

The Decline of Capital Punishment in North Carolina

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We review statistical trends in the use of capital punishment since 1977 with particular attention to explaining recent declines. Issues of innocence, cost, problems in the administration of executions, and most recently the Racial Justice Act have led to dramatic declines in capital sentencing rates and to a suspension since 2006 of actual executions in the state with the nation's eighth most active death chamber. Building on our previous independent studies of national-level trends and issues more specific to North Carolina, we present comprehensive and newly collected data on trends, race and gender effects on the likelihood of capital sentences, and new information on reversal rates among those initially sentenced to death. Data come from Department of Corrections information about death row inmates and other official sources. We also report data previously collected by Unah based on an intensive study of each stage of the capital punishment process, from the decision to seek death to the sentencing phase. These data help understand the legal processes that lead to the outcomes we demonstrate.

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Death sentences increased in the US from the late 1970s until the mid-1990s and have been on the decline since then. North Carolina has mirrored these trends but has become a leading state in various reforms related to restricting the use of the death penalty. No executions have taken place in North Carolina since 2006, and sentences have declined dramatically as well; 34 were sentenced to death in 1994, but the number declined so that it took eight years, from 2002 to 2009, for 34 to be sentenced in the more recent period. In this paper we review the situation in North Carolina, comparing it to the rest of the country and explaining some of the most important developments that explain the dramatic decline of capital punishment in what has historically been one of the most active death penalty states. We review issues of who is targeted by the death penalty, noting that young black men are most at risk of homicide, but white women are far more likely to see their deaths punished by execution. In the last section we relate the statistical trends we document to Unah's study of the stages of the judicial process that lead to these disparate outcomes by race and gender.

Background: North Carolina and the US

Figure 1 shows the number of death sentences and Figure 2 shows the number of executions nationally and in North Carolina.

(Insert Figures 1 and 2 about here)

The build-up of the death penalty was not quite as fast in North Carolina as in other states, but the state generally reflected national trends in increasing use of capital punishment from the early period to a peak in the mid-1990s, with executions declining slightly later than death sentences.¹

¹ For example, in their analysis of death row populations in states with 10 or more death sentences from 1977-1999, Blume, Eisenberg, and Wells (2004, p. 172) listed North Carolina as

Figure 3 and Table 1 show the number of executions across the 50 states since the U.S. Supreme Court reinstated capital punishment in *Gregg v. Georgia* (1976). North Carolina, with 43 executions, ranks 8th nationally; Baumgartner et al. (2008) listed North Carolina as 6th, based on data up through 2006. Because the state has been in a period of moratorium since then, Alabama and Georgia have surpassed North Carolina, though the top five states remain the same and account for 65 percent of the national total.

(Insert Figure 3 and Table 1 about here)

North Carolina is historically one of the most active users of the death penalty, but the trends apparent in this state largely mirror those in the nation as a whole. An intensive study of this state can therefore shed some light on some of the dynamics affecting the nation more broadly. Further, as North Carolina has been at the forefront of many aspects of reform, the impact of these reforms may have national implications.

Differential Likelihood of Execution by Race and Gender of the Victim

Homicide victimization

Being a victim of homicide is heavily dependent on race, gender, and age (Rand, Lynch, and Cantor 1997). Young black males have extremely high rates of homicide victimization as compared to other demographic categories. On the other hand, these homicides are extremely unlikely to be followed by a death sentence or execution for the perpetrators. Women constitute only a relatively small proportion of homicide victims but their deaths are much more likely to lead to a capital prosecution. In North Carolina, the difference in likelihood that the death of a black man versus a white woman will lead to the execution of the perpetrator is 40 : 1. This extremely large gap calls into question the equal protection guarantee of the US Constitution.

tenth in death sentencing rate, after the usual suspects, including Florida, Texas, Alabama, Nevada, Mississippi, Oklahoma and others.

From 1976 through 2008, 19,591 North Carolinians have been the victims of homicides, almost 600 per year on average. Of these, about three-quarters are male, and 54 percent are African-American.² Table 2 shows the number of homicide victims by race and gender.

(Insert Table 2 about here)

The table shows that fully 42 percent of homicide victims in North Carolina since 1976 have been black males; 29 percent, white males; 14 percent, white females, 10 percent, black females, and 10 percent, persons of other or unknown race or gender. These numbers of course vary somewhat over time. Figure 4 shows the rate per population of being the victim of homicide from 1976 to 1999.

(Insert Figure 4 about here)

Across the US, victimization rates range from approximately 5 per 100 000 population (in 1999) to just over 10 (in 1980). In North Carolina, for the period studied here, the numbers are slightly higher, ranging from 7 to 11 per 100 000 population. The figure makes clear, however, that race and gender differentiate very strongly in a person's likelihood of being the victim of murder. For white women in North Carolina, the rate falls within the range of 2.3 to 3.5, whereas for black men the chances of being murdered are between 28 to 53 per 100 000 population: more than 10 times greater.

Age also affects one's likelihood of homicide victimization, across all races and genders. Figure 5 shows the rates for black males of all ages.

(Insert Figure 5 about here)

Young men aged between 18 and 34 years are the heart of the homicide crisis in the United States as in North Carolina. Their rates of victimization are routinely more than 100 in

² In the 2000 US Census, blacks were 21.6 percent of the North Carolina population.

100,000 whereas the overall rate across all age and racial groups is 5 to 10. The killers of these different categories of victims have greatly varying chances of being executed for their crimes. If the death penalty were designed to be a deterrent to crime, one could imagine that it would be focused on where the homicides are occurring, but as we will see in the next section, it is not. In fact, it is focused on the killers of white women, statistically the least likely group in the population to be the victim of murder.

Executions

North Carolina has executed 43 individuals in the modern era (since 1976). Together, they had a total of 56 victims. Table 2 shows the characteristics of those 56 individuals whose killers were executed.

(Insert Table 3 about here)

William Q. Jones, a black male, was convicted in Wake County in 1987 for the killing of Edward Peebles, also a black male, and was executed on August 22, 2003. He is the only person to have been executed for killing a single black male in North Carolina. Earl Richmond, also a black male, was executed in 2005 for the triple murders of Helisa, Darien, and Philip Hayes, one of whom was a black male. Jones and Richmond are the only two death row inmates to have been executed for the crime of murder where a victim was a black male. Table 3 shows that while black males constitute 42 percent of the victims of homicides, they are just 4 percent of the victims of those who were later executed. White females, by contrast, represent 13 percent of the overall victims, but 43 percent of those for whom the murderer was in turn put to death.

Table 4 combines the information from Tables 1 and 2 to show the dramatic differences in the rates of executions for those who kill different types of victims.

(Insert Table 4 about here)

The killers of 56 homicide victims have been executed in North Carolina since 1976, whereas 19,517 homicides have occurred. The rate of execution is therefore $56 / 19,517$ or 0.287 percent. First of all, we should note what a minute proportion of all murders are punished by execution. For instance, Songer and Unah (2006) place this figure at approximately 2%; the figure here is even lower. Second, however, the disparities apparent in the table are truly remarkable, indicating that there is a racial hierarchy in the victims for whom an execution is most likely to be carried out. Black men are by far the largest category of victims of homicide, but the killing of white women has more than 40 times the likelihood of leading to an execution than does the killing of a black man. As Lawrence M. Friedman (1993) would attest, this result speaks loudly about the symbolic power of white women in American culture and society. In the criminal justice arena, white females have historically been viewed as a subgroup deserving of special protection in both traditional and institutional terms, and this hallowed status has led invariably to the escalation of punitive responses to their victimization. For instance, the death penalty was the favored punishment for individuals convicted of raping not just any woman but a white woman, and especially if the assailant was black. This practice of awarding the death penalty for rape ended with the Supreme Court ruling in *Coker v. Georgia* in 1977. In addition, the aptly named Mann Act was enacted into law in 1910 primarily to punish individuals of any gender but primarily men who transport a white woman across state lines for crimes of moral turpitude (Unah 2009 p. 161). Figures 6 and 7 illustrate the data presented above.

