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**Austin Sarat**  
Editor

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# STUDIES IN LAW, POLITICS, AND SOCIETY

EDITED BY

**AUSTIN SARAT**

*Department of Law, Jurisprudence & Social Thought and  
Political Science, Amherst College, USA*



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<i>Kevin J. McMahon</i>	Department of Political Science, Trinity College, Hartford, CT, USA
<i>Austin Sarat</i>	Department of Law, Jurisprudence & Social Thought and Political Science, Amherst College, Amherst, MA, USA
<i>Valmaine Toki</i>	Te Piringa – Faculty of Law, University of Waikato, Hamilton, New Zealand
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# A TWICE-TOLD STORY: COMPARING ACCOUNTS OF CAPITAL PUNISHMENT IN THE RADICAL AND MAINSTREAM PRESS

Austin Sarat, Kyra Ellis-Moore, Abraham Kanter,  
Christina Won and Abigail Xu

## ABSTRACT

*This paper examines coverage of America's death penalty in "mainstream" and "radical" newspapers in the 1970s. That decade was a crucial period for capital punishment, and newspapers during that time helped set the trajectory of the public's awareness and understanding for the remainder of the twentieth century. While scholars have recognized the role played by newspaper framing of capital punishment, most have limited their consideration to the mainstream press. We broaden the consideration to the radical press and note similarities in the treatment of the moral status of the death penalty across newspapers of different types. We find that the radical press was more likely to portray it as an instrument of racial and class oppression. In addition, long before mainstream papers attended to questions about the reliability of the death*

*penalty system, radical papers were calling attention to the number of innocent people who were erroneously sentenced to death. Like dissenting opinions in judicial decisions, the radical press highlighted issues not emphasized in mainstream papers and foresaw concerns that would become important in the death penalty debate a decade or two later.*

**Keywords:** Death penalty; mainstream and radical newspapers; 1970s

## INTRODUCTION: THE GARY TYLER CASE

On October 7, 1974, the small town of Destrehan, Louisiana, erupted in racial violence (Herbert, 2007b). As black students boarded a bus on their way to the recently integrated Destrehan High School, they were attacked by a mob of white protesters.<sup>1</sup> During the incident, a white student was shot and killed. Authorities soon arrested Gary Tyler, a black 17-year-old, and charged him with murder. Two years later Tyler was convicted and sentenced to death.

The Tyler case attracted considerable publicity both during and after the trial and became a cause celebre for radical newspapers. A 1976 article in *The Rag*, the first underground newspaper published in the South, ran under the headline “Black Student Railroaded & Given Death Sentence” (Black Student, 1976, p. 1). The article read: “In a surge of reaction to perpetuate racial persecution, the criminal ‘justice’ system, including both prosecution and defence, under the cloak of the Ku Klux Klan has once again been used to victimize a black person” (Black Student, 1976, p. 1). It reiterated the connection of Tyler’s sentence to the Klan by noting that while “Destrehan was ‘closed-off,’” David Duke, the “Grand Dragon of the Ku Klux Klan,” was allowed to attend the funeral service and “placed a wreath at the grave of the slain white student, in a drive to stir up still more emotion and hatred against blacks” (Black Student, 1976, p. 1). Next to *The Rag*’s headline appeared a cartoon, subtitled “Legal Lynching? The Case of Gary Tyler,” depicting a Klan member and a judge with their arms around one another, the former holding a noose and the latter holding a “guilty” verdict (Black Student, 1976, p. 1), Fig. 1.

In addition to its racially charged tone, *The Rag* presented information that, if true, should have exonerated Tyler. The paper claimed that “Gary had not been in class all day,” but had instead been “over a mile from campus” until he was stopped and returned to school by police (Black Student, 1976, p. 1). Eventually he got on the bus “to escape the unrest” and

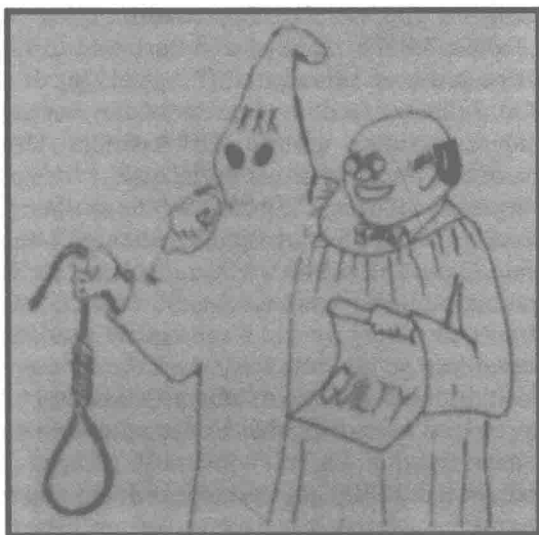


Fig. 1. Legal Lynching? The Case of Gary Tyler.

