

## **THE FINAL QUESTION – THE DEATH PENALTY**

It has been nearly 40 years since the decision was made. It has been years of continual debate between supporters and opponents. It has been years of wrestling between whether it's right or it's wrong. It has been years of legal arguments, mental anguish, anger, heartache, frustration, and confusion. It has been nearly 40 years since the Supreme Court reinstated the death penalty in America. Notice the key word in the previous sentence, *reinstated*. The decision made by the Supreme Court in 1976 to allow the death penalty to be implemented by the states, at their discretion, was not the first time the death penalty was found constitutional in the United States. Before we can address the death penalty, we must first consider the amendment to the Constitution allowing this action. The Eighth Amendment to our federal Constitution states: *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

It is this amendment which deals with and helps regulate the sentencing of criminals in the United States today and has done so since the Eighth Amendment was adopted through the Bill of Right in 1791.

Before our country had a federal constitution, the citizens of this land had to deal with the issue of punishment of criminals. In the Puritan era, the people had to deal with such crimes as gambling, swearing, robbery, lying and spouse beating. The punishments inflicted for such crimes ranged from fines to whippings to ducking. Ducking was, essentially, the dipping of a person into water. The person in question would sit in a chair built on the end of a long horizontal pole. The chair was then lowered into the water with the person sitting in the chair. The Puritan's also used public humiliation as a means of punishment. Some criminals were placed in stocks or the pillory. Additional humiliation tactics used were to make the criminal wear a letter signifying the crime he/she had committed.

When the question of criminal execution was presented to the Puritans, hanging was the answer. Another earlier death penalty practice was the firing squad. Since these primitive means of capital punishment were used, many new ones have been invented. Death by electrocution was introduced in 1890. Thirty-four years later, in 1924, the gas chamber became an option and, in 1977, lethal injection was introduced.

In 1972, our Supreme Court stopped just short of saying that the death penalty was cruel and unusual in the case of *Furman v. Georgia*. Then, in 1976, the Supreme Court authorized the death penalty in the case of *Gregg v. Georgia*. Today, there are many sentenced to death but few executed. Why is this so? The answer lies in the appeals process. When the judicial personnel are dealing with taking someone's life, they are very careful that there is no miscarriage of justice. Some people facing the death penalty were later found not guilty by a higher court. Randall Dale Adams is probably the most publicized person to be found innocent of his crime. Adams had spent 12 years on death row in Texas for murdering a police officer. While making the movie, *The Thin Blue Line*, a film maker found evidence which proved Adams' innocence.

In 1972, 52 percent of our American population favored the death penalty. In 1990, that figure had grown to 75 percent. Many people believe, however, that there is still not enough political will to initiate a series of executions. There seems to be a growing trend of anger across the United States. People are tired of the court's hesitancy to use the death penalty. They see more violent crimes being committed and reported, and they feel that justice is not being done. Proponents of the death penalty view capital punishment as a deterrent to crime. If the death penalty does not deter the criminal before he/she acts, he/she won't ever do it again! The death penalty, here, is seen as a permanent deterrent and as just.

Opponents to the death penalty do not view it as deterrent. In many countries, the death penalty is seen as a violation of human rights. Indeed, out of all of North America and Europe, only Belarus still has laws allowing executions. U.S. neighbors Canada and Mexico both abolished the practice, in 1976 and 2005 respectively. The European Union holds the official position that "the death penalty is cruel and inhumane, and has not been shown in any way to act as a deterrent to crime."

In 2002, the Supreme Court issued a landmark ruling ending the execution of those with intellectual disability. In *Atkins v. Virginia*, the Court held that it is a violation of the Eighth Amendment ban on cruel unusual punishment to execute death row inmates with "mental retardation". In 2005, the Supreme Court ruled that the Eighth Amendment forbids the execution of offenders who were under the age of 18 when their crimes were committed (*Roper v. Simmons*).

