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BA thesis
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The clash over death penalty in US-European relations

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1. Introduction

Even though human rights are certainly a big part of the set of values in the Western world, there is one issue that remains a controversy in transatlantic relations that is closely linked to those rights – death penalty. After the end of World War II, the international discourse on death penalty took a fairly sharp turn with the proclaiming of the Universal Declaration of Human Rights by the United Nations General Assembly in December 1948¹. Also signed by the USA, the Declaration confidently affirms every human's right to live. How and to what degree this right applies to convicted criminals, has been an issue of debate ever since.

This Bachelor's thesis' main focus is on identifying what the main arguments creating the clash between Europe and the United States of America in the discourse of the use of capital punishment are, where they manifest in today's world, and why. My argument is that even though we share similar values, our difference in ethics is the root cause of the clash.

Death penalty in the context of this thesis is only meant as a court-assigned sentence of execution of full-minded adults for capital crimes. The thesis does not include the issues of death penalty for minors or for the mentally disabled, neither of unlawful executions or those prescribed under suspicious circumstances. Those issues are part of further controversy, and as of today, aren't a part of the discussion concerning the United States.

The thesis starts out with setting a conceptual frame. When conducting empirical research, I myself started wondering about what exactly may be the cause of gulf in foreign policy on a particular issue of regions otherwise very much alike. With the help of several authors, such as Kissinger, Putnam, Lucarelli and Manners, the thesis conceptualizes the frame of these issues, which will also support my analysis later.

A big part of my thesis is also dedicated on describing the current situation in both the United States and Europe. I feel this is necessary, since one cannot be expected to fully

1 United Nations “The Universal Declaration of Human Rights.” <http://www.un.org/en/universal-declaration-human-rights/> (May 15, 2016)

grasp the controversy and the extent of it without being aware of what exactly (and, again, to what extent) is being done that is controversial. US has a larger chunk dedicated to it, since there is more variety in both the views and the actual use of death penalty. The thesis will explain the views on three levels for each region – public opinion, (member) states and US Supreme Court/Parliament and Council, as the highest level.

Since in this particular argument, the US and Europe very much represent the “For” and “Against” arguments on the issue of the use of death penalty, I have chosen to express the statistics and reasonings behind those sides only. This does not go to say that neither US or Europe is absolutely unanimous in supporting or objecting to death penalty, as nothing is rarely, if ever, as black and white. However, since the general public consensus correlates with this polarization, the US as a whole is retention both *de facto* and *de jure*, and Europe as a unit is strongly abolitionist, again, both *de facto* and *de jure*, I feel it is justified to represent those aspects to keep the analysis more straight-forward.

My categorization of factors (cultural, political and other) was largely influenced by the works of Eric Neumayer. Neumayer (2008) discusses the impact different types of factors have had on the trend of global abolition. He argues in his article that the biggest impact to the trend comes from political influences. As my thesis is not focused on finding out which factors are the most important, but rather simply bringing them forward and discussing their impact on the clash, I will neither confirm nor argue his point of view in this, but will draw material from his argumentation. Each category of factors is further divided into the actual factors discussed.

The materials used for this thesis are peer-reviewed articles from established publications. The statistical information is provided either by established non-profit organizations, such as Amnesty International and the Death Penalty Information Centre, or by well-known research companies, such as Gallup, who have proved themselves and their information as trustworthy.

In addition to this, materials published by organizations such as the European Union and the Council of Europe (or their sub-organizations) have been used.

2. Conceptual frame

In the traditional conception of foreign policy and international relations, foreign policy begins where domestic policy ends. If international relations is put in the simpler metaphor of person-to-person communication, this would be saying a person's inner monologue ends where outward communication begins. There is certainly logic in that view, but it has been argued that outward communication (foreign policy) is so deeply influenced by inward communication (domestic policy) that the line is far more blurred than the traditional conception might indicate. The two authors I have chosen to rely on in this instance are Robert Putnam and Henry Kissinger, both of whom talk about the impact of domestic policy and differing domestic views on foreign policy.

Putnam (1988) expresses that domestic and foreign policy is often a two-level game, meaning a representative of a country is being simultaneously influenced by both the politics they are involved in on the national level, as well as internationally. On one hand, they are influenced by the party they represent, the political groups they may be active in within their country, their constituents, and the interests of all those groups. On the other, in international politics they also represent their government as a whole, which in turn is interested in maximizing their ability to satisfy domestic pressures, whilst minimizing the potential negative impact of foreign developments. This logic could still be applied if we “up the level” in the context of the issue in question - in a large international organization, such as the EU or the Council of Europe, a representative of the organization represents both their country and the organization itself. The two-level game is still very much present.

As to how exactly different domestic policies may impact international relations, Kissinger (1966: 503-504) explains: “When the domestic structures are based on fundamentally different conceptions of what is just, the conduct of international affairs grows more complex. [...] When domestic structures and the concept of legitimacy on which they are based differ widely, statesmen can meet, but their ability to persuade has been reduced for they no longer speak the same language.”

This seems to fit quite well in the context of death penalty. The US society as whole gives

off the impression of considering capital punishment to be “just”, and essentially, a therefore justified exception to the human right to life. European society, on the other hand, respects human rights to the letter, and considers the right to live unquestionable in any and all circumstances. The two sides seem to have trouble understanding not even so much the other's point of view, but more why they are of that mindset.

“What is just” can essentially be considered to be a question of ethical principles and values. The different sets of ethics and values in foreign policy can easily be seen as the root cause of many disputes. However, what exactly are values and how they fit into the topic of foreign policy is a very complicated topic. This is in-depth discussed in Lucarelli and Manners “Values and Principles in European Union Foreign Policy” (2006). One of the contributors to the book, Jørgensen, offered the different definitions of the term “values” by explaining what they (along with “images” and “principles”) constitute as in the three major theoretical traditions – Liberalism, Realism and the English School. (Jørgensen 2006: 44) He presents a distinct difference in how this term is defined by the three traditions, which illustrates clearly the complex nature of the concept.

In the interest of this thesis, I have to make some generalizations. Ayson (2015) defines values as fundamental motivations; as guiding aims we think will make for a good society. In this particular context of the discourse on death penalty, I see this definition a good fit. The difference in fundamental motivations and the understanding of that would constitute a “good society” is certainly something that would result in misunderstanding and a conflict.

The European Union defined its values in Article 2 of the Lisbon Treaty in 2007²: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

2 Foundation for EU Democracy “Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007)”
http://www.eudemocrats.org/eud/uploads/downloads/Consolidated_LISBON_TREATY_3.pdf (May 15, 2016)

Ayson also mentions the close link between values and ethics, namely that values are strongly linked with what is considered to be moral or ethical conduct. The Oxford Dictionary³ defines “ethics” as “moral principles that govern a person’s behavior or the conducting of an activity”. It's safe to assume, the term “person” can easily be substituted with the term “state” without the definition losing in meaning. Roughly put – ethics is what we base our decisions of “right” and “wrong” upon. To put this into context, the way I understand it, the European value of respect for human rights means we, as a collective, find it unethical (“wrong”) to take a right so fundamental, as the right to live is, away. Again, it's easy to recognize how a difference in such moral principles might contribute to a debate.

Ian Manners has, in several of his works, also linked EU ethics closely with normative power. He stands firm in stating that the main force for EU policy comes from transnational and supranational organizations reflecting norms from civil society and European political elite. (Manners 2002: 251) This link will be more closely discussed later in this thesis under “political factors”, as the use of normative power is, in essence, certainly a political act driven by political motivation. By Manners' (2008) definition, the concept of normative power means that its use involves normative justification, rather than the use of material incentives or physical force. To put briefly, Manners' (2008) further logic concludes that the use of normative power lies, almost by its definition, on ethics.

The very use of normative power, however, can also be the cause of tensions in international relations. To explain simply, to use normative power means to tell someone what the norm of their behavior should be – what they should be doing. Normative power does not emerge in situations where all parties agree on the norms completely and act accordingly. To go back to the metaphor of “regular” person-to-person communication – if someone tells someone else what to do based on what they think they should be doing, it is easy to see that behavior as imposing. Certainly a tense situation.

3 Oxford Dictionaries, Definition of “Ethics”.
<http://www.oxforddictionaries.com/definition/english/ethics> (May 15, 2016)

3. General views on death penalty – basis of the dispute

3.1 *The United States of America*

3.1.1 US Supreme Court

The US Supreme Court, the highest in the judicial branch, has issued numerous rulings on the use of capital punishment that are mandatory for all states.⁴ As of May 2016, there has not been a ruling made that would imply death penalty to be in violation of the US Constitution altogether, since capital punishment was reinstated in 1976. However, there have been rulings that have narrowed the limits of what crimes can constitute as capital crimes (full list: Annex 3), as well as which criminals can be subjected to death penalty.

*Godfrey v. Georgia*⁵ (1980) resulted in a ruling that death penalty was not possible as punishment for ordinary murder. With *Atkins v. Virginia*(2002)⁶, the Supreme Court ruled the execution of mentally retarded defendants violates the Eighth Amendment's ban on cruel and unusual punishment, and is thus unconstitutional. With *Roper v. Simmons*⁷ (2005), it was ruled that death penalty for those who have committed their crimes under 18 years of age is also in violation of the same ban. In 2008's case of *Kennedy v. Louisiana*⁸, it was ruled states may not impose the death penalty for a crime against the person where the victim's life was not taken.

