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978-0-521-76351-6 - Is the Death Penalty Dying?: European and American Perspectives

Edited by Austin Sarat and Jürgen Martschukat

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Introduction: Transatlantic Perspectives on Capital Punishment

National Identity, the Death Penalty, and the Prospects for Abolition

Austin Sarat and Jürgen Martschukat

Is the Death Penalty Dying? offers an analysis of the historical and political conditions that have shaped and continue to shape death penalty practices on both sides of the Atlantic from the end of World War II to the twenty-first century. This book focuses on what we can learn about the American death penalty and the prospects of its abolition by studying the European experience with capital punishment and especially the multifaceted trajectory of abolition in different European nations and the European Union. As a comparative sociology and history of the present, our book seeks to illuminate the way death penalty systems work and the way abolition occurs. It includes eleven chapters, written by an interdisciplinary group of scholars in the fields of law and literature, sociology and criminology, political science, and history from the United States and several European countries. This work shows how the death penalty has helped define the political and cultural identities of both Europe and the United States and will help readers understand the cultural and institutional barriers that stand in the way of abolition of the death penalty in America.

AMERICAN QUANDARIES

The United States is today the only retentionist country among the community of Western democracies.¹ Indeed America finds itself in the company of countries such as China, Iran, Iraq, Pakistan, Saudi Arabia, and Sudan in its continuing use of state killing. Moreover, there is hardly any issue on which Europe and the United States seem as far apart as the death penalty. Whereas most American states authorize capital punishment, since the 1980s Europe has emerged as a bastion of abolitionism and its worldwide advance, with the European Union having made abolition a strict requirement for membership.

¹ Austin Sarat, and Christian Boulanger, eds., *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford, CA: Stanford University Press, 2005).

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Yet lately, the perception and politics of the death penalty in the United States have been changing.² This change has been driven in part by a large number of exonerations from death row, with 55 occurring in the last decade among a total of 138 since 1973.³ Americans are increasingly aware of judicial errors and wrongful convictions. The malfunctioning of the death penalty system has also been diagnosed by an array of research studies⁴, and it has led to far-reaching and widely noticed decisions by political figures like former Governors George Ryan of Illinois or Parris Glendening of Maryland, both death penalty supporters at one time, who declared moratoria on executions, and in Ryan's case granted clemency to everyone on his state's death row.

With increasing intensity, capital punishment in America has been labelled a broken system. Rising scepticism has also been accompanied by dropping execution numbers, from a high of ninety-eight in 1999 to fifty-two in 2009. Furthermore, even though support for the death penalty among the general population is still substantial, it is nevertheless shrinking. The Gallup Poll's latest national survey of American opinion on the death penalty found that support for capital punishment dropped by five percentage points from the year before, falling from a high of 80 percent in the mid-1990s to 69 percent in 2007 and down to 64 percent in 2008. Today American support for the death penalty is equal to the lowest it has been in the Gallup Polls during the past thirty years.⁵

When asked to choose between the death penalty and life without parole as a punishment for murder, the American public now splits right down the middle. Yet, the American public remains wedded to punitiveness. Thus, as Marie Gottschalk indicates in her contribution to this book, the promotion of life in prison without the possibility of parole (LWOP) by leading death penalty abolitionists appears to have contributed to "the construction of the carceral state in the U.S." by legitimizing the greater use of life sentences, even for noncapital crimes. Prior to the mid-1970s (which is also the time when the death penalty returned in America), LWOP was used sparingly, and in the mid-1990s, only sixteen states had LWOP on the books.

² Charles Ogletree, and Austin Sarat, eds., *The Road to Abolition? The Future of Capital Punishment in the United States* (New York: New York University Press, 2009).

³ "Exonerations by year," <http://www.deathpenaltyinfo.org/innocence-and-death-penalty#inn-yr-rc> (accessed March 9, 2010).

