The Daily Tar Heel

Perspective

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Section C

Should capital punishment be abolished?

Yes

Continued support for a policy of legally sanctioned execution is anachronistic in an era which professes a rebirth of humanism and which allegedly strives for advancement of the human condition. Capital punishment serves no purpose other than retribution within the law, an end which should no longer be acceptable in an enlightened society.

Supporters of the death penalty have claimed that the possibility of execution deters potential murderers, rapists and perpetrators of similar heinous acts from terrorizing society. Reasoning, historical precedent and expert investigation prove the deterrence rationale to be a shallow disguise for baser objectives.

Probability of punishment is a key to the deterrence theory. If a criminal is not likely to be subjected to punishment, why should threatened punishment deter him or her? Italian jurist Cesare Beccaria argued as early as 1764 that deterrence results from the certainty, not the severity of punishment.

Because not all crimes are reported (especially crimes like rape), not all reported crimes lead to apprehended suspects, not all apprehended suspects are charged, not all charged are brought to court and not all brought to court are convicted (even when guilty), the certainty of capital punishment (indeed, *any* punishment) is not high. Plea bargaining to reduce charges and jury reluctance to convict defendants facing severe penalties further erode the probability of punishment. Chances of suffering any penalty may be so low that potential miscreants are not deterred at all.

Historical precedents bear this out. Thorsten Sellin, professor emeritus at the University of Pennsylvani's Center for Studies in Criminology and Criminal Law and foremost among American authorities on deterrence, has compared the homicide rates in states which have retained the death penalty with those that have abolished it. On the basis of his studies examining homicide rates since the 1920s, Sellin concludes that "the death penalty, as we use it, exercises no influence on the extent or fluctuating rates of capital crimes. It has failed as a deterrent."

Schuessler argues that even increased certainty of punishment would not increase deterrence. Defining the risk of execution as the number of executions for murder per 10,000 homicides for the period 1937-49, his analysis of 41 states with the death penalty reveals that "the homicide rate does not consistently fall as the risk of execution increases."

Schuessler and others think that murderers seldom consider the possible consequences of their actions because of their preoccupation with the act of murder, the intimacy of many murders and the perceived necessity of others regardless of risks. Case studies and testimony from condemned (and later executed) criminals support this alternative explanation of the failure of deterrence.

The extremist claims of law enforcement officials notwithstanding, capital punishment can be renounced safely, as Associate Professor of Philosophy at the University of Texas Edmund Pincoffs indicates in 1966: "... there is ample evidence that capital punishment can be abolished without an advance in the rate of crimes it purportedly discouraged."

The death penalty does nothing to deter potential wrongdoers. It obviously has no rehabilitative value, and any value as a means to segregate the criminal from the noncriminal is surely not worth the evocation of extreme disdain for life such segregation expresses. Vengeance is unacceptable as a policy objective. The most obvious social value reinforced by capital punishment is that life is expendable at the hands of the state. Therefore, none of the major functions of criminal law is fulfilled by execution.

What is lost in a society in which life is so readily undervalued? Even though no one has been executed in the U.S. since 1967, the very existence of a system sanctioning death at the hands of the state is repulsive.

The application of the death penalty is inherently discriminatory because the criminal justice system as a whole discriminates against the undereducated and the poor. An eight-year study of California jury verdicts in first-degree murder trials in the 1960s revealed that 42 per cent of blue-collar workers convicted received death sentences while only five per cent of white-collar workers convicted were so condemned. Sixty-seven per cent of those with "low job stability" were condemned, whereas only 39 per cent of those with stable job backgrounds were condemned.

