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Capital Punishment and Race:
Racial Culture of the South

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There are currently 34 states with the death penalty and 16 states without the death penalty in the United States. According to the most recent report from the Death Penalty Information Center, there have been 1276 executions in the United States since 1976. In the year 2011 alone, there were 42 executions. This was 4 executions less than the previous year. Among the 1276 total executions in the United States since 1976, 1048 have taken place in the South. There are approximately 3,251 inmates on death row. African-Americans represent 42% of these inmates (Death Penalty Information Center, 2011). This statistic is quite disproportional because African-Americans only represent 9.7% of the population (2010 US Census, 2011).

There is a history of racial bias in Southern legal systems in the United States. These principles have been developed from as early as slavery, to the Black Codes following the Civil War, to the Jim Crow era. The historical racial culture in the South has an influence on the imposition of capital punishment, as it’s generally imposed in the South. A number of studies attribute racial disparities in all aspects of capital punishment. Baldus et al. found in 1998 that 96% of the states where there have been reviews of the death penalty and race showed a pattern of either race of victim or race of defendant discrimination (Death Penalty Information Center, 2011). Radelet and Pierce conducted a study of 15,281 homicides in the state of North Carolina between 1980 and 2007, which resulted in 368 death sentences. They found that the odds of a defendant receiving a death sentence was three times more likely if the person was convicted of killing a white person than a black person (Death Penalty Information Center, 2011). One byproduct of racial bias in capital punishment is the implied greater valuation of white lives than those of African Americans.

A Racial Culture Developed in the South:
Slave Codes

As the slave population increased in early colonial times, there was an increased fear of slave rebellion. This influenced stricter enforcement of laws broken by slaves. These laws considered “Slave Codes”, tolerated the execution of slaves for deviance. Slave Codes ranged from helping another slave escape to destroying property. Of the Slave Codes in Georgia, capital offenses included assaulting a white person, burglary, or any type of arson. The assault of a white person by a slave was never tolerated under any state’s slave codes. Whether
Black Codes
With the end of the Civil War in 1865, the southern states enacted “Black Codes”. Black Codes were enacted in southern states to represent their continued domination over newly freed slaves. They sustained partial control over blacks. In order to maintain control over newly freed slaves, the southern states passed laws that seemed to be fair. For example, blacks gained some basic property rights in the Black Codes that were enacted in Texas, in 1866. They could enforce contracts, sue or be sued, make wills, lease and hold property, among many other basic rights. Blacks were also guaranteed rights of personal liberty and security (Moneyhon, 1999). In reality, these codes denied blacks of many liberties. Black codes did not allow blacks to marry other whites. Blacks could not vote or run for political office. Blacks were not even allowed to serve on juries either (Moneyhon, 1999).

One common goal among the southern states that enacted the Black Codes was to control the labor of newly freed slaves. In Texas, there were vagrancy and apprentice laws. Under the vagrancy provision, the local courts would fine those who did not have a place of employment. If the fine could not be paid to the court, the vagrant would be punished with unpaid labor (Moneyhon, 1999).

Under the apprentice law, minors had to work as an apprentice on plantations. Masters were supposed to provide food, shelter, and education for the apprentices. In return, the apprentice would provide labor. These laws were especially effective in achieving control of blacks because most were unemployed after the abolition of slavery. With the implementation of these laws, the best bet for most freed slaves was to remain working on plantations (Moneyhon, 1999).

The South Carolina Black Codes denied former slaves the right to possess firearms; a right granted to other citizens under the second amendment to the constitution. Blacks could not make or sell liquor. In South Carolina, the Black Codes restricted people of color from various occupations. Blacks could only work as farmers or servants under a contract to a white employer (The Southern “Black Codes” of 1865-66, 2011). The laws restricting the freedom of Blacks were initially called Black Codes, but eventually became known as the laws of Jim Crow.

Jim Crow
The term Jim Crow originated around 1830 when Thomas “Daddy” Rice, a white actor at the Park Theatre in New York, performed the song “Jump Jim Crow” (Davis, 2008). The chorus to the “Jump Jim Crow” song is “Come listen all you galls and boys, I’m going to sing a little song. My name is Jim Crow. Weel about and turn about and do jis so, Eb’ry time I weel about I jump Jim Crow” (Pilgrim, 2000). Rice blackened his face with charcoal paste or a burnt cork while he performed. He also created a ridiculous dance routine, while impersonating an old, crippled black man. Rice’s character gained rapid success and became an especially common character in minstrel shows by the 1850s (Davis, 2008).