(Insert Figures 6 and 7 about here)

These figures further illustrate the tensions underlying political and scholarly debate over capital punishment. Many political commentators (e.g., former solicitor General Bork) and some economists who advocate a communication theory of punishment, claim that a deterrent effect of

executions on murders exists (Mocan and Gitling 2002; Sheppard, 2003). These claims often ignore fact that criminal behavior is not always a matter of careful rational calculation and they ignore the ephemeral nature of emotions and the role they play in criminal activity. Our paper does not examine the soundness of these deterrence claims but one thing that is clear is that through executions, American society is communicating the values it places on different groups of individuals: black men are clearly least valued whereas white women are most valued. Their respective chances of being the victim of homicide are in direct inverse proportion to the likelihood that their murderers will face capital punishment.

Historical Perspectives on Racial Bias

The Statistical Background

Are the racial tendencies in the application of North Carolina's death penalty new, or do they reflect long-standing patterns? In order to address this question we can compare rates of execution over time for white and black defendants. Figures 3 and 4 present these data (calculated from Espy and Smylka 2004).

(Insert Figures 8 and 9 about here)

Figure 8 shows the entire historical record of the annual number of executions since 1720, and Figure 9 shows only the 20th century. No analysis to date has taken such a long view of the North Carolina situation. Whether we look at the entire historical record or only the most recent period, we see that over 70 percent of those executed have been African-Americans and that this number has commonly been 100 percent: the death penalty has often been *exclusively* reserved for African-Americans, if we look at any single year. It is therefore not an overreach to conclude based on these historical data trend that the death penalty has been used primarily as an instrument of social and political control over African Americans in North Carolina.

Recent Efforts to Mitigate Bias

Two recent actions are fundamental to recent reforms in North Carolina and represent possible models for national use. First is the 2000 adoption of legislation creating the NC Office of Indigent Services (NC General Statute 15A-2004), and second is the 2009 Racial Justice Act. We discuss both in turn.

In 2000 the legislature responded to criticisms that indigent defense was poorly monitored and often unacceptable with the creation of the Office of Indigent Services (IDS). By centralizing indigent defense services in a single state-wide operation and by requiring that only lawyers affiliated with IDS could be assigned capital cases, the reform did more than any other single action to revolutionize the practice of capital punishment in the state. It is no mere coincidence that numbers of death sentences have declined so dramatically since the passage of this reform (see Figure 1 which shows a dramatic drop after 2000).

The law specifically targeted the procedure for determining who should represent indigent defendants in capital cases. Before the law came into force, trial judges were in charge of selecting defense attorneys based on a list of attorneys generated through the Administrative Office of the Courts in Raleigh. The procedure for determining placement on the list of capital attorneys was very loose. For one thing, there was no requirement that lead attorneys in a capital case be experienced in handling such cases. It was not uncommon for attorneys fresh out of law school to be assigned a death penalty case. Even attorneys that have been subjected to disciplinary action by the state or the NC Bar Association for unscrupulous behavior/ethical misconduct were tapped for capital defense work. As a result, many defendants on capital trial ended up with attorneys that were either unqualified or wholly uninterested in handling the rigors and legal nuances of a capital trial. Further, judges not only selected the defense attorneys but also determined their compensation and the budget available for such things as investigators,

expert witnesses, and other aspects of their case preparation. The end result was a capital punishment system that netted few acquittals for defendants and a relatively high conviction rate for the state.

With the creation of IDS in 2000, however, the process for determining capital representation was streamlined and centralized. Specific guidelines were crafted and the IDS was put in charge of selecting qualified attorneys to represent indigent defendants facing capital murder charges. Further, IDS controlled its own budget, allowing the defense bar to determine who would get expert witnesses and investigators, rather than individual trial judges. The impact of this new development was immediate. In 2000 when Bill Clinton was preparing to leave the presidency, 18 convicts were sentenced to death in North Carolina. During the following year, that number declined to 14 death sentences statewide; there were 7 death sentences in 2002 and this declining trend continued so that by 2007, only three individuals were sentenced to death in North Carolina.³

The second important reform was the Racial Justice Act (RJA), passed in 2009. This act, the only one of its kind in the nation, allows those condemned to death to present statistical evidence suggesting that race may have played a factor in patterns of sentencing in the state or in their judicial jurisdiction. The simple presentation of various official statistics that we have compiled here suggests that there has indeed been a long-standing connection between race and the death penalty, in particular when we consider the racial status of the victim of the crime. The bulk of homicides in North Carolina affect African-American men (especially young men). The likelihood of being executed for those crimes is 40 times lower, however, than for the killing of a white woman.

³ These data come from the Death Penalty Information Center and are available at www.deathpenaltyinfo.org/death-sentences-year-1977-2007.

The United States constitution permits, but does not require, the death penalty in the 8th Amendment. But the Constitution also warns in strong terms that criminal punishment should be administered fairly and without prejudice. The Fourteenth Amendment is crystal clear when it declares that “No state shall..... deprive any person of *life*, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” To what extent are these dual constitutional requirements of due process and equal protection of the laws being heeded in North Carolina trial court system when it comes to the death penalty? We address this question by examining appellate outcomes.

Rates of Reversal in NC Death Sentences

Sixty-seven percent of all death sentences imposed in the modern era in North Carolina have subsequently been overturned on appeal. Only twenty percent of death sentences have led to executions.

As of January 1, 2010, 43 individuals have been executed in the modern era (1977–) in North Carolina, and 158 sit on death row. There are only four women currently on death row in North Carolina.⁴ In all, since 1977, 388 individuals have been sentenced to death. Table 5 shows the gender and racial characteristics of these 388 men and women as well as the final disposition of their cases. Data come from official NC Department of Corrections records as posted on their website.⁵

(Insert Table 5 about here)

⁴ This figure for women on death row is based on *Death Row USA*, published by the NAACP Legal Defense Fund, February 20, 2009.

⁵ Source for inmates currently on death row: <http://www.doc.state.nc.us/dop/deathpenalty/deathrow.htm>. Source for inmates removed from death row: <http://www.doc.state.nc.us/dop/deathpenalty/removed.htm>. Both were downloaded in January 2010 and when combined reflect information on every inmate sentenced to death from 1977 through 2009.

Calculating Rates of Reversal

After a sentence of death, appeals continue as a matter of right and new trials are often ordered on the basis of appellate findings of flaws in the original trials of guilt or the separate penalty phase. Of the 388 inmates who have been sentenced to death in North Carolina, 158 remain on death row and 12 await new trials. (These 12 individuals may or may not return to death row depending on the results of their pending trials.) That leaves 218 cases where final decisions have been made. Of this group, Table 5 shows that 43 have been executed, 25 have died in prison (either by suicide or natural causes), and that the vast majority have had their sentences reduced. In fact, five were later found not guilty in their subsequent trial. Table 6 presents these cases as a percentage of the 218 cases in which final judicial dispositions have been made.

(Insert Table 6 about here)

So far in the history of the modern use of the death penalty in North Carolina, and not counting those cases where the inmates remain on death row and we cannot therefore assess what the final outcome of their appeals may be, execution follows a death sentence only 20 percent of the time. By far the most likely outcome of a death sentence is a subsequent trial ending in a sentence of life in prison.

The largest study reporting on rates at which death sentences are overturned, conducted by James Liebman, Jeffrey Fagan, and Valerie West and covering 23 years of data in all available states, found a reversal rate of 68 percent.⁶ This is virtually identical to what is found here: Those subsequently found not guilty or resentenced to a penalty of life or less than life in prison, from Table 6, comprise 67 percent of the total cases.

⁶ James S. Liebman, Jeffrey Fagan, and Valerie West, *Error Rates in Capital Cases, 1973–1995*. Columbia University Law School, June 12, 2000. Available from: http://www2.law.columbia.edu/instructionalservices/liebman/liebman_final.pdf.

