2007

Unequal justice : the death penalty and the black community

Samuel Odom
San Jose State University

Follow this and additional works at: https://scholarworks.sjsu.edu/etd_theses

Recommended Citation

Odom, Samuel, "Unequal justice : the death penalty and the black community" (2007). *Master's Theses*. 3403.

DOI: <https://doi.org/10.31979/etd.chs8-mkye>
https://scholarworks.sjsu.edu/etd_theses/3403

This Thesis is brought to you for free and open access by the Master's Theses and Graduate Research at SJSU ScholarWorks. It has been accepted for inclusion in Master's Theses by an authorized administrator of SJSU ScholarWorks. For more information, please contact scholarworks@sjsu.edu.

UNEQUAL JUSTICE:
THE DEATH PENALTY AND THE BLACK COMMUNITY

A Thesis
Presented to
The Faculty of the Department of Interdisciplinary Studies
San Jose State University

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Samuel Odom
August 2007

UMI Number: 1448888

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

UMI[®]

UMI Microform 1448888

Copyright 2007 by ProQuest Information and Learning Company.

All rights reserved. This microform edition is protected against unauthorized copying under Title 17, United States Code.

ProQuest Information and Learning Company
300 North Zeeb Road
P.O. Box 1346
Ann Arbor, MI 48106-1346

© 2007

Samuel Odom

ALL RIGHTS RESERVED

APPROVED FOR THE DEPARTMENT OF INTERDISCIPLINARY STUDIES

Dr. Cobie Harris

Savander Parker

Buddy Butler

APPROVED FOR THE UNIVERSITY

ABSTRACT

UNEQUAL JUSTICE:

THE DEATH PENALTY AND THE BLACK COMMUNITY

by Samuel Odom

This thesis examines the impact of Capital Punishment on the Black community. The cases and data that are analyzed indicate that race is a determining factor in capital punishment cases. This study looks at how the judicial system provides unequal treatment to Blacks, thereby enforcing the inferiority of Black life, the inherent unequal treatment of Blacks in the criminal justice system, as well as further institutional racism within the American courtrooms.

"Even under the most sophisticated death-penalty statutes, race continues to play a major role in determining who shall live and who shall die." (Blackmun, 1994 p. 1127, 1135)

Table of Contents

List of Tables.....	vi
Introduction	1
Problem Statement.....	4
Hypothesis and Variables	6
Research Methods.....	7
Theory.....	20
Analysis	24
Court Rulings.....	29
Conclusion.....	33
References.....	37
Bibliography.....	41

List of Tables

Table 1 Data from Grand Rapids, MI TV Stations.....	12
Table 2 Racial Comparison of Homicide Victims and Capital Case Victims.....	19
Table 3 Racial Comparison of Death Penalty Sentences.....	27
Table 4 Race of District Attorneys in Death Penalty States.....	28
Table 5 Race of Victims of Those Executed for Murder since the Resumption of Executions in 1977.....	32

Introduction

The death penalty is essentially an arbitrary punishment. There are no objective rules or guidelines for when a prosecutor should seek the death penalty, when a jury should recommend it, and when a judge should give it. This lack of objective, measurable standards ensures that the application of the death penalty will be discriminatory against racial, gender, and ethnic groups. (Jackson, 1996, p. 97)

This thesis seeks to understand and explain how and why the death penalty is unevenly applied to Blacks more than any other group of people. The death penalty in the United States has affected many people in our society, especially the Black and the poor. The death penalty serves to be a retributive legal means of punishment in many states throughout our country as well as in many other countries around the world.

The Black community continually watches members of its population being sentenced to death for their criminal wrongdoings, especially in circumstances when the victim is White. In addition, the White community continues to show much stronger support for the death penalty than other non-Whites in the US. "In 2001, 73 percent of Whites support the death penalty, compared with 63 percent of Hispanics and only 46 percent of Blacks" (American Demographics, 2001, p. 5). While the African American community does not

support the death penalty, even though Blacks are more likely to be murdered than any other group, the White community strongly favors capital punishment when their communities have a significant number of minorities. "The results fit with other research showing that in areas where the percentage of minorities is higher, crime control efforts are enhanced in part because whites become more fearful as minority populations become larger" (Unnever & Cullen, 2007, p. 3-38). This type of attention not only impacts the Black community in a negative manner, but it also perpetuates a cycle of labeling Black people as violent offenders who commit serious crimes that deserve the death penalty. "One of the more enduring observations in the study of death penalty support within the United States is the strong divide between Whites and Blacks. Whites show significantly higher levels of support for capital punishment than Blacks" (Cochran & Chamlin, 2005, p. 573-584).

In many instances, cases which involve the use of the death penalty tend to emphasize crimes committed by Blacks against Whites. Although there are various aspects of the death penalty which impact society, the issue of race and capital punishment in the Black community is what makes the

death penalty a true example of separate and unequal justice. In short, Blacks are more likely to receive the death sentence than any other group.

While the majority of those executed in the United States are White, the death penalty is recommended to Blacks more often and for less severe crimes than their White counterparts.

The main issue in capital punishment is who gets sentenced to die for murder and who does not. What occurs in our society is that the death penalty is statistically more likely to be assigned when the victim is White. In short, the US legal system has failed to eliminate race as the determining factor in capital cases.

Problem Statement

At one time, the US Constitution only considered Blacks three-fifths of a human being. When the Constitution was ratified in 1787, Blacks were then considered whole human beings. Like the Constitution, the criminal justice system has not protected Blacks and has instead been anti-Black. In 1857, the Supreme Court in the Dread Scott case issued an opinion that Blacks had no rights Whites were bound to respect. In 1896, the conclusion of the Plessy v. Fergusson case concluded that the legal separate but equal policy was essentially legalized apartheid.

The criminal justice system has instituted various laws, such as fugitive slave laws and vagrancy laws instituted to control Blacks during the early 1900's, that escalate the number of Blacks eligible for the death penalty while limiting the numbers of Whites who could be accused of crimes punishable by death.