⁴ James S. Liebman, Jeffrey Fagan, and Valerie West, "A Broken System. Error Rates in Capital Cases, 1973–1995," New York 2000, <http://www2.law.columbia.edu/instructionalservices/liebman/> (accessed March 9, 2010); James Liebmann et al., "A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It," New York 2002, <http://www2.law.columbia.edu/brokensystem2/index2.html> (accessed March 9, 2010); Raymond Paternoster, and R. Brame, "Reassessing Race Disparities in Maryland Capital Cases," *Criminology* 46, 4 (2008): 971–1008; Paternoster et al., "Justice by Geography and Race: The Administration of the Death Penalty in Maryland, 1978–1999," *Maryland's Law Journal on Race, Religion, Gender and Class* 4 (2004: 1–97).

⁵ Lydia Saad, "Americans Hold Firm to Support for Death Penalty. Only 21% say it is applied too often," *Gallup* (November 17, 2008), <http://www.gallup.com/poll/111931/Americans-Hold-Firm-Support-Death-Penalty.aspx> (accessed March 9, 2010).

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That number has risen to forty-nine today.⁶ Colin Dayan argues in her chapter that LWOP and solitary confinement are other death penalties that do not draw the same amount of attention and opposition as capital punishment.⁷ Gottschalk's, Dayan's, and Jonathan Simon's chapters indicate that the American debate on the death penalty is undergoing a transformation that would cover various forms of "ultimate sanctions."⁸

The larger problem of punitiveness that now inflects the American debate on capital punishment has begun to make its appearance in Europe. Thus Pieter Spierenburg notes that European incarceration rates have grown, too, during recent decades, although not on the same scale as in the United States.⁹ Furthermore, a March 9, 2010 decision by the German Federal Court of Justice that lifelong preventive detention of criminals who are deemed dangerous to the general public after the expiration of their sentence does not violate human rights, sparked a massive public debate in Germany. The daily "Süddeutsche Zeitung" commented on the German Federal Court's decision by calling lifelong preventive detention the "German substitute for the death penalty."¹⁰

Contributing to the unsettled status of capital punishment in the United States today, as it has often done in the modern history of the death penalty, are uncertainties surrounding methods of execution, their appropriateness and "decency" – a fact Timothy Kaufman-Osborn discusses in his chapter which analyzes the Report by the British 'Royal Commission on Capital Punishment' of the 1950s.¹¹ Though lethal injection mimics a healing and benign intervention into the human body, attention recently has been aroused by a substantial number of botched executions due to unqualified personnel and mismanagement. The Supreme Court's May 2008 decision that Kentucky's lethal injection protocol did not present an "unnecessary risk" of harm to the condemned seems unlikely to end the controversy about lethal injection.¹²

⁶ See Marie Gottschalk, "The Long Shadow of the Death Penalty: Incarceration, Capital Punishment, and Penal Policy in the United States" in this book; see also Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006).

⁷ Colin Dayan, "Did Anyone Die Here? Legal Personalities, the Supermax, and the Politics of Abolition" in this book; Colin Dayan, *The Story of Cruel and Unusual* (Boston, MA: MIT Press, 2007).

⁸ See also Jonathan Simon's contribution to this book: "Capital Punishment as Homeowners Insurance: The Rise of the Homeowner Citizen and the Fate of Ultimate Sanctions in Both Europe and the United States."

⁹ Pieter Spierenburg, "The Green, Green Grass of Home: Capital Punishment and the Penal System from a Long-Term Perspective," Chapter 1, this volume.

¹⁰ Heribert Prantl, "Verdammt in alle Ewigkeit," *Süddeutsche Zeitung* (March 10, 2010): 4.

¹¹ Timothy Kaufman-Osborn, "The Death of Dignity," in this book.