A recent study by Phil Cook reviewing the cost of the death penalty in North Carolina suggested that the state could save \$11 million per year by doing away with the punishment.⁷ Recognizing that just 20 percent of those sentenced to death are likely to be executed helps explain why the system is so expensive. Capital murder investigations and trials are of course much more expensive than non-capital ones because they last longer (frequently take as long as two years to complete),⁸ they include an entirely separate penalty phase, and greater resources are provided for the defense for research and expert consultants. The fact that the vast bulk of these trials are eventually overturned should give pause not only about the reliability of the process, but about its wastefulness as well.

The process is wasteful in another way as well: it leads the family members of the victims of murders with a false assurance that closure will come. But if the vast majority of death sentences are in fact overturned, this would seem to produce needless torment. Prosecutors, judges, and other professionals involved in the process are aware of the general fact that most death sentences are eventually overturned, but family members are not likely to know this. They are in fact misled by the false assumption that any initial sentence of death is likely to be carried out; statistics show that in fact it is quite unlikely. It is hard to know what a family member

⁷ Philip J. Cook, Potential Savings from Abolition of the Death Penalty in North Carolina. *American Law and Economics Review* 10 (December 11, 2009): 1–32. But North Carolina is not the only state that stands to benefit from doing away with the death penalty. In Florida, the average cost of trying and executing a single individual is \$3.2 million (Von Drehle 1988). In Wisconsin, the legislative counterpart of the Congressional Budget Office, known as the Legislative Fiscal Bureau, estimated that the cost of reinstating the death penalty in Wisconsin would run between \$1.6 million to \$3.3 million per execution (Associated Press 1993). Hoppe (1992) reported that Texas spends an average of \$2.3 million per capital case. One can only imagine how much public safety these states could purchase by deploying these sums to alternative criminal justice or educational uses.

⁸ See Garey 1985

might prefer in the case of their loved one's murder. But few would likely be happy with a process that leads to an initial death sentence, then its reversal, especially after years of litigation.

Why are rates of reversal so high? Because substantial procedural errors plague highly emotional capital trials. Cases are not reversed and inmates guilty of vicious crimes do not find themselves sentenced to lesser penalty because of trivial errors or slight imperfections in their initial trials. Only substantial errors can cause a reversal, but these are found in approximately 67 percent of all the cases over the past 30 years in this state. We all know that no government institutions are perfect, but this rate of error, quite typical of the national average, is shocking indeed.

Amount of Time Spent on Death Row

(Insert Table 7 about here)

Table 7 shows the period of time in years inmates have spent on death row in North Carolina. One inmate committed suicide after just 19 days on death row in 1977. Most serve considerably longer periods, including those who are eventually exonerated (7 years on average), who have their sentence commuted by the governor (8 years), or who receive a sentence less than death after a subsequent trial (5 years). Those executed range from 2 years 7 months to over 22 years on the row, with an average period of over ten years. Those currently serving have served an average of almost 9 years, with a range up to 24 years. Norris Taylor died in on death row in 2006 at the age of 61 after spending over 26 years on death row.

Reliability as a Standard

A simple standard of accuracy in any decision-making system is whether the same result is reached twice, given the same facts. If a system is extremely reliable, it always reaches the same outcome given the same information. By this standard, we can see that North Carolina's death

penalty system is extremely unreliable. Depending on the calculation, the rate of reliability can be calculated at between 20 and 33 percent: in other words between two-thirds and four-fifths of the time, the system reverses itself on review. The calculation is as follows: The simplest calculation is simply the number of executions that have been carried out (43) compared to the total number of cases where final decisions have been made (218): 20 percent. More generously, we could add to this number all those cases where the inmate died in prison or had their sentence commuted by the governor. These cases involve no reversal of the verdict of guilt or of the penalty. Using this standard, we have 73 cases, or 33 percent of the 218 cases where a final decision was reached. In these cases, we can say at least that the sentence of death was never overturned by any subsequent legal process. By contrast, 145, or 67 percent, resulted in a sentence of less than death at the second trial. So, no matter how we calculate the reliability of the death penalty system, we can see that it is extremely unreliable. Executions follow an initial sentence of death only 20 percent of the time. Much more likely is a subsequent decision to impose a lesser sentence, usually after years of delay.

Stages in the Judicial Process Leading to these Outcomes

The death penalty is best understood as a process rather than merely as an outcome. Many sequential stages are involved and numerous decisions must be exercised by officials, including police, prosecutor, judge and jury. Because of the complexities of the process, errors are bound to occur and the cumulative effects of these errors can be devastating for both the victims' families and defendants. In the following table, the death penalty is modeled as a process in a way that reflects the procedural reality of death penalty prosecutions in North Carolina. An indictment is followed by a possible plea deal under the assumption that both the defendant and the prosecutor wish to avoid the uncertainty of a full trial. Failing a plea deal, the case proceeds

to trial where the prosecutor may seek the death penalty or not. At the end of the trial, a jury must decide guilt or innocence and if the verdict is guilty, the case enters the final jury decision phase.

In 2001, Isaac Unah and UNC Law School Dean, Jack Boger collected data on 3990 murders with known defendants in North Carolina. Their objective was to replicate and extend the findings of the Baldus study (Baldus et al. 1990), which examined the death sentencing system in Georgia. Baldus and his colleagues relied on data from the 1970s and uncovered serious problems with the prosecution and jury decisions making in capital cases. We rely here on data from the Unah and Boger study for the multivariate analysis that follows but first, a note about the data is in order: The data cover murder transactions that occurred between January 1, 1993 and December 31, 1997. They include cases from 80 of the 100 counties of North Carolina. The data include all homicides resulting in a first degree murder charge during the period examined (99 cases) or life in prison without parole (303 cases). Finally, a multi-stage statistical sampling technique was employed to select a random sample of cases that received a life sentence, a term of years in prison, or an acquittal/dismissal (118 cases). Overall, we therefore had 520 cases to analyze. The unit of analysis is the homicide event. Thus a defendant who murders 3 individuals is thought to generate 3 separate cases since this defendant must, by law, be prosecuted for each homicide.

Figure 10 focuses on the penalty phase of death penalty prosecution and considers the race of defendant and victim as well as the racial configuration of the offense. This figure confirms what we have reported in the earlier sections of this paper. There is an important difference in the death sentencing rate for white and nonwhite victims. The rate at which a white victim's case will lead to a death sentence being awarded is 3.4 % compared to 1.6% for

nonwhites.⁹ When we consider defendants without any reference to their victims, we find that there is no difference among black and white defendants. But when we consider various racial configurations, the death penalty is most likely to be awarded when a nonwhite kills a white victim. One difficulty with the data on Figure 10 is that there is no account given to possible confounding factors. We address this problem by estimating a series of regression models designed to mirror the sequential nature of the death penalty process itself.

(Insert Figure 10 about here)

Table 8 presents estimates of race effects while controlling for various potential confounding factors. These were generated through Heckman Probit, a maximum likelihood estimation method that allows researchers to estimate models that closely approximate the sequential multi-stage process of capital punishment. We summarize here the most salient findings concerning race and gender.¹⁰

Overall, the models are highly plausible and this is indicated by the statistically significant Heckman Lambda. The results indicate that in North Carolina, prosecutors are more likely to reject a plea deal in cases that involve nonwhite defendants and white victims, but interestingly are less likely to seek the death penalty in such cases. When prosecutors do seek the death penalty, however, jurors (who face no electoral pressure) are significantly more likely to award the death penalty during the penalty phase. Conversely, the death penalty is significantly less likely to be awarded when a nonwhite individual kills another nonwhite.

⁹ Note that the Unah-Boger study includes only first degree homicides with known defendants, whereas the analysis above compared all deaths by homicides; this explains why the percentages of death sentences are higher in one study than the other. Even with first degree homicide cases, the percent leading to death sentences is very low. Executions remain even rarer.

