

Current Issues and Controversies in Capital Punishment

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Editorial Introduction

It is our pleasure to introduce you to our special issue on “*Current Issues and Controversies in Capital Punishment*”. Capital punishment continues to be one of the most highly debated and polarizing public policies issues in the United States. But, the number of individuals on death row has reached an almost twenty year low, many states have moratoriums on capital punishment, while others have repealed the use of the death penalty altogether (Death Penalty Information Center, 2014, 2013a). At the same time, thirty-two states continue to use capital punishment and as of this writing, twenty individuals have been executed in 2014 (Death Penalty Information Center, 2013b).

Social science research often enters the capital punishment debate through studies examining the influence of legal and extralegal characteristics on prosecutorial decisions to seek the death penalty (e.g., Paternoster, 1984; Paternoster & Brame, 2003), jury death sentence decision-making (e.g., Jennings, Richards, Bjerregaard, Smith, Bjerregaard, & Fogel, 2014; Paternoster & Brame, 2008; Richards, Jennings, Smith, Sellers, Fogel, & Bjerregaard, 2014; Williams, Demuth, & Holcomb, 2007), and societal attitudes regarding the use of the death penalty (e.g., Cochran & Chamlin, 2005; Michel & Cochran, 2011) as well as other related topics. In this vein, the purpose of this special issue is to address contemporary topics related to the death penalty that have not been addressed or have received limited attention in the extant criminological literature. The set of articles included in this special issue stem from different disciplinary perspectives including philosophy, law, public policy, and criminology, and utilize diverse methodological approaches ranging from case studies to propensity score analysis.

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Having provided this background, we now turn to discussing the articles included in this special issue, with a particular focus on their unique and substantively important contributions to the body of research on capital punishment. To begin, several articles focus on the influence of extralegal and legal variables on capital punishment. In the first article, “An Examination of Defendant Sex Disparity in Capital Sentencing: A Propensity Score Matching Approach,” Richards and colleagues use propensity score matching and a near population of capital murder trials in North Carolina (1977–2009) to analyze whether defendant sex impacts sentence decision-making among capital juries, a topic rarely explored in the literature. Richards et al. demonstrate that prior to matching, cases with female defendants appear to be significantly different than cases with male defendants across both legal and extralegal factors and that differences exist in the likelihood of receiving the death penalty based on defendants’ sex. After matching, however, sex-based differences in likelihood of the jury assessing death are not observed, and further examination identifies divergent “paths” to capital punishment for female versus male defendants. Their results provide key information regarding the legal variables, most importantly, aggravating and mitigating factors, present in capital trials involving female versus male defendants, and the ways in which these differences may, at first blush, be perceived as a defendant “sex effect” in regard to jury sentencing decision-making.

In the second article, “Examining the Impact of Proximate Culpability Mitigation in Capital Punishment Sentencing Recommendations: The Influence of Mental Health Mitigators,” Gillespie and co-authors, also using the North Carolina database, examine an under-researched area of capital punishment, the influence of mitigation on jury’s sentencing decision-making. Specifically, Gillespie et al. analyze the influence of five mitigators relevant to the mental health and mental capacity of defendants regarding whether juries assess the death penalty. The results provide important information regarding the impact of specific mitigators pertaining to proximate culpability, especially whether jury’s acceptance OR rejection of mitigators are important in sentencing decision-making. As an example, their findings demonstrate that a jury’s acceptance of defendants’ impaired capacity to appreciate the criminality of their conduct and/or a defendant’s young age at the time of the crime is significantly associated with a reduction in the probability of a death sentence. On the other hand, a jury’s rejection that the defendant was mentally or emotionally disturbed at the time of the crime or that the defendant suffered from a specific mental illness or disorder was significantly associated with an *increase* in the probability of a death sentence. Consequently, Gillespie et al. conclude that mental health mitigation, if introduced, must be managed very carefully at the sentencing phase of capital murder trials.

