



University
of Glasgow

Armstrong, S. (2011) *David Garland, Peculiar Institution: America's Death Penalty in an Age of Abolition*. *Edinburgh Law Review*, 15 (3). pp. 490-492. ISSN 1364-9809

<http://eprints.gla.ac.uk/60876/>

Deposited on: 16 March 2012

they feel little connected to the processes of government. This suggests that punitiveness and democratic dis-engagement may be locked into a spiral of increasing punitiveness and decreasing political engagement.

Against this discouraging implication, readers will find in this book an inspiration about the uses of social science. Rarely has research enterprise of this scale integrated qualitative and quantitative research. The authors not only began with “ethnographic” interviews and observations, but they built opportunities for qualitative data even into their survey instruments and draw on this data richly throughout the text. This study exemplifies the way the two kinds of research can work together. It is difficult, if not impossible, to generate more sophisticated models of social processes without qualitative data, and it is difficult, if not impossible, to test such models without large quantitative studies. Typically the division of skills and preference dictates that a study will be one or the other. This book makes a very strong case for wedding the two.

My only disappointment with the studies underlying this book is their failure to come to grips with the most troubling issue underlying both American criminal justice and American politics – that is, race. The national juror study they conducted could not include race because the archival records of both jurors and voters does not include that information. However in choosing to focus their survey study on a state, Washington, with a very low percentage of non-whites, the authors missed an excellent chance to examine how a jurors’ race or ethnicity effects the encouraging dynamics they discovered. The authors assert that the jury “must also be recognized as a powerful means of civil education that reaches across all demographic and cultural divides” (157), but the truth is we do not know if that is true (which they acknowledge on p 159). It is possible that African-American jurors, who are very likely, given criminal justice statistics, to serve on a jury which considers the case of an African-American defendant, are not as likely to be inspired to participate more in democracy. This important question will await further studies. Hopefully they will be as well designed as this one.

Jonathan Simon
University of California, Berkeley

EdinLR Vol 15 pp 490-492
DOI: 10.3366/elr.2011.0066

David Garland, PECULIAR INSTITUTION: AMERICA’S DEATH PENALTY IN AN AGE OF ABOLITION

New York: Oxford University Press (*www.oup.com*), 2010. 417 pp. ISBN 9780199594993. £21.99.

The book’s title signals clearly its argument. “Peculiar institution” is of course a reference to America’s enslavement of blacks, and applied here to the death penalty links this legacy of racial domination to contemporary penal practice. The subtitle further clarifies Garland’s stance: the persistence of capital punishment in America during a (European and Western) “age of abolition”. “Why”, he asks, “did the processes of transformation that fully abolished the death penalty throughout the rest of the Western world not do so in America?” (184).

The book’s aim is to answer this question by developing “a detailed description of death penalty practices and an explanatory account of their sources, uses, and meanings” (15). Such a plan of analysis might seem straightforward but in this field, where the literature is dominated by those pushing an agenda either supporting or opposing its use, it is actually quite ambitious. To accomplish it requires stepping outside the debates of morality and principle and turning attention to “the complex field of institutional arrangements, social practices and and cultural

forms through which American death penalties are actually administered” (14). Garland is particularly interested in how the death penalty, and its technological refinement and patterns of use over time, reflects an American sensibility and identity. A core feature of this sensibility is diversity and contradiction, an internal tension and resistance to the very notion of one America, that Garland is right to emphasise. He points to the widely varying positions different states take with regard to capital punishment. Michigan abolished it in the mid-nineteenth century well before the most progressive nations of Europe, while other states have retained the death penalty on the books but rarely or never apply it. Meanwhile, the face of the American death penalty to the world is probably a place like Texas, which has executed nearly 450 people since 1976 (the year when legal executions resumed following a US Supreme Court ruling that rendered many death penalty statutes unconstitutional).

This diversity and contradiction in death penalty practice flourishes due to a number of cultural, social and institutional conditions prevailing in America. Racial discrimination is among these, and thrives due to the enabling but less well publicised factor of localism. Death penalty prosecution decisions are largely made at the level of the local community (i.e. by county or city officials). Garland draws on key histories of American society to specify the multiple sources and mechanisms of this localism. Culturally, Americans are sceptical of centralised state control and distant, elite bureaucratic decision processes. They also possess a strong sense of individual responsibility, and so those who commit the worst transgressions will be held to ultimate account by the communities they have harmed. Politically, the American federal system preserves a great deal of state and local autonomy particularly in the area of criminal justice. Add to this the fact that judges and prosecutors are often elected, and a mob justice populism can find a direct route into the criminal legal process.

