Thomas G. Walker, *Eligible for Execution: The Story of the Daryl Atkins Case* (Washington, DC: CQ, 2008), 284 pp.

The recent history of the American death penalty has been characterized by a number of rapid shifts. The most notable shift occurred between 1972 and 1976, between the U.S. Supreme Court's declaration that the death penalty was unconstitutional as practiced and its later decision declaring that revised state statutes passed constitutional muster, thus restoring the death penalty to constitutional legitimacy.[1] Another such shift occurred between 1977 and 1983, a period when the Court went from deciding the majority of the death penalty cases it heard in favor of the defendants to inaugurating a process by which the Court backed away from tinkering with the machinery of death, as Justice Harry Blackmun later memorably phrased it.[2] One of the cases decided during this period was *Penry v. Lynaugh*, in which the Supreme Court ruled by a 5-4 majority that there was no constitutional bar to the execution of mentally retarded defendants.[3] A dozen years later, the Court reversed *Penry* in *Atkins v. Virginia*, in which the Court ruled (6-3) that the Eighth Amendment's prohibition of cruel and unusual punishments did, in fact, protect mentally retarded defendants.[4] In surveying the national landscape, Justice John Paul Stevens's opinion found that a national consensus had developed against the execution of mentally retarded defendants and that this consensus showed that the country's "evolving standards of decency" rendered these executions "cruel and unusual."[5]

Were it that simple, the eponymous Daryl Atkins would have benefitted from the case to which he gave his name. As is so often the case, however, Atkins's own case was anything but simple. Atkins and co-defendant William Jones were charged in the August 17, 1996, robbery and murder of twenty-one-year-old Eric Nesbitt. Initially, the Commonwealth's Attorney Eileen Addison brought capital charges against both defendants in turn but, because Virginia law only permits the 'triggerman' to face a capital charge, ultimately downgraded Jones's charge, believing that Atkins had been the triggerman. Atkins was convicted in February 1998 and sentenced to death for the killing. Four years and several rounds of appeals later, the Supreme Court vacated Atkins's sentence and remanded the case back to the Virginia trial court "for further proceedings not inconsistent with this opinion."[6] Atkins's death sentence was reinstated following a subsequent proceeding during which the jury found that he was not mentally retarded; while death penalty opponents had won a substantial victory in *Atkins*, Atkins himself reaped no benefit from his own case. It was not until 2009—after the publications of *Eligible for Execution*—that Atkins's case was finally resolved following the Supreme Court of Virginia's decision in *In Re: Commonwealth of Virginia*, a decision that hinged on prosecutorial misconduct and a failure to disclose evidence, not Atkins's mental capacities.[7]

In many ways, Atkins's case is noteworthy only in degree; the death penalty is a highly complex process at every level, which makes explaining these intricacies a difficult job under the best of circumstances. The Atkins case hardly qualifies as such, but Thomas G. Walker's book's best feature is the ability to distill and communicate complex legal and procedural problems clearly. Walker notes that he had been looking for an opportunity to write "a detailed account of an important constitutional decision" for some time (x), and *Atkins* certainly fits that bill. Walker has four goals: to help readers understand the *Atkins* decision and its importance; to take readers through the many layers of jurisprudence along the *Atkins* case path as a way to demonstrate how this convoluted process works; to explain the rights accused and convicted criminals have under the Eighth Amendment; and to talk about the "real people—often society's most vulnerable—who frequently have suffered catastrophic losses and have much at stake" (x).

Trying to achieve these goals, Walker proceeds methodically through each stage of the process, from the crime through the penul-

[1] *Furman v. Georgia*, 408 U.S. 238 (1972); *Gregg v. Georgia*, 428 U.S. 153 (1976).

[2] Robert Weisberg, "Deregulating Death," *The Supreme Court Review, 1983*, ed. Philip B. Kurland, Gerhard Casper, and Dennis J. Hutchinson (Chicago: U of Chicago P, 1984): 305-95; *Callins v. Collins*, 510 U.S. 1141 (1994) (Blackmun, J., dissenting)

[3] 492 U.S. 302 (1989).

[4] 536 U.S. 304 (2002).

[5] *Trop v. Dulles*, 356 U.S. 86 (1958): 101; Eighth Amendment to the U.S. Constitution.

