

National Portrait Gallery, Smithsonian Institution, Washington D.C., USA

Alice Storey

Introduction

The Smithsonian in Washington D.C., USA is the “world’s largest museum, education, and research complex” (Smithsonian Institution 2021). You may think of it as a must-see tourist attraction when in the USA, rather than a ‘dark destination.’ Yet, the Smithsonian’s National Portrait Gallery houses a collection about the ‘Scottsboro Boys,’ who were involved in an infamous death penalty case marred with racial discrimination and multiple wrongful convictions. This chapter discusses the case of the Scottsboro Boys as exhibited by the National Portrait Gallery, and the concerning trend of history repeating itself through the modern-day death penalty in the USA.

The National Portrait Gallery’s Scottsboro Boys Collection

The Scottsboro Boys Case involved nine young, black boys who were riding a freight train in Alabama in 1931 and got into a fight with a group of white boys (ACLU 2020). They were subsequently wrongfully accused and convicted of raping two white women while riding the train (ACLU 2020). The Scottsboro Boys Case took place against the backdrop of the South’s brutal treatment of black people, with the lynching of black men (Kaufman-Osborn 2006, p. 27) being the norm during the Jim Crow Era (Hunt 2016). The Jim Crow Era refers to the racial segregation laws that were rampant across the South, from 1877 to 1964, although arguably the Jim Crow legacy still lives on in the US today.

After the two white women accused the Boys of rape, all nine were arrested—Olen Montgomery, Clarence Norris, Haywood Patterson, Ozie Powell, Willie Roberson, Charley Weems, Eugene Williams, Andy Wright, and Roy Wright. In fact, they were almost lynched as a group of 10,000 people congregated in Scottsboro for the trials (Kirchmeier 2001, p. 95; ACLU 2020). Most of these people were “poor white farmers” who shouted racist abuse and asked whether there was “enough rope,” referring to their plans to lynch the Boys (Linder 2000, p. 551). However, instead of being lynched by an angry mob of white men, they were “legally lynched” (Hargrove 2001, p. 35) by an “all-male and all-white jury” with a short trial and conviction, which saw eight of the nine boys being sentenced to death (History 2020). The outcome of the Scottsboro Boys case was based upon “race and racial stereotypes rather than on evidence” (Duru 2004, p. 1337), and as the Boys were awaiting execution, a letter written by one of the two women came to light, in which she wrote that she had lied about the rape accusations (ACLU 2021). Despite this, the Alabama Supreme Court upheld all but one of the convictions, ruling that Williams must have a retrial as he was tried as an adult when he had only been 13 at the time.

All nine cases were appealed as one to the US Supreme Court, which held in favour of the Scottsboro Boys in a landmark ruling in *Powell v. Alabama* (1932). The Court found that the Boys had been denied their Fourteenth Amendment rights, as “the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.” (Powell v. Alabama 1932). The decisions of the Alabama courts were reversed and were remanded back to the State.

When the case returned to Alabama, the State tried the Boys again, in trials that were also fuelled by racial injustice and controversy (Linder 2000). For a second time, the US Supreme Court stepped in and reversed the convictions, due to a breach of due process, this time in relation to the systematic exclusion of black jurors (Norris v. Alabama 1935). For a third time, the State of Alabama sought convictions of the Scottsboro Boys.

Eventually in 1937, Montgomery, Roberson, Williams, and Roy Wright were released from prison as the State dropped the charges of rape against them. Powell remained in prison due to a conviction for attacking a prison guard. Norris, Patterson, Weems, and Andy Wright were all convicted of rape and completed prison sentences (Carter 1979). The last Scottsboro Boy passed away in 1989, yet it was not until 2013, “after the legislature passed a law permitting posthumous pardons, [that] they received full and unconditional pardons.” (ACLU 2020).

The National Portrait Gallery houses a portrait of Clarence Norris and Haywood Patterson, drawn by Aaron Douglas circa. 1935. This “provides the opportunity to pair a critical historical story with a powerful work of art” (Reaves 2011). It also serves as both a reminder to the world of the USA’s historic racism, and a demonstration of the link between historic and modern-day racial discrimination in the country.

Is History Repeating Itself?

The legacy of the Jim Crow Era and the racial injustice the Scottsboro Boys experienced lives on in the USA. The entirety of the US criminal justice system is marred with racial discrimination. From the killing of black men by police, right through to the death penalty, it is clear that more value is placed on a white life than a minority life.