In the southern part of the United States in the 1960's, a death sentence for the crime of rape was referred to as a "Black Monopoly" "because it was imposed only when a Black man was convicted of raping a White woman" (Bardaglio, 1994, p.749-772). "Death sentences for White

men convicted of raping Black women, however, were virtually unknown" (Hacker, 1988, p. 1494-1498). From "1976-1995, five white murderers have been put to death for the murder of black persons and 101 black murderers have been put to death for the murder of white persons" (Olgetree, 2006, p. 15). These racial disparities in the death sentences exist today and point to a racial bias in the criminal justice system toward Blacks.

The significance of this topic is based on the continuation of the issue of separate and unequal treatment under the law in the United States as well as the need to end racial disparities that exist in sentencing policy. The majority of Black individuals sentenced to death in the United States have committed crimes that involve White victims. This being said, current policy would suggest that the lives of White individuals are more important than the lives of other individuals as there tends to be more retribution shown for the loss of Caucasian Americans. This fact is based on the evidence that the majority of those sentenced to death committed crimes resulting in Caucasian victims. On the other side, the percentage of Black people sentenced to death for killing Black people and other ethnicities is much lower.

Hypothesis and Variables

In 1990, the United States General Accounting Office (GAO) reviewed the research on why African Americans are more likely to be sentenced to death than any other race, especially in crimes when the victim is White. They found that in "82% of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving a death sentence, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks" (Death Penalty Information Center [DPIC], 2003, p. 45).

My hypothesis is that racism as seen throughout the criminal justice system, specifically in the case of capital punishment, in turn directly impacts the Black community negatively. The dependent variable will be the likelihood of being sentenced to death in crimes when the victim is White. The independent variable is race. The control variable, should there be one, would be geographic location. The following portion of this paper will analyze and discuss the most recent research on this topic as well as point delimitations in the prior literature.

Research Methods

This study will use a cross-sectional demographic comparative analysis, using academic research and data analysis, looking at the capital punishment and Blacks in four geographical sections of the United States. The four sections will be north, south, east, and west. North being defined as Pennsylvania, south being defined as Florida and Mississippi, east defined as North Carolina, and west defined as California. Along with the comparative analysis, this study will also compare the Blacks from rural areas to those from urban areas to determine if the area of origin has any effect on the likelihood of being sentenced to death. Lastly, I will analyze previous court cases to determine if Blacks are more likely to receive capital punishment as their sentence.

Current research suggests that legal racism and minority threat contribute to the arbitrary use of the death penalty as well as large disparities in sentencing based on race of both the defendant and victim. When looking at the geographical regions within the United States (north, south, east, and west), and urban vs. rural

settings, Blacks are still more likely than any other race to be sentenced to the death penalty.

A study published in the Santa Clara Law review, based on race and capital punishment in California with regards to rural vs. urban living conditions, concluded that "[a] person convicted of first degree murder in a predominantly white, rural county (like Napa, King, Colusa, or Shasta counties) is more than three times as likely to be sentenced to death than a person convicted of a similar crime in a diverse, urban county like Los Angeles, which has the highest number of homicides in the state." (Davies, Purdie-Vaughns, & Johnson, 2006, p.383-386).

According to a study based on race and capital punishment in Philadelphia (**NORTH**) that involved 600 death eligible cases from 1979-1999, it was concluded that "'black' features can sway in favor of death penalty, and that murderers with stereotypically 'black-looking' features are more than twice as likely to get the death sentence than lighter-skinned African American defendants found guilty of killing a white person" (ibid, p.). The study found that "57.5 percent of defendants rated to have 'stereotypically black' features—broad noses, thick lips, dark skin and hair—were sentenced to death compared with

only 24.4 percent of men who were rated as less stereotypically black, and these results resonate with previous findings on race and the death penalty, which consistently show that defendants accused of killing white victims are much more likely to be sentenced to death than those accused of killing blacks." (ibid).

Using the FBI and the California Office of Vital Statistics as their sources for data on California homicides committed between 1990 and 1999, a study based on race and capital punishment in California (**WEST**) concluded that "race and ethnicity of the victim and location of the crime play a critical role in determining who will be sentenced to death. 80% of executions in California were for those convicted of killing whites, while only 27.6% of murder victims are white. Those who murder whites are over four times more likely to be sentenced to death than those who kill Latinos and over three times more likely to be sentenced to death than those who kill African Americans." (Pierce & Radelet, Santa Clara Law Review, 2005, p. 1-47).

In the southern states (Florida, Mississippi) (**SOUTH**), the data which is based on murder indictments "found that Blacks were much more likely to receive the death penalty for interracial murder" (Johnson, 1970, p. 52). Some

researchers questioned the validity of the Johnson study. In 1974, John Hagan conducted his own study on death penalty cases in southern states and concluded there existed "a highly significant relationship when re-analyzing the data on inter- and intra-racial crime reported by Wolfgang and Reidal (1973). Hagan attributed this relationship to the fact that the data collected on capital offenses committed in the south" (1974, p.357-383). Ultimately, Hagan concluded that "African-Americans are direct subjects of racial bias in criminal processing."

According to a study conducted in North Carolina (**EAST**), "court records of 502 murder cases from 1993 to 1997, found that race plays a significant role in who gets the death penalty. In North Carolina, defendants whose victims are white are 3.5 times more likely to be sentenced to death than those with non-white victims" (DPIC, 2003). Thus, when sentencing guidelines and standards fail to sufficiently lead judges and courtroom workgroups, "decision-makers may fall back on conscious or unconscious prejudices about who are the worst kinds of criminals or who are the more sympathetic victims." (DPIC, 2003).

This mindset tends to be perpetuated by the media and as a result, the images that are portrayed of African

Americans, especially in reality programming, tend to misrepresent the Black community and over-represent the theme of criminality. For example, when the news explores crime in America, it mostly looks at Blacks, disregarding the fact that more Whites commit more crimes than Blacks. The threatening images of Blacks created by the media seem to stem from "reality" programming, such as local news, that society has deemed a reliable source for information. Thus, whatever negative images are being portrayed is believed to be an accurate assessment of the perpetrators of crime. Table 1 represents a six-month report based on minority illustration on local television stations. When looking at the data, a pattern emerges that the Blacks are less likely to be heard on news stations, but are disproportionately represented as a criminal when they appear on the news or other forms of media.