[6] 536 U.S., at 321.

[7] *In Re: Commonwealth of Virginia,* Record Nos. 0802282 and 080283 (Supreme Court of Virginia [S.Ct. VA], 2009).

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timate stage in this particular case. Walker's concise history of the American death penalty, the procedural elements of the investigation and the process by which the case is first tried and then the decision appealed, and the history and standing of the controlling case law is clear and understandable to readers with limited or no foreknowledge. The accompanying website (walker.cqpress.com) supplements the sparse bibliographic content of the notes accompanying each chapter and has the added feature of giving the author a way to update the book by concluding the story outside of the pages of the book itself. That said, one wishes that the author or press had taken greater advantage of the website and updated the sometimes dated literature that Walker cites in his bibliographic notes or otherwise augmented the spare citations.

The book's expository style helps Walker achieve his first three goals. His explication of the Atkins case, case path, and importance is exemplary in its simplicity and elegant clarity. Along the way, Walker's engagement with the Eighth Amendment more broadly and with the history of capital punishment in the United States as it bears on the Atkins case is crisp and understandable. Readers already familiar with the intricacies of the jurisprudence and history of the death penalty will find nothing new here, but experts are not Walker's primary audience. Interested laypeople are his primary audience—the book works very well at that level—and is an excellent volume for classroom use. That said, the near lack of a scholarly apparatus—"[t]o enhance the readability of this book, standard footnote references have been omitted" and "bibliographic note[s]" substituted for a bibliography or bibliographic essay (x)—limits its usefulness in upper-level courses or beyond. Moreover, while these bibliographic notes contain information regarding useful sources, they are in themselves insufficient to broaden the book's utility far beyond *Atkins*. Where Walker achieves his first three goals within the narrative, the narrowness of the references to the death penalty generally limits the book's ability to speak to the issue more broadly.

Walker is also less successful in achieving his fourth goal of speaking about the 'real people' at the heart of the process. He dutifully profiles the major figures in the narrative—Atkins, Jones, Nesbitt, Addison, and others—but limits his treatment of the families of the defendant and victim and the Supreme Court Justices who decided the case. This, combined with the crisp, methodical way in which the various issues involved in the case path are discussed, prevents readers from engaging with the human element beyond generic responses to crime and punishment in general and murder specifically. The explicatory nature of the narrative causes Walker to miss several opportunities to deepen the book. There are also minor errors in presentation, such as the claim at 97 that Chief Justice William Rehnquist was a "Reagan appointe[e]." Rehnquist was a Nixon appointee to the Court whom Regan elevated to Chief Justice following the death of Warren Burger, as Walker later notes (cf. 185).

Moreover, while Walker has a broad national and historical focus appropriate to a thorough discussion of a case of major constitutional import, the book occasionally becomes too focused on the specifics of the Atkins case. The description of the way Virginia revised its capital punishment statutes to comply with *Furman* does not explain how Virginia's revised statutes were or were not broadly representative of all such statutes (cf. 127-28). Additionally, in a book that is otherwise outstanding in its clear, cogent presentation of complicated legal and procedural issues, the fact that Walker merely mentions and immediately transitions away from the 1996 Anti-Terrorism and Effective Death Penalty Act (cf. 77), arguably the most significant piece of death penalty legislation since *Furman*, is bewildering, particularly since it impacted how Atkins had to file his appeals. Finally, in a book that is likewise excellent in its understandable presentation of the complex Eighth Amendment jurisprudence that preceded *Atkins*, Walker puzzlingly uses *Witherspoon v. Illinois* (1968) to discuss problems with voir dire, rather than the two cases that substantially modified *Witherspoon*: *Wainwright v. Witt* and *Lockhart v. McCree*.[8] Despite these complaints, *Eligible for Execution* is useful in classroom settings, particularly American Studies and history courses dealing with the American death penalty, legal history, or crime and punishment in general, and the accompanying website opens up a number of possibilities to utilize non-traditional assignments in such courses.

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[8] *Witherspoon v. Illinois*, 391 U.S. 510 (1968); *Wainwright v. Witt*, 470 U.S. 1039 (1985); *Lockhart v. McCree*, 476 U.S. 162 (1986).

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