KILLER COUNTIES:

Geographic Arbitrariness & the Symbolic Functions of the

U.S. Death Penalty

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SENIOR THESIS
Acknowledgements and Dedication

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1. Introduction

When people first think about the geographic distribution of the death penalty, they tend to conceive of disparities at the state level, assuming that giants like Texas and Oklahoma account for the majority of the death penalty activity. While these states certainly have more death sentences and executions than most others, recent research has shown that within states that retain the death penalty, the starkest geographic differences lie at the local jurisdictional level. In the U.S. today, a tiny fraction of the nation’s 3,153 counties are responsible for the vast majority of death sentences and executions. In a recent study, the Death Penalty Information Center (DPIC) found that just 2% of counties in the United States have produced 52% of the nation’s executions and 56% of the nation’s death row.¹ That 2% represents a mere 62 counties that are responsible for the majority of the modern death penalty era’s nearly 1,500 executions and the majority of the nation’s death row,² which stood at a population of 3,125 in 2013.³ While the death penalty has been on a decline for the past few decades, its local concentration is increasing, with fewer and fewer counties throughout the country imposing it regularly.⁴

² The “modern death penalty era” refers to the administration of capital punishment in the United States from 1976 to present. 1976 is the year the death penalty was reinstated through the Supreme Court’s ruling in Gregg v. Georgia.
³ If the analysis of executions and death sentences in the US is limited only to counties where the death penalty is/was a legal option, then 2.4% of counties are responsible for 52% of executions and 56% of death sentences, based on my calculations. I excluded all counties in states where the death penalty was legal for less than half of the era of the modern death penalty (1976-present). This means that states that recently abolished the death penalty (between 2007 and 2018), were included: NJ (2007), NM (2009), IL (2011), CT (2012), and MD (2013). NY was excluded because it reinstated the death penalty in 1995 but its capital statute was ruled unconstitutional in 2004. States with recent gubernatorial moratoria on executions were also included: OR (2011), CO (2013), WA (2014), and PA (2015).
I. Historical Context

To understand how we got to this point, we must first consider the history of capital punishment in the United States. The American death penalty has long been fraught with concerns over arbitrary, discriminatory, and capricious application. In its early history, the death penalty was mainly used against those already disenfranchised in society: slaves, black Americans, strangers, and the poor. Some even argue that in the early 20th century, the death penalty was used more commonly against black men as a compromise to avoid lynchings.5 Rather than channeling white racial hate through extrajudicial hangings, capital punishment allowed white supremacist sentiment to be expressed through a somewhat sanitized, procedural system. Indeed, while many states reduced the number of capital-eligible crimes in early America, these reforms only applied to whites, with black Americans in particular often subject to the death penalty for trivial offenses.6 While many states have taken efforts to make the death penalty appear facially neutral, its discriminatory application against marginalized groups, especially black Americans, has been well-documented by researchers.7

Confronted with the fact that very little seemed to separate the vast majority of those convicted of murder from the handful who were sentenced to death, the Supreme Court reviewed the constitutionality of America’s death penalty and in Furman v. Georgia (1972) struck it down for its arbitrary and capricious application. The Court ruled that a constitutional system of capital punishment must provide guidelines for the sentencing discretion of jurors and create ‘narrowing’ criteria to distinguish typical murders from those that are death-eligible. Ideally,

according to the Court, this would create a more objective, fair system that would ensure that only “the worst of the worst” were subject to the ultimate punishment. Faced with this new mandate, many states rewrote their capital statutes to create narrowing criteria for capital-eligible offenses, establish guidelines for jury decision-making, and monitor for proportionality in the application of the death penalty. In 1976, the Court ruled the states’ new capital statutes constitutional and reinstated the death penalty through its decision in *Gregg v. Georgia*. States were also required to bifurcate capital trials into a guilt/merits phase and a penalty/sentencing phase. During the guilt phase, jurors hand down a verdict of guilty or not guilty; if the defendant is found guilty, jurors weigh aggravating and mitigating evidence to determine the proper penalty during the sentencing phase. In 1977, Utah conducted the first execution of the modern death penalty era, killing condemned man Gary Gilmore by firing squad. Soon thereafter, states developed a more “humane” method of execution and Texas conducted the nation’s first lethal injection in 1982. For most of the modern death penalty era, only certain aggravated homicides have been death-eligible; the Supreme Court ruled in its 1977 *Coker v. Georgia* decision that punishing non-homicide offenses such as rape with the penalty of death was unconstitutionally disproportionate to the crime.

The modern death penalty reached its height in 1999, with the highest number of executions (98) in the nation since 1976. Throughout the ‘90s, the death penalty was frequently used as a political talking point, with politicians competing with each other over who could support it the most. Bill Clinton’s 1994 crime bill expanded the number of offenses eligible for

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the federal death penalty and in 1996 Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA), severely restricting avenues for federal post-conviction review of death sentences.\textsuperscript{10} Around the same time, however, key flaws in the revised death penalty became visible. In 1987, confronted with the famous Baldus study showing that defendants who killed white victims were over four times as likely to be sentenced to death than that those who had killed black victims,\textsuperscript{11} the Supreme Court ruled that although the regression analyses seemed empirically sound, it could not consider statistical evidence as proof of racial discrimination. The Court argued that it could only consider the individual facts of the case at hand and worried that considering statistical evidence would threaten the legitimacy of the entire criminal justice system.\textsuperscript{12} In 1994, Justice Harry Blackmun, one of the justices who had voted to reinstate the death penalty in the \textit{Gregg} decision, famously stated that he “no longer shall tinker with the machinery of death,” as he felt “morally and intellectually obligated to concede that the death penalty experiment has failed.”\textsuperscript{13} These words coincided with the rise of the innocence movement and first DNA-based death row exoneration in 1993, shaking the public’s confidence in the reliability of capital murder convictions and invoking the specter of the innocent man wrongly executed.\textsuperscript{14}


\textsuperscript{14} Frank R. Baumgartner, \textit{The Decline of the Death Penalty and the Discovery of Innocence} (Cambridge University Press, 2008).
II. Research Problem and Question

Following the tumultuous ‘90s, the death penalty experienced a decline nationwide\(^\text{15}\) and popular support for it has diminished from 78% in 1996 to 55% in 2014.\(^\text{16}\) As time has gone on, more states have abolished the death penalty and retentionist states use it less regularly. Between 1976 and April 2018 the US had executed 1,473 people and between 1976 and 2016 it had handed down at least 8,088 death sentences.\(^\text{17}\) Thirty-one states retain the death penalty, four of which currently have gubernatorial moratoria on executions (see Appendix S). In the past, most literature on the geographic distribution of the death penalty had focused on differences between states, but recent research has focused on the emerging issue of disparities within states. As mentioned above, a mere 2% of counties account for the majority of the nation’s executions and death row population.

An emerging literature on the geographic distribution of death sentences and executions has verified that a very small number of counties nationwide keep the machinery of death turning. This literature has also shifted the focus from geographic disparities at the state level to disparities at the county level, but few of these studies have offered satisfactory explanations for why certain counties use the death penalty so much more than others. Baumgartner, Gram, and Kovarsky argue that a self-perpetuating legal culture or ‘local muscle memory’ from prior decisions of local district attorneys’ offices leads to this concentration.\(^\text{18}\) Others, like McCann

and Jacobs and Carmichael, argue that demographic and political factors have more to do with state-level disparities, but it remains to be seen whether this applies to counties and what connects those factors with death penalty activity.\textsuperscript{19} Some argue that county-level disparities exist due to the democratic implementation of local preferences\textsuperscript{20} or as a simple matter of budget constraints.\textsuperscript{21} Many of these explanations are either undertheorized or empirically untested. Thus, in this thesis, I endeavor to answer the question, why are \textit{those particular} counties responsible for so much death penalty activity? What factors and characteristics drive them to pursue the death penalty so much more than others where the death penalty is legal? Moreover, the continued use of the death penalty in these counties presents a puzzle, as capital punishment has not been proven to have a deterrent effect and alternatives such as life imprisonment can effectively serve the function of incapacitation. In noticing the both the local concentration of the death penalty and the apparent lack of rational justification for its use, I ask whether the symbolic functions of the death penalty influence its erratic geographic distribution. Ultimately, I draw from theoretical literature on symbolic defense and waning sovereignty to understand the non-rational, symbolic functions of the death penalty and how those functions determine death penalty geography.


III. Research Design

In reviewing the literature on this topic, I identify a few key gaps among current studies. While some empirical studies identify demographic conditions associated with high levels of death penalty activity, few of them present a theoretically developed causal pathway through which those underlying conditions generate increased use of the death penalty. Additionally, some of the more theoretical accounts of death penalty geography posit purely preliminary theories, without testing them against empirical data or case studies. Finally, few of the studies consider the relationship between counties, instead focusing on the conditions and climates of counties in isolation from one another. I contribute to this dearth in the literature through my multivariate, relational hypothesis of death penalty geography. I hypothesize that middle- to upper-class, majority-white, low-crime suburbs that neighbor predominantly black, high-poverty, high-crime cities are more susceptible to the societal threat and fear of outsiders triggered by violent crimes such as capital murders. Associating violent crimes with spillover of the perceived pathologies of neighboring cities, privileged residents of these localities leverage their outrage to pressure elected officials to communicate the power of the state and symbolically defend the insulated security of the suburbs.

To investigate this hypothesis, I first present my preliminary theory of death penalty geography, developing a causal pathway that may explain the disparate rates of death penalty activity in different counties throughout the United States. As presented in Chapter Three, this theory is preliminary and serves as a theoretical framework through which to evaluate my hypothesis. For my next two chapters, I pilot this theory in a single state, Virginia. While my theory of death penalty geography is meant to be generalizable to counties in the United States as a whole, this thesis seeks first to test my hypothesis in Virginia, providing a framework for future
researchers to use in studies of other states or of the entire nation. In Chapter Four, I conduct a qualitative analysis of various sources of prosecutorial rhetoric and popular responses to capital murders to provide a proof of concept for my theory. I review local press coverage, online commentary, and trial transcripts from Virginia capital cases to assess public sentiment and the justifications and rhetoric prosecutors use when pursuing and arguing for the death penalty. This allows me to present evidence from individual cases as a proof of concept for my symbolic defense theory but does not serve as a systematic evaluation thereof. In Chapter Five, I test the generalizability of my theory in Virginia counties by using descriptive statistics and demographic analysis. In doing so, I evaluate the demographic aspects of my hypothesis as well as hypotheses presented by other researchers. While future research should include additional independent variables and multivariate regression analyses, my quantitative analysis presents supporting evidence that my hypothesis is plausible and generalizable to the state of Virginia.

Overall, my mixed methods approach to understanding the causes of geographic disparities in the death penalty allows me to effectively isolate the independent variables affecting variation and theorize the causal relationship between demographic factors and the symbolic defense responses of prosecutors. Additionally, by including demographic data on neighboring counties in quantitative analysis, I am able to analyze the effect of those data not just in isolation but in relation to each other. This relational aspect of my hypothesis is my most unique contribution to the literature, as only one other study has emphasized the relationship between counties in this way.22 Finally, by analyzing the rhetoric of online commentators and death-seeking prosecutors, I am able to analyze how that relational dynamic between

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neighboring counties produces anxiety and fear of outsiders and thus triggers the symbolic defense response.

**IV. Significance**

I am interested in this question not because I believe geographic arbitrariness is the most effective legal grounds on which to challenge the constitutionality of the death penalty, but because it presents a unique opportunity to isolate the variables driving the use of capital punishment. I come at this issue from an abolitionist perspective, believing that the death penalty is morally unacceptable in all circumstances.\(^{23}\) To develop an effective abolitionist strategy, we must fully understand the uses and functions of the death penalty. By understanding its functions, abolitionists will be better equipped to strike at the root causes of this deadly punishment. Thus, all those invested in ending the death penalty, such as civil society organizations, capital defense attorneys, human rights activists, and faith-based organizations, will find this research important. Especially those with limited resources, such as nonprofit legal organizations and public defender offices, will benefit from an improved understanding of where to concentrate resources. Moreover, people who care about issues that intersect with capital punishment will be similarly invested; this includes intellectual disability, mental illness, traumatic brain injury, childhood abuse and neglect, poverty, racial justice, educational inequality, and mass incarceration.

My research question is also pertinent to multiple academic subfields and disciplines. Theorists of sovereignty, such as Wendy Brown, will be interested in my analysis of the symbolic uses of the death penalty as a projection of state power. Moreover, legal theorists and

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\(^{23}\) I remain aware of this stance a potential source of bias in my analysis and seek to counteract by adhering to rigorous quantitative and qualitative research standards. By clearly stating my bias, I allow readers to evaluate my arguments with it in mind.
constitutional scholars will be interested in the doctrinal ramifications of my claim that the death penalty is geographically arbitrary. Scholars of critical race theory, urban studies, suburbanization, and criminology will be interested in my unique, relational hypothesis explaining the geographical distribution of death penalty activity. Overall, my research has both practical and theoretical significance: contributing both to the long-term goal of abolition as well as to the development of social and political theories explaining the dynamics of punitiveness and criminal justice in the United States.
2. Literature Review

I. Introduction

With increasing concern over arbitrariness and discrimination in the administration of the modern death penalty, emerging research has focused on a new area of concern; recent studies are beginning to explore geographic arbitrariness and its normative, policy, and doctrinal ramifications for capital punishment in America. I first present empirical studies establishing the local concentration of capital punishment at the county level to demonstrate a growing consensus that geographic disparities in the death penalty exist. Next, I explore the different schools of thought regarding why certain counties pursue the death penalty at such high rates. After identifying a few key gaps in this literature, namely the lack of a theoretically developed causal pathway through which underlying conditions influence death penalty geography and the dearth of empirical testing of proposed hypotheses, I present relevant literature useful for theorizing a causal relationship and understanding the symbolic (i.e., non-rational) functions of the death penalty. Ultimately, while researchers have come to a consensus that geographic arbitrariness exists, there is little agreement as to why, and the explanations posited thus far remain either under-theorized or empirically untested.

The explanations of geographic disparities in the death penalty fall into five schools of thought: (1) Funding, (2) Prosecutorial Discretion, (3) Localism, (4) Path Dependency, and (5) Demographics. In addition to these, I explore emerging schools of thought within a literature drawing from psychology, sociology, and political theory, which I categorize broadly as ‘Symbolic Defense.’ Within Symbolic Defense, I divide the literature into three emerging
approaches to understanding the functions of the death penalty: (1) Authoritarian Personality Explanations, (2) Societal Threat Explanations, and (3) Sovereignty Explanations.

II. Establishing Geographic Arbitrariness

Most of the literature on geographic arbitrariness thus far has sought to establish the existence of geographic disparities in the use of the death penalty, but few scholars have attempted to explain why those disparities exist or why certain counties pursue the death penalty at rates so much higher than others. In the 2000s and prior, most literature on the geographic disparities in capital punishment focused on state-level differences, such as what caused some states to retain the death penalty and others to abolish it. Only recently did scholars begin to take note of the significant disparities in use of the death penalty not just between states, but within them at the local jurisdictional level.

Until recently, most statistical studies of geographic disparities in the use of the death penalty focused on county-level differences within specific states, such as Maryland, Connecticut, and Colorado. In these studies, scholars found that location had a significant impact on likelihood of being capitaly charged, sentenced to death, or executed.

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by the Virginia General Assembly (hereafter referred to as the “JLARC study”) found that the county where a crime occurred was the strongest determinant of whether a defendant was executed.26 One of the more comprehensive studies of local jurisdictional differences as a national trend was conducted by Cohen and R. Smith, who examined the racialized geographic disparities in the use of the federal death penalty between different federal districts27 and later documented the geographic disparities in the use of the death penalty between counties in state-level prosecutions.28 R. Smith argues that geographic disparities in the use of the death penalty should be analyzed at the county-level, not the state-level, as prosecutors elected at the county level are responsible for deciding whether to pursue the death penalty.29 He identifies striking disparities in the local use of the death penalty—only 1% of U.S. counties returned at least one death sentence per year, accounting for 44% of all death sentences, and only 15% of counties have executed anyone at all since 1976.30 He argues, however, that the question of ‘why’ is insignificant; instead, he focuses on the doctrinal, litigation, and policy ramifications of the geographic disparities in the use of the death penalty.31 I seek to fill the gap left by R. Smith’s

29 Ibid, 232.
31 Ibid, 243.

study by answering the question of why those specific counties pursue the death penalty at such high rates.

Following R. Smith’s studies, Richard Dieter, prominent abolitionist and director of the Death Penalty Information Center (DPIC), published a report entitled “The 2% Death Penalty,” in which he showed that 2% of counties in the United States were responsible for 52% of executions and 56% of death sentences since 1976.\textsuperscript{32} Dieter presents a few tentative explanations for these disparities, but leaves them unevaluated.\textsuperscript{33} Around this same time, political scientist Frank Baumgartner also conducted research on county-level geographic disparities in the use of the death penalty. Both he and his students have demonstrated that death sentences and executions in the US follow a power-law distribution,\textsuperscript{34} meaning that some non-random force is at work causing those events to be concentrated in a small number of jurisdictions.\textsuperscript{35} In other words, rather than falling into a normal bell curve, the majority observations cluster in a ‘fat tail’ with a few outliers on the other end of the curve, creating a shape that resembles a hockey stick.\textsuperscript{36} In 2016, Lee Kovarsky used a statistical method typically used to measure market competitiveness to show that not only were capital outcomes concentrated at the local level, but their concentration was also increasing over time.\textsuperscript{37} Both Kovarsky and Baumgartner posited that this local concentration was due to a self-perpetuating legal culture regarding whether to seek the death penalty, but neither had empirical evidence to evaluate or support this claim. At this point,

\textsuperscript{32} Dieter, “The 2% Death Penalty.”
\textsuperscript{33} Ibid, 21-25.
\textsuperscript{34} A power-law distribution is characterized by a long tail with a sharp uptick at the end to account for a few dramatic outliers. The distribution is shaped like a hockey stick.
\textsuperscript{36} Baumgartner et al., \textit{Deadly Justice}, 132.
\textsuperscript{37} Kovarsky, “MUSCLE MEMORY.”
a consensus has emerged that county-level disparities in the death penalty exist and tentative hypotheses have been presented, but few have been empirically evaluated or theorized.

Signaling the impact of this emerging scholarship, Justice Stephen Breyer referenced geographic arbitrariness as a potential threat to the constitutionality of the death penalty in his dissent for *Glossip v. Gross* (2015).\(^{38}\) Having reached the highest court in the land, awareness of geographic arbitrariness in the death penalty has reached a critical point where we can move from understanding that it exists, to theorizing and understanding *why*. I now turn to the explanations of geographic arbitrariness that have been posited thus far.

### III. Explanations of Geographic Arbitrariness: Five Schools of Thought

#### a. Funding and Budget Constraints

According to a few scholars, disparities in the use of the death penalty are primarily a function of budget capacities and resource constraints at the county level. Most notably, legal scholar Alan Gershowitz argues that the high cost of pursuing the death penalty in combination with budget constraints leads certain counties to under-use capital punishment. Citing the exorbitant cost of the death penalty,\(^{39}\) Gershowitz argues that so few counties pursue the death penalty at high rates because only a few counties are financially able to do so. While I and other scholars, such as Baumgartner and Kovarsky, are most concerned with those counties pursuing the death penalty at unusually high rates, Gershowitz is most concerned with the under-utilization of the death penalty in counties that, he argues, cannot afford to.\(^{40}\) In his view,

\(^{40}\) Gershowitz, “Statewide Capital Punishment.”
equalizing funding would result in consistent use of the death penalty, proportionally to the number of death-eligible homicides, across all counties within a state.

Brandon Garrett makes a similar argument in his book *End of Its Rope*, where he argues that smaller, poorer counties as a whole no longer seek the death penalty. He dedicates a full chapter to counties’ difficulties in covering the costs of capital prosecutions. In Texas, the state with the highest number of executions since 1976, a lawyer created a new capital public defender office that functioned on the concept of “murder insurance,” whereby counties pay annual premiums in exchange for the office’s indigent defense services in their capital prosecutions. According to Garrett, without such a scheme, all but the most populous and well-funded counties in Texas would be unable to afford the gargantuan costs of capital punishment. Nonetheless, he notes that all but a few counties in Texas have ceased to pursue the death penalty, even with the “murder insurance” scheme alleviating the financial burden. He evaluates the effect of funding limitations on rates of death penalty usage by using income per capita as a proxy for county revenue, but did not find a clear association between this measure and death sentencing rates. He points to a few populous, wealthy counties as evidence that only populous and wealthy counties pursue the death penalty, but at the same time notes a prominent example of a small, underfunded county pursuing the death penalty at high rates: the tiny Caddo Parish of northwest Louisiana consisted of 5% of the state’s population but produced nearly half of the state’s death sentences. Garrett leaves us with a conflicting view of the effect of county budgets on death

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42 Ibid, 134-5.
44 Ibid, 143, 268.
penalty usage rates, both arguing that funding is a significant determinant of death sentencing rates while providing anecdotal evidence that contradicts that claim.

If the budget hypothesis were true, similarly situated counties with sufficient funding would pursue the death penalty at the same or similar rates, while counties without sufficient funding would pursue the death penalty very little or not at all. While many of the counties with high death penalty usage rates are populous and wealthy, there are also many populous and wealthy counties that do not pursue the death penalty at high rates and the funding school of thought fails to explain why. Stephen F. Smith published a critique of Gershowitz’s article, documenting a number of small, low-budget counties that pursued the death penalty against all odds, even putting their municipalities at risk of bankruptcy. He discounts the funding hypothesis through counter-examples, such as Vinton County, Ohio, which sought the death penalty despite its meager $2.7 million annual budget, or Jasper County, Texas, which spent 10% of its annual budget to prosecute a capital case in 1998. S. Smith’s point is that every county makes tradeoffs as part of normal budgetary decisions and while wealthier counties might have to give up less to pursue the death penalty, there are still plenty of smaller, cash-strapped localities that are willing to pursue the death penalty when they view it as a priority. Finally, even if the majority of counties with high death penalty usage rates are wealthy and populous, this school of thought does not explain why many populous, wealthy counties do not regularly pursue the death penalty.