¹⁰ The full set of results can be found in the NC Indigent Defense Services website: <http://www.ncids.org/Motions%20Bank/RacialJustice/Unah-Boger%20Study.pdf>

(Insert Table 8 about here)

The data further indicate that although male victims are favored when the prosecutor is making arrangements to seek the death penalty, female victims are the ones whose deaths are actually more likely to lead to a death sentence.

To place the racial configuration results into proper context, we examine the role of multiple victim homicides, which under the law, constitute an aggravating circumstance.

Ordinarily, if criminal justice decisions were being made on the basis of the law, one would expect an aggravating factor such as the killing of multiple victims to command a powerful effect on the chances of a death sentence. We find that although the variable is statistically significant at the separate sentencing stage, the marginal effect on death sentencing pales in comparison to the marginal effect of a nonwhite killing a single white victim.

Finally, North Carolina law gives capital defendants the chance to raise mitigating circumstances during their trial to help them avoid a possible death sentence. For example, a severely deprived family background qualifies as a mitigating factor as is killing under duress. But to what extent do mitigating circumstances actually mitigate the death penalty? Figure 11 shows the differential impact of aggravating and mitigating circumstances.

(Insert Figure 11 about here)

As the slopes of the two lines indicate, aggravating factors are far more effective than mitigating factors. For a typical defendant, a jury would need to find six mitigating factors present in the case to counteract the effect of one aggravating factor.

Conclusion

North Carolina is typical of many states in that it is engaged in a wrenching debate about the viability of its capital punishment system. In this paper we have reviewed statistical evidence

suggesting there are serious disparities in the application of capital punishment, noted the results of a study that suggests that juries themselves may be a significant source of this bias, and noted the reforms that have been instituted and which are having the effect of reducing dramatically the likelihood that capital sentences will be carried out.

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Tables and Figures.

Figure 1. US and NC Death Sentences since 1976.

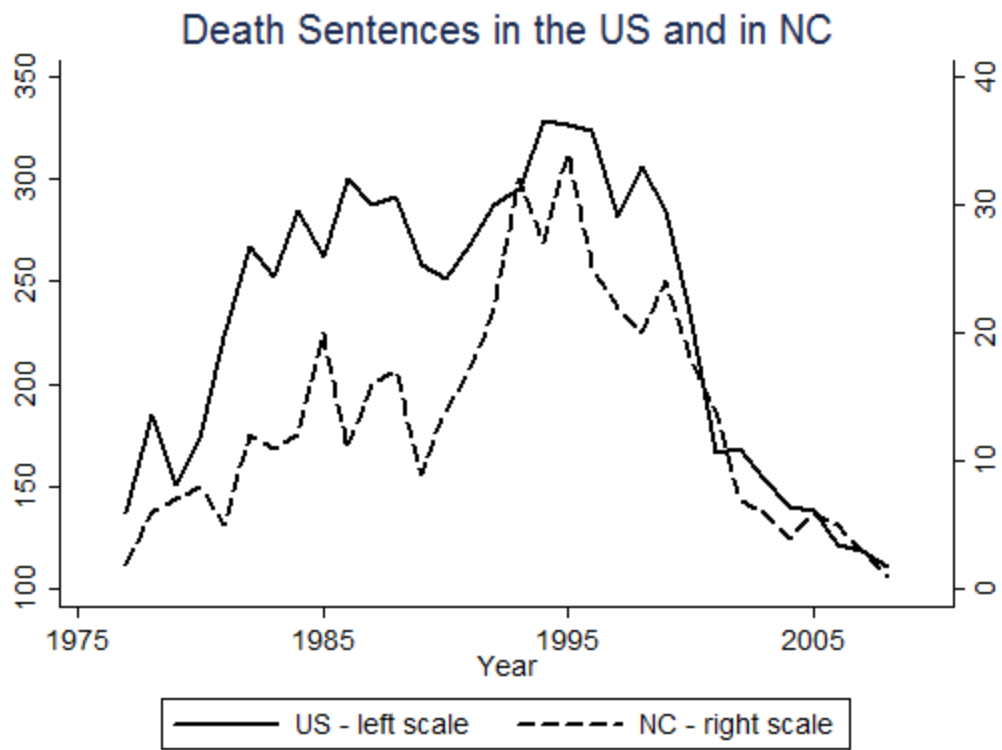


Figure 2. US and NC Executions since 1976.

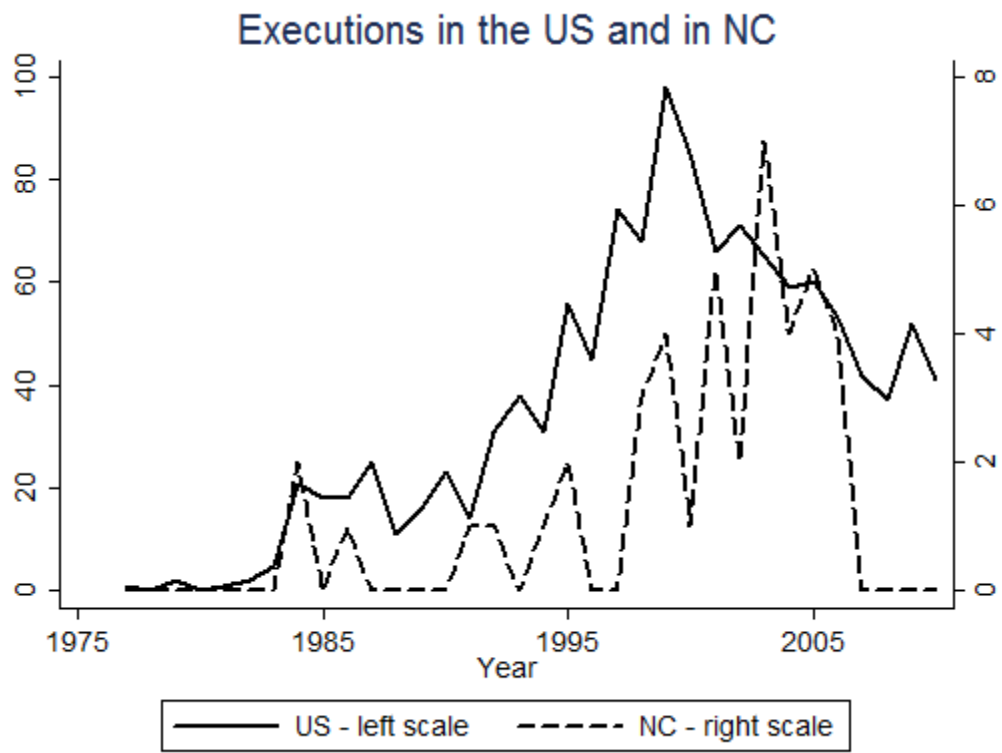
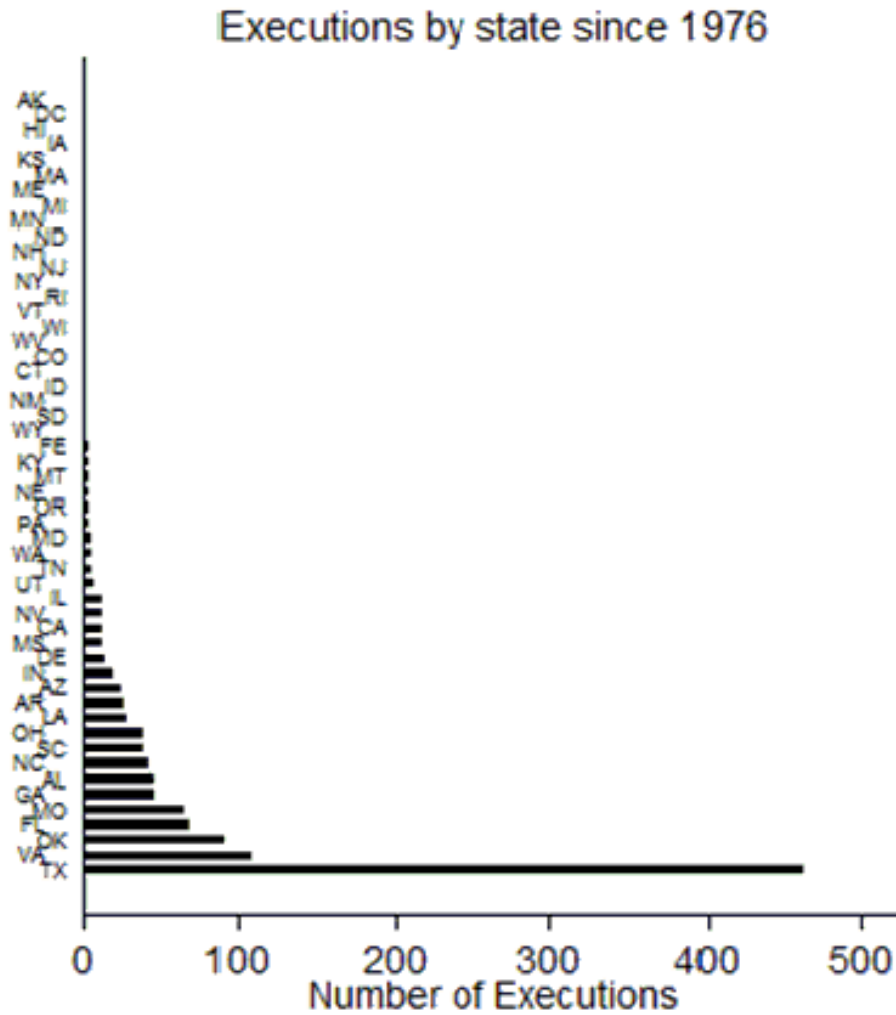


