life and death for a defendant.

The subject of defense counsel itself occupies a prominent niche in the literature (Beck & Shumsky, 1997; Bright, 1994; Phillips, 2009; Vick, 1995). One study examining the effects of legal counsel in Harris County, Texas, found that of the defendants being studied, those who hired counsel for their entire case were never sentenced to death, those who hired counsel for a portion of their case were substantially less likely to be sentenced to death than those who did not, and that hiring counsel is not a sole province of the wealthy due to the fact that virtually all capital defendants are poor, and some get financial assistance from family or friends (Phillips, 2009). Super due process protections now in place to prevent capricious and arbitrary practices, and to

provide legal representation to all, have been shown to do little to resolve problems associated with the death penalty. In fact, most of those who receive death sentences are largely indistinguishable from those who do not (Vick, 1995). Thus, individuals who have committed similar crimes under similar circumstances often receive substantially different punishments depending on the attitudes and beliefs of the particular legal actors who are involved with their case. There are a number of myths held by the public, however, that largely obscure this fact and that promote the notion that capital punishment is reserved and only used against the “worst of the worst” and the truly guilty (Haney, 1995).

The practice of capital punishment is premised upon a number of myths that the general public holds to be true and uses, sometimes unknowingly, in order to justify their feelings and decisions in regard to the death penalty (Haney, 1995). There are three central myths that pervade the system and that work to disadvantage capital defendants who lack the financial means and adequate resources necessary to overcome them at trial. Among these myths are the myth of demonic agency, or the denial of the humanity of the offender, the myth of due process, or that there are substantial protections in place to ensure that only those who are in fact truly guilty are sentenced and put to death, and the myth of civilized exterminations, or that the execution of these persons is justified under law and suitable punishment (Haney, 1995). By socially constructing defendants in a way that makes them appear sub-human, ignoring relevant mitigating circumstances from their childhood and adult life, and by minimizing experiences to dismiss outside forces as having had an impact on their actions, individuals facing capital punishment have a very small likelihood of displaying any characteristics to the judge and jury that would make

them appear favorable and worthy of leniency or mercy (Haney, 1995; Kaplan, 2012). The social distance existing between the lower class defendant and the middle class judge and jury often proves too substantial to bridge.

Media and Public Perception and Influence

In terms of crimes and the prescribed punishments, the media has become a substantial influence in popular perceptions and misconceptions, shaping perceptions of both the prevalence and severity of crime within our society (Bandes, 2004; Dardis, Baumgartner, Boydston, Boef, & Shen, 2006; Niven, 2002; Unnever, Cullen, & Roberts, 2005). The media largely obscures the reality of crime and its occurrence by selectively reporting and over reporting on certain types of crime and issues. Violent street crime by far receives the most attention and is the most heavily reported. The amount of attention devoted to violent street crime is very misleading in that this type of crime is the least common in reality (Bandes, 2004). The dramatization of violent crime ultimately results in the creation of a moral panic and public outcry for state officials to do “something” to combat what seems to be a growing crime problem (Kraska, 2004). As a consequence, the lower classes of society, or the dangerous surplus population, are then often deemed undesirable “others” that must be heavily policed and incarcerated in order to make communities safer. Creating fear and misconceptions about crime, especially violent crime, is largely the result of an interconnected relationship between the government, the media, and private interests, and most often works to the advantage of those with substantial power and control within society by serving to advance their interests and justify the actions and decisions that they make in response to the perceived crime problem (Kraska, 2004).

While the media is largely responsible for distorting the public's perception of crime within society, it has an even more detrimental effect in terms of the perception that it creates regarding the death penalty and capital defendants (Dardis et al., 2006). Much like with violent crime or crimes committed by strangers, the media presents a distorted image of the death penalty and of those on trial for capital murder. Nevertheless, many hold such images to be true and do not question them. As a result of ideological narrative framing and the perpetuation of misinformation, the media has become a significant factor in giving capital punishment such resonance and staying power in this country (Bandes, 2004; Dardis et al., 2006). While many citizens do not support the death penalty and advocate more humane ways to punish, the media largely tends to cover the death penalty's popularity without caveats, limitations, or even mention of support for alternative sentences (Niven, 2002).

By just reporting that the majority of the public supports the death penalty, the media obscures the truth in that they often do not provide respondents with alternatives to the death penalty or include that many oppose this sanction when applied arbitrarily or for juveniles and the mentally ill. Experimental evidence demonstrates that, in fact, support for the death penalty decreases if people are exposed to factual information about capital punishment, including sentencing innocent people to death and personal characteristics about the defendant (Unnever et al., 2005). In terms of social class, information about capital defendants that can be mitigating in their trials and that relates to their social status, such as lack of education and employment, impoverished or disadvantaged background, history of abuse, and the existence of mental illness, almost always remains unreported by the media (Haney, 1995). Thus, in the event that the

media did provide information about alternatives or include the whole truth, public support for the death penalty would likely decrease (Sandys & McGarrell, 1995).

The public perceptions that are held overall toward crime, criminals, and capital punishment are very much in line with the retributive, rather than rehabilitative, punishment ideology that has been characteristic of American society since the 1980s (Cullen, Fisher, & Applegate, 2000). However, when presented with appropriate alternatives in sentencing, it has been found that many will choose an alternative, such as life without parole, over capital punishment (Cullen et al., 2000). The socioeconomic and demographic characteristics of a given region, such as the wealth and size of the area and its current political climate, or of an individual, such as his or her age, race, sex, socioeconomic status, and gender, have also been shown to influence whether or not punishment practices are more retributive or rehabilitative in nature. In terms of capital punishment, these factors influence whether support exists for the death penalty (Baumer, Messner, & Rosenfeld, 2003).

Overall, the public's perception of capital punishment is shaped by the media and significantly influenced by the information, whether accurate or not, that it perpetuates. Information about both capital cases and defendants is often publicized before facts can be accurately verified and social backgrounds or mitigating factors can be established (Haney, 1995; Kaplan, 2012). As a result, not only are the actors of the legal system socially distanced from the typical lower class capital defendant, but so too the general public becomes increasingly distanced and removed. It is unsurprising, then, that the public is often unable to identify or empathize with the "dangerous other" who has committed what is portrayed to be a heinous and irreprehensible act.

CHAPTER 3

THEORETICAL FOUNDATION

Introduction

Though it has been well established that the poor and those belonging to the lower social classes are disproportionately targeted by the criminal justice system, a brief discussion of class inequality is necessary in order to better understand this phenomenon. The work of Karl Marx is particularly helpful in accomplishing this end in that his writings offer a theoretical foundation from which the mechanics of both classism and capitalism can be better understood. While much of his work does not directly deal with crime or the criminal justice system per se, Marx's ideas directly apply to capitalist and industrialized societies, such as the United States, and are thus able to offer an explanation as to why crime and criminalization occur and, subsequently, as to how the unequal distribution of power and resources throughout society is related to both. Ultimately, according to Marx, capitalism, and the division and increasingly growing separation between the social classes as caused by capital, serves to further the advancement of the interests of the few and the powerful, while simultaneously restricting the actions and behaviors of the poor and the marginalized. The inherent contradictions of capitalism are ultimately responsible for many of the class conflicts that occur and persist throughout industrialized society today.

Economic Context for Executing the Poor

Karl Marx wrote his theory during the Industrial Revolution, wherein he attempted to explain the dramatic changes that had occurred in the sudden restructuring of the prevailing social and economic systems of Europe. His theory linked economic development to social, political, and historical change, and was based on the principal conflict between the material forces of production, or a society's capacity to produce goods, and the social relations of production, or the relationships among the various members of society (Allan, 2005; Bernard, Vold, Snipes, & Gerould, 2010). In his theory, Marx posits that material forces of production follow a relatively continuous development throughout history, while social relations of production remain in particular patterns for continuous periods of time until forced to abruptly and violently change (Lanier & Henry, 2010). The social relations of a society ultimately serve to enhance the development of the social forces of production, but as time passes they become inconsistent with material forces and impede further development. As a result of this, the establishment of a new form of social relations, to once again enhance the development of the material forces of production, is required in order to continue society's economic and technological advancement (Allan, 2005; Bernard et al., 2010). Thus, the massive changes that occurred as a result of the Industrial Revolution, and that ended feudalism in Europe, were deemed by Marx to be the result of a necessary restructuring of the social relations of production. From this, feudalism, having become a hindrance to the further development of European society, was replaced by bourgeois capitalism (Bernard et al., 2010).

Capitalism is premised upon the notion of the “survival of the fittest” and ultimately results in the division of society into two distinct and increasingly conflicting classes (Lanier & Henry, 2010). One class consists of those who own a substantial amount of property within society and the means of economic production, while the other class consists of those who are un- and underemployed wage laborers (Bernard et al., 2010; Beirne & Messerschmidt, 2011; Lanier & Henry, 2010). Under capitalism, according to Marx, the major classes can be further divided to include the lumpenproletariat, or the unemployed and those unfit to work, the proletariat, or the skilled and unskilled workers, the middle class, and the capitalist class, or those who own capital (Beirne & Messerschmidt, 2011). As a result of the polarization between these conflicting classes, over time both property and wealth become more and more concentrated into fewer hands. The desire for mass accumulation subsequently leads to class conflict and the exploitation of the underclass, or the proletariat, by the owners of the means of economic production, or the bourgeoisie (Allan, 2005; Bernard et al., 2010; Beirne & Messerschmidt, 2011). Essentially, according to Marx, due to the practices and nature of capitalism, over time the bourgeoisie grow smaller in number and richer, as wealth accumulates and is concentrated among them, while the proletariat grow larger and poorer, as they are increasingly subject to the economic exploitation practices of the bourgeoisie and petty bourgeoisie managers (Bernard et al., 2010; Lanier & Henry, 2010).

The economic mode of production characteristic of a given society conditions the life processes of individuals in that society through what Marx refers to as ideology (Beirne & Messerschmidt, 2011). Ideology has multiple meanings and can encompass

any set of structured beliefs, values, and ideas, any set of mistaken or false beliefs, and any set of beliefs that both reflect and simultaneously distort social reality, thereby making particular policies and courses of action seem legitimate. In a capitalist society, the ideas of the bourgeoisie most often tend to be the ruling ideas and subsequently determine what is considered appropriate or acceptable in terms of behavior and action (Beirne & Messerschmidt, 2011). The ideas of the bourgeoisie also reflect, and simultaneously distort, social reality in a way that masks the exploitative nature of socially biased relationships between members of opposing classes. The beliefs that are derived from these social relationships, such as those associated with law and justice, in turn, serve the ideological function of masking the inherent nature of class oppression from those who are being oppressed and exploited (Beirne & Messerschmidt, 2011). Bourgeoisie ideology and the oppressive nature of capitalism, then, both govern and exploit the proletariat by contributing to and reaffirming the hegemonic representations of what has been determined to be fair and just under the law (Litowitz, 2000).

Hegemony is a condition in which group supremacy is achieved mostly through consensual submission rather than physical force (Litowitz, 2000). As used in Marxism, the concept of hegemony was developed by Gramsci and refers to the way in which the ruling capitalist class maintains control throughout society by means of ideology and hegemonic culture. Essentially, culture is used by the elite in order to perpetuate and sustain their hegemonic values and interests (Litowitz, 2000). This allows them to craft and continually reinforce the perception that such interests, beliefs, and practices are beneficial for everyone and constitutive of common sense, thus bolstering their economic and political interests. Eventually, hegemonic beliefs become so ingrained, so taken for

granted and regarded as common sense, that they go largely unquestioned and are unequivocally accepted as truth (Litowitz, 2000). Hegemonic beliefs and practices are endlessly reinforced throughout every social, economic, and political institution encompassed within society, in addition to what Marx calls 'civil society' or an individual's contacts, associations, and informal gatherings, which subsequently enables dominant groups to disseminate values and ideals with persuasion, leadership, and compliance, rather than brute force (Litowitz, 2000). Thus, the oppressed and exploited voluntarily partake in the acceptance of the values of the repressive group and subsequently become dominated through a manipulation of their habits, beliefs, and actions. Crime, and ultimately what it means to be a criminal, is largely attributable to the hegemonic beliefs that individuals accept and hold toward normative conduct and appropriate behavior and action within their society.

In terms of a criminological perspective and as related to class inequalities, two arguments advanced by Marx are particularly helpful in understanding the prevalence and treatment of crime in any given society. In his first argument, Marx states that it is essential to human nature that people be productive in life and in work (Bernard et al., 2010). Industrialized capitalist societies and surplus wage laborers hinder this desire, however, as large numbers of un- and underemployed people increasingly find themselves to be sedentary and unproductive in all aspects of their life. As a result of this unproductive state, these individuals, referred to by Marx as the lumpenproletariat and by Spitzer as social junk and social dynamite (Spitzer, 1998), become demoralized and are thus subject to all forms of crime and vice (Bernard et al., 2010; Lanier & Henry, 2010). According to Marx, then, prevailing economic conditions largely contribute to the level

of crime in a given society by affecting the productivity levels and labor wages of the underclass. The higher the level of surplus labor, the lower the demand and the greater the instance will be of a demoralized and unproductive lower class.

Marx's second argument differs from his first in that he fundamentally challenges the notion of the social contract, the proposition that law represents a consensus of the common good among members of society. Rather than exemplifying a consensus of general will, Marx contends that the unequal distribution of wealth in a society results in the unequal distribution of power throughout the society (Allan, 2005; Bernard et al., 2010; Lanier & Henry, 2010). Those without wealth inevitably have little power over circumstances affecting their lives and are ultimately subject to the will and desires of the bourgeoisie. The bourgeoisie are then able to control aspects of society in order to better represent and serve their own particular interests, while the proletariat remain continually exploited at the expense of those interests. Therefore, Marx viewed crime as a primitive form of rebellion by the proletariat against the dominant social order, not as the willful violation of the common good (Allan, 2005; Bernard et al., 2010; Lanier & Henry, 2010).

Capitalism encourages people to be greedy, selfish, and to pursue their own benefit without regard for their fellow citizens, a condition referred to by Bonger (1905) as egoism (Beirne & Messerschmidt, 2011). Due to the inherent nature of capitalism, crime becomes concentrated among the lower classes of society largely as a result of the justice system choosing to criminalize the greed of the poor, while overlooking the greed of the wealthy (Bernard et al., 2010). As a result of the Industrial Revolution and the replacement of feudalism with capitalism, many came to see the poor as deserving of their condition and as blameworthy for the misery that they suffered (Hamblet, 2011).

During this time period, Protestant religions also gained prominence and increasingly began to preach against almsgiving and financially supporting those in need; poverty was beginning to be looked upon as an undesirable and shameful state (Hamblet, 2011). Shaming practices, advanced by religion, capitalism, and an encouragement of entrepreneurship and wealth accumulation, served another purpose as well in that they made it easier for citizens to separate, otherize, and morally disengage themselves from those who were impoverished and seen as undesirable (Hamblet, 2011). The influential ideology of the rising bourgeoisie also led to the exemplification of the Protestant Ethic, or to the valuing of hard work and meritocracy over other individual characteristics and qualities. Inevitably, the dominant views of the poor quickly shifted from pity and an encouragement in almsgiving, under feudalism, to negative moral connotations in which the poor were regarded as morally decadent, dishonest, foul, lazy, and entirely deserving of their condition (Hamblet, 2011).

Historically, and as reinforced by bourgeoisie ideology, the prevailing view throughout most emerging capitalist and industrialized societies was that the poor were members of the lower and impoverished social class by their own fault and simply because they were deserving of their shameful plight (Hamblet, 2011; Poveda, 2011). In the modern era, and with the exception of being more divorced from religion, this view has remained significantly unchanged. Neoliberal ideology and practices under capitalism, such as free trade, deregulation, the privatization of markets, and wealth accumulation, have come to exemplify the notion that the poor are socially undeserving of relief, especially from state-based welfare programs (Wacquant, 2010). Developments in the United States since the 1970s have also created a system of economic and political

governance in which the heavy hand of the state strictly regulates those at the bottom of the social class structure while, conversely, governing those at the top through *laissez faire* (Wacquant, 2010). Private market solutions have increasingly been sought to solve modern economic and political problems and have resulted in a shift from a modern welfare state to a harsh punitive or penal state. This shift in orientations has been a major contributor to not only how the poor and impoverished are perceived by society, but also to how they are dealt with in terms of the criminal law and legal system. For these reasons, the actions and behaviors of the poor often come under far more state scrutiny than those of the upper and affluent social classes (Wacquant, 2010).

In terms of the criminal justice system and more specifically capital punishment, hegemonic ideology governing capital justice decisions remains fundamentally premised on the basis of individual worthiness (Kaplan, 2012; Miller & Browning, 2004). Individuals deemed most deserving of death, the “killable,” are overwhelmingly poor and considered by society to be lazy, untrustworthy, intellectually and morally inferior, a hindrance, and ultimately deserving of their fate, whereas those who have succeeded under capitalism’s standards, and who often belong to the middle and upper classes, are largely exempt (Hamblet, 2011; Poveda, 2000). Hegemonic justifications for determining who does and does not receive the death penalty are based on these perceptions and often serve as a mechanism that enables middle and upper class persons to morally disengage and socially distance themselves from the lower class Other, with whom they often cannot identify (Kaplan, 2012). Given this economic context and the nature of class inequalities from a Marxist perspective, some common explanations as to why the poor are disproportionately executed are considered below.

More Apparent Explanations for Executing the Poor

One of the primary and most obvious reasons that the poor are disproportionately executed is a lack of financial resources (Beck & Shumsky, 1997; Bright, 2004; Phillips, 2009; Vick, 1995). Unlike those who possess the financial means necessary to retain, and to also sustain, private legal counsel throughout the lengthy capital process, the vast majority of capital defendants are ultimately left with little choice as to the quality of legal counsel that they will be provided by the court. As a result of their impoverished state, most capital defendants are forced to rely on court appointed counsel and public defender services for the duration of their trial (Bright, 2004; Phillips, 2009; Vick, 1995). In the rare event that a defendant is not initially indigent, there is a very high likelihood that by the close of their trial they will be as a result of the extreme cost and length of the capital process (Kaplan, 2012). The inability to retain experienced and quality legal counsel can be detrimental to a capital defendant and can often be the difference between life and a sentence of death. Defense counsel plays a significant role in every phase of the capital process, influencing not only the decision of the prosecution to seek the death penalty, but also the success or failure of the initial trial and subsequent appeals (Beck & Shumsky, 1997; Bright, 1994; DeMay, 1998; Phillips, 2009; Vick, 1995).

The majority of attorneys appointed to capital defendants by the court lack the time, experience, and resources necessary to mount an optimal defense for their client (Beck & Shumsky, 1997; Bright, 1994; Phillips, 2009; Vick, 1995; Wheeler & Wheeler, 1980). Many are overworked and underpaid, carry case loads that limit the amount of attention that they can devote to a particular trial, and lack the financial resources necessary for needed investigations, psychological testing, and experts or witnesses

(Bright, 1994; Haney, 1995; Vick, 1995). Additionally, court appointed counsel and public defender services often fail to properly investigate many aspects of the defendant's case and prior history that could ultimately serve as mitigating circumstances and increase their likelihood of receiving leniency or a lesser sentence (Bright, 1994; Haney, 1995; Vick, 1995). As a result of the constraints and limitations that accompany most court appointed counsel and public defender services, ineffective assistance of counsel is a common claim made by many indigent defendants who have been convicted of capital murder and sentenced to die (Bright, 1994; Haney, 1995; Vick, 1995; Wheeler & Wheeler, 1980). Thus, the poor and persons who lack financial means are usually treated more harshly and are more strictly policed by the criminal justice system than are persons who possess the financial resources and capabilities to successfully subvert the law and maneuver throughout the system.

Aside from the availability of financial resources and the inability to privately retain quality defense counsel, another commonly evoked explanation for why the poor are disproportionately executed is their disproportionately high involvement in homicide. The poor and persons from the lower and impoverished social classes are overrepresented in homicide statistics largely as a result of the way in which the criminal laws are written and enforced (Hamblet, 2011; Reiman & Leighton, 2013). The legalistic definition of homicide encompasses both actions and behaviors that are associated more with the poor than with persons of means or with corporations, and this results in a harsher and more targeted sanctioning of street and violent crime over white collar and corporate crime (Reiman & Leighton, 2013). Thus, and as a result of available opportunity, resources, and the behaviors typically characteristic of lower social class standing, persons who are

poor and impoverished are often much more likely to be both the victim and the perpetrator in instances of homicide, under its legalistic definition, than are persons from the middle and upper social classes (Cooney, 1997; Reiman & Leighton, 2013).

In addition to the way in which homicide is legally defined, in that it is slanted to the actions of the lower social class, the nature of capital or aggravated homicide itself is also a factor in the disproportionate execution of the poor. As a group, the poor are much more likely than the wealthy to resort to violence as a means for problem solving (Cooney, 1997). In solving problems, those from the middle and upper social classes have many more options and resources available to them than do persons from the lower social class. The poor and the impoverished frequently do not have access to legal alternatives, such as attorneys or alternative dispute resolution, and default to physical force in order to solve issues that arise throughout the course of their daily lives (Cooney, 1997). As demonstrated by Anderson (2000), many such individuals adhere to a “code of the street,” wherein sub-cultural norms prescribe meeting displays of disrespect with violence. In fact, a failure to do so can result in an increased vulnerability to being victimized. Based on their early socialization and the way in which they learned to handle themselves, the poor often do not consider many of the legal alternatives to violence, such as those used by the wealthy, to be an available option. Thus, persons from the lower social class are not only more likely to participate in violence, and consequently homicide, but are also much more likely than the wealthy to be legally sanctioned for their participation (Cooney, 1997).

Given the more apparent explanations that have been discussed for the disproportionate execution of the poor, such as a lack of financial resources, an inability

to retain quality defense counsel, and the nature and legalistic definition of homicide, it is important to note that these arguments alone are insufficient to account for such a discrepancy. Explanations that solely attribute differences between upper and lower class defendants to financial resources and defense counsel are misleading and deficient in that they are predominantly resource-based arguments (Kaplan, 2012). Thus, these arguments lack any recognition of the cultural dynamics that shape the capital process and that significantly influence the legal treatment that many lower class individuals receive from the criminal justice system. By focusing solely on financial resources and overlooking cultural influences that are important to the capital process, social classes are rigidly defined and treated according to biased and class-based definitions of what constitutes crime and criminal activity. Inevitably, then, the legalistic definition of crime becomes unequivocally accepted, unquestioned, and disproportionately applied to members of society according to their social class standing.

Acceptance of the legalistic definition of crime contributes to the bourgeois ideology that the poor and impoverished are overwhelmingly involved in crime and socially harmful behavior. Since the definition of what constitutes crime is inherently biased by social class standing, many criminologists have proposed that crime be defined as a sociological problem, rather than as a legal category (Beirne & Messerschmidt, 2011). Criminologists have noted that accepting a purely legalistic definition of crime only serves to reinforce class bias and, subsequently, displaces attention from white collar and corporate crime while magnifying street and violent crime (Reiman & Leighton, 2013). Thus, and in order to include harmful behavior characteristic of every social class, crime should be defined not as a legal category, but rather as a violation of conduct

norms, as a social harm or social injury, as a violation of human rights, as a form of deviance, and or as a violation of global conduct norms (Beirne & Messerschmidt, 2011). Considering this, and with the inherent nature and legalistic definition of crime in mind, some less apparent reasons as to why the poor are disproportionately executed will be addressed in the section that follows.

Less Apparent Explanations for Executing the Poor

Given the legalistic definition of aggravated homicide and the actions and behaviors that officially constitute it, persons from the lower social class are often convicted and sanctioned for their criminal behavior at a much higher rate than persons from the middle and upper social class who commit acts that are socially harmful though not defined as homicide (Hamblet, 2011; Reiman & Leighton, 2013). Disproportionate and biased treatment under the criminal law also extend to capital punishment where, overwhelmingly, persons convicted of capital murder are poor, underprivileged, and/or are members of a marginalized or minority group (Akhtar, 2010; Bohm, 2011; Bowers, 1983; Bowers & Pierce, 1980; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Paternoster, 1993; Phillips, 2009). The legal actors of the criminal justice system, such as the legislators who create the law, the police and prosecutors who enforce the law, and the judges who interpret the law, knowingly and unknowingly allow their perceptions of morality, and what they deem to be acceptable in terms of behavior and action, to influence their legal decision making (Bowers, Foglia, Giles, & Antonio, 2006; Bright, 1995; Horowitz, 1997; Litowitz, 2000; Killer & Browning, 2004; Reiman & Leighton, 2013). Additionally, these individuals are predominantly from the middle and upper social classes, which often makes it difficult for them to identify with the typical lower

class capital defendant. Due to the social distance that exists between these two groups, dehumanizing practices are frequently employed by the legal actors of the court in order to demonize capital defendants and to create the perception that they are irredeemable and deserving of death (Haney, 1995; Kaplan, 2012; Miller & Browning, 2004).

The poor and persons from the lower social class, as opposed to their better off counterparts, are often overrepresented in homicide statistics partly as a result of their actions being disproportionately defined as criminal under law (Reiman & Leighton, 2013). The nature of the law itself is a major contributor to class disproportionality in capital punishment in that law is inherently biased in both its creation and enforcement (Bowers, 1983; Cole, 2001; Hagan, 1974; Jankovic, 1978; Litowitz, 2000; Miller & Browning, 2004; Reiman & Leighton, 2013; Seron & Munger, 1996; Wacquant, 2010). The law almost exclusively targets the lower social class by capitalizing on aggravated homicide while, conversely, overlooking the equally or more significant socially harmful behavior of the upper social class, such as marketing products known to be unsafe or improperly disposing of toxic waste (Reiman & Leighton, 2013). As a result of biased treatment under the law, certain populations, such as the poor and minorities, are often subject to far more scrutiny than others and ultimately come to be seen as dangerous, morally inferior, and as in need of stricter punitive and legal regulation (Hamblet, 2011; Kraska, 2004; Wacquant, 2010). Through this othering process, and as a result of the social distance that exists between the wealthy and the poor, the poor subsequently become easier to scrutinize, punish, and, in terms of capital punishment, condemn to death (Haney, 1995; Kaplan, 2012; Reiman & Leighton, 2013).

Persons from the lower social class are far more likely to be targeted by the criminal law than are persons who create and enforce the law. This, consequently, makes what it means to be a criminal largely premised upon the ideas and notions of the affluent class, rather than on the reality of social harm or on the ideas of the lower class (Cole, 2001; Litowitz, 2000; Miller & Browning, 2004; Reiman & Leighton, 2013; White & Van Der Velden, 1995). From a Marxist perspective, the proletariat and lumpenproletariat participate in criminal activity as a result of the severe limitations placed on them by the bourgeoisie, or the upper class, and the inherently exploitative nature of capitalism (Allan, 2005; Bernard et al., 2010; Reiman & Headlee, 1981). Capitalism severely restricts the opportunities and resources that are available to the poor, thus creating a substantial opportunity for their exploitation under the law and for the accumulation of capital (Bernard et al., 2010). The bourgeoisie advance their interests at the expense of the proletariat, often through hegemonic ideology concerning societal contribution and worth, as well as social harm, which results in a disproportionate application of the criminal law based predominantly upon social class standing (Bernard et al., 2010; Litowitz, 2000; Reiman & Headlee, 1981).

