



### A GOOD KILLING

BY ALLISON LEOTTA

Touchstone, New York, NY, 2015. 301 pages, \$25.00.

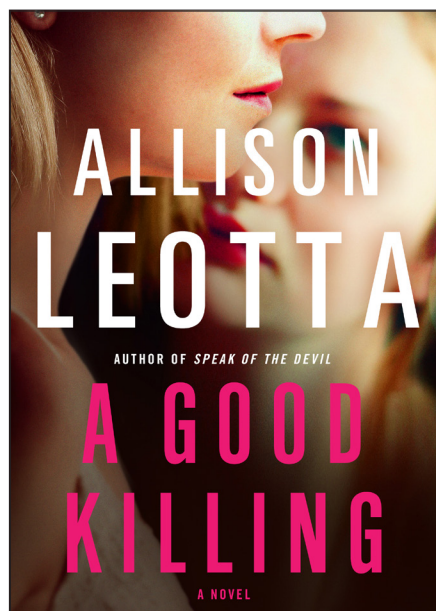
Reviewed by JoAnn Baca

In this fourth novel featuring assistant U.S. attorney Anna Curtis, Allison Leotta takes her protagonist far from the world of office politics, Washington, D.C. woes, and the twin drugs of sex and power that infused her previous novels. In fact, *A Good Killing* is stripped of nearly the entire infrastructure of characters, locations, and situations that those familiar with Leotta's earlier novels have come to know. Only a few appearances—and often little more than that—are made by characters who took up lots of narrative and emotional space in her earlier works. These characters include Curtis' significant other, D.C. homicide chief Jack Bailey, and her best friend, Grace. With the new landscape she has created as a backdrop for *A Good Killing*, Leotta displays her growing strength as a writer, for, even in the much different environment, Leotta is masterful at developing the familiar climate of tension and intensity that always propels her plots. She has also invested her new characters with so much vitality and shading that readers will not long rue the absence of the more familiar figures who populated her previous novels to such great effect.

*A Good Killing* picks up immediately after the events of her last book, *Speak of the Devil* (which I reviewed in the September 2013 issue of *The Federal Lawyer*), just as Curtis has concluded a successful prosecution of a major drug case. Despite that achievement, the tremendous upheaval in her personal life caused by secrets unmasked through that case has left her in an emotional tailspin. At her lowest point—hung over from the celebration of her winning case, sleeping in a borrowed bed, her wedding canceled—she receives a call from her hometown, Holly Grove, a fictional suburb of Detroit: A friend informs her that Curtis' sister Jody may be in trouble with the police, who want to question her about a suspicious death. With little to hold her in Washington, D.C., and much from which she wishes to run, Curtis flies to Detroit. She

lands in the middle of a confusing situation that she is ill-prepared to handle.

Beloved hometown hero Owen Fowler, the long-time winning football coach of Holly Grove High School, was last seen with Curtis' sister Jody. After flirting outrageously with the married Fowler, Jody left a bar with the very drunk coach and drove him away in the vintage blue Corvette that was as much a part of Fowler's persona as were his winning ways. Hours later, Fowler was found dead in the crashed and burned Corvette. Jody is questioned and released by the police, but, when the cause of death is determined to be blunt force trauma unrelated to the car accident, Jody immediately becomes the prime—and only—suspect. Curtis, a long-time prosecutor, decides to become her sister's defense attorney, risking her job and her dreams of a comfortable future. Hampered by Jody's strangely evasive and uncooperative attitude, Curtis does her best to protect and support her sister, even as she tries to navigate her way in the unfamiliar waters of criminal defense.



The novel runs along two tracks. Interspersed with the progression of the story are snippets of narrative in which Jody explains—to whom, we do not find out until the end of the book—her relationship with Fowler, her life in Holly Grove in the 10 years since Curtis left for higher education

and then Washington, D.C., and, eventually, what happened on the night of Fowler's death. The reader begins almost immediately to learn things about Jody and about Fowler that are not revealed contemporaneously to Curtis. This adds a layer of tension to the story, as the reader realizes that Curtis is hindered by her lack of information, which could severely limit her ability to defend her sister in the trial to follow.