Figure 3. Executions by State.



Seventeen states have executed no one in the modern era. On the other hand, Texas (463), Virginia (108), and Oklahoma (91) combine for 662, or more than half of the total. Table 1 lays out the numbers by state (it has 52 entries because the table includes the District of Columbia and the US Federal government).

Figure 4. Homicide Rates by Race and Gender.

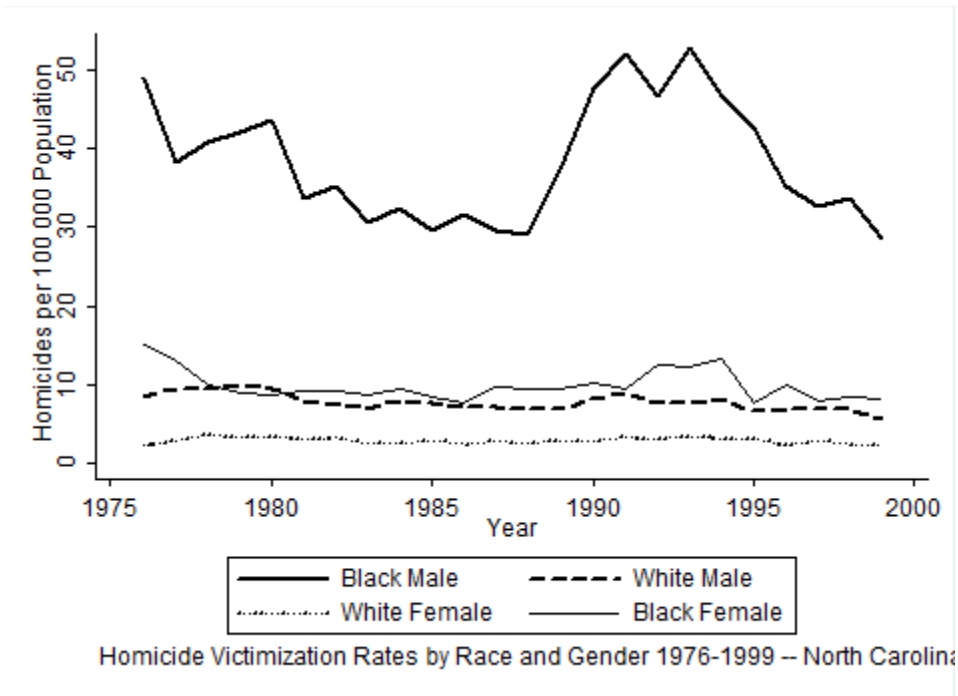


Figure 5. Homicide Rates for Black Males of Different Age Groups.

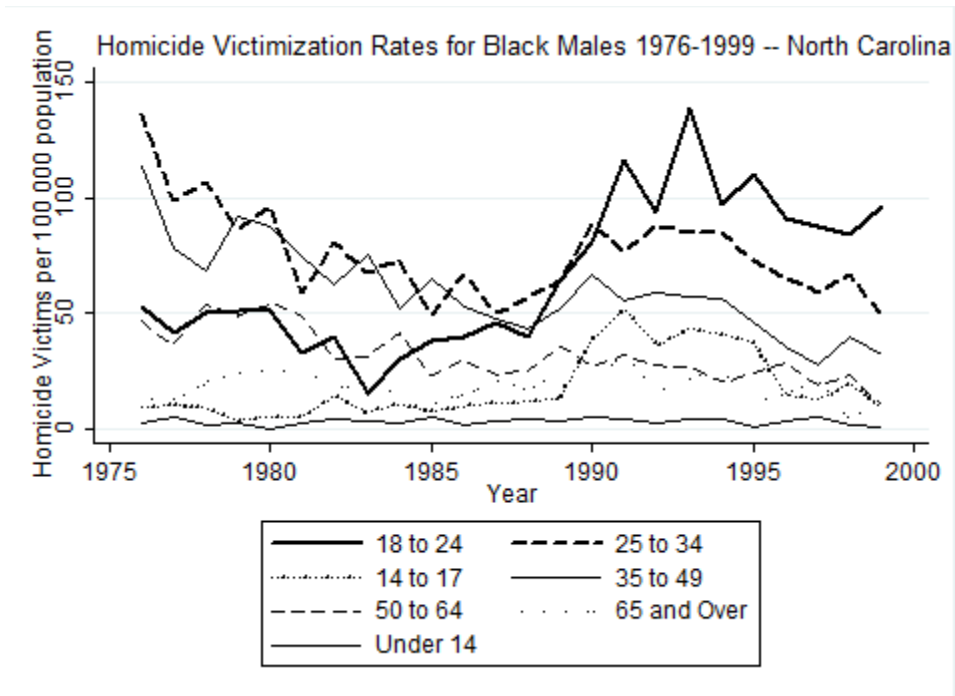
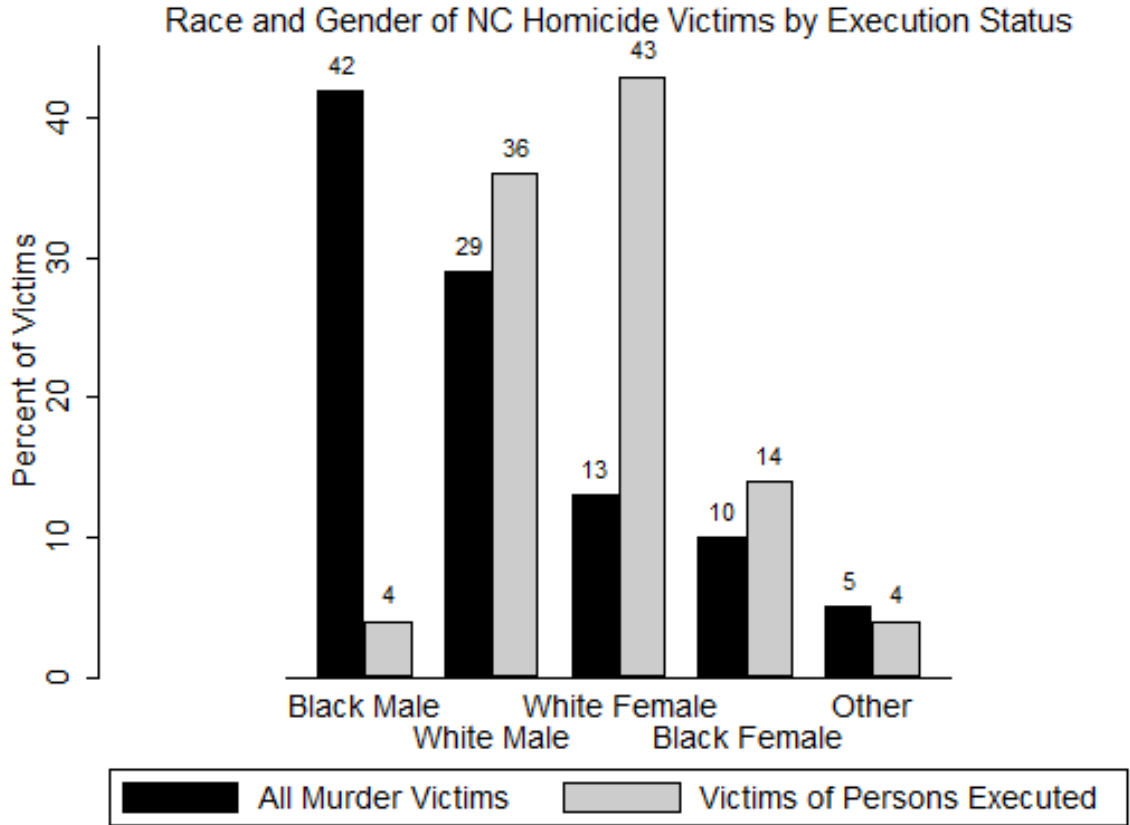


