

CAPITAL PUNISHMENT FOR THE CRIME OF HOMICIDE IN CHICAGO: 1870–1930

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I. INTRODUCTION: CAPITAL PUNISHMENT, RACE AND POVERTY

In the criminal justice system, the ultimate and final act in any homicide case is the application of the death penalty. Of course, not all homicides result in a death sentence, and not all homicide offenders are sentenced to death. As a consequence, the question of which offenses and which offenders merit a death sentence has always been central to the concern over whether capital punishment should be used at all. On the one hand, as times change and the criminal justice system changes with them, we would expect corresponding changes in the application of the death penalty. On the other hand, if capital punishment is rooted as fundamentally in the racial and economic inequities of society as some have argued, then even over a century we might see far more similarities than differences in how many offenders are sentenced to death, who they are, and for what kinds of homicides.

Included in the file on Chicago homicides from 1870 to 1930 are a small number of cases in which the offender was sentenced to capital punishment and was executed. Certainly, the questions of the morality or the efficacy of capital punishment, as well as concerns over the fairness of its application, were as relevant and alive then as they are now. An analysis of these death penalty cases could enable us to consider whether some of the patterns we see in capital punishment over the last half of the twentieth century held true in Chicago over a century ago. We can consider what kinds of homicides and what kinds of offenders were more likely to draw a death sentence, and examine whether those patterns changed over time. We can also examine how the application of capital punishment changed in Chicago over those fifty years, and can compare the patterns in death sen-

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tences in Chicago to the patterns we see in modern America. This is interesting in its own right, a look at a piece of history in a major American city at the turn of the last century, but it may also bring more data to bear on the fundamental moral and practical questions which have shaped the death penalty debate for decades.

Of course no data can resolve the basic philosophical question of capital punishment. Our goals are more modest. First, we will provide a general descriptive analysis of homicides that resulted in the death penalty in Chicago from 1870 to 1930; second, we will consider whether inequities in race and economic status were reflected in those decisions during that time; and third, we will look at changes in those cases, or in the use of capital punishment, over the fifty years of the Chicago data.

II. THE DEBATE OVER CAPITAL PUNISHMENT: THE RELEVANCE OF RACE AND POVERTY

Debates on capital punishment tend to revolve around philosophical questions as to the morality of the death penalty, or pragmatic questions as to the efficacy or effectiveness of the death penalty. In *Furman v. Georgia*, Justice Brennan wrote that “although pragmatic arguments . . . have been frequently advanced At bottom, the battle has been waged on moral grounds.”¹ On one extreme, there are those who argue that it is neither right nor moral for anyone to take another’s life, and that “anyone” includes the state. For these opponents, the death penalty in any form or under any condition is wrong. On the other extreme are those who adopt a rigid “eye for an eye” belief, in which anyone who kills another person without legal justification should die. From that perspective, it makes no difference whether capital punishment “functions” to deter crime or not, it is simply something that must morally be done.²

In between those extremes, however, and much more characteristic of the concerns of a majority of citizens and more representative of their position if the polls are accurate, is the argument which holds that it may be legitimate, and even moral, for the state to take a life *under certain circumstances* if taking that life could be shown to save

¹ 408 U.S. 238, 296 (1972) (Brennan, J., concurring) *reprinted in* THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES 192 (Hugo Adam Bedau ed., 1997).

² See James O. Finckenauer, *Public Support for the Death Penalty: Retribution as Just Deserts or Retribution as Revenge?*, 5 JUST. Q. 81, 83–84 (1988).

the lives of others.³ Under this approach, the argument becomes pragmatic, and the primary focus shifts to the question of what these “certain circumstances” might be.⁴ Most citizens would support the death penalty only under the condition that it is fairly and justly applied. While any number of criteria might be used to determine what is fair and just, since the inception of the modern debate on the death penalty two variables have stood out as problematic or key for this determination—race and poverty. These two factors constitute one focus of our analysis. The Chicago database allows us to look more closely at the question of the application of capital punishment a hundred years ago, and to ask whether these factors were paramount then as well.

A number of factors are involved in considering who is sentenced to capital punishment and who is not. Age, gender, and even geographic location show clear associations with the occurrence of homicide, and are consequently mirrored in the death row population. Historically, however, being black and being poor have always increased any homicide offender’s chance of being a death row statistic. These Chicago data provide us with an opportunity to look at those variables from yet another perspective, partly in the hope that they might indicate this has not always been the case, but more realistically in the expectation that they will confirm the consistency over time of poverty and race as key characteristics of whom we send to death row.

A. RACE OF OFFENDER AND VICTIM IN CAPITAL HOMICIDES.

Race stands out as the dominant factor that suggests the death penalty is not fairly and evenly applied across the population. Prior to the *Furman* decision, African Americans were more likely to be charged, sentenced, and executed than were others.⁵ Of more than 13,000 executions in the United States documented in the Espy File

³ MARK COSTANZO, JUST REVENGE: COSTS AND CONSEQUENCES OF THE DEATH PENALTY 117 (1997) (emphasis added); see also William C. Bailey & Ruth D. Peterson, *Capital Punishment, Homicide, and Deterrence: An Assessment of the Evidence*, in STUDYING AND PREVENTING HOMICIDE: ISSUES AND CHALLENGES 223–45 (M. Dwayne Smith & Margaret A. Zahn eds., 1999) (reviewing recent literature on the deterrent effectiveness of capital punishment).

