

Zsuzsanna Dóra Kukla¹

Racial disparities in the application of the death penalty in the United States of America

Foreword

This essay explores the relationship between race, racism and the application of the death penalty in the United States of America. The points of argument mainly will be based on a number of studies, reports and polls, thus using numerical data, facts to showcase the wrongful existence of racial biases in the legal system of the USA. There will be discussed the discriminatory pre-sentence practices as well, that lead up to the death sentence itself. Specific cases also will be introduced, that prove, that the racially biased legal system leads to verdicts, which do not represent equality and justice as it should.

Introduction

Capital punishment has a long history, the diverse political, geographical, social and cultural aspects in different countries have varied its form and use throughout the centuries. The first established death penalty laws date back to the Eighteenth Century B.C. in the Code of King Hammurabi of Babylon. The death penalty was also part of the Seventh Century B.C.'s Draconian Code of Athens, and in the Fifth Century B.C.'s Roman Law of the Twelve Tablets². As we can see death as a mean of punishment have occurred at a very early stage of human history and in several countries it still remains in use.

Right now in the world out of the one hundred ninety-five independent states there are fifty-six that retain death penalty in both law and practice. Twenty-nine states have abolished it in practice, they have executed nobody during the last decade or more and are believed to have a policy or established practice of not carrying out executions. Seven have abolished it in practice, namely that they have executed nobody during the last fourteen or more years and have abolished it by law, but retain it for exceptional or special circumstances such as crimes committed in wartime. One-hundred-six have abolished it for all crimes.³ In this essay the use of capital punishment in any other countries than the United States of America is not going to be further discussed.

The USA's law system

The United States of America is one of the countries that have retained capital punishment. America's law system and use of the death penalty was influenced by Britain more than any other country. When European settlers came to the new world, they brought the practice of capital punishment. The first recorded execution in the new colonies was in 1608. Laws regarding the death penalty varied from colony to colony⁴.

The USA's system is a "common law" system, which is often referred to as 'judge-made' law, which focuses on unwritten laws based on legal precedents established by the courts. During a trial, the court refers to previous cases in order to make their decisions.

¹ Joghallgató, SZTE Állam- és Jogtudományi Kar.

² Death penalty information center, Early history of the death penalty <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>

³ Death penalty information center, Abolitionist and Retentionist Countries <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries>, <https://www.deathpenaltyworldwide.org/>

⁴ Death Penalty Information Center, Early death penalty laws <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>

The presumption of innocence is a fundamental principle of the common law, which means that the defendant is innocent until proven guilty. However, there are a multitude of cases, where that standard does not seem to apply, especially in cases concerning African Americans, Hispanics or persons belonging to other minorities. The USA accepted the Universal Declaration of Human Rights⁵ and the International Convention on the Elimination of All Forms of Racial Discrimination⁶. As written in the tenth article of Universal Declaration of Human Rights: “*The hallmarks of a fair trial include the right to be present in court; to have a speedy public trial before an independent and impartial court; and to have a lawyer of one’s choice, or one provided at no cost. Also fundamental is the right to be presumed innocent until proven guilty, and the right not to be compelled to testify against yourself.*”⁷ Therefore, the American criminal law is supposed to provide the right to a fair trial as a fundamental principle.

The Equal Protection Clause of the Fourteenth Amendment of the Constitution also guarantees all individuals equality before the law⁸. Even so disparate treatment of minorities begins at the very first stage of the criminal justice system: the investigation of suspected criminal activity by law enforcement officials. Innocent minority citizens are detained by the police on the street and in their cars far more than whites. Those stops involve inconvenience, humiliation and a loss of privacy, in some extreme cases officers may cause the death of the suspect and may not face punishment⁹. A significant portion of such disparity may be attributed to implicit racial bias, the unconscious associations humans make about racial groups. Implicit biases or also referred to as stereotypes are activated when individuals must make fast decisions with imperfect information; biases - regardless of their accuracy – “fill in” missing information and allow individuals to make decisions in the limited time allowed. In such situations the vast majority of Americans of all races implicitly associate black Americans with adjectives such as “dangerous,” “aggressive,” “violent,” and “criminal.” Since the nature of law enforcement frequently requires police officers to make snap judgments about the danger posed by suspects and the criminal nature of their activity, subconscious racial associations influence the way officers perform their jobs.¹⁰

Unequal treatment of minorities characterizes every stage of the process. Black and Hispanic Americans, and other minority groups as well are victimized by unfair treatment by police and other frontline law enforcement officials; by racially skewed charging and plea bargaining decisions of prosecutors¹¹; by discriminatory sentencing practices; and by failure

⁵ Article 7: Right to Equality Before the Law, Article 8: Right to Remedy, Article 9: Freedom from Arbitrary Detention, Article 10: Right to a Fair Trial, Article 11: Presumption of Innocence and International Crimes

⁶ International Convention on The Elimination of All Forms of Racial Discrimination “Article 1: Definition of racial discrimination: any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin with the purpose or effect of impairing the enjoyment on equal footing of human rights. Affirmative action policies or measures are not to be deemed racial discrimination.” <https://www.coe.int/en/web/compass/148>

