

DEATH PENALTY

- Capital Punishment
- State-sanctioned practice of killing a person as a punishment for a crime
- Methods
 - Lethal Injection (primary method)
 - Electrocution
 - Lethal Gas
 - Hanging
 - Firing Squad

DEATH PENALTY STATISTICS

- Legal in United States
 - 27 States
 - Federal Government
 - Military
 - America Samoa
- Illegal in United States
 - Abolished in 23 states
- US has been responsible for 1,543 deaths due to capital punishment since 1976
- In 2020 only 5 states used capital punishment (AL, GA, MO, TN, TX)
- Death Penalty in the World (as of 2020)
 - 144 countries have abolished the death penalty in law or practice
 - 28 countries have *effectively* abolished the death penalty by not executing anyone in the past 10 years
 - Legal in 55 countries
 - China
 - Egypt
 - India
 - Iran
 - Nigeria
 - Japan

HISTORY OF THE DEATH PENALTY

- Common Law: all felonies punishable by death
- First recorded death sentence in colonies was in 1608
- Bill of Rights
 - 8th Amendment: cruel and unusual punishment
 - 5th Amendment: “capital crime” must be proscribed by grand jury indictment
- 19th Century Abolition: Michigan, Wisconsin, and Maine
- Capital Punishment suspended in 1972 (*Furman v. Georgia*)
- Capital Punishment reinstated in 1976 (*Gregg v. Georgia*)

FURMAN V. GEORGIA (1972)

- Several cases brought together at the same time
 - Individuals sentenced to death after conviction of murder/rape
- Claim: Georgia death penalty statute violated the 8th Amendment
- Supreme Court struck down death penalty statute under the 8th Amendment (5-4 Decision)
- Never said DP was *per se* unconstitutional
 - Instead of saying DP is unconstitutional, phrased as the sentences of these defendants constitutes “cruel and unusual punishment”

FURMAN V. GEORGIA (1972)

- "Majority" (DP Unconstitutional)
 - Violates 8th Amendment because it is unusually severe and degrading to human dignity, applied arbitrarily, viewed with doubt by society, less severe punishment would achieve same goals
 - DP is cruel and unusual based on "evolving standards of decency"
 - DP is applied discriminatorily – 8th Amendment requires laws to be written and applied fairly to all
- Dissents (DP Constitutional)
 - Oversteps judicial review – does not show proper deference to judgment of elected officials
 - DP is mentioned in Constitution, so can't be unconstitutional
 - DP should be overturned as a matter of policy, but it is not unconstitutional

GREGG V. GEORGIA (1976)

- Defendant convicted by a jury of two counts of armed robbery and two counts of murder
- Jury imposed death penalty
- Holding: DP is not a *per se* violation of the 8th Amendment, but should be imposed under sentencing procedures to avoid indiscriminate use (7-2 Decision)
- Majority
 - *To not be excessive*, punishment must not involve the unnecessary wanton infliction of pain and cannot be grossly out of proportion to the crime
 - Evolving standards of decency: a large portion of U.S. supports DP
 - Serves retributive and deterrent purposes
 - Deference to state legislatures

DEATH PENALTY PROCESS

- Federal Requirements
 - (1) defendant is charged with a crime for which the death penalty is a legally authorized sanction;
 - (2) the defendant intended or had a high degree of culpability with respect to the death of the victim; and
 - (3) one or more aggravating factors specified in a statutory list are present in the case
 - Ex: killing in the course of another serious offense, prior criminal history of violent crimes, commission of killing after substantial planning/premeditation, killing multiple victims
- Prosecutor is constitutionally prohibited from engaging in discrimination or favoritism based on invidious factors, such as race or ethnicity
- Bifurcated jury – separate juries for finding of guilty vs. sentencing

APPEALING DEATH PENALTY

- Between 1973 and 2013, 8,466 were sentenced to death but only 1,359 were executed
 - Overturned on appeal
 - Exonerated due to DNA evidence
- (1) State Appeal
 - Trial Court □ State Appellate Court □ US Supreme Court
 - Only bring up issues in the trial (typical appeal process)
- (2) State Post-Conviction Appeal
 - Same as above, but can raise issues outside of the case
- (3) Federal Habeas Corpus
 - U.S District Court □ U.S Court of Appeals □ U.S. Supreme Court
- (4) Executive Clemency
 - President or Governor

UNEQUAL APPLICATION OF DEATH PENALTY

- African Americans make up 41% of people on death row
 - Only 13% of the population is Black
- White victims make up ~50% of all murder victims, but 80% of capital case victims
- ~66% of people sentenced to death for crimes committed while juveniles were people of color
- Since 2002...
 - 12 people executed where defendant is white and victim is Black
 - 178 people executed where defendant is Black and victim is white
- *McCleskey v. Kemp* (1987)
 - Statistical showing that GA defendants were more than 4X as likely to be sentenced to death if the victim was white, as opposed to Black
 - Court held that racial bias is an inevitable part of our criminal justice system
- https://www.youtube.com/watch?v=_vAKvlslXHs

INNOCENCE & ERROR

- Since 1973, 186 people have been exonerated and released from death row
- For every nine people executed, one person on death row has been exonerated
- Factors driving wrongful convictions:
 - Erroneous eyewitness identification
 - False and coerced confessions
 - Inadequate legal defense
 - False or misleading forensic evidence
 - False accusations or perjury by witnesses who are promised leniency
- 87% of Black exonerees were victims of police misconduct
- Innocence not required for exoneration
 - In AL 160 death sentences have been invalidated by state/federal courts
 - Convicted of lesser offenses or sentenced to lesser sentences on retrial

PROPOSED LAW

Death shall not be proscribed as a punishment for any state or federal offense.