⁴ James Alan Fox et al., *Death Penalty Opinion in the Post-Furman Years*, 18 N.Y.U. REV. L. & SOC. CHANGE 499, 515 (1991).

⁵ See KEITH HARRIES & DERRAL CHEATWOOD, THE GEOGRAPHY OF EXECUTION: THE CAPITAL PUNISHMENT QUAGMIRE IN AMERICA 72–76, 90–93 (1997); COSTANZO, *supra* note 3, at 79–84.

from 1790 to 1985, nearly half were African American.⁶ Among eleven Southern states, sixty–three percent to ninety percent of all executions during the first half of the 20th century were of blacks.⁷ In rape cases, eighty–nine percent of all the offenders executed were black.⁸ Jeffrey Adler has analyzed data from Chicago homicides prior to 1920, and found that African Americans were never more than 4.2% of the city’s population, but comprised 12.1% of homicide offenders and 27.5% of those executed for homicide. Further, when African Americans killed a white victim, 6.8% were executed, but when they killed another African American only 1.5% were executed. And, in keeping with national data, there were no executions of a white offender for killing an African American.⁹

In the immediate post–Furman years, the first executions were predominately older, white males.¹⁰ Today, the balance on death row reflects, in general, the levels of involvement in homicide of blacks and whites as offenders. However, a more subtle racism appears to continue to exist. Probably reflecting what Darnell Hawkins calls the devaluation of black life, the odds of being charged and sentenced are significantly higher if the victim of the homicide is white.¹¹ Widmayer and Marquart argue that “[c]learly, the most salient racial factor in post–Furman capital punishment is the frequency in which white victim cases result in death sentences.”¹²

⁶ HARRIES & CHEATWOOD, *supra* note 5, at 18.

⁷ Michael L. Radelet & Margaret Vandiver, *Race and Capital Punishment: An Overview of the Issues*, in HOMICIDE AMONG BLACK AMERICANS 177, 181 (Darnell F. Hawkins ed., 1986) (surveying Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia).

⁸ COSTANZO, *supra* note 3, at 80 (discussing Marvin Wolfgang & Marc Riedel, *Race, Judicial Discretion, and the Death Penalty*, 407 ANNALS AM. ACAD. POL. & SOC. SCI., 119–33 (1973)).

⁹ Letter from Jeffrey Adler to Derral Cheatwood (Oct. 19, 2000) (on file with author).

¹⁰ Robert W. Jolly, Jr. & Edward Sagarin, *The First Eight After Furman: Who Was Executed with the Return of the Death Penalty?*, 30 CRIME & DELIQ. 610, 623 (1984); see also John H. Culver, *The States and Capital Punishment: Executions from 1977–1984*, 2 JUST. Q. 567 (1985).

¹¹ U.S. Gen. Accounting Office, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*, in THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES 271 (Hugo Adam Bedau ed., 1997); see also Leigh B. Bienen, *A Good Murder*, 20 FORDHAM URB. L.J. 585 (1993); Darnell F. Hawkins, *Black and White Homicide Differentials: Alternatives to an Inadequate Theory*, in HOMICIDE AMONG BLACK AMERICANS (Darnell F. Hawkins ed., 1986).

¹² Alan Widmayer & James Marquart, *Capital Punishment and Structured Discretion: Arbitrariness and Discrimination After Furman*, in CORRECTIONAL THEORY AND PRACTICE 187 (Clayton A. Hartjen & Edward E. Rhine eds., 1999).

Certainly, the raw numbers themselves seem to support an argument that white life is somehow valued more in the processing of capital murder cases. Of the 598 offenders executed in the United States from 1977 to January 1, 2000, fifty-six percent were white, thirty-five percent were black. This is obviously higher than the twelve percent of the general population which is black, but on the surface appears to be much more racially balanced when compared to the population of homicide offenders, of whom just under fifty percent are black. Further, the current racial breakdown of offenders on death row awaiting execution is very close to the actual involvement in homicides, with forty-seven percent being white and forty-three percent black.¹³ However, any apparent equity disappears completely when one looks at the race of the victim of those who have been executed. Eighty-two percent of the victims of the 598 executed offenders were white, but only twelve percent were black. Thus, while we seem to be coming closer to the actual percentages of involvement in homicides in our populations on death row, it is clear that one's odds of being sentenced to death if the victim was white are significantly higher than if the victim was not.

There is also evidence that race plays a role at each stage of the processing of a capital punishment case. Research has shown race based differences at the points of charging or indictment, sentencing, and post-sentence activities.¹⁴ The prosecution is more likely to seek the death penalty for cases with white victims.¹⁵ Also, evidence indicates that this disproportion is most pronounced in less dramatic or brutal cases. It has been suggested that it is among these "lesser" murders, where the crime is not as brutal or as heinous, that racism on the part of the prosecutor, judge, or jury member comes into play.¹⁶ Also, charged blacks are more likely to receive the death penalty, and when sentenced are more likely to have that sentence carried out.¹⁷ In short, the effects of race have an impact throughout the process of enacting the death penalty.

¹³ DEATH ROW U.S.A., 2001 (NAACP Legal Defense and Education Fund ed., 2001).

¹⁴ See Widmayer & Marquart, *supra* note 12, at 183-85.