To explain the ways in which social class so fundamentally structures the nature of capital justice, a theoretical foundation is required to address the multiple aspects of social class and how they impact capital punishment decisions (i.e., decisions to pursue the death penalty, decisions to impute guilt on capital charges, decisions to impose capital sentences, and decisions to carry out executions). To be effective, theoretical conceptions for making sense of class and capital punishment must take into account both human agency and action, as well as social context. Thus, the theoretical foundations

that will be used for this study consist of a combination of Bourdieu's (1986) work on forms of capital, Kaplan's (2012) work on ideological narrative construction, Haidt's (2001) theory of moral intuition, Bandura's (1999) theory of moral disengagement, and Black's (1989) work on the upward and downward movement of capital law. Taken together, these theories serve to explain class-based lifestyles and dispositions, the ideological construction of legal narratives, the ways in which moral judgments are constructed and rationalized, how the process of moral disengagement works, and the general nature of the law itself in regard to values placed on victim and offender status. In doing so, the theoretical framework connects macro and micro processes. A brief overview of each theorist and the relevant aspects of their work will comprise the section that follows.

Theoretical Foundation: A Description of Relevant Theories

From an ideological point of view, and as discussed in the previous overview of Marxism and class inequality, capitalism was, and still is, presented as a system of meritocracy in which society is stratified based on talent and individual merit. However, rather than creating an even playing field between all members of society as ideologically espoused, capitalism has led to the creation of monopolies and a continually widening divide between the rich and the poor (Allan, 2011; Bernard et al., 2010). Extra-legal factors such as race, gender, and group affiliation have become significant contributors to this growing disparity, in that they pattern social positioning to reflect inequality, and have ultimately increased the opportunity for the underclass to be marginalized and exploited (Allan, 2011).

In his writings, Pierre Bourdieu (1986) attributes the widening divide between the rich and the poor to the nature of capitalism itself and to the existing class structure. Different forms of capital exemplify a person's social class standing in every aspect of their life, through the daily interactions that they have, and can ultimately benefit or disadvantage them depending upon the given situation or circumstance. The four forms of capital that Bourdieu identifies, economic, social, symbolic, and cultural, comprise a person's social class standing by the way in which they regulate their actions and behaviors in relation to their peers (Allan, 2011). According to Bourdieu, class standing and an individual's habitus are difficult to change, in that they are socialized into us from an early age, making the likelihood of mobility between classes significantly improbable (Allan, 2011). Those who are poor often remain poor, while those who are wealthy remain wealthy.

Bourdieu (1986) identifies four different and interrelated forms of capital that serve to structure the production of class (Allan, 2011). Collectively, these forms of capital also constitute social class standing in that they condition both the way in which individuals perceive and interact with the world around them, as well as the stereotypical manner in which they are perceived and interacted with by others. The first form of capital is economic capital, or the cumulative total of one's wealth, income, and financial assets. Economic capital is the root and strongly influences the levels of other forms of capital present within an individual's life, thus making it dependent upon social class itself (Allan, 2011). The second form of capital Bourdieu identifies is social capital, or the social network within which an individual is situated. Social capital is dependent on

economic capital but it is not entirely affected by it as social networks can be both intentionally and unintentionally constructed (Allan, 2011).

The third type of capital discussed is symbolic capital, or the capacity of a group or individual to use symbols in order to create realities. This form of capital exemplifies the symbolic nature of class and structural divisions in that symbolic recognition is necessary in order to solidify the existence of a group and, in turn, regulate its meaning (Allan, 2011). Thus, objective categories generated through symbolic capital, such as race, gender, and class, are ultimately the product of “world-making” and are used to label and categorize certain individuals and groups within the larger population (Allan, 2011). As such, symbolic capital can be manifested vis-à-vis economic, social, and cultural forms of capital, as it interacts with other levels of capital while also remaining a distinct form itself, and presupposes the intervention of the habitus as a socially constituted cognitive capacity (Bourdieu, 1986). The last form of capital discussed by Bourdieu, cultural capital, is an extension of symbolic capital in that it is encompassed within the larger symbolic field. Cultural capital is the informal social skills, habits, linguistics, and tastes that are exemplified by a person in their daily life and that embody the social class with which they are a part (Allan, 2011). Of the types of cultural capital identified by Bourdieu, embodied cultural capital is the most important in that it constructs the tastes and habitus, or the organization of one’s body and employment in the world, of an individual to reveal their social class standing (Allan, 2011).

Social class, then, is much more than simply an economic classification.

According to Bourdieu, class is inscribed in our bodies through the primary socialization process and inevitably influences every aspect of our social selves (Allan, 2011). Habitus

is the durable organization of the body, and its deployment in the world, and is characteristic of virtually every aspect of life. The mannerisms of an individual in addition to the way in which they walk, talk, eat, and generally conduct themselves all contribute to their habitus and are typically characteristic of others who share a similar social background. The habitus of an individual is a means by which that individual both organizes their own behavior and perceives and interprets the behaviors of others (Allan, 2011). It is a frame of reference both given off and taken in. Bourdieu argues that by the very nature of habitus, cognitive processes that distinguish the classes typically occur unconsciously and are beyond the free choice of an individual. Thus, individuals act not according to their class, but rather replicate the expectancies of their class through the perceptions of appropriate behavior that they hold to be true (Allan, 2011).

Differences in class, behavior, and action create a social distance between groups that enable them to “other” those with whom they often do not identify or share similar characteristics. Ultimately then, the habitus of an individual is a socialized embodiment of their cultural capital rather than a consciously chosen path (Allan, 2011). A person’s habitus is also largely the product of both their education and their distance from necessity, making the potential for variance among individuals substantial (Allan, 2011). The greater a person’s distance from necessity, the more likely they are to have the freedom to experience the world free from urgency or need. In not having to worry over basic necessities or one’s daily existence, the upper class, as opposed to the lower class, are much more able to focus on abstract, rather than strictly concrete, aspects of life (Allan, 2011). Thus, endeavors such as education, entertainment, and investment typically characterize the lives of many middle and upper class individuals, making their

language, tastes, and experiences seem more refined and socially desirable than those of persons belonging to the lower social class (Allan, 2011).

According to Bourdieu, class is structured rather than structuring. As a result of this, class is replicated in such a way that it ultimately produces a hegemonic ideology of invisible power and results in a dialectic or tension between structure and agency (Allan, 2011). This tension serves to legitimize the hierarchical relations between class and power, while justifying the actions and behaviors of those who hold power and are influential within society (Allan, 2011). Consequently, persons of the lower social class often become subject to the will and interests of the upper class, making them vulnerable to social exclusion, exploitation, and other marginalizing and harmful practices. In terms of the criminal justice system, the habitus that is characteristic of many lower class defendants often places them at an extreme disadvantage in reference to appearing favorable to the court or in receiving leniency (Allan, 2011). The majority of legal actors, such as legislators, attorneys, judges, and jurors, come from the middle and upper social classes, rather than the lower social class, and therefore experience a great deal of social distance from the typical lower class defendant. This subsequently eases the dehumanization and othering processes, making it easier for these individuals to punish what they perceive to be unacceptable behavior, in that the poor are seen as largely incapable of conducting themselves appropriately and in consistence with middle class standards. Empathy and identification come less readily with social distance, which results in the poor being judged as less deserving of mercy and as being solely responsibility for their plight.

As a result of the social distance that exists between a majority of defendants and the legal actors of the court, lower class and poor individuals often face significant disadvantage at every phase of the legal process (Kaplan, 2012). Frequently, individuals belonging to the lower social class are dehumanized and portrayed in a way that makes them appear dangerous, irredeemable, and ultimately deserving of the criminal sanctions that they incur. Additionally, these individuals are often portrayed by middle and upper class persons as having undesirable characteristics that both inhibit their potential for rehabilitation and, subsequently, justify the use of harsh punitive sanctions, such as capital punishment, against them. Attributes common to these individuals are a reprehensible and ravaging character, a lack of redeemability, social remoteness, and resourcelessness. Taken together, these characteristics can be conceptualized as the “Five R’s” and primarily serve to spur on revanchism, or the desire for retaliation and revenge by members of a society against an individual for a socially harmful act. Thus, the Five R’s illustrate not only the cumulative effects that lower class persons often face throughout the legal system as a result of social disadvantage, but also the widespread middle class mentality that frequently results from the dehumanization process and negative social portrayal.

In his theory, Kaplan (2012) attributes the fundamental disadvantage faced by many lower class defendants to ideologically constructed narratives used to exemplify hegemonic qualities of the American Creed. The American Creed serves to extend the notion of equality to all, yet simultaneously tolerates extremes of economic inequality and justifies them based on American culture and meritocracy under capitalism (Kaplan, 2012; Poveda, 2000). According to Kaplan, values of the Creed include liberty,

egalitarianism, individualism, populism, and laissez faire governance, and these lend support to the notion that American exceptionalism is largely responsible for the disproportionate and biased treatment experienced by many in the criminal justice system, both historically and today (Kaplan, 2012; Poveda, 2000; Steiker, 2002).

According to Kaplan, ideological narratives are used to simplify conceptualizations of murder, execution, human agency, and the human mind in order to negatively affect the imagery of many defendants in terms of both the court and public (Kaplan, 2012). Individuals who are involved in litigation and legal decision making often have a limited ability to resist the discourses of the Creed, and in turn hegemonic American ideologies, thus allowing them to more easily dehumanize what they perceive to be dangerous Others. Ideological discourses perpetuated by the state convey what it means to be an offender, and conversely what it means to be a victim, in a way that constructs judicial, jury, and media perceptions that favor the prosecution over the defense (Kaplan, 2012). As a result of this, legal decisions, such as appropriate criminal sanctions and worthiness of life, become inadvertently premised on, and evaluated in accordance with, Bourdieu's forms of capital. Thus, a person's level of capitals and habitus not only dictate every aspect of their life and social class standing, such as their mannerisms, the way they walk, speak, act, and think, and the opportunities that are available to them, but also affect the way in which they are treated under the law and by the criminal justice system. In short, habitus shapes both actions and reactions. Those with which the legal actors and affluent can more readily identify are often treated much differently and with more leniency than those who are socially distanced and foreign to

the values, practices, and characteristics of the middle class (Kaplan, 2012; Poveda, 2000).

While the prosecution relies heavily on notions of the American Creed like individualism and populism in constructing their narratives against the defendant, the defense also relies on the Creed in order to appeal to the sentiments of the jury and to humanize their client. Kaplan argues that revenge, diminished autonomy, and the possibility of resistance play into these ideological narratives to both support and directly challenge the notions of the American Creed. Whereas prosecutorial narratives typically play off of the Creed to attribute blame to the defendant and to their criminal action, defense narratives tend to focus on context, using concepts of the Creed such as egalitarianism and libertarianism to appeal to the sentiments of the jury and to construct the defendant in a more humane and redeemable light (Kaplan, 2012). The American Creed permeates virtually every aspect of society and cannot be effectively challenged by either the prosecution or the defense. Thus, the only real difference between the defense and prosecution's narratives in a capital criminal trial is the version of the Creed that they employ (Kaplan, 2012).

The criminal law explicitly expresses cultural values and public opinion through the decision making, personal beliefs, and feelings of the legal actors who are involved in the system (Black, 1989). According to Donald Black's (1989) theory of the behavior of criminal law, these differences in values and opinion result in virtually identical cases being handled differently under the law and by the legal system. The law is a variable differing from one case to another, depending upon the particular situation and context in which it occurs, and its application is affected by the specific social characteristics of the

parties involved (Black, 1989). The social characteristics of the victim, the defendant, the attorneys, the judge, and the jurors significantly impact not only the way in which they relate to one another, but also the way in which they interpret and apply the law in a particular case. Thus, the context and social characteristics of the persons involved constitute the social structure of the case and contribute to the way in which it is handled (Black, 1989). Social standing, social distance, and social status all shape case structure and make the interpretation and application of the law premised on a complex arrangement of social positions and relationships (Black, 1989).

Black (1989) argues that the social structure of the complaint itself is the most important predictor of how a case will be handled. Social status is arguably the single most significant contributor to variation in the law in that it encompasses multiple dimensions of class standing that are substantially valued under capitalism. Aspects of social standing that are included in this are wealth, education, respectability, integration into society, and conventionality (Black, 1989). Black argues that rather than the social aspects of the defendant solely determining their treatment under the law, each adversary's social class standing, in relation to the others, is an integral factor in determining treatment and must therefore be considered to both predict and explain the way in which a particular case will be handled (Black, 1989). Legal advantages that are associated with high social status primarily arise when social superiority exists over an opposing, and particularly a lower class, party. Thus, biased and disproportionate treatment under the law is generally more prevalent when persons from different and increasingly separated social backgrounds are involved in a particular case or legal dispute (Black, 1989).

According to Black, the legal system is relatively lenient when persons of low social status victimize their peers, but grows more punitive when persons of low social status offend those who are above them in the social class structure (Black, 1989). As evidenced in the legalistic definition of homicide and the way in which the law is applied throughout society, crimes that are committed by persons of higher social status generally result in leniency, if in fact any sanctions are imposed at all (Black, 1989; Reiman & Leighton, 2013). Conversely, crimes that are committed by persons of lower social status are often sanctioned at a marginally higher rate than persons of higher social standing, and frequently result in them being more harshly punished (Reiman & Leighton, 2013). As a result, Black (1989) argues that there is an extremely high likelihood for downward punishment (i.e., the offender's social status is below the victim) to occur, compared with the lesser chances of upward punishment (i.e., the offender's social status is above the victim's). Essentially, downward law is greater than upward law and is most likely to occur when persons of lower or minority status victimize persons of higher or middle class status. Familiarity is an additional factor in that the more unfamiliar or less intimate the relationship is between the two parties, the more likely the law is to enter into the situation to remedy legal dispute (Black, 1989).

The authoritativeness of third parties involved with a case also significantly affects the way in which the criminal law is interpreted and applied. The degree of authoritativeness of a case varies with the social characteristics of the third party and is a direct function of the party's relative status (Black, 1989). Cases that are very similar in circumstance can therefore significantly differ in their treatment under the law as a result of the differing amounts of social distance that may be present between the third parties

and the adversaries. Essentially, the more socially removed a third party, such as a judge or a jury member, is from the defendant, the more punitive they will be in their handling of the case (Black, 1989). Additionally, the credibility of the defendant significantly contributes to the way in which the law is applied to their case in that their language and articulation affect their perceived competence and trustworthiness under the law. Largely as a result of the characteristics that are typical of most lower class defendants, these socially valued attributes are often lacking in their character, thus making them appear unfavorable to the judge and jury, in terms of potential for redemption (Black, 1989).

As an extension of Black's theory, Cooney (2009) posits that there are six sociological dimensions that affect the applicability of the law in a particular case. Thus, rather than being universal, the criminal law fluctuates with the social geometry of differing legal disputes (Cooney, 2009). The six dimensions outlined by Cooney are the vertical, organizational, radial, normative, cultural, and relational dimensions. The vertical dimension pertains to wealth distribution and states that social interaction, particularly homicide, has a direction, location, and distance in vertical space that is measured by the relative wealth of the legal participants involved with a case (Cooney, 2009). Thus, the greater the wealth disparity between parties, the greater the criminal sanctions, in addition to the vertical distance of the homicide. The second dimension, the organizational dimension, is a type of social status and is defined by the capacity for collective action (Cooney, 2009). Organizational status encompasses not only organizations, but also the individuals that comprise those organizations. As such, sanction severity increases with greater organizational distance and status, as with an

agent of the state, and decreases with lesser organizational distance and status, as with a factory worker.

The third dimension pertains to social integration and the radial status of legal actors. Radial status is a distinct form of social status and is the degree to which an individual is integrated into society and participates in social life (Cooney, 2009). As such, the law both increases and is greater in severity when directed from the center to the margins of society toward those who are poorly integrated, as opposed to from the margins to the center of society where people are better integrated. Fourth, the normative dimension of social space is defined as an individual's respectability. This dimension refers to a social actor's reputation, in terms of good and evil, and is influenced by the amount of social control to which they have been subjected. Ultimately, more experiences with legal and popular social control equate to less respectability, a diminished reputation, and thus greater punishment (Cooney, 2009).

Fifth, the cultural dimension is considered to be a quantitative dimension of social space that includes every form of individual and collective expression (Cooney, 2009). Conventionality is most valued in this dimension and results in the elevated location of an individual within social space. Accordingly, then, homicide is considered to be more serious when it is directed toward and affects conventionality. Thus, the seriousness of an offense generally increases with cultural distance (Cooney, 2009). The sixth and final dimension is the relational dimension. The relational dimension pertains to intimacy and is the degree to which an individual participates in the lives of others. Relational distance is significantly influential in the behavior of law in that the law generally becomes more involved in disputes between strangers than in disputes between intimates (Cooney,

2009). Thus, as the relational distance between two individuals increases, so too does the amount of law applied in a particular case; the law is more active in providing legal remedy for strangers than for those who are closely related (Cooney, 2009).

Cooney's (2009) analysis is consistent with the position that formulation, interpretation, and application of the criminal law in any given case involves varying measures of subjectivity and discretion premised on conceptions of morality that prosecutors, judges, and other middle and upper class actors hold in relation to acceptable conduct and normative behavior. Cultural ethics, morals, and rules governing individual action are shaped by ideologically charged hegemonic standards and are used to judge the seriousness of a criminal offense in addition to appropriate sanctions. As such, legal decisions are often made on the basis of morality and intuition, as distinct from objective facts and contextual information.

In his theory of moral reasoning, Jonathan Haidt (2001) argues that people grasp what they perceive to be moral truths, not so much through a process of rational reflection, but rather by a process of perception in which ostensible truths are often accepted without much question (Haidt, 2001). While moral intuition is not considered to be a kind of cognitive reasoning, it nonetheless drives the judgments that many make toward what is right and wrong, as well as what is ethically and morally acceptable. According to Haidt, judgment originates with moral intuition and is largely driven by morally based emotion rather than objective rationality (Haidt, 2001). Moral judgment is predominantly shaped by culture and is then reinforced by hegemonic representations perpetuated throughout society. Thus, cultural hegemony becomes an important component in the moral reasoning process as it ultimately serves to influence moral

intuition, judgment, and reasoning, before subsequently being both strengthened and reinforced by the process to which it gave rise. Figure 3.1 provides an illustration of Haidt's social intuitionist model.

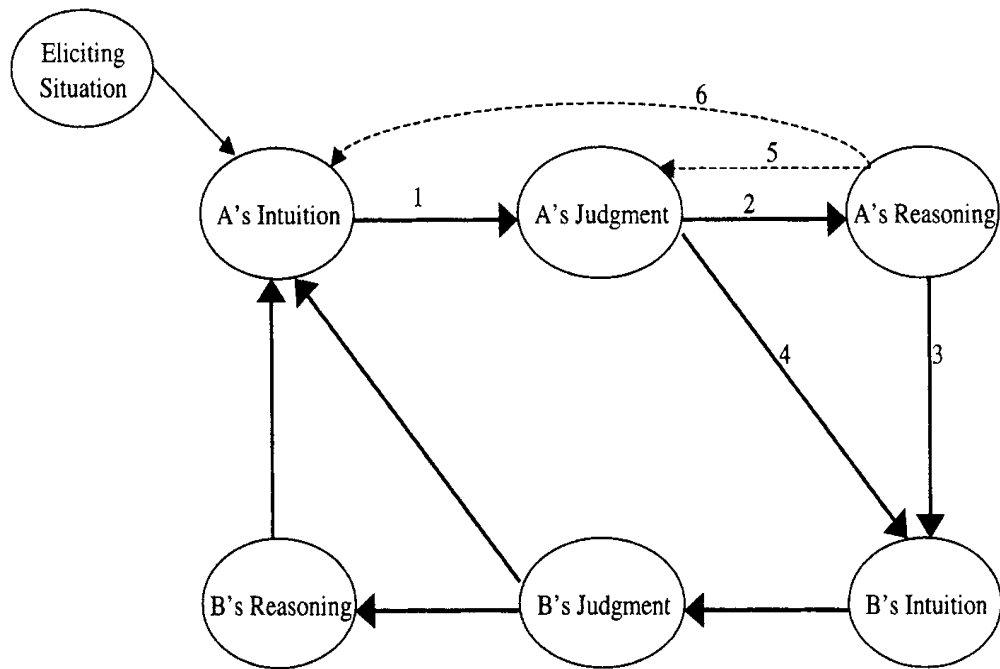


Figure 3.1. The Social Intuitionist Model.

Source: Haidt, J. (2001). The emotional dog and its rational tail: A social intuitionist approach to moral judgment. *Psychological Review*, 108(4), 814-834.

As outlined by Haidt (2001), the social intuitionist model (Figure 3.1) is comprised of four principle links that depict the moral reasoning process. The first link of the model, A's intuition to A's judgment, is referred to as the intuitive judgment link and proposes that moral judgments occur automatically and effortlessly as a result of quick moral intuitions (Haidt, 2001). The second designated path, A's judgment to A's

reasoning, is referred to as the post hoc reasoning link. This link proposes that moral reasoning is an effortful process, engaged in after a moral judgment has been made, in which an individual searches for a justification for the previously made judgment. The third path, A's reasoning to B's intuition, is the reasoned persuasion link. This link posits that moral reasoning is produced and sent forth in order to justify a previously made judgment. The reasoned persuasion link can thereby be influential in affecting the moral positioning of others in that moral discussion and argument are often used in order to alter individual perceptions (Haidt, 2001). The fourth path, A's judgment to B's intuition, is referred to as the social persuasion link and proposes that moral judgments, in conjunction with group norms, exert a direct influence on others through eliciting outward conformity. Taken together, then, these four paths comprise the core of the social intuitionist model and illustrate the moral reasoning process (Haidt, 2001).

Additional paths depicted in the model, paths five and six, demonstrate the way in which private reasoning can also shape moral judgments. Paths five and six are more characteristic of a rationalist model, as opposed to an intuitionist model, but can still contribute to the moral intuition, judgment, and reasoning process. Thus, path five, A's reasoning to A's judgment, is referred to as the reasoned judgment link as it allows individuals to override their initial intuition through the sheer force of logic (Haidt, 2001). Lastly, path six, A's reasoning to A's intuition, is the private reflection link. This link enables the activation of new intuitions which contradict initial intuitive judgments. Through role-taking, individuals are able to empathize with others and to morally reflect on their previously made intuitions, thus resulting in competing moral intuitions which often alter previously held judgments and perceptions (Haidt, 2001).

Hegemonic ideology, then, has a significant impact on the moral reasoning process. Culturally-based hegemonic representations shape moral intuition, judgment, and reasoning, before being both shaped and reinforced by the reasoning process itself. Thus, hegemonic representations are ultimately the product of the collective reasoning process, as culture reinforces ideals and perceptions that provide the basis for stereotypes and initial moral intuitions. These same culturally-based hegemonic representations also serve an additional purpose too, in that they individually shape moral intuition, judgment, and reasoning through legitimating and providing a justification for actions and decisions that are based in quick and effortless emotion, rather than in rationality or fact.

As a social psychological process, moral judgments are the result of quick moral intuitions and are subsequently followed by slow, ex post facto moral reasoning (Haidt, 2001). According to Haidt (2001), moral reasoning is motivated and used to construct post hoc justifications for the morally based emotion and intuition that guide and structure individual perceptions. Quick moral judgments are largely the result of how an individual feels at any given time and stem from the culturally bound perceptions the individual holds in regard to certain situations in which morals are challenged. Intuition, then, is shaped by culture and ideologies that govern and define appropriate behavior.

The moral intuition that structures moral judgments, as well as the post hoc reasoning that legitimates judgments, reflect the habitus and forms of capital, and thus the social class, of the actor in question. Morality and social expectations that are mostly characteristic of the middle class define the social structure and the way in which actions and behaviors are judged (Haidt, 2001). In terms of the criminal law, and based on the social positioning of a given individual, perceptions and judgments of moral culpability

and redemption can vary greatly according to the status and social characteristics of the persons involved in a particular case.

Haidt argues that moral judgments are the evaluations of action and character, with respect to common virtues, that are held universally by a culture or members of a society (Haidt, 2001). Accordingly, then, moral reasoning is both the conscious and unconscious search that an individual undertakes for evidence to support a previously made moral judgment. This ad hoc justification process is a mental activity that mostly consists of transforming available information about a given individual into a form suitable to justify the moral judgments that have previously been made against them (Haidt, 2001). While this justification process is undertaken both consciously and unconsciously, intuition occurs so quickly, effortlessly, and automatically that it often seems as though it is a strictly unconscious endeavor (Haidt, 2001). Thus, the reasoning that an individual employs to rationalize their moral intuition and judgment often follows a logic that they are largely unaware of and that is significantly influenced by the verbal persuasions of their peers and mainstream public perception. Intuitive judgments are effortless, post hoc reasoning is used to justify those judgments, and social persuasion influences the moral judgments of others in order to elicit conformity (Haidt, 2001).

The way in which people categorize others, rather instantly and automatically, is largely premised on their culturally-grounded existing stereotypes and the perceptions that they hold of what is and is not acceptable in terms of behavior and action (Haidt, 2001). The levels of capital and habitus that are characteristic of an individual, in addition to their culture, often influence the stereotypes, moral intuition, and moral reasoning that they use to both cast and justify their moral judgment. Haidt (2001) sees

morality as innate to human nature and also highly dependent on environmental influences, especially cultural socialization. Additionally, morality also serves to shape intuition, strategic reasoning, and the orientations that individuals adopt in order to form the basis of their moral foundations (Graham, Haidt, Koleva, Motyl, Iyer, Wojcik, & Ditto, 2012). Lower class defendants who are socially distanced from middle and upper class legal actors, such as judges and jurors, often find themselves at a significant disadvantage in terms of their perceived worthiness and moral favorability. This social distance enables upper and middle class persons to more easily dehumanize, otherize, and morally disengage from the lower class defendant, with whom they often cannot identify. Thus, and as a result of dehumanization and the othering process, harsh criminal sanctions, such as the death penalty, can become easier for disengaged middle and upper class individuals to impose. Such sanctions are, in turn, justified and legitimated through ideology-infused moral reasoning.

According to Zimring (2003), hegemonic representations that result in negative stereotypes and perceptions of the lower class largely stem from contradictions and biases inherent to the nature of capital punishment. These contradictions and biases are most evident in the ambivalence and conflict that exist in society regarding the use of the death penalty. More specifically, fundamental contradictions are the result of an underlying tension between localized cultural vigilante values, and a nationalized due process tradition that promotes both distrust of government and demand for due process (Zimring, 2003). The tension between vigilante values and a distrust of the government subsequently leads to ambivalence among the American citizenry wherein the result is a disproportionate disadvantaging of those who are socially distanced from middle class

standards and values. Consequently, individuals from the lower social class are defined as less deserving of lenience and due process, thus making them systematically more vulnerable to default and knee-jerk localized vigilante and cultural traditions that foster the application of social stereotypes and legitimate the use of capital punishment (Zimring, 2003). The disproportionate use of capital punishment against the poor is both justified and legitimated through hegemonic culture and an ideology-infused moral reasoning process.

Typically, moral standards are established throughout the socialization process and serve the primary purpose of enabling individuals to avoid self-condemnation and moral conflict. In addition to moral standards, self sanctions are also acquired throughout the socialization process and are used to both restrain behavior and maintain consistency between an individual's personal standards and their moral agency (Bandura, 1999; Osofsky, Bandura, & Zimbardo, 2005). Moral standards are largely premised on the behavioral norms and expectations of a given culture and thus allow individuals to not only regulate and censor their own actions, but also to judge the morality and actions of others. While self censure mechanisms are often thought to remain relatively constant throughout an individual's life, Albert Bandura (1999) contends that in certain situations social and psychological maneuvers can be undertaken in order to neutralize self-sanctions. Through this process of neutralization, individuals are able to subvert their moral standards and engage in activities that are considered cruel, inhumane, or in opposition to their personal views on morality (Bandura, 1999).

