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CAPITAL PUNISHMENT AND RACE DISPARITIES IN THE MODERN ERA: AN
EMPIRICAL ANALYSIS

BY

TREVOR R MYERS

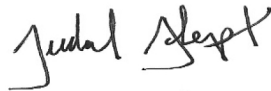
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CAPITAL PUNISHMENT AND RACE DISPARITIES IN THE MODERN ERA: AN
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BY

TREVOR R. MYERS

Submitted to the Faculty of the Graduate School of
Eastern Kentucky University
in partial fulfillment of the requirements for the degree of

MASTER OF SCIENCE

2020

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DEDICATION

This thesis is dedicated to my grandmother, Betty Perdue-Myers for her unmitigated
love, solace, and inspiration.

ACKNOWLEDGEMENTS

First and foremost, I would like to show appreciation to my grandmother Betty Perdue-Myers for all her support and admiration. Without her support I would not be where I am today nor have the luxury of being able to participate in academia. I would also like to thank Dr. Kevin Minor for his time, support, and guidance he has provided me. Without his generosity this would have not been possible, nor the opportunities he presented me with throughout my graduate career. I would also like to show appreciation to my committee members. Dr. Kristie Blevins for all of her astounding guidance and aid in improving my statistical comprehension, and Dr. Judah Schept for his guidance in literature, advice, and critiques. Furthermore, I would like to thank my colleagues for all of the advice they provided me with early in my graduate career. Without them I would not have developed into a proficient researcher and writer. Lastly, I would like to thank my family and friends for their emotional solace.

ABSTRACT

Dissimilarities by race-of-defendant and race-of-victim have received ample attention in capital punishment literature, predominately in regard to death sentencing. Much less attention has been provided to the intersection of race and gender-of-victim with utilization of execution data, and research has failed to adequately address this topic in a historical context. In this exploratory study, I seek to identify multivariate correlates of executions involving characterizations of defendant race as well as victim race x gender characterizations since 1977. More specifically, I use multivariate analyses to examine possible predictors of executions elucidated defendant race x victim race and gender amalgamations. Among the predictor variables included in the models are historical executions of black males for general sex crimes, as well as historical lynchings by state and county of conviction. Lastly, implications are examined for future death penalty research and generally for understanding capital punishment's modern usage in relation to its sordid history.

TABLE OF CONTENTS

| CHAPTER | PAGE |
|--|------|
| [I. Introduction]..... | 1 |
| Early Era of Capital Punishment (1608-1929)..... | 1 |
| Pre-Modern Era of Capital Punishment (1930-1967)..... | 3 |
| Transition Era..... | 5 |
| Modern Era of Capital Punishment (1976-Present)..... | 10 |
| Racialization | 12 |
| Voids in the Literature | 14 |
| [II. Literature Review] | 15 |
| Theoretical Foundation | 15 |
| Empirical Literature | 17 |
| Consistencies/Inconsistencies | 19 |
| Other Relevant Literature | 20 |
| [III. Methodology] | 24 |
| [IV. Results] | 27 |
| Bivariate Correlations: State-Level Historical Variable with Aggregated Defendant and victim Characteristics..... | 29 |
| Multinomial Logistic Regression..... | 34 |
| [V. Discussion] | 38 |
| Limitations | 42 |
| Implications for Future Research..... | 42 |
| Conclusions..... | 46 |

| | |
|------------------|----|
| References..... | 48 |
| Cases Cited..... | 51 |
| Appendix A..... | 53 |

LIST OF TABLES

| TABLE | PAGE |
|--|------|
| Table 2.1 Meta-Analyses | 18 |
| Table 4.1: State Level Historical Factors Positively Correlated with Modern Execution Variable | 32 |
| Table 4.2: Multinomial Logistic Regression | 36 |
| Table 4.3: Summary of Multinomial Logistic Regression Results | 37 |

[I. Introduction]

Capital punishment in the United States exhibits a history of racial disparity. Racialization of capital punishment is best understood by considering the historical context from which it stems. Racialization imbued slavery and lynchings in the early era, disproportionate death sentences and executions of blacks for sex crimes in the pre-modern era, and litigation questioning the constitutionality of capital punishment on racial grounds in the modern era. This Thesis addresses three major voids in the literature. First, most empirical research on capital punishment does not investigate racial disparities from a historical frame of reference. Second most research is partial to race of defendant and race of victim bias with little attention to gender. Third, existing research focuses primarily on death sentencing rather than executions. This thesis aims to address these voids with relevant data and theoretical grounding. This chapter examines the historical eras to establish a foundation for understanding racialization in executions in the modern era of capital punishment. Subsequent chapters consider data on racial disparities in modern era executions.

Early Era of Capital Punishment (1608-1929)

What is known as the early era of capital punishment took place between 1608 and 1929 (Paternoster, Brame, Bacon, and Bright, 2008). Roughly 10,598 executions took place during this period. These punishments were distributed for a variety of crimes, some of which could be considered low-level street crimes today. During this time, capital punishment was primarily conducted by local authorities and religious

leaders. The early era of capital punishment was known for lynchings, brutal public executions which disproportionately targeted African Americans. The National Association for the Advancement of Colored People (NAACP) discovered that 4,743 lynchings occurred between 1882 and 1968; however, due to the lack of adequate historical records, it is believed that more occurred. African Americans accounted for roughly 73 percent of the total lynchings that occurred during this era (NAACP | History of Lynchings, 2018). Furthermore, the lynching of African Americans was considered an act of terrorism. Lynching was a widely supported phenomenon that continued well into the 1900s. It profoundly impacted race relations in the southern United States; (EJI, 2017). In some of the non-southern states, there were more white lynchings than black ones, as whites were often lynched due to their support of African American civil rights (Paternoster et al., 2008).

Many Caucasians believed that lynching was a necessary evil, done especially to protect white women from the heinous crimes committed by African American men. In many of these cases, African Americans were not actually guilty of the allegations presented against them (EJI, 2017). Lynching instead served as a form of legal terrorism used by whites to continue the subordination of blacks following the end of slavery. During the Civil War, southerners established order by inciting mobs to target African Americans for lynchings. This allowed the southern population to incite terror into African Americans to prevent an uprising. Lynchings during this time were often performed out of fear that African Americans would join the populist party to provoke an uprising and usurp power from the hegemonic party (Garland, 2005). In order to prevent this, white supremacists began to foment racial animosity to divide indigent

whites and blacks. This animosity occurred more often during political occasions, as southern elites used racially discriminatory rhetoric to appeal to the white populous (Kirchmeier, 2015).

After the Civil War, blacks were given their freedom. Whites began to believe that this newly found power was excessive and blacks should be controlled more, and the sole purpose of lynchings was to maintain power and control over African Americans (NAACP, 2017). In the mid 1930's, local authorities believed that executions should be removed from the public's eye and become more concealed. This transition was more pronounced in northern states, whereas southern states took more time to move away from public executions. With lynchings on the decline, increased use of legal death penalties served as the replacement (EJI, 2017). Moreover, capital punishment began to serve as a state building function for mostly southern regions (Garland, 2010). Between the mid to late 1800's and 1920's, the state's involvement in distributing capital punishment increased vastly (Paternoster et al., 2008).

Pre-Modern Era of Capital Punishment (1930-1967)

As the United States progressed into the pre-modern era of capital punishment, crimes punishable by execution began to decrease. Between 1930 and 1967, 98 percent of the executions were for only two offenses: rape and murder. During this era, executions occurred most frequently in southern states; 97 percent of the executions for the crime of rape were in the south, 90 percent of which were non-white defendants. This reflected that capital punishment disproportionately targeted African Americans. Blacks made up only 10-12 percent of the total U.S. population during this era;

however, blacks accounted for more than 50 percent of the total number of those executed. Execution for murder, however, was not as racially disproportionate. Between 1930 and 1967 roughly 50 percent of executions for murder were white defendants, and roughly 50 percent were non-white. Male offenders accounted for 99 percent of the total executions that took place during this era (Paternoster et al., 2008).

Capital punishment began to take a turn during the pre-modern era. In 1964 a petition was brought to the U.S. Supreme Court by Frank Lee Rudolph, an African American man who was sentenced to death for the rape of a white female in the case *Rudolph v. Alabama*. Rudolph submitted a petition to the Supreme Court arguing, “the court had never declared any significant feature of the American death penalty unconstitutional” (Steiker & Steiker, 2016, p. 41). Additionally, the Supreme Court refused to get involved and declined the review. Similar to past denials of review, three justices called on the court to get involved. Justice Goldberg spoke on the matter, mentioning that he believed the court should determine if capital punishment is constitutional for the crime of rape. Goldberg’s suggestion would be an unprecedented limitation on state capital practices. The NAACP and Legal Defense Fund (LDF) were soon after involved due to the reluctance of the Supreme Court to review capital punishment’s constitutionality. The LDF was an organization devoted to racial equality, believing capital punishment was a mechanism for racial injustice. This organization’s goal was to bring capital punishment to a halt by enacting an execution moratorium, which presumably succeeded in 1967 with a de facto moratorium. During this unofficial moratorium, pressure was on the Supreme Court to not allow the use of capital

punishment to resume. However, the execution moratorium was not made official until *Furman v. Georgia* in 1972 (Steiker & Steiker, 2016).

