

**PUBLIC ENGAGEMENT WITH ISSUES OF CAPITAL PUNISHMENT:  
ONLINE RESPONSES TO *KENNEDY V. LOUISIANA* (2008)**

by

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A thesis submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Master of Arts in Sociology

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## **DEDICATION PAGE**

I would like to dedicate this completed thesis to my advisors in thanks for all of their support and guidance during the course of this project. In addition, I would like to thank my family and friends for their constant support and belief that I could complete this project.

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## ABSTRACT

This paper examines public response to the case of *Kennedy v. Louisiana* (2008) via the comments section of Internet newspapers reporting on the case. Those who comment on the article are freely able to discuss their feelings and sentiments toward the case and its eventual outcome. The results indicate that those opposing the decision specifically and in support of the death penalty in general argue for the necessity of the death penalty to fulfill justice, the importance of ‘vicarious victim experience’, and express an overall lack of support and confidence in the criminal justice system. I also find that these responses are largely emotional and focused on specific justice goals, such as incapacitation and deterrence. Those commenters that agree with the decision believe that the Supreme Court carried out the constitutional interpretation correctly, that ‘vicarious victim experience’ makes decision-making difficult and biased, and believe that shortcomings associated with the death penalty outweigh its necessity for justice. Overall, many of the arguments reveal a lack on consensus surrounding the role of the Constitution, to whom it applies, and the discretion of criminal justice and court officials, and reveal important features of popular Constitutionalism.

## INTRODUCTION

The United States is the only Western nation to retain the death penalty on the books and continues to carry out executions in practice (Zimring, 2003). The causes for this are a matter of some debate among observers. Some scholars believe that there is a deep-rooted cultural orientation held by Americans that causes this continued use of the death penalty despite its abolition in other European countries (Zimring, 2003). Others, however, believe that this continuation of the death penalty comes from a complex interaction between political, cultural, and structural forces within America that are specific to this nation (Garland, 2001; Tonry, 2004). The tenets of these competing theories all come into play when examining public opinion surrounding the death penalty and can be used to inform researchers what is motivating certain attitudes held by the public and how they came to be formed. Before scholars are able to make informed decisions concerning the importance of these theories and the unique position of the death penalty within the United States, they will need to better understand the intricacies of this public opinion.

Public support for the death penalty has fluctuated over the past several decades but at least some measure of support has remained steady in the past 50 years (Ellsworth and Gross, 1994). Many scholars have found that public support has remained relatively steady even though advancements in DNA testing have revealed

innocent individuals on death row and the Supreme Court rulings such as *Roper v. Simmons* (2005) and *Atkins v. Virginia* (2002) eliminated the death penalty for both individuals under the age of 18 and those with severe mental retardation (Lynch, 2002). However, these apparent movements toward a complete abolition of the death penalty did nothing more than relieve a few death row inmates of an impending sentence and have not radically changed public opinion (Tennen, 2005). This may be because scholars have found that the public's support for the death penalty tends to be very emotionally charged and motivated more by feelings of revenge than concrete knowledge of the death penalty and effectiveness in terms of deterrence, cost, and swiftness of punishment (Bohm et. al., 1999; Ellsworth and Gross, 1994).

This study will examine the general sentiments from both supporters and abolitionists in order to create a more complete picture of death penalty public opinion in an open, anonymous forum such as the Internet. Rather than focus solely on general statistics from death penalty opinion polls, a study such as this will reveal the complexities and nuances of current public debates surrounding capital punishment. I will use the case of *Kennedy v. Louisiana* (2008) to examine the nature of public opinion regarding the death penalty and the Supreme Court.

This case has several qualities that provide a window into the prevailing public debates surrounding the use of capital punishment. This paper aims to offer the

dominant arguments presented within the online format, including ideas from retentionists, abolitionists, and those who fall in-between. This analysis will inform literature surrounding the use of punishment within the United States and public opinion the will lead to a better understanding of popular sentiment towards capital punishment and its continued use within the United States.

Understanding popular opinion and public discourse is of utmost importance when studying particular cultural phenomena such as the death penalty within the United States (Lynch, 2002; Garland, 1990). This paper will reveal a unique picture of popular death penalty conceptions, and describe a scenario in which the public practices popular constitutionalism, their own understandings of crime and punishment in the United States. Understanding this information continues to be important and such an approach provides more nuance than the use of polls and can inform legislatures and politicians in forming their platforms and making policy decisions (Vollum et. al., 2004; Roberts and Stalans, 1998).

As mentioned previously, the United States continues in its retention and continued use of the death penalty (Simon, 2007), which continues to be measurably supported by popular opinion polls (BJS Statistics). Many theorists postulate different reasons for retention of capital punishment within the United States (O'Malley, 1999; Garland, 2001; Garland 1996). Scholars have analyzed general feelings and sentiments

toward the death penalty and how these discourses are constructed (Lynch, 2002; Sarat, 1993), but fewer have examined public response to a particular case in an open, anonymous forum such as comments to an Internet news article. Here, individuals openly voice their opinions associated with the case and are able to speak freely and engage in active debates with others choosing to comment. This analysis thus contributes to the understanding of public opinion surrounding the death penalty and how that opinion is shaped through the expression and exchange of opinion.

This study will proceed in the following manner: (1) I will discuss the general history of the death penalty and leading theories regarding its retention within the United States; (2) I will discuss the historical and legal background concerning *Kennedy v. Louisiana*, namely laws determining the punishment for child rape. This will include a discussion of the case as a whole and the rationale behind the Supreme Court's eventual ruling; (3) I will discuss the use of the Internet and the commenting forum as a source for data and the ways in which the individual commenter's interact within this space; (4) I will discuss the main messages that were focused upon by the majority of those commenting, while also discussing their connection to literature surrounding the main themes present in death penalty and crime and punishment discourse; (5) I will conclude the article by discussing the ways in which these comments reflect the main theories concerning crime and punishment throughout the

United States, as well as discussing how the active engagement of the commenters indicates a practice of popular constitutionalism.

### **THE UNIQUE POSITION OF THE DEATH PENALTY IN THE U.S.**

Capital punishment within the United States has followed a very similar pattern to most European countries (Garland, 2010). Executions began as very public events and were administered for all manner of crimes, with murder not being necessary for the administration of the death penalty in many cases. As the decades passed, capital punishment in both the United States and other Western nations began to evolve into a supposedly more humane practice in which the offender was executed for only the worst of crimes and was put to death with as little pain as possible. Not only did the nature of crimes punished with death change, but also the public nature of executions was removed, such as the gallows (Foucault, 1979). This process of humanization eventually led to the complete abolition of capital punishment within most Western nations (Zimring, 1993); however, the United States did not follow suit (Roberts, 2005).

Even as these changes were being made, the implementation and application of the death penalty in the United States was being criticized for its arbitrary nature and the racial imbalance in its application (Unnever and Cullen, 2010). Under the weight of these circumstances, the death penalty as practiced within the United States was

becoming problematic and, stating the need for procedural reform in sentencing practices, in *Furman v. Georgia* (1972), the Supreme Court placed a moratorium on the death penalty. Rather than being a victory for abolitionists, "...Furman's unintended effect was to mobilize a retentionist backlash, give new salience to the issue of capital punishment and transform the political connotations of the institution" (Garland, 2001: 359). As those in support of the death penalty and state legislatures began to reformulate death penalty sentencing procedures, the Supreme Court quickly overruled *Furman* and the death penalty returned to the United States.