Figure 6. Race and Gender of Homicide Victims



Note: From 1976 to 2008 there were 19,517 victims of homicide in North Carolina. The black bars show the percentage of these homicide victims across the categories shown. During the same period, 56 the killers of murder victims were executed. The grey bars show the percentage of these 56 in the same categories. White females were 13 percent of the homicide victims, but 43 percent of the cases in which the killer was later executed.

Figure 7. Execution Rates by Race and Gender of the Victim.

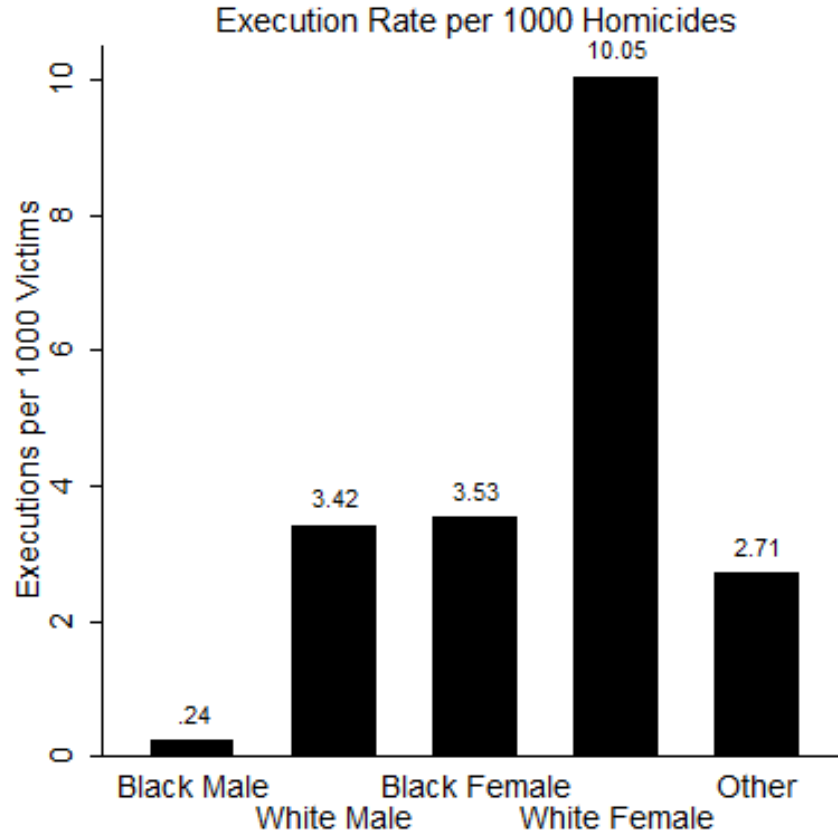


Figure 7 shows the number of executions per 1,000 homicides using the same information as in Figure 6, covering all homicides and executions in North Carolina from 1976 to 2008.

Figure 8. Numbers and Percent Black of North Carolina Executions, 1700 to 2002.

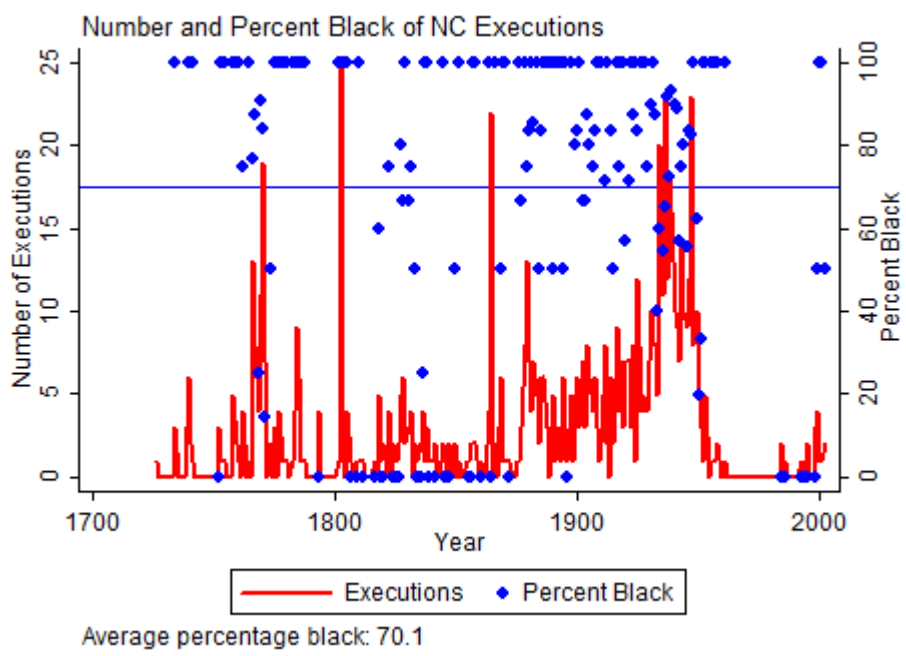


Figure 9. Numbers and Percent Black of North Carolina Executions, 1900 to 2002.

