

Stuart Banner:
The Death Penalty: An American History

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The death penalty arouses our passions as does few other issues. Some view taking another person's life as just and reasonable punishment while others see it as an inhumane and barbaric act. But the intensity of feeling that capital punishment provokes often obscures its long and varied history in this country.

Now, for the first time, we have a comprehensive history of the death penalty in the United States. Law professor Stuart Banner tells the story of how, over four centuries, dramatic changes have taken place in the ways capital punishment has been administered and experienced. In the seventeenth and eighteenth centuries, the penalty was standard for a laundry list of crimes--from adultery to murder, from arson to stealing horses. Hangings were public events, staged before audiences numbering in the thousands, attended by women and men, young and old, black and white alike. Early on, the gruesome spectacle had explicitly religious purposes--an event replete with sermons, confessions, and last minute penitence--to promote the salvation of both the condemned and the crowd. Through the nineteenth century, the execution became desacralized, increasingly secular and private, in response to changing mores. In the twentieth and twenty-first centuries, ironically, as it has become a quiet, sanitary, technological procedure, the death penalty is as divisive as ever.

By recreating what it was like to be the condemned, the executioner, and the spectator, Banner moves beyond the debates, to give us an unprecedented understanding of capital punishment's many meanings. As nearly four thousand inmates are now on death row, and almost one hundred are currently being executed each year, the furious debate is unlikely to diminish. The Death Penalty is invaluable in understanding the American way of the ultimate punishment.

Review:

A Very Popular Penalty

By Edmund S. Morgan, Marie Morgan
In The New York Review of Books, April 10, 2003

Not all Americans approve of the death penalty, but apparently most of them do. Prosecuting attorneys, state and federal, score points by showing their zeal for it, as they did when it was announced that the 2 alleged snipers who terrorized the Washington area John Allen Muhammad and John Lee Malvo had been apprehended.

In the tussle for jurisdiction that followed between Virginia and Maryland, a Justice Department official assured the public that getting the death penalty would be "a major factor in deciding where to hold the trial." When a Maryland prosecutor was the 1st to file charges, Virginians asserted their claim for jurisdiction on the ground that Maryland did not execute minors, the suspect Malvo being only 17. In Virginia, by contrast, Muhammad and Malvo "would both be eligible for the death penalty."

Moreover, while Maryland had conducted a mere three executions since 1976, Virginia could boast of eighty-seven. Maryland countered by sending agents as far as Jamaica to turn up evidence that Malvo was actually 18, in which case "Maryland could seek the death penalty against him as well." The United States Department of Justice got into the act by proposing to try the case as a violation of a federal statute against extortion, but relinquished control in favor of Virginia where, John Ashcroft was pleased to say, "the likelihood of obtaining death sentences was greatest."

If anyone has ever deserved to die for his crimes, Muhammad and Malvo do. But in the words of Clint Eastwood as he shot Gene Hackman to death in *Unforgiven*, "deserve's got nuthin' to do with it." Politics and culture have everything to do with it. And as Stuart Banner points out in this remarkable book, support for capital punishment has become an identifying tag for zeal against criminals. To oppose executing murderers and other hard-core felons is to be soft on crime.

That sentiment has not been checked by the many recent instances where credible new confessions and DNA testing have proved that persons already sentenced to death were innocent of the crimes for which they were convicted.

In Banner's careful assessment of various polls it is apparent "that a large majority of Americans still supported capital punishment even on the assumption that a tenth of those condemned had committed no crime." The scramble of state prosecutors for jurisdiction in the sniper case was a race to scoop the credit for general toughness on crime that death sentences would confer. Toughness on crime wins votes in a political system where prosecutors and judges, not to mention senators, congressmen, governors, and presidents, have to run for office. As the presidential primaries approach, Democratic aspirants hasten to assure the public that they, too, believe in killing killers, as if presidents of the United States could play any significant role in the outcomes of state criminal proceedings.

It was not always so, as Banner demonstrates. In the 19th and early 20th centuries Americans led the way against capital punishment. Before the Civil War 3 states had abolished it. By 1917 12 more had done so. Between 1968 and 1978 there was not a single execution in the United States. By then European countries were catching up. At the end of the 20th century the death penalty was gone in the United Kingdom and the countries of Western Europe, as well as Canada, Australia, and New Zealand. Of the major democratic nations Japan alone has retained capital punishment.

