


6-2001

# In Lockdown America: The Corruption of Capital Punishment

William Vance Trollinger

*University of Dayton*, wtrollinger1@udayton.edu

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## eCommons Citation

Trollinger, William Vance, "In Lockdown America: The Corruption of Capital Punishment" (2001). *History Faculty Publications*. 34.  
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## The corruption of capital punishment

# In Lockdown America

by William Vance Trollinger Jr.

**I** FINISH THIS REVIEW in the shadow of Timothy McVeigh's execution. But while America's most notorious mass murderer is dead, and while the pundits continue to argue the merits and meaning of his execution, news about capital punishment just keeps coming. Next after McVeigh on the federal death list is Juan Raul Garza, but because of the dramatic racial and geographic disparities in federal death sentences, religious and civil rights leaders are using Garza's case—he is a Mexican-American convicted in Texas—to press for a moratorium on federal executions. Recently the Supreme Court overturned the death sentences of Texans Mark Robertson and Johnny Paul Penry, the latter on the grounds that his jury should have received better instructions on how it should take into account his mental retardation and frightful childhood. And here in Ohio, the state prepares to execute Jay D. Scott, even as his attorneys continue to argue in various courts that to kill a schizophrenic is “cruel and unusual punishment”; Scott's execution has been delayed twice, the last time five minutes before the poison was to be administered—the shunts were already in his veins.

Welcome to America in 2001. It is now 25 years after *Gregg v. Georgia*, the Supreme Court decision that reinstated capital punishment in the United States. More than 3,700 men and women now reside on America's 39—one federal and 38 state—death rows; 717 individuals have been executed by lethal injection, electrocution, poison gas, hanging and firing squad since Gary Gilmore's death in 1977, and the 85 individuals put to death last year ranked the United States third in the world, behind China and Saudi Arabia. While over half of the world's nations have abolished capital punishment, and while international criticism of the U.S. has been intense, America continues to condemn the poor and racial minorities (particularly those who kill whites) in disproportionate numbers, as well as the mentally ill, the mentally retarded, juveniles (here the U.S. leads the world) and sometimes the innocent—and all this to no apparent deterrent effect.

A large majority of Americans continue to support capi-

tal punishment. But recent polls show that, Timothy McVeigh notwithstanding, the level of support for capital punishment is declining. That trend will continue if Randolph Loney, Austin Sarat and Mark Lewis Taylor have anything to say about it. Their three books could not have been written 25 years ago, as they are rooted in the realities of the capital punishment “system” as it has operated in the U.S. This empirical grounding makes it difficult to disregard what Loney, Sarat and Taylor have to say. Their three books together make a powerful and eloquent case for the abolition of the death penalty.

Sarat's approach is to change the terms of the argument. Sarat, who is William Nelson Cromwell Professor of Jurisprudence and Political Science at Amherst College, asserts that abolitionists need to move beyond the focus on “the immorality or injustice of the death penalty as a response to killing,” because such an approach forces them into the untenable position of defend-

ing “despised and notorious criminals” such as Timothy McVeigh. Instead, opponents of the death penalty must concentrate on how it has corrupted “our politics, law and culture.” *When the State Kills* is the model for such an approach, with fascinating and accessible chapters on such topics as the never-ending quest for “painless” executions, the role of and pressures on the jury in capital cases, the portrayal of executions in contemporary films, and the increasingly desperate efforts of death-penalty lawyers to ensure that those who are condemned to die have received something approximating fair treatment under the law.

Regarding the latter, these attorneys are fighting an increasingly difficult and unpopular battle. Beginning with *Furman v. Georgia* (1972), which held that the death penalty as currently applied in the U.S. was unconstitutional, the Supreme Court sought to maintain “a system of ‘super due process’ through which capital defendants could be assured

**A Dream of the Tattered Man: Stories from Georgia's Death Row.**

By Randolph Loney. Eerdmans, 235 pp., \$22.00.

**When the State Kills: Capital Punishment and the American Condition.**

By Austin Sarat. Princeton University Press, 324 pp., \$29.95.

**The Executed God: The Way of the Cross in Lockdown America.**

By Mark Lewis Taylor. Fortress, 208 pp., \$16.00.

William Vance Trollinger Jr. is associate professor of history at the University of Dayton. He is the author of “My friend's execution,” which appeared in the November 11, 1998, issue of the CENTURY.



an extra measure of protection from arbitrariness, caprice or emotionalism.” But in the past decade these legal protections have been systematically dismantled in response to pressures to speed up the execution process—“we just need to kill more quickly” is the primary rejoinder to the argument that the death penalty is not a deterrent—and to address the increasingly insistent demand for “victims’ rights.”

