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## [Review of] *Murder stories: Ideological narratives in capital punishment*

By: Marian R. Williams

Paul Kaplan

*Murder Stories: Ideological Narratives in Capital Punishment* Lanham, MD: Lexington Books, 2012. 195 pp. \$65.00. ISBN 978-0-7391-7170-7

Studies of the death penalty have focused on numerous aspects of the sanction; these include deterrence, retribution, discrimination, and actual innocence, among others. One of the questions examined in previous commentaries ponders the reasons why the United States retains the death penalty while comparable (i.e., European) countries have abolished it. Paul Kaplan explores this question in his research. Kaplan frames his questions and answers around his experiences as a capital mitigation investigator and his research on the sociology of capital punishment. In the first chapter of the book, Kaplan claims that punishment in the United States is not rational, in that it represents emotion, symbolism, and attempts to restore order. The death penalty is the perfect illustration of this, in that the United States uses the death penalty not only in an attempt to restore order but it does so with emotion and symbolism in an effort to keep the death penalty in place. In this vein, Kaplan discusses the “American Creed,” an idea of American exceptionalism that differentiates the United States from European countries. The traits that illustrate this creed are individualism, populism, egalitarianism, and liberty. As such, rather than seeing the death penalty as an “unacceptable expression of state power” (p. 28), as European countries do, the United States sees the death penalty as a “public service on behalf of victims” (p. 28). In effect, in the United States, the government is not necessarily killing its own citizens; instead, the government is helping victims with retribution and “closure.”

To illustrate the Creed, Kaplan examines death penalty narratives in capital trials in California; in effect, the language used by attorneys during the sentencing phase in capital cases. Kaplan argues that the narratives are implicated in, “propping up the death penalty in the United States” (p. 177). Kaplan analyzed capital trial transcripts in three counties between 1996 and 2004 and interviewed those who created the narratives. In death penalty cases, there are two types of narratives. The first comes from prosecutors and it “tells the story of a coherent, culpable individual deciding to mercilessly destroy an innocent victim to satisfy his selfish desires” (p. 14). Kaplan states that prosecutors depict defendants as “trouble,” disrupting the hard-working lives of victims (referred to as the *steady state*). As a result, a form of “redress” is needed (the death penalty) and it is up to the jury to recommend it because the victim’s family deserves it. Throughout, defendants are held individually accountable and must be punished (the lesson learned or the *coda*). These, according to Kaplan, reflect three aspects of the creed—liberty (or acting according to one’s will), egalitarianism (the victim deserved a chance at life), and populism (or the jury, acting on behalf of society, as punisher).

The second type of narrative comes from defenders, who, “tell the story of the not-fully-coherent, not-entirely-culpable individual victimized by damaging social conditions who ends up making a tragic mistake” (p. 14). Given this, Kaplan expected defender narratives to subvert the Creed. For example, Kaplan expected defenders to focus on the defendant’s diminished autonomy (e.g., childhood poverty, abuse, etc.) as a reason for his or her crime. This contradicts the individualism aspect of the creed. Instead, Kaplan argues, defenders never explicitly subvert the Creed; instead, “walking a tightrope with total free will on one side and [diminished autonomy] on the other” (p. 144). In essence, Kaplan argues that defenders attempted to explain defendants’ actions, but not excuse them. In these instances, the “trouble” is society failing the defendant (e.g., not treating a mental illness, not addressing abuse, etc.), the “steady state” is the defendant’s innocent childhood, the “redress” is to spare the defendant’s life, and the “coda” is that society needs to take care of those in need. However, throughout the defender narratives, defenders would utilize issues such as childhood abuse as an explanation for why a

defendant CHOSE to commit the murder. Due to this, defenders are keeping the individualism aspect of the Creed alive.

In the final two chapters, Kaplan provides the results of his interviews with defenders and prosecutors, respectively. For defenders, Kaplan discusses “cause lawyering,” or the idea that defenders would utilize the sentencing phase to work toward abolition of the death penalty. In these interviews, most defenders stated that their primary goal was to save their client’s life and Kaplan argues that the restrictive process of the penalty phase itself inhibits defenders from engaging in cause lawyering. For prosecutors, many saw themselves as representing the victim, which illustrates the egalitarianism of the American Creed. Due to this, according to Kaplan, prosecutors’ views of the “facts” of the case tended to ignore any type of diminished autonomy on the part of the defendant. Also, this reliance on “facts” is inherently contradictory to the language used in prosecutor narratives. Kaplan argues that “facts” are neutral under the law; however, prosecutors present these “facts” in, “the emotional grammar of sanctimonious language—all toward a goal of irrational retribution” (p. 172).

Kaplan hopes to add to the discourse on the death penalty using capital trial narratives to explain why the United States retains the death penalty. While Kaplan points to other research as framing his examination (see e.g., Sarat, 2001; Zimring, 2003), he hopes to distinguish his research by focusing on the “American Creed” found in the narratives. Unfortunately, Kaplan simply reiterates what previous researchers have stated. The language found in the narratives was not surprising and, in the end, the research sheds little light on what is already known. One could also argue that the “American Creed” could be applied to punishment in general in the United States, as the notion of individual responsibility permeates most forms of punishment. In the end, the piece was well written, but often redundant.

#### References

- Sarat, A. (2001). *When the state kills: Capital punishment and the American condition*. Princeton, NJ: Princeton University Press.
- Zimring, F. (2003). *The contradictions of American capital punishment*. Oxford, England: Oxford University Press.