

Baumgartner, POLI 195 Spring 2013

Follow-up on Cost studies from
Monday, continuing on to RJA

Reading: RJA, Revised RJA, and
Mosteller and Kotch section on the RJA

March 20, 2013

Announcements

- Friday seminar at the UNC Law School
- <http://sites.duke.edu/communitysymposium/>
- From Last Time
 - Continue from slide 15 last time...

The Road to the RJA

- “Baldus study” – Controlling for 39 other variables, killers of whites were 4.3 times more likely to get Death than killers of non-whites.
- *McCleskey v. Kemp*, 1987. SC declares that statistical evidence about patterns of discrimination are not themselves relevant to the decision about a particular case.
- Majority requires that plaintiff shows deliberate, conscious, race-based discrimination against the particular individual, by officials associated with their individual case.

Discriminatory Purpose, or Effect?

- Showing that a law has a discriminatory effect was done by Baldus.
- The court ruled that is not enough; it has to have that as an express purpose.
- Some have called McCleskey the worst decision by the SC since WW2; the new Dred Scott.

Other areas of the law

- Employment discrimination
- Affirmative Action
- Housing discrimination

- In these areas, the courts have indeed generally allowed evidence about the impact of particular procedures. For example, police departments can't have promotion exams that systematically generate high grades only for whites. They have not required the demonstration of intent. Rather they infer the intent from the impact.

RJA as taking up that challenge

- The court said that a state legislature was free to pass a law that would specifically allow the use of statistics on EFFECT, not only on INTENT.
- This would reduce the burden on the plaintiff to show that any particular individual acted with conscious intent.
- Of course, showing conscious intent to discriminate is virtually impossible.

Kentucky

- First state to pass a “Racial Justice Act”, 1998
- Not as sweeping as the NC act:
- Must be raised in pre-trial conference
- Clear and convincing evidence, burden on accused to prove discrimination
- Race of inmate must be “the cause” of the decision to ask for death
- Cannot be used to review existing cases.

NC's RJA

- Inmates can appeal their existing death sentence
- Virtually every inmate appealed, even the white ones. (Actually they may have had a point, as it is race-of-victim that is more important than race-of-inmate.)
- Very strong reactions for an against this law...

RJA

- Statistical patterns, in a relevant geographical area – not just in the particular case
 - What is “relevant”?
 - County
 - Judicial district
 - State of NC
 - Time period left unclear but very broad
 - Later amended to be limited to 10 years before and 2 years after the sentencing in question

RJA

- Race a factor in:
 - Decision to seek death by prosecutor
 - Decision to punish by death by judge / jury
 - Any other stage
 - “Seek or impose a death sentence”
- Race:
 - Inmate
 - Victim
 - Jury selection

RJA

- Evidence:
 - Sword testimony of actors involved
 - Statistical evidence relating to:
 - Inmate effects
 - Victim effects
 - Peremptory challenges on jury participation
- Relief:
 - In the event of success for the inmate's claim, the death sentence shall be converted to LWOP.

Revised RJA (2011)

- State must act with discriminatory INTENT
- Inmate must prove this with regard to their own particular case, not other cases in their geographical region.

The 4 Cases

- Marcus Robinson
 - Relief, based on jury selection. He came up under the original 2009 version of the law.
 - (His mother, Shirley Burns, is a speaker in our speaker series later this semester)
- 3 other cases, combined into one hearing
 - Relief in all three cases, under the 2011 version of the law.
 - Jury selection also the key element
- (Judge Weeks, who ruled, will speak in the speaker series as well.)

The fallout

- Legislators thought they had already gutted the law very successfully in 2011.
- Peremptory challenges based on race are quite rampant and have been for many decades in NC and elsewhere. Depending on the judge and the evidence presented, the ruling may well be that “intent to discriminate” has been proved, based on disparate strike rates for blacks and whites, not justified by any explanation.

The fallout

- Current bill to eliminate the RJA completely.
- But the cat may be out of the bag.
 - Judicial finding that race played a role is not the same as a journalist or a professor saying so. This was a judge.
 - Does the 2009 law still apply to those inmates on death row as of 2009? We do not know yet.
- The votes are clearly there to eliminate the RJA
- How this will be later interpreted in the courts is another matter.