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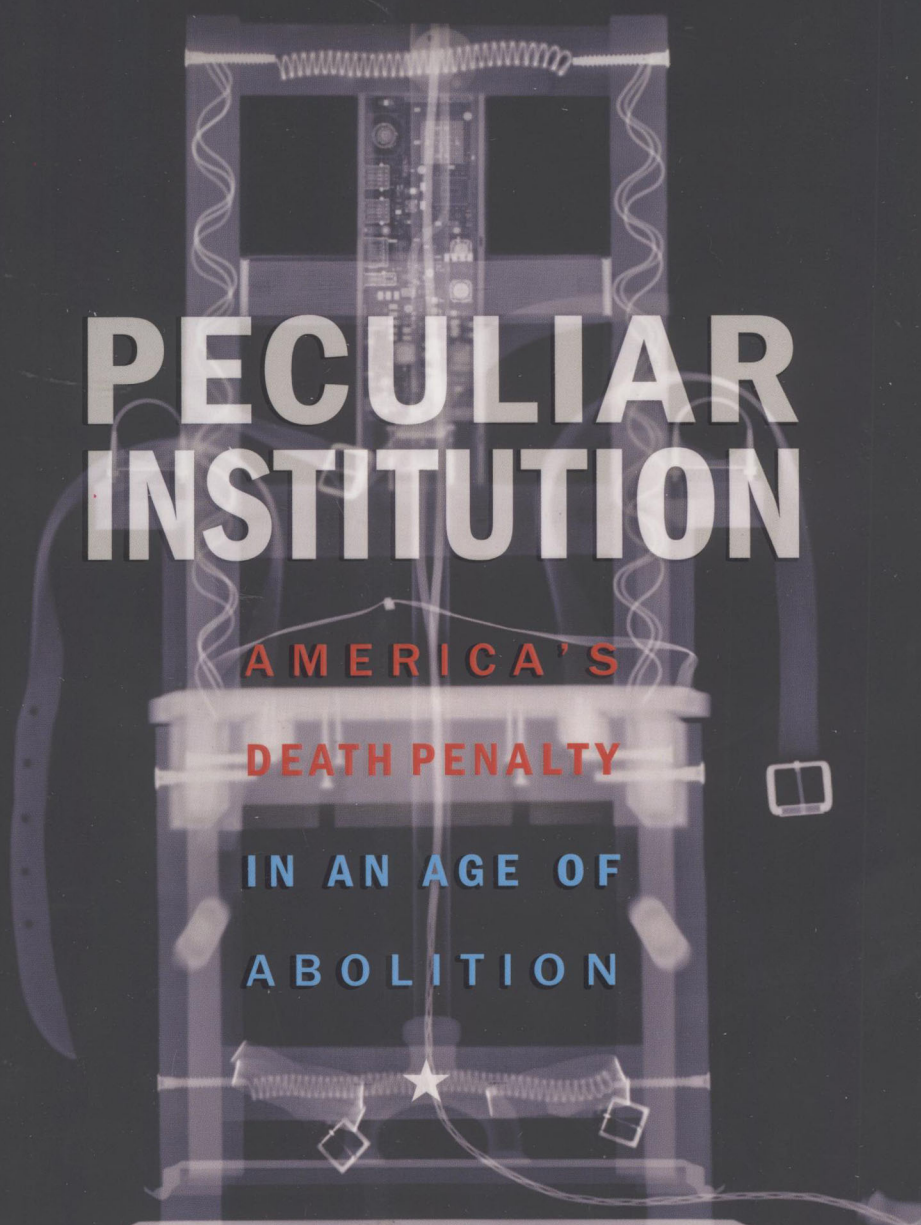
# PECULIAR INSTITUTION

AMERICA'S

DEATH PENALTY

IN AN AGE OF

ABOLITION



# PECULIAR INSTITUTION

America's Death Penalty

in an Age of Abolition

DAVID GARLAND



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**PECULIAR  
INSTITUTION**

*For Anne, Kasia, and Amy*

**PECULIAR  
INSTITUTION**

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# Prologue

## The Exemplary Execution

The following report appeared on Thursday, October 26, 2006, in the pages of an American newspaper:

### **Killer of 5 Florida Students Is Executed**

Gainesville, Fla., Oct. 25—*The serial killer who gruesomely murdered five college students here in 1990 was put to death on Wednesday by lethal injection, and relatives of his victims said afterward that they could finally feel the beginnings of relief.*