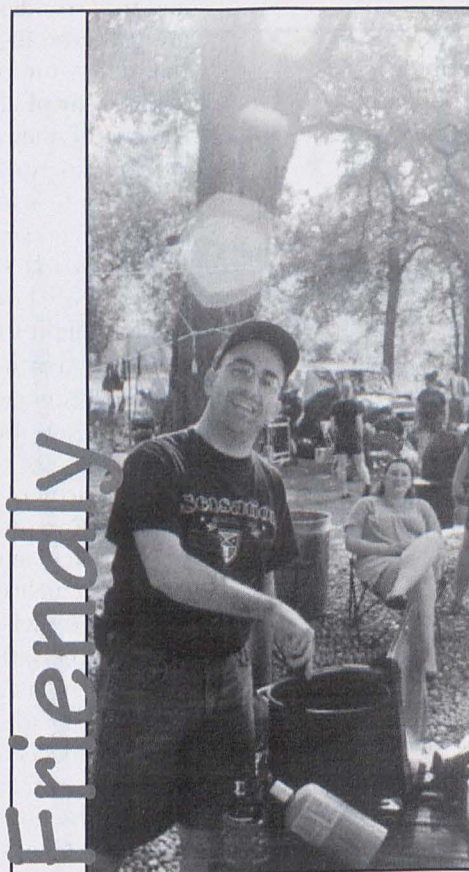
Sarat focuses on the latter in his troubling but persuasive chapter, “The Return of Revenge.” Much of his discussion deals with the use of victim-impact statements in the penalty phase of capital cases, a use made possible by the Supreme Court’s decision in *Payne v. Tennessee* (1991). It has proven very difficult for judges and politicians to resist this trend, especially when it comes to horrific crimes such as the Oklahoma City bombing: at McVeigh’s trial 38 witnesses described in heartbreaking detail how this event destroyed their lives. On the other hand, Sarat argues, this “demand for victims’ rights and the insistence that we hear the voices of the victims” is simply a new way “in which vengeance has disguised itself.” The trend poses a grave threat to American democracy: as Sarat quotes from Thurgood Marshall in his dissenting opinion in *Payne*, this return of revenge signals “one major step toward the demise of a conception of law as a ‘source of impersonal and reasoned judgments.’”

But there is irony here. While capital punishment becomes more and more a weapon of revenge, the state continues to shield the public from seeing the vengeance that it wreaks. Sarat deftly describes how in the late 19th century the United States shifted from public executions to bureaucratic and nearly invisible killings, not for reasons of humanity, but to allow the state to control what had always been—when public—a dangerously uncontrollable occasion. In keeping with Thomas Lynch, who made a similar argument a few weeks ago in the pages of this magazine, Sarat wants to televise state killing, arguing that “the public is always present at an execution”—the only question that remains is whether we are willing to see what is being done in our name. Sarat asserts that to televise executions would not only “reveal and invite the ‘bad taste’” of some viewers—if Timothy McVeigh’s death had been televised, it is easy to imagine a plethora of raucous “execution parties,” à la Super Bowl bashes—but it would also “reveal the sadism that is at the heart of the state’s tenacious attachment to capital punishment.”

In response to the calls for televising McVeigh’s execution, Ken Udiobok writes in the *Minneapolis Star Tribune* that “those who seek public executions . . . would reconsider their positions if they were to witness any execution firsthand.” Well, on September 24,

1997, I watched the state of Missouri execute Samuel McDonald. Yes, it was horrific; yes, it would have been even more horrific knowing that there were folks throughout the state watching and celebrating as the state killed my friend. But I have to say that Sarat and Lynch have convinced me. If we are a democracy, then we have to see what we are doing, even if bringing the sadism of state-sanctioned killing into the open would not—and here I think am less sanguine than Sarat—accelerate the demise of the death penalty.

**A**T THE HEART of *When the State Kills* is the notion that there is no way to square capital punishment with democratic values. Mark Lewis Taylor makes a similar point in his provocatively compelling book, *The Executed God*. Professor of theology and culture at Princeton Seminary, and coordinator of Academics for Mumia Abu-Jamal, Taylor acknowledges that there is a certain logic in the argument that some individuals “deserve to die for their crimes.” But the reality is that “there are just too many negatives” when the state is given the power to kill, including, as we have seen in the United States, the growth of a “bureaucracy of death” that targets the poor and people of color. Most important, Taylor argues, “the practice of execution is a terrorizing tactic that over time creates illegitimate state power”; the eventual result is a corrupt and undemocratic political system—in fact, what else can you expect when you give the government absolute power over life and death? Sounding very much like Sarat, Taylor asserts that it is



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the desire “for a just political order” and not just forgiveness and “love for the criminal” that should push Americans to rid themselves of the death penalty.