3.1.2 US States

As of May 2016, capital punishment is legal in 31 US states and has been legally abolished in 19, most recently Nebraska in May 2015. Of those 31, only 6 executed inmates (28 in total) in 2015 – Texas (13), Missouri (6), Georgia (5), Florida (2),

4 The Supreme Court Database All cases regarding death penalty.

<http://scdb.wustl.edu/analysisCaseListing.php?sid=1503-COLDSPELL-6011> (May 15, 2016)

5 The Supreme Court Database “Godfrey v. Georgia”

<http://scdb.wustl.edu/analysisCaseDetail.php?sid=1503-COLDSPELL-6011&cid=1979-086-01&pg=0> (May 15, 2016)

6 The Supreme Court Database “Atkins v. Virginia”

<http://scdb.wustl.edu/analysisCaseDetail.php?sid=1503-BALLGAME-8476&cid=2001-070-01&pg=0> (May 15, 2016)

7 The Supreme Court Database (Roper v. Simmons”

<http://scdb.wustl.edu/analysisCaseDetail.php?sid=1503-BALLGAME-8476&cid=2004-024-01&pg=0> (May 15, 2016)

8 The Supreme Court Database “Kennedy v. Louisiana”

<http://scdb.wustl.edu/analysisCaseDetail.php?sid=1503-BALLGAME-8476&cid=2007-068-01&pg=1> (May 15, 2016)

Oklahoma (1), and Virginia (1).⁹ The number of executions itself was the lowest since 1991. As of April 28th, there have been 13 executions carried out in 2016, but projecting a final number would currently prove to be too unreliable, with many of the executions scheduled have already been either rescheduled or postponed until further notice.

There were 49 new death sentences imposed, which was a 33% decline from the year before. Moreover, 2014 in turn had already marked a 40-year low with only 73 new death sentences imposed. All in all, 2015 was the fifth consecutive year in which less than 100 death penalties were imposed nation-wide. This indicates a clear trend of the imposing of capital punishment to be losing popularity.

The latest information (as of January 2016) of inmates on death row in the United States is 2,943, with California leading with 743 inmates, and Wyoming finishing the chart with 1 inmate (more: see Annex 4). Interestingly enough, there are two states which still have death row inmates, even though capital punishment itself has been abolished since the sentencings. These instances have so far been considered to be state matter; no general guidelines or rulings have been issued; and have been handled differently.

The first of these two states to abolish death penalty, New Mexico (abolished in 2009), has issued a repeal that was stated not to be retroactive, leaving two people on the state's death row still to this day. No executions have been scheduled for that state.¹⁰ The second state, Nebraska, abolished death penalty only a year ago in May 2015 and has not yet come to a legal decision on how to handle the 10 people on the state's death row.

3.1.3 Federal and military death penalty

According to the Death Penalty Information Centre's statistics, there are currently 62 inmates on the federal death row.¹¹ The number also includes the inmates who have received a verdict of death by the jury, but a judge has not yet issued the formal sentence.

9 All statistical information in this section, unless marked otherwise, is acquired from the Death Penalty Information Centre 2015 Year End Report. <http://deathpenaltyinfo.org/documents/2015YrEnd.pdf> (May 15, 2016)

10 Death Penalty Information Centre. "Upcoming Executions" <http://www.deathpenaltyinfo.org/upcoming-executions> (May 15, 2016)

11 Death Penalty Information Centre. "List of Death Row Prisoners (alphabetical)" <http://www.deathpenaltyinfo.org/federal-death-row-prisoners#list> (May 15, 2016)

As the judge, in the federal system, is obliged to follow the jury's recommendation if it is unanimous, this is in reality a technicality only. Of those 62, 2 have had their conviction or sentence reversed, but as of yet, the reversal is not final and thus they remain on death row.

The last federal execution took place in 2003 in the state of Indiana.¹²

The US Military holds a different justice system from the federal and those of the states, and its laws do legalize the use of death penalty. Currently, there are 6 men on military death row, with no executions scheduled. There was a reported instance in November 2008 where an execution for a crime committed in 1988 was scheduled for December of the same year but the District Court of Kansas ordered a stay of execution, and it never took place.¹³

The last military execution was by hanging in 1961.

3.1.4 Public opinion

3.1.4.1 Statistics

Based on the results of Gallup surveys¹⁴, the public support for death penalty has had a definite fall in the last 10 years, and the trend becomes the more prevalent, the further back we look. Annual research on this topic has been conducted since 1999, and also sporadically before that, although not following any distinct pattern. In the latest survey, which took place in October 2015, 61% of the people polled said they are in favor of the death penalty for a person convicted of murder, 37% said they were against and 2% held no opinion.

12 Death Penalty Information Centre. "Federal Executions 1927-Present"

<http://www.deathpenaltyinfo.org/federal-executions-1927-2003?scid=29&did=149> (May 15, 2016)

13 Death Penalty Information Centre. "First US Military Execution Since 1961 Scheduled for December" <http://www.deathpenaltyinfo.org/first-us-military-execution-1961-scheduled-december> (May 15, 2016)

14 Gallup. "Death Penalty. Gallup Historical Trends" <http://www.gallup.com/poll/1606/death-penalty.aspx> (May 15, 2016)

Are you in favor of the death penalty for a person convicted of murder?

	Favor	Not in favor	No opinion
	%	%	%
2015 Oct 7-11	61	37	2
2014 Oct 12-15	63	33	4
2013 Oct 3-6	60	35	5
2012 Dec 19-22	63	32	6
2011 Oct 6-9	61	35	4
2010 Oct 7-10 ^	64	29	6
2009 Oct 1-4	65	31	5
2008 Oct 3-5	64	30	5
2007 Oct 4-7	69	27	4
2006 Oct 9-12	67	28	5
2006 May 5-7 ^	65	28	7
2005 Oct 13-16	64	30	6
2004 Oct 11-14	64	31	5
2003 Oct 6-8	64	32	4
2003 May 19-21	70	28	2
2002 Oct 14-17	70	25	5
2001 Oct 11-14	68	26	6
2001 Feb 19-21 ^	67	25	8
2000 Aug 29-Sep 5	67	28	5
2000 Jun 23-25	66	26	8
2000 Feb 14-15	66	28	6
1999 Feb 8-9	71	22	7
1995 May 11-14	77	13	10
1994 Sep 6-7	80	16	4
1991 Jun 13-16	76	18	6
1988 Sep 25-Oct 1	79	16	5
1988 Sep 9-11	79	16	5
1986 Jan 10-13	70	22	8
1985 Nov 11-18	75	17	8
1985 Jan 11-14	72	20	8
1981 Jan 30-Feb 2	66	25	9
1978 Mar 3-6	62	27	11
1976 Apr 9-12	66	26	8
1972 Nov 10-13	57	32	11
1972 Mar 3-5	50	41	9
1971 Oct 29-Nov 2	49	40	11
1969 Jan 23-28	51	40	9
1967 Jun 2-7	54	38	8
1966 May 19-24	42	47	11
1965 Jan 7-12	45	43	12
1960 Mar 2-7	53	36	11
1957 Aug 29-Sep 4	47	34	18
1956 Mar 29-Apr 3	53	34	13
1953 Nov 1-5	68	25	7
1937 Dec 1-6	60	33	7
1936 Dec 2-7	59	38	3

^ Asked of a half sample.

GALLUP®

Source: Gallup. "Death Penalty. Gallup Historical Trends"

Last year's result of 61% is one of the lowest since both 1999 and 1976, when the death

penalty was reinstated in the United States. The same result has been reported only once since, in Oct 2011, and a percent lower, 60%, in Oct 2013. The percentage of people in favor has remained in the low to mid 60-s over the previous 12 years (until October 2003), with the exceptions in 2006 and 2007 (67% and 69% accordingly), which could possibly be attributed to the capture and execution of Saddam Hussein, largely seen as a contributor to the September 11 terrorist attacks. Prior to that, looking back until 1999, the support was in the high 60-s to low 70-s (ranging from 66% to 71%). Before 1999, as previously stated, this question was included in the poll only sporadically, having first been introduced in 1936. The all-time high in distinct support occurred in Sept 1994 at 80%, the all-time low in May 1966 at 42%.

The change does become more noticeable, however, when viewed percentage of the polled who report to be not in favor of death penalty (for convicted murderers). The 2015 result of 37% is the highest since 1999 as well as 1976. This percentage has generally been in the mid-to-high 20-s to low-to-mid 30-s, ranging from 22 to 35 percent previously, with the exceptions in Oct 2002 and Feb 2001 (both at 25%) and Feb 1999 (22%). Between 1999 and 1976, the fluctuation has been greater, with 26% of the polled stating they are not in favor in April 1976, to only 13% in May 1995. The all-time high of people not favoring death penalty was in May 1966, coinciding with the low of people favoring it, at 47%, and the all-time low occurring in 1995, as previously stated, at 13%.