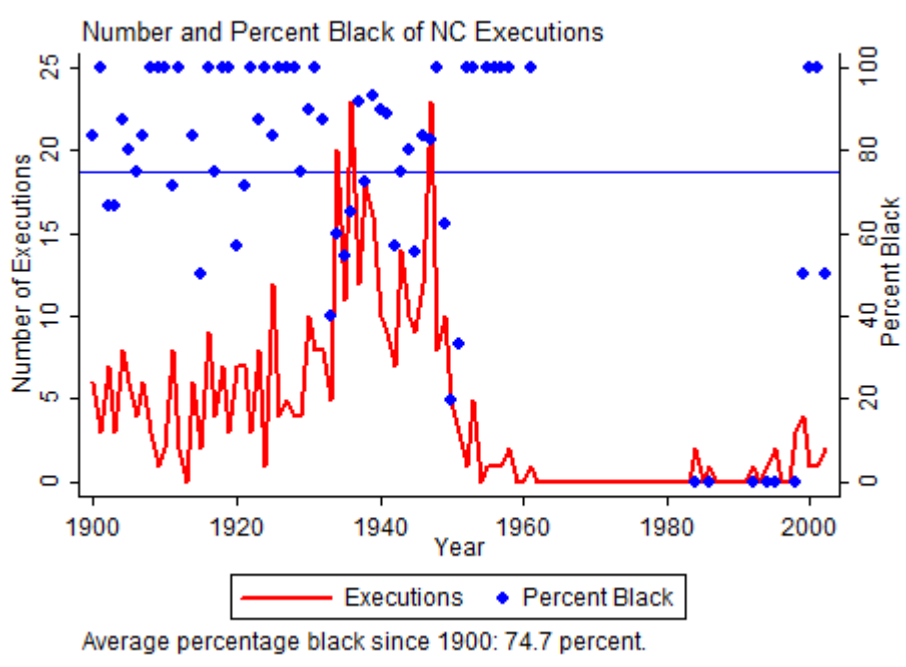
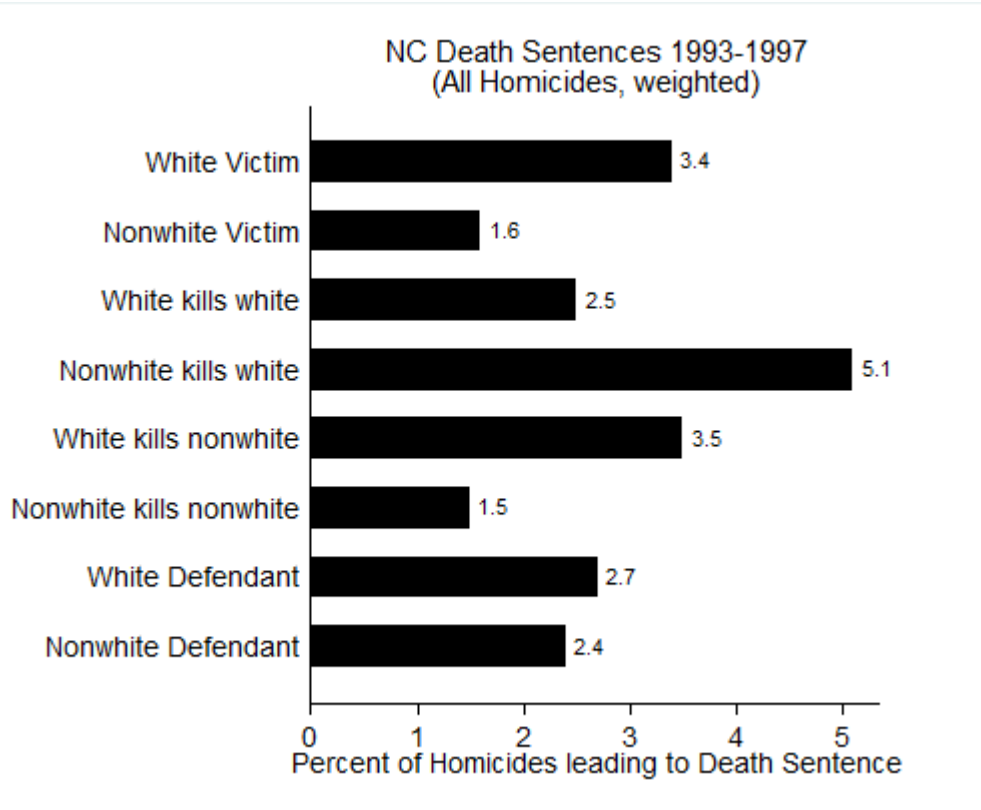
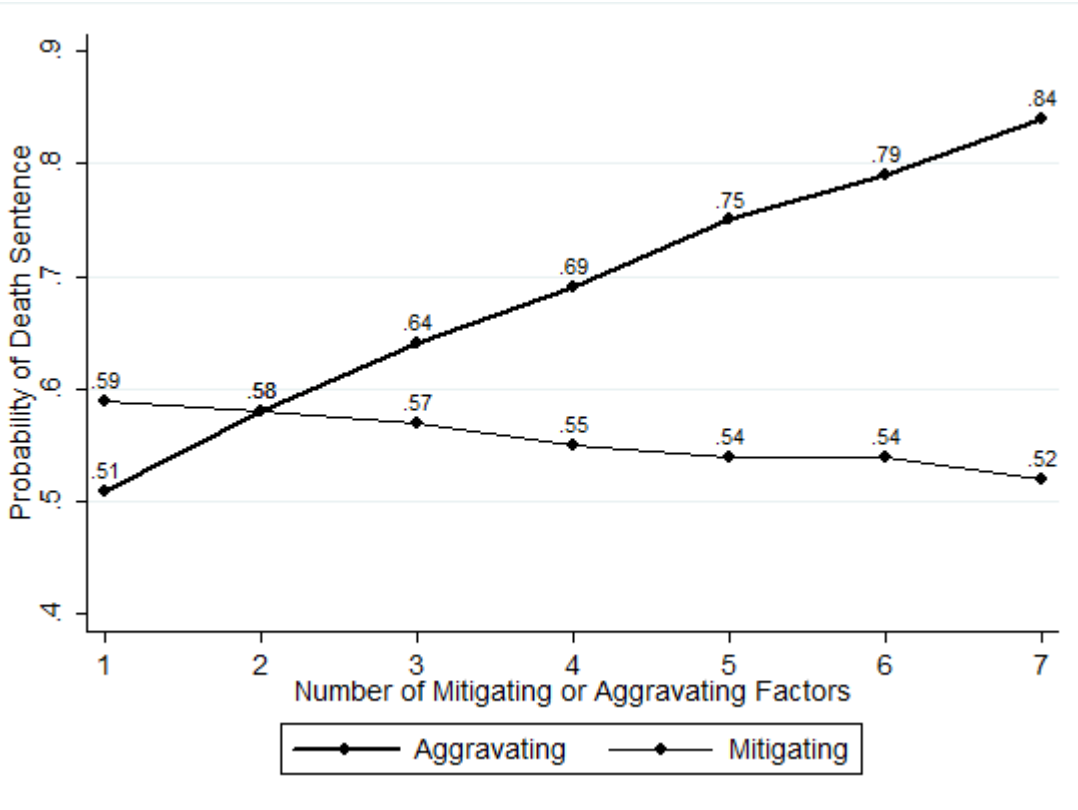


Figure 10. Percent of Homicides Leading to Death Sentences by Characteristics of the Victim and Defendant.



Note: Data from the University of North Carolina Death Penalty Study.

Figure 11. Effects of Aggravating and Mitigating Factors on the Probability of Receiving a Death Sentence.



Note: Data from the University of North Carolina Death Penalty Study.

Table 1. Executions by state.

Rank	State	Executions
1	TX	463
2	VA	108
3	OK	91
4	FL	69
5	MO	67
6	AL	48
7	GA	48
8	NC	43
9	OH	41
10	SC	41
11	LA	28
12	AR	27
13	AZ	24
14	IN	20
15	DE	14
16	CA	13
17	MS	13
18	NV	12
19	IL	12
20	UT	7
21	TN	6
22	MD	5
23	WA	5
24	NE	3
25	KY	3
26	MT	3
27	FE	3
28	PA	3
29	OR	3
30	CO	1
31	NM	1
32	WY	1
33	ID	1
34	SD	1
35	CT	1

States with no executions:

MI, ND, NJ, WI, NH, HI, NY, ME, AK, VT, MN, DC, WV, MA, KS, RI, IA

Table 2. Homicide Victimization Rates in North Carolina.