Table 1. Data from Grand Rapids, MI TV Stations

Six-month TV news Data on Racial Representation

(www.mediamouse.com)

	WOOD TV8 (6 & 11 news)	WZZM 13 (6 & 11 news)	WXMI 17 (10pm news)
Total # of Stories	3,604	3,064	2,417
Racial breakdown (by # of times we heard people speak & percentage of total voices)			
White	2555 - 86.31%	1767 - 84.6%	1255 - 84.8%
African American	325 - 10.97%	244 - 11.69%	175 - 11.8%
Hispanic	47 - 1.58%	52 - 2.49%	27 - 1.82%
Asian- American	11 - 0.37%	13 - 0.62%	10 - 0.67%
Arab- American	14 - 0.47%	6 - 0.28%	8 - 0.54%
Native American	8 - 0.27%	5 - 0.23%	5 - 0.33%
<hr/>			
Totals # of stories from all three stations		9,085	
Total # and percentage of voices/White		5,577 / 85.44%	
Total # of African American voices		744 / 11.39%	
Total # of Hispanic voices		126 / 1.93%	
Total # of Asian American voices		34 / .52%	
Total # of Arab American voices		28 / .42%	
Total # of Native American voices		18 / .27%	

of stories on crimes
committed when race was identified

	WOOD TV8	WZZM 13	WXMI 17
White	140	116	70
African American	105	69	60
Hispanic	30	25	19
Asian American	1	0	5
Arab American	3	1	4
Native American	0	0	0

Totals # and percentage of race identified crimes for all 3 stations:

White	326 / 50.3%
African American	234 / 36.1%
Hispanic	74 / 11.4%
Asian American	6 / .9%
Arab American	8 / 1.23%
Native American	0 / 0%

Percentage of voices and percentage of crimes:

White	85.44% / 50.3%
African American	11.39% / 36.1%
Hispanic	1.93% / 11.4%
Asian American	.52% / .9%
Arab American	.42% / 1.23%
Native American	.27% / 0%

According to a recent study by a Yale University political scientist, "while 20% of America's poor are black, far more than half of the poor people portrayed in newsmagazines and network television news are black." (Gilens, 1996, p. 15)

In addition to the over representative nature that has been explored with regard to news portrayals, it becomes important to "explore the extent to which crime stories may accurately or inaccurately represent criminal behavior in comparison to the arrest statistics recorded within the television coverage area." (Oliver, 2003, p. 3-18) "Modern studies of the death penalty continue to find a correlation between sentencing and race. The studies consistently show that those who kill white victims are much more likely to receive the death penalty than those who kill black victims. Racial disparities in sentencing and executions suggest that race plays a role in the application of the death penalty" (DPIC, 2003).

In terms of media portrayals of African Americans, past literature suggests that news coverage serves to be the most significant source of stereotypical and criminal images of African Americans. "News coverage often depicts Blacks as being violent, lazy, poor, and threatening toward

Caucasians" (Entman, 1992, p.341-361). In one study on the differences in TV depictions of Blacks and Whites, it was found that "Black defendants were more likely than White defendants to be shown in physical custody of police" (Entman, 1994, p.29-38). Thus, this pattern of negativity and criminality may result in the further creation of stereotypes of African Americans being violent and dangerous. "Race-of-victim bias in the death penalty has been a continual problem. In a study done by Gilliam and Lynger on long-term media exposure, it was found that "among white participants, exposure to any type of crime on television was associated with higher levels of racism." (Gilliam, 2000, p. 565). Similarly, a survey of White respondents showed that "racism was positively associated with viewing or enjoyment of reality-based police shows" (Oliver, 2003, p. 11).

In terms of racial threat, past literature has shown that the threat of larger minority populations is greater where Black existence is more substantial (Quillian, 1995, 1996; Taylor, 1998, p. 717-767). One study by Liska, Lawrence, and Sanchirico (1982) found that Black presence leads to an increased fear of crime. It would appear that the death penalty being legal is more likely in states with

the most Black residents (Oliver, 2002, p. 137-156).

"Findings that public support for capital punishment is associated with black presence and racial prejudice, also suggest that the number of death sentences will be greater in states with more blacks" (Jacobs, Carmichael, & Kent 2005, p. 670).

Attempts to further understand the impact of stereotypical portrayals of African-Americans on television and in the news on the attitudes of those individuals who view these images has become strikingly more important. Stereotypical depictions of African Americans serve as a foundation for the perpetuation of racism and inequality. Therefore, when images of African-Americans are over represented, inaccurate, or stereotypical, it becomes clear that racist notions will continue to be perpetuated, and create greater social distance between Blacks and the rest of society.

A study concerning the interpretation of portrayals of Black Americans found that the media, especially news, "not only reflects existing stereotypes of African Americans as dangerous and criminal, but also serves to reinforce stereotyping in ways that can implicate essentially any

Black person as potentially threatening or violent" (Oliver & Fonash, 2002, p.137-156)

In addition, the effects of media exposure to criminal images of African Americans inherently affect the criminal justice system, especially when it comes to the death penalty. Many citizens then begin to fear the Black community and vote in a way that imposes harsher policies that distinctly affect Black people as well as pressure the prosecution to suggest the death penalty to those individuals who seem to reflect what is seen on television and in the media. "Individuals in the United States have report[ed] that the majority of the information that they receive comes from the media" (Russell, 1995, p. 22-31). Criminal images of African-Americans seen on television and in newspapers or magazines may serve as an important catalyst that highly impacts the perceptions of viewers toward this group, given that most Americans rely on the media to receive information.

The evidence suggests that the victim's race determines who gets the death penalty. The arbitrary assignment of Blacks to the death penalty suggests that certain races have more value to society than others and shows that our society continues to harbor serious racial

issues that flow throughout the criminal justice system. In addition, a large amount of individuals in our society rely on television as their main source of knowledge of critical social issues. The images that are depicted to viewers are imperative in the perception of other races, which helps form opinions and perceptions about Blacks and the value of a Black life. Lastly, these negative images of the Black community throughout the media portray Blacks to be a particularly deviant and violent sub-group, thus others fear that they will become victim at the hands of a "dangerous and criminal" Black man. Overall, racism is at the root of the use of the death penalty and, if we look at Table 2, it can be seen in terms of the racial comparison of homicide victims in death penalty cases.

