

**ABOLITION OF CAPITAL PUNISHMENT IN NEW JERSEY AND NEW  
MEXICO: THE ROLE OF RELIGION AND THE LAW**

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## Abstract

New Jersey became the first state to abolish capital punishment in nearly 45 years. Less than two years later New Mexico did the same. Prior to that the states had executed many prisoners and thus abolition represented an extreme change. We primarily used secondary data such as legislative debate to shed light on this legislation. The irony is that the 1973 U.S. Supreme Court *Roe vs. Wade* decision set the groundwork for this legislation. The Roman Catholic Church has since that decision become adamantly opposed to executions as contrary to the sanctity of human life. The significance of a coalition of Roman Catholics and a liberal, pro-choice governor spearheaded this legislation in New Jersey as did Roman Catholics and a liberal protestant legislator in New Mexico. The New Jersey State Supreme Court and the courts in New Mexico long history of opposition to capital punishment provided the environment for this decision.

## **Introduction**

During the 1990s there were high levels of legislative and public support for capital punishment (Galliher et. al. 2002). No American states had abolished the death penalty since the mid-sixties and two abolition states had eventually passed laws allowing executions. After nearly 20 years of debate New York (Galliher and Galliher 2002) and Kansas (Galliher and Galliher 1997) finally passed this legislation. These bills passed in spite of opposition from abolitionist governors. But within a few more years, and prior to any actual executions, the supreme courts in both of these states ruled that these statutes violated the state constitutional rights of those convicted. To date no one has been executed in either state. New Jersey was the first state in over 40 years to abolish capital punishment [NJ Rev § Stat 2C:11-3 (2007)]. Just over a year after New Jersey's historic change New Mexico also abolished its death penalty law [NMSA 1978, §§ 31-20A-1 to - 6 (1979, as amended through 2009)]. We seek to account for these two recent legislative changes.

## **Public Opinion, Legislative Actions and Judicial Decisions**

Popular opinion does not account for these developments. Just prior to abolition in New Jersey it was reported that approximately 60 percent of citizens in the state supported the death penalty "in principle" (New Jersey Death Penalty Study Commission 2007: 41). And 66 percent of New Mexico voters supported the death penalty in 2002 (Terrell 2002). Minus attitudes, among the conditions that make contemporary abolition possible, the proportion of Roman Catholics in a state initially seemed worth considering. The proportion of Roman Catholics in New Jersey is 42% and the state is ranked 2nd in the

nation behind Rhode Island just ahead of Massachusetts, Connecticut, New York and California. New Mexico is ranked 7th in the proportion of Roman Catholics with 33% (Kosmin and Keysar 2009). These patterns seemed promising.

In the 1960s while most Protestant denominations were divided and mute on the issue, the Roman Catholic Church was an outspoken proponent of executions arguing that “the state may punish by death persons guilty of serious crimes against a just social order” (United Press International 1961; Galliher et al. 2002). Bedau recalled: “When I was in New Jersey on the Princeton faculty in the late 1950s local Catholics were solidly for the death penalty” (H. Bedau, pers. comm.). And Sister Helen Prejean remembered that “beginning in 1974 . . . the U.S. Conference of Catholic Bishops had begun to express ‘pastoral concerns’ about the death penalty” while prior to that time legislators, prosecutors judges and priests used church teaching to legitimate their pro-death penalty stance” (Prejean 2005: 116).

In the 1970s the U.S. Supreme Court provided an historical event that, combined with a dominant Roman Catholic community, created a window of opportunity for death penalty abolition. After *Roe v Wade* in 1973 the Roman Catholic Church decided to oppose capital punishment for the sake of consistency (*Roe v Wade*). According to numerous statements since, the Church has loftily proclaimed that being pro life is a “seamless garment” and thus the Church became an unwavering opponent of both capital punishment and abortion (Byrnes 1991; Kelly 1999). In 1984 Joseph Cardinal Bernardin coined this term in an address on the “consistent ethic of life” where he emphasized that “a concern for promoting a public attitude of respect for life has led the bishops of the United States to oppose the exercise” of capital punishment (Bernardin 1984). Justice

William Brennan, the U.S. Supreme Court's only Roman Catholic, opposed capital punishment but had supported *Roe v Wade* (Megivern 1997). Recent research found divisions between Roman Catholic clergy and parishioners on the issue of capital punishment (Bjarnason and Welch 2004), with clergy less supportive of the death penalty than lay people which explains support for capital punishment in the general population.

Indeed, punitive legislative action in New England seems consistent with public opinion. The New York legislature passed death penalty bills annually for nearly two decades, finally avoiding a veto in 1994. The Rhode Island legislature passed a death penalty law in 1973 and the Massachusetts legislature passed such legislation in 1975 and 1983. In Massachusetts polls routinely show majority support for capital punishment (Galliher et al. 2002). It was also recently noted that there were no significant differences in opposition to capital punishment among those in the Northeast compared to other regions of the nation nor were there differences among Protestants and Roman Catholics. The majority of all these groups supported the death penalty (Maguire and Pastore, eds. 2002).

And New Jersey has historically been no stranger to executions having put to death 361 prisoners between the 17<sup>th</sup> century and 1963 (Death Penalty Information Center 2009a). Hugo Adam Bedau, dean of death penalty researchers, found that between 1907 and 1960 alone the state executed 68 prisoners, still showing no aversion to capital punishment (Bedau 1964). At the time of abolition New Jersey had 9 prisoners on its death row but had executed no one since 1976. New Mexico had executed 73 people prior to 1976 and one in 2001. At the time of abolition New Mexico had two prisoners on its death row (Death Penalty Information Center 2009b).