¹⁵ Thomas J. Keil & Gennaro F. Vito, *Kentucky Prosecutor's Decision to Seek the Death Penalty: A LISREL Model*, in THE DEATH PENALTY IN AMERICA: CURRENT RESEARCH 53 (Robert M. Bohm ed., 1991); Raymond Paternoster, *Prosecutorial Discretion and Capital Sentencing in North and South Carolina*, in THE DEATH PENALTY IN AMERICA: CURRENT RESEARCH, *supra* at 39.

¹⁶ See Bienen, *supra* note 11.

¹⁷ Radelet & Vandiver, *supra* note 7, at 183-87; Widmayer & Marquart, *supra* note 12, at 183-85.

B. ECONOMIC STATUS AND THE SENTENCE OF DEATH

The other variable that has been associated with executions has been poverty. However, because of the difficulties of actually measuring the wealth, or lack of the same, of many of the individuals convicted of capital murder, this has been a very difficult relationship to accurately quantify. Radelet and Vandiver note that “there is little quantitative research on the impact of socioeconomic variables on the imposition of capital punishment. Such research is badly needed”¹⁸ They also recognize that “this absence of research reflects the difficulty of accurately measuring the social class of prisoners [through] official records of defendant’s income.”¹⁹

Whatever the difficulty in measuring poverty, there is no doubt but that the inability to hire adequate private counsel is reflected in the poverty found on death row. Stephen Bright pointedly notes that, “[i]n consequence, a large part of the death row population is made up of people who are distinguished by neither their records nor the circumstances of their crimes, but by their abject poverty, debilitating mental impairments, minimal intelligence, and the poor legal representation they received.”²⁰ And while being defended by other than privately hired counsel certainly increases one’s chances of being sentenced to death, it appears that even being defended by lawyers who are part of an established public defender program offers a better chance of avoiding the death penalty than being defended by a court appointed and paid lawyer from the private bar.²¹

Because it is so difficult to establish reliable data to measure the wealth or poverty level of an offender, one of the few (and by default probably the best) measures we have is occupation. In the Espy File, in the cases where occupation could be documented it was heavily biased toward lower status occupations.²² However, in the Espy file, this variable is present in only about forty-eight percent of the cases.²³ What little data are available all suffer these problems, and the best that we can do is use what we have with the necessary caveats. Clearly, it appears that the poor have a much higher chance of being sentenced to death than do the rich, and Costanzo quotes Jus-

¹⁸ Radalet & Vandiver, *supra* note 7, at 186.

¹⁹ *Id.*

²⁰ Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, in *THE DEATH PENALTY IN AMERICA*, *supra* note 1, at 278.

²¹ Bienen, *supra* note 11, at 325.

²² HARRIES & CHEATWOOD, *supra* note 5, at 19.

²³ *Id.*

tice William Douglas's comment that "[o]ne searches our chronicles in vain for the execution of any member of the affluent strata of this society."²⁴

III. THE CHICAGO DATABASE AND CENSUS DATA: STRENGTHS AND WEAKNESSES

The major limitation on any detailed or precise statistical analysis of the file is the nature of the data themselves. Problems associated with the data make comparisons of capital and non-capital homicides something that must be interpreted with some caution. There are a number of reasons for this. The contents of the data are police records, which were originally recorded a century ago by an unknown number of different personnel over a fifty year period. The emphasis on what was important to record obviously varied by time and by recorder, and there is no way to know what errors this may have introduced. Further, the coding of the existing data from the records produced some odd results. There are some cases where no sentence is recorded as being given, yet there is a code for an execution, the date of the execution, and the method.

On the one hand, this is far less perfect than we would want. But on the other hand, these are the data that are available for the analysis. The best solution, it would appear, is to acknowledge the problems and then consider the findings with that acknowledgment in mind. Certainly, while we will be noting comparisons of capital punishment cases with homicides generally and will be doing some discussion of change over time, we must always keep in mind that these are always with the caveats mentioned above.

One of the first decisions was to eliminate accidental deaths from our cases, leaving a file of "intentional death" cases, which more accurately reflects the universe from which capital cases are drawn. This "intentional victim" file was constructed by selecting only those cases from the Victim Record in which the cause of death was known, and in which the cause of death was not one of the cases coded as unintentional on the variable "Method of Killing." Even in this we must make some assumptions—drownings, for example, were left in because they were very few in number and because a drowning can be a method of murder. Abortion also posed a problem, since leaving those cases in would create a set of homicides which do not correspond to modern homicide cases. In the final analysis, the cases

²⁴ COSTANZO, *supra* note 3, at 73.

eliminated were those which involved being run over by a car or truck, abortions, deaths during medical procedures other than abortions, and alcohol poisonings. This left us with a total sample of 9095 “intentional victim” cases.

From the defendants in these cases, there were 103 sentenced to death as coded in the files. In addition, there were eleven more cases in which an execution was recorded as having occurred, but there was no coding of having been sentenced to death. This produced 114 cases in which a defendant was sentenced to death, whether subsequently executed or not, or was executed (with the assumption he had been so sentenced first, despite not having been so coded). Of this total of 114 cases, in 76 cases a defendant was actually executed. Further, there were eleven more individuals executed due to multiple offender cases in which two or more offenders were sentenced to death, producing a total of eighty-seven individuals executed during this time. Eighteen more individuals had a death sentence imposed, but the sentence was not carried out for reasons we will discuss later. In twenty cases a death sentence is coded as having been imposed, but there is no further information as to whether the sentence was ever imposed, the defendant was pardoned, the decision overturned, or the sentence commuted. We decided not to use these twenty cases since we cannot accurately tell what happened to the offender, which leaves us with a final sample of 94 cases (the original 114 minus these 20) in which one or more defendants had a death sentence imposed, whether they were subsequently executed or not, or in which a defendant was coded as being executed without our having knowledge of what the specific sentence had been.