**Table 2. Racial Comparison of Homicide Victims and Capital
Case Victims**

(FBI data and NAACP Legal Education Fund)

Theory

Minority Threat Theory

As expressed in earlier portions of this paper, the threat of large minority populations perpetuated by the violent portrayals of the Black community increases death sentencing for Black criminals. "Racial threat explanations imply that this sanction will be imposed more often in jurisdictions with larger minority populations, but some scholars suggest that a tradition of vigilante violence leads to increased death sentences" (Jacobs, Carmichael, & Kent 2005, p. 665).

Labeling Theory

The death penalty and its impact on the Black community illustrates how individuals from non-Black communities can label Black people as criminal and dangerous based on what they see in the news and on television and film. This type of deviant labeling breeds and strengthens White supremacist groups and attitudes. The goal of White supremacy is to have social control over Blacks by creating a systematic social privileging on the basis of race, while maintaining the notion that Blacks

should be subordinate to Whites. When this White Supremacy attitude is used in the criminal justice system, propaganda such as a war on drugs in Black populations and "tough" sentencing policies which affect Blacks who are living in low-income urban areas, it is at the expense of Black lives.

In addition, judges and prosecutors may also begin to label Black people in this manner, which would further increase the prison populations and increase death sentences for this group. The labeling theory hypothesizes that "the labels applied to individuals influence their behavior, particularly the application of negative or stigmatizing labels (such as "criminal" or "felon") promote deviant behavior, becoming a self-fulfilling prophecy, i.e. an individual who is labeled has little choice but to conform to the essential meaning of that judgment" (Mastro, 2000, p. 385). Because of this, the Black community may also begin to label themselves the way they are portrayed by the media and the criminal justice system. This serves to be a very serious problem because it promotes a long-term cycle of inequality and separation between groups of people. The Black community suffers from historical racism and as members of our society, they should also be

guaranteed the same rights as every other member of society. "Related prevention policies include client empowerment schemes, mediation and conciliation, victim-offender forgiveness ceremonies, restitution, reparation, and alternatives to prison programs involving diversion. Labeling theory has been accused of promoting impractical policy implications, and criticized for failing to explain society's most serious offences" (Mastro, 2000, p. 389).

Rational Choice Theory

According to Rational Choice Theory, Cornish and Clarke describe crime as an event that occurs when an offender decides to risk breaking the law after considering his or her own need for money, personal values or learning experiences and how well a target is protected, how affluent the neighborhood is or how efficient the local police are. In addition, it is proposed that the failure of families, in this case the Black community, expands the realm of relationships no longer controlled by the community, and undermines governmental controls. This leads to persistent "systematic" crime and delinquency (Cornish, 1986, p. 10). With respect to the death penalty, or rather ending up in the criminal justice system in general, it can

be seen that a lack of support by the justice system as well as inaccurate portrayals of the Black community in the media does not serve as a viable means for youth to pursue a life without criminal activity. This is directly tied back into the labeling theory as discussed above. In this sense, as more and more ill-educated youth flood the streets with no future and no way out of a life of poor education and poverty, they lean toward violent crime to empower them and gain benefits such as money, drugs, respect, and power.

Analysis

According to the Census and Bureau of Justice Statistics (Table 3), Blacks comprise 13 percent of the total US population, but make up 44 percent of all US prisoners, and 42 percent of all of those under the death sentence. When looking at these statistics, Blacks are overrepresented as prisoners and as those who have been sentenced to death in the United States.

Historical racism and social domination has been an ongoing struggle for the Black community to deal with. The History of the United States has been filled with the mass murdering of Blacks, known as "lynching." Lynching is a mob-sponsored hanging execution of people, used as a terrorist act of murder to instill social domination over another group. "There have been close to 3000 documented Black victims of lynching since 1882" (Tolnay & Beck, 1992, p. 201-210). According to Stewart Tolnay, Blacks were usually lynched for alleged crimes of improper dealings with a White woman, arguing with a White man, insulting a White man, courting White women, testifying against a White man, living with a White woman, eloping with a White woman, entering a White woman's room, frightening a White Woman, and trying to colonize Blacks. The use of lynching was

enacted when there was "any type of activity or behavior that contested the privileges of whites or threatened to hinder white dominations of the Black population" (Tolnay & Beck 1992, p. 201-210). This is very similar to the current day practices of the criminal justice system which uses a model of legal lynching, also known as capital punishment, which is more often used when the victim of murder is White.

The data on who receives the death penalty is very clear. Discrimination occurs on many levels throughout the criminal justice system and is present in the unambiguous use of the death penalty. Historically, Blacks have never been treated equally though due process of the law, and due process is not preserved in crimes whose victims are of non-White ethnicities.

When studying prosecutors who make the decisions about whether or not to use capital punishment, the "race of victim influence was found at all stages of the criminal justice process" and that "[t]he evidence for the race of victim influence was stronger for the earlier stages of the judicial process (e.g., prosecutorial decision to charge the defendant with a capital offense, decision to proceed to trial rather than plea bargain) than in later stages"

(GAO, 1990). White Prosecutors represent an overwhelming majority of the total prosecutors in the criminal justice system.

When looking at Table 4, observe that White district attorneys make up over 97.5 percent of the total district attorneys in the United States. According to former US Supreme Court Justice Harry A. Blackmun, "When a prosecutor is faced with a crime in his community, he often consults with the family of the victim as to whether the death penalty should be sought. If the victim's family is prominent, white, and likely to support him in his next election, there may be a greater willingness to expend the extensive financial resources and time which a death penalty prosecution will take" (DPIC, 1998).

In all cases, the families of victims are equally distraught and have suffered equal losses, yet only the White victim's cases seem to lead to the recommendation of the death penalty as a sufficient means of punishment. Also, the Black threat experienced by the White community based on celebrated cases, media depictions of Blacks, and race issues in general further leads to biased policy voting, which tends to be harsh toward the Black community and perpetuates racism.