Yet *Roe v. Wade* seems to have served as an important judicial event in heavily Roman Catholic states. Witness the following:

1) The Rhode Island State Supreme Court ruled in 1979 that the state's death penalty law passed in 1973 was unconstitutional (*State v Robert Cline; State v William H. Anthony*).

In 1980, 63.7% of Rhode Islanders identified as Catholic, making this state the most heavily Catholic in the nation (Association of Religious Data Archives n.d. a).

2) In Massachusetts the Supreme Judicial Court ruled in 1975, 1980 and 1984 that the state's death penalty law was unconstitutional (*Commonwealth v Robert E. O'Neal; District Attorney for the Suffolk District v James Watson and others; Commonwealth v Abimael Colon-Cruz*).

In 1980, 53% of Massachusetts residents identified themselves as Catholic making this state the second most heavily Catholic in the nation (Association of Religious Data Archives n.d. a).

3) The New York State Supreme Court in 2004 determined that its 1994 death penalty law was unconstitutional, this after 19 years of death penalty legislative debate and annual vetoes by Roman Catholic governors Hugh Carey and Mario Cuomo (*New York v Stephen S. LaVelle; Galliher and Galliher 2002*). In 2008, 37% of New Yorkers identified themselves as Catholic making this state (along with California) the 5<sup>th</sup> most heavily Catholic in the nation. (Kosmin and Keysar 2009).

4) In New Hampshire in 2000 the state legislature abolished capital punishment only to have the governor veto the bill. Even so the courts have sent only one person to the state's death row (Death Penalty Information Center 2009b). In 2000, 34.9% of New Hampshire residents identified themselves as Catholic making this state the 7<sup>th</sup> most heavily Catholic in the nation (Association of Religious Data Archives n.d. b). So we are

left with the conundrum of increasingly liberal judicial decisions, as opposed to punitive public opinion and mixed legislative action.

### **Data Sources**

The information collected for this research was primarily from existing records. We used records of legislative public hearings and floor debates, records of governors' vetoes, and court decisions. These state records were supplemented by newspaper coverage of these events. In addition, Lorry Post, the Executive Director of Murder Victims for Reconciliation provided an inside look at the abolition process in New Jersey that he was involved in for many years as did Viki Elkey who is the director of the New Mexico Coalition to Repeal the Death Penalty Coalition and Allen Sanchez, Director of the New Mexico Conference of Roman Catholic Bishops. New Mexico Representative Gail Chasey gave us a copy of the final report of the New Mexico Coalition.

### **Legal Culture in New Jersey and New Mexico**

The process of reinstating capital punishment in New Jersey after *Gregg vs. Georgia* in 1976 was delayed until 1982 by Governor Brendan Byrne's two vetoes in 1978 (Waldron 1978; O'Hern and Waugh 1980). Governor Byrne later argued that the death penalty was arbitrarily imposed. "I spent almost nine years as the prosecutor of Essex County. It was me who decided which cases should be exposed to the death penalty and that's shocking. . . . I remember one case where I withdrew a recommendation for the death penalty because the attorney for the defendant was having a nervous breakdown" (New Jerseyans for Alternatives to the Death Penalty 2000).

The New Jersey Supreme Court decisions since reinstatement show that the court upheld a death sentence after blocking the first 28 (Sullivan 1991). This first affirmative decision involved a defendant who was a wealthy white man (*New Jersey v Robert O. Marshall*). A further review of all the New Jersey Supreme Court death penalty decisions since 1982 reveals that in 44 of 60 capital convictions the court failed to uphold the death sentence. During the New Jersey house abolition debate Rep. Gordon Johnson argued: “Our law has been on the books since 1982. In that time there has not been a single execution under the law.” New Jersey’s last execution in fact was on January 22<sup>nd</sup>, 1963, nearly 45 years ago. A prosecutor elaborated: “Since the enactment of the death penalty in 1982 there have been 228 capital murder trials. Juries returned a death sentence in 60 and we have only 9 defendants on death row” (Assembly Law and Public Safety Committee 2007).

After nearly a decade of such Supreme Court decisions in 1990 a *New York Times* article asked “Is Court Killing Death Penalty in New Jersey?” The State’s Attorney General argued “the court appeared intent on preventing executions in New Jersey under any circumstances” (Sullivan 1990: 27). Complaints also came from legislators and prosecutors. In November of 1992 there was an unsuccessful move in the New Jersey legislature to alter the constitution to put justices on the ballot (Romano 1992). That same year the state’s voters approved a constitutional amendment to broaden the death penalty, demonstrating a pro-death penalty public opinion. Still no one was executed although there were eventually nine male prisoners on New Jersey’s death row.

New Mexico’s legal culture is reflected in a recent article in the *New Mexico Law Review* (Wilson 2008). From the time the death penalty was reinstated in July 1979

through 2007 there were 211 death penalty cases filed. Of these 211 cases nearly half went to trial and of these only 15 defendants were sentenced to death by juries, one person was executed and two remain on the state's death row. In only one of the state's 13 judicial districts has the number of death penalty cases increased over time. House debate on the abolition bill picks up on this reluctance: Representative Gail Chasey noted that the number of death penalty cases filed by New Mexico prosecutors has decreased since the death penalty was reinstated in 1979. She noted that only 7% of death penalty cases have drawn a death sentence and with 68% of these cases being overturned, New Mexico has the highest rate of reversals in the country. Chasey stated "We have executed 1 person since 1961, in 48 years. In 48 years we've spent several million dollars a year for this 1 execution. That's not much of a return." Also Representative Chavez noted that 135 prison inmates were shown to be innocent and released over the past 35 years. And Rep. Chasey noted that there were 310 black people murdered in New Mexico between 1980 and 2000 yet prosecutors asked for the death penalty in only one of these cases (*House Bill 285: House Debate 2009*). The picture that emerges from the administration of the death penalty in New Mexico is one of reluctance, incompetence and racism.