Many scholars have attempted to explain the retention of the death penalty and the strong backlash from death penalty supporters in response to *Furman*. A significant portion of research within this area explains American sentiment toward the death penalty as a form of 'American exceptionalism' (Zimring, 2003). These scholars claim that there is something within the character of the American public "...that underlie the American nation and shape its historical choices" (Garland, 2001: 348). These scholars believe that the United States public believes in the use of the death penalty to fulfill justice and as a result the use of the death penalty becomes an inherent facet of the American spirit and an integral part of American culture (Poveda, 2000; Freely, 2003).

Garland (2001) argues against this position and points out its benefit for death penalty retentionists: framing the matter in such a way means that taking issue with the death penalty is taking issue with the United States itself. Scholars have also shown that until very recently, the United States followed a pattern very similar to Western nations (Banner, 2002; Sarat and Boulanger, 2005). Scholars explain that the death penalty and its continued use within the United States can be more aptly understood by the social, political and organizational structure of the American government (Hood, 2002; Garland 2001). This argument points out that a majority of those in support of the death penalty today were shaped by a backlash to the decision in *Furman v. Georgia* (1972). Garland (2001) explains that *Furman* "...was handed down at a time when a strong anti-court, anti-liberal sentiment was emerging...reinforced by a powerfully rising concern about high crime rates and urban violence" (358). This position counters any claim that capital punishment is part of the American character, but rather a product of social and political forces at work concerning the death penalty and the use of punishment within the United States.

The public opinion analysis that will be offered within this article upholds the idea that those in support of the death penalty continue to be affected by a similar "anti-court, anti-liberal" spirit that was created in the past few decades. On the other hand, those who are in agreement with the *Kennedy* decision throughout the comments

generally maintain an open-minded position toward the death penalty and appear swayed by factual information surrounding capital punishment, its implementation and its overall effectiveness. The diversity of ideas and comments present throughout the analysis seem to indicate a movement away from the idea of ‘American exceptionalism’, as not all Americans, as they can be represented in this sample, feel that the death penalty is a part of the American culture. Information presented throughout this article will inform the debate by adding more substance to claims of popular opinion and the death penalty’s role in the United States.

#### ***KENNEDY AND THE HISTORY OF CHILD RAPE LEGISLATION***

Early use of the death penalty included the possibility of execution for all number of crimes that would not be considered capital crimes today, such as theft. As the death penalty slowly evolved in both the United States and other Western nations, it was eventually reserved for only the most extreme crimes, except for the use of treason and espionage in the federal government and in some states (Bell, 1998). Following *Furman* (1972) and the establishment of constitutional sentencing schemes, most states used the death penalty for only crimes in which a murder had occurred. However, in *Coker v. Georgia* (1977), the issue of capital punishment for rape without murder was brought before the Supreme Court. The Supreme Court ruled that to sentence an offender to death for a non-homicide rape of an adult is unconstitutional

under the Eighth Amendment. Following *Coker*, there were several debates concerning the Supreme Court's frequent reference to *adult* rape, leaving state courts to wonder if this ruling only applied to adults. At the very least, it appeared that the Court had made a statement concerning the sentence of death for non-homicide crimes; however, in 1995, Louisiana was the first state to respond to *Coker* by passing a "capital aggravated child rape provision" after a period of outrage at intense media coverage concerning child rapes in the area (Bell, 2008; Mears et. al., 2008). The statute states that a sentence of death may be considered in the crime of the rape of a child under twelve years old. After Louisiana passed this law, several other states began allowing the sentence of death for child rape including Florida, Georgia, South Carolina, Oklahoma and Montana (Bell, 2008).

The issue of execution for the rape of a child came under the Louisiana Supreme Court's purview in *State v. Kennedy* (2006). Kennedy had brutally raped his eight-year-old stepdaughter, causing her so much physical damage that she underwent several reconstructive surgeries. Using *Coker* as its guide, the Louisiana court argued that execution in this case was *not* cruel and unusual punishment and therefore not in violation of the Constitution. The majority opinion in the state Supreme Court based their rationale on the fact that several other states had begun to pass legislation allowing the death penalty for child rape and thus concluding that there was no

national consensus against it. In addition they focused on the proportionality component in the Eighth Amendment stating, “ In our view...child rape is the most heinous of all non-homicide crimes, and while the majority of other states may not provide capital punishment statutes for child rape, many do provide capital punishment for other non-homicide crimes which are far less heinous” (*State v. Kennedy*, 2006). The Court also relied on precedent from the cases of *Roper v. Simmons* (2005) and *Atkins v. Virginia* (2002) in which the Supreme Court stated, “It is the direction of change rather than the numerical count that is significant.” At this point, it appeared that the weight of American criminal justice supported the constitutionality of Louisiana’s capital child rape statute.

The United States Supreme Court reversed the Louisiana ruling with a 5-4 vote, claiming it was indeed cruel and unusual to be sentenced to death where no murder occurred. The rationale of the Supreme Court, drafted by Justice Kennedy (-joined by Justices Souter, Stevens, Ginsberg and Breyer) was based in several major claims. First, they argued, based on the ruling in *Tropp v. Dulles* (1958), that the Eighth Amendment “...draws its meaning from the evolving standards of decency that mark the progress of a maturing society.” Counter to the state Supreme Court’s interpretation, six states passing a particular law is not a sign or suggestion of a direction of change. Second, they mentioned that even though particular states had

passed these laws, no executions had yet to be carried out for the rape of a child and Kennedy was one of two individuals throughout the country on death row for such an offense. Third, the Court argued that a capital sentence for a non-capital crime such as child rape was not proportionate to the offense. The Court states that the evolving standards mentioned in *Tropp* “...counsel us to be most hesitant before interpreting the Eighth Amendment to allow the extension of the death penalty, a hesitation that has special force where no life was taken in the commission of the crime” (*Kennedy v. Louisiana*, 2008) Fourth, they claimed that it might not be in the best interest of a child victim to experience the extensive death penalty court process. The Court argues, “It is not at all evident that the child rape victim's hurt is lessened when the law permits the death of the perpetrator. Capital cases require a long-term commitment by those who testify for the prosecution, especially when guilt and sentencing determinations are in multiple proceedings” (*Kennedy v. Louisiana*, 2008). Situations involving child witnesses and their testimony, children knowing the offender, and the fact that the offender may kill the witness if death were a possible consequence are all areas of concern for making child rape a capital offense, according to the Supreme Court’s decision.

Justice Alito wrote the dissent (-joined by Justices Roberts, Scalia, and Thomas) in which he argued there was absolutely no national consensus that the

public believed the death penalty was disproportionate for the crime of child rape. He also emphasized that making this ruling did not allow for the introduction of aggravating factors in the worst of child rapes, such as the age of the child, the nature of the rape and the number of times the child was raped.

Opinions expressed about *Kennedy* allow for examination of many of the salient issues in the cultural role of punishment in the United States and a better understanding of the public's "intractable punitiveness" present over the past several decades (Unnever and Cullen, 2010). The formation of public opinion over the past several decades was shaped by the public's perception of violent crime levels (Mancini, 2010). Near the time when the Louisiana legislature was drafting their bill allowing capital punishment for the rape of a child under twelve, media coverage and national news was focusing its attention on violent crime and sensationalizing instances of child rape (Mears, Mancini, Gertz & Bratton, 2008). The fact that *Kennedy* deals with such a case makes this case an excellent site for examination of public opinion and the penal climate of the time.