Upon her return to her hometown, Curtis is fraught with regret over having previously left her sister, who was her only family, in order to create a life for herself. Their relationship is rocky as they attempt to recover their bond, fractured both by years of Curtis' unwitting neglect and the secrets that Jody refuses to divulge. Curtis' feelings about her fragmented personal life both in Michigan and Washington, D.C. pulse throughout the story, and her ability to finally recognize her own self-sufficiency is a compelling subplot. In this, she is aided by friends she left behind when she moved away from Holly Grove, especially old high school pal Cooper Bolden, whose outward wounds are only part of the legacy of the Afghanistan war from which he returned a changed man. Bolden functions in part as a metaphor for the city of Detroit, as someone who will never again be what he once was, but who is determined to create a different and better life, with help from whomever shares his vision of the future. He is a compelling and vivid character, someone who "bore deep scars, inside and out, [and] was trying to heal them by helping a city that was even more badly wounded than he was." When we meet Bolden, he is homesteading in Detroit, turning knowledge he gained by working on his family's farm into a pioneering attempt at urban farming within the tragically declining city. To provide fresh produce to restaurants and farmers' markets within the city, Bolden creates a community farm that draws other Detroit residents who wish to assist. Like sprouts of fresh grass stubbornly growing in an empty lot, their attempts to rebuild their lives and their city are courageous and beautiful. Bolden's enthusiasm is infectious: "Detroit today is home to one of the greatest urban experiments in the world. After everything is lost, there's freedom, a space to try new

things. Today we've got ... all sorts of creative thinkers figuring out how to find beauty and meaning in the ruins."

Other equally well-drawn characters include golden girl Wendy Weisowicz, the bane of Jody's existence in high school; Judge Lawrence P. Upperrhwaite, former district attorney and now a respected judge in Holly Grove; Kathy Mack, long-time pal of Jody's and of Curtis herself; and detective Rob Gargaron, who heads the investigation into Fowler's murder. But perhaps the best character in the novel is Detroit itself. Leotta often remarks on the sad decay of the once-thriving city. Viewing the city from a rooftop, Curtis thinks, "was like looking at archaeological ruins, standing before Machu Picchu or the Roman Forum." Despite the bleak view of what Detroit has become—blocks of shuttered, shattered, abandoned buildings—Leotta gives the reader a sense of renewal and hope for the city, a sense that struggles against heavy odds and is reflected in the lives of many of the people with whom Curtis becomes involved as the novel progresses. As evidence of the burgeoning of life amidst the decay, Leotta describes, through Bolden, several real businesses that are flourishing within the city center. One, the Detroit Beer Company—called the Detroit Brewing Company in the novel—has, in actual fact, "rehabbed this great old building downtown and [has] a restaurant and microbrewery there now." Another is "Great Lakes Coffee Roasting Company, on Woodward Avenue," which exists in exactly the place and kind of building that Bolden describes. As a way to bolster the community spirit of a city on the brink of dying, Leotta deserves kudos for seamlessly including boosterism within the pages of her novel, while simultaneously confirming the spread of optimism that occurs when individuals and communities work through difficulties to create a better life.

At the end of *A Good Killing*, Curtis' emotions and relationships are in flux, and she must decide whether she can or should return to Washington, D.C. after Jody's case is resolved. I hope to learn the answer to this question in a future novel by Leotta. ☺

*JoAnn Baca is retired from a career with the Federal Maritime Commission. Her husband, Lawrence Baca, is a past president of the Federal Bar Association.*

## HOW POLICY SHAPES POLITICS: RIGHTS, COURTS, LITIGATION, AND THE STRUGGLE OVER INJURY COMPENSATION

BY JEB BARNES AND THOMAS F. BURKE

Oxford University Press, New York, NY, 2015.

