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REVIEW OF EXECUTIONS IN AMERICA

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EXECUTIONS IN AMERICA. By *William J. Bowers*.
Lexington, Mass.: Lexington Books, D. C.
Heath and Company, 1974. Pp. xxviii, 489.
\$20.00.

To the serious student of capital punishment, *Executions In America* must rank as both a delight and disappointment. Prompted by the urgent need for more empirical research on the death penalty, Bowers offers this book as a repository of recent research and a stimulus for further investigations, his hope being that his efforts will affect pending death penalty legislation.¹

While this reader agrees with Bowers as to the need for more good empirical research on the capital punishment question, and the hope that policy makers will give proper attention to scientific investigations in deciding the fate of the death penalty, *Executions In America* falls short of the mark in a number of respects. But first, what of its strengths?

If for no other reason, the inclusion of the "Teeters-Zibulka Inventory of Executions Under State Authority, 1864-1967," which spans some 200 pages, makes this book well worth its price many times over.² Along similar lines, Bowers has further assisted those interested in the death penalty by including in this book an extensive 50 page bibliography on capital punishment compiled by Lyons (1972).³ This bibliography, which he has updated and reorganized along topical lines, provides, to this writer's knowledge, the most complete set of references available on capital punishment.

On the more negative side, much of Bowers' investigation suffers from some very serious theoretical and methodological shortcomings, especially his discussion and examination of the deterrence controversy over the death penalty. To illustrate, before empirically examining the merits of this argument, he spends a total of less than two pages discussing the deterrence thesis. Moreover, the discussion that he does present is quite distorted and misleading to the reader not otherwise familiar with this theoretical perspective. This shoddy presentation of deterrence theory is clearly surprising in light of the amount of attention this topic has received in the criminology

¹ It is of interest to note that at the latest count, 35 states have reinstated the death penalty in one form or another; over 500 persons are now on death row.

² Only the portion of the Teeters-Zibulka Inventory dealing with Alabama and Kentucky was in print prior to the Inventory's inclusion in the Bowers book.

³ An abridged version of D. Lyons' bibliography appeared earlier under the title, *Capital Punishment—A Selected Bibliography*, 8 CRIM. L. BULL. 783 (1972).

literature in recent years and the growing appreciation for the complexity of the deterrence issue.⁴ In addition, the lack of a systematic treatment of the deterrence argument and the many variables and propositions involved ill-equips the unfamiliar reader to fully understand and assess the significance of Bowers' research and that of others he presents. (It might be further added that this type of selective presentation of the deterrence thesis may result in Bowers' research being dismissed as biased, thus doing a grave disservice to his own personal concerns about the abolition of capital punishment.)

On the question of the deterrent effect of the death penalty, Bowers' analysis and the study he presents by Professor Fattah on the effects of abolition in Canada are far from convincing. Like his presentation of the deterrence doctrine, Bowers' and Fattah's analyses suffer from many serious shortcomings. Utilizing Sellin's classic approach of comparing groupings of contiguous death penalty and abolition states, Bowers shows homicide rates to be generally unrelated to the *statutory provision* for executions. Similarly, he reports no unusual increase in homicides after the abolition of capital punishment. In addition, by examining the periods prior to and following the *Furman* decision, he concludes that the reduced use of the death penalty in the 1960's and its abolition in 1972 cannot be considered responsible for the increase in homicides in recent years. Fattah draws the same conclusion from examining pre- and post-moratorium and abolition years in Canada.

Unfortunately, in examining the deterrence question, neither Bowers nor Fattah would seem to have profited from a number of recent discussions and critiques of this line of research.⁵ To illustrate, in

