

members of society on an enduring basis. Thus, we may have to face up to trade-offs between adaptability and secure inclusion. As with tensions between freedom of action and security in the common law, the choices we face are tough—and any tendency towards romanticism in our thinking will obscure them.

Newcastle University

The American death penalty: a flawed institution

Carolyn Hoyle

Deadly Justice: A Statistical Portrait of The Death Penalty, by F. R. Baumgartner, M. Davidson, K. R. Johnson, A. Krishnamurthy, and C. P. Wilson. Oxford University Press, 396 pp. £19.99.

It's not self-evident that death penalty scholars need to add another book on the American death penalty to our crowded shelves and reading lists. However, Baumgartner and his colleagues have provided something different: this review of a wide body of empirical research, by those who understand complex statistical data, serves as an ideal introductory text for students. But its main contribution is bringing to life the penalty of death for an intelligent and interested public.

In 1972, in the landmark case of *Furman v. Georgia*, the US Supreme Court struck down the death penalty, finding it to be unconstitutional on account of its arbitrariness and discriminatory impact on disadvantaged and vulnerable populations. States that wished to continue to execute those citizens who committed the most serious crimes had to rewrite their laws and revise their procedures to avoid the systemic faults identified by *Furman*. Georgia was the first to have its amended laws approved by the Court, in the case of *Gregg v. Georgia* in 1976, ending a four-year moratorium and establishing the modern era of the death penalty. In seventeen succinct chapters, this book considers whether, over forty years later, the American death penalty meets the goals of *Gregg* or fails the test of *Furman*.

To answer this question, Baumgartner and his colleagues pay little attention to the theoretical framework that has informed much of Baumgartner's earlier scholarship. Neither do they seek to analyse in depth the evolving jurisprudence on capital punishment. Instead, they take some of the assumptions that guide public support for capital punishment (for example, that it deters other criminals, that it is cheaper than locking people away for life, and that it is a just response to the most egregious offences) and subject them to rigorous empirical scrutiny.

While not explicitly normative, this book is far from neutral on the question of capital punishment. Indeed, its aim is to educate the public on its continuing arbitrariness and ineffectiveness. Drawing on the insight of Justice Thurgood Marshall—who believed that support for the death penalty would decline if people were aware of how it was used in practice—the authors explain how it should work and then demonstrate the gap between the law in books and the law in action.

Not everyone who commits a capital offence will be sentenced to death: only 16 per cent of those, in the modern era and in the USA, have been executed so far and only about a quarter will ever be. This book explains why.

Guided discretion was central to the Court's approval of new death penalty statutes, but Baumgartner and his colleagues show that those who commit the worst offences do not necessarily get the death penalty; that other variables shape the outcome of the criminal process. If the reader is considering committing a 'capital murder' (those with certain aggravating features), they will know to avoid doing this in Oklahoma or Texas (particularly in Harris County), where they will have a greater probability of being sentenced to death. While the chance of being sentenced to death in California is relatively high, executions there are extremely rare. These variances are not neatly correlated with homicide rates: of all states, you're most likely to be a homicide victim in Louisiana where such offences will probably not result in death sentences. Clearly, non-legal factors explain the administration of the death penalty in the USA, as they do elsewhere; race being one.

While most will assume that the race of the defendant is key, data show that the race

of the victim has a stronger influence on juries: those who kill white women are much more likely to get the death penalty than those who kill black men. At the same time, black women are much more likely to be sentenced to death than white women. In death sentencing, as in the American justice system more broadly, black lives are not valued.

For states that execute infrequently, the death penalty is exorbitantly expensive. Reviewing studies on costs, Chapter 14 argues that the American death penalty is much more expensive than any alternative, even life in prison without the prospect of parole, in large part because of the various procedural protections for the innocent and the disadvantaged. While this chapter cannot directly compare the costs of death versus life sentences, it shows how enhanced procedural protections in capital cases—what in the USA is often referred to as ‘super due process’—that are provided to all defendants charged with a capital offence from pre-trial, through the trial, and the appeals process, increase significantly the fiscal burden on the state.

There are many ways to measure the costs of capital punishment and the authors review all the available studies they consider to be sufficiently large and reliable. Most provide data on annual estimates for different states; we learn that capital punishment costs Florida \$51 million a year. Not surprisingly, estimates of the cumulative costs to a state of retaining the death penalty are much higher: some \$4 billion in California, a figure that persuaded some to vote for a moratorium there in an election on this issue in 2016 (‘Proposition 62’). Notwithstanding California’s reluctance to abandon this under-utilised punishment, studies on costs have reduced support elsewhere (including New Jersey), among conservatives in particular (liberals are more concerned about innocence).

‘Super due process’ can result in juries choosing to sentence defendants to life, instead of death, after a long and expensive trial, and mean that the majority of those sentenced to death will die of natural causes rather than by lethal injection, as their appeals wind slowly through the system. In all such cases, the costs for both the state and those subject to the criminal process are

high. Yet the bifurcated trials, and complex and protracted appeals processes, across state and federal courts, fail to protect the most vulnerable citizens and Baumgartner and his colleagues show that justice errs too often.