272 pages, \$39.95.

Reviewed by Christopher C. Faille

This book contributes to a growing body of scholarly literature that seeks to assess the consequences of the litigiousness of American culture. Although it contains some information of interest, it suffers from a skewed underlying point of view. For those with different perspectives, even persevering to the end might become a challenge.

But let's begin with the beginning. Who are these authors? Jeb Barnes is a former litigator himself and an associate professor of political science at the University of Southern California. Thomas F. Burke is the author of *Lawyers, Lawsuits, and Legal Rights* (2004). They don't question the conventional wisdom that legal rights as advocated by litigators and expounded by judicial opinions have become an extraordinarily important part of the policy mix in recent decades. They see this as having been a U.S. phenomenon initially, but they contend in their introduction that what they call "adversarial legalism" (I'll call it AL hereafter) is spreading to the rest of the world by contagion. They also accept the conventional wisdom that the rise of AL is on the whole a bad thing.

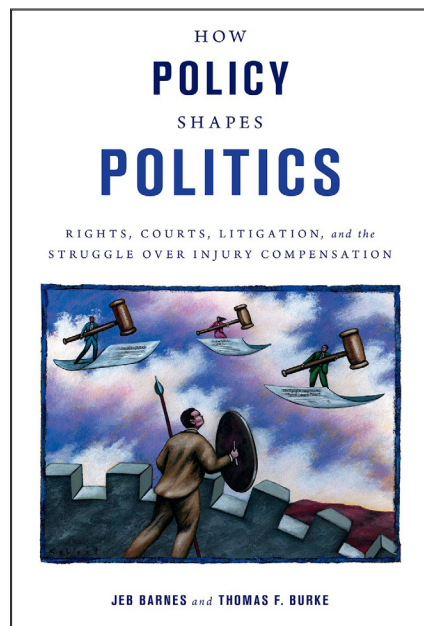
Where their work does contrast, as they put it, with "the dominant strands in the public law literature" on the subject is in their answers to the questions: Just what is so bad about it, and what might be a better approach to addressing the issues now addressed through AL?

### No Flypaper Effect

One line of argument, for example, has long been that AL is bad for the reform movements that come to depend upon it, because they become too dependent on their litigation strategies, and this drains resources from community-based organizing, from lobbying in the halls of Congress, and from other political approaches that might be superior in addressing their policy concerns. This is the "flypaper" argument put forward, for example, in a book by Gerald Rosenberg, *The Hollow Hope* (1991, 2d ed. 1998).

Barnes and Burke don't believe it. Their case studies in the field of injury compensation indicate to them that American interest groups have adapted quite well to a system "of overlapping, diversely representative forums" in which policy gets made in several places at once. Interest groups have proven capable of litigating without becoming stuck like flies to the courts.

For Barnes and Burke, what is dysfunctional about AL is that it undermines social solidarity. Litigation has given us the "complex, layered asbestos compensation system," for example, which helps generate "a divisive and complex politics." Along with "complex" and "divisive," other frequent characterizations of U.S. politics in this book are "fractious" and "chaotic." They're all bad things, and all attributed in some measure to AL.



### SSDI and Max Weber

So what is the alternative? Barnes and Burke clearly prefer that the question on which they focus—the means of compensating the injured—be addressed by experts working within congressionally mandated bureaus. Just under the surface, this book contains a paean to what the authors call "bureaucratic legalism." BL is better than AL: That's the authors' bottom line.

Barnes and Burke's idea of a case study in success is Social Security Disability Insurance, a program created in 1956 after a very contentious legislative process. It is a success because today the sorts of disability covered by SSDI are compensated with

little fuss. Necessary tinkering around the edges of the system on questions of implementation is shaped by a small circle of actors conversant in various technicalities and intricacies. That this is their ideal puts these authors in the tradition of Max Weber, a German sociologist who died almost a century ago after setting out an elitist “ideal type” of rational authority exercised by appointees on the basis of technical competence.