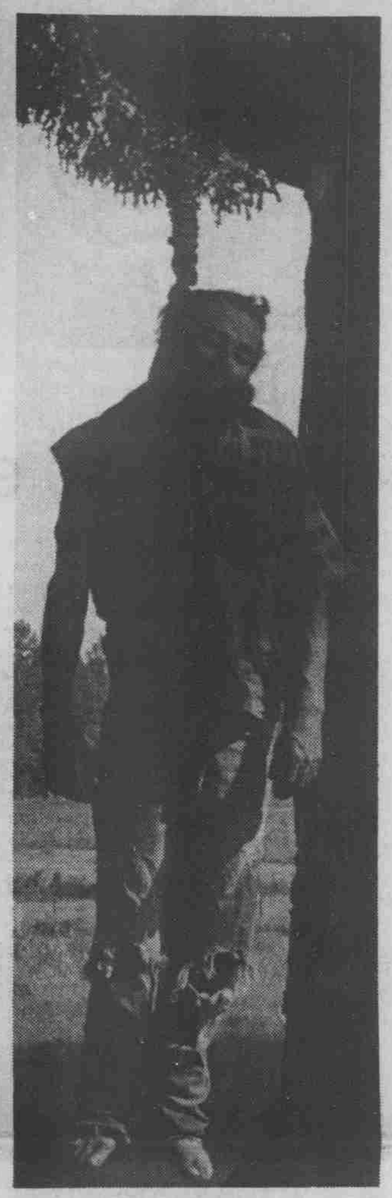
Although the 1972 case *Furman v. Georgia* struck down discretionary capital crime laws because of such discriminatory use, mandatory laws passed pursuant to that decision may still be applied to the disadvantaged more frequently while the advantaged classes bargain for lesser charges and thus lesser penalties.

No matter who is sentenced to die, the legal sanction of death devalues life. Society concedes that there are occasions in which it may collectively opt to end life, a concession which indicates that the full weight of law does not favor the preservation of life. Rather than attempt to rehabilitate an offender (an approach former Attorney General Ramsey Clark says is superior to execution), society cuts off the hand that offends. With the frailties of our justice system, even the innocent may be condemned to die.

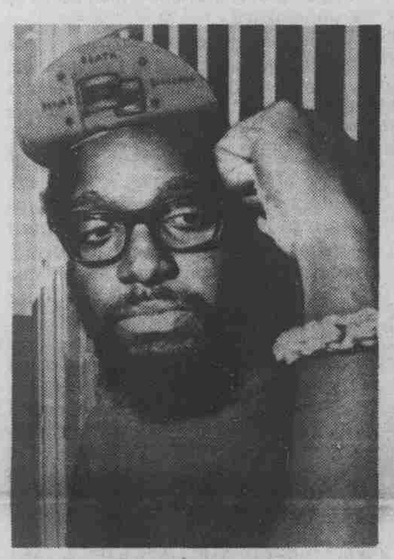
And it is all the more offensive because the condemned must suffer more than even their victims.

As Feodor Dostoyevsky wrote in *The Idiot*, "To kill for murder is a punishment incomparably worse than the crime itself. Anyone murdered by brigands... must surely hope to escape till the very last minute... but in the other case all that last hope, which makes dying ten times as easy, is taken away for certain. There is the sentence, and the whole awful torture lies in the fact that there is certainly no escape, and there is no torture in the world more terrible."

We must abolish the death penalty and reaffirm our commitment to life.



Joan Little (above) escaped the threat of capital punishment when charges against her were dropped to a non-capital offense. Jesse Fowler (below) awaits a Supreme Court ruling due this fall on an appeal of his death sentence.



No

To dismiss capital punishment as a useless and distasteful remnant of earlier and crueler times is to not appreciate the larger issues involved in a discussion of crime, deterrence, the moral function of law and the furtherance of community values. Much is said about the deterrence value of the death penalty, but even if someone indisputably established that it had no deterrent effect, the function of capital crime laws as a measure of the value of life and person would by itself justify the maintenance of capital punishment as one of many legal devices.

While there is some dispute over the deterrent effect of capital punishment, as long as this ultimate punishment has some hope of preventing even only a few handfuls of attacks it is worth keeping. In the words of Ernest van den Haag, New York University professor of social philosophy in 1969, "... the uncertainty which confronts us favors the death penalty as long as by imposing it we might save future victims of murder. ... Though we have no proof of the positive deterrence of the penalty, we also have no proof of zero, or negative effectiveness."

A study by the Los Angeles Police Department in 1970-71 offers an indication of the possible deterrent value. More than half (50.5 per cent) of the persons arrested for violent crimes interviewed in the study said they did not carry or use lethal weapons in committing crimes because they feared the death penalty. Only 10.1 per cent said they were undeterred by the threat of the gas chamber.