Year	Total	Gender			Race			Race or Gender					
		Male	Female	Unknown	White	Black	Other Races	Unknown	White Male	Black Male	White Female	Black Female	Other or Unknown
1976	609	465	142	2	222	370	15	2	174	278	48	92	17
1977	586	435	151	0	257	304	25	0	196	223	61	82	25
1978	600	446	144	9	276	306	8	9	199	242	78	65	17
1979	600	468	132	0	280	310	10	0	208	252	72	58	10
1980	619	483	136	0	281	327	11	0	206	268	75	59	11
1981	541	402	139	0	249	276	16	0	176	212	72	64	16
1982	545	401	144	0	243	288	14	0	167	224	76	64	14
1983	490	362	128	0	219	257	12	2	159	195	60	62	14
1984	539	405	133	1	245	277	14	3	184	209	61	68	17
1985	520	383	137	0	248	254	18	0	176	193	71	61	18
1986	515	391	124	0	228	266	19	2	168	208	60	57	22
1987	519	374	145	0	239	268	11	0	169	196	70	72	11
1988	510	374	136	0	231	266	12	0	167	195	65	72	12
1989	584	431	153	0	242	327	10	5	167	253	75	73	15
1990	711	548	163	0	278	405	24	4	204	325	74	80	28
1991	769	603	165	1	314	438	15	2	227	363	86	75	18
1992	723	534	189	0	272	433	18	0	191	332	81	100	18
1993	785	589	197	0	287	484	13	1	194	383	93	101	14
1994	772	570	201	1	295	455	18	4	210	344	85	111	22
1995	677	518	158	1	259	382	28	7	174	319	86	64	35
1996	619	466	150	3	248	352	17	2	182	267	63	86	21
1997	614	458	155	1	265	319	26	4	185	251	80	68	30
1998	612	463	149	0	255	337	15	5	187	262	69	75	20
1999	536	395	136	5	215	292	29	0	152	220	62	72	30
2000	551	422	128	1	231	295	25	0	164	239	67	56	25
2001	517	392	122	3	237	249	31	0	166	204	71	45	31

2002	543	396	147	0	239	275	29	0	157	219	82	56	29
2003	503	382	119	2	207	270	26	0	141	222	66	48	26
2004	503	380	121	2	213	254	36	0	149	202	64	52	36
2005	582	446	136	0	258	294	30	0	177	242	81	52	30
2006	534	384	130	20	216	293	25	0	138	227	68	57	44
2007	592	452	138	2	240	327	25	0	167	269	73	58	25
2008	597	429	168	0	267	296	34	0	172	234	95	62	34
Totals	19,517	14,646	4,816	55	8,254	10,547	663	53	5,851	8,271	2,388	2,267	739
Percent	100.00	75.04	24.68	0.28	42.29	54.04	3.40	0.27	29.98	42.38	12.24	11.62	3.79

Notes: Data from 1976 through 1999 come from Fox 2001. From 2000 through 2008 they come from the North Carolina State Bureau of Investigation (<http://sbi2.jus.state.nc.us/crp/public/Default.htm>) accessed in January 2010. Numbers from both sources were available for 1999. The North Carolina numbers were approximately 3 percent lower than the Fox (US Department of Justice) numbers over all, with no discernible differences in relative ratios by race or gender.

Table 3. Race and Gender of North Carolina Murder Victims, by Execution Status.

Victim Characteristics	All Murder Victims		Victims of Persons Executed	
	Number	Percentage	Number	Percentage
Black Male	8,271	42	2	4
White Male	5,852	29	20	36
White Female	2,388	13	24	43
Black Female	2,267	10	8	14
Other or Unknown	739	5	2	4
Total	19,517	100	56	100

Note: Information about executions was downloaded from the NC Department of Corrections web site on March 19, 2010: <http://www.doc.state.nc.us/dop/deathpenalty/executed.htm>.

Table 4. Execution Rates per 1,000 Murders, by Victim Characteristics

Victim Characteristics	All Murder Victims	Victims of Persons Executed	Execution Rate per 1,000 Homicides
White Female	2,388	24	10.05
Black Female	2,267	8	3.53
White Male	5,852	20	3.42
Other or Unknown	739	2	2.71
Black Male	8,271	2	0.24
Total	19,517	56	2.87

Table 5. Disposition of Death Row Cases in North Carolina, 1977–2009.

Disposition	Male	Female	White	Black	Other	Total
Ever Sentenced to Death	376	12	172	189	27	388
Currently Serving on Death Row	153	4	61	85	12	158
Removed to Jail Pending Outcome of New Trial	12	0	4	5	3	12
Subtotal: Final Decisions Made	210	8	107	99	12	218
Of these cases with decisions made:						
Sentence Commuted by Governor	5	0	0	4	1	5
Found Not Guilty in Subsequent Trial	5	0	3	2	0	5
Resentenced to a Sentence less than Life	10	0	4	5	1	10
Resentenced to Life in Prison	123	7	59	65	6	130
Resentenced to Death at Second Trial*	3	0	2	1	0	3
Died in Prison of Natural Causes	19	0	9	8	2	19
Suicide in Prison	6	0	5	1	0	6
Executed	42	1	27	14	2	43

*The Department of Corrections site lists only three individuals as having received a second death sentence. However, this may not be fully accurate. We do not analyze these cases below because informal discussions with those in the death penalty community suggest that there are more cases than those listed, but we do not know what the true number is.

Table 6. Dispositions as a Percent of Disposed Cases

Disposition	Male	Female	White	Black	Other	Total
Sentence Commuted by Governor	2	0	0	4	8	2
Found Not Guilty in Subsequent Trial	2	0	3	2	0	2
Resentenced to a Sentence less than Life	5	0	4	5	8	5
Resentenced to Life in Prison	59	88	55	66	50	60
Died in Prison of Natural Causes	9	0	8	8	17	9
Suicide in Prison	3	0	5	1	0	3
Executed	20	12	25	14	17	20
Total %	100	100	100	100	100	100
Total Cases Finally Disposed from Table 1	210	8	107	99	12	218
Rate of Death Penalty Reversals	66	88	62	73	58	67

Note: Reversals are when the second trial leads to innocence or a penalty of less than death.

Table 7. Time Spent on Death Row in North Carolina.

Disposition	Number of Inmates	Years on Death Row		
		Mean	Min	Max
Ever Sentenced to Death	388	8.80	0.05	26.52
Currently Serving on Death Row	158	11.85	0.67	24.32
Removed to Jail Pending Outcome of New Trial	12	6.84	1.48	16.09
Sentence Commuted by Governor	5	8.03	1.63	10.62
Found Not Guilty in Subsequent Trial	5	7.06	1.51	13.39
Resentenced to a Sentence less than Life	10	5.42	1.90	11.78
Resentenced to Life in Prison	130	5.15	0.98	25.93
Died in Prison of Natural Causes	19	9.42	2.92	26.52
Suicide in Prison	6	3.88	0.05	11.17
Executed	43	10.64	2.59	22.45

Years on death row is calculated from December 12, 2009.

Table 8. Summary of Results: Race and the Death Penalty in North Carolina, 1993–1997.

	STAGES OF THE DEATH PENALTY PROCESS			
	(1) Prosecutor Rejects Plea Deal	(2) Prosecutor Seeks Death	(3) Trial Outcome	(4) Penalty Phase
Nonwhite Defendant/White Victim	.750** (.75)	-.359*** (.10)	.377	.138*** (.08)
Nonwhite Defendant/Nonwhite Victim	-.025	-.057	-.238	-.059*** (.03)
Victim's Sex (Male=1)	.151	.0008* (.002)	-.485	-.113** (.07)
Multiple Homicide Victims	.665*** (.64)	1.238*** (.35)	-.276*** (.25)	.035*** (.02)
Heckman Lambda (λ)	---	.790***	---	-.351***
Constant	-4.382***	-6.923***	-10.602***	-10.602***
Number of Observations		498		250
Censored observations		118		17
Uncensored observations		380		233
Chi-Square		15.40***		7.67***
Conditional event probability	.96	.28	.92	.58

*** p < .01

In this table, each model has at least 27 variables. Only select key variables are reported. Marginal impact of statistically significant variables is shown in parenthesis. The excluded category for the racial configurations is white defendant/white victim. The white defendant/nonwhite victim category has too few cases to be included in the analysis. The models were estimated via Heckman Probit.

The full set of results can be found in the NC Indigent Defense Services website:
<http://www.ncids.org/Motions%20Bank/RacialJustice/Unah-Boger%20Study.pdf>

The data in this table come from the North Carolina Death Penalty Study, 2001 and range from 1993 to 1997. 80 of the 100 counties of North Carolina are represented in these data. The estimates were generated through Heckman Probit, which allows the researcher to estimate models that closely approximate the actual death penalty process. Thus the first two stages are modeled simultaneously as are the last two stages.