

Race, Politics, and the Process of Capital Punishment in North Carolina

Isaac Unah

Associate Professor

Department of Political Science

University of North Carolina at Chapel Hill

unah@unc.edu

John Charles Boger

Professor and Dean, School of Law

University of North Carolina at Chapel Hill

jcboger@email.unc.edu

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Abstract

The process of determining recipients of capital punishment in the United States involves sequential stages of decision making by the prosecutor and jury. In this paper, we argue in favor of modeling capital punishment as a process rather than simply as an outcome by decomposing the various stages of decision making. Using a Heckman procedure along with detailed criminal prosecution and sentencing data from North Carolina, we analyze the potential influence of race in the application of the death penalty. We find that despite structural reforms instituted to minimize its policy effects, race still plays a crucial role in determining capital punishment, even after controlling for political, socio-demographic, and institutional factors. However, the instrument of racial disparity has undergone a significant change. State prosecutors who once made primarily race-conscious decisions to “go for death,” now appear race-neutral. Our analysis also displays evidence of continuity, pointing to politically unaccountable jurors rather than to elected prosecutors as the actors most culpable for racial disparity in capital sentencing in North Carolina. Broader implications of these findings are discussed.

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The question of whether people should be put death by the state is of great social and political consequences and is sharply debated in both scholarly and public arenas (Bedau 2004; Walker 2009; Bailey and Peterson 1994; Keil and Vito 1992). Yet no serious proponent of capital punishment argues that its application should be racially biased. Indeed, persistent racial bias in capital prosecution and sentencing would devalue the death penalty as a just form of social control, not only in the United States but worldwide. As Justice Anthony Kennedy stated in *Edmonson v. Leesville Concrete Company* (1991), “racial bias mars the integrity of the judicial system and prevents the idea of democratic government from becoming reality.”

Whereas scholars have traditionally examined capital punishment as an outcome by focusing on its incidence on various social and ethnic groups (Paternoster 1984; Eckland-Olson 1988), we think that this distributive strategy is unproductive. It undermines our ability to gain a better understanding of the dynamics of race as an important and controversial factor in the disposition of death penalty cases, and it stifles public discourse surrounding crime policy and punishment. By focusing narrowly on outcomes rather than on process, scholars very often ignore important decisional events of low visibility that take place at earlier stages of capital prosecution. Events such as the prosecutor’s decision to “go for death” may well hold information that can advance our understanding about the contours of discrimination in modern criminal punishment and help us to pinpoint where discrimination largely resides in the capital prosecution process. Ultimately, this can both inform and guide how social scientists can provide valuable counsel to policy makers and help them to improve social justice.

The Premise of this Study

As American states have become more multiracial and multiethnic conglomerations over the last 20 years, the significance of investigating the linkages between racial and ethnic membership, political ideology, and death penalty processing is increasingly being recognized in criminological (Cochran and Chamlin 2006; Garland 2001), political science (Nice 1991, Walker 2009), sociological (Jacobs, Carmichael and Kent 2005; Simon and Spaulding 1999) and legal communities (Baldus, Woodworth, and Pulaski 1990; Gross and Mauro 1989; Unah and Songer 2006). One common theoretical dimension

of these analyses is the recognition of juridical punishment as a political construction. Criminological theorist Michel Foucault (1977, 23) calls it “a political tactic” and David Garland (1990, 2) describes it as an “apparatus of power and control,” which is situated within an interconnected field of power relations aimed at achieving social solidarity and order. Within this understanding of punishment, the role of electoral ideology in shaping death penalty decision making is enhanced by the visibility and salience of crime since the 1970s. Empirical evidence shows that when an issue gains in political salience, public and elected officials are likely to cultivate an accurate perception of public desires and develop incentives to respond even if for the sake of political self-preservation (Erikson, Luttbeg, and Holloway 1978).

Another important theoretical dimension of the literature on juridical punishment focuses on race as a symbol of social class conflict in which economic inequality that is usually associated with African Americans and other racial minorities, threatens the interest of the powerful and politically well-connected, leading to escalation in punishment in order to control these members of the lower socioeconomic class (Blalock 1967; Turk 1969; Tolnay, Beck, and Massey 1989; Liska 1992). Further linkage between race and the death penalty is provided by the controversy over whether racial diversity enhances the appeal of capital punishment. For example, the incidence of capital punishment is found disproportionately in southern states, which are more racially heterogeneous than in northern states, which are more racially homogeneous (Eckland-Olson 1992; Williams and Holcomb 2001; Thomson 1997). Although early research reported that black defendants were excessively more likely to be discriminated against in capital prosecution and punishment than their white counterparts (Wolfgang and Ridel 1973), more contemporary evidence suggests something different.

One of the earliest examples is the Baldus study (Baldus, Woodworth, and Pulaski 1990), which used Georgia death penalty data from 1973 through 1978 to examine the impact of race in capital sentencing. Relying upon several independent models to evaluate specific stages of capital prosecution, the study reported strong race-of-victim discrimination in the application of capital punishment. Race-of-defendant effects were anemic. These outcomes were specifically attributed to the discretionary choices exercised by district attorneys in Georgia in the early stages of the death penalty process. But while the Baldus study is truly seminal in its contributions, it suffers from important methodological

drawbacks that plague many empirical studies of capital punishment. Specifically, the analytical method employed failed to capture the truly *sequential* character of the death penalty process. In this paper, we present an alternative conceptualization of capital punishment not as an outcome but as a process.

With more than 30 years since the time period examined by Baldus et al., there are impressive signs throughout American society that racial attitudes are changing fundamentally. Surprisingly, no large-scale empirical reexamination of the death penalty in the South exist, except in Maryland (Paternoster et al., 2004), where the prevailing political culture is actually more consistent with northern liberalism than with southern conservatism. Our study is therefore important not only because it fills that void by focusing on North Carolina, but because geographic and cultural differences among states introduce the possibility that the conclusions of the Baldus study may not transfer to states outside Georgia. Furthermore, the changing political and cultural climates in the United States suggest that the findings may no longer hold. Only through careful and detailed study employing data from a more contemporary period can we reevaluate the race-and-death-penalty linkage. Indeed, our study provides reasons to believe that prosecutors are more race-neutral in the 1990s than they were when Baldus et al. first conducted their study. Adaptation to a new political landscape that includes politically attuned and active minority voting populations makes this insight plausible.

We analyze capital punishment as a political process consisting of sequential decisions by the prosecutor and jury. By decomposing the process into several interconnecting rather than independent stages of analysis, we move the literature beyond distributive results to distinguish a more complex and nuanced decision making outcome within the capital prosecution process. This will allow social scientists to determine whether racial discrimination, the most politically controversial and multifaceted aspect of the death penalty, continues to play an illegitimate role. While researchers continue to debate the intensity of racism in American society, particularly in the South (Fairbaugh and Davis 1988; Kuklinski, Cobb, and Gilens 1997), widespread agreement exist that generational change as well as legal and social pressures have calmed the once overtly racist tendencies of southern whites. That prevailing sentiment across the South is captured by the descriptive title of an empirical study of racial discrimination in Panola County, Mississippi, which proclaims: “We Ain’t What We Was” (Wirt 1997).

In the research reported here, we address three important questions that we think can shed new light

on the debate surrounding the role of race in capital punishment. First, does race *still* contribute significantly to the decision to prosecute and impose the death penalty in a southern state such as North Carolina? Second, looking beyond race, what are the most important political and socio-legal factors that account for the observed variation in capital prosecution and sentencing? Finally, to what extent do statutory mitigating factors actually mitigate death sentences?

To address these questions, we collected data from 80 of the 100 counties in North Carolina principally involving murders with known defendants committed between January 1, 1993 and December 31, 1997. Currently 37 other states also impose death sentences for murder. Thus, while our findings are most germane to North Carolina, they may very well have implications for how we understand the influence of race in modern prosecutorial strategy and in capital jury decision making nationwide.

Racial Discrimination and the Death Penalty in North Carolina

North Carolina is among several states that maintain hegemony in the use of capital punishment in the United States. According to the state department of corrections, between 1910 and 2008, North Carolina executed 391 individuals in Central Prison. Figure 1 presents the breakdown of these executions by period, coupled with the racial differentiation of the current death row population. Although African Americans comprise 23 percent of the state's total civilian population, they make up 54 percent of inmates on death row. There are four women currently on death row in North Carolina.

[Figure 1 about here]

North Carolina is often viewed both within and outside the South as an example of racial moderation (Luebke 1990, 102; Applebome 1990). But the statistics cited above and death penalty research that emerged from the state during the 1970s and 1980s suggest otherwise. Indeed, they compel the inference that North Carolina values the lives of blacks significantly less than the lives of whites (Gross and Mauro 1989; Nakell and Hardy 1978). As Black and Black (2002, 3) observe, part of the explanation is regional: "old southern politics was transparently undemocratic and racist." Overt racism is, at the very least, partly responsible for the sentencing disparities reported among whites and nonwhites throughout North Carolina before 1980. For example, Nakell and Hardy (1978) reported that the death penalty was imposed on black defendants with significantly higher frequency than on whites

charged with comparable offenses, and that the death penalty was used as a policy instrument for controlling the behavior of blacks (see also, Wolfgang and Riedel 1973).

Institutional reforms prompted by the civil rights movement, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, and Supreme Court decisions such as *Furman v. Georgia* (1974), were intended to challenge racial injustices and to require fundamental change in racial attitudes in government, including the introduction of structured sentencing that accounts for aggravating and mitigating circumstances in death sentencing. Indications are that these reforms have yielded results, showing a transformation in the contours of North Carolina politics.

And so, despite the vitriolic cast of North Carolina's race politics exemplified by the late Senator Jesse Helms, a significant upswing in race relations is manifested in the election of several African Americans to the state legislature and to various judgeships, including the chief justice of the state supreme court (Betts 1996). But disagreement remains about the degree to which racial attitudes have been transformed at the individual level, which is where important jury decisions are made. Whereas some scholars have proclaimed the emergence of a "new" South, characterized by a progressive attitude toward race relations (Fairbaugh and Davis 1988), skeptics maintain that through unobtrusive measures of racial attitude, in which white respondents are persuaded that they can express hostility toward blacks without anyone detecting that they have done so, racism remains high in North Carolina and in other southern states, especially among white southern men (Kuklinski, Cobb, and Gilens 1997).

Why North Carolina?