The death penalty may be the only hope of deterring certain individuals. The 1953 Report of the (British) Royal Commission of Capital Punishment pointed out that "in the case of a violent prisoner undergoing a life sentence the death penalty may be the only effective deterrent against his making a murderous assault on a fellow prisoner or a member of the prison staff."

But deterrence is not the only function of capital punishment nor of any criminal law. The Judaic code of "an eye for an eye" is not an attempt to sanction private vengeance by granting it a public channel. Rather, the maxim underscores that punishment should be appropriate to the crime punished, that the value of life is reinforced by requiring that anyone who denigrates it forfeit his or her own.

"The ultimate justification of any punishment is not that it is a deterrent," wrote Lord Justice Dunning of the Royal Commission on Capital Punishment, "but that it is the emphatic denunciation by the community of a crime; and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty."

That emphatic denunciation may in turn have a deterrent effect, the Royal Commission concluded, "by building up in the community, over a long period of time, a deep feeling of peculiar abhorence for the crime of murder."

As an expression of the values of the majority of Americans, the death penalty embodies certain mores against murder, rape and similar violent crimes. A 1972 state-wide referendum in California found that 68 per cent of the state's voters favored capital punishment, and a January 1974 national poll showed that 57 per cent of American adults favored use of the death penalty.

By expressing and shaping societal attitudes toward murder and violent assault, the death penalty in actuality affirms the values we place on life. Nebulous ideas of enlightened humanism cannot be offended by a punishment that affirms life and enjoys the clear support of a majority of the society.

Lest one reject the death penalty because it has at times been used arbitrarily or against lower socio-economic minorities, further explanation is in order. The fact that more minorities are sentenced to death may or may not be due to discrimination. In the words of Raymond Ewing, a black state senator from Illinois, "I realize that most of those who would face the death penalty are poor and black and friendless. I also realize that most of their victims are poor and black and friendless and dead."

The death penalty is not intrinsically capricious. As University of Texas Professor of Philosophy Edmund Pincoffs points out, "So far as justice is concerned, capital punishment can be as impartially administered as any other mode of punishment."

In 1972, the U.S. Supreme Court set forth an opinion in *Furman vs. Georgia* that laws which permit the discriminatory application of the death penalty are unconstitutional because of their cruel and unusual nature. Since that decision, numerous states (including North Carolina) have redrafted their capital crime laws to require mandatory execution upon a finding of guilt. Although this ruling is now under challenge in another Supreme Court case, its prohibition against discrimination should help end abuses of the kind that have occurred in the past.

This is not to say that all individuals who have committed capital offenses ought to be gassed or electrocuted or shot or hung. Convicted offenders with potential for rehabilitation can be spared under a system of capital punishment by commutation of sentence to life imprisonment by a governor or the president.

But as Professor Pincoffs declares, "What has not been sufficiently recognized by the general public... is that imprisonment can be a kind of torture worse than mutilation or the rack." Columbia University Professor Jaques Barzun concurs: "Whereas the objector to capital punishment *feels* that death is the greatest of evils, I *feel* that imprisonment is worse than death."

Perhaps long-range efforts aimed at de-criminalizing human tendencies may be the ultimate answer to all violent crime: the great leap toward a humanistic utopia. Until that paradise is within sight, however, we must maintain the option and the affirmative presence of legal execution for capital offenses.

Tom Boney

The War of Northern Aggression

There used to be a history teacher here at the University who jokingly referred to the conflict which took place in this country between 1861-1865 as "The War of Northern Aggression."

Apparently the Yanks do not know that the war is over, for they won another victory during the summer. The battle was fought in Washington over the proposed extension of the Voting Rights Act of 1965.

Southern patriots were angered by the attempt to renew an act which they regarded as cruel, unusual and punitive legislation aimed solely at their states.

A similar battle was fought in 1965 over original adoption and again in 1970 over renewing it for five more years. Leading the Southern forces in those days was "General" Sam J. Ervin, Jr. of North Carolina.

Ervin

leading the Southern forces

Ervin, however, had retired from active duty by this summer and was replaced as commander by James B. Allen of Alabama who led a spirited, but fruitless, attack against the more numerous Northerners.

