

BOOK ANNOTATIONS

FACING THE DEATH PENALTY: ESSAYS ON A CRUEL AND UNUSUAL PUNISHMENT. Edited by Michael L. Radelet. Philadelphia: Temple University Press, 1989. Pp. 215. N.p.

The United States and South Africa are the only Western countries which still sanction the use of capital punishment. Surprisingly, despite the near universal condemnation of the practice, polls taken in the United States show public support for the death penalty nearing a fifty-year record high. According to a 1986 Gallup Report, seventy percent of the general public favors the execution of convicted murderers. Other reports indicate that a majority of those who support capital punishment do so despite their agreement that "only the poor and unfortunate are likely to be executed." In addition, although deterrence is most often given as a justification for the death penalty, most death penalty proponents report that they would continue to support its use even if it were conclusively proven that the death penalty does not have a greater deterrent effect than life in prison.

Joseph B. Ingle, a minister to prisoners on death row and one of the contributors to this volume, believes that "if the citizens of the United States fully understood the nature and effects of the death penalty, we would no longer allow the punishment to be imposed." *Facing the Death Penalty: Essays on a Cruel and Unusual Punishment*, assembled and edited by Michael Radelet, is an eclectic series of essays examining the human and inhuman realities of what life under the death penalty is like for the condemned and for those who work on their behalf. The goal of the book is to inform, educate, and remind the reader that the United States has continued to use capital punishment in a brutal, arbitrary, and discriminatory way. The book further seeks to move beyond the discussion of the death penalty as an abstract theory of punishment and criminal justice by providing a personal, in-depth look at the ramifications of death row. This collection of essays enlightens the reader about what the death penalty means to the individuals who object to institutionally sanctioned homicide, to the families of the condemned, to those who work in prisons and minister to the condemned, and finally to the condemned themselves.

Each of the sixteen essays in this book addresses the same underlying question: should capital punishment be abolished? To provide the answer, a group of specialists, who have had extensive contact with those on death row, have combined their individual analyses to offer a unique interdisciplinary perspective on the merits of the continuation of capital punishment. The contributors include attorneys, criminologists, historians, sociologists, anthropol-

ogists, a minister, a philosopher, and three prisoners. Although the authors offer various justifications for their end result, all arrive at the common conclusion that the death penalty is inherently cruel and unusual punishment.

This collection brings together an interesting variety of viewpoints. Watt Epsy, who has documented sixteen thousand executions and is the country's most widely recognized death penalty historian, provides a graphic description of how the condemned have "prepared themselves for and met their fates." An attorney describes his failed attempt to persuade the governor, in a last minute face to face meeting, to commute the death sentence of his client. A journalist reports on the results of interviews with the officials in charge of operating the gas chambers at the San Quentin Prison, including a chilling interview with a "death watch officer" instrumental in 126 executions. Anthropologists compare contemporary executions in Florida with the human sacrifices practiced in the sixteenth century by the Aztecs of Mexico. Florida uses the electric chair; the Aztecs ripped out the living human's heart; and yet there are "startling points of similarity" between the two events.

In the dedication of *Facing the Death Penalty*, Mishnah, Sanhedrin 4:5 is quoted: "Therefore was one single man created first, Adam, to teach you that if anyone destroys a single soul from the children of man, Scripture charges him as though he had destroyed a whole universe — and whoever rescues a single soul from the children of man, Scripture credits him as if he had saved a whole universe." By focusing on the human beings who in various ways come face to face with the actual practice of execution in this country, the contributors to this collection of essays collectively seek to save innumerable universes.

Clifford H. Sirlin

THE DEATH PENALTY: A WORLD-WIDE PERSPECTIVE. A REPORT TO THE UNITED NATIONS COMMITTEE ON CRIME PREVENTION AND CONTROL. By Roger Hood. New York: Oxford University Press, 1989. Pp. 182. N.p.

The Death Penalty: A World-wide Perspective is a special issue of the International Review of Criminal Policy, sponsored by the United Nations Committee on Crime Prevention and Control. Roger Hood, a Fellow of All Souls College, Reader in Criminology, and Director of the Centre for Criminological Research at the University of Oxford, draws upon replies to United Nations surveys and questionnaires, information collected by Amnesty International, and other sources to provide a world-wide review of the death penalty. Reporting on both current death penalty systems and reform movements, he examines the whole spectrum of death penalty issues. Hood describes the extent of executions, the effectiveness of due process and other safeguards, and the problems of administering a restrictive policy of death sentencing. He explores the question of whether the death penalty acts as a deterrent and the state of public opinion and knowledge about capital punish-

ment. Additionally, he examines the abolitionist movements throughout the world as well as current attempts to expand the scope of the death penalty.

Although the United Nations favors the abolition of the death penalty, this book is essentially a review of available information rather than an argument against the death penalty. An appendix divides nations into four categories: (1) those which have abolished the death penalty for all crimes; (2) those which retain it for exceptional crimes or crimes committed under exceptional circumstances; (3) those which retain the death penalty but have not executed anyone during the past ten years; and, (4) those which retain and use the death penalty for ordinary crimes.