In the 1840s, the minstrel show was one of the earliest forms of public entertainment American. This type of performance largely evolved from Rice’s character, Jim Crow. The impersonation of blacks by white actors was commonly anticipated. The white actors embodied an exaggerated, extremely stereotypical black character (Glomska & Begnoche, 2002). By these stereotypical portrayals of blacks, the beliefs that blacks were ignorant, lazy, inherently inferior, and undeserving of integration were increasingly widespread. The term Jim Crow became a racial slur that was equivalent with black, colored, or Negro. The impersonation of blacks in minstrel shows helped to establish a desirability of segregation between racial groups (Pilgrim, 2000).

Jim Crow not only became a cultural way of life, but was a system of legal segregation that codified white supremacy. Jim Crow regulated every social interaction between whites and blacks. Blacks were forced to use separate hospitals, prisons, restroom, churches, and basically any public accommodation. Between 1877 and the mid-1960s, Jim Crow created a racial caste system throughout the South and its border states (Pilgrim, 2000). The South enacted 79% of Jim Crow Laws during this era; the largest amount of any region in the country. Of the South, Louisiana passed more Jim Crow laws than any other state with 29 statutes. Both Alabama and Georgia were not far behind as both states had 27 statutes each (Falck, 2005).

More than 400 hundred state laws and city ordinances legalizing segregation and racial discrimination were enacted in the United States between 1865 and 1967 (Falck, 2005). Of the Jim Crow laws, Falck’s data revealed that 29% were miscegenation laws, 25% were education laws, and 24% were public transportation and accommodation laws. Lastly, 6% were laws regarding voting rights (Falck, 2005).
Homer Adolph Plessy was a man who was seventh-eighths Caucasian and one eighth African American. In 1892, Plessy was arrested because he refused to move out of a “whites only” car of a Louisiana train. One of the Jim Crow laws in Louisiana enacted in 1890 required separate, but equal railway cars for blacks and whites (Cozzens, 1999). Despite the “separate, but equal” provision, no public locations provided blacks with equal facilities (Pilgrim, 2000).

Plessy was found guilty during his trial and he appealed this decision to the Supreme Court (Cozzens, 1999). In a 7-2 vote, the Supreme Court upheld the Louisiana law. The Court decided that as long as the state provided legal freedoms for blacks that were equal to those of whites, then they could maintain separate facilities. The majority did not believe that Plessy was stripped of his rights because he was provided with a railway car for blacks, but refused to obey the law. (Pilgrim, 2000).

The Plessy v. Ferguson decision played a prominent role in establishing racial segregation during the Jim Crow era. The fact that Plessy was not fully black, but had mixed black and white ancestry, represented the racial culture that remained in the South almost thirty years after the abolition of slavery. Blacks were the hated and disadvantaged members of society. Whites were privileged and received better liberties (Pilgrim, 2000).

Southern Lynching

Southern lynchings were a form of racial violence embraced in the South from slavery through the Jim Crow era. The legal systems of the South and its border states were biased against African Americans. According to a national assessment of lynching between 1882 and 1952 published in The Negro Year Book of 1952, 4,730 lynchings took place, of which 3,903 were committed in the South and its border states. African Americans constituted 85% of the victims of these lynchings” (Allen & Clubb, 2008). The recorded data revealed that in the South, lynching was used as a form of racial genocide against blacks.

The Civil War Reconstruction ended in 1877, and as slaves were newly freed, the Reconstruction era was a time of social, economic, and political change. The main issue within the Reconstruction era was the role that the federal government had in protecting citizen’s rights, especially equalizing the rights of newly freed slaves (Guisepi, 1999). During the Reconstruction era, lynchings tended to be hidden acts carried out in secrecy, as there was a fear of drawing attention from Northern authorities. However, following the Reconstruction era, lynching was often performed as celebratory measures that attracted crowds and publicity (Allen & Clubb, 2008). Lynchings transformed the execution of blacks into a community event. These events were devoid of any legal protections or due process for the victim.

Blacks were lynched by mobs for various reasons including suspicion or accusation of a crime (Ogletree Jr., 2006). According to Garland, public lynchings at the beginning of the twentieth century conveyed a passionate hatred towards blacks. These emotions were inflamed by the new found freedom granted to slaves. Garland attributed lynching as a measure to inflict a level of suffering that had legally been eliminated (Garland, 2010). He recognized that the popularity of public lynching was to assert some racial control that was lost by whites through the abolition of slavery.