⁷ Universal Declaration of Human Rights, Article 10, Right to a fair trial <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23898&LangID=E>

⁸ „nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws”

⁹ For instance: George Floyd (2020), Rayshard Brooks(2020), Daniel Prude(2020), Breonna Taylor(2020), Atatiana Jefferson(2019), Aura Rosser(2014), Stephon Clark(2018), Botham Jean, Philando Castille(2016)

¹⁰ Report of The Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System, August 2013 <https://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>

¹¹ “*The racial disparity revealed by several studies of prosecutorial decisions suggests that implicit racial bias does in fact influence prosecutors’ decision-making. A study conducted shortly after the Supreme Court reauthorized the use of capital punishment in 1976 found that the probability of a black defendant being indicted for killing a white person was more than twice as high as that of a white defendant killing a black person. Furthermore, prosecutors were significantly more likely to upgrade cases to felony murder status in cases in which defendants were black rather than white.*” - Shadow Report to the United Nations on Racial Disparities in the United States Criminal Justice System, 2013 <https://www.sentencingproject.org/publications/shadow-report-to->

*of judges, elected officials and other criminal justice policy makers to redress the inequities that become more glaring every day.*¹²

These pre-sentence disparities that minorities face were shown in order to indicate some of the striking errors of the American legal system, and because the racial disparities in the application of the death penalty cannot be discussed without having at least a basic knowledge of the injustices of the pre-trial and trial practices preceding the actual death sentence, because an unfair (pre-)trial most possibly leads to an unfair sentence as well.

Death penalty

In the US Certain State courts, the Federal Government, and the U.S. Military have the right to sanction death penalty. At the Federal level, the Supreme Court presides over criminal cases. The Military Court can only pronounce the capital punishment in fourteen rare cases of murder and in times of war for desertion. The majority of the cases of death penalty come from State courts. The Constitution of the United States specifies the connections between the Federal and State institutions. In addition, every State has its own Constitution and its own Supreme Court that is empowered to interpret it. Therefore, each State has its own judiciary system and criminal law. Today out of the fifty states of the US there are twenty-eight¹³ in which death penalty is still in practice, and twenty-two¹⁴, that have already abolished it. There are also three¹⁵ death penalty states with gubernatorial moratoria.

The reason why one can be sentenced to death has varied over the years. All of the prisoners currently on death row and all of those executed in the modern era of the death penalty were convicted of murder. Historically, the death penalty was widely used for rape, particularly against black defendants with white victims. When the death penalty was reinstated in 1976, the Supreme Court left open the possibility of imposing the death penalty for offenses other than murder, such as rape or even armed robbery. Later on the Supreme Court declared that the death penalty could no longer be applied for any crime against an individual where no death occurred. However, many states allow all those who participated in a felony in which a death occurred to be charged with murder and possibly face the death penalty, even though they may not have directly killed anyone. The question of whether the death penalty might be used for crimes against the government, such as treason or espionage, remains unsettled¹⁶.

There are different methods of execution, that are used in the US, which include lethal injection, electrocution, lethal gas, hanging and firing squad, but in all states lethal injection is the primary method, because it is considered as the most 'humane' method, in comparison with the other ones. The Supreme Court has never found a method of execution to be unconstitutional, though some methods have been declared unconstitutional by state courts.

[the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/](#)

¹² Clarence M. Dunnaville, Jr., Unequal Justice Under the Law - Racial Inequities in the Justice System, Virginia Lawyer Magazine - December 2000 <https://www.vsb.org/docs/valawyeromagazine/dec00dunnaville.pdf>

¹³ Alabama, Arizona, Arkansas, California, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming

¹⁴ Alaska (1957), Colorado (2020), Connecticut (2012), Delaware (2016), Hawaii (1957), Illinois (2011), Iowa (1965), Maine (1887), Maryland (2013), Massachusetts (1984), Michigan (1847), Minnesota (1911), New Hampshire (2019), New Jersey (2007), New Mexico (2009), New York (2007), North Dakota (1973), Rhode Island (1984), Vermont (1972), Washington (2018), West Virginia (1965), Wisconsin (1853)

¹⁵ California (2019), Oregon (2011), Pennsylvania (2015)

¹⁶ Death Penalty Information Center, Crimes Punishable by death <https://deathpenaltyinfo.org/facts-and-research/crimes-punishable-by-death>

There have been 1526 executions carried out since 1977¹⁷. The number of executions has been the highest in the state of Texas, that means 570 deaths so far¹⁸.

Differences of the application of the death penalty between the four main regions of the USA

The percentage of executed people varies in the four main regions of the United States – South, Midwest, West, Northeast. South tends to be the region, where the most executions are carried out. Since 1976 81% of executions has occurred in the South, while in the Midwest it has been 12%, in the West 5% and in the Northeast 0,2%¹⁹.

