

A DYING PENALTY?

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The death penalty is doomed. Nothing is more certainly engraved in the book of human destiny than that capital punishment eventually will be abolished everywhere, including Georgia. It is not a question of whether but only of when, to adopt the felicitous words of the late Chief Justice Earl Warren, "the evolving standards of decency that mark the progress of a maturing society" will end all executions forever.

For 200 years the humane, humanizing, ever-developing influences of the 18th century Enlightenment have been penetrating every quarter of the globe. The Enlightenment unleashed irresistible civilizing influences that have been changing social manners and political institutions around the world ever since. Part of this irreversible tide of change, of improved sentiments and improving moral values, has been a growing distaste for any government-sanctioned violence, brutality, or cruelty. This growing concern about brute force committed in the name of the law has produced numerous trends favoring social or governmental reform--for example, the trends that led to the abolition of legal slavery, lawful torture, and state-sponsored religious persecution, and the trend that now is moving in the direction of abolition of the death penalty.

Although the worldwide trend away from use of death as a criminal punishment is retardable for a generation or two in some places, the trend is unalterable, even in the Deep South and even in Georgia. The United States is one of very few Western democracies where executions still take place, but sooner or later executions will end in all the states, including Georgia. The day of punishing criminals by killing them will have passed. Future generations will look back at capital punishment with the same revulsion and incomprehension with which our generation views witchcraft prosecutions, forced religious conversions, boiling in oil, or burning at the stake.

Abolishing Executions

The decline of the death penalty in America dates back to first half of the 19th century. Since 1930--and even more since 1960--this decline has been accelerating.

The number of annual executions in this country has steadily declined during the 20th century, even though the size of the population has been increasing. In 1930 there were 155 executions in America; there were 124 in 1940; 82 in 1950; 56 in 1960; none in both 1970 and 1980; and 23 in 1990. There were 1,667 American executions in the 1930's, 1,284 in the 1940's, 717 in the 1950's, 191 in the 1960's, 3 in the 1970's, and 117 in the 1980's. In 1992 there were 31 executions in this country, compared to 199 in 1935.

Everywhere in America the death penalty is in decay. Of the millions of violent crimes committed each decade, hardly any are capital offenses anymore. Fourteen states have now abolished the death penalty. In the 36 states where it still exists it is limited to the crime of murder, as it is in the federal courts. There are fewer and fewer capital crimes on the books.

There are fewer capital prosecutions commenced, fewer capital sentences imposed. There has been a steady decline in the murder/death sentence ratio, as well as the murder/execution ratio. Only a tiny percentage of the murders committed annually result in a death sentence, and only a tiny percentage of convicted murderers are actually executed. The legal procedures required to impose and execute a death sentence have grown increasingly difficult, expensive, and time-consuming.

Methods of execution have become more humanized, while at the same time the public spectacle has been eliminated, with executions becoming strictly private events. Only a handful of officially approved witnesses attend executions, watching from a room separated from the death chamber by a thick wall of glass. All efforts to televise or broadcast judicial executions--and thereby allow Americans to see just what happens when the condemned is hanged, shot, electrocuted, asphyxiated, or given a lethal injection--meet granitic opposition from the law and order establishment.

Ending Georgia's Death Penalty

Any discussion of abolishing capital punishment in Georgia must begin with the recognition that Georgia already has partially abolished it. Georgia has abolished mandatory capital punishment. Georgia has abolished capital punishment for all crimes except murder. Georgia has abolished the death penalty for all murders not especially atrocious. Georgia has abolished execution of the retarded. Georgia has abolished execution of juveniles under 17. Georgia has abolished local or public executions. Georgia has abolished all death penalty legislation intended to uphold slavery or applicable only to black people. Georgia has abolished hanging.

These numerous steps which Georgia has already taken in the direction of abolishing the death penalty cannot be blamed on outside agitators or meddling federal judges. The steps represent Georgia's upwardly-evolving standards of justice and moral sentiment. These steps are for the most part the direct results of the will of the people of Georgia, expressed through reform statutes passed by the General Assembly and judicial decisions of this state's supreme court.

Georgia has also abolished the practice of executing frequently or commonly. Over the past 75 years, executions in Georgia have become increasingly rare events. There were 59 executions in Georgia from 1925 to 1930; 79 from 1931-1935; 64 from 1936-1940; 65 from 1941-1945; 66 from 1946-1950; 42 from 1951-1955; 36 from 1956-1960; 8 from 1961-1964; 12 from 1965-1970; 12 from 1971-1975; 12 from 1976-1980; 12 from 1981-1985; 12 from 1986-1990; and 6 from 1991-1994. In the 1930's the average number of executions per year in Georgia was 14; the number was 13 in the 1940's, 8 in the 1950's, less than 1 in the 1960's, and less than 2 during the eleven years from 1983 to 1994. There were 7 Georgia executions in 1930, 14 in 1940, 13 in 1950, 6 in 1960, and none in 1970, 1980, and 1990. Between 1983 and 1994 Georgia executed only 18 inmates, compared to 18 Georgia executions in the year 1943 alone.

