

# DEATHQUEST

**4**<sup>TH</sup> EDITION

AN INTRODUCTION  
TO THE THEORY  
AND PRACTICE OF  
CAPITAL PUNISHMENT  
IN THE UNITED STATES



ROBERT M. BOHM

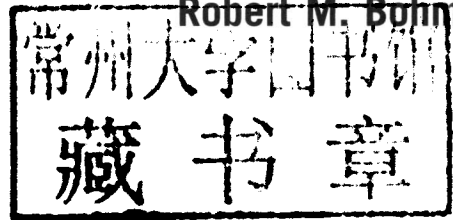
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## An Introduction to the Theory and Practice of Capital Punishment in the United States

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# DeathQuest

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and Practice of Capital Punishment  
in the United States

4th Edition

*To my nieces and nephews: Lisa, Traci, Allie,  
Daniel, Kami, Blythe, Weston, Kyler, Kallie,  
Jackson, Bella, and Layla*

# Foreword

Vengeance is mine, saith the Lord; and that means that it is not the Lord Chief Justice's.

—George Bernard Shaw, 1922

On an oppressively humid July night in 1987, I stood at the window of the gas chamber at the Mississippi State Penitentiary, staring at Connie Ray Evans. Strapped into a cold, steel chair nicknamed the “Black Death” by some forlorn, condemned prisoner many years before I became warden, I was preparing to give the order that would end Connie Evans’s life. This was my second execution in just 5 weeks. Still numb from the first one, I realized as I gazed into the eyes of this next victim that my senses were all but dulled. This one, I knew, would be even more difficult than the first. I had permitted myself to become close to Connie Ray Evans. I came to recognize him as more than just a prison number waiting his turn on death row. In the end, standing there that hot summer night, I realized I was about to execute a friend. My mind was haunted by questions: How had Connie Ray Evans and I gotten there? What goes so wrong that a normal 18-year-old kid spends the last 7 years of his life awaiting a date with the executioner?

At a 1790s meeting of the American Philosophical Society held at the home of longtime friend Benjamin Franklin, Dr Benjamin Rush delivered a paper condemning the young nation’s embrace of capital punishment. Rush, signer of the Declaration of Independence, father of American psychiatry, and social reformer, asked the same question: How had America arrived at the use of such a barbaric sanction? He dared to believe that we could be better than that.

Two centuries later, on a sweltering August day in Boston, champion libertarian and death penalty opponent Henry Schwarzschild delivered a message eerily similar to Rush’s earlier admonition. Insisting that it is useless to discuss a hypothetical society that applies capital punishment in a fair, rational, consistent manner, Schwarzschild asserted that such an idyllic society is nonexistent. It is necessary, then, to remember that people are not infallible, therefore rendering the legal system imperfect. For this reason alone, he concluded that the use of capital punishment should be relegated to the writings of historical scholars.

*DeathQuest* would win the wholehearted approval of both Rush and Schwarzschild, indeed no small achievement. Professor Bohm has crafted an exhaustive introductory work that should be required reading, not just for students of criminal justice but for any thoughtful, enlightened citizenry as well. Absent the emotional histrionics that characterize so much capital punishment literature, this work forges a detailed, fact-based discussion of what many believe to be the most contentious social issue in America today. While the quality of Professor Bohm’s book is unassailable, of even greater importance to the reader is the manner in which he “tells the story.” This is not a textbook filled with charts, graphs, and data, however impressive and necessary we perceive such material to be. It is, in the final analysis, a book about people—people not so very different from the rest of us. America’s death rows are filled with hope and despair, dreams and nightmares, optimism and resignation. While the purpose of this work is not to beatify death row prisoners, it does force the reader to come to grips with the stereotypical images that we so often assign to them.

As any thoughtful reader will quickly conclude, Professor Bohm has skillfully succeeded in painting the death penalty issue in realistic hues and shades of gray. Very rarely can we attribute consummate good or evil to any particular individual or community, and so it is with those on death row.