Transition Era

Issues first arose during the 1960s in regard to the administration of capital punishment, and some reform was deemed necessary. While *Rudolph v. Alabama* did not challenge the constitutionality of capital punishment for the crime of rape, Justice Goldberg gave mention to this issue. Goldberg's intentions were to compel his colleagues to restrict the death penalty or ultimately abolish it; however, his comments were considered unjust simulacrum of the LDF and NAACP. Rudolph's lawyers did not seek to challenge the court further, nor did they seek review. Coincidentally, Goldberg's comments had an influence on the NAACP and LDF abolitionist lawyers (Bohm, 2014). The NAACP Legal Defense and LDF led the campaign against the death penalty. They remained consistent in using the issue of race as a legal argument. However, the Supreme Court's regulation of the death penalty continued to fail at acknowledging the history of racialization within law and practice. During the 1960s and 1970s, the Supreme Court reflected poor resolve in regard to litigation efforts. It was with little doubt the issue of race maintained a stern influence on the death penalty's legal practice, mostly in southern states. Executions continued nationwide with little acknowledgement to *Brown v. Board of Education*. (Steiker & Steiker, 2016).

Rather than addressing the issue of racialization in capital punishment, the Supreme Court shifted their focus to the disproportionate application of capital punishment for the crime of rape. These scarce cases caught the attention of the LDF, which then broadened their focus to arbitrary usage in cases that involved African

American defendants who were plausibly innocent. The LDF managed to link crimes of rape to racial prejudice, which allowed the LDF's lawyers to conduct an empirical study of rape cases. Their primary focus was on southern states, of which they documented any rape case resulting in a death sentence that involved racial discrimination (Steiker & Steiker, 2016).

Maxwell v. Bishop was a result of the LDF's study, challenging the discriminatory framework in capital rape cases within the state of Arkansas. It was discovered that cases with a black defendant and white victim were more likely to receive a death sentence than any other racial combination. However, once the case reached Federal court, it was rejected due to methodological discrepancies. A court justice stated that evidence of racial discrimination within the state was not sufficient to prove evidence of discrimination in the case itself. During the time Maxwell's case had failed, the LDF shifted focus to halting capital punishment with a moratorium (Steiker & Steiker, 2016).

The LDF's new strategy focused on defects in capital litigation. Concerns formed about racial discrimination in the exclusion of jurors who maintained reservations about capital punishment, which was a common method of eliminating minorities during the jury selection process. As a result, the Arkansas Supreme Court granted a second review of Maxwell's case, and the issue of racialized discrimination was pressed further. It was decided that Maxwell was entitled relief based on the outcome of *Witherspoon v. Illinois*. *Witherspoon*'s case was in reference to the removal of jurors during the selection process. It provided that the practice of removing jurors on the grounds of doubting capital punishment infringed upon the defendant's right to have

a fair traverse constituent of the community to decide their case. *United States v. Jackson* dealt with another profound issue, which involved the federal kidnapping statute. This statute was also known as “Lindbergh law,” requiring the jury to make the recommendation to impose capital punishment. Under the statute, a defendant could waive their right to a jury trial by pleading guilty. By doing so the defendant could escape the death penalty. However, this statute impermissibly coaxed defendants to plead guilty, even if they were innocent. Furthermore, the Lindbergh law gave the prosecution leverage during plea bargaining. The Supreme Court opined the statute to be unconstitutional and kidnapping no longer punishable with a death sentence (Bohm, 2014).

The same day Maxwell’s case was being appealed, the Alabama Supreme Court heard the *Boykin v. Alabama* appeal. Boykin’s attorney argued that capital punishment for the crime of robbery was unconstitutional and in violation of the Eighth Amendment. Moreover, it was argued that the trial judge failed to assure Boykin’s understanding of the consequences of his guilty plea. In February of 1968 the Supreme Court rejected both of his arguments. Six months preceding his trial, the U.S. Supreme Court reviewed the Alabama court’s decision. In the following year, the Supreme Court granted Boykin a new trial. This was the first time the Supreme Court agreed to consider the death penalty’s constitutionality and not the methodology used to impose it. Furthermore, the LDF hoped the arguments brought on by Boykin would establish a foundation which could be used to abolish capital punishment on the grounds of the Eighth Amendment (Bohm, 2014).

McGautha v. California and *Crampton v. Ohio* held significance in regard to capital punishment as well. When McGautha's trial reached its final decision in 1971, it was argued that unbridled jury discretion in death sentence imposition for murder resulted in arbitrary sentencing and was in violation of the defendant's right to due process. Furthermore, the transition from single-phase trials to bifurcated trials was significant. Bifurcated trials are divided into a guilt phase and penalty phase. If the defendant(s) were found to be guilty, then the penalty phase would proceed. Ultimately, if the defendant was found to be guilty, the jury would decide based on the evidence of aggravating and mitigating circumstances if the defendant should face a death sentence (Steiker & Steiker, 2016).

McGautha v. California's significance, ultimately, contradicted the ruling for *Furman v. Georgia*. While the Court held in *McGautha v. California* that unbridled jury discretion did not violate the Constitution, *Furman v. Georgia* ruled that arbitrary and discriminatory usage of the death penalty—resulting from unguided jury discretion—constituted cruel and unusual punishment. Therefore, the states would have to remove the discriminatory and arbitrary features before resuming its practice. In the aftermath of the Furman decision, some states reconstructed capital statutes, which allowed them to guide jury discretion by removing mandatory death sentencing statutes and reserving the death penalty strictly for cases which had aggravating circumstances. It was not until *Gregg v. Georgia* and *Woodson v. North Carolina* that the use of mandatory death sentencing was considered to be cruel and unusual punishment under the Eighth Amendment. (Steiker & Steiker, 2016).

Gregg v. Georgia shifted focus to the aggravating and mitigating circumstances which may be present in a defendant's case. Only once the jury discovered that one or more aggravating circumstances were present beyond a reasonable doubt would the defendant be considered death penalty eligible. Mitigating circumstances allowed the defendant to explain the circumstances of their specific case and mercy could be granted by the jury. *Woodson v. North Carolina* outlawed mandatory death sentences and brought forth the argument that death penalty laws must allow juries to choose between a death sentence and imprisonment. For the jury to make that decision, the defendant's character, criminal record, and circumstances under which the murder was committed must be identified (Bohm, 2014).

The most profound failure regarding racial disparities in capital punishment rests with the Supreme Court and its' failure to acknowledge the death penalty's racialized history. Capital punishment's disproportionate application against African Americans is a reoccurring theme the Deep South faces, as does the nation generally. Evidence of this disproportionate application can be found across the United States throughout history. While the court recognizes racial injustice as an issue, it deliberately side-steps it, despite the variety of applications the LDF has presented to reflect its arbitrariness. The LDF's study, *Gregg v. Georgia*, *Furman v. Georgia*, *Maxwell v. Bishop*, and *Witherspoon v. Illinois* all provide evidence of disproportionality in the usage of capital punishment, but the Supreme Court has focused solely on other litigating factors that are present in each case (Steiker & Steiker, 2016).

Modern Era of Capital Punishment (1976-Present)

Capital punishment moved into the modern era after revisions were made following the 1976 decision in *Gregg v. Georgia* and other partner cases. Soon after *Gregg v. Georgia*, there was a slow but steady increase in death sentences and executions. The U.S. Supreme Court determined capital punishment was not cruel and unusual if evidence of aggravating circumstances was found in conjunction with the offense committed. Around this time, homicide rates were increasing steadily, which resulted in racial hostility. This hostility provoked pro-death elites to seek retribution disproportionately on African American defendants, expressing no sympathy (Garland, 2010). In light of the *Gregg* ruling, capital punishment resumed with the execution of Gary Gilmore in 1977. Following Gilmore's execution, no further executions occurred for two years.

After the execution moratorium, death sentencing began to rapidly increase. However, during the beginning of the contemporary era, statutes were created to reduce the offenses that were death penalty eligible, and new stipulations were applied to existing offenses. For example: if the offense was carried out in succession of another felony offense then it was death penalty eligible. This was later limited only to offenses in which murder was involved. Beginning with *Coker v. Georgia*, the U.S. Supreme Court determined capital punishment for the crime of rape of an adult where no murder took place was not permissible under the Eighth Amendment. This decision was later expanded upon to include the rape of a child (Paternoster et al., 2008).

The late 1970's was a crucial period for capital punishment as its usage became limited; however, an increase in death sentencing followed the post-execution

moratorium. Following *Coker v. Georgia* and other partner cases, there was another landmark case known as *McCleskey v. Kemp*. Warren McCleskey, an African American male, committed armed robbery before allegedly murdering a police officer in 1978. Before the trial was held, various attorneys selected the jurors. However, one main issue was noted in the selection process: the attorneys each had nine peremptory challenges, which they could use at their discretion to remove any potential jurors. Any of the jurors in direct opposition to capital punishment were removed from their duties. Alongside this, any African American jurors were removed. Lastly, these attorneys did not investigate any of the jurors for biases that might be based on race. It was believed that the jurors who served on the McCleskey case lived in a racially segregated environment and attended racially segregated schools. During *McCleskey v. Kemp*, the defense attempted to use the Baldus study to provide evidence of racial discrimination (Kirchmeier, 2015).