because "he was ordered to leave" school (Black Student, 1976, p. 1). Additionally, the gun used in the killing had "disappeared from a firing range used by the local police," was oddly "not noticed until after the shooting," and was not "found until the bus had been in the police garage for several hours" (Black Student, 1976, p. 1). No fingerprints, *The Rag* reported, were found on the gun, and Tyler's gloves tested negative for gunpowder traces until the "police only" test concluded otherwise (Black Student, 1976, p. 1). This test, the article contended, was "invalid, as negative results would appear because the gloves would be 'clean' by then, from being tested and handled too many times" (Black Student, 1976, p. 1).

*The Rag* also noted that the school bus driver, a military veteran "familiar with firearms," testified that it was not possible for the gun to have been shot from inside the bus (Black Student, 1976, p. 1). Lastly, the paper reported that the prosecution's key witness "was not considered a worthy citizen by the community, due to a long history of psychiatric problems, and trouble with the law, including a drug arrest." She was "provided with a job at the courthouse" after testifying against Tyler (Black Student, 1976, p. 1).

None of this information appeared in the mainstream press. An article in the May 21, 1976 issue of the *Los Angeles Times* typified mainstream

newspaper coverage of the case. The *Times* article, titled "Death Sentence of Youth Stirs Protest," was structured as a back-and-forth, balanced presentation of Tyler's prosecution and trial (Prugh, 1976). It alternated quotations from Bob Zellner, executive director of the Southern Conference Education Fund civil rights group, and Assistant District Attorney Norman J. Pitre, one of the prosecutors in the case.

The article began by quoting Zellner: "We think there is definite evidence of a frame-up ... It's obvious that the state of Louisiana sincerely intends to execute Gary Tyler. But we do not intend for him to die. We plan to prevent this by any means necessary" (Prugh, 1976). Even after describing the trial's all-white jury and a subsequent revelation that the key witness was coerced into giving false testimony, the *Times* refused to privilege Zellner's position. "For their part," the article states, "the prosecutors insist that Tyler received a fair trial, that blacks refused to serve on the jury and that the state did not coerce witnesses" (Prugh, 1976). In fact, Assistant District Attorney Pitre got the last word, arguing that the controversial testimony of the witness was "pretty well corroborated by two or three other witnesses who testified at the trial" (Prugh, 1976). He continued: "They did not actually see the firing, but they did see the weapon exchange (between Tyler and London) and every one of them said that the weapon came from Gary Tyler" (Prugh, 1976).

## A CRUCIAL DECADE

The Tyler case occurred during a crucial decade for America's death penalty (Epstein & Kobylka, 1992, p. 39).<sup>2</sup> The early to mid-1970s witnessed both the near-abolition of capital punishment and its forceful revival. In 1971, the death penalty, by most measures, appeared to be dying. Annual execution rates dropped from 199 in 1935 to zero in 1968 (Banner, 2002, p. 208). David Garland writes that "by the late 1960s – against a backdrop of decreasing executions, a *de facto* moratorium across the whole country, litigation challenging the death penalty's legality, and public and political opinion turning against capital punishment – America seemed on the verge of nationwide abolition" (Garland, 2010, p. 120).

Changes in the Supreme Court's treatment of death penalty cases and the involvement of the NAACP's Legal Defense Fund fueled an active abolition campaign (Meltsner, 1973, pp. 236–246). In 1972, the Court's *Furman v. Georgia* decision temporarily halted executions in America.

Examining cases that constituted “clean ... run of the mill murders,” *Furman* overturned three capital convictions (Garland, 2010, p. 224). While the Court had overturned death sentences before, *Furman* was the first time a plurality of justices ruled that most existing capital statutes were unconstitutional (Norris, 1976, p. 515). On the same day the Court issued its opinion in *Furman*, the New Jersey Supreme Court effectively abolished the death penalty in its state (Meltsner, 1973, p. 279). Soon after, California’s Supreme Court did the same (Meltsner, 1973, p. 281). These decisions, like *Furman*, focused on the death penalty’s arbitrariness, its lack of procedural safeguards, and racial and other prejudice evident in the penalty’s application (Garland, 2010, p. 225).