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46 Smith, “Localism and Capital Punishment.”
48 Ibid, 114.
b. Prosecutorial Discretion

Some commentators and scholars posit an individualist hypothesis, arguing that the preferences, political alignments, and decision-making behaviors of individual prosecutors drive the geographic disparities in the use of the death penalty. The prosecutorial discretion explanation is most useful for describing a few noteworthy cases where an ardently pro-death penalty district attorney (DA) remained in office in a particular county for a lengthy period of time. For instance, legal scholar Lee Kovarsky used the example of Caddo Parish DA Dale Cox as an example of “just how sensitive capital-sentencing activity can be to the preferences of a local stakeholder.” Indeed, between 2010 and 2015, “Cox had personally secured half of the state’s death verdicts.” The prosecutorial discretion hypothesis is largely personality-driven, focusing on larger-than-life caricatures of pro-death penalty advocates like “The Queen of Death,” Lynne Abraham. Abraham, also known as the “Deadliest DA,” was the long-time prosecutor to whom Philadelphia County’s disproportionately high share of Pennsylvania’s death sentences is often attributed. Another example supporting this hypothesis is Prince William County, Virginia, the most prolific producer of death sentences in the state. The county’s DA, Paul Ebert, has been in office since 1968 and its prolific use of capital punishment has remained consistent throughout his tenure.

In cases where the district attorney has been in office for decades upon decades, the prosecutorial discretion hypothesis holds some weight. But when we begin to consider the many

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50 Ibid, 261.
52 Ibid.
counties where different DAs have held office while rates of death penalty usage have remained constant, the individualist explanation falls apart. If death penalty usage rates remain consistent despite the comings and goings of prosecutors with different political leanings, behaviors, and beliefs about the death penalty, there must be some underlying mechanism that leads DAs within those counties to pursue the death penalty, aside from their personal uniqueness.

c. Localism and Public Opinion

The third school of thought on geographic disparities in the use of the death penalty is both normative and explanatory, arguing that geographic differences result from local preferences and public opinion, and as a result they are normatively justified by the values of democratic governance and federalism. One manifestation of this hypothesis argues that more conservative areas are more likely to pursue the death penalty; for instance, Jacobs and Carmichael found that high levels of Republican representation in state legislatures increased the likelihood that the death penalty was legal in that state.\textsuperscript{54} David Garland also theorizes a relationship between conservatism and support for capital punishment, as he argues that “emphasis on punishment is consistent with conservative beliefs about individual accountability.”\textsuperscript{55} According to this hypothesis, if we use conservatism as a proxy for support for capital punishment, conservative counties would be most likely to pursue the death penalty; however, a number of conservative counties (like the majority of Texas counties) do not pursue the death penalty while many liberal ones, such as Los Angeles and Philadelphia, do. And in significant case studies, like Harris County, which has executed more people than any other

\textsuperscript{54} Jacobs and Carmichael, “The Political Sociology of the Death Penalty.”
county in the US, public opinion polls show that support for the death penalty is in fact lower than the Texas state-wide average.\textsuperscript{56} Indeed, there are significant discrepancies in the use of the death penalty between counties with similar rates of support for capital punishment and this explanation fails to account for that. Public opinion “does not vary as much, by orders of magnitude, as executions across the states or localities.”\textsuperscript{57} Finally, even if prosecutors are merely representing the preferences and opinions of local constituents, as S. Smith and Scheidegger argue, public opinion does not form in a vacuum. I am interested in the underlying conditions that generate support and enthusiasm for the death penalty. If it turns out that support for the death penalty is tied to proximity to predominantly black localities or the presence of poor people, for example, a democratically driven and locally responsive capital punishment system may be deserving of normative scrutiny after all.

Normatively, some argue that scholars like Baumgartner, Gershovitz, and Kovarsky should not be concerned with geographic disparities between counties because those differences are merely a result of democratic, localized control over criminal justice matters. In a report to the Connecticut General Assembly, pro-death penalty advocate Kent S. Scheidegger ridicules the idea of “geographic disparity,” which he puts in scare quotes, as an object of concern.\textsuperscript{58} Rather than a defect, Scheidegger argues, geographic disparity is “American federal democracy working as designed.”\textsuperscript{59} In his view, when prosecutors pursue the death penalty at high rates they are merely representing the interests and preferences of those constituents and the same goes for prosecutors who refrain from using it. S. Smith makes a similar argument, insisting that “these

\textsuperscript{56} Baumgartner et al., “The Geographic Distribution of US Executions,” 2.
\textsuperscript{57} Baumgartner et al., \textit{Deadly Justice}.
\textsuperscript{59} Ibid.
kinds of disparities are not troubling at all, but rather the inevitable effect of any system of nationally varying law enforcement.”

According to this view, localism in the criminal justice system is virtuous for “its tendency to make the enforcement of criminal law more responsive to the values, priorities, and felt needs of local communities.”

These scholars view the right of vicinage and the jury as essential mechanisms for the expression of community values. By arguing for the “jury as democracy,” localist thinkers are able to explain the varying numbers of death sentences produced in a single locality, since they are typically handed down by juries. According to the constitutional right of vicinage, juries serve as proxies for the preferences and values of the local community. But in the realm of capital punishment, this is complicated by the fact that jurors must be “death-qualified,” meaning that they must be willing to consider imposing a death sentence and not opposed to the death penalty. If juries were a representative sample of residents in a geographic area, this argument might hold weight, but prosecutors, defense attorneys, and judges weigh their competing interests while striking and seeking to retain certain jurors for capital trials. In fact, Cohen and R. Smith found that at the federal level, US attorneys drew jurors from predominantly white, suburban areas to dilute minority representation in capital juries since black jurors and diverse juries are generally less likely to impose death sentences or even convict the accused. The

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61 Ibid, 110.
63 Some states do allow “judicial override,” whereby judges can override the decisions of jurors and replace a life sentence with a death sentence or vice versa, but this is not the norm. See “The Death Penalty in Alabama: Judge Override” (Montgomery, AL: Equal Justice Initiative, July 2011), https://eji.org/sites/default/files/death-penalty-in-alabama-judge-override.pdf.
64 The Vicinage Clause of the Sixth Amendment states that juries must be drawn from the same state or district where the alleged crime occurred.
66 Kovarsky, “MUSCLE MEMORY”; Baumgartner et al., Deadly Justice.
death-qualification requirement in combination with the competing interests of the actors who select jurors results in juries that often do not serve as representative samples of their communities, and thus cannot serve as authentic proxies for community values and preferences.

d. Path Dependency

The main scholars conducting statistical analysis on geographic disparities in the use of the death penalty have reached a similar conclusion; Baumgartner, Kovarsky, and Garrett argue that local concentration of capital punishment results from the self-perpetuating legal cultures of counties and prosecutors’ offices. They refer to this self-reinforcing process by a few different names, such as the “rich-get-richer effect,” the Pareto Principle,\(^68\) local muscle memory,\(^69\) inertia, entrenched practices,\(^70\) correlated decision-making,\(^71\) or as I call it, path dependency. Baumgartner and his students first posited this theory after finding through statistical analysis that the distribution of executions in the United States follows a power-law, which “can be generated by a process of self-reinforcement, but never by a series of independent factors working in isolation and coming together by random combination.”\(^72\) Thus, to explain this non-random distribution of executions, Baumgartner proposes that local district attorneys’ offices develop their own legal cultures around decisions to seek or not seek the death penalty. After beginning in one direction or another, future actors in those offices look to past decisions to inform present and future ones. As a result, district attorneys’ offices that have historically pursued the death penalty at high rates continue to do so, while those that never did continue to


\(^{69}\) Kovarsky, “MUSCLE MEMORY.”

\(^{70}\) Garrett, End of Its Rope.

\(^{71}\) Kovarsky, “MUSCLE MEMORY,” 285, 308.

refrain from using it. This is related to the prosecutorial discretion school of thought in that it looks to the calculated decision-making of prosecutors, but it differs in that the primary unit of analysis is the prosecutors’ office, rather than individual actors within it. Essentially, according to this school of thought, the primary determinant of present and future death penalty usage is past death penalty usage.

Kovarsky argues for this explanation against the localism school of thought, stating that “the causes of concentration are likely to be more bureaucratic and path dependent than they are democratic and pragmatic.”73 In fact, he argues that local muscle memory may “frustrate the degree to which local institutions may effectively transmit a community’s punishment norms,” because instead of looking to the constituents’ beliefs and preferences, local actors look to past bureaucratic decisions and entrenched practices when deciding how to proceed with a criminal case.74 But he acknowledges that this explanation is purely speculative; he cannot prove it with data or statistical analysis.75 Nonetheless, legal scholar Brandon Garrett attempts to evaluate the path dependency hypothesis empirically, measuring past death penalty activity as an independent variable affecting current death penalty usage. He found a strong correlation between past death sentencing activity and current rates of death sentencing in counties.76

Even if the path dependency hypothesis is correct, as suggested by Garrett’s findings, it does not explain what originally set local prosecutors’ offices on one path or another. What underlying conditions lead counties to begin pursuing the death penalty? What attributes and demographics are common across high-use counties and how do those factors drive prosecutors

73 Kovarsky, “MUSCLE MEMORY,” 259.
74 Ibid, 308.
75 Ibid, 285.
76 Garrett, End of Its Rope.
to begin seeking the death penalty in the first place? These are the questions left unanswered by the path dependency explanation, and I hope to address that gap in my thesis.

e. Demographics

The demographics school of thought extends analyses of racial and economic biases in the criminal justice system to the local concentration of capital punishment. According to this school of thought, a certain set of demographics is consistent across high-use death penalty counties, while a different set of demographics is consistent across counties that use the death penalty very little or not at all.

To begin with, Cohen and R. Smith argued that geographic disparities in the federal death penalty can be attributed to racial demographic differences between the location of the crime and the area from which juries are drawn. US attorneys prosecute federal death penalty cases at the jurisdictional level of federal districts, which are much larger than counties; for instance, the state of Maryland has only one federal district and the state of Virginia has two. According to the constitutional right of vicinage, juries must be drawn from the same state or district in which the alleged crime occurred, but in the case of federal prosecutions, this gives prosecutors wide latitude on where to draw juries from. Cohen and R. Smith argue that prosecutors seek death only when they calculate likelihood of success, based on their ability to draw a largely white, wealthy, and suburban jury to decide cases that typically originate from predominantly black, socioeconomically diverse, high-crime cities. White jurors are more likely to return death sentences, so “a disproportionate number of federal death sentences are located in districts where the decision to prosecute federally transformed the jury pool from predominantly black to

77 Cohen and Smith, “The Racial Geography of the Federal Death Penalty.”
predominantly white.” By drawing from a geographic area beyond the county where the alleged crime occurred, federal prosecutors dilute minority representation on their juries and increase their likelihood of securing death sentences. Federal districts are large enough to facilitate this demographic transformation in the jury pool, but it is doubtful that this explanation applies to smaller jurisdictions like counties.

Overall, Cohen and R. Smith argue that prosecutors seek the death penalty primarily in cases where they anticipate success, which they judge based on the racial demographics of their districts and their ability to dilute minority representation on juries. While Cohen and R. Smith’s analysis considers the calculated decision-making of prosecutors, it is distinct from the individualist prosecutorial discretion school of thought in that it focuses on the underlying conditions that generate certain decisions by local actors, rather than the individual whims and belief systems thereof. In other words, the individualist school of thought sees the decisions of prosecutors as arbitrary and random, while the demographic school of thought sees them as a response to the demographic makeup of their constituents.

While analyzing prosecutions at the state-level, Brandon Garrett finds that the demographics of local jurisdictions largely explain differential rates of death penalty usage. Garrett tested the effects of demographics as independent variables on death sentencing rates among counties and found strong support for the demographics hypothesis. He found a moderate association between homicide rate and death sentencing, but complicated this finding by then separating rates of homicide victimization of whites and blacks into two separate independent variables. He found that while there was a significant relationship between victimization of whites and death sentencing, there was no such relationship with victimization of blacks,

78 Ibid, 433.
signaling again that white lives matter more in the realm of capital prosecutions.79 Ultimately, he finds, “counties do not simply respond rationally to murder rates. Instead, patterns of racial bias affect how they respond to murders.”80 Controlling for murder rate and other independent variables, Garrett similarly found that counties with a higher proportion of black residents were more likely to have high death sentencing rates.81 Relatedly, he finds an association between population density and high death sentencing rates, suggesting that urban and suburban areas are more likely to pursue the death penalty than rural ones. Baumgartner and Dieter complicate this finding by pointing to the high rates of death penalty activity in predominantly white suburban counties with low homicide rates compared with low rates of death penalty activity in predominantly black urban counties with high homicide rates.82

While Garrett and other scholars present strong evidence for the demographics hypothesis, they present few explanations for why and how those demographic conditions translate into prosecutorial decisions to seek the death penalty at higher rates. Cohen and R. Smith provide an explanation for how demographics cause prosecutors to make certain decisions, but their study analyzes the federal death penalty, and it remains to be seen whether their theory is applicable to differences in state-level prosecutions from county to county. While Garrett finds strong statistical correlations between certain demographic factors and death sentencing rates, he provides limited explanations for how those demographic factors cause high rates of death sentences. My thesis expands on this dearth in the literature by theorizing a causal relationship between underlying demographic conditions and the decisions of prosecutors to seek the death penalty.

79 Garrett, End of Its Rope, 141, 273, 275.
80 Ibid, 141.
81 Ibid, 141, 147.
82 Baumgartner et al., Deadly Justice.
IV. Literature on Symbolic Defense

Some of the schools of thought mentioned above suffer from empirical problems, in that they are easily disproven or complicated, while others lack a causal explanation of how underlying conditions generate increased use of the death penalty. To fill the gap in this literature, I draw from a more loosely connected set of theories centered on the idea of ‘symbolic defense’ and the non-rational functions of the death penalty. Some of the theorists speak to geographic differences in the application of the death penalty, while others speak more generally to the functions of executions and death sentences and others theorize about entirely different social and political phenomena altogether. First, psychologists apply theories of authoritarian personalities to the symbolic uses of capital punishment, arguing that authoritarian actors deploy the death penalty to defend against awareness of our own mortality or reinforce authority. Sociologists apply Blalock’s symbolic threat hypothesis to crime control measures, arguing that authoritative displays of power like death sentences and executions serve as responses to perceived threat from racial and economic minority populations. Finally, social and political theorists argue that executions and other displays of power serve as spectacles to symbolically and coercively reassert the sovereign’s authority.

a. Authoritarian Personality Explanations

Social psychologists study the death penalty’s functions generally, arguing that it serves as a non-conscious defense mechanism against psychological discomfort triggered by societal threat or awareness of our own mortality. Donald P. Judges, both a psychologist and a legal scholar, argues that the death penalty cannot be understood from a purely rational perspective, since it does not serve as an effective deterrent and its retributive value is limited by the fact that
it is applied in an arbitrary and discriminatory fashion. Judges focuses on psychological responses to terror, arguing that authoritarians support the use of the death penalty as a non-conscious symbolic defense against awareness of our mortality, catalyzed by senseless and unexpected murders. Judges conceptualizes authoritarianism as a personality attribute, arguing that people predisposed to authoritarian attitudes are more likely to scapegoat members of an “outgroup” as representatives of a general threat and support the ritualistic killing of the “offending target person” to symbolically defend against that threat. Prosecutors influenced by authoritarian sentiments in their constituencies symbolically take control of death by returning it to a bureaucratized, controlled, and expected process through legal executions, thus psychologically defending against the mortal anxiety provoked by graphic and random homicides.

Another psychologist, Karen Lee Stenner, tests the relationship between authoritarianism, societal threat, and punitiveness using statistical analysis. Stenner similarly conceives of authoritarianism as a personality trait, focusing mainly on the authoritarian attitudes of political actors like prosecutors and judges. She argues that authoritarian actors deploy more punitive crime control responses when faced with higher levels of societal threat, which she measures as high levels of protest activity, partisan turnover in presidential elections, a liberal public mood, and rapid declines in presidential approval. Focusing on death sentencing rates in Texas from 1976 to 1982, she finds that those measures of societal threat increased the number of death

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84 Judges uses the theoretical framework ‘Terror Management Theory’ (TMT), a subset of ‘Authoritarian Dynamic Theory’ (ADT). ADT analyzes the behaviors of authoritarians based on their commitment to group integrity and fear of outgroup members. TMT uses this conceptualization of authoritarian personalities to understand authoritarians’ methods of managing terror. Stenner, discussed next, belongs to the more general framework of ADT.
86 Ibid, 169.
sentences returned by juries. Defining authoritarianism by its core attribute of fear of outgroups and commitment to defending group integrity, she concludes that “average citizens remain wholly unmoved by these political threats; and only those predisposed toward authoritarianism are impelled by threats to the normative order toward greater hostility, intolerance, and punitiveness.”

More recently, Stewart J. H. McCann tested the effects of the relationship between authoritarianism, libertarianism, and societal threat on capital punishment rates at the state level. Specifically, he tested whether measures of those variables affected numbers of death sentences and executions at the state level. In general, authoritarianism prioritizes order, stability, and control over individual freedom, and vice versa for libertarianism. Drawing from the literature on authoritarianism that conceptualizes its key attribute as fear of outgroups, McCann measured societal threat as the non-white percentage of the population along with homicide and violent crime rates. Drawing similarities between conservatism and authoritarianism, he measured level of authoritarianism through Republican presence in state legislatures. He found that threat level by itself was not correlated with death sentencing and execution rates, but the interaction of conservatism with societal threat was. Societal threat had no significant impact on the death sentencing or execution rates of liberal states, which he used as a proxy for libertarianism. These results lent support to the predictions of authoritarian dynamic theory that

88 By libertarianism, McCann is not referring to the U.S. conservative libertarian movement that prioritizes individual liberty and minimal government intervention and supports policies such as the flat tax rate, non-interventionist foreign policy, and the reduction of state regulations. Rather, he is referring to a personality attribute that emphasizes non-authoritarian responses to societal concerns and is generally against state coercion and repression. While Republicans in the U.S. may be more libertarian in fiscal policy, this study focuses on crime-control measures, which Republicans generally take a more authoritarian stance on.
authoritarian actors respond to threat with repressive crime control measures, while libertarians do not. McCann’s study examined different death penalty usage rates at the state-level, so it remains to be seen whether these authoritarian personality explanations apply to county-level disparities.

If these theorists were to answer my research question, they would predict that localities with the highest levels of both individual authoritarianism and societal threat use the death penalty at the highest rates. The psychological ‘authoritarian personality’ approach is useful for its conception of the death penalty as a largely non-rational response to threat, but limited in its micro-level focus on individual personality traits like authoritarianism and libertarianism. One could look at such traits at the macro-level as an aggregate of individual personality traits, but doing so obscures how individual constituents’ belief systems translate into the behaviors and decisions made by political actors. Moreover, its conclusion that only authoritarian actors would respond in this way is complicated by the fact that liberal, non-authoritarian localities like Philadelphia and Los Angeles Counties pursue the death penalty at high rates.

b. Societal Threat Explanations

Sociologists and political scientists take a more macro-level approach to threat explanations of the death penalty. Scholars within this subset focus on racial threat, economic threat, or the interaction of the two. Hubert M. Blalock pioneered this subfield by piloting a theory of minority-group relations in 1967. He explored different conceptions of threat, conceptualizing dominant groups’ responses to nonwhite populations as both fear of competition

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90 It is possible for political actors to be both liberal and authoritarian, but McCann uses measures of conservatism and liberalism as proxies for authoritarianism and libertarianism, respectively, so his findings indicate that liberal states do not respond to threat with increased use of the death penalty.

and “fear of power threat,” i.e. the fear that growing minority populations will usurp white people as the dominant racial group. Blalock draws on the above social psychological literature, arguing that these fears in combination with authoritarian personalities motivate dominant racial groups to discriminate against minority populations, thus producing and/or entrenching racial inequalities. Blalock argues that these fears increase when racial minorities represent a greater percentage of the local population. A number of scholars have tested this ‘racial threat’ hypothesis on criminal justice outcomes, finding that localities with a larger minority population hired more police officers, had higher arrest rates, and spent more on corrections.

Some scholars take a Marxian approach to minority threat, arguing that socioeconomic or class threat serves as more potent source of fear for elites and dominant groups. As a result, political actors deploy repressive crime control measures to assert their authority and coercively display their power to potentially rebellious masses. For instance, David Garland argues that penal law reinforces its claims on social authority and governing power “by means of coercive sanctions as well as symbolic displays, making punishment a form of power exercised as well as power expressed.” Garland views this expression of power as a way to maintain and reproduce class lines, preventing members of the lower classes from rebelling against elites. Legal historian Douglas Hay similarly used a Marxian approach to understand the symbolic functions of capital

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92 Ibid, 29. See Figure 9.
96 Garland, Punishment and Modern Society, 123.
punishment in Eighteenth-Century England. He argued that other commentators misunderstood the purpose of England’s death-sentencing system as a rational penal system, when it was actually a method of terrorizing rural peasants into submission. Rather than viewing capital punishment as a deterrent, he conceptualized it as a method of social control directed at limiting the behavior of the lower classes. While social psychologists view capital punishment as a soothing response to terror, these theorists view it as a method of terrorizing and coercively controlling racial minorities and subordinate economic classes.

Jacobs and Carmichael as well as Liebman and Clarke combined racial and economic threat hypotheses to analyze the driving forces behind the contemporary death penalty. Jacobs and Carmichael empirically tested the threat hypotheses by isolating the effects of threat variables on whether states retained the death penalty as a legal option. They found that percent black population, level of income inequality, and percent of residents born in the state had statistically significant effects on legality of the death penalty within states, lending support to both racial and economic threat hypotheses. It remains to be seen whether these variables would have a similar effect on differential rates of death penalty use between counties. Speaking directly to county-level variation, Liebman and Clarke used the racial and economic threat frameworks to develop a theoretical explanation for the local concentration of capital punishment. They argued that fear of crimes committed by ‘outsiders,’ i.e. individuals who cross geographic, race, or class boundaries, drive privileged members of communities to pressure elected officials into using coercive and punitive crime control measures like the death penalty. Liebman and Clarke posited this theory based on earlier statistical work Liebman et al.

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conducted on error rates in capital cases, so it remains to be seen whether this theory applies to county-level variation in the use of the death penalty. Overall, racial and economic threat hypotheses provide a rich theoretical framework for examining how demographic conditions affect crime control measures and responses, but require additional empirical testing in the context of county-level concentration of capital punishment. If applied to my research question, this theoretical framework would predict that counties with the highest levels of racial and economic threat (typically measured through percent of minority populations and level of poverty or economic inequality) would have the highest rates of death penalty usage.

c. Sovereignty Explanations

Positing another theory of its symbolic functions, political and social theorists argue that sovereigns use the death penalty as a tool of reinforcing authority when it is threatened or weakened. Sovereignty explanations are similar to authoritarian personality and societal threat hypotheses in that they also conceptualize the death penalty as a response to threat, but they conceptualize it more as a political response from state actors than as a result of popular outbursts or an aggregate of individual belief systems. Instead, the death penalty serves as a method of reinforcing or projecting the sovereign’s claims on authority and power. Foucault views executions as spectacles meant to communicate and display the awesome and unrestrained power of the sovereign. In *Discipline & Punish*, Foucault argues that executions served as ritualistic reminders of the sovereign’s authority: their goal was “to make everyone aware, through the body of the criminal, of the unrestrained presence of the sovereign. The public

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execution did not re-establish justice; it reactivated power.”

