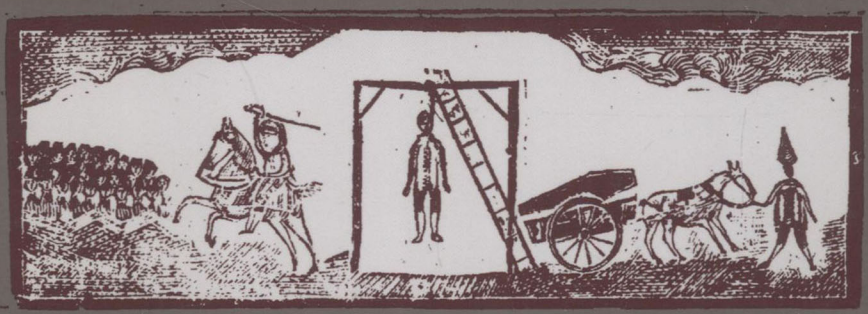
THE SOLEMN SENTENCE OF DEATH



Capital Punishment in Connecticut

Lawrence B. Goodheart

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To Ellen and Anna

TABLES

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INTRODUCTION
The Paradox of Capital Punishment

It seems strange to me that in these days when capital punishment has been abolished in many states, that Connecticut, one of the leading and most liberal states in the United States, still uses capital punishment.

Rabbi Dr. David S. Hachen to Governor John Dempsey, April 14, 1967

On November 13, 1817, more than 15,000 people—men, women, and children—converged on Danbury, Connecticut. It was an unusually large gathering for the time. Some had traveled from as far away as twenty-five miles and arrived the previous night. They came to see the public execution that day of Amos Adams, a twenty-eight-year-old African American who had been convicted of raping Lelea Thorp, a married white woman and mother. Adams was to be the last person in Connecticut executed for a capital crime other than homicide.[1]

In contrast, Michael Ross in 2005 died by lethal injection in a supermaximum prison during the early morning hours. An admitted sexual sadist, he had manually strangled eight girls and young women after raping most of them. Only a few witnesses were permitted at the execution, and protesters against the death penalty were kept well away. Despite a judicial process that would have continued to stay his already much-delayed execution, Ross voluntarily waived his legal rights and opted to die. His was the only legal execution in New England since 1960, when Connecticut electrocuted Joseph Taborsky, another serial killer who relinquished further appeals. At a time of declining execution rates in the United States and the abolition of capital punishment in much of the western world, Connecticut is the only state in New England to have executed anyone during the last half century. As of 2010, it had ten inmates on death row, by far the most in New England.[2]

The opening quotation by Rabbi Hachen asks why, and *The Solemn Sentence of Death: Capital Punishment in Connecticut* responds to that question.[3]

This book examines what happened in one jurisdiction over nearly four hundred years. Criminologist David Garland observed that "the social meaning of punishment is badly understood." He added, "To say—correctly—that punishment is a form of power immediately raises the question: 'what kind of power?' Is it authorized? Does it command popular support? What values does it convey? Which objectives does it seek? How is it shaped by sensibilities and in what kind of culture and morality is it grounded?"[4]

The death penalty, the most extreme and irreversible form of retribution, is intrinsically a social and legal artifact. The focus is the criminal justice system, but the larger context is the ethical values of New England culture. In Connecticut over the centuries, 158 people have been judicially executed in civilian courts. In sheer numbers, that is slightly more than the number of people executed—154—during the five years that George W. Bush was governor of Texas from 1995 to 2000. The contrast is striking and points to significant regional variation in the United States. No southern or far western state, areas with indelible traditions of racial suppression and vigilantism, has abolished the death penalty. In New England and the Northeast (excluding Pennsylvania), only New Hampshire and Connecticut retain a capital code, yet no systematic historical analysis of capital punishment exists for Connecticut. In addition, only recently has a comprehensive study appeared for another state (Massachusetts, which executed 237 people from 1630 to its last in 1947).[5] This book, then, explores new ground.[6]

The major conclusion of this work is that after nearly four centuries, capital punishment in Connecticut presents a paradox. The current restrictive statute and the lengthy appeals process have in recent decades blocked executions unless, ironically, the convict stipulates for death, as Taborsky and Ross did. State policy seeks to have it both ways: a commitment to the death penalty, but one that is not carried out. There is an uneasy tension between supporters and opponents that has resulted in halfway measures. Public opinion, the General Assembly (except in 2009), most governors, and the courts (state and federal) sustain the death penalty, at least for particularly cruel and heinous murders. A substantial majority of citizens believed that Taborsky and Ross got what they deserved. At the same time, however, there has been a judicial mandate to limit the scope of the law to the extent that it is virtually ineffective. The result is that the death penalty in Connecticut is contradictory in principle and unworkable in practice.