### **The Abolition Process Begins**

In New Jersey a Death Penalty Study Commission was appointed on June 9, 2006 and submitted its report approximately seven months later (January 2, 2007). The report noted that since 1982 there have been 228 capital murder trials. Of these, 60 death sentences were returned by juries. The state Supreme Court overturned 44 death sentences, including the first 28 as indicated above (New Jersey Death Penalty Study Commission

2007). Republican senator John Russo, who is a former Democratic President of the state senate, was alone on the Commission in the minority supporting the death penalty. He claimed that his position on capital punishment was not motivated by: “the death of my father who was killed in his home during the course of a robbery” (New Jersey Death Penalty Study Commission: 79). He alleged that the problem with capital punishment in New Jersey “is not the statute but rather liberal judges . . . who have consistently disregarded the legislative will and refused to enforce the law as written (New Jersey Death Penalty Study Commission: 82).

Senator Raymond Lesniak argued that: “We shouldn’t have the death penalty unless we’re going to use it. And we shouldn’t use it” (pers. comm.). Senator Richard Codey concurred: “In 27 years since we reinstated the death penalty only 9 murderers have been sentenced to die. And none of them have been executed . . . How could I intelligently argue for the deterrent aspect of the death penalty when we in fact have never used it” (Senate Sessions 2007).

On the other hand, Senator Leonard Lance was confident that since New Jersey prosecutors and judges are appointed by the state’s governor with “the advice and consent of the Senate [and not elected] there’s no question as to the guilt of the 9 persons who have been sentenced to capital punishment in New Jersey.” Senator Gerald Cardinale added: “Common sense tells us that penalties deter crime. [But] we haven’t used the death penalty in New Jersey.” And Senator Ronald Rice agreed: “We have not executed anyone because of the courts. That’s the biggest barrier. We need to fix the system. In order for deterrent mechanisms to be there punishment must be swift and certain” (Senate Sessions 2007). In the assembly debate Representative Michael Doherty

summed up this position: “The reason the death penalty has not been a deterrent in New Jersey is that we haven’t used it” (Assembly Sessions 2007).

Amnesty International reported that Lorry Post who is a murder victim’s father actively supported abolition (Lajoie 2008). During assembly debate on the abolition bill Chris Bateman recalled: “In 2001 Lorry Post walked into my legislative office and told me that he had lost his only daughter to murder [and that] the death penalty fails victim families and exacerbates their pain” (Assembly Sessions 2007). His experience and that of Senator Russo appear to have set the tone for legislative hearings and debate emphasizing as they did special standing of victim families on the death penalty issue.

While not a Roman Catholic Lorry Post recalled that his friend “Jack Callahan, is, and Jack guided me around the State House in the early days, having once worked for the State senate, and interestingly enough, particularly sought out those legislators he knew to be Catholic for us to speak to. At the beginning we had only two Assemblymen in our corner, including Assemblyman Caraballo. . . . It was a question of winning others over, one by one” (L. Post, pers. comm.). In 2005 Sister Helen Prejean visited New Jersey to lobby against capital punishment in the state legislature and a Catholic high school (Braun 2005). Indeed, by 2007 she had made dozens of trips to the state to urge repeal of the death penalty (Schwaneberg 2007). Roman Catholic Celeste Fitzgerald who was the head of New Jerseyans for Alternatives to the Death Penalty had an annual organizational budget of \$600,000, had approximately 200 sponsoring groups, hired staff and opened an office near the state capitol (Braun 2006; Lesniak 2007). Fitzgerald had been working at this since 1999 and in 2008 received an award for her long-term efforts (*Star Ledger* 2008). The coalition of abolitionists conducted hundreds of events in New Jersey

churches over 8 years with the assistance of priests, nuns and bishops and one of those won over was Roman Catholic Senator Raymond Lesniak who sponsored the abolition bill (Lesniak 2008).

The assembly hearings began with an assertion by Wilfredo Caraballo that “this is not a Democratic bill, this is not a Republican bill, this is a bill about the people in the state” (Assembly Law and Public Safety Committee 2007). Accordingly, during the senate debate Republican Senator Leonard Lance noted that “the Senate Republican Caucus has chosen not to take a position on the issue and each Republican member of the senate will be voting his or her conscience on the issue.” Republican Senator Robert Martin, one of the bill’s co-sponsors, remembered the compassion of Jesus in the Sermon on the Mount and that “Gandhi [and] Martin Luther King Jr. observed an eye for an eye leaves everyone blind. [And] U.S. Supreme Court Justice Thurgood Marshall . . . urged us to recognize evolving standards of decency” (Senate Sessions 2007).

In 1997 the New Mexico Coalition to Repeal the Death Penalty was organized and held its first legislative interim committee meeting to inform legislators. At this first meeting newly elected Representative and Episcopalian Gail Chasey volunteered to take on this issue. She introduced legislation in 1999, 2001, 2005 and 2007 typically failing by a close vote in committee or the senate floor. The Coalition had a statewide membership of over 3,800 individuals including trade unionists and over 140 organizations including the New Mexico Catholic Conference, and Murder Victims’ Families for Reconciliation (Elkey, n.d.).