The death penalty conjures up scary pictures of electric chairs, dark gas chambers, and needles filled with lethal drugs. Capital punishment also brings up two opposite views. One, "Justice cannot be served as long as we practice and okay the death sentence." Two, "Justice has been served because this criminal has been eliminated from society."

## ***Furman v. Georgia (1972)***

### **CIRCUMSTANCES OF THE CASE**

The Furman case consolidated appeals from three convicted murderers serving out sentences on death row. The lead case was that of William Henry Furman, a 26-year-old African American from Georgia, who had broken into a home with the intent to commit theft. The home owner surprised Furman, however, and attempted to apprehend him. Furman, armed with a revolver, ran away. While fleeing, Furman said, he "dropped his gun, which discharged and killed the home owner." Furman was arrested, tried, and found guilty of murder. The jury had the choice of sentencing Furman to life imprisonment or to death. It chose death.

The other cases were those of Lucius Jackson, Jr., who had been convicted of sexual assault and sentenced to death, also in Georgia, and Elmer Branch, who awaited execution in Texas after being convicted of sexual assault. These two men were also African American.

### **CONSTITUTIONAL ISSUES**

The cases considered the 8th and 14th Amendments—the Cruel and Unusual Punishment and the Equal Protection clauses, specifically. Was the death penalty, as applied by the States in the three cases, "cruel and unusual"? Would the death penalty be "cruel and unusual" if it typically were given to poor people and minorities, while affluent or white people were given life sentences for similar crimes? Did such a double standard violate the Equal Protection Clause of the 14th Amendment?

### **ARGUMENTS FOR FURMAN**

Furman's attorneys argued that criminal justice could be served well enough with life imprisonment. "...[T]he American people no longer felt that the death penalty was suited to human dignity," they said. Most importantly, however, the attorneys argued that poor people and people of color routinely received the death penalty for capital offenses, at a rate vastly disproportionate to that of whites, particularly affluent whites, accused of similar offenses. This was a clear violation of the 14th Amendment's guarantee of equal protection of the laws.

### **ARGUMENTS FOR GEORGIA**

Attorneys for the State of Georgia argued that the death penalty was permitted under the due process provisions of the 5th and 14th Amendments and did not constitute "cruel and unusual punishment" as prohibited by the 8th Amendment. The attorneys argued that "the death penalty served to discourage [or deter] crime and also satisfied the public's moral outrage when terrible crimes were committed."

### **OUTCOME**

The Court split 5–4 in striking down the death penalty as it was currently applied in State criminal codes. The Court held that the death penalty, as it was currently applied in State criminal codes, violated the 8th Amendment and 14th Amendment rights of condemned persons. The Court ruled that the sentence of death, itself, was not unconstitutional, but that the procedures and applications as practiced by the States were. Many States rewrote their criminal codes immediately, to more narrowly define and apply the death sentence.

## ***Gregg v. Georgia (1976)***

In *Furman v. Georgia* (1972), the Supreme Court ruled that the death penalty systems currently in place were unconstitutional violations of the Eighth Amendment's prohibition on "cruel and unusual" punishments. The Court noted that there were no rational, objective standards for when the death penalty would be given. Justice Potter Stewart described the death penalty system at the time as "cruel and unusual in the same way that being struck by lightning is cruel and unusual." In other words, it was not the death penalty itself that was unconstitutional, but rather, the random way it was applied made it cruel and unusual. A moratorium, or temporary ban, of the death penalty went into effect in the United States. In response to the decision, 35 states changed their death penalty systems in order to comply with the Court's ruling.

Four years later the case of *Gregg v. Georgia* (1976) reached the Court. Troy Gregg had been found guilty of murder and armed robbery and sentenced to death. He asked the Court to go further than it had in the Furman case, and rule the death penalty itself unconstitutional. The Court refused to do so. The Court found that Georgia's system for applying the death penalty was "judicious" and "careful." Gregg had gone through two trials – one to determine guilt and one for sentencing. Further, specific jury findings of "aggravating circumstances" were necessary to impose the death penalty. There was therefore no Eighth Amendment violation, and the death penalty was constitutional.