

## Worth Reading

by Russ Immarigeon\*

### *Victims and Capital Punishment*

#### **Wounds That Do Not Bind: Victim-Based Perspectives on the Death Penalty**

edited by James R. Acker and  
David R. Karp

Capital punishment has a long history which has been associated as much with sordidness as sensationalism. Long ignored in the legacy of capital punishment has been its impact upon what victimologists now call "secondary victims": the family members, neighbors, friends, and colleagues of homicide victims. Typically, these people have been largely used as kindling to fire the flames of death penalty rhetoric. In recent years, however, more worthy attention has been given this group of diverse individuals who have been left out too long.

In *Wounds That Do Not Bind*, criminal justice researchers James R. Acker and David R. Karp present a valuable collection of 22 articles that cover various aspects of victim-based perspectives on the death penalty. Acker teaches at the University of Albany's School of Criminal Justice and Karp teaches in the sociology department at Skidmore College, where the editors organized a conference on "The Impact of the Death Penalty on Victims' Families" in September 2003. The conference was cosponsored not just by the editors' respective schools, but also by Justice Solutions, Inc., victim advocate Anne Seymour's base of operations in Washington, DC. The editors describe the conference this way:

It brought together over the span of three days a national representation of approximately 40 covictims, victim advocates, and academics from multiple disciplines to share their insights, perspectives, and knowledge about murder covictimization and the death penalty.

*Wounds That Do Not Bind* reflects the conference that gave it life.

#### **Feelings of Uncertainty**

The book's opening section (one of four) focuses on "Personal Accounts: The Experiences of Covictims of Murder, Other

Crime Victims, and Victim Advocates." Eight articles are presented in this section: Linda White, Stanley and Phyllis Rosenbluth, Roberta Roper, and Martha Kimble address the murders of their children in Texas, Oklahoma and Maryland; Shane Wagner writes about the murder of his father in Illinois and about Gov. George Ryan's clemency of all death row inmates in that state; Charisse Coleman and Dan Levey open up about the murders of their brothers in Louisiana and Arizona; and Gary Wright, a bombing victim, engages in a fascinating dialogue with David Kaczynski, the brother of the infamous Unabomber, the man who planted the bomb that injured Mr. Wright. Ms. Kimble's daughter died in the bombing of the federal office building in Oklahoma City. The articles in this section are all heartfelt, but they are not of one voice. The victims' voices here are engaging and insightful, yet they are often uncertain about the value, if not the "need," for capital punishment. Some, however, are clearly against it. One of the difficult remnants of individual and societal responses to capital murder is that it so frequently leaves us with feelings of uncertainty, not so much about the appropriateness or morality of the death penalty but more about our individual and collective inability to really "resolve" matters raised by murder and its aftermath.

#### **Legal Perspectives of Capital Punishment**

The second section of *Wounds That Do Not Bind* examines legal perspectives. Capital punishment has produced an industry based on legal issues related to the imposition and "execution" of the death penalty. The four articles in the section cover only a portion of the issues central to this industry, but they are valuable for their contributions to our understanding of death penalty-related victim concerns. In these articles, James Acker and Jeanna Marie Mastrocinque of the University of Albany trace the history of how state laws have displaced victims, and even offenders, from involvement in capital cases ("the evolution of homicide from a private injury that demanded retaliation or compensation to a public harm resulting in state-administered punishment"). Wayne A. Logan observes that the death penalty is allegedly imposed rationally as a "reasoned moral response," yet explores the "intensely human and emotional undertakings" that characterize capital lit-

igation and also looks into the variety of rules governing victim impact evidence and the role of victim and victim survivor testimony in capital trials and sentencing decisions. Charles S. Lanier and Beau Breslin, also at the University of Albany, and Austin Sarat, of the University of Massachusetts at Amherst, describe and explore implications of Gov. George Ryan's clemency of death row inmates in Illinois in 2003.

#### **Perspectives on Social Research**

Capital punishment's induced birth of a legal industry centered on death penalty-related matters is mirrored in the world of social research, where there has been tremendous growth in the variety and range of empirical studies over the past 30 years. In this volume, researchers provide their perspectives in six articles. Margaret Vandiver of the University of Memphis begins with an overview of victim family-related research issues, which include such matters as how incapacitation affects family feelings of safety; how victims differ in choosing the death penalty versus severe, noncapital penalties; the stability of victim perspectives over time; the immediate effect of executions on victim family members; disagreements among family members about death sentences; wrongful convictions; how families respond when both victims and offenders are from the same family or at least know each other well; and the effect of capital punishment on the family members of executed persons.