Table 3. Racial Comparison of Death Penalty Sentences

(Census and Bureau of Justice Statistics, 2003 data)

Table 4. Race of District Attorneys in Death Penalty States
(DPIC, 2003)

State	White DAs	Black DAs	Hisp- anic DAs	State	White DAs	Black DAs	Hisp- anic DAs
Alabama	39	1	0	Nebraska	89	0	0
Arizona	15	0	1	Nevada	17	0	0
Arkansas	24	0	0	N. Hampshire	10	0	0
California	55	0	3	New Jersey	20	1	0
Colorado	21	0	1	New Mexico	9	0	5
Connecticut	12	0	0	New York	61	1	0
Delaware	3	0	0	N. Carolina	37	2	0
Florida	19	0	1	Ohio	87	1	0
Georgia	45	1	0	Oklahoma**	26	0	0
Idaho	44	0	0	Oregon	36	0	0
Illinois	102	0	0	Pennsylvania	67	0	0
Indiana	90	1	0	South Carolina	15	1	0
Kansas	104	1	0	South Dakota	66	0	0
Kentucky	56	0	0	Tennessee	31	0	0
Louisiana	39	1	0	Texas	137	0	11
Maryland	23	2	0	Utah	29	0	0
Mississippi	21	1	0	Virginia	113	8	0
Missouri	115	0	0	Washington	39	0	0
Montana**	56	0	0	Wyoming	22	0	0
				TOTAL	1794	22	22
					97.5%	1.2%	1.2%

Court Rulings

In 1976, three celebrated state supreme court rulings in Georgia (Gregg v. Georgia [428 U.S. 153]), Texas (Jurek v. Texas [428 U.S. 262]), and Florida (Proffitt v. Florida [428 U.S. 242]), became collectively referred to as the Gregg Decision. Despite a long history of controversy and milestone court decisions, like the Gregg Decision, regarding the constitutionality of the death penalty, the United States Supreme Court ruled that the death penalty itself was constitutional under the Eighth Amendment.

Following this decision, numerous studies and debates have targeted the issues surrounding capital punishment and its presence as a serious social problem in the United States. As in the Supreme Court case Coker v. Georgia (1977), where Erlich Anthony Coker, a Black man, was convicted of raping Elnita Carver, a White woman, and was sentenced to death on the rape charge after the jury concluded that aggravating circumstances were present to impose the death sentence. Coker appealed his case to the US Supreme Court on the basis that the State of Georgia violated his Eighth Amendment right. The holding from the case came to the conclusion that "the death sentence for the crime of rape was grossly disproportionate and

excessive, thus forbidden by his Eighth Amendment right as cruel and unusual punishment. The conclusion of this case resulted in the removal of 20 death row inmates, three of which were White and 17 which were Black" (www.findlaw.com).

In the Supreme Court case *McCleskey v. Kemp* (1987), a Black man in Georgia was convicted of armed robbery and murder, stemming from the murder of a White police officer during the robbery of the store. McCleskey was sentenced to the death penalty in the state of Georgia, but McCleskey sought habeas corpus in the Federal Court system. His claim was that the Georgia death penalty process was inherently racist and violated his Eighth and Fourteenth Amendments. Table 5 illustrates how McCleskey pointed to the Baldus study, which the court found to be a "valid statistical" study that looked at 1000 Georgia murders in the 1970's, and came to the conclusion "that the race of the victim played a significant role in deciding whether the death penalty was imposed, and the odds of a death sentence were four times higher for cases with white victims than with black victims."

Four of the Supreme Court justices agreed that the Baldus study was adequate to prove that Georgia's capital

punishment was unconstitutional. Justice Lewis Powell wrote "taken to its logical conclusion, [McCleskey] throws into serious question the principles that underlie our entire justice system" (US Supreme Court Center). In order to present a clearer picture about capital punishment and its effects on society as well as the effects on those currently awaiting their executions, one must address the issues of racial bias and the large racial disparities that exist in death sentencing.

Table 5. Race of Victims of Those Executed for Murder since the Resumption of Executions in 1977

(<http://www.supremecourtus.gov/>)

Conclusion

The Black community has suffered through a long history of discrimination and inequality, which can be aptly seen in the face of the death penalty.

The legal methods of execution parallel significant times of slavery for Blacks; the death penalty is a reassignment of the role of lynch mobs to government authority. The judiciary seeks to preserve a system of a preferred role, a role where Whites have risen to prominence within the system with ascribed status of lawyers and judges, and Blacks have descended to the ascribed status of criminal—a natural enemy of the system. Disposal of the enemy is sought by use of the death penalty.

In the analysis of the research question of why the death penalty is unevenly applied to Blacks more than any other group of people, the current use and application of the death penalty in the United States has a devastating impact on the Black community. The application of the death penalty in various cases has shown to be illogical and racist in cases where the victim is White and the accused is Black.

In addition, the Black community already suffers from many other forms of discrimination and unfair treatment. Issues of drug abuse, poverty, and single parent homes flood the African American community and as a result many of the members are left with few options and little hope.

In terms of capital punishment, the use of the death penalty further disconnects Black people from mainstream society in that they are shown that the lives of White people are valued more as those cases recommend the death penalty most often. The use of the death penalty is no more than a tool of White supremacy to legally justify the new-age lynching practices by the White power structure.

The lack of willingness of White America to confront the notion that race plays a direct responsibility in the determination of death is in itself an act of social distance, both to turn their backs on the plight of Blacks when dealing with the criminal justice system, and to further demonize Blacks. The criminal justice system is still upholding its old Constitutional Amendments by treating Blacks as three-fifths of a man as well as denying due process, moral rights, and either the rule of law or the procedure of democracy.

Blacks have been betrayed by democracy and the criminal justice system, further creating a massive amount of distrust of the criminal justice system. The racism that existed in the colonial era is alive and well today and is only a microcosm of the United States.

By sentencing Blacks to death, the criminal justice system has supported the notion of racial inferiority and White supremacy. The criminal justice system racist tactics are sustained by the 1857 Dred Scott opinion that Blacks have no rights which the White man is bound to respect.

This type of structured inequality and racism in American society is justified by our legal system, which has from its incorporation been anti-Black and pro-White. The legal system itself has acted as an agent for social control, ignoring Blacks' access to legitimate participation within social institutions.

The centralization of power that Whites in the media specifically label Blacks as criminal and deviant, therefore closing structural opportunities for Blacks while increasing the likelihood of incarceration and delinquency. Blacks have in turn internalized negative images disproportionately portrayed through the media and have negative subconscious misinterpretations about themselves

also leading to deviant behavior. By looking at how Blacks are over-represented in sentencing to capital punishment, it is easy, though social comparison, to see that the value of Black life is not equal to White life. Consequently, this furthers a White self-interest in the criminal justice system that classically conditions the attitudes of America to disregard Blacks.