The Baldus Study was conducted by David Baldus who served as a law professor at the University of Iowa. Baldus examined 2,500 murder cases in the State of Georgia between 1973 and 1979. The study found that race of victim was a significant factor in whether or not the defendant received the death penalty. In 70 percent of cases involving a black defendant and white victim the prosecutor sought the death penalty. However, in only 19 percent of cases involving a white defendant and black victim did the prosecutor seek the death penalty. Baldus found a similar trend for cases that actually had the death penalty imposed. Twenty-two percent of all criminal homicide cases involving a black defendant and white victim resulted in capital litigation; 3

percent of cases resulted in the death penalty where the defendant was white and the victim was black (Baldus et al., 1983).

The Baldus Study concluded that offenders who commit murder against white individuals are more likely to be sentenced to death or receive a capital case. In McCleskey's appeal, the court rejected his argument, stating that aggregate statistical trends are not sufficient to prove the existence of discrimination in an individual case (Baldus, 1983). In order to provide a defense on the grounds of racial discrimination, the defendant must provide evidence that discrimination was intentional by officers of the state. McCleskey was death penalty eligible due to the fact the murder was carried out in succession of a felony offense. During the sentencing phase, the prosecutors began to dehumanize McCleskey, expressing that he lacked remorse and showed carelessness of the offenses. He was sentenced to death for the murder of police officer Schlatt. The defense attorney set motions for re-trial but was unsuccessful. McCleskey was executed by electrocution in September of 1991 (Kirchmeier, 2015). Subsequent race of victim and race of defendant studies reflect results similar to that of the Baldus Study. Moreover, this literature is discussed further in the proceeding chapter (Baumgartner et al., 2018; Blevins & Minor, 2018; Pierce et al., 2017; Steiker & Steiker, 2016).

Racialization

As shown above, racialization in capital punishment has been a reoccurring theme throughout U.S. history. The ongoing concern has been that white elites target African Americans disproportionately and subject them to death sentences and

executions. After the execution moratorium that took place between 1967 and 1977, there was a rise in execution rates nationwide. Furthermore, traces of racial discrimination were still prominent in cases following the moratorium. However, the issue did not receive attention from the Supreme Court until the 1987 case *McCleskey v. Kemp*, and the challenges brought by McCleskey were not enough to prove that racialization existed. The Supreme Court decided that evidence of aggregate racial disparity is not sufficient to support a claim of racial discrimination in a given case. The burden of proof rested with the defendant to prove the officers of the state acted with intent to discriminate (Paternoster et al., 2008).

Throughout the early, pre-modern, and modern eras, the death penalty has been used at a lower rate overtime. Beginning with historical lynchings, research shows how racially biased capital punishment was during the early and pre-modern eras, but these biases are still present in late modernity. First and foremost, the cultural ideologies capital punishment has established in the United States are crucial. The majority of historical lynchings took place in southern states. By analyzing capital punishment through a historical context, it can be seen that southern states also maintain the largest count of executions conducted in the modern era. The Baldus Study reflected statistical evidence that executions taking place in the state of Georgia were heavily racialized. The majority of those sentenced to death or tried for the death penalty were African American, most often convicted for murder of a white individual. The data collected also indicate that only a small number of white defendants received or were tried for the death penalty for the killing of an African American. Comparable results were found in

a study done in Missouri as well. This reflects that racial disparity in the capital punishment process has been reoccurring and is still present (Paternoster et al., 2008).

Voids in the Literature

A considerable amount of research has examined race-of-defendant and race-of-victim disparities with regard to death sentencing (Baumgartner et al., 2018; Blevins & Minor, 2018; Grosso et al., 2014; Pierce et al., 2017; Vito & Higgins, 2016). However, most death sentences do not culminate in executions, and rather are overturned or indefinitely postponed, which reflects additional layer(s) of discretion from multiple government actors. Racial disparities in execution data have received less attention. Additionally, race-of-victim disparity research has devoted little attention to the intersection of victim race and gender, resulting in a plethora of voids in capital punishment research. The purpose of this thesis is to address three major voids. (1) Research on death sentencing and executions do not adequately investigate disparities from a historical context. (2) Most research focuses primarily on race of defendant bias and race of victim bias. (3) Existing literature concentrates predominately on death sentencing rather than executions. These three voids, ultimately, reinforce the notion that insufficient attention has been given to the intersection of race and gender of victims.

[II. Literature Review]

Theoretical Foundation

The purpose of this chapter is to discuss this study's theoretical grounding and its relationship to previous research on race of defendant and race/gender of victim disparities. First and foremost, execution data can be better understood by considering the local historical contexts from which they arise. Modern era death sentencing practices are configured by the historically-situated state and local conditions in which those conditions are embedded and conveyed (Garland, 2005, 2010; Steiker & Steiker, 2016). Historical lynchings have shaped modern death sentencing practice; however, this relationship depends on locale and time frame under study (Vandiver, 2018). It is important to bear in mind that cultural conceptualizations—while historically grounded—are not static or perpetual. These outcomes can be contingent, undetermined, and dubious—current context and actors matter considerably. To examine the relationship between modern capital punishment and historical context, this chapter will use Garrett's (2017) explanation of muscle memory. Muscle memory is linked to localism and populism through the development of local legal culture.

Muscle memory is described as follows: "The attitudes and politics of prosecutors largely decide who lives and who dies. Prosecutors get used to seeking the death penalty, they build a team of lawyers to take death cases to trial, and they keep doing it reflexively (Garrett, 2017, p.149)." However, it is not just prosecutors alone who contribute to this consistency. Other state actors like, judges, defense attorneys, and jurors, all contribute to the prosecution's ability to maintain power. The criminal justice decision-making process occurs primarily at the local level, meaning that the

prosecution retains a substantial amount of discretion over whether or not criminal charges are presented, and the prosecution receives authority to seek a death sentence. As a result, local legal cultures begin to develop. Local legal cultures are influenced by localist/populist sentiments as well as any implicit biases established by a given community (Garrett, 2017). Implicit bias, specifically, can become manifested within local legal culture, and become unison with muscle memory over time.

In order to establish a connection between muscle memory and localism/populism one should review how capital punishment became a locally designated power. The U.S. Supreme Court's primary strategy was to democratize and localize power. By separating powers, promoting states' rights, and valuing local democracy and populism, the Court relinquished much power over capital punishment to state legislators and local legal officials—otherwise alluded to as populists. Now the most important decisions in capital proceedings are made by locally elected officials and individuals of the community—often acting in accord with perceived community sentiment (Garland, 2010).

Local legal culture is the key connection between muscle memory and localism/populism. Localized structure and corresponding culture, as impacted by local populist sentiments, shape legal culture and practices in a given jurisdiction, which in turn gives rise to muscle memory over time. This culture reflects courtroom workgroup norms, which is in reference to active relationships between the local judge, prosecutor and defense attorney. These active relationships often prioritize occupational nuances—how cases are handled—as opposed to how the cases are approached under procedure. The court system typically presumes a motivated prosecutor in competition with a

defense attorney, both operating in favor of their respective clients. For the prosecution, this allows for impact from local popular opinion. This development has allowed for the community to shape the criminal justice decision making process in capital cases. Additionally, local opinions are further strengthened by a developed understanding of values between the judge, prosecutor, and defense attorney. Furthermore, these understandings often come to form an agreed upon ideology, which is susceptible to a range of penalties and negotiating practices for plea-bargaining. Together this workgroup creates an occupational subculture for their specific locale. Rather than arduously battling cases, the trio cooperate together when processing a case (Gould & Leon, 2017).

Empirical Literature

Much of the research regarding racial bias in capital punishment has been thoroughly reviewed by multiple literature reviews or meta-analyses. Rather than reviewing each study individually, the approach this section takes is to summarize the findings of meta-analyses through Table 2.1. Each analysis is broken down by author, time frame the analysis covers (i.e., what years were analyzed), dependent variable under study (executions or death sentencing), independent variable (victim race, defendant race, and victim gender), review findings (if applicable), and data findings (if applicable). This section will also review any consistencies/inconsistencies that were discovered and that are relevant to the topic of racial bias. Lastly, there are multiple studies that are not considered a meta-analysis but are still considered relevant to the topic—those are addressed later.

