



HANDOUT THREE: **LYNCING'S LEGACY: CAPITAL PUNISHMENT IN AMERICA**

Excerpted from [*Lynching in America: From "Popular Justice" to Racial Terror*](#)

Directions: Underline key phrases and new details as you read through this excerpt from the EJI Report “Lynching in America.” Note names of places, court cases or people you might be interested in learning more about in the future.

Prepare to answer these questions during classroom discussion, or in writing:

- Describe how the legacy of racial terror lynching is visible in today’s system of capital punishment.
- How do you think this legacy should influence our capital punishment laws and policies?
- Use the data from the film clip, the [Lynching In America](#) report, or conduct independent research to identify other areas of our criminal justice system where else the legacy of racial terror and the narrative of racial difference is evident.

LYNCING'S LEGACY: CAPITAL PUNISHMENT IN AMERICA

As early as the 1920s, lynchings were disfavored because of the “bad press” they garnered. Southern legislatures shifted to capital punishment so that legal and ostensibly unbiased court proceedings could serve the same purpose as vigilante violence: satisfying the lust for revenge...²¹

By 1915, court-ordered executions outpaced lynchings in the former slave states for the first time. Two-thirds of those executed in the 1930s were black, and the trend continued. As African Americans fell to just 22 percent of the South’s population between 1910 and 1950, they constituted 75 percent of those executed in the South during that period.

In the 1940s and 1950s, the NAACP’s Legal Defense Fund (LDF) began a multi-decade litigation strategy to challenge the American death penalty—which was most active in the South—as racially-biased and unconstitutional. They won in *Furman v. Georgia* in 1972 when the United States Supreme Court struck down Georgia’s death penalty statute, holding that capital punishment too closely resembled “self-help, vigilante justice, and lynch law” and that “if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race.

Southern opponents decried the decision and immediately proposed new death penalty statutes. In 1976, in *Gregg v. Georgia*, the Supreme Court upheld Georgia’s new death penalty statute and reinstated the American death penalty, capitulating to the claim that legal executions were needed to prevent vigilante violence.

21 <https://lynchinginamerica.eji.org/drupal/sites/default/files/2019-08/lynching-in-america-3d-ed-080219.pdf>, pgs. 62-64.

The new death penalty statutes continued to result in racial imbalance, and constitutional challenges persisted. In the 1987 case of *McCleskey v. Kemp*, the Supreme Court considered statistical evidence demonstrating that Georgia decision makers were more than four times as likely to impose death for the killing of a white person than a black person. Accepting the data as accurate, The Court described racial bias in sentencing as “an inevitable part of our criminal justice system” and upheld Warren McCleskey’s death sentence because he had failed to identify a “constitutionally significant risk of racial bias” in his case.

Race remains a significant factor in capital sentencing. African Americans make up less than 13 percent of the nation’s population, but nearly 42 percent of those currently on death row in America are black, and 34 percent of those executed since 1976 have been black. In 96 percent of states where researchers have completed studies examining the relationship between race and the death penalty, results reveal a pattern of discrimination based on the race of the victim, the race of the defendant, or both. Capital trials today remain proceedings with little racial diversity; the accused is often the only person of color in the courtroom and illegal racial discrimination in jury selection is widespread, especially in the South and in capital cases. In Houston County, Alabama, prosecutors have excluded 80 percent of qualified African Americans from juries in death penalty cases.

More than eight in ten American lynchings between 1889 and 1918 occurred in the South, and more than eight in ten of the nearly 1400 legal executions carried out in this country since 1976 have been in the South. Modern death sentences are disproportionately meted out to African Americans accused of crimes against white victims; efforts to combat racial bias and create federal protection against racial bias in the administration of the death penalty remain thwarted by familiar appeals to the rhetoric of states’ rights; and regional data demonstrates that the modern death penalty in America mirrors racial violence of the past. As contemporary proponents of the American death penalty focus on form rather than substance by tinkering with the aesthetics of lethal punishment to improve procedures and methods, capital punishment remains rooted in racial terror—“a direct descendant of lynching.”²²

²² *Ibid.*, p. 63-64