It is the Weberian ideal, adhered to consistently here as a filter for the comprehension of data, that will strike some as quite skewed and that will make reading this book a trudge. In their discussion of how AL has given us an inefficient system of compensation for exposure to asbestos, the authors mention the Sumner Simpson papers. Although it is a mere detail to them, I think it worth highlighting.

### ***The Sumner Simpson Papers***

In February 1977, Karl Asch, a trial lawyer in New Jersey, obtained a subpoena ordering William Simpson, president of one of the largest asbestos manufacturers in the United States, to testify at a deposition and to bring documents pertaining to the working conditions at his company's Passaic plant. Simpson brought along a box of old papers that his father had left him. His father, Sumner Simpson, had been the founder of this corporate defendant, Raybestos-Manhattan.

This box turned out to contain, in the words of Barnes and Burke, “a treasure trove of correspondence between Sumner Simpson and his counterparts at other leading asbestos manufacturer companies, which showed these companies not only knew about the risks of asbestos for decades but also had commissioned studies on asbestos's dangers and concealed the results.” Asch's find set off a new surge of litigation, because it eliminated the industry's defensive pretense that the risks becoming clear in the 1970s had not been part of the state of the art of existing medical and scientific knowledge until then.

Why is this worth highlighting? Because, I submit, it shows the drawback of the Barnes-Burke-Weberian preference for legislation that creates agencies that can produce fault-free injury compensation without a lot of post-enactment political fuss.

The first point to make here is that bureaucrats sitting in their offices in Washington, paid from the Treasury, free of political

fuss and bother, would likely never have uncovered the facts about the long cover-up of the threat that asbestos posed to workers. They would never have had the personal incentive—the profit motive—that Asch as a plaintiffs' attorney had to get such information. And they would never have had an institutional incentive either. Precisely because the systems that Barnes and Burke admire make no-fault payments, there is no need for anyone to go into the institutional question of who was, well ... at fault. So, if you believe that such discoveries are good things, this is a point in favor of adversarial legalism.

Second, I submit that such discoveries are good things, not just for curious historians. People who engage in such behavior—hiding the dangers of the materials to which their employees, customers, and others are exposed, while continuing to downplay those dangers in public—deserve at the least some shaming and some loss of their enterprise's “good will.” Instead, a few pages after the authors' brief account of the story of Asch's discovery, Barnes and Burke are lamenting that the lawsuits politically isolated asbestos manufacturers, making it difficult for legislators to “build a coalition for a governmental response” that might have treated the whole issue more as a “public health problem.”

Sorry, but in some parts of this book the tone comes close to an unconscious parody of the elitism inherent in the Weberian ideal. ☹

*Christopher C. Faille graduated from Western New England College School of Law in 1982 and became a member of the Connecticut Bar soon thereafter. He is at work on a book that will make the quants of Wall Street intelligible to sociology majors.*

## **THE COMMANDER-IN-CHIEF**

BY JAMES P. TERRY

Carolina Academic Press, Durham, NC, 2015.

190 pages, \$40.00.

### **Reviewed by Louis Fisher**

In writing *The Commander-in-Chief*, James Terry drew on his experience as legal counsel to the chairman of the Joint Chiefs of Staff under Colin Powell and John Shalikashvili. Terry served for 27 years on active duty with tours in Vietnam and as staff judge advocate during the first Gulf war. After receiving a law degree from Mercer University, he gained advanced degrees in international

law from George Washington University. He passed away on Dec. 12, 2014. His book offers excellent insights into the type of legal and constitutional analysis performed within the executive branch on matters of national security policy.