Table 2.1 Meta-Analysis

| | |
|---|---|
| <i>Capital Sentencing and Structural Racism: The Source of Bias</i> (Vito & Higgins, 2016) | <i>Deadly Justice: A Statistical Portrait of the Death Penalty</i> (Baumgartner et al., 2018) |
| <p>Time Frame: 1974-2009 Dependent Variable: Death Sentencing Independent Variable: Defendant Race / Victim Race Review Findings: Revealed that prosecution, courts, and juries open the way for racial threat theory¹. White populations use local government to control/oppress/subjugate black populations. Data Findings: N/A</p> | <p>Time Frame: 1976-2015 Dependent Variable: Executions Independent Variable: Defendant Race / Victim Race/ Victim Gender Review Findings: N/A Data Findings: 38% of defendants with a white female victim(s) were executed, n=1,422. 15% of defendants with a black victim(s) were executed.</p> |
| <i>Race and Death Sentencing for Oklahoma Homicides Committed Between 1990 and 2012</i> (Pierce, Radelet, Sharp, 2017) | <i>Race and the Death Penalty</i> (Blevins & Minor, 2018) |
| <p>Time Frame: 1990-2012 Dependent Variable: Death Sentencing Independent Variable: Defendant Race / Victim Race/ Victim Gender Review Findings: Discovered no correlation with race of defendant. A strong correlation discovered between victim race and death sentencing. Defendants with a white victim were most likely to result in a death sentence. Gender is also a strong predictor variable. Those convicted of killing a female were more likely to receive a death sentence. Data Findings: N/A</p> | <p>Time Frame: 1976-2016 Dependent Variable: Executions Independent Variable: Defendant Race / Victim Race/ Victim Gender Review Findings: N/A Data Findings: 10.4% of 1,436 executions involved black male killing at least 1 white female (n=2,106). 11% of executions involved black male convicted of killing 1 white male (n=2,106).</p> |
| <i>Race Discrimination and the Death Penalty: An Empirical and Legal Overview</i> (Grosso et al., 2014) | <i>Race, Death, and Justice: Capital Sentencing in Washington State, 1981-2014</i> (Beckett & Evans, 2016) |
| <p>Time Frame: 1973-1999 Dependent Variable: Death Sentencing Independent Variable: Defendant Race / Victim Race/ Victim Gender Review Findings: N/A Data Findings: Discovered in multiple states that race of victim is a substantial predictor of a death sentence. Murder involving black defendant w/ white victim increased death sentencing rate by 29/63%+/- depending on the state.</p> | <p>Time Frame: 1981-2014 Dependent Variable: Death Sentencing Independent Variable: Defendant Race / Victim Race Review Findings: Victim-race, legal, and extra-legal factors influence capital punishment administration. Defendants with a white victim are more likely to receive a death sentence when controlling for legal/extra-legal factors. Data Findings: 71% of cases involving a black defendant with white victim resulted in a death sentence (24% of cases). Jury is 4x more likely to deliver a death sentence where the defendant is black</p> |

¹ Racial threat theory: “racialization occurs when Whites use their disproportionate power to implement state-control over minorities and, in the face of a growing minority population, encourage more rigorous, racialized practices in order to protect their existing power and privileges.” (Dollar, 2014, p. 1)

Consistencies/Inconsistencies

Data retrieved from table 2.1 aid in showing racial bias in capital punishment/sentencing. Aggregate patterns of racial bias are presented in two different ways, through literature review findings and data findings. Many of the studies—regardless of the results—found that victim race has the strongest influence on whether or not a defendant is sentenced/executed through capital punishment. Likewise, gender also maintains a significant presence in the determination of a death sentence or execution (Baumgartner et al., 2018; Beckett & Evans, 2016; Blevins & Minor, 2018; Grosso et al., 2014; Pierce, Radelet, & Sharp, 2017). However, the most notable inconsistency revealed is whether or not race-of-defendant is correlated with death sentence/executions. Race of defendant often shows little to no correlation with rate of executions/sentencing. In fact, the strongest correlation is revealed when all three independent variables are present in a given study (race-of-defendant, race-of-victim, gender-of-victim). Another notable inconsistency provided by Beckett and Evans (2016) is the influence of legal and extra-legal factors (e.g., murder of children, women, stranger, race, etc...). When controlling for a wide range of legal/extra-legal factors, the pattern of racial bias becomes more evident. Some extra-legal factors maintain a strong influence over prosecutorial decision making. More specifically, whether or not a case receives extensive media attention/publicity impacts prosecutors' decisions (Beckett & Evans, 2016). This implies the relevance of populist opinions.

Other Relevant Literature

The data/literature included in table 2.1 are important meta-analyses that cover a wide range of death sentencing/execution time periods throughout history. However, there were multiple studies not included in the table that are still relevant in regard to explaining racial bias in death sentencing/executions. The remainder of this chapter will focus on exploring literature focused in individual states/jurisdictions.

Prior to considering this literature, it is important to remember that modern era executions typically display three characteristics: (1) they disproportionately involve black-on-white homicide cases, (2) they are less likely to involve black-on-black homicides, and (3) they hardly ever involve white-on-black homicides. Likewise, there are three things to bear in mind when pondering these findings: First, around a quarter of homicide victims are women, with African American women having a considerably larger victimization rate than white women. Second, about half of homicide victims are black, with black men having by far the highest rate, followed by black women. Lastly, intraracial homicides occur more frequently than interracial ones, and black male defendants have a far greater likelihood of being executed for the murder of a white female than a white male defendant does for murdering a black female (Baumgartner et al., 2018). Research has yielded mixed results regarding aggregate patterns of racial bias in capital punishment. Race of defendant is often not a significant correlate of death sentencing, and where it does exist, race of defendant bias is thought to emanate primarily from the jury decision-making process (Hunt, 2015).

Phillips (2009) discovered that black defendants in comparison to white defendants were more likely to: murder white victims, commit the most heinous

murders, commit murders in conjunction with another felony crime, commit murder as an adult, and commit murder through beating, stabbing, or asphyxiation. Generally, crimes by black defendants were more likely to include aggravating circumstances, which would increase the chances of a death sentence. Ultimately, the prosecutors pursue the death penalty against black defendants at a similar rate as white defendants despite the varying levels of seriousness between the two (Phillips, 2009). When considering race of the offender singly, minor differentials exist.

Once race of defendant and race of victim are brought together, the racial disparity pattern is more evident. Phillips (2009) not only looked at race of defendant bias but also at race of victim. Black victims were two times more likely than whites to be killed in homicides involving multiple victims. White victim cases were the most likely to result in a death sentence. Simply, the prosecution sought death less often for black than white victim homicides, despite the fact blacks were killed in more serious homicides involving more than one victim. It appears that expectations are set higher for seeking death on behalf of black victims. Phillips also noted a striking differential between jurors and the prosecution. The prosecution is considerably more likely to seek death against black defendants with a white victim; however, jurors are slightly more likely to impose death against white defendants with a black victim. Juror involvement alleviates racial disparity at a minimal level (Phillips, 2009).

Previous research on race-of-victim bias in capital punishment has revealed that African Americans with a white victim are more likely to receive a death sentence than any other racial dyad (Baldus, Woodworth, Zuckerman, Weinert, & Broft, 1983; Jacobs et al., 2007; *McCleskey v Kemp*, 1987; Paternoster, 1983; Pierce et al.,

2017; Wolfgang & Riedel, 1976). Zeisel (1981) reviewed Florida arrests for the crime of murder (1972-1977), which includes murders during the commission of a felony. Zeisel broke down offender – victim murder into four groups: black – white (n = 78), white – white (n = 190), black – black (n = 102), and white – black (n = 8). Black offenders with a white victim received a death sentence in 47 percent of cases, while white offenders with a white victim received a death sentence in 24 percent of cases. Black offenders with a black victim received a death sentence in less than 1 percent of cases. Lastly, white offenders with a black victim received a death sentence in 0 percent of cases. Cases involving white victims were held to a higher standard than cases involving black victims; murder of blacks was not considered as serious (Zeisel, 1981).

Sorensen and Wallace (1995) found that African American defendants were two to three times more likely to be sentenced to death for a felony homicide against a white victim than a white defendant with an African American victim. It was also found that blacks who have white victims were roughly four times more likely to proceed to the sentencing stage of a death penalty trial than those who killed other blacks. Disparity gradually rises in cases in which the offender is black, especially in cases with high and mid-range aggravating circumstances (Bohm, 2011). The data reflect a strong inconsistency between black on white and white on black homicides. It is important to mention that limits on juror discretion are not sufficient to eradicate discrimination from the capital punishment procedure. Lastly, there was a racial effect in cases where aggravating circumstances were the least. Cases involving black victims were often devalued, whereas cases involving white victims were the most likely to result in a death sentence, especially if the defendant was black. (Sorensen & Wallace, 1995).

Death sentences are most probable in cases with white female victims and least probable in cases with black male victims. Researchers have discovered that victim race and gender are considered significant factors in the prosecutor's decision to seek the death penalty (Girgenti, 2015). Gender of the victim is a significant predictor. The race-gender dyad is more apparent in death sentencing and executions than race single handedly. Recent studies indicate that defendants with a white female victim are more likely to receive a death sentence than a defendant with a black male victim (Baumgartner et al., 2018; Blevins & Minor, 2018; Pierce et al., 2017; Holcomb et al., 2004; Williams et al., 2007), even though black men are far more likely to be homicide victims.