Ambiguity, ambivalence, and alteration have characterized the death penalty since the colonial era. A number of religious proscriptions adopted

by the first colonists were never implemented, and others, such as execution for witchcraft, were blocked after 1663 even though they remained on the books for decades. The 1750 Connecticut Code of Laws dropped all biblical citations. There was a steady diminution in the types of crimes considered capital offenses. Concern with proportionate punishment during the Enlightenment led to imprisonment in place of corporal punishment or shaming for eventually all capital crimes except first-degree murder. A long tradition of the rule of law and adherence to a fair trial obstructed mob lynching so characteristic of the Wild West and Jim Crow South. A two-eyewitness standard of evidence, jury proceedings, and representation by attorneys have been standard in capital cases since the colonial era. The capital codes excluded the mentally disordered and eventually youths under eighteen years old. An unofficial gender convention has barred the execution of females since 1786. Connecticut established the first office of public defender during the early twentieth century. By the late 1950s, court decisions expanded defendants' rights and impeded implementation of the death penalty. With few exceptions, the underclass constituted those judicially executed. There is no way to determine how many people with more privilege escaped such punishment. What is clear is that those on the social margins were most vulnerable.

Before 1833, executions were public. The gallows provided a ritual of death emblematic of divine wrath and civic retribution for all to see. The funeral sermon held forth hope of repentance and salvation for all sinners, including the prisoner. By 1833, the morbid event was seen as too crass, brutalizing, and degrading for citizens of a democratic republic, and the gallows were banished to the confines of county jails. Sheriffs continued to admit dozens of spectators, however, until in 1893 hangings were sequestered in the state prison and only a select few were admitted. Executions were secretive and isolated, out of sight and out of mind, as it were. The latest technology—the automatic gallows, electric chair, and lethal injection—rendered a gruesome event more expeditious, more modern, and less offensive, it was hoped.

Abolitionist efforts reached their zenith during the late antebellum period, during the 1950s, and in 2009 when a gubernatorial veto blocked such legislation. Ethically based opposition contended that state-sanctioned killing was wrong, whereas proponents supported the righteousness of retribution. Despite a petition campaign and gubernatorial support, opponents during an era of reform in the 1840s and 1850s failed to sway the legislature, a time during which Michigan in 1846 was the first state to abolish the death penalty. The bloody Civil War forestalled further efforts. After the horrors of World

War II, Governor Abraham Ribicoff and the *Hartford Courant* supported broad-based efforts to end capital punishment, but the General Assembly voted down abolition and the shocking murder spree of Taborsky undermined the cause. Taborsky's multiple murders left a lasting legacy of support for capital punishment, albeit with many restrictions that have resulted in an unofficial moratorium, interrupted by the self-willed execution of Michael Ross in 2005. Then, in 2009, for the first time the General Assembly, with Democratic majorities in both houses, voted to abolish the death penalty, but Republican Governor M. Jodi Rell vetoed the bill.[7] The present law is riddled with contradictions.

This book is organized on a thematic and chronological format. Each chapter examines the capital code, the criminal justice system, a profile of the executed person, and the broader cultural context. Table 1 breaks down the number of persons judicially executed in Connecticut by the same groupings as the chapters in this book.