¹² *Baze v. Rees*, 553 U.S. 35 (2008). For the recent controversy on lethal injection, see the articles by Deborah Denno, "The Lethal Injection Quandary: How Medicine Has Dismantled the Death Penalty," *Fordham Law Review* 76, 1 (2007): 49–128; Denno, "For Execution Methods Challenges, the Road to Abolition Is Paved with Paradox," in *The Road to Abolition?* ed. Ogletree and Sarat, 183–214; Timothy Kaufman-Osborn, "Perfect Execution. Abolitionism and the Paradox of Lethal Injection," in

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An important marker of the changing American landscape of capital punishment occurred in New Jersey where on December 18, 2007, then Governor Jon Corzine signed a bill making his state the first in a generation to abolish capital punishment. Corzine stated that “this is a day of progress for us and for the millions of people across our nation and around the globe who reject the death penalty as a moral or practical response to the grievous, even heinous, crime of murder.” Among the reasons he mentioned for the abolition of the death penalty were two issues discussed above, namely the impossibility of devising “a humane technique of execution that is not cruel and unusual, and . . . a foolproof system that precludes the possibility of executing the innocent.”¹³

Another factor was the high financial cost of capital punishment: Keeping inmates on death row cost the state \$72,602 per year for each prisoner, whereas inmates kept in the general population cost \$40,121 per year each to house. The New Jersey corrections department estimated that the repeal would save the state as much as \$1.3 million per inmate over his or her lifetime – and that figure did not include the millions spent on inmates’ appeals. Beside concerns about the execution technique, the error rate, and the economic cost, Corzine noted that the death penalty “begets violence and undermines our commitment to the sanctity of life. We in New Jersey are proud to be the first state to prohibit the death penalty since it was permitted by the U.S. Supreme Court in 1976, and we are proud to serve as leaders on this profound issue of conscience.”¹⁴

New Jersey abolished capital punishment despite the pleas of some high-profile victims and the fact that, at the time of abolition, New Jersey voters were opposed to ending the death penalty by a margin of 53 percent to 39 percent. This conforms to the European experience that public opinion tends to follow decisions by political elites rather than leading them. Thus, Andrew Hammel labels European abolitionist intellectuals and politicians “civilized rebels” in his contribution to this book.¹⁵ Since American institutions are more “porous” and open to popular demands than European political structures, the path to abolition in the United States is less certain. The more democratic penal policy-making in the United States is prone to be punitive. As one observer put it, “basically, Europe doesn’t have the death

The Road to Abolition? ed. Ogletree and Sarat, 215–51; Jürgen Martschukat “‘No Improvement Over Electrocution or Even a Bullet’: Lethal Injection and the Meaning of Speed and Reliability in the Modern Execution Process,” in *The Road to Abolition?* ed. Ogletree and Sarat, 252–78.

¹³ For the full text of Governor Corzine’s statement, see “New Jersey Governor Jon S. Corzine – Remarks as Delivered December 17, 2007,” found at <http://www.allamericanpatriots.com/48739396-new-jersey-governor-corzines-remarks-eliminating-death-penalty-new-jersey> (accessed September 2, 2010).

¹⁴ New Jersey State League of Municipalities, “Governor Corzine Signs Legislation Eliminating Death Penalty in New Jersey,” <http://www.njslom.org/death-penalty-press-release.html> (accessed May 13, 2010).

¹⁵ Andrew Hammel, “Civilized Rebels: Death-Penalty Abolition in Europe as Cause, Mark of Distinction, and Political Strategy,” Chapter 7, this volume.

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penalty because its political systems are less democratic, or at least more insulated from populist impulses, than the U.S. government.”¹⁶

In another sign of the changing situation in the United States, fifteen months after New Jersey, New Mexico also abolished its death penalty. On March 18, 2009, Governor Bill Richardson, formerly a supporter of capital punishment, described replacing execution with life in prison without the possibility of parole as “the most difficult decision of his political life.” However, noting that 130 death-row prisoners had been exonerated at that point in time, four of them in New Mexico, Richardson observed that even though he still believed in the death penalty in general, he did not trust the “broken system” enough to sign a death warrant:

“Regardless of my personal opinion about the death penalty, I do not have confidence in the criminal justice system as it currently operates to be the final arbiter when it comes to who lives and who dies for their crime. Faced with the reality that our system for imposing the death penalty can never be perfect, my conscience compels me to replace the death penalty with a solution that keeps society safe.”¹⁷

Yet paradoxically, perhaps the most telling example of America’s current quandary with capital punishment is not an effort at abolition, but at its reintroduction. When in April 2005, then–Massachusetts Governor Mitt Romney, a Republican with a progressive record on social issues, was gearing up for an effort to secure the Republican nomination for President, he was looking for ways to reassure conservatives that he really was one of them. As *The New York Times* put it at the time the Romney death penalty bill was introduced, “Mr. Romney, who is widely believed to have national political ambitions, may intend his death penalty bill for a different audience as well: conservatives outside his state who are pivotal in Republican Party politics.”¹⁸

Yet, the Romney bill itself indicated the power of the growing tide of doubt about the death penalty and was designed to respond to the multilayered criticism of the preceding years. It would have restricted capital punishment to a very limited number of crimes, namely murders that involve terrorism, prolonged torture,

¹⁶ Joshua Micah Marshall, “Death in Venice: Europe’s Death-penalty Elitism,” *The New Republic* (July 31, 2000), here quoted after Andrew Moravcsik, “The New Abolitionism: Why Does the U.S. Practice the Death Penalty While Europe Does Not?” Council for European Studies at Columbia University 2006, <http://www.ces.columbia.edu/pub/Moravcsik.sepo1.html> (accessed March 9, 2010). See also Franklin Zimring, Gordon Hawkins, and Sam Kamin, *Punishment and Democracy: Three Strikes and You’re Out in California* (Oxford: Oxford University Press, 2001).

¹⁷ “New Mexi-Can and New Mexi-Did Abolish Capital Punishment,” ACLU Blog of Rights, March 19 2009, <http://www.aclu.org/blog/capital-punishment/new-mexi-can-and-new-mexi-did-abolish-capital-punishment> (accessed March 14, 2010).

¹⁸ Pam Belluck, “Massachusetts Governor Urges Death Penalty,” *New York Times* (April 29, 2005), <http://query.nytimes.com/gst/fullpage.html?res=9801E6DC1131F93AA15757C0A9639C8B63&sec=&spon=&pagewanted=all> (accessed March 15, 2010).

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multiple killings, or the killing of police officers, judges, witnesses, or others involved in the criminal justice system. Defendants who had previously been convicted of first-degree murder or were serving life sentences without parole would also have been eligible. Yet, even more important in the context of the current debate is that the Romney bill included several provisions that had never been tried in any other state. To make the system absolutely foolproof, it would have required “conclusive scientific evidence,” like DNA, to link a defendant to a crime. Furthermore, it would have allowed a death penalty to be imposed only if a sentencing jury found that there was “no doubt” about a defendant’s guilt, a standard even stricter than “beyond a reasonable doubt.” Finally, Romney’s bill also included a requirement that defendants in capital cases have two and possibly three lawyers, that scientific evidence be examined by a review board, that every death sentence be reviewed by the state’s highest court, and that a special panel be set up to handle complaints.¹⁹

The Romney bill signals a key difference between American and European perceptions of capital punishment. It expressed the hope that the “broken system” of the death penalty in America might be fixed. The question whether the death penalty was appropriate at all in a democratic state that sees itself in the tradition of the enlightenment was not on the agenda. In Europe, the death penalty is not considered primarily to be an issue of the criminal justice system and its reliability, but instead is seen as an issue of human rights.

ABOLITIONISM AND EUROPEAN UNITY

For several decades, the European position on capital punishment moved in the opposite direction from the American position, with the death penalty a significant influence in shaping a European identity. In this book, Evi Gírling and Kathryn Heard focus on differences among European and American perceptions of executions and their implications for identity formations.²⁰ In the press and to the public, European opposition to capital punishment is often presented as an offspring of the European Enlightenment and secularization since the eighteenth century, whereas American adherence to the death penalty is described as a vestige of a centuries-old frontier mentality.

