

The Future of America's Death Penalty: An Agenda for the Next Generation of Capital Punishment Research, edited by Charles S. Lanier, William J. Bowers, and James R. Acker. Durham, NC: Carolina Academic Press, 2008.

reviewed by Eric N. Waltenburg

Almost three-and-one-half decades after the U.S. Supreme Court's decision in *Gregg v. Georgia* (1976) ushered in the "modern era" of capital punishment in the United States, the nation and its leaders remain conflicted concerning the aim, efficacy, and implementation of this ultimate sanction. What can be gained by imposing the death penalty? How is the death penalty framed and perceived? What are the cultural, social, psychological, and fiscal costs associated with it? To whom should the death penalty be applied? And can it be applied in an equitable manner, or do forces such as race, class, and even geography so infect it that the nation's capital-punishment system is fatally flawed? To be sure, questions like these surround criminal sentencing in general, but, as judges have said, "death is different." Its severity and finality amplify the need to arrive at a thorough and objective understanding of the administration and characteristics of capital punishment in America. In other words, systematic social-science research that will inform the public-policy debate on the death penalty is essential.

The Future of America's Death Penalty is a collection of essays on capital punishment by many of the nation's leading scholars that should jump-start this research. Its overarching goal is not to relate what we know about capital punishment but to identify key questions and suggest strategies for future analysis. The book begins with a foreword by Ronald Tabak, in which he identifies and discusses a number of subjects for future research that could affect judicial or legislative actions dealing with capital punishment or could shape public policy on whether to retain capital punishment, including mental retardation and mental illness, race, jury instructions, and public opinion. The foreword is followed by a brief introductory chapter in which the editors relate the book's genesis at a major conference at the University at Albany and describe its basic organization. The book's remaining 22 chapters are organized into five sections: (1) General Research Directions and Challenges, (2) The Process Leading to a Death Sentence, (3) The Process Beyond the Sentencing Decision, (4) The Utility and Efficacy of the Capital Sanction, and (5) Examining the Punishment of Death. These sections cover an analytically, politically, and emotionally complex subject impressively.

The chapters that compose section 1 highlight the questions and effects of evolving research on the death penalty. An introductory chapter (chapter 2) by Hugo Adam Bedau reviews some of the broader findings in the extant research literature and points out where these findings offer points of departure for new or further analysis; Bedau provides a very useful selected bibliography of books on the death penalty from 2000 to 2008. In chapter 3, Jordan Steiker discusses the effects of empirical research on Supreme Court death penalty jurisprudence. He concludes

that the findings presented in the research literature matter little to the justices. Rather, elite and mass opinion on the death penalty, together with the system's practicability, appear to weigh most heavily in their decisional calculus. Chapter 4, by William Bowers and Scott Sundby, identifies a phenomenon worthy of greater systematic scrutiny—the recent, precipitate drop in death-sentence convictions. The authors document the decline, discuss several possible explanations for it, and describe a research strategy and necessary data for conducting a scientific investigation of this development.

The section's final two chapters are descriptive surveys of resources that are available for the study of the death penalty. The first of these, chapter 5, by Deborah Fleischaker, reports on the ABA's Death Penalty Moratorium Implementation Project and notes some of the gaps in the data that make drawing valid conclusions concerning the system's operation difficult, while Charles Lanier's chapter 6 describes the ambitious collection on the death penalty being built at the University of Albany's National Death Penalty Archive, which contains data on the Capital Jury Project, clemency petitions, an oral history on the death penalty, and a variety of other collections. Scholars examining the capital-punishment system in the United States should find this an invaluable resource both now and as it continues to be developed.

The focus of section 2 is on the administration of capital sentencing. It is relatively well documented that racial disparities are present in capital convictions (see, for example, *McCleskey v. Kemp*, 481 U.S. 279 [1987]). Chapter 7, by Michael Radelet and Glenn Pierce, examines whether similar disparities are also present in the early, investigative stage of homicide cases. The authors find that racial disparities taint the resolution of homicides and, thus, affect who ends up on death row. They point out that to fully understand the administration of the death penalty, the analyst must examine the full domain of the process. In chapter 8, David Baldus, George Woodworth, and Neil Alan Weiner describe the two basic approaches that have been used to examine disparities in capital charging and sentencing—Supplemental Homicide Reports and *McCleskey*-Style Analyses, and then, in chapter 9, joined by David Zuckerman and Catherine M. Gross, they take a step further the subject of empirical examination of disparities in the administration of the death sentence and offer a methodological primer on conducting such analyses.

Of course, a key actor in the administration of the death penalty is the capital jury. To what extent do biases affect its decisions? How well do juries understand sentencing requirements and sentencing alternatives? These questions are important for understanding the decisional calculus of the jury, a topic discussed in chapter 10. There the authors, Bowers and Lanier, along with Thomas Brewer, describe the Capital Jury Project, in which jurors in capital cases have been interviewed, and discuss a research agenda for examining the extent to which capital juries fulfill constitutional mandates. (See Antonio, 2008, and Sandys and Trahan, 2008, in this issue, for examples of project-based studies.)