The United States' historical background has a huge impact on these numbers, it implies that there is a link between the more widespread application of death sentence in the southern states and the fact that they were pro-slavery before the American Revolution. The states that once had the highest lynching rates now appear to use the death sentence most often. Death sentences are especially likely in states with the largest minority populations that also had a history of frequent vigilante violence. (Vigilantism, Current Racial Threat, and Death Sentences, 2005). There is a stricter application of death sentences in the south because of the so called 'racial threat theory'.²⁰ Larger black populations produce increased votes for anti-minority candidates, who often support harsh punishments.²¹

Considering the whole country, the percent of white citizens is 76,3% and people of colour make 23,7% of the population, out of which 13,4% includes African Americans.²² The South and Southwest of the United States hold most of the counties where Hispanic, black or indigenous people make up a majority of residents. The ten counties with the highest shares of black residents in 2018 were in Mississippi (seven counties) Alabama (two) and Virginia (one). In these ten counties, about seventy percent or more residents were black.²³ Therefore in these regions African Americans may face harsher punishment, than in other ones and will more likely be sentenced to death.

Factors affecting the death sentence

Once minority defendants are convicted, they are likely to be sentenced more harshly than white defendants convicted for similar crimes. Mainly two racial variables affect capital punishment sentencing: the race of the perpetrator and the race of the victim.

The United States General Accounting Office, Death Penalty Sentencing(1990) found that: *“In 82% of the studies [reviewed], race of the victim was found to influence the likelihood of*

¹⁷ The death penalty in the US was reinstated in 1976. There were no executions between 1967 and 1977.

¹⁸ Death Penalty Information Center, Executions Overview, September 03, 2020 <https://deathpenaltyinfo.org/executions/executions-overview>

¹⁹ Death Penalty Information Center, Executions by State and Region Since 1976 <https://deathpenaltyinfo.org/executions/executions-overview/number-of-executions-by-state-and-region-since-1976>

²⁰ „The term racial threat refers to how people react to those of a different race. More specifically, the racial threat hypothesis or racial threat theory proposes that a higher population of members of a minority race results in the dominant race imposing higher levels of social control on the subordinate race, which, according to this hypothesis, occurs as a result of the dominant race fearing the subordinate race's political, economic, or criminal threat.” https://en.wikipedia.org/wiki/Racial_threat Wikipedia, Racial Threat, April 1, 2020

²¹ David Jacobs, Jason T. Carmichael, Stephanie L. Kent, Vigilantism, Current Racial Threat, and Death Sentences, The American Sociological Review, August 1, 2005

²² <https://www.census.gov/quickfacts/fact/table/US/PST045219> United States Consensus Bureau, 2019

²³ Katherine Schaffer, In a rising number of U.S. counties, Hispanic and black Americans are the majority, November 20, 2019, Pew research center <https://www.pewresearch.org/fact-tank/2019/11/20/in-a-rising-number-of-u-s-counties-hispanic-and-black-americans-are-the-majority/>

being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks.”²⁴

The death sentence can also be affected by the race of the jurors and prosecutors. In capital cases, one juror can represent the difference between life and death. Black jurors are excused at a much higher rate than whites. Of jurors who say that either they or someone close to them had a bad experience with the police or the courts, prosecutors strike one-hundred percent of the blacks, but only thirty-nine percent of the whites. In the state of Texas there is a method, that is used to exclude the Black jurors – or to keep members of a certain religion, occupation or gender off a jury - often referred as “Texas shuffle”. The request for a jury shuffle can be made by either side prior to the commencement of voir dire. The purpose of the shuffle is to take all the jurors who have been seated, shuffle their names, and have them seated once again. After the use of strikes for cause and peremptory challenges, the jury will most likely be made up of roughly the first twenty-four to thirty-two seated jurors. These jurors make up the "strike zone" and one side may wish to shake up the panel so that a group more favourable to their case resides in these seats. There is only one jury shuffle allowed per case, so if one side is pleased with the original arrangement, but dislikes the panel after the shuffle, they have no way of remedying the situation aside from using their peremptory strikes and motions for cause strategically. This practice allows lawyers to discriminate almost without repercussion²⁵.

A 1998 examination of Chief District Attorneys in states with the death penalty found that nearly ninety-eight percent of the prosecutors are white, one percent are black, and one percent are Hispanic.²⁶ The percent of black defendants executed in the U.S. since 1976 is 33,9%, white defendants make up 55,9% , Latinos make up 8,5% and others 1,7%. This shows us that the second largest racial group being sentenced to death and executed is the group of African Americans. Although more white people are executed than black people, compared to the overall percent of black population in the U.S. the number of them being executed can be considered especially high.

The race of victims since 1976: black – 15,3%, white – 75,6%, Latinos: 6,9%, other: 2,2%.²⁷

A study *The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides* (1998) found that more than seventy-five percent of the murder victims in cases resulting in an execution were white, even though nationally only fifty percent of murder victims generally are white. The racial combination most likely to result in a death sentence is a black defendant with a nonblack victim, regardless of how severe the murder committed. Black-on-black crimes are less likely to receive a death sentence, followed by crimes by other defendants, regardless of the race of their victims. Few defendants of any race are likely to get the death penalty in a case involving defendants with no prior record and where the killing may have been accidental. But for the bulk of crimes which are in the mid-level of severity, blacks who kill non-blacks are more likely to receive the death penalty than blacks who kill blacks, and they have a death sentencing rate much larger than the rate for defendants of other races who commit similarly

