

The Death Penalty in South Africa: Some Psychiatric and Psychological Elements*

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It is with more than my usual measure of diffidence or stage fright that I rise to speak in this august assembly of lawyers, of psychiatrists, of rare hermaphroditic specimens of both vocations, of law professors (although I don't really have a queasy feeling about them as such), of psychologists, and of other *rarae aves* – which, I hasten to add, is the South African Latin way of saying “queer birds.” I feel this special diffidence since I come from a country where, despite the baffling complexity of many of its political and social problems, thought patterns in even the most complex legal problems are still compellingly simple and simplistic and devoid of most of the erudite and probing questions which envelop (not to say obscure) so much of the thinking on these questions in your country. And being today in the very midst of these self-same people who ask these probing questions – questions which in fact go to the furthest fringes of human cognitive capacity – makes me feel small indeed as I steel myself to accompany you now into the outer reaches of the virgin forests of the situation in South Africa as regards the death penalty, and as I try to illuminate a few psychological and psychiatric elements within the overall picture concerning the death penalty.

Now simple and simplistic as much of the thinking in South Africa is on these questions, my exposition may even be simpler and more simplistic. The reason is that I had to prepare this paper under somewhat difficult conditions before my departure, without having at my disposal even the most rudimentary South African library. However, this defect may be an advantage in disguise, since it compelled me to look at overall patterns rather than at details, at trends rather than at trivia, and at problems rather than at involved theoretical solutions. However, as the debate about the death penalty reaches a new intensity in this country, there may just be something, somewhere, in the realities of the situation in South Africa which has some real relevance also for you here in America. At least that is my sincere hope.

If thought patterns about the death penalty in South Africa are simplistic and simple, the facts in and around that phenomenon are profoundly complicated, subject to many conflicting opinions and extremely subtle in many of their manifestations. These complications exist also in the United States. Indeed the death penalty is really still today, and has always been, very much an impenetrable and closed book, perhaps not quite unlike Hitler's book *Mein Kampf*, about which everyone had something to say but

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which no one had ever read. And this brings me to a first element touching on psychology: namely the reasons for what amounts to a veritable conspiracy of silence. As backdrop to what I have to say about this conspiracy of silence, remember just one gruesome truth: until a lustrum ago when I last made a statistical analysis, South Africa was (and probably still is today) at the very "top of the pops," in absolute and not in any comparative terms, in the world as far as the execution of formally imposed capital punishment was concerned, responsible at the time for no less than 47% of the known total of executions in the world. For the first decade of the existence of the Republican form of government, from 1961 to 1971, the annual toll of the South African hangman in Pretoria was over one hundred per annum. And yet, until I published the 47 per cent figure, there had been no debate whatever, except of course as is always the case anywhere in the world, in relation to some specific instance, especially where a woman or a particularly juicy sexual relationship was involved. But for the prophetic foresight of the South African government to prosecute me for contempt of court over a legal article I had published in the *South African Law Journal*,¹ there would never have been a real debate on the question at all. I shall say more about this prosecution later.² And since this prosecution the blinds of silence have once more been pulled down on the entire question, although the debate which did in fact ensue did not fail to leave a very important mark on the institution of the death penalty, causing in fact a drop of about fifty per cent in the annual number of executions in two years.

Why then this absence of debate, this absence of probing, this academic disinterest, this conspiracy of silence on the part of the legal profession in particular and on the part of society in general? The answer, I submit, is overwhelmingly of a psychological nature. Let me now illuminate, in a few very broad strokes, a few aspects of this phenomenon. First and foremost, the privilege of being hoist by the hangman's noose in Pretoria is, in purely statistical terms, that of the black man, whereas under the present socio-political constellation all the levers of power, including power over the media, are firmly in the hands of Whites. Because once more, in purely statistical terms, the crimes for which the candidates in Pretoria's death row pay with their lives are, looking at the overall picture, pretty gruesome crimes, the problem just does not touch any raw nerve within the white socio-political power establishment.