In order for an individual to participate in conduct that directly challenges their personal standards or morality, they must first disengage from the mechanisms that

regulate self-censure. According to Bandura (1999), gradualistic moral disengagement involves multiple steps and is initially a slow process. As time passes and with the frequency in which it occurs, however, the disengagement process often becomes effortless and expedited for those who are involved. Typically, moral disengagement begins with the fundamental reconstruction of the inhumane conduct itself in order to make it appear more palatable and dissociated from immorality (Bandura, 1999). The operation of agency follows conduct reconstruction and allows the perpetrators of the inhumane act to minimize their role in the harm that they have caused. The consequences that result from the actions of the perpetrators, in addition to how the victims are regarded in terms of their devaluing and blaming, comprise the final steps of the process and significantly affect the way in which others perceive the harmful conduct or action of the perpetrators (Bandura, 1999).

Ordinarily, individuals do not engage in harmful behavior unless they have first justified the behavior to themselves as either ethically or morally necessary (Bandura, 1999). Through the process of moral justification, harmful conduct is made both personally and socially acceptable by purporting it as serving the greater good. Moral justification not only permits individuals to act in accordance with inhumane conduct, but it also preserves their morality while allowing them to see themselves as protecting societal values, peace, and humanity (Bandura, 1999). Euphemistic language is often employed by perpetrators of harm to morally justify their harmful actions and conduct. This language makes harmful conduct more socially palatable while, subsequently, reducing the amount of personal responsibility that an individual feels for having taken part. According to Bandura, individuals are more able to act inhumanely when their

actions and language are sanitized, or perceived as necessary for harm reduction, than when they are not (Bandura, 1999). Harm reduction is largely accomplished through comparison, or the contrasting of one harmful behavior to another, so that the initial behavior seems more acceptable and righteous. By comparing harmful conduct to something more serious, individuals are largely able to excuse their actions and credit them as the lesser of two necessary evils (Bandura, 1999). Essentially, cognitive restructuring, moral justification, sanitizing language, and palatable comparisons all work together in order to make harmful conduct seem more socially acceptable and to allow perpetrators to morally disengage from their actions and curtail self sanctions (Bandura, 1999).

Bandura (1999) argues that the second stage of moral disengagement operates to simultaneously obscure and minimize the role of harm caused by inhumane conduct. Individuals often exempt themselves from taking responsibility for the inhumane action that they partake in through the displacement of responsibility. By displacing responsibility from themselves onto others who share a similar involvement, individuals are able to defer blame for their harmful actions and, in turn, excuse their behavior. When a sense of responsibility is diffused onto multiple persons, it ultimately diminishes responsibility and displaces it through a division of labor. Thus, when everyone becomes responsible for a particular action, essentially no one is responsible for the action (Bandura, 1999). Through the diffusion of responsibility, the effects of an individual's inhumane actions are distorted in a way that weakens their moral controls and subsequently allows them to initially and continually engage in the behavior. Remoteness, as it is associated with many contemporary forms of harm and suffering,

also contributes to this in that it allows an individual to become depersonalized, thus making them more vulnerable to cruel and inhumane activities. Essentially, the further removed an individual is from the object of their harm, as with social distancing the weaker their restraining power becomes (Bandura, 1999).

The final set of disengagement processes discussed by Bandura (1999) deal primarily with the recipients of harmful and inhumane action. Since an individual's mechanisms for self-censure are largely premised on how they view the recipient of their actions, treatment can differ greatly depending on the social distance that exists between any two parties. When a significant amount of social distance is present, the lesser of the parties, or the socially disadvantaged party, is often subject to dehumanizing and othering practices. According to Bandura, it is much easier for an individual to engage in cruel and inhumane conduct when the recipient of such action has been stripped of their human qualities (Bandura, 1999). Thus, dehumanization is more frequently and easily carried out when the redeemable qualities of an individual are lacking and when their overall perceived worthiness is diminished to the point that they are considered to be a moral and social hindrance or as possessing the traits characteristic of a lower class habitus.

Individuals who are socially distanced from their peers are often perceived and portrayed to be subhuman, demonic, and savage, thus attributing negative and animal-like qualities to their character (Bandura, 1999). This, subsequently, enables them to be more easily brutalized in that harsh sanctioning and treatment are seen as justified and necessary to remedy their social infractions. Taken together then, the diffusion of responsibility and dehumanization practices are largely responsible for the overly harsh and punitive response that many lower class and impoverished persons face in terms of

the criminal justice system (Bandura, 1999). The attribution of blame serves self exonerating purposes and allows middle and upper class individuals to view themselves as faultless, without blame, and as driven to their conduct by force and ultimately without choice. Thus, lower class and impoverished persons are disproportionately and more harshly punished by the criminal justice system because they are perceived as deserving of their plight.

CHAPTER 4

METHODS

Purpose and Research Strategy

One purpose of this study was to empirically investigate the relationship between social class and capital punishment. In order to accomplish this goal, a research strategy was devised that employed a mixed methods approach consisting of both qualitative and quantitative data.

Quantitative data were gathered on the social class characteristics of the 293 individuals executed in Texas between 2000 and 2012, and these data were supplemented by a dataset of similar characteristics on individuals sentenced to death from the *Gregg* decision through 1997 in Tennessee. Initially, research began by focusing on persons executed in the United States in 2012. However, due to variance and a lack of uniformity in the information available on each state's death row website, the state from which the most information could be obtained, Texas, was chosen for the purposes of this study. Inquiry into Texas originally began by examining executions carried out between 2008 and 2012. This timeframe was later expanded to include 2000 through 2012, to increase the overall sample size of the Texas dataset. As a result of the presence of victim information, it was not possible to obtain offender's pre-sentence investigation reports. Thus, multiple sources, including the Texas Department of Criminal Justice website, the Census Bureau, and the Bureau of Labor Statistics, were consulted in order to obtain the

information necessary to construct the Texas dataset. The supplemental Tennessee dataset was chosen on the basis of availability and its similarity in content to the Texas dataset.

Qualitative data for this study consisted of narrative case studies on selected individuals executed in multiple states in 2013, as well as an examination of state-defined mitigating factors for capital cases. While case studies do not provide generalizable data, they were included in this study because of their rich content. Five individuals executed in 2013 were randomly selected for these case studies. These cases represented Ohio, Georgia, Oklahoma, Florida, and Virginia. In addition, two Texas cases were included; these were considered to be “outliers,” or executed persons who do not share many of the social characteristics typically associated with the lower class. Mitigating statutes were examined in order to determine if certain factors, as defined under a particular state’s law, work to disadvantage persons of lower social class.

Quantitative Data

Texas Dataset. The Texas Department of Criminal Justice (TDCJ) maintains a comprehensive website upon which they list the personal and offense information for persons currently on death row, as well as for persons who have been executed. Information pertaining to the personal, demographic, and social characteristics, in addition to criminal history and employment information, of the 293 individuals comprising the sample for this study was collected from the TDCJ website. These data were then combined with information gathered from the Census Bureau and Bureau of Labor Statistics in order to create an extensive database on social class characteristics.

Data were collected from the Census Bureau using the Fact Finder and Social Explorer search tools, while data gathered from the Bureau of Labor Statistics were collected using the May 2012 annual mean income estimates. After all data had been gathered and upon its completion, this database ultimately included the personal and offense information detailed on the TDCJ website for each individual included in the sample, their estimated per capita and median household income, based on Census Bureau reports and the county in which they committed their crime, and information on the estimated annual median income level for their last known occupation, based on similar occupations as classified and listed on the Bureau of Labor Statistics' website.

The Texas Department of Criminal Justice website lists the name, offender information, and last statement for each individual who has been sentenced to death and executed in the state of Texas from 1982 to present. Thus, the TDCJ website was the primary source used for gathering information on the personal characteristics and criminal histories of the 293 individuals executed in the state between 2000 and 2012. The offender information section of the TDCJ website was most useful in that it provided a comprehensive file on each offender detailing their personal information as well as information relating to their capital offense and prior criminal history. Included in this section was information such as the name of the offender, date of birth, the date of their offense, their age at the time of their offense, their county of conviction, their race and sex, their native county and state, their prior occupation and educational level, and their cumulative prison record. Additional information such as the offender's height, weight, eye color, hair color, and victim information were also available in this section of the TDCJ website, though they are not particularly relevant to this study and were therefore

not included in the Texas dataset. Lastly, the final statement of each individual comprising the study population, if given, was also examined as it frequently provided valuable information pertaining to proclamations of innocence, marital status, and the presence or absence of children, each of which were considered proxies for social class standing (Cooney, 1997; Kaplan, 2012).

After collecting the TDCJ offender information most relevant to this study (including offender name, date of execution, age at the time of offense, sex, race, county where crime occurred, educational level, previous employment, proclamations of innocence, and prior criminal history), obtaining information regarding legal counsel and mental illness became the next priority. In order to acquire information on legal counsel, court records held by county clerk offices in each county where an individual had committed a capital crime were consulted and searched. This approach made it possible to determine for each individual if they had court appointed legal counsel, or if they were successfully able to privately retain legal counsel. In addition to legal counsel, information was collected in reference to claims of mental illness or insanity through available interviews, newspaper articles, and reports on the particular individual. One website in particular, clarkprosecutor.org, was very helpful in that this website provides a compilation of available news reports and court transcripts for each person who has been executed in the United States since 1976.

The final information that was collected for the Texas dataset pertained to median household income, as well as to per capita income, and national occupational employment and wage estimates. To collect information on median household income and per capita income, the offender information provided by the Texas Department of

Criminal Justice was consulted in order to determine the jurisdiction and county in which each individual committed their capital offense. Depending on the date of their offense, or to which decade it most closely corresponded, the appropriate census report was then accessed in order to establish both the median household income and per capita income of the county during that particular census report. Two Census search tools, Fact Finder and Social Explorer, were used to accomplish this based on the year for which information was needed; Fact Finder was most appropriate for the 2000 and 2010 census, while Social Explorer was most appropriate for the 1980 and 1990 census.

For select individuals in the sample, home addresses were available which permitted the use of census tracts in order to further refine median household and per capita income; the Fact Finder and Social Explorer tools were used for this purpose. Since information from the 1980 and 1990 census were not as readily available as data from the 2000 and 2010 census, due to recent system upgrades and file conversions undertaken by the Census Bureau, metro and non-metro (as determined by population size) median household income totals were used for these reports. Weighted average poverty thresholds, for both one and four person households, were also included in the dataset from the Census Bureau in order to supplement median household and per capita income information. The TDCJ website of offender information was also used to determine national occupational employment and wage estimates. Prior occupation as listed for each individual was matched according to the most appropriate occupation provided by the Bureau of Labor Statistics for May 2012. From this information, it was possible to determine approximately how much an individual was earning prior to their capital crime and subsequent imprisonment.

In terms of the information gathered for the Texas dataset, particularly from the TDCJ offender information website, there are some issues concerning accuracy that need to be addressed. Whenever possible, and in order to ensure accuracy, all offender information gathered from the TDCJ website was crosschecked with other sources. In doing this, there were several cases in which information on the TDCJ website was found to be inaccurate or incomplete. Thus, other sources, such as the clarkprosecutor.org website, news reports, interviews, and court transcripts, were also used in order to help ensure the accuracy of information being collected. No inconsistencies were found in reference to offender name, date of execution, age at the time of offense and execution, sex, race, and county where crime occurred, but a small number of inconsistencies were found in reference to education and prior occupation as listed on the TDCJ website. Additionally, it was not possible to locate a central source in order to verify the presence of mental illness, innocence claims, or marital status and children, so this information may too suffer from some minor inaccuracy as it was obtained mostly through available news reports, interviews, and court transcripts. As a result, the reader is cautioned to interpret the results of this study with the above points in mind. Overall, however, and with the exception of the few minor inconsistencies listed above, the information collected for this dataset has been verified as accurate.

Tennessee Dataset. In order to supplement the information collected for the Texas dataset, and also to further investigate the social class-capital punishment relationship, a secondary dataset was used. This dataset was very similar in nature to the Texas dataset and included information on the characteristics of individuals who were sentenced to death from the *Gregg* decision through 1997 in Tennessee. A multitude of

variables were collected by Blevins and Blankenship (2001) in order to create the dataset, with the most relevant to the present study being the name and date of birth of the defendant, their race, sex, marital status, and number of children, their highest grade completed, their work history, and any issues concerning mental retardation. Additionally, information pertaining to how the defendant secured their legal counsel, the county in which their trial occurred, the sentence that was imposed, and any prior criminal convictions was also relevant to the present study and was thus included in order to supplement the Texas dataset. While the Texas and Tennessee datasets both pertain to the study of capital punishment, one major point of divergence exists between them; the Texas dataset and present study focus on social class as it relates to capital punishment, whereas the Tennessee dataset and study examine different combinations of defendant and victim races in capital cases (Blevins & Blankenship, 2001). That is, social class was not the primary focus in the latter research.

The study that was used to construct the Tennessee dataset was based on patterns of aggravating and mitigating circumstances found among different combinations of victim and defendant races (Blevins & Blankenship, 2001). The study population consisted of 152 persons who were sentenced to death between 1977, when capital punishment was reinstated in Tennessee, and December 31, 1997. Rule 12 Forms filed with the Tennessee Supreme Court, or forms that were completed by trial judges in every case in which a defendant was convicted of first degree murder regardless of the sentence imposed, were used by the researchers in order to collect all necessary personal and legal information for the individuals who comprised the sample (Blevins & Blankenship, 2001). Rule 12 Forms contain six sections and include information on the offense and

reason for the trial, the background and demographic characteristics of the defendant, information on the co-defendant, accomplices, and victim or victims, information on the legal representation of the defendant, general information about the trial, and the chronology of the case and major points. As reported by the researchers, these forms were only available for 118 of the 152 defendants who were sentenced to death in the designated time frame. Thus, information pertaining to the remaining 34 defendants was obtained from appellate court files that contained information comparable to that found in the Rule 12 Forms (Blevins & Blankenship, 2001).

At the conclusion of their study, Blevins and Blankenship (2001) found that there were no statistically significant differences in the total numbers of aggravating and mitigating circumstances found for defendants in Tennessee based solely on the race of the victim or the race of the defendant. However, they did report finding significant differences based on victim and defendant race, considered together, for certain aggravating circumstances (Blevins & Blankenship, 2001). In particular, the aggravating circumstance concerning criminal history was found more often for non-white defendants with white victims, than for white defendants who had non-white victims. Furthermore, aggravating circumstances indicating that the capital crime was committed while in custody in order to avoid arrest were found more often for defendants with white victims than with non-white victims (Blevins & Blankenship, 2001). Additionally, aggravating circumstances concerning whether the murder occurred during the commission of a felony were found more often for non-white defendants with white victims, than for white defendants who had non-white victims.

The aggravating circumstance regarding the heinousness and cruelty of the criminal act was found significantly more often for white defendants who had white victims, than for any other racial group (Blevins & Blankenship, 2001). Thus, this aggravating circumstance was found to have an association with race that was stronger than any of the other aggravating circumstances that were considered. Additionally, the only variables that were determined to be significant predictors of the number of aggravators that would be found against a defendant were the relationship of the victim and the defendant and the racial composition of the jury (Blevins & Blankenship, 2001). In essence, and based on the conclusions of this study, capital defendants receive more aggravating circumstances when members of their own race are absent from the jury, as opposed to when they are present, and when they kill a stranger or a person unknown to them, as opposed to when they kill someone that they know or to whom they have relation (Blevins & Blankenship, 2001).

Qualitative Data

Case Studies. In order to further supplement the quantitative data just described, seven qualitative case studies were undertaken on individuals throughout the United States who were executed in 2013. These seven case studies were completed on persons who were randomly selected from all of those who had been executed at the time of the research, and included demographic and basic information pertaining to their personal characteristics and attributes, as well as information related to their offense, criminal trials, and media news reports. Personal information gathered for these studies included the defendant's name, date of birth, their race, and their gender. Information regarding their crime consisted of the date of their offense, the state and county in which they were

convicted, and the date of their execution. Information related to median household income and per capita income for the county in which these individuals were convicted was also collected as a proxy for the social class with which they most likely would have identified.

In gathering the needed information for these case studies, the primary sources that proved most useful were the prison and death row websites for each state represented, the Census Bureau, and the clarkprosecutor.org website. Case studies that examined individuals executed in a different state (Ohio, Georgia, Oklahoma, Florida, and Virginia) subsequently required searching five separate death row websites in order to collect information similar to that acquired for the Texas database, such as personal characteristics and offense details. Each state's death row website differed from the others and contained a significantly smaller amount of information than what was available on the TDCJ website, so additional sources were also consulted. The clarkprosecutor.org website was among these sources and proved invaluable in that it held not only information on the personal characteristics of each individual, but also information pertaining to their capital offense and criminal trial, in addition to media reports and news stories about their crime, arrest, and execution. The final data that were collected for these case studies, the median household and per capita income for the state and county in which the individual was convicted, was obtained from the Census Bureau in a similar manner to the census information gathered for the initial Texas dataset.

Aside from the information collected from each state's death row website, the Census Bureau, and the clarkprosecutor.org website, case studies also included a theoretical component in which a summary of the information gathered was detailed and

explained in a narrative fashion. This section focused heavily on each individual's portrayal in the media via newspaper reports, personal interviews, and witnesses to their execution, and also discussed their family background, any history of substance and or physical abuse and neglect, and any prior criminal convictions. Information concerning family background, forms of abuse experienced, drug and alcohol use, and previous convictions or institutionalizations was considered to be particularly relevant to the present study in that this information carried social class implications (Akhtar, 2010; Bowers, Foglia, Giles, & Antonio, 2006; DeMay, 1998; Hagan, 1974; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Seron & Munger, 1996). Additionally, this information also provided insight into the presence of mental illness and characteristics that are associated with concentrated disadvantage, thus enabling it to qualify as information that could have been used for mitigating evidence in each individual's capital case. Information pertaining to the trial of each individual, including legal disputes that they had in terms of evidence, testimony, and attorney performance, was also included in the theoretical component of each case study.

In addition to the information that was collected for the five case studies completed on individuals throughout the United States, two additional case studies were also completed on individuals who were executed in Texas in 2013. These case studies differed slightly from the others, however, in that they focused on what one might refer to as "outliers," or executed persons who do not share many of the social and economic characteristics typically associated with those belonging to the lower or impoverished social class. Both individuals used for these case studies could have been considered middle class prior to their capital offense, thus evidencing that the pattern of almost

exclusively executing the poor does, in fact, occasionally diverge. The information that was gathered for each individual is similar to that collected for the five other case studies, making the TDCJ offender website database the primary source for acquiring information needed and relevant to these studies. Additionally, the clarkprosecutor.org website was also consulted in order to gather information on each individual's capital trial, offense, and portrayal in the media via available news reports and interviews.

State-Defined Mitigating Factors for Capital Cases. The final data collected for this study pertained to the factors, as defined by each state, that qualify as mitigating in capital murder cases. Mitigating factors can be best thought of as circumstances that are used by the defense in order to partially or fully explain the actions and behaviors of a capital defendant. Mitigating evidence is typically introduced during the sentencing phase of a bifurcated capital trial, and serves the primary purpose of offering an explanation for the defendant's actions in order to illicit mercy from the judge or jury regarding sentence imposition. Since there is no universal standard in place, and death penalty states often differ both marginally and substantially in their formal definition of what they consider to be mitigating circumstances, an examination of each state's capital statutes was required.

While some are far more active in the execution process than others, at the time of this study, 32 states, the federal government, and the United States military all retained the death penalty for first degree murder and aggravated homicide (DPIC). Through the legislative process, these states and jurisdictions have created legal statutes in which they have specified the certain factors and circumstances as mitigating in capital murder cases. Each state differs in their considerations, with some states specifying a substantial list of

explicit factors, and others relying more heavily on the subjectivity and individual interpretation of the various legal actors involved in a particular case. Several states, however, do share one similarity in these considerations in that they provide for the opportunity to include any evidence that may be considered as mitigating in the sentencing phase of a capital trial, regardless of whether it is specified in their capital statute. This option enables the defense to introduce any evidence that they feel may increase the favorability of their client to the judge and jury, and that subsequently may increase their chances of receiving leniency or mercy in sentencing. The option also helps to alleviate some of the bias that exists in law creation and enforcement in that mitigating factors are not confined or limited to a certain list of available options.

In order to collect information on the mitigating statutes for each state that retained the death penalty at the time of this research, the website maintained by the Death Penalty Information Center was consulted. On this website, information can be found concerning which states have abolished and which states currently retain the death penalty, in addition to a summary of death penalty statutes by state and a multitude of other valuable information and resources. From the Death Penalty Information Center website, it was possible to determine the states in which capital punishment was still in use and also to review their capital statutes in order to record any consistencies, inconsistencies, and open-ended factors that are included in the legislation and shared between multiple states. Information necessary to make comparisons between the capital statutes of different states and to establish the presence or absence of social class implications was acquired from the database of state mitigating statutes as listed on the Death Penalty Information Center website.

CHAPTER 5

RESULTS

This chapter presents the quantitative results of the research using the methodology outlined in the previous chapter. In addition to discussing the quantitative results derived from the Texas and Tennessee datasets, this chapter will also discuss the qualitative results of the content analysis of state-defined mitigating circumstances. The only results that will not be discussed in this chapter are the narrative case studies, as they will be included in the following chapter alongside a theoretical interpretation and application. This chapter will be organized in accordance with the methods chapter, wherein the quantitative data of the Texas dataset will be presented first, followed then by the Tennessee dataset, and, lastly, by the qualitative data on the content analysis of state defined mitigating circumstances.

Quantitative Results

Texas Dataset. Recall from the previous chapter that the Texas dataset included variables pertaining to date of execution, age at the time of offense and execution, gender, county where crime occurred, race, education level, and previous occupation or employment. Other variables included legal counsel, proclamations of innocence, prior criminal history, mental illness, median household income of the county of conviction, and per capita income of the county of conviction. Results from the Texas dataset will begin with a discussion of the demographic variables, before then moving to address the

social and economic variables included in this study. The results for each variable are presented in the order of which they were outlined in the previous chapter.

The first demographic variable that will be addressed is date of execution. As previously noted in the methodology chapter, the Texas dataset encompassed every individual who was executed in the state of Texas between the years of 2000 and 2012. As shown in Table 5.1, the vast majority of individuals included in this dataset were executed within the first five years of the designated time frame. More specifically, over half, or 53%, were executed between the years of 2000 and 2005. After this five year span, however, executions appeared to remain relatively constant with 2011 and 2012 posting the smallest percentages at 4% and 5%, respectively. The average age at the time of offense was 26.73 years ($SD = 7.989$) and the average age at the time of execution was 39.08 years ($SD = 8.638$).

Table 5.1
Date of Execution, 2000-2012

<u>Variable</u>	<u>N</u>	<u>%</u>	<u>Cumulative %</u>
Date of Execution			
00	40	14%	-
01	17	6%	20%
02	33	11%	31%
03	24	8%	39%
04	23	8%	47%
05	19	6%	53%
06	24	8%	61%
07	26	9%	70%
08	18	6%	76%
09	24	8%	84%
10	17	6%	90%
11	13	4%	94%
12	15	5%	99%

Results pertaining to demographic and social characteristics (gender, region of conviction, marital status, race, education, and legal counsel) are presented in Table 5.2. As evidenced in Table 5.2, almost all of those who were executed between the years of 2000 and 2012 were male, with only 1% of the sample being female. Due to the high number of counties present within the sample, the state of Texas was divided into regions in which each county was located. The majority of cases came from the northeast and southeast regions of Texas, with over 60% of cases originating within these areas (see Table 5.2). Despite a substantial amount of missing data in regard to children and marital status, results indicate that a quarter (25%) of those executed had children at the time of their offense, 8% were married, and 11% were married in addition to having children.¹ In terms of race, Table 5.2 also indicates that 42% of those included in this study were white and 58% were representative of a minority group. More specifically, 40% were black and 18% were Hispanic. Using 2010 data gathered from the U.S. Census Bureau, Figure 5.1 provides a comparison of the racial composition of the sample to the general U.S. population. Similarly, Figure 5.2 provides a comparison of the racial composition of the sample to the state of Texas.

Regarding race, difference in proportions tests showed some significant differences when comparing the race of those in the Texas dataset to race among the population as well as the general U.S. population. Specifically, the proportion of white individuals in the Texas dataset was significantly ($p \leq .01$) lower than the proportion of white persons in Texas and the entire U.S. There were also differences in the proportion

¹Inaccuracy may be present in the data as a result of the inability to locate a central data source. Additionally, it is also unknown if this information denotes marital status, and children, at the time of conviction, imprisonment, or execution. Of the sample, data were missing for 188 cases.

of black individuals, with the Texas dataset containing a significantly ($p \leq .01$) larger proportion of black persons than both the state of Texas and the U.S. A comparison of the proportions of Hispanics revealed that the proportion of Hispanics in the dataset was significantly ($p \leq .01$) lower than the proportion of Hispanics in the state, yet there was not a significant difference in the proportion of Hispanics in the Texas dataset as compared to the general U.S. population.

Table 5.2
Summary of Demographic Characteristics

<u>Variable</u>	<u>N</u>	<u>%</u>	<u>Mean</u>	<u>SD</u>
1. Sex				
Male	291	99.3%	-	-
Female	2	0.7%	-	-
2. Race				
White	123	42.0%	-	-
Black	116	39.6%	-	-
Hispanic	54	18.4%	-	-
3. Region (Co. of Conviction)				
Panhandle and North Central	18	6.1%	-	-
Central	42	14.3%	-	-
Northern				
Northeastern	79	27.0%	-	-
Southeastern	99	33.8%	-	-
South Central	51	17.4%	-	-
Far Western	4	1.4%	-	-
4. Education ²			10.47	2.25
8 Years or less	34	11.6%	-	-
9 Years-11 Years	134	45.7%	-	-
12 Years or GED	106	36.1%	-	-
13 Years - 16 Years	14	4.8%	-	-

² Data pertaining to education were gathered from the Texas Department of Criminal Justice website. The reported mean may be misleading or inaccurate due to the fact that offender education levels were classified on the website in terms of both years and grade; classifications varied with offenders.