*Kennedy* offers another component present throughout much death penalty debate: the most innocent of victims. According to some scholars, discussion of the death penalty has become less about procedural and proportional responses to crime, and more about the necessity of the respect for the innocent victim (Unnever and

Cullen, 2010; Berns, 2009). Similarly, other scholars state that debates surrounding the death penalty have become centered on the value of the victim versus the value of the offender (Lynch, 2002). Not only does *Kennedy* deal with the most innocent of victims, children, it also confronts the proportionality of capital punishment and the offender's eighth Amendment right to be free from cruel and unusual punishment. Rather than considering only a procedural matter, the Supreme Court was required to investigate the application of a Constitutional protection for the offender. All of these attributes of *Kennedy*, its portrayal as an online news article, and the inclusion of an open forum of public communication make it ripe for an investigation and discussion of the 'cognitive landscape' of the modern penal period and the use of capital punishment within the United States (Hagan, Shedd, and Payne, 2005).

### **PUBLIC DISCOURSE AND THE INTERNET FRONTIER**

The Internet has increasingly become a source of data for researchers of public opinion (Fisher, 1998). Specifically in the area of public opinion and the death penalty, scholars have begun to analyze on line discourse through several different avenues, such as pro-death penalty discourse and activism on the Internet (Lynch, 2002). The Internet has become an area of interest simply based on the sheer volume of users able to participate in the discourse along with the quickness that information can be disseminated (Fisher, 1998). Despite this interest, however, the Internet and its

multitude of uses is still a relatively new frontier for examination by scholars. This study will contribute to the understanding of the Internet as a site for examining public opinion and what methods achieve the richest analyses.

Over the last two decades the Internet has moved into a prominent position for Americans seeking news. The sample of public used within this study will comprise only those individuals able to gain access to the Internet news article. Despite its predominance as a news source, it is important to note that the population of those who use the Internet most frequently are financially stable, Caucasian and male (Lynch, 2000; Lynch, 2002), and the results should be seen through this limitation. Despite this, a large portion of Americans polled state that they use Internet news as their main source of news information. The Newspaper Association of America (<http://www.naa.org/PressCenter>) has recently released data and information stating that newspapers reach nearly three out of four consuming adults every week either online or in print. This information expresses the overall exposure of the mass media and supports some level of generalizability when researching the public discourse following a news story. Examining the use of online newspapers, specifically an online poll ([www.whattheythink.com](http://www.whattheythink.com)) entitled “Poll on US media sees trouble for traditional media”, found that over half of Americans state that they get their news information online. Further, they found that one-third of Americans tend to use

network television online news forums, such as ABC and CBS news. This information reveals that those Americans using the Internet for news may represent a relatively significant proportion of the American population and thus their comments surrounding the death penalty case used will be of social-scientific interest.

The current study can be conducted because of the comments to various news articles are archived and available for public review. Much like the use of blogs, particular news articles provide an area in which Internet users may read the comments of other readers, while at the same time offering their own comments, concerns, or other responses. The comments section differs from the blogs in that blogs usually center on a specific issue that is discussed at length and usually advocates a particular agenda or political perspective, one that is shared by many of the blog's readers. The forum available in an open comments section following a news article allows for the meeting of ideological opposites as well as those who are neutral on a controversial topic. Individuals visiting these sites are able to openly voice opinions and begin debates with other users and are not limited by the agenda advocated by a blog. This means that the users commenting following a news article are prepared to be met by opposition and in many cases hope to elicit a response from those in disagreement with their position.

With the use of Internet discourse and study of Internet content comes some limitations. Individuals are free to comment on news articles under a pseudonym in many cases and this anonymity may create a more open forum in which individuals feel comfortable offering opinions that they may not otherwise share in the public arena; however, some individuals use this anonymity to make comments that are meant to shock or stir up controversy rather than to state a sincerely held opinion. This problem began to occur with the advent of online comment sites bringing with it possibilities of users providing false information (Maratea, 2008). As these individuals are commenting freely, the intention behind their comments cannot be assumed to be honest and only the specific information provided can be discussed. For example, if a commenter mentions the extreme number of child rapes occurring throughout the nation, the researcher cannot infer that they received this information from a sensationalized media source. These shortcomings associated with Internet research reveal a limitation of this study.

Many (though not all) newspapers allow readers to offer their own opinions and feelings about articles posted on-line. The on-line newspapers themselves monitor these, in many cases, to remove offensive or off-topic comments (including “spammers” who use the site for advertisement or “trollers” who participate in the discourse purely to stir up controversy). Throughout the course of this study,

comments will be omitted from the final sample for the following reasons: 1) The comment is meant to shock or offend and offers no discernable opinion; 2) The comment is attempting to push an agenda with no connection to issues surrounding the death penalty or the Supreme Court; 3) The comment has been repeated by the same user or is identical to a previous comment. The comments that remain after this systematic filtering of unusable comments will comprise the total sample that will be closely analyzed and used to reveal the general public conceptions of death penalty issues and how they exercise their ability to communicate with fellow citizens.

The news articles used within the present study present the ruling and discuss the issues present within *Kennedy*. The public is able to openly discuss their feelings and reactions toward the issues presented and through this discourse allow the researcher to identify issues most prevalent within public consciousness of capital punishment. Vollum et. al. (2004) points out that, “In fact, some argue that it is these perceptions of public opinion that are most salient to judicial and public policy decisions” (524). Much of the scholarship focusing on the study of public discourse has utilized opinion polls to examine public sentiment concerning the death penalty and punishment. The current analysis will offer an alternative source of information and begin to build literature surrounding popular opinion as freely voiced via the Internet. Similar to unsolicited public opinion that can be found in Letters to the

Editor, this study will offer an even less filtered version of public discourse coming from the engaged and interested populous. The study at hand puts primary focus on those common citizens taking the time to comment and give information surrounding their opinions and frames of capital punishment and its use. It is argued that this is an area that should be studied in order to reveal the complexities within public opinion that may be influencing legislation and political agendas (Garland, 2001). The current study will contribute information in these areas.

### **GENERAL DISCUSSION AND BREAKDOWN OF OPINIONS**

The sample of articles chosen and the comments pertaining to those articles include pieces from two major network news sites, ABC Online News and CBS Online News, and one local on-line newspaper from the state of Louisiana, New Orleans Metro Real Time News. The articles used are entitled “Supreme Court Could Revisit Death Penalty for Child Rape Decision” (ABC News; <http://abcnews.go.com/TheLaw/SCOTUS/story?id=5760359&page=1>), and “High Court Spares Lives of Child Rapists” (CBS News; <http://www.cbsnews.com/stories/2008/06/25/supremecourt/main4207513.shtml?tag=currentVideoInfo;videoMetaInfo#comments>), and “Supreme Court Strikes Down LA Rape Penalty” (New Orleans Metro; <http://www.nola.com>

[/news/index.ssf/2008/06/louisiana\\_rape\\_law\\_struck\\_down.html](/news/index.ssf/2008/06/louisiana_rape_law_struck_down.html)). The total number of responses following the three articles is 350 comments, however, not all the comments were analyzed due to the content or nature of the comment mentioned previously. Of those that were deemed usable for the final analysis, the first article has approximately 33 comments, the second has 100 comments, and the third has 127 comments. There are roughly the same amount of comments coming from the network news sites and the local news site and the number of comments closely analyzed for the project includes 237 total.