A. THE USE OF OCCUPATION AS A SURROGATE FOR POVERTY

While there is no variable measuring the income of the offender (and one would be useless given the problems discussed earlier), it is possible to at least consider the role of economic status by a consideration of the occupation in those cases in which occupation is recorded. In the past this has been less than useful because of the rarity with which this is recorded. That proved to be the case in this sample as well, with only fourteen percent of the 9095 cases having the victim’s occupation listed. From among the sample of ninety-four capital cases, slightly better than seventeen percent have their occupation recorded.

B. RACE AND THE CENSUS DATA²⁵

The census data for Chicago for 1870 through 1930 were obtained from the U.S. Census reports. In these counts, the categories change so that it is impossible to do a complete consideration of ethnicity. In 1870 the only race/ethnicity categories are white, colored, and Indian. In 1880 "Chinese or Japanese" is added, in 1890 Colored becomes Negro, Indian becomes Civilized Indians, and Chinese and Japanese are split into individual categories. Among whites, a breakdown of Native Born of Native Parents, Native Born of Foreign Parents, and Foreign Born are present in 1900 and 1910, then only Native and Foreign Born in 1920 and 1930. Despite these changes, these are census data and do appear to be reasonably accurate, at least for the overall white and black populations. The rates that can be computed reliably across the entire time frame of this analysis, then, are the total rate and the black and white rate. Given the small number of individuals (or offenders) in other categories and the dominance of race as a salient factor for the system and for our concerns, this was not a problem.

IV. ANALYSIS: HOMICIDE AND CAPITAL PUNISHMENT IN CHICAGO

The nature of the database and the general research on capital punishment led us to seek answers to the following four basic sets of questions. Taken together, the answers to these questions should give us a broad picture of the use of capital punishment in murder cases in Chicago from 1870 to 1930.

1. What proportion of homicides in Chicago resulted in a death sentence? Do these numbers change over time, and does the percentage of homicides resulting in a death sentence change over time?

2. Are there differences in the victims and offenders in death penalty homicides along racial or economic lines? Also, are the crimes themselves different, particularly do they tend to occur in the commission of another felony?

3. Were the people sentenced actually executed? Were there racial differences in the processing of death penalty cases once the sentence had been handed down?

4. Do the victims and offenders in these death penalty homicides represent the demographic composition of Chicago at the time?

²⁵ The census data were gathered by Sue Troyan, Federal Document Librarian of the Texas State Library, who was invaluable in finding and providing this information in a timely and useful fashion.

Again, specifically are the death penalty homicide rates larger for minority populations?

V. CAPITAL CASES FROM 1870 TO 1930, NUMBERS, PROPORTIONS,
AND CHANGES

Not all cases of homicide, nor even all relevant or applicable cases of homicide, result in a charge, conviction, or sentence to death. As noted previously, there were 103 cases in which the offender was coded as being sentenced to death and 11 cases in which the offender was coded as being executed but without having been initially coded as sentenced to death. We reviewed each of these cases, and were able to confirm that in all 114 of these situations an offender was, in fact, sentenced to death. Of this total, we were then able to confirm that in seventy-six of these cases, at least one offender sentenced was executed.

From our set of 9095 “intentional victim” cases this suggests that about 1.2% of all of these cases resulted in a death sentence. Further, overall only about 0.96% of these cases resulted in an offender being executed. It is interesting to observe how closely these percentages match modern data.

Note that this a very liberal definition of homicide for these Chicago data, and despite our coding decisions may still include some acts that were accidents, or might not be found in modern data. If these were taken out, decreasing the denominator, it would obviously increase the percentages for the Chicago homicides. We can not know precisely how many of these cases there are, but even a change of a thousand cases (from 9095 to 8095) only changes the percentage of homicides resulting in a death sentence to 1.4%, and a change of 2000 to 3000 cases still leaves the proportion of Chicago homicides resulting in a sentence of death within a half of a percentage point of modern data.

Table 1
*Homicides Resulting in a Death Sentence and Resulting in an
 Actual Execution:*
Chicago 1870–1930 and the United States in 1997

	Total	Homicides Resulting in Death Sentence		Executions Carried Out	
		Number	Percent	Number	Percent
Chicago: 1870–1930	9,095	114	1.2%	87	.96%
United States: 1997	18,209	256	1.4%	74	.3%–.8%*

*. The range depends upon assumptions made as to length of time from murder to execution and about the average number of executions to be expected in any given year.

In 1997, across the United States, 256 prisoners were received from the courts under sentence of death.²⁶ That same year, there were 18,209 murders reported to the Federal Bureau of Investigation.²⁷ Again, we must stress that the statistics we are going to derive from this are not precise, and depend upon a series of assumptions. All of those sentenced to death were obviously not offenders who committed their crime in 1997, for example. However, these numbers do give us at least a basis for making some reasoned estimates, and are instructive to consider if one keeps their limitations clearly in mind.