¹⁹ Drake Bennett, “Reasonable Doubt,” *Boston Globe* (May 8, 2005), http://www.boston.com/news/globe/ideas/articles/2005/05/08/reasonable_doubt/ (accessed March 15, 2010).

²⁰ Evi Gírling, “European Identity and the Mission Against the Death Penalty in the United States,” in *The Cultural Lives of Capital Punishment*, ed. Sarat and Boulanger, 112–28; see also Gírling’s chapter in this book, “The Witnessing of Judgement: Between Error, Mercy, and Vindictiveness”; see also Kathryn Heard’s contribution in “Unframing the Death Penalty: Transatlantic Discourse on the Possibility of Abolition and the Execution of Saddam Hussein,” and Stefano Manacorda, “Restraints on Death Penalty in Europe: A Circular Process,” *Journal of International Criminal Justice* 1 (2003): 263–83; Martschukat, “Capital Punishment,” in *The Oxford Encyclopedia of the Modern World*, ed. Peter N. Stearns (New York: Oxford University Press, 2008), Vol. 2, 33–8.

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This version of a deeply rooted European-American dichotomy is overly simplistic, because the reforms triggered by the Enlightenment initiated transformations of the criminal justice systems in both Europe and the United States. Secondly, with respect to the death penalty, neither in Europe nor America did early reforms mean total abolition, but rather a reduction in the number of capital felonies and a “modernization” of execution procedures.²¹ Thirdly, in the United States, cultures and systems of punishment were and remain manifold and diverse, and often enough, northern and midwestern states were pioneers in the transatlantic criminal justice reform movement, whereas southern states were most ardently retentionist.²² Fourth, until the post-World War II period, Europe was not the abolitionist continent it is today. Indeed, neither the Nazi regime nor the horrors of the Holocaust and World War II changed the dominant public attitude of many European countries that taking a life in the name of the state was acceptable and necessary in particular cases. Significantly, in the years immediately after the war, in addition to Finland, only West Germany, Italy, and Austria – former fascist states and World War II aggressors – abandoned the death penalty. When the parliamentary assembly was set up in West Germany in 1948–1949 to write a new democratic constitution, it finally abolished the death penalty in the so-called *Grundgesetz* (basic law). But many members of the German parliament were not primarily motivated by humanistic reasons. For them, the first priority was to protect from the death penalty war criminals or those who had been loyal to the regime to the very end.²³

The Council of Europe and the European Convention on Human Rights were established in 1949 and 1950 with the mission of defending humanity, yet their general commitment to the right to life explicitly excluded lawful death sentences. This ambivalent position on capital punishment was reflected in the policies of several influential European countries. Timothy Kaufman-Osborn’s chapter describes the intense debate Great Britain had on the death penalty in the early 1950s. Executions in Great Britain continued until 1964. The death penalty was struck down the following year, and abolition was made permanent in 1969. In Spain, the era of the death penalty lasted until three years after the end of the Franco regime in 1975, and France continued to carry out executions until 1977. It did not formally abolish capital punishment until 1981. Particularly (but by far not exclusively) in France, the death penalty was abolished against prevailing public sentiment through “a coup

²¹ Even though during the nineteenth and twentieth centuries, the drive to modernize the execution procedure was more intense in the United States than in Europe, as for instance Simon Grievé’s and Timothy Kaufman-Osborn’s contributions to this book show. For the eighteenth and nineteenth centuries, see Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865* (Oxford/New York: Oxford University Press, 1989); Martschukat, *Inszeniertes Töten. Eine Geschichte der Todesstrafe vom 17. bis zum 19. Jahrhundert* (Cologne: Böhlau, 2000).

²² Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002); Martschukat, *Die Geschichte der Todesstrafe in Nordamerika* (München: Beck, 2002).