In the end, "like the entire criminal justice system, the administration of the death penalty in America places a disproportionate burden on Blacks" (Ogletree, 2002, p. 20).

References

- Bardaglio, P. W. (1994, November). Rape and the law in the Old South: Calculated to excite indignation in every heart. *The Journal of Southern History*, 60(4), 749-772.
- Blackmun, H. A., Justice, dissenting from the Court's decision in *Callins v. Collins*, (1994). 114 Supreme Court. 1127, 1135.
- Callins v. Collins*, 114 Supreme Court. 1127, 1130 (1994) Blackmun, H.A., Justice, dissenting.
- Chamlin, M.B. & Cochran, J.K. (2005). Can information change public opinion?: Another test of the Marshall hypothesis. *Journal of Criminal Justice*, 33, 573-584.
- Coker v. Georgia* (433 U.S. 584 (1977))
- Cornish, D. & Clarke, R. (1986). Introduction. *The reasoning criminal*. New York: Springer-Verlag. 1-16.
- Davies, P. G., Purdie-Vaughns, V. J., & Johnson, S. L. (2006, May). Looking deathworthy: Perceived stereotypicality of black defendants predicts capital-sentencing outcomes. *Psychological Science*, 17 (5), 383-386.
- The death penalty - American attitudes. (2001, November 1). *American Demographics*.
- Death Penalty Information Center (1998). The death penalty in black and white: Who lives, who dies, who decides.
- Drummond, W. J. (1991). Blacks and the news media. *Wilson Quarterly*, 15(1), 123-126.
- Entman, R. M. (1992). Blacks in the news: Television, modern racism, and cultural change. *Journalism Quarterly*, 69, 341-361.
- Entman, R. M. (1994). African Americans according to TV news. *Media Studies Journal*, 8(3), 29-38.

- Entman, R. M. (2000). Race and the media: A decade of research. *Humanity relations task force*.
- Fitzgerald, M. (1997). Media perpetuate a myth. *Editor & Publisher*, 130(33), 13.
- Gilens, M. (1996). Race and poverty in America. *Public Opinion Quarterly*, 60(4), 515-542.
- Gilliam, F.D. & Lygner, S. (2000). Prime suspects: The influence of local television news on the viewing public. *American Journal of Political Science*, 41, 560-573.
- Grand Rapids, MI TV news data table accessed (n.d.) from http://www.mediamouse.org/griid/report-2000profiling.php#content_analysis
- Gregg Decision* (1976). United States Supreme Court Ruling, Gregg v. Georgia (428 U.S. 153), Jurek v. Texas (428 U.S. 262), Proffitt v. Florida (428 U.S. 242). Retrieved from U.S. Supreme Court website October 25, 2006. <http://www.supremecourtus.gov/>
- Hacker, A. (1988). Developments in the Law—Race and the Criminal Process. *Harvard Law Review*, 1472, 1494-98.
- Hagan, J. (1974). Extra-legal attributes and criminal sentencing: An assessment of a sociological viewpoint. *Law and Society Review*, 8, 357-383.
- The impact of legally inappropriate factors on death sentencing for California homicides, 1990-99. (2006) *Santa Clara Law Review*, 46, 1-47.
- Innocence and the death penalty*. (2003). Retrieved October 26, 2006 from Death Penalty Information Center website. <http://www.deathpenaltyinfo.org/innoc.html>
- Jackson, J. (1996). *Legal lynching: Racism, injustice and the death penalty*. New York: Marlowe.

- Jamieson, K. H. (1992). *Dirty politics: Deception, distraction, and democracy*. New York: Oxford University Press.
- Johnson, G.B. (1970). The Negro and crime. *The sociology of crime and delinquency*. 2nd ed. Eds M.E. Wolfgang, L. Savitz, & N. Johnston. New York: John Wiley.
- Liska, A. E., Lawrence, J. J. & Sanchirico, A. (1982). Fear of crime as a social fact. *Social Forces* 60, 760-71.
- Mastro, D.E., & Robinson, A.L. (2000). Cops and crooks: Images of minorities on primetime television. *Journal of Criminal Justice*, 28, 385-396.
- McCleskey v. Kemp (481 U.S. 279 (1987)) Retrieved October 25, 2006, from <http://www.supremecourtus.gov/>
- Ogletree, C.J. (2002). *Oregon Law Review* 81(15), 1-25.
- Ogletree, C.J. (n.d.) From lynch mobs to the killing state: Race and the death penalty in America. *The Charles Hamilton Houston Institute Series on Race and Justice*.
- Oliver, M. B. (1999). Caucasian viewers' memory of black and white criminal suspects in the news. *Journal of Communication*, 49(3), 46-60.
- Oliver, M. B. (2003). African American men as "criminal and dangerous": Implications of media portrayals of crime on the "criminalization" of African American men. *Journal of African American Studies*, 7(2), 3-18.
- Oliver, M. B., & Fonash, D. (2002). Race and crime in the news: Whites' identification and misidentification of violent and nonviolent criminal suspects. *Media Psychology*, 4, 137-156.
- Quillian, L. & Pager, D. (2002). Black neighbors, higher crime? The role of racial stereotypes in evaluations of neighborhood crime. *American Journal of Sociology* 107, 717-67.

- Russell, C. (1995). True Crime. *American Demographics*, 17, 22-31.
- Tolnay, S & Beck, E.M. (1992). *A festival of violence: An analysis of Southern lynchings, 1882-1930*. Urbana and Chicago: University of Illinois Press.
- Unnever, J.D. & Cullen, F.T. (2007). Reassessing the racial divide in support for capital punishment: The continuing significance of race. *Journal of Research in Crime and Delinquency*, 44(1), 124-158.
- U.S. Department of Justice, Office of justice programs, Bureau of Justice statistics. <http://www.ojp.usdoj.gov>
- U.S. General Accounting Office (1990). Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities.
- Weisberg, J. (1991). This is Your Death. *The New Republic* (1), 23-24. Retrieved October 26, 2006, from <http://www.deathpenaltyinfo.org/innoc.html>
- Young, R. (1991). Race, conceptions of crime and justice, and support for the death penalty. *Soc Psychol Q*, 54.

