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Robert Turrell, *White Mercy. A Study of the Death Penalty in South Africa*

Westport, Praeger, 2004, 281 pp., ISBN 0 325 07132 2

Dior Konaté



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- 1 Turrell's book is an in-depth look at «How a condemned man's and woman's fate was determined after a death sentence was handed down in South Africa». Using mercy records, Turrell examines the role of death penalty in managing homicidal violence in a racist South African during the first half of the twentieth century.
- 2 The introduction of death penalty was part of England's colonizing efforts in South Africa. Between 1900 and 1950, South Africa was the only country in the world with a rising rate of death sentences handed down by the courts. A body of literature has explored capital punishment in South Africa¹. While some studies examine capital punishment and attempt to relate to it to a structural consideration of South African society, (Welsh, 1969), others concluded that the path of death penalty legislation differed markedly from that which death penalty practice in the courts were taking (Vuren, 1994). Turrell brings a new approach by analyzing the socio-political meanings of death penalty and by focusing on acts of mercy in South Africa between 1900 and 1950. He writes: «Hanging was a symbolic expression of political power»(7) and «death penalty was a used as weapon for social discipline» (46), but «South Africa appears to have been lenient in the exercise of mercy» (24).
- 3 Based on both law and history, the book begins with a study of the distinctive features of murder. Turrell's first task is to explore the differences between murder and manslaughter, express and implied malice, malice and motives, and to explain how the

distinction help to define murder, highlight the exercise of mercy and address the last chance for a convicted murder to hope that a good motive counted in her or his favor.

- 4 To better understand the death penalty and mercy process in South Africa, Turrell relies on the English law. He notes that the English mapped homicide into one part murder and one part manslaughter and defined murder as unlawful killing with malice aforethought and manslaughter as unlawful killing without malice aforethought. As many criminals were given mandatory death penalty, the English relied on royal prerogative of mercy to select non-capital murderers. But instead, British courts preferred dispensing justice in the secrecy of the King's council or the Home Office rather than in open courts. South Africans, Turrell argues inherited the wide definition of murder, the mandatory death penalty and the secret process of mercy in death penalty cases from the English after they colonized the Cape in 1806.
- 5 After this legal background, Turrell documents in chapter one how the ideology and practice of segregation shaped a governor's exercise of mercy between 1900 and 1910. Chapter two traces the exercise of mercy under governor Lord Gladstone, a weak believer in capital punishment, who approved more executions than any his pre-1948-successors because of «His imperfect understanding of witchcraft, his anxiety over ritual murder and, the economic and social inequality of the times» (72). Chapter three grapples with how the ideology and practice of segregation shaped the exercise of mercy in tandem with the concept of degeneration between 1914 and 1921 leading to a policy of executing white degenerates who posed a threat to the «white race». Turrell stresses that «Degeneracy was not simply a criminology concept. It took on a crucial political meaning and was pressed into service in opposition to white working-class militancy» (96).
- 6 Chapter 4 focuses on decisions arising of racial and public murders from 1922 to 1924, the opposition between judges and politicians for death sentences recommendations, and the constitutional crisis that resulted from it when the government chose to follow judges rather than politicians. Chapter 2 highlights the politics of mercy in racial murder cases, and the extent of racial injustice in the courts between 1924 and 1933, showing how a shift in managing murder and variation of racial murder cases took place in the context of bad relationships between farmers and their employees (140). While chapter 2 dwells the introduction of a new murder law in 1935 that abolished mandatory death penalty for murder and introduced extenuating circumstances shifting the boundary between justice and mercy, chapter 7 examines discretionary death penalties and the limits of judicial impartiality between 1933 and 1939.
- 7 To demonstrate how death penalty and mercy were related to the socio-political context of South Africa, Turrell goes on to stress that «the argument about death penalty concerns racial equality» (7) and «the argument about mercy concerns sovereignty, power and discretion», (14). In his view, «Mercy was exercised as a weather vane of the stability and instability of a government and that executions were a powerful display of sovereign power», but he concludes that «it was impossible to dispense equality in a racially unequal society» (203). His argumentation becomes interesting when he considers the question of race and gender in the exercise of mercy. He points out that «There were similarities and differences between gender and race discretion in the exercise of mercy. Paternalism and marginality in relation to the 'weaker race' or «weaker sex' took the form of accepting what it called a cultural defense». In his words, «The death penalty was biased against the poor and ethnic minorities and in favor of

women. The great majority of the hanged were African men, and the number of women hanged could be counted on the fingers of an hand» (18).

- 8 As he explores the mercy rules through the concept of cultural defense, Turrell argues how the death penalty was transformed from a class of self-defense into a form of racial self-defense over the 1930s. According to him, «death sentences were handed down to protect white against black criminals, white political opponents, and white racial 'degenerates'. But after the 1930s and until the 1950s, it was a punishment that white state officials official inflicted on black condemned. His main conclusion is that «The exercise of mercy was racist, sexist and that it use was political» (230).
- 9 Turrell's study is an impressive piece of scholarship that provides an invaluable frame for the study of death penalty and mercy in other countries. As a comprehensive and largely descriptive account it covers rather fully of the variety of mercy cases and pulls together much important information and many the sources from which future scholarship can depart. His examination of race, degeneration, gender and mercy shed light on the mysteries that surrounded the mercy process in South Africa. But Turrell's failure to provide a conclusion for each chapter made his insights less apparent for the readers. Overall, this book is a must be read for students of South African history and law.

NOTES

1. Wesh, D., «Capital Punishment in South Africa», in Milner, A., (1969), Ed., *African Penal Systems*, New York, Frederick, pp. 395-429, Vuren, J., V., *Homicide and the Death Penalty in South Africa. Historical Development*, Thesis, University of California Berkeley, 1994.

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