

## Dead End

Capital Punishment: At a Crossroads, or Is This the Exit?

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Gary Gilmore, patron saint of the modern American execution, hear our plea.

Give us potassium chloride, give us death, but give us two good grams of sodium thiopental first.

Give us the long drop, the 2,000-volt surge, the Cor-Bon 185-grain jacketed hollow-point .45, but let the country give up this quest for a painless execution.

Is it even possible? It has been the holy grail of executioners for more than a century, and we are still plodding along the capital punishment road, vast horizons ahead.

Lethal injections, once thought of as perfection revealed, are now on hold in Maryland, California, Florida, Missouri, South Dakota. Doctors say that, if improperly administered, they might cause the condemned to die in pain. Since this pain violates constitutional protections against cruel and unusual punishment, and since lethal injections are now the method of choice for almost all executions, opponents think they may have found the way to do away with capital punishment in America.

"I don't think we've changed morally, but we may be in that process" of abolishing the penalty, says Richard Dieter, executive director of the Death Penalty Information Center.

"A pivotal moment in history," editorialized the Lancet, a medical journal that has played a key role in the latest attempts to outlaw lethal injection.

Is this it? Are we approaching the end?

Thirty years ago this week, Gary, is the anniversary of your execution, the one you worked so hard to bring about, the one that reintroduced the nation to the moral complexities of capital punishment after a decade's respite. Did you feel pain in that squalid Utah state prison room, strapped into an office chair in front of a grimy mattress, five rifles pointed toward the white circle over your heart?

The press reported your last public words:

"Let's do it."

Less known were your actual final words to a priest:

*Dominus vobiscum.*

The Lord be with you.

And then, the blood dripping onto your shoes.

\* \* \*

Hanging. People used to like hanging.

It worked pretty well. (See: Hussein, Saddam -- the hanging, not the chaos and hooting.) It asphyxiated, it snapped spinal cords. A big hit for centuries the world over. It clearly was less sadistic than disembowelment, the crucifix, the pyre, the garrote.

It didn't require much -- knotted rope, height -- and was rich in symbolism. Hangman. Gallows. Noose.

But hanging was so easy that lynch mobs used it, which led to nasty image problems, and it wasn't all that painless or quick, unless you knew how to calculate prisoner weight, length of fall, pressure required to break the neck. People tended to squirm up there on the rope, which made people squirm down there on the ground.

So, about 140 years ago, Americans turned to their new god of Science for even better ways to kill the condemned. Anesthesia was in its infancy, and this would have a profound change on human existence and its termination -- pain was no longer inevitable. It could be avoided and, in terms of executions, people came to feel it should be.

Now, according to the Associated Press, at least 19 of the country's 38 death-penalty states offer sedatives and anti-anxiety drugs to condemned inmates before execution, almost as if they're putting the family's golden retriever to sleep.

"A great deal of effort goes into preparing the condemned felon mentally for what he's about to face," says Edwin Voorhies, warden at the Southern Ohio Correctional Facility. "Our goal is to get them to walk peacefully into that chamber."

This anesthetic concept introduced the fundamental American paradox of execution that continues to this day: It is constitutional to execute condemned criminals. It is not constitutional to hurt them while you do it.

"The proper punishment was viewed as death, not death plus lots of pain," says Stuart Banner, a professor at the UCLA School of Law and author of "The Death Penalty: An American History." "The driving force behind the changes in executions ever since has been minimizing the pain for the condemned, both for their sake and that of the spectators."

Ah, yes. Less discomfort for spectators. Absolution for the living. We promise the condemned a painless death, something that none of the rest of us are given, and we employ the most modern means of science to accomplish this. The care taken is evidence that this is not revenge, or a continuation of what scholar Francis Zimring calls "the vigilante tradition."

"The sensitivity is not for people opposed to the death penalty, because they are opposed to it on any grounds," says Zimring, a law professor at the University of California, Berkeley, and author of "The Contradictions of American Capital Punishment." "It's for people who are ambivalent supporters."

And Americans (including the president) do support the death penalty.

They do so at 67 percent, though their betters -- newspaper editorial writers, the French -- tell them they shouldn't. The United States is one of four countries that account for about 95 percent of the world's executions (the others being China, Saudi Arabia and Iran). Americans support it three decades after all of Western Europe stopped, calling it outdated, unfair and barbaric. Amnesty International, Human Rights Watch -- oh, you know.

Opponents generally portray it as being on its way out, though that is hardly clear.

Two months ago, voters in Wisconsin asked to reinstate the death penalty -- 153 years after abolishing it. The non-binding referendum, which said the penalty would be used only for vicious crimes where DNA evidence proved guilt, passed at nearly 56 percent.

"It passed in 71 of 72 counties, and in some counties the vote was at 68 percent," said state Sen. Alan Lasee (R), who pushed the bill.

This despite the patchwork nature of capital punishment, the fact that there is really little rhyme nor much reason as to who gets executed, and why. (A man is executed in North Carolina for killing his stepdaughter, but the BTK Killer in Kansas and the Green River Killer in Washington get life in prison.) It is so seldom used (56 times last year) that it has long since stopped being a working part of the criminal justice system. In the past 20 years, prosecutors and supporters have begun saying it is needed because it "brings closure" to

victims' families, but they can't possibly mean that, because that would imply that 99 percent of the families of victims *never* get closure. The system is filled with what Supreme Court Justice Harry A. Blackmun once called "arbitrariness, discrimination, caprice and mistake."