Table 5.2 (continued)

<u>Variable</u>	<u>N</u>	<u>%</u>	<u>Mean</u>	<u>SD</u>
Missing	5	1.7%	-	-
5. Counsel (Trial Court Appointed Retained Unknown)	258	88.1%	-	-
	19	6.5%	-	-
	16	5.5%	-	-

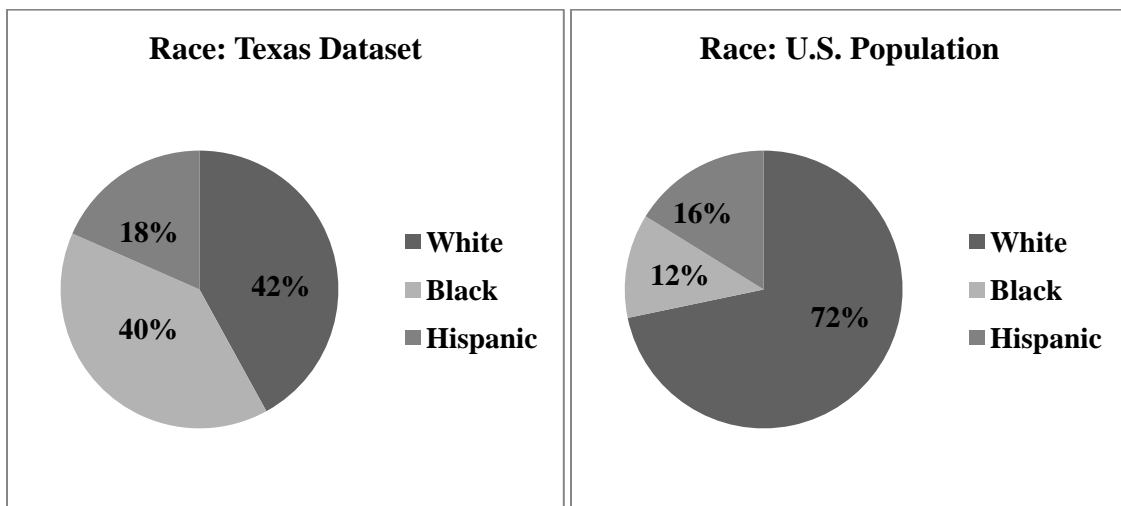


Figure 5.1. Comparison of Race between the Texas Dataset and the General U.S. Population

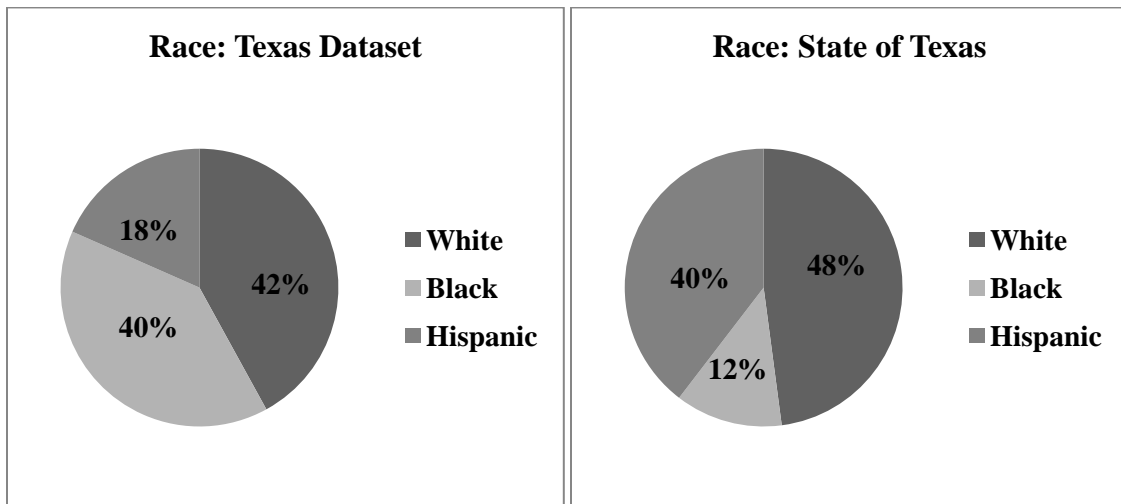


Figure 5.2. Comparison of Race between the Texas Dataset and the State of Texas

The results of the analysis for education and legal counsel are also presented in Table 5.2. As can be seen, the vast majority of individuals included in the sample, or 46%, had between nine and 11 years of education. The next largest category was 12 years (or a GED), with 36% falling within this category. Thus, of the total study sample, 93% had the equivalent of a high school diploma or less; only 5% had acquired any formal education beyond a high school degree. Figure 5.3 compares the educational levels, based on a high school degree or GED, of the sample to the general U.S. population, while Figure 5.4 compares the educational levels of the sample to the state of Texas. Lastly, the vast majority, or 88%, of individuals within the Texas dataset had court appointed legal counsel. Only a small percentage, or 6.5%, were able to privately retain legal counsel for a portion of their capital trial and appeals process.

In terms of education, difference in proportions tests indicated a significant ($p \leq .01$) difference in the proportion of education in the Texas dataset as compared with the general U.S. population and the population of Texas. There was a significantly ($p \leq .01$) higher proportion of individuals in the Texas dataset with 12 years or less of education than in the general U.S. population and the Texas population. These analyses suggest that, as a group, individuals who were executed in Texas had considerably less education than the general population of the state or the country.

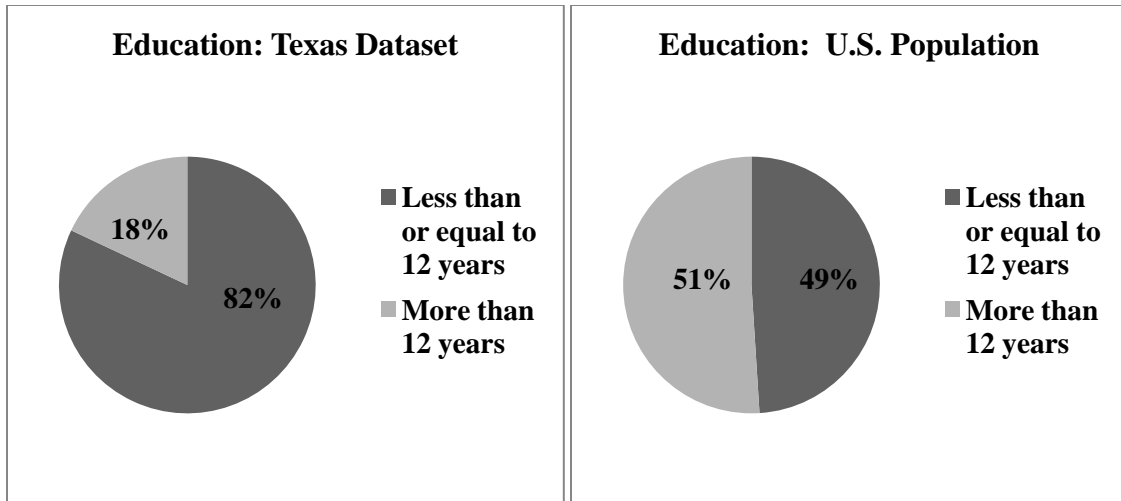


Figure 5.3. Comparison of Education between the Texas Dataset and the General U.S. Population

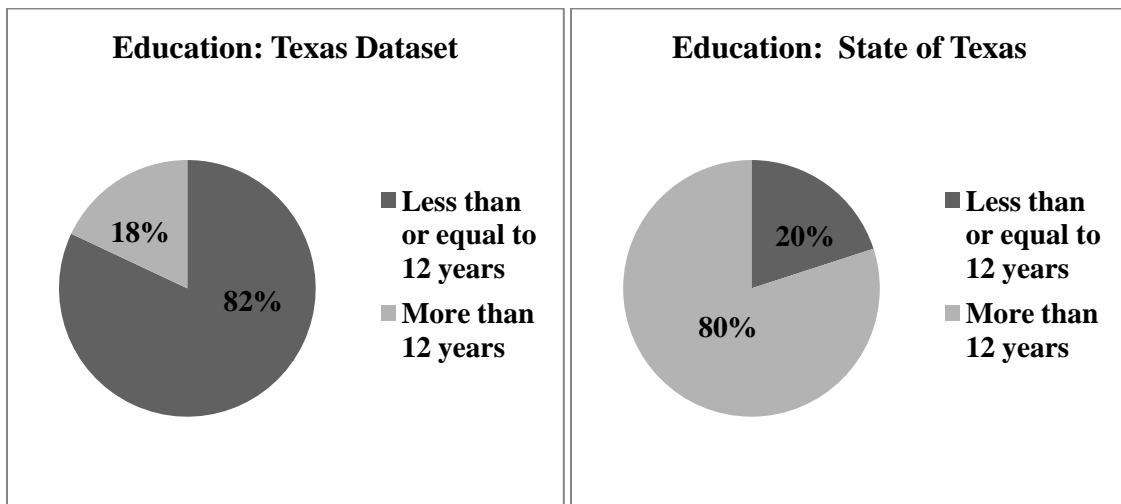


Figure 5.4. Comparison of Education between the Texas Dataset and the State of Texas

The occupational backgrounds of those in the Texas dataset are described in Table 5.3. As can be seen, the most common category of occupations was construction and extraction, with 49% of individuals falling within this category. Food preparation and service was the next largest category, representing 8% of the sample, and this was closely followed by installation, maintenance, and repair, with 7%, and production occupations, with 6%. New occupational groupings were constructed in order to account for

individuals who had listed multiple occupations falling within different categories; this was done by grouping those categories with which their previous employment most closely corresponded. Figure 5.5 provides an illustration of the prevalence of the occupations most common among those in the sample as compared to the general U.S. population. Regarding occupation, difference in proportions tests indicated significant ($p \leq .01$) differences in the proportions of occupations in the Texas dataset and the general U.S. population. Particularly, a significantly higher proportion of individuals in the Texas dataset had previous occupations related to construction and food preparation than in the general U.S. population.

Table 5.3
Summary of Occupational Characteristics

<u>Variable</u>	<u>N</u>	<u>%</u>
Employment ³		
1.Production	17	5.8%
2.Installation, Maintenance, and Repair	19	6.5%
3.Construction and Extraction	143	48.8%
4.Food Preparation and Serving	22	7.5%
5.Sales	12	4.1%
6.Transportation and Material Moving	9	3.1%
7.Office and Administrative	8	2.7%
8.Protective Services	6	2.0%
9.Arts, Design, Entertainment, and Media	1	.3%
10.Farming, Fishing, and Forestry	4	1.4%
11.Healthcare Support	3	1.0%
12.Building and Grounds Cleaning and Maintenance	8	2.7%
13.Personal Care and Service	3	1.0%
14.Computer and Mathematical	2	.7%

³ Employment categories were determined using the May 2012 Bureau of Labor Statistics annual mean income estimates. Rows 16 through 24 represent a combination of the first 15 rows.

Table 5.3 (continued)

<u>Variable</u>	<u>N</u>	<u>%</u>
15.Architecture/ Engineering	1	.3%
16.Food Prep/Building and Grounds	2	.7%
17.Installation/ Construction	4	1.4%
18.Production/ Construction	1	.3%
19.Construction/Food Prep	3	1.0%
20.Farming/ Construction	1	.3%
21.Transportation/ Construction	1	.3%
22.Production/ Installation	2	.7%
23.Installation/Food Prep	1	.3%
24.Food Prep/Office Support	1	.3%
25.Unknown	19	6.5%

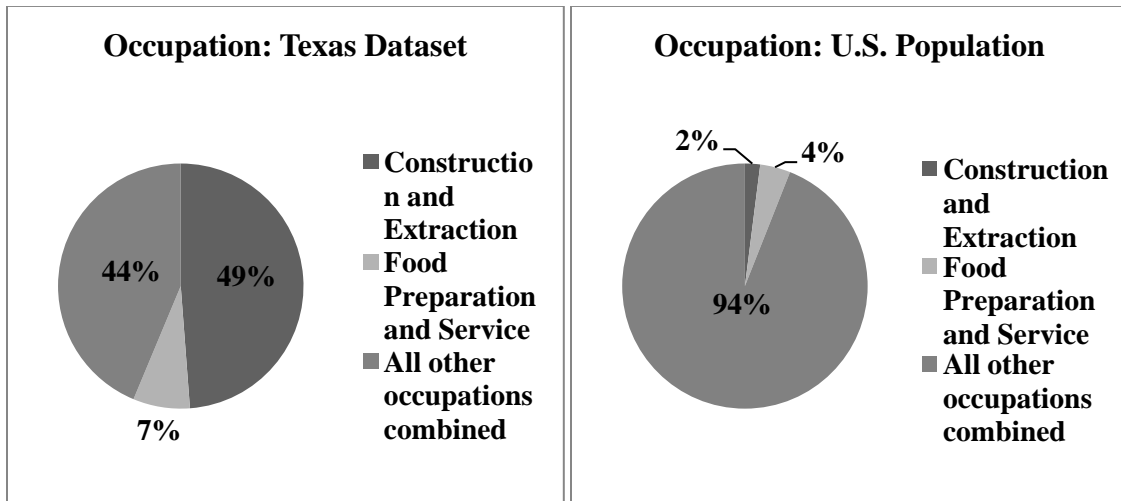


Figure 5.5. Comparison of Occupations between the Texas Dataset and the General U.S.

Population

Additional results pertaining to the variables of proclamations of innocence, prior criminal history, and mental illness are presented in Table 5.4. As can be seen from Table 5.4, the number of individuals who proclaimed innocence slightly outnumbered

those who did not, with 52% claiming innocence and 48% accepting or acknowledging guilt. In regard to prior criminal history the majority, or 52%, of individuals within the sample did not have a criminal record prior to their capital offense (see Table 5.4). Of those who had a prior criminal history, 16% were for felony convictions related to violent crime and 13% were for felony convictions related to property crime. Similar to the grouping of occupational categories as outlined above, criminal classifications were also combined, where appropriate, in order to account for individuals who had multiple prior convictions falling within different crime classifications or categories. From these groupings, the combination of prior convictions for both violent and property crimes was the largest category, with 6% of individuals falling within this realm. Lastly, results for mental illness are also presented in Table 5.4. As evidenced from Table 5.4, mental illness, or evidence of retardation, was present for 16% of the cases. Additionally, analysis also revealed the insanity plea to have been invoked by the defense for approximately 1% of individuals included within the Texas dataset.

Table 5.4
Summary of Social Characteristics

<u>Variable</u>	<u>N</u>	<u>%</u>
1. Innocence		
Yes	153	52.1%
No	140	47.8%
2. Prior Record ⁴		
No	153	52.2%
Yes	140	47.7%
a. Felony Property	38	13.0%
b. Felony Violent	46	15.7%
c. Felony Drug	7	2.4%
d. Sexual Offenses	4	1.4%

⁴ Prior record data was classified according to offense categories as listed by the UCR. Categories denoted as “multiple” indicate convictions of more than one offense type.

Table 5.4 (continued)

<u>Variable</u>	<u>N</u>	<u>%</u>
e. Part II (UCR)	4	1.4%
f. Multiple (Violent/Drug)	3	1.0%
g. Multiple (Property/Violent)	17	5.8%
h. Multiple (Violent/Sex)	1	.3%
i. Multiple (Violent/Part II)	1	.3%
j. Multiple (Sex/Drug)	2	.7%
k. Multiple (Violent/Property/Drug)	3	1.0%
l. Multiple (Property/Sex)	4	1.4%
m. Multiple (Property/Part II)	4	1.4%
n. Multiple (Property/Drug)	3	1.0%
o. Multiple (Property/Drug/ Sex)	1	.3%
p. Multiple (Property/Vice/ Violent/Part II)	1	.3%
q. Multiple (Property/Part II/Drug/Violent)	1	.3%
3. Mental Illness		
No	243	82.9%
Yes	46	15.7%
Insanity Plea	4	1.4%

Results pertaining to economic characteristics, or median household income, per capita income, and census tract information, are presented in Table 5.5. The data in Table 5.5 reveal that the average median household income of the county of conviction for individuals within the sample was \$50,424.86 ($SD = 9,559.81$) per year and the average per capita income for the county of conviction was \$25,814.01 ($SD = 4,665.81$) per year. Additionally, the data reveal that 57% of cases were from counties that had a median household income below \$50,000 per year, and 88% were from counties that had a median household income below \$60,000 per year.

Due to the high number of convictions in Harris, Bexar, and Dallas counties (n=114), or the larger cities of Texas, the dollar amounts reported for the average median household and per capita incomes are likely inflated, thus skewing the reported results. In order to control for this, home addresses and census tract information were collected for the cases in which such information was available (n=54). Using census tract information allowed for more precise income measurements in regions of Texas such as Houston, Dallas, and San Antonio, where median household and per capita income levels are elevated, but the levels for particular neighborhoods are not. As shown in Table 5.5, the average median household income for census tract was \$33,132 (*SD* = 11,302.33) per year, which is likely more reflective of the actual annual income amounts of those included within the sample. Figure 5.6 provides a comparison of the median household income of individuals within the study sample to Texas in general. Additionally, Figure 5.6 also illustrates a comparison of the median household and per capita incomes of both rural and urban settings within the state of Texas.

Table 5.5
Summary of Economic Characteristics

<u>Variable</u>	<u>Mean</u>	<u>Median</u>	<u>Min–Max</u>	<u>SD</u>
1. Median Household Income	\$50,424.86	\$48,942.00	\$23,525 - \$82,758	9,559.81
2. Per Capita Income	\$25,814.01	\$26,617.00	\$13,681 - \$50,920	4,665.81
3. Census Tract ⁵	\$33,132.00	\$30,688.50	\$14,089 - \$68,690	11,302.33

⁵ In 54 cases, information pertaining to the home addresses of individuals present within the dataset was available, mostly from Bexar and Harris counties. From this, and in conjunction with reports from the Census Bureau that most closely corresponded to the individual's year of conviction, census tract information was gathered.

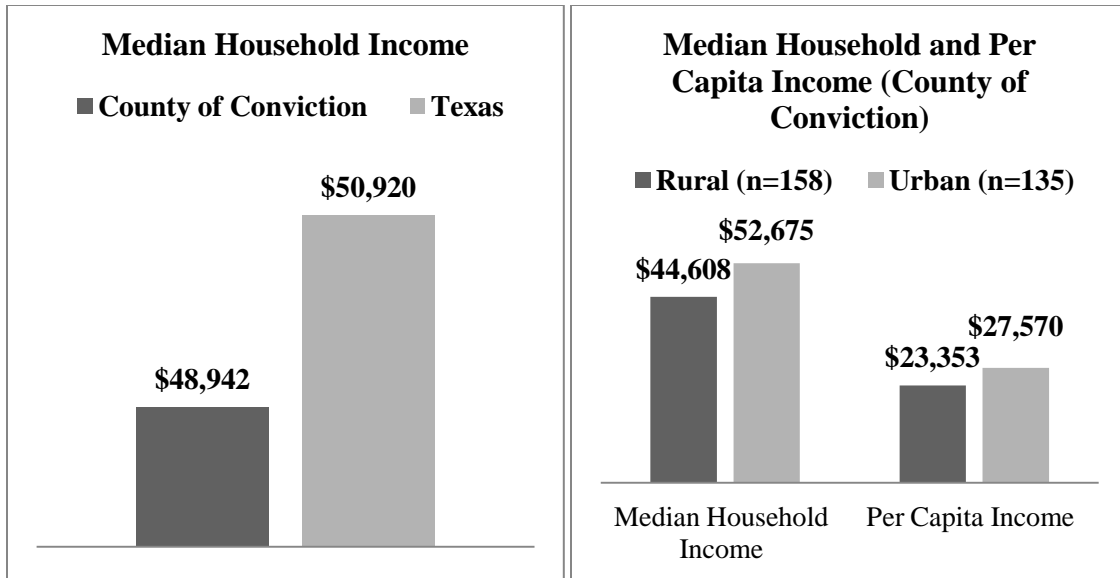


Figure 5.6. Comparison of the Median Household Income and Per Capita Income of the Texas Dataset and General U.S. Population, and Census Tracts, or Urban and Rural Settings

Tennessee Dataset. Recall from the previous chapter that an archived dataset was used in order to supplement the Texas dataset. The former consisted of data on individuals sentenced and not sentenced to death in Tennessee from the Supreme Court's *Gregg* decision through 1997. While the archived dataset contained a substantial amount of information, only the variables determined to be most relevant to the present study were included for analysis. Descriptive results for each variable are presented in Table 5.6. Information regarding Chi-Square analysis and levels of significance is also presented in Table 5.6. It should be noted that results presented in this table may be misleading in that cross tabulation resulted in a substantial amount of missing data for each variable contained within the dataset⁶.

⁶ The numbers of missing cases for each variable included in the crosstab were: Race = 68; Marital Status = 43; Children = 31; Prior Convictions = 31; Counsel = 47; Counsel Retained = 47; Counsel Type = 91; High School Graduate = 56.

Table 5.6
Summary of Tennessee Data

<u>Variable</u>	<u>Death: No</u>	<u>Death: Yes</u>	<u>X²</u>	<u>df</u>	<u>P</u>
1. Race (n=169)			2.99	1	.060
0 = Nonwhite	26(41%)	37(59%)			
1 = White	30(28%)	76(72%)			
2. Marital Status (n=194)			2.50	1	.077
0 = Single	66(49%)	70(52%)			
1 = Married	21(36%)	37(64%)			
3. Children (n=206)			1.70	1	.123
0 = No	53(47%)	59(53%)			
1 = Yes	36(38%)	58(62%)			
4. Prior Convictions (n=206)			8.08	1	.004*
0 = No	37(58%)	27(42%)			
1 = Yes	52(37%)	90(63%)			
5. Counsel (n=190)			10.40	2	.006*
0 = Court Appointed	39(35%)	73(65%)			
1 = Public Defender	22(65%)	12(35%)			
2 = Retained	22(50%)	22(50%)			
6. Counsel Retained (n=190)			.93	1	.214
0 = No	61(42%)	85(58%)			
1 = Yes	22(50%)	22(50%)			
7. Counsel Type (n=146)			9.58	1	.002*
0 = Court Appointed	39(35%)	73(65%)			
1 = Public Defender	22(65%)	12(35%)			
8. High School Graduate (n=181)			6.98	1	.006*
0 = No	57(53%)	51(47%)			
1 = Yes	24(33%)	49(67%)			

*p≤.05

As can be seen from Table 5.6, a series of Chi-Square tests revealed significant findings for the prior criminal convictions, education, and legal counsel variables. Of the cases for which data were available and who had prior criminal convictions, 63% were sentenced to death while only 42% of those who did not have a prior criminal conviction

were sentenced to death. Results pertaining to education were counterintuitive in that of the individuals who were high school graduates, 67% were sentenced to death, while only 47% of non-high school graduates were sentenced to death. Though results for education are in contrast to what might be expected, it begs the question as to whether or not, at the present time, a high school degree is an accurate proxy for determining social class standing. Arguably, and in the context of contemporary American society, the standard seems to have shifted from a high school education to a college education.

Results presented in Table 5.6 also revealed a significant Chi-Square for the three categories of counsel (i.e., court appointed, public defender, and retained). Further analysis revealed the locus of significance to be between public defender services and court appointed counsel, with 65% of individuals represented by court appointed legal counsel receiving a death sentence, as compared to only 35% of individuals represented by a public defender. Lastly, it can also be seen from Table 5.6 that while close, tests of the variables of race and marital status were not significant. Additionally, the presence or absence of children prior to an individual's capital offense did not prove to be significant.

Qualitative Results

For the purposes of this study, a content analysis of state-defined mitigating circumstances was undertaken in order to determine the prevalence with which open-ended or potentially biasing factors appeared in capital statutes guiding penalty phase decisions. Mitigating circumstances were examined for each of the 32 states that retained capital punishment at the time of this study, but only those factors judged to be open-

ended or inviting of social class interpretation were included for analysis. The particular mitigating factors selected for content analysis are listed by state in Appendix A.

For the content analysis of state-defined mitigating factors, patterns and major themes were selected that seemed to be inviting of social class interpretation. As reported in Table 5.7, content analysis of the data revealed that of the 32 states that retained capital punishment, 24, or 75%, included mitigating language that pertains to mental illness, impaired mental functioning, or the ability of a defendant to appreciate the wrongfulness of their actions. Similarly, 21 states, or 66%, listed prior criminal history as a mitigating factor influential in capital punishment decisions, while 18 states, or 56%, listed open-ended circumstances as appropriate for satisfying mitigation. Open-ended circumstances provide for the inclusion of any evidence that is deemed to be appropriate or important for proving mitigation, thus invoking a great deal of discretion on which extra legal factors, such as social class, race, and sex, may potentially prove influential. While the ability to introduce any relevant evidence at the penalty phase of a capital trial for mitigation may be beneficial, it can also be harmful in that the unrestrained discretion and subjective interpretations of middle and upper class legal actors of the court often work to the disadvantage of the typical lower class capital defendant.

Furthermore, the information shown in Table 5.7 revealed that several states, six or 19%, listed moral justification as a mitigating circumstance, and three states, or 9%, considered the future dangerousness or threat of a defendant to be significant in considerations of mitigating evidence and the death penalty. Thus, subjective interpretations of middle and upper class legal actors provide the basis by which both the actions and future dangerousness of capital defendants are determined and judged. Also

revealed in Table 5.7, lesser included categories were identified for a single state, Colorado, and pertained to whether the defendant could have foreseen the risk or consequences of their actions and whether the defendant cooperated and complied with the various processes involved in the criminal justice system. As evidenced by their presence in the legal statute of a single state, however, these mitigating circumstances did not prove to be a predominant theme or a reoccurring pattern throughout the statutes examined.

Table 5.7
Summary of Mitigating Circumstances by State

1. Substantially Impaired/Mental Functioning	AL, AZ, AR, CA, CO, DE, FL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NH, NC, OH, PA, SC, VA, WA, WY
2. Prior Criminal History	AL, AR, CA, CO, FL, IN, KS, KY, LA, MS, MO, MT, NE, NV, NC, OH, PA, SC, VA, WA, WY
3. Moral Justification	CA, CO, KY, LA, OK, SC
4. Open-Ended Interpretations	CA, CO, GA, FL, ID, IN, LA, MT, NV, NC, OH, OK, PA, SD, TN, TX, UT, WY
5. Foreseen Risks or Consequences	CO
6. Cooperation with the System	CO
7. Future Threat to Society	CO, KS, WA

As previously noted, the only results that were not presented in this chapter were the narrative case studies. The case studies will be discussed in the following chapter where they will be accompanied by both theoretical application and interpretation. The application of theory to the case studies enables the present study to illustrate the way in which social class interacts with capital punishment at crucial decision making junctures,

in addition to providing a theoretical model against which the content rich data can be meaningfully interpreted.

CHAPTER 6

THEORETICAL APPLICATION

This chapter will begin by presenting the theoretical model that will be used to explain the interrelated themes emerging from a review of the empirical research and literature in Chapter 2, and from the results of the present study in Chapter 5. Subsequently, the model will be applied to those themes in order to provide an explanation for the way in which social class interacts with decision making at crucial junctures in the capital punishment process. The theoretical model will serve to account for the disproportionate and biased treatment that has become so characteristic of the death penalty, as it relates to social class, by emphasizing the way in which individual characteristics, perceptions, and stereotypes influence legal decision making and disadvantage individuals belonging to the lower social class at every stage of the capital process. Finally, the qualitative case studies will be discussed last as they are presented in relationship to the model.

Theoretical Model

The theoretical model presented in Figure 6.1 is a visual integration of the theorists discussed in Chapter 3, and it serves as a means by which the emerging themes can be explained. The model is labeled through the identification of paths, all of which will be discussed and explained in terms of how they relate to social class and capital punishment. At the outset, it is worth pointing out that an important advantage of this

model is its infusion of human agency, through the social psychological work of Bandura and Haidt, into the structural and cultural analyses provided by Bourdieu, Kaplan, and Black. In working through the model, discussion will begin with path A and will conclude with path G.