²⁴ Death penalty information center, Executions by Race and Race of Victim 2020 <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>
United States General Accounting Office, Death Penalty Sentencing, February 1990

²⁵ Thinking about juries, The Texas jury shuffle: The dance of indirect discrimination? September 21, 2014 <http://juryclass.blogspot.com/2014/09/the-texas-jury-shuffle-dance-of.html>

²⁶ Capital Punishment in Context, Race and the death penalty, <https://capitalpunishmentincontext.org/issues/race>

²⁷ Death penalty information center, Executions by Race and Race of Victim 2020 <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>
NAACP Legal Defense and Educational Fund, Inc., Death row USA, April 1, 2020 <https://www.naacpldf.org/wp-content/uploads/DRUSASpring2020.pdf>

severe murders of black victims. In conclusion black defendants on average face a distinctly higher risk of receiving a death sentence than all other similarly situated defendants.²⁸

The U.S. Department of Justice found that while white victims account for approximately one-half of all murder victims, eighty percent of all Capital cases involve white victims. Furthermore, as of October 2002, twelve people have been executed where the defendant was white and the murder victim black, compared with one-hundred-seventy-eight black defendants executed for murders with white victims... the influence that the race of the victim has in determining potential capital cases. U.S. Attorneys recommended the death penalty in thirty-six percent of the cases with black defendants and non-black victims, but only recommended the death penalty in twenty percent of the cases with black defendants and black victims... the federal death penalty, like its application in the states, is used disproportionately against people of colour.²⁹

Specific cases affected by racial bias

Not only do law enforcement officials, judges, jurors and prosecutors mistreat and discriminate minorities - mainly African Americans – but the U.S' society as a whole does so, racism is strongly present in the American society. Racism is a system based on race that unfairly disadvantages some individuals and communities, and advantages others. Polls and studies repeatedly show that most Americans make assumptions about an individual's character based of their race and believe Black are "prone to violence". Because of this it seems like U.S. citizens developed a sort of racial fear concerning African Americans. This fear has led to extreme cases, when White citizens assumed, that their lives were threatened by people of colour and they ended up wrongfully killing or violently treating their African American peers, while if the "suspicious fellas" were White, no crime would have been committed. In these cases, most white "victims" state that they acted reasonably – acted on racial-fear – and base their arguments on the fact, that there are huge statistical differences between the crime rates of Blacks and non-Blacks. They insist on that they had known about those statistics and reasonably relied on them when deciding to act violently against Black people. In other cases, if they have previously been violated by a Black individual, they can base on their argument that their overreaction to the victim's race was reasonable in light of their earlier experiences. Defendants in self-defence cases often exploit the racial-fears of jurors in asserting the reasonableness of their fear of supposed assailants who are black. The acceptance of racially charged arguments of reasonableness in self-defence cases is significantly growing. This way several people get away with murder on a regular basis – who murder blacks are less likely to be sentenced to death.

To prove these points there will be shown a few such examples, when White people killed African Americans and did not face execution. Here I want to use Jody David Armour's (1997) words to sum up *The People v. Goetz* case, which happened in a New York subway: "*The defendant Bernhard Goetz successfully claimed that his shooting of four Black teenagers on a crowded subway after two of them smiled at him and "asked" for five dollars was justified as an act of self-defence. Goetz opened fire on the youths as soon as they "asked" for money, shooting some while they were retreating from the scene. He later confessed that he knew none of the youths had a gun. Goetz's defence attorney, Barry Slotnick played on the racial factor throughout the trial relentlessly characterizing the victims subhuman, stereotype-laden terms*

²⁸ Death penalty information center, *The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides*, June 04, 1998 - <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/the-death-penalty-in-black-and-white-who-lives-who-dies-who-decides>

²⁹ The U.S. Department of Justice (DOJ), *Race and the death penalty*, <https://www.aclu.org/other/race-and-death-penalty>

such as “savages”, “vultures”, “predators on society”. The tactic worked. Goetz was acquitted by a predominantly White jury.”³⁰

In Stephon Clarke’s case the twenty-two years old man was standing in his grandmother’s garden, when police officers noticed him and assuming that he was holding a gun, they shot him more than twenty times. Clarke was only holding a mobile-phone. The district attorney refused to file criminal charges.³¹

In Alton Sterling’s case, the thirty-two years old man was shot by officer Blane Salamoni, one of two officers who confronted him outside a shop. He was tasered and pinned to the ground before being shot six times. Salamoni was fired, the other officer involved was suspended for three days, no charges were filed.³²

In these cases, the killers were White, who murdered innocent Black people and none of them faced charges of murder. While in cases, generally speaking, when the killer is Black, who has killed a White person more likely faces charges of murder and eventually receives death sentence. These cases suggest that homicides with Black victims are treated less seriously than those with White victims. Blacks are treated particularly harshly for the murder of Whites. Executions for Black-on-White crime are common, while executions for White-on-Black crime are rare.³³