The death penalty has been a force in every major civilization since the dawn of history. So have the debate and controversy that surround it. For our part, executions are not new to the American scene. They have been part of our machinery of justice since the precolonial era, brought to Jamestown, Plymouth, and Boston by the earliest European settlers. Capital punishment is not a topic of discussion that falls within the purview of researchers or policy makers alone. The major religious denominations, civil rights organizations, and other social- and reform-minded groups have all focused attention on the troublesome issues that arise from the capital punishment debate.

This book will foster renewed, vigorous examination of the multiple realities that are capital punishment, and the impact the execution process has each time America leads one of its citizens to the execution chamber. Whether discussing the early history of executions in this country, retributive arguments, or our present enthrallment with sanitized lethal injection, Professor Bohm writes with acuity and a forcefulness that compels the reader to revisit long-held beliefs. This is not, after all, a book of abstract ideas or fictitious characters. Rather, when Professor Bohm forces us to confront the stark reality of the gallows, the grisly nature of the electric chair, or the sterility of the lethal injection table, he engages us in a self-examination of who we are as a society. The calculated, methodical, politically convenient approach to justice that has long been part of the execution protocol is laid bare in this book, in all of its disturbing reality.

This work will ensure that we never view state-ordered killing in quite the same way again.

Donald A. Cabana  
Professor, University of Southern Mississippi  
Author of *Death at Midnight: The Confession of an Executioner*  
Former warden at various correctional facilities throughout the South

# Acknowledgments

I would like to thank all of my friends and colleagues for their support, help, understanding, and inspiration. Although there are too many people to list here by name, many of them are cited in the pages of this book. The others know who they are.



# About the Author

**Robert M. Bohm** is a Professor of Criminal Justice at the University of Central Florida in Orlando. He has also been a faculty member in the Departments of Criminal Justice at the University of North Carolina at Charlotte (1989–1995) and at Jacksonville State University in Alabama (1979–1989). In 1973–1974, he worked for the Jackson County Department of Corrections in Kansas City, Missouri, first as a corrections officer and later as an instructor/counselor in the Model Inmate Employment Program, a Law Enforcement Assistance Administration sponsored work-release project. He received his PhD in Criminology from Florida State University in 1980.

Professor Bohm has published numerous journal articles and book chapters in the areas of criminal justice and criminology. In addition to being the author of *DeathQuest: An Introduction to the Theory and Practice of Capital Punishment in the United States*, 4th ed. (2012), he is the author of *Ultimate Sanction: Understanding the Death Penalty Through Its Many Voices and Many Sides* (2010) and *A Concise Introduction to Criminal Justice* (2008). He is coauthor (with Keith N. Haley) of *Introduction to Criminal Justice*, 7th ed. (2012), and (with Brenda L. Vogel) *A Primer on Crime and Delinquency Theory*, 3rd ed. (2011). He is also the editor of *The Death Penalty Today* (2008) and *The Death Penalty in America: Current Research* (1991), and coeditor (with James R. Acker and Charles S. Lanier) of *America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Sanction*, 2nd ed. (2003), and (with Jeffery T. Walker) *Demystifying Crime and Criminal Justice* (2006).

Professor Bohm has been active in the American Society of Criminology, the Southern Criminal Justice Association, and especially the Academy of Criminal Justice Sciences, having served in the latter organization as President (1992–1993). In 1989, the Southern Criminal Justice Association selected him as the Outstanding Educator of the Year. In 1999, he became a Fellow of the Academy of Criminal Justice Sciences; in 2001, he was presented with the Founder's Award of the Academy of Criminal Justice Sciences; and, in 2008, he was presented with the Bruce Smith Sr. Award by the Academy of Criminal Justice Sciences.