The third option offered, “No opinion”, applied to only 2% of the people polled. This result equaled the all-time low set in 2003, but has been ranging from 4% to 8% since 1999, excluding these two examples, and 4% to 11% if the time period is extended to 1976. Historically, this statistic has always been fairly low, with the exception of August 1957, when 18% didn't hold an opinion, staying in the 3% (Dec 1936) to 13% (Mar 1956) range.

The questions as to why the public supports death penalty are not asked as commonly, but Gallup has included them in some polls over the years. The latest poll which included this question was in October of 2014. (Annex 5) To an open-ended question of why the answerer favors death penalty for persons convicted of murder, the answers reflected retribution as the main reason. 35% directly said it was an eye-for-an-eye principle that led them to favor it, “They deserve it” came up in 14% of further answers. Along the same

vein, 4% found it to be “Fair punishment” and another 4% said it would “Serve justice”. It is important to note, however, that due to the phrasing of this question, people answering were able to mention more than one reason, so, in fact, these further reasons could be given by the same 35% who proclaim their support. Therefore viewing only the answers most obviously reflecting retribution, 37% supporting the eye-for-an-eye approach in 2003, 48% in February 2001 and 50% in June 1991.

Deterrence was, and has always been, present in less answers – in 2014, only 6% mentioned setting an example or the belief it would be a deterrent for potential crimes as a reason for their choice to support death penalty. In 2003 the percentage was almost double at 11%, 2001 dipped slightly below that with 10% and in 1991, 13% of the public polled felt deterrence was a factor in their support.

3.1.4.2 Analysis

All in all, these results would suggest the people in the US are becoming more opinionated in the subject, taking into account the low (and by recent statistics, dropping) percentage of people reporting to not hold an opinion.

The population generally seems to be turning towards not favoring death penalty, even in the case of a convicted murderer. This is supported by the 2010 poll published by the Death Penalty Information Centre in their Fact Sheet¹⁵, which states that 61% of the poll voters would choose punishment other than the death penalty for murder. (Annex 6)

However, even though the numbers are suggesting a change, then prompted with simply the question of whether they are for or against, the majority of the polled will still confirm they favor the death penalty. A 2007 survey for the Death Penalty Information Centre, which is discussed in-depth in the Centre's 2007 report “A Crisis of Confidence: Americans’ Doubts About the Death Penalty”¹⁶, found evidence that when further prompted, introduced to statistics and alternative forms of punishment, many are likely to change their minds.

15 Death Penalty Information Centre. “Facts About Death Penalty”
<http://www.deathpenaltyinfo.org/documents/FactSheet.pdf> (May 15, 2016)

16 Dieter, R. (2007) “A CRISIS OF CONFIDENCE: Americans’ Doubts About the Death Penalty”
<http://www.deathpenaltyinfo.org/CoC.pdf> (May 15, 2016)

To me, this would seem to suggest that people's initial opinion made on this subject could possibly be a largely emotional one, rational thinking catching up a bit later. Considering the emotional impact the loss of life has on a mentally stable person, this would not be surprising.

As far as the reasons behind support go, retribution is a clear frontrunner. Because the nature of how this question was phrased in the polls, I feel confident only in comparing the percentages of answers most obviously talking about retribution. There is a clear decline in popularity for retribution over the years, but its status as the most popular reason behind supporting death penalty continues.

The support for deterrence is clearly lower on the scale, and has also been showing clear signs of further decline.

3.2 Europe

3.2.1 European Union and Council of Europe

When it comes to Europe, the European Union's stance on death penalty is very clear, as stated by European External Action Service: “The European Union holds a strong and principled position against the death penalty; its abolition is a key objective for the Union’s human rights policy.”¹⁷

The Council of Europe has “a long tradition of co-operation which draws on their shared values: human rights, democracy and the rule of law”.¹⁸ With that in mind, the Council has also declared its solidarity with the EU in its stance against the use of death penalty.

The European Union as a whole first made a strong stance on the issue of death penalty in 1998 with the adoption of the EU Guidelines on death penalty by the Council, which were also the first human rights guidelines adopted. They have since been updated and

¹⁷ http://eeas.europa.eu/human_rights/adp/index_en.htm

¹⁸ http://www.coe.int/t/der/EU_en.asp

reconfirmed several times, most lately, in 2013.¹⁹ The first point in the Guidelines' introduction currently reads: "The European Union has a strong and unequivocal opposition to the death penalty in all times and in all circumstances. Therefore, and encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty." There is no way to misunderstand the statement made.

The most recent declaration of Europe's strong opposition to the use of death penalty is the European Parliament resolution on the Death Penalty²⁰, which reached its final stage in October 2015. The first operational clause of the resolution reads: [The European Parliament - author] "Reiterates its condemnation of the use of the death penalty and strongly supports the introduction of a moratorium on the death penalty, as a step towards abolition; emphasizes once again that the abolition of the death penalty contributes to the enhancement of human dignity and that the EU's ultimate aim is universal abolition". It also reconfirms its support to all previous statements and documents made about the global abolition of death penalty.

There are a number of documents, issued by different institutions in the European Union and the Council of Europe that touch upon death penalty. These documents include Parliament resolutions and recommendations, the Council Guidelines, the Treaty on European Union, as well as the Charter of Fundamental Rights of The European Union and the European Convention of Human Rights and its Protocols, particularly Protocols no. 6 and 13. How much this issue is mentioned on all levels shows, most of all, the strength of Europe's conviction in this matter.

3.2.2 Member states

With the abolition of death penalty being a top priority for the European Union, it is a pre-requisite of joining the Union. Therefore, all 28 member states of the European Union are abolitionist (for a list of the members, see Annex 8). The Council of Europe has 47

19

http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf

20 [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2879\(RSP\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2879(RSP))

member states, including the 28 that are EU members, all of whom are abolitionist in practice (for a list of the members, see Annex 9). The latest legally binding document providing for the abolition was Protocol no.13 to the European Convention of Human Rights in 2003, which has been ratified by 44 of the Council's member states, signed (but not ratified, as of now) by 1 state (Armenia) and yet to be signed by 2 (Russian Federation and Azerbaijan).²¹

The only country inside European borders who remains retentionist, both *de facto* and *de jure*, is Belarus, which is neither a member of the European Union nor the Council of Europe.

3.2.3 Public opinion

3.2.3.1 Statistics

Curiously, although public opinion on many topics in Europe is fairly well catalogued, there is not much information to be found on the general views on death penalty, at least in English or Estonian, as far as the whole continent is concerned. Even Eurobarometer, a comprehensive poll conducted bi-annually, strangely does not appear to touch upon death penalty, and according to an alphabetical guide²² to their studies, never has.

The one study to help illustrate European public opinion in this question from is a 2007 poll for Associated Press International Affairs²³ They asked several questions about death penalty, but the simplest and most telling results are represented in the graph below:

21 http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Death_Penalty/default_en.asp

22 <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Archive/index>

23 Ipsos Public Affairs. (2007) "The Associated Press International Affairs Poll". All of the results: http://surveys.ap.org/data/Ipsos/international/2007-04%20AP%20Globus%20topline_042507.pdf (May 15, 2016)

[ASKED OF RANDOM HALF SAMPLE OF RESPONDENTS]

1a. Do you favor or oppose the death penalty for people convicted of murder? Is that strongly favor/oppose or somewhat favor/oppose?

	<u>U.S.</u>	<u>Canada</u>	<u>México</u>	<u>S. Korea</u>	
Strongly favor	42	23	34	35	
Somewhat favor.....	27	21	37	37	
Somewhat oppose.....	17	21	11	20	
Strongly oppose.....	13	30	15	8	
Not sure.....	1	5	3	-	
Total Strongly/Somewhat Favor...	69	44	71	72	
Total Strongly/Somewhat Oppose	29	52	26	28	
	<u>France</u>	<u>Germany</u>	<u>Italy</u>	<u>Spain</u>	<u>U.K.</u>
Strongly favor	14	14	14	13	29
Somewhat favor.....	31	21	17	15	21
Somewhat oppose.....	19	21	15	11	16
Strongly oppose.....	33	42	49	57	29
Not sure.....	3	2	5	4	5
Total Strongly/Somewhat Favor...	45	35	31	28	50
Total Strongly/Somewhat Oppose	52	62	64	69	45

Source: Ipsos Public Affairs. (2007) "The Associated Press International Affairs Poll"

As seen, only some European countries were included in the poll, but as these are some of the most populous countries in Europe (see Annex 8 for the European Union population distribution), with the exception of Russian Federation and Turkey who are Council members (but whose status as "European" countries has been contested many a time), I feel some conclusions can still be justifiably drawn.

As evident in the chart, the country representing the highest level of support is the UK, with 50% expressing some level of support and 45% some level of opposition. The lowest by those indicators is Spain, with only 28% and 69% accordingly. In between are France, Germany and Italy, in that order, highest support to lowest. Based on these five countries, the calculated average level of support for death penalty was 37,8% and the average level of opposition 58,4%. Those calculations are my own.

This poll did not discuss the public's motives for supporting or opposing death penalty, so unfortunately, no comments can be made on that aspect.

3.2.3.2 Analysis

It's clear that even the European nation represented with the highest support for death penalty is still much behind the US in that aspect, almost by 20%, and far ahead in opposition by 16%. The European averages also reflect a public opinion far different when it comes to capital punishment. Not only is the public opinion opposing the use of death penalty, it's doing so very decisively. Coincidentally, the European averages of 2007

are almost the same reversed as the US results from 2015 – support at 37,8% and 61% and the opposition at 58,4% and 37% accordingly.