What there still is of the death penalty in Georgia is only a shadow of what it once was, only a hollow straw man, a pitiful vestigial remainder. After centuries of legal and social change that have crippled and discredited it, capital punishment maintains a feeble existence, like an obsolete dinosaur that lingers on in an inappropriate geological age. The very legislative and judicial reforms that have eviscerated capital punishment have also, ironically, made its abolition more

difficult by concealing its most gruesome features from the general public.

There is not much left of death as a punishment for crime. Its abolition should be seen not as a radical, drastic, or dangerous step, but only as the logical conclusion of a lengthy series of reforms that already have removed capital punishment from the center stage in criminal justice and demoted it to the status of an expensive, obsolescent penalty applicable solely to a few murders, infrequently imposed, and rarely (and secretly) carried out. Abolition of capital punishment will not drastically alter the administration of criminal justice in America. Abolition of capital punishment means that 100 percent, instead of the present 85 percent, of the persons convicted of murder will receive sentences of imprisonment rather than death, and that instead of 90 percent of convicted murderers escaping execution, 100 percent will.

Death Penalty Myths

Capital punishment in Georgia probably would have vanished decades ago if it were not for widespread acceptance of certain myths purporting to vindicate the death penalty.

One of these myths is the notion that capital punishment for murder is justified by the "eye for an eye" principle: if you take someone's life, you lose yours. (Note that this "argument" is a defense of the death penalty for murder, but not for any other crime.) The argument is a myth because it is no longer rooted in the realities of capital punishment in America. Mandatory capital punishment for murder was abolished long ago, and since around 1900 the death penalty has been imposed for only a small percentage of the total murders committed. For many years the death penalty for murder has been limited, in the words of Stanford University law professor Anthony G. Amsterdam, to "a rare, sparse handful of convicted murderers ..."

"We do not and cannot act upon [the proposition it is fair and just to take the life of one who has taken another's life]," notes retired Columbia University law professor Herbert Wechsler. "The problem rather is whether a small and highly random sample of people who commit murder ... ought to be dispatched, while most of those convicted of ... [murder] are dealt with by imprisonment."

Another widely believed pro-death penalty myth is the view that executions are cheaper than locking people up, that it is less expensive to execute an offender than to imprison him or her for life. This myth is particularly loathsome, since it assumes that it is morally acceptable for the state to kill convicted criminals simply to save money. But quite apart from its moral weaknesses, this myth suffers from two fatal defects. First, studies show that, given the enormous expense of capital punishment these days, it is in fact cheaper to imprison offenders for life than to execute them. In fact, studies show that it is cheaper to sentence offenders to life in prison without parole than it is to execute them.

Second, the real question is not the narrow question whether it is less expensive to execute criminals than to jail them, but the broader question whether a criminal justice system with the death penalty is less expensive than one without. And there can be no doubt how this question must be answered. As an article published in the *Loyola of Los Angeles Law Review* in 1989 has observed: "Several scholarly works have concluded that a criminal justice system which uses

the death penalty costs more than a system in which life imprisonment is the ultimate punishment." The same article also notes: "[C]osts are higher for every justice component for death penalty cases."

In 1979 Georgia spent one million dollars for a new electric chair, a new death chamber, and wire fences designed to control demonstrators for or against the death penalty.

That the death penalty deters murders is another myth that sustains capital punishment. There is no reliable evidence that the death penalty deters murders more effectively than life imprisonment. Social scientists have carried out multitudinous tests and studies to examine the deterrent effect, if any, of capital punishment in the United States. After comparing abolitionist and retentionist states in every possible statistical way and from every perspective, the scientists have totally failed to uncover any evidence that the death penalty has any measurable effect on murder rates. There is no evidence, for example, that murder rates are less in jurisdictions retaining capital punishment. Indeed, abolitionist states as a group have lower homicide rates than retentionist states; and the states that have executed the most are the states with the highest homicide rates. Nor is there any evidence that police officers or prison guards are safer in states retaining the death penalty.

Executing Innocents

As long as the death penalty is carried out, there is a risk that an innocent person will be executed. No one really knows exactly how many innocent persons have been executed in this history of America. No governmental statistics are kept on the subject, and there are no governmental agencies or projects assigned to investigate cases where innocent persons have been executed. However, according to the best and most reliable studies conducted by scholars, at least 25 innocent persons have been executed in the United States since 1900.

Even putting these scholarly studies to one side, no one who has examined the history of the death penalty in this country can seriously doubt that executions of the innocent have occurred. Innocent persons have been placed on trial for capital offenses; innocent persons have been convicted of capital offenses; innocent persons have been sentenced to death; innocent persons have had their death sentences upheld on appellate review; innocent persons have had their death sentences upheld on postconviction review; innocent persons have escaped execution solely because they were granted executive clemency; and innocent persons have come within an eyelash of being executed. There is no reason to doubt that occasionally some of the innocents sentenced to death have been executed.

Watt Espy, of the Capital Punishment Project in Headland, Alabama, who knows more about the history of executions in America than anyone else, believes that far more innocent persons have been executed than previously realized. Indeed, he is convinced increasing knowledge about executions of the innocent will eventually undermine popular support for capital punishment.

