

**Adding to the Story of What We Know About Capital  
Punishment: A Review of  
Women and the Death Penalty and Deathquest**

By

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Women and the Death Penalty in the United States,  
1900-1998

Author: Kathleen A. O'Shea  
Publisher: Praeger  
Year: 1999

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

Author: Robert M. Bohm  
Publisher: Anderson Publishing  
Year: 1999

Law professor Leigh B. Bienen from the Northwestern University School of Law recently reviewed nine books written about the death penalty (Bienen, 1999). Two more recent capital punishment tomes - Women and the Death Penalty in the United States, 1900-1998 by Kathleen O'Shea and DeathQuest: An Introduction to the Theory and Practice of Capital Punishment in the United States by Robert M. Bohm - were published too late to be included in Professor Bienen's article.

Both books are within the ambit of Bienen's review in that they focus on capital punishment. Will they "play a decisive role, introducing new facts and energy into the old debate over the morality and justice of capital punishment in the United States at the turn of the century" (p. 770)? "Perhaps," as Bienen muses in her review, "it is enough that these authors tell us some part of the story of where we are now in terms of capital punishment in the United States, and how we got there" (p. 754). Both O'Shea and Bohm meet that criteria in their books, albeit with different degrees of success.

Not surprisingly, most of the research on the death penalty focuses on men, who make up the majority of death-sentenced prisoners. As of April 1, 1999, men accounted for 98.6 percent of the prisoners on death row in the United States (NAACP, 1999). One author who has written about females and the death penalty, though, is Victor L. Streib (see Streib 1990; 1992; 1998; 1999), and he is now joined by Kathleen O'Shea. One of her stated goals in Women and the Death Penalty is to refocus our attention to the plight of women on death row, who she describes as "terribly isolated, invisible, and alone" (p. xix).

Women and the Death Penalty in the United States, 1900-1998 begins with a brief, fairly general chapter on the "History and the Execution of Women,"

and then moves to a state-by-state<sup>1</sup> treatment of women and the death penalty. Each of these 30 jurisdictional-specific chapters follows a similar format: (a) a short history of the death penalty in that particular state, (b) some other relevant capital punishment issues (e.g., "judicial override" in Alabama; "racial bias" and "jury selection" in Georgia; "clemency" in Texas), and (c) profiles of the women who have been sentenced to death. As such, this book reaches for insights into the criminal justice system and the economic, social, and interpersonal factors that influenced the lives of women on death row.

According to O'Shea, "[T]he main purpose of this work is to put a human face on the death penalty" (p. xvii). She attempts to accomplish this task by including, in her state reviews, personal information collected from women imprisoned on various death rows around the nation. This information is the most appealing aspect of the book. O'Shea offers personal vignettes of a wide variety of women sentenced to death, including one of the most celebrated - "pickax murderer" Karla Faye Tucker (pp. 343-345). O'Shea notes that "Karla will also be remembered for sparking a worldwide debate over redemption and retribution" (p. 343). Lesser known condemned women, like Ohio's "beautiful blonde killer" Ana Marie Hahn (pp. 282-283), Louisiana police officer Antoinette Frank (pp. 194-196), North Carolina's "Lil Devil" Christa Gail Pike (pp. 325-326), and Florida serial killer Aileen Wuornos (pp. 129-131), also provide interesting and worthy media for the human face.

On the downside, one exasperating aspect of this book, which can be found primarily but not exclusively in Chapter One, is the carelessness with which sources are treated. In numerous instances, works are mentioned in the text -- and at times even directly quoted -- yet are neither referenced in the text nor listed in the Bibliography (e.g., Denno, p. xv; Wells, pp. 6-7; Radalet [sic], p. 19; ABA, p. 21). In other instances, authors are cited in the text, yet have been left out of the Bibliography (e.g., Benavid, 1996, on p. 18; Bright, 1995, on p. 25; International Commission of Jurists, Human Rights Quarterly, 1997, on p. 25; Carelli, 1998, on p. 28). As with the data in individual state chapters, statistics and figures also appear in the text from time to time, wholly without reference to any source.

Moreover, a feature of the book that should have been developed in greater detail was an explanation of O'Shea's attempts at arranging meetings with death row prisoners (e.g., how she made contact, how she explained her research to the women, etc.), her frustration with the various prison authorities (e.g., was she ever offered any explanation for delayed or truncated visits, was she singled out for such treatment or was such behavior common with all death row visitors, etc.), and her actual encounters with these death-sentenced females (e.g., were the visits stilted, were the women ever reluctant to disclose certain events in their lives, etc.). Rather, she devoted only two paragraphs to these problems in the

Preface to the book (p. xviii). This material could have been written up profitably in a separate "methodology" section of the book, along with a discussion of O'Shea's data sources and data collection strategy. Additionally, including failures as well as successes in getting interviews would have been a valuable addition to the manuscript.<sup>2</sup>