Curiously, the data suggests that the one with the highest support of the represented European countries is the UK. I would theorize this likeness to the US, being the only European country also to have a higher level of support rather than opposition, could be explained with common history the two countries share.

4. Cultural factors

In the conceptual frame section, the influence ethics and values can have on foreign policy was already briefly discussed. Naturally, with both of those terms being very wide in meaning and applicable to many fields, there is no one way of saying they would constitute as strictly cultural factors or strictly political ones. The fluidity of them must be recognized, that is certain, but for the sake of analysis, I will categorize them anyway. When discussing this particular issue, I personally feel the issues of ethics and values are more rooted in culture rather than politics.

4.1 *Ethics and values*

As previously mentioned in the conceptual frame section, the European Union defines its values in the Lisbon Treaty as “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”²⁴ The objection for the use of capital punishment could, in my understanding, root first and foremost from two of these values: respect for human dignity and respect for human rights. The European External Action Service, which is a sub-organization of the Union, says the following, confirming that²⁵: “The death penalty is cruel and inhuman, and has not been shown in any way to act as a deterrent to crime. The European Union regards abolition as essential for the protection of human dignity, as well as for the progressive development of human rights.” In short – Europe objects to death penalty, because it finds the use of it to violate two of our core values, and because of that, we find the use “wrong” or unethical. The general view of both the Union as well as the Council and other international organizations involving Europe is that human rights are to be upheld in any and all circumstances. There is no room to maneuver or misunderstand.

Obviously, it would be false to say the US does not hold the same values all in all, however, there are factors which influence their point of view – that influence their values.

24 Foundation for EU Democracy. “Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007)”
http://www.eudemocrats.org/eud/uploads/downloads/Consolidated_LISBON_TREATY_3.pdf (May 15, 2016)

25 European Union – EEAS (European External Action Service) | EU Policy on Death Penalty Link:
http://eeas.europa.eu/human_rights/adp/index_en.htm (Accessed May 2016)

On a general level, the arguments supporting death penalty in society have been proven by both polls and scholarly research to revolve around 2 axis: deterrence and retribution. (Moss 2002)

Retribution is an ideology that influences how people view moral and just punishment in terms of a crime (Radelet & Borg, 2000). In essence, retribution is based the principle of *lex talionis* – the principal from early Babylonian law²⁶ of “an eye for an eye”. In the particular case of death penalty, it translates as “if a person takes a life, then he or she must sacrifice his or her own life” (Lambert, Clarke, & Lambert 2004: 7). This is statistically proven to be the biggest reason behind the support in the general public in the US, and one can assume, also the support of the lawmakers serving the general public.

The view of retribution is what makes the ethics of the US different. Yes, human rights are important, as is respect for human dignity, but by my understanding, the support of retribution means since a person didn't respect those rights of their victims, we don't have to respect theirs. An emotional approach in a sense, to be certain, but popular. I suppose it could be deducted that essentially, the European opposition is based on factors more rational and emotions don't (or shouldn't) influence particular decisions as much.

The perspective of deterrence argues that society as a whole “must punish offenders to discourage others from committing similar offenses; we punish past offenders to send a message to potential offenders” (Radelet & Borg 2000: 44). In terms of death penalty, the idea is that executing convicted murderers will prevent other people from committing murder. Whereas retribution seems like a more emotional motive to support death penalty, deterrence can be rationalized and measured. To quote Stuart Banner (2002): “The main purpose of the death penalty was conceived to be its deterrent effect.”

As apparent from the statistics on US public opinion, as well as the opinions held in Europe (the quote above from the External Service website illustrates), the belief in the deterring influence of death penalty is wavering. Nevertheless, this would certainly be an argument that would make the use of it more ethically acceptable – yes, we may be taking the right to live from this person, but this might save more lives as a result. As long as it

26 Encyclopædia Britannica. “Talion” <http://www.britannica.com/topic/talion> (May 15, 2016)

is believed, it deserves to be discussed.

However, there is a limited evidence to prove that the use of capital punishment deters capital crimes. The FBI Crime Report from 2014²⁷ (released fall of 2015) still finds the crime rates to be the highest and rising in the region of the country which holds the most executions – the South. National Research Council of the National Academies released a report in 2012²⁸, which found that the three decades of research they analyzed is “not informative about whether capital punishment decreases, increases, or has no effect on homicide rates.”

Continuing on the vein of ethics derived from values – the question of dignity. The European belief strongly links human dignity to human rights, and holds that death penalty shows disrespect to human dignity. One counter-argument from the US' side in this case could be the choice of method. All US states, as well as the federal government, use lethal injection as the primary method of execution.²⁹ However, the inmate is allowed to choose from authorized methods³⁰, which could be argued as them retaining their dignity, choosing the way they die. In addition to that, the argument can be made that with lethal injection, the death is more “dignified”, because it is humane. This argument has been widely disputed by abolitionists in and outside the US.³¹

I would categorize these differences in ethics as cultural, most of all, because I see no other explanation that would make sense. The belief in retribution is not something that could be rooted from politics, rather, politics could be, and as in the case of death penalty, is influenced by that belief. As representatives of the Western culture as a whole, Europe and the US hold the same values, in principle, but yet somehow interpret the ethics deriving from those values differently.

27 Federal Bureau of Investigation. “2014 Crime in the United States” <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-4> (May 15, 2016)

28 National Research Council (2012) Deterrence and the Death Penalty. Washington, DC: The National Academies Press.

29 Death Penalty Information Centre. “Lethal Injection” <http://www.deathpenaltyinfo.org/lethal-injection> (May 15, 2016)

30 Death Penalty Information Centre. “Authorized Methods” <http://www.deathpenaltyinfo.org/methods-execution?scid=8&did=245#authorized> (May 15, 2016)

31 For example: Amnesty USA. “Lethal Injection” <http://www.amnestyusa.org/our-work/issues/death-penalty/lethal-injection> (May 15, 2016)

4.2 Cultural-historical events

An event that has been strongly linked with the hunger for retribution is the terrorist attacks of 9/11. Even though this was an attack with several motivations, including political and cultural, against the US, it strongly impacted not only US foreign policy, but also the cultural surround. Moss (2002) discusses this issue at length. As he explains, “the retributive aim of execution is to assist the survivors”, with also suggesting that the feelings of retribution are often the strongest within the survivors. 9/11 was widely portrayed to have been an attack against America. That mindset would make every American not killed a survivor, and would empower them with retribution. Outside the US, the attacks were far less implicated to be against all of us, thus not leaving the general public feeling like survivors. Whether this was because of simply because of the location of the attacks or might have been also fueled by other cultural traits (the different nature of reporting of the US media, for example) is up for discussion. However, this makes seeing why the US feels more retributive than us quite simple.

4.3 Legal traditions

Neumayer (2008: 253), when talking about cultural factors, brings forward two, one of which is applicable in transatlantic relations – legal traditions.³²

With legal systems, Neumayer talks about the fact that countries whose legal system is based on English common law, have either been late in abolishing capital punishment or remain retentionist. This is consistent with the facts – the US, a country using a system based on English common law, remains retentionist and even though the UK, where the English common law is obviously based in, is abolitionist now, a public opinion poll previously discussed showed that the UK public hold views closer to the ones of the US when it comes to death penalty. The reason behind common law countries being more favorable towards death penalty could be in the history, Neumayer says. As late as in the nineteenth century, England was far ahead in execution rates compared to other European countries, and English liberals of the time, including John Stuart Mill, were more reluctant

32 The other he discusses is religion and brings forth the impact of Islam, but as both the US and Europe are predominantly Christian (according to Gallup, Annex 10, and Pew Research Center, Annex 11), I would argue religion isn't a major factor.

to support abolition or even restrictions on the use of death penalty. The abolitionists of the time described England as “the most merciless of Christian countries” and expressed that “in no other country in the civilized world were the laws relating to capital punishment so backward and so unsatisfactory as our own”. (Neumayer 2008: 253-254). The nature of the legal system itself is also a factor that could provide for the continued use of capital punishment. The common law is based rather on the customs of the people than the rules and regulations provided by rulers and legislators. As the general public still holds a favoring view, death penalty remains a more accepted form of punishment.

5. Political factors

Political factors are discussed in-depth in Neumayer's (2008: 249) work and he considers them to be democracy, democratization, the political balance within countries between left-wing and right-wing parties, historical experience of armed conflict and the political pressure imposed by abolitionist on retentionist countries. By my own accord, I will also add the use of normative power into this list.

Democracy and democratization aren't current issues in transatlantic discourse, as both sides are democratic (or in the case of Europe, to a very large extent, at least) and democratization as spreader of abolitionist views is not applicable in the case of the US.