The irrationality and racism reflected in the courts was stressed in New Mexico by Rep. Chasey in the house debate who noted that since reinstatement the death penalty

has not been fairly applied because white people and the wealthy are largely excluded from death row. Additionally, 85% of the victims of those on death row were white. Representative Chavez agreed calling the death penalty “racially biased and unfair” noting that the punishment is primarily reserved for the poor and people of color. She also noted that the majority of people facing the death penalty are unable to afford a lawyer and that the death penalty denies those who are executed the right to due process because they are unable to benefit from new evidence (*House Bill 285: House Debate 2009*).

During the New Mexico Senate debate Senator Michael Sanchez told the story of a rape victim in North Carolina who had identified her attacker in a courtroom. She pointed to the person and said “without a doubt” that he had attacked her. The person that she accused went to prison for 11 years and was later exonerated based on DNA evidence. Sanchez stated “It turned this young lady’s life around to the point where to this day he and this woman go around the country talking about eyewitness identifications and how they can be and are misleading” (*House Bill 285: Senate Debate 2009*). During the same debate Sanchez noted that two psychologists, one from the University of California—Irvine, the other from Iowa State University, discussed how police can persuade victims to positively identify a suspect. They showed a police officer how this occurred and the officer was surprised to learn that his witness identification procedures were misleading (*House Bill 285: Senate Debate*).

In 2005 the Coalition to Repeal the Death Penalty stressed how the needs of violent crime victims are not being met because of the death penalty (Elkey n.d.). They also pointed to the innocent people who had been released from death row thus switching

the focus of the debate. Juan Melendez, who was freed in 2002 after spending almost 18 years on death row, spoke to numerous legislators and the Governor about prosecutorial misconduct, lying witnesses and poor defense he received that landed him on death row. Viki Elkey stated: “I will never forget the look on Governor Richardson’s face as he listened to Juan just two days before he signed the legislation—he was disgusted by the way Juan was railroaded onto Florida’s death row.” The governor had supported the death penalty while on the Presidential campaign trail. Nevertheless, he issued a statement to the state senate to let the bill get a fair hearing in committee and on the floor. This helped get the bill through the senate judiciary committee where it had been stalled the previous two sessions. On March 18 Governor Richardson signed the bill into law.

### ***Roman Catholics***

Roman Catholic Bishop John Smith testified that: “over many decades the Catholic Bishops of New Jersey have called for the abolishment of the death penalty. . . . The death penalty takes human life and should be abolished. . . . We cannot teach respect for life by taking a life.” To illustrate the point Irish-American prosecutor Thomas Kelaher noted that: “to pick a jury we went through almost 200 people before we were able to seat 14 people . . .who would vote for the death penalty. . . . People released from the jury were concerned with the position of the Church: [and thus the death penalty was] ‘an exercise in futility’” (Senate Budget and Appropriations Committee 2007).

The Catholic card was played again by Assemblyman Wilfredo Caraballo: “Sister Helen Prejean, the author of *Dead Man Walking* was here in New Jersey a couple of weeks ago at a state House press conference where she said that New Jersey is going to

be a beacon on the hill. The Death Penalty Study Commission found a system that lacks closure . . . Our death penalty is fatally flawed. It creates a false sense of security for those who want to see justice done and it is hurtful to the families of murdered ones who only want to see justice done.” Assembly Majority Leader Bonnie Watson Coleman read a letter from a constituent “As the son of a woman who was murdered and whose killer received life without parole, I can tell you that your vote to repeal the death penalty will save countless families the unnecessary suffering that death penalty processes by their nature entail” (Assembly Sessions 2007).

The Roman Catholic Church made a prominent appearance in the New Mexico house debate: Representative Gail Chasey stated that during committee meetings it was pointed out that the Catholic Church approves of the death penalty only when there is no other way to protect society from a dangerous person. With modern prisons, she noted, such situations no longer exist. Chasey quoted Pope John Paul the 2<sup>nd</sup> who said: “if a person is incarcerated it is unethical to put him or her to death. If you stop the attack, you no longer have the right to kill” (*House Bill 285: House Debate* 2009). Also on the house floor Representative Roger Madalena spoke of his background in the pueblo and how his people “embraced Roman Catholic beliefs” and native spirituality and how the “Creator determines how much time people spend on earth, not people” (Elkey n.d.).

According to an interview (5/11) with Viki Elkey Chair of the New Mexico Coalition to Repeal the Death Penalty the “Catholic Church was wonderful here in New Mexico and literally got us the votes we needed. Our Arch Bishop had several dinners with our governor to help convince him that abolition was the best thing to do” (V. Elkey, pers. comm. 5/11/09). Allen Sanchez, Director of the New Mexico Conference of

Catholic Bishops, recalled that Governor Bill Richardson told him three weeks earlier and prior to his meetings with the New Mexico Arch Bishop he would have vetoed the bill ” (V. Elkey, pers. comm.).