Bibliography

- Acker, J. R., Bohm, R. M., & Lanier, C. S. (Eds.). *Is capital punishment an effective deterrent for murder? An examination of the social science research.* (1998). America's Experiment with Capital Punishment: Reflections on the Past, Present, and Future of the Ultimate Sanction. Durham: Carolina Academic Press. 157-82.
- Anderson, S.E. & Media, T. (Ed.). (1996). *In defense of mumia.* Writers and Readers Publishing.
- The Autobiography of Malcolm X,* (1964). New York: Ballantine Books/Random House.
- Bailey, W. C. (1983). Disaggregation in deterrence and death penalty research: The case of murder in Chicago. *Journal of Criminal Law and Criminology*, 74, 827-59.
- Bailey, W. C. & Peterson, R. D. (1987). *Police killings and capital punishment: The post-Furman period.* *Criminology*, 25, 1-25.
- Baldus, D. C. and Cole, J. W. L. (1975). A comparison of the work of Thorsten Sellin and Isaac Ehrlich on the deterrent effect of capital punishment. *Yale Law Journal*, 85, 170-86.
- Bandelet, A. (2000). *The prisoner's wife: A memoir.* Pocket Books.
- Bedau, H. A. (1967). *The death penalty in America* (Rev. ed.). New York: Doubleday.
- Black prison movements. (1995, 1987). *The NOBO Journal of African American Dialogue*, II(I). Africa World Press.
- Bowers, W. J. & Pierce, G. (1975). The illusion of deterrence in Isaac Ehrlich's research on capital punishment. *Yale Law Journal*, 85, 187-208.

- Burton-Rose, D.; Pens, D. & Wright, P. (Eds.). (1998). *The celling of America: An inside look at the U.S. prison industry*. Monroe: Common Courage Press.
- Cabana, D. A. (1996). *Death at midnight: The confession of an executioner*. Boston: Northeastern University Press.
- Cardarelli, A. P. (1968). An analysis of police killed in criminal action: 1961-1963. *Journal of Criminal Law, Criminology and Police Science*, 59, 447-53.
- Chamlin, M. B., Grasmick, H. G., Bursik, R. J. Jr., & Cochran, J. K. (1992). Time aggregation and time lag in macro-level deterrence research. *Criminology*, 30, 377-95.
- Cheatwood, D. (1993). Capital punishment and the deterrence of violent crime in comparable counties. *Criminal Justice Review*, 18, 165-79.
- Chomsky, N. (1989). *Necessary illusions of thought control in democratic societies*. Boston: South End Press.
- Cochran, J. K., Chamlin, M. B., & Seth, M. (1994). Deterrence or brutalization? An assessment of Oklahoma's return to capital punishment. *Criminology*, 32, 107-34.
- Cohen, S. (1988). *Visions of social control*. London School of Economics and Political Science.
- Criminal resistance and the prison-industrial complex: A special issue of the Journal Social Justice*. (2003). Critical Resistance Publications Collective, (Eds.).
- Currie, E. (1998). *Crime and punishment in America*. Henry Holt and Company/Owl Books.
- Davis, A. (2003). *Are prisons obsolete? Seven Stories Press*.

- The death penalty in America: Current controversies.*
(1997). New York: Oxford University Press.
- Decker, S. H. & Kohfeld, C. W. (1984). A deterrence study of the death penalty in Illinois, 1933-1980. *Journal of Criminal Justice*, 12, 367-77.
- Decker, S. H. & Kohfeld, C. W. (1990). The deterrent effect of capital punishment in the five most active execution states: A time series analysis. *Criminal Justice Review*, 15, 173-91.
- DeFronzo, J. (1997). Welfare and homicide. *Journal of Research in Crime & Delinquency*, 34, 395-406.
- Deterrence or brutalization: What is the effect of executions? (1980). *Crime & Delinquency*, 26, 453-84.
- Donziger, S. R. (Ed.). (1996). *The real war on crime: The report of the National Criminal Justice Commission.* Harper Perennial.
- Drew, R. (1998). *Looking into the eyes of a killer: A psychiatrist's journey through the murderer's world.* New York: Plenum Press.
- Dyer, J. (1999). *The perpetual prisoner machine: How America profits from crime.* Westview Press.
- Ehrlich, I. (1975). The deterrent effect of capital punishment: A question of life and death. *American Economic Review*, 65, 397-417.
- Felony murder and capital punishment: An examination of the deterrence question. (1991). *Criminology*, 29, 367-95.
- Forst, B. (1977). The deterrent effect of capital punishment: A cross-tabular analysis of the 1960's. *Minnesota Law Review*, 61, 743-67.
- Frazier, M. B. (1995). *From behind the wall: Commentary on crime, punishment, race, and the underclass by a prison inmate.* New York: Paragon House.

- Furman v. Georgia. (1972). 408 U.S. 238.
- Gilmore, M. (1994). *Shot in the heart*. New York: Doubleday.
- Gray, I. & Stanley, M. (1989). *A punishment in search of a crime*. Amnesty International USA. Avon Books.
- Greenberg, D.F. (Ed.). (1993). *Crime and capitalism: Readings in marxist criminology*. Temple University Press.
- Haines, H. H. (1996). *Against capital punishment: The anti-death penalty movement in America, 1972-1994*. Oxford University Press.
- Harris, A. J. (1995). *Until proven innocent: A true story of murder, honor, and justice*. New York: Avon Books.
- Hill & Wang. (1971). *Struggle for justice: A report on crime and punishment in America*. American Friends Service Committee.
- Instead of prisons: Prison research education action project*. (1986). Prison Research Education Action (Eds.). Safer Society Press.
- Jamal, M. A. (n.d.) *Live from death row*. Robertsbridge, East Sussex: Plough Publishing.
- Jamal, M. A. (1996). *Live from death row*. Avon Paperbacks.
- Jamal, M. A., Hanrahan, N. (Ed.). (2000). *All things censored*. Seven Stories Press.
- Klein, L. R., Forst, B., & Filatov, V. (1978). The deterrent effect of capital punishment: An assessment of estimates. In Blumstein, A., Cohen, J., & Nagin, D. (Eds.) *Deterrence and incapacitation: Estimating the effects of criminal sanctions on crime rates*, Washington, DC (pp. 331-60). National Academy of Sciences.

