

Jim Crow Criminal Justice and Modern America

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Perspective

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INTRODUCTION

In 2019, the American Journal of Legal History published my essay on the racialization of capital punishment in the Jim Crow South. Focusing on the death penalty in New Orleans between World War I and World War II, my research charted the process through which capital sentences became reserved exclusively for African America defendants. During the 1920's, white residents comprised 56.3% of convicted killers sent to the gallows. After 1933, however, African Americans made up 100% of those executed for murder, even though the rate at which these residents killed plunged. I argued that this early twentieth century shift to the use of capital punishment as a mechanism of racial control forged the foundation for modern mass incarceration and criminal system disparities. In the early twenty-first century, African Americans comprised a massively disproportion share of prison and death row populations.

DESCRIPTION

My subsequent research has both re-affirmed this conclusion and suggested a somewhat more complicated and chilling transformation during the last hundred years ^[1].

On the one hand, other trends in law enforcement demonstrate that racial differences in capital punishment represented a cypher for wider trends in policing and criminal justice. Between 1920 and 1945, changes in arrest differentials, homicide conviction rates, police brutality cases, and deadly police shootings shifted in comparable ways, increasingly eliding crime and race control and targeting African American residents. The interwar South produced the scaffolding for the institutionalized, systemic racism that continues to haunt the nation ^[2].

On the other hand, the history of the death penalty and the larger operations of the criminal justice are less linear than my macro level analysis implied. To be sure, the grotesque racial disparities that my research documented persist, but late twentieth century developments make our present challenges even more distressing. The progress and promise of the Civil Rights Movement, the Kerner Commission report, and the Warren Court ultimately failed to extend constitutional protections to all Americans. In 1972, in *Furman v. Georgia*, the U.S. Supreme Court affirmed that racial disparities in capital punishment were endemic, leading to a national moratorium on execution. But such hopeful signs elicited fierce backlashes that reinvigorated the institutional practices of the pre-world war II era. Within five years of the moratorium, for example, state after state created capital punishment standards that disingenuously side stepped constitutional guardrails and enabled state courts to restore racial disparities in executions ^[3]. A racially inflected "war on crime," the creation of militarized street crime units and SWAT teams, and more recent get tough on crime initiatives, such as stop and frisk programs, have threatened to return the nation to the criminal justice of Jim Crow era ^[4-6].

CONCLUSION

My research on early twentieth-century New Orleans indicated that police officers shot unarmed African Americans at four times the rate of white suspects. Early twenty-first century data reveal 3.5 to fivefold disparities. Similarly, law enforcers committed 7.8% of homicides in interwar New Orleans and commit 8% in modern America. The rate at which killer cops are convicted remains unchanged as well. Despite recent, unsettling research on implicit racial bias, many governors and state legislatures are eager to enhance police authority and to make capital convictions easier. These trends are particularly dispiriting because of the reckoning fueled by the civil rights movement and the warren court and by the re-awakening initiated by widely circulated videos of the George Floyd and Tyre Nichols police murders. Without question, American race relations and the law have changed during the last century, and there has been remarkable progress. But, as a historian of the early twentieth century, I am struck that much has remained the same as well.

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