Yet opponents of abolition in New Jersey emphasized their Catholicism. Senator Russo noted that he had been a student at Notre Dame and had great respect for Bishop Smith but observed that “I’m a practicing Catholic and have always been pro life” and opposed to abortion, but not to capital punishment. Another opponent of abolition (John Tomicki) noted that he had been educated by “the Jesuits at Fordham” and that they emphasized that executions were approved by the Bible (Senate Budget and Appropriations Committee 2007). Irish-American, Assemblyman Michael Doherty said he was pro life and that was not a contradiction to his support for capital punishment since “Taking an unborn life that’s an innocent individual who has not committed a crime [is always wrong yet while] it’s part of the doctrine in the Catholic Church to be against the death penalty [but in actuality] Catholic canon law states that the state has the right to put somebody to death if that individual remains a danger to society” (Assembly Sessions 2007).

A protestant clergyman, the Rev. Douglas Batchelder from the Fellowship Church of Phillipsburg agreed: “By removing the death penalty you would be communicating the fact that justice in New Jersey is diminished in regard to the value of human life” (Assembly Law and Public Safety Committee 2007). During the New Mexico Senate Judiciary Committee hearings the Senate Republican Whip, who did not indicate his religious affiliation, argued that police and corrections officers are best protected by

capital punishment and a District Attorney agreed that the death penalty is a deterrent (Terrell 2009b).

### *Victims and Veterans*

Another prosecutor Edward DeFazio argued of the New Jersey death penalty: “It’s a cruel hoax on the families of the victims.” Vicki Schieber [board member of national Murder Victims for Human Rights] noted that there was no closure with capital punishment. Witness Kathleen Garcia agreed: “Last year I had the honor of serving on the Death Penalty Study Commission with prosecutors DeFazio and Kelaher [and learned about murder survivors] trauma and grief with every new trial; and appeal. . . . What survivors of crime victims need most is certainty in sentencing” (Senate Budget and Appropriations Committee 2007).

New Mexico Senator Michael Sanchez noted that support for HB 285 came from a group representing family members of murder victims. In supporting the bill they stated that the lengthy appeals process was difficult for the families of victims while a life sentence without parole could bring closure (*House Bill 285: Senate Debate* 2009). New Mexico Representative Sandra Jeff agreed speaking of a woman who had lost two of her family members to murder and noting that this woman stated she would not want to make someone else have the same experience. The woman stated “Executing someone through use of the death penalty is simply murder. And putting someone to death will not bring my family members back.” Jeff noted that this woman is “Catholic and a Native American and believes in the sanctity of life no matter what that life is” (*House Bill 285: House Debate* 2009).

During the New Mexico house debate special standing was mentioned by the bill's sponsor, Representative Chasey, who told the story of an abolitionist Albuquerque police officer whose daughter-in-law was kidnapped, raped and murdered while walking her dog. Chasey also told the story of a woman whose son was murdered and the woman stated that the execution of the murderer would not relieve her pain. Chasey also mentioned a woman whose brother was killed in the September 11<sup>th</sup>, 2001 attacks. The woman stated that the death of the attackers was no consolation to her, and she did not feel that justice had been done. Rep. Chavez could speak directly to the issue: noting that a cousin of hers was murdered and that another cousin had murdered her own husband. In both cases the family members of the victims did not ask for revenge. Chavez stated: "The death penalty does not deter crime. Killing people to show that killing people is wrong is not justice, its revenge." Chavez further noted that the U.S. is the only Western nation that still upholds the death penalty. She stated "I support this bill and I oppose the death penalty" (*House Bill 285: House Debate 2009*).

The New Mexico House Consumer and Public Affairs Committee voted 5-2 to pass on this bill (HB 285) [See Terrell 2009a]. With a quavering voice a woman said that the 2008 Texas execution of her son caused her marriage to fall apart and caused her to be hospitalized several times during his appeals. She said: "I am a survivor of a murder victim. When Texas murdered [her son]...it altered my life, my family, my friends, my community all have been damaged. It was because of his execution" (Terrell 2009a). Others speaking against the death penalty included a woman whose lawyer-husband had been murdered in 1999 on his way to the Santa Fe courthouse (Terrell 2009a). During the House debate Representative Chasey quoted a Texas law enforcement official, a former

prosecutor from San Antonio, who believes that he was responsible for having an innocent man executed. Although he had placed a number of people on death row, he decided to quit his job when he discovered that this particular individual was likely innocent. (*House Bill 285: House Debate 2009*; See also *House Bill 285: Senate Debate 2009*).

On the other hand, in assembly committee hearings Marilyn Zabinsky asked that the testimony of New Jersey prosecutors DeFazio and Kelaher be taken with a grain of salt: “The two prosecutors (DeFazio and Kelaher who had served on the Death Penalty Study Commission) were coming up for reappointment by the Governor to their positions in the year 2007. And that was still over their heads while the sessions went on and before the report was released” (Assembly Law and Public Safety Committee 2007). During the New Jersey legislative debate two members of the senate claimed special standing on the issue of capital punishment, one by virtue of his family’s experience with violent crime and the other on the basis of his military service. Senator Robert Singer: “I rise today very troubled by this legislation maybe because my family’s been a victim of violent crime twice. . . . [and I] actually wore the uniform and took the oath [and] that was my job” as a police officer. Senator Leonard Connors noted: “I’ve served in the military. . . Uncle Sam gave you a gun . . . to protect your home territory and the enemy had to be killed and we killed a lot of them and now it is imperative that we protect our families” with capital punishment (Senate Sessions 2007). This last quote shows how important it was considered to stretch for special standing on this issue. Being in the military was claimed to have significance for capital punishment.

In New Mexico Rep. Dennis J. Kintigh spoke of his special standing as a law enforcement official who “had strived to put men on death row.” He stated that his job required him to protect people from “predators” even though, at times, members of his occupation did not receive the respect that they deserved. Still, he felt privileged to work in the occupation (*House Bill 285: House Debate 2009*).

