

The Death of Punishment: Searching for Justice Among the Worst of the Worst

By Robert Blecker, Palgrave MacMillan, N.Y., 314 pages, \$28 hardcover.

Jeffrey Kirchmeier , New York Law Journal

May 12, 2014

When Oklahoma recently botched the lethal injection of a condemned man, death penalty opponents decried the execution as inhumane. While many death penalty advocates also criticized the procedural mistakes, some people argued that the man's horrible crime justified his agony. Throughout history, humans have debated how much suffering governments should inflict on criminals, and in his new book, "The Death of Punishment: Searching for Justice Among the Worst of the Worst," New York Law School Professor Robert Blecker explores the role of retribution in the criminal justice system.

While arguing that our system should be more grounded in retributive theories, he concludes that the United States both under-punishes some crimes and over-punishes others.

In "The Death of Punishment," Blecker critiques a system that focuses on housing criminals as a way of punishing and preventing crime. He reasons that society gives too little weight to retributive goals of sentencing, arguing that our anger at horrible crimes justifies more severe punishments. As an advocate for the death penalty, he asserts that egregious murderers should suffer a painful, but quick, death. He prefers the firing squad to lethal injection because the former looks like punishment, not a medical procedure. Further, he complains that prisons house people in too much comfort when prisons should be punitive institutions of suffering where inmates are constantly reminded of their victims in an unpleasant environment with tasteless food.

But he also believes that in some instances the U.S. overuses punishment. He balances his support for the death penalty with an argument that states should reserve capital punishment for fewer crimes than they do. And he criticizes U.S. jurisdictions for incarcerating too many people. In explaining where punishment is overused and where it is underused, he hopes to provide a model for a criminal justice system steeped in the retributive values he advocates.

Beyond the philosophical arguments, the author engages the reader by describing his personal journey exploring his ideas. The trip begins briefly with his childhood, through schooling and through his work as a lawyer and law professor.

Blecker recounts some of his visits to prisons, including his study at Lorton Central Prison in Washington, D.C., where he spent significant time talking with a number of inmates. Other chapters discuss his visits with Tennessee death row prisoner Daryl Holton. This relationship, some of which was filmed for the 2008 documentary "Robert Blecker Wants Me Dead," grew

from Blecker's desire to interview someone deserving of capital punishment. Holton, a divorced Gulf War veteran, had shot and killed his three young sons and their half-sister. Through a number of visits, Blecker discusses the morality of punishment with Holton, who also supported the death penalty and at one point gave up his appeals and wanted to be executed.

As someone who disagrees with many of Blecker's conclusions, I nevertheless enjoyed reading "The Death of Punishment." People opposed to the death penalty, as well as those who are in favor of capital punishment, will find the book compels you to evaluate the role retribution should play in our justice system and to consider where you agree and where you disagree with the book's author. For example, one may question Blecker's certainty in knowing which criminals are the "worst of the worst."

Further, in Blecker's conversations with convicted criminals, a reader may not find the deep philosophical justifications for punishment that the book's author seeks. Instead, one may suspect that other factors—like mental illness, a history of abuse, or jailhouse boasting—are better explanations of their statements. But reading the conversations between the professor and the inmates is engaging even if you draw different conclusions from the author. And to Blecker's credit, he remains honest and does not hide his beliefs from the prisoners, telling them bluntly that they deserve to be punished.

Throughout the book, Blecker maintains his own certainty that the death penalty is appropriate punishment for some crimes. But while he asserts this conclusion as an absolute truth grounded in retributive theory, "The Death of Punishment" also raises some underlying questions. Blecker recognizes problems in the criminal justice system, including the influence of racism and the risk of executing the innocent. Yet, he maintains a faith that these systemic problems can be addressed, and he suggests changes to capital sentencing statutes.

Also, he concedes that scientific advances about understanding the role nature and nurture play in creating criminals might one day undermine his retributive justifications. But he asserts that for now, we should maintain a faith that criminals act with free will and complete moral responsibility.

Blecker sincerely describes his feelings during the 2007 execution of Holton, a murderer he eventually came to see as a friend. Outside the prison, the death penalty advocate felt lost. He found himself unwelcome to stand with death penalty protestors while at the same time somewhat repulsed by death penalty supporters who wanted the state to kill someone he knew. It is a philosophical dilemma that "The Death of Punishment" never resolves adequately, although the book is stronger for allowing some ambiguity amidst Blecker's absolutes. I will leave it to the reader to pick up the book to discover how Blecker feels today about whether or not Holton should have been executed.

In a book about moral certainty, a reader may find most interesting the author's uncertain personal journey to test his beliefs. Whether or not one agrees with Blecker's positions, "The Death of Punishment" is a fascinating trip into our criminal justice system with insight into the punitive and retributive nature of human beings.

Jeffrey L. Kirchmeier is a professor of law at CUNY School of Law.

Copyright 2014. ALM Media Properties, LLC. All rights reserved.