²³ Richard Evans, *Rituals of Retribution: Capital Punishment in Germany 1600–1987* (Oxford: Oxford University Press, 1996), 739–804.

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d'état by a political and intellectual elite against the clearly established sentiments of the vast majority of the public," as Andrew Hammel puts it in his chapter in this book.²⁴

Thus the much-ballyhooed European position with regard to the death penalty is a relatively recent development. A milestone was the March 1985 enactment of Protocol No. 6 to the European Convention on Human Rights. It was the first international treaty to call for the abolition of the death penalty, and since 1994, adoption of the protocol has been a requirement for acceptance of new members to the Council of Europe. Since 1999, the same has been true for the European Union, which has made abolition of the death penalty obligatory for members and declared a worldwide execution moratorium one of the major pillars of its human rights policy. Thus it was not before the late twentieth century that European penal policy was guided by the "firm conviction that capital punishment . . . has no place in civilized, democratic societies governed by the rule of law," as the Council of Europe's Commissioner of Human Rights, Thomas Hammarberg, stated in 2007.²⁵ Or as European Court of Human Rights Justice Jan de Meyer argued in 1989, "[capital] punishment is not consistent with the present state of European civilisation."²⁶

Coinciding with the period from the mid-1960s, when Great Britain abolished capital punishment, to the early 1980s, when France followed the British example, the United States itself had a de facto moratorium that lasted from June 1967 to January 1977. Yet while the death penalty was found constitutional by the Supreme Court in 1976, returned in a constantly increasing number of U.S. states afterward, and reached its heyday in the 1990s, European abolitionism in the very same decade gained momentum as a unifying force in Europe after the dissolution of the Soviet bloc and the eastward enlargement of the European Union. The dynamics of regional and political integration spurred abolition in Eastern and Southeastern Europe. As Evi Gírling has shown in her work, the formal acceptance of an abolitionist position became a defining criterion of "Europeanness."²⁷ Agata Fijalkowski reminds us in her contribution to this book that most governments in post-Communist countries abolished the death penalty less because of the "human rights appeal" of abolitionism, and more because of anticipated benefits of compliance with European norms. Institutional pressure makes the abolitionist consensus

²⁴ Hammel, *Civilized Rebels*, quoting Robert A. Nye, "Two Capital Punishment Debates in France: 1908 and 1981," *Historical Reflections/Reflexions Historiques* 29 (2002): 226; Robert Badinter: *One Man's Battle Against the Death Penalty* (Boston: Northeastern University Press, 2008).

²⁵ Thomas Hammarberg, Commissioner for Human Rights, "We need to educate about the true nature of the Death Penalty" (presentation at the III World Congress Against the Death Penalty in Paris, France, February 1, 2007), <https://wcd.coe.int/ViewDoc.jsp?id=1089191&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (accessed March 15, 2010).

²⁶ *Soering v. United Kingdom*, (Series A, No 161; Application No 14038/88), European Court of Human Rights (1989) 11 EHRR 439, July 7, 1989, <http://www.worldlii.org/eu/cases/ECHR/1989/14.html> (accessed March 15, 2010).

²⁷ Gírling, "European Identity and the Mission Against the Death Penalty."

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quite solid in Europe, even though many Eastern European populations are still ambivalent about the death penalty.

EUROPEAN AND AMERICAN PERSPECTIVES ON THE DYING
DEATH PENALTY

As we see it, the European-American divide on the death penalty is more complex than it has often been thought to be, and the constellations of forces on both sides of the Atlantic are more ambivalent than they appear at first sight to be. Europe's firm abolitionism has a short history, has often been driven by tangible political and economic interests, and has no steadfast support among populations in several European countries. At the same time, the position of the death penalty in America is weakening, criticism is growing, and its popular support is still strong, but shrinking. Yet as several chapters to this book show, the increasingly relied-on sentences of "life in prison without parole" and the use of solitary confinement are also highly troubling in that they indicate an unbroken punishment sentiment. Thus the scrutiny of the transatlantic situation of capital punishment and punitiveness is, we believe, crucial if we are to understand where America is on the road to abolition and what the European experience has to offer.