Although clear, cognizant, and purposeful bigotry has decreased in latter years, various studies demonstrate that both auxiliary prejudice and certain racial predispositions continue. Unconscious attributions individuals commonly associate with African Americans (implicit bias) maintain influence over the criminal justice sentence making process, both pre and post-*Furman*. Multiple experiential studies of implicit bias reflect how race of defendant/victim affects perceptions even in the absence of racial enmity or odium (Beckett & Evans, 2016).

[III. Methodology]

The primary focus of this research here is on modern (post-*Furman*) executions in the United States within an historical context. Therefore, it was important to collect information for all recorded executions in the United States. Data for this study were obtained from publicly accessible records for all executions on record through May 17, 2017 and were obtained from the Death Penalty Information Center and the ESPY file. All information available for each execution was recorded in one of two SPSS datasets. The historical database contained information about pre-*Furman* executions, and the other held data for post-*Furman* (modern) executions.

When available, data for pre-*Furman* cases included, race, sex, age of the defendant, and state of conviction. A non-murder offense variable also was created in the pre-*Furman* database. Executions for non-murder offenses occurred between 1608 and 1964 (N=2,398), and included adultery, aiding a runaway slave, arson, attempted murder, attempted rape, bestiality, buggery, concealing a birth, counterfeiting, criminal assault, desertion, espionage, forgery, guerilla activity, horse stealing, housebreaking, kidnapping, piracy, prison break, rape, rioting, robbery, slave revolt, sodomy, theft, treason and witchcraft. It should be noted that the following criminal acts were not coded as non-murder offenses as they did not indicate if the criminal offense resulted in a victim's death: accessory to murder, conspiracy to commit murder, other, poisoning, unknown and unspecified felony.

The post-*Furman*, or modern execution, dataset contained information concerning the 1,450 executions that occurred from January 17, 1977 through May 17, 2017, all of which were for the crime of murder. There was a modern execution dataset

for every individual executed within the mentioned dates. Each dataset included information pertaining to the defendant's race, gender, age (at time of execution), method of execution, number of victims, victim's age and gender, victim's race, and State/County of the offense. Additionally, a second dataset was created which aggregated the modern execution data to form a State level dataset (34 states). In addition to data included from the modern execution dataset, information pertaining to the State's capital punishment usage was also included. Information in regard to each State's total number of individuals sentenced, and total number of individuals executed were included. All race variables were coded as white, black, or other. Further, two historical variables were added for each case in the dataset. First, the number of executions for non-murder offenses from the pre-*Furman* data was added for the state of conviction. Second, based on information obtained from the Equal Justice Initiative (2017), a black lynching variable was created to represent the number of black lynchings on record in each county of conviction. These data allowed for the examination of more than 40 years of modern executions in the United States.

The State-level database—descriptive statistics for which can be observed in Appendix A—reflects a variety of information relevant to this study's focus. For example, 74 percent of recorded lynchings involved black individuals. Texas maintained the highest total number (542) of individuals executed in the modern era of capital punishment. Of the 542 individuals executed, 36.53 percent were of black race. It is important to note that 71.40 percent of individuals lynched in the state of Texas were black as well.

Of the total number of non-murder executions to take place between 1608 and 1964 (n=2,398), black individuals (1,568) were executed at the highest rate (65.39%). White individuals (646) were executed at the second highest rate (26.94%). Individuals of the other race category (29) made up about 1.21 percent of the non-murder execution population. Lastly, individuals whose race is considered to be unknown (155), made up about 6.46 percent of the total number of non-murder executions. In addition to the rates of non-murder executions provided above, it is important to note that Virginia maintained the highest number of non-murder executions (425), North Carolina was second highest with 213 and finally, South Carolina had 206 non-murder executions. States in the South and Northeast regions maintained the highest frequency of non-murder executions, as compared to the West and Midwest. Washington and California were the only two western states that had executions for non-murder offenses.

The next chapter contains results from descriptive and inferential statistical analyses conducted to answer the following research questions:

Q1: Does defendant race maintain a correlation with capital executions?

Q2: Do victim characteristics (gender and/or race) correlate positively or negatively with rates of capital executions?

Q3: Is there a positive or negative correlation between historical factors and sentencing/execution rates?

[IV. Results]

The purpose of this chapter is to review the outcomes of statistical analyses conducted with data associated with post-*Furman* executions (N=1,450) in the U.S. that occurred between January 17, 1977 through May 17, 2017. There is little existing research concerning potential associations between historical variables and modern executions, and previous studies concerning aggregate patterns of racial bias in race of defendant research have yielded mixed results (see Pierce, Radelet, & Sharp, 2017). Regarding race of victim(s), previous research suggests that defendants with at least one white victim are more likely to receive capital sentences (Baumgartner et al., 2018; Blevins & Minor, 2018; Phillips, 2009; Pierce et al., 2017; Holcomb et al., 2014; Williams et al., 2007; Sorensen & Wallace, 1995), and, overall, these results support that idea.

The descriptive statistics for the 34 states in which post-*Furman* executions have taken place are presented in Appendix A. Descriptive statistics reflect that of the total number of individuals executed in the modern era (n=1,450) 55.66% were white, 34.41% were black, and 9.93% were individuals of the other race category. The majority of states have executed larger percentages of whites, with the exception of Maryland (60%) and Nebraska (66.67%). Virginia was split with 50% white individuals executed and 50% black and other races combined. Essentially, these results indicate that there have been more executions of white, as compared to black or other race defendants, in this country under the modern capital punishment process. This finding certainly does not mean there are not disparities based on defendant race earlier in the

death penalty process, and it is important to explore other factors, such as victim characteristics.

When examining race of victim(s), the data show that, nationwide, more than three-quarters (78.28%) of all individuals executed by the states were convicted of crimes that involved the murder of at least one white victim, and more than two-thirds of the executions in each state involved at least one white victim. There were at least 33 percent more executions of defendants with white victims than black or other race victims in each of the 34 states where modern executions have occurred. Additionally, there were multiple states (Colorado, Connecticut, Idaho, Kentucky, Maryland, Minnesota, Nebraska, New Mexico, Nevada, Oregon, South Dakota, Utah, Washington, and Wyoming) in which all (100%) defendants executed were convicted of the murder of at least one white victim. Pennsylvania maintained the lowest percentage (66.67%) of executions for murders involving at least one white victim. Chi-square analyses revealed that a significantly greater percentage of all modern executions involved white victims as compared to victims of other races ($\chi^2=927.400$, $p\leq.01$). Notably, black defendants were significantly ($\chi^2=42.473$, $p\leq.01$) more likely to have at least one white victim (60.32%) as comparing to having only black (35.47%) or other race (6.21%) victims.

As shown in Appendix A, almost sixty percent (58.90%) of individuals executed post-*Furman* had at least one male victim, and 55.59 percent had at least one female victim. Execution rates in cases involving male victims were discovered to be similar to execution rates in which the victim was female. Sixteen states maintained higher rates of executions in cases where the victim was male, and 16 states maintained higher rates

of execution in cases where the victim was female. Two states had similar rates of execution for defendants with both male and female victims. When examining whether or not there was at least one female victim across defendant races, only white defendants had higher percentages of female victim involvement as compared to (58.36%) only male (57.99%) victims.

Although there were no statistical differences in executions based on gender of victim alone, these results indicate that the interaction of victim race and gender could be a source of disparities. Of 1,450 execution cases post-*Furman*, there was only about half a percent difference in the proportion of cases involving white male victims (44.97%) and white female victims (44.41%). There were higher percentages of cases with at least one white female victims as compared to all other races of female victims in all states but Pennsylvania, which had 33.33 percent for both white and black female victims (see Appendix A). Moreover, white defendants were significantly ($\chi^2 = 36.106$, $p \leq .01$) more likely to have white female victims as compared to all other victim race and gender combinations.

Bivariate Correlations: State-Level Historical Variable with Aggregated

Defendant and victim Characteristics

This study adds to the literature by using aggregated information for each state to explore the potential impact of some historical variables on capital punishment in the modern era. Investigating these types of influences may lead to a greater understanding of aggregate patterns of racial bias in the administration of the death penalty. For example, the number of executions for offenses other than murder, as well as historical

lynchings, especially of black individuals, may be related to characteristics of defendants who are executed.

As shown in Table 4.1, the two historical variables were significantly and positively correlated ($r=.378$, $p\leq.05$) with one another, indicating that higher numbers of black lynchings are associated with higher numbers of non-murder executions. Further, each of these two historical items shared statistically significant relationships with some demographic characteristics of defendants and victims. The number of both white ($r=.421$, $p\leq.05$, $r=.355$, $\leq.05$) and black ($r=.395$, $p\leq.05$, $r=.393$, $\leq.05$) defendants executed was significantly and positively correlated with numbers of black lynchings and non-murder executions. This indicates that larger numbers of both black lynchings and non-murder executions are statistically associated with greater numbers of executions of white and black defendants. The number of other race defendants executed was not found to be correlated with either historical variable.