*Danny H. Rolling, 52, was pronounced dead at 6:13 P.M. at Florida State Prison in Starke, about 30 miles northeast of Gainesville. Witnesses said he stared toward them and sang a hymn-type song just before the drugs were administered.*

*“Maybe now that we don’t have this on us,” said Dianna Hoyt, the stepmother of one victim, “we can try and relax and live with the memories we have of our children and be at peace.”*

*Mr. Rolling was 36 when he arrived in Gainesville shortly before the fall semester began at the University of Florida, a drifter with a criminal past who pitched a tent in some woods near campus. He followed two freshman roommates, Sonja Larson, 18, and Christina Powell, 17, to their off-campus apartment, raped Miss Powell, repeatedly stabbed both women with a hunting knife and mutilated their bodies.*

*The police discovered them on Aug. 26, after Miss Powell’s parents re-*

ported that their daughter was not answering her door or phone. Later that night, the police found Christa Hoyt, 18, dead in her off-campus duplex. Mr. Rolling had raped and stabbed her, severed her head and placed it on a shelf.

The next day, Tracy Paules and Manuel Taboada, both 23, were discovered stabbed to death in their apartment, not far from where the other killings took place. Mr. Rolling attacked Mr. Taboada, a former high school football player, as he slept, then killed Miss Paules. . . .

Gainesville, a small city of pretty homes and live oaks, was crippled with dread. The campus shut down for a week and many of the 34,000 students scrambled home, some never to return. Others bought baseball bats and Mace, put triple locks on their doors or slept in shifts. . . .

[I]n January 1991, the police discovered Mr. Rolling in a county jail south of Gainesville, awaiting trial in a supermarket robbery. He initially denied committing the murders, but DNA tests ultimately showed he was responsible. He pleaded guilty on the eve of his trial in 1994, telling the judge, "There are some things that you just can't run from."

Mr. Rolling was also believed guilty of three slayings in his hometown, Shreveport, La., but was never tried for those crimes. He attributed his behavior to abuse by his father, a police officer, and to an evil alter ego.

In prison, he drew disturbing pictures and wrote a graphic book, "The Making of a Serial Killer," with a woman who was his fiancée for a time. For his last meal, he asked for lobster tail and butterfly shrimp, prison officials said.

Across the road from the prison, dozens of onlookers gathered into groups for and against the death penalty. It was perhaps the largest turnout for an execution here since that of Ted Bundy, who was put to death at Florida State Prison in 1989 after being suspected of murdering more than 30 young women across the nation. . . .

Mr. Rolling was the third death row inmate executed here in recent weeks, and like the others he had filed a late appeal claiming that the lethal injection procedure was so painful as to be unconstitutional.

But Bill Cervone, the state attorney for the Eighth Judicial Circuit and a witness to the execution, said Mr. Rolling's death did not seem punishing enough.

"To watch his death in such an antiseptic and clinical environment convinces me that the punishment does not fit that crime," Mr. Cervone said. "We are, however, a society of laws, and the law governed what we carried out this evening."

Laurie Lahay, the sister of Tracy Paules, said she had been reluctant to witness Mr. Rolling's death but felt exhilarated afterward.

*"Once everything quiets down, I'll think about Tracy and I'll be sad," she said. "But right now, he's gone. He's gone."*

This is a capital case report, a real-life death penalty story, written by Abby Goodnough for the *New York Times*. Danny Rolling's case may not be typical of death penalty cases in contemporary America—outside of media reports, mundane robbery-murders are more common than macabre serial killings—but it is, in a certain respect, exemplary.

Capital cases most often make national news nowadays because they raise claims of innocence, inadequate assistance of counsel, or racial injustices; because DNA exonerates the accused; because execution methods are challenged as "cruel and unusual"; or because botched executions and their aftermaths result in public outrage. When capital punishment features in the news today, it is often as a "broken system," an institution subject to challenge and rebuke. The Rolling case appears, in contrast, as a striking example of the death penalty being "properly" imposed and "properly" carried out as punishment for murderous acts of breathtaking horror and wickedness. To read the *Times* report is to get a sense of what the death penalty is, at least officially, supposed to be. Florida Governor Jeb Bush said of Rolling, "He is the poster child . . . of why there should be a death penalty."<sup>1</sup> We might think of Rolling's execution, in turn, as a poster image of the modern American death penalty, imposed and administered as the law and the authorities intended.