However, when on a very rare occasion the white man's moral values are directly involved — as happens when a female, and particularly a strikingly beautiful female, is sentenced to death and even more so when she is reprieved or executed — or, as happened recently, when a male is sentenced to death (and in the case I have in mind, he was also executed) who, through his family, has connections with the powers that be — under these rare circumstances popular emotions amongst Whites are awakened which deeply question the moral applicability of capital punishment. Like everything else in South Africa, however, the emotions are peculiarly (and I mean *peculiarly* in both senses of that word) one-sided and indeed racialistic. It happens frequently that on one day six or seven condemned persons are executed and the event, because the convicts are black, may not even be reported or may be reported in a single paragraph in

the newspapers. Some time ago, however, when a white man murdered the husband of his mistress, South Africans were regaled by the very rare phenomenon of critical editorials in even the most establishment-minded government press and by unprecedented collection of signatures calling for mercy by a government-supporting politician and friend of the condemned person's family on the main square of Pretoria. All this happened despite the fact that the condemned person committed one of the most serious crimes in the hierarchy of psychological values of the average white man: the killing of a policeman — that was the murdered man's occupation. And no doubt in the mind of the justice minister at the time — fortunately from the strictly limited point of view of this address he is now deceased and cannot sue me for libel, as he was engaged in doing at the time he died, over another death penalty statement of mine — as I say, no doubt in the mind of the justice minister at the time, who, in effect albeit not formally, casts the final die as regards the question of who will live and who will die, it was probably *this* fact and this fact alone — the deceased man's occupation — which operated in his mind to swing (and I do not mean to pun) the case against the condemned man. And here of course we confront another psychological factor of immense practical importance, namely the mental make-up of the person who takes the real decision of whether or not a condemned person will die or live. At the level at which all legal remedies have been exhausted and execution or reprieve must be decided upon, we reach a high pitch of irrational decision-making, exceeding even the degree of irrationality of decision-making on the judicial level when sentence of death is imposed or avoided. I shall say more below about policies of reprieve and about a court case in which I was involved concerning that question.

Now to return to and to finalize the point I was making: It is a combination of psychological factors which makes capital punishment, one of the greatest moral issues of our time, a non-issue in South Africa, the country where it is most frequently applied. However, one interesting thing is that among Blacks the support for capital punishment is almost total, whereas there is a good 20% — 30% abolitionist or semi-abolitionist trend amongst Whites when directly approached. This almost total Black support for capital punishment is somewhat ironic in view of the fundamental belief amongst large sections of Whites — a belief which even has express academic following — that the death penalty is necessary in view of the racial structure of the population, which is simply not even a very polite way of saying that in order to stem the criminal activities or criminal propensities of Blacks the ultimate deterrent is needed. One of the leading stars on the academic firmament — and you will no doubt conclude that the firmament is a pretty sombre and beclouded one — and a Professor of Criminology to boot, displayed at least the virtue of honesty on a subject normally totally hushed into silence when he stated openly about the question of abolition:

... one must remember that we are dealing with people of different races. It is an open question whether the Black will show the same appreciation for abolition as the White. He has not reached the same level of development and civilization to appreciate abolition. He may regard such a "softening" as a free pass to sow death and destruction.³

This opinion has at least the abiding merit of honesty – the one characteristic entirely absent from most discussions of the question of capital punishment in South Africa – since the Professor gives audible expression to a deeply relevant psychological hang-up on the entire phenomenon of capital punishment in South Africa: its justification, express or implied, on racially oriented thinking and premises. I leave you to ponder the extent to which this phenomenon may be relevant to your own death penalty debate.

