

US: Impunity for Killer Cops at Home and Legal Immunity for Military Personnel Overseas

It's Not the Law, But Prosecutors, That Give Immunity to Killer Cops

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"In refusing to prosecute, Obama and Holder demonstrate their own profound disregard for the collective rights of Black Americans as a people."

Black Americans know all about "law and order": the term, itself, is code for the state-wielded hammer that is relentlessly deployed against us. No people on earth are more conditioned to concentrated bludgeoning under "color of law" than African Americans, who account for one out of out eight of the world's prison inmates. Black males are 21 times more likely than their white peers to be killed by U.S. lawmen, and make up a [clear majority](#) of young police shooting victims under the most draconian law and order regime on the planet. Of all the world's peoples, none have been so unremittingly inculcated with the lessons of crime and punishment – especially punishment, whether merited or not.

For a people so acculturated, justice demands retribution – even for Pharaoh and his army. Thus, the simple and near-universal Black American demand that President Obama and Attorney General Eric Holder prosecute killer cops.

But, this they will not do.

The Obama administration has no intention of pursuing prosecution of Darren Wilson, or Trayvon Martin's vigilante killer George Zimmerman, or the whole crew of New York City homicidal and/or depravedly indifferent first-responders in the Eric Garner case. Obama and Holder have nothing worthwhile to say to the [nine grieving Black mothers](#) now visiting Washington demanding justice for their murdered loved ones, other than empty assurances that they feel the families' pain.

The U.S. Justice Department, which marshals unlimited resources to pursue long and sometimes fruitless prosecutions of whistleblowers and other "national security" targets, claims it is helpless to confront police impunity in the murder of Black Americans. The law, Holder and his apologists claim, requires that federal criminal prosecutions under the civil rights statute must prove beyond a reasonable doubt that the officers "acted willfully" for the specific purpose of violating the victim's 4th Amendment constitutional right to life. Making that case, they say, is near-impossible, requiring that prosecutors "get inside the officer's head" to divine his intentions at the moment the trigger was pulled. Therefore, despite Holder and Obama's public statements of concern, no good faith attempt is made to mount prosecutions.

The Michigan branch of the American Civil Liberties Union doesn't buy that argument. In an article [in this issue of BAR](#), ACLU lawyer Mark Fancher, a counsel in the case of the police "circular firing squad" killing of [Milton Hall](#), in Saginaw, Michigan, contends that the law fully supports charges of "open defiance" or "reckless disregard" for the constitutional rights of the victims in such case. Although prosecutions of police are more difficult than trying civilians, the ACLU cites [U.S. Supreme Court and federal appellate](#) rulings from 1945, 1972, 1993 and 1997, that continue to sustain the vitality of the original, Reconstruction era federal statute forbidding deprivation of constitutional rights, including the right to life, "under cover of law" – that is, by police. "It is enough...if it can be proved – by circumstantial evidence or otherwise – that a defendant exhibited reckless disregard for a constitutional or federal right," according to *U.S. v. Johnstone*, 1997.

That's not nearly as high a bar to a good faith prosecution as federal officials contend, and an easy argument for any federal prosecutor to make before malleable grand juries. Whether an actual trial jury convicts the cop is a different story, but the prosecutor has an obligation to pursue justice to the full extent of the law. It is not "the law" that stands like a brick wall of impunity for police, but the interpretation of the law by attorneys general and their subordinates who view prosecutions of police as akin to unnatural acts that cannot be performed in public view.

As Atty. Fancher writes, it is "hard to imagine why charges cannot be brought when police officers fire dozens of bullets at a homeless man armed only with a pen knife; or when police use a choke hold to put a submissive man on the ground because he was alleged to be engaged in unauthorized cigarette sales. By almost anyone's reckoning, such conduct should be regarded as 'open defiance' or 'reckless disregard' for the constitutional rights of the victims."

In refusing to prosecute, Obama and Holder demonstrate their own profound disregard for the collective rights of Black Americans as a people. Police immunity from prosecution begins with the prosecutors. If the Obama regime were serious about establishing "trust" between Black America and the authorities, as they claim, they would begin with a campaign of police prosecutions for "reckless disregard" and "open defiance" of Black people's constitutional rights. There is no lack of actionable cases. As BAR editor and senior columnist Margaret Kimberley writes: "There is no need for more task forces or advisory commissions. The police must stop killing black people with impunity and nothing will make that less likely to happen than the sight of Wilson and his partners in crime sitting in federal prisons."

The penalty for "reckless disregard" of people's constitutional rights, involving violence, is ten years in prison and a stiff fine.

Of course, the feds and their state and local counterparts will not break their pact with the police – not until a people in angry, righteous motion create conditions of ungovernability in America's cities that allows no other choice. Police impunity is the domestic counterpart of the legal immunity that U.S. military personnel enjoy overseas. The U.S. deploys troops in the majority of countries in the world, but does not station soldiers anywhere in the absence of Status of Forces Agreements (SOFA) granting them immunity from prosecution under the host country's laws. Failure to secure an extension of the SOFA agreement with Iraq required the withdrawal of U.S. troops, in 2010. The United States claims it has not joined the International Criminal Court because, among other reasons, compliance with the treaty could lead to "foreign" prosecution of its military personnel.

Essentially, prosecutors in the United States maintain an informal kind of Status of Forces Agreement, immunizing the police from prosecution in the deaths of Black and brown “natives” in the areas they occupy. At home and abroad, the armed forces of the racist, imperial State are beyond the law. As such, their very presence is an affront to human dignity. That’s just as true in Ferguson and Oakland and New York City, as it is in Kabul and Ouagadougou and Bogota.

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