(And Japan carries out death sentences in an atmosphere of utmost secrecy, with the intention of ruthlessly shaming those executed, and without any pretense of consideration for the dignity of those under sentence or their families.)

Against this background of unanimous Western European abolition, something else has happened in the United States since 1976. Capital punishment is the law in 38 states. There were 98 executions in 1999. By October 1, 2000, there were 3,703 residents on death rows throughout the United States. The numbers went down a little in 2001 and probably in 2002, but polls still showed an overwhelming majority in favor of capital punishment. The

world's greatest democracy was suddenly left in the company of Japan and of autocratic regimes that employ the penalty to eliminate opposition.

How we arrived at this position is a long story, full of ironies that Banner narrates with extraordinary objectivity and insight. Not the least of the ironies is the loss of community values that accompanied the decline of the death penalty before 1978. Banner begins with the 17th century, when hanging was the standard mode of execution in the North American colonies.

Hangings were solemn public convocations, attended by hundreds and even thousands. They held the fascination and excitement that any kind of killing holds for the living. But we cannot conclude that these were occasions for the bloody-minded and the voyeuristic to slake their appetites. Public executions were ceremonies designed to achieve far more than the demise of the victim.

Trial, sentencing, and execution followed the apprehension of the criminal in rapid succession, a matter of days or weeks, before public memory of the crime could fade. The ritual on the day of the hanging began with a trip through the streets from the jailhouse to the gallows.

Stouthearted or ornery felons who had made up their minds to "die game" might dress in their finest (or don rags to cheat the hangman of their garments), comporting themselves with dignity or chippiness according to their sense of the occasion. The gallows would be erected for the event as near as possible to the scene of the crime, in an open space large enough to hold a crowd of spectators from all ranks in the community. A minister would deliver a sermon, and the condemned if so inclined would make a dying statement, repenting his sins, or protesting his innocence, or defying his captors and calling down maledictions on the spectators.

A thriving literary genre, the execution sermon, served to memorialize these events by depicting sinners brought to repentance or monsters of depravity persisting in their evil courses to the very moment of reckoning. The purpose of the public assembly and the public discourse was not only to frighten potential delinquents but to purify the community by testifying to the standards that held it together, restoring its order by eliminating violators in a fashion that expressed abhorrence of their deeds and the certainty of swift retribution, on earth and in the life to come.

Colonial justice nevertheless made considerable allowance for mitigating circumstances, good character, youth, and other factors surrounding a criminal's act. In the absence of appellate courts, executive clemency, now very rare in American criminal justice, was regularly used to rescue from the gallows men and women whom harsh laws and zealous judges placed there.

When Angelica Barnett, a free black woman, was convicted of killing the white man who had attempted to whip her, a majority of the Richmond, Virginia, bar petitioned on her behalf. She was duly pardoned.

The affirmation of community solidarity gave to public hangings and merciful pardons a rationale that began to disappear in the aftermath of the American Revolution. The architects of the new republican government took pride in eliminating the death penalty for the multitude of lesser property crimes to which English law had attached it. In 1778, for example, Thomas Jefferson drafted his "Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital," with a preamble that brought together the key arguments from Enlightenment thought concerning capital punishment, most of them utilitarian. Many of the new states reserved it for murder. The publication of the Italian jurist Cesare Beccaria's treatise *On Crimes and Punishments* in 1764, widely distributed in its English translation, offered a rationale for abolition, arguing that life imprisonment was a greater deterrent to crime than death. Reformers pressed the argument and went further: a few ardent republicans, like Benjamin Rush, went on to advocate its total abolition.

"It is in my opinion," Rush said, "murder to punish murder by death."

None of the new state governments agreed: they all kept the death penalty for murder, and many kept it for a number of other major offenses, such as rape, arson, and burglary. Southern states enlarged the number for crimes by slaves as the ultimate sanction for maintaining their total subjection. Over decades of debate, no clear-cut consensus emerged on either side. Retentionists were more apt to be found among orthodox Christians than among Quakers or Unitarians and Universalists, who were often in the front rank of death penalty abolitionists. This latter group, on the other hand, like so many American enthusiasts of social renovation, diffused their intellectual and organizational energies to oppose the death penalty as only one evil among many, generally giving priority to the eradication of slavery.