⁴See, e.g., H. BEDAU, *THE DEATH PENALTY IN AMERICA* (rev. ed. 1967); J. WILSON, *THINKING ABOUT CRIME* (1975); F. ZIMRING, *PERSPECTIVES ON DETERRENCE* (1971); F. ZIMRING & G. HAWKINS, *DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL* (1973); Andenaes, *General Prevention Revisited: Research and Policy Implications*, 66 J. CRIM. L. & C. 338 (1975); Bailey, *Murder and the Death Penalty*, 65 J. CRIM. L. & C. 416 (1974); Ball, *The Deterrence Concept in Criminology and Law*, 46 J. CRIM. L.C. & P.S. 347 (1955); Bedau, *Deterrence and the Death Penalty: A Reconsideration*, 61 J. CRIM. L.C. & P.S. 539 (1971); Gibbs, *Crime, Punishment and Deterrence*, 48 SOUTHEAST SOC. SCI. Q. 515 (1968); van den Haag, *On Deterrence and the Death Penalty*, 60 J. CRIM. L.C. & P.S. 141 (1969); Tittle & Logan, *Sanctions and Deviance: Evidence and Remaining Questions*, 7 LAW & SOC. REV. 371 (1973).

⁵WILSON, *supra* note 4; ZIMRING, *supra* note 4; ZIMRING & HAWKINS, *supra* note 4; Ball, *supra* note 4; Bedau, *supra* note 4; Gibbs, *supra* note 4; Jeffery, *supra* note 4; van den Haag, *supra* note 4; Tittle & Logan, *supra* note 4.

neither study is systematic attention given the possible deterrent effect of the certainty of the death penalty in retentionist jurisdictions. Rather, jurisdictions are simply designated as either retentionist or abolitionist, with no attention given Sellin's and others' arguments that we need to examine the effect of the certainty of the death penalty on capital offenses, and not simply its presence or absence in the statutes.⁶ Accordingly, both investigations could have been much improved by examining the relationship between jurisdictions' execution rates and homicide rates longitudinally, as well as cross-sectionally as Schuessler did in an investigation some 25 years ago.⁷

Second, although some have called into question the typical practice of simply comparing contiguous abolition and retentionist states because they are not similar enough, Bowers makes no mention of this objection nor does he try to match otherwise similar death penalty and abolition states in examining homicide rates.⁸ Such an analysis could have been conducted very easily through the use of various socioeconomic and demographic data compiled by the Bureau of the Census and other federal agencies.

Third, and along different lines, while deterrence theory emphasizes the importance of the celerity of punishment, no attention is given this variable in either Bowers' or Fattah's analysis. Nor does either investigator discuss, or even speculate about, the deterrent effect of the publicity (nonpublicity) surrounding death sentences and executions. Unfortunately, this variable too is excluded from both analyses, thus leaving another important question unaddressed about the deterrent effect of the death penalty.

When one adds to the above list a host of additional theoretical and methodological considerations recently raised in the deterrence literature, the

⁶To cite Sellin, we need to focus upon executions, not simply statutes, for "were it present in the law alone it would be completely robbed of its threat. . . . We should therefore examine the effect of executions on murder rates." T. SELLIN, *THE DEATH PENALTY* (1959).

⁷Schuessler, *The Deterrent Influence of the Death Penalty*, 284 ANNALS 54 (1952).

⁸As van den Haag argues, in many cases contiguous abolition and death penalty states are "not similar enough" to draw meaningful conclusions. "Homicide rates do not depend exclusively on penalties any more than other crime rates. A number of conditions which influence the propensity to crime, demographic, economic, or general social . . . may influence homicide rates." Accordingly, whatever variation is found in comparing abolition and retentionist states cannot be attributed to variations in penalties, unless the jurisdictions are otherwise comparable. van den Haag, *supra* note 4, at 146.

conclusion becomes obvious.⁹ We have only begun systematically and meaningfully to explore the deterrent effect of legal sanctions, the death penalty included. As C. R. Jeffery concludes, the investigations to date have simply not allowed deterrence theory to show its stuff, one way or the other.¹⁰ As distasteful as this conclusion may seem to those deeply concerned about the death penalty, to draw any other conclusion would be misleading and might discourage further investigations of this important issue.

In conclusion, while Bowers' *Executions In America* has provided this writer with a number of insights and raised many interesting questions to be explored, I found his investigation (with the exception of his analysis of racism and executions) a disappointment. The book is not as significant a contribution to the death penalty literature as it might have been had Bowers been more abreast of the theoretical and methodological issues and debates in the professional literature.

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