Brown reported on the nature of public forms of lynching. He noted that there was advance notice and lots of publicity to attract Southern whites to the horrific event. These public lynchings were mass spectacles, as they drew large numbers of people who were eager to see the gruesome violence that was involved in the act of racial oppression (Brown cited in Allen & Clubb, 2008).

The spectacle of lynching drew considerable attention nationwide from the media. Newspaper reports appeared exploiting the vast entertainment potential that these executions attained. Professional photographers publicized public lynchings through postcards that included photographs of the gruesome event, along with degrading messages (Garland, 2010). These postcards were associated with images of a burning, torturing, or mutilating victim (Allen & Clubb, 2008).

It was not until the mid 1950s that lynchings became a national disgrace. Emmett Till was a 14 year old, African American boy from Chicago that was murdered in the Mississippi Delta on August 28, 1955 (Whitfield, 2003). While, Till was not publicly lynched yet his murder was very influential to the racial culture of the South during the Jim Crow Era.

Emmett Till left his home in Chicago in the summer of 1955 to visit his relatives that resided in Leflore County, Mississippi. The town of Money within Leflore County, where Till’s great-uncle had resided, was a little different than urban Chicago. The biggest difference was the racial climate within this region of Mississippi strictly enforced Jim Crow segregation laws (Crowe, 2003).

On Wednesday night of August 24th, Emmett and some of the local black children were amusing themselves with games, stories, and music in front of Bryant’s Grocery and Meat
Market (Whitfield, 2003). Emmett was teasing his friends about how he had a white girlfriend back home in Chicago. One of Till’s friends challenged his claim and suggested that Till get a date with the white lady in the grocery store. Emmett was unfamiliar with the racial culture in this community and the severe consequences inflicted on blacks who broke the Jim Crow laws of the South. He quickly accepted his friend’s challenge (Crowe, 2003).

Witnesses reported that Till whistled the two-note “wolf whistle” and said “bye, baby” to the white woman who worked behind the counter of the grocery store (Crowe, 2003). Till did not know that the woman that he made a suggestive comment to that afternoon was Carolyn Bryant, wife of the owner of the grocery store. Roy Bryant, the woman’s husband, and his half brother J.W. Milam, abducted Till from the home of his great uncle four days following the incident at the grocery store (Whitfield, 2003). Bryant and Milam pistol whipped the teenage Chicago boy, and they preceded to torture and then murder him. Bryant and Milam dumped Till’s body in the nearby Tallahatchie River (Crowe, 2003).

Less than a day after the disappearance of Emmett Till, local authorities arrested Bryant and Milam. Most southerners were surprised by the arrest of Bryant and Milam because rarely ever was legal action taken against whites who committed crimes of violence against blacks (Crowe, 2003). Though the murderers of Till were being charged for these crimes, the case was lost before it began.

The trial of J.W. Milam took place in the Mississippi State Court in September of 1955 with an all-male and all white jury. (Crowe, 2003) Because of the segregation laws of the era, African Americans were banned from serving on the jury. They were also packed in a specific section of the courtroom. The trial only lasted a week until the all-white jury declared Bryant and Milam innocent (Whitfield, 2003).

The lynching of Emmett Till represented the extent to which blacks were hated by whites during the Jim Crow era. Black hatred in the South was so significant that the murder of a young African American boy was tolerated by the Mississippi courts. As whites comprised all of the jury members in this case, they demonstrated no remorse for the life of a black child.

The use of capital punishment in America has been characterized as a form of “legal lynching” (Garland, 2010). It is reasonable to attribute the influence of past Southern legal systems to contemporary capital punishment because most executions occur primarily in the South. Today death sentences are produced by many of the same social and political dynamics that produced the historical racial culture in the South. Contemporary capital punishment continues to include racialized effects. Contemporary executions occur primarily in Southern states where African Americans are sentenced to death at a disproportionately high number (Garland, 2010).