Like Judges and other scholars mentioned above, Foucault argues that the death penalty served not a rational, retributive purpose, but instead a symbolic, communicative role. But like Hay argues, this role is terroristic for the masses and psychologically reassuring for the elite few. Foucault ultimately argues that the modern era has moved past the spectacle and into a more restrained ‘disciplinary society,’ so it remains to be seen whether this theory of demonstrative power applies in the years following his publication of *Discipline & Punish*.

Another political theorist of sovereignty, Wendy Brown, conceptualizes a similarly communicative aspect of sovereign power displays, but in a different context. She argues that states respond to perceptions of waning sovereignty by erecting walls on their borders. In her psychoanalytic reading of national security apparatuses, she claims that border walls serve as “a form of national psychic defense,” symbolically protecting against perceptions of penetrability by projecting a semblance of security and containment. What she refers to as “theatricalized and spectacularized performance of sovereign power at aspirational or actual national borders” invokes Foucault’s conception of executions as spectacles meant to coercively communicate and reinforce the power of the sovereign. In the context of capital punishment, the accused has “momentarily injured” the sovereign by committing a crime, and so the sovereign must reconstitute its authority through the ceremonial execution. In Brown’s analysis, the entrance of unauthorized migrants and threats of terrorism injure the national security state, so it responds by erecting visual representations of the authority it seeks to reconstitute. In both analyses, the sovereign symbolically defends against perceptions of weakening authority by reconstituting it

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through communicative displays of power. If answering my research question, these theorists would predict that in places where perceptions of waning authority are high, use of the death penalty would be highest.

Incorporating this loosely connected set of theories regarding symbolic defense bridges the individual and the systemic to form a more comprehensive understanding of how demographic conditions and individual belief systems affect the behavior of political actors. By drawing from the symbolic defense literature, I am able to propose a more theoretically developed causal pathway through which underlying conditions generate higher rates of death penalty activity.

V. Hypothesis and Research Design

I draw primarily from the demographics school of thought along with the societal threat and sovereignty explanations from within symbolic defense to arrive at my hypothesis: middle-to upper-class, majority-white, low-crime suburbs that neighbor predominantly black, high-crime cities with high rates of poverty are more susceptible to the societal threat and fear of outsiders triggered by violent crime. As a result, privileged residents of these localities leverage their outrage to pressure elected officials to communicate the power of the state and reinforce order through the symbolic uses of capital punishment. In the following chapter, I will develop a theoretical framework through which to evaluate this hypothesis, drawing mainly from the literature on societal threat and symbolic defense. In doing so, I bridge previously disconnected disciplines to more comprehensively understand why certain counties pursue the death penalty at high rates while others do not.
In responding to the gaps identified in the literature, I theorize a causal pathway through which underlying conditions such as demographic factors could influence prosecutorial behavior. I develop this theoretical framework first by presenting my predictions informed by the relevant literature and then by conducting a rhetorical analysis of popular responses to capital murder and prosecutors’ justifications for seeking the death penalty to develop a proof of concept for the symbolic defense aspect of my hypothesis. Although I cannot systematically evaluate the symbolic defense aspect of my hypothesis at this time, I contribute to the literature by providing a framework through which future studies can analyze death penalty geography.

Next, I address the dearth of empirical testing in the literature by piloting my multivariate, relational hypothesis through quantitative analysis of a number of independent variables expected to impact death penalty activity in a case study of Virginia. I identify my independent variables from other empirical studies conducted on the geography of the death penalty and from untested hypotheses presented by other researchers. Further, in conducting my analysis of Virginia counties, I consider not just the demographics of counties in isolation, but their demographics in relation to one another. This is my most novel contribution to the study of death penalty geography; aside from Liebman and Clarke, I have not identified any researchers that consider the relationship between counties as a potential trigger of increased death penalty activity. Although additional research must be conducted before my hypothesis can be verified either in Virginia or in the nation as a whole, my qualitative and quantitative analyses provide strong preliminary evidence of the plausibility of my hypothesis and emphasize the significance of considering the relationship between counties, rather than artificially isolating them. Overall, I contribute to the field of research on death penalty geography by presenting a new theoretical framework for understanding the causal pathways of death penalty geography, by emphasizing
the relational dynamic between geographic units, and by testing previously unevaluated hypotheses against empirical evidence.
3. Toward a Theory of Death Penalty Geography

I. National Context

This chapter presents a preliminary theory of the geographic distribution of the death penalty drawn from observations of a series of cases studies at the national level. Counterintuitively, a number of the counties responsible for the highest number of death sentences and executions actually have lower homicide and crime rates than some of the counties that neighbor them. In fact, upon list after list of these killer counties, a familiar culprit appears: the suburbs. A significant portion of the most prolific death counties are relatively low-crime, majority-white, and middle- to upper-class suburbs neighboring predominantly black, economically distressed cities with comparatively high homicide rates. Maryland, which retained the death penalty until 2013, was home to one of the most prominent examples of this dynamic: suburban Baltimore County, which encircles Baltimore city like a donut, had one-twelfth the homicide rate of the city but executed three times as many people. In 2002, nine of the thirteen people on Maryland’s death row were sent there by Baltimore County prosecutors who sought the death penalty whenever the law allowed, while Baltimore city prosecutors exercised restraint in charging offenses capitally. In 2000, suburban Baltimore County was 20% black and 74% white while Baltimore city was 64% black and 32% white. Moreover, 19% of Baltimore city families lived in poverty, compared to only 5% in the surrounding suburbs. Other examples

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103 See a full list of top producers of executions and death sentences in the appendix to Dieter, “The 2% Death Penalty,” 27-30.
104 Baumgartner et al., Deadly Justice, 130; “Execution Database.”
105 Montgomery, “Md. Questioning Local Extremes On Death Penalty.”
that display similar demographic characteristics and comparative levels of death penalty activity include DeKalb County and Atlanta, Georgia; Hamilton County (Cincinnati) and Franklin County (Columbus), Ohio; St. Louis County and St. Louis city, Missouri; and Jefferson Parish and Orleans Parish, Louisiana. Many of the suburban counties have a long history of racist exclusion, racial disparities in criminalization, and lynching.

The pattern of low-crime, majority-white, wealthy suburbs pursuing the death penalty at high rates while their urban, high-crime, predominantly black, and impoverished neighbors refrain signals some sort of relational dynamic between the demographics of neighboring counties and their deployment of capital punishment. The unique socioeconomic and racial dynamics between the cities and suburbs pointed me toward the literature on racial and economic threat and subsequent crime responses. Why are these suburbs pursuing the death penalty at such high rates, and what does it have to do with population density, race, class, and proximity to high-crime cities? In this section, I propose a preliminary, explanatory theory of the relationship between cities and suburbs and its role in determining the local concentration of the death penalty.

II. The Symbolic Functions of the Death Penalty

In addition to exploring how decisions to utilize the death penalty are influenced by factors often deemed legally irrelevant, such as the racial and economic demographics of a community and its relationship to neighboring jurisdictions, we must examine whether the death penalty

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penalty is merely being deployed in response to high crime rates or high population, which likely generate a high number of death-eligible crimes. In other words, do crime rates and population numbers explain a large percentage of the geographic variation in the application of the death penalty? I explore this question in more depth in Chapter Five. Aside from mere correlation with population and crime, scholars have proposed other rational explanations of the death penalty’s erratic geography. In this section, I examine the most commonly proposed practical explanations of geographic disparities and through the process of elimination arrive at the conclusion that some symbolic element must be at play.

To begin with, some justify the death penalty as an instrumental, utilitarian crime-control response serving the functions of deterrence and/or incapacitation. However, social scientific research has not shown the death penalty to be an effective deterrent, and the most generous reading of the literature indicates that the evidence is inconclusive.¹¹ The mere possibility that the death penalty could have a yet-undetected deterrent effect does not seem like a rational reason to extinguish lives. Some argue that the death penalty is the most effective means of incapacitation but fail to make a compelling argument for why life imprisonment without the possibility of parole (LWOP) cannot serve this function. Proponents of the death penalty cite concerns about the possibility of escape or violence against prison guards and other incarcerated people, but this concern obscures the reality that most people sentenced to death are in fact incarcerated on death row for years or even decades before reaching their execution dates. The capital punishment apparatus in the US involves a degree of risk of escape or prison violence

similar to that of LWOP. Moreover, the likelihood of events such as escape or serious injury to others within prisons is low, considering the fact that most people incarcerated for capital murder spend twenty-three hours of each day locked in solitary confinement.\textsuperscript{111} Since executing someone requires incarcerating them for a lengthy period of time anyway, those worried about prison escapes and assaults are better off seeking to improve prison security and equip prison guards with more effective self-defense training to ensure incapacitation during incarceration.

Others argue that the death penalty serves the expressive function of retribution. In line with the values of ‘just deserts,’ capital punishment exacts a proportional punishment against those who have committed the most heinous and deserving crimes. However, a key principle of retributivism holds that punishment must be proportional and to scale across all offenders.

Positive retributivism, which entails the state’s duty to punish, is especially incompatible with a disproportionate application of just deserts, while negative retribution, which entails the state’s right to punish, would allow for the differential punishment of equal crimes in certain cases.\textsuperscript{112} Nonetheless, even in the case of negative retributivism, disproportionate punishment must be justified and some disparities may not be justified if they are tied to arbitrary factors such as race, gender, or geography. A vast literature on arbitrariness and proportionality in the application of the death penalty has demonstrated that it disproportionately ensnares people of color, poor people, people with mental illnesses, and people residing in certain geographic locations.\textsuperscript{113} A

\begin{itemize}
\item \textsuperscript{112} Kovarsky, “MUSCLE MEMORY,” 302–6.
\end{itemize}
system that applies just deserts disproportionately on the basis of legally irrelevant factors such as these lacks merit as a properly retributive system.

If incapacitation, deterrence, and retribution fail to explain the death penalty’s continued use, it must serve a non-instrumental, symbolic role in the American criminal justice system. In the remainder of this chapter, I theorize the symbolic function of the death penalty and the underlying conditions that generate its use.

III. Panic and Fear in White Suburbia

Many American suburbs were formed out of a desire to flee the pathologies, poverty, and diversity of the inner city, but remain within the metropolitan area to retain access to steady employment and amenities. I predict that the suburbs’ continued proximity to cities remains a constant source of anxiety and fear over the possibility of spillover of crime and disorder across county lines. Borne out of a desire for separation and security from people of color, poor people, and their perceived pathologies, the typical American suburb became a community formed on the expectation of security and protection from the encroachments of urban problems. As a result, many suburbanites perceive any event associated with the pathologies of urban life, such as violent crimes, as a violation of the suburban-urban boundary and a shattering of the very security suburbs were formed to provide.

In the development of American suburbs as we know them today, many residents erected barriers to prevent the perceived pathologies of inner city from following them. In the 1950s, the majority of suburbanites were upper-class whites who could afford to purchase private homes, but with the creation of various veterans’ benefits like the GI bill, the federal government
facilitated white flight from the cities to the suburbs by subsidizing the purchase of single-family suburban homes.\textsuperscript{114} Through legal housing discrimination, red-lining, and acts of violence and hostility against people of color who attempted to move into these new neighborhoods, white residents of the suburbs made it nearly impossible for inner-city residents of color to live there.\textsuperscript{115} Instead, cities became increasingly concentrated with people of color, and due to de-industrialization, urban residents lost their manufacturing jobs. In place of manufacturing, the suburban service sector became dominant, but suburban employers were much more likely to hire suburban whites than urban people of color.\textsuperscript{116} Through legal discrimination in housing and employment, white suburbanites erected a material barrier against people of color in what may be viewed as an attempt to shield the newly formed communities from people seen as criminal and violent. Despite the subsequent elimination of de jure housing and employment discrimination, de facto discrimination persists in the suburbs to this day, continuing to serve as a wall between the city and the suburbs.

Counterintuitively, I predict that low to medium crime rates actually generate a greater sense of unrest and fear among largely affluent and white suburbanites. Compared to city-dwellers, who often experience desensitization as a result of high crime levels and personal experiences with victimization, most residents of the suburbs expect to avoid crime by virtue of their conception of the suburbs as enclosed and protected zones of refuge from the violence and uncertainty of the inner city. White flight from the cities to the suburbs came with the promise of escape from increasingly volatile and crime-ridden neighborhoods. Thus, when an especially

\textsuperscript{114} Andrew L. Barlow, \textit{Between Fear and Hope: Globalization and Race in the United States} (Lanham, UK: Rowman & Littlefield, 2003), 39.
\textsuperscript{116} Ibid, 40-41.
violent crime like the kind eligible for capital punishment rocks an unsuspecting and typically quiet suburban neighborhood, I predict the event to unsettle the residents’ conception of the space around them, disillusioning their perceptions of safety and security. Whereas perceptions of inner cities as violent and unsafe may lead residents to expect a certain level of crime in their neighborhoods, crime in neighborhoods preemptively deemed ‘safe’ brings with it a shock factor likely to throw the psyche of the local community into confusion and disarray, leading to concerns over the local community’s and government’s ability to ensure order and security. A violent crime in a wealthy, white, suburban community serves to symbolically penetrate the veneer of ‘safety’ and protection promised by the very notion of a suburb.

I predict that in general, American suburbs develop a particular notion of ‘community’ that predisposes them to fear and panic in response to perceived boundary violations, threats, and acts of violence, particularly those committed by people viewed as ‘outsiders’—racially, culturally, economically, or geographically. Liebman and Clarke argue that localities exhibiting high levels of parochialism, that is, “the attribution of innate importance and validity to the values and experiences one shares with the members of—and thus to the security, stability and continuity of—one’s closely proximate community” tend to deploy the death penalty at much higher rates. In a majority-white, low-poverty suburb, poor and/or black perpetrators of crimes are likely viewed as threatening ‘outsiders’ even if they are actually residents of the suburbs themselves, because they fall outside the self-perception of the suburban community as wealthy, white, and crime-free.

Part of the reason many white people fled American cities was because increasing numbers of people of color, especially black people, were moving into their neighborhoods at the

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same time crime was rising in the inner cities.\footnote{Nicholas Dagen Bloom, \textit{Suburban Alchemy: 1960s New Towns and the Transformation of the American Dream}, Urban Life and Urban Landscape Series. (Columbus: Ohio State University Press, 2001), 17.} Given historical stereotypes of black folks, especially black men, as inherently violent and dangerous, white residents of the cities likely associated rising crime in their neighborhoods with an influx of people of color. Voluminous social scientific research has demonstrated that implicit associations between black folks and violence continue to this day. Social psychologists have found that people tend to associate images of black people with apes, which are associated with unrestrained, unstoppable rage and violence.\footnote{Phillip Atiba Goff et al., “Not yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences.,” \textit{Journal of Personality and Social Psychology} 94, no. 2 (2008): 292–306, https://doi.org/10.1037/0022-3514.94.2.292.} Relatively, black men have long been stereotyped as hypersexual and violent, leading to the racial construction the ‘superpredator’ of the 1990s and the hypersexual black male rapist intent on defiling innocent white women.\footnote{See generally Sarah Haley, \textit{No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity} (Chapel Hill: The University of North Carolina Press, 2016); Gilbert King, \textit{Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America} (New York: Harper Perennial, 2013); Khalil Gibran Muhammad, \textit{The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America} (Cambridge, MA: Harvard University Press, 2011); Perry L. Moriearty, “Cognitive Warfare and Young Black Males in America,” \textit{Journal of Gender, Race, and Justice} 15 (2012): 281–313.} Ultimately, due to this false association between black folks and violence, the mere presence of black people is likely threatening to most white suburbanites. Regardless of the \textit{actual} threat posed by the presence of black residents in the suburbs, many white suburbanites associate them with criminality and thus perceive them as threats to the ‘safe’ and crime-free zone of protection promised by the suburbs. For this reason, the effects of \textit{racial threat} on the use of repressive crime-control measures are amplified in majority-white, middle- to upper-class suburbs neighboring predominantly black and poor cities.

Suburban communities self-segregate according to class position for both cultural and material reasons. Housing in the suburbs is often more expensive than in the cities,\footnote{Although this is changing in some parts of cities due to gentrification, it remains true overall. See Samuel H. Kye, “The Persistence of White Flight in Middle-Class Suburbia,” \textit{Social Science Research} 72 (May 1, 2018): 38–52.} creating a
material barrier for poor and working-class people seeking to live in the suburbs, which suburbanites might view as a buffer against economically driven crime. By ensuring that only middle- and upper-class people can afford to live in the suburbs, residents guarantee a healthy tax base and thus high-quality social services, schools, and other municipal amenities. Attendance at well-resourced suburban schools and participation in suburban interest groups such as professional associations and parent-teacher associations confers middle-class status upon residents and ensures upward mobility through high-quality education and local employment referral networks. The presence of working-class people thus threatens the privilege-insulating function of the suburb by threatening the middle-class makeup of schools, weakening the tax base, and invoking the specter of property crimes like home invasions and robberies. As a result, I expect that the panic and fear associated with economic threat are amplified in the suburbs.

Due to the construction of suburbs as an escape from poor and black residents of inner cities, racial and economic threat interact to produce fear and anxiety over perceived boundary violations from members of those demographic groups. Because crime, black people, and poor people are often associated with cities, crimes committed by poor black people are especially likely to inspire feelings of insecurity and fear among suburbanites. Even if the crimes at hand were not committed by black people, poor people, or people from the cities, I expect the violence of the event to cause suburbanites to automatically associate it with spillover from the cities and the presence of racial and economic minorities. As a result, increased presence of black people and people living in poverty within suburbs is likely to increase the threat level and sense of disorder among suburbanites when violent crimes like capital murders occur. In the following

122 Barlow, Between Fear and Hope, 87–88.
chapters, I will evaluate this hypothesis by analyzing the demographic variables present in counties with the highest rates of death penalty activity.

**IV. Electoral Incentives and Punitive Politics**

Thus far, I have presented a theoretical explanation of how certain racial and economic demographics could generate increased level of threat and fear among suburban residents. To fully develop a causal theoretical framework for death penalty geography, I now explain how that anxious public sentiment pressures elected prosecutors into displaying the reassuring power of the state through the deployment of the death penalty.

Crime is a highly salient political issue in the United States today, but it was not always so. Prior to the 1960s, when crime rates were low, crime was not a major concern among the American electorate, but when crime spiked in the 60s, politicians began to compete over how ‘tough on crime’ they could be and used harsh enforcement of criminal law to display their commitment to public safety.\(^{123}\) Similarly, in the realm of capital punishment, the death penalty was far less politicized prior to its embattlement with the Supreme Court in the 1970s. Executions were on the decline when the Supreme Court declared the death penalty unconstitutional through its 1972 decision in *Furman v. Georgia*; however, populist resentment against the Court’s use of its unelected and undemocratic power to remove an important piece of local autonomy in criminal justice matters resurfaced in the form of a resurgent pro-death penalty movement. Four years later, the Court reinstated the death penalty and it returned with a newly politicized vengeance.\(^{124}\) The political salience of the death penalty has enormous implications

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for elected prosecutors, and every state that currently retains the death penalty elects its district attorneys.\footnote{125}{John Pfaff, \textit{Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform} (New York: Basic Books, 2017), 128.}

The politics of criminal justice and incentives for elected officials are “skewed in favor of death” and other harsh punishments.\footnote{126}{Smith, “The Supreme Court and the Politics of Death,” 327.} The American electorate consists of “low-information, high-salience” voters who know very little about the details of criminal law or the vast majority of cases processed through the judicial system, but are highly responsive to sensationalized, high-profile criminal cases such as murders.\footnote{127}{Pfaff, \textit{Locked In}, 169.} As a result, voters are much more likely to be aware of sensationalized cases where individuals were not sufficiently incapacitated, such as the infamous case in which Massachusetts prisoner Willie Horton was granted furlough and subsequently assaulted a man and raped the man’s fiancé. Despite the fact that over 90% of people granted furlough in Massachusetts returned to prison without incident, Willie Horton’s case was the salient one. Democratic presidential candidate Michael Dukakis was the governor of Massachusetts at the time of Horton’s furlough, and his mere support of the furlough program led his Republican opponent George H. W. Bush to run attack ads accusing Dukakis of being soft on crime. While it now appears that the attack ads had little effect on the outcome of the election, the fact that Dukakis suffered defeat to Bush is often repeated as evidence that any appearance of softness can derail a political career.\footnote{128}{John Pfaff, “The Never-Ending ‘Willie Horton Effect’ Is Keeping Prisons Too Full for America’s Good,” \textit{Los Angeles Times}, May 14, 2017, http://www.latimes.com/opinion/op-ed/la-oe-pfaff-why-prison-reform-isnt-working-20170514-story.html; Beth Schwartzapfel and Bill Keller, “Willie Horton Revisited,” \textit{The Marshall Project}, May 13, 2015, https://www.themarshallproject.org/2015/05/13/willie-horton-revisited; John Sides, “It’s Time to Stop the Endless Hype of the ‘Willie Horton’ Ad,” \textit{The Washington Post}, January 6, 2016, https://www.washingtonpost.com/news/monkey-cage/wp/2016/01/06/its-time-to-stop-the-endless-hype-of-the-willie-horton-ad/?utm_term=.3363a7cc648c; Morgan Whitaker, “The Legacy of the Willie Horton Ad Lives on, 25 Years Later,” \textit{MSNBC}, October 21, 2013, http://www.msnbc.com/msnbc/the-legacy-the-willie-horton-ad-lives.} There are far greater political
consequences to under-punishing than there are to over-punishing, because the Willie Horton incidents are far more salient than the many instances in which people are unnecessarily incarcerated or punished.\textsuperscript{129} Prosecutors’ fears of losing reelection due to perceived softness or having their future prospects for higher political office threatened by the resurfacing of a Willie Horton leads them to err on the side of harshness, and there is no better way to demonstrate one’s commitment to the harsh punishment of criminals than the pursuit of the death penalty. Because people tend to only know and care about high-profile crimes and capital murders tend to receive intense media coverage, seeking the death penalty is an especially potent tool that symbolizes prosecutors’ dedication to safety, security, and order.

For these reasons, it is in prosecutors’ best interests (both for current reelection concerns and future political prospects) to demonstrate their commitment to law and order and the harsh punishment of the most violent offenders. The unique demographics of suburban communities generate a high level of fear and anxious public sentiment “that is forcefully communicated to local officials whose jobs depend on the adequacy of their response to the fear.”\textsuperscript{130} Public sentiment about crime is particularly well-communicated to prosecutors in suburbs due to the prevalence of local interest groups like neighborhood watches, housing associations, sports leagues, and parent-teacher associations.\textsuperscript{131} These groups speak with one another, rally residents, organize town halls, and write op-eds in local newspapers. In some cases, local interest groups take on advocacy roles and campaign for or against prosecutors based on their perceived commitment to maintaining order and safety in their communities. Because these kinds of

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\textsuperscript{129} Pfaff, \textit{Locked In}, 167–71.
\textsuperscript{130} Liebman and Clarke, “Minority Practice, Majority’s Burden,” 289.
\textsuperscript{131} Barlow, \textit{Between Fear and Hope}, 39–40.
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associations are especially common in suburban communities, public pressure on elected prosecutors is especially potent in these jurisdictions.

