



Abolishing the Death Penalty Values Black Lives

By Alexis Hoag

This piece is excerpted from Valuing Black Lives: A Case for Ending the Death Penalty, [Columbia Human Rights Law Review, Vol. 51, No. 3, 2020](#)

The political and legal climate recognizes two types of people when criminal conduct is involved: victims and Black people. The death penalty continues to be administered to the most disfavored members of society: the poor, those with mental illness, and Black people.

Since its inception, the disproportionate imposition of the death penalty has denied murdered Black victims the equal protection of the laws. Capital punishment is supposed to be reserved for those who commit the “worst of the worst” crimes. Instead, as a result of bias, prejudice and racism, it is disproportionality reserved for those charged with killing white victims.

In North Carolina, Jack Boger and Isaac Unah examined death penalty cases from 1993 to 1997, finding that defendants whose victims were white were 3.5 times more likely to be sentenced to death than those with non-white victims. Unah noted that no matter how he and Boger analyzed the data, the whiteness of homicide victims “operates as a ‘silent aggravating circumstance’ that makes death significantly more likely to be imposed.” Michael Radelet and Glenn Pierce came to a similar conclusion when reviewing data from North Carolina capital cases from 1980 to 2007.

The lack of redress for Black victims of crime is not a recent phenomenon; its origins lie in slavery and white supremacy. The seeds of white supremacy were planted in 1619, when white settlers first brought enslaved Africans to the shores of colonial America. Early colonial law intentionally did not provide redress for Black people; it provided only punishment. Slave codes enabled white people to punish Black people with impunity to maintain power and dominance.

Following the formation of the United States, the law’s emphasis on punishing Black bodies continued. Antebellum era criminal codes often explicitly mentioned both the race of the victim and the defendant, making certain acts felonies *only when* committed by Black people. Whereas certain crimes specifically targeted enslaved people, equally troubling was the fact that the social, political, and legal norms of the South also failed to hold white people accountable where the victim of the crime was Black. For example, the criminal codes assigned harsher punishments to enslaved and free Black people for committing the same offense as a white person.

Any death sentencing scheme is unlikely to eradicate racism from its operation where the American public and the justice system continue to undervalue Black lives. Where multiple actors in the justice system — law enforcement, prosecuting attorneys, and the jury — all contribute to consistent race-of-victim disparities in death sentencing, there can be no constitutional administration of capital punishment.

Placing equal value on Black lives — perpetrators and victims — relative to white lives, would compel the criminal legal system to address longstanding racial discrimination in the operation of the death penalty. Rather than expand or even reform capital punishment, the only solution is abolition. Borrowing from Allegra McLeod's prison abolition framework, abolition of the death penalty forces the law to confront the dehumanization, violence, and racial degradation inherent in death sentencing. Empirical evidence gathered since *Furman* illustrates that our nation is incapable of administering the death penalty free from racial discrimination. It is time for this nation to cease tinkering with the machinery of death and to abolish capital punishment.

Alexis Hoag previously served as senior counsel at the NAACP Legal Defense and Educational Fund, Inc. ([LDF](#)). Currently she is an associate research scholar and lecturer in law at Columbia Law School, as well as the inaugural Practitioner-in-Residence at the Eric H. Holder Jr. Initiative for Civil and Political Rights.