# Introduction

At one level, the death penalty is a minor issue. The media keep the public aware of all sorts of horrible crimes, but relatively few people are directly affected by these crimes, either as perpetrators or victims or as family and friends of the perpetrators and victims. Very few people are sentenced to die for their crimes, and fewer people, still, are ever executed. The approximately 3,300 inmates currently on death rows throughout the United States represent less than two-tenths of 1 percent of the approximately 2.4 million inmates in all prisons and jails. Moreover, the only reason there are as many as 3,300 death row inmates is that some of them have been awaiting execution for more than 30 years.

Certainly, for me, the death penalty was a minor issue prior to the mid-1980s, and I am a criminal justice professor! I had not given much thought to the issue because other subjects, such as the causes and prevention of crime, were more important to me. (I suppose that even then I did not believe that the death penalty was an important tool in preventing crime.) Then, one day, an article in the local newspaper caught my eye. It mentioned a Gallup poll that showed that 75 percent of the American public supported the death penalty. What struck me as interesting was that such a large percentage of the public agreed about anything. Soon thereafter, I began my effort to understand why the death penalty in the United States was so strongly supported. I wanted to know what was motivating the “deathquest” of the American people.

Not long into my investigation, I became aware that, at another level, the death penalty represents two profound concerns of nearly everyone: the value of human life and how best to protect it. I also discovered that people differ greatly in the ways they believe these concerns should be addressed. For most people who support the death penalty, the execution of killers (and people who commit other horrible acts) makes sense. Death penalty supporters frequently state that executions do prevent those executed from committing heinous crimes again and that the example of executions probably prevents most people who might contemplate committing appalling crimes from doing so. In addition, many death penalty supporters simply believe that people who commit such crimes deserve to die, that they have earned their ignominious fate.

For opponents, the death penalty issue is about something else entirely. It is a benchmark of the “developing moral standards” of American civilization.<sup>1</sup> As Winston Churchill once said, “The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country.” Put somewhat differently, for many opponents, the level of death penalty support in the United States is a rough estimate of the level of maturity of the American people. The not-so-subtle implication is that a mature, civilized society would not employ the death penalty. Opponents maintain that perpetrators of horrible crimes can be dealt with effectively by other means and that it makes little sense to kill some people, however blameworthy they are, to teach other people not to kill. These opponents argue that although the perpetrators of terrible crimes may deserve severe punishment, the punishment need not be execution.

The death penalty issue can be and has been addressed on many different levels. Only superficially is it a minor issue. Rather, it is a complex concern that encompasses fundamental questions of who we are as a people and how we deal with some of our most vexing social problems.

One of the more unexpected findings of my research is that most people have a relatively strong opinion about the death penalty, even though they know little about it. What they think they know, moreover, is often wrong. For these reasons, I decided to prepare and teach a college

class on the death penalty. Not only did I believe that such a class would be a good vehicle for teaching critical-thinking skills in general, but also I was curious to know whether information about the death penalty (an entire semester's worth) would have any effect on people's opinions about it.

This book is a product of more than two decades of preparing and teaching my class. My principal goal, both in teaching and in writing this book, is to educate students so that whatever their death penalty opinions are, they are informed ones.

I believe it only fair to admit that I am an opponent of the death penalty. Years of study have convinced me that it is a penal practice we can do without. However, as I do in my classes, I will present in this book, as best I can, both sides of all issues. I will let the reader decide whether I have succeeded in the effort and interpret what I write in light of my biases. The reader should be forewarned that most of the literature and research on the death penalty has been produced by its opponents. For the most part, supporters have not felt the need to justify their position. As noted previously, for most of them, supporting the death penalty is just common sense.