One of the most famous Black-On-White homicide cases is the McCleskey v. Kemp case. McCleskey was sentenced to death for his role in an armed robbery, which resulted in the murder of a police officer. He challenged his sentence on the ground that it was imposed because he was black. McCleskey provided statistical evidence that blacks disproportionately received death sentences - and therefore unconstitutionally - when the murder victim was white. *“The case brought the Court within one vote of potentially striking down capital punishment in the state—but instead affirmed a standard that civil-rights advocates have been fighting ever since. The Supreme Court’s decision in McCleskey protected criminal justice laws and policies from being challenged on the basis of racially disparate impact. The Court found no constitutional error in a system where African-Americans and whites were treated unequally... Ultimately, the McCleskey decision set the stage for more than twenty years of dramatically increasing racial disparities within the criminal justice system. McCleskey now acts as a substantial barrier to the elimination of racial inequalities in the criminal justice system, perpetuating an unfair racial imbalance that has come to define criminal justice in America.”* – writes the Legal Defense and Educational Fund Inc. (2020).³⁴

“McCleskey is the Dred Scott³⁵ decision of our time. It is a declaration that African-American life has no value which white men are bound to respect.” (Law professor Anthony Amsterdam.)³⁶

Scott Phillips and Justin Marceau in their study - The Harvard Civil Rights-Civil Liberties Law Review(2019) - evaluating about 2,500 cases between 1973 and June 2019, the study

³⁰ Jody David Armour, *Negrophobia and Reasonable Racism: The Hidden Costs of Being Black in America*, 1997 https://books.google.hu/books?hl=hu&lr=&id=L_4S4Q0XqYC&oi=fnd&pg=PP9&dq=black+racism+in+americ+a&ots=WIYZjBUqEc&sig=HfnTG0m8Ak_J131QZLeUrGbTut&redir_esc=y#v=onepage&q&f=false

³¹ Alia Chughtai, Christian Mugarura Mafigiri, Al Jazeera <https://interactive.aljazeera.com/aje/2020/know-their-names/index.html>

³² Alia Chughtai, Christian Mugarura Mafigiri, Al Jazeera <https://interactive.aljazeera.com/aje/2020/know-their-names/index.html>

³³ Amanda Grigg, Alisa Mastro, Frank R. Baumgartner, Blacks are much more likely to be executed for killing whites than whites who have killed blacks, February 7, 2015 <http://bit.ly/1vBzb2G>

³⁴ Legal Defense and Educational Fund, Inc., Case: Landmark: McCleskey V. Kemp, 2020 <https://www.naacpldf.org/case-issue/landmark-mccleskey-v-kemp/>

³⁵ „The United States Supreme Court decided 7–2 against Scott, finding that neither he nor any other person of African ancestry could claim citizenship in the United States” https://en.wikipedia.org/wiki/Dred_Scott

³⁶ Equal justice initiative, Study Reveals Racial Bias in Executions, 2019 <https://eji.org/news/study-reveals-racial-bias-in-executions/>

specifically found that 2.26% of the defendants who were convicted of killing a white victim were ultimately executed, compared to just 0.13% of the defendants convicted of killing a Black victim. The disparity they uncovered is substantial. But it is important to be clear about the nature of the disparity. It is simply not the case that defendants convicted of killing a white victim were executed on a regular basis. Rather, defendants convicted of killing a black victim were almost never executed. The disparity stems from comparing rare executions in cases with white victims to virtually non-existent executions in cases with black victims.³⁷

In 2010 forty-one percent of the death-row prisoners were Black, forty-two percent were White, fourteen percent were Hispanic and three percent belonged to other minorities. Right now in 2020 there are fifty-five death-row prisoners forty-five point five percent (twenty-five people) of them are Black, forty percent (twenty people) are White, twelve point seven percent (seven people) of them are Latinos and one point eight percent (one person) are Asians.

Thus racial discrimination is most obviously at the origin of such differences of application of death penalty.

Racism in the United States

Racism is the marginalization and/or oppression of people of colour based on a socially constructed racial hierarchy that privileges white people. It is natural that human beings use relatively simple categories to find their way in the complexities of social life, such simple categories include gender and race. Children, even babies have been shown to notice and sort people into categories on the basis of skin colour long before they are aware of the stigma that may be attached to particular groups and its members.³⁸ As a result of humans using categories to navigate their social worlds, is likely nearly impossible to avoid noticing basic social categories like race and gender. People, adults and children alike, tend to feel and act more positively toward those they consider to be like them. This means that they are likely to treat people from outside of their social circles less favourably. It is especially important that this basic process occurs automatically and quickly, therefore it is not the underlying issue. Rather racial categorization serves as a starting point that may lead to prejudice and discrimination, but this path to prejudice and discrimination is not automatic.³⁹ In the USA racism has posed a huge issue for a long time, race runs through the American psyche in deep ways, all rooted to slavery and white supremacy. In addition to enduring centuries of enslavement, exploitation and inequality, African Americans have long been the targets of racially charged physical violence. Many of the violent crimes against black people are committed by the police. Violence against black men and women at the hands of white authority is foundational to the United States, and highly influences its policing culture. Thus policing too plays a key role in maintaining structural inequalities between people of colour and white people.⁴⁰