5.1 Political balance

Political balance within countries is definitely applicable, however. According to Neumayer (2008: 251), countries governed by right-wing governments can be expected to be less pro-abolitionist than countries governed by left-wing governments, because right-wing politicians and voters oriented to them are more likely to believe in the social usefulness of harsh punishment. He also references a positive link found between the strength of the Republican Party and the legal existence of the death penalty. As of now, based on Gallup information (Annex 12) of the 6 states that executed last year, 3 are competitive states, leaning either side (Georgia, Florida, Virginia), 2 lean Republican (Texas, Missouri) and 1 is solidly conservative (Oklahoma). Therefore, the information does seem to confirm this theory. Where US as a country is concerned, it's difficult to say. Americans have elected a Democratic (left-wing) president in the last two elections, but how the 2016 election is going to go is still causing heated debate. It's safe to say that as public opinion favors capital punishment (and the Congress has a Republican majority, and the country as a whole is still retentionist), they are leaning right in this particular issue. Saying Europe as a whole is left- or right-wing would be a big generalization as well, but as far as social usefulness of harsh punishment goes, Europe's point of view is definitely more inclined towards the left, both in public opinion and as a political region.

5.2 History of armed conflict

Even though experience with armed conflict was not found to have had a significant impact on the abolition movement thus far (the proposed logic being countries with more history of wartime would be more reluctant in becoming abolitionist), it was admitted by Neumayer that this experience might still have an impact, and might represent an obstacle to the global abolition of death penalty. With the US being a country in the middle of an armed conflict, and remaining retentionist, this impact could indeed be present. With Europe in mind, the reverse effect can also be seen, taking into consideration our history of peace since the end of World War II. If Europe as a continent was to enter into war, which is not an entirely impossible outlook, taking the recent attacks on our cities into account, it would surely be interesting to see if and how the principles concerning death penalty would change.

5.3 International pressure

The most important political factor in my personal opinion, however, is the international pressure abolitionist regions put on retentionist ones. Neumayer's research also confirmed the positive link between international pressure and the spreading of the abolitionist movement. (Neumayer 2008: 262) Europe continually puts effort into pressuring retentionist countries towards an abolitionist approach. By the European External Action Service's accord, "The EU intervenes both on individual cases and at a general policy level when a country's policy on the death penalty is in flux. In 2009 alone, the EU issued statements on over 30 individual cases and carried out more than 30 other actions in favor of individuals at risk of execution.

EU funding also allows non-governmental organizations to campaign for the abolition of the death penalty. Projects may range from the monitoring of the use of the death penalty to assistance to prisoners, support for constitutional reform, training, advocacy and awareness-raising campaigns."³³ Most recently, the European Parliament sent a strong message by reconfirming its support of all UN agencies, NGOs and intergovernmental regional bodies in their efforts to encourage further abolishment in their joint motion for

33 European Union – EEAS (European External Action Service). "EU Policy on Death Penalty"
http://eeas.europa.eu/human_rights/adp/index_en.htm (May 15, 2016)

a resolution passed in October 2015³⁴.

The non-governmental organizations mentioned include (but are not limited to) the International Commission against the Death Penalty, World Coalition Against the Death Penalty, Amnesty International, Hands off Cain, Penal Reform International and Ensemble Contre la Peine de Mort, which, in turn, cooperate with many smaller organizations and sub-organizations dedicated to the same cause. Other examples of the campaign include the support and organizing of events such as the World and European Day against the Death Penalty³⁵.

Policy wise, as mentioned previously when describing the general views on death penalty in Europe, both the Council and the Union are continually reconfirming their stance against death penalty. This translates into actions as resolutions by the Parliament and declarations by the Committee of Ministers (a Council institution)³⁶, as well as vocal support for all UN resolutions condemning the use. Just like the Union, the Council regularly intervenes on individual cases, particularly in the United States.³⁷

5.4 Normative power

Europe's use of power in general, but particularly normative power, is a subject Ian Mannors discusses at length in several of his works. In his 2002 article, Mannors uses the EU's international pursuit of the abolition of capital punishment to illustrate how Europe is exercising normative power to prove his point that the EU, in fact, is a normative power to begin with.

34 European Parliament. "Joint motion for a resolution on the death penalty" (Clause 19) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2015-0998+0+DOC+XML+V0//EN> (May 15, 2016)

35 European Union – EEAS (European External Action Service) "World/Europe Day against the Death Penalty" http://eeas.europa.eu/top_stories/2015/101015_day_against_the_death_penalty_en.htm (May 15, 2016)

36 The latest declaration being from February 2016: "Declaration by the Committee of Ministers on the death penalty in the United States of America" [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl\(10.02.2016\)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Decl(10.02.2016)&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true) (May 15, 2016)

37 The Council of Europe. "Death Penalty. Action at international level" http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Death_Penalty/default_en.asp (May 15, 2016)

As background, Manners (2002: 246) discusses three factors that led the EU (and by extension, the Council and therefore, the large majority of Europe) to work towards a global abolition of death penalty, and bases all three on the human rights discourses of the late 1980s and early 1990s. He mentions the role of the Council of Europe in ensuring that from 1980s onwards, the abolition of death penalty had become a norm, and a significant one, in Western Europe. Another important point is that after the end of the cold war, it became important to reconsider that it meant to be a liberal, democratic European state, which also meant both Eastern and Western European states reconfirming their support of the European values, including the ones which the abolition was based on. The third factor, Manners says, was the crisis in confidence in the EU in the 1990s, which pushed member states to reflect on how to best revitalize the Union. The route they eventually took was to call for greater respect for human rights, both within Europe and outside of it, and for the Parliament to adopt a resolution on the abolition of death penalty aimed at all European states.

Manners omits that it's not easy to assess the full impact of the EU's normative power on this subject, but makes two broad observations on its exercise of power. (Mannars 2002: 248) First, by engaging with the so-called “super-executioners”, including the US, the EU is trying to contribute towards raising the issue of death penalty to an international level. The method of choice here being presidential and parliamentary statements, initiatives and dialogue, as well as the use of the delegation offices. Second, the EU has raised this issue on a bilateral and multilateral basis to shape the dialogue between other states. This includes the raising of this issue in the UN on several occasions - Mannars mentions the presidency memorandum and speech by Tarja Halonen, the Finnish Foreign Minister, in 1999, and the introduction of a “resolution on the death penalty” in 1999, 2000 and 2001. (Mannars 2002: 248)

Examples of the use of normative power today include the willingness to impinge on state sovereignty; interventions in support of individuals; the absence of obvious material gain from its interventions (and in fact may mean loss because of important economic relations suffering); and the fact that the EU often faces opposition from developed OECD states, such as the US, China and Saudi Arabia, in the case of death penalty. The author emphasizes the importance of the last point, as it allows us to argue against the point of Europe trying to disguise cultural imperialism with its “norms”. (Mannars 2002: 253)

Clearly, there are ways in which the use of normative power can be less than pleasing for the countries it's being enforced on. Impinging on state sovereignty, which Manners exemplifies by writing to the prison governors instead of the heads of government, can definitely cause tensions and may be seen as intrusive behavior. Same logic applies in the case of intervening in support of individuals. Both of these actions are things the EU as well as the Council of Europe have admitted of doing, as seen from their statements brought forth before.

6. Other factors

In this segment, I would sub-categorize it further into two aspects that I find to be most impactful: sociological and commercial.

6.1 Sociological factors

These types of factors were also briefly discussed by Neumayer (2008: 254). He brought forth social control by the elites over the lower classes, the issues related to racial and ethnic diversity, the impact of violent crime rates. He also mentions the potential impact of economic advancement (i.e. more advanced countries are more willing to abolish), but doesn't find it to have a significant one, and also doesn't fit in the case of the US, which the author brings forward as an exception even before analysis. (Neumayer 2008: 255)

The social control aspect could well be a factor, but is difficult to analyze on its own, since class disparities go very much hand-in-hand with racial ones in the US, with ethnic minorities more often being lower class. The similarity in principle is also mentioned in Neumayer's analysis, where he confirms the claims made by other authors: "The death penalty might therefore be more likely to exist in economically more unequal and ethnically, racially or culturally more diverse countries." (Neumayer 2008: 254) In analysis, he also brings forward the aspect of ethnic fractionalization, and finds its impact to be statistically significant, just as the one of social control. (Neumayer 2008: 260 Table 5).

The issue of racial bias in (but certainly not limited to) the justice system is certainly a prevalent one, and is one of the main problems brought forward in the discourse both within the US and internationally. The Death Penalty Information Centre has comprehensive information on this subject³⁸, but in short, it's been found in numerous states, that not only are there disparities in the race of the convict, there are also disparities concerning the race of the victim, namely inmates who have committed a capital offense against a white victim are more likely to be sentenced to death than those whose victims are of any other race. Research finding evidence about racial disparities include studies

38 Death Penalty Information Centre "Race and Death Penalty" <http://www.deathpenaltyinfo.org/race-and-death-penalty> (May 15, 2016)

about Washington (Beckett & Evans, 2014), Louisiana (Pierce & Radelet, 2011), California (Pierce & Radelet, 2005) and North Carolina (Boger & Unah, 2001). There are disparities also found in the cases of military³⁹ and federal⁴⁰ death penalty. These findings are fundamentally unsettling, both since they indicate a deep problem within the US justice system as a whole (which, obviously, should be unbiased towards the persons accused, just like any other justice system), and since they very much go against the value of equally respecting human rights of the minorities. Of course, this is only part of a bigger problem, as issues with racism in the US, both conscious and not, are well documented and widely discussed both within the country as well as internationally.