North Carolina provides an excellent setting for studying the linkages between race and capital punishment. For one thing, North Carolina is one of the leading death penalty states. According to Blume, Eisenberg, and Wells (2004), North Carolina has the fourth largest number of death row inmates and ranks among the top ten in the number of blacks sentenced to death. Second, over 95 percent of prosecutors in North Carolina are white males who were elected through district-level elections. These are characteristics shared by most other prosecutors nationwide. Finally, V.O. Key's (1949) penetrating analysis of southern cultures and politics revealed the importance of intra-regional variation in the intensity of racism among Southern states. Key (1949, 205) singled out North Carolina as the most

“presentable...progressive plutocracy.” We think Key’s insight remains relevant as we seek to gauge the state’s racial progress in the prosecution of society’s most heinous offenses. While North Carolina does not represent the entire South in all cultural dimensions, we think that the state’s inclination toward racial moderation might serve as a harbinger of good things to come in the region regarding the interconnections between race and criminal justice policy. For these reasons, we think our findings are generalizable to other death penalty jurisdictions across the nation.

Does race *still* contribute substantially to the application of capital punishment in North Carolina? Answering this question is the centerpiece of our study. Criminal prosecutions in North Carolina follow a judicially mandated bifurcated trial scheme, requiring the weighing of aggravating and mitigating circumstances before imposition of a death sentence. In the next section, we detail our theoretical framework through which we hope to make a contribution to the discussion of criminal punishment.

A Process Theory of Capital Punishment

Our theoretical argument is that capital prosecution is properly understood as a *process* that encompasses three sets of decision-theoretic factors. *Social background factors* underscore the racial threat argument and so emphasize personal socio-demographic attributes such as race and socioeconomic status (SES) of victims, defendants, and the local communities in which a death-worthy crime may have been committed. *Formal legal factors* are alternative systemic mechanisms of control that focus on institutional rules bearing upon the severity of the crime and past criminal history of defendants. Finally, *structural factors* emphasize political incentives, electoral ideology, and the characteristics of pivotal actors within the criminal justice system, including prosecutors and defense attorneys.

We assert that, to varying degrees, these theoretical factors operate simultaneously at each of the various stages of criminal prosecution from indictment to sentencing. Specifically, we identify two main sequential stages of capital prosecution. The first is the pretrial/discovery stage, which features the local criminal prosecutor who exercises untrammelled authority to determine what charges to bring and what prosecutorial strategy to adopt. The second, trial/post-trial, stage features the petit jury, which determines guilt and pronounces the sentence. In each of these two stages, we analyze the interconnected decisions of the respective judicial officers as reflected in the actual flow of cases within

the judicial system.

In our theoretical framework, we take as given the truism that all homicide suspects processed through the justice system have been formally indicted. Therefore, we begin our analysis with the plea-bargaining decision, which the prosecutor can make under the assumption that, on balance, the defendant will seek a plea arrangement to avoid the uncertainty of trial and a possible death sentence. Thus, the dependent variable for the initial selection model is the rejection or acceptance (1/0) of a plea agreement by the prosecutor, given an indictment (γ). This choice option will determine the outcome of the last important pretrial decision the prosecutor has to make, namely, whether to seek the death penalty or not (1/0), given rejection of a plea agreement and presence of a formal indictment. Thus, we shall estimate the following conditional probabilities for an indicted suspect:

$$\begin{aligned} (1a) \quad & P(\mathfrak{R} = 1 | \gamma) && \rightarrow && \text{selection model} \\ (1b) \quad & P(\Omega = 1 | \mathfrak{R} = 1, \gamma) && \rightarrow && \text{outcome model,} \end{aligned}$$

where \mathfrak{R} = rejection of plea agreement; γ = indicted suspect; Ω = prosecutor seeks death.

The second set of models focus on trial/post-trial decision making. This time the actor in focus is not the prosecutor but the jury. The dependent variable for the selection model is whether the defendant was found guilty at the criminal trial or not (1/0), assuming that the prosecutor sought the death penalty, rejected a plea agreement, and an indictment was announced. For the outcome model the dependent variable is whether the defendant was sentenced to death or life in prison, assuming a conviction was obtained. We shall estimate the following corresponding conditional probabilities:

$$\begin{aligned} (2a) \quad & P(\Psi = 1 | \Omega = 1, \mathfrak{R} = 1, \gamma) && \rightarrow && \text{selection model} \\ (2b) \quad & P(\Gamma = 1 | \Psi = 1) && \rightarrow && \text{outcome model,} \end{aligned}$$

where Ψ = conviction, Ω = prosecutor seeks death, \mathfrak{R} = rejection of plea agreement, Γ = death penalty.

No previous studies have modeled capital prosecution and punishment in such a process-oriented framework. Its main advantage is that it accounts for built-in conditionality in the decisions that

prosecutor and jury must make. We think that our framework represents an improvement over previous studies because our models closely reflect the complex sequential process actually used in capital prosecution and sentencing in the United States (cf: Baldus et al. 1990; Gross and Mauro 1989; Paternoster et al. 2004). Our theoretical framework permits us to employ a large set of independent variables to test competing relational explanations about the linkages between race and the death penalty, and to pinpoint the location of any discrimination that may exist in the system and where it might be most acute. We now discuss our independent variables and hypotheses.

Racial Threat, Class Struggle, and Social Background Factors

The classic racial threat perspective proposes that criminal punishment escalates as racially marginal populations increase because of the potential threat these populations represent to the white majority, and to existing social, economic, and political arrangements that align with the majority's interests (Blalock 1967). Indeed, a sizeable literature finds an association between the size of the nonwhite population in a state and escalation in overall punishment severity (Liska and Chamlin 1984; Jacobs and Carmichael 2002; Western 2006; Steffensmeier and Demuth 2000). Accordingly, we would expect black or nonwhite offenders to receive harsher punishment than white offenders, especially when the victim is white. Furthermore, as the nonwhite population increases in a community, we expect overall death sentences to rise.

Race-based explanations of criminal punishment further maintain that criminal justice outcomes are significantly influenced by racial discrimination among authorities formally entrusted with administering justice, including police officers who investigate crimes, district attorneys who prosecute crimes and jurors who convict and impose sentences (Bowers and Pierce 1980; Radelet and Pierce 1985; Gross and Mauro 1989; Paternoster 1984). Empirical research that relied on death penalty outcome data from before 1970 emphasized the criminal defendant's race as the key correlate of capital punishment as state officials used the death penalty as an instrument of social control over blacks (Garfinkel 1949; Phillips 1987). In North Carolina, research conducted during the Jim Crow era indicated that racial discrimination played a regular and illegitimate role. Prosecution and sentencing of

blacks was disproportionately more severe than that of whites for similar offenses.¹

Consistent with the racial threat formulation, race-based sentencing patterns persisted even after the Supreme Court reinstated the death penalty in *Gregg v. Georgia* (1976) and voiced optimism in *Woodson v. North Carolina* (1976) that two key reforms: (1) bifurcating the trial process and (2) giving juries structured sentencing guidelines will reduce the incidence of racial discrimination in capital sentencing. Given this, one would expect the Court to favor statistical evidence showing disparate application of the death penalty. But in *McCleskey v. Kemp* (1987), the Court rejected strong statistical evidence of continued group-based racial discrimination in sentencing, placing the burden on defendants such as McCleskey to prove that they personally suffered discrimination during their capital trial.²

Data from the post-Gregg era suggest that the Court's optimism is misguided and this further bolsters our racial threat argument. Nakell and Hardy's (1987) analysis of North Carolina data during 1977—1978, for example, found a pattern of racial discrimination whereby defendants of whatever race who killed whites were significantly more likely to receive capital punishment than defendants who killed nonwhites. In addition, black defendants were more likely to receive the death penalty compared to defendants of other races. But the short temporal distance between this study and the Gregg decision made it difficult for these authors to assess the decision's true impact. Gross and Mauro (1989) also examined the post-Gregg environment, focusing on the role of race in 126 death sentences imposed in Arkansas, Mississippi, Oklahoma, North Carolina, and Virginia between 1976 and 1980. In each of these states "white-victim homicides were more likely to result in death sentences than black-victim homicides" p. 92. Unfortunately, the small sample and lack of controls for extra-legal influences other than the victim's race rendered the findings inconclusive.

¹ For instance, Johnson (1941) found that, among 330 murder cases in five North Carolina counties between 1930 and 1940, 32 percent of all black defendants and only 13 percent of white defendants received death sentences for similarly serious felonies. Also, death sentences were imposed in 17.5 percent of white victim cases but only in 0.4 percent of black victim cases.

² The *McCleskey* and *Woodson* decisions test the limits and usefulness of statistics in judicial proceedings. Although the justices have accepted the use of statistics in employment discrimination cases (e.g., *Johnson v. Santa Clara*), they remain unwilling to permit the same in death penalty cases. According to the *McCleskey* decision, the death penalty is by nature "fundamentally different" from cases invoking Title VII of the Civil Rights Act. The decision to impose death is made by a properly constituted jury, unique in its composition, whose decisions rests upon numerous factors pertinent to the case. However, the decision maker in Title VII cases is a single entity that considers numerous cases, thus making group-based statistics appropriate for showing racial disparities under Title VII.

Perhaps the most wide-ranging post-*Gregg* study in the Deep South was the Baldus study. Using an empirical model comprising of more than 230 independent variables, the study generally confirmed previous findings regarding the significance of race but with greater specificity. Although the incredibly large number of independent variables raises specification concerns, Baldus et al. (1990) concluded that the application of capital punishment favors white victims compared to black victims. The odds of receiving capital punishment were 4.3 times higher for white victim cases than for black victim cases. Similar findings have been reported in other studies (Keil and Vito 1989). One study from Maryland using data from 1978 to 1999 similarly reported strong race-of-victim effects (Paternoster et al. 2004). In all these studies, researchers attributed victim-based effects to unchecked prosecutorial discretion exercised at the earliest stages of case processing. The defendant's race generally reached statistically insignificant impact (Baldus et al. 1990; Keil and Vito 1992; Paternoster et al. 2004).

Unfortunately, while Baldus et al. (1990) and Paternoster et al. (2004) made truly valuable contributions to the race and death penalty debate, both studies suffer from two key research design flaws. First, their selection of explanatory variables relied on stepwise regression technique, a multi-step approach, which raises the problem of excluded variable bias and can lead to inaccurate inferences.³ For example, in both Georgia and Maryland where state prosecutors are popularly elected, electoral incentives are potentially influential considerations for prosecutors, especially in inter-racial homicides. Yet neither study controlled for possible electoral pressure on prosecutors. Second, neither study accounted for case selection bias in any direct way.

The studies we have reviewed here are all valuable. But many suffer from methodological problems ranging from too few cases and weak statistical tests (Gross and Mauro 1989) to selection bias (Nakell and Hardy 1987; Paternoster et al. 2004). But overall, analyses of race and the death penalty are fairly consistent in reporting race-of-victim effects and absence of defendant's race effects.⁴ The question is whether that reported pattern of racial disparities still holds in North Carolina. While our study focuses

³ As explained by Paternoster et al. (2004, p. 23), under the multiple stage approach, they "first examined each case characteristic separately to see if it was related to the county or race variable of interest. Those factors that were significantly related at the .05 level were retained for further analysis, those not meeting that criterion were dropped. The variables that were retained at the first screening were then entered into a full logistic regression model..." From this description, we can conclude that the analysis was not entirely theoretically grounded.