Assuming the numbers of homicides do not change too dramatically from one year to another (there were 18,209 in 1997 and 19,645 in 1996, for example), and assuming that in the current system it takes a few months to a year from the date of the crime to reach a capital punishment verdict, it appears that about 1.4% of the murders in any given year result in a sentence of death. It is much more suspect to compare the actual number of executions and murders in any given year, of course, since under the current system it is anywhere from three to twenty-plus years from a murder to the execution of the offender for that murder. However, again, we can make a very broad

²⁶ CORRECTIONAL POPULATIONS IN THE UNITED STATES (U.S. Dep't. of Just., Bureau of Just. Statistics ed., 1997).

²⁷ FBI, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES (1998), available at <http://www.fbi.gov/ucr/97cius.htm>.

statement. There were 74 executions in 1997, and 18,209 homicides. Using only these data, we find a baseline in which the number of executions in 1997 was 0.4% of the number of homicides that year. If we assume an average of seven years from a homicide to the execution for that homicide, then these seventy-four executions in 1997 actually represent homicides that occurred in 1990. In that year, there were 23,438 homicides, so we would estimate that 0.3% of those homicides (74 of the 23,438) resulted in executions.

However, the number of executions has increased to over 100 in 2000. If we assume about 100 executions in 2002, based on the 21,606 homicides that occurred in 1995, then around 0.5% of homicides may eventually result in an actual execution. These are approximations, and varying the assumptions made, first, about length of time from murder to execution and, and second, about the average number of executions to be expected in any given year, this percentage can easily vary from 0.3% to 0.8%. If, for example, we assume the increase in the number of executions continues, and we reach 150 executions a year by 2004, those executions being from the 18,209 homicides in 1997, then 0.8% of homicides will result in executions. In fact, this estimated range of 0.3% to 0.8% is a calculated best-guess. But even with this range, and given the assumptions that have to be made, these figures closely match the data from Chicago of a century ago.

A. CHANGES OVER TIME

Further, with the changes in society that occurred over the fifty years represented in this database, it is reasonable to consider whether the proportion of all homicides which resulted in a death penalty have changed. Again, we must caution that the calculation of these changes rests upon assumptions as to the validity of the early data.

Review of the case files indicates that the lag from homicide to execution problem existing in the modern criminal justice system was not present during the Chicago data era. Executions commonly occurred within a year, frequently within a few months, of the crime. In these data, then, the lag problem is not an issue. Table 2 presents the number of homicides, the number of executions, and the percentage of homicides resulting in an execution by decade.

Table 2
*Homicides, Homicides Resulting in Executions,
 and Proportion of Homicides Resulting in Execution:
 Chicago 1870 to 1930, n = 8712*

Decade	Number of Homicides	Homicides Resulting in Execution	Percent Resulting in Execution
1870's	70	1	1.4%
1880's	291	3	1.0%
1890's	699	12	1.7%
1900's	1322	22	1.7%
1910's	1997	5	.2%
1920's	3822	27	.7%
1930*	511	6	1.2%

*. Note that 1930 is a single year, not a decade.

There is again remarkable consistency for most of the decades, with 0.7% to 1.7% of all homicides resulting in the death penalty. However, there is a significant decrease in the proportion of homicides which result in executions during the 1910's, which drops to an unusual low of 0.2%. This proportion begins to return to the levels seen in previous decades, and the data from the single year 1930 imply that the decline in the proportion from 1910 through the 1920's was out of the ordinary. Unfortunately, there is nothing in the data which provides any reason, or even any clues, as to why this occurred. This simply remains an anomaly that will require historical research into other data sources to resolve. In general, however, it appears that the percentage of cases resulting in the death penalty is not only relatively consistent through this era, but is very similar to modern percentages as well.

VI. RACE AND EMPLOYMENT OF OFFENDERS AND VICTIMS IN CHICAGO CAPITAL PUNISHMENT CASES

A. RACE AND THOSE EXECUTED AND NOT-EXECUTED

In calculating the data for the race of the victim and offender from our "intentional death" file of 9095 cases, we further ruled out law enforcement personnel acting in the line of duty, effectively excluding those cases of justifiable homicide. This produced a sample

of 7536 defendants for whom we had data on race (7341 of which were coded as white or black).

After these adjustments, we calculated the following racial breakdowns for the total sample.

Table 3

*Race of Victims (n = 8660) and Defendants (n = 7341)
for Total Adjusted Sample: Chicago Homicides 1870–1920**

	Race	
	White	Black
Victims	77%	22%
Defendants	83%	17%

* For both victims and defendants the Asian/Other category was excluded due to the small numbers involved.

The only difference, with slightly more victims than defendants being black, probably reflects the fact that we excluded justifiable homicides by law enforcement officers from the defendants (which were almost all white) but not from the victims, due to the simple fact that the Victim Record did not have a variable indicating whether the victim was killed as a result of a justifiable homicide by a law enforcement officer. Also, coding and recording decisions may have played a role in this racial difference. Since “white” was the default for coding on race, and since it is more likely that the race of the victim was known and recorded than the race of the defendant, there is an increased chance of a defendant being incorrectly coded as white by default.

For convenience, in this section we will refer to those eighteen cases in which a death sentence was handed down yet the offender was not executed as the “not-executed,” remembering that this means only those who were initially sentenced to death but were not subsequently executed.

When we examine the data on race, particularly when we focus on the race of the victim, there is significant support for the argument that black life is devalued in capital punishment cases, even in these data from the early half of the century. Recall from Table 3 that among defendants, approximately eighty-three percent were white, and seventeen percent were black. Among victims, seventy-seven percent were white and twenty-two percent were black. Yet when

we look at whether a sentenced offender was executed or not, a pronounced racial difference occurs, reflecting primarily the race of the victim.