Garland argues that *Furman* generated three outcomes unforeseen by abolitionists: it provoked a pro-death penalty backlash, gave new salience to the issue of the death penalty, and transformed its political connotations (Garland, 2010, pp. 232, 234–235, 245, 253). After *Furman*, the death penalty morphed from a penological into a political and symbolic issue: it led to a “law and order” campaign against civil rights, became a gauge of cultural and political loyalties, and fueled states’ rights activities (Garland, 2010, p. 253).

Most importantly, *Furman* propelled the death penalty to the forefront of the public gaze. After the decision, the subject of the death penalty arose with increased frequency in “discussions among legislators, lawyers, scholars, and even average citizens” (Epstein & Kobylka, 1992, pp. 130–131). President Richard Nixon proclaimed that *Furman* would not end the death penalty, and legislation was introduced in Congress specifying new capital crimes (Banner, 2002, p. 84). For the first time in American history, pro-death penalty campaigns were launched nationwide (Garland, 2010, p. 232). Mobilized by conservative citizens, law enforcement officials, and politicians, these campaigns led to a proliferation of new capital statutes (Epstein & Kobylka, 1992, pp. 86–88; Garland, 2010, p. 232). According to Epstein and Kobylka: “The *Furman* backlash was loud, quick, and broad based. Public opinion, generally supportive of capital punishment before June 1972, became even more so in the immediate aftermath of the decision. State legislatures across the country, and not just in the South, could barely wait to reconvene and pass new laws” (Epstein & Kobylka, 1992, pp. 130–131).

The new laws led to increasing numbers of capital sentences: 42 people were sentenced to death in 1973, 149 people in 1974, and 298 in 1975 (Banner, 2002, p. 270). These sentences, in turn, brought new legal challenges. Stuart Banner writes: “Capital cases continued to pile up at the

Court ... By September 1975 the appeals of thirty-seven condemned prisoners had made their way to the Court, where they were all being held until the Court could rule on the constitutionality of the new sentencing schemes" (Banner, 2002, p. 271).

In its 1976 *Gregg v. Georgia* decision, the Court reinstated capital punishment. The majority and concurring opinions found that sentencing guidelines included in capital laws like Georgia's mitigated the risk of arbitrariness that the Court had found unacceptable in *Furman* (Epstein & Kobylka, 1992, pp. 116–117).<sup>3</sup> Thus, *Gregg* marked the full revival of capital punishment in America.

After *Gregg*, the death penalty became a highly controlled and carefully planned procedure. The death penalty process was meticulously choreographed so as to reaffirm the legitimacy of the lethal power exercised by the state. "Rather than contributing to a moral and political lesson," Herbert Haines observes, "ritual now seems primarily intended to soothe the uneasy conscience of a public which supports the death penalty mostly at a distance and as an abstraction" (Haines, 1992, p. 126).

Moreover, the decisions in *Furman* and *Gregg* gave the Supreme Court a powerful influence on the trajectory and public profile of the American way of death. Banner writes that "if *Furman* did not influence the *direction* of change, it almost certainly influenced the *speed* of change. *Furman* suddenly made capital punishment a more salient issue than it had been in past decades, perhaps ever. People who previously had had little occasion to think about the death penalty now saw it on the front page of the newspaper" (Banner, 2002, p. 268).

## THE DEATH PENALTY IN THE NEWS: MAINSTREAM AND RADICAL PERSPECTIVES

Media accounts of the death penalty process hold "up a magnifying ... glass to a precarious ritual that the authorities [take pains] to conceal from the general public" (Linders, 2002, p. 618) and citizens have to rely on the press to show them what they cannot see. As a result, scholars have long recognized the importance of newspaper coverage of the death penalty and the key role it played in the decade of the 1970s (Baumgartner, De Boef, & Boydston, 2008, p. 115; Sarat et al., 2012, pp. 1–30).<sup>4</sup> Some argue that media portrayals of capital punishment were at least partially responsible for the aforementioned political and judicial

developments. "Media framing effects," Frank Baumgartner et al. write, "build momentum in the death penalty system, influencing sentencing directly as well as indirectly through public opinion" (Baumgartner, Linn, & Boydston, 2010, p. 177).

