

# Book Review

Criminal Justice Policy Review

1-3

© The Author(s) 2018

Reprints and permissions:

[sagepub.com/journalsPermissions.nav](http://sagepub.com/journalsPermissions.nav)[journals.sagepub.com/home/cjp](http://journals.sagepub.com/home/cjp)

Baumgartner, F. R., Davidson, M., Johnson, K. R., Krishnamurthy, A., & Wilson, C. P. (2018). *Deadly Justice: A Statistical Portrait of the Death Penalty*. New York, NY: Oxford University Press. 396 pp. ISBN: 978-0-19-084154-6

**Reviewed by:** Brandon C. Dulisse, Indiana University of Pennsylvania, USA

DOI: 10.1177/0887403418787226

The legality (and morality) surrounding the use of the death penalty in the United States has remained a divisive topic for legislators and the public alike. This incongruence in part stems from the divergent opinions of the Supreme Court in the landmark cases of *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976). *Furman* was a controversial 5-4 decision by the Supreme Court striking down all current death penalty actions and requiring states to remove arbitrary and discriminatory effects of the punishment to satisfy the Eighth Amendment to the United States Constitution. In the less than 4 years after, many states quickly passed new death penalty statutes that they argued satisfied the requirements left in the Court's decision on *Furman*. This led to *Gregg v. Georgia* (1976), along with other similar state cases, which ultimately reestablished the use of the death penalty under these new "modern" guidelines.

*Deadly Justice: A Statistical Portrait of the Death Penalty* begins its investigation here (post-*Gregg*), examining patterns and empirical evidence in this "modern" period to conclude whether or not current death penalty laws are living up to the federal parameters set up in *Gregg v. Georgia* (1976) and beyond. This volume consists of 13 cogent and concise chapters ranging from explanations of previous case law, to detailed and descriptive patterns of death penalty usage from all 50 states for the last four decades. In the authors' inquiry on this topic, detailed patterns from public data sources provide ample evidence that a new evaluation is necessary to reconsider the constitutionality of death penalty statutes across the United States.

From the beginning of Chapter 1, the authors caution that the intent of this work is not necessarily to answer a question of "who deserves death" or even to create a literary narrative to invalidate death penalty statutes. Rather, the authors resonate with the well-known dissenting opinion of Justice Thurgood Marshall in *Furman v. Georgia* (1972) who famously suggested that the more the general public understood about the death penalty and its application, the less appealing it would become as a punishment.

The first part of this work satisfies Justice Marshall's hypothesis through the use of simple summary statistics, unadulterated graphic evidence of trends, and even summaries of previous empirical studies. All of the data trends in the same direction without an explicit narrative to support the claim, perhaps because the data speaks for itself.

The empirical concentration of this book serves a distinct and transparent purpose at examining how the United States attempted to fix the flaws of an unconstitutional death penalty at a time when many other developed nations were abandoning their own. Each chapter deconstructs one or more of the "remedies" that were accepted in *Gregg* as well as other applicable cases that led to the reintegration of the death penalty in the modern era. For example, Chapter 5 focuses on capital-eligible crimes by addressing the question, "Is the death penalty reserved for the worst of the worst?" This question stems from multiple Supreme Court decisions post-*Furman* that have attempted to narrow the scope of the death penalty to the most heinous and egregious acts without violating the Eighth Amendment. In addressing this question, the authors use tables, graphs, and figures to reveal how each state defines the "narrow targeting" of death penalty eligible cases as well as how often these cases are tried and those found guilty are sentenced to death. The results are surprising and troubling at the same time. For example, in Colorado 0.6% of homicides determined "death-eligible" receive a death sentence compared to Georgia with 17% of those found guilty of "death-eligible" homicides receiving the death penalty. Even more baffling is the variation between states' acceptance of homicides as "death-eligible" ranging from 92% (Colorado) to 19% (South Carolina). These types of empirical examples are readily found in each chapter, solidified in an easy to understand and systematic focus on each topic. Although the authors do not spend much time discussing the implications of these disparities early on, they rightly reason that the patterns observed in nearly every area of death penalty application provide evidence of an unfair and unequal application of the punishment.

The latter part of this work focuses on addressing the deterrent power and popularity of the death penalty concluding with a final chapter on whether or not the modern death penalty actually passes the *Furman* test. One indicator of a strong narrative work is the ability of the authors to predict when a reader is conjuring new ideas and questions and how to answer them appropriately. These summary chapters provide an excellent example of this and stand as evidence to how well this volume is put together. The organization of this work conveniently dovetails the summary conclusion and introduction of the controversial *Furman* and *Gregg* decisions to bring the reader full-circle and back into the conversation about the constitutionality of the death penalty based on these cases.

Perhaps the greatest strength of this work is the statistical attention paid to new issues that have emerged in the modern era of the death penalty. The exponential increase in time and cost, the geographic concentration, and the increased rates of reversal of death penalty cases to name a few are prime examples of new issues that the authors spend time analyzing using previous studies and current data trends. Although the conclusion is the same, the wealth of evidence further supports the

narrative that the modern death penalty may be more arbitrary and unconstitutional than its pre-*Gregg* predecessor. This declaration is extremely important to this work for two reasons. First, many members of society are not familiar with the legal legacy of the death penalty and the required narrow-focus of the post-*Gregg* era. By demonstrating clear patterns of evidence from unbiased sources, the authors gift the reader with the contextual tools required to understand the current folly of the modern application of the death penalty. Second, even if the remedies affirmed in *Gregg* were shown to pass the *Furman* test, these new problems stand alone as modern constitutional questions that require future resolution.

As a book for those interested in learning about the death penalty from any level of knowledge or expertise there are some areas that, to the informed reader, may seem superficial leaving them desiring a more content-rich volume. For example, while the word “portrait” is used by the authors in describing the sheer bulk of visual evidence in this work, the issue of depth in this portrait is nevertheless present throughout the book. Each chapter is filled with examples of descriptive statistics that paint the portrait of an unfair application of the death penalty, but a reader desiring more complexity may not be as fulfilled with predictable correlations and summary reviews of the literature. Although this work could be strengthened by the collection of existing inferential statistical studies or even original statistical inquiry that is not to say that it does not achieve its defined goal. Overall, this book is informative to readers of all levels and should be considered as a resource for any seeking empirical insight into one of America’s most divisive practices.

Just as standards of decency evolve over time, modern society will reconsider the decisions of its predecessors, giving this book an important purpose in the future evaluation of the post-*Gregg* death penalty. This book starts (or at least continues) an important conversation on the policies and procedures of how the United States legally carries out and defends its harshest punishment. By providing basic definitions, easy to understand graphs and tables, and concluding statements for each chapter and idea, this book is an effective and worthwhile index on the topic of death penalty application, social and demographic trends in the criminal justice system, geographic variation in criminal justice policy, and many other topics. I strongly recommend this book for any students majoring in Criminology/Criminal Justice, Political Science, Sociology, or Pre-law. In addition, I believe this resource to be of particular use to courtroom practitioners, specifically prosecutors, defense attorneys, and judges involved in capital cases in jurisdictions where the death penalty is available. These individuals are or will be shaping policies on the death penalty and owe it to all those involved in that process to be more well-informed of the implications of their decisions. Perhaps, as Justice Marshall hypothesized, the more society truly understands about the death penalty and how it is applied, greater consideration will be taken into debating the use of the irrevocable punishment. This work helps achieve this end, and is recognized by the reviewer for its contribution to this conversation.