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Richard J. Evans. *Rituals of Retribution: Capital Punishment in Germany 1600-1987.* Oxford: Oxford University Press, 1996. xxxii + 1014 pp. $65.00 (cloth), ISBN 978-0-19-821968-2.

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In *Rituals of Retribution*, Richard J. Evans for the second time brings to the scholarly community a big book that seemingly addresses an arcane and narrow subject but in reality throws a piercing light into many unlit corners of German history. Just as *Death in Hamburg* (1987) taught us much about urbanization, municipal government, the history of medicine, public health, and the history of technology–thus transcending its apparent focus on a single cholera epidemic in a masterpiece of bricolage–*Rituals of Retribution* offers far more than a mere history of capital punishment in Germany.

Evans uses capital punishment to trace the transition of Germany from a society of estates to a class society and through all the upheavals and regime changes of the twentieth century. In so doing, he not only challenges constructions of "German exceptionalism," but explores the validity of three rival theories of death as punishment: Michel Foucault (*Discipline and Punish*), Norbert Elias (*The Civilizing Process*), and Philippe Aries (*The Hour of Our Death*). Evans constructs the theories as contending primacies of discourse, culture, and experience, and social historians will not be surprised to learn that he finds experience to be the most persuasive explanation both for the persistence and then the abolition of the death penalty in Germany.

Evans places early modern capital punishment in its context of an array of corporal punishments in a society in which both religious concern for the soul and concepts of honor dominated people's thinking and the public discourse. Executions were public, brutal, and calibrated to convey community notions of honor and dishonor. "Honorable" executions were conducted by the sword, whereas breaking with the wheel (and lesser corporal punishments such as cropping and branding) aimed at heaping obloquy and infamy upon the offender. Yet the larger public ceremony at the raven stone sacralized the institution of capital punishment, supporting the secular sovereign through the ultimate sovereignty of God, who could redeem even the basest if only she or he repented. Confession remained central, both in criminal law to create certainty before execution of the ultimate penalty and in religion, as the condemned was assisted by the patriarchal state to security in the life everlasting.

Reason in the Enlightenment called this understanding into question. Beginning in the mid-eighteenth century, penal theorists questioned both the rationality and deterrent value of corporal and capital punishments, favoring instead rehabilitation and building prisons. Inspired by Beccaria, some European states, notably the Habsburg Empire under Joseph II, abolished capital punishment, while others reduced the wide array and dishonoring intent of their means of execution. Evans views

the Prussian General Law Code of 1794 as the "summation of Enlightenment thinking on criminal law" (p. 135), and it eliminated corporal punishments and created a limited number of graduated means of execution for a shorter list of capital crimes. While it did not abolish the death penalty, the General Law Code desacralized it, secularizing the execution ceremony through the work of rationalist officials and elites. Yet popular notions of the meaning of capital punishment continued, and after events in Paris since the summer of 1789, those same rationalist officials and elites became increasingly nervous about disorder of the lower orders at public executions.

The trend in the nineteenth century, then, was toward continued rational codification of criminal law, and an end of public executions, turning to "intramural" ceremonies within prison walls in the presence of a controlled audience of elites. Rationalism and secularization accompanied a divergence of elite and popular understandings of capital punishment, as well as a transition from a society of estates to one of classes. Liberal rationalism led in the early 1840s to an active debate in the bourgeois public sphere about abolition of capital punishment. Although new criminal law codes, such as the Prussian Criminal Code of 1851, did not abolish the death penalty, the debate about potential abolition caused sovereigns to exercise their powers of clemency to commute sentences to life imprisonment out of considerations of caution and fairness. In sharp contrast to England, the death penalty ceased for property crimes that did not involve homicide, and while legislatures debated new codes in mid-century, executions ceased altogether. In Prussia, there were no executions between 1868 and 1878, and abolition seemed imminent.

Bismarck's course change in 1878 renewed the death penalty in Prussia. He made the execution of the would-be assassin Hoedel in 1878 part of his campaign to play upon the contradictions of liberal convictions, to play their abolitionism off against their fear of Social Democracy, to expose their elite rationalism to a populist audience that favored the death penalty as just retribution. Abolitionism and retentionism became fundamental political positions, and the politics of the death penalty reflected divergent theories of the state. The death penalty served far more as an instrument of state policy that an aspect of penal policy.

Weimar opened with a debate about abolition, and the liberals again compromised by omitting it from the constitution, pending a revision of the criminal code that has not yet happened. The Third Reich, as is well known, greatly expanded its use before it eventually merged into even vaster forms of elimination. Article 102 of the *Grundgesetz* came into being in 1949 almost by chance, withstood efforts in the 1950s and 1960s to restore the death penalty, and survived until a public abolitionist consensus emerged in the west in the 1960s, which ultimately forced the DDR in 1987 to abolish the death penalty as it was losing its own legitimacy.

Evans concludes that Foucault erred by overestimating the transgressive potential and carnivalesque atmosphere of early modern executions and underestimating the real humanitarianism of Enlightenment rationalism. Elias mistook German exceptionalism, which he took to be one of barbarity. Certainly National Socialist positions on capital punishment were barbarous, but prior to 1933 German exceptionalism was in its humanity, eliminating the death penalty for property crimes quite early and executing murderers as a far lower rate than Britain, France, and of course the United States.

Taking Aries's history of experience as the most promising, Evans argues that changing attitudes toward death are the key to understanding the history of the death penalty in Germany. Secularization and rationalism shifted attention from the afterlife to the value of human life in the present, favoring abolition; but in the 1890s, the rise of eugenics and hereditarian notions of criminality brought a new secularly-rational justification to the death penalty, one carried to its logical extreme by the National Socialists. German exceptionalism, Evans argues, was that the social tensions of crime were diverted upward into politics (p. 899), with capital punishment as the central symbol of the division. Only in Germany did abolition become identified as a central tenet of liberalism and retention as support for sovereignty, authority, and rejection of liberal beliefs like tolerance, participation, and freedom of the individual.

Americans in the 1990s can doubt whether the symbolic politics of capital punishment were peculiar to Germany, and legal historians can quibble with Evans' equation of the *Rechtsstaat* with legal positivism (p. 470), but all historians of Germany and of criminal law should welcome this latest excellent contribution.

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