In sum, I predict that suburbanites wield their privileged positions and community associations to pressure elected prosecutors to display their commitment to order and safety if they hope to keep their jobs. However, there may be instances in which prosecutors pursue the death penalty for reasons other than those discussed already. Alternative explanations for prosecutorial behavior may explain why certain counties do not follow the demographic patterns described above but seek the death penalty at high rates. The following are three potential pathways explaining prosecutorial behavior:

A. Public sentiment → Electoral pressure → DA seeks death penalty
B. Societal threat → DA feels societal threat → DA seeks death penalty
C. DA personally supports death penalty → DA seeks death penalty

This thesis will focus on prosecutorial behavior and geographic disparities that can be explained by pathways A and B. In many cases, prosecutors’ behavior will stem from a combination of electoral pressure and their own personal insecurities and feelings of societal threat. In counties that do not follow the suburban demographic pattern but continue to seek the death penalty at high rates, pathway C may explain prosecutors’ behavior, in accordance with the individualist hypothesis.
V. Sovereignty, the State, and Symbolic Defense

Violent crimes such as capital murders temporarily injure the sovereign, threatening its claim to authority premised on its ability to maintain order and security. Especially in the suburbs, where citizens expect and demand security and protection, I expect the failure to prevent violence to signal the impotence of the state and inspire the populace to demand action. The populace demands some kind of defense against violence and the fear it provokes, but the sovereign cannot prevent all violence from occurring. Instead, the sovereign deploys the spectacularized and sensationalized death penalty to symbolically and psychically defend against feelings of disorder and insecurity. While the sovereign cannot protect its subjects from all violence, it can assuage panic and construct an artificial sense of security through a ritualistic display of the power and control it claims to possess. If true control cannot be achieved, the semblance of it can at least assuage suburbanites’ fears.

Wendy Brown theorizes this simulacrum in her *Walled States, Waning Sovereignty*. Unauthorized border crossings and terrorist attacks penetrate the perceived zone of protection, calling into question the state’s claim to sovereignty and its ability to maintain order. The state cannot prevent all such penetrations, so it instead erects borders walls which “function theatrically, projecting power and efficaciousness that they do not and cannot actually exercise.” The public demands some form of action on the part of the state through its expression of panic and fear and electoral pressure on delegates of the sovereign, and in the case

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132 In the context of this thesis, individual prosecutors act as delegates of a non-absolute sovereign state. Thus, when I refer to “the sovereign,” I am referring to local district attorneys acting as representatives of the sovereign. Moreover, although district attorneys are elected at the county level, they are employed by state governments and represent the state’s interests, as demonstrated by the fact that their cases are entitled “The State [or Commonwealth] vs. Defendant.” See Daniel Philpott, “Sovereignty: An Introduction and Brief History,” *Journal of International Affairs* 48, no. 2 (1995): 358 for a discussion of the distinctions between absolute and non-absolute sovereignty.


of border crossings “the popular desire for walling harbors a wish for the powers of protection, containment, and integration promised by sovereignty.”\textsuperscript{135} Just as the sovereign makes a promise to protect the nation-state from outsiders and border violations, the suburb was borne of a promise to protect its residents from violence and other pathologies associated with black and poor city-dwellers. I theorize that suburbanites desire containment of their racial and class privileges and protection from spillover violence from the inner cities, but the state cannot realistically ensure such things. Its next best option is to psychically reassure suburban residents of its ability to maintain order by displaying remnants of its awesome power, reminding the populace of its ultimate control over life and death. In the same way walls are more of a theatrical showpiece than a useful deterrent, the death penalty serves more of a symbolic purpose than a utilitarian crime control function. Both walls and capital punishment “may be effective in producing this psychic containment even as they fail” to accomplish their stated purposes.\textsuperscript{136}

Foucault originally argued that the spectacle of the scaffold gave way to the disciplinary society, trading in awesome displays of sovereign power for more subtle control of docile bodies. In the spectacle of the scaffold, the sovereign reinforced its power through a spectacularized representation of its authority. Eventually, however, the sovereign began to see crowds witnessing executions as potential sites of resistance and organizing, and the punishing state transformed into a ‘disciplinary society’ with control over docile bodies through indoctrination and socialization.\textsuperscript{137} I argue, however, that we have moved beyond that time period into an era that combines the elements of both the spectacle of the scaffold and the disciplinary society—

\textsuperscript{135} Ibid, 26.
\textsuperscript{136} Ibid, 109.
indoctrination in disciplinary institutions persists alongside a transformed scaffold in the form of a digital spectacle. With the advent of profit-driven 24-hour news cycles and the proliferation of online news websites, reports of the grisly details of gruesome murders and the ongoing proceedings of capital trials and executions create a new kind of spectacle. Views translate into advertising revenue for news websites and television programs, so reporters are incentivized to publish the most sensationalized details of capital cases in order to attract the morbid fascination of the public. Instead of a crowd gathering to witness a hanging, crowds of revenge-hungry citizens now gather on online forums to celebrate death sentences and executions, posting those news articles and television segments as references and sources of information. When news of a botched execution comes out, politicians and private citizens alike sometimes remark that the “humane” method of execution by lethal execution is “too good” for capital murder defendants, celebrating executions that went horrifically wrong and caused slow, painful deaths.138

The idea of the digital spectacle has mostly been discussed in the context of viral videos of police brutality shared on the internet.139 One commentator argues that the wide sharing of videos of police brutality parallels the public spectacle of lynchings in America.140 In the context of the death penalty, Austin Sarat compiled a dataset of botched executions from 1890 to 2010 and took note of the way those executions were litigated, reported on, and spectacularized.141 In one case, Sarat notes how the inclusion of photos of a botched execution in a judicial opinion

“transgresses convention in such a way as to ensure that they will be the subject of considerable attention and commentary.”\textsuperscript{142} By emphasizing the gruesome details of the execution, the judicial system drew media attention to and thus spectacularized it. In the realm of online commentary and social media, Phillips and Cooney examined hostile comments directed at capital defendants on the forum prodeathpenalty.com, which they describe as an “electronic pillory.”\textsuperscript{143} Referencing news articles that report the grisly details of executions and capital murders, these commenters create threads that act as virtual lynching mobs by celebrating the executions of capital defendants and hoping for them to be botched and painful. Thus, the enhanced media coverage of death sentences and executions increases their symbolic importance in the minds of the general public and stirs up a digital spectacle of outrage and hostility toward capital defendants.

In sum, even when prosecutors and judges keep cameras out of the courtroom, the words spoken inside the courthouse are repeated in forums, social media, news reports, and newspaper articles. Sensationalized and gruesome tales and descriptions of both the original murder and the state murder attract the public’s fascination and place the prosecutor’s death-seeking behavior in the spotlight. A new spectacle has arisen, and through it the sovereign assuages its subjects’ fear by performing the very security it cannot guarantee.

VI. Conclusion

In this chapter, I developed a theoretical framework through which to analyze the geographic distribution of the American death penalty. First, I reviewed practical explanations of county-level disparities in the use of the death penalty as a rational crime-control measure. In

\textsuperscript{142} Ibid, 25.
doing so, I found that these explanations had little merit and thus some symbolic element must be at work in the continued use of the death penalty. Next, drawing from case studies at the national level, I posited that certain demographic variables, namely the positioning of a majority-white, middle- to upper-class, low-crime suburb in proximity to a majority-black, impoverished, high-crime city, are likely to trigger increased anxiety and fear when violent crimes occur. By bringing in literature on the electoral incentives at stake in criminal justice, I developed a causal pathway through which public sentiment could influence prosecutorial behavior. Finally, I developed a theoretical frame through which to view prosecutors’ use of the death penalty as a symbolic defense meant to assuage the fears of local residents and reaffirm the awesome power of the sovereign in reaction to perceived injury. In my next chapter, I present qualitative evidence as proof of concept that symbolic defense responses and rhetoric are at play in Virginia counties with high rates of death penalty activity.
4. Rhetorical Analysis: Narrating Symbolic Defense

I. Research Design

After laying out my preliminary theory of death penalty geography, I now move into testable hypotheses and the methodology by which I will evaluate them. I hypothesize that affluent, majority-white, low-crime suburbs that neighbor predominantly black, high-crime cities with higher rates of poverty are more susceptible to the societal threat and fear of outsiders triggered by violent crime. I suggest that suburbanites view violent crimes as a violation of their communities’ promises of protection; as a result, they leverage their outrage to pressure elected officials to communicate the power of the state and reinforce order through the symbolic uses of capital punishment. District attorneys, as representatives of the state, deploy the death penalty to defend against appearances of impotence and penetrability and to assuage the fears of the residents they are entrusted to protect.

I evaluate my hypothesis in two parts: first by providing a proof of concept in the form of rhetorical analysis of individual case studies, then by testing the generalizability of this concept through descriptive statistics and demographic analysis. In this section, I use qualitative case studies of neighboring counties to explore the relationship between urban and suburban counties and evaluate the symbolic defense aspect of my hypothesis. In doing so, I perform a rhetorical analysis of online commentary to gauge public sentiment regarding capital cases and resultant pressure on elected prosecutors. I also analyze the rhetoric used by prosecutors and other elected officials when announcing their decision to seek the death penalty. Sources of prosecutorial rhetoric include local press coverage of capital cases as well as transcripts of capital trials. This
qualitative analysis allows me to analyze what prosecutors present as the driving forces and functions behind the death penalty, thus evaluating my symbolic defense hypothesis.

a. Case Selection: Virginia

Through a review of the literature on the independent variables that could affect levels of death penalty activity, it became clear that the most robust way to study its geographic disparities is to conduct a single-state analysis or otherwise control for all the factors in which capital punishment varies by state. Due to limitations on time and the availability of data, I chose to conduct an analysis of a single state, piloting a theory of death penalty geography that could then be tested in other states by future researchers. A number of the most robust and empirically advanced studies of arbitrariness in the death penalty focus on a single state, from the infamous Baldus study examining Georgia’s racially discriminatory death penalty to more recent studies of the death penalty in individual states like Connecticut, New Jersey, and Maryland. This approach allows researchers to control for state-level differences such as the structuring and funding of indigent capital defense, appellate review processes, and the predicates and aggravating factors listed in capital statutes.

Through its rulings in Furman v. Georgia, the Supreme Court required states to rewrite their capital statutes so that they had a ‘narrowing’ effect on the pool of capital-eligible offenses. This narrowing requirement was intended to ensure that only the ‘worst of the worst’ offenders would be subject to the death penalty, to prevent it from returning to its arbitrary and capricious

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Following Furman, each state rewrote its capital punishment statutes to create their own system for ‘narrowing’ the range of capital offenses, thus creating a significant source of variation in the application and use of the death penalty state-by-state. Virginia employs a two-pronged narrowing system: first, the offense must include one of fifteen capital predicates in order to be indicted as capital murder; next, it must involve one of two aggravating factors: the crime must have been “vile” or the defendant must pose a threat of “future dangerousness” to society. Because each state devised its own unique capital statutory scheme, the pool and nature of capital-eligible offenses varies state-by-state and could thus affect volume of capital cases.

The Virginia death penalty differs from other states in its structuring of indigent capital defense, as well. Prior to the establishment of regional capital defender offices in 2004, Virginia had no specially designated indigent capital defense services. Instead, general public defender offices or private court-appointed attorneys represented capital defendants. Court-appointed attorneys’ fees were capped at a mere $650. As a result, they often failed to investigate their clients' life histories, thus presenting very little evidence at the penalty phase of trials and giving jurors little reason to spare their clients from the death penalty. This poorly designed system led

146 The capital predicates specify types of murder and certain classes of victim that elevate it to a death-eligible offense. The predicates include murder in the commission of an abduction, robbery, rape, illegal drug exchange, or terrorism. Additional predicates include murder for hire, murder by a prisoner, murder of a law enforcement officer, murder of multiple people, murder for the purpose of engagement in a continuing criminal enterprise, murder of a pregnant woman, murder of a child under the age of 14, murder of a judge, and murder of a court witness. See Virginia Code § 18.2-31 (2016).
147 A crime qualifies as “vile” if it “was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.” Defendants may be considered a future danger if, through consideration of their past criminal records, it is found “that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society.” See VA Code § 19.2-264.2 (2001).
to across-the-board ineffective assistance of counsel for capital defendants in Virginia.\textsuperscript{148}

Following the creation of capital defender offices, the rate of death sentences in Virginia dramatically declined, demonstrating just how susceptible levels of death penalty activity are to the structuring of indigent defense services.\textsuperscript{149}

I chose Virginia as a case study for my state-level analysis partly because of my prior knowledge about its capital punishment system\textsuperscript{150} and partly because it is one of the most prolific producers of death sentences and executions since the reinstatement of the death penalty in 1976. While many states that retain the death penalty as a legal option rarely pursue it, Virginia remains one of the few, alongside giants like Texas and Oklahoma, that actively achieves death sentences and carries out executions (see Appendix A). Although the establishment of capital defender offices greatly reduced the number of death sentences achieved by Virginia prosecutors, they continue to pursue the death penalty at relatively high rates, as evidenced by the number of capital indictments filed in the state.\textsuperscript{151}

I chose Virginia as a case study for methodological reasons as well; through my internship with the Northern Virginia Capital Defender Office, I connected with University of Denver criminologist and sociologist Scott Phillips who had begun collecting data on capital indictments filed in the state of Virginia from 1995 to 2011. The availability of data on capital

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\textsuperscript{149} See Garret, \textit{End of Its Rope}, 106-131 for a discussion of the effect of defense lawyering and the structuring of indigent capital defense on rates of death sentencing in different states, including Virginia.
\textsuperscript{150} During the summer of 2017, I interned with the Northern Virginia Capital Defender Office, one of the four regional public defender offices established by the Virginia legislature in 2004 with the purpose of representing indigent defendants who are facing the death penalty. During this internship, I saw firsthand the processes by which capital cases are pursued in Northern Virginia and developed a rich understanding of the state’s capital punishment statutes, including the way capital predicates and aggravating factors are defined.
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indictments allows me to operationalize intent to seek the death penalty, not only success in securing death sentences and executions. I would not have had access to capital indictment data for other states due to the poor data collection practices of most state governments. The availability of capital indictment data was especially important for Virginia since the number of new death sentences in the state has dramatically decreased and the majority of capital cases fail to reach the sentencing phase.

b. Sources

To evaluate my symbolic defense theory of the death penalty’s functions, I sought out qualitative sources on the stated objectives of prosecutors in pursuing capital punishment, public sentiment regarding capital cases, and the themes and rhetoric used when prosecutors argue for jurors and judges to return death verdicts. In reviewing these sources, I qualitatively evaluate the link between expressed public sentiment and the expressed motivations of prosecutors pursuing the death penalty. Due to time constraints and limitations on access to information and trial transcripts, I was only able to review a few sources of online commentary and I selected only a few capital cases in Virginia to focus on. I selected these case studies based on the jurisdiction of offense and my predictions about the characteristics of cases that would generate the highest levels of racial and economic threat and thus include the most revealing rhetoric in terms of symbolic defense.

152 Despite the fact that trial transcripts are “public records” and many of them have already been transcribed due to the high-profile nature of capital cases, acquiring physical copies of these transcripts is prohibitively expensive (running from hundreds of dollars to upwards of a thousand dollars, depending on length and the courthouse’s rates). Thankfully, Brandon Garrett had already collected a number of Virginia capital trials for his book End of Its Rope and donated them to be part of a collection held by the University of Virginia’s Arthur J. Morris Law Library Special Collections. With a travel grant from Haverford’s Center for Peace and Global Citizenship, I was able to travel to Charlottesville, VA to review these transcripts in person. Rob Lee and Rachel Shannon of the Virginia Capital Representation Resource Center (VCRRC) also graciously shared with me digital copies of the case materials for a number of Virginia capital cases.
First, because my hypothesis predicts that low-crime, majority-white, middle- to upper-class counties neighboring predominantly black, high-crime, impoverished cities are most likely to deploy the death penalty at high rates as a symbolic defense against fear and societal threat, I selected county case studies that followed those demographic patterns. I selected Prince William County and Fairfax County since they are some of the most prolific death-seeking counties in the state. They also follow the demographic patterns described above and neighbor the predominantly black, high-crime, high poverty city of the Washington, DC. While Prince William does not directly border DC, its proximity to the city and the city’s reputation as a particularly crime-ridden and impoverished area make it likely to inspire the same fears of inner-city spillover common to more proximate suburban residents. Additionally, Prince William is across the Potomac River from Charles County, Maryland, which was 26% black in 2000 and has grown to 43% black in 2016 (one of the rare examples of significant black-white demographic shifts in the region; see Appendix L).\textsuperscript{153} I will also examine cases from Chesterfield County, which neighbors the notoriously high-crime, predominantly black, and deeply impoverished city of Richmond. Chesterfield is majority-white with a relatively high median income and low crime rate (see Appendices I, G). Finding evidence of symbolic defense in these cases would not verify my hypothesis, but it would present a proof of concept that societal threat is driving the use of the death penalty in at least some cases.

Following Liebman and Clarke, I predict that crimes that evoke a sense of spillover and invasion of outsiders from high-crime cities will inspire the greatest levels of demographic threat and thus set in motion the symbolic defense response of prosecutors, as indicated by their

rhetoric. For instance, while assault-based murders are often committed by perpetrators who know the victim personally, murders involving robbery, home invasion, or burglary (hereafter referred to as “robbery-murders”) are often perpetrated by strangers to the victim. Indeed, the JLARC study found that murders in which the perpetrator and victim were strangers were more likely to be pursued as death cases compared to murders where the two had some kind of pre-existing relationship.154 Robbery-murders are described by newspapers and community members as senseless, random, cruel, unnecessary, and perpetrated against innocent and unwitting victims. The stark contrast between cruel, violent outsiders desperate for cash and innocent victims who were prominent and productive members of the community creates the perfect storm for a symbolic defense response on the part of prosecutors. While residents may assume that perpetrators of these kinds of crimes are outsiders from other communities, especially the city, “‘outsider’ also includes individuals who cross racial and economic boundaries within communities in order to commit crimes.”155 Parochial, insular communities—exactly the kind that I suggest suburbs produce—breed a fear of unprovoked, ‘out of the blue’ crime perceived to cross racial, cultural, economic, or geographic boundaries. The death penalty “provide[s] law enforcement officials with a powerful device for assuaging fears and communicating how seriously they take, and how harshly they are prepared to punish, outsider crime.”156 According to Liebman and Clarke,

“…the small set of jurisdictions that propel the modern American death penalty are driven by the combined instincts of parochialism and libertarianism. These communities exhibit a fear of outside influences that threaten the local values and experiences that set them off from the national and global mainstream. Whites in these communities, who we take to be a proxy for more privileged residents, tend to have high rates of homicide victimization relative to the rates experienced by African-American residents, and the

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156 Ibid, 287.
white population tends to be located in close proximity to poor and African-American communities—factors we associate with a partly justified, partly inflated apprehension of crime. These jurisdictions also tend to have more populist electoral mechanisms through which fears of this sort can be powerfully communicated to local officials. Taken together, these factors generate an elevated fear of stranger crime on the part of privileged members of capital-prone communities that is forcefully communicated to local officials whose jobs depend on the adequacy of their response to the fear.”157

According to this analysis, crimes that fit the following patterns are more likely to generate symbolic defense responses:

**Racial threat**: Murder of someone of one race (especially white) by someone of another race (especially black).

**Economic threat**: Murder for which there was an economic motive, such as murders in the commission of a robbery, burglary, home invasion, or drug exchange. Residents expect that only those living in poverty and economic desperation are willing to commit these crimes, and thus they pose a greater threat.

**Victim-perpetrator contrast**: Murder of a productive, contributing member of society seen as ‘innocent’ and ‘undeserving’ (such as women, teachers, police officers, or those with advanced degrees or a career in the professions) by someone who is considered unknown, low-status, or destructive (such as a drug dealer, a stranger to the community, or someone with a criminal record).158

In each of these cases, the perpetrators would be viewed as outsiders by virtue of their contrast to the self-perception of the suburban community and what it stands for. Regardless of where the perpetrator actually resides, suburban residents would likely associate the perpetrator with the perceived pathologies of the inner city by virtue of the perpetrator’s connection to violent crime, economic desperation, and racial minorities. Consequently, I selected cases that featured these characteristics in the expectation that they would trigger symbolic defense rhetoric (for a summary of the cases analyzed in this section, see Appendix J). To evaluate symbolic defense responses, I conduct a rhetorical analysis of three main sources: capital trial transcripts,

157 Ibid, 289.
158 For a discussion of the effect of the murder of a ‘well-known victim’ on community morale, fear, and disorder, see also Liebman and Clarke, “Minority Practice, Majority’s Burden,” 296.
online commentary and forums, and press coverage. In the capital trial transcripts, I focus on prosecutors’ opening and closing statements to analyze the arguments they make when imploring jurors and judges to impose the death penalty. In these arguments, I expect to find references to communities shattered by economic, racial, and geographic outsiders. I expect this to be particularly evident in arguments prosecutors make about the ‘future dangerousness’ and ‘continuing threat to society’ posed by the defendant. In victim impact statements,\(^{159}\) I expect to find rhetoric highlighting the contrast between innocent, contributing members of the community and destructive, outsider defendants.

Following Phillips and Cooney’s use of the online forum prodeathpenalty.com to gauge public hostility toward capital defendants,\(^{160}\) I use online commentary on local forums, forums about punishment and the death penalty, social media posts, and local news articles to gauge public sentiment about capital cases. In doing so, I qualitatively evaluate the relationship between expressed public sentiment and desire for the death of perpetrators and the rhetoric prosecutors use when following through on those demands. In the same vein, I analyze local press coverage of capital cases, since media framing of murder cases is the public’s main source of information and is thus likely to affect public sentiment. Additionally, local newspapers sometimes report on the stated goals of prosecutors who are pursuing the death penalty, which I analyze in the same way I approach their arguments in the trial transcripts. Ideally, I would have analyzed more sources of online commentary, but due to time constraints this will be an area for future research and exploration.

\(^{159}\) Victim impact statements are governed by Virginia Code § 19.2-299.1 (2006). Statements are given by victims’ loved ones during the sentencing phase and may discuss the life of the victim; economic, physical, and psychological losses or injuries suffered by the loved ones; services needed to address those injuries; and changes to the loved ones’ lives as a result of the offense.

