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The American Historical Review (April 2012) (reviewing David Garland, Peculiar Institution: America's Death Penalty in an Age of Abolition

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Hyman opens by examining the rise of installment credit in the 1920s and its impact on both consumers and businesses. For consumers, this form of financing offered an affordable path toward a solid middle-class lifestyle, which in turn helped make being in debt more socially acceptable. Manufacturers, in turn, relied on credit to generate sales and finance retailer inventories of expensive goods like cars, a process made easier by forming a separate finance company. While banks were not significant direct lenders to consumers because of the risk involved, their role grew in the 1930s after participation in Federal Housing Administration (FHA) lending programs gave them a glimpse of the profitability and potential of personal finance.

One of the stronger sections involves the transition from installment credit (used to finance specific purchases) to revolving lines of credit that could be used to pay for a variety of consumer goods. It began in the 1940s following the Federal Reserve's enactment of Regulation W, an anti-inflation measure that restricted maturities on installment loans. To evade these rules, retailers gave customers lines of credit with no preset maturities as a way to finance goods normally paid for on the installment plan. Consumers embraced this new form of financing, because they appreciated the sense of control they had over both how much they could borrow, and how they could use the credit. Large retailers like department stores initially dominated the revolving credit market, with banks becoming more involved after improvements in technology led to the formation of the VISA and MasterCard networks. By the end of the 1970s, the universally accepted, bank-issued credit card was the dominant form of personal credit, and using "plastic" to finance consumerism had become a broadly accepted part of American life.

The rise of debt securitization is an example of how public and private forces converged to shape the availability of consumer debt. In the early 1970s, the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation began buying and selling bonds backed by personal debt like mortgages, home equity loans, and eventually credit card receivables. This created a stable secondary market for consumer loans and gave lenders the ability to raise capital directly from individual and institutional investors. The result was billions in new funds for loans, and the entry of new financial institutions into the consumer credit business. None of this, however, would have been possible without improvements in technology and the sophisticated statistical models needed to analyze credit risk, track consumer accounts, and structure the sale of debt to investors. Unfortunately, the success of debt securitization became the core of the current financial crisis, as investor demand for these securities encouraged banks to lend more to consumers so those debts could in turn be securitized and sold.

Hyman is at his best when describing how necessity, chance, and basic capitalism influenced how and why businesses pursued different forms of non-mortgage credit, and these insights provide a solid contribution to the literature. Similarly, his analysis of the shortcomings of computer-based credit evaluation systems, especially as they relate to financial discrimination, is also compelling. However, the chapter on changes in mortgage lending practices, which emphasizes the role of the FHA in shaping how Americans finance their homes, is less persuasive. His conclusions would be better supported and more accurate if the key role traditional home lenders played in this complex process had been included. The work also would have benefitted from greater use of statistical tables on the levels of consumer debt over time, the inclusion of which would enhance its value as a reference source. Such issues, however, do not diminish the merits of this book whose readable overview of the history of personal debt in the United States will be of value to scholars new to the subject.

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David Garland. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Cambridge: Belknap Press of Harvard University Press. 2010. Pp. 417. $35.00.

David Garland's book poses this question: what explains the United States' continued use of capital punishment in the face of a worldwide abolition movement? Garland approaches the question not as a debate participant but as a detached sociologist (p. 7). His conclusion: American executions persist "because of the structure of the American polity" (p. 310). "America's federated system," he emphasizes, produces "state-by-state variation" (p. 160) with "local" control remaining a dominant feature (p. 122).

The book is an impressive work of scholarship. It explains the death penalty's demise in other Western countries—and even in places like South Africa—as it grapples with its persistence in the United States. It gives a compelling account of the racial prejudice that once spawned lynchings and that still plagues America's death penalty. It recounts how the U.S. Supreme Court, in 1976, retreated from its 1972 decision in *Furman v. Georgia*—the case that once declared U.S. death penalty laws, as then administered, unconstitutional (p. 206). And it persuasively explains how America's death penalty—now judged under the Court's "evolving standards of decency" test—has itself evolved as American society has changed.

Much of Garland's analysis is spot on. Pointing to lynch mobs in the Jim Crow South, Garland aptly argues that "local popular justice" (p. 32) has long been an American tradition. While prosecutors and judges in more centralized European states, he explains, are mostly "tenured civil servants," American prosecutors and state court judges must run for office (p. 48). The death penalty's popularity, especially in the Deep South, has thus made it difficult to outlaw executions nationwide. Capital juries also contribute—as Garland notes—to the death penalty's staying power (p. 49), es-

pecially since the Supreme Court allows "death-qualified" juries that systematically exclude death penalty opponents. Only sixteen American states now outlaw executions, though in many other states executions are extremely rare.

