Racial Discrimination and the Death Penalty: An Analysis of the United States’ Judicial System

Abstract:
Racial discrimination plays a role in the administration of the death penalty. This research analyzes the history, and past scholarly research, of the death penalty. The purpose of this research is to understand the correlation between racial discrimination and those sentenced to death. This study includes a literature review regarding the different aspects of the death penalty and race. Following the literature review, an analysis is performed of both previous literature and current death penalty statistics that augments the discussion of the death penalty.

Literature Review:

Historical Underpinnings
Between 1862 and 1966, about 3,000 people were lynched and this continued into the 1960s. Ogletree argued that “lynching was an expression of racism and racial discrimination,” citing sociologist Gunnar Myrdal, who suggested that lynching was a tool used to maintain racial caste distinctions and to keep blacks in a position of subjugation (Ogletree 2002, p. 23). To further expand his argument that lynching was a racist act, Ogletree attempts to connect this history with current death penalty patterns. Ogletree discusses the “discriminatory aspects” of lynching, comparing the lynching norm with 1,330 journalists applying to “witness Timothy McVeigh’s execution” (Ogletree 2002, p. 22). Essentially, Ogletree argues that modern society still views these executions as recreational to a certain degree.

Marvin Wolfgang conducted the “first major empirical challenge to racial discrimination in the use of the death penalty in the United States” in the 1966 8th circuit case of William L. Maxwell (Gross 2012, pp. 1966). Maxwell was convicted of “raping a 15 year old, unmarried white woman” in Arkansas in 1962 and sentenced to death (Maxwell v. Bishop). He challenged his death sentence by arguing that “certain Arkansas statutes...dealing with the crime of rape and the punishment imposed therein have been applied unconstitutionally to Negro men convicted of raping white women…” (Maxwell v. Bishop). Wolfgang collected data on about “5000 rape convictions in the southern United States,” finding that “black men who were convicted of rape were seven times more likely to be sentenced to death than white men, and that black men who were convicted of raping white women were eighteen times more likely to be sentenced to death than men convicted of rape in any other racial combination” (Gross 2012, pp. 1966). Regardless of the statistical results presented, Wolfgang’s study was rejected by the Eighth Circuit.

The Baldus Study
David Baldus, Charles Polenick, and George Woodworth conducted a large scale study titled “Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience.” This study discusses the significance of “comparative sentence reviews,” also known as “proportionality reviews,” which is a procedure by which a court determines whether a death sentence is consistent with the usual pattern of sentencing decisions in similar cases or is comparatively excessive (Baldus et al. 1983 pp. 663). Baldus is one of the most important studies. One finding is that when analyzing the death-sentencing system of Georgia using their measures it could be identified as “presumptively excessive” (Baldus et al. 1983 pp. 726). Ultimately, they argue that their data “suggest that Georgia’s death-sentencing system has continued to impose the type of inconsistent, arbitrary death sentences that the United States Supreme Court condemned in Furman v. Georgia” and that the sentence review process failed (Baldus et al. 1983 pp. 730). With these findings, they question whether or not this system was operating “in the consistent, evenhanded manner required by the Eighth Amendment” (Baldus et al. 1983 pp. 730).

The Court held that “the statistical evidence [from the Baldus study] was insufficient to support an inference that any of the decision makers in the accused’s case acted with discriminatory purpose in violation of the equal protection clause...” (McCleskey v. Kemp 1987).

Introduction and Purpose of Study:
The United States has an extensive history of racial discrimination ranging from the overt discrimination of the Jim Crow era to the more ambiguous discrimination of modern times. Discrimination has permeated into the judicial system of the United States. The purpose of this study is to provide a view of the race and death penalty through a socio-political analysis is performed of both previous literature and current death penalty patterns. This study also states that “the court’s attitude in McCleskey essentially stating that the 1983 Baldus study’s statistics, even if valid, could not be applied specifically to the case at hand. Justice Powell delivered the opinion, arguing that the question at hand is “whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that petitioner McCleskey’s capital sentence is unconstitutional under the Eighth or Fourteenth Amendment” (McCleskey v. Kemp 481 US 279(1987).

Recent Scholarship
Scott Phillips conducted a study from 1990 to 1999, analyzing death penalty race and race in Harris County, Texas. This county is “arguably the capital of capital punishment,” and Phillips examined “whether race influenced the District Attorney’s decision to pursue a death trial or the jury’s decision to impose a death sentence against adult defendants indicted for capital murder” (Phillips 2009 pp. 609). This study has a far more narrow scope than the Baldus Study, as Phillips focused on a specific county and only those defendants who were indicted for capital murder. Phillips argued that “while his study was narrow in scope and could not be generalized throughout the country, no death penalty study can be generalized throughout the country due to the vast differences among states and countries. His findings are interesting, as they do not fully focus on the race of the victim, but they also found that the race of the defendant is relevant.

Analysis:
The historical context and the work of previous scholars have shown that there is a correlation between race and the death penalty. One can see the dialectical process in which the death penalty has become far less applicable in recent years. This is a trend that was previously unheard of as demonstrated within this research project. With that being said, it would be interesting to analyze whether the Supreme Court would accept the legitimacy of statistical data and declare the punishment unconstitutional if a similar case to Kemp were to be introduced today. Further, scholars such as Phillips are studying race and the death penalty prompting others to change their own research and discourses. However, it seems that the death penalty is being implemented in an arbitrary manner today, despite the fact that the Supreme Court attempted to alleviate this issue decades ago.

Conclusions & Further Study:
Racial discrimination within the death penalty is a contentious subject that continues to stir debate. With this in mind, it is imperative to remain vigilant about the issue in the upcoming years. It seems that the Supreme Court accepts death penalty as an acceptance of statistical data within cases. This is a trend that was previously unknown of as demonstrated within this research project. With that being said, it would be interesting to analyze whether the Supreme Court would accept the legitimacy of statistical data and declare the punishment unconstitutional if a similar case to Kemp were to be introduced today. Further, scholars such as Phillips are studying race and the death penalty prompting others to change their own research and discourses. However, it seems that the death penalty is being implemented in an arbitrary manner today, despite the fact that the Supreme Court attempted to alleviate this issue decades ago.

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