One of the great strengths of Taylor’s book is that he places capital punishment within the context of “Lockdown America.” As Taylor documents, over 2 million people are incarcerated in the U.S., which works out to a per capita rate up to ten times higher than most other countries on the planet, including China and Russia. In a chilling chapter titled “The Theater of Terror,” Taylor describes a prison system that locks up economic and racial minorities—70 percent of those in prison are people of color. While the vast majority of these individuals have been locked up for nonviolent (primarily drug) offenses, they are kept in place via various methods of terror, including a widespread and institutionally tolerated culture of rape. As documented by Taylor, somewhere between 200,000 and 290,000 male inmates are raped each year—and some of these individuals are raped daily. Theater of terror indeed.

Taylor laments the fact that so many Christians have

been silent in response to the horrors of Lockdown America, particularly since this silence does not jive with the story of Jesus and his followers. Taylor points out—and I cannot do full justice to his argument here—that not only was Jesus a threat to Rome and the religious elites who were allied with it, but he ended up being crucified—executed—by the imperial authorities. As Taylor sees it, this is not insignificant: “Jesus’ life, as bound up with God’s life, receives its distinctive stamp because of the way in which he suffered state-sanctioned killing.” And the story does not end here. John the Baptist, Paul, Peter—all were executed by repressive state powers. In fact, given the degree to which the “early followers of Jesus . . . suffered Rome’s punitive regime, living at the edge of prison, . . . risking torture and execution,” Taylor finds it exceedingly peculiar that “Christians today are so accepting” of Lockdown America.

But *The Executed God* is more than a lament or indictment. It is also a call to action. Taylor devotes the final two chapters of his book to a discussion of how Christians can engage in a “way of the cross”—in movement-building and a “theatrics of counterterror”—as a way to “take on the death penalty, . . . working for a time when it is no more.”

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## Duet

—for Tharin, whom I know only by letter

When I opened my eyes, the leaves were already  
swaying back and forth like whole notes  
against the staff of the venetian blinds,

which is why I picked up my pen to scribble  
how music had cracked down on the roof early,  
how the sparrows were asserting a diversity

of positions on the existence of the universe.  
And you were there already.  
I could almost here you say, *Not bad.*

*There’s a little music in that line.*  
Though we’ve never met, I can guess  
you’re a harp, maybe, or a glockenspiel

sitting in the roomy chamber quartet  
of some Tuesday afternoon,  
or in the corner bar of an unfinished symphony.

I’ll walk in, a second violin, scuffed case,  
jazzed to find a partner. The conductor  
slouches in the doorway like God

between the Bach and the Shostakovich.  
He raps his baton on his stand. Listen,  
the sun is about to climb above the horizon

and we are learning into the reveille of morning  
humming a little A to get tuned up.

Jeanne Murray Walker

IF WE CAN STRETCH “theatrics” to include “witness,” Randolph Loney’s remarkable *Dream of the Tattered Man* fits the category. His account has its beginning in the Glad River Congregation, a tiny band of believers drawn from the Mercer University community in Macon, Georgia. United by an “Anabaptist conception of church” and the “scandalous conviction” that “where two or three are gathered together in the name of a redeeming Love that defies the powers of shame and death, the meaning and destiny of all creation are revealed,” this little group ordained Loney as a pastor to the men on Georgia’s death row in January of 1985.

So this former college professor began making weekly trips from his small farm in Harris County to the (horrifyingly named) Georgia Diagnostic and Classification Prison. Not bound by “clerical or therapeutic” roles, Loney sought to be “a friend to the men under the sentence of death.” *Tattered Man* records the story of Loney’s visits and the friendships that developed, a primary purpose being to lead the reader “to a deeper understanding of those we have consigned to death”—the vast majority of whom do not fit the Timothy McVeigh profile. For one thing, Loney’s book is a forceful reminder that many of those on death row are African-American males who endured childhoods of dire poverty, oppressive racism, and dreadful neglect and abuse. Regarding the latter, the stories are depressingly redundant: parents and other relatives who were alcoholics and/or drug addicts, who left the boys to fend for themselves or locked them for hours at a time in a bathroom or the basement, and who took out their own frustrations by beating the boys with belts and boards. Some of the stories make Charles Dickens look positively cheerful: there is Henry Willis, who at six months was discovered “in a hole in a bed, where he had been for four days, his skin peeling from his body because no one had turned him



over”; Tom Stevens, whose fundamentalist caregiver rubbed feces in his face and gave him “nightly baths of garlic and vinegar, followed by an enema”; William Hance, who at ten watched as his seven-year-old sister was raped in the bed they shared.

