

**Book Review: R.J. Maratea, *Killing With Prejudice: Institutionalized Racism In American Capital Punishment*. NYU Press. 2019. ISBN: 9781479888603 (Hardcover). 224 pages. \$26.00.**

Reviewed by Thomas Dutcher<sup>1</sup>

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“What remained intact is an apparatus of insidious racial chauvinism that continues to cast a pall over the pursuit of justice in the United States” (175). This is the conclusion Maratea reaches in his analysis of not only the death penalty, but the overall criminal justice system in, *Killing with Prejudice; Institutionalized Racism in American Capital Punishment*. The death sentence of Warren McCleskey and the subsequent Supreme Court case of *McCleskey v. Kemp* (1986) is used as a case study in which Maratea sets out to provide an analysis of the current state of institutionalized bias within the U.S. criminal justice system. Using a multi-tiered approach, the text argues that institutionalized bias is not unique to the death penalty. The death penalty is identified as just one example of how the United States struggles to come to terms with institutionalized racism, while preferring to address more tangible forms of direct individualistic racism. Within his argument, Maratea consistently refers back to two of the conclusions of the Baldus Study (Baldus, Pulaski, & Woodworth, 1983). These two conclusions, which form the backbone of the book, are that 1) the black body is deserving of the harshest punishments and 2) so are those that harm the white body. Maratea echoes the critical analyses of Anderson (2016), Kendi (2017),

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<sup>1</sup> **Thomas Dutcher** is currently a criminal justice doctoral student and fellow at the University of New Haven, West Haven, Connecticut. He holds a master’s degree in International Migration from the University of Kent– Brussels School of International Studies. His theoretical interests largely come from the field of critical criminology, specifically peacemaking criminology and cultural criminology. His research interests include the criminalization of homelessness, identity construction of both incarcerated individuals and their families, and the stigmatic impact of the criminal label.

and Waquant (2009), engaging in a Foucauldian historical analysis of the disproportionate punishments laid out to black bodies that harm white bodies.

It is this historical analysis which informs the structure of the text. The author takes the reader on a journey, delving into legal racism and tracking its evolution from reconstruction to its modern-day "race-neutral" conclusions. This task is undertaken by tracing the history of Supreme Court decisions related to race and the death penalty. *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976) are two cases of high significance in relation to the argument of coded racial bias in the current criminal justice system. Arguing that *Gregg v. Georgia* (1976) reinstated the death penalty before serious socio-cultural and socio-judicial normative change, the author aligns himself with the minority opinion of Justice Brennan (*Gregg v. Georgia*, 1976) and the findings of the Baldus Study (Baldus et al., 1983).

Alongside this analysis is a thorough discussion of *McCleskey v. Kemp* (1986), including the case put forth by the defense and prosecution, the political and ideological makeup of the Supreme Court, and the implications of Justice Powell's majority opinion. The structure of the text, interweaving the specifics of *McCleskey v. Kemp* (1986) into socio-structural forces at play, makes it clear that Maratea is using the McCleskey decision to assert that the same forces that result in racial disparities in death penalty sentencing permeate the entirety of the nation's criminal justice system.

From the outset, Maratea alerts the reader to process his text in this manner. As early as page 2, he describes the symbolic (rather than literal) power of Warren McCleskey, by preferring to paint the portrait of the individual, his crime, and his punishment via historic forces rather than an individual narrative. The book mimics *McCleskey v. Kemp* (1986) with its focus on the Baldus study and its implications. The Supreme Court's decision that the Baldus study, or any macro-level data, cannot prove that McCleskey's 8<sup>th</sup> or 14<sup>th</sup> amendment rights were violated becomes a launching point for the main arguments of the book. Central to the argument of the text is the majority opinion of Justice Powell, that "apparent disparities in sentencing are an inevitable part of our criminal justice system" (*McCleskey v. Kemp*, 1986, p. 313). This finding is critical to the implications laid forth in the concluding chapter of the text. The implications section focuses less on racism specific to the death penalty, and shifts to using systemic racism within the death penalty as a case study for overall systemic racism found in politics, American individualism, and "race-neutral" policies and law.

The strongest aspect of this text is its structure. The author withholds his feelings and potential biases toward the topic while presenting a historical analysis of the death penalty. It is only after the book covers this analysis that Maratea begins to inform the reader of his interpretations. While the author could have begun the book by proposing that "the egalitarian ideal of post-racial United States is little more than a myth" (175), this conclusion is saved for the last paragraph. Rather than implant the idea of wide-reaching structural racism, the author keeps his analysis to the death penalty. Before providing his own analysis, he allows the reader to question the extent of structural bias within the U.S. criminal justice system.