Prosecutorial Discretion

The American criminal justice system grants state prosecutors the privilege of exercising broad discretion in determining which murder cases warrant capital punishment. State prosecutors are burdened with hundreds of homicides each year. Due to limited resources, prosecutors must be quite sensible in selecting cases in which to seek the death penalty. Thus, the death penalty is imposed in a small number of homicide cases each year (Songer & Unah, 2005). In order to provide a standard for capital selection, the South Carolina General Assembly required the state in 1976 to seek the death penalty in the case that a willful homicide reflected at least one of eleven statutory aggravating circumstances (Songer & Unah, 2005).

South Carolina’s classification of aggravating circumstances includes “armed robbery, burglary, criminal sexual conduct, torture, killing a child under eleven years old, knowingly endangering more than one person, among others” (Songer & Unah, 2005). Many aggravating circumstances, especially “physical torture” and whether the offender “knowingly endangered more than one person” may be construed in various ways for the same criminal act. This creates broad discretion among prosecution in deciding which cases deserve capital selection (Songer & Unah, 2005). Because the vagueness of aggravating factors persist, the probability of non-statutory factors (such as race and class) affecting the decision determined by the prosecution in which cases merit capital punishment is very reasonable (Songer & Unah, 2005).

One of the most comprehensive studies assessing the racial effects in capital selection was the Baldus study, which examined the imposition of capital punishment in Georgia. This study was a major issue in the 1987 United States Supreme Court case of McCleskey v. Kemp (Songer & Unah, 2005). Professor David Baldus led a research team at the University of Iowa Law School, that strive[d] to expose the influence of fraudulent factors in Georgia’s capital punishment system (Howe, 2009).

Baldus showed that prosecutors were roughly five times more likely to impose capital punishment against black defendants that were accused of killing white victims, than black defendants that were accused of killing black victims (Songer & Unah, 2005). The Baldus Study also reported that black defendants were much more likely to be sentenced to death than white defendants (Howe, 2009). Though the data may suggest an
Within the twelve-juror trials that were included in the data from Hingston, & Devine, 2003). In the included cases appealed their convictions (Bourke, et al. was able to gather the records from these cases included the selection process for 13,662 prospective jurors. Examined 390 jury trials in Jefferson Parish, where the data Parish District Attorney's office in Louisiana. Bourke et al.'s study held the decision of Georgia's state prosecutors accountable, to some extent, for the racial inequalities in death penalty cases (Songer & Unah, 2005).

If an attorney in a capital case supposes that a prospective juror may not have the ability to remain impartial, they may request a challenge for cause. The trial judge will use his or her discretion to determine whether to grant the challenge, thus releasing the potential juror from the case, or to deny the challenge, allowing the potential juror to remain (Sandys & McClelland, 2003). Once potential jurors survive the voir dire stage, attorneys may use their discretion, without the consent of the trial judge. Through peremptory challenges that are limited in number, attorneys are allowed to remove a potential juror from the case that they feel may be biased against their case (Sandys & McClelland, 2003).

The Chattahoochee Judicial Circuit and the Ocmulgee Judicial Circuit sends more people to death row than any other circuit in Georgia. Of the Chattahoochee Judicial Circuit, Bright reported that, “prosecutors used 83 percent of their opportunities to use peremptory jury strikes against African Americans, even though black people constitute 34 percent of the population in the circuit” (Bright, 2006).

Joseph Briley, district attorney in the Ocmulgee Judicial Circuit between 1974 and 1994, tried thirty three capital punishment cases, where twenty four were against African American defendants. Bright reported that of all the capital cases that Briley prosecuted, he used 94 percent of his peremptory challenges, which 96 out of 103 were against African Americans (Bright, 2006).

In September 2003, Bourke et al. conducted a study of the racially disparate use of peremptory challenges by the Jefferson Parish District Attorney's office in Louisiana. Bourke et al. examined 390 jury trials in Jefferson Parish, where the data included the selection process for 13,662 prospective jurors. Bourke et al. was able to gather the records from these cases through the Louisiana Appellate Project, as all the defendants in the included cases appealed their convictions (Bourke, Hingston, & Devine, 2003).

Within the twelve-juror trials that were included in the data from Bourke et. al, 8,160 potential jurors made it to the stage where the prosecutor was forced to accept or peremptorily challenge the juror. Of the Black prospective jurors, 540 were chosen to participate as a juror, while 640 were challenged. Of the White prospective jurors, 5,812 were chosen to participate as a juror, while 1,135 were challenged. According to data recorded by Bourke et al., the Jefferson Parish District Attorney's office exercised their peremptory challenges to remove 55% of black prospective jurors and only 16.3% of white prospective jurors (Bourke, Hingston, & Devine, 2003).