In the third article, “Judicial Narratives of Ideal and Deviant Victims in Judges’ Capital Sentencing Decisions,” Zaykowski, Kleinstuber, and McDonough examine judicial perceptions of victims (ideal vs. deviant victims) in capital cases and whether these constructions impact sentencing outcomes in Delaware capital trials – where judges, not juries, have final decision-making power regarding life versus death. Using content analysis, Zaykaowski et al. examine the population of capital cases in Delaware from 2001 to 2011 to determine judges’ constructions of victims given the victim impact evidence submitted as sworn evidence at trial. Findings from this study suggest

that judges do perceive some victims as more “worthy” than others, that victims described in ideal ways are more likely to be white and female, and that cases involving “ideal victims” are more likely to result in death sentences than cases including victims perceived as deviant.

In the fourth article, “A Review of Sex Disparities among the ‘Key Players’ of the Capital Punishment Process: From Defendants to Jurors,” Tomsich et al. provide an in-depth review of the growing body of research focused on the influence of sex/gender on capital punishment. This manuscript presents the extant research regarding the influence/impact of victims’, defendants’, jurors’, prosecutors’, attorneys’, and judges’ sex on death penalty case outcomes and links this research to the relevant theoretical orientations. This review demonstrates that prior research shows that the sex of some death penalty actors such as jurors and attorneys are inconsistently related to the likelihood of death sentencing while research more conclusively suggests that the sex of other actors, such as victims, impacts death penalty sentencing; however, Tomsich and colleagues present research suggesting that this effect may be moderated by additional legal variables such victim involvement in illegal behavior and the presence of aggravating factors.

In the fifth article, “Capital Sentencing in Kentucky, 2000–2010,” Vito and colleagues, use a population of death eligible homicide cases in Kentucky over a decade to examine the predictors of prosecutor’s decisions to seek the death penalty as well as to offer a defendant a plea bargain. Their findings provide evidence that extralegal factors influence prosecutorial decision-making regarding the death penalty in Kentucky. Specifically, results from a multivariate analysis indicate that prosecutors are more likely to seek death in cases including female victims and that cases including a Black defendant and a White victim are less likely to result in a plea bargain than cases involving other victim/offender racial dyads.

In the sixth article, “Race and the Construction of Evidence in Homicide Cases”, Pierce and colleagues examined prosecutorial files for over 400 homicide cases in Louisiana to explore the influence of victim race and gender on prosecutor’s investigatory effort which they deem “case construction output”. Results of the multivariate analysis indicate that even after controlling for aggravating factors, prosecutors exerted more effort in cases involving White female victims than other homicides, and relatedly more severe sentences for perpetrators. Pierce et al.’s findings present evidence regarding significant variation in *prosecutorial priority* of cases with certain types of victims (White females) and provides new insight into one of the preliminary stages of the death penalty process.

In addition, several articles in this issue examine constitutional questions regarding the capital punishment process. In the seventh article, “Autonomy in Extremis: An Intelligent Waiver of Appeals on Death Row,” Johnson et al. present a legal analysis regarding the right of death row inmates to choose to waive their appeals process and accept their death sentence “on their own terms.” Johnson and colleagues provide an in-depth case study of one Utah death row inmate who moved to voluntarily terminate his appeals process and advance his execution. In doing so, they contextualize the case law that serves as a legal basis for appellate waivers as well as the process for evaluating the voluntariness of such decisions.

In the eighth article, “Abolishing the Death Penalty: An Untested Legal Argument,” Sarver examines an untested challenge to the legality of the death penalty in the United

States –that the mere possibility of a wrongful execution yields an imperative for abolishment of capital punishment by the Court. As such, it yields “a novel strategy” for appellants and supporting amici seeking review of capital cases in the United States Supreme Court.

