

***Peculiar Institution: America's Death Penalty in an Age of Abolition,***  
**David Garland, Harvard University Press, Cambridge, MA, 2010,**  
**432 pages (ISBN 978-0-674-05723-4)**

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If you are intrigued by the United States (US) death penalty, you are not alone. David Garland's most recent book shows us why: first, the institution is so peculiar it invites it; and second, by engaging in the discourse, you also become part of its sociological structure.

Garland's book, *Peculiar Institution: America's Death Penalty in an Age of Abolition*, adds to bulging bookshelves on the death penalty, but in a completely novel way. Garland, Professor of Law and Professor of Sociology at New York University, steps outside the capital punishment institution, puts partisan argument aside, and seeks to 'regard capital punishment not as a moral dilemma to be addressed or a policy issue to be resolved but as social fact to be explained' (Garland 2010:13–14).

In this regard, he uses historical and sociological comparative analyses, rather than moral and legal debates, to understand the peculiar nature of capital punishment in the US. This is because '[l]ike any social fact, today's capital punishment complex bears witness to the social organizations, cultural patterns, and conflicting interests of the people who produced it' (Garland 2010:69).

The peculiarities include its unique presence in the West, its legacy to slavery and racial lynchings, and its poorly adapted role towards criminal justice purposes — where the primary cause of death, for the relatively few death row inmates per 12,000 homicides per year, is 'natural causes' (Garland 2010:11).

In his approach, Garland does not shy away from conflicting conventional wisdom with partisan echoes (such as the death penalty as an anachronistic holdover, American Exceptionalism, an exercise of sovereign state power or merely symbolic); rather, harnessing what he describes as their 'half-truths' (Garland 2010:17) to finetune his own analytical perspective.

Garland also highlights the continuing function of the death penalty, most starkly as a communication system and a vehicle that permits very lengthy sentences of imprisonment, such as life without parole, as humane.

Ultimately, Garland attributes the enduring presence of the death penalty to 'one of America's chief values and virtues—a radically local version of democracy' (Garland 2010:309). In short, strong local autonomy and popular democracy have prevented abolition of the death penalty when popular opinion favoured retaining it. Conversely, this also explains why some US states with different anatomy, economic conditions, racial divisions and crime patterns were able to abolish it, even as early as the 1800s.

Garland draws from the apparent historical ironies between 'America's most shameful legacies '(slavery, lynching, racial violence) [and] its most cherished values (democracy, localism, individual responsibility)' (Garland 2010:15). In using the example of lynching, Garland argues the narrative of the death penalty is driven by similar structural features, such as 'the state's relative autonomy from the national state, the local control of power to punish, the political dominance of small groups' (Garland 2010:38).

Whilst it has been over 40 years since Ronald Ryan was hanged in Pentridge Gaol, becoming the last instance of capital punishment in Australia, this book still has resonance in Australia.

The death penalty, as an extreme lens through which to view sentencing generally, is a tool to learn from American experience, particularly in the shared context of 'law and order' politics. For example, in New South Wales (NSW) where the Law Reform Commission is reviewing sentencing laws, tabloid newspaper headlines at the time of writing this review included 'How the [Attorney-General] went from Rambo to Cream Puff with stance of sentencing in NSW' (Clennell 2012).

This book ultimately shows that we can only benefit from shifting the conversation and understanding why capital punishment or, in Australia's case, sentencing more generally, 'throws a long cultural shadow, producing an extent of political, cultural, and legal engagement that seems quite out of proportion to the institution's actual use or penological purpose' (Garland 2010:55).

Lucy Blair

BVSc (Hons) MACVSc LLB (Hons)\*

## References

Clennell A (2012) 'How DPP Greg Smith went from Rambo to cream puff with stance of sentencing in NSW', *The Daily Telegraph* (online), 24 January 2012 <<http://www.dailytelegraph.com.au/news/how-dpp-greg-smith-went-from-rambo-to-cream-puff-with-stance-of-sentencing-in-nsw/story-e6freuy9-1226251663461>>

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\* Incorporating one semester in the Capital Punishment Clinic at the University of Texas, Austin.