Table 4

*Offenders Sentenced to Death and Subsequently Executed or Not-Executed by Race of Offenders and Victims in Chicago**

Race of Offender	Race of Victim	Sentenced to Death	Executed Number	Executed %	Not Executed Number	Not Executed %
White	White	75	63	84%	12	16%
White	Black	0	0	0%	0	0%
Black	White	15	15	100%	0	0%
Black	Black	11	9	82%	2	18%
Totals		101	87	86%	14	14%

* Total n = 101 offenders. This represents ninety offenders from the total of ninety-four cases in which at least one offender was coded as sentenced to death plus an additional eleven offenders from cases in which more than one offender was sentenced. The remaining four cases from the full sample of ninety-four cases included victims who were coded as Asian or "other," or for whom race was unknown.

Table 4 shows first that no white offender was ever sentenced for killing a black. However, virtually every black offender sentenced to die for killing a white victim was eventually executed. On the other hand, white offenders who killed white victims were not executed in sixteen percent of all cases, and black offenders who killed black victims were not executed in eighteen percent of all cases.

Two facts stand out. First, no white offender was ever executed (nor even sentenced to death) for killing a black victim. Second, in no case where a black offender killed a white victim was the offender not executed. A white killing a black is not capital-punishment-serious at the level of conviction, but a black convicted of killing a white is the only racial combination guaranteed to result in death once the sentence is passed. Moreover, the devaluation of black life seen in the death of a black victim cuts across the offender's racial category. If the victim is black, no white offenders are ever executed, and even if the offender is black, eighteen percent of those sentenced to death for killing a black victim are never executed.

Further, among all executions in which the race of the victim was known, 89.6% of those executed were cases involving a white victim. Only 10.3% involved a black victim. In short, even the most basic

review of the racial breakdown of these cases supports two arguments. First, race is a factor in the determination of who will be sentenced to death and, once the sentence is handed down, who will actually be executed. Second, not only is race a factor, but the more important consideration in race is not the offender, but the victim.

This association also holds across the decades. Table 5 presents the victim/offender combination in the executions which occur in each decade. By the 1920's, almost a third of all executions involved a black offender and a white victim.

Table 5

*Known Victim/Offender Combination by Decades: Chicago Executions
1870–1930, n = 87*

Decade	Victim/Offender Combination		
	White Offender/ White Victim	Black Offender/ White Victim	Black Offender/ Black Victim
1870's	2	0	0
1880's	3	0	0
1890's	10	2	0
1900's	16	4	2
1910's	0	0	0
1920's	18	9	4
1930	16	0	3

Table 6 further displays the relationship between race and executions, in this case between executions by decade and the race of the offender. For each decade the number of executions for offenders of each race are presented. The percentage of the total number of executions for the decade that each offender's race represent is also presented.

Table 6
Executions by Offender's Race by Decade,
*Chicago 1870–1930, n = 87**

Decade	White Offenders		Black Offenders	
	Number	% of Total	Number	% of Total
1870's Executions:	2	100%	0	0%
1880's Executions:	3	100%	0	0%
1890's Executions:	10	83%	2	17%
1900's Executions:	16	73%	6	27%
1910's Executions:	8	100%	0	0%
1920's Executions:	18	58%	13	42%
1930 Executions:	6	67%	3	33%

* No offenders from the Asian/Other category were executed during this time.

An odd pattern appears after 1890, when there are a fairly large number of black homicides from which to calculate. In the 1890's, 1900's and the 1920's, the percentage of blacks executed exceeds the percentage of homicides committed by blacks. But in the 1900's during the decade when there were only five executions, all of those executions are of white offenders.²⁸ This again points up the anomaly of that decade discussed earlier.

On the other hand, the actual homicide rate for white and black populations is displayed in Table 7. This Table presents the number of homicides by race in each decade, the percentage of the total homicides in that decade represented by the specific racial category, and the homicide rate for that race during that decade.

²⁸ 1930 is not considered since it represents only a single year.

Table 7

*Homicides by Victims Race for Known Intentional Victims: Number, Percentage of Total for Decade, and Rate, n = 8660**

Decade	White Victims			Black Victims		
	Number	Percent of Decade Total**	Homicide Rate per 100,000	Number	Percent of Decade Total	Homicide Rate per 100,000
1870's	66	94%	1.67	4	6%	7.86
1880's	268	92%	3.39	21	7%	20.24
1890's	624	89%	4.53	73	10%	32.87
1900's	1,161	88%	6.10	158	12%	42.56
1910's	1,702	85%	7.19	286	14%	37.24
1920's	2,567	67%	8.99	1,221	32%	71.12
1930	326	64%	10.45	183	36%	78.23

* The Asian/Other category is not included since in no decade did it constitute higher than one percent of victims.

** This rate is only an approximation, since census data for every year are not available. We assumed that the rate of homicides was evenly distributed, and so divided the total reported for the decade by ten. Using the decennial census figures, we then interpolated to the mid-year population and used that as the population base in the calculation.

Clearly, the homicide rate for both groups increases steadily, the black rate being five to eight times higher than the white rate in each decade. Because the homicide rate is based on the race of the victim, and the execution data in Table 6 on the race of the offender, a superficial comparison of the two tables seems to imply a rough racial equity, with a disproportionate number of whites being executed in the 1870's, 1880's, and 1910's, but a disproportionate number of blacks being executed in the 1890's, 1900's, and 1920's. However, this overlooks the racial disparity discussed earlier in regard to the victims, and the fact that most of the blacks executed during any of those years were sentenced for killing a white victim (refer again to Table 4).