But Republican Assemblyman Chris Bateman noted the special harm to victim’s families occasioned by capital punishment: “The death penalty despite necessary precautions and attempts to make it work remains deeply flawed causing nothing but delays and pain. . . . The commission heard from dozens of family members and victim’s advocates who said that the death penalty had harmed them.” Charles Bennett agreed using all the symbols of special standing noting that his daughter and two grandchildren had been murdered and: “As a police officer and United States Marine who served in the Vietnam War I can assure you that I am not testifying in favor of ending the death penalty because of any sympathy for murderers. I am here because my law enforcement experience has shown me that the death penalty has been a colossal failure. It is not a deterrent [and] has only served to hurt victim’s families and distract from justice ” (*Assembly Law and Public Safety Committee 2007*). Those claiming special standing included Roman Catholics, Hispanics and Native Americans.

### **Conclusions: The Special Etiquette of Abolition Politics**

In New Mexico the house vote was 40-28 (2/11/09) and in the senate the vote was 24-18 (3/13/09). The senate vote in New Jersey on the bill on December 10 was 21-16. The New Jersey Assembly voted 44-36 on December 13. Immediately after the abolition bill

passed both houses of the New Jersey legislature pro-choice, protestant Governor Jon Corzine signed it into law (Peters 2007). “In a contemplative and at times emotional speech [the governor called this an end to] ‘state endorsed killing’ [adding that capital punishment] ‘undermines our commitment to the sanctity of life.’” And when signing the bill the governor recognized the New Jersey Catholic Conference for creating a “fundamental grassroots groundswell that put pressure on those of us in public service to stand up and do the right thing” (State of New Jersey Office of the Governor 2007).

Prior to Governor Corzine’s comments when signing the abolition bill Senator Ray Lesniak who sponsored the bill said: “In 1982 I voted to reinstate the death penalty in New Jersey. Today I’d like to thank some folks who helped correct that mistake. The support of the New Jersey bishops led by Archbishop Smith and the Catholic Conference was of particular significance to me. . . . My struggles with the faith of my baptism and their support strengthened my beliefs. Pope John Paul II would be proud. . . . And I want to thank Governor Corzine for not listening to me when I tried to convince him to change his position against the death penalty when he first ran for the U.S. Senate more than seven years ago” (New Jersey Senate Democrats 2007). In New Mexico Hispanic, Roman Catholic Governor Bill Richardson finally decided to sign the bill after many months of indecision (Baker 2009). It is worth noting that neither bill had a veto-proof majority.

Some death penalty supporters were less bound by the capital punishment debate etiquette than others. It was only death penalty supporters who emphasized that they were pro-life by being opposed to abortion. Those who testified on behalf of abolition of capital punishment had no need to assert their genuine Catholicism since they stood with

the Church hierarchy. The irony is that vigorous Church action against the death penalty was related in time to its aggressive opposition to *Roe v Wade* and a woman's new right to freedom of choice. Perhaps the consistency is that those who most vigorously opposed the right of women also opposed the rights of the men on New Jersey's death row. In fact, neither side to the abolition debate adopted a "seamless garment" position consistent with Church teachings. New Jersey Assemblyman James Holzapfel seemed genuinely piqued and thus asked his colleagues "What would we do if we caught someone similar to Osama Bin Laden tomorrow?" contending that only killing such an individual would be appropriate. His colleague Michael Patrick Carroll agreed saying: "the Left concerns itself very little with the preservation of innocent life except for innocent whales and harp seals. Many of these same folks who shed tears over the fate [of those on death row] can locate not the slightest mode of compassion for the innocent unborn." Yet it was left to New Jersey Assemblywoman Marcia Karrow to speak in the strongest terms: "the eight monsters that are on death row are monsters. We shouldn't even call them men or humans" (Assembly Sessions 2007). Abortion also made a cameo appearance in New Mexico. During the House debate Representative Nora Espinosa asked: "What about the victims? We passed a bill in committee that gave zero right to the innocent. Full term babies have no right. They could be aborted. Here is the innocent who had no voice. Yet life was taken away. Here we have those that have been killed."

The special standing in these committee hearings and debate demonstrates the significance of Roman Catholics, victims' families and even military veterans. The central role played by the New Jersey state supreme court in failing to uphold death sentences was agreed to by both sides, but the meanings attributed to this failure were

diametrically opposed. Abolitionists asserted that the law was both ineffective and inhuman, but those yearning for executions argued that the law was only ineffective because it had not been imposed.

The significance of the Roman Catholic Church in New Jersey's and New Mexico's political culture seems verified by this research. The sanctity of life was emphasized by successful abolitionists without mentioning abortion. Senator Lesniak admitted: "I can't check my faith-based beliefs when I go through the statehouse door. They are a part of me that I can't deny" (Lesniak 2008). Unlike public opinion, judicial decisions in heavily Roman Catholic states have been typically opposed to capital punishment. New York's Supreme Court invalidated their law in 2004, while the Rhode Island Supreme Court invalidated their law in 1979 and the Massachusetts Supreme Court did this on three separate occasions in the 1970s and 1980s. This seems to provide an overarching explanation for our results.

