The Death Penalty: An American History

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In colonial America, criminals were regularly sentenced to death not only for murder or rape but also for less serious offenses such as burglary, forgery and smuggling. The preferred method of capital punishment was hanging, and executions were usually carried out before large crowds and accompanied by a dramatic public ritual that included the delivery of religious sermons. Today, the death penalty is imposed for far fewer crimes and is no longer carried out within the public's view. Executions are performed behind prison walls, where the number of witnesses is strictly limited and the method of killing is designed to be relatively painless. Stuart Banner's *The Death Penalty: An American History* tracks these changes over the past three centuries, explaining how shifting views of crime and human nature have altered the way Americans mete out the harshest of all punishments. He also demonstrates that issues raised by the death penalty far exceed the boundaries of a mere policy debate and that they actually reveal some of the most basic tensions and dilemmas of American identity.

Early Americans embraced the use of public executions because they believed them to be a strong deterrent to crime, a moral response to criminal "depravity," and an effective means of encouraging condemned criminals to repent their sins. All this began to change, however, beginning in the late 18th century, as a new faith in science led people to question whether criminal activity was a simple choice or if it was conditioned by heredity and environment. As a result, many Americans grew uneasy about inflicting death as a punishment for acts over which the perpetrator may not have had clear control. Not only did the list of crimes punishable by death shrink, but executions — now considered unseemly — were increasingly removed from public view. Prisons, first introduced in the 1780s, became a frequent alternative to execution, offering an appropriate punishment for criminals while holding out some hope for rehabilitation. Along with this innovation, the first major opposition movement to the death penalty emerged, setting the scene for a protracted debate about the place of capital punishment in American life.

Opposition to the death penalty gained ground during the 19th and early 20th centuries, as doubts about criminal culpability became more widespread and as public officials began to question the efficacy of capital punishment as a deterrent to crime. As the overall rate of violent crimes dropped during this period, the movement for abolition grew. Beginning in the 1930s, there was a significant decline in the number of criminals executed each year, a figure that dropped from 199 in 1935 to only 21 in 1963. Despite this shift, however, there were few legislative efforts to abolish the death penalty during this period and public opinion polls revealed that a majority of Americans continued to favor its retention. Banner explains that many Americans displayed ambivalence toward capital punishment, supporting it in the abstract while growing increasingly reluctant to impose it in actual cases.

A dramatic turning point came in 1972 with the landmark case *Furman v. Georgia*, in which the U.S. Supreme Court ruled by a 5–4 majority that capital punishment violated the Eighth Amendment ban on "cruel and unusual punishments." The court based its decision on the haphazard way in which the death penalty was imposed in different states and by different juries. Some justices, like Byron White and Potter Stewart, were particularly concerned that such arbitrariness had become an instrument of discrimination against African Americans, and they saw the abolition of the death penalty as part of their overall effort to bring an end to government racism.

As important as the *Furman* ruling was, however, it represented only a temporary end to capital punishment in the United States. Ironically, the success of the abolition movement only energized proponents of capital punishment, who led the movement in many states to develop new rules and standards that would invalidate the Constitutional objections raised by the Supreme Court. In addition, rising crime rates once again increased the importance of the death penalty as a symbol in the debate over law, order, and rehabilitation. In fact, according to Banner, the issue took on "a new political resonance" during this period, becoming "a shorthand way for elected officials to signify to voters a cluster of positions on other issues"(267). In the post-*Furman* era, capital punishment has moved to the center of a larger culture war between conservatives and liberals where its importance as a symbol far outweighs its actual impact on average Americans.

Today, while capital punishment enjoys greater support in the United States than it has in decades;

however, Banner demonstrates that it still stirs deep ambivalence in Americans on both sides of the political divide. Despite widespread support for the killing of capital offenders, for example, a persistent revulsion toward the actual act of execution has led governments to banish the gas chamber and the electric chair, making the process of killing quieter, more "sanitary," and requiring less human involvement. The elaborate technological procedures currently used by most prisons for lethal injections allow everyone participating in the process to feel that "the ultimate responsibility for killing a fellow human being always lay with someone else" (299). A wide cross-section of Americans is also unnerved by the increasing number of innocent people who have been condemned to death by the judicial system. Revelations of these cases, according to Banner, may be the factor that could once again turn public opinion against capital punishment. Yet, there seems to be an unfortunate public resignation, echoed in recent decisions by the Supreme Court, that it is impossible to ever totally banish racism and arbitrariness from the legal system. The one thing that does clearly emerge from recent discussions of the death penalty is the degree to which Americans are lacking solutions to the fundamental challenges presented by crime, racism, and human nature itself.

Eric L. Goldstein is Assistant Professor of History and Jewish Studies at Emory University in Atlanta. He is completing a book on Jews and American racial politics.

Death Penalty Disconnect: American Jews and Their Communal Organizations

Lawrence Rubin

National Jewish organizations and the Jewish grassroots differ sharply in their attitudes toward capital punishment. Jewish organizations have consistently spoken out against the death penalty, whereas American Jews — like Americans generally — have regularly supported it. Across this fault line, one finds Jewish organizations placing a priority on social policy considerations with long-term consequences for Jewish security in American society. The grassroots, on the other hand, focus not on policy but on personal safety, i.e., the immediate security of Jews on American streets.

When a divided U.S. Supreme Court, in *Furman v. Georgia* (1972), declared the death penalty unconstitutional, the court's finding was endorsed by the National Jewish Community Relations Advisory Council, the organized community's public affairs umbrella. In its authoritative *Joint Program Plan* (1973–74), the NJCRAC (now the Jewish Council for Public Affairs, JCPA) recommended that "Jewish community relations agencies make known their opposition to capital punishment."

Even as the *Joint Program Plan* went to press, a Harris poll revealed that Americans backed the death penalty by 59 percent to 31 percent. Support for capital punishment remains high, with a 2001 Harris poll reporting belief in it by a 67 percent to 26 percent margin. American Jewish attitudes toward the death penalty mirror, occasionally with exquisite precision, those of other Americans. The 2000 Annual Survey of American Jewish Opinion, for example, sponsored by the American Jewish Committee, revealed that Jews favor the death penalty by the exact same 67–26 percent margin that Harris found a year later. Also in 2001, a national survey sponsored by Amos: The National Jewish Partnership for Social Justice found that American Jews, while professing a strong commitment to social justice, *rejected* a moratorium on capital punishment by 55 percent to 45 percent. Yet even as Amos poll respondents said no to the moratorium, the JCPA's national conference was adopting a resolution endorsing it.

The complexities inherent in the disconnect are illustrated by a 1985 public opinion poll undertaken by the Philadelphia Jewish Community Relations Council. The JCRC asked a representative sample of federation-affiliated Jews whether they agreed that the death penalty should be abolished. Sixty-seven percent said no, the death penalty should *not* be abolished, and an overwhelming majority asserted strong