The impact of violent crime rates was found to have an impact in Neumayer's research, and a plausible connection can be found in the current statistics as well. As the deterrence aspect is disproved by the fact that violent crime rates (including homicide rates) are one of the highest in the US states that still actively execute, this could explain why those states are less willing to abolish. Neumayer explains the crime rate influence by saying higher crime rates impact the public's ability to feel safe, and the support of death penalty can be viewed as an attempt to regain that feeling of safety. (Neumayer 2008: 254) This link in the statistics could be explained by that attempt.

6.2 Commercial factors

As also mentioned before, according to the Death Penalty Information Centre, the primary method of execution in the US is lethal injection. A variety of one-, two-, or three-drug protocol is used. The three-drug protocol uses an anesthetic or sedative, typically followed by pancuronium bromide to paralyze the inmate and potassium chloride to stop the inmate's heart. The one or two-drug protocols typically use a lethal dose of an anesthetic or sedative.⁴¹

Contributing to the clash is the fact that many pharmaceutical companies, as well as

39 Death Penalty Information Centre "The U.S. Military Death Penalty"
<http://www.deathpenaltyinfo.org/us-military-death-penalty#Race> (May 15, 2016)

40 Death Penalty Information Centre "Federal Death Penalty – Race"
<http://www.deathpenaltyinfo.org/federal-death-penalty#race> (May 15, 2016)

41 Death Penalty Information Centre "Lethal Injection" <http://www.deathpenaltyinfo.org/lethal-injection> (May 15, 2016)

national and international associations, have issued statements banning the use of their drugs in lethal injections or strongly stating disapproval or that measures are being taken against the use of their drugs for executions, or in the case of associations, discouraging members to sell for that purpose.⁴² This is causing supplying issues with the drugs necessary for executions by lethal injection, which, in turn, causes a multitude of problems, in addition to meaning many executions are being postponed⁴³.

The issue with the most international impact is the fact that since lethal injection drugs are becoming harder to acquire, states are re-authorizing the use of alternative execution methods, including the electric chair, gas chamber and firing squad.⁴⁴ These methods were cast aside previously because they were thought to be less humane than the lethal injection, meaning the use of these methods now must be of questionable ethics even by US' standards, let alone European ones, which declare all death penalty unethical. It is not unreasonable to assume if an execution were to take place by one of these methods, the international backlash would be significant.

42 A list of such statements can be found on the website of the Death Penalty Information Centre "Statements from drug manufacturers and other medical professionals"

<http://www.deathpenaltyinfo.org/lethal-injection#statements> (May 15, 2016)

43 Death Penalty Information Centre "Upcoming Executions - Stays of execution 2016"

<http://www.deathpenaltyinfo.org/upcoming-executions#stays> (May 15, 2016)

44 Death Penalty Information Centre "Authorized Methods" <http://www.deathpenaltyinfo.org/methods-execution?scid=8&did=245#authorized> (May 15, 2015)

7. Conclusion

Right from the start, it was clear that the issue of death penalty was complex and, all in all, included more factors, controversies and facets than comprehensible. As exploring the subject more, this suspicion was quickly confirmed, and as I tried to navigate all the information on the subject, decide what is more important and what less, I tried to keep my focus clear. This meant making choices in which aspects to discuss. I made this choice based on my own logic and common sense.

In my personal opinion, capital punishment is far too shrouded in controversy to be used in the standard criminal justice cases in the US, or elsewhere, for that matter. The issues with racial and class bias, in any context they may appear, are not to be taken lightly. Even though there is no definitive research proving this bias in all the US states still using death penalty, the confirmed bias in some states and the general issues with racial discrimination, conscious or not, by both the police, juries, and civilians are enough to raise suspicions. The fact that many death penalty cases date back to times before the collection and analysis of DNA and other modern advancements in investigation, begs the question how many people are on death row that would today be found to be innocent, if there would be evidence to analyze. All this is troubling, to say the least, and to me, a clear sign that death penalty is not working like it's intended to.

I believe to have found ample evidence to prove my argument of differing ethics being the root cause of the clash. European policies are very clear on death penalty – the right to live is universal among humans. The US' policies say “Yes, BUT”. This is the essence of the clash. Even though our values are more similar than different, other factors, including cultural and sociological ones, impact the way those translate into ethics. Thus, the clash becomes more complicated in a way – it's not so much a complete disagreement on the basics as it is in the details. We agree to an extent, but when we don't, we lose complete track of how the other side could interpret the same thing so differently.

The human feeling that retribution is necessary is understandable, even to the abolitionists, I'm certain. However, I'm equally certain all would agree that even retribution must be carried out in a way that is just, and carries little value when enforced in any other way. The question behind the root cause of the clash, as I would interpret it,

is IS capital punishment just, or even CAN it be. It would appear to me, the statistics and research prove it might not be. The abolitionists say this means it shouldn't be used. The retentionists say it's worth the risk.

I hope I have succeeded in what I set out to do – focus on the most important aspects of this complex topic, bring forward what causes the clash and how it manifests. I sincerely hope the research on this topic continues, both academically and in terms of field work. As people's lives are at stake, it's certainly worthy of attention.

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9. Annexations

Annex 1

STATES WITH THE DEATH PENALTY (31)		
Alabama	Louisiana	Pennsylvania
Arizona	Mississippi	South Carolina
Arkansas	Missouri	South Dakota
California	Montana	Tennessee
Colorado	Nevada	Texas
Delaware	New Hampshire	Utah
Florida	North Carolina	Virginia
Georgia	Ohio	Washington
Idaho	Oklahoma	Wyoming
Indiana	Oregon	
Kansas		ALSO
Kentucky		- U.S. Gov't
		- U.S. Military

Source: Death Penalty Information Centre. "States With and Without Death Penalty."

<http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (May 15, 2016)

Annex 2

STATES WITHOUT THE DEATH PENALTY (19) (YEAR ABOLISHED IN PARENTHESES)		
Alaska (1957)	Michigan (1846)	Vermont (1964)
Connecticut (2012)	Minnesota (1911)	West Virginia (1965)
Hawaii (1957)	Nebraska** (2015)	Wisconsin (1853)
Illinois (2011)	New Jersey (2007)	
Iowa (1965)	New Mexico* (2009)	ALSO
Maine (1887)	New York (2007)#	Dist. of Columbia (1981)
Maryland (2013)	North Dakota (1973)	
Massachusetts (1984)	Rhode Island (1984)^	

* In March 2009, New Mexico voted to abolish the death penalty. However, the repeal was not retroactive, leaving two people on the state's death row.

** In May 2015, Nebraska voted to abolish the death penalty. The status of the 10 inmates on death row is uncertain at this time. A petition has been submitted to suspend the repeal and put it to a voter referendum.

^ In 1979, the Supreme Court of Rhode Island held that a statute making a death sentence mandatory for someone who killed a fellow prisoner was unconstitutional. The legislature removed the statute in 1984.

In 2004, the New York Court of Appeals held that a portion of the state's death penalty law was unconstitutional. In 2007, they ruled that their prior holding applied to the last remaining person on the state's death row. The legislature has voted down attempts to restore the statute.

Source: Source: Death Penalty Information Centre. "States With and Without Death

Penalty." <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (May 15, 2016)

Annex 3

DEATH ROW INMATES BY STATE: January 1, 2016					
California	743	Oklahoma	49	Idaho	9
Florida	396	Mississippi	48	Utah	9
Texas	263	S. Carolina	43	Washington	9
Alabama	196	Arkansas	36	Virginia	7
Pennsylvania	180	Oregon	34	U.S. Military	6
N. Carolina	155	Kentucky	34	Colorado	3
Ohio	143	Missouri	28	S. Dakota	3
Arizona	125	Delaware	18	Montana	2
Louisiana	81	Indiana	13	New Mexico	2
Georgia	78	Kansas	10	N. Hampshire	1
Nevada	79	Nebraska	10	Wyoming	1
Tennessee	71			TOTAL: 2,943	
U.S. Gov't	62				

Source: Death Penalty Information Centre. "Facts About Death Penalty"

<http://www.deathpenaltyinfo.org/documents/FactSheet.pdf> (May 15, 2016)