But at least in the North, the retributive function of all punishments began to give way to a utilitarian view of punishment as a means of rehabilitating criminals. The building of prisons made it possible to proportion the length of terms to the gravity of different crimes and to treat punishment as a mode of reform. Hence the name "penitentiary" for the place where criminals repented their deeds and came out cured of their vicious propensities. The penitentiary isolated criminals from the society they had offended. In the 19th century, increasingly, the irredeemable felons for whom capital punishment was retained received execution out of public view in the enclosed prison yard, where the only witnesses were officials and a few chosen notables. Refinements of cruelty, such as exhibiting executed corpses ("hanging in chains"), were also deemed unsuitable.

These changes were prompted not by any opposition to capital punishment as such, but by changes in taste and sensibility that spared the genteel from contact with the jostling bottom feeders that any big public occasion attracts. A growing aversion to the physical realities of death and dying doubtless contributed to this shrinking from the shadow of the gallows tree. A crowd still foregathered outside the prison, but simply to hear officials announce that the act was consummated. Newspapers and mass-circulation tracts reported it in detail. But, as Banner sees it, executions lost much of their symbolic meaning. The community no longer gathered to make its statement of condemnation. There was no more ritual to reinforce communal norms proscribing crime, no more ceremony at which to display one's participation in a collective moral order.

This sequestering of executions increased still further with the advent of the electric chair. Executions moved from the prison yard to a small death chamber housing the lethal instrument, a device so costly in itself that one was made to serve a whole state. Spectators were reduced to a handful, those required to be present by reason of office or by invitation. Where executions had once been visibly an act of the community, performed by the local sheriff, they were now an act of the state government. When the chair (and the gas chamber) were supplanted by lethal injection in the 1980s, though the act could presumably have been performed anywhere, executions continued to be held in a single prison room while a handful of witnesses, sometimes including relatives of the victim, looked on from an adjoining room.

Placing executions out of sight affected the conditions of public debate in several ways. It was now easy to favor the death penalty as a general policy without considering particular circumstances or the character and claims of individual wrongdoers. On the other hand, retribution for violating the social order was overshadowed by vengeance for a private injury. Barred from the execution itself, the public shifted their attention to the trial and sentencing, where judge and jury decided between imprisonment and death, in a milieu where cut-and-thrust exchanges between opposing counsel, abstruse expert witness testimony, and scrutiny of the accused's demeanor marked the dramaturgy. For the small numbers who could fit inside a courtroom, the procedures offered a faint echo of the rituals of a hanging, but the larger public, Banner notes, participated now as a "reading public, not an actual assembly of people." The televising of notable trials and the emergence of Court TV may have reinforced the spectator aspect of criminal trials, but without conferring any sense of participating in a uniting ritual.

The shift from public participation in executions was accompanied by a new attention to appellate courts, where sentences could be challenged. By the 2nd half of the 20th century, there was an enormous increase in such challenges, with the result that the number of people under sentence on "death rows" came to exceed the annual number of executions. Appeals to higher courts eventually meant appeals to the Supreme Court of the United States. Few federal crimes carried a death sentence, and Northern states generally applied the penalty only to murder. In 1920 only 8 retained it at all, though majorities on either side were narrow, and several states had abolished and then restored the penalty. There was no such vacillation in the South, where different states continued to assign it to rape, robbery, arson, and burglary as well as murder. None abolished it.

It goes without saying that race affected trials, sentencing, and executions in the South more than in the North. The number of blacks who suffered the death penalty (quite apart from the epidemic of lynchings in the early twentieth century) far exceeded their proportion in the population. Sooner or later the disparity was bound to become a national issue, in cases brought to the Supreme Court. But the manner of its arriving there and the Court's handling of it followed a tortuous legal path that Banner traces in all its complexity.

In movements for abolition of the death penalty before the 20th century no one had argued that it violated the Eighth Amendment's prohibition of cruel and unusual punishments. Executions had never been unusual, and the manner of performing them had become less and less cruel, as Banner demonstrates in a long chapter devoted to the changing technology of executions. The 1st attempts to challenge the constitutionality of the penalty charged that it violated constitutional guarantees of due process and equal protection. The disproportionate number of blacks convicted and sentenced to die gave the charge plausibility but failed to convince the Supreme

Court. It was in the wake of the civil rights movement of the 1950s and 1960s that lawyers for the Legal Defense Fund of the NAACP saw an opportunity to challenge the penalty itself as a violation of the Eighth Amendment.