Garland uses newspapers as a vehicle to analyze the public view of capital punishment. He describes the popular reception of *Furman v. Georgia* as "mixed," citing reports of celebration from prisoners on death row, enthusiastic support from liberal politicians, and criticism from police chiefs and conservative government officials (Garland, 2010, pp. 231–232). He suggests that the *Washington Post* headline, "Joy on Death Row; Praise, Scorn on Capitol Hill," nicely captures the nature of the political response to the death penalty, and a *New York Times* headline, "Banned – But for How Long?" aptly demonstrates how soon after *Furman* support for the death penalty began to mobilize (Garland, 2010, pp. 231–232).<sup>5</sup>

Because they focus almost exclusively on the mainstream press, scholars like Garland and Baumgartner do not provide an adequate view of the range of capital punishment coverage or the spectrum of public response to the changing landscape of America's death penalty in the crucial decade of the 1970s. Alongside the mainstream press, the so-called "radical" press played an important role in covering the death penalty. As outlets for, and reflections of, burgeoning social movements, these newspapers highlighted themes underrepresented in the mainstream press and anticipated arguments that would later become vital to America's death penalty discourse.

### *An Overview of the Radical Press*

In the 1960s and 1970s, the radical press was at its peak. It served, some scholars argue, as the only unifying institution for the otherwise highly diverse and amorphous social movements which collectively came to be known as the New Left (Leamer, 1972). Comprised of black nationalists, students, and socialists, among others, the New Left had a significant influence on America's political and social landscape. The approach of the radical press was to represent ideas from the public, rather than simply transmit news to the public (Vatikiotis, 2005, p. 4) and to offer "space to individual and minority expressions" (Vatikiotis, 2005, p. 6).

A prominent example of a radical newspaper that arose in reaction to perceived inadequacies in the mainstream press was *The Black Panther*, the official newspaper of the Black Panther Party. It reported on the "organization's ideologies, activities, and internal affairs" and covered "'mainstream'



news events, community political struggles, and revolutionary liberation movements” (Hughey, 2009, pp. 29–30). *The Black Panther* reflected the “imagined, diasporic, black nationalism” that was developed by Huey Newton, co-founder of the party (Hughey, 2009, p. 40).

While the radical press of the 1970s was multifaceted and diverse, it was united by a commitment to social change. Radical newspapers were activist in nature, engaging in dialogue with their readership designed to initiate action and blurred the relation between author and audience (Schudson, 1995). As Newton put it such newspapers were “essential to capture the imagination of the people to spark their resistance to oppression” (Hughey, 2009, p. 40). Media scholars Atton and Couldry have argued that “at stake in the whole range of radical media practice is the issue of *citizenship* in some sense” (Atton & Couldry, 2003, p. 580).

Radical papers developed as a reaction both to the distinctive social and political context of their time, and to the manner in which the mainstream media reported the news (Glessing, 1970). They contested the mainstream press in content as well as in form because the mainstream media refused to represent certain political viewpoints in its coverage and failed to foster truly democratic debate (Leamer, 1972, p. 182). In its content, the radical press did not seek to replicate the coverage of the mainstream press; it ignored some things the established press found important, while giving other stories considerable attention.

In addition to differences in focus, the radical press rejected the ideology of objectivity and blended reporting and opining. According to Hartley, “objectivity is an invention of American journalism in the period around the turn of the twentieth century, when the idea of the ‘informed citizen’ gained prominence, along with the presumption that the press was the chief means for providing citizens with the information needed to make rational calculations and informed judgments about the issues, controversies, and problems of the day” (Hartley, 2002, p. 191). The editor of the *Great Speckled Bird*, a widely circulated leftist newspaper published in Georgia in the 1970s (“It Was 40”), said of the mainstream press: “To criticize in America today is ‘unobjective.’ To protest is ‘irresponsible.’ To dare suggest the need for basic change ... is blasphemous” (Lewes, 2000, p. 386).

Radical reporters and editors did not try to deny bias in the name of a fictive objectivity, but rather to take into account biases and “to honestly admit them” (Leamer, 1972, p. 189). In this view, “a newspaper is, in the final analysis, its own vision of the world” (Glessing, 1970, p. 97). The radical press saw objectivity as an inadequate vehicle for promoting an informed citizenry.<sup>6</sup>