Path A. The theoretical model begins with class stratification and Pierre Bourdieu's (1986) conceptualization of forms of capital. Recall from Chapter 3 that Bourdieu attributes the widening divide between the rich and the poor to the nature of capitalism itself (Allan, 2011). Bourdieu identifies four forms of capital, including economic, social, symbolic, and cultural, which collectively comprise a person's social class standing and condition both the way in which they perceive and interact with the world around them, as well as the stereotypical manner in which they are perceived and interacted with by others. The first form of capital, economic capital, is constituted by the cumulative total of an individual's wealth, income, and financial assets. Economic capital is the root of, and strongly influences, the levels of other forms of capital that are present within an individual's life in that it is dependent upon social class stratification itself (Allan, 2011; Bourdieu, 1986). The second form of capital, social capital, relies on levels of economic capital and is the social network within which an individual is situated. Though economic capital is highly influential in determining social capital, the latter is not entirely dependent on the former as social networks and relationships are continuously constructed both intentionally and unintentionally (Allan, 2011).

The third form of capital, symbolic capital, is the capacity of a group or individual to use symbols in order to socially construct or create realities. Symbolic capital exemplifies the nature of class stratification in that symbolic recognition is necessary in order to solidify the existence of a group, while also regulating its perceptions and meaning. This world-making process is primarily accomplished through the construction of objective categories, such as class, race, and gender, which label and categorize individuals and groups within the larger population (Allan, 2011). As such, symbolic

capital can be manifested vis-à-vis economic, social, and cultural forms of capital, as it “presupposes the intervention of the habitus as a socially constituted cognitive capacity” (Bourdieu, 1986, p. 56). Thus, symbolic capital influences and is influenced by the levels of economic, social, and cultural capital present within an individual’s life, while also constituting a distinct form of capital itself. The final form of capital, cultural capital, is an extension of symbolic capital in that it is encompassed within the larger symbolic field. Of the forms of capital, cultural capital is conceptualized as highly influential to social interaction as it embodies the informal social skills, habits, linguistics, and tastes of a person in their daily life, while also constituting their habitus or organization and employment in the world (Allan, 2011).

Recall from Chapter 3 that according to Bourdieu, class is inscribed on the body and influences every aspect of the social self, including the way in which persons walk, talk, eat, and generally conduct themselves. These characteristics are ultimately the product of education and distance from necessity, and serve the primary purpose of affecting the way in which perceptions are made and interactions are structured (Allan, 2011). Figure 6.2 presents a heuristic device that encompasses the four forms of capital and illustrates the variability that may be present not only within each form, but also across the collective habitus. Depending on the class standing of a particular individual, levels of capital may range from the low end to the high end of the spectrum, thereby contributing to the overall “capital profile.” The capital profile is essentially a means by which individuals are both judged and socially ranked. The profile is culturally, as well as sub-culturally, relative, as values in conventional society often differ from those in unconventional or sub-cultural settings. Thus, actions and behaviors that may increase

forms of capital in conventional realms, such as mainstream society, subsequently decrease forms of capital in unconventional or sub-cultural realms, such as prison. Furthermore, the capital profile is also a mechanism that fosters and confirms the application of social stereotypes. Where an individual ranks within and across each form of capital ultimately determines their overall class habitus, thus conditioning the way they are perceived and treated by persons and groups with different capital profiles. Criminal offending, once both detected and reacted to, can significantly diminish extant forms of capital as the stigma associated with a criminal label can reduce not only conventional social networks, but also economic resources and displays of cultural and social capital.

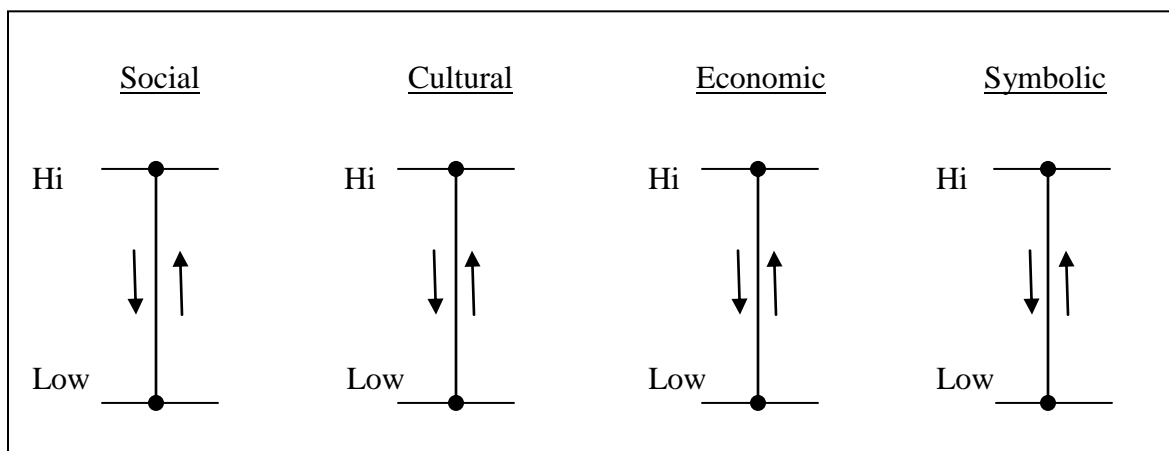


Figure 6.2. Capital Profile Heuristic.

Complementing Bourdieu's (1986) forms of capital, and also relevant to this stage of the model, is the theoretical work of Paul Kaplan (2012). Again, recall from Chapter 3 that Kaplan's theory is premised on ideological narratives and the notion that lower class and poor individuals face significant disadvantage throughout the legal process due to social distancing and dehumanization. Individuals from the lower class are readily constructed as dangerous, irredeemable, and ultimately deserving of the criminal

sanctions that they incur. Extending on Kaplan, they are rather easily attributed a character that exhibits reprehensible and ravaging qualities, a lack of redeemability, social remoteness, and a degree of resourcelessness. These characteristics, or the five R's, taken together, subsequently work to perpetuate a sixth R, revanchism, or the desire for retaliation and revenge among the public, thus reinforcing (via Path G in Figure 6.1) many of the forms of fundamental disadvantage that are faced by lower class capital defendants (Kaplan, 2012). Ideological legal narratives further contribute to this disadvantage through a simplification of the concepts of murder, execution, human agency, and the human mind, thereby recasting what it means to be an offender (Path A₁), and conversely what it means to be a victim (Path A₂), in a way that conditions judicial, jury, and media perceptions and stereotypes (Paths A₃ and A₄) to favor one party over another (Kaplan, 2012). Thus, hegemonic ideologies that pervade and sustain the legal system promote middle and upper class standards, while perceptions and stereotypes of the lower class structure the system in a way that determines both the applicability and interpretation of the law as it pertains to a particular case.

Legal decisions related to capital punishment are ultimately premised on, and validated in accordance with, Bourdieu's forms of capital. Social class positioning and habitus not only affect various aspects of an individual's life, such as their mannerisms and perceptions of the world in the case of cultural capital, but also the treatment that they receive under the law and by the criminal justice system and media agents. Those with whom legal actors and the higher classes can identify are treated with relative lenience, while those who are socially distanced and foreign to the values, practices, and characteristics of such classes are more readily denied mercy and harshly sanctioned

(Kaplan, 2012). The theoretical model suggests, then, that the habitus of many lower class murder defendants places them at an extreme disadvantage in regard to the legal system. The majority of legal actors come from the middle and upper social classes, where they are comfortably distanced from necessity and substantially removed from the life experiences of the typical murder defendant. They base their perceptions of these individuals on social stereotypes that are manifestations of class stratification (Path A). These stereotypes are also affected by the class positioning of both the offender and victim (Paths A₃ and A₄), and influence the way in which individuals from the lower class are dealt with by the courts and criminal justice system.

Of additional relevance at this stage of the model is Donald Black's (1989) theory of the behavior of the criminal law. As discussed in Chapter 3, the criminal law expresses particular cultural values and aspects of public opinion through the decision making, personal beliefs, and feelings of the legal actors who comprise the criminal justice system (Black, 1989). According to Black, differences in these cultural underpinnings result in virtually identical cases being handled differently, as the application of law differs depending on the context, situation, and social characteristics of the parties involved. Cooney's (2009) analysis is also consistent with this position in that he sees the formulation, interpretation, and application of the law as being dependent on measures of subjectivity and discretion that are used by middle class legal actors in decision making. Moreover, cultural ethics, morals, and rules that govern individual action are shaped by ideologically charged hegemonic standards that are used by these individuals to judge the seriousness of a criminal offense in addition to appropriate

sanctions. Social standing, distance, and status, therefore, all contribute to the structure of a case through influencing the interpretation and application of the law.

According to Black, biased and disproportionate treatment is more likely to occur when persons from different and increasingly separated social backgrounds are involved in a particular case or legal dispute (Black, 1989). The legal system, Black reasons, is relatively lenient when persons of low social status victimize their peers, but grows more punitive when persons of low social status offend those above them in the social class structure. Thus, the social class positioning and perceived credibility of defendants influence the way in which the law is applied to their particular cases, in addition to the criminal sanctions that they will incur. The more socially removed a party is from the defendant, such as the judge, jury, or prosecution, the more punitive these parties will likely be in their handling of the case (Black, 1989).

In terms of capital punishment and the theoretical model, the class stratification and habitus characteristic of particular individuals influence the way in which they are perceived, whether as offenders (Path A₁) or as victims (Path A₂). The various perceptions that structure the ideology of what an offender and victim are supposed to be largely depends on the social status of the parties involved, in addition to their subsequent perceptions of one another. The social construction and representation of the offender, as well as that of the victim, is premised on the class stratification, forms of capital, and social positioning of the defendant as these relate to the victims and the legal actors involved with their case. The characteristics, beliefs, perceptions, and actions of these individuals structure the way in which the law is interpreted and applied, in addition to the way in which the defendant and victim are socially constructed and portrayed to the

public via the media. These perceptions mediate and reinforce the social stereotypes that are characteristic of the typical lower class capital defendant (Path A₃), and victim (Path A₄), and facilitate the dehumanization, marginalization, and cumulative disadvantaging of individuals belonging to the lower social class. Essentially, these individuals are cast into the realm of otherness wherein they are considered to be dangerous and as having contributed to (and are deserving of) their own demise.

Paths B, C, D, and E. As evidenced in the previous discussion, the interpretation and application of the criminal law is premised on conceptions of morality held by the judge, prosecution, and other middle or upper class actors of the court, including jurors and defense attorneys. These moral ideals provide the basis upon which criminal action is defined in relation to hegemonic standards that sustain the interests of higher classes. Furthermore, vis-à-vis subjective determination of what constitutes a criminal offense, these standards also determine the way in which criminal sanctions are both defined as appropriate and imposed. Thus, in a continuance of the theoretical model, the work of Jonathan Haidt (2001) on moral intuition, judgment, and reasoning will now be incorporated.

As a result of the discretionary subjectivity involved in the interpretation and application of the law, legal decisions are largely premised on conceptions of morality and corresponding moral intuition, as opposed to objective or factual information. That is, “facts” must be interpreted, and they are interpreted through a moral lens. Recall from Chapter 3 that Haidt’s central argument is that people generally grasp what they perceive to be moral truths, not by a process of rational reasoning and reflection, but rather by a process of perception, based mostly on emotion, in which given “truths” are accepted

without question (Haidt, 2001). Culture and hegemonic representations are central to this happening in that they influence moral intuition, judgment, and reasoning, before then being both reinforced and legitimated by the reasoning process itself.

According to Haidt, moral intuition is a function of interaction between biological evolution and cultural socialization. The biological and cultural factors that shape moral intuition, then, are also the primary factors that shape morality in that they provide the basis for moral foundations and the various modules that comprise each domain of a moral foundation (Graham, et al., 2012). Haidt and his colleagues identify five foundations that they believe shape moral intuitions. These include the care/harm foundation, the fairness/cheating foundation, the loyalty/betrayal foundation, the authority/subversion foundation, and the sanctity/degradation foundation. The first foundation, the care/harm foundation, is characterized by the adaptive challenge of protecting and caring for children. It is based on the emotions of compassion for victims and anger for perpetrators, and is triggered by suffering, distress, and neediness. Caring and kindness are the most relevant virtues to this foundation (Graham et al., 2012). Second, the fairness/cheating foundation is characterized by the adaptive challenge of reaping the benefits of two-way partnerships. It is triggered by cheating, cooperation, and deception, and is distinguished by emotions such as anger, gratitude, and guilt. Relevant virtues pertain to fairness, trustworthiness, and justice (Graham, et al., 2012).

The third foundation, the loyalty/betrayal foundation, is characterized by the desire to form cohesive coalitions. It is triggered by threat or a challenge to the collective group and is distinguished by emotions such as group pride and rage against traitors. The most relevant virtues to this foundation are loyalty, patriotism, and self-sacrifice (Graham

et al., 2012). Forth, the authority/subversion foundation is characterized by an adaptive challenge of forging beneficial relationships within hierarchies. It is triggered by signs of high and low rank and is comprised of emotions such as fear and respect. The virtues most relevant to this foundation are obedience and deference (Graham et al., 2012). Lastly, the sanctity/degradation foundation is characterized by an adaptive challenge of avoiding communicable diseases. It is triggered by waste products and disease, and is emotionally distinguished by disgust. The virtues most relevant to this foundation are temperance, chastity, piety, and cleanliness (Graham, et al., 2012).

It is beyond the scope of this thesis to present a detailed description of Haidt's complex conception of biology and culture as they interact to affect the moral foundations which, in turn, shape moral intuition. A comprehensive discussion of these topics can be found in the work of Graham et al. (2012). The discussion below concentrates on the factor germane to this study (i.e., culture).

Culture, in the context of social class stratification, provides the basis from which class stereotypes are formed and presented, and is also a significant determinant of moral intuition. As the product of class stratified culture, class stereotypes shape the moral intuition of a given individual and hence reinforce cultural ideologies that reproduce class stratification. In essence, moral intuitions are continuously shaped by culture, of which class stereotypes are an integral part. Acclamation to these class stereotypes is an important part of cultural socialization.

Ensuing from this process, moral intuition subsequently shapes moral judgment and reasoning (Paths C and D). According to Haidt, moral judgments are the result of

quick moral intuitions and are immediately followed by slow, ex post facto moral reasoning to justify the moral intuition and judgment (Haidt, 2001). Thus, moral reasoning is predominantly employed to construct post hoc justifications for the morally-based emotion and intuition that often guide and structure individual perceptions. Culture, habitus, and the capital profile characteristic of a given individual, then, structure moral intuition and, thereby, condition the way in which people both interpret and judge the actions of others.

Moral reasoning is the process undertaken by an individual in order to support a previously made moral judgment derived from moral intuition. This ad hoc justification process is essentially a means by which intuition is legitimated and judgments are given logic (Path F₁), since it is culturally normative to expect people to “defend” their decisions and actions (Haidt, 2001). Per the theoretical model, forms of capital, as an interplay of social structure and culture, influence class stereotypes, and thus the moral intuition and moral reasoning used to by middle and upper class legal actors to interpret and apply the law in death penalty cases (Path B - D). Individuals from the lower class who are socially distanced from their better off counterparts often face significant disadvantage, as the moral intuition of their counterparts crafts perceptions of worthiness, morality, and deservingness in regard to both offenders (Path B₁) and victims (Path B₂). If deemed appropriate by quick and subjective moral intuition, harsh criminal sanctions, such as the death penalty, seem warranted (Path C) through an ideology-infused moral reasoning process that legitimates these decisions and constructs them as necessary for both “justice” and the betterment and protection of society (Path D). Moral intuition is thereby legitimated (Path F₁). Ideology and hegemonic justifications for the death

penalty are further extended through culture, where they then serve to influence the perceptions, moral intuition, judgment, and reasoning of others, thus bolstering public support for a practice that is fundamentally biased and arbitrary in application (Path E). Moreover, this process is critical to the hegemony of the death penalty as capital punishment is not only shaped by culture, but also reinforces and reciprocally shapes culture. Essentially, once moral reasoning and action are in place, they subsequently flip to influence future decision making, as it relates to capital punishment, through a reinforcement of punitive ideology and conceptions of punishment.

Path F. Throughout the moral reasoning and judgment process, individuals often disengage themselves from situations that conflict with, or are in opposition to, their personal standards of morality. According to Albert Bandura (1999), and as discussed in Chapter 3, moral standards and self sanctions are the primary means by which individuals regulate and restrain their own behavior in order to maintain consistency between their personal standards and moral agency. Through the process of moral disengagement, then, Bandura addresses the translation of moral reasoning into action via self-regulation. More specifically, Bandura uses the moral disengagement process in order to provide an explanation for how moral standards acquired through socialization, which are largely shaped by forms of capital and class stratification, are continually compared against both actions and contemplated actions.

Moral disengagement typically occurs through a reconstruction of inhumane conduct, so as to make such conduct more palatable, and involves a moral justification for the activity in question so that individual participation will not diminish considerations of morality. Bandura posits several means by which an individual can

accomplish moral disengagement, and he argues that continued or repeated exposure to disengagement mechanisms will ultimately result in an easing of the process, something he calls “gradualistic disengagement.” Individually, each disengagement mechanism is influential on the collective reasoning process. These mechanisms affect not only the initial moral intuition (Path F) and judgment (Path F₃), but also the moral reasoning (Path F) that provides logic and justification for the judgment or action (Path F₁). As a result of the disengagement process and continued exposure to these mechanisms, individuals are able to gradually disengage themselves from situations and conduct that runs counter to their standards of morality. Thus, persistent exposure to disengagement mechanisms can lead to gradualistic moral disengagement. In terms of social class and the death penalty, this helps to account for the routinization of the use of capital punishment against the poor, as members of the lower class are more often given this sanction consequently making its imposition seem legitimate.

According to Bandura, over the course of a three-stage process individuals employ numerous disengagement mechanisms in order to participate in conduct that runs counter to their standards of morality. These stages, in addition to the individual mechanisms that constitute each, are listed in Table 6.1. In the first stage of moral disengagement, practices such as cognitive restructuring, moral justification, sanitizing language, and palatable comparison are usually invoked in order to increase the social acceptability of harmful conduct and to curtail or minimize self sanctions (Bandura, 1999). In terms of capital punishment, moral justification, or the use of worthy ends (e.g., “justice”) to justify injurious means (e.g., execution), is often employed to minimize internal moral conflict. Sanitizing language, or rendering the execution process

benign through euphemistic and neutral language (e.g., depersonalization and the abstract label of “capital punishment”) can also accomplish this. The same holds for palatable comparison, or justification on the basis of preventing future harm (e.g., execution prevents additional human suffering and promotes public safety). Taken together, these mechanisms are collectively used to maintain public support for capital punishment by facilitating the moral judgment that leads to the imposition of the sanction (Path F₃) (Osofsky, Bandura, & Zimbardo, 2005).

Table 6.1
Summary of Mechanisms through which Moral Self-Sanctions are Selectively Disengaged.

Stage 1: Injurious Conduct	<ul style="list-style-type: none"> • Moral Justification – Worthy ends are used to vindicate or justify means and inhumane conduct • Palliative Comparison – Used to affirm injurious conduct as preventing more harm or suffering than it causes • Euphemistic Labeling – Renders injurious conduct benign through sanitizing language
Stage 2: Detrimental Effects	<ul style="list-style-type: none"> • Minimizing, Ignoring, and Misconstruing Consequences – Weakens moral controls by minimizing, ignoring, and disbelieving consequences of conduct to be harmful • Displacement/Diffusion of Responsibility – Diffuses responsibility for conduct through a division of labor, group decision-making, and engaging in collective action as to provide personal anonymity and minimize individual accountability
Stage 3: Victim	<ul style="list-style-type: none"> • Dehumanization – Divests individuals of human qualities and attributes demonic traits to their character • Attribution of Blame – Compelling circumstances are used to blame the victim of the harmful conduct for their own suffering

Source: Osofsky, M., Bandura, A., & Zimbardo, P. (2005). The role of moral disengagement in the execution process. *Law and Human Behavior*, 29(4), 371-393.

From the first stage, the second stage of moral disengagement then operates to obscure or minimize the role of harm, as caused by the inhumane conduct, through a diffusion or displacement of responsibility. As it relates to capital punishment, a displacement of responsibility (e.g., viewing personal actions, such as sentencing an individual to death or carrying out an execution, as stemming from the dictates of authorities), allows individuals to absolve themselves of personal responsibility (Path F₂). Additionally, this displacement also permits an avoidance of self-condemnation as individuals are able to view others as being responsible for their actions (Osofsky, Bandura, & Zimbardo, 2005). In furthering this, a diffusion of responsibility (e.g., through a division of labor in decision making, group decision making, and an engagement in collective action) also assists in the moral disengagement process, as does minimizing or disregarding the harmful consequences of one's actions (e.g., ignoring of the injurious outcome of capital punishment by the judge, jury, attorneys, corrections officials, and the state). Per the theoretical model, each of these processes work to not only influence the initial intuition of an individual in determining the appropriateness of the death penalty, but also the moral judgment and reasoning that immediately follow to confirm or justify the original intuition (Paths C and D of Figure 6.1).

The final stage of the disengagement process relates to the consequences of the harm. This stage consists of dehumanization and an attribution of blame that quantifies the victim as deserving of the inhumane conduct. In terms of capital punishment, dehumanization (e.g., divesting capital defendants of human qualities by attributing demonic qualities to their character) and attribution of blame (e.g., blaming capital defendants for bringing suffering on themselves) work together to allow for the

imposition of the death penalty. Through these mechanisms, those involved in the execution process, such as legal actors and correctional officials, come to see themselves as driven to their actions by the defendant's appalling inhumanities (Osofsky, Bandura, & Zimbardo, 2005). Thus, these mechanisms excuse the actions of the perpetrators through a justification of serving the greater good. Of the stages and mechanisms that comprise the moral disengagement process, Bandura posits that a combination of diffused responsibility (Stage 2) and dehumanization (Stage 3) is especially likely to increase punitiveness, particularly in terms of the death penalty. As can be seen from the model, disengagement practices significantly influence moral reasoning in that they provide a justification for the original judgment made from emotionally-based and quick intuition (Path F₁).

The moral disengagement process, as a collective whole, is substantially affected by the social class positioning, or habitus, of the parties involved with a particular case. When a significant amount of social distance is present, the lesser of the parties, or the socially disadvantaged party, is often subject to dehumanization and othering, which allows them to be more easily stripped of their human qualities, perceived as unworthy, and brutalized through harsh criminal sanctioning and treatment. Thus, the dehumanization process, in conjunction with social distancing and a diffusion of responsibility, is largely responsible for the overly harsh and punitive response that many lower class and impoverished persons face in terms of the criminal justice system (Bandura, 1999). Attributions of blame serve self exonerating purposes and allow middle and upper class individuals to view themselves as faultless, without blame, and as driven

to their conduct by force, thereby allowing them to more easily condemn a lower class individual to death (Path F₂).

Path G. The final path of the theoretical model to be explained is the link from moral reasoning and immoral or harmful action back to class stratification and forms of capital. The post hoc moral reasoning process and harmful action that occur on individual and group levels, and that enable a justification for capital punishment on the basis of offender worthiness and necessity, is dependent on the social class positioning of the defendant as it relates to the various legal actors of the court. Per the theoretical model, the moral disengagement of middle class legal actors from immoral and harmful actions primarily results in a stimulation of moral reasoning in order to justify those actions (Path G₁). Essentially, then, moral reasoning, based on middle class standards, is used by these individuals to justify the use of immoral and harmful practices such as capital punishment and overly punitive criminal sanctioning. Moral reasoning, in conjunction with dehumanization and social distancing, also routinizes the use of capital punishment against the poor through the mechanisms associated with gradualistic moral disengagement. Disengagement from these harmful actions serves an additional purpose too in that it legitimates and reproduces class stratification (Path G₂) through the perceptions and stereotypes that structure moral intuition. Thus, punishment is not only influenced by culture and the moral intuition, judgment, and reasoning of individuals, but is itself influential in the shaping of culture by way of hegemonic ideology that perpetuates the overly punitive and harsh treatment of criminal offenders (Garland, 1990, 2001).

Individuals from the lower social class are thus significantly disadvantaged at every phase of the legal process as middle and upper class perceptions are continually reinforced through stereotypes (Path A) that provide the basis for quick moral intuition (Path B) and judgment (Path C). This judgment is justified through moral reasoning (Path D), where it is then reinforced by the class stratification and forms of capital, or habitus, characteristic of a particular individual (Path G). The capital profile of these individuals, then, ultimately serves as a means by which they can be judged and socially ranked, in addition to negatively labeled through harmful social stereotypes. Thus, the process is cyclical and effectively serves to reproduce social class disadvantage by promulgating hegemonic representations of the poor as dangerous and deserving of harsh punishment. That is, executing the poor functions to reinforce the stratification of capital in its various forms. Extant conceptions of class stratification become reaffirmed.

In the section that follows, the theoretical model will be applied to the themes emerging from a review of the literature in Chapter 2, and from the results of the present study in Chapter 5. This will be done in order to provide an explanation for the way in which social class interacts with capital punishment at crucial junctures in the decision making process.

Emergent Themes

Eight prominent themes have emerged from the previous chapters that specifically relate to the way in which social class interacts with capital punishment. Among these themes or patterns, the most obvious is the degree to which extra-legal factors, such as social class, race, and gender, condition or shape the capital punishment process. This

notion is further extended by the second theme, or the consistency of lower social class proxies, such as less education, working class occupation, prior criminal record, and approximations of median household and per capita income, as represented among capital defendants. With the exception of atypical outliers, most of those sentenced to death have minimal education, an occupational history lacking any substantive employment, a prior criminal record, and a pre-conviction life characterized by the chronic stresses associated with poverty. The third theme extends this notion in that it relates to the social background of the individuals who are typically representative of death row populations. Overwhelmingly, these persons have persistently suffered from concentrated disadvantage, wherein their opportunities and resources are both severely limited and restricted. High levels of concentrated disadvantage are not only indicative of poverty, residential instability, immigrant heterogeneity, and dilapidated housing, but are also correlated with high rates of crime, violence, mental illness, and various forms of abuse.

The fourth major theme to emerge from the empirical research and literature is the inability of most capital defendants, due to a lack of financial resources, to privately retain legal counsel. Forced reliance on court appointed legal counsel can be an extreme disadvantage in an adversarial capital trial in that it significantly influences not only the outcome of the trial, but also the initial decision of the prosecution to seek the death penalty. The fifth theme, prosecutorial, judicial, and jury discretion, extends this further as the discretion allotted to these individuals ultimately determines the way in which certain persons are dealt with by the courts and criminal justice system. Middle class standards and ideology guide legal interactions and facilitate the social exclusion and dehumanization of those who do not conform to these principles. The sixth theme also

relates to interpretation and discretion in that the legal system, as an institution, is inherently biased as it works to the disadvantage of lower class capital defendants through a disproportionate application of the law. Those who belong to the middle and upper class are far more likely to avoid capital punishment than are those belonging to the lower class.

The seventh theme to emerge from the empirical research and literature is based on the previous ones, as individuals from the lower class are not only persistently disadvantaged through the biases of the legal process itself, but also through the way in which the law is written in regard to what crimes are considered capital and what circumstances are considered mitigating. Equally important is what behaviors are not considered capital offenses and what circumstances, such as chronic poverty and certain forms of abuse, are not considered mitigating. Most capital statutes, as defined by states retaining the death penalty, are open-ended and inviting of social class interpretation. This ultimately disadvantages those with whom middle and upper class legal actors cannot identify, as such actors largely interpret the law in accordance to their standards and the perceptions or stereotypes that they hold true about those belonging to the lower class. The final theme concerns the media and the way in which capital defendants are framed through imagery and narrative discourse. This also relates to the perceptions of the middle and upper class through the information that they perpetuate. Capital defendants are portrayed as dangerous, savage, and unworthy of leniency, which legitimates a sentence of death and rallies the public's support for their execution.

