

BOOK ANNOTATIONS

DEATH WORK: A STUDY OF THE MODERN EXECUTION PROCESS. By Robert Johnson. Pacific Grove, California: Brooks/Cole Publishing Co., 1990. Pp. 174. N.p.

Albert Camus wrote that "a man is undone by waiting for capital punishment well before he dies. Two deaths are inflicted on him, the first being worse than the second . . ." Dr. Johnson, in his new book *Death Work*, bears witness to the process by which both of Camus' deaths are inflicted on individuals currently housed on America's death rows. While the criminal justice system strives to execute its criminals in a "humane" manner and to shield the public from the less easily "sanitized" aspects of the death penalty, Dr. Johnson seeks to document in exacting detail "the waiting, killing, and dying, as seen by both prisoner and staff."

Death Work begins with an historical overview of capital punishment from antiquity to present. Dr. Johnson traces in Foucauldian fashion the movement from execution as public spectacle, full of religious fervor, frenzy, and gore, to execution as carefully staged state-imposed death, tamed to accommodate evolving public sensibilities. This section places in perspective the main subject of the book: how the death penalty in contemporary America is inflicted first and foremost on the prisoner's psyche. *Death Work* explodes the notion that today, the condemned individual suffers less pain than her historical predecessors, that our kinder, gentler republic has produced a more humane execution process.

Dr. Johnson immerses his audience in the world of death row through lengthy descriptions of the daily routine of death row, and observations of the myriad of ways in which the routine affects the inmates and staff. He powerfully weaves together the narratives of prisoners and guards. The words of these individuals who are closest to the process lay the foundation for the author's critical insights and analysis. The result is a deep, often disturbing exploration of the complex psychological processes involved in killing and being killed. The proverbial solitary black-hooded executioner, we learn, has given way to highly trained teams of correctional officers. Some teams are in charge of the deathwatch (the final period before execution), others the actual execution. Within teams, an intricate division of labor occurs, particularly when it comes time to kill the condemned. Dr. Johnson details the selection and training of officers and the psychological dynamics and tensions which develop within the teams as they undertake their lethal responsibilities. He also chronicles the impact of the team's calculated and practiced behavior on the individual to be executed. The subtitles to these chilling chapters convey a

sense of their startling and disturbing content: "Keeping the Prisoner Calm," "Maintaining Emotional Distance," "Calculated Camaraderie" (between guards and the condemned), "Unintentional Collusion," "Defeated Men" (meaning the condemned), and "Psyching Up" (referring to the executioners). An unsettling conclusion unfolds from Dr. Johnson's documentation of the execution process: the institution intentionally inflicts Camus' first death upon an inmate to avoid having to strap down and kill a fully-human being.

In the concluding chapter Dr. Johnson examines capital punishment within the philosophical framework of the theories of retribution and deterrence and offers a model for an alternative to capital punishment. His contributions here are neither as original nor comprehensive as those that precede it. Nevertheless, it is to Johnson's credit that he sets out in clear tones the parameters of the philosophical debate, citing several major authors who speak to the intersection of moral philosophy and capital punishment (e.g., Kant, Mill, Herbert Morris, Jeffrey Reiman, Jan Gorecki, Ernst Van den Haag).

Dr. Johnson believes that the practice of capital punishment — one of society's supreme exercises of power — demands the scrutiny of the citizens in whose name the state kills. Thus he writes in crisp, clear language, readily accessible to a general audience. Not only is *Death Work* unencumbered by academic jargon, it is also devoid of moral exhortation: readers are left to "give or withdraw [their] consent" to the death penalty. While the duty of the general citizenry to be informed about the death penalty is sufficient reason to read *Death Work*, Dr. Johnson's meticulous research and analysis of the execution process make his work pertinent to a more specialized audience. Capital defense counsel, judges, and legislators can benefit from the insights into the human issues implicated by this ultimate sanction, as they struggle to shape the future of this penal practice. Moreover, as a phenomenology of a social institution through which society defines and expresses itself, *Death Work* will provide future historians and sociologists a window into late twentieth century American thought not just about crime and punishment, but also about power, authority, normality, morality, and personhood.

In an age where our society's practice of capital punishment has been rendered "invisible and unreal," bearing witness becomes a moral imperative. *Death Work* not only provides us with the hard facts of execution, it also beckons us to abandon our detachment and to confront the two deaths inflicted on America's condemned.

Daniel N. Abrahamson

DEATH & DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING.

By Samuel R. Gross and Robert Mauro. Boston, Massachusetts: Northeastern University Press, 1989. Pp. xvi, 268. N.p.