Now as far as both working class Blacks and the black intelligentsia are concerned, their thinking – or rather non-thinking – on the question is of an entirely different nature. Apart from any considerations of development, background and the like, their psychological hang-ups on this question are of an entirely practical nature. As victims of the highest crime rate of violence in the world in their own ghettos, these people have very little stomach for what they regard as the molly-coddling of violent criminals. In Soweto, the biggest black ghetto in South Africa, whose name of course has become a shorthand term for much of the institutionalized evil in my country, according to statistical surveys most adults have personally been victims of crimes of violence. The statistical daily average of violent deaths in Soweto over any year is between 2½ and 3½ per day, with the figure in the black areas of the Cape being about the same. People who are personally exposed to violence of this magnitude do not have sympathy for violent criminals despite the undeniably racial pattern and racial background inherent in the crime scene. In this regard I may just in passing mention an interesting side-light of the crime beat in these black urban areas. The question of the alternatives to capital punishment is often put to me in South Africa, and my standard answer is – you will not guess it – *more and better street lights*. When a year or two ago certain areas of Soweto became more effectively lit up, violent crime in those areas decreased massively. Speaking with scant knowledge but with a deep interest in your own crime scene, I think there may be a lesson here for you as well, and the lesson concerns the conscious creation of psychological barriers to violent crime in high crime density areas. Perhaps something like horseback patrols in your depressed areas will constitute a visible and audible sign of the presence of the rule of law, such as it is, in those areas and a comforting reminder of the more romantic and less violent days of yore – if, of course, there were any such days at all in your history!

From the nebulous realm of the major psychological justification of capital punishment in South Africa, let us move up to the rarified air of the courtroom, and let us pick up and examine a few psychological and psychiatric nuggets from amongst the debris of broken lives and broken hopes which in human terms constitute the death penalty scene in any country practicing that form of social control. The courts in South Africa are empowered to impose the ultimate sanction in no fewer than *eleven* substantive crimes and two attempts to commit substantive crimes. Whereas the rest of the Western world largely turned its back on capital punishment in the post-World War II period, South Africa added eight new substantive capital crimes in the late fifties and early sixties. What may be called the

“classical capital crimes” in South Africa – murder, rape and high treason – were joined by robbery (or attempts), housebreaking (or attempts), sabotage (very widely defined), likewise terrorism (defined with celestial latitude and with the elasticity of an old-fashioned female bloomer), kidnapping, childstealing, undergoing training abroad that can further the aims of communism at home, and finally, advocating abroad economic and social change in South Africa by violent means through the aid of a foreign government or foreign institution. However, except for murder, rape, housebreaking, robbery and sabotage, the death penalty is *de facto* not applied in practice, and in the last few years only murder and rape and very occasionally robbery have led to capital punishment. The one and only execution for high treason was in 1914.

It is the crimes of murder and rape, but particularly murder, which invite our attention as we spy around for those elusive psychological and psychiatric nuggets. We no longer have a jury system in South Africa, and it is perhaps just as well, since the inherently racist and/or middle-class value orientation of our juries and their propensities for being swayed by emotional and irrational argument were notorious and mind-boggling. A judge is assisted by two assessors as regards questions of fact (including the question of extenuating circumstances) when capital punishment may be imposed – an interesting example of pre-judgment which has of necessity to take place outside the courtroom and is not always made on necessarily rational grounds. Now South African law *demand*s the obligatory imposition of the death sentence except where so-called extenuating circumstances are found, in which case the death penalty may be (not *must* be, *may* be) dispensed with.⁴ A very sound ruling, one would say, provided one accepts the basic premise of capital punishment. The snag is that “extenuating circumstances” as a concept is undefined and left in effect to the absolute and unfettered discretion of the court. (And indeed the concept is a difficult one to define.) Since the adoption of this position in 1935, the courts have in effect proceeded on the basis of *ad hoc* consideration and also largely on the basis of a general hunch in order to decide what extenuating circumstances are. Such circumstances, according to oft-repeated definitional cliché, mean “a fact or facts associated with the crime which serve in the minds of reasonable men to diminish, morally albeit not legally, the degree of the prisoner’s guilt.” The judge and the two assessors decide the issue by majority vote.