Terry begins by saying that the President's authority as commander-in-chief, despite “concerns directed at former President George W. Bush in Iraq, has actually increased significantly over time.” On that judgment, Terry is entirely correct, but the larger question is whether that trend has been beneficial to the country, the Constitution, and the presidency. In the preface, Terry appears to concentrate only on “far-reaching and successful initiatives” by “our nine war-fighting presidents.” What of unsuccessful initiatives resulting from poor planning and judgment?

A very strong chapter is the fifth, “The Development of the President's Operational Authority in Wartime.” Terry states that Congress has declared war on only five occasions and in “all other military engagements” the President has exercised “his independent executive responsibilities as Commander-in-Chief pursuant to the authority set forth in Article II. ...” Yet, as Terry notes elsewhere in the book, Congress also passes statutes that *authorize* military operations, including the Quasi-War in 1798, 10 statutes that authorized military action against the Barbary states, the Gulf of Tonkin Resolution in 1964, the Authorization for the Use of Force after Sept. 11, 2001, and the Iraq Resolution in 2002. At 47 pages, this chapter is the longest in the book, providing Terry with ample space to offer analysis that is thorough, closely reasoned, and with full documentation.

Chapter 6, “Terrorism and the President's Commander-in-Chief Authority,” is the next longest at 23 pages. It covers Jimmy Carter and the Iranian hostage crisis, Ronald Reagan's military response to Libya, Bill Clinton's actions in Nairobi, Dar As Salam, and the attack on the USS *Cole* in 2000, and George W. Bush's actions after the Sept. 11 attacks. Terry states that Clinton “never responded directly” to the terrorist attacks in Nairobi, Dar As Salam, and the *Cole*. Yet he did order cruise missiles into Afghanistan to attack paramilitary camps and into Sudan to destroy a pharmaceutical factory in the belief that it was producing materials for chemical weapons. The chemical in question, Empta, was capable of making either



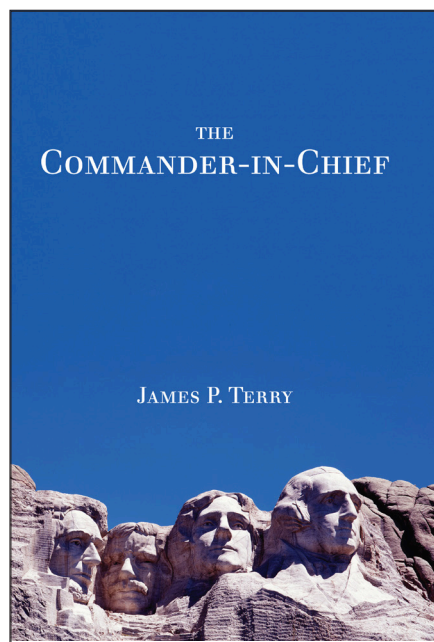
a nerve gas or an agricultural insecticide, quite likely the latter. In the *El-Shifa* case, the owner of the factory spent more than a decade in court seeking compensation, without success. Terry does not explore why the *Cole*, in highly risky waters in Yemen, should have allowed an unidentified vessel to come alongside it. The Bush response to Sept. 11 is covered in three pages.

Other chapters raise substantial questions but are often too short to explore and analyze them. Chapter 7, “Humanitarian Crises Addressed by Our Presidents,” covers Lyndon Johnson’s intervention in the Congo and Clinton’s military action in Kosovo. It is only six pages long. Chapter 8, “Presidential Authority and United Nations’ Peacekeeping,” describes military operations in support of U.N. Security Council mandates in Haiti, Somalia, the former Yugoslavia, and Rwanda. It is somewhat longer, at 12 pages. Chapter 9, “The President’s Actions in Defense of U.S. Nationals Abroad,” analyzes military actions by Lyndon Johnson in the Dominican Republic, Reagan in Grenada, and George H.W. Bush in Panama. At 19 pages, its length is sufficient to provide extensive analysis.