⁴ An etiology of capital sentencing studies by the General Accounting Office confirms this conclusion: "In 82 percent of the studies, those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. The finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques." (U.S. GAO 1990, 5).

on race as a condition of criminal punishment, we account for alternative explanations regarding socio-legal and structural conditions to assess death penalty decision making.

Among these alternative explanations in the social landscape is class conflict. Class-based explanation of criminal prosecution and sentencing harkens back to Marx. These explanations assert that punishment is conditioned by social structural relations and procedures, and they predict that intensity of punishment that befalls those with social value will be less severe (Garland 1990; Savelsberg 1994). Thus the class-based explanation views death penalty prosecution metaphorically as a card game with a deck stacked against low SES players because they lack both affluence and influence with the politically powerful. By contrast, high SES players are advantaged in their capacity to exploit the rules of the game to their benefit. According to this social class argument, high SES defendants can use legal institutions to reduce or altogether escape punishment for criminal transgressions through their social networks and their ability to hire superior lawyers and insiders. Similarly, high SES victims hold greater social and economic value than low SES victims (Savelsberg 1994; Bedau and Cassell 2004). The antecedent of this differential treatment is social inequality, especially ascriptive inequality. Based upon this logic, high SES victims can be expected to command severe punishment for their killers commensurate with their high social class standing. We test these social class arguments using educational attainment of the defendant and victim. We expect that crimes involving well-educated defendants will be less likely to result in capital prosecution and punishment whereas those involving well-educated victims will be more likely to result in capital prosecution and punishment (Appendix A gives the operationalization of all our variables).

Prosecutors and juries may be more sympathetic to a certain class of defendants and victims than to others. Unfortunately, we have little information to assess which defendants or victims will elicit such sentiment. Two social background factors that seem especially appropriate are age and sex. Age has been associated with both prosecutorial and sentencing decision making in capital cases (Radelet and Pierce 1985; Williams and Holcomb 2002). Society views older defendants as being more responsible and set in their own ways than younger defendants who are seen as being more impulsive and immature, but more easily rehabilitated. Also, younger defendants are less likely to carry a criminal history than older offenders. Therefore, we expect older defendants to be more likely to face capital prosecution and

sentencing than younger defendants.

Graddy's (2001) study of jury decision making in product liability awards shows that at the extremes, age has an exculpatory quality in the justice system. Because of physical and mental infirmities associated with age, much older defendants (especially those over 75 for example) and much younger defendants (under 20) may be perceived as being cognitively weak and consequently likely to invite leniency compared to middle-aged offenders.⁵ This possibility suggests a curvilinear relationship between defendant's age and the probability of criminal prosecution and sentencing. We construct the exponential variable "Age²" as a way to test this relationship. Similarly, society views very young and very old victims as "helpless" and therefore especially vulnerable to crime. On this basis, one would expect crimes against very old and very young victims to command more severe punishment than those committed against middle-aged victims, leading us to expect a curvilinear relationship as well.

A mountain of empirical evidence points to a gender-gap in the criminal justice system (Hurwitz and Smithey 1998; Daly and Tonry 1997; Nagel and Johnson 1994). While men are overrepresented in the death penalty system, women are underrepresented partly because of the arrangement of gender roles in society but mostly because women commit fewer crimes (especially violent crimes) than men. Moreover, studies suggest that women are treated more leniently than men not just in capital prosecution and sentencing but in most other aspect of the criminal justice system. In Spohn and Spears' (1997) study of male and female felony defendants, females were sentenced less harshly than males for similar offenses. Evidence also suggests that violent offences against women are more likely to elicit the death penalty than offenses against men (Baldus, Woodworth and Pulaski 1990, 73; Unah and Songer 2006).⁶ Thus, we expect less severe treatment of female offenders and more severe treatment for those who attack women.

⁵ Indeed, North Carolina and many other states exempt from capital punishment criminal defendants under 18, well before the Supreme Court outlawed the execution of individuals under 18 (*Roper v. Simmons*, 2005).

⁶ A woman facing execution is a particularly rare event inasmuch as it is relatively rare for a woman to receive the death penalty. In 2000, pre-execution media frenzy swirled around Texas death row inmate, Carla Faye Tucker, mostly over her sex, not over her claim of total rehabilitation or conversion to Christianity while in prison.

Formal Legal Factors

Legal factors designated by a state's criminal statutes and judicial decisions are designed to constrain prosecutorial discretion and jury decision making. Presumably, this should lead to evenhandedness in prosecution and sentencing. Indeed, socio-legal theorists such as Black (1976) recognize that society is based on a social contract and have conceptualized law as a form of social control, formulated to explain society's response to deviant behavior. Savelsberg (1992) also recognizes the weight of penal law, maintaining that legal factors represent a neoclassical return to formal rationality in prosecution and punishment where the chief objective is simply to do the right thing and "be just."

Decision making based upon formal legal factors therefore functions in the Weberian sense whereby rational judicial officials strictly adhere to criminal codes in an objective and dispassionate manner to arrive at their decisions. Under this rationale, we would expect legally identified variables to emerge as a major determinant of criminal punishment in North Carolina. Indeed studies examining unwarranted disparity in sentencing outcomes have shown that legal factors, including offense characteristics, have powerful effects. Because punishment is predicated on offense severity, formal legal factors predict that prosecutors will likely proceed capitally and juries will likely convict and impose a death sentence if the offense surpasses a certain threshold of heinousness and if the offender has prior history of violence such as a felony conviction (Bushway and Piehl 2001; Mather 1979; Simon and Spaulding 1999).

North Carolina criminal statutes and those in other southern states, including Florida, Louisiana and Tennessee contain three legal criteria that control whether a homicide defendant can be prosecuted for a capital crime. These criteria speak to the mental condition of the accused (*mens rea*) during the offense (i.e., the extent of premeditation involved). The first criteria for first-degree murder involve one of five circumstances that have historically been seen as especially heinous when they lead to murder: poisoning, lying-in-wait, imprisonment, torture, or starvation. The second criteria designate crimes that reflect a "willful, deliberate, or premeditated killing." The third involves felony murders, those committed irrespective of the defendant's mental state while in the commission of another felony such as rape or armed robbery.⁷ Our hypothesis regarding these criteria for first degree prosecution is

⁷ The district attorney must designate either at indictment or soon thereafter which permissible legal theory of first-degree homicide he or she will attempt to prove. Then if the defendant is found guilty, a penalty phase will ensue.

informed by Justice Byron White's logic in *Gregg v. Georgia* (1976), "Unless prosecutors are incompetent in their judgments, the standards by which they decide to charge a capital felony will be the same as those by which the jury will decide the questions of guilt and sentence." Thus, we expect these three enumerated legal criteria to have a significant positive effect on prosecution and punishment.

Complicating the analysis, North Carolina criminal statute requires that beyond conviction for first-degree murder, no defendant can be capitally sentenced unless the jury, at a separate sentencing proceeding, finds at least one aggravating circumstance described by statute. The statute lists several aggravating circumstances, including killing a law enforcement or corrections officer and killing anyone while incarcerated. The jury must weigh these aggravating circumstances against a list of mitigating circumstances, factors that presumably make the defendant less culpable for the offense, such as killing under duress or under domination of another person. Only when aggravating circumstances outweigh mitigating circumstances can a jury impose a death sentence. We expect the presence of aggravating circumstances to increase the likelihood of capital prosecution and sentence, and we expect the presence of mitigating factors to decrease that likelihood. We also included the killing of multiple victims as a possible correlate of capital prosecution and sentencing. Premeditated killing of one victim is a clear enough indicator of depraved indifference to human life; both society and the law view killing multiple victims as a stronger indicator.

Analyses of community responses to crime indicate that criminal motives are related to punishment severity (Simon and Spaulding 1999). Yet, a number of studies that rely on official government data typically overlook the importance of motive and thus fail to explicitly account for it. Part of the reason is that the data gathering authority thinks that motive is already integrated into the sentencing guidelines. But because of the fluidity of human motivations, prosecutors and jury can assign greater severity to a particular offense based upon the assailant's motive. In the politics of law enforcement, where criminal intent determines perceptions of culpability and punishment assignment, we think that taking account of various criminal motives can help us explain the behavior of prosecutors and jury. We examine five motives typically associated with homicide: hatred, rage, sex, money and involvement in collateral crimes. We use rage as our comparison category. We expect the presence of these motives to enhance the probability of prosecution and sentencing.

Structural Factors, Electoral Incentives, and Criminal Punishment

Because early studies reached mixed findings when researchers relied on the Durkheim intensity of punishment formulation or the Marxist linkage of unemployment, crime, and punishment severity, a growing literature on criminal punishment has turned to politics, conceptualizing punishment straightforwardly as a political response to social problems (Wilson 1985; Garland 1990; Beckett 1997; Stucky, Heimer, and Lang 2005; Jacobs and Carmichael 2001). Indeed Richard Nixon's 1968 promise to return the nation to "law and order," his eventual appointment to the Supreme Court of law and order conservatives Warren Burger and William Rehnquist, and George H. W. Bush's 1988 use of prison furlough in a campaign advertisement featuring Willie Horton to accuse Michael Dukakis of being "soft on crime," all underscore the strong connection that exists between politics and criminal punishment, with central emphasis being placed on the political processes.

Within that description, structural factors concern the manner in which the political process is institutionalized in prosecutorial practice. Linking prosecutorial practice and the political process are process-oriented variables such as the temporal proximity of the case in the prosecutor's election cycle, party competition, and political ideology.

Research on judicial accountability suggests that elections provide an incentive structure that controls the behavior of state Supreme Court justices (Traut and Emmert 1998). In controversial issues such as the death penalty, Hall (1995) finds that state Supreme Court justices act strategically by casting votes that conform to constituency preferences. Burnside (1999) reported that an Alabama trial judge up for reelection upgraded a jury's life sentence to a death sentence to improve his chances for reelection. There is theoretical reason to believe that North Carolina prosecutors who are subject to electoral accountability will also respond to political pressure. As Gordon and Huber (2002) suggest, electoral incentives serve as instruments of political accountability. Yet, elections can lead to perverse strategies including malicious prosecution. Strategic prosecutors will consider their future electoral prospects in their charging and prosecuting decisions. Evidence proffered by Bowers and Pierce (1980) supports the contention that prosecutors facing electoral competition do succumb to political pressure to cultivate an aggressive posture by disingenuously upgrading the crimes of, and vigorously prosecuting, accused

offenders deemed easily convictable.⁸ These soft targets are typically the poor or minorities. The payoff for prosecutors includes a high conviction rate, which they can use to win support from crime-conscious voters. We expect electoral proximity to influence prosecutorial decisions, especially in the context of electoral competition.