More importantly, though, is the fact that there is no concluding chapter to the book. After Chapter 31 - "Virginia" - the book moves immediately to Appendices A through E, all of which appear without any source notes (Does all the information in the various Appendices come from the Death Penalty Information Center, U.S. Department of Justice, various printed historical sources, or an ABC News Special Report titled "Women on Death Row"?<sup>3</sup>). A number of issues could have been addressed by the author in a final chapter. For instance, the author might have used a final chapter to discuss more thoroughly an important issue she raised in the Preface: "To fully understand the history of women in our criminal justice system, we need to look at women who have been given the death penalty and at the circumstances surrounding their sentencing and deaths" (p. xii). Also, O'Shea never tells us why we should care that women are sentenced to death in contemporary society. After all, it is a criminal justice event that occurs infrequently.<sup>4</sup>

A final chapter also could have presented information on some of the current cases in which women are charged with a capital offense and where they are located. Are there any federal cases in which women have been charged with a capital crime, now that the Antiterrorism and Effective Death Penalty Act of 1996<sup>5</sup> expanded its reach? Why do some states send women to death row, while others apparently do not?<sup>6</sup> What are the policy implications raised by this book, if any, and how might they be confronted? What direction should research on women and the death penalty take in the future? Finally, will additional research help the plight of women on death row? This is one of the book's more serious shortcomings - it lacks any sense of direction. Rather, it just ends, abruptly.

At base, O'Shea's attempt to explore each jurisdiction's execution history, and the women who await being killed by the state, is an ambitious one. It is realized, in part, due only to the brevity of the treatment she affords readers in the book. In that regard, this book has relatively little utility as a criminal justice or legal text. While the general subject matter, or even selected portions of the text (e.g., some of the more ample "biographies" of women currently on American death rows), are valuable for stimulating discussion in the classroom, on the whole this book is not recommend as "required reading" for most classes.

Instead, Women and the Death Penalty in the United States, 1900-1998 might best be considered as a point of departure for a more thorough and scholarly research undertaking. In short, it might be used safely as a reference, of sorts, for inspiring further

research on women and the death penalty. Of course, it could be useful in select courses, like "Women and Crime," yet it must be employed carefully in light of the shortcomings noted above. The book may be most useful, though, to the lay reader who wants to know more about capital punishment in America. The personal stories and state historical overviews are both interesting and easily readable, and, as such, may actually help O'Shea realize the "human face" she longs to produce for women on death row. Had some of the shortcomings noted above been addressed, and had a copy editor been more attentive, this book would have provided a much greater contribution to the field. A revised edition would benefit from these suggestions.

Deathquest, on the other hand, strives to be a textbook (i.e., according to The American Heritage Dictionary of the English Language [New College Edition, 1980: p. 1332], "[a] book used as a standard work for the formal study of a particular subject"). Bohm is careful, though, to warn readers of any potential bias in his text when he writes in the Introduction: "I believe it only fair to admit that I am an opponent of the death penalty.... 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" (p. xiv).

The initial four chapters to Deathquest can best be described as fairly straightforward reportage on the history and jurisprudence of the death penalty in the United States. Chapter One presents a history of the death penalty from colonial times up until 1972 when the Supreme Court declared in Furman v. Georgia that the death penalty was unconstitutional as then administered in the United States. Chapter Two organizes and examines Supreme Court rulings from the 19th Century (and later) challenges to the method of execution (e.g., Wilkerson v. Utah; In re Kemmler; Louisiana ex rel. Francis v. Resweber) up through Furman, the Gregg-cases which re-authorized capital punishment in 1976 (e.g., Gregg v. Georgia; Jurek v. Texas; Proffitt v. Florida), and finally the later cases in which the Court attempted to "fine tune" the administration of the death penalty (e.g., McCleskey v. Kemp [race discrimination must be shown in individual cases]; Pulley v. Harris [no constitutional requirement for proportionality review of a death sentence]; Herrea v. Collins [actual innocence no "bar" to execution].)

Chapter Three focuses on the death penalty at the Federal level. This chapter includes a review of both U.S. Government and U.S. Military capital punishment laws, procedures, and a history of executions ("Neither jurisdiction has executed anyone under post-Furman statutes - yet, together, they have made many more crimes death-eligible than has any of the states" [p. 68]). The fourth chapter looks at the various ways in which the death penalty has been discharged throughout history (e.g., hanging, firing squad, electrocution, lethal gas, and lethal injection). Chapter Four also explores the evolving "cruel and unusual punishment" standard that has been

used to determine the constitutionality of the various methods of execution.

The next five chapters in Deathquest move the discussion into more contentious territory, presenting "arguments and counter-arguments employed by proponents and opponents of the death penalty" (p. xiv). Chapter Five confronts the issues "head on" by tackling the issue of general deterrence - one of the most argued points in the death penalty debate - even though it no longer is an important rationale among supporters of capital punishment (p. 84). The costs associated with having a death penalty, as well as the issue of incapacitation, is Bohm's focus in Chapter Six. He discusses the matter in a logical manner, pointing out that incapacitation can be accomplished by either executing convicted capital murderers or sentencing them to life without possibility of parole. After reviewing all of the extra costs associated with capital punishment, and the rationales underpinning these considerable expenses, Bohm muses "whether the death penalty is worth the extra cost" (p. 119).