Those five chapters, 5 through 9, total 107 pages, or more than half the text, which ends at page 167. That leaves inadequate space to cover military actions in Korea, Vietnam, the Iraq war in 2003, and Libya in 2011. Terry does not discuss whether it was an error by Harry Truman to send U.S. troops into North Korea, precipitating Chinese intervention and a costly stalemate that led to the deaths of more than 30,000 U.S. soldiers and greatly damaged Truman’s presidency. Nor does Terry analyze Johnson’s decision to escalate the war in Vietnam. As to conflicting reports about attacks on American ships in the Gulf of Tonkin, Terry states in a footnote that the number of attacks “remains in dispute.” That ambiguity ended in 2005 when the National Security Agency released a report that explained that signals from the first attack had been delayed. When they finally arrived they were misinterpreted as evidence of a second attack. The so-called second attack, provoking passage of the Tonkin Gulf Resolution, never happened.

Terry does not analyze the six claims by the George W. Bush administration that Iraq possessed weapons of mass destruction, assertions later found to be wholly empty. Nor does he analyze the administration’s

failure to anticipate and respond to the insurgency, the disastrous decision to disband the Iraqi army, the failure to protect Iraq’s infrastructure so that the Coalition Authority could quickly restore order, and the ease with which insurgents gained access to arms depots. Abuses at Abu Ghraib, not discussed in the book, were damaging to the United States’ effort. The book does not evaluate Obama’s decision to use military force against Libya, an action that produced a broken state that is now a breeding ground



for terrorism.

Terry reviews the legal and constitutional sources of presidential authority, including actions pursuant to UN Security Council resolutions. He states that, after ratification of the U.N. Charter in 1945, “authority to direct the use of force to rescue or protect U.S. or foreign citizens abroad rests exclusively with the 15 member UN Security Council.” That is an overstatement. As he acknowledges elsewhere in the book, on repeated occasions the Security Council has lacked the votes to direct the use of force.

The U.N. Participation Act of 1945 explains the procedures for U.S. military actions under the U.N. Charter. The statute directs the president to negotiate agreements with the U.N. concerning the number and types of armed forces to be supplied. The agreements, as Terry points out, “were to be submitted to the Congress for approval.” Yet Truman, he says, “viewed that provision to be in conflict with his Article II authority as Commander-in-Chief.” To support that statement, Terry

provides a footnote to Dean Acheson’s memoirs, *Present at the Creation*, published in 1974.

Acheson’s account is not persuasive. When the Senate debated the U.N. Charter in July 1945, Truman sent a cable from Potsdam stating that when any agreements are negotiated, “it will be my purpose to ask the Congress for appropriate legislation to approve them.” His cable was placed in the *Congressional Record*. The UN Participation Act required congressional approval. Truman signed it without expressing any constitutional objections. Although Terry says that Truman offered his “support for the UN Participation Act,” the fact is that five years later he violated both his personal pledge and the statute. Terry is correct that “the overwhelming sentiment in the country was that Truman was doing the right thing” in sending U.S. troops to Korea, but he acted illegally and established a precedent that has been followed by other presidents: Clinton with Haiti and Bosnia and Obama with Libya. They circumvented lawmakers by seeking “authority” from the Security Council instead of requesting approval from Congress, as required by law.

Throughout the book, Terry refers to the doctrine of “inherent presidential powers” to use military force outside the country. All three branches have a mix of enumerated and implied powers. The term “inherent” introduces an entirely different source of authority. It applies to a power that inheres in a person or an office and therefore is not subject to checks by the other branches. That was the argument of the Justice Department in district court in 1952 in the steel seizure case. In a blistering opinion, District Judge David Pine denounced the theory of inherent presidential power, describing it as “a form of government alien to our Constitutional government of limited powers.” When Solicitor General Philip Perlman appeared before the Supreme Court, he did not use the word “inherent” a single time. And, of course, the Supreme Court found that Truman lacked the constitutional or statutory power to seize the steel mills.