Annex 4

TABLE 1
Capital offenses, by state, 2013

State	Offense	State	Offense
Alabama	Intentional murder (Ala. Stat. Ann. 13A-5-40(a)(1)-(18)) with 10 aggravating factors (Ala. Stat. Ann. 13A-5-49).	Nevada	First-degree murder with at least 1 of 15 aggravating circumstances (NRS 200.030, 200.033, and 200.035).
Arizona	First-degree murder, including premeditated murder and felony murder, accompanied by at least 1 of 14 aggravating factors (A.R.S. § 13-703(F)).	New Hampshire	Murder committed in the course of rape, kidnapping, drug crimes, or home invasion; killing of a police officer, judge, or prosecutor; murder for hire; murder by an inmate while serving a sentence of life without parole (RSA 630:1 and 630:5).
Arkansas	Capital murder (Ark. Code Ann. § 5-10-101) with a finding of at least 1 of 10 aggravating circumstances; treason (Ark. Code Ann. § 5-51-201).	New Mexico ^b	First-degree murder with at least 1 of 7 aggravating factors (NMSA 1978 § 31-20A-5).
California	First-degree murder with special circumstances; sabotage; train wrecking causing death; treason; perjury in a capital case causing execution of an innocent person; fatal assault by a prisoner serving a life sentence.	New York ^c	First-degree murder with 1 of 13 aggravating factors (NY Penal Law § 125.27).
Colorado	First-degree murder with at least 1 of 17 aggravating factors; first-degree kidnapping resulting in death; treason.	North Carolina	First-degree murder (N.C.G.S. § 14-17) with the finding of at least 1 of 11 statutory aggravating circumstances (N.C.G.S. § 15A-2000).
Connecticut ^a	Capital felony with 8 forms of aggravated homicide (C.G.S. § 53a-54b).	Ohio	Aggravated murder with at least 1 of 10 aggravating circumstances (O.R.C. 2903.01, 2929.02, and 2929.04).
Delaware	First-degree murder (11 Del. C. § 636) with at least 1 statutory aggravating circumstance (11 Del. C. § 4209).	Oklahoma	First-degree murder in conjunction with a finding of at least 1 of 8 statutorily-defined aggravating circumstances.
Florida	First-degree murder; felony murder; capital drug trafficking; capital sexual battery.	Oregon	Aggravated murder (ORS 163.095).
Georgia	Murder with aggravating circumstances; rape, armed robbery, or kidnapping with bodily injury or ransom when the victim dies; aircraft hijacking; treason.	Pennsylvania	First-degree murder with 18 aggravating circumstances.
Idaho	First-degree murder with aggravating factors; first-degree kidnapping; perjury resulting in the execution of an innocent person.	South Carolina	Murder with at least 1 of 12 aggravating circumstances (§ 16-3-20(C)(a)).
Indiana	Murder with 16 aggravating circumstances (IC 35-50-2-9).	South Dakota	First-degree murder with 1 of 10 aggravating circumstances.
Kansas	Capital murder (K.S.A. 21-5401) with 8 aggravating circumstances (K.S.A. 21-6617 and K.S.A. 21-6624).	Tennessee	First-degree murder (Tenn. Code Ann. § 39-13-202) with 1 of 17 aggravating circumstances (Tenn. Code Ann. § 39-13-204).
Kentucky	Capital murder with the presence of at least one statutory aggravating circumstance; capital kidnapping (KRS 532.025).	Texas	Criminal homicide with 1 of 9 aggravating circumstances (Tex. Penal Code § 19.03).
Louisiana	First-degree murder; treason (La. R.S. 14:30 and 14:113).	Utah	Aggravated murder (Utah Code Ann. 76-5-202).
Mississippi	Capital murder (Miss. Code Ann. § 97-3-19(2)); aircraft piracy (Miss. Code Ann. § 97-25-55(1)).	Virginia	First-degree murder with 1 of 15 aggravating circumstances (VA Code § 18.2-31(1-15)).
Missouri	First-degree murder (565.020 RSMO 2000).	Washington	Aggravated first-degree murder.
Montana	Capital murder with 1 of 9 aggravating circumstances (Mont. Code Ann. § 46-18-303); aggravated kidnapping; felony murder; capital sexual intercourse without consent (Mont. Code Ann. § 45-5-503).	Wyoming	First-degree murder; murder during the commission of sexual assault, sexual abuse of a minor, arson, robbery, burglary, escape, resisting arrest, kidnapping, or abuse of a minor under 16 (W.S.A. § 6-2-101(a)).
Nebraska	First-degree murder with a finding of one or more statutory aggravating circumstances.		

Note: Maryland repealed its capital statute effective October 1, 2013. Five men in Maryland remain under a previously imposed sentence of death.

^aConnecticut enacted a prospective repeal of its capital statute as of April 25, 2012. Offenders who committed capital offenses prior to that date are eligible for the death penalty.

^bNew Mexico enacted a prospective repeal of its capital statute as of July 1, 2009. Offenders who committed capital offenses prior to that date are eligible for the death penalty.

^cThe New York Court of Appeals has held that a portion of New York's death penalty sentencing statute (CPL 400.27) was unconstitutional (*People v. Taylor*, 9 N.Y. 3d 129 (2007)). No legislative action has been taken to amend the statute. As a result, capital cases are no longer pursued in New York.

Source: Bureau of Justice Statistics, National Prisoner Statistics Program (NPS-8), 2013.

Source: Bureau of Justice Statistics. "Capital Punishment In The United States, 2013 - Statistical Tables" <http://www.bjs.gov/content/pub/pdf/cp13st.pdf> (May 15, 2016)

Annex 5

Why do you favor the death penalty for persons convicted of murder? [OPEN-ENDED]

	2014 Oct 12-15	2003 May 19-21	2001 Feb 19-21	1991 Jun 13-16
	%	%	%	%
An eye for an eye/They took a life/Fits the crime	35	37	48	50
Save taxpayers money/Cost associated with prison	14	11	20	13
They deserve it	14	13	6	--
They will repeat crime/Keep them from repeating it	7	7	6	19
Deterrent for potential crimes/Set an example	6	11	10	13
Depends on the type of crime they commit	5	4	6	--
Fair punishment	4	3	1	--
Serve justice	4	4	1	3
If there's no doubt the person committed the crime	3	3	2	--
Support/believe in death penalty	3	2	6	--
Don't believe they can be rehabilitated	3	2	2	--
Biblical reasons	3	5	3	--
Life sentences don't always mean life in prison	2	1	2	--
Relieves prison overcrowding	2	1	2	--
Would help/benefit families of victims	1	2	1	--
Other	1	4	3	11
No opinion	4	2	1	2

Totals exceed 100% due to multiple mentions

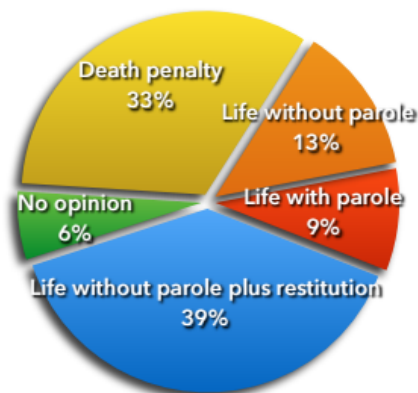
Source: Gallup. "Death Penalty. Gallup Historical Trends"

<http://www.gallup.com/poll/1606/death-penalty.aspx> (May 15, 2016)

Annex 6

Support for Alternatives to the Death Penalty

- A 2010 poll by Lake Research Partners found that a clear majority of voters (61%) would choose a punishment other than the death penalty for murder.



Source: Dieter, R. (2007) "A CRISIS OF CONFIDENCE: Americans' Doubts About the Death Penalty" <http://www.deathpenaltyinfo.org/CoC.pdf> (May 15, 2016)

Annex 7



Note: Latvia is now also a de jure abolitionist.

Source: Hands Off Cain.

<http://www.handsoffcain.info/bancadati/stati.php?idcontinente=20> (May 15, 2016)

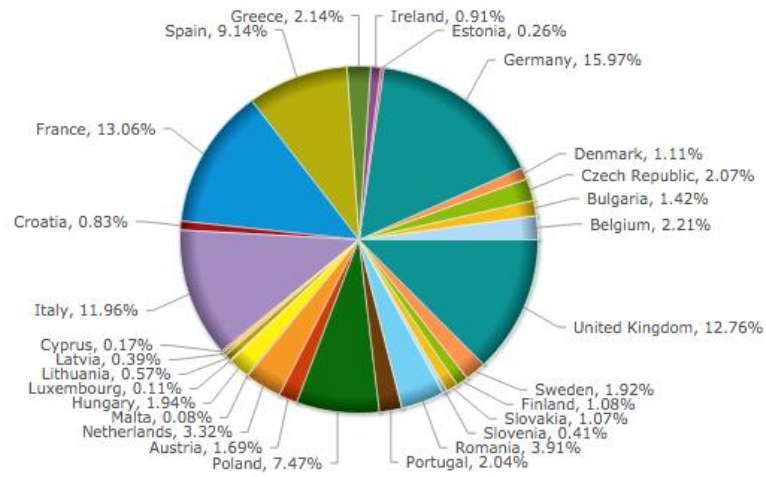
Annex 8

▶ Albania		▶ Lithuania	
▶ Andorra		▶ Luxembourg	
▶ Armenia		▶ Malta	
▶ Austria		▶ Monaco	
▶ Azerbaijan		▶ Montenegro	
▶ Belgium		▶ Netherlands	
▶ Bosnia and Herzegovina		▶ Norway	
▶ Bulgaria		▶ Poland	
▶ Croatia		▶ Portugal	
▶ Cyprus		▶ Republic of Moldova	
▶ Czech Republic		▶ Romania	
▶ Denmark		▶ Russian Federation	
▶ Estonia		▶ San Marino	
▶ Finland		▶ Serbia	
▶ France		▶ Slovak Republic	
▶ Georgia		▶ Slovenia	
▶ Germany		▶ Spain	
▶ Greece		▶ Sweden	
▶ Hungary		▶ Switzerland	
▶ Iceland		▶ "The former Yugoslav Republic of Macedonia"	
▶ Ireland		▶ Turkey	
▶ Italy		▶ Ukraine	
▶ Latvia		▶ United Kingdom	
▶ Liechtenstein			

Source: Council of Europe. "Our member States" <http://www.coe.int/en/web/about-us/our-member-states> (May 15, 2016)

Annex 9

Population by country (Total EU population : 508 450 856)



Source: European Union. “Living in the EU” http://europa.eu/about-eu/facts-figures/living/index_en.htm (May 15, 2016)

Annex 10

What is your religious preference -- Protestant, Roman Catholic, Jewish, another religion, or no religion?