³⁷ Scott Phillips, Justin Marceau, Whom the State Kills, *The Harvard Civil Rights-Civil Liberties Law Review*, University of Denver, August 22, 2019 <https://poseidon01.ssrn.com/delivery.php?ID=080024092024098109121097098115080110032078062093055026025124005112114067070023106113098018058015020038053119007110085076083102054075021079031078102078118089071026052008016026089080080099078067125095093020009001111088094076079022068076099097114002112&EXT=pdf>

³⁸ Nathalia Gjersoe, The conversation, How young children can develop racial biases – and what that means, March 20, 2018 <https://theconversation.com/how-young-children-can-develop-racial-biases-and-what-that-means-93150>

³⁹ Destiny Peery, The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations, Spring 2011 <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1070&context=njlsp>

⁴⁰ Bernadett R. Hadden, Willie Tolliver, Fabienne Snowden, Robyn Brown Manning, An authentic discourse: Recentering race and racism as factors that contribute to police violence against unarmed Black or African American men, *Journal of human behaviour in the social environment*, 2016 <http://www.detroitchamber.com/wp-content/uploads/2014/10/Recentering-Race-and-Racism.pdf>

In the case of the U.S. it is important to mention systemic racism, that has developed over the years of the existence of this country. Systematic racism is a combination of systems, institutions and factors that advantage white people and for people of colour, cause widespread harm and disadvantages in access and opportunity. It is grounded in the history of the U.S.’ laws and institutions which were created on a foundation of white supremacy; exists in the institutions and policies that advantage white people and disadvantage people of colour; and takes places in interpersonal communication and behaviour that maintains and supports systemic inequities and systemic racism.⁴¹ As a result of systematic racism can cases - as in the given examples above - of extreme inequality occur in several fields of law and mainly in the application of death penalty.

At this point it is inevitable to mention the application of “colour-blindness”. It is racist and unjust for decision-makers to make judgements based on race/colour. The colour-blind formalism – within it is understood that one does not choose one's race, but one should be conscious, or at least cautious, not to make race more than background cultural information - promotes the very discrimination it is supposed to prevent.⁴² This idea is widely used among the American courts and judges, however they have seemingly not fully considered whether colour-blindness actually leads to the racial equality it is intended to produce and support. Colour-blindness is problematic precisely because it offers a way to avoid addressing the exact social problem of discrimination. Majority group members may be motivated to take a colour-blind approach because it allows them to avoid acknowledging or remedying inequalities, while maintaining their relative advantages. Many argue that colour-consciousness would be a better way to treat this problem, because it avoids the problem of denial of discrimination. It prevents complete denial of the history and legacy of discrimination and its effects on those minority groups who have long suffered from its effects.⁴³

Perception of the application of the death penalty

Black and White Americans perceive the issue of the application of the death penalty differently, thus support for the death penalty has long been divided by race. In 2018 it was found that fifty-nine percent majority of Whites favoured the death penalty for those convicted of murder, compared with forty-seven percent of Hispanics and only thirty-six percent of Blacks.⁴⁴

In this year the moral acceptability of death penalty hit record low. That means fifty-four percent of Americans consider the death penalty to be morally acceptable and forty percent think it is morally wrong.⁴⁵

A 2010 poll by Lake Research Partners found that a clear majority of voters – sixty-one percent - would choose a punishment other than the death penalty for murder. Thirty-three percent preferred death penalty, thirty-nine percent voted for life without parole plus restitution,

⁴¹ ADL- Anti-Defamation League, Racism <https://www.adl.org/racism> , 2020

⁴² ADIA HARVEY WINGFIELD, Colour-Blindness Is Counterproductive, *The Atlantic*, September 13, 2015, ...it is no longer socially acceptable in many quarters to identify oneself as racist. Instead, many Americans purport not to see colour. However, their colour-blindness comes at a cost. By claiming that they do not see race, they also can avert their eyes from the ways in which well-meaning people engage in practices that reproduce neighbourhood and school segregation, rely on “soft skills” in ways that disadvantage racial minorities in the job market, and hoard opportunities in ways that reserve access to better jobs for white peers.” <https://www.theatlantic.com/politics/archive/2015/09/color-blindness-is-counterproductive/405037/>

⁴³ Destiny Peery, *The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations*, Spring 2011 <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1070&context=njls>

⁴⁴ Death penalty information center, National Polls and Studies, 2020 <https://deathpenaltyinfo.org/facts-and-research/public-opinion-polls/national-polls-and-studies>

⁴⁵ Death Penalty Information Center, Gallup Values & Beliefs Poll—Record-Low Percentage of Americans Now Find Death Penalty Morally Acceptable, 2020 <https://deathpenaltyinfo.org/facts-and-research/public-opinion-polls/national-polls-and-studies>

thirteen percent voted for life without parole, nine percent voted for life with parole and six percent had no opinion on the topic.⁴⁶

Public opinion can greatly affect the application of death penalty, some cases can even lead to public outrage, when society finds a trial or death sentence - or a not carried out execution - unfair.⁴⁷

It is important to what extent the proceedings are openly shown to the public. It is, clear that even where courts seek to impose secrecy, this frequently fails where there is considerable public interest in the story. Media reporting on crime-related cases frequently violates the presumption of innocence. Suspects are commonly presented as though they are guilty - particularly in attention-grabbing headlines - and reporting is often unbalanced against the suspect. Some groups of suspects - especially African Americans and other minorities - are more likely to bear these problems. It is clearly a huge problem, poorly researched topics are often shown in the media and press, thus spreading misinformation. Due to the important principle of media freedom, and the growing range of media outlets it cannot be prevented. It would make a huge change if only the journalists who have undergone training on these issues would be allowed to cover criminal proceedings. It would also be valuable to monitor press coverage and to use this to expose reporting that violates the presumption of innocence.