Circumstances which have prevailed in the past to save a man from the gallows have ranged from his being a good sportsman to his having political motives, down to his having a sincere belief in witchcraft. Most important, however, and crucial within the ambit of this paper, have been circumstances which have a bearing on the accused’s general mental condition. This question is of course not connected to his possible condition of insanity (whatever that may mean) at the time of the crime or at the time of the trial, in which cases the accused can be dealt with administratively. In parenthesis, I may add that, not unlike the situation in Great Britain when that country still had capital punishment, it is generally disastrous for an accused to plead insanity unless he expects the death sentence to be imposed, since the administrative ‘punishment’ will in all likelihood ultimately be worse than

the punishment imposed by the court in terms of duration.

Now let us concentrate upon the courts' decision-making as regards the possibly "extenuating" mental state of the accused. In the vast majority of murder cases, the accused are impecunious Blacks defended by *pro Deo* advocates who are inadequately paid in comparison with normal rates of court work remuneration and who spend mostly very little time (perhaps only two or three hours) with the accused, communicating mostly through an interpreter of possibly dubious quality. This kind of work, not surprisingly, usually attracts only a particular kind of lawyer who in a highly capitalistically oriented profession cannot make the grade elsewhere. In substance, therefore, it can be said that the cases with the potentially most serious consequences are largely defended by the worst legal services which lack of money can buy. The mental condition, the social background of the accused, the inherently and institutionally deprived youth and background of the average accused are seldom canvassed and therefore seldom considered or heeded.

Of course the court or the authorities may, before the trial or during the trial or before sentence, send the accused "for observation" (as the saying goes) to a mental institution, where, one might think, motivated psychiatrists and psychologists would consume themselves in probing into the hidden crevices of the mind of the accused. Well, such may indeed be the case when the accused can pay for the best services money can buy to countervail any negative report or evidence from the official institutions, and of course from time to time we find that kind of Patty Hearst evidence bandied around in court, but such a case is very rare. The average black candidate for death row in South Africa has not had *any* real benefit of a psychiatrist's enquiry meaningfully directed at his own complex personality.

Now, as is the case in other areas of the death penalty situation in South Africa, there exist a conspiracy of silence and an almost total lack of interest in what happens behind the scenes when an impecunious person lands in a mental institution to be "observed" and when the decision which will be taken there may turn out to be the fundamental and decisive link between his crime and the hangman's noose.

From my own surreptitious and informal enquiries, and from my own observation of the practice, I can say the following – and, surprising as it may be to you, this may be the first time such things have ever been said publicly about the situation. Too bad it has to be in far-away New Orleans.

The first problem is resources; basing our analysis on the classical recipe for economic inflation, one can say that there are too many patients chasing too few psychiatric services. Often one sees only two or three fully trained psychiatrists in charge not only of observation cases but also of the patients in the entire institution. Secondly – and here we are faced with a problem of fundamental importance – even given the availability of adequate services, we still have the problem of a basic lack of communication between the psychiatric services, such as they are, on the one hand, and the patient on the other. I may be treading now on thin ice as far as certain susceptibilities of some of you here are concerned, but I dispute on grounds of simple logic and simple observation the claim that a meaningful and therapeutically helpful psychiatric analysis can take place when the cultural