These eight emergent themes will be addressed in the order presented, and the theoretical model will be applied to account for them. References to the model and

corresponding paths are helpful in this discussion in that they help to make sense of, or explain, the themes through an illustration of their applicability to the model.

Extra-Legal Factors. Extra-legal factors, such as social class, race, and gender, have been shown to be influential in routine operations of the criminal justice system, as well as decisions related to capital punishment and the death penalty (Akhtar, 2010; Bowers, Foglia, Giles, & Antonio, 2006; Hagan, 1974; Haney, 1995; Johnson & Johnson, 2001; Luginbuhl & Burkhead, 1994; Mitchell & Sidanius, 1995; Seron & Munger, 1996). Extra-legal factors not only affect the way in which individuals are handled by the courts and criminal justice system, but also the way they are perceived by those who ultimately determine their fate through creating, enforcing, interpreting, and applying the criminal law. Thus, individuals from the lower social class often face cumulative disadvantage as considerations of guilt, and appropriate sanctions, are determined largely in accordance with social stereotypes and standards that are held by the middle and upper class (Paths A and B). Essentially, then, extra-legal factors serve as a means by which the middle and upper class can differentiate themselves from the lower class by way of both a disproportionate application and interpretation of the law (Hagan, 1974). The social distance present between the middle and lower class, in conjunction with the dehumanization process (Path F), makes it easier for middle and upper class legal actors to impose harsh criminal sanctions on those belonging to the lower social class (Path F₂).

Recall from Chapter 5 that of the individuals included in the Texas dataset, 58% were representative of a minority group and almost all were determined to be poor or from the lower social class. From this, it is evident that extra-legal factors bear a considerable influence on decision making related to the death penalty, as the

demographic composition of the death row population lacks any significant social class variation. Overwhelmingly, extra-legal variables related to class are filtered from the system through technical legal decisions and the appeals process. Those who are sentenced to death and eventually executed, conversely, often share similar traits as they are collectively unable to avoid the death penalty due to their capital profile.

Though research indicates that criminal justice decisions are more likely to be based on legally-relevant factors, such as offense seriousness and prior criminal history, than on extra-legal factors (Akers & Sellers, 2013), certain groups remain disproportionately represented in rates of arrest, prosecution, and imprisonment. In fact, the most overrepresented group for each category is poor young adult males who belong to a minority group (Akers & Sellers, 2013). Considering this, it seems misleading to draw a firm distinction between legally-relevant and extra-legal factors, as the separation is partly artificial. Extra-legal factors operate in the production of legally-relevant factors, and legally-relevant factors are conditioned by the presence of extra-legal factors. Thus, the presence of certain extra-legal factors can increase the probability of an individual acquiring the legally-relevant factors (i.e., a prior record) that weigh heavily on decision making. The formal definition of crime and the culmination of social biases illustrate this well in that they ultimately influence one another through a disproportionate targeting of the lower class. Likewise, virtually every individual sentenced to death is poor regardless of gender, race, or age. For capital punishment, then, social class overshadows, but does not necessarily trump, other demographic characteristics.

Social Class Proxies. The second major theme, or the consistency of social class proxies among capital defendants and the death row population, is significantly related to

the extra-legal factors discussed above in that, collectively, proxies for social class standing are premised on basic demographic characteristics. Common proxies used to approximate social class, and which are also included in the present study, are education level, previous occupation or employment, prior criminal history, and estimations of median household and per capita income. The same logic applies for mental illness or impaired mental functioning, as well as race in that minorities are disproportionately represented among the poor. Yet nearly every individual on death row, regardless of their race, is a member of the lower class.

Recall from Chapter 5 that 93% of individuals included in the Texas dataset had a high school education or less, and 49% had an employment history of construction and extraction related occupations. Furthermore, 48% of the cases had a prior criminal record, and most had median household and per capita incomes substantially below their wealthier middle and upper class counterparts. The combination of these characteristics persistently disadvantages individuals belonging to the lower social class in that such individuals are increasingly distanced from the middle class standards that pervade contemporary culture and ideology and that structure decision making. Thus, these characteristics are proxies for forms of capital, and it is the capital profile of a given individual that fosters the application of social stereotypes. The capital profile of lower class individuals is substantially deficient compared against that of middle and upper class legal actors, and this distance ultimately results in perceptions of dangerousness, savagery, and threat.

Per the theoretical model, proxies for social class standing represent class stratification by forms of capital, or habitus. These factors condition the way a capital

defendant is perceived as an offender (Path A₁) and shape perceptions of the victim (Path A₂). Borrowing from Kaplan (2012), ideological and cultural narratives contribute to this through the social construction of perceptions and stereotypes that define, according to middle class standards, individuals in terms of both their offense (Path A₃) and the victim of that offense (Path A₄). These perceptions also reinforce and account for disproportionate applications of the criminal law as middle class stereotypes warrant harsher criminal sanctions against individuals belonging to the lower social class who are perceived to be violent, dangerous, and undeserving of lenience or mercy. Stereotypes that define social class standing vis-à-vis forms of capital, then, ultimately depend on the habitus (Path A) of a particular individual and provide the foundation upon which all subsequent judgments and decisions are based (Paths B – D).

Social Backgrounds. Of the individuals who are sentenced to death and executed, many share similar characteristics in terms of their social backgrounds and life experiences. Overwhelmingly, individuals from within this group have been subject to a persistent state of concentrated disadvantage wherein their opportunities and resources are severely limited due to a lack of neighborhood social cohesion and collective efficacy (Sampson, 2003). Characteristics of concentrated disadvantage include poverty, residential instability, single parent households, immigrant heterogeneity, and dilapidated housing, in addition to high rates of crime, violence, mental illness, and forms of abuse, all of which are typically present among individuals comprising death row populations (Haney, 1995; Sampson, 2003).

Perceptions of individuals from the lower class, based on preconceived notions and stereotypes of social backgrounds, serve as the basis from which decisions regarding

the death penalty are justified and myths enabling its imposition (e.g., capital punishment promotes public safety) are created (Haney, 1995). The perpetuation of these myths allows for the continuance of capital punishment through masking the contradictions and biases inherent to its nature. In terms of contradictions, recall from Chapter 3 that Zimring (2003) posits the fundamental contradiction of capital punishment to be an underlying tension between localized cultural vigilante values, and a nationalized due process tradition of a distrust of the government. Capital punishment, then, is a community-driven process that exists in a state of constant tension wherein it eventually results in ambivalence among the American citizenry as well as a disproportionate disadvantaging of those who are socially distanced from middle class standards and values. This dialectic has special implications for capital punishment in terms of how it plays out vis-à-vis social class in that the poor, due to an unfavorable social background and deficits in class habitus, are disproportionately susceptible to cultural perceptions that quantify them as unworthy and deserving of the death penalty. Consequently, these individuals are defined as less deserving of lenience and due process, thus making them systematically more vulnerable to default and knee-jerk localized vigilante and cultural traditions that foster the application of social stereotypes and legitimate the use of capital punishment (Zimring, 2003).

Myths commonly associated with the use of capital punishment enable the dehumanization of individuals from the lower social class through a demonization of their character and social backgrounds. Of these myths, the most prominent are the myth of demonic agency, or the denial of the humanity of the offender, the myth of “super” due process, or that there are substantial protections in place to ensure that only those who are

in fact truly guilty of the worst crimes are sentenced and put to death, and the myth of civilized exterminations, or that the execution of these persons is justified under law and is suitable punishment (Haney, 1995). By socially constructing defendants in a way that makes them appear sub-human, ignoring or downplaying relevant mitigating circumstances, and minimizing experiences and social backgrounds so as to dismiss outside forces as having had an impact on their actions, individuals facing capital punishment ultimately have a diminished likelihood of displaying any characteristics that would make them appear favorable and worth saving by middle class standards (Haney, 1995; Kaplan, 2012).

Middle and upper class conceptions of acceptable conduct ultimately shape the ideology of legal actors, such as the prosecution, judge, and jury, through negative perceptions of the lower class (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995; DeMay, 1998; Haney, 1995; Horowitz, 1997; Phillips, 2009; Vick, 1995). The social class positioning of these actors conditions their considerations of appropriate punishment, while also devaluing and downplaying the social background, characteristics, and circumstances of both the capital defendant and their offense (Haney, 1995). In terms of the theoretical model, social and legal backgrounds work to disadvantage the typical lower class capital defendant by constructing negative perceptions of them that reinforce commonly held social stereotypes and myths (Path A). The social background and personal history of an individual is influential at every stage of the legal process as it constitutes their habitus and affects the way they are perceived through stereotypes. These perceptions and stereotypes, in turn, influence the way in

which both moral intuition (Path B) and judgments operate in relation to the law and judgment of a particular case (Path C).

Court Appointed Legal Counsel. Competent defense counsel is vital to ensuring a fair and equitable trial in that it significantly impacts virtually every aspect of the legal process (Beck & Shumsky, 1997; Bright, 1994; Phillips, 2009; Vick, 1995; Wheeler & Wheeler, 1980). In terms of capital punishment, defense counsel plays a substantial role not only in the initial trial and appeals, but also in the prosecutor's decision as to whether or not they will seek death against a defendant (DeMay, 1998). Since the majority of capital defendants are from the lower social class, they are usually forced to rely on court appointed legal counsel or public defender services for representation. Often, such counsel further disadvantages these already vulnerable individuals in that they fail to properly investigate aspects of the defendant's case and prior life that could serve as mitigating circumstances. In addition, such counsel may be inexperienced and underpaid, lacking the time and financial resources necessary to successfully avoid a capital murder conviction and capital sentence (Bright, 1994; Haney, 1995; Phillips, 2009; Vick, 1995). Due process protections meant to universally extend equality and guard against injustice, through providing indigent defendants with legal representation, have done little to resolve the problems that are associated with the arbitrary and fundamentally biased nature of the death penalty. Thus, it is no surprise that ineffective assistance of counsel is a common claim among individuals represented by court appointed attorneys.

Recall from Chapter 5 that 88% of executed individuals in the Texas dataset, and 85% of individuals in the Tennessee dataset who were sentenced to death, had court appointed legal counsel. In terms of the Tennessee data on legal counsel that was not

privately retained, 65% were represented by court appointed legal counsel and 35% were represented by a public defender. Thus, a significantly higher proportion of individuals with court appointed legal counsel (65%), as compared with public defenders (35%), received a death sentence. As can be seen from this, a significant disparity exists in the likelihood of a death sentence in this state and time frame based on the type of counsel that was appointed to a particular case by the court. An explanation for this could be that as a result of the court appointing legal counsel to capital cases strictly on the basis of need, court appointed counsel lack the time, experience, desire, or financial resources necessary to properly defend their clients (Cole, 1999). Conversely, public defenders often provide their services in capital cases by choice, thus making them more willing to devote time, effort, and financial resources to a particular capital case. Regardless of whether legal counsel was court appointed or retained, however, the inherent nature of a capital trial, in terms of the length and expense, make it likely that few people will have the financial resources necessary to mount a rigorous defense throughout the entire capital process (Kaplan, 2012). Thus, most defendants are forced to rely on court appointed legal counsel for at least a portion, if not their entire, capital trial.

From the data presented in Chapter 5, and as outlined above, it can be inferred that the vast majority of individuals sentenced to death are at the mercy of court appointed legal counsel. In many instances, legal counsel appointed by the court provides minimal assistance to the capital defendants whom they are tasked to defend. Additionally, the legal competency of these individuals can often be seriously called into question as they frequently have little capital justice training, multiple bar violations, histories of alcohol and substance abuse, and investigate and present little evidence of

mitigation at their client's trial, among other things (Cole, 1999). However, while many capital defendants may have the ineffective assistance of counsel, it is all but impossible to have this fact formally recognized and remedied by the court. The *Strickland Test*, or the legal test to determine ineffective assistance of counsel, is inadequate in nature and very difficult to satisfy as it systematically works against those who are poor or belong to the lower social class (Cole, 1999).

In order to successfully claim ineffective assistance of counsel, a defendant must establish both deficient performance and prejudice (Cole, 1999). This is accomplished by demonstrating that attorney performance was outside of professionally competent assistance, and that the proclaimed deficiency affected the legal outcome of the trial. The burden of proof for satisfying these claims falls entirely on the defendant and, with the flexibility given to counsel by the courts for "tactical and strategic decision making," the actions and motives of court appointed attorneys are rarely questioned (Cole, 1999). The requirements for satisfying the *Strickland Test* for ineffective legal assistance disproportionately disadvantage the poor in that financial resources, of which individuals from this group often lack, are required in order to gather the evidence necessary for proving and supporting these claims. Thus, not only do habitus and class stratification fundamentally work to disadvantage capital defendants through perceptions and social stereotypes (Path A), they also manifest in more concrete forms through the forced reliance on court appointed legal representation and the major challenges to proving ineffective assistance of counsel. Furthermore, this notion also extends to the decision making of legal actors involved with a particular case, as ineffectual counsel cannot effectively counter moral intuition and reasoning (Paths B – D), nor can they counter the

moral disengagement processes used by these individuals to condemn a lower class person to death (Path F – F₃).

Judicial, Prosecutorial, Defense, and Jury Discretion. The social class disparity and disproportionate treatment that characterizes both the death penalty and criminal justice system is ultimately the product of the moral intuition, judgment, and reasoning of individuals operating within its parameters. Public officials, such as law makers, judges, prosecutors, and defense attorneys, typically come from the middle or more affluent classes of the social structure, whereas the vast majority of defendants (capital and otherwise) come from the lower or impoverished classes of the social structure. This social distance a la forms of capital, in conjunction with pervasive middle class standards and relatively unrestrained discretion, ultimately shape legal decision making (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995; DeMay, 1998; Horowitz, 1997; Wheeler & Wheeler, 1980).

Since the decision to seek the death penalty rests mostly with the prosecution, the socioeconomic status of the defendant and his or her capacity to obtain effective representation, as well as the perceived likelihood of conviction, play a substantial role in determinations of death eligibility and subsequent legal processing. Those who have court appointed legal counsel are often judged to be an easier case to prosecute, as opposed to those who privately retain counsel; the latter are typically extended a plea bargain, thus resulting in the disproportionate representation of court appointed counsel cases in capital trials. Prosecutorial discretion, then, can largely be accredited with maintaining disparity between the social classes and capital punishment in that it differentiates justice through selective applications of the law based on legal

representation (Johnson & Johnson, 2001). Though this discretion is necessary for the legal process, it can also be problematic in that a single person, or small group, is responsible for determining how to legally charge a defendant (Bright, 1994; Horowitz, 1997). From this, it is easy to see the way in which individual biases, or factors such as political elections, financial budgets, and media attention, can influence and contribute to disproportionate treatment.

Aside from legal counsel, issues surrounding discretion also extend to the judge, as the discretion of this individual weighs heavily on determinations of innocence and guilt and plays a major role in the outcome of many capital cases (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995). Much like the prosecution, judicial considerations are also influenced by factors such as political elections, media attention, and personal biases, and ultimately affect the way in which a particular case and capital defendant are handled. Additionally, a similar argument can be made for members of the jury, as the discretion allotted to this group is significantly influenced by the social backgrounds, ideology, and perspectives of each individual member (Bowers, Foglia, Giles, & Antonio, 2006; Luginbuhl & Burkhead, 1994). Lastly, the discretion given to defense counsel also significantly influences legal outcomes and considerations in that the social backgrounds and ideologies of these individuals influences not only the way in which they perceive their client, but also the way in which they approach a particular case in terms of their legal strategy for trial, sentencing, and the appeals process.

The legal discretion allotted to the prosecution, judge, jury, and defender shape the way in which they both individually and collectively approach and resolve particular legal issues. Collectively, as formal legal actors of the court, these individuals typically

come from the middle and upper social classes wherein their respective backgrounds greatly differ, and are far removed, from the typical lower class capital defendant. The stereotypes and perceptions that these individuals hold toward those belonging to the lower class (Paths A and B) influence the way in which they judge and handle legal cases before them, in addition to the sanctions that they deem appropriate for legal remedy. Furthermore, these perceptions also provide a basis for the quick moral intuition and judgments of these individuals (Path C), before then being legitimated through a reasoning process (Path D) that justifies their actions on the grounds of necessity and individual worth and deservingness. Disengagement mechanisms facilitate and sustain this process by affecting the reasoning process and enabling dehumanization and othering (Path F).

Institutional Biases of the Legal System. Aside from the particular social and demographic characteristics of individual legal actors, persons from the lower social class are also disproportionately affected by the biases structured into the law and legal system (Cole, 2001; Cooney, 1997; Haney, 1995; Reiman & Leighton, 2013). The law preserves inequality by sustaining a class hierarchy that differentiates treatment depending on social class standing. Thus, those from the lower social class are often subject to a disproportionate application of the law (Simon, 1993; Cohen, 1985; Sampson & Laub, 1993; Seron & Munger, 1996; Wacquant, 2010). This ranges from biases in the definition of capital crime to biases in the appeals process. It involves law makers, police, court actors, and even correctional staff. Hegemonic notions of criminality are structured in a way as to exclude a variety of harmful actions, such as those committed by persons of means, from criminal sanctioning while, simultaneously, over exaggerating

less harmful or problematic actions, such as those committed by individuals from the lower social class (Reiman & Leighton, 2013).

Biases in law creation primarily result in a disproportionate applicability of the law, as socially harmful actions of the upper class are not defined as death eligible in terms of the legal codes (Reiman & Leighton, 2013). This disproportionate application of the criminal law is also evident when looking at the individuals who are typically arrested, who tend to be the poor and racial minorities, and the types of crimes that are most often prosecuted, with street crime being far more vigorously targeted than white collar or corporate crimes that are more harmful (Reiman & Leighton, 2013).

Institutional biases of the legal system enable this disparity in that those who possess economic and political power, and who are overwhelmingly from the middle and upper class, create, enforce, and interpret the law in a way that is most beneficial to their particular interests and congruent with their habitus. Thus, the over policing and prosecution of street crime deflects focus from the harmful behaviors of better off individuals in order to recast it onto the lower class, thereby constructing the lower class as dangerous and a threat to society (Path A), and as warranting the imposition of harmful and exclusive actions (Garland, 2001; Reiman & Leighton, 2013). Essentially, then, the law exacted both reflects and legitimates the authority and actions of the powerful, while also criminalizing the poor, enabling the state to carry out harmful practices such as capital punishment (Seron & Munger, 1996; White & Van Der Velden, 1995), which, in turn, function to reproduce stratification.

Per the theoretical model, institutional biases pervade the legal system at every stage of the capital process through fundamentally disadvantaging individuals belonging

to the lower social class. This is evident in not only the way in which capital defendants are socially constructed and perceived by the middle and upper class (Path A), but also in how these perceptions are subsequently used to create, enforce, and interpret the law (Path B). The moral intuition, judgment, and reasoning of those involved with the legal system is largely premised on these ideas and stereotypes and allows legal actors to morally disengage from and dehumanize the typical lower class capital defendant (Paths C and D). This, in turn, makes it easier to impose upon them a sentence of death (Path F – F₃), and then justify it on the basis of their diminished status, or habitus, and the forms of capital that they possess. The effect is to reproduce class stratification and to add fuel to the cycle depicted in the theoretical model (Paths G₂ and G₁).

Mitigating Circumstances. An examination of the way in which mitigating statutes are written, as to define what constitutes appropriate evidence, also exemplifies the bias present within both the law and criminal justice system. Social class proxies, such as education level, employment history, race, mental illness, prior criminal history, and approximations of median household and per capita income, are influential in considerations of mitigation in that they are indicative of an individual's class habitus and capital profile. Recall from Chapter 5 that of the states that currently retain capital punishment, 75% include language in their mitigating statutes that pertains to mental illness, impaired mental functioning, and the ability of a defendant to appreciate the wrongfulness of their actions. Additionally, 66% reference lack of prior criminal history as a mitigating factor influential in capital punishment decisions, while 56% list circumstances that are so explicitly open-ended as to include any mitigating evidence that is deemed appropriate or relevant. Thus, a great deal of legal discretion is allotted to the

prosecution, judge, jury, and defender for the determination of not only what qualifies as mitigating evidence, but also for the manner in which the evidence will be perceived, presented, and considered. Furthermore, additional issues also arise in that mitigating evidence can be transformed into aggravating evidence by jurors (e.g., a juror's perception that an individual who is mentally retarded cannot learn so he or she must be executed), thus justifying a sentence of death, and defenders can altogether refrain from presenting certain relevant information in an effort to appear credible (Kaplan, 2012). Essentially, then, the discretion given to these middle and upper class legal actors significantly disadvantages lower class capital defendants, in terms of proving mitigation, as evidence is both defined and judged in accordance to these actors' subjective class standards.

The presence of open-ended circumstances and language inviting of social class interpretation in the capital statutes of many states allows for the subjective quantification, based on middle class standards, of what constitutes and is worthy of being considered mitigating evidence (e.g., possessing a gainful employment history). In effect, these open-ended categories invite consideration of forms of capital as they favor individuals of the higher classes (Paths A and B). Defendants who have ineffective assistance of counsel are particularly vulnerable to the framing of mitigation in that their legal counsel has often spent little time or put forth little effort and resources to investigate the circumstances of their offense, social background, or anything that could serve as mitigating evidence in their case. Without mitigating evidence or a social context within which the defendant can be placed (Haney, 1995), they effectively

maintain an identity of “other” and are thereby extended little sympathy or leniency in sentencing.

Media Framing and Portrayal of Capital Defendants and the Death Penalty.

Narrative discourse and imagery, as perpetuated by the mass media, significantly influence the stereotypical perceptions (Path A) and moral intuitions (Path B) that are held by many about both the defendant in a capital case and the death penalty in general (Bandes, 2004; Dardis, Baumgartner, Boydston, Boef, & Shen, 2006; Niven, 2002). Information that could benefit a defendant and serve as mitigation in their capital trial, such as a lack of education and employment, an impoverished economic background, a history of abuse, and mental illness, is often excluded by the media in reporting in order to not only demonize their character, but also to construct them as dangerous and deserving of death (Haney, 1995). If not entirely excluded, this information, such as a lack of education and employment opportunity, is often framed by the media in a way that is counter-mitigative. As a result, lower class capital defendants are portrayed in a way that makes them appear lazy, unwilling to work or better themselves, and as undeserving of sympathy, leniency, or mercy (Path F). Only in rare instances is the accuracy of this information verified and, in the event that incorrect information has been reported, is it seldom corrected in the same manner, or with the same vigor, that it was originally publicized (Haney, 1995; Kaplan, 2012). As a result of the omission of mitigating circumstances in reporting, then, capital defendants from the lower class are dehumanized in a way that justifies their execution on the basis of low individual worth and high deservingness (Path F – F₂).

Not only are the legal actors of the court socially distanced from the typical lower class capital defendant, but so too are the media and the general public. The media largely distort the perceptions that are held by the public toward capital punishment through the perpetuation of negative imagery, language, and ideology. To no surprise, the public, in addition to the judge, prosecution, and jury, are often unable or unwilling to identify or empathize with the socially removed lower class capital defendant, as they are constructed as less than human and inherently evil. This, in turn, provides a justification for the death penalty and contributes to its tremendous staying power in this country (Bandes, 2004; Dardis et al., 2006).

The narrative case studies will be discussed in the final section of this chapter. These provide an excellent illustration of the way in which the media, in addition to the other prominent themes as outlined above, interact with social class and the capital punishment process.

Case Studies

This section presents the final component of the qualitative results, the narrative case studies, using the methodology outlined in Chapter 4. The case studies will be presented in their entirety, and they will also be supplemented by theoretical application and interpretation. Not only do these case studies provide content rich data from which the effects of social class positioning can be seen, but they also illustrate the way in which the emergent themes, as outlined above, interact with the capital punishment process. This section will be organized by first providing a brief summary of the basic demographic and economic characteristics of each individual included, before then

moving to discuss their capital crime, media portrayal, and mitigating circumstances. Additionally, any legal issues arising from their capital trial, such as the ineffective assistance of counsel, will also be discussed.

The first case study undertaken for this research examined the life history and capital crime of Steven Smith. Smith, born in 1967, was a white male who raped and murdered a six month old white female on September, 29, 1998, at the age of 31. He was convicted of capital murder and sentenced to death in Mansfield, Ohio, located in Richland County. He spent a total of 15 years on death row awaiting execution. According to current census data, the median household income in Richland County is approximately \$43,098 per year and the median per capita income is approximately \$21,966 per year. Smith was executed on May 1, 2013, at the age of 46, after all of his appeals had been exhausted.

In terms of his capital offense and the way in which he was framed by the media, language used to portray Smith, especially in regard to his crime and execution, had an explicitly negative tone and constructed him in a way that ‘demonized’ both his actions and character. This is largely evidenced by the expressions and descriptive language used to characterize him and his crime by the courts, prosecutor, and various media sources. Included in this characterization were things such as “baby killer,” “ferociousness of the attack on the baby,” “among the worst of the worst,” “it is hard to fathom a crime more repulsive or reprehensible in character,” “...man who killed, raped six month old,” “the purposeful murder of a baby girl,” and “...while using the baby to sexually gratify himself.” The only media language that was used and did not portray Smith in a blatantly negative light, and that also sought to provide explanation for his

criminal actions, were the statements released by his defense counsel and daughter. Defense counsel contended that Smith was “too drunk to realize his assault was killing her,” “Autumn’s death was a horrible accident,” there was no “intent to kill the victim,” “...his client felt great remorse for the tragic and shocking crime he committed,” and “...didn’t mean to hurt her.”

Smith’s background and prior history provided little mitigating value in reference to his capital trial. He was raised mostly by his mother who often neglected and paid little attention to his overall well-being, and was frequently subject to the abuse of his mother’s first husband who regularly drank and used drugs. Smith’s aunt and grandmother also helped raise him, though they were not a significant or continuous presence in his life. At his trial, Smith’s first cousin testified that his stepfather regularly beat him by whipping him with a belt. His sister also testified, stating that he received little attention while growing up and started drinking alcohol at the age of nine or ten. Per his mother, Smith was the second of four children and had no contact with his biological father while growing up. Both his mother and sister described him as a good boy who loved school, loved to work, and got along well with everyone.

Interviews revealed Smith to be an average student in high school, ranking 149 out of 162, and intelligence tests placed his IQ around 80. As stated by his sister, the only major problem plaguing Smith was his heavy alcohol consumption. At the time of his arrest, Smith was alcohol dependent and likely in the middle to late stages of alcoholism. Smith's heavy use of alcohol provided little mitigating value during his trial, however, as evidence showed that he was aware of what he was being accused of and

was coherent enough, at the time of his crime, to hide physical evidence, including beer cans, a torn baby diaper, and a shirt, in a trash dumpster outside of his building.

Additionally, it was also determined through psychological testing, that Smith faced persistent problems with depression and sensitivity to others, and also had difficulty with containing his emotions, understanding and processing information, and impulse control.

In terms of his capital trial, Smith argued that his due process rights were violated through irrelevant and highly prejudicial photographs shown to damage his character and public appearance. Additionally, he also contended that he was denied a fair trial as a result of prosecutorial misconduct, and that he received the ineffective assistance of counsel throughout the length of his capital trial and appeals. These claims were made to no avail, however, in that they too, in addition to his troubled childhood and adolescence, substance abuse problems, and impaired mental functioning, proved inconsequential to the ultimate outcome of his capital trial. In accordance with research pertaining to the social backgrounds of capital defendants, Smith was invariably dehumanized, socially distanced, demonized, and portrayed by the media in a way that supplanted his classification as a dangerous other, ultimately warranting his condemnation to death (Haney, 1995; Kaplan, 2012). Furthermore, the ineffective assistance of his court appointed legal counsel also attributed to the culmination of his disadvantage in that relevant mitigating evidence, such as that relating to his substance abuse problems, physical abuse, and impaired mental functioning, was left unexamined and presented during his capital trial (Cole, 1999). Thus, Smith, like many other capital defendants, was sentenced to death largely as a result of deficits in his class habitus or capital profile,

and the inability of middle and upper class legal actors to identify with his crime or character.