"The punishment is so final," Espy says. "There's no rectifying a mistake."

England abolished the death penalty in 1965 in large part because it had been conclusively

proved that an innocent man, Timothy J. Evans, had hanged in 1950. Evans had been convicted of killing his wife and infant daughter, both of whom, it later turned out, actually had been murdered by a necrophilic serial killer and ex-policeman named John Reginald Halliday Christie.

Several innocent persons have come close to being executed in Georgia in recent years. In the 1970's two men--Jerry Banks in Henry county, and Earl Charles in Chatham county--were sentenced to death and spent several years in prison awaiting execution until they were exonerated and released. In 1991 an innocent person, Gary X. Nelson of Savannah, was released after serving 10 years on death row. In the Banks and Charles cases the erroneous conviction was due to police misconduct; in the Nelson case the problem was prosecutorial misconduct, complicated by erroneous trial testimony by an expert from the state crime lab. In all three cases the exoneration of the condemned person was a matter of luck and fortuity. In all three cases the erroneously condemned person was a black male.

There is only one way to prevent the ultimate injustice, the execution of an innocent person. And that is to stop executing anyone.

Basic Facts About Executions in Georgia, 1735-1994

Total Executions 1,153

Juveniles executed 47 (35 hanged, 12 electrocuted)

Females executed 20 (19 hanged, 1 electrocuted)

Total Executions, 1924-1964 421 (6 hangings, 415 electrocutions)

Executions by sex, 1924-1964 420 males (99%), 1 female* (1%)

Executions by race, 1924-1964 340 blacks (81%), 81 whites (19%)

Executions for murder, 1924-1964 344

Executions for murder by race, 1924-1964 269 blacks (78%), 75 whites (22%)

Executions for rape, 1924-1964 66

Executions for rape by race, 1924-1964 63 blacks (93%), 3 whites (7%)

Executions for armed robbery, 1924-1964 6

Executions for armed robbery by race, 1924-1964 6 blacks (100%), 0 whites

Total Executions, 1930-1964 367 (all electrocutions except 1 hanging)

Executions by race, 1930-1964 299 blacks (81%), 68 whites (19%)

Total Executions, 1983-1994** 18 (all for the crime of murder)

Executions by race, 1983-1994 12 blacks (67%), 6 whites (33%)

Executions by sex, 1983-1994 18 males (100%), 0 females

Total Georgia Executions, 1924-1994 439 (6 hangings, 433 electrocutions)

*The black female executed was Lena Baker, 44, convicted of murder in Randolph county and electrocuted on Mar. 5, 1945.

**For 19 years, from Nov. 1964 until Dec. 1983, there were no executions in Georgia.

Yearly Executions in Georgia, 1924-1994

| Year | No. Executions | Year | No. Executions |
|------|----------------|------|----------------|
| 1924 | 2 | 1952 | 11 |
| 1925 | 3 | 1953 | 8 |
| 1926 | 11 | 1954 | 12 |
| 1927 | 11 | 1955 | 4 |
| 1928 | 15 | 1956 | 6 |
| 1929 | 12 | 1957 | 14 |
| 1930 | 7 | 1958 | 6 |
| 1931 | 18 | 1959 | 4 |
| 1932 | 12 | 1960 | 6 |
| 1933 | 14 | 1961 | 3 |
| 1934 | 13 | 1962 | 1 |
| 1935 | 23 | 1963 | 2 |
| 1936 | 11 | 1964 | 2 |
| 1937 | 16 | 1965 | 0 |
| 1938 | 15 | 1982 | 0 |
| 1939 | 8 | 1983 | 1 |
| 1940 | 14 | 1984 | 2 |
| 1941 | 6 | 1985 | 3 |
| 1942 | 11 | 1986 | 1 |
| 1943 | 18 | 1987 | 5 |
| 1944 | 10 | 1988 | 1 |
| 1945 | 19 | 1989 | 1 |
| 1946 | 16 | 1990 | 0 |
| 1947 | 16 | 1991 | 1 |
| 1948 | 13 | 1992 | 0 |
| 1949 | 8 | 1993 | 2 |
| 1950 | 13 | 1994 | 1 |
| 1951 | 7 | --- | --- |

UPDATE

JULY 25, 2006

EXECUTIONS IN GEORGIA SINCE 1994

TOTAL GEORGIA EXECUTIONS SINCE 1994: 20

TOTAL GEORGIA EXECUTIONS BY ELECTROCUTION (1924-1998): 437

TOTAL GEORGIA EXECUTIONS BY LETHAL INJECTION (1998-2006): 16

TOTAL GEORGIA EXECUTIONS SINCE 1735: 1173

TOTAL GEORGIA EXECUTIONS SINCE 1924: 475

TOTAL GEORGIA EXECUTIONS SINCE DEC. 1983 (WHEN GEORGIA RESUMED
EXECUTIONS FOR THE FIRST TIME SINCE 1964): 38

MOST RECENT GEORGIA EXECUTION: July 12, 2005