Of course, there are individuals who endure hellish childhoods but who do not go on to commit violent acts. Loney suggests that it may be that these folks were fortunate enough to have “rescuers”—individuals who reached out in sacrificial love and kept them from falling. But Loney’s friends on death row were not rescued; instead, they committed or were an accomplice to terrible crimes. As a result, they ended up in America’s nightmarish legal system. Poor black men were assigned white attorneys who often did not adequately prepare or introduce mitigating evidence (including evidence of mental retardation), and who on occasion even suggested that “a death sentence was appropriate.” Then there were the (white) prosecutors zealously pushing (usually white-dominated) juries to bring back a death sentence; in William Hance’s case, this resulted in 11 white jurors—one of whom asserted that the “nigger admitted he did it, [so] he should fry”—mercilessly harassing the sole black juror until she retreated into silent acquiescence.

**A**LL OF THIS IS powerful corroboration of what Sarat and Taylor argue are the ways in which capital punishment inevitably corrupts the American legal system. But despite these corruptions, the majority of Americans continue to support the death penalty, in good part because of the deep-seated conviction that the thousands of individuals on America’s death rows are freakish, sadistic, irredeemable monsters. In the view of the *Barnesville* (Georgia) *Herald-Gazette*, for example, those who have been condemned to die are “human waste,” and thus “executing them should come as easily to a civilized society as flushing the toilet.”

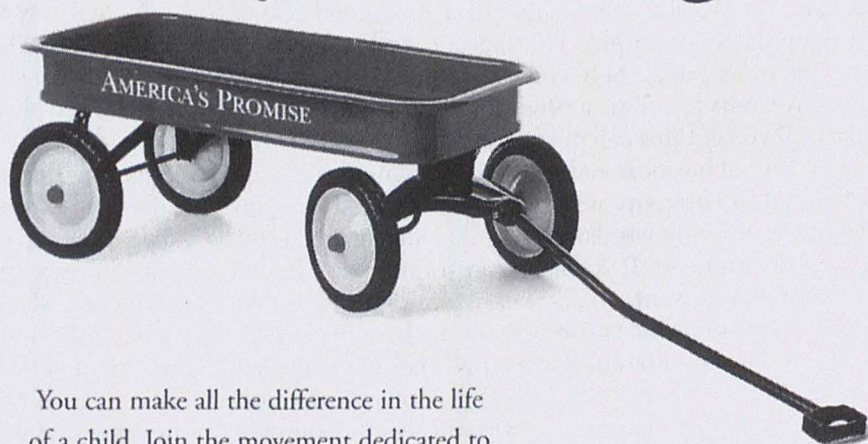
But in reading Randolph Loney’s stories of his friends on Georgia’s death row we are forced to acknowledge a simple truth: those whom we have condemned to die are not “aliens,” but individuals who, in their essential humanity, are connected to all of us. Loney brings this home with innumerable examples of moral growth and development on the part of the condemned, examples that underscore a point made by a character in the recent film *The Widow of St. Pierre*: “The man we execute is not the man we condemned.”

Loney’s friends worked—with his tender assistance—to come to terms

with their painful pasts, a task which often involved asking for forgiveness from their victim’s families. The men on death row also reached out in love to their own families, in the process struggling heroically to deal with their overwhelming sense of shame. They also cared for their comrades on death row: in one instance a prisoner “so much . . . love[d] the man who was about to die” that he “scaled the fence that enclosed the death-row exercise yard and reached the roof of a nearby building before he was stopped on his way to the death house,” where he “had intended to disable the [electric] chair’s generator.” Finally, despite their own pain, despite—in the case of the African-American prisoners—the racism they had endured outside and inside prison, the men on death row reached out in love to Randolph Loney. As Loney said about Bill Tucker, “his time was running out” and yet “he seemed more concerned about me than himself. . . . I was in his care.”

Loney gradually became aware that when he “was with death-row prisoners and their families,” he was “witnessing nothing less than the image of God within each of them.” Such sentiments are not bound to be popular: Loney worries that his “frail witness” will be ignored in a country where the people demand revenge and seem to get an “obscene joy” from executions. Still, he puts his book out there in the hopes that those who read these words will “reject capital punishment,” will “choose life instead of death and thereby begin to experience a spring tide of the spirit for which we all long.” ■

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