OVERVIEW OF THE CHAPTERS

Part I of this book explores the relationship between the death penalty and the broader system of punishment of which it is a part. The main topic of Part II is the ways the meanings of capital punishment are framed in the United States and Europe. Part III puts abolitionist discourses, strategies, and dilemmas in transatlantic perspective.

Pieter Spierenburg opens the book by taking contemporary European abandonment of the death penalty and its traces in contemporary culture as the starting point of his argument. An expert in early modern European history, he takes us back to the fifteenth century and shows that Europeans were not always unfamiliar with capital punishment, and that, seen in the historic long run, Europe and America's history of harsh sanctions are less far apart than today's observers might think. As several other scholars in this volume also show, Spierenburg maintains that the death penalty can only be understood within the larger frame of a society's penal system and a culture's punitiveness, which has also gained momentum in Europe in recent years. By taking up the recent debate in *Punishment & Society* between David Garland, Franklin Zimring, and Charles Whitman,²⁸ and by relating it to further writings

²⁸ David Garland, "Capital Punishment and American Culture," *Punishment & Society* 7, 4 (2005): 347–76; Franklin E. Zimring, "Path Dependence, Culture and State-Level Execution Policy: A Reply to David Garland," *Punishment & Society* 7, 4 (2005): 377–84; James Q. Whitman, "Response to Garland," *Punishment & Society* 7, 4 (2005): 389–96.

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on the history of the death penalty in Europe and America, Spierenburg highlights similarities as well as peculiarities and separate developments in various European countries and America. Drawing on Norbert Elias's theory of the civilizing process, Spierenburg describes a long history of moderation in "the West," characterizing American society to a lesser extent than European societies and coinciding with a lesser inclination to demand restraints on violent punishments.

Colin Dayan embraces Spierenburg's view that the death penalty has to be analyzed in the larger context of a culture's punitiveness. Abolitionist discourse has often presented "life without the possibility of parole" as a viable alternative to the death penalty. Yet Dayan shows that LWOP, and particularly solitary confinement, should be considered a different type of capital punishment to which ever larger parts of the American population are subject. Whereas not long ago, prisoners in solitary confinement were a rare exception, today it has become a major pillar of penal philosophy.

Between 30,000 and 100,000 of America's 2.3 million prisoners are now confined in so-called "supermaxes." Thus while the outcome of America's debate on the death penalty is more open today than it has been in the last thirty years, "alongside it," Colin Dayan stresses, "we have invented a new form of death penalty, one which needs no judicial decision, carries no decent shame, is not open to scrutiny, and already stands in danger of killing more people than the death penalty." Criticizing the recent jurisprudence of the Eighth Amendment, Dayan shows that it is the suffering of a real person that is at stake constitutionally. In her view, the supermax is the background against which the death penalty and the debate on dying by the hands of the state must be read.

In the last chapter in this section, Jonathan Simon relates European and American punitiveness to homeownership and analyzes ultimate sanctions as "homeowners insurance." By understanding long, possibly terminal prison sentences as "death sentences in disguise," Simon hypothesizes that crime fear and the proclivity to support ultimate sanctions correlates with homeownership and is higher where more people own their homes than rent. In his chapter, he compares highly punitive American states like California, Florida, and Arizona to the most booming residential real estate markets of Western Europe, such as Ireland, Spain, and the Netherlands, which also rank among the top four European countries in terms of penal growth.

Evi Girling begins Part II with a chapter that focuses on acts of judgment and punishment in liberal democracies in a time of global witnessing. Today, translocal cultures transcend the apparently stable structures of the nation-state and make local institutional and punitive practices an issue of global awareness and concern. Global communities of "sentiment" and "judgment" emerge, as we are told by Girling, and new media technologies have created global communities of witnessing by facilitating an "intimate proximity" among widely dispersed observers to geographically distant events.