For his understanding of presidential authority, Terry relies in part on Justice Sutherland’s opinion in *United States v. Curtiss-Wright* (1936), which Terry correctly says enunciates “the position that the power of the national government in foreign relations is not one of enumerated but of inherent powers.” However, from 1936 for-

ward, scholars have demonstrated convincingly that Sutherland wholly misrepresented John Marshall's speech in 1800 that referred to the president as "sole organ of the nation in its external relations." All that Marshall meant was that, after the two elected branches *jointly* formulate foreign policy, it is the president's duty to *implement* it.

Sutherland described the president's powers in foreign affairs as "plenary and exclusive," a claim that is rendered false simply by reading the text of Articles I and II of the Constitution. Nevertheless, the executive branch and the Justice Department continue to cite *Curtiss-Wright* to defend broad and unchecked doctrines of Presidential power. In other sections of the book, Terry recognizes that the President's power in external affairs is not plenary and exclusive. The powers granted to the president, "as broad as they are, are nevertheless circumscribed by equally fulsome and intersecting Congressional authorities." The principal ones identified by Terry "are the withholding or withdrawal of legislative authority, and the limitation on funding for military operations as occurred in Vietnam and Somalia." That remains an important constitutional check for those who counsel that the president possesses unchecked authority to order military initiatives. ☉

*Louis Fisher is scholar in residence at the Constitution Project. From 1970-2010, he served at the Library of Congress as a senior specialist in separation of powers with the Congressional Research Service and as specialist in constitutional law with the Law Library. His is the author of more than 20 books, including Presidential War Power (3d ed., 2013) and The Law of the Executive Branch: Presidential Power (2014). His personal Web page can be found at <http://loufisher.org>.*

## **CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS**

BY MARIE GOTTSCHALK

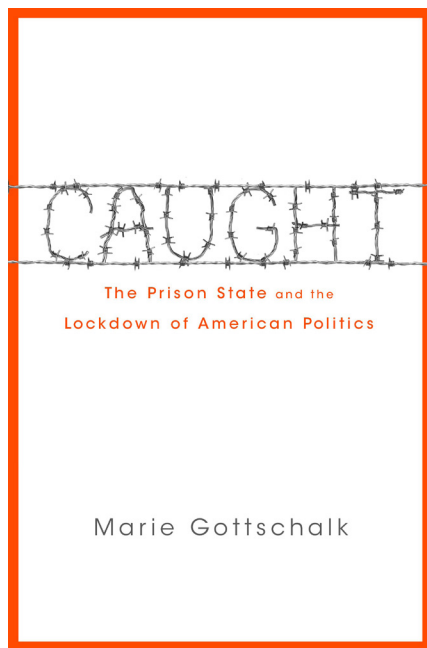
Princeton University Press, Princeton, NJ, 2015.  
474 pages, \$35.00.

**Reviewed by Elizabeth Kelley**

*Caught: The Prison State and the Lockdown of American Politics* is an important scholarly contribution to the discussion of

mass incarceration and will likely be a controversial one. Written by Marie Gottschalk, a political science professor at the University of Pennsylvania, *Caught* is by no means an easy read, not because of any deficiencies on Gottschalk's part—indeed, she is a clear and colorful writer—but because *Caught* is laden with facts. Accompanying the 284 pages of text are 125 pages of endnotes and a 27-page bibliography. Any of *Caught's* 12 chapters would be a worthy subject for an extended essay or a conference.

*Caught's* three most important themes are that (1) "small-bore" solutions will not solve the problem of mass incarceration, (2) racism and the "war on drugs" contribute to mass incarceration but are not its sole causes, and (3) the culture of the "carceral state" (a term coined by philosopher Michel Foucault and used throughout the book) is deeply embedded in our politics, and it will



take a wholesale revision of our political system to fix it.