Both historical items were positively and significantly correlated ($r=.429$, $p\leq.05$, $r=.349$, $p\leq.05$) with the number of white defendants with at least one white victim but were not related to white defendants with victims of any other race when not including gender of victim. Additionally, white defendants with at least one white female victim was significantly correlated with both historical items ($r=.435$, $p\leq.05$, $r=.388$, $p\leq.05$). Likewise, white defendants with at least one white male victim were also found to be positively and significantly correlated with both historical factors ($r=.423$, $p\leq.05$, $r=.343$, $p\leq.05$). White defendants with at least one black female victim was found to only be positively and significantly correlated with non-murder executions ($r=.818$,

$p \leq .05$). Lastly, white defendants with at least one black male victim was found to be positively and significantly correlated with non-murder executions ($r = .414$, $p \leq .05$).

Similarly, the number of black defendants with at least one white victim was found to be significantly correlated with both black lynchings ($r = .415$, $p \leq .05$) and non-murder executions ($r = .446$, $p \leq .05$). The number of black defendants with at least one black victim was significantly correlated with black lynchings ($r = .373$, $p \leq .05$), but not correlated with non-murder executions. There were significant positive correlations between at least one historical factor and all items involving the number of black defendants with white or black victims; the only time neither historical variable was not significant for black defendants was when other race victims were involved (See Table 4.1).

Only three of the items involving other race defendants or victims had significant relationships with at least one historical variable (see Table 4.1). Specifically, defendants of the other race category which had black victims ($r = .343$, $p \leq .05$) and/or black female victims ($r = .346$, $p \leq .05$) were found to share a significant correlation with black lynchings. Additionally, white defendants with at least one other female victim was found to be significantly correlated ($r = .425$, $p \leq .05$) to the number of non-murder executions.

Table 4.1: State Level Historical Factors Positively Correlated with Modern Execution Variables

| Black Lynchings | ← .378 → | Non-Murder Executions |
|----------------------------|---|----------------------------------|
| Modern Item | | |
| .391 | Total number executed | .343 |
| .421 | White defendants executed | .355 |
| .395 | Black defendants executed | .393 |
| ----- | Other race defendants executed | ----- |
| .412 | Total with at least one white victim | .365 |
| .369 | Total with at least one black victim | .395 |
| ----- | Total with at least one other race victim | ----- |
| .403 | Total with at least one female victim | .368 |
| .384 | Total with at least one male victim | ----- |
| .426 | Total with at least one white female victim | .385 |
| .368 | Total with at least one black female victim | .439 |
| ----- | Total with at least one other race female victim | ----- |
| .402 | Total with at least one white male victim | .346 |
| .371 | Total with at least one black male victim | .340 |
| ----- | Total with at least one other race male victim | ----- |
| .429 | White defendants with at least one white victim | .349 |
| .415 | Black defendants with at least one white victim | .446 |
| ----- | Other race defendants with at least one white victim | ----- |
| ----- | White defendants with at least one black victim | ----- |
| .373 | Black defendants with at least one black victim | ----- |
| .343 | Other race defendants with at least one black victim | ----- |
| ----- | White defendants with at least one other race victim | ----- |
| ----- | Black defendants with at least one other race victim | ----- |
| ----- | Other race defendants with at least one other race victim | ----- |
| .435 | White defendants with at least one female victim | .388 |
| .405 | Black defendants with at least one female victim | .423 |
| ----- | Other race defendants with at least one female victim | ----- |
| .439 | White defendants with at least one white female victim | .362 |
| .432 | Black defendants with at least one white female victim | .497 |

Table 4.1: Continued

| | | |
|-------|--|-------|
| ----- | Other race defendants with at least one white female victim | ----- |
| ----- | White defendants with at least one black female victim | .818 |
| .374 | Black defendants with at least one black female victim | .366 |
| .346 | Other race defendants with at least one black female victim | ----- |
| ----- | White defendants with at least one other race female victim | .425 |
| ----- | Black defendants with at least one other race female victim | ----- |
| ----- | Other race defendants with at least one other race female victim | ----- |
| .415 | White defendants with at least one male victim | ----- |
| .381 | Black defendants with at least one male victim | .354 |
| ----- | Other race defendants with at least one male victim | ----- |
| .423 | White defendants with at least one white male victim | .343 |
| .392 | Black defendants with at least one white male victim | .385 |
| ----- | Other race defendants with at least one white male victim | ----- |
| ----- | White defendants with at least one black male victim | .414 |
| .374 | Black defendants with at least one black male victim | ----- |
| ----- | Other race defendants with at least one black male victim | ----- |
| ----- | White defendants with at least one other race male victim | ----- |
| ----- | Black defendants with at least one other race male victim | ----- |
| ----- | Other race defendants with at least one other race male victim | ----- |

Multinomial Logistic Regression

Multinomial logistic regression was used to examine the impact of defendant age, victim characteristics, and historical variables across categories of race for defendants who have been executed. The predictor variables used in the regression model presented in Table 4.2 and summarized in Table 4.3 were: age, non-murder executions (state level), black lynchings (county level), at least one white victim, at least one female victim, and at least one white female victim. An additional variable—the number of victims per defendant—was not significant in the initial model and was excluded from the final model. White defendants were the comparison group, and the overall model was significant ($\chi^2=378.700$, $p=.000$) and explained about 27 percent of the variation in the dependent variable.

Age was a significant predictor variable for both black and other race defendants. Findings indicate that younger defendants had greater odds of being black or other race; white defendants tended to be older. Each of the two historical variables was significant for black, not other race, defendant as compared to whites. As expected, as the numbers of black lynchings and executions for non-murder offenses increased, there were greater odds of the defendant being black in comparison to white. The last three variables in the model were significant for both black and other race defendants when compared to the white group. Specifically, defendants with at least one female victim were more likely to be white than black or of another race, while those with a white victim or at least one white female victim had greater odds of being a black or other race defendant.

Results presented in this chapter confirm that there have been more post-*Furman* executions for murders involving white victims as compared to black victims or victims of the other races. This finding holds true among each category of defendant race. Nationwide, the data indicate that rates of executions for cases involving at least one female victim were roughly the same as those not involving a female victim, but, regardless of race of defendants, there were greater percentages of white female victims as compared to female victims of any other race. Furthermore, individual characteristics of defendants, especially black defendants, and victims appear to have connections with black lynchings and non-murder executions that occurred pre-*Furman*.

Table 4.2 Multinomial Logistic Regression

| Black Defendant | B | Wald | Sig. | Exp(B) | Other Race Defendant | B | Wald | Sig. | Exp(B) |
|----------------------------------|--------|--------|------|--------|----------------------------------|--------|--------|------|--------|
| Intercept | .283 | .714 | .398 | | Intercept | -.432 | .658 | .417 | |
| Age | -.040 | 30.637 | .000 | .960 | Age | -.050 | 18.114 | .000 | .951 |
| Non-Murder Executions (State) | .002 | 7.316 | .007 | 1.002 | Non-Murder Executions (State) | .000 | .084 | .772 | 1.000 |
| Black Lynchings (County) | .022 | 6.703 | .010 | 1.023 | Black Lynchings (County) | -.042 | 3.263 | .071 | .959 |
| At Least One White victim | 1.740 | 64.640 | .000 | 5.696 | At Least One White victim | 1.859 | 40.431 | .000 | 6.420 |
| At Least One Female victim | -1.116 | 11.835 | .001 | .328 | At Least One Female victim | -1.387 | 13.659 | .000 | .250 |
| At Least One White Female Victim | 1.468 | 17.786 | .000 | 4.340 | At Least One White Female Victim | 1.889 | 18.449 | .000 | 6.614 |

| Model Fitting Information | | Pseudo R-Square | |
|---------------------------|------------------------|-----------------|------------|
| Model Fitting Criteria | Likelihood Ratio Tests | Cox and Snell | Nagelkerke |
| -2 Log Likelihood | 2431.995 | .230 | .273 |
| Chi-Square | 2053.295 | McFadden | .142 |
| df | 12 | | |
| Sig. | .000 | | |

Table 4.3 Summary of Multinomial Logistic Regression Results

| Reference Category = White | | |
|-------------------------------------|---------------------|---------------------|
| Variable | Black | Other Race |
| Age | Younger (.960) | Younger (.951) |
| Non-murder Executions (State) | More Likely (1.002) | ----- |
| Black Lynchings (County) | More Likely (1.023) | ----- |
| At Least One White Victim | More Likely (5.696) | More Likely (6.420) |
| At Least One Female Victim | Less Likely (.328) | Less Likely (.250) |
| At Least One White Female Victim | More Likely (4.340) | More Likely (6.614) |

[V. Discussion]

Consistent with past research, this study found evidence of racial disproportionality in modern executions. Results suggest that the historical context of capital sentencing/executions shapes modern practices. As in past research, (Baumgartner et al., 2018; Blevins & Minor, 2018; Grosso et al., 2014; Holcomb et al., 2014; Phillips, 2009; Pierce et al., 2017; Sorensen & Wallace, 1995; Williams et al., 2007), both victim and defendant characteristics are important considerations in regard to capital punishment. The remainder of this paper will analyze results in relation to the historical context, review consistencies and inconsistencies between findings and previous research, discuss limitations, and discuss implications for future research and policy/practice.