A violent career criminal turned notorious serial killer ("the Gainesville Ripper"), convicted of horrendous capital crimes (multiple counts of murder, rape, torture, mutilation, and necrophilia) after due process of law (Rolling was represented by "the state's outstanding public defender"; his guilty plea was backed by a confession and DNA; his multiple appeals were duly heard and turned down), is provided a last meal ("lobster tail and butterfly shrimp") and gently put to death by lethal injection ("He relaxed, went to sleep, did not feel anything"), while grieving family members express exhilaration and relief and officials talk of what "a society of laws" requires.<sup>2</sup>

Unmarred by suspicions of race discrimination (like most American serial killers, Rolling was white); untouched by claims of actual innocence, inadequate assistance of counsel, or disproportionality; and unspoiled by any hitch in the execution protocol, Rolling's case gives us a glimpse of the death penalty at its most legitimate, its most unproblematic, and, if the reports are to be believed—about his eve-of-death confession to other murders, about the feelings of relief experienced by the victims' families, and about its cleansing effect on the local community—at its most effective.<sup>3</sup>

But if the Rolling case is exemplary, in its way, it is certainly not unproblematic. No death penalty case today ever is.

On October 4, 2006, a few days after Governor Bush signed the execution warrant, Rolling's attorneys filed a motion claiming that their client had been denied access to relevant records, that the lethal injection protocol was unconstitutional, and that newly discovered evidence demonstrated that his execution would constitute cruel and unusual punishment. These claims were summarily denied by the Florida district court and, on appeal, by the Florida Supreme Court. On Wednesday, October 25, the U.S. Supreme Court voted seven to two not to grant a stay of execution pending an appeal challenging the method of execution. (The same challenge would eventually be taken up by the Supreme Court the following year, leading to lengthy reprieves for dozens of other inmates facing execution.) On the day before Rolling's execution, the National Coalition to Abolish the Death Penalty distributed the following press release:

#### **Do Not Execute Danny Rolling**

*Danny Rolling is set to be executed by the state of Florida on October 25. In late August 1990, Rolling went on a killing spree in Gainesville. Rolling broke into three apartments in the area belonging to five college students, whom he went on to assault and kill. The victims were Christina Powell, Sonja Larson, Christa Hoyt, Manuel Taboada, and Tracy Paules.*

*While these crimes are heinous and inexcusable, the death penalty is not the right choice for Danny Rolling. Rolling grew up in a dysfunctional household with an abusive father. Furthermore, he suffered from emotional and psychological problems, as noted in one appellate judge's opinion at his sentencing. Rolling pleaded guilty in his 1994 trial, where it was established that at the time of his crimes, he had the emotional maturity of a 15-year-old and that he suffered from extreme emotional disturbance.*

*During his trial, Rolling and his defense team tried to get a change of venue for the trial, which was denied. His story had been sensationalized by the media, so that he could not have received a fair trial where jury members had no bias about the crimes. Furthermore, several pieces of evidence, including statements made without counsel present and items gathered without a warrant from Rolling's place of residence were allowed in the trial.*

*Rolling expresses remorse for his crimes, as demonstrated by his confession and eventual guilty plea. His family has a history of mental illness, and his father's abuse influenced his mental instability. Rolling's emo-*

*tional state, as well as several errors in his trial, prove that justice will not come to him in the form of capital punishment.*

*Please send appeals to Gov. Jeb Bush on behalf of Danny Rolling.*

These appeals by Rolling's attorneys and supporters focused not on his crime or his guilt but on his person and his punishment. What others had seen as wickedness and evil they saw as evidence of mental illness and a damaged personality. Whereas others viewed the death penalty as a just and fitting punishment, they saw it as an undeserved, legally unsound, and deeply immoral act.

In America today, a defendant can plead guilty to multiple heinous murders, have his conviction survive years of appellate review and federal court scrutiny, and even confess to further murders, but his death sentence will still be regarded by many as unjust and inappropriate. Questions will be raised about procedural injustice, about mitigation and mental illness, and about numerous other issues that might put the sentence in doubt. And, always, behind these challenges, and in the background of every capital case, are the devout objections that the death penalty evokes: "Justice will not come . . . in the form of capital punishment." Even in its best-case, "poster-image" examples, America's death penalty is a deeply troubled institution.