The Supreme Court, Garland writes, has adopted a rationalizing, democratizing, and localizing jurisprudence. The Court's attempt to subject executions to legal rules—the "rationalizing" component—is rooted in the Fourteenth Amendment. Its "democratizing" and "localizing" jurisprudence is grounded in separation-of-power principles, with much control ceded to state legislators and the discretion of local prosecutors, judges, and juries (p. 262). "If the Court were now to declare the death penalty illegal," Garland contends, alluding to language in the Constitution contemplating state-sanctioned killing, "it would have to set aside the letter of the law and reverse all the relevant precedents" (pp. 221–222). Yet, the Eighth Amendment—which now bars executing the insane, juveniles, the mentally retarded, and less culpable offenders—has itself, Garland acknowledges, already contributed to another facet of the Court's jurisprudence: a civilizing and humanizing one (p. 262).

Garland masterfully explains why executions still endure in the United States, but his suggestion that the Constitution "limits the possibility" of capital punishment "being plausibly regarded as unconstitutional" (pp. 187, 222) is contestable. The Eighth Amendment unequivocally bars all "cruel and unusual punishments." Although the Eighth Amendment originally applied only to the national government, the Fourteenth Amendment made the Bill of Rights applicable to the states. In guaranteeing "due process" and "equal protection," the Fourteenth Amendment transformed American law, ensuring that the "cruel and unusual punishments" prohibition would trump any offending local practices. The Eighth and Fourteenth Amendments, in fact, currently require prison officials to protect inmates from harm, and corporal punishments short of death have long been abandoned (p. 103) and struck down as unconstitutional.

That executions should be declared unconstitutional is supported by the facts that Garland so cogently presents. While mandatory death sentences for murder were once the norm, they have disappeared (p. 260). Death sentences are now discretionary and executions take place predominantly in a few southern locales (p. 201). Executions—far crueler than corporal punishments—have thus become "unusual," less common even than being struck by lightning (p. 312). While death sentences are still infrequently imposed in an arbitrary and discriminatory manner, life-without-parole sentences are now the standard—or usual—punishment for first-degree murder.

The Fifth and Fourteenth Amendments—referencing "capital" and "life" or "limb"—contemplated gruesome corporal punishments and the death penalty's infliction (p. 221). Those provisions, however, were put in place to protect individual rights when corporal punishments and mandatory death sentences were still prevalent. Indeed, the concept of judicial independence requires the Supreme Court to decide the Eighth Amendment's meaning for itself. The Court's continued deference to legislators (p. 275) and conviction-prone "death-qualified" juries to gauge "evolving standards," particularly in the face of sporadic, discriminatory executions, actually contradicts that principle and the Court's own obligation to assess independently what is "cruel and unusual." Ear cropping and lopping off limbs are already part of a bygone era (p. 145). A truly principled Eighth Amendment analysis would bar executions, too.

Anyone wanting to understand America's death penalty should read Garland's superb book. But readers should remember that the fate of death-row inmates ultimately lies in the hands of the U.S. Supreme Court.

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Erika Doss. *Memorial Mania: Public Feeling in America*. Chicago: University of Chicago Press. 2010. Pp. xvii, 458. $25.00.

Americans are manic about memory. From temporary roadside memorials to sprawling heritage corridors, the commemorative impulse has grown so powerful as to obscure who or what we hope to remember. This observation introduces Erika Doss's survey of the nation's current mnemonic landscape and sustains it at a surprising clip over nearly four hundred pages. In what may be the most penetrating contribution to American memory studies since Kirk Savage's *Standing Soldiers, Kneeling Slaves: Race, War, and Monument in Nineteenth-Century America* (1997), Doss suggests that modern memorial culture is an index of our capacity for civil discourse. That it is, by her account, is cause for real concern.

Among the study's most important contributions is Doss's contention that memorials function today as "archives of public affect" (p. 13). Some historians may be unfamiliar with affect studies, which make significant claims for the critical examination of feeling. The presumption is that feeling of any kind, whether it is happiness or shame, is socially constructed and therefore worth interrogating for what it reveals about how and why we interact with one another. By asserting that memorials embody affect, Doss expands her analytical possibilities beyond categories like place, power, and identity, which have become *de rigueur* in scholarship concerning monuments.

Memorials, however, as Doss explains in her first chapter, are not monuments, at least not insomuch as we recall the statue mania that prevailed until early in the last century. Commemorative genres like Savage's standing soldiers made essentialist claims about the American past on behalf of a supposedly singular body politic. By World War II, though, doubts about the feasibility of visually representing collective trauma triggered a commemorative frame shift. Minimalist public