Hood does not claim to provide "an authoritative or entirely accurate account of world-wide trends in the law and procedures relating to the death penalty," due to the lack of complete information on many of the questionnaires returned to the United Nations. He emphasizes the need for a more comprehensive study conducted under the auspices of the United Nations.

Although the book was reprinted in 1990 with corrections, it is already clearly dated. A reference to President Ceaucescu of Romania as an active proponent of limiting capital punishment raises questions as to the current accuracy of the summaries presented. Obviously written before the upheavals in Eastern Europe and not revised afterward, the book raises more questions than it answers about the status of the death penalty in the face of a rapidly changing world. Additionally, Hood's failure to explore public attitudes toward philosophical justifications for the death penalty leaves the reader without a theoretical framework in which to understand variations in national attitudes toward capital punishment. Nevertheless, the book provides useful statistics and general information about the international imposition of the death penalty in the pre-1989 world.

Julie L. Novkov

RACIAL VIOLENCE IN KENTUCKY, 1865-1940: LYNCHINGS, MOB RULE, AND "LEGAL LYNCHINGS." By George C. Wright. Baton Rouge, Louisiana: Louisiana State University Press, 1990. Pp. 350. \$32.50.

In *Racial Violence in Kentucky*, George C. Wright, Professor of History and Director of the African and Afro-American Studies and Research Center at the University of Texas at Austin, tells the stories of the many blacks in Kentucky who were victims of white mob rule following the Civil War and continuing into this century. Despite the state's alliance with the North during the Civil War, Wright's work shows that the racial climate in Kentucky actually differed little from the racial climate in the Deep South.

The first chapters of the book describe the major forms of mob rule in Kentucky at the turn of the century: lynchings of blacks accused of murder or rape or burglary; whippings of blacks by former slave-owners; destruction of black schools and intimidation of educators; the evacuation of entire black

communities seen as threats to white communities or white jobs. Wright then examines the variety of responses of the black community to this violence. These responses ranged from appeals to the Freedman's Bureau and other state and federal officials to forming community organizations and, ultimately, to armed defense of their property and friends threatened by mob violence.

The most interesting chapters of the book, however, explore the evolution of the relationship between the lynch mob and the judicial system. Mob violence was usually justified as being necessary because the legal system could not be trusted to catch and punish criminals swiftly. Thus, politicians, police, and judges, in their efforts to curb mob violence, set out to demonstrate how quickly, certainly, and severely the courts could be trusted to convict and punish blacks accused of murdering or raping whites. In doing so, the state essentially took on the role of the mob, replacing extra-judicial lynchings with legally sanctioned executions.

Wright's documentation is extensive, his analysis clear, powerful, and extremely readable. However, at one point he claims that "[t]he racial violence discussed in this study has ended for the most part." This facile conclusion is surprising, counterintuitive, and unsupported. Wright recounts the justifications for "legal lynchings" at the beginning of the century; a common justification was that "[l]ong-drawn out trials followed by appeals with repeated retrials do much to weaken the popular confidence in the law as a remedy for crime." This familiar reasoning is identical to current arguments for cutbacks of the capital appeals process. The historical horror stories Wright tells of trials that are a mockery of justice are also not very different from the stories that some capital defense practitioners tell today.

This quibble aside, *Racial Violence in Kentucky* is a valuable book for its contribution to the understanding of the insidiousness of group hatred, an understanding that hopefully someday can truly make such violence a thing of the past.

Ellen Ross

A PUNISHMENT IN SEARCH OF A CRIME: AMERICANS SPEAK OUT AGAINST THE DEATH PENALTY. By Ian Gray and Moira Stanley for Amnesty International, U.S.A. New York: Avon Books, 1989. Pp. 383. \$8.95.

A Punishment In Search of a Crime, by Ian Gray and Martin Stanley for Amnesty International, U.S.A., is an important addition to the literature of the anti-death penalty movement. The authors of this book interviewed a cross section of Americans concerning their opposition to capital punishment. The result is an original publication which is crucial to understanding why the death penalty should be abolished.

The first forty pages of the book detail the history of the death penalty in America. The authors examine different types of execution practices and the costs of administering the death penalty. The remainder of the book is a col-

lection of forty-two interviews with lawyers, prison wardens, former death row inmates, priests and academics who both oppose capital punishment and have been intimately involved with the death penalty.

Some of the more fascinating interviews are those conducted with death row inmates. Provided with a rare opportunity to speak their minds and relate their life stories, many of these inmate interviews are shocking and moving. For example: Shabaka Sundiata Waqlimi relates how he was within fifteen hours of being executed in Florida when he was granted a stay and later finally found innocent. Daryl Bell also came within hours of being executed, but was granted a stay and eventually pardoned and released from prison. He is now a social worker who works with abused children. Particularly disturbing is the story of Willie Jasper Darden, Jr., who maintained his innocence throughout the fourteen years he spent on Florida's death row. Despite clear injustices in his case and a substantial amount of evidence showing that he was indeed innocent, Willie Jasper Darden, Jr. was executed on March 15, 1988.

