

Race and Age Characteristics of those Sentenced to Death before and after *Roper*

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June 21, 2022

The penalty of death is more likely to be imposed on individuals who suffer from various disadvantages: poverty, poor lawyers, mental illness, intellectual deficits, for example. It also is more common among those with white victims compared to minority victims, those who commit crimes in jurisdictions that have previously sentenced more individuals to death, and those who committed their crimes in the 1980s or 1990s as compared to more recent years (see Baumgartner et al. 2018 for details). In this short report I focus on two particular disadvantages: age and minority status.

Since the 2005 *Roper v. Simmons* decision, the US Supreme Court has held it unconstitutional to sentence juveniles to death, recognizing the reduced capacity of children to control impulsive behavior. In recent years, many have argued that this exclusion should extend to those in the “Late Adolescent Class” (LAC) of individuals aged 18 to 20 at the time of their crime (see Lark 2021). The “bright line” at age 18 is not consistent with scientific understanding of the development of the brain. Here, I ask the question: What are the racial characteristics of those in the 18-to-20 age-group? Among those sentenced to death, does the social disadvantage of youth correspond with a greater likelihood of another disadvantage, racial minority status? I find that it does.

I make use of a comprehensive database covering the universe of US death sentences from 1972 through the end of 2021. This database includes information about the race of the defendant and the dates of birth, crime, and death sentence. (See Baumgartner et al. 2020 for information about the database.)

From the *Furman* decision in June, 1972 through the end of 2021, over 8,700 individuals have been sentenced to death in the US. Table 1 lays out their racial characteristics.

Table 1. Summary of Race of Individuals Sentenced to Death, 1972–2021.

Race	Number	Percent
White	3,917	44.85
Black	3,432	39.30
Hispanic	672	7.69
Other	179	2.05
Missing / unknown	533	6.10
Total	8,733	100.00

Table 2 shows the ages of these individuals at the time of their crime.

Table 2. Summary of Ages of those Sentenced to Death, 1972–2021.

Age Group	Number	Percent
Less than 18 years old	235	2.69
18 to 20 years old	1,319	15.10
21 years and older	6,936	79.42
Missing / unknown	243	2.78
Total	8,733	100.00

The US Supreme Court held the practice of sentencing juveniles to death unconstitutional in its *Roper v. Simmons* decision in March 2005. What are the racial characteristics of those in the two younger age categories, and how has this changed since the *Roper* decision? Table 3 lays out the answer to the first question. It shows that minorities constitute a higher share of the younger age groups compared to those aged 21 or over at the time of their crimes. Within each age group, the table shows percentages by race, summing to 100, allowing one to evaluate the relative share of whites, blacks, and people of other races within each age group.

Table 3. Age Groups by Race.

Age:	Under 18		18 to 20		21+		Missing		Total	
Race:	N	%	N	%	N	%	N	%	N	%
White	77	32.77	442	33.51	3,339	48.14	59	24.28	3,917	44.85
Black	115	48.94	640	48.52	2,602	37.51	75	30.86	3,432	39.30
Hispanic	26	11.06	139	10.54	490	7.06	17	7.00	672	7.69
Other	3	1.28	30	2.27	143	2.06	3	1.23	179	2.05
Missing	14	5.96	68	5.16	362	5.22	89	36.63	533	6.10
Total	235	100.00	1,319	100.00	6,936	100.00	243	100.00	8,733	100.00

Table 3 shows that whites are over-represented among those aged 21 and over; they are 48 percent of that group, but only 33 percent of those aged under 18 and 34 percent of those in the LAC (those aged 18 to 20). Blacks are 49 percent of those in the two younger groups, but only 38 percent of those aged 21 or over; similarly Hispanic individuals constitute 11 percent of the two younger categories but are only seven percent of those in the older age group. Minorities overall are 61 percent of those aged under 18, 61 percent of those in the LAC, and just 47 percent of those aged 21 or over.

Since *Roper*, racial minorities have constituted an even greater share of those in the LAC. Table 4 shows the same breakdown as above for the 1,236 death sentences imposed since March 1, 2005, the date of the *Roper* decision. (No one aged under 18 has been sentenced to death during this period as the Court ruled that unconstitutional on that date.)

Table 4. Race and Age Characteristics of those Sentenced to Death since *Roper*.