The book is divided into 12 chapters. The first six are the least controversial, as they present mostly facts about the death penalty in the United States. The first chapter traces the history of the death penalty in the United States from 1608 until the mid-1960s—which may be called the premodern death penalty period. The second chapter focuses on the role of the US Supreme Court in the premodern practice of capital punishment. Although some of the premodern death penalty cases set precedent for modern capital jurisprudence, other cases, perhaps most of them, are mostly of historical interest. All of them, however, reveal troubling flaws in the premodern death penalty systems of many jurisdictions. Chapter 3 describes the constitutional attack on capital punishment's legality that culminated with the Supreme Court's 1972 landmark decision in *Furman v. Georgia*. It also examines the tremendous public backlash to *Furman* and the Court's reinstatement of the death penalty 4 short years later in *Gregg v. Georgia*. Chapter 4 presents many of the Court's decisions that have shaped death penalty jurisprudence during the modern period. The chapter reveals the Court's ongoing effort to regulate the penalty of death. The fifth chapter addresses the death penalty systems of the federal government and the military. Similarities and differences between these two systems and the systems of the 34 death penalty states are highlighted. The fifth chapter also examines the death penalty from a global perspective. The sixth chapter provides a detailed analysis of execution methods employed in the United States, outlines the legal history of the concept of "cruel and unusual punishment," and briefly describes the execution process and what it is like to witness an execution.

Chapters 7 through 11 examine the arguments and counterarguments employed by proponents and opponents of the death penalty. The seventh chapter addresses the issue of general deterrence. People who believe in the general deterrent effect assume that either the threat of executions or executions themselves prevent other people from committing capital crimes. Incapacitation and the economic costs of capital punishment are the subjects of the eighth chapter. Incapacitation refers to the goal of execution preventing convicted murderers or other capital offenders from committing other crimes. In the second section of this chapter, the economic costs of capital punishment are compared to the economic costs of alternative punishments, especially life imprisonment without opportunity of parole, or LWOP. The ninth chapter explores the subject of miscarriages of justice in capital cases. Incidents of wrongful arrests, wrongful charges or indictments, wrongful convictions, wrongful sentences, and wrongful executions are discussed, as are the reasons for miscarriages of justice. The chapter ends with suggestions about what can be done about them. Chapter 10 addresses two major problems the Supreme Court found with premodern death penalty statutes: that they did not prevent the

death penalty from being imposed arbitrarily and in a discriminatory fashion. The major focus of the chapter is the modern record and whether the procedural reforms that have been implemented since *Furman v. Georgia* was decided in 1972 have, indeed, eliminated arbitrary and discriminatory application of the death penalty. Chapter 11 examines the subjects of retribution and religion in relation to the death penalty. Emphasized in the section on retribution are the effects of capital punishment on the families of murder victims and death row and executed inmates.

The twelfth and final chapter of the book, focuses on American death penalty opinion. This chapter is divided into three major sections. The first section provides the history of death penalty opinion, describing what is called here “the too simple and, therefore, misleading death penalty opinion question period.” The second section surveys the present period and chronicles “the more complex and revealing death penalty opinion question period.” This section begins with a description of research that tested the hypothesis that death penalty support is largely a product of ignorance about the way capital punishment is actually administered. The final section, and the conclusion to the book, addresses the future of American death penalty opinion and the effect it may have on the practice of capital punishment in the United States.

Three remarks about terminology should prove helpful. First, the terms “death penalty” and “capital punishment” are used interchangeably. They refer to the same thing. Second, frequent use is made of the terms “pre-*Furman*” (premodern) and “post-*Furman*” (modern) to denote different historical periods. *Furman* refers to the 1972 landmark Supreme Court decision, *Furman v. Georgia*—the first time that capital punishment was held to be unconstitutional. The pre-*Furman* era, for purposes of this book, spans the period from 1608, the year the first person in America was executed by legal authority, to the mid-1960s, when the legal assault on capital punishment began. The “modern” era of capital punishment, the post-*Furman* period, covers everything about the death penalty in the United States that has occurred since June 29, 1972. Third, the term “death eligible” is used frequently. The definition provided by law professors Baldus and Woodworth is employed: “A death-eligible case refers to one in which the facts are sufficient under state law to sustain a capital murder conviction and death sentence, whether or not the state actually seeks a death sentence or the jury actually imposes a death sentence in the case.”<sup>2</sup>

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## Notes

1. See, for example, Kohlberg and Elfenbein (1975).
2. Baldus and Woodworth (1998, p. 386).

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