gap is as wide and deep as it is between the average candidate for death row in South Africa and a man trained in the psychiatric enigma or the esoteric and jargonized erudition of upper-middle-class psychiatry as developed in the West. If anyone here agrees, he may see some closer-to-home significance in this bit of South African experience as the United States prepares itself morally for the return of the executioner; he may see such significance especially in view of the inadequate knowledge we now possess about the background of the vast majority of persons executed in America in the past. In my country the spaces of difference separating the average death penalty candidate, on the one hand, from the psychiatric services and the court judges, on the other hand, are of cosmic proportions. These differences are manifested in certain outward signs such as differences of language or tribe, differences of sophistication and of education and of occupation, but they are even more deeply, while of course less visibly, present in the internal make-up of the persons viewing each other across that chasm. One of the basic premises of my personal opposition to the death penalty in South Africa is the impossibility of even beginning to reconcile the opposing worlds of Western legal standards and of the average man in Pretoria's death row. If psychiatry and psychology in my country can fulfill any useful function — and the situation there, I hasten to add, is repeated elsewhere in societies with deep social and cultural cleavages — it is to accept that they have little contribution to make in such a monumentally crucial question as the application of the death penalty and to persuade those exercising judicial power of their own inability, at least at this time, to cope with the elusive and staggering problems involved.

Now let me return to the real executioner — not the man who is called such, but the man who formally takes the fateful decision: the judge who takes the first formal decision of who shall live and who shall die. What is there to learn about the way he arrives at his decision in South Africa? Once again we stand awe-struck before the sight of a virgin forest, impenetrable and silent and unexplored. To some extent I personally take blame for the silence. I now make good my first promise to tell you about my first collision with the taboos and susceptibilities surrounding the South African death penalty scene. As I said earlier on, I was prosecuted over the publication of an article in the *South African Law Journal*; in the course of the article I had published the results of a poll I had undertaken amongst practicing advocates (or barristers), who, unlike attorneys (or solicitors), practice in the Superior Courts and who have unequalled experience of defending death penalty cases. I posed two questions concerning the possible obtrusion of the racial factor in the exercise of the judicial discretion concerning the imposition of the death penalty, and I accurately reported the finding. For asking the questions I was arraigned before the Supreme Court on contempt of court; the judge found that the asking of such questions was contempt but that I had to be acquitted due to my absence of *mens rea*, or intention to commit the crime. Since then no one has again ventured on to this sensitive and slippery terrain, which is a veritable minefield of prejudices, myths and taboos.

Now it is a palpable statistical truth that racial factors do in fact play an obvious role in the life-or-death decisions. How else can one reconcile the

following facts (and those of you from the South will not fail to note an eerie familiarity with the situation in your own States in the not too distant days of yore): that for instance some 150 Blacks have been executed for rape, mostly of white women, since 1911, whereas not a single White has ever been sentenced to death, leave alone executed, for the rape of a black woman; that only three Whites have ever been executed for rape, all of white children of tender age; or that for cross-racial murder there have been only 6 or 7 executions since 1911 of Whites for the murder of Blacks, whereas in the inverse racial direction the number of executions runs into hundreds. Of course, this is just one way, and a dramatic one at that, of looking at the influence of race; there is still the other factor, less easily visible but even more important perhaps, of the fact that the judiciary of the superior courts is all white, drawn almost totally from the ranks of the highest-earning advocates in the country, whose practices had largely consisted of corporation work and whose values reflect a deep and obvious upper-middle-class white orientation. In front of these people now stands a man who has probably had no schooling and no parental control as a child, who may believe in various taboos and superstitions which have an unreal and unreasonable ring in Western ears, who does not understand the significance of cross-examination and the pitfalls inherent in that form of arriving at the so-called truth, whose every word has to be translated into one of the official languages, who is defended by an almost complete novice, and so forth. The judge will no doubt personally be the most reasonable man imaginable, punctilious to a fault about procedural niceties, a gentle and genteel man to behold and to hear, and yet he will carry on his back, like a pack mule in the Andes, the heavy burden of his own typical upbringing and of the values of the society to which he belongs. This may not look like racism of the kind described above, but the effect upon our man in the dock will be mighty similar. But, as I said, silence permeates this question.