Based on the information offered in each of the articles concerning the general details of the case, the outcome of the case, and the ruling of the Supreme Court, an analysis was expected to reveal basic agreement or disagreement with the use of the death penalty. Commenters on these articles fell within four general categories: commenters that were pro-death penalty and anti-decision (Commenters who supported the death penalty in general and opposed the Court's opinion in *Kennedy*; 115), commenters that were anti-death penalty and pro-decision (Commenters who were not in support of the death penalty in general and agreed with the Court's decision in *Kennedy*; 101), commenters that were anti-death and anti-decision (Commenters who were not in support of the death penalty and opposed the Court's decision in *Kennedy*; 3), and lastly commenters that were pro-death but also pro-

decision (Commenters who supported the death penalty in general and agreed with the Court's decision in *Kennedy*; 12). Some comments that were utilized offered an opinion surrounding the facts of the case and the role of the Supreme Court; however, their specific stance in regards to the use of capital punishment was unclear (7).

The actual text of the messages that were posted will be discussed in the following sections, but these general sentiments toward the death penalty appear to be evenly split between those who agree with the death penalty and thus are unhappy with the decision in *Kennedy* and those who are generally against the death penalty and thus are pleased with the outcome of *Kennedy*. In addition, those who were in support of the death penalty, but not in *Kennedy* outnumbered those who were against the death penalty but agreed that Louisiana should retain their child rape death penalty statute. The breakdowns were fairly even between the Network news sites (ABC and CBS) and the local news site (New Orleans Metro). As mentioned, a more in-depth analysis of the competing themes and frames presented on these websites will be discussed in the proceeding sections. It is important, however, to first understand the general breakdown of opinions, such as how many individual commenters were for and against the death penalty and the *Kennedy* decision (See Table One). Any comments missing from this Table are omitted from the calculation due to a lack of a specifically stated opinion.

Table 1. Breakdown of Support for the Death Penalty and *Kennedy* Decision

	Pro-Death Penalty	Anti-Death Penalty	Decision Support Totals
Pro-Decision	12 comments	101 comments	113 comments
Anti-Decision	115 comments	3 comments	118 comments
Death Penalty Support Totals	127 comments	104 comments	231 comments

The breadth of categories that emerged reveals the overall complexity of public opinion in this area. For example, just because one is in support of the death penalty overall, does not mean that they will not consider the facts of the case and decide that they agree with the *Kennedy* ruling. In addition, some of the commenters are not merely commenting on the *Kennedy* decision but are interacting with their fellow commenters, turning the news article into a forum for debating the death penalty, rape, and the Supreme Court more generally. The following section will look not only at the content of individual comments, but also how the commenters interact with one another.

## **MODES OF INTERACTIONS EMPLOYED WITHIN COMMENTING**

The analysis of comments sections as a representation of public discourse and interaction is a fairly new subject for research. Blogs have traditionally predominated the area of online communication and operate in a similar way to comments sections available following online news. Both allow comments and opinions to be observed by all who log on and choose to view them. However, in contrast to blogs, which usually center on one particular viewpoint and create an echo chamber as users communicate with those who share their views, comments sections following an online newspaper article allow for open communication with no stated agenda. The only agenda stated is that of general information offered in the article itself. The only regulations following the articles allow users to alert the news sites of a user posting an “inappropriate comment” or a link to an explicit site.

The three articles chosen to represent the major issues in *Kennedy* present a relatively neutral account of the ruling, without stating a particular stance on the death penalty itself. After careful analysis of the comments, several different modes of interaction became clear. Not all commenters stated their opinions in an identical fashion. On the contrary, there were a variety of interaction styles used by commenters. For example, some commenters simply wanted to state an opinion while others spoke directly to other commenters in order to engage in an active debate. The

majority of users that chose to include themselves in the discussion primarily used the following modes of interaction: offering discourse with stereotypes/insults, offering discourse with slogans/clichés, making general comments, or responding specifically to other users with facts or formulated arguments within a debate. Many of these modes of interaction may overlap in a given comment, but they still represent the most prevalent interaction styles within these comments. In addition, those who are for and against both the death penalty and the decision in *Kennedy* are represented throughout all the modes of interaction present. For example, death penalty supporters are not more likely to use stereotypes or insults than other commenters.

### **General Opinion**

The first of these modes of interaction consists in making general statements in response to the case and the major case issues without engaging with other commenters. These individuals are not making political statements or commenting on political ideologies associated with the death penalty per se. Instead, they are simply commenting on the case outcome and their general opinions surrounding the issue. This type of commenting is not usually as competitive or hostile as the others.

In many cases of child rape force is not used and the "rape" is accomplished through pretending to "play." It often happens within families, often by siblings or parents.

I've seen how a child has lost their life after a brutal crime like rape. It's a slow suicidal lifestyle they will turn to as a young adult. I think death for the rapist is more humane than the results from their sick lusts.

It is a sad day in this world when a person can rape a child, taking every ounce of innocence away from them, and not be punished by the death penalty for such a horrendous act.

It appears that these commenters are not actively engaging in the comment section in order to debate but rather to satisfy their need to contribute their opinion on the case at hand. The following groups all include a more intimate interaction with other commenters and create an environment meant to incite discussion and dispute within other commenters.

### **Stereotypes/Insults**

The next of these modes consists of stereotypes or insults delivered within the expressed opinion on the case. Some of these users may have been provoked by previous comments or the article itself may have elicited the response. These comments focus on stereotypes of adherents to various political ideologies, stereotypes about the characteristics of death penalty supporters and those advocating abolition, and stereotypes concerning regional distinctions between citizens of the United States. Some examples of this mode of communication are as follows:

Its liberals who don't mind innocent people being killed and raped. Punishing the offenders is what bothers them.

Now I know how all you uneducated yats are going to be calling for this mans head but think about people, the eye for an eye doctrine is so outmoded and caveman like.

I will fight to take back what is mine from the mind-numbing rednecks who have suddenly decided that anyone who doesn't want Islamic Shariah "eye for an eye" retributive justice, guns on college campuses, 30-student public classrooms, and all that other right-wing crap, isn't a true American.

Many of these commenters place great weight in regional or political differences when interpreting the comments of others. The stereotypes are used to identify those opinions or commenters in direct disagreement with their view. These commenters are more likely to connect opinions about the death penalty, especially as presented in *Kennedy*, to political or regional issues. For example, commenters using stereotypes are likely to not only disagree with other commenters but also believe that their disagreement is due to broader political differences. The confrontational and provocative nature of these comments also stirs up greater debate among these opposites, as these comments tend to be more emotional.

The liberals protect and defend the rights of pedophiles, murderers, rapists, and terrorists, while turning a blind eye of indifference to true victims of crime, or the rights of every day law-abiding citizens.

Many of the child rapists are killed in jail by other inmates. I guess this can sate the conservative lust for vengeance.

The Louisiana expression of crime of punishment addresses the public appetite for retaliation instead of correction of the offender. It is typical of backwards

thinking found in this part of the country.

But what do I expect from such regressive and primitive society like the one reflected in a large segment of South Louisiana. You try to teach the primitives, and all they want is vengeance.

The use of stereotypes such as these created a hostile environment between these commenters. They simplified issues dealing with the death penalty and treatment of offenders to a breakdown between political or regional lines. Their conceptions of what it means to be liberal or conservative, from the south or from the north appear to be based on stereotypical beliefs and behaviors of these different groups.

### **Slogans/Clichés**

The next of these modes of interaction include the use of slogans and clichés to make a point within the discussion. These tend to be exaggerated statements about the impact of the case, how it will affect the nation as a whole, or what types of people support or oppose the death penalty. These commenters attempt to make witty or even sarcastic remarks in order to convey their message. Some examples of this mode of communication are as follows:

Yeehawww! Put the perverted scum into General Population! Have the trustees leak their identity upon their arrival at the pen.