\(^{160}\) Phillips and Cooney, “The Electronic Pillory.”
II. Rhetorical Analysis

a. The Shock of an Unexpected Suburban Crime

My theory of death penalty geography posits that sensationalized, violent crimes will have a deeper psychological and fear-inducing effect on suburbanites who rarely encounter crime and expect not to encounter it in their own communities. Rather than the desensitization to violence that sometimes occurs in high-crime cities, suburbanites, particularly those who are wealthy and white, are hyper-sensitive to violent crimes and the panic they induce. Rhetorical analysis of Virginia capital trial transcripts provides preliminary support for this aspect of my hypothesis.

The case of Alfredo Prieto is illustrative. Prieto, often classified as a serial killer, was already convicted of capital murder and sitting on death row in California when DNA evidence matched him to two murders in Fairfax County and one in Arlington. Despite the fact that he was already sentenced to death, Fairfax County prosecutors extradited Prieto to Northern Virginia for what I view as symbolic capital murder trial in response to an attack on the suburban county’s reputation as safe, secure, and crime-free. Ultimately, due to reversals and mistrials, Prieto was tried three times, but the Fairfax County prosecutors felt that pursuing a death sentence in Virginia was worth their time and money. These prosecutors were not rookies; they were some of the most prolific death-seeking Commonwealth’s Attorneys (or CA, Virginia’s title for district attorneys) in the state. Raymond Morrogh, a Democrat, became an Assistant Commonwealth’s Attorney for Fairfax in 1983 and then became the Commonwealth’s Attorney in 2007, after achieving a high-profile, tough-on-crime reputation for his prosecution of Lee Boyd Malvo, one
of the D.C. snipers. Fairfax County is a leader in producing death sentences and executions in Virginia, and with its majority-white, majority-wealthy demographic makeup and proximity to DC, it is an ideal case study for a proof of concept of symbolic defense responses.

The case of Alfredo Prieto is also particularly revealing because he was found guilty of killing a young couple that represented everything Fairfax County aspired to be: they were morally upstanding churchgoers, college students at George Washington University, gregarious athletes, and devoted family members. The murder of these two 22-year-olds ready to embark on the next chapter of their lives together likely sent shockwaves through the community, not only affecting the most immediate victims. Morrogh put it best in his closing statement to the jury, when he emphasized the utter shock and unexpectedness of the crime: “These kids had never been exposed to anything like this.” The implications are clear: violent crimes such as these are not supposed to affect people like Kyle and Stephanie, college sweethearts, one of whom was soon to graduate George Washington and the other already graduated and planning to attend law school. Media coverage further emphasized the rarity of such crimes; Washington Post reporter Tamara Jones narrated the community response to the murders as such:

“Murder, uncommon in Fairfax County, was rarer still in the bosky cul-de-sacs of Reston, and three dozen cops quickly swarmed the neighborhood. One woman thought she had heard gunshots while out for a walk the night before, yes, three or four in a row, then two more an hour and a half later, after she was back inside. Probably hunters, she had decided. They were known to poach the white-tailed deer that foraged across the street, in

162 In 1999, the median household income in Fairfax County ($81k) was twice that of Washington, D.C. ($40k). Fairfax County was 9% black while D.C. was 60% black. Source: U.S. Census Bureau, Median household income in 1999 dollars, Black or African American Alone, Census 2000, prepared by Social Explorer, https://www.socialexplorer.com/23915ba902/view and https://www.socialexplorer.com/a2ef9dd8b8/view (accessed March 13, 2018).
164 The names of all victims and witness who did not testify in their professional capacity have been changed to pseudonyms.
the woods where crime scene technicians now zipped the beautiful girl into a body bag.\textsuperscript{165}

Jones emphasizes the rarity of crime in Reston by highlighting its suburbanicity through mention of its cul-de-sacs and contrasting that with the unusual presence of police officers. Violent crime was so rare in this community that residents assumed that the sound of multiple gun shots must have come from a hunter. The idea that it could have been anything else was utterly inconceivable to the residents of suburban Reston. As one commentator on a George Washington University (GW) sports forum noted, “it was probably the lowest moment in GW history.”\textsuperscript{166}

Among both the suburbs of Reston and the relatively privileged students at GW, such a shocking and unexpected crime penetrated their veneer of safety and security. As Investigation Discovery host Paula Zahn succinctly put it, “This quiet suburban community was stunned by a vicious double homicide.”\textsuperscript{167} Here we see the effect of geographic context on public sentiment; because violent crimes were so rare in suburban Reston, this crime likely had generated a more fear and anxiety among residents than a similar crime would have in a city with a high homicide rate.

A case in nearby Prince William County featured similar rhetoric of a community destroyed by unsuspected crime. Prince William, while not directly bordering DC, is still relatively close to the district and borders predominantly black Charles County, Maryland. While not as well-off as Fairfax, Prince William is still majority-white and majority middle-to-upper-class (see Appendices I, M, N, and R).\textsuperscript{168} Paul Ebert, well-known for sending people to death


\textsuperscript{168} Prince William County had a median household income of $66k and 3% of resident families lived below the poverty line. The county was 19% black. Source: U.S. Census Bureau, Median household income in 1999 dollars, Income in 1999 below the poverty level, Black or African American Alone, Census 2000, prepared by Social
row, has been the Prince William Commonwealth’s Attorney since 1968. In a particularly horrific case, Paul Powell, a 20-year-old white male, killed his 16-year-old friend Olivia and raped her 14-year-old sister Rebecca in Manassas in 1999. Ebert’s co-counsel from the Commonwealth’s Attorney’s office, James Willett, emphasized the devastating impact of this crime not just on the immediate victims, but on the community as a whole: “Ladies and gentlemen, the upshot, the result [of this crime] was that this home and our community was blasted apart.” He further contrasted the crime with the everyday state of affairs in Prince William: “His crime was so vile, it required such depravity of mind to torture two kids like this, that it is unimaginable to those of us who live normal, everyday lives.” In another Prince William case, the robbery-murder capital trial of Joshua Andrews, Willett suggested that a jury who failed to impose the death penalty would be shirking its duty by failing to protect the community from future acts of violence: “There may some day be a jury that will not do its duty, who shrinks from the evidence, who fails to protect the community, but it is not this jury.”

Overall, the evidence presented here suggests that the shock of unexpected violent crime within typically crime-free suburban communities elevates the levels of fear, anxiety, and devastation among residents of the community as a whole in ways that we likely would not see in an urban context.

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169 Green, “Paul Ebert, Doyen of Virginia Prosecutors, Running for 13th Term at Age 77.”
171 Ibid, 616.
b. A Stand-In for the Community

As mentioned in the previous section, prosecutors and media reporters describe the impact of violent crime as extending from the immediate victims to the community as a whole. In order to emphasize the impact on the community as a whole and use it to justify the pursuit of the ultimate punishment, it appears that prosecutors and witnesses refer to the everyday, mundane aspects of victims’ lives to frame them as symbolic representatives of the community at large. By positioning victims as representatives of the average community member, prosecutors are able to frame attacks on the immediate victims as attacks on the community as a whole.

During Alfredo Prieto’s trial, a sentencing phase witness commented that she and the deceased victim, Stephanie, “used to joke that she [Stephanie] and [Kyle] were like a clean cut Ken and Barbie.”173 By their similarity to the cookie-cutter model of a monogamous, heterosexual, white couple, they stand in for the majority of couples and families in Fairfax County. Prosecutors then take these tidbits from the victim impact testimony and use them to emphasize the normalcy and unexpectedness of the crimes at hand, focusing on mundane aspects of everyday life that jurors and the general public can relate to.

In another example, the prosecutor in Paul Powell’s trial emphasized the normalcy of the day while recounting the events leading up to the murder. Narrating in the present tense to really bring the jury into the story, Assistant CA Willett forebodes: “the day is proceeding like it normally would.”174 Willett recounts how it was just an average day for the victims’ stepfather, who came home and went to check on the two girls like he normally did, only to be horrified by what he found. Emphasizing these aspects of the story taps into the fears of jurors and the

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general public, causing them to think, what if that were me? What if I came home to something so horrifying? A case in Chesterfield, a suburban, majority-white community neighboring the high-crime, impoverished, majority-black city of Richmond exemplified similar patterns. Mark Sheppard, a black man, was facing the death penalty for a robbery-murder in which a local white couple was killed over drug money. Local news reports describe the murder as occurring in “suburban Richmond.” Though it occurred in the suburbs, an article on the case was written in a section aptly called “City Life,” demonstrating the way residents of the region likely view violent crimes as products of the city, even when they occur in the suburbs. Emphasizing the utter averageness of the victims in contrast to the rarity of violent crime, Chesterfield CA William Davenport used the direct victims as a stand-in for the shattered sense of security of the county’s suburban residents:

“[Tina] and [Mike] were lulled into a false sense of security into their own home in the den of that home. They knelt, one of them, at the coffee table with a Wheat Thin cracker in his hand, the other one either smoking or lighting a cigarette when this violent act occurred.”

In the same way suburbanites feel “lulled into a false sense of security” when violent crimes occur in their supposedly safe communities, Tina and Mike were caught off guard by the sudden entrance of violence into the home they presumed to be safe. By emphasizing relatable aspects of Tina and Mike’s daily lives, like lighting a cigarette and eating a Wheat Thin, prosecutors frame

175 Chesterfield County was 18% black and 3% of its resident families lived below the poverty line. Richmond was 57% black and 17% of its families lived below the poverty line. Chesterfield had a homicide rate of 3.2 per 100,000 persons compared to 20.6 in Richmond. Source: U.S. Census Bureau, Black or African American Alone, Income in 1999 below the poverty level, Census 2000, prepared by Social Explorer, https://www.socialexplorer.com/786d0583oe/view, https://www.socialexplorer.com/063531d6e3/view (accessed March 13, 2018); Federal Bureau of Investigation, Total Violent Crimes Rate: Murder Rate, UCR Crime Data 2010, prepared by Social Explorer, https://www.socialexplorer.com/ba82ba9502/view (accessed March 13, 2018).
177 Joint Appendix Vol. 4 at 1799, Commonwealth of Virginia v. Mark Arlo Sheppard, CR94F00391 (Circuit Court of the County of Chesterfield, 1995).
the direct victims as representatives of the average community member and thus frame the crime as an attack on the way of life and sense of normalcy within that community. In the next section, I turn to how prosecutors frame victims not only as representatives of the general community, but as symbols of all that is good and productive in a community.

c. The Innocent and Virtuous Victim

Innocence, a concept used by prosecutors to paint victims as virtuous, unwitting, and undeserving, is fraught with racialized and gendered implications. Throughout history, innocence and helplessness have largely been associated with white femininity, with black women and black men alike associated with guilt and criminality by virtue of their blackness and the criminalization thereof. Indeed, black women have long been stereotyped as less feminine and more aggressive, one tool of many among white supremacist ideology to cast black women as incapable of being victimized. This justified and facilitated the repeated violence against black women by white slave-owners, land-owners, and deputies of the state, because they were not seen as ‘innocent victims.’ Prosecutors of today realize that for juries to sympathize with crime victims, they must emphasize their innocence and lack of responsibility in provoking violence against them. For instance, prosecutors in the capital cases I reviewed often emphasized generic aspects of daily life for the victims, demonstrating to the jury that the victim was “just like them” and not some drug dealer or career criminal who may have been “asking for it.” Through their rhetoric and the witness testimony they present to the jury, prosecutors generally minimize the culpability and emphasize the virtuosity of the victim(s) while juxtaposing such descriptions to the destructiveness of the defendant.

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178 Haley, No Mercy Here.
White supremacist ideology throughout American history has etched associations of blackness with criminality and whiteness with innocence in the minds of most Americans for hundreds of years.\textsuperscript{179} Indeed, research based on Harvard University’s Project Implicit has demonstrated the prevalence of these associations even today.\textsuperscript{180} Research from the Capital Jury Project has demonstrated the effect of these associations on the perceived worthiness and virtuosity of victims, measured through jurors’ and judges’ willingness to impose harsher penalties for crimes against certain victims.\textsuperscript{181} Empirical research on capital punishment has long established that the race of the victim is one of the greatest predictors of whether a defendant will be sentenced to death, greater even than the race of the defendant. This research has shown that the combination of a black defendant and white victim is deadliest for the accused.\textsuperscript{182} Brandon Garrett found that death sentencing rates had a statistically significant correlation with rate of homicides with white victims, but not with black homicide victimization rates, signaling a “white lives matter more” effect in the realm of capital sentencing.\textsuperscript{183} The association between whiteness and innocence and blackness with criminality may be part of why jurors tend to view the murders of white victims as more worthy of severe punishment.

The quantity, quality, and content of victim impact testimony provides significant insight into racial and economic threat patterns as well as the virtuous/destructive duality between victim and perpetrator. Victim impact testimony was not a staple in capital cases until relatively

\textsuperscript{179} Muhammad, \textit{The Condemnation of Blackness}.


\textsuperscript{183} Garrett, \textit{End of Its Rope}, 273–75.
recently; until the Supreme Court case *Payne v. Tennessee* (1991), victim impact evidence was not even admissible in some courts.\(^{184}\) In the past couple of decades, however, prosecutors have recognized the effectiveness of victim impact testimony in pushing jurors to impose the harshest sentence possible. Prosecutors call family members of the deceased victims to the stand to recount the emotional, physical, and financial injuries suffered as a result of the loss of their loved ones. Research from the Capital Jury Project has shown that jurors respond with greater hostility toward the perpetrator and increased desire to help the victims’ families when presented with this type of testimony, often resulting in death sentences rather than mercy for the defendant.\(^ {185}\) This effect is greatly increased when the prosecutors emphasize the virtuosity and innocence of victims to present their lives as worthy.

My symbolic defense theory proposes that fear among affluent, white suburbanites will increase the number of capital outcomes sought by prosecutors. By emphasizing direct connections to white, middle-class, suburban culture and the virtuosity of the victims, prosecutors paint their murders as attacks against the values of the community and the suburbs as a whole. In Prieto’s trial, Fairfax CA Morrogh contrasts the virtuosity of the white, affluent victims in this case with the “typical” murder victim, who might be more closely associated with run-of-the-mill urban crime.

“The Defendant chose his victims, and I don’t mean to denigrate anybody’s life, but there are killings where people are involved in drug dealing and, you know, motorcycle gang disputes, and things which are tragic, but somehow don’t rise to the level of two innocent college kids who are abducted over the holidays and then taken to a cold field, one murdered and the other raped and murdered...There was simply no reason to kill these people. He had their car. He could have driven away.”\(^ {186}\)


\(^{185}\) Sundby, “The Capital Jury and Empathy.”

Here Morrogh implies that the murder of certain kinds of victims is more justified than others; while there was “no reason” to kill “two innocent college kids,” there might be a reason to kill a drug dealer or a gang member. Fairfax County residents are well-educated and relate much more to the lifestyle of the victims in this case, Stephanie and Kyle, than they relate to what might be viewed as the typical inner-city murder: one with an economic motive or one between two people involved in criminal activities.\footnote{For some examples of how inner-city murders are typically discussed and characterized, see generally “Crime and Despair in Baltimore,” \textit{The Economist}, June 29, 2017, https://www.economist.com/news/united-states/21724399-americasafes-marylands-biggest-city-does-not-crime-and-despair-baltimore; Max Rust, Scott Calvert, and Shibani Mahtani, “Murder in America: What Makes Cities More Dangerous,” \textit{Wall Street Journal}, December 26, 2017, sec. null, https://www.wsj.com/articles/murder-in-america-what-makes-cities-more-dangerous-1514293200.} Thus, by emphasizing the virtuosity and class positions of Stephanie and Kyle, the prosecutors represent their murder as somehow worse than others, in large part because it cut off the contribution they could have made to their suburban communities. Again emphasizing the generic virtuosity of the victims, Morrogh refers to Kyle as “an innocent red blooded American good kid” in his closing argument.\footnote{Joint Appendix Vol. 20 at 25883, Commonwealth of Virginia v. Alfredo R. Prieto, FE 2005-001764 (Circuit Court of Fairfax County, 2012).}

Further, Morrogh argues that \textit{because} the victims were so innocent, Prieto posed a greater threat of future dangerousness to the community. While the violent crimes against criminally involved people are more common and (in Morrogh’s view) apparently more justified, the murder of two innocent, defenseless college students is so unexpected and unwarranted that it points to the inherent dangerousness of the perpetrator. While arguing motions about the validity of the Commonwealth’s evidence on the future dangerousness aggravator, Morrogh argues that the innocence of the victims is legally relevant to the question of whether Prieto posed a continuing threat to society:

“…we’ve got quite a bit of evidence in the record that this Defendant is not only violent, but he has been repeatedly violent, extremely and ultra-violent, unnecessarily so, to
innocent people, including at least one child, and we think that’s a fair jury question as to whether or not that carries the day on future dangerousness.”

In this way, Morrogh defines Prieto’s dangerousness according to the threat he poses to innocent (read: white, affluent, and suburban) victims.

A review of victim impact testimony and prosecutorial rhetoric in other cases from prolific death-seeking counties revealed a clear pattern of race and class determining the apparent worthiness and virtuosity of certain victims. I also reviewed the case of Joshua Andrews, a black defendant who was convicted of killing two black men and maliciously wounding another in the commission of a robbery. While this case was not cross-racial, I still expected the innocent victim trope to play out to some degree in most capital cases. Instead, the race-of-victim effect in capital cases played out by diminishing the quality and quantity of victim impact testimony in this case. While the prosecutors in Prieto’s case brought in multiple witnesses from the families of each (white) victim, the prosecutors in Andrews’ case brought in only one parent for each of the three (black) victims for victim impact testimony. Robustly establishing the connection between race of victim and the innocent victim trope requires further research and a review more cases, but my research presents preliminary evidence of the racialized nature of victim impact testimony.

Victim impact testimony in the cases I reviewed was laden with rhetoric associating class position with virtuosity and innocence. As described in Prieto’s case, prosecutors contrast the innocent, high-achieving, “red-blooded American” victim with the more typical homicide victims who come from less fortunate backgrounds. In most of the cases I reviewed, prosecutors also emphasized the victims’ productivity and contribution to society in contrast to the

\[^{189}\text{Ibid, Vol. 16 at 23824. Note: The reference to ‘one child’ is a reference to another rape-murder for which Prieto was convicted: that of a 15-year-old girl in California.}\]
destructiveness and low status of the defendant. In Prieto’s case, the high-achieving profiles of the victims stood in stark contrast to the portrayal of the defendant, a Hispanic man who grew up in El Salvador and worked blue-collar jobs. Similarly, in the case of Marcus Valentino Garrett in Virginia Beach, victim impact testimony focused heavily on the educational and professional achievements of the white victims. The victims in the case had achieved post-graduate degrees and were pursuing successful, professional careers, making their deaths all the more worthy of a capital prosecution. In describing the destructiveness of Garrett’s crimes, Virginia Beach CA Harvey Bryant lamented that “in less than a minute, he [Garrett] wiped out a combined fifty-some years of hopes, dreams, goal-oriented study and achievement on the part of [Tom] and [Kenneth].”\textsuperscript{190} Their worthiness as victims and the heinousness of their murder was correlated to their professional achievement and class position, and presented in stark contrast to the destructiveness of the defendant.

Prosecutors stress victims’ positions and contributions within the community to frame the murder as an attack on the good within that community and the members contributing positively to it. During Prieto’s trial, Morrogh and media reporters repeatedly referenced the fact that Kyle’s parents worked for the Salvation Army and regularly attended church in Northern Virginia. In the Newport News murder trial of John Moses Ragin, the prosecutor framed the day of the crime as “one of the bloodiest days in the history of Newport News…because [Lisa Sisemore] lost her life. A soldier, a mother, a wife.”\textsuperscript{191} It was not one of the bloodiest days just because a murder occurred, but specifically because the murder of a prominent, positively

\textsuperscript{190} Trial Transcript at 421, Commonwealth of Virginia v. Marcus Valentino Garrett, CR05-2976 (Circuit Court of the City of Virginia Beach, 2008), Box 4, Brandon Garrett Collection of Criminal and Death Penalty Trial Transcripts, MSS 2017-01, University of Virginia Law Library Special Collections.

\textsuperscript{191} Trial Transcript at 1021, Commonwealth of Virginia v. John Moses Ragin (Circuit Court of Newport News, 2014), Box 7, Brandon Garrett Collection of Criminal and Death Penalty Trial Transcripts, MSS 2017-01, University of Virginia Law Library Special Collections.
contributing member of society occurred. Lisa represented the respectful, hard-working life of a suburban mother and wife; she served her country as a soldier and served her community as a family member. Similar themes played out in the Virginia Beach trial of Ted Carter for the murder of a police officer, when the brother of the victim testified the following:

“The man that the defendant shot and killed was my baby brother, a father, a husband, a son, a policeman, not a drug buyer, not an anonymous face in the crowd; but I don’t think that any of that mattered at that moment when the defendant shattered our lives. [Jason] was killed that night not for who he was or wasn’t but because he was there.”

Again, the victim in this case was distinguished from the typical homicide victim involved in illicit activities and street crime. Because the community at large suffered the loss of an active, contributing member of society, the crime was considered more heinous and thus more disturbing to local residents. As such, victim impact testimony and prosecutors’ rhetoric in opening and closing arguments provide insight into the kinds of cases that will stimulate symbolic defense responses and compel prosecutors to pursue the death penalty. Those cases that cut at the very core of the suburban lifestyle by ending the lives of its most prominent and productive members inspire panic and fear among other residents. By virtue of their symbolic representation of the lifestyle and values of the suburbs, the murders of these victims penetrate the community’s sense of safety and security, thus setting in motion the symbolic defense response of prosecutors to assuage those fears.

d. The Threat of Economic Desperation

As predicted by the societal threat aspect of my symbolic defense theory, prosecutorial rhetoric and victim impact testimony demonstrated themes of economic threat. In contrasting the

192 Trial Transcript at 41-2, Commonwealth of Virginia v. Ted Carter (Circuit Court of the City of Virginia Beach, 2011), Box 4, Brandon Garrett Collection of Criminal and Death Penalty Trial Transcripts, MSS 2017-01, University of Virginia Law Library Special Collections.
apparent material greed of the defendant with the gruesome loss of life suffered by the victim, prosecutors and victim impact witnesses alike demonstrate a profound fear of economic desperation and the violence they associate it with. Further, although some of these defendants were themselves residents of the counties in which the crime occurred, by virtue of their class position and their severe violation of the communities’ norms, community members likely read them as invading outsiders. These themes are most prominent in robbery-murder cases, since the prosecutors and victims can frame those murders as a product of economic desperation and poverty. In the illustrative case of Mark Sheppard, the black defendant was accused of invading the home of a white couple and shooting them over a drug-related dispute. Sheppard and a co-defendant were convicted of the murders and suspected of committing a number of other robbery-murders in Richmond and its surrounding suburbs. By virtue of the defendants’ connection to Richmond, this case likely generated fears of urban spill-over crime. In his closing argument, Chesterfield CA Davenport juxtaposed the defendant’s callous disregard for life and apparent fixation on material accumulation to demonstrate the dangerousness of economic desperation:

“And as their life’s blood was flowing out of their bodies, Mark Sheppard was pulling wedding bands, wedding rings off hands, pulling jewelry Stars of David from around the neck of [Mike Boyd], going through the pockets of the dead body, stepping over the dead bodies, unhooking and unplugging stereo equipment to take that from the [Boyds’] house.”