The second case study undertaken for this research examined the life history and capital crime of Andrew Cook. Cook, born in 1974, was a white male who murdered two white college students on January 2, 1995, at the age of 20. He was convicted of capital murder and sentenced to death in Monroe County, Georgia, where he spent a total of 18 years on death row awaiting execution. According to current census data, the median household income in Monroe County is approximately \$48,632 per year and the median per capita income is approximately \$23,671 per year. This case study is somewhat unique in that Cook's father was an FBI agent at the time of his offense and testified against him at his capital trial. Cook was executed on February 21, 2013, at the age of 38, after all of his appeals had been exhausted.

The language used to portray Cook in the media had a somewhat negative tone, but was not nearly as negative as that of Steven Smith in the previous case study. Possibly due to the nature of his crime and the status and age of the victims, Cook was regarded less as an individual with 'demonic' and evil qualities and more as an individual who had made a mistake and accepted the consequences. This is evidenced largely by the expressions and descriptive language used to characterize him and his crime by the courts and various media sources. Included in these characterizations were things such as "Andrew Cook apologized before his execution...", "...he said it was senseless to kill Grant Patrick Hendrickson and Michele Cartagena...", "I'm not going to ask you to forgive me...I can't even do it myself," "...thanked his family for 'their support, for

being with me, and I'm sorry I took so much from you all," "...Cook had changed during his time in prison and was a good man...he had become spiritual while on death row and he wanted to help the families of his victims," and "38-year-old inmate...apologizing to the families of both victims before being injected at a state prison..."

From information provided by media sources, it is apparent that language used to represent Cook was far more neutral and less damaging to character than that of Steven Smith. Cook was apologetic for his crimes and the actions that resulted in the death of the two university students, and was framed by the media in a more humanized manner as a result. While there was some level of negativity present, evidenced by expressions such as "slayings," and "...two people he murdered," overall Cook was portrayed to be someone who had exhibited poor judgment and accepted his punishment. The fact the Cook's father was an FBI agent also gained a lot of attention in the media and somewhat obscured what may have been Cook's alternative, and more negative, portrayal. One media source in particular, entitled "How FBI Agent Sent His Son to Death Row," explicitly focused on Cook's father and his part in the capital murder process. Through focusing mostly on his father's loyalties and how they ripped him, his life, and his family apart, Cook's crime was overshadowed as sympathy for both Cook and his family, rather than the victims, were achieved. Arguably, the higher status and position of Cook's father played a large role in the way in which he was perceived by both the media and public, and also in the type of attention that this crime and case received.

As with Steven Smith from the first case study, issues concerning defense counsel were also raised by Cook in that he claimed his court appointed attorneys failed to

properly investigate his behavioral and mental health problems. Additionally, issues surrounding mitigation, or his history of mental illness and his childhood and adolescence, were also raised. As a child, Cook had been physically abused by his stepfather, which he claimed had resulted in both memory problems and delusions. Cook was a shy and awkward child but had a relatively positive family life until his mother divorced his father in 1981. Difficulties began for Cook at the age of eight, when his father remarried, and persisted throughout his youth and into his adulthood. Cook was evaluated at the age of nine and was reported to be “emotionally exhausted” from the disruption in his family life. Psychological evaluation also revealed that Cook strongly disliked school, seemed to live in a dream world, was withdrawn and unhappy, had threatened to hurt himself, and was having problems with family relationships.

At the age of fifteen, Cook began demonstrating antisocial behaviors including burglarizing a neighbor's house, stealing, and fraudulently using a box of checks, which led his parents to hospitalize him for approximately five weeks. Too, and as Cook grew older, his relationship with his stepfather became even more strained and worsened through both emotional and physical abuse. After being released from his hospitalization, Cook committed another burglary and, as a result, was arrested and placed on probation for a year. Cook's mother eventually divorced his stepfather wherein she then became “too lenient” with him in an attempt to compensate for his previous living situation and the abuse that he had persistently suffered. In December 1994, Cook's mother had to sell their home which resulted in psychological stress and an extreme hardship on him. This event preceded his capital crime as the murders occurred several days later.

Common themes within the case studies thus far, then (in addition to court appointed and inexperienced counsel), are histories of childhood neglect and abuse, mental illness and behavioral problems, and an unstable personal and family life. Each of these factors, in addition to a forced reliance on court appointed legal counsel, is indicative of lower social class standing in that these issues largely stem from the stresses associated with chronic poverty and concentrated disadvantage (Sampson & Laub, 1993). The culmination of these factors effectively results in negative portrayals and perceptions of the social backgrounds of these individuals, thereby casting them as dangerous others and as deserving of the death penalty (Haney, 1995). In terms of capital punishment and as stated earlier, most demographic and social characteristics can ultimately be linked to social stratification in that a lower class habitus overshadows the effects of other variables, such as race and gender, and remains the single variable most consistently present among capital defendants.

The third case study undertaken for this research examined the life history and capital crime of Steven Thacker. Thacker, born in 1970, was a white male who kidnapped, raped, and murdered a young white woman, while on a three-state crime spree, on December 23, 1999, at the age of 29. He was convicted of capital murder and sentenced to death in Maye County, Oklahoma, where he spent a total of 13 years on death row awaiting execution. According to current census data, the median household income in Maye County is approximately \$42,425 per year and the median per capita income is approximately \$20,170 per year. Thacker was executed on March 12, 2013, at the age of 42, after all of his appeals had been exhausted.

Language used to portray Steven Thacker in the media had an overtly negative tone, but much like Andrew Cook in the second case study, it was not nearly as negative as that of Steven Smith. Though Thacker was apologetic for his crimes, the nature of the crimes and his prior criminal record likely made it difficult for the public and media to “lessen” the impact of his capital offense. Thus, Thacker was subject to dehumanizing language and derogatory characterizations which likely had a significant impact on the public’s overall perception of and feelings toward him. This is evidenced largely through the expressions and descriptive language that was used to characterize him and his crimes by the courts and various media sources. Included in these negative characterizations were things such as “three-state killer...,” “Steven Thacker deserved to be punished,” “destroyed a family,” “...savagely ending the life of an innocent young woman,” “Thacker’s heinous killing spree,” and “...the kidnapping, rape and fatal stabbing of his first victim...” In reference to himself and to his feelings of regret for his capital offense, Thacker made an apologetic last statement regarding religion and his crimes before being executed, “I would like to apologize sincerely to the families of Lacy Hill, Forrest Boyd and Ray Patterson. I don’t deserve it, but as God has forgiven me, I hope you will forgive me for the pain I’ve caused.”

In terms of his prior criminal history and childhood, Thacker’s parents divorced when he was three, thus resulting in him having little adult supervision. As a child, Thacker was physically abused by his mother while his father had little involvement in his life. He performed poorly in school, fought frequently, was truant often, failed the first and seventh grades, and quit school in the ninth grade, though he later earned his GED in prison. He began smoking marijuana and drinking alcohol at the age of fourteen

and, by the next year, was using crack, powder cocaine, and LSD. As a teenager, Thacker was arrested on charges of burglary, theft, and auto theft, and was an alcoholic by the age of sixteen. At the age of seventeen, he was arrested for breaking and entering and served six months in prison, and at eighteen he was arrested for writing bad checks. He was also caught stealing a truck for which he served two additional years in prison in Ohio, and then violated parole by stealing a motorcycle and wrecking it which resulted in him being sent back to prison. Psychological testing revealed Thacker to have had bipolar disorder, with episodes of depression, crying spells, insomnia, hopelessness, and suicidal thoughts. He was also suffering from extreme mental and emotional disturbance at the time of his offense. Mental examinations also indicated that he was of average intelligence and suffered from poor impulse control.

In addition to Smith and Cook from the previous case studies, Thacker also raised several issues in regard to his capital trial. Chiefly, he claimed his trial counsel failed to present compelling and relevant mitigating evidence at his sentencing hearing and that he had the ineffective assistance of counsel at both the trial and appellate levels. As previously noted, the ineffective assistance of counsel can be detrimental in terms of providing a solid defense and compelling mitigating evidence for a capital case (Cole, 1999). Also, and continuing with the themes established by the first two case studies, Thacker had three court appointed attorneys who served as his legal representation, a history of drug use and abuse from a young age, and suffered from mental illness and impaired cognitive functioning. As with the previous case studies, the lower class habitus and capital profile of Thacker ultimately proved too difficult to overcome as his

inability to conform to middle and upper class standards inevitably worked to legitimate the imposition of his death sentence.

The fourth case study undertaken for this research examined the life history and capital crime of Larry Mann. Mann, born in 1953, was a white male who murdered a ten year old white female on November 4, 1980, at the age of 27. He was convicted of capital murder and sentenced to death in Pinellas County, Florida, where he spent a total of 32 years on death row awaiting execution. According to current census data, the median household income in Pinellas County is approximately \$45,891 per year and the median per capita income is approximately \$29,232 per year. Mann was executed on April 10, 2013, at the age of 59, after all of his appeals had been exhausted.

Much like the other case studies, language used to portray Larry Mann in the media had an overtly negative and derogatory tone, though it was not to the degree or harshness of that of Steven Smith. Mann's depiction was largely based on and influenced by his prior history of pedophilia, which ultimately served to shape perceptions about both his current and future state of dangerousness. Several reports indicated that Mann was remorseful of his criminal actions but, due to the nature of his crime, in addition to his prior criminal record, it was likely difficult for the public and media to empathize. Thus, Mann was subject to dehumanizing language and derogatory characterizations which likely impacted the public's overall perception of and feeling toward him. This is evidenced through the expressions and descriptive language that was used to characterize him, and subsequently his crime, by the courts and various media sources. Included in these negative characterizations were things such as "a pedophile," "drove the girl to an

orange grove, where he beat her, stabbed her and crushed her head with a concrete-encased pole,” “he kidnapped and murdered a 10-year-old girl,” “Mann pulled over into an abandoned orange grove, slit her throat twice, and then bludgeoned her head with a pipe with a cement base,” and “crushed a little girl's skull 32 years ago.”

In terms of mitigating circumstances, it was revealed during his trial that Mann suffered from psychotic depression and feelings of rage due to his inability to suppress his strong pedophilic urges. Furthermore, Mann had a long history of alcohol and drug dependency, which likely affected his coping mechanisms, but was nonetheless successful in maintaining a relationship with his family and friends while incarcerated. Additionally, he was also reported to have been an exemplary inmate while in prison, during which time he had often demonstrated great remorse for his crimes. This information did little to benefit Mann, however, as it was given less weight than the aggravating circumstances that were used against him by the state during his capital trial. His categorization as a sexual predator, due to his previous convictions and suspected involvement in many sexual incidents, in addition to the nature of his current crime, invariably proved too substantial to overcome.

Mann shared many similarities with the other individuals chosen for these case studies, in terms of criminal history, mental illness, impaired cognitive functioning, and alcohol and substance abuse, yet he also differed in several key aspects. For instance, Mann was married at the time of the capital murder for which he was convicted and was also capable of retaining private defense counsel for the duration of his initial trial. This suggests some degree of stability in his adult life, as he was living a somewhat

conventional lifestyle and was financially able to privately retain legal representation. Eventually, however, he too was also forced to rely on the assistance of court-appointed legal counsel, during the appellate stages of his trial, which eventually resulted in claims of ineffective assistance of counsel. Like the others, the mitigating evidence that could have benefited Mann during his capital trial was largely overlooked as his social background was framed as counter-mitigative and used against him (Haney, 1995). Essentially, the social distance associated with his capital profile, in conjunction with the heinousness of his crime, enabled middle and upper class legal actors to demonize his character, thereby warranting and easing the imposition of the death penalty.

The fifth case study undertaken for this research examined the life history and capital crime of Robert Gleason Jr. Gleason, born in 1970, was a white male who murdered another white male in order to cover up his involvement in a drug gang at the age of 37. Once incarcerated, Gleason went on to murder two white fellow inmates, on May 8, 2009 and July 28, 2010, at the ages of 39 and 40, respectively. The murder of the first inmate, in 2009, resulted in his capital conviction. He was sentenced to death in Amherst County, Virginia, and spent a total of three years on death row awaiting execution. According to current census data, the median household income in Amherst County is approximately \$44,383 per year and the median per capita income is approximately \$22,128 per year. Gleason was executed on January 16, 2013, at the age of 42, after he waived his appeals and demanded to be executed.

This case study largely differs from the others in that Gleason actively sought out the death penalty through waiving his appeals and refusing the assistance of legal

counsel. Receiving the death penalty was the sole motivator for the capital murders of which he was convicted, both of which were fellow inmates, and he pledged to continue killing unless he was put to death. Language used to portray Gleason in the media was similar to that of previous case studies in that it had an overtly negative tone and largely depicted him as an individual who was inherently dangerous to both the general and prison populations. Gleason was characterized as a danger to society and as someone who needed to be put to death in order to protect others. This is evidenced primarily through the expressions and descriptive language that was used to characterize him, in addition to the statements that he made regarding himself and his crimes.

Included in his characterizations were things such as “strangled his prison cell mate and made good on a vow to continue killing,” “The only way to stop me is put me on death row,” “...he only requested death to keep a promise to a loved one that he wouldn't kill again,” “he timed it to coincide with the anniversary of the killing for which he was sent to prison in the first place,” “already had a few [other] inmates lined up, just in case I didn't get the death penalty, that I was gonna take out,” and “killing to him is no different than 'going to the fridge to get a beer' or 'tying a shoe.” However, some individuals also positively attested to the character of Gleason and described him as someone who was in fact not the monster that he was being portrayed. This can be noted through expressions such as “Gleason was an extraordinary tattoo artist, friend and something of a father figure,” “The Bobby Gleason I knew - he was a genuine nice guy, all-around good person,” and “He was never, ever aggressive that I ever saw... and he was a great artist.”

Unlike individuals in the previous case studies, Gleason did not raise any issues at his trial nor did he claim ineffective assistance of counsel; instead, he represented himself with the guidance of stand-by legal counsel and waived all future appeals. Several defense attorneys attempted to represent Gleason and file petitions to prevent him from waiving his appeals, but were ultimately unsuccessful as the Court determined that he was competent to act alone and to waive his rights. Gleason had a documented history of suffering from feelings of paranoia, anxiety, and depression, in addition to an exhaustion that he believed would be intolerable if forced to spend his life in prison. This, in fact, is believed to have been the motivation for his seeking of the death penalty. Despite this, though, the Court found that he was competent, possessed an adequate level of intelligence, was not suffering from a mental illness, had the capacity to make reasoned choices, and was able to knowingly, voluntarily, and intelligently make a decision regarding his case and appeals process. Gleason fought last-minute attempts by attorneys to block the scheduled execution and refuted claims that he was not competent to waive his appeals due to a year spent in solitary confinement and the exacerbation of his already deteriorating mental condition.

Like the other individuals chosen for these case studies, Gleason also dealt with court appointed attorneys during the periods in which he cooperated with counsel. Though it cannot be known if he too would have eventually claimed ineffective assistance, the mere fact that he was assigned court appointed counsel suggests that he did not have the financial resources necessary to privately retain legal representation. Additionally, as like the others, Gleason also exhibited signs of mental illness in the form of prolonged bouts of depression, multiple suicide attempts, and impulsivity. Though he

was deemed to be competent to waive his appeals and to refuse the assistance of legal counsel, the presence of mental illness remains a variable consistently present within the lives of each individual chosen for these case studies. In terms of personal information, little was available on the pre-conviction life of Robert Gleason; however, it is readily apparent from the information that was available that his class habitus and capital profile was markedly different than that of an individual belonging to the middle or upper social class.

The sixth case study undertaken for this research examined the life history and capital crime of Douglas Feldman. Feldman, born in 1958, was a white male who murdered both a white and Hispanic male truck driver on August 24, 1998, at the age of 40. He was convicted of capital murder and sentenced to death in Dallas County, Texas, where he spent a total of 15 years on death row awaiting execution. According to current census data, the median household income in Dallas County is approximately \$42,259 per year and the median per capita income is approximately \$27,251 per year. Feldman was executed on July 31, 2013, at the age of 55, after all of his appeals had been exhausted.

Feldman was not representative of the typical death row inmate in that before his capital crime and conviction, he was a member of the middle class. This is evidenced by his previous occupation in which he worked as a financial analyst, a job not typically associated with lower social class standing. The vast majority of those sentenced to death and executed, including the previous case studies, are poor with lives characterized by concentrated disadvantage, impoverished living conditions, and the stresses associated with chronic poverty (Haney, 1995; Kaplan, 2012). By existing in contrast to this

pattern, Feldman can be considered an example of an outlier, or an individual who is not a member of the lower social class but who, nonetheless, is convicted of a capital crime, sentenced to death, and executed. As revealed in letters written by Feldman while on death row about the nature of capital punishment, it is clear that he had an educational background more extensive than high school and the typical capital defendant. In fact, he was a magna cum laude graduate of Southern Methodist University. The nature of his previous occupation together with these letters, support his outlier status in that they reveal him to be well educated, well spoken, and articulate. In contrast to Feldman, most lower class death row inmates in the Texas database were classified as “laborers,” held a service related occupation, or were unemployed prior to their arrest and capital conviction.

In terms of media framing and portrayal, language used to characterize Feldman had a decidedly negative tone, as he was openly remorseless for his crimes, and constructed him as both violent and dangerous. This is evidenced largely by the expressions and descriptive language used to characterize him and his crimes by the courts and various media sources. Additionally, he also wrote several letters to an ex-girlfriend while in jail, all of which were introduced into evidence at his trial. These revealed the anger he held toward the world and likely exacerbated the demonization of his character. Included in these characterizations were things such as “the Plano Terminator, lived and died an evil bastard,” “the remorseless, highly intelligent psychopath who terrorized three north Texas counties,” “shuffled off his mortal coil with the same venom with which he inhabited it,” “the road-rage shooting deaths of two truckers,” “shooting the man in cold blood,” “a former financial analyst with a history of

disruptive behavior,” “a dangerous and evil person,” “the poster child for the death penalty,” “killer shows anger until death,” and “killer of two truckers outlined violent fantasies in letters.”

In terms of mitigating evidence and his social background, Feldman was revealed to have had both a pre-conviction and post-conviction life characterized by extreme anger and rage. He was often in trouble as a juvenile, had persistent drug abuse problems, and had prior criminal convictions related to both robbery and controlled substances. Furthermore, he received in-patient psychiatric treatment for paranoia and drug abuse, and he persistently suffered from depression. Prior to his capital conviction, Feldman robbed a pharmacy, for which he served eight months in prison, assaulted and threatened to kill a man with a hammer as a result of road rage, and drove his car into a bell-hop at a fast food restaurant, subsequently causing her to lose consciousness and several teeth. Eight months before his capital murders, Feldman informed his mother that he felt distracted, unable to sleep, and as if he were being “dared to escalate and engulfed in an unrealistic euphoria.” The day prior to his capital crimes, Feldman fired several shots onto the grounds of a Volkswagen dealership, damaging several cars and windows. Once incarcerated, prison records revealed Feldman to have had 136 disciplinary cases against him, and to have ripped a telephone out of the wall as a result of being refused a media interview by prison authorities.

While there were apparent differences between Feldman and the individuals examined in the previous case studies, primarily in terms of education and social class standing, there were also many similarities. Feldman, in addition to the others, had a

history of substance abuse and mental illness, as well as a prior criminal record. Thus, and as can be seen from a consistent presence throughout the case studies, mental illness, impaired cognitive functioning, and prior criminal convictions appear to be relatively common among individuals who have been sentenced to death and executed (Haney, 1995; Kaplan, 2012). Additionally, and much like the individuals from the previous case studies, Feldman had court appointed legal counsel for at least a portion of his capital trial. While awaiting execution, Feldman took responsibility for his crimes in a letter written to the State. In this letter, he appeared not to show sorrow or remorse for his actions, but rather to exhibit extreme anger and rage for the circumstances surrounding his imprisonment and the unfairness of the criminal justice system. He referred to the jurors hearing his case as “a bunch of fat, ignorant slobs,” and complained that he had deficient legal help at his trial and that the jury received improper instructions which affected the outcome of his case. Furthermore, he continued to express his anger during his final statement wherein he pronounced the victims of his capital crimes guilty of crimes against himself, “I hereby declare, Robert Steven Everett and Nicholas Velasquez, guilty of crimes against me, Douglas Alan Feldman. Either by fact or by proxy, I find them both guilty. I hereby sentence both of them to death, which I carried out in August 1998. As of that time, the State of Texas has been holding me illegally in confinement and by force for 15 years. I hereby protest my pending execution and demand immediate relief.” The execution of Douglas Feldman was an anomaly in that it diverged from the typical pattern of almost exclusively executing the poor.

The seventh and final case study undertaken for this research was similar to the previous in that it focused on an outlier. This case study examined the life history and

capital crime of Vaughn Ross. Ross, born in 1971, was a black male who murdered a white male and black female on the campus of Texas Tech University on January 31, 2001, at the age of 30. He was convicted of capital murder and sentenced to death in Lubbock County, Texas, where he spent a total of 11 years on death row awaiting execution. According to current census data, the median household income in Lubbock County is approximately \$43,983 per year and the median per capita income is approximately \$23,353 per year. Ross was executed on July 18, 2013, at the age of 55, after all of his appeals had been exhausted.

Much like Feldman in the previous case study, Ross was also not the typical capital defendant. At the time of his capital crime, Ross was a graduate student at Texas Tech University where he studied architecture. Originally from St. Louis, Missouri, he received an undergraduate degree from Central Missouri State University. In being a graduate student, Ross, like Feldman, was more so characteristic of the middle than lower class in that he was well educated in comparison to the vast majority of those who are on death row. In terms of media framing of his crime, language used to portray Ross had a negative tone, as would be expected, but not extraordinarily negative as in the cases of Steven Smith or Douglas Feldman. This is evidenced by the expressions and descriptive language that were used to characterize him and his crime by the courts and various media sources. Included in these characterizations were statements such as, “ex-Texas Tech student executed for double slaying,” “remorseless to the last, Vaughn Ross was executed Thursday,” “condemned for the fatal shootings,” “both calm and defiant,” and “executed for the double murder.”

In regard to mitigating evidence and his social background, Ross's mother testified at his trial that he had three sisters and grew up without his father. Ross attended public school, where he was active in sports, ran track, and played football, and was a member of both the Cub Scouts and Boy Scouts. He attended inner city schools until junior high, during which time his family relocated to a white community in the suburbs of St. Louis. Ross's step-grandfather was a preacher and he attended church three to four times per week until he began college. Ross's mother testified that he did not have trouble with the law as a juvenile, other than a minor curfew violation, and did not get into trouble while at school. Additionally, she also testified that he did not use drugs or alcohol and was not involved in any gang-related activity. As a teenager, Ross had a job at a country club and was stated to be a quiet and calm person. Upon graduating high school, Ross attended Central Missouri State University where he was a good student and an active member of his fraternity. After college, Ross held several jobs with architectural firms before returning to school at Texas Tech University in order to further his education. Ross worked while attending school to pay for his education and was not stated to have any mental problems. In terms of a prior criminal record, however, Ross was placed on probation in Missouri as a result of an incident that occurred with his girlfriend. According to Ross, his girlfriend was stalking him and tried to stab him with a butcher knife, but was instead stabbed herself by Ross; after the incident, he also stole her car. He reportedly expressed no remorse for the crime and did not accept responsibility for the incident.

Though Ross significantly differed from the other individuals included in these case studies, in that he had a stable life and childhood, no history of drug or alcohol

abuse, no significant criminal record, and no indications of mental illness, he did share one similarity. Ross, along with the individuals from the previous case studies, had court appointed legal representation throughout the duration of his trial. As previously noted, forced reliance on court appointed legal counsel can ultimately prove detrimental to a capital defendant. Valuable mitigating evidence often goes uninvestigated, and little time or effort is put forth to examine the circumstances of an offense (Cole, 1999). Of the legal issues raised by Ross, then, it comes as no surprise that he contended ineffective assistance of counsel through a failure to argue and present mitigating evidence. He claimed that such evidence would have likely resulted in the jury recommending life in prison as opposed to death, and that the presence of this mitigating evidence would have also provided a valuable explanation as to why, and what factors, influenced him to commit his capital offense.

Information pertaining to his social background, in terms of the lack of a criminal history, substance abuse problems, or mental illness, could have worked to the benefit of Ross through positively influencing the perceptions that were held about him by both the media and legal actors of the court (Haney, 1995). Since his capital profile was more akin to that of an individual from the middle class, it is likely that this information, in addition to information pertaining to his education and employment history, would have enabled these persons to more readily identify with him and extend him both lenience and mercy. However, the omission of this evidence by his legal counsel ultimately resulted in his dehumanization and social construction as a dangerous and violent other deserving of the death penalty. Ross persistently denied any involvement in the crime and proclaimed his innocence until the time at which he was executed. He stated that lies were told about

him in court regarding his case, and that these lies inevitably resulted in his conviction and execution. Ross, more so than Feldman, may be the true anomaly of this study in that he is an example of an outlier who lacked many of the typical death row characteristics, but was sentenced to death and executed anyway. Perhaps by effect rather than intent, occurrences such as this are necessary in order to extend legitimacy to capital punishment and to promote the illusion that the sanction is applied equally throughout society regardless of the presence of extra-legal factors.

CHAPTER 7

DISCUSSION AND CONCLUSION

This chapter will begin with a brief summary of the literature from Chapter 2 and the results of the present study from Chapter 5. Then, there will be a discussion of the emergent themes and the theoretical model that were presented in Chapter 6. Finally, the last section of this chapter will address limitations of the present study, as well as implications for policy and future research.

Previous Research and the Present Study

The death penalty has been thoroughly addressed in the literature, with numerous historical examinations, analyses of execution methods and purposes for executing, and analyses of disparities in extra-legal factors such as race, gender, age, mental illness, and mental competency (Banner, 2002; Bohm, 2011; Johnson, 2006; Garland, 2010; Garland, Meranze, & McGowen, 2011; Sarat, 2001; Whitman, 2005; Zimring, 2003). Research on the social class-capital punishment relationship, however, has been significantly lacking. With the exception of Kaplan (2012), few researchers have empirically examined or documented this relationship, and virtually none have attempted to provide a systematic explanation. Thus, the lower social class profile of death row continues to be largely taken for granted and poorly understood. From the standpoint of the capital punishment literature, then, studying the impact of social class on the death penalty addresses a glaring void in existing knowledge. The present study contributes to the

existing literature by addressing this void through a systematic explanation of the ways in which social class shapes capital punishment decision making at crucial junctures.

As compared with extra-legal factors such as race and gender, implications of class bias for the justness of the system remain largely underappreciated.