The overlap between law and social science represents a perennial problem, especially in the area of racial discrimination in capital sentencing. In

McCleskey v. Kemp, 481 U.S. 279 (1987), the Supreme Court declared empirical studies intrinsically insufficient to establish a violation of the Constitution for racial discrimination in death penalty sentencing. While *McCleskey* seemingly settles the matter legally, the political and moral debate continues, especially as increasingly thorough and sophisticated studies are completed.

The core of *Death & Discrimination* consists of just such a compelling statistical study, specifically of racial patterns in capital sentencing in eight states (Georgia, Florida, Illinois, Oklahoma, North Carolina, Mississippi, Virginia, and Arkansas) in the period from 1976 to 1980. Mr. Gross and Mr. Mauro also present an informative introduction on the background of the current debate, a critical summary of previous research, and an overview of the legal context.

Mr. Gross and Mr. Mauro conclude from their study that the death penalty is more likely to be imposed on those convicted of killing whites than on those convicted of killing blacks. Furthermore, the study indicated that blacks who kill whites are more likely to receive death sentences than whites who kill whites. What makes this study so complex and so interesting is the fact that it controlled for six key nonracial factors that might have influenced the likelihood of a death sentence: the commission of a separate felony in conjunction with a homicide; the killing of a stranger; the killing of more than one victim; the sex of the victim; the use of a gun; and the location of the homicide. After controlling for these variables, the race-of-victim disparities remained unexplained, and the race-of-suspect disparities for white-victim homicides were only somewhat reduced.

Thus, it is the view of Mr. Gross and Mr. Mauro that the decision of the Supreme Court in *McCleskey* is patently wrong and one simply *cannot* deny the existence of racial discrimination in capital sentencing. In addition, the authors conclude that *McCleskey* reveals the federal courts' "continuing devotion to a fiction of their own invention — the fiction of the efficacy of the procedural reforms in capital sentencing." If the efficacy of these last-ditch efforts at reform were admitted by the courts to be inadequate, then the constitutionality of the death penalty itself would be called into question. In other words, "it's not broken because it can't be fixed."

This book is highly convincing and relatively easy to follow. It offers a surprisingly clear use and explanation of technical terminology that is very helpful to math-adverse readers. Best of all, this book reads like an engaging narrative and is far from a cold statistical analysis.

Anne P. Birge

rites of execution: CAPITAL PUNISHMENT AND THE TRANSFORMATION OF AMERICAN CULTURE, 1776-1865. By Louis P. Masur. New York, New York: Oxford University Press, 1989. Pp. 163. N.p.

Rites of Execution, by Louis Masur, Professor of History at the Univer-

sity of California at Riverside, examines the cultural changes and the political, penal, and religious philosophies that influenced the "anti-gallows" movement between the Revolutionary and Civil Wars. Professor Masur first presents the purposes that public executions originally served, then documents why, by the 1850's, public executions had virtually disappeared. He suggests that the most persuasive element of gallows reform was the shift in the cultural values of the dominant and increasingly urbanized middle class. However, in most states, the outrage against public executions and concern for public order fell short of compelling the abolition of the death penalty altogether.

In the early American republic, the debate over the death penalty was centered in the tension caused on the one hand by the desire to dispel monarchic values of absolutism, and on the other hand by an attempt to grapple with the rising rate of crime, an aspect of the turmoil that followed the Revolutionary War. During the ten years following the Revolutionary War, the number of hangings increased dramatically. Professor Masur displays how the execution spectacle sought to preserve civil and public order. The orderly procession of the prisoner to the gallows, accompanied by state and religious authorities, the minister's delivery of moral warnings to the community assembled at the gallows, and the display of the body, issued a moral warning to the community.

Professor Masur then outlines the dominant themes of the anti-gallows movement. To leading reformists such as Dr. Benjamin Rush, executions spoke of monarchy, which inflicted extreme punishments and usurped the divine right to take human life. Republicanism, by contrast, decentralized power and maximized liberty, therefore its punishments should be mild and benevolent. Reformists also drew from the teachings of the Italian philosopher Beccaria, who believed that the sole purpose of punishment should be deterrence, which was best accomplished by the certainty, not the severity of punishment.

Professor Masur reports that the attendance at public executions sharply dropped between 1800 and 1825. Yet the behavior of the community appears to have been influenced less by reformers than by the middle class retreat to values of privacy, as the populations of cities exploded. Professor Masur argues convincingly that what was most intolerable to the American middle class was not the fact of the execution, but the sight of it. In the 1830's, legislatures began to abolish public executions; but removing death from public view neutralized the most forceful arguments for reform, those which attacked the spectacle of execution and the fear of public disorder. By 1840 it was clear that in most states capital punishment remained intact in the prison yards. Democrats took up the view that the death penalty embodied inequality and privilege, since most who were executed were poor. However, the reformist movement hardly appeared to regain its momentum: following the Civil War, the hanging of Lincoln's assassins was attended by hundreds.