Wow, I hope they are proud of what they've done today. Now us tax payers can pay to clothe and feed a child rapist. Congratulations Satan, you've won another battle.

I prefer to be intolerant, close-minded and xenophobic. I like the literal interpretation of the Old Testament. That's what America is all about!

Confused? I'm not surprised. Does Louisiana even HAVE schools and libraries anymore?

It appears that a number of these types of comments may be used to provoke controversy or stir up the debate within the comments and may be “trolling”; however, noxious as many of them are, these comments still provide insight into public ideas surrounding death penalty use and support within the United States.

### **Formulated Argument/Debate**

The last mode of interaction present within these comments is one of responding to particular users with formulated arguments and responses. This mode of interaction includes engagement with other commenters. Commenters using this mode of interaction may debate with another user over the span of several comments, rather than offering an isolated comment. This mode of interaction includes stating arguments that address issues presented by other users. Some of this mode of interaction resembles an educated debate, in which respondents carefully formulate their responses.

It costs 10Xs the amount to execute someone then it does to keep them in prison for life. Know your facts before you post. Also it should be noted the US is one of a few western countries that imposes the death penalty at all. Almost all studies show the death penalty does nothing to deter crime.

Hey [username]... I doubt it's ten times; but the ONLY reason it costs more is because bleeding hearts like you FORCE the system to spend DECADES in paying for appeal after appeal after appeal in which case we are not only paying for their room and board AS WELL as the abominable court costs!

Independent studies conducted in almost every state and on the national level have found the death penalty system is so completely messed up that executions should stop immediately until the flaws can be fixed (the flaws can never be fixed). Now, add to the disastrous death penalty system, a whole new type of case. Cases involving child rape. You necessarily have to have testimony of child victims -- who are likely to have difficulty giving testimony, likely to be traumatized having to give that testimony for trials, retrials, etc. Sometimes children aren't able to testify. Sometimes they are unclear about what happened to them. Sometimes they are coached.

These commenters offered facts and data about the cost and effectiveness of the death penalty. Rather than simply agreeing or disagreeing with the ruling or the death penalty in general, these individuals presented additional issues that could be considered by other commenters.

These modes of communication represent the different ways in which the public interacts over the Internet when debating an issue such as capital punishment. Understanding how these various modes may contribute to the examination of Internet discourse in the future. They each have their own dynamics and reveal different things about the speaker and his or her views about public discourse on political issues as well as self-representation on line. However, a deeper analysis of these modes would take us beyond the focus of this paper. In the next section, the content of these

comments and the main themes that are revealed throughout all the modes of interaction are discussed.

## **MAJOR THEMES WITHIN PRO-DECISION AND ANTI-DECISION DISCOURSE**

The major modes of communication reveal public interpretations and feelings toward the death penalty, along with the anger and passion present from those who feel strongly about the issues at hand. Through the analysis, I uncovered several themes from the comments surrounding capital punishment, victims and offenders, and the Supreme Court's role. This type of study and analysis will aid in understanding the complex organization of public thought surrounding capital punishment and what this may say about the United State's continued use of the death penalty in the modern era.

The analysis of the public's 'cognitive landscape' following Internet news articles covering *Kennedy* revealed a multitude of major areas of focus (Hagan, Shedd and Payne, 2005). Those individuals that chose to voice their opinions following the articles focused their attention on several issues prevalent within death penalty discourse. As the analysis progressed, several themes emerged from the comments. The thematic categories include: (1) discussion of the *victim and the offender*, (separately and in relation to one another), (2) the idea of '*victim experience*', (3) the

significance of *vengeance, justice, and retribution*, and finally (4) *the role of the Supreme Court* within death penalty implementation and jurisprudence. The sections devoted to each category describe the theme, its connection to the greater literature, and examples from comments sections themselves.

### **Victim and Offender**

One area of focus within the comments is comparison between the value of victim and the rights of the offender. Rather than focusing on both the recovery of the victim and the constitutional rights of the offender, the focus must only be placed on one or the other. Death penalty supporters state that any concern for offenders' rights is to forget and ignore the victim completely. Those who disagree with this stance, state that the victim is not the state's concern, and the offender must be given his [Kennedy's] due process and constitutional rights throughout his trial. This type of death penalty rhetoric has been found in several past studies of death penalty discourse and is deployed by both supporters and abolitionists (Lynch, 2002; Berns, 2009; Unnever and Cullen, 2010). The analysis of these comments revealed that those who were for and against the decision in *Kennedy* used their discussion of the victim and offender in different ways. The major theme of discussing and debating the roles and rights of both the victim and offender centered on several key issues: the victim's

rights versus the offender's rights, the offender's rights in general, and the significance and magnitude of the victim's experience.

Several of the commenters debated the value of the victim in relation to the rights of the offender. Those who opposed *Kennedy* felt that the victim's rights were being disregarded in favor of the offender's, while those in agreement with the decision emphasized the Constitutional rights of the accused. Unnever and Cullen (2010) found that this feeling held by death penalty supporters "...is most poignantly reflected in the belief that the court system, especially the U.S. Supreme Court, has trumpeted the rights of offenders at the expense of protecting the rights of others [victims]" (103). Many of the commenters pursued the idea that if the Court is giving this right to the offenders in *Kennedy*, they are directly ignoring the victim and (by a logical leap) thereby condoning child rape. These individuals feel that anyone on the side of the offender has no concern for innocent victims of child rape (Berns 2009; Cullen and Gilbert, 1982).

For several commenters, there was no middle ground in terms of supporting the victim and punishing the offender.

It is a sad day when a child rapist has more rights than the victim. What about the child's constitutional rights? Is a grown man raping a child and emotionally ruining the child's life not cruel and unusual punishment?

Why is the perpetrator treated better and more fairly than the victim?

'In a 5-4 vote, the court says the law allowing the death penalty to be imposed

in cases of child rape violates the Constitution's ban on cruel and unusual punishment'. So in other words the court does not think that child rape is cruel and unusual punishment to the children victims?

Those who agreed with the decision emphasized the view that offenders must be recognized and protected within the criminal justice system and that it is possible that death could be replaced with a system of rehabilitation or a way in which the offender may heal. These commenters believe that the offender does have rights and that those rights must be protected throughout the criminal justice process, especially one involving the death penalty. Some of the commenters make note of the fact that the victim was not killed in *Kennedy* to make their point. They maintain that the only time the state is working on behalf of the victim is when the victim is no longer present: in homicide offenses. When the victim is still alive, the state should only be concerned with prosecuting the offender as provided by the Constitution.

These prevalent themes within death penalty discourse concerning a battle between the victim and offender were represented within the comments.

Not rape. Not burglary. Not vandalism. Murder. And why murder? Because the witness is no longer there to defend himself/herself. Not because of revenge. Because he/she's missing.

'Murder is the only crime where society assumes the role of the victim.' That's why societies have capital crimes.

Criminal rapists remain within our justice system. Unfortunate, maybe, but it's the Constitution. The law must stand even when the result is unpopular--not popular is no reason to ditch the Constitution in the toilet like so many of you

advocate.

In a good liberal setting these crimes probably warrant 50 hours of community service along with tens of thousands of dollars to help the criminal rehabilitate himself. As far as the victim, it's not the courts concern.

However, the 8th amend does not allow cruel and unusual punishment. This means that the punishment must fit the crime. While child rape is an atrocious crime, the victim does not lose his or her life. The criminals are sill punished.

The opposition between support for the victim and advocating rights for the offender was a very important point of contention among the commenters. Scholars have uncovered that a focus on the victim in comparison to the offender is becoming a major issue among death penalty advocates and abolitionists (Berns, 2009).