Through this rhetoric, Davenport highlighted economic desperation as a threat to the safety and security of the comparatively well-off residents of suburban Chesterfield County.

Similar themes highlighting fears over economically motivated acts of violence appeared in the prosecutorial rhetoric and victim impact testimony within counties that did not precisely

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follow the demographic patterns predicted in my hypothesis, as well. This does not contradict my theory, because I do not endeavor to explain where symbolic defense is present and where it is not, but where the demographics and spatial positioning of counties will generate the greatest amount of symbolic defense responses. For instance, themes of economic desperation were particularly prominent in the prosecution of Ted Carter in Virginia Beach. The city of Virginia Beach has one-third the poverty rate (5%) of its neighboring city, Norfolk (16%), and less than half the proportion of black residents than the latter (19% and 44%, respectively).194 So, while Virginia Beach is not suburban, it does follow the economic and racial demographic patterns laid out in my theory of symbolic defense, meaning that my hypothesis would predict the presence of economic threat rhetoric due to its proximity to a much more impoverished city.

And indeed, the relatively recent (2011) case of Ted Carter demonstrated economic threat rhetoric throughout the trial. Victim-perpetrator contrast was also present in this case, since Carter was accused of killing an undercover police officer during a drug exchange. Repeated references throughout the trial, both from prosecutors and victim impact witnesses, to “bloody money” emphasize the economic desperation of the defendant and the inherent dangerousness thereof. In the words of the wife of the victim,

“It is a nightmare that I see the defendant grabbing money off of my husband, money that’s bloodied, because that money was worth more than [Jason’s] life, and [Jason] like gasping for air and dying. I can’t understand or forgive a person who places money over life.”195

195 Trial Transcript at 89, Commonwealth of Virginia v. Ted Carter (Circuit Court of the City of Virginia Beach, 2011), Box 4, Brandon Garrett Collection of Criminal and Death Penalty Trial Transcripts, MSS 2017-01, University of Virginia Law Library Special Collections.
The implication here is that those who are desperate for money and working within the illicit economy must resort to violence to provide for themselves and defend their source of income. As a result, participants in the illicit economy like Ted Carter learn to put “money over life.” The prosecutor and his witnesses repeatedly referenced the fact that even when police officers arrived on the scene to arrest Carter, he continued to clutch the bloody money. Even while he was being handcuffed, he was “holding the blood money in his hands just not letting it go.” The judge in the case went so far as to use the bloody money as evidence supporting the capital aggravator of vileness. The idea of prioritizing money over life thus elevated this crime beyond an “ordinary” murder to one that was eligible for the death penalty. Clearly, these cases demonstrate a pattern of economic threat among residents of economically secure counties neighboring more impoverished, crime-stricken counties. Fearing spillover from economically desperate residents of impoverished cities, residents of well-off counties pressure their prosecutors to deploy the death penalty in a psychologically reassuring show of strength and security.

e. Summary of Findings

Rhetoric used in the capital trial transcripts and media coverage provided mixed results for my hypothesis. Prosecutors’ and press reporters’ rhetoric did present preliminary evidence for my hypothesis regarding suburbanites’ shock in response to rare, violent crimes. This is consistent with my counter-intuitive expectation that counties with lower crime rates respond with greater fear and demand harsher punishments when violent crimes occur in their communities. In regard to the expectations of safety and security in a low-crime suburb, I found evidence that prosecutors use the everyday, relatable aspects of the victims’ lives to present them

196 Ibid, 36.
197 Ibid, 205.
as representatives of the average suburbanite. In doing so, they frame the murder as an attack on the suburban way of life and the community as a whole, justifying their pursuit of the death penalty as a symbolic defense of that community.

While I did not find much of the coded racism or “dog-whistles” I expected to see in rhetoric about black defendants, I did discover deeply racialized trends in the victim impact testimony, with white victims portrayed as worthier than people of color. The contrast between worthy and unworthy victims is laden with classist rhetoric, as well, with class-based accolades like college degrees and professional careers standing in for the inherent worth of the victims’ life. Moreover, class and race cannot be disentangled in the American context, with many Americans implicitly associating people of color and especially black people with poverty, and with black Americans continuing to suffer from a persistent wealth gap resulting from hundreds of years of exploitation in the form of slavery, sharecropping, Jim Crow laws, and now mass incarceration. In this way, the rhetoric regarding economic desperation, though not explicitly racial, can be seen to have racial undertones. In fact, it may be that political actors like prosecutors are more comfortable using classist rhetoric due to American values of rugged individualism and widespread assumptions that class status is chosen and self-determined, unlike race. It would be more taboo for prosecutors to use explicitly racial language to condemn a defendant and this may be why there was less evidence of racial rhetoric in the trial transcripts. Nonetheless, the evidence presented here suggests that many of the cases with black defendants, such as Jason Andrew James, Marcus Valentino Garrett, and Mark Sheppard, generated some of the highest threat levels among local residents and inspired some of the most in-depth rhetoric contrasting the virtuosity of the victim with the destructiveness of the perpetrator. Moreover, even in the Fairfax County case of Alfredo Prieto, although the man convicted turned out to be
Hispanic, many residents initially believed the defendant to be a black man due to the discovery of an African-American hair at the scene of the crime. 198 This discovery led to widespread reporting that the suspect was a black man and inspired one blog post warning about an “elusive black serial killer” on the loose. 199 If my hypothesis is correct, the widespread belief that the killer was black likely amplified racial threat within the community and increased the likelihood of a symbolic defense response.

Overall, it is clear from the trial transcripts that in well-off counties neighboring more impoverished counties, economic (and implicitly racial) threat levels remain high and thus set in motion a symbolic defense response by prosecutors. Future studies should also compare suburban prosecutors’ rhetoric to that of urban prosecutors to more systematically evaluate whether symbolic defense is driven by geographic context. Future research should also include more in-depth analysis of online commentary and local media coverage to more fully evaluate the link between public sentiment and prosecutorial behavior.

5. A Tale of Two Death Penalties:

Capital Cases in the Cities and Suburbs

I. Research Design

Moving from the proof of concept generated through a qualitative analysis of prosecutorial rhetoric and local media coverage, in this section I endeavor to measure the extent and generalizability of this concept through descriptive statistics. In the previous section, I found evidence of symbolic defense rhetoric in individual cases, but in this section I analyze whether the demographic variables I have identified as most susceptible to symbolic defense responses translate into higher rates of capital indictments, death sentences, and executions in certain counties and not others. This section moves from micro-level rhetorical analysis to macro-level quantitative and demographic analysis. Ultimately, I find strong preliminary evidence that the variables I identified are driving the use of the death penalty as a symbolic defense in the suburbs. Importantly, I also make the novel discovery that the death penalty appears to be used as a bargaining chip in urban counties, as evidenced by high numbers of capital indictments but little follow-through in death sentence and execution rates, in contrast to the evidently symbolic uses of the death penalty in suburban counties with comparatively fewer indictments but much higher rates of death sentences and executions.

a. Dependent Variables

My dependent variable is the amount of death penalty activity, measured in three distinct ways: the numbers of capital indictments, death sentences, and executions produced by a single county within a given timeframe. It is necessary to measure death penalty activity in each of
these ways because a variety of factors could influence one but not the others. For instance, executions serve as a crude measure of prosecutors’ intent to seek the death penalty, since governors are responsible for actually signing death warrants and deciding whether to grant clemency. Because my thesis focuses on the motivations of prosecutors in the context of their local communities, it is necessary to measure rates of capital indictments and death sentences, as well. I reached this methodological conclusion before searching for the necessary data and ultimately found that data on sentences and indictments had not been amassed into one central database the same way executions in the United States have. The most comprehensive list of death sentences nationwide was just released this March of 2018 by Brandon Garrett, who drew from a number of sources to compile it.\textsuperscript{200} The data are publicly available and include every death sentence in the US from 1991 to 2017, but because these data were so recently compiled, very little research has focused on nationwide death sentencing rates. This is part of the reason many of the studies of geographic disparities thus far, particularly the nationwide studies, have used executions as a crude measure for death penalty activity.\textsuperscript{201} These studies have exchanged depth for breadth, conducting studies of the entire United States for which it would be nearly impossible to amass a comprehensive dataset of capital indictments or (until now) death sentences. While many of these researchers, such as Kovarsky and Baumgartner, intend to analyze the decision-making behaviors and motivations of prosecutors’ offices, they use measures like executions and, to a lesser extent, sentences, both of which are further removed from the prosecutors’ realm of control than capital indictments. By focusing on Virginia, a state


\textsuperscript{201} Baumgartner et al., “The Geographic Distribution of US Executions”; Kovarsky, “MUSCLE MEMORY.”
where researchers have already begun collecting a dataset of capital indictments, I am able to more precisely measure county prosecutors’ intent to seek the death penalty.

Data on executions is widely available due to the relatively small number thereof; since 1976, there have been 1,473 executions in the United States.\textsuperscript{202} The most commonly used database for executions in the modern era is the Death Penalty Information Center’s execution database, which is searchable and downloadable from its website.\textsuperscript{203} Prior to the release of Garrett’s data, many researchers used data from state departments of corrections and the NAACP Legal Defense Fund’s “Death Row USA” quarterly reports to determine how many people currently languish on death row.\textsuperscript{204} This is an imperfect system, however, for determining the number of death sentences produced by certain localities; while it may provide a rough estimate, some death sentences are no longer represented by death row occupancy because those defendants could have been executed or had their death sentences reversed or commuted. Lastly, there is no comprehensive, nationwide data source on capital indictments.

In Virginia, criminologist and sociologist Scott Phillips has begun collecting data on all capital indictments filed in the state from 1995 to 2011 in order to examine the arbitrariness of the robbery-murder capital predicate. Phillips and his team of law student volunteers requested capital indictments from the Virginia Supreme Court and manually compiled them into a spreadsheet that included the jurisdiction of the offense as well as whether the indictment resulted in a conviction, death sentence, or execution. According to Virginia Code § 19.2-217.1, the clerk of each Virginia circuit court must send a copy of every capital indictment to the Supreme Court of Virginia to be kept in a central and comprehensive file. However, there are no

\begin{footnotesize}
\textsuperscript{202} “Execution Database.”
\textsuperscript{203} “Execution Database.”
\end{footnotesize}
repercussions faced by clerks who fail to comply with this statute, and as a result the Supreme Court’s central file is far from comprehensive. Through manual collection of the Virginia Supreme Court’s files as well as supplementary case information from Virginia Capital Case Clearinghouse (VC3) and the Virginia Supreme Court website, Phillips has compiled a spreadsheet of nearly 400 capital indictments between 1995 to 2011, but we know that it is not comprehensive. To develop the most comprehensive dataset of capital indictments possible, I also draw from Ben Schoenfeld’s Virginia court data and the capital case database maintained by VC3, a law clinic at Washington and Lee University School of Law. By using OpenRefine to normalize and mass-edit the spreadsheets, I was able to check for errors, remove duplicates, and ultimately create a spreadsheet that accounted for each unique capital case listed in at least one of the datasets. My combined spreadsheet of capital indictments contains 745 capital indictments, the most comprehensive list of capital cases in Virginia to date. While the cases range from 1978 to 2016, the most comprehensive subset of the data should be the cases from 2005 to 2011, as this is the timeframe covered by all three data sources.
From this newly compiled data source, Garrett’s death sentencing data, and DPIC’s execution data, I then needed to get a county totals for each of the three dependent variables in a given timeframe. For both substantive and methodological reasons, I restricted my count of capital indictments to the years 1995 to 2011 and based the timeframes for counts of sentences and executions on that starting point. A few major events in Virginia’s system of capital punishment guided this decision. First, parole was abolished in Virginia in 1995, which may have led to a decline in the use of the death penalty as prosecutors and the public alike could have been more satisfied with the finality of life imprisonment without the possibility of parole.

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205 On file with Scott Phillips, Professor of Sociology and Criminology at the University of Denver.
207 Schoenfeld developed a webcrawler to pull case information off the front end of the Virginia Supreme Court website. Because the jurisdictions of Fairfax County, Alexandria, and Virginia Beach County use different websites from the rest of the state, data from their courts is not available on Schoenfeld’s website. For all other jurisdictions, data on all Virginia felonies from 2000 to 2016 is available for bulk download by year on his website. I am using an altered version of the data that was sorted by Northern Virginia Capital Defender Office interns to include only cases that were filed as capital murder indictments (under Virginia Code § 18.2-31) and combines all data from the year 2005 to 2016 into a single spreadsheet. The publicly available data on the website does not include defendants’ names and dates of birth, but the restricted version of the data I am using includes that information, so I was able to cross-reference it with the other spreadsheets. See Ben Schoenfeld, “Virginia Court Data,” Virginia Court Data, accessed February 24, 2018, http://virginiacourtdata.org/ #.
208 Some capital cases involve multiple capital charges; for instance, if the act involved the alleged capital murder of two people the accused could be indicted for capital murder twice. Because each individual capital charge is filed as a separate indictment, the Supreme Court website lists them as if they were separate cases. Thus, individual cases with multiple capital indictments are listed in Schoenfeld’s data as if they were separate cases, so the original spreadsheet contained 420 entries. For every case in which there were multiple capital indictments filed for the same act in the same jurisdiction, I considered them one case and removed them as duplicates. This resulted in a spreadsheet of 305 unique cases.
and thus may have pursued the death penalty less frequently.\textsuperscript{209} Next, the establishment of the four regional capital defender offices in Virginia in 2004 greatly enhanced the quality of representation to indigent capital defendants and thus sharply reduced the number of death sentences secured.\textsuperscript{210} It is also possible that prosecutors filed fewer capital indictments during this time period because they knew it would be more difficult to secure capital convictions and death sentences with a well-resourced and highly specialized team of capital defense attorneys and mitigation specialists\textsuperscript{211} representing the accused. I examined county totals of indictments, sentences, and executions from 1995 to 2011 and from 2004 to 2011, and found that while death penalty activity decreased across the board in this timeframe, the geographic distribution thereof did not change. These changes appear to have led to an overall decline in the Virginia death penalty, but did not shift the geographic distribution thereof. Turning to the quality of the data collected, I determined that Scott Phillips’ data on capital indictments was the most comprehensive and reliable set. Ben Schoenfeld’s data was missing indictments from some of the largest jurisdictions in the state (Fairfax, Alexandria, and Virginia Beach) and the VC3 database only contains cases that resulted in a capital murder conviction. Thus, I selected 1995 to 2011 as the most methodologically robust and representative timeframe for county totals of capital indictments.

\textsuperscript{210} Garrett, \textit{End of Its Rope}, 115–25.
\textsuperscript{211} Capital trials are bifurcated into a merit (guilt vs. innocence) phase and a sentencing (life vs. death) phase. The sentencing phase requires jurors to weigh aggravating and mitigating factors to determine whether to sentence the defendant to life imprisonment or death. Mitigation specialists are an essential and constitutionally required part of capital representation. They investigate defendants’ life histories and compile evidence of mitigating factors to persuade juries to vote in favor of life rather than death.
Moving from this initial decision, I chose the timeframes for death sentences and executions so they would roughly align with cases initiated from 1995 to 2011.\(^{212}\) While a robust quantitative analysis of the amount of time that usually passes between an indictment and a death sentence has not been conducted, I estimated from my personal knowledge of the Virginia death penalty that it would typically take one to two years. Thus, I staggered the timeframe for death sentences to contain only those sentences from 1996 to 2012. In the case of executions, researchers have found that condemned people in Virginia spend an average of 7.1 years on death row.\(^{213}\) Although some prisoners may leave death row as a result of appellate reversal or commutation, Virginia’s post-conviction review system is highly conservative and one of the least likely in the nation to reverse death sentences, meaning that three out of every four people sentenced to death are eventually executed.\(^{214}\) As a result, I used the average of seven years as the average amount of time between a death sentence and an execution. From this figure, I staggered the county totals for executions to include only those executions that took place between 2003 and 2017.\(^{215}\) By staggering the timeframes, I produced county totals of indictments, sentences, and executions for cases initiated in roughly the same time period. When comparing number of death sentences and executions with the number of capital indictments, the former may be slightly inflated since the list of capital indictments is not exhaustive but the lists

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\(^{212}\) This is a rough timeframe, as the data indicating year of capital indictment are imperfect. For entries sourced by Scott Phillips’ or Ben Schoenfeld’s data, the year should refer to the year the capital indictment was filed. For entries sourced by VC3, the year might instead refer to the year of the death sentence or other conclusion to the case. If there were multiple entries referring to the same case, I retained the entry sourced by Phillips first and if it were a choice between VC3 and Schoenfeld, I kept the entry sourced by Schoenfeld. Further, VC3 contained a lot fewer cases than the other sources, so only 38 of the 543 capital indictment entries from 1995 to 2011 were sourced by VC3. This means that although the VC3 year data are imperfect, they should have a relatively minor impact on the overall reliability of the dataset. In the future, I plan to go through the VC3 cases and find the accurate filing date of each. 


\(^{214}\) Ibid. 

\(^{215}\) As of April, there have been no executions in Virginia in 2018.
of death sentences and executions are. Nonetheless they serve as an accurate point of comparison of death sentence and execution rates between counties, as they should be inflated equally across the board.

**Figure 2: Summary of Sources for Three Dependent Variables**

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Capital Indictments</th>
<th>Death Sentences</th>
<th>Executions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source(s)</td>
<td>Scott Phillips, Ben Schoenfeld, VC3</td>
<td>Brandon Garrett</td>
<td>DPIC</td>
</tr>
<tr>
<td>N</td>
<td>543</td>
<td>57</td>
<td>26</td>
</tr>
</tbody>
</table>

b. Independent Variables

To test my own hypothesis as well as the others mentioned in the literature review, I include data on a wide range of independent variables in my descriptive statistics and also identify variables that should be included in regression analyses by future researchers. See Appendix K for a more detailed summary of those variables. I include variables that allow me to evaluate alternative hypotheses that have been posed by other researchers:

**Hypothesis 1 (Homicide Rate):** Homicide rates of counties explain most of the geographic variation in the use of the death penalty. Higher homicide rates are correlated with greater use of the death penalty.

**Hypothesis 2 (Population):** Population explains most of the geographic variation. Counties with large populations pursue the death penalty at the highest rates.

**Hypothesis 3 (Partisanship):** Partisan politics explain most of the geographic variation.  
3.A: Counties with a strong Republican voting base are more likely to pursue the death penalty at high rates.  
3.B: Counties with Republican prosecutors are more likely to pursue the death penalty at high rates.

**Hypothesis 4 (Budget):** County budgets explain most of the geographic variation. Counties with greater fiscal resources are more likely to pursue the death penalty at higher rates.
Each of these hypotheses functions as a null hypothesis of sorts, because being unable to reject them would point to a simpler explanation of geographic disparities in the use of the death penalty. If geographic disparities are explained in large part by the homicide rates in local jurisdictions, such a finding would suggest that the death penalty is deployed as a rational response to crime. Even if it does not effectively function as a deterrent, prosecutors might deploy it in response to high rates of crime or pursue it proportionally to the number of death-eligible offenses, which is crudely measured by homicide rate. In the same vein, if all the counties pursuing the death penalty at high rates have large populations and all the counties refraining have low populations, the simplest explanation might be a correlation with population, as counties with the highest populations are likely to have the most number of murders and increased resources for police departments and prosecutors’ offices. If association with the Republican Party explains much of the variation, it may be that the death penalty is merely part of the conservative party line, a way of maintaining the party’s ‘tough-on-crime’ and ‘law-and-order’ stances. Finally, if county budgets explain much of the variation, it may be that prosecutors simply pursue the death penalty when they have the money to and choose not to when their budgets fall short. I think of each of these hypotheses as the “there’s nothing to see here, folks” explanations of geographic disparities—if any of these individually or the four of them together explain the bulk of variation between counties, I will be unable to reject them and thus accept them as the simplest (and arguably innocuous) explanations of geographic disparity.

My hypothesis, on the other hand, combines a number of demographic factors and especially the interaction effects of the demographics of neighboring counties to explain
geographic variation in the use of the death penalty.\textsuperscript{216} See below a visual summary of my multivariate hypothesis:

**Figure 3: Visual Summary of Hypothesis**

**Hypothesis 5:** When the following characteristics exist in two counties neighboring one another, county 1 is likely to pursue the death penalty at high rates.

<table>
<thead>
<tr>
<th>County 1</th>
<th>County 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suburban</td>
<td>Urban</td>
</tr>
<tr>
<td>High percent white</td>
<td>High percent black</td>
</tr>
<tr>
<td>Low percent in poverty</td>
<td>High percent in poverty</td>
</tr>
<tr>
<td>Low to medium crime rates</td>
<td>High crime rates</td>
</tr>
</tbody>
</table>

I measure suburbanicity and urbanicity through population density, following the JLARC study’s classification of low-density localities as rural, medium-density as suburban, and high-density as urban.\textsuperscript{217} To classify counties as such, I use Census 2000 data on population density, measured as population per square mile. Because I am analyzing racial demographics relative to neighboring counties, I decided to use racial demographic data from a single Census year (2000) rather than using a time-series. I chose 2000 specifically because the decennial Census is a robust and comprehensive source of data and 2000 falls in the beginning of my capital indictment timeframe of 1995 to 2011. In reviewing data on race for Virginia counties from 1995 to the present, it is clear that while Hispanic and Asian populations have changed significantly over past few decades, the relative rates of black and white populations have remained mostly the same (see Appendix L). Upon review of the data on poverty, income inequality, and crime rates, it was also clear that while general state-wide rates have fluctuated over the years, the differences between neighboring counties have remained generally constant. Because my hypothesis is a

\textsuperscript{216} Future researchers will ideally conduct multivariate regression analyses that evaluate the effect of independent variables as well as the interaction effects of multiple independent variables to more effectively evaluate my relational hypothesis of death penalty geography.