An additional strength is the manner with which Maratea is willing to incorporate information that can be used to undermine his arguments. In doing so he is able to explain why these limitations do not deter from the legitimacy of his own conclusions. Maratea avoids the critique of producing advocacy and not data backed through research by admitting that Warren McCleskey was guilty of certain crimes. Additionally, by highlighting that the methodology of the Baldus study is not flawless, potential criticisms that he ignored facts that did not support his conclusions are proactively rebuked. By acknowledging that various attacks against the death penalty have been defended over time, including that it is not against the constitution to execute an innocent person (*Herrera v. Collins*, 1993), Maratea prevents critics from assailing his analysis as being too narrowminded and of playing off the current social interest in racial bias studies.

A final strength within the historical analysis is that it uses the case study of McCleskey not as an endpoint, but as a midpoint within the overall argument. Rather than tracing racial disparities and racism against black skin up to McCleskey, the text goes on to discuss more modern events. This approach enables the reader to recognize that the decision in McCleskey is not of isolated significance. This format structurally mimics the overall argument that the McCleskey decision is important, because it provides an example of a larger phenomenon occurring in United States society. Instead of concluding with the McCleskey decision, the text dedicates its conclusion to discuss meaningful and specific implications of the case. This structure enables Maratea to provide his own justifications for the importance of his book while not mixing his opinions with his historical analysis. This allows Maratea to convey to the reader that McCleskey is not a conclusion, it is a continuation and example of something greater.

This is not to say, however, that the text was without flaws. While coming to grand conclusions on the state of structural racism, Maretea strangely distances his work from being interpreted as an anti-death penalty text. While the case study approach lends itself to a fluid read, the choice to abandon the value of the case in question for broader conclusions seems unnecessary. The conclusion, in aiming to solidify the accusation of rampant implicit structural racism, situates the use of the death penalty as largely symbolic. It does not argue for the abolition of the death penalty, instead stating that attempts to do so would result in displacement. Maretea argues that abolition, rather than being a solution to racial disparity, would result in an increase in racial disparities of persons serving life sentences. This analysis ignores that there is a difference in the power to take a life and the power to confine a life. This pessimistic attitude toward death penalty reform limits the conclusion to be a condemnation of structural racism in the U.S. criminal justice system.

Second, there is a failure to thoroughly discuss the implications of punishing those who harm the white body. At several points the text provides data that white victims are more sacred than black and brown victims. This data comes directly from the findings of the Baldus study. The study found that persons who kill white persons are more likely to be sentenced to death (Baldus et al., 1983). This finding is juxtaposed against data showing that only 1% of the lynching's of black individuals in Georgia led to a criminal conviction (Baldus et al., 1983). Yet, when it comes to producing conclusions about structural racism, the text focuses on how the punishment of black and brown bodies is the primary indicator of structural racism. Had the author expanded upon what is called the white victim effect (Bowers, Steiner, & Sandys, 2001; Jennings, Richards, Dwayne Smith, Bjerregaard, & Fogel, 2014), he would have been able to call on additional empirical research showing statistically significant racial bias in sentencing that makes a black individual convicted of killing a white woman the most likely to receive a death sentence (Paternoster & Brame, 2008; Williams, Demuth, & Holcomb, 2007). It is important to note, however, that these weaknesses are neither fatal to the overall argument by the author nor do they impede the readability of the book.

After factoring in the weaknesses, strengths, and style of the text, ultimately the importance of this text lies in its accessibility to a wide range of readers. Using a micro-level case study to highlight a macro-level, intangible phenomena such as structural racism is not something that can easily be done, especially while refraining from technical jargon

and verbose academic writing. This is what Maratea is able to accomplish. Maratea achieves readability by backing up his analyses with direct quotes from the opinions of Supreme Court cases. Additionally, readability is achieved through his clear and simple structure. The book flows seamlessly from the Baldus study to the McCleskey decision, to the implications of this decision, all while maintaining the central theme of structural racism. His decision to blend micro and macro contexts blends the philosophical and the anthropological, and in doing so provides an excellent counterargument to the logic used by the Supreme Court in upholding McCleskey's death sentence. The importance of this book is that it provides an example of how a macro-level phenomenon, like structural racism, has micro-level impacts on individual cases. His analysis, while not overly unique in its conclusions, serves as a foundational and grounded text for those interested in examining the extent to which separate but equal logic remains pervasive in American society. This book is a necessary read for those interested in racial disparity as well as death penalty research.

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