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17.245 The Supreme Court, Civil Liberties, and Civil Rights
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Discussion 20: The 8th Amendment

Three 8th Amendment Cases:

- *Furman v. Georgia*—Supreme Court holds the death penalty unconstitutional
- *Wilson v. Seiter*—Court defines standards for 8th Amendment challenges to confinement conditions, institutes a rigorous intent requirement for the classification of conditions as intrinsic to a punishment
- *Roper v. Simmons*—Supreme Court held that the death penalty was unconstitutional as applied to juveniles in part on the grounds that it conflicts with international human rights standards. The leading recent example of the Court taking international human rights norms into account.

Background of the 8th Amendment

“Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishment inflicted.”

- Clause 1. Bail. Bail must be reasonable given the crime suspected. This is a highly subjective standard.
- Clause 2. Excessive Fines. Fines can be levied in both criminal and civil cases.
- Clause 3. Cruel and Unusual Punishment. One question this raises is whether “and” is strictly conjunctive or disjunctive in this phrase. Does punishment have to be both cruel and unusual, or simply cruel or unusual?

Debate of the meaning of clause 3:

- Most interpretations have argued that a punishment must be both cruel and unusual.

What exactly does the term “unusual” mean?

Potential meanings:

- Uncommon or infrequent
- Substantially unrelated to or incommensurate with the crime committed

The term unusual has been interpreted to mean uncommon or irregular.

One view might be to look to the historical context of the 8th Amendment; e.g. punishments imposed under English common and statutory law that were incommensurate with the crime committed. Using this view, a punishment that goes well beyond what is necessary to deter a crime might be “unusual”.

Another view of the meaning/purpose of the term “unusual” could be to prevent punishments that might have ulterior or suspect motivations. For instance, prescribing a different punishment than is typical for the crime committed because of the defendant’s political views might constitute an “unusual” punishment.

Viewing the words “cruel and unusual” as a single phrase could suggest an effort to target a more specific type of punishment—one that is cruel not because of its nature but because it is so unusual. For example, it might not be inherently cruel to give someone a 20 year prison sentence, but issuing such a punishment for stealing a piece of candy might be so unusual as to make it cruel. Under this interpretation, the 8th Amendment is intended to restrict punishments that are just cruel (which inherently implies unusual), as well as punishments that are so unusual as to make them cruel.

These notes were taken by an MIT undergraduate student enrolled in 17.245. They have been reviewed but only lightly edited by the instructor. The notes reflect a combination of teacher and student comments and questions, and are not a transcript or verbatim rendering of class discussions.

11th Circuit case: death row prisoners in Florida recently brought a case claiming that extreme heat and other restrictions amount to cruel and unusual punishment. The 11th Circuit affirmed the district court's denial of relief on grounds of Wilson v. Seiter (no showing that the state had deliberately inflicted these conditions as punishment on the prisoners).

Is excessive heat a form of cruel and unusual punishment?
The plaintiffs were only able to show a few days of 100+ degree conditions each year.

The case shows the importance of facts on the record in the district courts. Since the Supreme Court and appellate courts generally do not determine facts, it is a prerequisite that all the facts necessary to sustain or dispute the claim be established on the record in the District Court.

Discussion of Wilson v. Seiter, 1991

Inmates bring a complaint that conditions in the prison are cruel and unusual. They complain of overcrowding, excessive noise, insufficient locker storage space, inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms, unsanitary food, and housing with mentally and physically ill inmates.

The Court's holding in Wilson v. Seiter lays down a severe intent requirement for petitioners trying to sue for better conditions in prisons under the 8th Amendment. They must prove that the prison intended to create the conditions as a component of the prisoners' punishment.

The intent requirement essentially requires prison officials to admit that they intended to inflict cruel and unusual punishment in order for a plaintiff to be able to prove a violation. This creates a very lenient standard for prisons because of the obvious difficulty of proving intent when assessing prison conditions. How negligent must prisons be with respect to inmates' health, safety, and well-being before the conditions prisons allow become an inherent part of the punishment?

Without such an intent requirement, the courts would then become overseers of all prison conditions and would have to continually deal with challenges.

The intent requirement means, then, that unfavorable conditions in a prison, if unintended, are not punishment. It does not mean that there are no conditions of confinement that amount to punishment. Conditions of confinement can be an element of the punishment.

One way of satisfying the intent requirement is to show deliberate indifference. If a condition in a prison is bad enough to constitute cruel and unusual punishment and is a result of deliberate negligence by the prison, there could be an 8th Amendment violation.