The modern-day death penalty is more nuanced in its racial discrimination than at the time of the Scottsboro Boys case. Detailed studies have been carried out regarding the link between race and capital punishment, which demonstrate “a correlation between holding racially biased beliefs and support for the death penalty in the [USA]” (Hood & Hoyle 2015, p. 286). The leading study is the Baldus Study, which was a sophisticated analysis carried out on sentencing within cases in the 1970s and the racial disparities in the death penalty in the State of Georgia (Baldus et al 1983; Baldus et al 1985). The Baldus Study found that there was a 4.3:1 chance of a defendant

receiving the death penalty for killing a white person than a black person. From the data collected, the authors concluded that the race of the victim is almost as influential as a defendant having previously been convicted of crimes such as robbery (Baldus et al 1983; Baldus et al 1985). Furthermore, when the raw data was analysed, it showed that even in this category black defendants were more likely to be executed than white defendants (Baldus et al 1983; Baldus et al 1985; Mears 2008, p. 81).

Despite the clear evidence of discrimination, courts in the USA have not been receptive to the findings of the Baldus Study. In the 1987 case of *McCleskey v. Kemp*, the appellant used it to demonstrate that “the Georgia capital sentencing process is administered in a racially discriminative manner in violation of the Eighth and Fourteenth Amendments” (McCleskey v. Kemp 1987, p. 286). However, in a 5-4 decision, the US Supreme Court rejected this argument and, in delivering the opinion of the Court, Justice Powell found that for an Equal Protection claim to stand, an appellant must prove “that the decision-makers in *his* case acted with discriminatory purpose” (McCleskey v. Kemp 1987, p. 292). The majority found McCleskey had not done this, as he had relied solely on the findings of the Baldus study, rather than on the facts of his own case (McCleskey v. Kemp 1987, p. 292-93).

This problem has not improved over time. The Death Penalty Information Center (2021) carried out a study of all capital cases from 1976 to July 2021, which provided statistical results showing that “[m]ore than 75% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of total murder victims generally are white.” Furthermore, a 2007 study sponsored by the American Bar Association demonstrated that black defendants “received the death penalty at three times the rate of white defendants where the victims were white” (Advocates for Human Rights 2010, para. 5). Additionally, whilst the federal death penalty is often cited by the US government in terms of the rare numbers of capital sentences and executions, the Federal Death Penalty Resource Council has provided statistics “illustrat[ing] that the death penalty is applied more than three times as often against non-whites as against whites and more than twice as often against blacks as against whites” (Inter-American Commission on Human Rights 2010). In the capital case of Orlando Hall, he specifically cited the federal death penalty in Texas, wherein “black defendants are 5.3 times more likely than white defendants to face the death penalty in Texas federal prosecutions; and 10.3 times more likely than Hispanic defendants” (Inter-American Commission on Human Rights 2010). This suggests that whilst the federal death penalty is not used as often, it is more discriminatory based on race.

More positively, in 2018, in *State v. Gregory*, the Washington State Supreme Court struck down its capital punishment statute based on a study on race (State v. Gregory 2018; Beckett 2016). However, generally, even well-regarded studies that provide clear data demonstrating the extent of racial discrimination in the death penalty are not acted upon by the courts. Whilst the example of Washington State is certainly a positive, no other US State has followed suit to date.

Linking this modern-day racially biased death penalty to the injustices faced by the Scottsboro boys, former-Supreme Court Justice Stevens stated that, “the murder of black victims is treated as less culpable than the murder of white victims provides a haunting reminder of once-prevalent Southern lynchings” (Equal Justice Initiative 2010).

Conclusion

The Smithsonian’s National Portrait Gallery allows visitors to remember the racially motivated wrongful convictions of the Scottsboro Boys, but also to reflect upon how the Jim Crow Era still lingers today. It is abundantly clear that racial injustice permeates the death penalty, demonstrated by the myriad studies conducted, one of which has led to a State’s abolition of the punishment.

Capital punishment is an archaic and barbaric punishment that has no penological rationale in today’s society. Racial discrimination is just one of the many fundamental flaws of the capital system in the USA and, if it wants to move away from its historical legacy of racism as demonstrated by the Scottsboro Boys Case, then one step in the right direction would be to abolish the death penalty across the USA.

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