The data suggest that the Jefferson Parish District Attorney's office was three times more likely to use peremptory challenges to remove African-Americans from juries, than the removal of white participants. While African American's made up 23% of Jefferson Parish's population, the data recorded from Bourke et al. suggested that they were significantly underrepresented among juror participation (Bourke, Hingston, & Devine, 2003).

From 2005 to 2009, prosecutors in Houston County, Alabama have used peremptory challenges to remove 80% of blacks eligible for jury service in cases where the death penalty had been imposed (Stevenson, 2010). According to the data from the Equal Justice Initiative, half of these juries were all white and the other half had juries with only one black member. Despite the low representation of African Americans among capital juries in Houston County, Alabama, African Americans make up roughly 27% of this county's population (Stevenson, 2010).

The wide range of prosecutorial discretion granted in capital cases not only disproportionately affects the race of the defendant, but the race of the juror as well. Several of these statistics have verified a trend by district attorneys in removing African Americans from capital juries. There remains an incentive among prosecutors to seek capital punishment in circumstances that show promise for a successful prosecution (Songer & Unah, 2005). Because prosecutors disproportionately impose the death penalty in cases with African American defendants and white victims, challenging the participation of African American jurors strategically increases the chance of a death conviction.

**Support for the Death Penalty**

Bowers surveyed a number of citizens from various states, as well as interviews with capital jurors in three different states. His findings include that most participants agreed that capital punishment was much too subjective due to the fact that some people are executed, while others are sent to prison (Bowers cited in Walker, Spohn, & Delone, 2012). Those states that...
implement capital punishment allow the defendant with a two phase process, a guilt- or- innocent trial, followed by a fair penalty phase. This bifurcated process is used as a measure to prevent an unwarranted death sentence (Howe, 2009).

Evidence suggests that an aspect of racial bias in capital punishment sentencing is a racial split among those that support the law. Whites are more likely to support the death penalty because it disproportionately targets African Americans (Walker, Spohn, & Delone, 2012). Walker, Spohn, and Delone found that 65 percent of Americans favored the death penalty for people who have been convicted of murder (Walker, Spohn, & Delone, 2012). According to a Gallup Poll based on data collected in 2007, 70 percent of whites supported the death penalty, while only 40 percent of African Americans shared this same opinion (Walker, Spohn, & Delone, 2012).

In his concurring opinion regarding the 1972 capital case, Furman vs. Georgia, Justice Marshall wrote that the public generally was not enlightened with the ways in which capital punishment was imposed, specifically, the arbitrary manner of the sanction, as it places the burden on the underprivileged members of society (Walker, Spohn, & Delone, 2012).

Unnever and Cullen conducted a recent study on to the correlation of racial differences and support for capital punishment. They held white racism mainly culpable among other factors (Unnever and Cullen cited in Walker, Spohn, & Delone, 2012). The study included data from the 2000 National Election Study, which sampled 1,555 individuals from across the nation that provided post election interviews. The degree to which participants supported the death penalty was the dependant variable of the study. The independent variables in this study included factors that could potentially explain the relationship between race and public support of the death penalty. These variables consisted of factors ranging from Jim Crow, white racism, egalitarianism, religiosity, media, and trust in government (Unnever & Cullen, 2007).

After including the white racism measure, Unnever and Cullen discovered that the racial divide in public support of the death penalty was reduced by 39 percent. Their findings suggest that over a third of the racial divide in public support of capital punishment can be accredited to white racism. (Unnever & Cullen, 2007) Unnever and Cullen’s study also indicates that policy makers ignore an unjust reality when justifying their support for the death penalty by asserting that this sanction is the preferred by the majority of this country (Walker, Spohn, & Delone, 2012).

Death Qualification Process

In order to be suitable to serve as a capital juror, jurors must be deemed “death qualified.” The procedures to determine death qualification status typically targets a potential juror’s capability to vote for a sentence of death (Sandys & McClelland, 2003). Though the implementation of death-qualification among capital jurors is sought to ensure impartiality, more harm than justice is actually done to the defendant. Death qualified jurors are more conviction prone. This makes them more predisposed to believe the prosecution than jurors that are not deemed death qualified (Sandys & McClelland, 2003).