Another process-oriented variable connected to the structure of prosecutorial practice is the prosecutor's ideology, an antecedent of attitude toward capital punishment. Opinion polls consistently indicate that conservatives support the death penalty considerably more than do liberals (Ellsworth and Gross 1994; Edsall and Edsall 1991). Conservatives believe that severe punishment is needed to deter crime, an act of individual choice. Liberals believe that crimes are often the result of forces beyond the individual's direct control (Schuman, Steeh, and Bobo 1985). Studies of decision making in Congress show that ideology is the most fundamental of all the political assets that government officials possess and routinely depend upon for decisions (Hinich and Munger 1994). As Segal and Spaeth (1993) and Hall (1995) have convincingly documented, ideology also operates in the judicial system, even at the state level. We use party identification of the prosecutor to capture ideological influences on prosecutorial decisions. Because conservatives have a greater orientation toward law and order and are prone to employing punitive measures than liberals, we would expect conservative prosecutors to pursue more severe punishment than do liberal prosecutors.

Defense counsel status is another process-oriented variable. In the adversarial setting of a criminal proceeding, the experience of the defense lawyer is an important predictor of the probability of prosecution as well as sentence severity (Bright 1997). We focus on the defense counsel by using two variables: (1) expertise and (2) whether the defense attorney is retained by the accused or an assigned public defender. We use hourly rate of pay that defense attorneys receive as a measure of expertise.⁹

⁸ In capital trials, all jurors must be death qualified. In addition to routine attitudinal and experiential questions, prospective capital jurors are usually asked about their capacity and willingness to impose death if the defendant is found guilty. The Supreme Court ruled in *Witherspoon v. Illinois* (1968) that potential jurors whose beliefs "substantially impair" their ability to impose the death sentence may be excused from jury service in capital cases.

⁹ Our data do not distinguish between two types of expertise identified by Kritzer (1998): substantive expertise (knowledge of the law) and process expertise (ability to utilize legal knowledge to earn the "trust" of judges through persuasion). Our measure reasonably approximates these forms of expertise because in North Carolina, the hourly rate of pay is determined by the trial judge based upon the lawyer's professional experience in capital cases and sometimes upon the perceived complexity of the matter in light of case law. This comment is based upon telephone interview with an administrator at the Administrative Office of the

Other factors linking the structure of prosecutorial practice to capital prosecution but which are not necessarily process-oriented exist, including the racial composition of the local community where the case was tried, and the race and gender of the prosecutor. We use race and gender of the prosecutor to attempt to generalize the gender- and racial-gap hypotheses that females and nonwhites are “softer” on criminals than males and whites (Mills and Bohanon 1982; Welch, Combs, and Gruhl 1988, cf: Steffensmeier and Hebert 1999). Finally, we include a measure of the racial composition of the county of conviction. Because prosecutors have an electoral incentive to be race-neutral, we hypothesize that prosecutors are less likely to seek the death penalty if the county nonwhite population is large rather than small. However, we expect jurors who face no electoral accountability to be more likely to convict and sentence defendants to death if the nonwhite population is large rather than small. Finally, we explore a number of interactions to tease out the complex relationships between these political variables and prosecutorial and sentencing decisions.

Research Design

During the 1993 to 1997 period, 3990 known defendants were prosecuted for different homicides in North Carolina. Our data capture homicides resulting in a murder or first-degree murder charge.¹⁰ In addition, our data include a random sample of second-degree murder cases to account for the very real possibility that, for extra-legal motivations, prosecutors may undercharge an otherwise death eligible offense.¹¹ Our data then consisted of the entire population of first-degree murder cases in which the defendant received a death sentence (99 cases) or life in prison without parole (303 cases). We used multistage statistical sampling to select a random sample from the remaining homicide cases designated

Courts in Raleigh, North Carolina.

¹⁰ In North Carolina, homicides are charged as murder, first-degree murder, second-degree murder, and manslaughter. A nonspecific charge of “murder” is an all-inclusive category used if the prosecutor has insufficient evidence to classify the homicide as first or second-degree murder or manslaughter. It further gives the prosecutor flexibility should a plea agreement be negotiated down the line.

¹¹ Because of prosecutorial discretion, prosecutors can decline to file a capital charge even if a case is death eligible. Bolstering our claim is Paternoster et al. (2004, 26) who found that in Maryland, “killings involving a black offender and a black victim make up .49 of the total death eligible cases, but only .28 of death notifications.” In our North Carolina data, we found 34 death eligible cases where the prosecutor failed to seek the death penalty, most of these had black victims. Therefore, we *define a death eligible offense* as one in which the prosecutor files notice to seek the death penalty *or*, as stipulated under the criminal code, at least one statutory aggravating circumstance is present, and the defendant is at least 18 years of age, the statutory minimum age for invoking the death penalty in North Carolina.

with a “murder” charge but receiving a life sentence, a term of years in prison, or an acquittal/dismissal (118 cases). In this way our data reflect the entire population of homicides committed in North Carolina during the period examined.

Under multistage sampling, cases are selected in stages to arrive at an overall nonzero probability of inclusion in the analysis (see Appendix B). To check the representativeness of our sample, we created a sampling weight that reflects the probabilities of the two sampling stages used.¹² However, since regression analysis assumes observed rather than weighted data, we limit our regressions to the unweighted sample, N= 520. We use the weighted data only for reporting death-sentencing rates for various racial groups and configurations.

We decompose the capital prosecution process by estimating the two sets of models outlined in our theoretical framework, using Heckman probit (Heckman 1979) as a way to truly capture the sequential process of capital prosecution and punishment.¹³ We added exclusion restrictions into the selection models to reduce any collinearity problems that might be associated with the Heckman correction index.

Results

Does race *still* contribute substantially toward capital prosecution in North Carolina during the 1990s? If progressive changes in Southern racial attitude in recent decades are reflected in the application of criminal punishment in North Carolina, then little evidence of racial bias in prosecution

¹² Because North Carolina counties are grouped into judicial districts with each being controlled by a single prosecutor, we first selected a random sample of judicial districts; we then derived our randomly selected cases from these judicial districts. Our sampling weight, calculated to be 31.7, reflects these two sampling stages. To check the accuracy of this weight, we mapped our 520 cases back to the entire population of 3990 and received a 99% accuracy rate (N=3956). Due to rounding of decimal fractions, such mapping hardly ever yields the exact population figure. But we think our sample weight is almost perfect.

¹³ Heckman probit (Heckprob) models are suitable for analyzing the death penalty as a process because our dependent variables are binary and because cases that reach any given stage of the process are a nonrandom selection of all cases that enter the courthouse. Heckman procedure corrects for selection bias by using probit to predict selection into the sample as a function of independent variables Z, then corrects for selection bias by calculating a nonlinear selectivity index or hazard rate, λ_i (Achen 1986). That quantity is then included in the second stage regression to compensate for the selection bias: $y_i = X_i'\beta + \beta_\lambda \lambda_i + \varepsilon_i$, where X is the set of independent variables that predicted the outcome. Note that because the hazard rate depends on normally distributed errors, λ_i must be nonlinear. If λ_i is linear, the outcome equation will be unidentified. In order to achieve analytical convergence in Heckman models, the selection equation requires an “instrumental” variable or exclusion restriction that explains the dependent variable in the selection equation but not in the outcome equation. Without such identifying variable, one is relying solely on the functional form to identify the model. This would be problematic since the functional form assumption has no firm basis in theory.

and death sentencing should emerge. By racial bias, we mean a predictable inequity in the treatment of a racial group. Figure 2 reports simple *death-sentencing rates* grouped by racial category. Overall, the death-sentencing rate for homicides in North Carolina from 1993-1997 is 2.5 percent. Coincidentally, this rate is right in line with the national average of 2.5 percent reported by Blum, Eisenberg and Wells (2004, 172-177). Beyond the aggregate death sentencing rate that we report, three interesting findings emerge once we disaggregate the data and apply a weight index.

[Figure 2 about here]

First, consistent with racial threat theory there is a stark difference in death-sentencing rates between white and nonwhite victim cases.¹⁴ The death-sentencing rate for white victim cases is 3.4 percent regardless of the race of the defendant. This is more than doubled the death-sentencing rate for nonwhite victim cases (1.6 percent, $p < .01$). Thus the aggravated murder of a white individual is 3.4 times more likely to result in a death sentence compare to the murder of a nonwhite individual.

Second, the death-sentencing rate for both white and nonwhite defendants is statistically indistinguishable if the victim's race is not taken into account. This finding is consistent with much of the post-Gregg literature. Finally, we examine defendant/victim racial configurations. How do capital murder defendants fare in the justice system when judged in light of their victim's race? The most striking result is in the treatment of victims killed by nonwhite defendants. When a nonwhite defendant kills a white victim, the death-sentencing rate is 5.1 percent. However, when a nonwhite defendant kills a nonwhite victim, the death-sentencing rate is only 1.5 percent. This difference is statistically significant using a difference of proportions test ($p < .01$). The highest death-sentencing rate occurs where a nonwhite kills a white; the lowest occurs where a nonwhite kills another nonwhite. The sentencing of white defendants does not differ significantly in terms of their victim's race. However, as in the case of nonwhite defendants being significantly worse off when they commit interracial murders, white defendants who commit interracial murders also appear worse off, but the number of cases in that category is too small, rendering the ratio statistically meaningless.

¹⁴ We define nonwhites to include blacks, Hispanics, Asians and other racial minorities, but most individuals in this category are black. While several death-sentencing studies simply make a distinction between whites and blacks, we believe that this is under-inclusive because other racial minorities also suffer illegal discrimination in state and federal justice systems.

Generally speaking, inter-racial homicides command higher death-sentencing rates than intra-racial homicides. This pattern fits in with previous findings based upon 1970s data from Florida (Radelet 1981) and Georgia (Baldus, Woodworth and Pulaski 1990) and 1990s data from Maryland (Paternoster et al. 2004). One explanation is that intra-racial homicides tend to involve primary relations such as relatives, acquaintances, or friends. These kinds of homicides are generally thought to carry lower levels of aggravation than inter-racial homicides, which typically involve strangers and thus pack higher levels of aggravation. Our data support that explanation. In cases where a nonwhite kills another nonwhite, 21 percent of those receiving death sentences involve strangers. But in cases where a nonwhite kills a white, the rate more than doubles: 44 percent of those receiving death involve strangers.

On the basis of this descriptive analysis, we can surmise that a discernible pattern exists. On account of race alone, death penalty sentencing in North Carolina is not evenhanded. Nonwhite killers of whites are overwhelmingly more likely to receive the death penalty than any other racial configuration. The full percentages are reported in Table 1. Our analysis thus far cannot fully account for the differential treatment of murder defendants and victims since we have not yet controlled for legal and political influences.

[Table 1 about here]

Will the lack of evenhandedness disappear in our results once we subject the data to more rigorous statistical testing that accounts for linear dependencies and control for factors other than race, such as institutional rules surrounding case facts and structural conditions pertaining to case processing?