In 1976, the United States Supreme Court in *Gregg v. Georgia* lifted the ban on capital punishment that it had imposed four years earlier in *Furman v. Georgia*. Since then, more than one thousand people have been executed in the United States. Starting in the late 1990s, however, the number of convicts executed and the number of people sentenced to death have declined significantly nationwide. The growing reliability of DNA evidence has contributed to the exoneration and freedom of dozens of wrongly convicted prisoners, including those on death row. The documentation of bias in the criminal justice system is clear; for example, low-income black men convicted

TABLE 1
Number of Persons Judicially Executed in Connecticut, by Chapter

Chapter in This Volume	Number of Persons Executed
1. Biblical Retribution, 1636–1699	31
2. Emergence of Yankee Justice, 1700–1772	17
3. Era of Newgate Prison, 1773–1827	16
4. Debate over Capital Punishment, 1828–1879	12
5. Menace of the Criminal Class, 1880–1929	60
6. Waning of Executions, 1930–1960	21
7. Unofficial Moratorium, 1961–2004	0
8. Execution of Michael Ross, 2005	1
Total	158

of murdering whites are particularly vulnerable to capital punishment.[8] Moratoria on the death penalty exist in a dozen states, including Illinois, where Governor George Ryan called the system broken. The U.S. Supreme Court has recently excluded juveniles and the mentally retarded from capital punishment on the basis of mental competency. In 2008, it also ruled that the death penalty for rape is unconstitutional because it is not a graduated response according to the Eighth Amendment's injunction against cruel and unusual punishment. The Court upheld the death penalty, but only in crimes against individuals when a life is taken. In the majority decision, Justice Anthony Kennedy cautioned, "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint."[9]

Indeed, the death penalty is an emotionally charged and polarizing topic. Opponents such as Sister Helen Prejean ultimately base their opposition not on the injustice of the criminal system, but on the premise that judicial execution is an evil per se, a cruel and unusual punishment banned by the Eighth Amendment. Defenders such as state's attorney John Connolly reply that Connecticut's capital punishment is limited to the worst of the worst, for which execution is a just and appropriate retribution. Like abortion, evolution, flag burning, gay marriage, gun control, and school prayer, capital punishment is an integral part of the cultural politics that have significantly reshaped the electoral landscape since Ronald Reagan's presidency of the 1980s. After nearly four centuries of capital punishment, Connecticut is exceptional in its region in still carrying out the statute. It appears that a substantial majority of the state's citizens wish to preserve the death penalty, at least for multiple murderers such as Taborsky and Ross.

This book concludes that there were—and are—inherent tensions in the capital code and application of the death penalty. The effort to resolve these contradictions led to revisions and the unsuccessful effort to abolish capital punishment. A profound ambivalence has further complicated the issue. Moral repugnance at state-sanctioned killing contends with a still popular emotion that certain crimes demand death if for no other reason than communal revenge for the victim. The concern with due process and the fear of executing an innocent person act as restraints; however, the animus against arbitrary government rests uncomfortably with the belief that capital punishment is an essential function of state power. Over the course of four centuries, legislation, more recently prompted by federal court decisions, has greatly restricted but not eliminated capital punishment. The

death penalty remains on the books because enough citizens believe that it is a necessary and just retribution. In rural eastern Connecticut, where most of Ross's young victims had lived, one of several large plywood signs posted along a highway in 2005 celebrated, "EXECUTE ROSS! TIME FOR A PARTY!"[10] The sentiment was widespread.

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BIBLICAL RETRIBUTION 1636–1699

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The Saints maintain God in his ordinances, the want of which is under the penalty of death and condemnation.

Thomas Hooker, 1641

We have endeavored not only to ground our capital laws upon the word of God, but also all our other Laws upon the justice and equity held forth in that word which is a most perfect rule.

Connecticut Code of Laws, 1672

CAPITAL PUNISHMENT was not a casual or arbitrary matter for the Puritans of New England. Scrupulous attention was paid to law and procedure, which were influenced by English tradition and scriptural interpretation. The saints, God's elect, held the individual responsible for his or her actions, which were measured against the law, and the law's ultimate basis was believed to be sacred.[1] In the Connecticut and New Haven Colonies (two separate plantations until the latter merged with the former in 1665), thirty-one people were judicially executed in nonmilitary situations over the course of the seventeenth century. Puritan statutes did not explicitly impose differential standards based on a person's identity or standing in the community. The ideal, as the 1672 Connecticut Code of Laws stated, was to ensure "justice and equity," an earthly reflection of the "most perfect rule" of heaven. Based largely on biblical retribution, certain crimes were capital, but who was executed, and why?

The Religious Mandate for the Death Penalty

New England was a Puritan redoubt in the contentious religious wars that continued a century after the origins of the Reformation. Among those seeking refuge from Anglican persecution of nonconformist ministers were the