Life without Parole: America's New Death Penalty? Edited by Charles J. Ogletree, Jr., and Austin Sarat. New York: New York University Press, 2012. 352 pp. $26.00 paper.

Reviewed by Sam Kamin, University of Denver Sturm College of Law

Charles Ogletree and Austin Sarat have edited a new book exploring the exponential growth of life without the possibility of parole (LWOP) sentences in the United States. The first half of this volume is devoted to discussing the unique place that LWOP sentences occupy in the modern American carceral state. Jessica Henry considers LWOP alongside other death in prison (DIP) sentences to show that even the editors' introductory figures on the increased use of LWOP sentences understate the problem—looking only at "official" LWOP sentences paints only a small part of the picture. Simply put, a state need not explicitly remove the possibility of parole to ensure that the defendant dies behind bars.

But this definitional slipperiness (we don't always know a DIP sentence when we see one) is only a part of the way in which DIP and LWOP sentences are hidden from critical scrutiny. Henry makes an important point echoed throughout this volume: a criminal defendant can be sentenced to a term of imprisonment that will result in his death behind bars with little in the way of attention, either public or legal. In contrast to capital cases—with their press coverage, organized opposition, and hyper-due process—the damage inflicted by LWOP sentences on defendants and their families is largely hidden from the public consciousness. This point is echoed by Bennett Capers, a former federal prosecutor who writes about the disconnect that "death is different" proceduralism creates in our criminal process. While both his office and defense counsel would gear up emotionally and otherwise for litigating a death case, defendants facing a "mere" life term were treated as business as usual. Given that, by Capers' own account, LWOP cases outnumbered death cases by twelve-to-one, nearly all of his office's attention on DIP sentences was focused on the tiny percentage of cases in which the death penalty was sought.

The irony, of course, is that a LWOP sentence can be every bit as irrevocable, permanent, and damaging as a death sentence. Both sentences are an announcement that the defendant is irretrievably lost. As Sharon Dolovic writes, "[i]n one move [LWOP] guarantees that the targeted offender will never reemerge, never reintegrate, never again move freely in the shared public space" (p. 96). Furthermore, there is every reason to think that LWOP sentences are pregnant with the same issues of race and class as the death

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sentences they often replace. That death penalty sentences are heavily scrutinized—by courts, abolitionists, specialized capital defense counsel, etc.—while LWOP sentences happen in the normal course of business only promises to exacerbate these injustices.

The book's second half looks to the future, inquiring into possibilities of reform. Much is made in this section of the fact that LWOP arose as part of the death penalty abolition movement. This is an important point, but it also proves too much. It is certainly possible to advocate for LWOP as an alternative to death while opposing its use elsewhere; there are many cases in which sparing the defendant's life is the most that a capital attorney can hope to achieve through her advocacy. While we can argue about whether LWOP is in general a more humane punishment than death, the principal problems with LWOP are the diminished procedural protections in non-capital murder cases and the spread of LWOP's use outside of first degree murder cases. In this way, death penalty abolitionists probably receive too much blame for the birth of LWOP in American penology. Rather it is the misuse use of the punishment—its use without procedural safeguards or against defendants for whom it is wholly disproportionate—that is the true problem identified by this volume.

As a number of authors in the book's second half note, the Supreme Court's recent categorical approach to both capital punishment (it is impermissible for juveniles, for the mentally retarded, for those convicted of a crime other than murder) and LWOP for juveniles (there can be no automatic life sentences, no life sentences for non-violent crimes) presents some opportunity for optimism here. As Rachel Barkow writes, however, we should not hope for categorical exclusions in the adult LWOP context anytime soon. The reason she cites, echoing Henry, is definitional: We know a capital sentence when we see one, but the difference between true LWOP, an extraordinary term of years, or a sentence in which parole is a technical possibility but a practical impossibility is largely meaningless. Even if the Supreme Court were to impose a blanket ban on LWOP sentences for some crimes or some defendants, it is hard to imagine the current Court setting an upper limit on how many years imprisonment is appropriate in a particular circumstance. (The Court's decisions in the context of California's Three-Strikes-and-You're-Out laws make this painfully clear.) Perhaps the best hope for reform, therefore, is one based not in high theories of punishment and desert but in simple fiscal reality. As Marie Gottschalk quotes Attorney General Eric Holder as stating, the current rate of imprisonment in this country is "unsustainable economically" (p. 227). However, given that the true fiscal impact of LWOP sentences is unlikely to be felt for years if not decades—most of those sentenced to LWOP sentences would have been sentenced

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to long terms of imprisonment in any event—it may be quite some time before this fiscal pressure makes political change a reality.

Despite its seemingly narrow focus on a single punishment, one imposed on only 41,000 of the more than 2 million people in prisons and jails in this country, this book is an important read for anyone interested in understanding contemporary American penology. The authors' analysis of LWOP sentences—their history, their ties to other punishments, the hopes for the future—tells us much about the uniquely American approach to crime and punishment.

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Legal Pluralism and Development: Scholars and Practitioners in Dialogue. Edited by Brian Z. Tamanaha, Caroline Sage, and Michael Woolcock. Cambridge: Cambridge University Press, 2012. 270 pp. $ 99.00 cloth.

Reviewed by Ralf Michaels, Duke University

This collection of essays (some of them previously published in the Hague Journal on the Rule of Law) emerges from a 2010 workshop organized by the "Justice for the Poor" initiative in the World Bank. The book, like the workshop, brings together scholars and practitioners (a dichotomy curiously maintained even in the list of contributors). The hope, expressed in the excellent introduction by Caroline Sage and Michael Woolcock (a version of which had been circulated to the conference participants in preparation) was to initiate a dialogue to instill better mutual knowledge.

Indeed, some contributions to the book suggest that the classic definition of legal pluralism as the coexistence of plural laws in the same social space, and the ensuing discussion in scholarship, are still not yet universally known. Daniel Adler and Sokbunthoeun So, in their paper, confine "law" to state law and discuss how state law is sometimes not effective. David Kinley discusses, as pluralism, varieties of human rights law between states, but not interaction with non-state law. Varun Gauri does adopt the classical definition, but his list of shortcomings of non-state law—substantive defects, lack of enforcement power, lack of publicity—still uses an idealized vision of state law as the yardstick.

Appropriately, several other chapters are conceived largely as brief introductions into legal pluralism made for non-experts.

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