Mark D. Reed and Brenda Sims Blackwell follow up this article with one on the impact of justice system processing on secondary victims' psychological adjustment and their use of available social and support services, especially those in the mental health area. David Karp and Jarrett B. Warshaw next assess the role of testimony from murder victims' families on capital juror decision-making and they find that covictims like following trials and jurors are sympathetic with their plight, but, overall, covictim participation does not make that much difference in sentencing outcomes. Then, Theodore Eisenberg, Stephen P. Garvey, and Martin T. Wells examine victim characteristics and victim impact evidence in South Carolina capital cases. Again, it is found that victim impact evidence has relatively little impact. In the end, case facts play a more dominant role in sanctioning

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decisions. Finally, Judith Kay interviews murder victims' families, finding that they prefer "a needs based compensation system that fostered offender responsibility" over simple restitution as part of sentences meted out to those who murder.

## Policy Implications

In the final section of *Wounds That Do Not Bind*, Tammy Krause, Michael L. Radelet, Dawn Stanley, Peter Loge, Carroll Ann Ellis, Karin Ho, and Anne Seymour cull policy implications from their research and experiences with capital punishment, criminal justice practices, and victim services.

Krause, who has integrated victim perspectives into capital defense work, writes:

The prosecution has become so zealous in the protection of the victim that attorneys miss the opportunity to help discern the best interests of justice for society and the family. Without dialogue involving what the defendant can do for the victim's family, what seems like a victory to others may not be a victory for the family. State attorneys need to keep a skeptical eye on defense-based victim outreach, to help ensure that the defense attorney does not harm the victim's family. Defense attorneys need to embrace an ethical values-based approach of reaching out to the victim's family and work within the parameters that guide victim outreach specialists.

Radelet and Stanley work on figuring out better ways to spend the excessive amount of fiscal resources required in capital cases and their outcomes, suggesting that:

[O]ne of the best ways to help (co)victim families is to strengthen efforts made to find that person responsible for causing the death of their loved one. This goal can be achieved only if we allocate more resources to the

police, and better train individual police departments in ways to improve their communication with affected families.

Loge offers a range of possible reforms:

- Keeping victim services separate from, and independent of, prosecutors' offices;
- Allowing victim family members to veto capital sentences;
- Removing barriers between victims and other participants in the processing of capital cases;
- Offering independent explanations and continuous counseling; and
- Promoting joint participation of family members, prosecutors, defense attorneys, judges and legislators in each others' meetings, conferences and publications.

Loge observes:

In an effort to be heard and respected in the process, and to make some sense of what's happening, many victims have turned to the criminal justice system for solutions. Unfortunately, that system, and in particular the over-reliance on prosecutors' offices too often lets victims' families down. The solution is not greater investment in prosecutors but rather less. Victims need to help create and increase community-based programs that bring advocates from all sides to them. Only by controlling and owning their journey can victims hope to heal.

Lastly, Ellis, Ho, and Seymour, who listened to a group of victims' family members at the Skidmore College conference in 2003, conclude:

The complexity, controversy, and conflict that surround most death penalty cases can have profound impact on covictims, our system of justice, and society as a whole. The many facets of capital cases *all* have the potential to contribute to increased

trauma, frustration, and fear among covictims. [emphasis in original]

While this last section of the book seems the appropriate places for potential remedies to the problems raised about the consequences of homicide on its covictims or victim involvement (or noninvolvement) with capital punishment, possible remedies are in fact suggested throughout the volume, sometimes explicitly, as in the efforts of Acker and Mastrocinque to explore restorative justice, or sometimes implicitly, as in the many personal accounts of individual responses to the loss of loved ones. In this sense, then, while the volume has a prescribed order, it is also circular in that articles in one section frequently connect with those in other sections.

## Missing Information

*A small complaint:* While the editors' introduction and the first section of this book are full of autobiographical details, especially concerning each author's personal and professional relationship with capital punishment, the legal scholars, researchers, advocates, and practitioners who contribute to the rest of this volume are left largely unidentified in terms of institutional affiliation, educational background, or past or current involvement with the issues at hand. Having edited books myself, I know there is always the risk of leaving something out (afterthoughts are such awkwardly painful experiences), but this seems an unfortunate omission. In some cases I have inserted my understanding of a person's current affiliation, but I have left others uncomfortably unidentified in these terms because I simply do not know this information and I did not want to hazard guesses.

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[The] privilege shall be subject to waiver only in the following circumstances:

(a) where the allied mental health and human services professional is a party defendant to a civil, criminal, or disciplinary action;

(b) where the client is a defendant in a criminal proceeding and the use of the privilege would violate the de-

fendant's right to compulsory process and right to present testimony and witnesses in his own behalf;

(c) when the communication reveals the contemplation or commission of a crime or a harmful act; and

(d) where a client[s] agrees to the waiver.

In Iowa, a waiver by a minor must be reviewed and approved by the court.

A minor may waive the privilege

under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant. (Iowa Code ch. 915.20A.4.) ■