Research has shown that death penalty discourse is full of this debate between rehabilitation of the offender and protecting of the victims in this case young children (Unnever and Cullen, 2010). Scholars have found advocates of capital punishment have, "...mobilized support for tougher punishment policies by symbolically reconstructing the punishment of criminals as a victim's right" (Messner et. al., 2006: 559). Several scholars have placed the role of most media sources on the side of the death penalty supporters, as most media focuses on the intimate details of the crime and ignores any background information about the offender or any possible underlying causes of the crime that might complicate public assumptions about the severity of the crime (Chermack, 1994; Tunnell, 1998).

The next two key areas of focus pay attention to the victim and to the offender but do not place them directly in comparison to one another. Those against the decision were very likely to emphasize the innocence of the victim and strip the offender of his or her rights (Lynch, 2002), while those in support of the decision were likely to take the victim into consideration but emphasize that the offender does indeed have rights under the Constitution.

They decided that crimes against the state are far worse than crimes against innocent children. What kind of message does this send to the victims?

Rapists already kill something in their victims. They should die for this crime.

Sorry but when you commit a crime YOU HAVE NO RIGHTS! You violated your rights and you should be treated like the scum you are.

The perpetrator is being treated thus by the legal institutions of our country and under our constitution. Whereas the victim was at the hands of who we are all calling a "monster." Shall we encourage our highest court to step down to the level of a monster? Or maintain higher standards? Personally I would like to see the death penalty completely abolished, as I find it, particularly the way we practice it in the US, cruel and unusual.

These comments represent a general disagreement concerning the role of the state in advocating for the victims of crime and the rights held by the accused. Those who disagreed with the decision in these terms felt the victim was being disregarded complete, and those who agreed with the decision felt the Supreme Court properly applied the Constitutional rights to the offender.

As stated previously, scholars believe that the public's focus on either the victim or the offender may be due to how it is displayed in the media. Scholars have noted that the death penalty supporters realized the value of placing such attention on the experience of the victim and the specific details of the crime. If they argue that without the death penalty the victim will never be healed, then they can claim that the death penalty is fundamentally necessary for victim closure (Berns, 2009). The media perpetuates this position by reporting on the horrific details of the crime and the victim's experience, but never humanizing the offender. Berns (2009) states, "The promise of 'closure' for crime victims and their families has become a prominent cultural narrative for defining not only victims' needs but also the broader concept of justice" (383). If the media focuses only on the horrific details of the crime, the victim quickly moves to the forefront of the discussion. This theme of opposition between the victim and offender, as Lynch (2002) termed it between 'good and evil', is prevalent within death penalty discourse literature and was represented within the analysis (222). It may result from various feelings toward crime levels within the United States, deferring understandings of the role of the Constitution and a different application of the rights afforded within.

While this theme focuses on the two main players in a death penalty case, whose rights should be focused upon and how their needs should be handled, the

proceeding themes begin to touch on more specific issues such as who should be making the decisions, how the decisions should be made, and which societal goals of punishment are the most important.

### **‘Vicarious Victimization’**

Another prevalent theme through the comments was ‘vicarious homicide victimization’ (Borg, 1998; Mancini and Mears, 2010). A large number of those responding within the comments discussed or mentioned the necessity of having experience with personal or vicarious victimization with rape when stating an opinion on its appropriate punishment. Those who argued this and were against the decision in *Kennedy*, felt that the justices were in no position to respond to such a case since they were not associated with or had experienced child rape in any way. On the other hand, those in agreement with the decision would respond to these claims by explaining the need for a Supreme Court Justice to be impartial.

It was obvious that a great number of those in opposition to the decision called for the absolute necessity of taking the victim’s experience into account. They stated that if someone had not been touched by tragedy in some way concerning child rape, they had no real place making a decision about punishing such a crime.

It would be horrible if one of the five justices who voted the death penalty unconstitutional have something similar happen to a family member. I guess none of the justices have been victims of violent crime? Shame on the justice’s

decision.

I wonder if Justice Anthony Kennedy would still have the same opinion if one of his own grandchildren were raped by one of these vermin that they are protecting.

The court proves that they are indeed spineless. But let it happen to someone THEY love and this will change in a heartbeat.

Despite the veracity of these opinions, studies have shown that in some cases, knowing or being a victim of child rape actually decreased the victim's support for the death penalty (Mancini and Mears, 2010). In these cases the victim is likely to know their offender and therefore not be likely to push for the death penalty. Those advocating for 'victim experience' may be reacting to their initial wish for revenge rather than considering how they may actually feel, especially if they knew their attacker. Another study examined the truth behind the 'mugging thesis', which states that those who have experienced crime or violence are more likely to have conservative ideologies, such as support for the death penalty. These scholars found no correlation between "...being a crime victim and having a conservative worldview, support for conservative social policies, or punitiveness toward crime as measured by support for the death penalty and for harsher courts" (Unnever et. al., 2007: 310). Nevertheless, several commenters mentioned this need for victim experience and others presented the problems with such an opinion.

One scholar addressed the conflicts and complexities inherent within this area. Byron (2002) explained that the individuals mentioning that an opinion would drastically change once someone had been touched by violence were completely correct. He states, "...I want to say, yes, I would ask for the death penalty if my child were murdered, but my opinion under those circumstances should not count" (Byron, 2002: 307). Commenters echoed Byron's view, claiming that Justice Kennedy's opinion would drastically change given his hypothetical granddaughter's rape, but in that case he should most certainly not be making the decisions about punishment.

If there is a reason to think they [SC justices] will not be objective then the issue of conflict of interest is raised and they would have to recuse themselves.

In the hypothetical case you proposed, Kennedy would lose the objectivity we demand of everyone on the Court and he should not participate in the ruling.

Of course, if my child was raped, I would want to kill the rapist in revenge. But we are a society of the Rule of Law, and the law does not promote or permit revenge.

The concept of 'vicarious victimization experience' is fascinating and seems to hold a prominent place among those commenters debating capital punishment. It poses a philosophical question concerning whether judges should be impartial arbiters of the law or compassionate legal elites that understand the ramifications of a crime such as brutal rape for the lives of the victims and their families. As will be discussed within the next section, the call for 'vicarious homicide victimization', or victim experience,

may be closely associated with feelings of revenge.

### **Vengeance/Justice/Retribution**

The comments also focused on the ends of justice. Several commenters state which goal of justice they believe to be the most important when it comes to punishing those who have committed heinous crimes. These goals include incapacitation, retribution (possibly used to represent actual feelings of revenge or vengeance in some comments), deterrence, and rehabilitation. Based on how the commenter spoke about the decision in *Kennedy* they were very likely to discuss which of these goals they felt was or was not being fulfilled. The largest theme to come out of this type of comment was a debate between the understandings of vengeance, justice, and retribution.

Throughout the comments it became evident that those who were against the *Kennedy* decision believed several goals of justice should be predominant. Most within this group would speak out against the effectiveness of rehabilitation and instead focus on incapacitation, deterrence, and retribution. Similar to studies conducted by other scholars, these comments were mostly very emotional and the actual words used more in line with vengeance rather than retribution (Lynch, 2002). For example, these commenters wished for harm to come to the offenders in the name of retribution, however, they prescribe extra-legal (vigilante) “justice” that occurs outside the bounds of the law, which is more closely associated with vengeance.

The state where I live the warden keeps the shovels sharp and the press out of our prisons.

Death is too good for this guy; the only consolation we have now is that he will be taken off death row and placed into the general population. Things there have a way of working themselves out if you know what I mean.