In section 3, the focus turns to the administration of the death penalty beyond the sentencing decision itself. In chapter 11, Richard Dieter deals with the effect of innocence on the use of capital punishment. The author reports the association between the public's awareness of the possibility of wrongful convictions and its attitude regarding the death penalty. Given this association, he suggests several questions. For example, is the recent decline in capital convictions the result of juror concerns with possible innocence, with prosecutors thus deciding to bring fewer death penalty cases? Or do prosecutors pursue fewer capital convictions *because* they believe jurors are more difficult to convince? In chapter 12, John Blume, Sheri Lynn Johnson, and Christopher Seeds look at the implications of the Supreme Court's ruling that the mentally retarded are constitutionally exempt from death sentences (*Atkins v. Virginia*, 536 U.S. 304 [2002]). This chapter in particular spotlights the effect of the federal system on the administration of capital punishment. States have different requirements for the designation of retardation and different procedures for its determination, and these differences naturally raise questions concerning their effect on the use of the death penalty.

Chapters 13 and 14 deal with recent changes in the two major mechanisms for avoiding the execution chamber—federal habeas-corpus petitions and clemency. The authors of chapter 13, David Dow and Eric Freedman, provide evidence that streamlining the federal habeas-corpus system has been concurrent with a precipitate drop in the success of habeas petitions. (See Gould, 2008, in this issue.) They are careful to note that the two developments are not necessarily causally linked, but they point out that the possible relationship deserves systematic analysis and call for such research. Austin Sarat's chapter 14 then examines theoretical and normative issues associated with clemency petitions.

The chapters of section 4 examine the effect or consequences of the death penalty. In chapter 15, essentially a methodological audit of studies purporting to show the deterrent effect of the death penalty, Jeffrey Fagan and Valerie West show that these studies are fraught with serious theoretical and methodological defects. Given that deterrence has been a rationale for death penalty legislation, policies predicated on these deterrence studies may be fatally flawed. Better than any other chapter, the authors here demonstrate the importance of valid empirical research to the nation's capital-punishment system. Chapter 16, by Jon Sorensen, examines studies that attempt to gauge the future dangerousness of defendants. The author points out that measures of future dangerousness are assessed in nearly every capital-murder trial. But herein lies the rub; as is the case with deterrence studies, extant analyses on future dangerousness are prone to methodological problems. Snags arise with sample selection, operational definitions of violence, and the availability of essential data. Overcoming these problems should be the aim of future investigations.

In chapter 17, Margaret Vandiver turns our attention to the effect of the death penalty on family members—both those of the victim and the offender. Certainly, a

death sentence imposes costs on family members. But what is the full scope of these costs to the families? What exactly is lost? For example, there is shame, distance, the protracted reminder of a loved one incarcerated and awaiting death or a loved one murdered. These are concepts filled with emotional content, and the author is careful to lay out the unique challenges and difficulties associated with examining capital punishment's effects on families and to suggest means to overcome them. In chapter 18, Jonathan Gradess and Andrew Davies examine the more obvious and tangible costs associated with maintaining a capital-punishment system—the financial demands such a system imposes on the state. Through a review of the literature, they demonstrate that it costs more to maintain a death penalty system than it does to impose life sentences on offenders.

The final section focuses on death as a punishment. As is repeatedly noted in court cases on capital punishment, “death is different.” But is it a form of punishment that is so qualitatively different that only executions can achieve its particular end? This is in essence the focus of chapters 19 and 20. In chapter 19, David Garland asks whether the death penalty should be understood largely in terms of symbolic or instrumental aspects. Given the rarity of the death penalty's implementation, there is a school of thought that would present it as largely of symbolic effect. In the end, however, Garland avers that the symbolic/instrumental distinction is a false dichotomy. Symbolism can have tangible effects, and depending on how the death penalty is socially constructed, it can affect the actions of activists on either side of the capital-punishment debate as they wage a symbolic struggle to shape public opinion conducive to their public-policy goals. James Acker's closely related chapter 20, examining alternative forms of punishment, asks whether they could be framed to accomplish the same special goals we associate with the death penalty.

Chapter 21, by Robert Johnson, Sandra McGunigall-Smith, Jocelyn Fontaine, and Christopher Dum, focuses on research needed on the nature and effects of life on death row for those individuals who experience it—in particular inmates and guards. For both groups, that “death is different” has consequences. Research suggests that for guards, working on death row is stressful and emotionally challenging. For the inmates, life on death row produces a variety of behaviors and responses—from “tripping,” to emotional collapse, to successful adaptation to their confinement. Variation on death row occurs along a range of dimensions, and the authors suggest a number of research questions that take advantage of this variation. Finally, in chapter 22, Deborah Denno looks at the use of lethal injection as the nation's principal mode of execution. By its nature, lethal injection produces an odd marriage between the medical and legal communities, and Denno identifies the stresses and questions attendant to this largely uncomfortable relationship.

The concluding chapter, by Acker and his coeditors, does a fine job of drawing these essays together. It lays out common themes and suggests a variety of research proposals stemming from the various chapters. It also makes the case for the impor-

tance of reliable, accessible data and calls for analysts and the officials responsible for administering the nation's capital-punishment system to make these data available.

The Future of America's Death Penalty fulfills its goals. It identifies the broader trends in capital convictions in the United States. It poses a series of research questions and lays out a research agenda for arriving at a more systematic understanding of the use, implementation, and costs of capital punishment. And it suggests strategies for conducting empirical research on the subject. In the end, it provides a useful resource for social scientists studying America's death penalty. **jsj**

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