

BOOK REVIEWS

The Story of Cruel & Unusual

by Colin Dayan

Cambridge: MIT Press (2007), 100 pp.

Reviewed by Mike Larsen

In a JPP article entitled “What did you expect?”, Roger Buehl (2006) makes a short but provocative argument against the tendency towards depicting U.S. abuses at Abu Ghraib as novel, abnormal, and unusual. He suggests that the atrocities, so compellingly documented in photograph, are better understood as extensions of the policies of degradation and abuse that are characteristic of the U.S. penal system. Buehl’s observations are echoed in and serve as an excellent preface for *The Story of Cruel & Unusual*, a recent book by Colin Dayan. Dayan’s objective in this short and succinct text is to use the legal history of the U.S. Eighth Amendment (against cruel and unusual punishment) to show how abuses at Abu Ghraib and Guantanamo Bay are rooted in a legacy of permissible prisoner abuse that stretches back to U.S. policy regarding the treatment of black slaves. Buehl asks us “what did you expect?”, and Dayan explains why the reasonable - and troubling - response ought to be “more of the same”.

Dayan makes it her task, in a short 100 pages, to demonstrate how, in the American context, the political and legal debates around the limits of permissible pain have consistently empowered the state to degrade, dehumanize, and abuse prisoners. She begins by noting how the Eighth Amendment prohibits punishment that is both cruel and unusual, a coupling that has opened the door to normalized and institutionalized cruelty. The origins of this conceptual coupling, she argues, can be traced to U.S. law regarding the treatment of black slaves, which was characterized by ambiguity and superficiality; by constructing a legal prohibition against treatment that was *both* cruel and unusual, regular and structured (“usual”) forms of abuse were protected by the law. Dayan moves from this discussion of slave law to an exploration of U.S. Eighth Amendment jurisprudence, which has, to summarize her argument, emphasized the irregularity and intent associated with prisoner treatment, and not its effects. The result is a legal history that refuses to recognize the abusive effects of prison conditions, of deprivations, or of the carceral experience more generally. Instead, a focus on intent in

determining abuse has ensured a culture of explaining away the excesses of bad apples, instead of acknowledging the structural abuses of the penal system. This approach, as both Dayan and Buehl recognize, is reflected in the official reaction to the Abu Ghraib abuses.

Dayan paints a disturbing (but not unsurprising) picture of a penal policy that has outlawed only excesses “at the outer limits of the barbarous” (p. 84), permitting and legitimizing more “normal” and regularized forms of abuse. She shows how decisions around the U.S. Eighth Amendment have consistently favoured the state, rejecting arguments based on the cumulative effects of incarceration. Similarly, she notes how jurisprudence around cruel and unusual punishment has consistently constructed prisoners - and security detainees and “enemy combatants” - as carceral “bodies”. In practical terms, this corporeal construction has enabled non-corporeal (mental) forms of punishment. This legacy of permissible and institutionalized abuse has produced the contextual backdrop for the mistreatment of detainees in the “war on terror”.

The Story of Cruel & Unusual is a useful, well-written, and well-documented book, and it makes an important contribution to the literature on prisoner treatment and human rights law. Dayan draws on a variety of sources to make her argument, including first-hand accounts and statements from prisoners and court officials. These statements emerge from her extensive research into contemporary and historical texts, as opposed to interviews, and the reader is left with the impression that greater direct engagement with ethnographic material would add additional strength and legitimacy to Dayan’s arguments. Another shortcoming is the text’s exclusive focus on American law and policy. A broader, more well-rounded and transnational analysis would doubtless find important parallels in the policies of many western states. Such work would better equip us to discuss and critique global carceral politics.

REFERENCE

- Buehl, Roger (2006) “What did you expect?” in *Journal of Prisoners on Prisons*, Volume 15:1, p. 1-3.

ABOUT THE REVIEWER

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