In the ninth article, “The Death Penalty: A Multi-level Analysis of Public Opinion,” Burgason and Pazzani advance the research regarding factors that influence public opinion of capital punishment using participant responses to murder vignettes. The authors utilize hierarchical linear modeling (HLM) to examine whether variables related to the murder presented in the vignette influenced respondents’ likelihood of electing the death penalty as well as how respondents’ characteristics (e.g., gender, age, political affiliation, etc.) conditioned their assessment of whether the death penalty was an appropriate punishment. Results demonstrated that while there were no independent effects of individual-level variables on respondents’ decision to assess a case for the death penalty, significant cross-level interactions were observed for individual-level and murder case characteristics that conditioned respondents’ support for the death penalty. Most notably, this exploratory study advances the body of work on public perception of the death penalty by examining contextual factors regarding the homicide event in relation to the individual level factors that have been the primary focus of previous research.

In the issue’s last article, “Capital Punishment in the Era of Globalization: A Partial Test of the Marshall Hypothesis Among College Students,” La Chappelle further explores predictors of public opinion regarding the death penalty. This preliminary study examines the impact of the Marshall Hypothesis, that international contextual information against the death penalty will influence opinion of capital punishment in the U.S, using a sample of US college students. The results of this study provide supportive evidence that student support for the death penalty is decreased by exposure to international contextual information, leading the author to speculate as to what this might mean for the “evolving standards of decency” by which capital punishment could be declared unconstitutional.

In the end, we would like to offer a sincere thank you to the members of the Executive Board of the Southern Criminal Justice Association and to the current Editor, Dr. Wesley J. Jennings of the *American Journal of Criminal Justice* for allowing us the opportunity to serve as Guest Editors for this special issue and providing us with assistance for taking this special issue to production. Finally, we also would like to extend our gratitude to all of the reviewers who played vital roles in the review process that ultimately improved the quality of each of the articles that are included in this special issue. We hope that you enjoy reading this special issue and that its contents not only provide a pleasurable read, but provide a further step in advancing contemporary research regarding capital punishment.

Sincerely,

Tara N. Richards, Ph.D. and M. Dwayne Smith, Ph.D.

Guest Editors

References

- Cochran, J. K., & Chamlin, M. B. (2005). Can information change public opinion? Another test of the Marshall hypotheses. *Journal of Criminal Justice*, 33(6), 573–584.
- Death Penalty Information Center. (2013a). Death row. Accessed at <http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year?scid=9&did=188>
- Death Penalty Information Center. (2013b). Executions by year since 1976. Accessed at <http://www.deathpenaltyinfo.org/executions-year>
- Death Penalty Information Center. (2014). States with and without the death penalty. Accessed at <http://www.deathpenaltyinfo.org/states-and-without-death-penalty>
- Jennings, W.G., Richards, T., Smith, M.D., Bjerregaard, B., & Fogel, S. (2014). A critical examination of the “White victim effect” and death penalty decision-making from a causal inference approach: The North Carolina experience. *Journal of Criminal Justice* (forthcoming)
- Michel, C., & Cochran, J. K. (2011). The effects of information on change in death penalty support: Race- and gender-specific extensions of the Marshall hypotheses. *Journal of Ethnicity in Criminal Justice*, 9(4), 291–313.
- Paternoster, R. (1984). Prosecutorial discretion in requesting the death penalty: A case of victim-based racial discrimination. *Law and Society Review*, 18, 437–478.
- Paternoster, R., & Brame, R. (2003). An empirical analysis of Maryland’s death sentencing system with respect to the influence of race and legal jurisdiction. Retrieved from http://www.sentencingproject.org/doc/publications/rd_sentencing_review.pdf
- Paternoster, R., & Brame, R. (2008). Reassessing race disparities in Maryland capital cases. *Criminology*, 46, 971–1008.
- Richards, T. N., Jennings, W. G., Smith, M. D., Sellers, C., Fogel, S. J., & Bjerregaard, B. (2014). Explaining the “female victim effect” in capital punishment: An examination of victim sex specific models of juror decision-making. *Crime and Delinquency. Advanced Online Publication*. doi:10.1177/0011128714530826.
- Williams, M. R., Demuth, S., & Holcomb, J. E. (2007). Understanding the influence of victim gender in death penalty cases: The importance of victim race, sex-related victimization, and jury decision-making. *Criminology*, 45, 865–891.

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