Race and Prosecutorial Decision to “go for Death”

At the prosecutorial decision stage, the most important question we seek to answer is: Does race still affect the prosecutor’s decision to seek the death penalty in North Carolina? Table 2 reports Heckman probit estimates explaining prosecutorial decision to reject a plea deal and to seek the death penalty. Due to space constraints, we limit our discussion to the prosecutor’s decision to seek death (Model 2). Overall, the models perform quite well as indicated by the chi square test, which suggests that the coefficients did not occur by chance. Moreover, the reported rho of .66 indicates the level of

association between rejection of a plea agreement by the prosecutor and the decision to seek the death penalty. It lends credence to our analytical method, which is capable of correcting for collinearities between prosecuting stages. To address any variability that may not be captured by our aggregate-level predictors, standard errors are corrected for clustering on county of offense. Generally speaking, the probability that North Carolina prosecutors would seek the death penalty, conditional upon all variables being held at their mean, is 28 percent. Since interpretation of probit estimates is less straightforward, we have calculated the marginal impact of each statistically significant variable based upon the conditional event probability. What do the results mean?

Using white defendants who kill white victims as the comparison category throughout, we find that North Carolina prosecutors are 10 percent less likely to seek the death penalty when a nonwhite individual kills a white individual than when a white kills a white, holding all other variables constant at their mean. As we indicated earlier, white defendant-nonwhite victim cases are too few to be successfully analyzed in the regression models. The category of nonwhites-who-kill-other-nonwhites fails to reach statistical significance. Our key finding that racial disparity does not reside in the prosecutorial stage would surely seem counter-intuitive to many because it contradicts the old-style racism thesis, and it contradicts conclusions reached by the Baldus study. However, we think our finding makes theoretical sense. The historical understanding of racial discrimination in criminal punishment in the South conjures up images of a white prosecutor vigorously pursuing capital justice against a black defendant when the victim is white. From that standpoint, our finding here indicates that North Carolina is changing fundamentally and that this is a harbinger of positive developments to come throughout the South.

There is both a statistical and a substantive explanation for this finding. Statistically speaking, our rigorous analytical method places more demands on the data and it uses a two-step estimation procedure designed to address the underlying issues of case selection bias and conditionality that are common in capital prosecution data. Substantively, there is a logical political explanation for our finding. As Carmines and Stimson (1989) and Black and Black (2002) have demonstrated, electoral politics in American society and particularly in the South have indeed undergone fundamental change since the 1970s due to the increasing importance of race in election outcomes. Democratically elected

district attorneys in the North Carolina of the 1990s must respond to a broader electoral constituency than district attorneys who served before and during the 1980s when nonwhites faced demoralizing obstacles of disenfranchisement. Owing to legal and political reforms of the civil rights era, most notably the Voting Rights Act of 1965 and Supreme Court decisions invalidating discriminatory practices, nonwhites have gained substantial political clout and independence, which prosecutors now ignore only at their own electoral peril. As we further explain below, a strong electoral connection exists between prosecutorial choices and voter ideology.

[Table 2 about here]

Other factors besides race are important in explaining prosecutorial decision to seek the death penalty. Among these are social background factors such as age and social class status. As expected, the age of both the defendant and victim have a statistically significant impact in prosecutorial decision making. However, the effect is less than 5 percent in both instances. Theoretically more interesting though is the curvilinear nature of the age effects. These indicate that North Carolina prosecutors favor very old and very young defendants and victims for favorable treatment compared to middle-aged individuals. Our social class argument receives mixed support. Whereas the defendant's social class status, represented here by educational attainment, fails to achieve statistical significance, the victim's class status is statistically significant. Prosecutors are 7 percent more likely to seek the death penalty when the victim is more educated rather than less. This finding is consistent with our social threat argument that individuals with "value" would typically command more severe punishment for their assailants.

Strategic political behavior is always an option for political actors, including those in the judiciary, who may seek to advance public policy or even their own narrow political objectives (Epstein and Knight 1998). It is well known that in the U.S., politicians including local prosecutors often resort to aggressive anti-crime appeals in order to improve their chances for electoral success. Accordingly, we include in our analysis variables designed to capture the importance of the political process in prosecutorial choices. Tapping into potential electoral and constituency connections in prosecutorial decision making are variables such as electoral proximity, partisan competition, and political ideology. Hall's (1995) study of capital punishment decision making by judges in four states,

including North Carolina, shows that justices who face electoral competition and accountability are strongly influenced in their decision making by their prospect for reelection.

We find that electoral incentives *do* strongly shape prosecutorial strategy in the decision to seek the death penalty. North Carolina prosecutors are 64 percent more likely to seek the death penalty if their election is only a year away and the district is Republican. We further examine the sensitivity of this conditional relationship by exploring interaction with additional predictors, including the partisanship of the district attorney (D.A.).

We find that this conditional probability attenuates by 13 percent if the D.A. is Republican as indicated by the three way interaction of Republican DA, county ideology, and electoral proximity. Furthermore, the probability is increased by 6 percent if the county has a high population of nonwhite residents. The main effects of county nonwhite population and Republican DA suggest that these predictors are negatively associated with the probability of seeking the death penalty. But of all the political predictors analyzed, the prosecutor is most likely to seek the death penalty when the county nonwhite population is high and the prosecutor is Republican. Under these conditions, the probability is 292 percent higher that a North Carolina Rule 24 hearing would be held, formally signaling prosecutorial intent to pursue the death penalty.

Our analysis further shows that electoral proximity and the intensity of two-party competition in the prosecuting counties also evince codependent explanations. On average, the probability is slightly higher (3 percent) that a prosecutor facing a competitive election in the next year will seek the death penalty than one who is not facing electoral pressure in the near future. Overall, this analysis demonstrates the importance of the political process in the low visibility decisions that criminal prosecutors must make.

We examine the extent to which there is a racial or gender gap among prosecutors themselves in seeking the death penalty. This is important in light of research showing that woman and minorities exhibit “softer” or more compassionate attitudes toward crime and punishment than white males (Nagel and Johnson 1994; Hurwitz and Smithey 1998). We find that white male prosecutors are 26 percent more likely to seek the death penalty than female prosecutors. This finding should be understood in the general context of gender identity among North Carolina prosecutors. For the period

covered in our study, over 95 percent of district attorneys in the state were men. Only two women were serving as district attorneys statewide.

Black prosecutors are also rare in the North Carolina, only two statewide during the period studied. Interestingly black prosecutors are actually 25 percent more likely to seek the death penalty than white prosecutors, even after controlling for electoral proximity. We think this is because black prosecutors must be particularly and credibly tough on crime in order to win popular local elections, especially in majority white districts such as Orange County, North Carolina, where a “tough as nails” black prosecutor (Carl Fox) has served several terms including during the period we study.

Resource asymmetry is an endemic problem in local criminal prosecution. The state’s attorney typically commands greater financial resources than the defendant’s attorney, especially if the defendant is indigent and requires a public defender. Meanwhile, rich defendants are able to hire private lawyers for their own defense. Does resource asymmetry have a material impact on prosecutorial choices? We find that it does. Defendants represented by public defenders are 22 percent more likely to face capital prosecution than those who retain their own private criminal defense lawyer. Contrary to expectation, the prosecutor is significantly more likely to seek the death penalty when the defendant’s attorney is experienced. This finding is perhaps an artifact of the measure itself, which is the log of how much money was paid to the attorney for this service. Under this measure, truly complicated murder cases such as serial murders will command higher payout and therefore indicate greater attorney experience. But such cases are highly likely to be prosecuted capitally in the first place. The Heckman selection index is statistically significant, giving credence to our analytical method, which accounts for all cases “expected” to be prosecuted capitally but may not have been because of an existing plea arrangement.

Deciding whether to seek the death penalty is a difficult choice for most prosecutors and likely one of the most agonizing. Because it is a solemn choice of obvious and overwhelming finality, legal requirements exist to guide and constrain that choice. We find that at the death-seeking stage of the process, legal factors do play an important role as we expected. In particular, felony murders are 27 percent more likely to precipitate a capital prosecution. Also, the prosecutor is 30 percent more likely to seek the death penalty if the defendant has a prior homicide conviction and 35 percent more likely

to seek the death penalty if the defendant murdered multiple victims. Most of the motives we examine fail to reach statistical significance in this model with the only exception being the motive related to involvement in a collateral offense. In the next section of the paper we focus on the penalty phase.

The Decision to Impose Capital Punishment

For crime victims and defendants along with their families, the most important part of the criminal process is sentencing because it carries the most vivid material consequences for the crime. Table 3 reports the results for the jury verdict on guilt or innocence. However, we focus our discussion on the results for the penalty phase (model 4). The results strongly support our theoretical framework, showing that factors associated with racial threat and structure of the political process carry important weight in the decision to impose the death penalty once a conviction has been obtained.

The Effects of Race and Other Social Background Factors on Capital Punishment

We find a strong linkage between race and the application of capital punishment in North Carolina. The configuration of nonwhite defendant and white victim is particularly strong and authenticates our earlier reported finding in figure 2. Nonwhite defendants who murder white victims fare particularly poorly; they are 8 percent *more likely* to receive the death penalty than white defendants who murder white victims, even after controlling for aggravating and mitigating circumstances sanctioned by the North Carolina General Assembly. Conversely, nonwhite defendants who murder nonwhite victims are 3 percent *less likely* to receive the death penalty than white defendants who murder white victims. Thus nonwhite victims suffer a race penalty while nonwhite defendants receive a race-based easygoingness in the punishment for this category of intra-racial homicides. Putting these findings into proper perspective is the fact that in theory, race is not supposed to matter at all in capital sentencing. Insufficient cases in the white defendant/nonwhite victim configuration preclude us from including that variable in the regression analysis.

How do our findings compare with other death sentencing studies? We can transform the probit coefficient of .138 for the nonwhite defendant white victim configuration into a logistic estimate and then derive an odds ratio, which we can use to compare our findings to the Baldus study. Such a

comparison is useful because it allows us to derive suggestive indications of change and continuity in criminal punishment, albeit crudely, across time and space. The transformation leads to an odds ratio of 1.28.¹⁵ Thus, race effects on sentencing are less pronounced in North Carolina than in Georgia, where based upon data from the 1970s, the Baldus study placed the odds of receiving death at 4.3 for black defendants convicted of killing whites. In Maryland, Paternoster et al. (2004, 27) reported their findings in terms of probability rather than odds ratio. They find that the probability of a death sentence for black-on-white killings is .14, which is higher than the probability of .08 that we report for North Carolina. We conclude that despite reforms designed to purge race from capital sentencing, race continues to endure as an illegitimate factor in capital sentencing even in the 1990s.