Prior to the 1968 Supreme Court case in Witherspoon v. Illinois, the standard to determine death qualification status of prospective jurors, inquired whether or not the potential jurors had any “conscientious scruples against the death penalty”, resulting in the exclusion of those jurors that had any oppositions towards the death penalty (Sandys & McClelland, 2003). When Witherspoon was convicted and sentenced to death, he introduced three unpublished studies that argued the existence of conviction proneness among death qualified jurors in the review of his case (Sandys & McClelland, 2003, pp. 387-388).

Although the Court did not find any of the jurors who decided the capital case against Witherspoon to be biased in any way, they established a new death-qualification standard. The majority opinion by Justice Potter Stewart argued that the standards did not allow for the wide spectrum of viewpoints that exists within communities. The new standard required prosecutors to determine whether prospective jurors would automatically vote against the death penalty before they could be challenged for cause (Sandys & McClelland, 2003). Fitzgerald and Ellsworth concluded in 1984 that, “death qualification systematically distorts the attitudes of the jury in a direction that discriminates against the defendant and undermines the protections of due process” (Fitzgerald and Ellsworth cited in Sandys & McClelland, 2003, pp. 387-388).

The process in which prospective jurors are deemed “death qualified” often results in the removal of minorities. Minorities generally maintain negative attitudes towards capital punishment because it has historically and continues to be used in a racially discriminatory manner (Bright, 2006). Death qualified jurors tend to have biases that significantly differ from the general population. Lynch argued that “death qualified jury pools ends up disproportionately white, male, older, and more religiously and politically conservative” (Lynch, 2006, p. 187). Lynch suggested that the demographically skewed characteristics of capital juries increases the likelihood that jurors will hold stereotyped thinking and biased attitudes (Lynch, 2006).
The Race of Decision-makers

The criminal justice system continues to under-represent racial minorities as judges, prosecutors, jurors, lawyers, and prominent roles in law enforcement. Because racial minorities are especially underrepresented in the highly arbitrary decisions that control the imposition of the death penalty, these judgments are generally made by individuals that are indifferent to the minority community (Bright, 2006).

In his 1993 Los Angeles Times article, Deciding Life of Death for O.C.’s Worst Murderers, Lynch proclaimed that Orange County ranked third of all California jurisdictions in death sentences. In Orange County, there is no representation by the minority community in prosecutorial discretion, as the panel of prosecutors was established entirely by white males (Lynch cited in Bright, 2006, p. 221).

According to Pokorak, only 1% of district attorneys in death penalty states are black. One percent of district attorneys in death penalty states are Hispanic and .5% are of other non-Caucasian races. The remaining 97.5% of district attorneys in death penalty states are white. Almost all of the white district attorneys within death penalty states are male as well (Death Penalty Information Center, 2011).

With the support of the National Science Foundation, the Capital Jury Project is a team of university based researchers that investigate the decision-making of capital jurors. The CJP data is obtained from comprehensive interviews with individuals who have served as jurors in death penalty trials. Researchers recorded their different experiences, as well as their justifications behind decision making. The CJP had presently sampled approximately 1,201 jurors, from 354 capital cases, in 14 different states, representing about 76% of death row inmates as of June 1, 2002. These researchers are able to confirm that the likelihood of a capital sentence is linked to the racial structure of the jury, especially in the circumstances that the defendant is black and the victim is white. Their data reveals that death sentences were awarded in more than twice the number of cases with five or more white males, than in cases with less than five white males (Bowers, Fleury-Steiner, & Antonio, 2003). One of the interviewed minority jurors of the CJP claimed, “they (white jurors) were not considering what background this kid (the defendant) came out of. They were looking at it from a white middle-class point of view…We had to look at it like the lifestyle he came out of, the background he came out of. But nobody wanted to listen” (Bowers, Fleury-Steiner, & Antonio, 2003). The CJP reported that white jurors typically seem unwilling to consider mitigating evidence when there is a black defendant.

One crucial emotion that undoubtedly plays a significant role in a juror’s capital sentencing judgments is empathy. In the guilt phase of a capital trial, jurors focus primarily on the violent acts that have been committed by the defendant. The penalty phase follows the guilt phase, where jurors accepted the defendant’s criminality. This already makes death an appropriate choice for jurors. Gross and Mauro affirmed that the most reasonable explanation that killers of whites are more likely to receive death sentences than killers of African Americans because “white jurors who end up being the majority in most capital juries, feel more empathy for white victims” (Gross and Mauro cited in Lynch, 2006). Thus, a juror’s capital sentencing judgments are highly subjective, as their ability to empathize with the defendant enough to save his life is essential in acquiring a life verdict (Lynch, 2006).