Garland juxtaposes this distinctively American experience with Europe, generally by noting the civilising and secularising processes taking place there, and specifically by tracking the steady progress of death penalty abolition among its constituent states. European elites happily legislated against popular support for the death penalty, and the arrangement of political structures which limited local control and direct democratic participation allowed them to prevail. However, abolitionism gained more widespread popular support in Europe than America partly due to increasing public horror at the more physical and public displays of legal killing. Such horror reflected broader changes in cultural sensibility (an increasing aversion to violence and the sight of gore) and political values (the emergence in modernity of a particular concept of humanitarianism).

Such civilising processes and political changes were not absent in America, but they took uniquely American form. Garland contrasts the bloodthirsty way the crimes and sentencing of death row inmates is displayed in contemporary public discourse with the jarringly circumspect tone and minimal detail used in the coverage of executions themselves. Executions are no longer the visible culmination of a morally infused drama of judgment, but a carefully controlled and medicalised process. The preferred technology of lethal injection avoids the spectacular and bloody display of other methods – hanging, shooting, burning; and the removal of execution from public spaces into the secrecy of special prison death chambers, argues Garland, dampens the emotional immediacy of the event while nevertheless nourishing a public (blood)thirst through the mystique of its hidden happening.

Garland argues that nuance and scepticism are prerequisites to understanding a practice that has been so thoroughly politicised and mythologised. For the most part the book ably identifies where politics and myth have produced the thickest cloud cover. At the same time, the book, though carefully and regularly pointing out the dangers of essentialising whole nations, can sometimes appear to treat “America” and “Europe” unproblematically as sources of cultural meaning and identity and, moreover, as relevant comparators. This may be partly a

function of the expansive ground covered and the consequent reliance on secondary sources, which themselves are making contestable arguments as much as providing historical “fact” about American “exceptionalism”, the primacy of black-white relations in measuring racism, and the civilising of Europe. Setting up the issue by showing America to be the outlier of the “Western world” may be taking for granted the thing which deserves the most scrutiny. Since 2000, California – the state with the most people on death row – has sentenced more Hispanic men and women to death than blacks or whites; the same is true in Texas. This changing demographic not just of the death penalty but of the American population generally is missing in this account. Moreover, China, which executes more people than any other nation in the world, is to my mind too easily cast out of the analysis, especially given that it too is a major source of immigration to the US as well as being its primary creditor and economic competitor. This book provides an excellent resource and critical survey of the death penalty and its history in America and Europe. One hopes it will be joined in due course by an account which applies a similar scepticism to the idea of a civilised “West” sealed off from an (uncivilised) east and south.

Sarah Armstrong

Scottish Centre for Crime and Justice Research, University of Glasgow

EdinLR Vol 15 pp 492-493

DOI: 10.3366/elr.2011.0067

Catherine A Appleton, LIFE AFTER LIFE IMPRISONMENT

Oxford: Oxford University Press (www.oup.com), Clarendon Studies in Criminology, 2010. xxiii + 252 pp. ISBN 9780199582716. £50.

This book examines the process of resettlement for a cohort of life-sentenced prisoners in England released on license between 1992 and 1997. It is based predominantly on interviews with 37 prisoners and 113 probation officers and supported by analysis of case files and some statistical analysis. Discretionary lifers have committed predominantly violent and/or sexual offences, hence their status as presenting a risk to the public. Over 90% had experienced mental health problems (compared to 75% of the general prison population), 87% had records of previous criminal offences, and the sample exhibited high levels of alcohol abuse, poor educational achievement, histories of childhood abuse, poor employment record etc. There were very few female lifers.

The first chapter deals with the legal regulation of the life sentence. Appleton points to the discrepancy between the judicial process governing the release of lifers and the administrative process governing recall. She argues that the procedural protections available for release processes should also be available for recall procedures. However the main focus of the book is on the work of probation officers and their relationship with the lifers.

Readers of this journal will be familiar with the various theories of “the new penology” which argue that the welfarism which underpinned criminal justice in the post-war years has been replaced by an actuarial approach to managing the risks presented by dangerous populations. These theories (necessarily) have relied to a significant extent on analyses of legislative reform, government policies and political rhetoric. There have been relatively few empirical studies of criminal justice practices. Such research is expensive, resource intensive and small scale and it will always be difficult to build a comprehensive evidence base about what is “really happening on the ground”. However, this empirical study shows that “new penology” discourses do not dominate the day-to-day working practices of probation officers who continue to treat offenders as moral agents with the potential to change and make judgments based on professional expertise rather than actuarial data in their work with offenders. The analysis and management