If the Rolling story is a best-case illustration for the institution of capital punishment, the *New York Times* article is also exemplary in its way. The reports of executions carried by today's newspapers exhibit a definite generic format, and the *Times* story is a model of the genre. All the usual elements are there: disturbing descriptions of the crime and its impact; emotional statements from the victims' kin; the offender's criminal history; the years of legal struggles and the last-minute appeals; homely details of the final meal; eyewitness accounts of the execution and the condemned's last words; interviews with supporters and protesters outside the prison; formal statements from officials. And they all add up to form a satisfying narrative of an evil offender being brought to justice, accorded his legal rights, then executed with maximum humanity.

In the public telling of Rolling's story, the October 2006 *Times* article presents the concluding chapter of a tale that had begun decades before, in 1990, with the initial reports of the Gainesville murders. That narrative continued, in local and national news, with dramatic accounts of Rolling's arrest, trial, and conviction, followed by more sporadic reports of postconviction proceedings and Rolling's exploits on death row. Viewed in the overall arc of its unfolding, this dramatic narrative has the form of a

morality play in two acts—Act I: the crime and the criminal's conviction; Act II: the punishment and its ultimate execution—of which the *Times* report presents the concluding scene and epilogue.

Rolling's case is altogether singular in terms of its characters, events, and the twists and turns of its narrative, which is what makes it fresh and compelling as a news story. But the plot of the play, the *dramatis personae* involved, and the moral issues at stake are all too familiar, being repeated time after time in a standard performance that is well known to its audience and has a special place in contemporary American culture. In Rolling's case, as in all the others, the morality play performed for the watching public begins with reports of a violent murder and ends in eyewitness accounts of a judicial execution. The dramatic relation between these paired killings—the murder and the execution—draws the audience in, ensuring popular interest, emotional involvement, and continuing engagement with the story. As the sociologist Emile Durkheim long ago observed, news of atrocious crimes provokes passionate outrage, generates collective excitement, and produces powerful narratives that concentrate public sentiment and give it force and focus. Capital cases—cases in which the death penalty is invoked—double this dramatic effect. The story of the initial killing is intensified by the promise of another, more righteous killing that will settle accounts, express collective anger, and move the public audience cathartically from outrage to relief. That the terrifying mystery of death lies at the heart of these dramas serves only to deepen their emotional impact and extend their metaphoric appeal.

Evidence of this excitement and emotional involvement becomes more apparent if we turn to the stories carried by newspapers less sober than the *Times*. In the breathless reports of the tabloid press, much space is devoted to lurid descriptions of Rolling's crimes: "Rolling posed his mutilated victims in sexually provocative positions and kept body parts as trophies"; "Christa's lifeless head was found sitting on a bookshelf in the bedroom, and her body was propped, sitting up on her bed"—and to expressing community views about his sentence: "I'm an eye-for-an-eye person . . . I think he's getting off so easy it's sickening."<sup>4</sup>

Rolling's deeds and Rolling's death were also put into cultural circulation by other media: TV, film, and the Internet. If we examine these words and images we see dramatic excitement shade into prurient interest and morbid fascination, and the narrative style shift from sober tragedy to sensational entertainment. Rolling wrote and published a book while on death row, in collaboration with a woman to whom he became engaged while in prison. Several books were written by others about him. Several

Hollywood films and TV dramas were produced, depicting his serial killer exploits and his eventual execution. And, inevitably, the publicity about the Rolling case triggered a fresh round of the public debate about the legitimacy of the death penalty.<sup>5</sup> Rolling's story, like each new version of the old morality play, serves as an occasion for the airing of opposing views and the ritualized back and forth of death penalty discourse.

The *New York Times* story, then, is not just a factual report of a case. It is the specific enactment of a generic cultural form. In America today, capital cases are more than legal and political events: they are significant cultural performances as well.

The aim of this book is not to challenge the legitimacy of American capital punishment or to show the death penalty being botched, unfairly imposed, or unjustly administered. Rather, it is to describe and explain the peculiar institution of American capital punishment in all its complex, controversial detail and to explore its relationship to the society that sustains it. To pursue this aim faithfully requires a measure of detachment—a suspension of judgment in the interests of clear-eyed description and objective analysis. To understand the emotive, contested field that today's death penalty has become, we need to put aside partisan argument (to the extent that this is possible) and strive to understand the passions and interests of both sides of the debate, together with the values and attitudes that underlie them.

I have begun with the “official” version of the institution, a story of the death penalty “properly” applied, to show that this conception is as much a part of the institution as the miscarried cases and botched procedures that so often undermine it. I have quoted from the *Times* report to make clear that the practice of capital punishment in America today is as much about discourse as it is about death, and as much about cultural politics as about the punishment of crime. When considering the death penalty, we must conjure an image of the *contemporary* American practice—a lethal injection administered after many years of legal process—for theorists of capital punishment are all too prone to think of the death penalty as if it were still violently executed on a scaffold before a watching crowd.