Levinson argues, through his defense of the social cognition theory, that capital judges and jurors unconsciously misremember facts in racially biased ways. He asserts that capital judges and jurors will find it easier to retain facts that are consistent with their implicit racial stereotypes. For example, the stereotype that African Americans are aggressive, which Levinson argues can be retained easily as it is a common stereotype of African Americans (Levinson, 2009). Prosecutors that have faith in the common stereotypes of blacks may be more likely to impose the death penalty in cases involving African American offenders, while they may also be less apt to seek capital punishment in cases including African American victims. Jurors that support the legitimacy of these particular stereotypes will be influenced by these attitudes in deciding whether the crime involved aggravating and mitigating factors (Bright, 2006).

In most jurisdictions across the United States, the majority of prosecutors, judges, and penalty trial jurors are predominantly white (Sandsys & McClelland, 2003) Levinson affirms, “As social science research continues to demonstrate the power and pervasiveness of implicit racial bias in American society, it is important to consider how automatic and unintentional cognitive processes may foster racial bias in the legal system” (Levinson, 2009). Though the theory of social cognition may not specifically validate the racial disparities among capital punishment, it provides a plausible notion regarding this matter.

Media and Interracial Cases

Recent studies have exposed that interracial cases involving white victims attract the most media coverage. Dixon and Linz assessed whether television news representations of race and crime were inaccurate depictions in Los Angeles news stations in 1998. Through police arrest reports, Dixon and Linz found
that blacks represented 21% of those individuals arrested in Los Angeles. They found that 37% of the offenders in local news programs were black (Dixon & Linz, 2007). Dixon and Linz also concluded that 69% of the officers on local news programs were white. Whites actually made up 59% of the police officers in Los Angeles according to employment records (Dixon & Linz, 2007).

Whites were underrepresented as perpetrators of crime, as Dixon and Linz's data found that whites were 21% of the offenders on local television news, though Los Angeles arrest reports found that they formed 28% of actual perpetrators. Whites were also overrepresented as 43% of the victims in television news. Dixon and Linz noted that Los Angeles crime reports concluded that whites actually made up 13% of the victims of crime (Dixon & Linz, 2007).

In 1998, Linton and LeBailly conducted a random study of 340 blacks and Latinos on how they felt their ethnic group was portrayed by television news (Linton & LeBailly, 1998). Linton and LeBailly found that almost two-thirds of the participants said their race or ethnic group was portrayed inaccurately on television news. The data also revealed that 43% of the participants specified that they believed that local television news focused on negative aspects of their communities and helped to reinforce demeaning stereotypes. African Americans were three times more likely than Latinos to believe that television news continued to hurt race relations, as they believed it created negative stereotypes (Linton & LeBailly, 1998).

Because interracial cases involving white victims attract the most media coverage, prosecutors, as well as judges, and juries, receive public pressure to severely punish highly visible murders. Media attention may also help correlate with the racial disparities in the charging and sentencing outcomes in capital punishment (Sandys & McClelland, 2003). There remains difficulty in proving that the decisions made by prosecutors in potential capital cases are based on conscious means to racially discriminate (Howe, 2009). Prosecutorial decisions may be the result of personal biases against the defendant, considerations of their political career, or even the desire to focus their efforts on other cases (Howe, 2009).

**Conclusion**

Numerous studies confirm that race plays a vital role in capital punishment cases in America. These studies generally found that African American defendants were more likely to be convicted of the death penalty if there was a white victim. Many aspects within the imposition of capital punishment may lead to these severe racial disparities.

Southern states account for the majority of executions that have taken place in the history of capital punishment in America. The historical racial culture in the South is very likely to influence racial disparities in the death penalty. The racial culture in the South originated during slavery. Slave Codes were implemented that gave slave-owners total control of their slave's liberties. This culture persisted after the abolition of slavery with the Black Codes and Jim Crow. The historical racial culture in the South devalued the lives of African American, as black hatred was emphasized.

Because a majority of prosecutors and jurors are white, negative stereotypes are likely to affect the decisions made by prosecutors and jurors. Decision-makers are more apt to empathize with members of the same race. The lack of minority representation in criminal justice roles is very influential to the racial disparities in capital punishment.

**References**