It seems these commenters were comforted knowing that this offender would be killed by some means outside of the law. They called for vigilante justice because they Court ruled that the state would not consider death in cases of the rape of a child with no murder.

Scholars have shown that it is common for pro-death penalty advocates to focus on the emotional and disturbing aspects of the case in order to elicit feelings of retribution, or more likely vengeance, from others (Sarat, 1997). On the other hand, these same death penalty supporters work to cleanse the appearance and conception of the criminal execution in order to make sure one death is not compared to the other (Sarat, 1999). Most commenters in opposition to the decision felt that an execution was absolutely necessary in order to achieve a sense of justice. It was within this same group of commenters that called for the justices to have ‘victim experience.’ Those with victim experience, as noted by Byron (2002), are those most likely to be fueled by revenge and understandably so. This theme reveals the tension between actions motivated by emotional revenge and proportionate retribution.

Scholars have researched the long-standing debate among the meanings behind the goals of retribution, justice, and vengeance and how they can be best defined. Those who are in support of the death penalty consider the use of the death penalty as paramount to fulfilling justice. Wiecko and Gau (2008) state, “Within this segment of the population, killing in one context is considered a grievous sin, while killing in another context is not only morally tolerable but even advisable” (546). Death penalty supporters who represented their disagreement with *Kennedy* in terms of justice goals, advocated the absolute necessity of an execution as the principal goal, followed by incapacitation. In the case of these commenters, the incapacitation had to be permanent. As will be revealed in the following section, these commenters had little faith that the criminal justice system would ensure that the offender was never released.

On the one hand, it appears that within this pro-death penalty group, the motivations behind the implementation of capital punishment are unimportant in comparison to the need to kill the offender in order to fulfill justice.

It still floors me how people can read about what some guy did to a little girl (raping her and tearing her insides apart) and think, ‘He’s still a person, he deserves to breathe and live until his natural death.’

I don't necessarily CARE about punishment being a deterrent: what's the percent of molesters who go back and do it again, like 95%? They just need to go.

This animal should be executed in the most painful way possible.

All I can say is if some pervert raped one of my grandchildren they have best give their soul to whatever God they believe in because that physical body belongs to me.

On the other hand, those who were in agreement with the *Kennedy* decision were often careful to make distinctions between the concept of revenge and justice, vengeance and retribution. Byron (2002) explains the concept: “Whereas revenge lies outside the rule of law, the assessment of a criminal’s debt to society takes place within the pre-established institutions of a legal system. Whereas revenge is motivated by fury and it often out of proportion, retribution is pursued for the sake of the good of social order and is, at least ideally, proportional to the crime” (310). Commenters made similar arguments concerning vengeance and retribution as these scholars discuss.

I use to be a death penalty supporter, but now I am not. Living in Texas, the state that carries out the most executions, what I do see is that many times the calls for death are not for justice, but more in line with vengeance.

On one hand, there's the law. On the other, there's justice. This ruling is not justice.

In fact, people who are hell bent on imposing Islamic law (such as those demanding for "eye for an eye" retributive justice) are the ones who are depraved, vengeful, hateful, un-American, and un-Christian . . . in my humble opinion.

Revenge is not justice. Revenge is an emotional thing. A Hollywood thing. A right wing lunatic thing. Justice is different. Justice is rational.

This is a very Shairah-law-compliant worldview. You must be proud of your Islamo-Abrahamic views that law is about vengeance. What a wonderful world you live in.

The commenters generally split into two groups concerning the meanings behind these terms. As mentioned previously, those who were against the decision believed that in order for justice to be achieved, it was both acceptable and necessary for an offender to be executed. Those who were in agreement with the goals of justice presented made a distinction between retribution and revenge and argued that the only way civilized justice could take place is if all vengeful feelings were put aside. This discussion of the definition of retribution, justice, and vengeance is at the heart of much of the death penalty debate. Not only the definitions of these concepts are debated, but also whether or not there is an inherent problem with feeling and being vengeful at the death or attack of a loved one.

### **Politics and the Role of the Supreme Court**

The final major theme within the comments concerns the Supreme Court and its role in interpreting the Constitution. Researchers have found that negative feelings toward the criminal justice system in general, along with negative feelings toward the Supreme Court were associated with increased support for the death penalty (Mancini and Mears, 2010; Roberts and Hough, 2005). In addition, several scholars that have

examined the origins and feeling toward punishment within the United States, believe that a general misconception about crime levels and “mistrust of governing institutions” has pushed the public to fight for harsher penalties (Simon, 2007: 155; Garland, 2005; Simon et. al., 1999). Throughout the analysis, the groups commenting on the Supreme Court and their role in this decision tended to claim affiliations along political and ideological lines.

Public understanding of the role of the Supreme Court, its ability to make decisions, and its overall effectiveness all emerged in the comments. As was displayed in the disagreement among the commenters concerning the rights of the accused in the previous sections, comments concerning the Supreme Court reveal that there is a disagreement when it comes to basic tenets of the Constitution and the purpose and role of the Supreme Court among the commenters. This disagreement represents historical disagreements as to whether the Supreme Court could act as a lawmaking body. Those who were in agreement with the *Kennedy* decision generally supported the Supreme Court and trusted their interpretation. Those who agreed with the decision felt that the Court accurately interpreted the Constitution in the ruling and did so in an unbiased manner. As is evident in much of the literature on the Supreme Court and its effectiveness, those who accuse the Court of manipulating law and being very politically and socially motivated in decisions may be more in line with what has

been shown by several scholars (Tushnet, 1987). Those in agreement with the decision may be too quick to credit the Supreme Court with unbiased, Constitutional interpretation.

That's what the Supreme Court is doing, interpreting the Constitution. I doubt you know more about the law than anyone here, much less any one justice, just from your pathetic posts.

The justices are charged with the job of ensuring the laws passed by the legislative branch are consistent with the U.S. Constitution.

Support the death penalty, but only in the most extreme cases. Otherwise we end up starting to apply it to too many types of crimes. It's not a popular decision, but it's the right one I believe.

Those who disagreed with the decision most notably felt that the Court was stepping on state legislatures and overlooking the will of the people. In addition to this, there were several of those commenters who were disappointed with the decision that showed a general mistrust in the Court and felt that it was manipulating the ruling to fit its particular agenda. These individuals in disagreement with the Court believed that it was overlooking the will of the people and unjustifiably overruling the democratic state legislature.

If the good citizens of Louisiana decided that capital punishment is an appropriate form of justice for the brutal rape of a child (effectively murdering her innocence), then the Supreme Court should stay out of this matter.

I am utterly amazed at how the Supreme Court continues to distort the Constitution, what was cruel and usual in 1798 is still cruel and unusual and

the opposite is also true, if it wasn't cruel and unusual in 1798 it still isn't.

Great Job Supreme Court Justices!!!!!! Continue to gut the teeth in the penal system for horrible crimes against people....send a strong message it's OK to rape etc.....This follows in step with the continuing deterioration of the once strong America we knew...OK, now time for bleeding heart liberals to jump on this post.

The death penalty for child rape is clearly not "cruel and unusual" punishment. The Supreme Court should butt out and let the state legislatures decide. If I were dictator, I would let the so and so live and make his life so miserable he would wish he was dead, but it's better for the legislatures decide this issue. Different states should have a right to do different things.