Earlier research on the origins of law demonstrated the utility of distinguishing between triggering events and structural foundations (Galliher and Basilick 1979). Triggering events involve the motivations and tactics of legislative sponsors and opponents. And structural foundations involve the historical, cultural, demographic, economic and political traditions that make legislation possible. This 1979 study found Utah to be a leader in the decriminalization of marijuana possession. In this heavily Mormon (Latter Day Saints—LDS) state, LDS legislators argued that in spite of this religion's opposition to all mind-altering substances, control of marijuana among the state's youth was better left to the family than the courts. No one mentioned that most

young people in the state were LDS. One could not have determined the law's origins from the legislative debate, or triggering events, alone.

While this dichotomy was adequate for the earlier case, in New Jersey's and New Mexico's abolition legislation finer distinctions were required. It is clear that Roman Catholic beliefs provided essential triggering events for this legislation. Federal judicial acceptance of abortion was an initial structural foundation for death penalty abolition, but only in heavily Roman Catholic states when these states local courts began to resist enforcing death penalty laws. Thus the U.S. Supreme Court provided an initial structural foundation, followed by resistance to the death penalty in state courts where there was a heavily Roman Catholic population. The judicial resistance to the death penalty in New Jersey and New Mexico did not emerge until after the *Roe v. Wade* decision. Although both states reinstated capital punishment after *Roe v. Wade* (New Mexico in 1979 and New Jersey in 1982), these laws qualify as symbolic, or unenforced, law (Gusfield 1963). Symbolic law usually provides a temporary means of bridging large gaps in popular opinion as it did in these two states.

## References

- Assembly Law and Public Safety Committee*, New Jersey Legislature, Dec. 10, 2007.
- Assembly Sessions*, New Jersey Legislature, Dec. 13, 2007.
- Association of Religious Data Archives, Social Science Research Institute, Pennsylvania State University n.d. a. "Catholic States (1980)." Retrieved June 20, 2009 ([http://www.thearda.com/QuickLists/QuickList\\_60.asp](http://www.thearda.com/QuickLists/QuickList_60.asp)).
- Association of Religious Data Archives, Social Science Research Institute, Pennsylvania State University n.d. b. "Catholic States (2000)." Retrieved June 20, 2009 ([http://www.thearda.com/QuickLists/QuickList\\_58.asp](http://www.thearda.com/QuickLists/QuickList_58.asp)).
- Baker, Deborah. 2009. "New Mexico Governor Signs Measure to Abolish Death Penalty." *The Seattle Times*, March 19, Retrieved June 21, 2009 ([http://seattletimes.nwsourc.com/html/politics/2008883282\\_apxgrdeathpenalty.html](http://seattletimes.nwsourc.com/html/politics/2008883282_apxgrdeathpenalty.html)).
- Bedau, Hugo A. 1964. "Death Sentences in New Jersey 1907-1960." *Rutgers Law Review* 19: 1-64.
- Bernardin, Joseph Cardinal. March 11, 1984. A consistent ethic of life: Continuing the dialogue. Lecture at St. Louis University. Retrieved February 27, 2009 (<http://www.priestsforlife.org/magisterium/bernardinwade.html>).
- Bjarnason, Thoroddur and Michael R. Welch. 2004. "Father Knows Best: Parishes, Priests, and American Catholic Parishioners' Attitudes Toward Capital Punishment." *Journal for the Scientific Study of Religion* 43: 103-118.
- Braun, Bob. 2005. "For Pro-Life Nun, State's Death Penalty Deserves Execution." *The Star-Ledger*, December 12, p. 13.
- Braun, Bob. 2006. "For a Most Unlikely Lobbyist, a Major Death Penalty Victory." *The Star-Ledger*, January 23, p. 13.
- Byrnes, Timothy A. 1991. "How Seamless a Garment? The Catholic Bishops and the Politics of Abortion." *Journal of Church and State* 33: 18-35.
- Commonwealth v Abimael Colon-Cruz*, 393 Mass 150, 470 N.E.2d 116 (1984).
- Commonwealth v Robert E. O'Neal*, 369 Mass 242, 339 N.E.2d 676 (1975).
- Death Penalty Information Center. 2009a. "Executions in the United States, 1608-1976, By State." Retrieved June 21, 2009 (<http://www.deathpenaltyinfo.org/executions-united-states-1608-1976-state>).

- Death Penalty Information Center. 2009b. "State by State Database." Retrieved June 21, 2009. ([http://www.deathpenaltyinfo.org/state\\_by\\_state](http://www.deathpenaltyinfo.org/state_by_state)).
- District Attorney for the Suffolk District v James Watson and others*, 381 Mass 648, 411 N.E.2d 1274 (1980).
- Elkey, Viki. (n.d.). "Abolishing the Death Penalty in New Mexico: Lessons Learned" (unpublished manuscript).
- Galliher, James M. and John F. Galliher. 1997. "'Déjà Vu All Over Again': The Recurring Life and Death of Capital Punishment Legislation in Kansas." *Social Problems* 44:369-385.
- Galliher, James M. and John F. Galliher. 2002. "A 'Commonsense' Theory of Deterrence and the 'Ideology' of Science: The New York State Death Penalty Debate." *Journal of Criminal Law and Criminology* 92: 307-333.
- Galliher, John F. and Linda Basilick. 1979. "Utah's Liberal Drug Laws: Structural Foundations and Triggering Events." *Social Problems* 26: 284-297.
- Galliher, John F., Larry W. Koch, David Patrick Keys, and Teresa J. Guess. 2002. *America without the Death Penalty: States Leading the Way*. Lebanon, NH: Northeastern University Press.
- Gregg v Georgia* 428 U.S. 153 (1976).
- Gusfield, Joseph R. 1963. *Symbolic crusade: Status politics and the American Temperance Movement*. Urbana, IL: University of Illinois Press.
- House Bill 285: House Debate* (2009). Santa Fe, NM: New Mexico Legislative Reports.
- House Bill 285: Senate Debate* (2009). Santa Fe, NM: New Mexico Legislative Reports.
- Kelly, James R. 1999. "Sociology and Public Theology: A Case-Study of Pro-Choice/Pro-Life Common Ground." *Sociology of Religion* 60: 99-124.
- Kosmin, Barry A., and Ariela Keysar. 2009. *American Religious Identification Survey: [Aris 2008]: Summary Report: March 2009*. Hartford, CT: Trinity College. Retrieved June 20, 2009 ([http://livinginliminality.files.wordpress.com/2009/03/aris\\_report\\_2008.pdf](http://livinginliminality.files.wordpress.com/2009/03/aris_report_2008.pdf)).
- Lajoie, Ron. 2008. "Changing Hearts and Minds." *Amnesty International*, Spring: 22.
- Lesniak, Raymond J. 2007. *The Road to Abolition*. Union, NJ: Kean University Press.
- Lesniak, Raymond J. September 9, 2008. Speech at Yale University.

