

Crime and Punishment

A skeptical look at the death penalty and other related issues.

IT'S ALL THE RAGE

Crime and Culture.

By Wendy Kaminer.

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By David J. Garrow

ASSERTING that America's "criminal justice debates are strikingly irrational," Wendy Kaminer says that her goal in "It's All the Rage" "is not to solve problems but to help rationalize our discussion of them." A former Brooklyn public defender and a self-described "radical individualist member" of the American Civil Liberties Union, Ms. Kaminer, whose previous books include "I'm Dysfunctional, You're Dysfunctional," maintains that Americans "tend to alternate between judging too harshly ... and not judging at all." But such occasionally provocative observations aside, she fails to develop any sustained critique or analysis of the American criminal justice system.

Arguing that the system "can't be trusted" to prosecute even the least serious crimes "sensibly," Ms. Kaminer says she wants to criticize present-day criminal-justice policy debates in order to "explore underlying notions of individual accountability, self-control, moral agency, victimhood and justice." Half of the book's eight chapters concern the death penalty; the others discuss criminal offenders as "victims" themselves, news coverage of criminal prosecutions, the irrelevance of criminal justice research and this country's impulse toward "moral reform."

She devotes significant attention to the death penalty, citing Justice Harry Blackmun's statement that "the Supreme Court has been downright delusional on the subject of capital punishment." She acknowledges that a recent Gallup poll found that some 76 percent of Americans favor capital punishment, and she admits that "support for the death penalty has steadily risen in the past 25 years." She nevertheless says that "public support for capital punishment seems based on ignorance about how the death penalty is applied and what it does or does not achieve," and she boldly insists that "public support shouldn't count for much when it's based on public ignorance." Ms. Kaminer and other opponents of capital punishment are extremely naïve to think that public officials will change position on a highly visible political issue simply because she and other analysts believe that constituents' strong preferences are not based on comprehensive study and scholarly reflection. New York's reintroduction of the death penalty is a case in point.

Ms. Kaminer makes any number of arguable assertions — that "none of us is singly, absolutely responsible for our behavior," that "there is ultimately no bright line between innocence and guilt," and that "in a political struggle, there are no truths independent of politics. Truth is a matter of ideological, not factual correctness." But some of her comments — such as when she speaks of "the idiocy of our political debates" — may strike many readers as more flippant than intrepid.

In discussing capital punishment, Ms. Kaminer can perceptively note that "the greatest cruelty we inflict upon the condemned is not death but anticipation of it." Yet just a few pages later she carelessly declares that "in any marginally civilized

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society, victims of violent crime will outnumber perpetrators, giving conservative approaches to crime a natural advantage over liberalism." Ms. Kaminer's casual identification of liberalism with perpetrators, of course, does thoughtful liberals no favor at all. Indeed, it unfortunately calls to mind former Attorney General Edwin Meese's angry calumny that the American Civil Liberties Union was a "criminals' lobby."

Ms. Kaminer bemoans that "knowledge is irrelevant" to political debates over criminal-justice policies, but she is unwilling to accept fully how strongly *illiberal* most Americans' policy preferences actually are. She notes that a 1993 Time magazine-CNN poll found that 81 percent of respondents believe "courts do not deal harshly enough with criminals," but she is disinclined to acknowledge that in a representative democracy the policy preferences of the most knowledgeable elites do not — and perhaps *should* not — exercise controlling influence over government policies.

A careful reader of "It's All the Rage" could well conclude that Ms. Kaminer is less a "radical individualist" than an elitist; her book repeatedly laments how advocacy-driven scholarship on criminal justice issues has *failed* to have any detectable impact on actual public policies. "What we do doesn't matter," she quotes one dejected criminologist as saying. Ms. Kaminer often reiterates her complaint that American political arguments are insufficiently "rational," but she gives far less thought than she might to the *symbolic* qualities of legislation and other public declarations of policy. On one occasion she acknowledges that some laws "are less effective than expressive," and on another she notes that the enactment of the Brady Handgun Violence Prevention Act in 1993 "represented an important symbolic defeat" for the National Rifle Association. Those exceptions aside, however, Ms. Kaminer expresses slight interest and devotes little attention to those "expressive" values and symbolic rewards that hard-nosed statutes and penalties offer both to public officials and to opinionated citizens. As New York's recent legislative debates about the death penalty again exemplified, the symbolic aspects of such statutory gestures often count for much more (to proponents and opponents alike) than any evidence or statistics regarding implementation of the law itself.

"It's All the Rage" seeks to address issues of considerable importance. However, Ms. Kaminer fails to present a cogent argument; the result is an inconsequential and embarrassingly weak book. □