Several developments made the challenge possible. In the 1960s a number of cases had established as law that sentences disproportionate to the offense were cruel and unusual. By this time too the Court had found that the 1st 10 amendments limited the states as well as the national government. The language of the Eighth Amendment "cruel and unusual" has invited differing interpretations over time. In a 1958 case, *Trop v. Dulles*, where the death penalty was not an issue, the Court explicitly stated that the amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." The Court had begun to take an active role in recognizing and promoting social change, as it did in 1954 with *Brown v. Board of Education*, and in standardizing criminal procedure, in *Miranda v. Arizona*. In 1963 Justice Arthur Goldberg circulated among his Supreme Court colleagues a controversial memorandum, researched and written by Alan Dershowitz, proposing that standards of decency had evolved to the point that the death penalty was proscribed by the Constitution as cruel and unusual punishment.

It took another 10 years of attempts and failures before the lawyers of the Legal Defense Fund were able to find a way of bringing capital punishment before the Court under the Eighth Amendment. They finally succeeded in 1972, in *Furman v. Georgia*. The argument was actually procedural, stating that Furman had been sentenced by a jury that followed no rules in its capital decisions, resulting in random sentencing. "Randomness," Banner observes, "became in effect a code word for discrimination." Without any rules to prescribe their procedures, juries were sentencing more blacks to death than whites in similar cases. Having failed so often with equal protection arguments, lawyers for the Legal Defense Fund now built their case on the random character of sentencing: the absence of regular sentencing procedures was in itself a cruel and unusual punishment.

It was a tenuous line of reasoning, but it worked before a court where 2 of the justices, William J. Brennan and Thurgood Marshall (Goldberg having departed the Court in 1965), already believed that "evolving standards of decency" had made the death penalty itself unconstitutional. 3 more justices, William O. Douglas, Byron White, and Potter Stewart, were persuaded, in different ways, that the administration of the death penalty was capricious. In a 5-to-4 decision the Supreme Court in effect outlawed capital punishment throughout the United States, for no state had provisions for jury sentencing that would satisfy the Court's requirements. Neither did the United States in its kidnapping statute.

For 4 years capital punishment was gone. But during those years 35 states and the federal government enacted new legislation to make the imposition of death sentences follow procedures that would withstand judicial scrutiny. Standards of decency had not evolved in the way that Brennan and Marshall supposed. Public opinion polls in 1976 showed that proponents of the death penalty now outnumbered opponents 65 to 28 %. In that year, in *Gregg v. Georgia* the Court restored the penalty in the same backhanded way that it had abolished it. Georgia and the other 34 states had enacted new legislation, prescribing guidelines for juries in capital cases, so as to conform to the Eighth Amendment, as now interpreted.

The result has not been quite what the Court must have expected. In order to cover the various aggravating and mitigating circumstances of particular murders, the sentencing standards, though differing from state to state, now require a jury to choose between death and imprisonment by weighing such subjective factors as the accused's sanity, depravity, and evil impulses, and the degree of probability that he or she would do it again. In the post-*Gregg* regime, procedural changes have been carpentered into structures adequate to withstand constitutional challenge, but the room for politics and prejudice is as large as ever. The Court has shown no propensity to intervene again. Arguments against the penalty continue in particular cases on various procedural grounds, appealed from court to court and frequently reaching the Supreme Court, but arguments based on the Eighth Amendment no longer prevail.

Popular support for the death penalty is probably higher now than it was in 1976. Banner shows that it had already begun rising before then, chiefly because of its symbolic value as a surrogate for all violent crime. And its prevalence in United States law may be, as Banner suggests, the result of a sensitivity of legislatures and courts to public opinion, a sensitivity greater than is the case in most democracies.

Abolition in European democracies was frequently accomplished through courts and other governmental bodies not immediately dependent on popular election or popular opinion. It was abolished in England and France, for example, when popular opinion was unquestionably in favor of retaining it. Banner sticks to the facts and takes no sides, except as the facts themselves point to the failure of what Justice Blackmun has called "the death

penalty experiment." Banner leaves us with that failure and a change in popular opinion and belief as the only way left to correct it.

