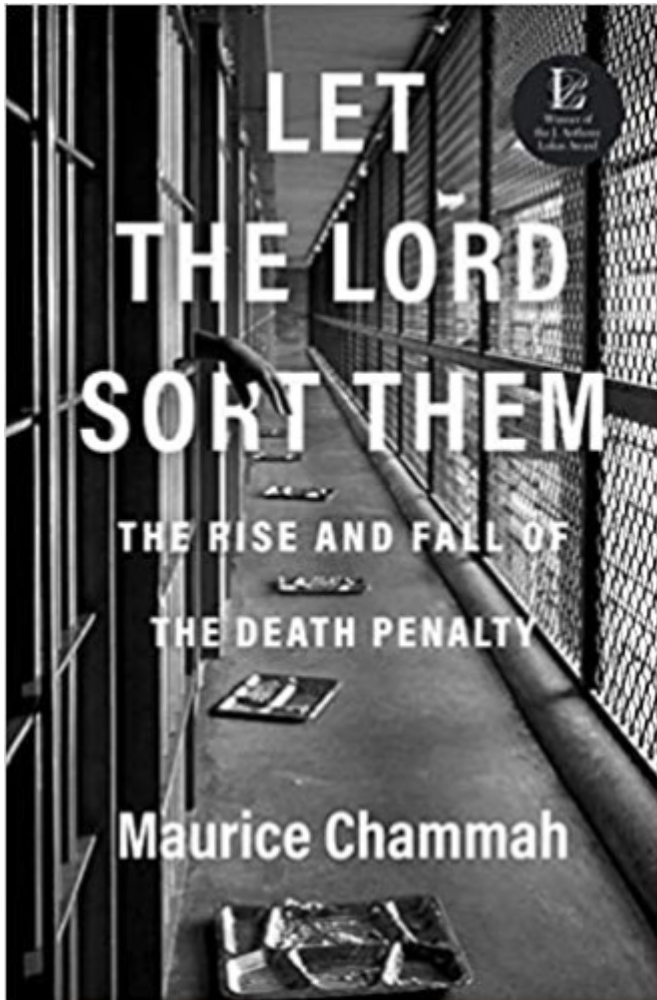


Why the death penalty came back

## **And why it might be abolished**

by [Amy Frykholm](#) in the [April 21, 2021](#) issue

### **In Review**



### **Let the Lord Sort Them**

The Rise and Fall of the Death Penalty

By Maurice Chammah

Crown

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After decades of debate, US society still has not made up its mind about the death penalty. The popularity of the punishment has plummeted, with support dropping well below 50 percent from a high in the 80s in 1994. But deep ambivalence about it and its implications remains a key aspect of American culture, and the most serious problems associated with it have not been resolved.

Thus journalist Maurice Chammah's book comes at an important time. When members of the Trump administration undertook to kill as many prisoners on federal death row as they could in the short time before they left office, they inadvertently highlighted the arbitrariness and capriciousness of the criminal justice system's approach. This has coincided with public questioning about whether the government can ever be trusted to make life-and-death decisions, whether our criminal justice system can ever be just enough to hold in its hands the life of a human being, and whether people—with their central capacity for change—can ever be called evil enough to deserve to die at the hands of the state.

To trace the decline of the death penalty, Chammah, who works for the Marshall Project, focuses on Texas, which has been singularly responsible for more than a third of the 1,500 executions carried out in the United States over the last 50 years. He begins with a moment in 1982 when a small prison in Texas prepared to execute its first prisoner in 18 years. No one who worked in the prison unit responsible for these executions particularly relished the task. None of them knew anything about lethal injection. But they began a process that would become the deadliest in the country.

Chammah embeds well-wrought cultural analysis within the ins and outs of historical narrative. So, for example, as Texas began to reconsider its death penalty laws in 1973, after the 1972 Supreme Court decision that current death penalty laws constituted "cruel and unusual punishment," Chammah shows how a particular frontier-oriented identity, with roots in slavery and in lynching, played a masked role in those conversations. This kind of analysis is useful, because it allows us to see the ideological frames in which these histories are contained. Chammah zeroes in on one detail at a time, but his intent to provide both texture and breadth is evident.

As we see what all of this death has wrought, the effect is devastating. Unlike with many policy decisions, public opinion—that is, what each of us believes and

perceives about the death penalty—has played a direct role in its functioning. It was public opinion that revived the death penalty in the 1970s. We were, Chammah says, a “national culture that favored retribution.”

Chammah shows that this is in part because of the overriding nature of American individualism. Individualism blinds us to the racial and social dynamics at play in execution. It allows us to believe that juries make impartial decisions based on the merits of an individual case and that local traditions and ideologies play a legitimate role in life-and-death decision making. White Americans have been able to believe that the government, in its death practices, is merely carrying out the will of the people, those who sit on juries and vote in elections. This makes the United States different from an authoritarian government.

But to maintain the myth of local control and the people’s will, you have to ignore the history of racism deeply embedded in the system—which many, many have done. Chammah cites the all but unchallenged words of Robert Bork, arguing before the Supreme Court in 1976: “Capital punishment has not been shown to be inflicted on the basis of race.” Forty-five years and 1,500 deaths later, such a declaration is revealed as absurd, but individualism is part of the logic that made Bork’s statement seem reasonable to some of his listeners at the time.

After the Supreme Court’s 1972 decision, which condemned the current practices but did not close the door on the death penalty altogether, the debate in the general public became about abstractions. Were you an “eye for an eye” person? Or did you believe in “just mercy”? Because people no longer gathered in public squares to watch the condemned die, the realities of the lives and deaths of the condemned were obscured. These abstract conversations also obscured what Chammah’s account tries to make visible:

In every death penalty case . . . you will find the family members, the lawyers, the journalists, the prison workers—each of them touched, in ways large and small, observable and invisible, by the moment a person takes a life, the moment the state takes a life, and the many moments in between.

To everyone else, the death penalty can feel like an abstraction, a source of dinner table quarrels that reemerge when a major case hits the news

and we marshal the arguments we've heard before, citing the Bible or statistics or anecdote to make our case for or against.

The accumulation of moments and personalities in the story of the death penalty in America is exactly what makes Chammah's account so compelling. It's true that there are many times in this story where readers lose a view of the forest for the trees. The storytelling is so fine-grained that readers may often wonder where the focal points are. And yet it is this moment-by-moment accumulation that allows us, eventually, to see how the death penalty no longer has a place in American society. Sister Helen Prejean has long pointed out that if we really saw the death penalty up close and personal, we would all become anti-death penalty. We would question its processes and understand its costs.

If one thing can be said about the death penalty over the last 50 years, it's that thanks to the tireless work of lawyers and advocates, famous and unknown, many Americans have been awakened to the reality that innocent people have been executed, as in the 2004 case of Cameron Todd Willingham. They have had questions raised in their minds about how people change, as in the highly visible case of Karla Faye Tucker, executed in 1998. And they have been awakened to the reality that the main way to get yourself put on death row is to be poor, Black, and southern, as in the case of Anthony Ray Hinton, exonerated and released from death row after nearly 30 years. These awakenings have gradually, one opinion at a time, eroded public confidence in the death penalty. But they have been a long time coming, and the human costs have been uncountable.

*A version of this article appears in the print edition under the title "American executions."*