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David M. Oshinsky. *Capital Punishment on Trial: Furman V. Georgia and the Death Penalty in Modern America.* Lawrence: University Press of Kansas, 2010. 144 pp. $29.95 (cloth), ISBN 978-0-7006-1710-4; $14.95 (paper), ISBN 978-0-7006-1711-1.

Reviewed by David Stebenne
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David Oshinsky's new book, *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America*, deals with a very important issue in a clear, accessible, and concise way. Oshinsky, who holds the Jack S. Blanton Chair in History at the University of Texas, explores a curious paradox in American law and life that emerged during the middle 1960s. From that time forward for the next three decades, many more criminals were sentenced to death than during the previous generation, but only a tiny percentage of them were actually executed. Oshinsky does a fine job of explaining how the U.S. Supreme Court handed down a series of rulings (starting with the landmark case of *Furman v. Georgia* in 1972) that greatly diminished the states' freedom to execute those convicted of capital crimes. He is especially good at describing the very serious splits within the Court on the death penalty issue from the late 1960s onward and their consequences. Oshinsky argues persuasively that the interpretive stance of Associate Justice Potter Stewart, who in Oshinsky's words "appeared to want fewer executions, with scrupulous rules to punish the worst offenders" (p. 56), prevailed then, in opposition to those justices such as William O. Douglas, and Thurgood Marshall who wanted capital punishment abolished via constitutional interpretation, and those such as Byron White, Warren Burger, and William Rehnquist, who believed the death penalty enjoyed broad constitutional protection.

Oshinsky also explains very clearly and effectively the problems the U.S. Supreme Court encountered in applying constitutional law doctrines to what had historically been a state issue. He notes, correctly, that no issue–not even abortion–fragmented the Warren and Burger courts as severely as the death penalty did. Oshinsky also illuminates well how closely tied the Supreme Court's rulings were to issues of race. Many more blacks have been executed in modern American history than whites. The propensity to hand down a death sentence has also been markedly higher when the victim of a capital crime was white. Those disturbing patterns are, Oshinsky explains, what drove the death penalty issue to the forefront in the mid-1960s and kept it there for the next thirty years.

Capital Punishment on Trial does have one basic weakness, which is a tendency to under-contextualize how and why the Supreme Court became so concerned about, and involved with, the death penalty by the later 1960s. Oshinsky could have done a better job of explaining the most important factors in producing violent crime. In modern American history they have been the fraction of the male population that is between the ages of sixteen and thirty (most violent crimes are committed by that group), and the lack of good-paying jobs for males without much formal education (and the closely related problems of family strife and breakup). Had he foregrounded those factors in his introductory discussion of capital punishment in modern American history, the reader would have gained a much clearer understanding of why the death penalty was imposed so frequently in the 1930s (when violent crime reached all-time highs thanks mostly to extraordinarily high unemployment among men), declined in the 1940s and '50s (when good-paying jobs for males without much formal education became much more available), and then resurged in the 1960s (when the number of young adult baby boomers swelled and the number of good-paying jobs for those without much education began to decline sharply).

Explaining all this at the outset would also have clarified better the dilemma facing the legal system by the late 1960s. Ever more young adult males and ever fewer good-paying jobs for those without much education helped triple the violent crime rate between 1963-74. Had the U.S. Supreme Court not stepped in then to limit the number of executions, they, too, would likely have

soared. Like so many issues that faced the Warren and Burger courts, the death penalty raised the difficult question of what the judiciary ought to do if the state legislatures failed to act because the broad middle class mostly favored the legal status quo despite major changes in social conditions. Oshinsky's book would have been more analytically powerful if he had framed his discussion that way.

Despite this weakness, Oshinsky's book is a very useful one. Like the others in the series of which it is a part (the University Press of Kansas's Landmark Law Cases and American Society, edited by Peter Charles Hoffer and N. E. H. Hull), this book will prompt lively discussion among students in American legal history courses and among educated general readers. Oshinsky also deserves praise for tackling an important issue that many Americans today seemingly don't think much about.

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