With so much imperfection about crime and punishment, it seemed the least thing the nation could do was to find the perfect means of execution. There would be one perfect note in the whole process, and it would be, with morbid certainty, the last one.

By killing painlessly, we would accommodate the Constitution and assuage our conscience -- the condemned would have a gentler death than they dealt out. (Or, at least, than they were *convicted* of having dealt out.)

This search started long ago. For a while, back in the 1800s, there was something called the "upright jerker." It was inverted hanging -- you still had the noose, but you didn't drop -- a contraption snapped you up in the air! It was supposed to be a quicker death.

But it was still so low-tech.

By 1886, a New York commission sat down and considered 34 different means of doing the deed. There were three desirable criteria, which have been the hallmarks of executions in America ever since: (a) speed, (b) absence of pain and (c) lack of blood.

Their answer then, much as it would be 100 years later, would be to turn to the science of the day. Electricity was the latest thing. It had never been used to intentionally kill anyone before, and it wasn't even known how it caused death (ventricular fibrillation, it would turn out).

But new science? Technology?

Brilliant!

Edison was involved in the design. The big decision was whether to use direct or alternating current.

William Kemmler was the first killer strapped in, electrodes attached to the base of his spine, to a metal cap strapped onto his head. Press accounts say he told the prison authorities to take their time and do it right.

Boy, did they!

Capillaries in his face burst. Blood oozed onto his face. Burnt flesh. Singed hair. The 25 spectators were nauseated. He was dead, all right, but it wasn't quite what people pictured.

But you can't stop Americans from improving on things. The kinks were worked out. The chair remains in use today, though rarely, and not without the occasional mishap.

There were other developments, too, some rehashed, some new.

Firing squad?

Dramatic, instant. Excellent! (But bloody.)

Gas?

1924's brainchild! Used in 1960 for Caryl Chessman, best-selling prison author and worldwide sensation for death-penalty opponents! One could not help thinking about that pause between the gas pellets dropping and the first whiff of lethal fumes. And wondering about just how long human beings can hold their breath.

Lethal injection?

What could be better?

Oh. Wait.

\* \* \*

Stanley "Tookie" Williams did not die well.

The "execution team" at San Quentin didn't set the intravenous line in his arm properly in 2005 when the Crips co-founder lay strapped to the gurney. This meant he may have been conscious to feel the deadly potassium chloride pour into his veins.

"It would be a cruel way to die: awake, paralyzed, unable to move, to breathe, while potassium burned through your veins," said the Lancet.

Nobody really knows if Williams died in pain, but the process didn't look good. When a federal judge questioned the executioners about the errors, one team member said the crew wasn't exactly broken up about it:

"[Expletive] does happen," the witness said.

It turned out the executioners had no training in mixing the lethal drugs. Also, one member had been disciplined for smuggling illegal drugs into prison. Also, the team leader had received a diagnosis of post-traumatic stress disorder. Also, a bunch of sodium thiopental -- an addictive controlled substance -- was taken from the prison pharmacy by execution team members and, um, not used or returned. (At least *somebody* out at San Quentin was feeling no pain.)

Four hundred years of execution in this country (the first one was at Jamestown, 1607, firing squad), and this is where we are.

Then, in 2006, Angel Nieves Diaz in Florida took twice as long to die as the 15-minute procedure usually takes, because the technicians had put the needle all the way through his vein, delivering the mix into the tissue of his arm, not the bloodstream. He had chemical burns on his arm at autopsy. Some 24 minutes into the procedure, technicians reported he was blinking, licking his lips. It led to a halt of all executions in Florida.

This, coupled with the judge's hold on executions in California, became national headlines. Now all lethal injections across the country are pretty much on hold while the courts sort it all out.

Shocking! Lethal injection errors! People act like this is new.

Did everyone forget John Wayne Gacy?

Chicago's killer clown, strangler of 33 teenage boys and young men, was due for lethal injection in 1994. Gacy ate a last meal of fried chicken, said he was innocent, said, "Kiss my ass," and lay down on the table for his lethal injection.

The intravenous tubes clogged. The drugs wouldn't go through.

Prison officials had to close the blinds to the execution chamber, reset the IV, then open the blinds. Then they killed him.

Nobody really cried, because nobody really liked John Wayne Gacy, anyway, though he could paint a nice clown picture.

\* \* \*

People forget, Gary, they do.

They forget what you knew, as soon as you shot those men out in Utah: Killing a man is easy.

The living with it after. That's what's hard.

That's what maybe this country has learned: We are a society that kills certain prisoners. We kill more in some years, less in others. It comes and goes. But there is no perfect, painless, fair way to do it. It turns out there is no absolution for the living. It turns out the dead haunt us. It is a thought as disturbing as the bodies of Richard Hickock and Perry Smith, the killers in Truman Capote's "In Cold Blood," dying the old-fashioned way, swinging at the end of a rope in the middle of the Kansas night.

The images do not lie easy on us, not in our sleep, not in yours, and it seems they never will.

Perhaps that is as it should be.

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