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The Death Penalty in America: An Anthology by Hugo Adam Bedau

Jefferson Frazier
Harvard University

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Book Reviews

THE DEATH PENALTY IN AMERICA: AN ANTHOLOGY.

By Hugo Adam Bedau.

Aldine Publishing Co., Chicago, (1964)

Even within that noble aggregation of unsubstantiable vagaries known as the principles of the criminal law, the question of capital punishment stands unsurpassed for the emotionalism of its debaters and the infinite diversity of their opinions. In Kentucky, according to author Bedau, “it used to be said that if a Negro killed a white man it was murder, if a white man killed a Negro it was unfortunate, but if a white man killed a white man it was self-defense, unless the affray was over a woman, in which case the cause of death was apoplexy.”

No one volume could possibly cover the broad range of questions raised by the death penalty, and the answers to such questions as “does the death penalty really deter?” are seemingly inscrutable. Much of the debate centers on the preliminary issue of which side should bear the burden of proof, and, as The Death Penalty in America makes plain, the participants seem rarely to respect the good sense of the other side. On the one hand, J. Edgar Hoover attacks “maudlin,” “misguided do-gooders,” and concludes: “No one, unless he can probe the mind of every potential killer, can say with any authority whatsoever that capital punishment is not a deterrent.” On the other, author Bedau, Associate Professor of Philosophy at Reed College in Oregon, declares that no penologist of any repute supports capital punishment, and concludes: “there is no evidence to support the theory that the death penalty is a deterrent superior to imprisonment for the crime of murder.”

Although all but one of the essays in this volume have appeared elsewhere, nearly all of them deserve republication and study. There are stimulating tracts by the Chief of Police in Santa Ana, California, and the President of the American League to Abolish Capital Punishment, monographs by such noted social scientists as Thorsten Sellin on the deterrence issue, and compendious stories of false convictions and executions.

Unfortunately, Mr. Bedau is far from an objective editor. An active proponent of abolition in New Jersey in the 1950’s, he feels compelled
to rebute the arguments of defenders of the death penalty, especially when they wear the intellectual credentials of a Sidney Hook or a Jacques Barzun. While his own comments throughout the book in favor of “the ultimate punishment, literal life imprisonment” (with parole possible after ten years) are cogently and ably argued, he would have done better to confine his remarks to the introduction, or to publish them under separate cover.

Capital punishment has been slowly whittled away in America over the last century. The number of crimes has been reduced, technical distinctions introduced, and the sanity standard made more compatible with modern psychiatry. If the death penalty is retained but never used, there is surely no deterrent; instead, disrespect for the law is encouraged. The ultimate question today is: who should bear the burden of proving the crucial point of deterrence? Given the tremendous social costs of capital punishment, the danger that the innocent will be killed, the inequities of race and class, the lack of rational justification for the penalty, and the absence of evidence that murder rates have risen in states which have abolished the death penalty, the deathhouse should be abolished. But we will have to know much more before the case for abolition becomes so overwhelming as to lead to Mr. Bedau’s solution: a universal constitutional amendment to ban capital punishment forever in the United States.

Jefferson Frazier*

CIVIL PROCEDURE IN SWEDEN

By Ruth Bader Ginsburg and Anders Bruzelius

The Hague: Martinus Nijhoff (1965)

In connection with the planned civil procedure reform in Germany after World War I, a series of monographs dealing with foreign civil procedure systems has been published in the collection Das Zivilprozessrecht der Kulturstaaten. One of the first volumes in the collection was Das civilprozessrecht Schwedens und Finnlands by Baron Rabbe Axel Wrede, published in 1924.

Forty years later a similar project has been initiated in this country. The Project on International Procedure of the Columbia University School of Law has as its aim, among others, to prepare studies of the laws of civil procedure of selected foreign countries. The first of the

* Second year student at Harvard University Law School.