It is not easy to make quantitative research comprehensible, but this authoritative account of the American death penalty does just that. While each chapter reviews complex statistical data, the authors weave in stories from cases that illustrate the cruelty and capriciousness of the system. Their greatest challenge was making accessible econometric studies of the possible deterrent effect of capital punishment. Those daunted by the prospect of getting to grips with statistical modelling can skip to the main conclusion on pages 319–20: deterrence simply cannot be assessed by the existing studies. We can’t say there is no deterrent effect, but no one as yet has been able to demonstrate such, and those who argue that the state has a moral obligation to execute murderers in order to protect future potential victims are on shaky ground.

The early chapters are not perfectly judged. The first and the second, which describe the relevant Court jurisprudence and the legal process from arrest through to appeals, are too basic for legal scholars, yet rather dry for a general readership. Some chapters could have delved a little deeper into sociological explanations that most readers would have found easy to comprehend. For example, Chapter 3 on homicide rates might have explored possible causes, such as the availability of firearms, gang culture, or the considerable social distance in high crime cities such as Chicago or New Orleans. However, most chapters that deal with specific issues—such as the types of crimes that result in the death penalty or the vulnerabilities of those who are subject to capital punishment—will be stimulating and comprehensible to general readers. They will realise, as they turn the pages, that those subject to capital punishment may not be the egregious, but the intellectually impaired, the mentally ill, ethnic minorities, and the poor—particularly those with incompetent counsel.

Since 1976, the US Supreme Court has heard many challenges to the

administration of the death penalty on the issues discussed in this book. In the case of *Glossip v. Gross* in 2014 (a challenge pertaining to the constitutionality of the lethal injection 3-drug protocol), Justice Breyer's dissenting opinion could be interpreted as inviting another challenge to the constitutionality of the death penalty. When this will happen is not clear, but it will happen. And when it does, the justices would do well to heed the final sentence of this comprehensive review of the modern death penalty: 'A reasoned assessment based on the facts suggests not only that the modern system flunks the *Furman* test but that it surpasses the historical death penalty in the depth and breadth of the flaws apparent in its application.'

University of Oxford

Yemen: 'international community' where art thou?

Thanos Petouris

Yemen in Crisis: Autocracy, Neo-Liberalism and the Disintegration of a State, by Helen Lackner. Saqi. 330 pp. £25.00.

The Yemeni civil war, which according to some started on 21 September 2014 with the taking over of the capital Sana'a by Huthi militia and, according to others, five months later with the escape of president Abdrabbuh Mansur Hadi to Aden and thence to Saudi Arabia, has already entered its fourth year. The latest report of the United Nations' Office for the Coordination of Humanitarian Affairs (UNOCHA) on conditions in the country makes dismal reading. In no uncertain terms, Yemen has been characterised as 'the world's largest humanitarian crisis' with two-thirds of Yemenis facing starvation. The term 'humanitarian crisis' hides a multitude of afflictions that the Yemeni population has been subject to even before the war started. Outbreaks of disease, child malnutrition, lack of basic medication for common health problems, destruction of terraced farmland, and worsening of environmental conditions are just a few of the visible effects of the current

crisis that have damaged Yemen's future for generations to come.

In response to Yemeni internal political developments, in March 2015 Saudi Arabia and the United Arab Emirates gathered an assemblage of military forces with some contributions from a number of Arab countries, and even including mercenaries from as far afield as Colombia. The ostensible mandate of the Saudi-led coalition, as it has become known, is to restore the legitimate government of president Hadi. At the same time, the different direct and indirect participants in the conflict—whether local or international—have been pursuing their own political agendas, further complicating attempts at a negotiated cessation of hostilities. Helen Lackner's assertion that 'none of the players involved demonstrated the slightest concern for the welfare of the 27 million Yemenis, most of whom suffered worsening conditions on a daily basis', is perhaps the most poignant summary of the conflict and a harsh indictment of the so-called international community's response to the plight of the Yemeni people.

In *Yemen in Crisis* Lackner sets out to explain the reasons for the country's chronic political, economic and social problems, which the current war and its attendant humanitarian crisis have thrown into sharp relief. A long-term researcher of Yemen, Lackner has lived and worked in both the former Yemen Arab Republic (North) and People's Democratic Republic of Yemen (South) for fifteen years. This allows her not only to speak with authority about the country, but also to enhance her narrative with the nuance of her first-hand experiences. In spite of its important geopolitical position, Yemen has remained one of the least studied countries of the Middle East and Lackner's contribution to its scholarship is a welcome one. Her publication does not pretend to be an exhaustive dissection of contemporary Yemeni history and politics, but rather it focuses on specific historical episodes as well as some of the more important political and social challenges the country has faced since the unification of North and South in 1990.

The book can be divided broadly into three parts. In the first three chapters, the author combines a brief historical summary of the two Yemeni republics from the 1960s