Chapter Seven is concerned with miscarriages of justice in capital cases. Bohm exposes readers to research suggesting that not only are innocent people sent to death row, but some actually have been executed as well. Among the information presented are the various sources of failure - "errors prior to trial" (e.g., shoddy investigation by police; eyewitness misidentification and perjury by prosecution witnesses; guilty pleas by innocent defendants) and "errors at trial" (e.g., quality of legal representation at trial) - which can result in a wrongful conviction. This chapter further explores the issue of capital counsel and then briefly touches on the "Illusive Hope of Clemency" (p. 137).

Hard on the heels of the discussion about miscarriages of justice comes Chapter Eight which looks at arbitrariness and discrimination in the administration of the death penalty - the potentially fatal bacilli thought disposed of by the Court in Furman. Chapter Eight first explores the sundry sources of arbitrariness (e.g., post-Furman statutes that justify arbitrariness; jurors' misunderstanding or underestimating their sentencing obligations; Supreme Court rule changes; problems in determining murderous intent; availability/use of plea bargaining; the appellate courts), and then discusses several types of discrimination (e.g., social class, gender, age, race) implicated in the administration of capital punishment. Chapter Nine examines "retribution," which "appears to be the primary basis of support for the death penalty in the United States" (p. 169), and "religion," where "a majority of the people in the United States who profess a religious belief...support capital punishment" (p. 177).

The final chapter in Deathquest offers a review of public opinion toward capital punishment, including a section on "why American death penalty opinion is important" (p. 187). Chapter Ten begins with a look at the history of death penalty opinion in America. The author next explores current death penalty opinion polling, with special emphasis on empirical research

designed to test the "Marshall Hypotheses" (i.e., that the American populous knows little about capital punishment and its application in the United States, and that support for the ultimate penalty would plummet given an informed and knowledgeable public), which arose from the opinion written by Justice Thurgood Marshall in Furman. Bohm concludes Chapter Ten with a brief look at the future of death penalty opinion in America.

Deathquest is not a "casebook," where lengthy excerpts from actual court cases are printed for readers. Nor is it a one-sided examination with an intentional bias or a covert agenda. Rather, it is a helpful, scholarly examination of the history, issues, research, and conduct of capital punishment in America. Moreover, from the outset, Bohm provides a common foundation for reading and logically discussing the information he subsequently presents. For example, in the chapter on deterrence, Bohm sets out the integral terms ("general," "specific," and "special" deterrence) and provides definitions for each. In most other instances, he also takes studious care to clarify and define the terms he uses in the book (e.g., "super due process" p. 26 & p.109; "brutalizing effect" p. 94; "statistical significance" and "sampling error" p. 98, n. 15; "incapacitation" p. 103; "innocence" pp. 125-126; "arbitrariness" and "discrimination" p. 143; etc.).

Deathquest is well-organized conceptually, and is a thoroughly instructive and brilliantly written text in which Bohm has done a splendid job of footnoting and referencing his research materials. Additionally, questions at the end of each chapter offer a guide for informed discussion, papers, and/or further research. Deathquest is made for the classroom, or any other instructive forum, and it provides valuable information for students as well as their instructors. On the whole, the book is balanced. For example, Bohm offers criticisms of research that shows the death penalty has no deterrent effect. He also is careful to include both sides of the various issues he confronts in the book. After reading Deathquest, one can fairly conclude that Bohm attains his goal of presenting a balanced, scholarly textbook on the practice of capital punishment in America.

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#### Endnotes

<sup>1</sup> The use of the word "state" to describe the various chapters is a bit inaccurate because they include the Federal jurisdiction as well.

<sup>2</sup> In the Preface, O'Shea notes that: "...lawyers who represent women on death row often caution them against speaking to anyone, lest they jeopardize their appeals. In writing this book I had several experiences with such lawyers who threatened me with everything from subpoenas to jail" (p. xvii). This type of information would have been an invaluable addition to the book in a separate chapter on the methodology.

<sup>3</sup> This report can be found at: [http://abcnews.go.com/sections/us/deathrow/deathrow\\_women.html](http://abcnews.go.com/sections/us/deathrow/deathrow_women.html).

<sup>4</sup> According to Victor L. Streib, an authority on women and the death penalty: "Women account for about one in eight (13%) murder arrests; ...only one in fifty-two (1.9%) death sentences imposed at the trial level;

...only one in seventy-seven (1.3%) persons presently on death row; and ...only three of 540 (0.6%) persons actually executed in this modern era. In sum, women are unlikely to be arrested for murder, extremely unlikely to be sentenced to death, and almost never executed" (1999).

<sup>5</sup> Pub.L. 104-32, Tit. IV-B, § 413(f), 110 Stat. 1269.

<sup>6</sup> States that currently have a death penalty, but are excluded from the text, are: Colorado, Kansas, Montana, Nebraska, New Hampshire, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Because O'Shea includes "[o]nly states that gave women the death penalty" in her book, it must be presumed that the 11 states noted here have not sentenced any women to death, at least since 1900 (p. xii). Whether this is an accurate reflection of the capital punishment traditions in these states is an interesting question, and, if it is true, why has the death penalty been administered in such a singular fashion?