- Kruse, K. (2006, May). From the grassroots to the Supreme Court: Brown v. Board of Education and American democracy. *Journal of Southern History*, 72(2).
- Land, K. C., McCall, L., & Cohen, L. E. (1990). Structural covariates of homicide rates: Are there any invariances across time and social space? *American Journal of Sociology*, 95, 922-63.
- The machinery of death: A shocking indictment of capital punishment in the United States. (1995). Amnesty International U.S.A.
- Marquart, J. W., Ekland-Olson, S. & Sorensen, J. R. (1994). *The rope, the chair, and the needle: Capital punishment in Texas, 1923-1990*. Austin: University of Texas Press.
- Marx, K., Engels, F. (1848). The Communist manifesto. *American Sociological Review*
- Mauer, M. (1999). *Race to incarcerate*. The Sentencing Project. The New Press.
- Maxfield, M. G. (1989). Circumstances in supplemental homicide reports: Variety and validity. *Criminology*, 27, 671-95.
- McChesney, R. (2004). The problem of the media: U.S. communication politics in the 21st century. New York: Monthly Review Press.
- Mead, H. G. (1934). (1934). *Mind, self, and society*. Chicago: University of Chicago Press.
- Merton, R. K. (1938). Social structure and anomie. *American Sociological Review*.
- Messerschmidt, J. (1983). *The trial of Leonard Peltier*. South End Press.

- Miller, J. G. (1996). *Search and destroy: African-American males in the criminal justice system*. Cambridge University Press.
- Nelson, Jill & Norton, W.W. (2000). *Police brutality: An anthology*.
- Newey, Whitley & West, K. D. (1987). A simple, positive, semi-definite, heteroskedasticity and autocorrelation consistent covariance matrix. *Econometrica*, 55, 703-8.
- Oshinsky, D. M. (1996). *Worse than slavery: Parchman Farm and the ordeal of Jim Crow justice*. The Free Press.
- Parenti, C. (1999). *Lockdown America: Police and prisons in the age of crisis*. Verso Books.
- Passell, P. (1975). The deterrent effect of the death penalty: A statistical test. *Stanford Law Review*, 28, 61-80.
- Peltier, L. (1999). *Prison writing: My life is my sundance*. St. Martin's Press.
- Peterson, R. D. & Bailey, W. C. (1988). Murder and Capital Punishment in the Evolving Context of the Post-Furman Era. *Social Forces*, 66, 774-807.
- Prison conditions in the United States. (1991) *Human Rights Watch*, New York, Amnesty International, ed.: *When the state kills...*(1989) London: Amnesty International Publications.
- Radelet, M. L., Bedau, H. A., & Putnam, C. E. (1992). *In spite of innocence: The ordeal of 400 Americans wrongly convicted of crimes punishable by death*. Northeastern University Press.
- Reiman, J. (1996). *... And the poor get prison: Economic bias in American criminal justice*. Boston: Allyn & Bacon.

- Riedel, M., Zahn, M. A., & Mock, L. (1985). *The nature and pattern of American homicide*. Washington, DC: Government Printing Office.
- Rosenblatt, E. (Ed.). (1996). *Criminal injustice: Confronting the prison crisis*. South End Press.
- Schabas, W. A. (1997). *The abolition of the death penalty in international law*. Cambridge University Press.
- Schaefer, R. (2002). *Racial and Ethnic Groups* (Eighth Edition). Upper Saddle River: Prentice Hall.
- Schuessler, K. F. (1952). The deterrent effect of the death penalty. *The Annals of the American Academy of Political and Social Science*, 284, 54-62.
- Sellin, T. (1967). *Capital punishment*. New York: Harper & Row.
- Sellin, T. (1980). *The penalty of death*. Beverly Hills: Sage.
- Shakur, A. (1987). *Assata: An autobiography*. Chicago: Lawrence Hill & Co.
- StataCorp. (1997). *Stata Statistical Software* (Release 5.0) [Computer software]. College Station, TX: Author.
- Sutherland, E. H. (1925). Murder and the death penalty. *Journal of Criminal Law and Criminology*, 15, 522-9.
- Sutherland, E. H. (1947). *Principles of criminology*. 4th ed. Philadelphia: J.B. Lippincott.
- Taylor, I., Walton P. & Young, J. (1973). *The New Criminology*. London: Routledge and Kegan Paul.
- Thompson, E. (1997). Deterrence versus brutalization: The case of Arizona. *Homicide Studies*, 1, 110-28.
- Thurston, L. M. (Ed.). (1993). *A call to action: An analysis and overview of the United States criminal justice system, with recommendations, from the*

- National Commission on Crime and Justice*. Chicago: Third World Press.
- Tonry, M. (1995). *Malign neglect: Race, crime and punishment in America*. Oxford University Press.
- Trombley, S. (1992). *The execution protocol: Inside America's capital punishment industry*. New York: Crown Publishers.
- Unnever, J. D. & Cullen, F. T. (2005). Executing the innocent and support for capital punishment: Implications for public policy. *Criminology & Public Policy*, 4(1), 3-38.
- Van den Haag, E. (1975). Why capital punishment? *Albany Law Review*, 54, 501-14.
- Whitman, C., & Zimmerman, J. (Eds.). (1997). *Frontiers of justice, Vol. 1: The death penalty*. Brunswick: Biddle Publishing Company.
- Williams, E. (1993). *Inadmissible evidence: The story of the African-American trial lawyer who defended the Black Liberation Army*. Chicago: Lawrence Hill Books.
- Wilmore, G. (Ed.). (1990). *Black men in prison: The response of the African American church*. Atlanta: The Interdenominational Theological Center Press.
- Wimsatt, W. U. (1999). No more prisons. *Soft Skull Press*.
www.softskull.com, www.nomoreprisons.net

Videos

Burden of Innocence [*PBS Frontline*]. 53 mins.

Juvenile offenders in their own words. (2000, January 9).
[*CNN & Time*].

Lockdown U.S.A. (Deep Dish TV, 38 minutes)

Locked inside a nightmare. (1999). *60 Minutes II*. New York:
Central Broadcasting Service.

Mumia Abu Jamal: A Case for Reasonable Doubt. (1996).