Numerous other demographic factors associated with both defendants and victims also prove important in capital sentencing in North Carolina. In particular, very old defendants tend to receive the benefit of the doubt whereas very young victims are slightly more likely to produce death sentences for their assailants. Whereas we find that males are more likely to be convicted at the trial level, being a convicted male offender actually fails to evince a statistically significant relationship with capital sentencing. But the story is slightly different for male victims whose killing we find is 7 percent less likely to lead to a death sentence than female victims.

A recurrent sociopolitical question regarding the death penalty is the extent to which outcomes in capital cases are explained by race versus class. One thesis expressed by Degler (1972, 102) is that “Race in the South, as in the nation, has always overwhelmed class.” Opponents of the racial impact thesis, however, insist that the linkage between race and capital punishment is preposterous, reasoning that insofar as there is any racial effect, such effect is actually social class bias masquerading as a racial effect (Kleck 1981). Our test of this claim reveals no evidence that social class status of the victim as measured by educational attainment plays a statistically significant role in capital sentencing. However, we do find strong evidence that the defendant’s social class status plays a sizeable role. More educated convicts are 11 percent less likely to be sentenced to death even after controlling for legal and political factors. Therefore, on the question of race versus class, Degler’s

¹⁵ The Heckman probit coefficient .138 can be easily transformed into a logistic coefficient by simply multiplying it by a normalization factor of 1.8138 (see Aldrich and Nelson 1984, 44). The result is a logistic coefficient of .250. The odds ratio of this logistic coefficient is simply its exponent, i.e., $e^{.250} = 1.28$.

observation is only partially confirmed. Race definitely matters in capital sentencing. But while the defendant's social class status also matters, the victim's does not.

In the late 1990s, intense media coverage of a number of notorious killings brought the issue of hate-motivated crime to the national media. The dragging death of a black man, James Byrd Jr., by three white supremacists in Jasper, Texas in 1998 and the killing of a gay college student, Matthew Shepard, in Wyoming the same year are just two of many examples of hate crimes in the United States. To demonstrate society's revulsion toward such crimes, Congress and states such as North Carolina and Wisconsin responded by enacting punishment enhancement laws for hate-motivated crimes. We tested the importance of hatred and other criminal motives in death sentencing. Of the five motives examined, only hate-motivated killings evinced statistically significant impact, suggesting an expression of low tolerance among North Carolinians for hate-motivated offenses during the 1990s.

Finally, we consider the importance of multiple killings in capital sentencing. A convict who kills multiple victims is 2 percent more likely to receive the death penalty than one who kills a single victim. But surprisingly, killing multiple victims is relatively less important than one might suspect. The analysis suggests that the effect on capital sentencing for a convict killing multiple victims is far less than that for a nonwhite killing one white victim. In North Carolina, it appears that killing multiple victims is less important in capital sentencing than when a nonwhite kills one white person.

Effects of Politics on Capital Punishment

Because the decision to impose capital punishment is carried out by an unelected jury, the political variables are not expected to play a particularly strong role, except where community ideology and values are concerned. Only a few mainstream political predictors are important in explaining death sentencing decisions, including predictors associated with the district attorney and the local community where the crime occurred. We find that Republican prosecutors are 2 percent less likely to win a death sentence than Democratic prosecutors. In other words, during the sentencing phase, convicts are better off facing a Republican prosecutor than a Democratic one. Male prosecutors are even less successful compared to their female counterparts. Male prosecutors are 23 percent less likely to win a death sentence compare to female prosecutors who apparently are far more convincing

in their courtroom advocacy. In highly conservative counties, an increase in the nonwhite population reduces the chances of a death sentence by 1.47 times as indicated by the interaction of county ideology and county nonwhite population. This finding conflicts with the racial threat hypothesis but conforms to the political change explanation. We created three dummy variables to represent the mountain, piedmont, and coastal regions of North Carolina to test for differences in political attitude toward capital punishment across the state. The mountain region serves as the comparison category. It appears that V.O. Key is correct when he posited significant cultural variation within different sections of North Carolina. Region does make an important difference in the sentencing phase. Convicts in the piedmont, the most urbanized region of the state, including large cities such as Charlotte, Durham, and Raleigh are 5 percent more likely to receive the death penalty compared to convicts in the mountain region. Importantly, the effects more than double in the coastal sand hills, traditionally the most conservative region of the state.

The Effects of Institutional/Legal Factors on Capital Punishment

Is the capital sentencing system functioning as intended? Ideally, homicide prosecution and sentencing should follow exacting standards prescribed by statute. Therefore, only institutional or legal factors associated with the case should have statistically significant impact on the disposition of capital cases. Unfortunately, the empirical literature and our results here suggest otherwise; the system is far from perfect. Nevertheless, we do highlight several legal factors that emerge as important correlates of capital sentencing.

By statute, statutory aggravating and mitigating circumstances constitute the cornerstone of capital punishment in North Carolina. Thus, it comes as no surprise that statutory aggravating factors such as the killing of a peace officer increase the probability of a death sentence by 11 percent after controlling for other legal, political, and social conditions. Statutory mitigating circumstances decrease a defendant's criminal culpability and the risk of a death sentence. We find that the effect of statutory mitigating factors is also consistent with our theoretical expectation. But this raises an important question.

How truly mitigating are statutory mitigating circumstances? Mitigating evidence is not intended to excuse or justify the crime for which a defendant stands convicted but to help explain it in

order to avoid a death sentence. Thus mitigation is not a matter of equivalence with statutory aggravating factors but a matter of impact. The impact of three statutory mitigating factors in lessening the probability of a death sentence need not be equivalent to the impact of three statutory aggravating factors in increasing the likelihood of a death sentence, but as the Supreme Court stated in *Eddings v. Oklahoma* (1982), the importance of mitigating circumstances “should be duly considered in sentencing.” How much credence do juries place on mitigating evidence? Our findings indicate that statutory mitigating factors (such as killing under duress or deplorable childhood upbringing) do attenuate the likelihood of being sentenced to death, but there is significant discounting of mitigating evidence by jury, making its effect quite anemic indeed (only 2 percent) compared to the effect of aggravating factors on the death sentencing decision (11 percent).

Figure 3 presents a comparative assessment of the effects of aggravating and mitigating circumstances on the probability of receiving a death sentence. It shows that mitigating factors are only weakly associated with lowering the chances of receiving a death sentence. Whereas the slope for the effects of aggravating circumstances is fairly steep, the slope for the effects of mitigating circumstances is virtually flat, raising concerns about the efficacy of mitigating factors. We conclude that mitigating factors are not very mitigating. Aggravating factors have a far more dramatic effect in leading to a death sentence than do mitigating factors in lessening the chances of a death sentence. A jury would need to find six mitigating factors present in a case to effectively counteract the effect of a single aggravating factor in capital sentencing.

[Figure 3 about here]

Of all the legal predictors examined, none has stronger effect on the probability of a death sentence than prior homicide record. Defendants with a history of violence such as parolees or fugitives who commit another murder are 21 percent more likely to receive the death penalty than convicts without a prior felony record. First-degree murder criteria involving homicides based upon willful, deliberate or premeditated killing are 6 percent more likely to lead to a death sentence. However, felony murders which typically lack strong element of premeditation fail to achieve statistical significance. We conclude that legal factors are a strong component of the application of capital punishment.

Conclusions

Justice Anthony Kennedy and other members of the Supreme Court agree that racial bias undermines the integrity of the U.S. justice system. Under the U.S. Constitution and under several state death penalty statutes, only legal factors associated with a crime should influence capital prosecution and sentencing. After analyzing a rich set of capital prosecution and sentencing data from North Carolina, we conclude that this ideal is far from reality. Beyond legitimate aggravating and mitigating circumstances, several illegitimate factors *do* indeed influence the decision to sentence defendants to death. Among these illegitimate factors is race.

The central question we sought to answer in this paper was: To what extent does race *still* matter in capital prosecution and sentencing in North Carolina, a state that prides itself as a “progressive plutocracy”? It is inadequate to address this important question simply by examining distributive outcomes as many previous researchers have done. Instead, we have argued in favor of analyzing capital punishment as a *process*, a political process that is infused with highly conditional decision making procedures. We formulated a theoretical model encompassing legal, structural/political, and social threat conditions. Our analytical framework and data suggest that the answer to the above question is more nuanced and that it depends upon which aspect of the capital prosecution process we examine. If we focus on the jury’s decision at the penalty phase, we find evidence of continuity in that race remains in essence a non-statutory aggravating factor for the death penalty. The impact of race in sentencing is present and nontrivial. In particular, the race of the victim *still* exerts a significant amount of influence in determining which homicide defendant lives or dies.

If on the other hand we turn our attention to earlier stages of prosecutorial decision making as cases are funneled through the system, our core finding contradicts the prevailing empirical literature. In that vein, the most surprising finding is that prosecutors are not exhibiting racially conscious tendencies in their decision to seek the death penalty. This represents a change from the traditional view of North Carolina prosecutors. Of course individual districts might not exhibit the same tendencies as we report but overall, we are confident that North Carolina prosecutors as a whole are exhibiting signs of change. Our decomposition of the death penalty system permits us to account for the inter-linkages between different stages of the capital punishment decision making process, and to

arrive at an important new insight toward our understanding of prosecutorial decision making in the processing of society's most violent offenders.

We think our finding reflects the latent effects of decades of aggressive political action involving institutional reforms such as the Voting Rights Act of 1965 and numerous Supreme Court decisions in cases such as *Furman v. Georgia* (1972) and *Woodson v. North Carolina* (1976) and *Reynolds v. Sims* (1966), which substantially expanded defendants' rights and political representation for formerly disenfranchised citizens. It appears that the political effects of these reforms have matured among government officials. Elected politicians are responding to the presence of a significantly diversified and attentive electoral constituency of nonwhites to safeguard public policy and to preserve their jobs.

This conclusion comes into sharper focus when contrasted with the behavior of jurors who are not politically accountable. While elected prosecutors have become race-neutral in their decision to seek the death penalty, sentencing jurors remain race-conscious in determining which convicts will live and which will die, thus confirming the racial threat theory. The problem of racial disparity in capital sentencing is therefore most acute at the sentencing stage, where ordinary citizens are the key deciders. It suggests that racial attitudes are hard to change at the individual level and judicial officials must be proactive in educating jurors about hidden sources of bias in their decision making.

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Appendix A: Data Sources and Measurements

In appendixes A and B, we provide detailed information about our research design and measurements for purposes of future replication. We will also make our data available to all interested parties after this paper is published.

Our data came from numerous sources. We list these sources below, along with the variable coding scheme. For most variables, we relied on multiple sources to gather our information. This allows us to cross check the validity of official records. For example, we use briefs filed by defendants and prosecutors to construct case facts. But we also relied on the medical examiner's autopsy notes to verify crime facts for consistency. We reconcile any differences through police reports of the offense.