If people see an image of someone being arrested they are likely to think the person is guilty, the more severe the restraint used, the more likely this is. The press has a huge appetite for those kind of images, where suspects are shown in a manner public assume their guilt. These images are often humiliating and can threaten fair trials or cause irreversible damage to a suspects' ability to recover after the ordeal of being prosecuted - even if they are cleared of any wrongdoing.⁴⁸

Conclusion

Capital punishment is cruel and unusual. It is cruel because it is a relic of the earliest days of criminology, when slavery, branding, and other corporal punishments were commonplace. Like those barbaric practices, executions have no place in a civilized society. It is unusual because only the United States of all the western industrialized nations engages in this punishment. It deprives individuals of the opportunity to benefit from new evidence or new laws that might warrant the reversal of a conviction, or the setting aside of a death sentence. The death penalty violates the constitutional guarantee of equal protection. It is applied randomly – and most importantly discriminatorily. It is imposed disproportionately upon those whose victims are white, offenders who are people of colour, and on those who are poor and uneducated and concentrated in certain geographic regions of the country. For these reasons there are huge changes needed in the USA's legal system, which would provide people of colour equal treatment.

⁴⁶ Lake Research Partners, Support for Alternatives to the Death Penalty, 2010, <https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1601652961.pdf>

⁴⁷ George Floyd case, 2020, the public demanded the punishment of the violent police officer, who murdered George Floyd, it led to global protests and calls for police reform.

⁴⁸ Innocent until proven guilty? The presentation of suspects in criminal proceedings - About Fair Trials, 2014-2020 https://www.fairtrials.org/sites/default/files/publication_pdf/Fair-Trials-Innocent%20until-proven-guilty-The-presentation-of-suspects-in-criminal-proceedings_0.pdf

Bibliography

1. Death penalty information center, Early history of the death penalty <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>
2. Death penalty information center, Abolitionist and Retentionist Countries <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries>, <https://www.deathpenaltyworldwide.org/>
3. Death Penalty Information Center, Early death penalty laws <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>
4. Council of Europe, Compass: Manual for Human Rights Education with Young people, 2017 International Convention on The Elimination of All Forms of Racial Discrimination “Article 1: Definition of racial discrimination: any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin with the purpose or effect of impairing the enjoyment on equal footing of human rights. Affirmative action policies or measures are not to be deemed racial discrimination.” <https://www.coe.int/en/web/compass/148>
5. Universal Declaration of Human Rights, Article 10, Right to a fair trial <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23898&LangID=E>
6. Report of The Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System, August 2013 <https://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>
7. Clarence M. Dunnaville, Jr., Unequal Justice Under the Law - Racial Inequities in the Justice System, Virginia Lawyer Magazine - December 2000 <https://www.vsb.org/docs/valawyeromagazine/dec00dunnaville.pdf>
8. Death Penalty Information Center, Crimes Punishable by death <https://deathpenaltyinfo.org/facts-and-research/crimes-punishable-by-death>
9. Death Penalty Information Center, Executions Overview, September 03, 2020 <https://deathpenaltyinfo.org/executions/executions-overview>
10. Death Penalty Information Center, Executions by State and Region Since 1976 <https://deathpenaltyinfo.org/executions/executions-overview/number-of-executions-by-state-and-region-since-1976>
11. Wikipedia, Racial threat, April 1, 2020 „*The term racial threat refers to how people react to those of a different race. More specifically, the racial threat hypothesis or racial threat theory proposes that a higher population of members of a minority race results in the dominant race imposing higher levels of social control on the subordinate race, which, according to this hypothesis, occurs as a result of the dominant race fearing the subordinate race's political, economic, or criminal threat.*” https://en.wikipedia.org/wiki/Racial_threat
12. David Jacobs, Jason T. Carmichael, Stephanie L. Kent, Vigilantism, Current Racial Threat, and Death Sentences, The American Sociological Review, August 1, 2005
13. United States Census Bureau, 2019 <https://www.census.gov/quickfacts/fact/table/US/PST045219>
14. Katherine Schaffer, In a rising number of U.S. counties, Hispanic and black Americans are the majority, November 20, 2019, Pew research center <https://www.pewresearch.org/fact-tank/2019/11/20/in-a-rising-number-of-u-s-counties-hispanic-and-black-americans-are-the-majority/>
15. Death penalty information center, Executions by Race and Race of Victim 2020 <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>