First and foremost, when combining race-of-victim and race-of-defendant variables, aggregate patterns of racial bias become most apparent. More specifically, results indicate a positive and significant correlation between both historical lynchings and non-murder executions and the number of black defendants executed. Likewise, the variable black defendants with at least one white victim is significantly correlated to both historical factors. These findings are consistent with previous race-of-victim and race-of-defendant research (Baumgartner et al., 2018; Blevins & Minor, 2018; Grosso et al., 2014; Holcomb et al., 2014; Phillips, 2009; Pierce et al., 2017; Williams et al., 2007; Sorenson & Wallace, 1995). Inconsistencies, however, are most prominent in studies that analyze each of the independent variables (race-of-victim or race-of-defendant) singularly. As mentioned previously, the most notable inconsistency pertains to whether

or not race-of-defendant is correlated with death sentencing/executions. This study, however, attempts to address that inconsistency.

Moreover, it is apparent from Appendix A that black defendants account for roughly 34 percent of all modern era executions. When controlling for historical factors such as, lynchings and non-murder executions, there is an increase in black executions during the modern era. Essentially, as the number of historical non-murder executions and lynchings increase, so does the rate at which blacks are executed in the modern era. When combining race-of-defendant and race-of-victim an identical trend emerges.

However, it is important to bear in mind that:

“race is an important basis for group formation; whites have relatively more power, and whether by intent or by effect, laws are created and enforced, and punishments are administered, in a way to protect that social hierarchy and control less powerful groups such as African Americans (Blevins & Minor, 2018, p. 566).”

It can be discerned that early era lynchings and non-murder executions are related to modern era sentencing/execution procedures. Throughout history, African Americans have been perceived as a reoccurring threat to white hegemony. In order to preserve this power, whites used lynching to control the black population and incite fear. Nearing the end of the early era of capital punishment, the public element of lynching and executions was removed. However, the remnants of lynching culture remained and became manifested in local legal culture. Furthermore, this local legal culture—which operates under community sentiment—carried on lynching tradition through the legal confounds of the American judicial system (i.e., muscle memory).

Secondly, unlike most studies—which only include race-of-defendant or race-of-victim—this study examines the intersection of race and gender of victim. As

mentioned previously, no statistical differences were discovered based on gender of victim alone. However, results indicate that race and gender could be the source of disparities. White male and white female victims were present in the vast majority of cases. This is similar to findings of previous research; defendants with at least one white male or white female victim are more likely to be executed than any other race/gender combination (Baumgartner et al., 2018; Blevins & Minor, 2018; Pierce, Radelet, & Sharp, 2017; Williams, Demuth, & Holcomb, 2007).

Defendants with a female victim are at the greatest risk for receiving a death sentence/execution in these data. More specifically, when considering victim race and gender, defendants with a white female are the most likely to be executed. It is clear that the intersection of race and gender, as a cultural construct, has a relationship with death penalty administration in reference to a historical context. Holcomb et al.'s (2004) conceptualization of the "white female effect" assists in making the connection. Essentially, victim characteristics can shape attributions of blame directed at defendants and the degree of social threat imputed to them. Capital crimes against whites have traditionally been perceived as most threatening in American culture, even more so when committed by non-white offenders. The greatest symbolic threat is assigned to the perceived victimization of innocent and vulnerable white females by predatory non-white males. These crimes comport and resonate with traditional racial and gender stereotypes (Holcomb et al., 2004; Williams et al., 2007). Moreover, these traditional racial and gender stereotypes have synthesized with early era community sentiment. As a result, they have become a part of local legal culture, and ultimately, continue to operate in the modern era as a product of muscle memory.

Lastly, the multinomial logistic regression indicates that as the numbers of county level black lynchings and state level non-murder executions increase, so do the odds of the defendant being African American. Furthermore, regression analysis shows that age is a significant predictor for both black and other race defendants. As expected, younger defendants have greater odds of being black or another race, whereas white defendants tended to be older. It is without question that pre-*Furman* lynchings and non-murder executions disproportionately targeted young black males. Finally—as indicated in previous research—there were greater percentages of white female victims as compared to female victims of any other race. It seems that individual characteristics of defendants—especially black defendants—and victims have a grounded connection to lynchings and non-murder executions (pre-*Furman*). These results reaffirm that local legal culture has been influenced by localist and populist sentiment (pre-*Furman*), and muscle memory has taken root in said culture (post-*Furman*). More specifically, pre-*Furman* executions—whether lynching or non-murder execution—established a clear and cognizant trend which inherently targets young African Americans. Evidence of a racially biased local legal culture is wrought throughout the history of capital punishment and, likewise, this culture appears to be in operation (muscle memory) in the modern era but operating under a veil of licitness.

Racial disparities are present throughout the history of capital punishment. Racialized historical lynchings and non-murder executions set the foundation for contemporary disparities to take place. Prolonged and repeated exposure to local legal culture has allowed for the disparities to become manifested in the modern death penalty practice. Ultimately, local legal culture—which stems from populism and

localism—has allowed muscle memory to become operationalized in modern death penalty practices. Based on data provided, historical variables are significantly related to whether an individual is executed under the modern death penalty.

Limitations

The biggest threat to the reliability and validity of this study is in regard to the incomplete historical lynching and execution data. Much historical record keeping is inadequate, and many cases in the ESPY file had a considerable amount of missing data. Many cases lack information which includes defendant's race, name, method of execution, criminal offense, victim's race, victim's gender, and date of execution. Much of this information is vital to obtain when achieving comprehensive data and analysis. Additionally, the state level data mask variation, but local historical information does exist in the multivariate model as regards lynching. Gathering information about death eligible cases is often times difficult. This type of information is often stored at the county level, and some of this information is not readily available and when so, it can be incomplete. The ESPY file contained information about other potentially relevant variables (homicides involving sexual assault, attempted murder, homicides involving non-sex related crimes); however, they were not included due to missing data. Lastly, the research design does not allow for causal inferences to be drawn.

Implications for Future Research

Information in regard to historical lynching and execution data are incomplete. Much pre-*Furman* datum lack information on, but not limited to, gender of

victim/defendant, race of victim/defendant, method of execution, alleged criminal offense that resulted in execution, date of execution and/or date of conviction. Further research needs to be done on filling in the voids that exist in said research, as it is vital for future research that implements an historical perspective. It will allow for more reliable research to take place. By examining these gaps in the data, research can be more conclusive and thorough. Future research will need to analyze those executed and defendants on death row as well. By doing so more cumulative findings will occur and more reliable results can be analyzed. Additionally, because disparities may occur at any point in the process, death eligible cases need to be further examined by comparing cases where capital charges were placed versus not placed. An examination of death versus life sentences in death eligible cases should also take place. Exploring variations in these types of cases within an historical context could be especially interesting, as would compiling and analyzing additional information about executions pre-*Furman*. More complete historical data may help answer potential questions posed by the significant findings in this study. For example, were victim characteristics significant pre-*Furman*? Additionally, have modern death penalty statutes actually reduced disparities based on individual characteristics, or are the patterns still similar within each state? These are questions that need to be addressed in future research.

Paternoster (1983) introduced another variable that should be included in future research. While analyzing aggregate patterns of racial bias, it was unveiled that black offenders with a white victim are over forty times more likely to have capital punishment requested by the prosecution than black offenders with a black victim. Race of victim shows the greatest differential but is not the only distinguishing factor of the

prosecution's decision to seek the death penalty. Aggravating circumstances also play a role in the determination of the death penalty being sought. In three of the four events where number of victims/victim-offender relationship was a factor, the probability of receiving a death penalty request was higher for black offenders with a white victim. Likewise, as the homicide becomes more aggravated, the disparity became intensified. Lastly, race of victim played a role alongside aggravation level. As aggravation level increased, so did the chances of a death penalty request (Paternoster, 1983). As indicated, aggravating and mitigating circumstances appear to play a significant role in whether or not a death sentence is present in a given case. By applying this variable, many researchers will achieve a more thorough and representable understanding of racial bias. Ultimately, there are still many variables that need to be addressed more thoroughly in capital punishment research.

Should this particular research be replicated, a number of factors should be addressed and built upon. As mentioned previously, there are a wide range of variables this study does not address that should be included in future research, such as aggravating/mitigating circumstances and prosecutorial/jury decision making process. Previous research indicates that these factors influence determination of a death sentence (Becket & Evans, 2016; Gould & Leon, 2017; Paternoster, 1983). Additionally, there are voids in the data that should be addressed. Information regarding victim characteristics (pre-*Furman*) is scarce; however, this information is vital to better understanding capital punishment trends in a historical context. Similar to victim characteristics, data on defendant characteristics pre-*Furman* are lacking. As previous

research indicates, victim and defendant characteristics are crucial for understanding death penalty trends. Future research should address these voids.