Overwhelmingly, capital punishment is applied to the poor, while those who are financially capable of maneuvering throughout the legal system circumvent the death penalty regardless of their innocence or guilt (Akhtar, 2010; Brandon, 1911; Cole, 1999; Hagan, 1974; Reiman & Leighton, 2013; Vick, 1995). Individuals belonging to the lower social class are disadvantaged at every phase of the legal process as they face substantial, and cumulative, disadvantage on the basis of their socialization (Mitchell & Sidanius, 1995; Seron & Munger, 1996). Capital law making itself favors the behaviors of the upper and middle classes over the lower class (Cole, 2001; Jankovic, 1978; Seron & Munger, 1996); hegemonic ideologies promote middle and upper class conceptions of what actions are and are not acceptable in terms of cultural norms and criminality (Kaplan, 2012). Similarly, preconceived class-based notions of victim and offender worthiness and blame influence the attitudes and beliefs of virtually everyone involved in the capital punishment process. Consequently, the discretionary power exercised by middle and upper class legal actors, such as the police, prosecution, defense, judges, and jury, is heavily influenced and shaped by their own conceptions of criminality, what behaviors or actions they perceive to be culturally acceptable, and what punishments they deem appropriate (Bowers, Foglia, Giles, & Antonio, 2006; Bright & Keenan, 1995; DeMay, 1998; Haney, 1995; Horowitz, 1997; Phillips, 2009; Vick, 1995).

While the criminal justice system espouses equality under the law at an ideological level, the practical administration of the law is based on exploitation of the very inequality that legal ideology eschews. Moreover, the criminal justice system depends on inequality and discrimination, based on race, class, gender, and age, in order to function and remain operational (Cole, 1999). Social class, like other extra-legal factors, significantly influences the operations of the legal system. And regardless of race, gender, or age, virtually every convicted capital offender is poor (Reiman & Leighton, 2013). Thus, and as a result of the preferential treatment of the better-off over the poor, this overt legal discrimination results in biased treatment and a disproportionate application of the law, especially in death penalty cases.

Class habitus can be considered particularly influential in the capital punishment process as it affects not only who is prosecuted for a capital crime, based mostly on social class standing and legal representation, but also the likelihood of conviction. Collectively, individuals from the lower social class are disproportionately targeted for capital punishment by criminal justice actors. This results from over capital criminalization of the poor by law makers and subsequently enables biased application and interpretation of the law. In terms of prosecution, and due to a diminished class standing, most capital defendants are also not afforded the legal resources or representation necessary to adequately support their defense (Chiricos & Waldo, 1975; Cole, 1999; Vick, 1995). Thus, persons from the lower social class are often unable to contest the prosecution's case against them, as well as present a defense that would allow them to avoid a capital conviction (Bright, 2008). Considering this, social class is arguably one of the most significant contributors to legal considerations regarding the

death penalty. Hegemonic conceptions of social class and stratification ultimately affect middle class ideals of appropriate punishment and sanctions, in addition to the preconceived notions of defendant worthiness and redemption that are held by various legal actors of the court.

Results from the present study, particularly the Texas and Tennessee datasets, are consistent with previous research and literature and only further evidence the biased and disproportionate nature of the death penalty. As Kaplan (2012) noted, ideological narratives are often used to simplify conceptualizations of murder, execution, and human agency in order to negatively affect the imagery of many capital defendants via the courts, media, and public. Ideological discourses perpetuated by the state convey what it means to be an offender, and also what it means to be a victim, in a way that constructs judicial, jury, and media perceptions to favor the prosecution over the defense (Kaplan, 2012). As a result, legal decisions, such as appropriate criminal sanctions and worthiness of life, become largely premised on class habitus and the capital profile of a particular individual, in addition to the factors considered legally relevant to their case (e.g., offense seriousness and prior criminal history) since these factors are themselves conditioned by social class stratification. Furthermore, and as premised by Cole (1999), disparities in extra-legal factors work to significantly influence legal decision making through enabling the criminal justice system to differentiate justice based on the social class and relative status of an individual as compared to others. This differentiated justice further extends itself throughout the system where it is ultimately realized in the form of legal representation, arguably the single most important determinant for the outcome of a capital case (Cole, 1999). Since the majority of capital defendants are from the lower

social class, they are often forced to rely on court appointed legal counsel or public defender services for representation during their trial. A forced reliance on court appointed counsel generally places these individuals at a disadvantage in that such counsel affects not only the outcome of the initial capital trial and appeals, but also the prosecutor's decision as to whether or not they will seek death against a defendant in a particular case (DeMay, 1998). The following section reiterates these points as the prominent themes from the present and previous studies are briefly discussed.

Emergent Themes

Recall from Chapter 6 that eight themes have emerged from the previous research and literature that specifically relate to the way in which social class interacts with capital punishment. Included in these themes are: (1) the degree to which extra-legal factors, such as social class, race, and gender, condition the capital punishment process; (2) the degree to which social class proxies, such as education, occupation, prior criminal history, and approximations of income, are consistent among capital defendants; (3) the similarities that exist among capital defendants in terms of their social backgrounds and previous life experiences; (4) the inability of most capital defendants to privately retain legal counsel; (5) the dangers of unrestrained prosecutorial, judicial, and jury discretion; (6) the inherent biases of the legal system itself; (7) the way in which the law is written in regard to state-defined mitigating circumstances; and (8) the narrative framing and media portrayal of both capital defendants specifically, and the death penalty in general.

With the exception of atypical outliers, most individuals who are sentenced to death have minimal education, an occupational history lacking any substantive

employment, a prior criminal record, and a pre-conviction life characterized by the chronic stresses associated with poverty. Furthermore, these individuals have in most cases persistently suffered from concentrated disadvantage, wherein their opportunities and resources are both severely limited and restricted. High levels of concentrated disadvantage are not only indicative of poverty, residential instability, immigrant heterogeneity, and dilapidated housing, but are also correlated with high rates of crime, violence, mental illness, and various forms of abuse. As a result of the culmination of these factors and their class habitus, then, most capital defendants are unable to privately retain legal counsel and are thereby forced to rely on counsel appointed by the courts for a portion, and usually their entire, capital trial. As stated above, a forced reliance on court appointed legal counsel can be an extreme disadvantage, and even detrimental, in an adversarial capital trial.

Aside from the substantial influence that legal counsel has in capital trials, prosecutorial, judicial, and jury discretion also significantly contribute to the way in which individuals are dealt with by the courts and criminal justice system. Middle class standards and ideology guide legal interactions and facilitate the social exclusion and dehumanization of those who do not conform to these principles. The subjective discretion employed by legal actors can be further extended to the legal system itself in that, as an institution, the criminal justice system is inherently biased in favor of the middle and upper class. Middle class perceptions of criminality and appropriate sanctioning work to the disadvantage of lower class capital defendants through a biased and disproportionate application and interpretation of the law. Largely as a result of similar capital profiles, then, individuals belonging to the middle and upper social class

are far more likely to avoid capital punishment than are individuals who belong to the lower social class.

Finally, individuals from the lower social class are not only persistently disadvantaged through a culmination of the previously discussed themes, including the biases of the legal system itself, but they are also disadvantaged through the way in which the law is written in regard to what crimes are considered capital and what circumstances are considered mitigating. Equally important in this, however, is what behaviors are not considered capital offenses and what circumstances, such as chronic poverty and certain forms of abuse, are not necessarily considered mitigating. Most capital statutes, as defined by states retaining the death penalty, are open-ended and thus inviting of subjective interpretation that can express class biases. This subsequently disadvantages those with whom middle and upper class legal actors cannot identify, as such actors interpret the law primarily in accordance with their standards and the perceptions or stereotypes they hold true about those belonging to the lower class. These perceptions, and their interpretation, eventually manifest themselves in the narrative discourse and imagery that is perpetuated to the public via the mass media. Overwhelmingly, then, capital defendants are portrayed as dangerous, savage, and unworthy of leniency, thereby legitimating a sentence of death against them and rallying the public's support for their execution.

Collectively, these eight themes are reflected in the theoretical model. Moreover, empirical findings and the emergent themes, together with the theoretical application, demonstrate the ways in which social class interacts with decision making by human agents at crucial junctures in the capital punishment process. In the section that follows,

a brief summary of the theoretical model will be provided. The theoretical model emphasizes the way in which individual characteristics, perceptions, and stereotypes influence legal decision making and disadvantage individuals belonging to the lower social class at every stage of the capital process.

Theoretical Model

Recall from Chapter 6 that the theoretical model is a visual integration of the theorists presented in Chapter 3. This model uses theoretical logic to explain the emergent themes through an application of each to the capital punishment process. The explanation provided by the model offers a distinct advantage over other explanations in that it infuses human agency, through the social psychological work of Bandura (1999) and Haidt (2001), into structural and cultural analyses provided by Bourdieu (1986), Kaplan (2012), and Black (1989).

To briefly summarize the theoretical model, individuals from the lower social class often face cumulative disadvantage at every phase of the legal process as middle and upper class perceptions continually reinforce stereotypes arising from capital profiles (Path A of Figure 6.1) that define both offender (Path A₁) and victim status (Path A₂). These perceptions condition judicial, jury, and media stereotypes (Paths A₃ and A₄) to favor one party over another (Kaplan, 2012), and provide the basis for quick moral intuition (Path B) and judgment (Path C). Through the moral reasoning process, individuals are able to support previously made moral judgments derived from moral intuition. This ad hoc justification process is a means by which intuition is legitimated and judgments are given logic (Path F₁). Essentially, forms of capital influence class

stereotypes and hence the moral intuition and reasoning used by middle and upper class legal actors to interpret and apply the law in death penalty cases (Path B - D). Individuals from the lower social class face significant disadvantage in the capital process as the moral intuition of their upper and middle class counterparts crafts perceptions of worthiness, morality, and deservingness in regard to both offenders (Path B₁) and victims (Path B₂).

If deemed appropriate by quick, subjective, and culturally-bound moral intuition, harsh criminal sanctions, such as the death penalty, are viewed as warranted (Path C) through an ideology-infused moral reasoning process that justifies such decisions (Path D). This process also legitimates moral intuition (Path F₁) and significantly influences the perceptions, moral intuition, judgment, and reasoning of others, thus bolstering additional support for the death penalty (Path E). Mechanisms of moral disengagement continuously operate throughout this process to affect not only moral intuition (Path F) and judgment (Path F₃), but also the moral reasoning (Path F) that provides logic and justification for the judgment or action (Path F₁). The moral disengagement of middle class legal actors from immoral and harmful actions results in a stimulation of moral reasoning that is used to justify those actions (Path G₁). Subsequently, disengagement from these harmful actions legitimates and reproduces class stratification (Path G₂) through the perceptions and stereotypes that structure moral intuition. Essentially, then, the process is cyclical and effectively serves to reproduce social class disadvantage by promulgating hegemonic representations of the poor as dangerous and deserving of harsh punishment. That is, executing the poor functions to reinforce the stratification of capital in its various forms.

Limitations and Implications for Policy and Future Empirical Research

This section will begin by addressing the limitations of the present study before discussing implications for policy and future research. The limitations of this study primarily concern the Texas and Tennessee datasets, in addition to the qualitative case studies. Implications for policy and future research focus on suggestions for improving the capital punishment process, as well as possible avenues for future research.

The major limitation of this study was that data were only drawn from two jurisdictions, Texas and Tennessee. As a result, patterns observed may not generalize to other areas or regions of the United States. In terms of the Texas dataset, limitations of the present study primarily concern the availability and accuracy of the information collected. Unfortunately, it was not possible to obtain the presentence investigation reports of individuals who were included in the Texas dataset due to the presence of victim information in those reports. As a result, information regarding these persons was collected from various online sources such as the Texas Department of Criminal Justice website, clarkprosecutor.org, and multiple news and media outlets. Therefore, at least a small portion of this information may be of questionable accuracy. As an additional limitation, extensive research was also unable to produce any substantial information on certain social class variables, such as employment status at the time of arrest, home address, and information pertaining to social backgrounds, that would have been beneficial for inclusion in the dataset.

In terms of the archived Tennessee data, there were two major limitations for purposes of the present study. The first related to the number of variables pertaining to

social class included in the dataset, while the second related to the number of cases. Ideally, it would have been beneficial to have had a greater number of social class proxies in the dataset as it would have allowed for a more thorough comparison of the Tennessee and Texas data. Additionally, it would have also been beneficial to have had a larger number of total cases in the Tennessee dataset as this would have allowed for multi-variate testing.

In addition to the Texas and Tennessee datasets, the present study also had a number of limitations in regard to the case studies. First and foremost, each case study was limited in terms of detail due to a lack of available information. As with the Texas dataset, it was not possible to obtain presentence investigation reports for the individuals who were chosen for a case study. Furthermore, it was also not possible to conduct interviews with these persons, or to interview their family members, neighbors, or any individual who was acquainted with or knew them. As a result, data on personal characteristics was strictly collected from documentary information. That is, news media outlets, trial and appeals transcripts, and the clarprosecutor.org website were the primary sources from which information was collected. Considering this, and as previously discussed, at least a portion of this information may be of questionable accuracy, thus resulting in issues of validity. Additionally, the case studies provide content rich data on the particular individuals who were studied, but results are generalizable only to the extent that executed individuals not included in this study display characteristics similar to those included. The final limitation of the case studies concerns the number of outliers included. As permitted by a greater availability of data resources, it would have been beneficial to locate and include a larger number of outliers. In doing so, it may have

become more apparent as to what factors contribute to the execution of individuals from the middle, as opposed to lower, social class.

In terms of advantages, an important strength of the present study is its utilization of a mixed-methods research approach. Through the inclusion of both quantitative and qualitative data, this study provided quantitative data on a relatively large sample of individuals, as well as rich qualitative data on a select group of individuals chosen for case study. Additionally, the employment of a mixed methods research approach also permitted data collection from multiple jurisdictions that currently retain the death penalty. While the quantitative data were collected from two jurisdictions, Texas and Tennessee, the case studies enabled the inclusion of information from persons in five other jurisdictions: Ohio, Georgia, Oklahoma, Florida, and Virginia. Furthermore, an additional strength of the present study was that mitigating data were also collected for all death penalty jurisdictions.

As a means of overcoming the limitations previously discussed, future research should aim to collect more variables on social class characteristics (e.g., employment status), which are not readily available due to a masking of inequality, through an examination of presentence investigation reports. In doing so, a wealth of information not available for this study could be gathered and subsequently used in order to reveal more themes or patterns that are characteristic of the social class-capital punishment relationship. Additionally, future research could also overcome limitations of the present study by expanding the number of jurisdictions investigated, particularly to include those in non-southern regions of the United States, such as Ohio or California. This is important in that it would provide variation in the data and possibly offer an explanation

as to what characteristics, unique to a particular area, account for the use of capital punishment and patterns of class bias. Next, future research could also examine the social class characteristics of the victim and how these influence capital decision making. Considerable attention has already been paid to victim race (Baldus, Pulaski, & Woodworth, 1983), so it is important that other victim characteristics, such as social class, also be examined. According to Cooney (2009), the applicability of the criminal law fluctuates with the social geometry of differing legal disputes. Thus, examining the social status of the victim is important in that it could help to explain why criminal sanctions increase with disparities in wealth. Utilizing Black's (1989) theory, Phillips (2009) has initiated this line of inquiry and provided preliminary support for status disparities in the administration of capital punishment. Lastly, future research should also include a wider range of case studies wherein interviews are conducted with individuals known to the capital defendant. In depth interviews of previous teachers, relatives, neighbors, former acquaintances, and so on, would provide more insight into the individual's class habitus, thus allowing additional social class patterns to emerge. Considering this, it would also be beneficial to interview criminal justice actors, such as prosecutors, judges, jurors, and defendants, to discuss class habitus and the concept of capital profiles.

The most obvious implication of the theoretical model developed in this thesis is to abolish the practice of capital punishment, as this route has now been taken by virtually all other western nations. In fact, it has been argued that the persistence of capital punishment in the western world is quite peculiar to the United States and localized pockets therein (Garland, 2010). Nevertheless, although abolition would not

eliminate class biases in the administration of other forms of punishment such as life without parole, it would be the best way to eradicate social class bias in the administration of capital punishment. Indeed, the retention of capital punishment in the United States is bound up with the same cultural forces that have been drawn on to account for the social class-capital punishment relationship. However, in the past when the American death penalty has been attacked or questioned on the basis of demographic characteristics such as race, the outcome has not been favorable or effective in curtailing public support. Most notably, in *McCleskey v. Kemp* the United States Supreme Court held that evidence of racial bias must be case specific and that aggregate evidence is not sufficient to overturn a capital case. The precedent laid out in *McCleskey* would almost certainly be applied to social class, so that defendants would have to demonstrate class bias in their individual case, rather than a pattern across time, in order for such discrimination to be formally acknowledged or recognized by the courts. As with race, this would likely prove incredibly difficult and would do little to provide a solution to the biased nature of the death penalty.

Aside from total abolishment, one suggestion for improving the capital punishment process would be to implement a mandatory review of the capital statutes for each state retaining the death penalty. In doing this, each capital statute would be carefully reviewed and scrutinized so as to discern the presence of any discriminatory language that could potentially disadvantage individuals from a certain group. Since there is already a preexisting awareness of discrimination in terms of race, gender, age, and mental competency, special attention should be paid to social class. In fact, social class should be questioned as a basis for classifying individuals for capital punishment

just as race, gender, age, and mental competency are. Again, the point is not to prioritize class over any other demographic, but rather, to give social class the consideration it deserves. Thus, and in order to ensure the fair and equitable application of the law, it is essential that more attention be paid to class bias and that class sensitivity be given an equal footing to mental competency and race sensitivity in capital statutes.

From a policy perspective, research has shown one of the surest ways to receive a death sentence to be ineffective assistance of legal counsel (Cole, 1999). A competent defense attorney is vital to ensuring a fair and equitable trial. Yet court appointed legal counselors often provide minimal assistance to the capital defendants whom they are tasked to defend. Often, though certainly not always, the competency of these individuals to litigate capital crimes can be seriously called into question, as they frequently have little capital justice training, multiple bar violations, histories of alcohol and substance abuse, and investigate and present little evidence of mitigation at their client's trial (Cole, 1999). A forced reliance on court appointed legal counsel, then, only further disadvantages an already vulnerable capital defendant in that such counsel persistently fails to properly represent and investigate aspects of the defendant's case and prior life that could serve as mitigating evidence at their trial (Bright, 1994; Haney, 1995; Phillips, 2009; Vick, 1995). With this being considered, one of the best ways to avoid a wrongful conviction, and to ensure fairness in a death penalty case, is to make certain capital defendants have competent legal representation throughout their initial trial and appeals (Williams, 2012).

Another suggestion for improving the capital punishment system is to implement stricter control or regulation over prosecutorial discretion. This would primarily entail

eliminating or restricting the ability of a single individual or small group to seek the death penalty against a particular individual, especially for politically motivated reasons.

Matters of capital charging and prosecution should be brought before a committee of persons who maintain no vested, political, or personal interests in seeking death against an individual in a particular case or jurisdiction. This would help to curtail political motivations for seeking the death penalty, as well as the selection of capital cases on the basis of class habitus or legal representation alone.

Additionally, to decrease instances of social class discrimination, courts should also allow freestanding claims of innocence during state and federal habeas proceedings. In doing so, capital defendants would be provided a way to introduce evidence that had not previously been introduced during their initial capital trial (Williams, 2012).

Allowing this may help to guard against unfair convictions based on class bias in that it would lessen the impact of ineffective assistance of counsel, and would require a separate court to independently review the evidence of a particular case. With regard to ineffective representation, a revision of the *Strickland Test* for showing ineffective legal assistance would also be beneficial. Recall from Chapter 6 that in its current state, the *Strickland Test* is inadequate in nature and very difficult for members of the lower social class to satisfy. Revising this legal standard, then, would more easily allow the poor to contest the performance of their legal representation, thereby increasing their chances for receiving a fair and unbiased capital trial. Lastly, independent innocence commissions could also be created to in order to further investigate death penalty cases and to ensure that each individual tried for capital murder was given fair treatment and legal

consideration regardless of their race, gender, age, or, most importantly, social class standing (Williams, 2012).

Conclusion

The question might be raised as to why the study of capital punishment generally, and the study of capital punishment and social class in particular, really matter. After all, research shows that very few homicide offenses result in capital prosecution, fewer still in capital conviction and sentencing, and far fewer still in execution (Bohm, 2011). Moreover, only 2% of death penalty jurisdictions are responsible for the majority of executions in the United States (Dieter, 2013). It might even be asked why it matters that individuals belonging to the lower social class are disproportionately sentenced to death and executed, given that the poor are disproportionately represented in behavior legally defined as capital homicide, such as homicide during the course of armed robbery (Cooney, 1997).

The answer to questions like these lies in coming to terms with how the death penalty functions as part of a wider political economic and ideological system of power and social control. Though localized in character, capital punishment is a robust feature of wider cultural hegemony, a kind of staple mentality premised on such brass-tack ideologies as the notion that people who commit atrocious murders (construed in terms of street crime) ought to be made to pay with their own lives. Accordingly, in both capital and non-capital jurisdictions, the institution of the death penalty affects the way individuals exercise moral intuition, judgment, and reasoning processes. Hegemonic representations of good and bad, right and wrong, just and unjust constitute the very

“stuff” of moral intuition and, hence, moral judgment. Moral reasoning, operating in conjunction with social distancing and gradualistic moral disengagement, contribute to a routinization of use of capital punishment against the poor. Pragmatically, this process plays out in localized juristic subcultures charged by politicized interests and saturated with profit-motivated media representations of dangerous deserving others. Certain imageries are thereby projected of crime, criminals, and state authority. This entire enterprise of representing the state as avenger of victimhood, protector of the public, righter of wrongs, and making criminals pay presumes a ready supply of expendables. The poor and powerless fit this bill.

Sporadic death sentences and protracted executions help prop up wider ideological imagery of justice and safety without representing the state as unduly repressive or disregarding of due process. Barring an occasional death sentence or execution being more broadly publicized from a localized context, the intolerance toward crime and public safety posturing of political and media elites would be compromised; legitimacy would be open to challenge from groups preoccupied with offender accountability, citizen protection, and victim closure. In this manner, expendable others capable of marshalling minimal resistance become scapegoats for the continuance of a system of subjugation that is as heavily reliant on the advancement of ideological agendas and images as it is avoidant of resort to brute force *en masse*. Through hegemony, “matters of culture, and in particular the social divisions and hierarchies associated with them, are constituted as such by the actions of the state which, by instituting them both in things and in minds, confers upon the cultural arbitrary all the appearances of the natural” (Bourdieu, Wacquant, & Farage, 1999, p.2). In short,

ideological hegemony ultimately enables the choices of the state to become regarded as common sense and reality. Thus, capital punishment is not only influenced by culture, through moral intuition and reasoning, but is itself a powerful contributor to hegemonic ideology that, in perpetuating punitive and harsh treatment of the poor, reinforces class stratification amidst *claims* of egalitarianism.

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APPENDIX A:
Death Penalty Mitigating Statutes

State	Death Penalty Mitigating Statutes
Alabama	<ul style="list-style-type: none"> • The defendant had no history of prior criminal activity • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired
Arizona	<ul style="list-style-type: none"> • The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution
Arkansas	<ul style="list-style-type: none"> • The capital murder was committed while the defendant was under extreme mental or emotional disturbance • The capital murder was committed while the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law was impaired as a result of mental disease or defect, intoxication, or drug abuse • The defendant has no significant history of prior criminal activity
California	<ul style="list-style-type: none"> • The presence or absence of any prior felony conviction • Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance • Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct • Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication • Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime
Colorado	<ul style="list-style-type: none"> • The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution • The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing death to another person • The absence of any significant prior conviction • The extent of the defendant's cooperation with law enforcement officers or agencies and with the office of the prosecuting district attorney • The good faith, although mistaken, belief by the defendant that circumstances existed which constituted a moral justification for the defendant's conduct • The defendant is not a continuing threat to society

	<ul style="list-style-type: none"> • Any other evidence which in the court's opinion bears on the question of mitigation
Delaware	<ul style="list-style-type: none"> • Whether the defendant has a significantly sub-average level of intellectual functioning • Whether the defendant's adaptive behavior is substantially impaired
Florida	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired • The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty
Georgia	<ul style="list-style-type: none"> • In all cases for other offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by the law...
Idaho	<ul style="list-style-type: none"> • The defendant shall be sentenced to death unless mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust
Indiana	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal conduct • The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or intoxication • Any other circumstances appropriate for consideration
Kansas	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The crime was committed while the defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired • At the time of the crime, the defendant was suffering from post-traumatic stress syndrome caused by violence or abuse by the victim • A term of imprisonment is sufficient to defend and protect the people's safety from the defendant
Kentucky	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime • The capital offense was committed under circumstances which the

	<p>defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime</p> <ul style="list-style-type: none"> • At the time of the offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication...
Louisiana	<ul style="list-style-type: none"> • The offender has no significant prior history of criminal activity • The offense was committed while the offender was under the influence of extreme mental or emotional disturbance • The offense was committed under circumstances which the offender reasonably believed to provide moral justification or extenuation for his conduct • At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication • Any other relevant mitigating circumstances
Mississippi	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired
Missouri	<ul style="list-style-type: none"> • The defendant had no significant history of prior criminal activity • The murder in the first degree was committed while the defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct the requirements of law was substantially impaired
Montana	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired • The court may consider any other fact that exists in mitigation of the penalty
Nebraska	<ul style="list-style-type: none"> • The offender has no significant history of prior criminal activity • The crime was committed while the offender was under the influence of extreme mental or emotional disturbance • At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her

	conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication
Nevada	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance • Any other mitigating circumstance
New Hampshire	<ul style="list-style-type: none"> • The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired...
North Carolina	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The capital felony was committed while the defendant was under the influence of mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired • Any other circumstance arising from the evidence which the jury deems to have mitigating value
Ohio	<ul style="list-style-type: none"> • Whether, at the time of committing the offense, the offender, because of mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law • The offender's lack of a significant history of prior criminal convictions and delinquency adjudications • Any other factors that are relevant to the issue of whether the offender should be sentenced to death
Oklahoma	<ul style="list-style-type: none"> • Circumstances that may extenuate or reduce the degree of moral culpability or blame • Circumstances which in fairness, sympathy or mercy may lead you as jurors individually or collectively to decide against imposing the death penalty
Pennsylvania	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal convictions • The defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired • Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense
South Carolina	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal conviction involving the use of violence against another person • The murder was committed while the defendant was under the influence of mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirement of law was

	<p>substantially impaired</p> <ul style="list-style-type: none"> • The defendant was provoked by the victim into committing the murder • The defendant had mental retardation at the time of the crime
South Dakota	<ul style="list-style-type: none"> • The judge shall consider, or shall include in instructions to the jury for it to consider, any mitigating circumstances...
Tennessee	<ul style="list-style-type: none"> • Evidence may be presented as to any matter that the court deems relevant to the punishment...the defendant's character, background history, and physical condition
Texas	<ul style="list-style-type: none"> • Evidence may be presented...as to any matter that the court deems relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense against the imposition of the death penalty
Utah	<ul style="list-style-type: none"> • Evidence may be presented on...the defendant's character, background, history, and mental and physical condition; the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence
Virginia	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance • At the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired • The sub-average intellectual functioning of the defendant
Washington	<ul style="list-style-type: none"> • Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity • Whether the murder was committed while the defendant was under the influence of extreme mental disturbance • Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect • Whether there is a likelihood that the defendant will pose a danger to others in the future
Wyoming	<ul style="list-style-type: none"> • The defendant has no significant history of prior criminal activity • The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance • The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired • Any other fact or circumstance of the defendant's character or prior

	record or matter surrounding his offense which serves to mitigate his culpability
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