Of course, in the final analysis, the answer to the question of "who shall live and who shall die" (to quote the text of the song of the everlasting soldier) lies in the hand essentially of a politician who, picking up the dice of life and death once more, casts them with the ultimate finality of a Roman emperor ordering the death of a man in the Circus ring. I am personally rather too well informed about how the dice are cast on this last level of decision-making, since I had the misfortune of being sued for libel by the former Minister of Justice when I criticized the Government for sending a Black to his death and sparing the life of a White after the two men, in a rare display of integration on the level of criminals, had together robbed and murdered a shopkeeper. On a preliminary application to dismiss the claim, the highest court of the land held that under the circumstances – unique as such a holding may be for any Western legal system – the Minister could be defamed, although my criticism was directed at an official act of the Government. Let us not re-open this psychological scar on my life, but let us instead in conclusion direct briefly a shaft of light into only one psychological aspect of the exercise of this awesome power.

Of course, what I have said above about the burden on the judicial mind of a person's background and status would apply with even greater force to a politician who has to look, according to present statistics, at more than 100

such cases per year, about sixty of which end on the row of six gallows in the Pretoria Central Prison.⁵ The Minister and a small sub-committee of the Cabinet look at reports from the Department of Justice and then make their recommendation to the State President, a recommendation which is never refused. Looked at purely from the point of view of availability of labour resources, one sees the absolute grotesqueness of the situation — about one case for every third day of the year, statistically speaking, a situation which simply means that nothing like a new enquiry can take place, no new heart-searching can be undertaken, no real alternatives examined. The question then arises as to the real basis for decision-making on this level, and the answer, I think, is not difficult to find. Whereas a judge, trained in the demanding school of the competitive life at the closely-knit Bar, can conceivably be a highly critical individual of some intellectual independence, this virtue is very rare among politicians. The previous incumbent of the Ministry of Justice, who, as I said, particularly commended himself to my attention and, who knows, may now be facing the people he helped to dispatch to the Great Beyond, was, for instance, a man singularly unendowed with any intellectual independence. He was a man whose background was that of a small-time attorney from a one-eye-horse town, and his reputation for critical thinking was zero. And yet, realistically assessed, it was from the mind of this man that flowed probably some one thousand or more decisions to snuff out life or to preserve it. But even if the incumbent is highly intelligent and intellectually critical and independent, the question remains — and it is a question which, as you are sweeping the gas chambers and rewiring the electric chairs, will also present itself to you here in America — what psychological forces shape the decision of a man, or a group of men for that matter, on a matter so monumentally important but yet so unresponsive to critical analysis as the casting of that die on the fate of a fellow man? Reformulate the wording of the death penalty statutes as you may, juggle around with protective devices; still the final decision, whether taken by a genius or by a fool, will be based at least as much on psychological factors as on any objective standards. In the end result you will still have to realize that it will not be the inherent quality of the deed or of the mind behind the deed which will brand the crime as worthy of death, but the inherent quality of the man making that decision. Inevitable as this truth may also be in the case of ordinary punishment, it is — speaking for myself — not acceptable when death is the consequence of the decision.

The question now surely arises whether anything I have hitherto said — beyond the immediately preceding philosophical generalization — has a relevance to your own human experience here in America as your country prepares itself to re-introduce the death penalty. I submit that such relevance exists on a number of levels. First and foremost, and of particular pertinence given the theme of this lecture, I believe that the unequalled experience which South Africa has had with the death penalty goes a long way toward demonstrating that the role of the psychiatrist *re* the issue has, at most, been of very dubious value, one which resembles that of a gimmick more than that of an instrumentality of justice and of service to truth. If the South African experience teaches us anything in this regard, it is simply that for

every point which psychiatrist A will make about the accused in a capital trial, we can find a psychiatrist B to make the opposite point, and that the really important role of psychiatric evidence in such a trial is to give the sentencing authority the chance to support its "hunch" by means of psychiatric labels *if it wishes to do so*. The history of psychiatry, in both my country and yours, shows that for the right kind of motivation (usually pecuniary) a psychiatrist can be found to defend almost any point of view, with the possibility therefore that just about any interest except that of truth can be served.