Age:	18 to 20		21+		Missing		Total	
Race	N	%	N	%	N	%	N	%
White	29	20.42	465	44.20	9	21.43	503	40.70
Black	73	51.41	409	38.88	14	33.33	496	40.13
Hispanic	35	24.65	145	13.78	6	14.29	186	15.05
Other	3	2.11	29	2.76	0	0.00	32	2.59
Missing	2	1.41	4	0.38	13	30.95	19	1.54
Total	142	100.00	1,052	100.00	42	100.00	1,236	100.00

Whites are just 20 percent of those in the LAC, but they are 44 percent of those aged 21 or higher. Blacks represent an absolute majority of those in the LAC, though they are less than 40 percent of those aged 21 or older. Similarly, Hispanics are over-represented in the LAC (25 percent) compared to in the 21-and-older group (14 percent). Combining the categories of black, Hispanics, and other race, fully 78 percent of those in the Late Adolescent Class in the period since *Roper* have been racial or ethnic minorities, a much greater share than the 56 percent they constitute among those aged 21 and over.

This short review of simple statistics shows that in the period since *Roper*, minorities are substantially over-represented in the Late Adolescent Class. The disadvantage of age cumulates with the disadvantage of minority status. This could be for many reasons, including the tendency to attribute adult characteristics to youthful black and minority individuals moreso than to whites (see Rattan et al. 2012). No matter what the cause, it is a troubling fact, and one that should cause policymakers to consider extending the protections of *Roper* to those in the 18-to-20 age category as well. If we are to have a death penalty, it should target the most deserving, rather than the most vulnerable.

References

- Baumgartner, Frank R., Marty Davidson, Kaneesha R. Johnson, Arvind Krishnamurthy, and Colin P. Wilson. 2018. *Deadly Justice: A Statistical Portrait of the Death Penalty*. New York: Oxford University Press.
- Baumgartner Frank R., Janet M. Box-Steffensmeier, Benjamin M. Campbell, Christian Caron, and Hailey Sherman. 2020. Learning to Kill: Why a Small Handful of Counties Generates the Bulk of US Death Sentences. *PLoS-ONE* 15, 10: e0240401.
- Leark, Robert A., ed. 2021. Special Issue: Law, Neuroscience, and Death as a Penalty for the Late Adolescent Class. *Journal of Pediatric Neuropsychology* 7, 1–2.
- Rattan Aneeta, Cynthia S. Levine, Carol S. Dweck, and Jennifer L. Eberhardt. 2012. Race and the Fragility of the Legal Distinction between Juveniles and Adults. *PLoS ONE* 7, 5: e36680.

Declaration of Frank R Baumgartner, Ph.D.

Pursuant to Cal. C.C.P. § 2015.5

I, Frank R. Baumgartner, declare as follows:

1. I am the Richard J. Richardson Distinguished Professor of Political Science at the University of North Carolina at Chapel Hill. I hold a Ph.D. in Political Science and have authored or co-authored numerous books and articles in peer-reviewed journals, many of them focused on the death penalty and the statistical analysis of capital charging and sentencing decisions.
2. As part of my research, I have compiled and maintain a comprehensive database on death sentences imposed around the United States since the Supreme Court decided *Furman v. Georgia* in 1972. See Frank R. Baumgartner et al., *Deadly Justice: A Statistical Portrait of the Death Penalty* (2018).
3. On June 21, 2022, I authored a report entitled “Race and Age Characteristics of Those Sentenced to Death Before and After *Roper*” (attached as Exhibit A). I examined racial and ethnic differences in death sentences imposed on juveniles and late adolescents aged 18 to 20, and found dramatic differences. From 1972 (the year of the *Furman* decision) to 2021, almost half, of all death sentences imposed on juveniles were imposed on black children (48.94%), and 11.06% of those sentences were imposed on Hispanic children, while 32.77% were imposed on white children. During that time period, again, almost half of all death sentences imposed on late adolescents aged 18-20 (48.52%) were imposed on black adolescents, 10.54% on Hispanic adolescents, and 33.51 on white adolescents. Exhibit A, Table 3.
4. I also reported that the late adolescent disparities widened after the Supreme Court held in *Roper v. Simmons* that juveniles are categorically ineligible for the death penalty. Between March 1, 2005 (the date of the *Roper* decision) and 2021, 51.41% of the late adolescents sentenced to death were Black and 24.65% were Hispanic, while only 20.42% were white. Exhibit A, Table 4.
5. In September 2022, Claudia Van Wyk, a Senior Staff Attorney for the ACLU Capital Punishment Project, asked me to examine whether the same patterns appeared in the data for Riverside County. I found that they did.
6. I first generated Tables 3a and 4a, which are updated versions of my nationwide tables 3 and 4, described above, and include additional data I have acquired since June 21, 2022:

7. Table 3a. Age Groups by Race. (Updated version of Table 3 from my June 21, 2022 Report (see Exhibit A, Table 3))

Age:	Under 18		18 to 20		21+		Missing		Total	
Race:	N	%	N	%	N	%	N	%	N	%
White	78	33.05	445	33.69	3,358	48.32	58	25.66	3,939	45.11
Black	116	49.15	642	48.60	2,618	37.67	68	30.09	3,444	39.44
Hispanic	27	11.44	140	10.60	493	7.09	13	5.75	673	7.71
Other	3	1.27	30	2.27	144	2.07	3	1.33	180	2.06
Missing	12	5.08	64	4.84	336	4.84	84	37.17	496	5.68
Total	236	100.00	1,321	100.00	6,949	100.00	226	100.00	8,732	100.00

8. Table 4a. Race and Age Characteristics of those Sentenced to Death since *Roper*. (Updated version of Table 4 from my June 21, 2022 Report (see Exhibit A, Table 4))

Age:	18 to 20		21+		Missing		Total	
Race	N	%	N	%	N	%	N	%
White	29	20.42	465	44.16	9	22.50	503	40.73
Black	73	51.41	411	39.03	14	35.00	498	40.32
Hispanic	35	24.65	147	13.96	5	12.50	187	15.14
Other	3	2.11	29	2.75	0	0.00	32	2.59
Missing	2	1.41	1	0.09	12	30.00	15	1.21
Total	142	100.00	1,053	100.00	40	100.00	1,235	100.00

9. I reviewed the Riverside County data and found that, because of the smaller number of county-level cases, compared to the nationwide numbers described above, grouping the minority defendants together would provide more meaningful comparisons between racial/ethnic groups. To facilitate my comparison of Riverside County with the nation as a whole, I created versions of the nationwide tables 3a and 4a that also grouped minority defendants together. From the updated nationwide data from 1972 to 2021, I created table 3b, below:

10. Table 3b. Race and Age Characteristics of those Sentenced to Death since *Furman*, United States, with Black and Hispanic individuals in a single “Minority” category.

Age:	Under 18		18 to 20		21+		Missing		Total	
Race:	N	%	N	%	N	%	N	%	N	%
White	78	33.05	445	33.69	3,358	48.32	58	25.66	3,939	45.11
Minority	146	61.86	812	61.47	3,255	46.84	84	37.17	4,297	49.21
Missing	12	5.08	64	4.84	336	4.84	84	37.17	496	5.68
Total	236	100.00	1,321	100.00	6,949	100.00	226	100.00	8,732	100.00

11. From the Riverside County data for the same period, 1972 to 2021, I created Table 3c, below:

12. Table 3c. Race and Age Characteristics of those Sentenced to Death since *Furman*, Riverside County, California, with Black and Hispanic individuals in a single “Minority” category.

Age:	Under 18		18 to 20		21+		Total	
Race:	N	%	N	%	N	%	N	%
White	0	0.00	3	15.79	24	25.81	27	23.89
Minority	1	100.00	16	84.21	61	65.59	75	66.37
Missing	0	0.00	0	0.00	8	8.60	11	9.73
Total	1	100.00	19	100.00	93	100.00	113	100.00

13. I created Table 4b, a version of my updated nationwide Table 4a, covering the post-*Roper* period from 2005 to 2021, that grouped minority defendants together:

14. Table 4b. Race and Age Characteristics of those Sentenced to Death since *Roper*, United States.

Age:	18 to 20		21+		Missing		Total	
Race	N	%	N	%	N	%	N	%
White	29	20.42	465	44.16	9	22.50	503	40.73
Minority	111	78.17	587	55.75	19	47.50	717	58.06
Missing	2	1.41	1	0.09	12	30.00	15	1.21
Total	142	100.00	1,053	100.00	40	100.00	1,235	100.00

15. From the Riverside County data for the same period, 2005-2021, I created Table 4c, below:

16. Table 4c. Race and Age Characteristics of those Sentenced to Death since *Roper*, Riverside County, California.

Age:	18 to 20		21+		Total	
Race	N	%	N	%	N	%
White	2	20.00	11	25.00	13	24.07
Minority	8	80.00	33	75.00	38	70.37
Missing	0	0.00	0	0.00	3	5.56
Total	10	100.00	44	100.00	54	100.00

17. These tables reflect an even larger gap between minority and white representation among late adolescents sentenced to death in Riverside County than in the nation at large. Since *Furman*, minority members have comprised 61.47 the late adolescents sentenced to death nationwide (see Table 3b above) and 84.21 percent of that cohort sentenced to death in Riverside (Table 3c). Since *Roper*, minority members have comprised 78.17% of the late adolescents sentenced to death nationwide (table 4b) and 80.00 % of that cohort sentenced to death in Riverside (Table 4c).

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct.



Frank R Baumgartner

Executed on September 21, 2022 at Chapel Hill NC