Institutional/Legal Factors: North Carolina criminal statutes list both aggravating and mitigating circumstances, which we coded as follows:

Statutory aggravating circumstances = count of statutory aggravating factors found by jury

Statutory mitigating circumstances = count of statutory mitigating factors found by jury

Poisoning, lying-in-wait, imprisonment, torture, starvation = 1 if present; 0 otherwise

Willful, deliberate, and premeditated killing = 1 if present; 0 otherwise

Felony murder = (homicide accompanied by another felony), coded 1 if present; 0 otherwise

Motives

We used trial briefs, police reports, arrest warrants, and oral interviews with prosecutors and defense attorneys to determine criminal motive. Each of the following motives: hatred, financial, sexual, rage, and motive "related to other crimes" was measured as follows:

0 = no evidence of this item exist

1 = some evidence this item exist

2 = evidence of this item exist beyond reasonable doubt

3 = strong evidence of this item exist

Hatred: Involves long-term hatred of victim; retaliation or revenge for prior harm done to defendant

or another; avenging the role played by judicial officer in the exercise of his/her duty; avenging the role played by police officer; racial animosity; animosity toward victim because of victim's sexual orientation. **Money** involves killing to obtain money or item of monetary value; contract killing for money; collecting insurance proceeds; obtaining inheritance or property transfer as a result of the victim's death. **Rage** involves immediate rage or frustration (e.g., over victim's conduct during an illegal activity); killing to experience gratification or thrill; demonstrating physical or psychological prowess; no rage apparent indicating complete indifference to value of human life. **Sex** involves desire for sexual gratification, retaliation for sexual refusal, and retaliation for sexual rivalry (jealousy).

Collateral and other crimes involve facilitating commission of another crime; panic (e.g., defendant became frightened when surprised by crime victim in the course of a burglary); shootout with crime victim; crime victim resisted (e.g., pushed silent alarm); silencing a witness to another crime; escaping apprehension, trial or punishment; retaliation for unpaid drug debt or dispute related to drug trade.

Victim and Defendant Social-Demographic Characteristics

Sources include: North Carolina Office of the Chief Medical Examiner (OCME). Files from these offices contain useful information about the victim, including demographic factors such as race, sex, age and information about probable cause of death and a narrative summary of the circumstances surrounding the death and the nature of the wounds sustained by the victim. Each victim has an OCME case number, which makes it relatively easy to track information throughout the data collection process. The Department of Corrections website was used to verify defendant demographic characteristics and prior criminal record.

Race: 1 = white; 0 = nonwhite

Age: actual chronological age

Sex: 1 = male; 0 = female

Education: 0 = high school dropout or currently in grade school

1 = high school graduate or some higher education

2 = college graduate or higher

Stranger = 1; 0 otherwise

Post-mortem abuse = 1; 0 otherwise

Multiple victims = 1 if 2 or more victims; 0 if 1 victim

Defendant's Criminal History: We examined court records, including indictments sheets; records on appeal; superior court files; jury instructions and verdict sheets for both guilt and penalty phases; defendants' briefs; state's briefs; trial court issues and recommendations forms; and opinions from the North Carolina Court of Appeals and the North Carolina Supreme Court. We also examined police information network records of previous arrests and convictions; newspaper/journalistic accounts of the homicide; and North Carolina Department of Corrections' website. Finally, we interviewed prosecuting and defense attorneys to obtain more information about their cases.

Prior criminal record = actual number of prior felony convictions

Political/Structural Factors

Electoral proximity:

- 0 = four years before prosecutor's next election
- 1 = three years before prosecutor's next election
- 2 = two years before prosecutor's next election
- 3 = one year before prosecutor's next election.

Electoral competition: = $100\% - [\% \text{ vote for winner} + \% \text{ margin of victory} + 1 \text{ (if uncontested seat, 0 otherwise)} + 1 \text{ (if safe seat, 0 otherwise)}] / 4$. A safe seat is one where the winner won by at least 30% of the vote. By this measure electoral competition is zero if there is absolutely no competition in the district.

County ideology: Percent vote for Republican candidate for Senate in 1992 and 1996

Prosecutor's party affiliation: 1 = Republican; 0 = Democrat

Prosecutor's race 1 = black; 0 = white

Prosecutor's sex 1 = male; 0 = female

Public defender = 1 if public defender or court appointed attorney; 0 = attorney retained privately

Defense lawyer expertise = ratio of total dollar amount paid to total hours billed

County nonwhite population = proportion of county of offense that is nonwhite

Location: Dummy variables representing Mountain, Piedmont, and Coastal regions of the state.

Appendix B: Multi-Stage Statistical Sampling

Stage 1: selecting judicial districts. There are 44 judicial districts in North Carolina representing a total of 100 counties. Each judicial district is headed by one district attorney who manages the prosecution of cases in the counties within that district. This explains why we selected cases by judicial districts. In order to obtain a broad geographic representation of the state, we randomly selected 26 judicial districts.

Stage 2: selecting cases from selected districts. Overall, 3990 known defendants were charged with homicide from January 1, 1993 to December 31, 1997. Cases from unselected districts were removed to meet budgetary constraints, leaving 2504 cases from which we generated our analytical sample. In it, 99 defendants were sentenced to death and 303 were sentenced to life in prison based upon a first-degree murder conviction. Defendants in 181 second-degree murder cases also received life sentences. We randomly selected 10% of these for analysis (18 cases) because prosecutors have been known to undercharge otherwise death eligible offenses (see note 11). Similarly, we randomly selected an additional 100 cases (5.2%) from the remaining 1921 cases with acquittals and term sentences of less than life in prison. Our core analysis is therefore based upon 520 cases, representing 520 individual defendants who form our unit of analysis. Overall, the cases represent 80 of the 100 counties of North Carolina. We created sampling weights to reflect the differing sampling probabilities in the two sampling stages and were able to map the sample back to the population. Since regression analysis assumes the use of observed rather than weighted data, we restricted our use of weighted data to descriptive analyses.

Table 1

Percentage of Death Sentences Imposed, Grouped by Racial Characteristics and Configuration (Weighted)		
	ALL MURDER CASES	DEATH ELIGIBLE CASES
Death sentences imposed	2.5 percent (99/3958)	5.8 percent (99/1717)
Defendant		
White defendant	2.7 percent (38/1408)	5.9 percent (38/647)
Nonwhite defendant	2.4 percent (61/2550)	5.7 percent (61/1070)
Victim		
White victim	3.4 percent (67/1945)***	7.1 percent (67/938)**
Nonwhite victim	1.6 percent (32/1982)***	4.3 percent (32/747)**
Defendant/Victim Configuration		
White kills white	2.5 percent (34/1333)	5.9 percent (34/572)
Nonwhite kills white	5.1 percent (33/644)***	9.0 percent (33/365)***
White kills nonwhite	3.5 percent (5/141)	11.0 percent (5/45)
Nonwhite kills nonwhite	1.5 percent (29/1974)***	3.9 percent (29/738)***

Note: Death eligible cases are first-degree murder cases where at least one statutory aggravating circumstance was found or the prosecutor seeks the death penalty, and the defendant is more than 17 years of age.

* $p < .10$ (two-tailed test)

** $p < .05$ (two-tailed test)

*** $p < .01$ (two-tailed test)

Table 2

Explaining Prosecutorial Decision Making in Murder Cases in North Carolina, 1993-1997

Independent Variable	(1) Prosecutor Rejects Plea Deal		(2) Prosecutor Seeks Death Penalty	
	Coefficient (Std. error)	Marginal Impact	Coefficient (Std. error)	Marginal Impact
Race and Social Background Factors				
Nonwhite defendant/white victim	.750** (.444)	.75	-.359** (.155)	.10
Nonwhite defendant/nonwhite victim	-.025 (.279)		-.057 (.309)	
Defendant age	-.101 (.045)		.101*** (.015)	.03
Defendant age ²	.002*** (.0006)	.0019	-.001*** (.0002)	.00028
Defendant education	.227 (.258)		-.005 (.207)	
Defendant sex	-.143 (.409)		.325 (.281)	
Victim age	.005 (.024)		-.088* (.060)	.02
Victim age ²	-.00004 (.0002)		.0008* (.0005)	.002
Victim education	-.234*** (.043)	.22	.233* (.164)	.07
Victim sex	.151 (.143)		.0008* (.0005)	.002
Political Factors				
Electoral proximity * County ideology (Republican)	-.874*** (.282)	.84	2.275*** (.374)	.64
Electoral proximity	.340* (.231)	.33	-.905*** (.081)	.25
County ideology	2.289* (1.627)	2.20	-18.049*** (1.934)	5.05
Electoral proximity * Party competition	.0007 (.005)		.009*** (.002)	.003
Party competition	.046*** (.008)	.04	.033*** (.013)	.009
County ideology * Party competition	-.099*** (.016)	.09	-.132*** (.030)	.04
Republican district attorney (D.A) * County nonwhite population			10.445*** (2.073)	2.92
Republican D.A.	-.499 (.798)		-5.233*** (1.095)	1.47
County nonwhite population	1.137** (.645)	1.09	-4.337*** (1.347)	1.21
Republican D.A. * county ideology * proximity	.057 (.066)		-.468*** (.103)	.13
Republican D.A. * proximity * county ideology * county nonwhite population	-.313** (.171)	.30	.206** (.156)	.06
Male D.A.	.645*** (.068)	.62	.942*** (.276)	.26
Black D.A.	-.461 (.362)	.44	.885** (.399)	.25

Public defender	.545*** (.110)	.52	.791*** (.106)	.22
Defense attorney expertise (Log)	.542*** (.087)	.52	1.300*** (.241)	.36
North Carolina Piedmont	-.102 (.152)			
North Carolina Coast	-.291 (.195)			

Institutional/Legal Factors

First degree murder theory 2 (willful, deliberate, premeditated killing)			.067 (.177)	
First degree murder theory 3 (arson, rape or sex offense, robbery, kidnapping, burglary, etc)			.951*** (.177)	.27
Prior homicide record of defendant	.187 (.344)		1.085*** (.243)	.30
Multiple victims	.665*** (.201)	.64	1.238*** (.412)	.35
Infliction of severe physical pain on victim	-.031 (.030)		-.057 (.092)	
Nonstatutory aggravating circumstance(victim supporting children)	1.526*** (.298)	1.46		
Post mortem abuse	-.355*** (.072)	.34	.017 (.102)	
Barroom fight	.239 (.628)		-1.674*** (.547)	.47
Offense heinousness index	.248*** (.036)	.23	.023 (.131)	

Motives

Sex	.106*** (.032)	.10	.020 (.056)	
Money	-.164*** (.026)	.16	.026 (.118)	
Hatred	.121* (.075)	.12	-.100 (.079)	
Collateral crime	-.082 (.071)		.279* (.184)	.08
Heckman's Lambda (λ)	--	--	.790*** (.201)	--
Constant	-4.382*** (.464)	--	-6.923*** (1.309)	--

