Race, Human Rights, and the U.S. Death Penalty

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International Convention on the Elimination of All Forms of Racial Discrimination

- **Article 2 § 1.** States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms ....

- **Article 6.** States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention ....
Everywhere in the world in which the death penalty exists, it is applied disproportionately against racially, religiously, ethnically, and politically disfavored groups.
The United States is no exception to that worldwide rule.
Lynchings and Capital Punishment

**The Lynching of Henry Smith** on the Courthouse Lawn, Paris, Texas 1893

Many lynchings took place under cover of darkness with a few people capturing and killing a lynching victim, allowing the community to disclaim collective responsibility. But hundreds of lynchings during the North, public executions fell into disfavor in the 1800s, with many states banning the practice before.

**The Execution of Raney Bethea** on the Courthouse Lawn, Owensboro, KY 1936

In August 1936, more than 20,000 people gathered in Owensboro, Kentucky to watch the hanging of Raney Bethea only on the rape charge. To ensure a public execution, prosecutors tried and convicted Bethea only on the rape charge.
Lynchings and Capital Punishment

Lynching of Black Victims (1883-1940)

Executions of Black Defendants (1972-2020)
The use of the death penalty for rape, more than for any other crime, demonstrates the racially discriminatory nature of capital punishment in the United States.

Between 1930 and 1972, 455 people were executed for rape.
- 405 (89.1%) of those executed were black.
- 97.3% of the executions for rape occurred in former Confederate states.
No white man has ever been executed in the U.S. for the non-homicide rape of a black woman or child.
Race Disparities in Virginia Executions from 1900-1969

Virginia provides an illustration of how much race determined who was executed for non-murder crimes. Before the Civil War, Virginia explicitly provided different penalties for white people and its enslaved population. By 1848, white people could be sentenced to death only for first-degree murder while enslaved Black people could be executed for a number of non-homicide offenses. Although this formal distinction was gone by the twentieth century, the state’s executions showed that in practice different rules were being applied to white and Black defendants.
U.S. Executions by Race of Defendant

Race
- White
- Black
- Latino
- Asian
- American Indian or ...
- Other Race

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Executions disproportionately involve white victims, suggesting an inappropriate race-based conception of what constitutes the “worst of the worst” killings.
No matter how terrible a murder is, at all levels of severity, a death sentence is more likely if the defendant is Black and if the victim is not.
In Philadelphia, Pennsylvania, black defendants tried for killing white victims were twice as likely to be sentenced to death if they had “stereotypically” African facial features.
The Faces of Innocence

Since 1973, 190 people in 29 states who have been wrongly convicted and sentenced to death have been exonerated.
Race and Wrongful Convictions in the United States

2022

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NATIONAL REGISTRY OF EXONERATIONS
SEPTEMBER 2022

National Registry of Exoneration
A project of the University of California Irvine • Newkirk Center for Science & Society,
the University of Michigan Law School, and Michigan State University College of Law

NEWS

Report: Black People 7.5 Times More Likely to Be Wrongfully Convicted of Murder than Whites, Risk Even Greater if Victim was White
Death-Row Exonerations by Race and State

No. of Exonerations
190

Exonerations by Race

<table>
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<tr>
<td>Latino</td>
<td>17</td>
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It Takes Longer for Wrongfully Convicted Death-Row Prisoners to Be Exonerated if They are Black
Prisoners of color constituted 83.1% of the all death-row prisoners later found to be ineligible for the death penalty because of intellectual disability: 68.3% were Black, 14.1% were Latinx.

At least 29 likely intellectually disabled people have been executed since Atkins: 62.1% were Black and 13.8% were Latinx.
Offenders Under Age 18

• 22 prisoners under age 18 were executed in the U.S. before *Roper v. Simmons* was decided.

• 55% were prisoners of color: 11 were Black, 1 was Latino.
The victims in the juvenile execution cases were disproportionately white.
Youthful offenders are more likely to be executed if they are Black or Latinx.

Disproportionately, death sentences and executions reflect racial stereotyping concerning future dangerousness (see also *Buck v. Davis*).
A DPIC analysis found that the more vulnerable death-sentenced defendants were as an age class, the more the death sentences imposed on that class of defendants were racially disproportionate.
Juries and Racial Bias in Death Penalty Cases

- Death-qualification, peremptory strikes, and human rights violations against both defendants and jurors.
Symbolic Endorsement of Racism

Confederate flag and memorial outside Caddo Parish Courthouse, Shreveport, Louisiana, 2010
guilty until proven innocent: conviction orientation, racial attitudes, and support for capital punishment

Robert L. Young
University of Texas at Arlington, Arlington, Texas, USA
“Let's face it, ... there's the blacks from the low-income areas, [they’re] less likely to convict. . . . There is a resentment for law enforcement, there's a resentment for authority and, as a result, you don't want those people on your jury. ...
Juries and Racial Bias in Death Penalty Cases
A two-year Dallas Morning News investigation of jury selection in Dallas County has revealed that prosecutors exclude blacks from juries at more than twice the rate they reject whites, and that race is the most important personal trait affecting which jurors prosecutors reject. The paper’s review also found that when potential black and white jurors answered key questions about criminal justice issues the same way, blacks were rejected at a higher rate.