Among those who were sentenced but not executed were two black offenders and one Asian, with the remaining fifteen cases being white offenders. The racial breakdown among those non-executed, then, is eleven percent black (or seventeen percent minority including

the Asian case), and seventy-eight percent white (with the remainder being one case where the race of the offender was not recorded). The only Asian to appear in these cases was a "Chinaman," found guilty of the murder of another "Chinaman," and sentenced to death. He was, however, granted a new trial, adjudicated insane, and sent to an asylum. He was one of two cases where the offender was subsequently adjudicated insane after being sentenced to death.

The other not-executed cases tended to run the full range of types. The two cases involving black offenders both had "unusual" circumstances which might explain the change, in one case the offender was a woman who murdered her husband, in the other the victim had actually started the fight which resulted in his death. But among the white cases there is no apparent pattern. The offenders include those who were involved in robberies when the murder was committed, as well as those who murdered a family member. Even in the processing there is a spread, with five obtaining a new trial which resulted in a lighter sentence, six receiving a new trial which resulted in their acquittal, five having their sentences commuted, and two being found insane. Even the spread across time is relatively even, with one case in the 1870's, five in the 1890's, four in the 1900's, two in the 1910's, five in the 1920's, and one in 1930. Also recall that the distribution of those sentenced but not executed was much closer to the total proportion of offenders, with seventy one percent of those not executed involving white victims and eleven percent involving black victims.

B. EMPLOYMENT AND THOSE EXECUTED AND NOT EXECUTED

As we have cautioned before, the only data available which reflect poverty are those related to the employment of the offender, and these data are very scarce. As a consequence, what follows can be offered as generally anecdotal evidence, since it would be very inadvisable to place any confidence in the statistics for comparison.

That said, however, the data which are available are certainly interesting in their consistency. Of the ninety-four cases which resulted in an execution, the occupation of the offender is listed in only thirteen cases, yet in eleven of these the offender was coded as "outside the labor force." In only two cases was the offender coded as a laborer, in one case as a porter in a saloon, in another as a watchman. Among those sentenced to death but not executed, occupation is known for four; two are outside the labor force, one is an unskilled laborer, and one is a doctor found guilty of a criminal abortion.

Oddly, because of our decision to remove abortions from the general analysis file, this case appears only because it is the sole abortion case for which a sentence of death was handed down, and the death penalty cases were drawn initially from among the total database. This doctor's case was reversed by the Illinois Supreme Court; he was retried and found guilty of manslaughter.

Two things stand out. First, the data reconfirm the fact that we seldom have anything concrete to go on when we consider the economic status of offenders. Clearly, however, these are not professional types. While it certainly supports the contention that death row is a destination for the poor, it also reinforces the call for more thorough research on just how much of an effect being poor has on the process.

Second, while it is merely one case, it is notable that the only case in which the offender was a professional was a case in which he was not ultimately executed. It is instructive in this regard that he had the money not only to push his initial conviction to death all the way to the Supreme Court, but apparently also appealed his second manslaughter conviction all the way to court again. This is something that a "colored" porter, like the one hung in 1897 for the murder of the owner of the saloon in which he worked, would not have had the funds to do.

VII. THE NATURE OF THE CRIME AND THE DEATH SENTENCE

The cases of those who were sentenced to death cover the range of events that lead to homicide, but the cases of those who are eventually executed are heavily concentrated in two areas: robberies and killings of peace officers.

Of the eighteen cases in which a sentence of death was handed down but later reversed or commuted, five involved robberies of some kind, three were domestic quarrels (or related to domestic quarrels), and the remaining ten were the result of arguments among strangers or friends, or the causes were simply not listed. Some of these arguments appear to be as trivial as those that lead to homicide today. In 1916 one fifty-five year old victim was stabbed to death (ten stab wounds) by a saloon keeper because he would not stop singing. In 1926 another victim is stabbed in a fight precipitated when he tells several men to get out of his stairway for making too much noise. Even the homicides related to domestic troubles look like those of today, to the degree that in one the victim was not the wife of the offender, but a friend who was letting that wife stay in her home.

The estranged husband came to the home and, attempting to reach his wife, shot the victim. In a second domestic situation the victim had simply tried to intervene in an argument between a man and his wife. Just as often occurs in modern homicides, the victim is often the one who attempts to protect one party or to intervene.

Among the cases in which the offender was executed there are two pronounced types. In twenty-two of these seventy-six cases, or twenty-nine percent, the homicide occurs in the commission of a robbery or a burglary. In another nineteen cases (twenty-five percent) the victim is a peace officer. Thus, in fully fifty-four percent of all of the cases resulting in the execution of an offender, the case either involved a robbery or a burglary, or the victim was a police officer. Further, there are three cases in which a notation is made of evidence of rape, or that the victim was "ravished," which means that in almost sixty percent of these executions the victim was a police officer, or the homicide occurred during the commission of another felony.

Clearly, and in line with its reputation on this issue, Chicago does not like the killing of its officers. Of the total of twenty-seven cases involving a robbery or burglary in which a death sentence was handed down, the cases were equally likely to result in the offender being executed (twenty-two of seventy-six, or twenty-nine percent of all those executed) or not executed (five of eighteen, or twenty eight percent of those not executed). However, in those cases in which a death sentence was given and the victim was a peace officer, fully 100% of the offenders were subsequently executed.