This heinous case allows the moral and emotional aspects of capital punishment to be rendered a little more complex than they sometimes are when we think about the injustice, or racism, or exonerations associated with the contemporary institution. To understand today's American death penalty—which, despite the French proverb, is not to forgive it—we must try to see its moral power, its emotional appeal, its claim to be doing justice. We must strive to see in it what its supporters claim to see and not

dwell exclusively on its injustices and pathologies. As sociologists have long been taught, to explain a practice we must first appreciate what it means for the actors involved.

So the conviction and execution of Danny Rolling are presented here not as a moral tale but as an aid to thinking. In Rolling's disturbing story and its *denouement* we catch a glimpse of a peculiar institution that operates today in America and nowhere else in the Western world. Understanding that institution, and the society that maintains it, is what this book sets out to do.

## A Peculiar Institution

Every people, the proverb has it, loves its own form of violence.

CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES*, 1973

As a Philadelphia journalist observed in 1812, “So much has been written and said on the subject of capital punishments that it seems almost like presumptive vanity to pursue the topic any further.”<sup>1</sup> Yet after two and a half centuries of moral debate and four decades of constitutional argument, the one thing that seems indisputable is that the death penalty produces an endless stream of discourse. Our bookstore shelves and law library stacks groan under the weight of writing provoked by this institution, and still the ink continues to flow. The rate at which we put offenders to death may have declined over the last few centuries, but there has been no let up in the practice of talking and writing about it. In twenty-first-century America, capital punishment remains a perennial subject of commentary and debate.

Perhaps all this talk should not surprise us. After all, the institution of capital punishment raises profound moral questions and possesses more than its share of controversial characteristics. As one scholar of criminal law noted, “Only someone who is morally obtuse could fail to perceive how charged the issue of capital punishment is with questions of fundamental value.”<sup>2</sup> And it is no doubt true that the death penalty poses, in the starkest form, a deliberate choice between life and death in situations where killing is neither necessary nor unavoidable. Perhaps we ought not to find it strange that it prompts so much discussion.

Perhaps. But bear in mind that American society does not always re-

spond to moral problems by making them topics of prolix discourse and debate. The moral attention of Americans is highly selective. As a society, the United States does not spill so much ink over each individual fatality in war, or each life cut short by poverty, though these deaths are often “unnecessary” and “avoidable,” and those who die are certainly no more deserving of their fate than convicted killers. Yet if a murder suspect is capitally charged or a convicted murderer is sentenced to death, Americans somehow contrive to make this headline news, an occasion for a flurry of commentaries, and a rehearsal of all the familiar arguments for and against the institution.

Or compare the endless talk about capital punishment with the relative silence with which American public discourse (and Supreme Court case law) passes over extraordinarily severe prison sentences and the mass imprisonment they produce, even though incarceration affects tens of millions of individuals and families in the United States while death sentences are imposed on fewer than 120 offenders each year. Whatever else capital punishment does or does not do, it certainly functions as an incitement to talk.

The subject of capital punishment seems to invite, even to compel, the repetitive restatement of arguments and counterarguments that are all too familiar. For centuries now, it has given rise to a set-piece debate that contrasts the New Testament with the Old, Enlightenment with Tradition, humanity with justice, and restraint with retribution. There is very little in today’s debates that would not be familiar to those who addressed the issue 200 years ago, as a glance at the writings of Cesare Beccaria, Jeremy Bentham, or Benjamin Rush will quickly reveal. And although the emergence of constitutional challenges in the 1960s produced some novel legal arguments—about arbitrary application, “evolving standards of decency,” and the unreliability of a sanction that is so rarely used—even these propositions now seem commonplace.<sup>3</sup>

Yet the recent history of capital punishment has taken a surprising turn that raises a whole new set of questions. Increasingly over the last thirty years, the issue of American capital punishment has taken on a new character and urgency. The familiar moral-political debate continues, of course, with the same arguments being traded back and forth. But recent developments have produced a new challenge for analysis: the need to make sense of the peculiar institution that has emerged in the United States since the 1970s. What was once a familiar moral debate has been reborn as a sociological and historical problem: how to explain the peculiarities of America’s twenty-first-century death penalty?

The contemporary American death penalty is, in several respects, a pe-