Number of observations	498
Censored observations	118
Uncensored observations	380
Chi square	15.40***
ρ (Rho)	.66
Conditional event probability (π)	.96

* $p < .10$ (one-tail test)

** $p < .05$ (one-tail test)

*** $p < .01$ (one-tail test)

Table 3

**Explaining Murder Trial Verdicts and Death Sentencing Outcomes in North Carolina,
1993-1997**

Independent Variable	(3) Trial Outcome: Convict/Acquit		(4) Penalty Phase Outcome: Death/Life	
	Coefficient (Std. error)	Marginal Impact	Coefficient (Std. error)	Marginal Impact
Race and Social Background Factors				
Nonwhite defendant/white victim	.377 (.742)		.138*** (.028)	.08
Nonwhite defendant/nonwhite victim	-.238 (.200)		-.059*** (.023)	.03
Defendant age	.059 (.162)		.039** (.018)	.02
Defendant age ²	-.0007 (.002)		-.0005** (.00002)	.0003
Defendant education	.453** (.240)	.42	-.190** (.083)	.11
Defendant sex	2.411*** (.861)	2.22	.035 (.184)	
Victim age	-.025 (.024)		-.014** (.006)	.008
Victim age ²	.0001 (.0002)		.0001*** (.00003)	.00006
Victim education	.463 (.683)		.014 (.031)	
Victim sex	-.485 (.829)		-.113** (.068)	.07
Political Factors				
Electoral proximity			-.008 (.031)	
County ideology x County nonwhite population			-2.542** (1.371)	1.47
County ideology	4.759** (2.089)	4.38	.015 (.995)	
County nonwhite population	4.329*** (1.369)	3.98	.552 (.875)	
Republican district attorney	.485** (.209)	.45	-.042** (.019)	.02
Male district attorney			-.401*** (.103)	.23
Public defender	1.658*** (.303)	1.53	-.175 (.161)	
North Carolina Piedmont	-.347 (.653)		.082*** (.012)	.05

North Carolina Coast	-1.00 (.375)		.189*** (.044)	.11
Institutional/Legal Factors				
First degree murder theory 2 (willful, deliberate, premeditated killing)	3.406*** (1.125)	3.13	.101*** (.026)	.06
First degree murder theory 3 (arson, rape or sex offense, robbery, kidnapping, burglary, etc)	2.204** (1.025)	2.03	-.023 (.040)	
Statutory aggravating circumstances (e.g., law enforcement officer; HAC murder)			.183*** (.014)	.11
Statutory mitigating circumstances (e.g., victim partly culpable)			-.036*** (.008)	.02
Nonstatutory mitigating circumstances (e.g., neglected as child; poor upbringing)	3.26** (.159)	3.00	-.008** (.003)	.005
Prior homicide record of defendant			.357*** (.054)	.21
Multiple victims	-.276*** (.078)	.25	.035*** (.011)	.02
Infliction of severe physical pain on victim			-.007 (.024)	
Nonstatutory aggravating circumstance of the victim (supporting children)	.773 (.728)		-.049** (.021)	.03
Post mortem abuse	-.003 (.330)		.049* (.031)	.03
Offense heinousness index	-.105* (.069)	.10	-.028** (.014)	.02
Motives				
Sex	-.273** (.147)	.25	-.007 (.015)	
Money	.402*** (.123)	.37	-.008 (.010)	
Hatred	-.059 (.208)		.054** (.027)	.03
Collateral crime	-.249 (.221)		-.003 (.010)	
Heckman's Lambda (λ)	--		-.351*** (.006)	--
Constant	-10.602*** (2.090)		-10.602*** (2.090)	--
Number of observations			250	
Censored observations			17	
Uncensored observations			233	
Chi Square			7.67***	
ρ (Rho)			-1.00	
Conditional Event Probability			.92	.58

Figure 1

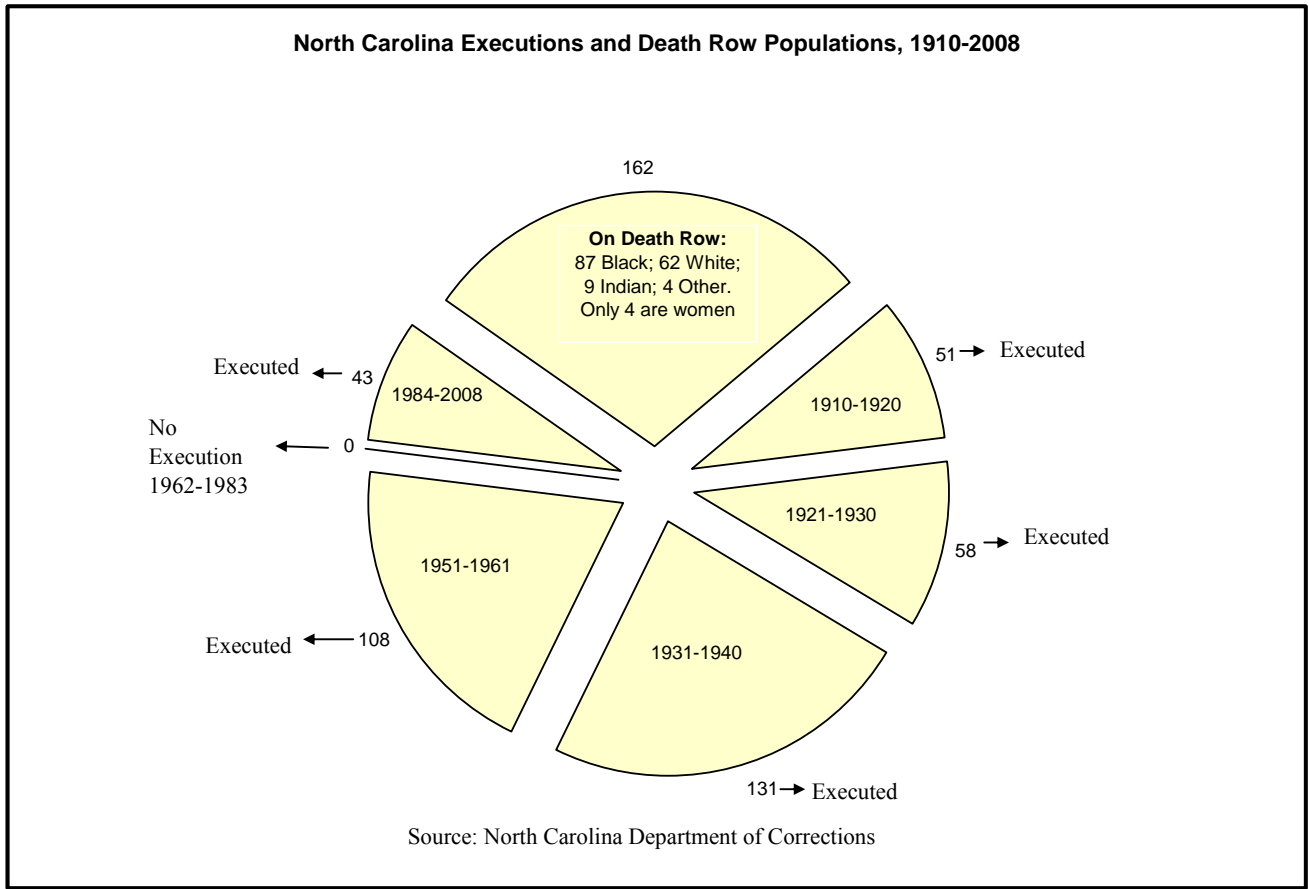


Figure 2

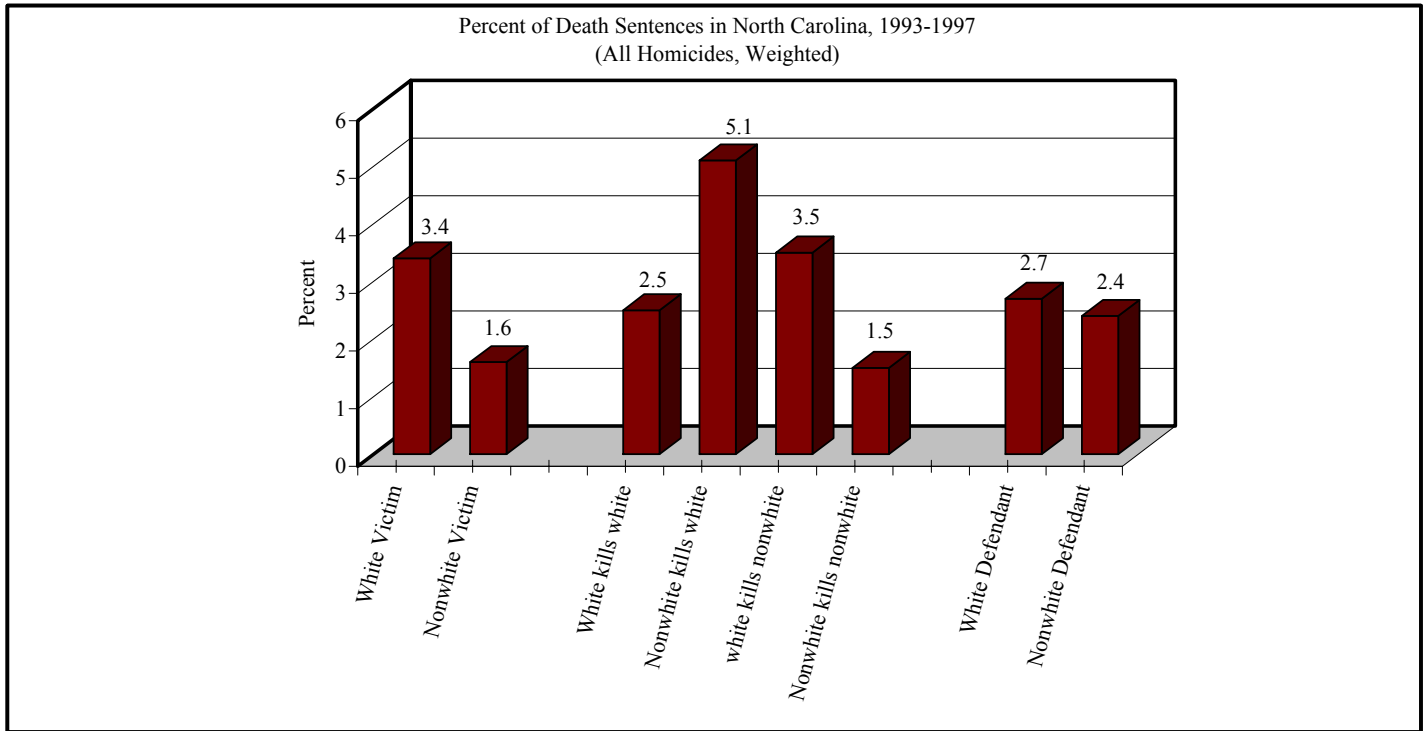


Figure 3