In some cases the officer was involved in an arrest of obviously dangerous criminals, the reports noting that the officer was shot "in a fight with hold-up men" or while "attempting to arrest the car born [sic] robbers and murderers," or "while in the act of making an arrest in an attempted holdup." In other cases one finds the combination of alcohol and stupidity that still gets young men executed, as in the case of the officer who was killed in 1904 by two assailants "who were intoxicated and creating a disturbance and when remonstrated with by the officer assaulted him and shot him in the abdomen." The cases of officers killed demonstrate how little the nature of the dangerous side of police work has changed over a century.

The other major category of homicides which result in death sentences are those which involve another offense, most commonly a robbery or burglary. In reviewing the limited data available in each case description, it is interesting to observe that there is nothing that clearly differentiates those capital homicide robberies that result in

executions from those in which the offender is sentenced but not executed. Of the twenty-two cases in which the offender is executed, four occur in saloons or poolrooms, six in the street, and eleven in businesses (with one case in a home). Of the five cases not executed, two occur in saloons, one on the street, and two in businesses. The files seem to be describing similar situations. In 1901 a nineteen-year-old victim is “[s]hot by robbers in saloon.” Their sentences are commuted. In 1919 a twenty-six-year-old victim is “[s]hot to death in poolroom . . . by one of three holdup men who robbed the place,” and the offender is executed. In some instances there are differences that can explain the execution. Most commonly there is more than one victim or the offenders are identified in such a way that it appears they were known to the police, and this is one of a series of robberies. But clearly, there are other factors operating which make the difference between life and death, yet which do not appear in the data.

There are also a number of cases in which no information is given, or not enough to make a judgement of what occurred. The descriptions are terse. “[Name], killed with club . . . by [Name] who was arrested Aug. 25, and hanged in the Spring of 1896.” Or “[Name]—Age 55—Shot to death at 12:50 am, in front of [address] by a recently paroled (Pontiac) Negro, [Name], who was arrested while running away.”

The only other sizeable group of cases for which something is known are those involving a domestic problem, representing eight of the seventy-six execution cases (ten percent) and three of the eighteen not-executed cases (seventeen percent). The cases are strikingly similar to modern descriptions of domestic homicides. The victims are women and children when the victim is the intended target: “[Name]—age 32—Fatally shot at 11:20 pm in the store part of her home [address] by her husband . . . who accused her of infidelity,” or “[Name and address], missing. Her husband . . . arrested, 19th Prect., on suspicion of having murdered her.” In more than one case the offender then attempts suicide, in a classic murder-suicide pattern: “[Name], throat cut with razor . . . by her husband who attempted suicide by cutting his own throat,” or “[Name] 25 years old, [name] 2-years old, and [name] 1-years old, murdered, shot and cut at home . . . by husband and father, [name], who attempted suicide by cutting throat.” And, as we still see in modern homicides, there are the victims who are killed because they are protecting the intended victim, or are attempting to intervene in the argument. In one sense this may be surprising, as we somehow expect people or conditions to be “different” a century ago. On the other hand, the conditions that lead to

homicide, everything from poverty and alcohol to gambling, jealousy, and depression, are constants. Certainly these homicide data imply a consistency in human nature and the human condition.

In short, the descriptions of these situations from a century ago are strikingly close to the descriptions we find in current cases. Those cases in which the offender is sentenced to death are most commonly those which involve another concurrent felony, or in which the victim is a police officer. Of the remaining cases, there is nothing obvious in the description to suggest why one offender is given the death penalty and executed, another given the death penalty and not executed, and yet another not sentenced to death.

VIII. CONCLUSIONS: THE CONSTANCY OF RACE AND POVERTY

Perhaps the most interesting single finding from the analysis of these data is the similarity of the patterns found in Chicago to the findings from all other places and times in the United States. Black life is devalued. The black homicide rate is consistently higher, and the percentage of all executions which involve blacks is higher for each decade in the 1900's except 1910 to 1920 (with no conclusion drawn for the single year 1930). Further, among all executions for which the race of the victim is known, ninety percent involve white victims, ten percent involve black victims, and in no case is a white man executed for killing a black man. And as to the economics of execution, from what little data are available we may not be able to say that most people on death row during this time were poor, we can say with more certainty that few, if any, of them were rich.

Cases in which the offender is sentenced to death commonly involve a concurrent felony or a peace officer as a victim. It appears that if the concurrent felony involves more than one victim or the offenders are known to have engaged in a series of crimes, the offenders sentenced are more likely to be executed, although this is anecdotal and based on a very small number of cases. But if an offender kills a peace officer in Chicago and is sentenced to death, the sentence is carried out.

Even the general pattern of capital punishment for homicide remains similar over the period of time represented, and is similar to modern patterns. A surprisingly close percentage of homicide cases appear to result in a death sentence when we compare the Chicago data to present data, and a very similar number of those cases which do receive a death sentence appear to result in execution.

And finally, the reasons for those homicides for which people are executed seem to have changed little. Husbands kill wives, robbers kill their victims, drunks kill each other. If capital punishment were having some effect, we would expect to see some change or improvement. Yet it appears that the one outstanding fact from these data is that we are entering a new century with patterns which are strikingly similar to those with which we entered the last century, and the fact that we are finally willing to execute a white person for the murder of a black person is not the evidence of humanitarian progress we might have wished over that past century.