It is not an enviable position we are left in, nor is it any consolation that our democratic constitutional government has placed us there. Is there any issue of greater intrinsic importance than the right of the state to take human life? This would seem to be too grave a matter to be left out of any fundamental constitution of government, too grave to be within reach of fickle changes in public sentiment or expectation.

But that has never been quite the case. Banner chronicles popular movements for abolition of the penalty that have come and gone like other reform movements since the 1780s. A 20th-century crusade against it, supported by many mainstream churches, seemed to be gaining ground, at least in the North, until shortly before the 1970s. But in the states where the movement prevailed, as for example in Minnesota, North and South Dakota, and Kansas, the punishment was eliminated by ordinary legislation and usually by narrow majorities, just as narrow majorities defeated proposals for abolition in other states. Some states got rid of the penalty only to restore it later. Massachusetts abolished it in 1984; its present governor campaigned on a promise to restore it, but a poll of the legislators elected alongside him shows a majority against restoration.

A proposal to lodge abolition in any state's constitution would doubtless fail of the large majority usually required for constitutional amendments.

The problem is more complex in the United States than in most other countries. Almost all crimes involving the death penalty, murder included, are violations of state laws. The United States can assume jurisdiction only in a limited number of federal capital crimes and can intervene in state judicial proceedings only if a state's procedures violate the Constitution, as the Supreme Court determined in *Furman*. This division of functions is basic to American federalism. Equally basic to it is the commitment of foreign relations exclusively to the national government: individual states cannot make treaties or alliances, while any made by the national government become "the Supreme Law of the Land."

What, then, if a treaty enjoins actions that the Constitution, also "the Supreme Law of the Land," assigns to the separate states?

American diplomats have been sensitive to this contradiction from the beginning of the country and have generally been able to dodge it. The United States has made few treaties, and the states have seldom found a challenge to their powers in them. But the creation of the United Nations in the wake of the Second World War has led the United States to join with other nations in a number of resolutions, declarations, and conventions affirming and defining human rights that the signatories agree to respect and defend. One of the most important of these conventions is the International Covenant on Civil and Political Rights (ICCPR), drafted in 1966 and adopted as a treaty by 35 countries in 1976.

The United States did not ratify it until 1992 and in doing so reserved the right to impose capital punishment on anyone except a pregnant woman. The ICCPR had placed many limitations on the death penalty, and in 1989 adopted an "optional protocol" forbidding it entirely. The United States, of course, did not take that option.

Some 68 nations, not including the United States, have now signed treaties or conventions that recognize prohibition of the penalty as a part of international law. Anyone examining the history of these 68 nations will probably agree that few come to the court of world opinion with clean hands. Freedom from the death penalty was scarcely considered a human right anywhere before the 2nd half of the twentieth century. It has now become a stand-in for other freedoms, for fair trials, free elections, and other human rights that are regularly violated in most of the world most of the time. By agreeing to the abolition of the death penalty despotic regimes can claim an enlightenment that is conspicuously missing in their history or current practice.

Nevertheless, the persistence of capital punishment in the United States has placed it out of step with most of the countries that share its moral and cultural values and has weakened its position in the world as a bulwark of human rights. The founders of the country led the world in the protection of human rights, embodied in the state and national constitutions. In the 20th century Americans played a crucial role in overthrowing the totalitarian states that had destroyed human rights in Western Europe. But after the Second World War, in recasting the definitions of rights so as to outlaw capital punishment, Europe left the United States behind, tied as it was to the exclusive jurisdiction of the separate states in most criminal cases. Despite the reservations on capital punishment that the federal system has required it to attach to international agreements, the violation of the spirit of such agreements by its separate states has made the United States appear hypocritical to outsiders. In 1996 an international commission of jurists complained of American failure to recognize the "global standards" of decency that forbid the death penalty.

The United States need not heed world opinion. Despite occasional lapses, its record on human rights over the past century will bear comparison with that of any other country. But it cannot continue to ignore the failure of its judicial system that the Supreme Court was unable to correct in Furman and Gregg. In 1995 the State Department declared that it would not interfere with the "democratically expressed will of the American people" on the question. But there are fifty such democratically expressed wills of fifty peoples. The State Department not only will not but cannot interfere with any of them, and the Supreme Court has given up the attempt except in hearing narrowly defined procedural appeals from individuals contesting the right of states to execute them.