- Maguire, Kathleen, and Ann L. Pastore, eds. 2002. *Sourcebook of Criminal Justice Statistics*. Washington, DC: Government Printing Office.
- Megivern, James A. 1997. *The Death Penalty: An Historical and Theological Survey*. New York: Paulist Press.
- New Jersey Death Penalty Study Commission. *New Jersey Death Penalty Study Commission Report*. 2007. Retrieved February 27, 2009 ([http://www.njleg.state.nj.us/committees/dpsc\\_final.pdf](http://www.njleg.state.nj.us/committees/dpsc_final.pdf)).
- New Jersey Senate Democrats. 2007. "Lesniak Statement on the Signing of the Death Penalty Ban." Retrieved February 26, 2009 (<http://www.njsendems.com/release.asp?rid=1694>).
- New Jersey v Robert O. Marshall*, 123 NJ 1, 586 A2d 85 (1991).
- New Jerseyans for Alternatives to the Death Penalty. 2000. "The Death Penalty: New Jersey Voices." Retrieved February 26, 2009 (<http://www.njadp.org/gdcommentary&what=njvoices>).
- New York v Stephen S. LaVelle*, 3 N.Y. 3d 88, 817 N.E. 2d 341, 783 N.Y.S. 2d 485 (2004).
- O'Hern, Daniel J. and Alexander P. Waugh, Jr. 1980. "Gubernatorial Courtesy: A Reply." *New York Times*, May 4, p. NJ32.
- Peters, Jeremy W. 2007. "Corzine Signs Bill Ending Executions, Then Commutes Sentences of 8." *New York Times*, December 18, p. B3.
- Prejean, Sister Helen. 2005. *The Death of Innocents: An Eyewitness Account of Wrongful Executions*. New York: Random House.
- Roe v Wade* 410 U.S. 113 (1973).
- Romano, Jay. 1992. "Legislators Seek to Put Justices on Ballot." *New York Times*, November 22, pp. NJ1, 14.
- Schwaneberg, Robert. 2007. "Assembly to Decide Soon on Repealing Death Penalty." *Star-Ledger*, November 10, p. 7.
- Senate Budget and Appropriations Committee*, New Jersey Legislature, Dec. 3, 2007.
- Senate Sessions*, New Jersey Legislature, Dec. 10, 2007.
- The Star-Ledger*. 2008. "Achievements." January 18, p. 24.

State of New Jersey Office of the Governor. 2007. "Remarks—Elimination of the Death Penalty." Retrieved February 26, 2009

([http://www.state.nj.us/governor/news/speeches/elimination\\_death\\_penalty.html](http://www.state.nj.us/governor/news/speeches/elimination_death_penalty.html)).

*State v Robert Cline*, 121 R.I. 299, 397 A.2d 1309 (1979).

*State v William H. Anthony*, 121 R.I. 954, 398 A.2d 1157 (1979).

Sullivan, Joseph F. 1990. "Is Court Killing Death Penalty in New Jersey?" *New York Times*, December 1, pp. 27, 29.

Sullivan, Joseph F. 1991. "New Jersey's High Court Upholds Death Sentence after Blocking 26." *New York Times*, January 25, pp. A1-B2.

Terrell, Steve. 2002. "Poll: Voters Favor Death Penalty." *Santa Fe New Mexican*, October 4, p. A1.

Terrell, Steve. 2009a. "Bill to Abolish Death Penalty Moves Forward." *Santa Fe New Mexican*, January 30, Retrieved June 18, 2009

(<http://www.santafenewmexican.com/A-renewed-plea-for-life>).

Terrell, Steve. 2009b. "Death Penalty Clears Crucial Panel Vote." *Santa Fe New Mexican*. March 9, Retrieved June 13, 2009

(<http://www.santafenewmexican.com/SantaFeNorthernNM/2009-Legislature2009-03-09T21-50-22>).

United Press International. 1961. "Episcopal Church Opens Drive for Abolition of Death Penalty." *New York Times*, March 20, pp. 1, 14.

Waldron, Martin. 1978. "Byrne Pocket Vetoes a Bill to Restore Death Penalty." *New York Times*, March 4, pp. 45, 48.

Wilson, Marcia J. 2008. "The Application of the Death Penalty in New Mexico, July 1979 through December 2007: An Empirical Analysis." *New Mexico Law Review* 38: 255-301.