In addition to the breakdown between those who did and did not agree with the Supreme Court interpretation, commenters attributed a great deal of importance to Supreme Court rulings in general. Regardless of their feelings on *Kennedy*, most commenters felt that Supreme Court decisions have a notable and immediate impact on American society. After analyzing these comments that some of the commenters are under the impression that the impact of the Supreme Court is direct and swift. Much scholarly work argues against this position (Tennen, 2005; Rosenberg, 1990), however, the comments reveal that some of the public believes Supreme Court decisions directly impact crime rates.

Another pathetic ruling from the Supreme Court. If these parasites were executed, how many children would grow up never being molested.

This ruling sent a wrong message to child rapists everywhere that they can get away from serious punishment even if they commit such horrid act.

Child victims of rape do not go a day in their lives without thinking about what their rapist did to them. I hope the Justices on the Supreme Court understand the full magnitude of their decision.

This is what happens when the court replaces the judgment of elected officials with its own. Even with a large majority of republican appointees this has not changed. I fear nothing will stop this judicial dictatorship.

The theme of the role of the Supreme Court reveals that the commenters are engaged with Supreme Court politics and that there is some disagreement on the role that the Supreme Court should play in terms of policy creation and legal interpretation.

## **DISCUSSION AND CONCLUSION**

This analysis reveals a detailed, complex picture of public discourse surrounding the death penalty. The examination of Internet comments opens a window into how an important segment of the population is reacting to the death penalty, in an anonymous forum with no specifically stated agenda. The individuals that chose to comment on these articles revealed a system of meaning and understanding of the law as it is administered in cases involving the possibility of execution. Executions continue to occur within the United States and popular support continues to remain relatively stable (Ellsworth and Gross, 1994). America retains the death penalty while all other Western nations have abolished the practice (Simon, 1997). The unique position of the death penalty within the American justice system makes the study of public opinion an important indicator of the future of the death penalty. Some scholars

argue that American continued support of the death penalty represent the very character of the American spirit (Zimring, 2003), while others believe that the social and political forces have shaped and morphed public opinion over the past few decades (Garland, 2005). This analysis allows for greater insight into the content of public opinion and information concerning the American reaction to capital punishment.

The in-depth analysis of the general public's comments concerning *Kennedy* reveals several complexities within public death penalty discourse. The modes of communication discussed add to an understanding of the ways in which the public interacts within the space of the Internet. The forum of an open comments section following the articles allowed ideological opposites the opportunity to meet in cyberspace and debate the issues at hand. This analysis provides a more concrete understanding of the ways in which the public debate today and interact with one another concerning death penalty issues, at least within the safety and anonymity of the Internet. Some of the commenters use slogans, clichés and insults as their main form of communication with other users. Others, however, present well thought out arguments that offer research and factual accounts, including data concerning death penalty implementation and effectiveness. It is clear that not all United States citizens feel the need to be completely informed before offering their comments concerning

the death penalty and its use. (Further research in this area could include a comparison of how modes of communication differ between blogs, comments sections, and other Internet spaces, why these differences may occur, and what modes of communication are the most widely used.)

This study revealed variation and instability within death penalty sentiments, indicating the support for the death penalty might not be an innate part of the American character as some scholars have maintained. Some commenters believed the death penalty was necessary for justice (however they construed this concept), others were unsure and wanted more information, and still others were against the death penalty in all cases for moral reasons. Those that wanted more information were more often likely to advocate life without parole after learning facts about the death penalty's effectiveness and alternative punishments (Vollum et. al., 2004; Bohm, 1991; Lifton, 2000). For the staunch death penalty supporters, however, no such knowledge affected their belief in the need for the death penalty to fulfill justice, and problems with the death penalty were considered necessary risks (Lynch, 2002). Vollum et. al. (2004) described work by Bohm et. al. (1991) by stating they found "...significant increases in opposition to the death penalty as knowledge of its application and administration was introduced. However, subjects whose support for the death penalty was based on a desire for retribution were less affected by such

knowledge” (526). The commenters revealed this type of mentality throughout their debates. If a death penalty supporter made a call for vengeance and was met with a fact concerning the overall cost of the death penalty, they were not swayed and maintained their position.

The responses offered by the public to *Kennedy* expose a varied set of legal ideas and constructions concerning how justice should be implemented, applied, and adjudicated. Therefore, the last major contribution of this analysis is in relation to theories of legal pluralism and popular constitutionalism. The analysis reveals information concerning the legal pluralism that exists within the United States. The pluralism of legal ideas surrounding the death penalty reveal that a great amount of debate and opinion formation occurs outside of any court or formal legal setting. The commenters have conceptions of how the United States justice system operates and what it means to be protected by the Constitution. Legal pluralist scholars argue that these conceptions are meaningful and important and because large numbers of individuals hold these particular beliefs they become an additional form of law (Merry, 1988). These individuals comment without provocation or requirement and feel strongly enough about the issue to speak their ideas in a public forum.

The results of this study show the “extent to which other forms of regulation outside the law constitute the law” (Merry, 1988: 874). If enough of the public feels a

particular way about the application of the right to be free from cruel and unusual punishment, then that becomes a valid frame of public understanding of that Amendment. This argument has been outlined by the Supreme Court as well in *Tropp v. Dulles* (1958) when the Court stated that an Amendment "...must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." It remains unclear exactly how the Supreme Court is able to measure or understand how the standards of decency evolve, but hopefully a study such as this can add greater substance to public opinion. Kramer (2004) states, "...the role of the people is not confined to occasional acts of constitution making, but includes active and ongoing control over the interpretation and enforcement of constitutional law" (959). These commenters are active participants in the understanding of the law as it relates to capital punishment and the functioning of the criminal justice system. Contrary to some arguments concerning public apathy toward criminal justice issues and lack of knowledge about the Supreme Court (Kritzer, 2001), the individual comments analyzed in this study show an engagement and passion concerning the legal landscape surrounding the death penalty.

As found within this study, the demands of popular justice may be out of proportion to those provided by written law (Merry, 1995). Many commenters called for vigilante justice against any child rapist that would not receive death penalty.

Stating the necessity of taking justice into their own hands or hoping that the prisons “keep their shovels sharp”, advocating swift death of these types of prisoners once they enter prison. As important as it is to recognize the significance of popular constitutionalism and popular justice, it is equally as important to understand that the balance between ideas of popular justice and the regulatory power of the criminal justice system (MacAulay, 1989). These comments offer valuable insight into the dominant popular ideas surrounding the death penalty; showing that the public is engaged with these types of criminal justice issues and have ideas surrounding the appropriate execution of justice and punishment.

Finally, it is important to understand the context where Americans discuss the death penalty. The comments section of an Internet news report is different from other places where an individual may express their views on the subject. A survey or a face-to-face interview of the same commenters discussed here may provide different results, as would other Internet forums such as a blog or an instant messaging chat-room. Whether one of these different contexts provides a “more accurate” picture of public attitudes towards the death penalty is impossible to say. We need to understand that the location of public discourse affects the nature of this discourse and that the internet with its anonymity and impersonal form of interaction structures public opinion as much as does any other aspect of subject under discussion. To some extent

“the media is the message” and any place where the death penalty is discussed provides important insights about the moving target that is American attitudes towards the death penalty.

The analysis offered within this paper reveals a complex set of attitudes toward the death penalty, which can add to information utilized by policy makers and criminal justice actors in their quest to understand public sentiment surrounding the death penalty. This analysis indicates that the public response to the death penalty is varied, both in content and commitment to a particular argument or agenda. There are not only those that fully agree or disagree with death penalty, but also those that fall in between these extremes and want to understand how the death penalty operates within the United States. It was the goal of this study to broaden such knowledge and create a more complete picture of those members of the general public engaged in death penalty debates today.

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