\textsuperscript{217} Joint Legislative Audit and Review Commission, “Review of Virginia’s System of Capital Punishment.”
relational analysis of the demographic factors of neighboring counties, the difference between
neighboring county rates is more relevant than the rates in isolation, which may have changed.
To evaluate my relational hypothesis, I ask whether the county at hand neighbors a county with a
poverty rate, crime rate, or percent black population above a certain threshold at which I expect it
to generate societal threat in neighboring counties. I collected these rates for every Virginia
county and from that data calculated a median rate for Virginia counties (see Appendix E). I then
used those medians as my predicted threshold for generating high levels of race-, class-, or
crime-based threat among neighboring localities, since in the context of Virginia those rates
would be higher than the average. Altogether, I use demographic data on race, poverty,
population, population density, and income from the 2000 Census.

The 2000 Census did not collect county-level data on crime rates and socioeconomic
inequality, so I draw from the first year of available county-level data for each: 2010 Federal
Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) for crime rates and the 2009
American Community Survey (ACS) 5-Year Estimates for the Gini index of income inequality.
While my hypothesis centers relative poverty rates as the primary motivator of economic threat, I
include the Gini index of income inequality to see whether diversity of economic status also
plays a role. Because there is no easily accessible data source on county-level election results or
on the partisan affiliations of county prosecutors, I am unable at this time to test the partisanship
hypothesis beyond a discussion of a few case studies. If this data becomes more readily
available, future researchers should include it in regression analyses. By using descriptive
statistics to evaluate each independent variable independently and in interaction with one
another, I am able to analyze their effects on the number of capital indictments, death sentences,
and executions in a given county and thus evaluate the null hypotheses and my own.
II. Results

Collecting data on all three measures of death penalty activity (capital indictments, death sentences, and executions) illuminated distinct uses of the death penalty in different kinds of localities. First, in line with the conclusions of the 2002 JLARC study, I found that very few rural counties (or “low-density” counties as the JLARC study referred to them) pursued the death penalty at high rates. Instead, suburban (medium-density) and urban (high-density) counties accounted for the vast majority of capital cases in Virginia, as measured by the number of identified capital indictments for each county. However, once we compare the rate of capital indictments to the rate of death sentences and executions for those counties, localities split off into two distinct categories: (1) urban counties with a high number of indictments but comparatively low number of death sentences and executions and (2) suburban counties with a modest number of indictments but much higher rate of death sentences and executions. I propose that these numbers indicate that cities use the death penalty as a bargaining chip to more quickly achieve plea deals and avoid the financial and temporal burdens of trials, while suburbs use the death penalty as a symbolic defense against the race- and class-based fears and anxieties provoked by violent crime.

a. The Death Penalty as a Bargaining Chip in Urban Jurisdictions

In measuring death sentences and executions, scholars like Brandon Garrett and Frank Baumgartner have taken note of a decline in the death penalty both nationwide and in Virginia.\textsuperscript{218} However, in taking a closer look, Garrett and John G. Douglass noticed that while

\begin{footnotesize}
there was a steep decline in Virginia death sentences and executions starting in the early 2000s, the decline in capital indictments was much more modest (see Figures 4 and 5).

Figure 4: Capital Charging and Trials in Virginia, 2008-2014

Source: Figure taken from Garrett, “The Decline of the Virginia (and American) Death Penalty,” 681.

Figure 5: Executions Per Year in Virginia from 1982 to 2017

Figure created by author. Data source: Death Penalty Information Center Execution Database.
Thus, while the most evident and spectacularized aspects of the death penalty (death sentences and executions) have declined in most localities, the death penalty has quietly chugged along as a bargaining chip in many high-crime urban jurisdictions. While more specific data on whether cases are taken to trial or resolved through plea bargains must be collected and analyzed to verify this claim, it seems that most urban prosecutors use capital indictments to pressure defendants into taking plea deals while never intending to take the case to a capital trial in the first place. Instead, capital charging could be seen as a practical method of managing an overburdened homicide caseload, especially since many of these localities, like Richmond and Norfolk, have relatively high homicide rates (see Appendices F and O). With so many murder cases to adjudicate, an already under-resourced and under-staffed Commonwealth’s Attorney’s office is unlikely to be able to take every murder case to trial, let alone a capital trial. Instead, they use the prospect of the death penalty to pressure defendants into pleading guilty in exchange for a non-death sentence. When faced with the risk of dying at the hands of the state, there is no meaningful choice for the accused when presented with such a plea deal. Prosecutors know this and likely use it to their advantage. While a full exploration of the use of the death penalty as a bargaining chip would require further investigation into the motivations of prosecutors and perhaps qualitative interviews with them, the tiny proportion of capital indictments that translate into death sentences or executions provides strong preliminary evidence for my claim. See below a sampling of urban jurisdictions and their rates of capital indictments, death sentences, and executions (for a full list of top producers of capital indictments, see Appendix H).
These cities are some of the top producers of capital indictments, but their prosecutors rarely achieve death sentences or executions, with rates for both hovering between 0 and 6%. Urban jurisdictions like Norfolk and Richmond do not follow the pattern predicted in my demographic hypothesis. In fact, a number of these cities are predominantly black, poor, and high-crime themselves (see Appendix I)—the very cities I expected to be sources of the race- and class-based anxiety driving symbolic defense in the suburbs. While this complicates my findings, it does not refute my hypothesis. My hypothesis centers on where societal threat is driving prolific use of the death penalty as a symbolic defense, and my findings indicate that the continued use of capital charging in these high-crime cities is not a result of societal threat, but rather a calculated and practical use of resources by urban Commonwealth’s Attorneys to quickly resolve cases. While I originally predicted that death penalty activity would only be highest in localities where symbolic defense is at play, the differential rates of capital indictments, death sentences, and executions indicates that localities where prosecutors actually take capital cases to trial are likely the only ones where societal threat is driving the death penalty.

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219 Per square mile.
220 Number of death sentences divided by the number of capital indictments.
221 Number of executions divided by the number of capital indictments.
penalty. Thus, I discovered that the use of the death penalty looks different depending on what motivates its use, and those motivations are largely associated with geographic context. Overall, these findings suggest that where capital indictments are frequent but not followed by a high proportion of death sentences and executions, the death penalty functions as a bargaining chip rather than a symbolic display of sovereign force.

b. The Death Penalty as Symbolic Defense in Suburban Jurisdictions

Douglass has already proposed that the Virginia death penalty carries on as merely a bargaining chip, but he generalizes this explanation to all Virginia counties without distinguishing between different types of localities. I complicate Douglass’s narrative by pointing out the use of the death penalty as a symbolic and psychologically reassuring display of power, rather than a bargaining chip, in suburban counties like Fairfax, Prince William, and Chesterfield. In many capital cases in these counties, defense teams attempt to reach plea deals for life imprisonment to avoid capital trials, but prosecutors sometimes refuse to accept those deals, seemingly intent on achieving death sentences. Hence, while there is a “funneling” or “winnowing” effect in all localities—narrowing the number of capital cases as the legal process moves from all death-eligible cases to indictment to trial to sentencing to execution—the pool of death-eligible cases narrows much less in suburban counties. In other words, suburban prosecutors take a greater proportion of cases from the capital indictment stage to trial, sentencing, and execution than urban prosecutors do. Urban counties produce the majority of

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222 Douglass, “Death as a Bargaining Chip.”
224 Commonwealth’s Attorneys are not entirely in control of whether an individual is executed. Once a death sentence is handed down by a judge or jury, the individual might not be executed for a few reasons: an appellate court could reverse the death sentence, the governor could commute the death sentence, or the individual could die or commit suicide on death row. In the first two cases, reversal or commutation may be a sign of how strong the
capital indictments in Virginia, so it should not be a surprise that the “winnowing process
disposes of close to 90% of capital indictments.” Indeed, the overall death sentence rate
(number of death sentences divided by indictments) for Virginia within my timeframe is 10% and the execution rate (number of executions divided by indictments) is 5%. Death sentence and execution rates are strong indicators of the suburbs’ persistent pursuit of the death penalty as a symbolic defense, rather than a mere bargaining chip.

The contrast between the death sentence and execution rates for urban and suburban jurisdictions is astonishingly stark. On a list of counties with the highest number of capital indictments, three suburban jurisdictions with demographic variables I expect to trigger symbolic defense stand out with exceedingly high death sentence rates: 30% in Prince William, 21% in Chesterfield, and 67% in Fairfax (see Appendix H). Recall that urban jurisdictions like Richmond, Norfolk, and Portsmouth had death sentence rates hovering around a mere 5%. While cities produce the majority of indictments, the suburbs are responsible for the few capital cases that achieve death sentences and executions (see Appendices B, C, D, and I). I hypothesize that the majority of those cases that make it past the indictment stage are prosecuted in suburban counties by CAs seeking to defend against the race- and class-based fears of their constituents. Descriptive statistics provide preliminary evidence for this hypothesis and for my predictions regarding which counties are most susceptible to symbolic defense responses (Appendix I).

The top three producers of capital indictments (Norfolk, Richmond, and Portsmouth) are high-poverty, predominantly black, urban counties with high murder rates. However, as

description stats provide preliminary evidence for this hypothesis and for my predictions regarding which counties are most susceptible to symbolic defense responses (Appendix I).

The top three producers of capital indictments (Norfolk, Richmond, and Portsmouth) are high-poverty, predominantly black, urban counties with high murder rates. However, as
described above, prosecutors in these cities appear to be using the death penalty as a bargaining chip without any real intention of securing death sentences, as evidenced by their incredibly low death sentence rates. To evaluate the generalizability of this pattern, I used population density to classify each of the top indictment-producing localities as rural (up to 499 people per square mile), suburban (500 to 2500), and urban (2500 and above) (see Appendices H and I). Some of these classifications are complicated by the question of relativity; for instance, Virginia Beach is incorporated as a city and has a relatively high population density compared to neighboring localities, but compared to jurisdictions far away in Northern Virginia it would fit more definitively into the suburban category. Nonetheless, there is a clear pattern in the death sentence rates of suburban counties on this list: they achieve death sentences for a much higher proportion of the capital indictments they file than urban counties do (see Appendix I).

i. Northern Virginia

In raw numbers, Prince William County has pursued the death penalty the most (twenty indictments, six sentences, and three executions) but Fairfax County has a much higher death sentencing rate, despite lower numbers overall (six, four, and one, respectively). As death sentencing rate is the best proxy for capital punishment as a symbolic defense (discussed in a later section of this chapter), this conforms to my demographic hypothesis. Fairfax County fits my profile of death-seeking counties driven by symbolic defense perfectly: a predominantly white (70%) locality with a black population (9%) below the Virginia median (14%), it is also one of the richest counties in Virginia. Compared with the state-wide Virginia median of $36k (see Appendix E), the median household income in 1999 dollars for Fairfax County was $81k (Appendix G). Moreover, Fairfax’s murder rate of 2.1 per 100,000 people aligns near perfectly
with the statewide median murder rate (Appendices E and F). If Fairfax’s murder rate is unquestionably average for Virginia, murder rate cannot explain why it pursues the death penalty at such high rates. Indeed, a ranking of Virginia counties with the highest murder rates hardly corresponds to the top death-seeking counties (see Appendices F and H). It is also important to note that Fairfax has the largest population of any Virginia county, but from a brief look at the top producers of capital indictments (Appendix B), death sentences (Appendix C), and executions (Appendix D), it is clear that although it plays a role, population is not the only thing driving high rates of death penalty usage.

On the other side of the coin, Washington, D.C. fits the profile of a high-crime, predominantly black, impoverished city likely to inspire panic and fear in suburbanites riddled with race- and class-based anxiety. D.C.’s murder rate of 22 per 100,000 people is over ten times that of Fairfax (Appendices F and O). D.C., a district with a rich history and reputation as a predominantly black city, was 60% black and 31% white in 2000. Finally, while a mere 3% of Fairfax families lived with incomes below the federal poverty level, a tragic 17% of D.C. families did. While additional quantitative analysis is required to confirm my hypothesis and control for selection bias, the demographics of Fairfax County and Washington, D.C. provide strong preliminary evidence for my relational symbolic defense theory of death penalty geography.

While Prince William, another county with a strikingly high death sentence rate (30%) does not fit the demographic profile for my hypothesis perfectly, it checks a number of the boxes. Prince William is also predominantly white (69%), but its proportion of black residents is higher than the state-wide median (19% and 14%, respectively). This complicates my prediction that counties with a black population lower than the state-wide median would be less susceptible
to symbolic defense responses. I predicted that counties with a sizable black population would be less likely to pressure their prosecutors to deploy the death penalty as a symbolic defense because they would be less susceptible to fears of black people from neighboring cities. There are a few explanations for why Prince William County might continue to use the death penalty as a symbolic defense despite a significant black constituency. First, it could be that black residents of Prince William hold less political influence in the eyes of elected officials like the Commonwealth’s Attorney—due to long histories of disenfranchisement and their continued status as numeric minorities in the county, they might not hold as much political sway as white residents. As a result, their fears or lack thereof may not factor into prosecutors’ behavior. Another potential explanation is that the real tension between suburbs and cities is class-based; middle- and upper-class black residents of the suburbs might feel the same level of fear toward impoverished residents of the city that similarly situated white suburbanites feel. If this were true, middle- to upper-class low-crime suburbs neighboring impoverished high-crime cities would exhibit the same kinds of symbolic defense relationships seen between Fairfax and D.C., regardless of racial constituency. Unfortunately, there are few cities that do not have sizable black populations, so there are few points of comparison through which to test this hypothesis. A simpler explanation is that the threshold of 14% black is too low; a greater number of black residents is needed to affect the public sentiment of the county and prosecutorial behavior.

While Prince William is less wealthy than Fairfax, it too has a low number of families living under the federal poverty level: only 3%. Similarly to Fairfax, it has an average murder rate of 2.2 per 100,000 people. Despite this low murder rate, Prince William prosecutors pursue the death penalty at disproportionately high rates. While Prince William does not directly border Washington, D.C., it remains in the close vicinity of its borders and is situated across the
Potomac from predominantly black (26% in 2000, 39% in 2010) Charles County, Maryland. Charles County is not urban; in fact its population density (262 per square mile in 2000) fits into my classification of rural and it has a relatively low number of families living in poverty (4%), so it does not precisely fit the profile of a locality I expect to trigger symbolic defense responses in the suburbs. A final potential explanation for Prince William’s imperfect fit into my model of symbolic defense is the prosecutorial discretion hypothesis; rather than a certain set of demographics setting in motion symbolic defense responses, it could be that a single, ardently pro-death penalty Commonwealth’s Attorney is responsible for Prince William’s prominence in the Virginia death penalty. CA Paul Ebert has been in office since 1968 and has earned a reputation for sending people to death row;\(^\text{227}\) perhaps Prince William’s prolific use of the death penalty is attributable to him. Additional research is required to fully parse out the effects of these variables; future researchers should conduct multivariate regressions accounting for race, poverty levels, population, population density, county prosecutor, and crime rates.

Population may explain why Arlington County, another predominantly white (69% white, 9% black) and low-poverty (5% of families below the poverty level) county neighboring Washington, D.C. has much less death penalty activity than its counterparts, Prince William and Fairfax. Although Arlington had the same number of capital indictments as Fairfax (six), it had only two death sentences and zero executions. Arlington is demographically similar to Fairfax, but it had one fifth of its population in 2000 (189,453 compared to 969,749). Another potential explanation for Arlington’s relatively low amount of death penalty activity is its urbanicity. With a population density of 7,323 people per square mile, Arlington fits my classification of urban, not suburban, which would exclude it from my profile of counties most likely to use the death penalty.

\(^{227}\) Green, “Paul Ebert, Doyen of Virginia Prosecutors, Running for 13th Term at Age 77.”

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penalty as a symbolic defense. However, its high rate of death sentencing (one third of indictments resulted in death sentences) is close to Prince William’s (30%) and further complicates whether Arlington fits the profile or not. Arlington appears to be an outlier and requires more in-depth qualitative and quantitative analysis to understand its use of the death penalty. Overall, Northern Virginia counties present strong preliminary evidence for the generalizability of my hypothesis.

ii. Central Virginia

In turning to Central Virginia, we see a similar pattern in the geographic distribution of capital indictments, death sentences, and executions. D.C.’s counterpart in Central Virginia is Richmond, a city that is 57% black and 38% white, with 17% of its families living below the poverty level. With a murder rate ten times the state-wide median (20 murders per 100,000 people), Richmond has a high volume of homicide cases to adjudicate. Richmond was the second greatest producer of capital indictments with a total of thirty-three, but these were followed by a meagre death sentence rate of 6%, that is, only two death sentences and one execution (Appendix I). This suggests that Richmond follows the framework described above of urban counties using the death penalty as a bargaining chip rather than a symbolic defense. Its demographics fit the profile of a county I would expect to generate racial and economic threat within neighboring suburbs.

Indeed, neighboring Chesterfield County has produced the sixth largest number of capital indictments and tied with Fairfax as the second greatest producer of death sentences. Suburban Chesterfield mostly fits my profile of a county susceptible to symbolic defense responses. Its crime rate of 3 murders per 100,000 people pales in comparison to Richmond’s 20. Only 3% of
its resident families have incomes that fall below the federal poverty line and its median household income is twice that of Richmond ($59k and $31k, respectively). Like Prince William, its racial demographics complicate my narrative slightly. Chesterfield is predominantly white (77%) but its population is also 19% black, higher than the median for Virginia counties. On the other hand, Henrico County, which neighbors the other side of Richmond, has similar economic demographics and crime rates to Chesterfield (with a slightly higher poverty rate of 5%) but has a larger black population at 25%. Given that these two counties are otherwise similarly situated and that Prince William had a similarly sized black population, it is more likely that the threshold for black residents’ influence on prosecutorial behavior is higher than I originally expected, as opposed to the alternative explanation that racial demographics do not actually play much of a role in determining which counties pursue the death penalty at high rates. The simplest explanation, then, for why Henrico does not pursue the death penalty at rates as high as Chesterfield is that black suburbanites are less susceptible to racial and economic threat and at 25% of the population their sentiment regarding local murders has a stronger effect on the prosecutor’s sense of the public’s outrage or lack thereof. Thus, when suburban counties reach a certain threshold (somewhere between 20 and 25% black), they are less likely to pursue the death penalty at such high rates. In sum, death-seeking counties Central Virginia also present supporting evidence for my relational, multivariate hypothesis of death penalty geography.

iii. Death Sentences as Evidence of Symbolic Defense

I view a higher proportion of death sentences and executions as evidence of the death penalty being used for symbolic defense because death sentences and executions send a much stronger message to the community than mere capital indictments do. Death sentences and
executions generate much more media coverage and popular discussion than indictments, and it is difficult for a prosecutorial action to send a symbolic or psychologically reassuring message through something that few people are hearing about, discussing, or even aware of. In this sense, a high number of capital indictments likely does little to send a symbolically defensive message to local constituents, as they are unlikely to even be aware of them. In reviewing media coverage of capital cases, I noticed a clear pattern: most articles referenced either the sentencing or execution, if there was one. There would be a few articles mentioning the initial arrest, but much less coverage of the CA’s decision to indict a suspect for capital murder. Once the defendant was sentenced, however, either to a term of life or death, there was much more coverage. If, years later, the condemned person was executed, news reports would sprout up again, rehashing the details of the murder, trial, and sentencing and reigniting digital commentary surrounding the case. Hence, prosecutors can more effectively use the death penalty as a symbolic defense against residents’ fears by taking cases to trial and winning death sentences, as these generate increased media attention and communicate the prosecutor’s symbolic act to a greater proportion of the populace. For this reason, I consider a high death sentencing rate as evidence of the death penalty’s use as a symbolic defense, rather than a bargaining chip as it appears to be used in urban jurisdictions.

At this point, I am not able to systematically verify my claim regarding the distinct uses of capital punishment in urban and suburban counties, but I have presented strong preliminary evidence suggesting that cities use the death penalty as a bargaining chip while suburbs use it for its symbolic functions. This finding is a novel contribution to the study of the Virginia death penalty and would not have been noticed without data on capital indictments. Future research should include a more robust analysis of how many capital cases urban prosecutors actually
bring to trial to determine whether they are merely ineffective at achieving death sentences or truly never intended to in the first place. Additional research could also benefit from qualitative interviews with local actors such as CAs, defense attorneys, and defendants themselves, as these actors might have a better sense of CAs’ motives and goals.

c. Discussion of Alternative Hypotheses and Summary of Findings

I did not find strong evidence in support of any of the alternative hypotheses discussed in this section or the literature review, but did not find definitive enough evidence to completely rule them out either. For example, it is difficult to disentangle the role of the prosecutor from other independent variables, as many of the counties focused on in this section have had the same Commonwealth’s Attorney for decades, most notably Paul Ebert who has held office as Prince William County CA since 1968. There is no comprehensive data source detailing who has held office as CA in each county, how long they served, and their partisan affiliation, so it is difficult to evaluate the prosecutorial discretion hypothesis discussed in the literature review. Future researchers should work to compile a database of local prosecutors that includes their personal views on the death penalty; the number of capital indictments, death sentences, and executions they have produced; and their partisan affiliations. This would allow us to more critically monitor prosecutorial discretion, evaluate the partisanship hypothesis, and determine to what extent the individuals elected CA influence the geographic distribution of the death penalty.

As discussed earlier in this section, homicide rates failed to explain the bulk of the variation. Appomattox, a rural county with the highest murder rate in Virginia, did not top any of the three dependent variable lists with only 2 capital indictments, 1 death sentence, and 1 execution. While a number of the cities with the most capital indictments are represented among
the counties with the highest murder rates (see Appendix G), a number of other cities, like Petersburg and Martinsville, have higher murder rates but relatively few capital indictments. This suggests that some high-crime cities choose not to use the death penalty as a bargaining chip (or at all), which is a subject for further investigation. Overall, it is clear that while the top producers of indictments do have high murder rates (suggesting the use of the death penalty as a bargaining chip in some urban jurisdictions), the counties with the highest death sentencing rates (like Fairfax, Prince William, and Chesterfield) have very low murder rates. This lends support to the counterintuitive aspect of my hypothesis that suburban counties with lower homicide rates are actually more likely to pursue the death penalty as a symbolic defense, as those few murders are so shocking and disruptive that they inspire residents to clamor for prosecutors to take serious action. Thus, we can reject homicide rate as an explanation for geographic disparities in the use of the death penalty.