The opponents of this law—including this writer—do not oppose legitimate voting rights for anybody. We do object most strenuously to the singling out of a few, in this instance Southern, states for punitive legislation.

While it is true that scattered countries in Arizona, Alaska and elsewhere are affected, the law's primary intent and effect has been to impose Federal supervision of state voting procedures in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia and 39 counties here in North Carolina. (And we thought Reconstruction was over).

The general principles of the act are, and always have been, commendable. To provide an equal opportunity for blacks to register to vote and to actually vote is a worthy objective. However, there is always the question of whether the end justifies the means used to obtain it. In this case we think the answer is clearly no. The means used to achieve the goal are, and always have been, grossly unfair.

The worst feature of the law is that it presumes guilt on the part of the Southern states. Since 1965, every law affecting voting **in any way** must be given **prior** approval by the Attorney General of the United States. Thus, an appointed, nonjudicial Federal official exercises veto power over the duly-elected state legislatures of seven Southern states. The North Carolina General Assembly can enact voting legislation, but until the U.S. Attorney General says it's okay, that legislation cannot become law in the State of North Carolina. No such provision exists in any but these covered states.

For even such minor changes as municipal annexations, changes in precinct boundaries, new location for voting, the Attorney General must issue his seal of approval. Communities which propose such changes must prove that the changes are **not** designed to discriminate. In other words, they must prove their innocence—a requirement which is in direct opposition to traditional American jurisprudence.

The major sponsor of the extension bill, Democratic Sen. John Tunney of California, flatly admitted that if this provision were applied nationwide, the law would be ruled unconstitutional. We are at a loss to understand why something which would be unconstitutional if applied nationally is legal when applied only to seven states in one region of the country.

Former Supreme Court Justice Hugo Black was so right when he wrote that the Southern states were being treated as "conquered provinces" under the law. Attempts by Ervin in 1970 and Allen in 1975 to eliminate the pre-clearance doctrine or apply it nationally were defeated.

Of the 4,476 laws reviewed by the Attorney General, only 4 percent (163 laws) have been overturned. It should be clear that in 1975 there is no deliberate attempt to deprive blacks of the vote. Yet this unnecessary and burdensome doctrine has been extended for seven more years.

Another part of the law requires that all election disputes be handled by the U.S. District Court for the District of Columbia. There are U.S. District Courts in Greensboro and Charlotte right here in North Carolina. But, oh no, Southerners have to hike all the way up to Washington. Federal District Courts down here might be too easy on us. Such a provision shows outright contempt for traditional legal processes. Once again, efforts to amend this section have been rebuffed.

To be affected by the law, a state which had maintained literacy tests as a prerequisite to voter registration must have had either less than 50 per cent of eligible voters registered on November 1, 1964, or less than 50 per cent who actually voted in the 1964 election.

There is no way to escape from that 1964 "sin" of having less than 50 per cent registered or voting. Even if 100 per cent of the eligible citizens registered **and** turned out to vote in the Presidential elections of 1968 or 1972 the state is still subject to the law.

Congress has repeatedly refused to update the 1964 basis for coverage. Ervin tried in 1970 to get the effective date moved to the election of 1968. This year, Allen tried amending the effective date to the most recent Presidential election—1972. But no, the Yankees did not want that because then some Southerners might have "escaped" and some Northern counties might have been included.

So the extension is still based on voting trends of **eleven** years ago.

We hope that the United States Congress will, in the future, confine its deliberations to measures which treat all 50 states equally. Regardless of the attractive goal, proper procedures—administered fairly and equally—must be adhered to.

The one saving grace of the Voting Rights Battle was an amendment by Senate Majority Whip Robert Byrd which extended the act for seven years rather than the 10 which had been originally advocated. That comfort is about like knowing that Carolina lost to N.C. State by seven points instead of 10. Another battle is scheduled for 1982 when the Yanks will probably want to extend the act indefinitely. We hope the South will choose that occasion to rise again and throw off this yoke of oppression.

Tom Boney is a senior journalism major from Graham, N.C. and recipient of Sigma Delta Chi's Mark of Excellence Award for editorial writing.

Tunney

Voting Act "unconstitutional"