But, having said so, I hasten to add that I do not at all doubt that psychiatrists will in fact be extensively employed in capital cases. Indeed, I believe that psychiatrists may well become the real executors of the death penalty in the future, or, alternatively and more felicitously, they may become the real abolishers of the death penalty. The crux, it would seem, of the spate of new death penalty statutes now being put on your books – and some 35 such statutes have now been enacted – is that, in order to withstand the constitutional test of the *Furman v. Georgia* decision, sentencing in capital cases will proceed along ostensibly more rational lines. According to a number of United States Supreme Court decisions in which certain death penalty statutes were upheld, such laws must involve provision to put before the courts any mitigating factors which may have affected the defendant's blame-worthiness, factors to which the courts will have to address themselves. Although it may look as though such an enquiry should proceed along rational lines, the courts will still, in the final analysis, be faced by the necessity (faced by South African courts since 1935) of giving meaning to the amorphous and indefinable concept of mitigating or extenuating circumstances. Although undoubtedly, as happened in South Africa, a certain crystallization of the elements of this concept will take place in time, the truth is that, finally, subjective factors will decide that one man will live and that another will die.

The most important factor to be considered here will be (as it has been in South Africa when adequate defense has been forthcoming) the state of mind of the defendant at the time of the crime. It is here that psychiatrists will have a field day, and for this reason I have little doubt that their decisions and modes of thinking will become crucial to the death penalty question. After an almost total moratorium on executions, lasting almost a decade and a half, courts may well be reluctant (whatever promises may be made during judicial elections!) to get too deeply entangled in the actual imposition of capital punishment. (I think that the fifty per cent drop over two years in the number of South African executions, after the gruesome statistical facts about the death penalty were revealed in my prosecution for contempt of court, has some heuristic value in this regard.) It is very likely that courts and juries, at this point in your history, will gladly pass the buck, regarding the real decision or regarding the ostensible (but perhaps not real) reasons for their own decisions, to the "mind specialists" – your own profession. Steel yourselves therefore to become deeply involved – as has happened in the changing of abortion laws – in the entire web of complex issues relating to the death penalty; and prepare yourselves also (this my firm belief on the basis of my knowledge of your "psychiatry-conscious" society

and on the basis of the history of a similar legal set-up in South Africa) to become a very important conduit through which the battle for retention of the abolition of the death penalty will be channeled. No doubt this role, despite its profound ethical implications, will be quite remunerative — a quality which (I unhappily predict) will become a very important factor to the assumption of that onerous duty by the profession.

Ultimately, when all has been said and done (or “executed”), I predict that the objective differences between, say, the last decade of the previous capital punishment regime and the first decade of the new regime — differences in the *kinds* of people who will take those lonely and last few steps to the execution chamber — will in substance be negligible ones. I so predict despite the vast differences in the forms within which these decisions will have been taken.

And then, of course, your profession will have to steel itself to render decisions even more often than now on questions concerning the capacity to stand trial, and also on questions concerning that peculiarly American contribution to the death penalty story — the capacity or fitness to be executed, a question previously decided usually without psychiatric intervention. I have no difficulty in predicting a great future for your profession as your nation sweeps out the cobwebs from the execution chambers and launches itself on a course now almost universally condemned in the “civilized” world.

References

1. 86 South African Law Journal 475 (1969) and 87 S A L J 60 (1970)
2. Reported as *S v. Van Niekerk*, 1970 (3) S A L Rev 655 (T). On this prosecution see the statement of the Council of the Society of University Teachers of Law, 87 S A L J 467 (1970), JRL Milton in 87 S A L J 424 (1970), HR Hahlo in Univ of Toronto L J 393 (1971), and Review of the International Commission of Jurists (Dec. 1971).
3. See my article, quoted above, note 1, 67 (1970)
4. Youths under 18 years of age committing murder and women murdering their newly born children are also subject to discretionary sentences.
5. In 1975, 103 persons were sentenced to death and 68 were executed. See A Survey of Race Relations in South Africa, p. 90 (1974).