Additionally, Brandon Garrett argued that those counties with adequate resources are most likely to pursue the death penalty at high rates. To measure this, he performed a multivariate regression analysis testing the effect of income per capita (as a proxy for county budget) on death sentencing rates while controlling for other variables and did not find an association between the two.\footnote{Garrett, \textit{End of Its Rope}, 143, 268.} While Garrett approaches wealth or the lack thereof as a resource constraint on death penalty activity, I view it from a sociological perspective. Using a slightly different measure, median household income, I argue that wealthy counties (which can be measured as high median household income or low poverty levels) are more likely to pursue the death penalty because they are more susceptible to economic fears induced by neighboring poor counties. Indeed, in looking at a list of Virginia counties with the highest median household
incomes, the suburban counties I’ve identified as most susceptible to racial and economic threat are some of the wealthiest in the state (see Appendix G). Fairfax County is #1, followed by Prince William at #6 and Chesterfield at #13. Some of the others represented on this list are much smaller independent cities, like Fairfax City and Falls Church, that likely don’t have the financial resources or sheer quantity of murders necessary to pursue the death penalty at high rates. Others are majority-white, majority-wealthy counties, like Stafford and Spotsylvania, that mostly fit the profile of a county susceptible to symbolic defense responses, except for the fact that they do not neighbor majority-black, impoverished, high-crime cities and are more rural than suburban. This finding lends support for my hypothesis by showing that it is not merely the demographic variables of the counties in question that matter, but the demographics of neighboring counties and the relational dynamic between the two.

Another finding from my data requiring future investigation is the representation of rural jurisdictions on the list of counties with the highest number of capital indictments (Appendix I). Most of the rural counties represented on this list follow a pattern similar to the urban localities, with a low death sentence rate that shows little follow-through with capital trials. Rural counties, too, may be using the death penalty as a bargaining chip, which makes sense given that rural prosecutors’ offices are often under-staffed and under-resourced.229 Threatening the death penalty to pressure defendants into guilty pleas could allow rural prosecutors to quickly resolve homicide cases without the financial burdens and time commitments of trials. One major difference is that rural counties generally have much lower homicide rates and fewer homicides in raw numbers (due to low population) and the effect of this is a lower number of capital indictments overall. Nonetheless, top indicters like Nottoway, Rockingham, and Franklin could

229 Ibid, 141.
be using the death penalty as a bargaining chip as well, proportionally to the number of murder cases in those counties. Because my thesis focuses on the duality of and relationship between cities and suburbs, the function of the death penalty in rural jurisdictions is a subject for further inquiry in future research.

Overall, from the disparate death sentencing and execution rates between urban and suburban counties, it appears that while urban counties use capital indictments as a bargaining chip for the practical goals of quickly resolving cases and pressuring defendants into guilty pleas, suburban counties more often take capital cases to trial and achieve death sentences, suggesting that prosecutors in these localities intend to garner more attention and communicate a message of symbolic defense through their dogged pursuit of death verdicts. As discussed in Chapter Three of this thesis, the absence of a practical rationale behind a certain act suggests that the act has some kind of symbolic, non-practical purpose. For urban prosecutors, using the specter of the death penalty to pressure defendants into accepting guilty pleas for life imprisonment serves the practical crime-control functions of deterrence and incapacitation. On the other hand, since social science research has not shown a deterrent function of the death penalty and because incapacitation can be achieved through life imprisonment, suburban prosecutors’ use of the death penalty as something other than a bargaining chip suggests a symbolic element at play. I argue that this element is a symbolic defense against the fears and anxieties that residents of white, wealthy, low-crime suburbs neighboring predominantly black, poor, high-crime cities are most susceptible to. Indeed, by showing that counties of these demographic patterns are in fact most likely to pursue death sentences at a much higher rate than other counties, I have provided preliminary evidence in support of this hypothesis. I have also shown through descriptive statistics that the null hypotheses lack merit; while homicide rate, population size, median
household income (as a proxy for county budget), and partisanship seem to play a role in the volume of death penalty activity, they do not explain the bulk of variation between counties. Thus, while additional research is necessary, including both more extensive qualitative analysis and multivariate regression analyses, the evidence thus far provides preliminary support for my hypothesis.
6. Conclusion

In this thesis, I endeavored to answer the question of why certain counties in the United States pursue the death penalty so much more frequently than others. In doing so, I contributed to an emerging literature investigating not just the existence of county-level disparities in the use of the death penalty, but why those disparities exist in the first place. First, I responded to the gaps in the literature by proposing a theoretical framework through which to analyze death penalty geography. Through the incorporation of literature on symbolic defense and sovereignty, this framework clarified the causal pathway through which underlying conditions such as demographic variables could influence the behavior of prosecutors and generate increased use of capital punishment. It also shifted the current research narrative from examining the demographics of counties in isolation to considering the relationship between counties and how their respect demographic patterns influence one another. Next, I provided a proof of concept for this theory through a rhetorical analysis of prosecutors’ justifications for pursuing the death penalty and their arguments when asking decision-makers to return death verdicts. I also reviewed local media coverage and online commentary, though future research should incorporate a much more systematic and thorough analysis of those sources. This proof of concept demonstrated the presence of rhetorical themes indicative of symbolic defense responses on the part of prosecutors.

Next, I tested the generalizability of my theory among counties in Virginia and found strong preliminary evidence for my hypothesis. I found that a high number of the most prolific, death-seeking counties were majority-white, middle- to upper-class, low-crime suburbs neighboring predominantly black, high-crime, high-poverty cities, as I predicted. Unexpectedly,
I found that these suburban counties were not actually the most prolific producers of capital indictments; rather, urban jurisdictions with high homicide rates, such as Richmond and Norfolk, filed the highest number of capital indictments. The difference lied in the fact that suburban jurisdictions like Fairfax and Chesterfield had incredibly high death sentence rates, demonstrating high follow-through from the capital indictment stage to trial and sentencing. On the other hand, urban jurisdictions had incredibly high numbers of indictments, but a meagre proportion of those cases resulted in death sentences, indicating that prosecutors likely never intended to take those cases to trial or send defendants to death row. Instead, it appears that urban jurisdictions in Virginia use the death penalty as a bargaining chip to pressure defendants into accepting plea deals, while suburban counties use the death penalty as a symbolic defense, as evidenced by their high death sentencing rates. Overall, this complicated my findings but overall lent support to my hypothesis regarding the symbolic functions of the death penalty in the Virginia suburbs. In other words, I found that symbolic defense is not the only driving force behind the Virginia death penalty in general, but it appears to be the primary force driving the death penalty in the Virginia suburbs specifically.

Moreover, I contributed to the field of empirical research on the death penalty by compiling a more comprehensive dataset of capital cases and illuminating the inaccessible nature of criminal justice data in Virginia. By combining and refining data from Scott Phillips, Ben Schoenfeld, and the VC3 capital case database, I compiled what is currently the most comprehensive dataset of capital cases from the modern era of Virginia’s death penalty. Due to a lack of data on capital indictments, most research thus far has focused primarily on volume of death sentences and executions, but as shown by my findings regarding the distinct uses of the death penalty in the cities and the suburbs, omitting data on indictments leaves a large part of the
story untold. In addition to improving the state of data on the Virginia death penalty, I revealed some of its key flaws. While Virginia court clerks are statutorily required to send a copy of each capital indictment to the Supreme Court of Virginia to be kept in a central file, many fail to do so and the Supreme Court’s file is far from comprehensive. As a result, there is no centralized data source of capital cases in Virginia, and although mine is currently the most comprehensive dataset, it is far from complete. In order to more rigorously study the Virginia death penalty, the state of Virginia must improve its data collection efforts and make its data publicly available and accessible.

This thesis contributes to future research by piloting a theory of death penalty geography that can be more systematically evaluated in subsequent studies. Future research should include qualitative interviews with local actors, such as capital defense attorneys, district attorneys, and defendants, as well as multivariate regression analyses of the variables discussed here. New studies should also test the generalizability of my hypothesis by evaluating it in other states throughout the U.S. In addition, I wrote this thesis with the intention of benefiting abolition efforts by illuminating the driving forces behind the continued use of the death penalty. My findings about the disparate uses of the death penalty in the cities and the suburbs should be especially useful for abolitionists developing organizing strategies and capital defense attorneys developing litigation tactics. For instance, better understanding how geographic context influences the motivations of prosecutors could assist defense attorneys in preparing for negotiations and developing trial strategies. Moreover, civil society organizations like Virginians for Alternatives to the Death Penalty (VADP) have limited resources and may need to concentrate them in certain locations. Organizations like VADP can use the analysis of the Virginia death penalty presented in this thesis to more directly respond to its driving and to
expend resources in the places that need it most. Capital defense attorneys can use the social
scientific research presented in this thesis to make legal motions to bar the death penalty and
move case law gradually toward abolition. They can also draw attention to some of the
particularly disturbing and normatively unacceptable aspects of capital punishment revealed in
this thesis, such as its racially driven nature and the use of the death penalty as a bargaining chip
to, arguably, deprive defendants of their right to trial in urban counties.

Finally, the empirical findings presented in this thesis pose serious concerns about the
ethics and legitimacy of capital punishment in America. As Justice Harry Blackmun remarked in
1994, “Perhaps it should not be surprising that the biases and prejudices that infect society
generally would influence the determination of who is sentenced to death.”230 Indeed, in this
study I found that legacies of wealthy inequality, residential segregation, and white supremacy
infect and in fact drive the use of the death penalty in Virginia today. I expect that these findings
will be replicated in other states throughout the nation, implicating the modern U.S. death
penalty as a whole in these normative concerns. For both urban jurisdictions, which appear to be
using the death penalty to deprive defendants of their right to trial, and suburban jurisdictions,
which appear to use the death penalty as a symbolic defense against the fears of primarily white,
wealthy residents of the suburbs, the continued use of the death penalty should give pause to all
those who value formal equality under the law, the inherent dignity of human life, and the fair
administration of justice.

References


Appendix A: Number of Executions Since 1976 by State  
(as of February 23, 2018)

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Note: Excludes states without an execution since 1976.
Appendix B: Number of Capital Indictments Per Virginia County from 1995 to 2011
(excluding those without identified capital indictments)

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N=87.

Source: Author’s combined spreadsheet of capital indictments drawing from Scott Phillips’, Ben Schoenfeld’s, and the Virginia Capital Case Clearinghouse (VC3)’s data.
Appendix C: Number of Death Sentences Per Virginia County from 1996 to 2012
(excluding those without death sentences in this timeframe)

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N=34.

Appendix D: Number of Executions Per Virginia County from 2003 to 2017
(excluding those without death sentences in this timeframe)

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N=26.

## Appendix E: Summary Statistics for Demographics of Virginia Counties

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<td>% black (2000)</td>
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<td>% families under federal poverty level (2000)</td>
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<td>Murders per 100,000 population (2010)</td>
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<sup>231</sup> Values rounded to the nearest whole number.
### Appendix F: Virginia Counties with Top 30 Highest Murder Rates (2010)

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### Appendix G: Virginia Counties with Top 30 Highest Median Household Incomes (2000)

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Appendix H: Counties with Highest Number of Capital Indictments Compared with Death Sentence and Execution Totals and Population Density

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<td>0%</td>
</tr>
<tr>
<td>2</td>
<td>Richmond City</td>
<td>3293</td>
<td>33</td>
<td>2</td>
<td>6%</td>
<td>1</td>
<td>3%</td>
</tr>
<tr>
<td>3</td>
<td>Portsmouth City</td>
<td>3033</td>
<td>25</td>
<td>1</td>
<td>4%</td>
<td>1</td>
<td>4%</td>
</tr>
<tr>
<td>4 (tie)</td>
<td>Prince William County</td>
<td>831</td>
<td>20</td>
<td>6</td>
<td>30%</td>
<td>3</td>
<td>15%</td>
</tr>
<tr>
<td>4 (tie)</td>
<td>Virginia Beach City</td>
<td>1713</td>
<td>20</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>6</td>
<td>Chesterfield County</td>
<td>610</td>
<td>19</td>
<td>4</td>
<td>21%</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>7</td>
<td>Henrico County</td>
<td>1102</td>
<td>15</td>
<td>1</td>
<td>7%</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>8 (tie)</td>
<td>Nottoway County</td>
<td>50</td>
<td>14</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>8 (tie)</td>
<td>Rockingham County</td>
<td>80</td>
<td>14</td>
<td>2</td>
<td>14%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>10 (tie)</td>
<td>Franklin County</td>
<td>68</td>
<td>10</td>
<td>1</td>
<td>10%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>10 (tie)</td>
<td>Suffolk County</td>
<td>159</td>
<td>1</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>12 (tie)</td>
<td>Chesapeake City</td>
<td>585</td>
<td>9</td>
<td>0</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>12 (tie)</td>
<td>Danville City</td>
<td>1124</td>
<td>9</td>
<td>2</td>
<td>22%</td>
<td>1</td>
<td>11%</td>
</tr>
<tr>
<td>12 (tie)</td>
<td>Pittsylvania County</td>
<td>64</td>
<td>9</td>
<td>1</td>
<td>11%</td>
<td>1</td>
<td>11%</td>
</tr>
<tr>
<td>22 (tie)</td>
<td>Fairfax County</td>
<td>2455</td>
<td>6</td>
<td>4</td>
<td>67%</td>
<td>1</td>
<td>17%</td>
</tr>
</tbody>
</table>

Sources: See Appendix B, C, and D.
Note: Includes top 14 counties and counties with at least 4 death sentences (Fairfax, Chesterfield, and Prince William).

Key:
- Rural (up to 499 people per square mile)
- Suburban (500 to 2500)
- Urban (2500 and above)

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232 Per square mile.
233 Number of death sentences divided by the number of capital indictments.
234 Number of executions divided by the number of capital indictments.
## Appendix I: Demographics of Virginia Counties with Highest Number of Capital Indictments (1995-2011)

<table>
<thead>
<tr>
<th>County</th>
<th>Indictments</th>
<th>Death Sentence Rate</th>
<th>Population</th>
<th>Population Density</th>
<th>% White</th>
<th>% Black</th>
<th>% Families Below Poverty Level</th>
<th>Murder Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norfolk City</td>
<td>54</td>
<td>6%</td>
<td>234,403</td>
<td>4362.8</td>
<td>48.4</td>
<td>44.1</td>
<td>15.5</td>
<td>14.0</td>
</tr>
<tr>
<td>Richmond City</td>
<td>33</td>
<td>6%</td>
<td>197,790</td>
<td>3292.6</td>
<td>38.3</td>
<td>57.2</td>
<td>17.1</td>
<td>20.6</td>
</tr>
<tr>
<td>Portsmouth City</td>
<td>25</td>
<td>4%</td>
<td>100,565</td>
<td>3032.7</td>
<td>45.8</td>
<td>50.6</td>
<td>13.3</td>
<td>13.6</td>
</tr>
<tr>
<td>Prince William County</td>
<td>20</td>
<td>30%</td>
<td>280,813</td>
<td>831.3</td>
<td>68.9</td>
<td>18.8</td>
<td>3.3</td>
<td>2.2</td>
</tr>
<tr>
<td>Virginia Beach City</td>
<td>20</td>
<td>0%</td>
<td>425,257</td>
<td>1712.7</td>
<td>71.4</td>
<td>19.0</td>
<td>5.1</td>
<td>3.2</td>
</tr>
<tr>
<td>Chesterfield County</td>
<td>19</td>
<td>21%</td>
<td>259,903</td>
<td>610.5</td>
<td>76.7</td>
<td>17.8</td>
<td>3.3</td>
<td>3.2</td>
</tr>
<tr>
<td>Henrico County</td>
<td>15</td>
<td>7%</td>
<td>262,300</td>
<td>1101.8</td>
<td>68.9</td>
<td>24.7</td>
<td>4.5</td>
<td>3.9</td>
</tr>
<tr>
<td>Nottoway County</td>
<td>14</td>
<td>0%</td>
<td>15,725</td>
<td>50.0</td>
<td>57.2</td>
<td>40.6</td>
<td>15.5</td>
<td>6.3</td>
</tr>
<tr>
<td>Rockingham County</td>
<td>14</td>
<td>14%</td>
<td>67,725</td>
<td>79.6</td>
<td>96.6</td>
<td>1.4</td>
<td>5.3</td>
<td>0.0</td>
</tr>
<tr>
<td>Franklin County</td>
<td>10</td>
<td>10%</td>
<td>47,286</td>
<td>68.3</td>
<td>89.0</td>
<td>9.4</td>
<td>7.3</td>
<td>3.6</td>
</tr>
<tr>
<td>Suffolk City</td>
<td>10</td>
<td>0%</td>
<td>63,677</td>
<td>159.2</td>
<td>53.8</td>
<td>43.5</td>
<td>10.8</td>
<td>3.5</td>
</tr>
<tr>
<td>Chesapeake City</td>
<td>9</td>
<td>0%</td>
<td>199,184</td>
<td>584.6</td>
<td>66.9</td>
<td>28.5</td>
<td>6.2</td>
<td>4.5</td>
</tr>
<tr>
<td>Danville City</td>
<td>9</td>
<td>22%</td>
<td>48,411</td>
<td>1124.2</td>
<td>53.9</td>
<td>44.1</td>
<td>15.9</td>
<td>20.9</td>
</tr>
<tr>
<td>Pittsylvania County</td>
<td>9</td>
<td>11%</td>
<td>61,745</td>
<td>63.6</td>
<td>75.0</td>
<td>23.7</td>
<td>8.6</td>
<td>6.3</td>
</tr>
<tr>
<td>Fairfax County</td>
<td>6</td>
<td>67%</td>
<td>969,749</td>
<td>2454.8</td>
<td>69.9</td>
<td>8.6</td>
<td>3.0</td>
<td>2.1</td>
</tr>
</tbody>
</table>

Sources: See Appendix B, C, D, and E.

Note: This table includes the top 14 counties with the highest number of the capital indictments as well as counties with at least 4 death sentences (Fairfax, Chesterfield, and Prince William) that did not make it into the top 14 (Fairfax). The death sentence and execution rates may be slightly inflated because the list of capital indictments is not exhaustive, while the death sentence and execution totals are. Nonetheless, they serve as an accurate point of comparison between different counties’ ability or intent to fully pursue capital cases.

Key:
- Rural (up to 499 people per square mile)
- Suburban (500 to 2500)
- Urban (2500 and above)
## Appendix J: Summary of Case Studies Used in Qualitative Analysis

<table>
<thead>
<tr>
<th>Defendant</th>
<th>Year</th>
<th>County</th>
<th>Defendant demographics</th>
<th>Victim demographics</th>
<th>Predicate</th>
<th>Stranger Victim</th>
<th>Cross-racial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ted Carter</td>
<td>2011</td>
<td>Virginia Beach</td>
<td>Black male</td>
<td>1 white male</td>
<td>Robbery</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Jason Andrew James</td>
<td>2007</td>
<td>Henrico</td>
<td>Black male</td>
<td>1 black male, 1 black female</td>
<td>Multiple</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Marcus Valentino Garrett</td>
<td>2008</td>
<td>Virginia Beach</td>
<td>Black male</td>
<td>1 white female and 2 white males</td>
<td>Multiple</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>John Moses Ragin</td>
<td>2014</td>
<td>Newport News</td>
<td>Black male</td>
<td>2 black females, 2 black males</td>
<td>Multiple, children</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Alfredo Prieto</td>
<td>2012</td>
<td>Fairfax</td>
<td>Hispanic male</td>
<td>1 white female, 1 white male</td>
<td>Rape, multiple</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Joshua Andrews</td>
<td>2010</td>
<td>Prince William</td>
<td>Black male</td>
<td>3 black males</td>
<td>Robbery, multiple</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Mark Sheppard</td>
<td>1995</td>
<td>Chesterfield</td>
<td>Black male</td>
<td>1 white male</td>
<td>Robbery</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Paul Powell</td>
<td>2001</td>
<td>Prince William</td>
<td>White male</td>
<td>2 white females</td>
<td>Rape</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Sources: Brandon Garrett Collection of Criminal and Death Penalty Trial Transcripts; Virginia Capital Representation Resource Center Digital Collection of Trial Transcripts; VC3 Capital Case Database.
## Appendix K: Summary of Independent Variables

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Measure or Proxy</th>
<th>Type of Variable</th>
<th>Data Source</th>
<th>Expected Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Racial demographics</td>
<td>% white, % black</td>
<td>Continuous(^{235})</td>
<td>US Census Bureau: 2000 Census</td>
<td>Higher % white in county increases DP activity</td>
</tr>
<tr>
<td>Racial demographics of neighboring counties</td>
<td>Is there a neighboring county that is more than 14% black?</td>
<td>Dichotomous</td>
<td>US Census Bureau: 2000 Census</td>
<td>Yes → more DP activity</td>
</tr>
<tr>
<td>Poverty level</td>
<td>% families under federal poverty line</td>
<td>Continuous</td>
<td>US Census Bureau: 2000 Census</td>
<td>Higher unemployment → more DP activity</td>
</tr>
<tr>
<td>Poverty level of neighboring counties</td>
<td>Is there a neighboring county with more than 8% of its families living below the poverty level?</td>
<td>Dichotomous</td>
<td>US Census Bureau: 2000 Census</td>
<td>Yes → more DP</td>
</tr>
<tr>
<td>County budget</td>
<td>Median household income</td>
<td>Continuous</td>
<td>US Census Bureau: 2000 Census</td>
<td>Higher budget → more DP</td>
</tr>
<tr>
<td>Homicide rate</td>
<td>Homicide rate</td>
<td>Continuous</td>
<td>FBI Uniform Crime Reports: 2010</td>
<td>Low homicide rate → more DP</td>
</tr>
<tr>
<td>Homicide rate of neighboring county</td>
<td>Is there a neighboring county with more than 2 murders per 100,000 population?</td>
<td>Dichotomous</td>
<td>FBI Uniform Crime Reports: 2010</td>
<td>Yes → more DP</td>
</tr>
</tbody>
</table>

\(^{235}\) Technically cardinal but I will treat it as continuous.
<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Measure or Proxy</th>
<th>Type of Variable</th>
<th>Data Source</th>
<th>Expected Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population density</td>
<td>Population per square mile</td>
<td>Continuous</td>
<td>US Census Bureau: 2000 Census</td>
<td>Higher pop. density $\rightarrow$ more DP</td>
</tr>
<tr>
<td>Population density of neighboring counties</td>
<td>Is there a neighboring county with more than 2500 people per square mile?</td>
<td>Dichotomous</td>
<td>US Census Bureau: 2000 Census</td>
<td>Yes $\rightarrow$ more DP</td>
</tr>
<tr>
<td>Population</td>
<td>Number of people</td>
<td>Cardinal</td>
<td>US Census Bureau: 2000 Census</td>
<td>Higher pop. $\rightarrow$ more DP</td>
</tr>
</tbody>
</table>

Table created by author.
Appendix L: Percent Black in Virginia and Surrounding Counties in 2000 and 2010


Appendix N: Families with Incomes Below the Federal Poverty Level in 1999

Appendix O: Murder Rate in Virginia and Surrounding Counties in 2010


Murders reported per 100,000 population
Appendix P: Population Density Per Square Mile in Virginia and Surrounding Counties in 2000

Appendix Q: Total Population in Virginia and Surrounding Counties in 2000

Appendix R: Median Household Income in Virginia and Surrounding Counties in 1999

Appendix S: States With and Without the Death Penalty (2016)

States with and without the death penalty
as of November 9, 2016