

# The Death Penalty, by Stuart Banner

reviewed by [William Vance Trollinger Jr.](#) in the [July 31, 2002](#) issue

Our hottest, most divisive cultural arguments are often conducted without any awareness of historical context, as the debates over abortion and capital punishment attest. But it does not have to be this way. Historians Linda Gordon and, most recently, Leslie Reagan have written excellent works on the history of abortion in the United States. And Stuart Banner has now given us a history of the death penalty.

In this dispassionate but chillingly detailed survey of capital punishment, Banner, professor of law at St. Louis's Washington University, documents and explains the dramatic "changes in the arguments pro and con, in the crimes punished with death, in execution methods and rituals . . . [and] in the way Americans have understood and experienced the death penalty."

Since there were no prisons in colonial America, Banner observes, the death penalty served as "the standard punishment for a wide range of serious crime," including murder, rape, theft, arson and counterfeiting. Generally this meant public hanging, a ritualized spectacle that often involved sermons and confessions. But while capital punishment was the norm, there were deviations. These included "symbolic" executions, such as mock hangings and dramatic reprieves at the gallows, as well as "intensified" executions--e.g., burning at the stake, dismemberment and public display of the corpse. Such punishments were reserved for particularly threatening offenders like the pirate Joseph Andrews, whose body was hung high in an iron cage on an island just outside New York City, "a Spectacle to deter all Persons from the like Felonies for the Future."

Banner emphasizes that in colonial America executions were public affairs, conducted by the community for the deterrent benefit. But in the 19th century a growing squeamishness about hangings and the sort of crowds they attracted prompted states to begin moving executions behind jail walls, a process completed in the North by 1860 and in much of the South by 1900.

Over the next few decades the public was further removed from the killing process, as the "search for a clean, clinical, undisturbing method of execution" led to the electric chair and the gas chamber. Now executions were held indoors before a few select witnesses, and were administered not by local officials but by specialists in technological killing. Mississippi's Jimmy Thompson, for example, traveled from execution to execution with the state's only electric chair in the back of his pickup truck. His expertise included the notion that "rapists needed more voltage than murderers because of their greater strength and sexual drive."

In the book's final section Banner discusses the dramatic decline in executions in the U.S. between 1880 and 1975; the 1972 Supreme Court decision (*Furman v. Georgia*) that invalidated all state capital punishment statutes; and, the 1976 court decision (*Gregg v. Georgia*) that established that capital punishment is constitutional if procedures guiding and limiting jury discretion are in place.

But as Banner observes in a chapter infelicitously titled "Resurrection"--referring to the dramatic resurgence of death sentences after 1976--the effort to rationalize sentencing has resulted in a terribly expensive but nonetheless haphazard capital punishment system: "Being executed [is] still, as Justice Stewart had put it in *Furman*, like being struck by lightning." Particularly liable to lightning strikes are poor southern black people convicted of murdering a white person.

Since *Death Penalty* is a very broad survey, it is not surprising that there are some gaps. There are few references to religion and virtually no discussions of how religious groups have responded to and shaped public opinion regarding the death penalty. Nevertheless, Banner has produced a significant piece of scholarship. While his book will not prompt partisans to abandon their commitments, there is now no excuse for engaging in the capital-punishment debate in historical ignorance.