The number of such appeals now in process has produced a situation that offends any standard of decency, local or global. The population of death rows has increased roughly 3 times more rapidly than the number of executions. The number who die from "other causes" like disease exceeds the number executed. The number, dead or alive, who are proved innocent by later confessions and by DNA analysis keeps increasing. Those who end up in the death chamber get there after a protracted series of legal maneuvers that have little relation to the seriousness of their crimes.

And the way people reach it, varying from state to state, continues to be as random as it was before Furman. In 1997 a report of the American Bar Association found that "the efforts to forge a fair capital punishment jurisprudence have failed. Today, administration of the death penalty, far from being fair and consistent, is instead a haphazard maze of unfair practices with no internal consistency."

The logjams on death rows are the product of America's democratic brand of federalism. We give our state governments the powers of life and death but also require them to respect due process of law. It is obvious that something in the resulting judicial system is not working.

Due process is mocked by the failure to provide expert legal counsel to those who cannot themselves pay for it. As Scott Turow pointed out in a recent issue of *The New Yorker*, many of those on death row are there "essentially for the crime of having the wrong lawyers."

If there were a way to furnish everyone accused of murder with a skilled lawyer, the numbers on death row would certainly decline. The adversary system of justice works best where the contending parties are evenly matched. But whether the system can ever identify people who deserve to die has become increasingly doubtful since the restoration of the penalty in 1976. As Charles Black pointed out at the time, due process in capital cases scarcely deserves the name, for it leaves the fate of the defendant at the mercy of arbitrary decisions at every stage of his case. The outcome of a capital trial, even with the best lawyers available to the defendant, depends heavily on the initial prosecutor's decisions about what charges to bring, against whom, and on what plea bargains he chooses to offer. It depends on his eagerness for a conviction. It depends on how the jury chooses to interpret the contradictory standards the state now presents to it. It depends on procedural choices that have unexpected outcomes. After twenty years' experience of the capital cases reaching the Supreme Court in the wake of Gregg, Justice Blackmun arrived at the same conclusion as Black, that there was no way within the existing judicial system "to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor."

For the moment most of the public in most of the states apparently do not agree that the death penalty is administered unfairly. Or, as the polls suggest, they do not care. For those who do care, palliations of the injustice may still be sought in reforms of one kind or another.

But unless and until the penalty is abolished, the greatest relief must come from executive clemency. Because the appellate courts have been so active in hearing capital cases, the governors of states have hesitated to override judicial decisions with commutations or pardons. In earlier times governors did much through their power of pardon to counteract the ill effects of unwise legislation and unfair punishments.

Governor George Ryan of Illinois has now set an example for other governors to resume that prerogative, which has never been exercised without political risks. Ryan, a conservative Republican and former supporter of the death penalty, took the risks. In the year 2000 he declared a moratorium on executions, and just before leaving office, in January 2003, he emptied Illinois's death row by pardons and commutations of death sentences to imprisonment for 40 years or for life. He did it because the evidence was overwhelming that substantial numbers of those sentenced to die had been convicted on the basis of coerced confessions, uncorroborated testimony from jailhouse informants, or faulty physical evidence canceled out by DNA testing.

The response from Europe has been a chorus of praise, but from Illinois the loudest noise has come from outraged prosecutors and families of victims whose possible or probable murderers were turned out of death row. Instead of being accepted as a principled exercise of executive clemency, the governor's acts were characterized as irresponsible and even unintelligible. As one prosecutor bitterly complained on national television, the governor "is a pharmacist, not a lawyer."

Governor Ryan did the right thing: he spared the lives of innocent people at the cost of sparing the lives of guilty people. But what are we to think of a democracy that cannot avoid killing innocent citizens except by having an executive overturn the decisions of juries and judges in fulfillment of legislation enacted by regularly elected representatives?

In the long run executives cannot and should not make law. Neither should the courts. Only a change in public opinion expressed in state legislation can fix our "broken system" by abolishing the death penalty. Until that happens in all fifty states, "deserve" will not have much to do with whom we kill.

(source: Stuart Banner, review, NY Rev. of Books, by E. & M. Morgan)