46. O’Brien testified, without contradiction, to large disparities in strike rates based on race. Across all strike-eligible venire members in the MSU Study, the Court finds that prosecutors statewide struck 52.6% of eligible black venire members, compared to only 25.7% of all other eligible venire members. This difference is statistically significant with a p-value of <0.001. The probability of this disparity occurring in a race-neutral jury selection process is less than one in ten trillion. DE3, p. 22. Katz, the state’s statistical expert, concurred that this disparity is statistically significant. HTP: 1944.
Washington State

NEWS

Washington Supreme Court Declares State’s Death Penalty Unconstitutional

Finding that the death penalty “is imposed in an arbitrary and racially biased manner,” a unanimous Washington Supreme Court has struck down the state’s capital-punishment statute as violating Washington’s state constitutional prohibition against “cruel punishment.” The court’s ruling, authored by Chief Justice Mary E. Fairhurst and issued on October 11, 2018, declared: “The death penalty, as administered in our state, fails to serve any legitimate penological goal; thus, it violates article I, section 14 of our state constitution.” The decision also converted the sentences of all eight people on the state’s death row (pictured) to life imprisonment without possibility of release. The court’s action makes Washington the twentieth U.S. state to have judicially or legislatively abolished the death penalty, and the eighth to have done so this century. Governor Jay Inslee, who imposed a moratorium on all executions in 2014, hailed the ruling, saying, “Today’s decision by the state Supreme Court thankfully ends the death penalty in Washington. ... This is a hugely important moment in our pursuit for equal and fair application of justice.”

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )
  Respondent, ) No. 88086-7

v. )

ALLEN EUGENE GREGORY, ) EN BANC
  Appellant. ) FILED OCT 1 2018

FAIRHURST, C.J.—Washington’s death penalty laws have been declared unconstitutional not once, not twice, but three times. State v. Baker, 81 Wn.2d 281, 501 P.2d 284 (1972); State v. Green, 91 Wn.2d 431, 588 P.2d 1370 (1979); State v. Frampton, 95 Wn.2d 469, 627 P.2d 922 (1981).¹ And today, we do so again. None

¹ Arguably, it has occurred four times because a federal district court judge found that our statutory proportionality review of death sentences violated due process. Harris ex rel. Ramseyer v. Bidgast, 853 F. Supp. 1239, 1288-91 (W.D. Wash. 1994), aff’d sub nom. on other grounds, Harris ex rel. Ramseyer v. Wood, 64 F.3d 1432 (9th Cir. 1995). But we considered and rejected the claim. In Re Pers. Restraint of Bens, 134 Wn.2d 868, 925-26, 952 P.2d 116.
Study proves death penalty imposed by Washington jurors in a racially biased manner

- "The death penalty is invalid because it is imposed in an arbitrary and racially biased manner."

Over a 25-year period of Washington State capital prosecutions, juries were 4.5 times more likely to impose a death sentence on a black defendant than on a white defendant in a similar case.
Racist expert testimony: the Duane Buck case

Race → future danger
Racism and dog whistles in prosecutorial argument

The U.S. Court of Appeals for the Fourth Circuit has upheld a federal district court's decision ordering a new sentencing hearing for Johnny Bennett, a black man who was sentenced to death by an all-white South Carolina jury in a trial tainted by a prosecutor's racially-inflammatory cross-examination and argument.

Bennett was prosecuted by Donald Myers (pictured), known as "Death Penalty Donnie" for having sent 28 South Carolina defendants to death row. In response to defense argument at Bennett's sentencing proceedings in 2000 that Bennett would not pose a future danger to society if incarcerated for life, Myers repeatedly invoked violent animal references, calling Bennett "King Kong on a bad day," a "caveman," a "mountain man," a "monster," a "big old tiger," and "[t]he beast of burden."

Earlier in the trial, Meyers had elicited irrelevant testimony that a white witness whom Bennett had assaulted when he was a juvenile had dreamed of "being chased by black savages." The prosecutor also gratuitously asked a witness about sexual relations Bennett had had with a "blonde-headed" prison guard. A juror later described Bennett as "just a dumb n**ger."
B. Animal Imagery and the Black Brute

Prosecutors’ use of animal imagery and the “black brute” caricature in their closing arguments dehumanizes Black defendants.\textsuperscript{138} Dehumanization reduces white persons’ empathy for Black people, which could explain why violent crimes against white victims typically trigger harsher punishments than crimes against people of color, particularly when the offender is Black and the victim is white.\textsuperscript{139}
Being Black Can Act As An "Aggravating Factor"

- Murder with torture: 1.9
- Grave risk of death to others: 1.5
- BLACK DEFENDANT: 1.4
- Caused great harm, fear or pain: 1.0
- Murder with multiple stab wounds: 0.9
- Murder with another felony: 0.8

Fig. 3

Relative Value in Predicting a Death Sentence by Jury