16. United States General Accounting Office, Death Penalty Sentencing, February 1990
17. Capital Punishment in Context, Race and the death penalty, <https://capitalpunishmentincontext.org/issues/race>
18. Death penalty information center, Executions by Race and Race of Victim 2020 <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>
19. NAACP Legal Defense and Educational Fund, Inc., Death row USA, April 1, 2020 <https://www.naacpldf.org/wp-content/uploads/DRUSASpring2020.pdf>
20. Death penalty information center, The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides, June 04, 1998 - <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/the-death-penalty-in-black-and-white-who-lives-who-dies-who-decides>
21. The U.S. Department of Justice (DOJ), 2000, Race and the death penalty, <https://www.aclu.org/other/race-and-death-penalty>
22. Jody David Armour, Negrophobia and Reasonable Racism: The Hidden Costs of Being Black in America, 1997 https://books.google.hu/books?hl=hu&lr=&id=L_4S4Q0XqYC&oi=fnd&pg=PP9&dq=black+racism+in+america&ots=WlYzjBUqEc&sig=HfnTG0m8Ak_J131QZLeUrGbTutc&redir_esc=y#v=onepage&q&f=false
23. Alia Chughtai, Christian Mugarura Mafigiri, Al Jazeera <https://interactive.aljazeera.com/aje/2020/know-their-names/index.html>
24. Amanda Grigg, Alisa Mastro, Frank R. Baumgartner, Blacks are much more likely to be executed for killing whites than whites who have killed blacks, February 7, 2015 <http://bit.ly/1vBzb2G>
25. Legal Defense and Educational Fund, Inc., Case: Landmark: McCleskey V. Kemp, 2020 <https://www.naacpldf.org/case-issue/landmark-mccleskey-v-kemp/>
26. „The United States Supreme Court decided 7–2 against Scott, finding that neither he nor any other person of African ancestry could claim citizenship in the United States” https://en.wikipedia.org/wiki/Dred_Scott
27. Equal justice initiative, Study Reveals Racial Bias in Executions, 2019 <https://eji.org/news/study-reveals-racial-bias-in-executions/>
28. Scott Phillips, Justin Marceau, Whom the State Kills, The Harvard Civil Rights-Civil Liberties Law Review, University of Denver, August 22, 2019 <https://poseidon01.ssrn.com/delivery.php?ID=080024092024098109121097098115080110032078062093055026025124005112114067070023106113098018058015020038053119007110085076083102054075021079031078102078118089071026052008016026089080080099078067125095093020009001111088094076079022068076099097114002112&EXT=pdf>
29. Nathalia Gjersoe, The conversation, How young children can develop racial biases – and what that means, March 20, 2018 <https://theconversation.com/how-young-children-can-develop-racial-biases-and-what-that-means-93150>
30. Destiny Peery, The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations, Spring 2011
31. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1070&context=njlsp>
32. ADL- Anti-Defamation League, Racism <https://www.adl.org/racism> , 2020
33. ADIA HARVEY WINGFIELD, Colour-Blindness Is Counterproductive, The Atlantic, September 13, 2015 „...it is no longer socially acceptable in many quarters to identify oneself as racist. Instead, many Americans purport not to see colour. However, their colour-blindness comes at a cost. By claiming that they do not see race, they also can avert their eyes from the ways in which well-meaning people engage in practices that reproduce neighbourhood and school segregation, rely on “soft skills” in ways that disadvantage racial minorities in the job

market, and hoard opportunities in ways that reserve access to better jobs for white peers.”
<https://www.theatlantic.com/politics/archive/2015/09/color-blindness-is-counterproductive/405037/>

34. Destiny Peery, *The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations*, Spring 2011
<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1070&context=nljlp>

35. Death penalty information center, *National Polls and Studies*, 2020
<https://deathpenaltyinfo.org/facts-and-research/public-opinion-polls/national-polls-and-studies>

36. Death Penalty Information Center, *Gallup Values & Beliefs Poll—Record-Low Percentage of Americans Now Find Death Penalty Morally Acceptable*, 2020
<https://deathpenaltyinfo.org/facts-and-research/public-opinion-polls/national-polls-and-studies>

37. Lake Research Partners, *Support for Alternatives to the Death Penalty*, 2010,
<https://files.deathpenaltyinfo.org/documents/pdf/FactSheet.f1601652961.pdf>

38. Hungarian Helsinki Committee (the “Project”) with partners Aditus Foundation (Malta), Fair Trials, Human Right House, Zagreb (Croatia), Mérték (Hungary), Rights International Spain, and the University of Vienna, *Innocent until proven guilty, The presentation of suspects in criminal proceedings - About Fair Trials, 2014-2020*
https://www.fairtrials.org/sites/default/files/publication_pdf/Fair-Trials-Innocent%20until-proven-guilty-The-presentation-of-suspects-in-criminal-proceedings_0.pdf

39. Bernadett R. Hadden, Willie Tolliver, Fabienne Snowden, Robyn Brown Manning, *An authentic discourse: Recentring race and racism as factors that contribute to police violence against unarmed Black or African American men*, *Journal of human behaviour in the social environment*, 2016
<http://www.detroitchamber.com/wp-content/uploads/2014/10/Recentring-Race-and-Racism.pdf>