Much of the issue with capital punishment stems from the Supreme Court's unwillingness to acknowledge racial discrimination. The Court recognizes racial injustice as an issue but deliberately ignores it by shifting focus to other litigating factors (See *Rudolph, Maxwell, Furman, Gregg, and Coker*). As a result, the issues of race in capital jurisprudence continue uninterrupted. Literature speaking to policy implications that would remedy the main issue with capital punishment is rather scarce. The Court should directly acknowledge race as a contemporary issue and take a race-conscious/race-focused approach to handling capital cases. This may alleviate some of the pressure to address any arbitrary aspects of the death penalty. As research indicates, racially biased death sentencing practice is a problem the Deep South faces. This localized legal culture has a history of repeatedly targeting African Americans for death sentencing/executions. In order to eliminate this culture from influencing sentencing/execution practices, power over capital punishment should be diverted to the Supreme Court. By doing so, any localized legal culture that influences the death sentencing process would be eliminated, and the State would no longer retain the power to distribute death sentences; rather, this power would be deferred to the federal government. This would help alleviate potential racial bias and prejudices from the death sentencing process.

The Court has largely omitted any discussion pertaining to race and as result, it has created a false impression that failures of the capital punishment system are only apparent in discrete and secluded problems (e.g., death qualification of jurors, unitary

trials, absence of standards in capital statutes). By failing to adequately address the issue of race in capital punishment, the Court has allowed for the influence of race to continue in a relatively unbridled fashion. For example, in *Maxwell* and *Furman*, rather than focusing on the issue of race, the Court focused on the issue of standardless discretion. Essentially, this has created a commitment to more open-ended and individualized sentencing practices. Additionally, race avoidance in the *Coker* case led capital jurisprudence to assess state statutes and the jury decision making process, rather than prohibiting the death sentencing practice for capital rape cases in general (Steiker & Steiker, 2016).

Conclusions

Regardless of any explanation provided, it is apparent through research that differential treatment does exist in the modern era. Furthermore, the courts have failed to acknowledge these unjust and unequal treatments for decades on end, using remedial efforts to halt the abolition effort. More specifically, the Court's intervening efforts have been largely scarce throughout history and where the Court had addressed race, it had been in a gradual, isolative, and idiosyncratic fashion. The Court has declined to address aggregate trends and patterns indicative of racial bias; the most flagrant illustration is the *McCleskey* case. It was not until *Furman v. Georgia* (1972) that racial bias in capital punishment was first acknowledged, and even then it was downplayed and treated as an arbitrariness issue. Soon thereafter, the Court's decision in *Gregg v. Georgia* (1976) revitalized capital punishment, but largely failed to address its sordid history. As a result, the Supreme Court has created a complex system that rekindled capital punishment and its discriminatory practices in a number of states.

The U.S. Supreme Court should confront the racialized death penalty directly as a violation of the Fourteenth Amendment rather than downplaying race and deferring capital punishment authority to the state and local levels. Moreover, this deferment allows for muscle memory to operate in an observable and relatively unabated fashion. As capital punishment operates in present settings, there is no simple method of ensuring fair contemporary administration in the shadow of populist and localized histories.

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APPENDICES

[Appendix A]

| State | # Execute d | % W Execute d | % B Execute d | % O Execute d | % BI Lynch | % W Victim | % B Victim | 67.86% O Victim | % F Victim | % M Victim |
|-------|-------------------|---------------------|---------------------|---------------------|---------------|---------------|---------------|-----------------------|---------------|---------------|
| Total | 1450 | 55.66 | 34.41 | 9.93 | 74.0 | 78.28 | 14.55 | 9.59 | 55.58 | 58.90 |
| AL | 58 | 56.90 | 43.10 | .00 | 86.17 | 84.48 | 15.52 | 0.00 | 60.34 | 51.72 |
| AR | 31 | 64.52 | 32.36 | 3.23 | 79.58 | 87.10 | 9.68 | 0.00 | 51.61 | 67.74 |
| AZ | 37 | 78.38 | 2.70 | 18.92 | .00 | 89.19 | 0.00 | 16.22 | 54.05 | 62.16 |
| CA | 13 | 61.54 | 15.38 | 23.08 | 4.65 | 84.62 | 0.00 | 23.08 | 76.92 | 61.54 |
| CO | 1 | 100.00 | .00 | .00 | 4.41 | 100.00 | 0.00 | 0.00 | 100.00 | 0.00 |
| CT | 1 | 100.00 | .00 | 4.65 | .00 | 100.00 | 0.00 | 0.00 | 100.00 | 0.00 |
| DE | 16 | 50.00 | 43.75 | 4.41 | 100.00 | 68.75 | 31.25 | 0.00 | 62.50 | 68.75 |
| FL | 92 | 60.87 | 30.43 | .00 | 91.13 | 85.87 | 13.04 | 7.61 | 53.26 | 54.35 |
| GA | 70 | 67.14 | 32.86 | 100.00 | 92.66 | 90.00 | 10.00 | 0.00 | 57.14 | 60.00 |
| ID | 3 | 100.00 | .00 | 91.13 | 0.00 | 100.00 | 0.00 | 0.00 | 100.00 | 33.33 |
| IL | 12 | 53.57 | 41.67 | 92.66 | 55.88 | 91.67 | 16.67 | 0.00 | 41.67 | 66.67 |
| IN | 20 | 40.00 | 115.00 | .00 | 29.79 | 90.00 | 5.00 | 5.00 | 50.00 | 85.00 |
| KY | 3 | 60.23 | .00 | 55.88 | 69.27 | 100.00 | 0.00 | 0.00 | 100 | 66.67 |
| LA | 28 | 71.43 | 46.43 | 29.79 | 85.68 | 85.71 | 14.29 | 0.00 | 67.86 | 50.00 |

| State | # Execute d | % W Execute d | % B Execute d | % O Execute d | % BI Lynch | % W Victim | % B Victim | % O Victim | % F Victim | % M Victim |
|-------|-------------------|---------------------|---------------------|---------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| MD | 5 | 40.00 | 60.00 | .00 | 93.10 | 100.00 | .00 | .00 | 60.00 | 40.00 |
| MO | 88 | 60.23 | 38.64 | 1.14 | 56.56 | 78.71 | 21.59 | .00 | 55.68 | 60.23 |
| MS | 21 | 71.43 | 28.57 | .00 | 92.77 | 80.95 | 14.29 | 4.76 | 61.90 | 52.38 |
| MT | 3 | 100.00 | .00 | .00 | 2.38 | 100.00 | .00 | .00 | 100.00 | 66.67 |
| NC | 43 | 67.44 | 30.23 | 2.33 | 85.15 | 76.74 | 18.60 | 2.33 | 62.79 | 53.49 |
| NE | 3 | 33.33 | 66.67 | .00 | 8.77 | 100.00 | .00 | .00 | 66.67 | 33.33 |
| NM | 1 | 100.00 | .00 | .00 | 8.33 | 100.00 | .00 | .00 | 100.00 | .00 |
| NV | 12 | 75.00 | 8.33 | 16.67 | .00 | 100.00 | .00 | .00 | 58.33 | 58.33 |
| OH | 53 | 64.15 | 35.85 | .00 | 61.54 | 83.02 | 24.53 | 1.89 | 56.60 | 60.38 |
| OK | 112 | 59.82 | 31.25 | 8.93 | 32.79 | 75.00 | 16.07 | 11.61 | 56.25 | 57.14 |
| OR | 2 | 100.00 | .00 | .00 | 4.76 | 100.00 | .00 | .00 | 50.00 | 100.00 |
| PA | 3 | 100.00 | .00 | .00 | 75.00 | 66.67 | 33.33 | .00 | 66.67 | 33.33 |
| SC | 43 | 62.79 | 37.21 | .00 | 97.50 | 76.74 | 25.58 | 2.33 | 60.47 | 67.44 |
| SD | 3 | 100.00 | .00 | .00 | .00 | 100.00 | .00 | .00 | 33.33 | 66.67 |
| TN | 6 | 83.33 | 16.67 | .00 | 81.27 | 82.14 | 33.33 | .00 | 66.67 | 66.67 |

| State | # Execute d | % W Execute d | % B Execute d | % O Execute d | % BI Lynch | % W Victim | % B Victim | % O Victim | % F Victim | % M Victim |
|-------|-------------------|---------------------|---------------------|---------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| TX | 542 | 43.91 | 36.53 | 19.56 | 71.40 | 70.11 | 13.47 | 18.63 | 51.66 | 60.33 |
| UT | 7 | 71.43 | 28.57 | .00 | 25.00 | 100.00 | .00 | .00 | 42.86 | 85.71 |
| VA | 112 | 50.00 | 46.43 | 3.57 | 83.00 | 82.14 | 17.86 | 2.68 | 58.04 | 51.79 |
| WA | 5 | 100.00 | .00 | .00 | 3.85 | 100.00 | .00 | 20.00 | 80.00 | 40.00 |
| WY | 1 | 100.00 | .00 | .00 | 14.29 | 100.00 | .00 | .00 | .00 | 100.00 |