

Charles J. Ogletree Jr., Austin Sarat, eds. *The Road to Abolition? The Future of Capital Punishment in the United States.* Charles Hamilton Houston Institute Series on Race and Justice. New York: New York University Press, 2009. ix + 374 pp. \$79.00 (cloth), ISBN 978-0-8147-6217-2; \$22.00 (paper), ISBN 978-0-8147-6218-9.



Reviewed by Aaron Lorenz (Ramapo College, Law & Society)

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Commissioned by Rebecca K. Root (Ramapo College of New Jersey)

Attitudinal Shifts toward Capital Punishment and Prospects of Its Abolition

For this volume, Austin Sarat and Charles J. Ogletree Jr., two pioneers in contemporary capital punishment research, commissioned scholars whose work provides theoretical and practical insights on the topic of capital punishment. Capital punishment research is plentiful today; Sarat and Ogletree add to this research with a book designed to highlight the current movement toward abolishing the death penalty in the United States.

The book is assembled into three parts: assessing prospects for abolition, debating the moral and legal issues associated with lethal injection, and putting the death penalty in context. Each section is theoretically innovative and the contributors enhance the structure by focusing on the legal values implicit in capital punishment debates. The present debate entails moral considerations, legal implications, historical traditions, and specific issues concerning the execution itself, for example, lethal injection versus other forms of execution. This edited volume addresses all of these issues.

Part 1 begins by examining the prospects for aboli-

tion. Sociologist Michael Radelet suggests that progress has been made toward abolition and momentum remains with the abolitionists. His research shows, exhaustively, that the discourse regarding capital punishment has changed over the past twenty-five years. This change is due to the discrediting of the deterrence argument, the cost discrepancy between life in prison without the possibility of parole and a death sentence being more consistently advertised, and statistics on racial bias in death penalty cases becoming increasingly accepted at both the national and state level.

The chapters continue with a fascinating discussion by science and technology historians Simon Cole and Jay Aranson. They discuss prospects for abolition by addressing the "innocence revolution" brought about by DNA evidence and multiple exonerations. This chapter is especially valuable to the debate on capital punishment because Cole and Aranson have immense credibility on the issue and because there are so few studies that show the "cultural authority of science" (p. 8). Cole and Aranson, like good law and society scholars, note that neither

science nor law is enough to develop a social consensus on abolition. Rather, science, law, morality, and criminology must all be factored into the abolition question.

The next several chapters discuss the political prospects of and strategies for abolition. Bernard Harcourt, a professor of law and criminology, argues that capital punishment will be abolished by the middle of the twenty-first century. Harcourt focuses on the celerity of executions. Criminologists note that in order for punishment to be viewed as effective by society, there must be celerity, certainty, and severity. With an ever-increasing apprehension about executing the wrong person, society is less likely to want to swiftly execute, thus having the effect of slowly eroding faith in what death penalty opponents, and former Supreme Court Justice Harry Blackmun in *Callins v. Collins* (1994), called "the machinery of death." Carol Steiker, a professor of law, and Jordan Steiker, a judge, continue the discussion on the prospects of abolition by reminding the reader (and the abolitionists) that capital punishment will be defunct by judicial abolition in the United States, whereas European abolition came by way of legislative action in the face of strong popular support for retention. In the United States, politicians often seem more likely to respond to their electorate. Thus, Steiker and Steiker note that addressing public opinion is a necessity. Political scientist Michael McCann and sociologist David Johnson complete the first section of the book with a bit of skepticism about the prospects of abolition. They argue that attempts to whittle away capital punishment have made it more difficult to end the practice of state killing. They pay particular attention to moratoriums on capital punishment across states. These moratoriums have often only temporarily slowed the executions and, in fact, have not necessarily led to those states becoming abolitionist states.

Part 2 looks at the issue of lethal injections. Law professor Deborah Denno examines some recent lethal injection cases and their potential impact on the death penalty debate more generally. She notes that the lethal injection debate has been effective in changing the perception of capital punishment, but she reminds the abolitionist that this debate can act as a distraction from deeper discourse on the death penalty. A prime example of this is Justice John Paul Stevens's concurrence with Chief Justice John Roberts in the 2008 *Baze* case. Stevens declared his opposition to capital punishment in general yet he supported the majority in *Baze*, which declared Kentucky's lethal injection protocol constitutional.

Political scientist Timothy Kaufman-Osborn discusses *Baze* in great detail and argues that it was a setback for abolition. In this chapter, Kaufman-Osborn posits that Chief Justice Roberts's interpretation and the lack of consensus in the case will make future challenges to lethal injection less likely to succeed. *Baze* has shifted the debate away from the power of the state to execute and back to the search for the perfect execution. That is, discussing ways to antiseptically develop methods of execution will inevitably lead to debates like those found in *Baze* where the Court accepts the risk of pain in executing criminals. History professor Jurgen Martschukat continues along this thematic line, noting that executions have historically been made to appear tolerable by providing a relatively painless death. This, Martschukat explains, is a delusion of modern cultures. Each execution from the guillotine to lethal injection has been developed to kill without pain. Yet each method has raised questions of whether society is alleviating the pain of the executed or the pain of witnesses to be forced to watch a botched execution. Abolitionists must recognize that the debate centers on reminding the public that a perfect execution is an unattainable goal.

Part 3 ends by putting the death penalty into its proper context. Sociologist Robin Wagner-Pacifici and law professor Peter Fitzpatrick separately address the death penalty and modes of terror as well as prospects for abolition. Wagner-Pacifici discusses the countless times that society has seen the sovereign state make claims about its authority to execute. The contemporary debate regarding torture and the "war on terror" has only added to the murkiness of the discourse. Fitzpatrick finishes the book with a reminder that the abolition movement need not follow a marked path. Whether it is deterrence, morality, legality, public opinion, or scientific advancement, abolitionists need to remain vigilant in highlighting the racial injustices that underlie the criminal justice system and manifest themselves clearly in capital punishment cases.

The Road to Abolition is a collection of work by some of the best researchers on capital punishment assessing the prospects of a future without the death penalty. Due to the specificity of the research and the background required to contextualize the arguments, this book is best suited for graduate students and scholars who work within the doctrinal history of capital punishment cases. It is particularly useful for scholars and abolitionists considering the impact of previous abolitionist movements.

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