Discussion of Furman v. Georgia, 1974

The Supreme Court strikes down the death penalty in 3 cases.

Two of the justices (Brennan and Stewart) write opinions arguing for the abolition of the death penalty. This conclusion is based on the premise that capital punishment is inconsistent with human dignity:

"Today death is a uniquely and unusually severe punishment. When examined by the principles applicable under the Cruel and Unusual Punishments Clause, death stands

condemned as fatally offensive to human dignity. The punishment of death is therefore "cruel and unusual," and the States may no longer inflict it as a punishment for crimes. Rather than kill an arbitrary handful of criminals each year, the States will confine them in prison. "The State thereby suffers nothing and loses no power. The purpose of punishment is fulfilled, crime [408 U.S. 238, 306] is repressed by penalties of just, not tormenting, severity, its repetition is prevented, and hope is given for the reformation of the criminal." Weems v. United States, 217 U.S., at 381." (Brennan, concurring opinion in *Furman v. Georgia*, www.findlaw.com)

The remaining members of the majority (Douglas, Marshall, and White) vote to strike down the death penalty only in the context of the three cases at hand and seem to leave open the possibility that the death penalty could be an acceptable form of punishment in other circumstances. The more narrow concurring opinion constructions allow capital punishment in theory, but only if applied in a non-discriminatory manner. Despite these qualifications, the decision has come to be identified as a general pronouncement on the constitutionality of the death penalty.

"It has been assumed in our decisions that punishment by death is not cruel, unless the manner of execution can be said to be inhuman and barbarous ... these discretionary statutes are unconstitutional [408 U.S. 238, 257] in their operation. They are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on "cruel and unusual" punishments. Any law which is nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 U.S. 356. Such conceivably might be the fate of a mandatory death penalty, where equal or lesser sentences were imposed on the elite, a harsher one on the minorities or members of the lower castes. Whether a mandatory death penalty would otherwise be constitutional is a question I do not reach." (Douglas, concurring opinion in *Furman v. Georgia*, www.findlaw.com)

Part of the dissenting opinion seems to agree with the majority view that the death penalty is permissible as an available punishment, so long as it is not administered arbitrarily. The dissenters argue that even though discretion is involved, discretion is necessary in order for the punishment to be administered in a way that reflects the moral views of the society. *"It would, of course, be unrealistic to assume that juries have been perfectly consistent in choosing the cases where the death penalty is to be imposed, for no human institution performs with perfect consistency. There are doubtless prisoners on death row who would not be there had they been tried before a different jury or in a different State. In this sense their fate has been controlled by a fortuitous circumstance. However, this element of fortuity does not stand as an indictment either of the general functioning of juries in capital cases or of the integrity of jury decisions in individual cases. There is no empirical basis for concluding that juries have generally failed to discharge in good faith the responsibility described in Witherspoon - that of choosing between life and death in individual cases according to the dictates of community values."* (Burger, dissenting opinion in *Furman v. Georgia*, www.findlaw.com)

Later litigation gave rise to a requirement of legislation pre-establishing penalties for certain crimes. Arbitrary administration of the death penalty is considered a form of ex-post facto law and thus unconstitutional. Another law prescribing the death penalty as punishment for 1st degree murder was also struck down on due process grounds, on the theory that a defendant must have an opportunity to present mitigating evidence.

Discussion of Roper v. Simmons, 2005

This decision invalidates the application of the death penalty to juveniles. The Supreme Court invokes an evolving international human rights consensus against the juvenile death penalty as a justification for a constitutional holding.

The court also takes account of the fact that many of the states that enforce the death penalty outlaw its application to juveniles, and cites evidence of the trend towards outlawing the juvenile death penalty among the states.

The defendant pre-meditated a murder, executed it, and claimed he would get away with it. Both sides invoked this fact in support of their arguments, including their respective views of deterrence theory. The dissent says that the death penalty should be available because it proves the defendant wrong—a juvenile cannot get away with murder. The majority says that it proves the opposite, that deterrence fails — even where the state, as here, did allow the juvenile death penalty, the defendant still committed the murder.

The Court refers to indicia of evolving standards of decency in international legal opinion – references that triggered a caustic reply from the dissenting justices (particularly Scalia, J.). This case has opened up debate about what methodology should drive Supreme Court interpretations of relatively open-ended provisions of the Constitution such as the “cruel and unusual” standard and whether international norms can inform domestic U.S. constitutional law.