Based on yearly aggregates of Gallup polls

	Protestant	Christian (nonspecific)	Catholic	Jewish	Mormon	Other	None	No answer
	%	%	%	%	%	%	%	%
2015	38	9	23	2	2	6	17	4
2014	37	10	23	2	2	6	16	4
2013	38	10	24	2	2	5	15	4
2012	41	10	23	2	2	4	14	3
2011	42	10	23	2	2	5	13	3
2010	45	8	21	2	2	4	14	4
2009	45	9	22	2	1	5	13	3
2008	47	8	22	2	2	5	12	3
2007	51	5	23	3	2	4	11	2
2006	49	6	22	2	2	5	12	2
2005	49	7	23	2	2	5	10	2
2004	50	7	24	2	2	4	9	2
2003	49	7	24	2	2	4	10	2
2002	49	7	24	2	2	4	10	2
2001	53	4	25	2	2	4	8	2
2000	52	5	25	2	2	5	8	2

Source: Gallup. "Religion. Gallup Historical Trends"

<http://www.gallup.com/poll/1690/religion.aspx> (May 15, 2016)

Annex 11

Size, Projected Growth of Major Religious Groups in Europe, 2010-2050

	2010 ESTIMATED POPULATION	% IN 2010	2050 PROJECTED POPULATION	% IN 2050	POPULATION GROWTH 2010-2050	% INCREASE 2010-2050	COMPOUND ANNUAL GROWTH RATE (%)
Christians	553,280,000	74.5%	454,090,000	65.2%	-99,190,000	-17.9%	-0.5%
Unaffiliated	139,890,000	18.8	162,320,000	23.3	22,420,000	16.0	0.4
Muslims	43,470,000	5.9	70,870,000	10.2	27,400,000	63.0	1.2
Jews	1,420,000	0.2	1,200,000	0.2	-220,000	-15.2	-0.4
Hindus	1,380,000	0.2	2,660,000	0.4	1,280,000	92.9	1.7
Buddhists	1,350,000	0.2	2,490,000	0.4	1,140,000	85.0	1.5
Other Religions	890,000	0.1	1,100,000	0.2	210,000	23.3	0.5
Folk Religions	870,000	0.1	1,590,000	0.2	720,000	83.1	1.5
Regional total	742,550,000	100.0	696,330,000	100.0	-46,220,000	-6.2	-0.2

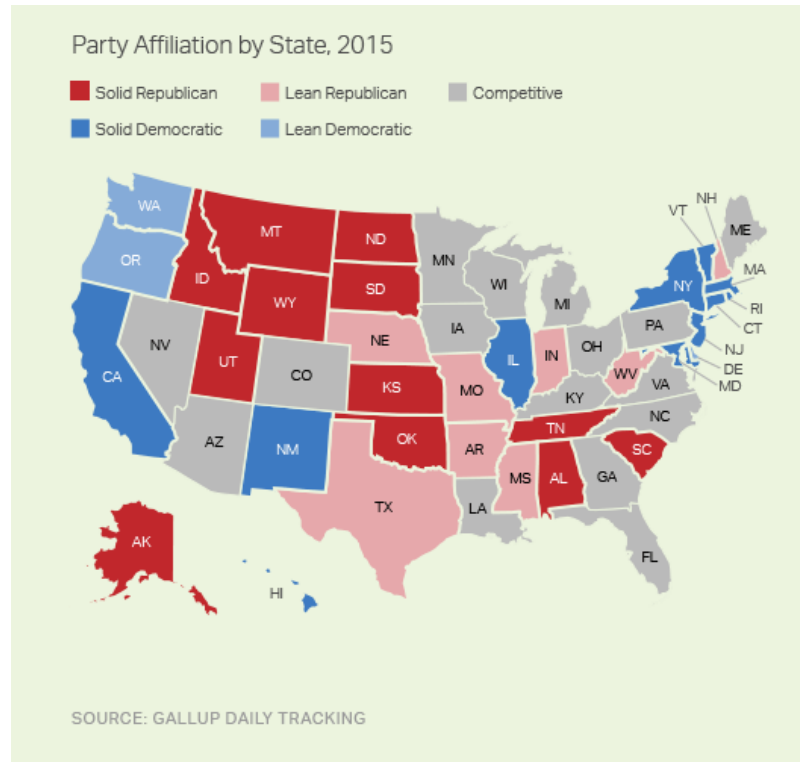
Source: The Future of World Religions: Population Growth Projections, 2010-2050. Population estimates are rounded to the nearest 10,000. Percentages are calculated from unrounded numbers. Figures may not add to 100% because of rounding.

PEW RESEARCH CENTER

Source: Pew Research Centre. "Projected Religious Population Changes in Europe"

<http://www.pewforum.org/2015/04/02/europe/> (May 15, 2016)

Annex 12



Source: Gallup. Red States Outnumber Blue States for the First Time in Gallup Tracking” <http://www.gallup.com/poll/188969/red-states-outnumber-blue-first-time-gallup-tracking.aspx> (May 15, 2016)

10. Kokkuvõte

Kohe töö alustamisest alates oli selge, et surmanuhtluse temaatika on keeruline ja hõlmab kokkuvõttes rohkem faktoreid, vastuolusid ja tahke, kui võimalik hoomata. Teemat läheamlt uurides sai see kahtlus kiirelt kinnitust, ja püüdes antud probleemiga seotud infos navigeerida, otsustada, mis rohkem ja mis vähem oluline, püüdsin fookuse selge hoida. See tähendas valikute tegemist selle osas, milliseid aspekte kaasata. Tegin selle valiku oma loogikat ja kainet mõistust kasutades.

Mu isikliku arvamuse kohaselt on surmanuhtlus liialt vastuoludesse mähkunud, et sel oleks kohta “tavalises” kriminaalõiguses USA-s või mujal. Probleemid rassilise ja klassilise diskrimineerimisega, mistahes kontekstis need ilmuvad, ei ole midagi, mida kergelt võtta. Hoolimata sellest, et ei ole konkreetset uurimust, mis tõestaks erapoolikut suhtumist kõigis osariikides, mis siiani surmanuhtlust kasutavad, on teatud osariikides kinnitatud erapoolik suhtumine ja üldised probleemid rassilise diskrimineerimisega, olgu see teadlik või mitte, nii politsei, vande kohtute kui tsiviilisikute poolt piisavad, et kahtlusi äratada. Asjaolu, et paljud surmanuhtluse juhtumid pärinevad ajast, mil polnud DNA kogumist ja analüüsimist, samuti mitmeid teisi uuendusi politseiuurimises, seab küsimuse, kui paljud inimesed, kes on surma mõistetud, võidaks täna õigeks mõista, kui oleks tõendeid, mida analüüsida. Kõik see on murettekitav ja minu seisukohast kindel märk sellest, et surmanuhtlus ei tööta nii, nagu see ette nähtud oleks.

Euroopa poliitika on sel teemal väga selge – õigus elada on inimeste hulgas universaalne. USA poliitika ütleb: “Jah, AGA”. Selles peitubki arvamuste põrkumise allikas. Ehkki meie väärtused on rohkem sarnaseid kui erinevad, mõjutavad mitmed teised faktorid, sealhulgas kultuurilised ja sotsioloogilised, kuidas need väärtused eetikas tõlgenduvad. Seeläbi muutub meie arvamuste põrkumine vaat-et keerulisemaks – probleem pole sedavõrd täielikus eriarvamuses, kuivõrd vaid detailide osas. Me nõustume üksteisega mingi piirini, kuid sellest edasi ei suuda enam mõista, kuidas teine osapool sama asja sedavõrd teisiti tõlgendab.

Inimlik soov kättemaksu järele on kahtlemata arusaadav, isegi neile, kes surmanuhtluse kaotamist pooldavad. Sellegipoolest olen aga samavõrd kindel, et kõik nõustuksid

sellega, et igasugune kättemaks peaks läbi viidama viisil, mis on õiglane, ja omab vähe mõtet, kui see toimub mistahes muul moel. Küsimus meie arvamuste pörkumise taga on minu arusaamise kohaselt selles, KAS surmanuhtlus on õiglane, ja kas see üldse VÕIB olla. Mulle tundub, et statistika ja uurimused tõestavad, et ei pruugi. Surmanuhtluse vastased ütlevad, et see tähendab, et seda ei tohiks kasutada. Pooldajate arvates väärib see seda riski.

Minu lootus on, et õnnestusin selles, mida teha lootsin – keskenduda selle kompleksse teema olulisimatele aspektidele, tuua välja mis mõttelaadide pörkumist põhjustab ja kuidas see väljendub. Loodan siiralt, et uurimused sel teemal jätkuvad, seda nii akadeemilisel kui ka praktilisel moel. Kuna kaalul on inimeste elud, väärib teema kindlasti tähelepanu.