Professor Masur makes prodigious use of primary sources such as letters,

sermons, and writings, and refers to secondary sources for more complete development of subsidiary points. Much attention is paid to the ideas and theories of reformers and their opposition. Unfortunately, what is left unclear is the extent to which these ideas actually influenced public sentiment or legislatures to privatize executions. This is particularly true of the debates over the meaning of biblical texts. However, the book is useful for those who are interested in the flavor of the times, and provides an important historical background for the debate over capital punishment today, which draws from many of the same concerns about moral rights, control of crime, and social order.

Nina Loewenstein

PUBLIC JUSTICE, PRIVATE MERCY: A GOVERNOR'S EDUCATION ON DEATH ROW. By Edmund G. (Pat) Brown with Dick Adler. New York, New York: Weidenfeld & Nicolson, 1989. Pp. xvii, 171. N.p.

The role of a governor in capital punishment decisions and the import of mental-health factors on sentencing are two of the main themes of *Public Justice, Private Mercy*, based on Mr. Brown's experience as the governor of California from 1959 to 1967. Then, as now, the fate of each condemned person after all other legal appeals have failed, rests with the state's governor. It is obvious from this book that Mr. Brown found these life or death decisions difficult, distasteful, and inappropriate for a governor to make. It is less clear what alternate solution he would propose.

Mr. Brown begins with a prologue reviewing his career as district attorney and attorney general when he strongly advocated the implementation of the death penalty in every appropriate case. Mr. Brown's first doubts about the death penalty surfaced in the Burton Abbott case, in which then-Governor Knight stayed Abbott's death sentence minutes after Abbott had been executed. Shaken by this tragic event, Mr. Brown called for a five-year moratorium on the death penalty. Then, after becoming governor in 1959, he commuted twenty-three of fifty-nine death sentences to life imprisonment. This high number earned then-Governor Brown the reputation as a foe of capital punishment.

The body of the book discusses cases with which Mr. Brown was involved. He recounts each case in detail to illustrate the flaws inherent in the death-penalty system. The prose is conversational and engaging, and complex legal concepts are explained. The book is not so much a handbook for lawyers, as it is a book for anyone interested in a personal look at death-penalty issues. One important case Mr. Brown discusses is that of John Crooker, to whom Brown granted clemency due to lack of premeditation. Mr. Brown emphasizes Crooker's ensuing successful rehabilitation in order to demonstrate the possibilities available from sparing a person's life. Mr. Brown also recounts the Lindsey case, involving a mentally ill man, to critique the relationship between the judicial system and the psychiatric profession. He argues

that psychiatrists fail to communicate effectively a condemned person's mental condition to both the courts and the governor, who rely on psychiatric findings in making life-or-death decisions. He suggests an insanity standard less rigid than the *M'Naghten* rule and less reliance on governors untrained in psychiatry. In the final chapter, Mr. Brown argues that the death penalty is not a deterrent and that it clogs and pollutes the legal system. He proposes life-without-parole sentences and redefinition of legal sanity. He concludes by noting, and opposing, the imminent return of the death penalty to California.

Mr. Brown's highly personal approach to death penalty issues makes the book engaging and real. However, this perspective reduces the effectiveness of his arguments by focusing too narrowly on his own feelings concerning the death penalty. The conversational style draws the reader into each episode, but distracts her from the issues at hand. In addition, several of Mr. Brown's proposals seem unlikely and impracticable. He argues that governors should not make life or death decisions because personal feelings, political pressures, lack of expertise, and human frailty combine to make such decisions arbitrary and biased. But then who should decide? Mr. Brown ultimately concludes that the death penalty is not supportable regardless of the place or amount of debate, procedural safeguards, reform of mental health standards or sentencing structures. Regrettably, the book does not offer sustained and cohesive support for this conclusion.

Cheryl Ann Manganello

DEATH IN THE BALANCE: THE DEBATE OVER CAPITAL PUNISHMENT. By Donald D. Hook and Lothar Kahn. Lexington, Massachusetts: Lexington Books, 1989. Pp. 131. N.p.

The authors of *Death in the Balance* have written an overview of the controversy surrounding the death penalty in an attempt "to present both sides of an issue of great moral, social, and political import." Aimed at a wide, non-academic audience, the book takes on an informal, anecdotal tone as it traces the various aspects of the death penalty debate. Although the authors purport neutrality, it is not difficult to discern that they believe capital punishment will sooner or later be abolished. This position, however, is not based upon an ethical or policy stance against executions. Rather, the authors point to the contradiction that, although America refuses to end capital punishment, its current legal system prevents the full and consistent implementation of this form of punishment. The authors conclude that such a contradictory situation, which keeps hundreds of prisoners on death row for numerous years and costs millions, and potentially billions, of dollars in litigation expenses, cannot be maintained. "If the American people are not willing to see that the laws requiring execution are carried out fairly and speedily in the name of justice, then they should be willing to abandon those laws."