The figures are indisputable. In the United States, 2.2 million people are in jail or prison. Eight million people are under some type of court supervision such as probation or parole, and 7.5 million people are felons or ex-felons. Beyond that, two million children have a parent in jail or prison. Neighborhoods and communities have been decimated by the incarceration of their residents. America's rate of incarceration surpasses that of any other country, and we have become the "world's warden," in Gottschalk's words. Jails and prisons have

become so common that Yelp! reviews many of these facilities. Not only do we incarcerate more people, but we incarcerate them for longer periods of time. And, when prisoners are released, they face a host of collateral consequences that prevent them from reintegrating into society and set them up to fail. Ex-offenders in European countries do not confront such obstacles.

In recent years, in large part because of the Great Recession and shrinking budgets, the federal and state governments have implemented various initiatives to reduce the jail and prison populations. Gottschalk views such initiatives as "small-bore" and as not having a significant long-term impact on reducing the number of people ensnared by the criminal justice system. Rather than releasing a few prisoners early, entire institutions must be shut down or not built in the first place. For the government to focus on what Gottschalk calls "the 3 R's"—"reentry, justice reinvestment, and recidivism"—will not have a lasting impact in large part because the 3 R's focus on the three "nons"—"nonviolent, nonserious, and nonsexual offenders."

In her first chapter, Gottschalk acknowledges the importance of Michelle Alexander's book, *The New Jim Crow* (reviewed in *The Federal Lawyer*, May 2011), and she emphasizes that "[r]ace matters, and it matters profoundly in any discussion of how to dismantle the carceral state." However, she writes:

Building on Alexander's work, I identify some other underlying political, economic, and social factors that spark and sustain such punitive policies not only for certain blacks, but also for certain whites, Latinos, immigrants, and members of other demographic groups. Bluntly stated, the United States would still have an incarceration crisis even if African Americans were sent to prison and jail at "only" the rate at which whites in the United States are currently locked up. ...

Moreover, Gottschalk works to shatter the myth that the "war on drugs" is solely responsible for mass incarceration. She notes that the majority of inmates are sentenced for violent offenses, and that sentences for sex offenders and their subsequent civil commitment have increased the number of prisoners, as have three-strikes initiatives.

As the incarceration rate has quadrupled in recent years, the number of convicts sentenced to life without parole has increased a hundredfold; Gottschalk notes that the anti-death penalty movement has unintentionally contributed to this. The number of inmates held for immigration-related offenses has also skyrocketed.

The rise of the carceral state is the product of politics and money. Many people have benefited from it, which will make dismantling it difficult and will require a huge economic investment, as well as a change of mind on the part of the American public. Gottschalk analogizes the problem to the closing, 50 years ago, of state institutions for the mentally disabled. No politician wants to appear soft on crime. Prosecutors have immense power in making charging decisions. Prisons are touted as tools for

economic development. Local jails benefit from renting out bed space. Private prisons have become a huge industry. In the meantime, the public has turned a blind eye, not just to the sheer number of Americans who are ensnared by the criminal justice system but to the often barbaric treatment of people in our penal institutions—what Gottschalk calls the “devolving standards of decency.”

*Caught* offers few specific solutions. In fact, Gottschalk criticizes assorted “micro-interventions” as having little impact. But, until such time as we as a country change our mindset, gain the discipline to attack the underlying causes of crime, and choose leaders with long-term, selfless vision, we should continue to pursue whatever steps possible to reduce the size of the incarcerated population. Tell any prisoner

that his or her early release was a “small-bore” solution. That person may not care whether being released made a dent in the overall prison population but will just be happy to be home. ☺

*Elizabeth Kelley is a criminal defense lawyer based in Spokane, Washington. She has a special commitment to representing individuals with mental illness and developmental or intellectual disabilities who are accused of crimes. She has served two terms on the board of the National Association of Criminal Defense Lawyers, has served as the chair of the Mental Health and Corrections Committees, and is currently the chair of the Membership Committee. She hosts two radio shows, Celebrity Court and Celebrity Court: Author Chats. She can be contacted at [zealousadvocacy@aol.com](mailto:zealousadvocacy@aol.com).*

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