One of the most redeeming qualities of this book is the interviewer's obvious efforts not to put words in the mouths of the interviewees: Questions are asked in a way that allows the interviewees to express their opinions freely. This creates the impression that the interviewees are speaking directly to the reader and allows the reader to become emotionally involved in their stories.

One of the goals of Amnesty International, U.S.A. is to abolish the death penalty in America by raising the consciousness of its citizens. For readers already opposed to capital punishment, this book will certainly reinforce their opinion. For other readers, this book provides a fresh insight into the death penalty that may serve to alter their viewpoints. Although Amnesty's goal is far from being realized, this book's publication is a step towards achieving it.

Charles J. Press

EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS. By David C. Baldus, George G. Woodworth, and Charles A. Pulaski, Jr. Boston: Northeastern University Press, 1990. Pp. 698. N.p.

Equal Justice and the Death Penalty, by David C. Baldus, Professor at the University of Iowa College of Law, George G. Woodworth, Associate Professor of Statistics and Actuarial Science at the University of Iowa, and Charles A. Pulaski, Jr., a member of the Phoenix law firm of Snell and Wilmer, analyzes arbitrariness and racial discrimination in death penalty programs in the United States. The authors examine capital sentencing developments between *Furman v. Georgia*, 408 U.S. 238 (1972), and *McCleskey v. Kemp*, 481 U.S. 279 (1987). In *Furman*, decided in 1972, the United States Supreme Court held death penalty statutes to be arbitrary and potentially discriminatory and thus unconstitutional under the eighth amendment. Fifteen years later in *McCleskey*, the Supreme Court upheld the constitutionality of the Georgia capital sentencing system despite claims of arbitrariness and discrimination. Using

statistical studies, the authors explore whether there have been any significant changes in the administration of capital punishment which would warrant the change in the Supreme Court's stance on the death penalty.

The book is organized into five sections. First, the authors address the Supreme Court's decision in *Furman* and the ensuing developments in various states' death penalty programs. The second and third parts describe the methodology of two empirical studies of the administration of the death penalty in Georgia and explain the conclusions the authors draw from them. Next, the authors review the empirical literature regarding capital sentencing in other states and examine the effectiveness of post-*Furman* proportionality review in these states. The final section, describing and evaluating the *McCleskey* decision, concludes with a critique of methodological issues raised by the opinions of both the Court of Appeals and the Supreme Court in *McCleskey*.

The authors present in detail two comprehensive empirical studies which were designed to test whether the post-*Furman* reforms are effectively reducing the degree of arbitrariness and racial discrimination in Georgia's capital sentences. The first study, the Procedural Reform Study, examines Georgia cases resulting in murder convictions, both before and after *Furman*, in order to determine the extent to which death sentencing became less arbitrary after *Furman*. The data from the study were also used to evaluate the competence of state supreme courts to ensure the uniform and impartial application of the death penalty through comparative proportionality review. The second study, the Charging and Sentencing Study, was developed to challenge the constitutionality of Georgia's death sentencing program and formed part of the basis for the petitioner's claims in *McCleskey*. It examines murder and voluntary manslaughter cases in Georgia, exploring whether trial-level reforms effectively made rationally determined sentences possible.

On the basis of these studies, the authors conclude that, although there have been measurable improvements, grave unfairness persists in death sentencing. However, they do not call for the abolition of the death penalty as the only means of eliminating the unfairness of death sentencing. Rather, they suggest that modifications of trial-level guidelines and of state systems of supreme court review may lead to a system where only the worst offenders are executed.

The authors closely analyze the Supreme Court's response to the statistical studies presented in *McCleskey*. They point out that the Court in effect found that claims of classwide purposeful racial discrimination in capital sentencing cases cannot be based on statistical studies. Consequently, they argue, *McCleskey* establishes a virtually insurmountable barrier to proof — *McCleskey* requires capital defendants to show discriminatory intent on the part of prosecutors or jurors in order to establish a claim under the equal protection clause.

The authors go on to criticize the Supreme Court's rejection of the eighth amendment claims in *McCleskey*. The Court held that the statistical studies

introduced into evidence did not demonstrate the required degree of risk necessary to establish an eighth amendment violation. The authors charge that this reluctance to give the statistical findings significant credence amounts to a refusal to address egregious, ingrained racial discrimination in the administration of the death penalty.

Although the studies primarily focus on Georgia's capital sentencing system, the conclusions are valuable to death penalty scholars generally as indicative of discrimination patterns nationwide. The inability of state courts to administer their capital sentencing systems in an adequately uniform and just fashion is prevalent. Detailed appendixes assist the reader in understanding the statistical analyses and methodology underlying the principal findings of the studies, so that similarities and differences in other states can be recognized. In addition, death penalty abolitionists can use the results of the authors' studies in their appeals to Congress to rectify the current arbitrary and discriminatory administration of capital punishment.

Caroline Kelley