This rather agnostic, "fence-sitting" approach remains unsatisfying. At

pains to present all sides of the issue, the authors are unable to sustain coherent summaries of the critical arguments. They want to permit the reader to form her own judgment. But their inability to take a strong stand constantly leads the authors to the conclusion that one's view of the policy and moral arguments is premised on one's original position for or against capital punishment. For instance, the authors take the "balanced" approach that empirical studies on the deterrent effect of capital punishment cannot prove either side of the proposition. One's evaluation of this evidence, they assert, depends on whether one supports or opposes the death penalty. Similarly, the authors refuse to take a stand on the problem of the risk of executing the innocent. The twenty-three victims of error from 1900 to 1980 is a large or small number "[d]epending on the vantage point from which one views the question." The authors' examination of Western history and thought also fails to reveal a clear lesson. The Old Testament, they point out, states not only "Thou shall not kill," but also "Who sheddeth man's blood shall his blood be shed."

Professors Hook and Kahn do take a clear stance against capital punishment in their chapter on racial discrimination. The authors summarize a 1975 empirical study of the death penalty in Florida, Georgia, Texas, and Ohio that concludes that a death sentence results approximately twenty-five percent of the time when a black kills a white. By contrast, the study found that the death sentence is handed down less than five percent of the time when a white kills a white, less than one-fifth of one percent of the time when a black kills a black, and never when a white kills a black. Such results, the authors maintain, cannot be tolerated. "No law leading to discriminatory results is likely to be constitutional; yet it is doubtful that any fairer doctrines can be enunciated than those now in existence." Unfortunately, the usefulness of this information is severely undermined by the fact that the authors do not consider *McCleskey v. Kemp*, 481 U.S. 279 (1987), in which the Supreme Court rejected an equal protection challenge to the discriminatory effect of capital punishment.

Although *Death in the Balance* is intended only to provide an introduction to the general themes of the death penalty debate, the book undermines its goal of allowing readers to formulate their own opinions by its conclusion that empirical, policy, and moral arguments all depend upon one's original position on the subject. This approach fails to advance the reader beyond what she already knows. If, as the authors appear to believe, the death penalty will and should be abolished, a more effective, useful method would have been for the authors to have made a clear, cogent argument against capital punishment. As Professors Hook and Kahn themselves point out: "It is hypocritical to straddle the fence."

Marc Schachter

LAST RIGHTS: 13 FATAL ENCOUNTERS WITH THE STATE'S JUSTICE. By Joe Ingle. Nashville, Tennessee: Abingdon Press, 1990. Pp. 300. N.p.

Last Rights, by Joe Ingle, minister of the United Church of Christ and activist in the struggle against the death penalty, recounts the lives of, and his relationships with, thirteen death row prisoners. The book is designed to impress upon the reader the humanity of each individual. Mr. Ingle paints a loving picture of his subjects and their families. Unfortunately, he shies away from unfavorable information, making it apparent that pertinent details are being downplayed. This undermines the author's goal and forces even the most sympathetic reader to become cynical.

The book is heavily laden with religious argument and analogy. Mr. Ingle's argument that capital punishment is inherently unacceptable in Christian morality is a strong one. However, his extensive use of this argument, rather than one which transcends a particular religion to appeal to a more common morality, may seem heavy-handed and alienating to readers outside the Christian faith. In addition, some of the religious arguments leave concern about their extension beyond the scope of capital punishment to other "right-to-life" issues.

The thirteen stories which comprise the body of the book set the backdrop for an eloquent closing essay, which analyzes: the objectification of killing which society performs in order to be able to live with capital punishment; the entanglement of legal and political policy-making resulting in death distributed according to the "tyranny of the majority"; and the interplay of morality and religion. For example, in discussing the objectification of state-sponsored killing, he draws fascinating analogies to Nazi Germany and the Stanley Milgrim studies (demonstrating people's willingness to administer painful electrical shock to strangers merely because they were told to do so). Mr. Ingle arrives at the conclusion that "focusing on the task at hand enables the member 'of the [execution] team' to become lost in the successful completion of detail and not be disturbed by the total picture of how he cooperates in killing a person." Recalling the behavior of prison officials, guards, and politicians described in the book, any reader will surely be brought to the same conclusion. It is unfortunate that Mr. Ingle does not support his discussion of de Tocqueville's "tyranny of the majority" in a similar manner by using more substantive legal information in the thirteen stories. While the stories often refer to the legal and political processes involved in death penalty appeals, the coverage is superficial at best.

In all, the book provides an interesting and casual read. Unfortunately, the inherently fascinating lives of the thirteen subjects and the urgency of their stories deserve more than passing attention.

Amanda White