

Baumgartner, POLI 203 Fall 2014

NC DP History

Reading: UNC Wilson Library
Collection on-line, Kotch

October 15, 2014

Catching up

- Last 3 slides from Peffley and Hurwitz
- Race just “too hard” for some people to accept

McCleskey v. Kemp (1987)

- Baldus study of racial disparities in Georgia death sentencing cases shows disparate outcomes
 - Argument: general patterns v. individual intent
 - “Racially disproportionate impact”
 - “Racially discriminatory purpose”
 - (Duke Sociology Chair, Eduardo Bonilla Silva has a good book: Racism without Racists, arguing you don’t need intent to have disparate outcomes...)
 - Huge impact of this decision, patterns not relevant
 - Arguing for McCleskey, attorney Jack Boger, currently Dean of UNC Law...

A very close decision

- 5-4 decision, very close
- Justice Scalia: Racial bias is:
 - Real
 - Ineradicable
- Justice Powell:
 - Court concerned that 14th amendment claim, equal protection, would not be limited to capital cases and would shake the entire criminal justice system: “too much justice”
- Justice Brennan (voted with the majority):
 - Now that you have retired, would you change any vote: Yes, one. McCleskey v. Kemp.

NC RJA legislation explicitly based on McCleskey

- Justices said that a legislature could pass a law making statistical evidence be a part of the consideration, but current law did not allow it.
- This was the challenge picked up in the RJA
- This is why the RJA was so revolutionary and so controversial
- More about that later in the term.

NC History (Finally!)

- Public access
 - Huge public crowds, drinking, etc. Goal was to make a big public demonstration of the power of the state, common to executions everywhere.
 - 1868: law requires them to be inside
 - 1897: last public execution
 - 1910: centralized at Central Prison in Raleigh
 - Currently: minimal attendance, media, generally at night (similar to other states)

Methods

- Hanging
- Electrocution (1910) – “being Westinghoused”
- Lethal gas (1935)
- 1961 to 1984, no executions...
- 1984 –, lethal injection
 - 2006, NC Medical Board ruled any physician participating would lose their license.
 - This ban eventually lifted by NC Supreme Court declaring it illegal. Law still requires a physician...
- Current moratorium for 2 reasons:
 - RJA appeals still not yet resolved by the NC SC
 - Lethal injection procedures will be litigated when the first execution would be scheduled, none scheduled yet

Race

- Historical times
 - Slave rebellions, lynching
 - Death for robbery, other property crimes
 - Rape a capital offence until 1974
- Guy Johnson study in 1941
 - 330 murder cases from 1930 to 1940...
 - Black inmates: 32% got sentence of death
 - White inmates: 13% got sentence of death
 - White victim: 17.5% got sentence of death
 - Black victim: 0.4% got sentence of death
- Unah-Boger study in 2001
 - White victim increases odds of death by 3.5 times.
 - (BTW, Unah my colleague in Poli Sci; Boger Dean of Law School.)

Rough politics

- See 1988 in the timeline, execution of Ricky Lee Sanderson; Hugh Holliman was the father of the victim, and later elected to the NC House of Representatives
- See RJA flier on the class website. Holliman consistently supported the death penalty, but voted in favor of the RJA...

The Pardon

- Historically, before World War two:
- Judges routinely sentenced an inmate to death but accompanied their ruling with a request to the governor for a commutation (pardon)
- Governor's pardons (sending the condemned to life in prison rather than to death) were considered a normal part of the legal system, a safeguard for where the death penalty was imposed by law, but seemed too severe
- No longer. They are extremely rare now. Once were common. Politically toxic, too prone to be exploited. This was not the case long ago.

Kotch - Mosteller

- Long-run history
- No point at which there is a clear break from the obviously racialized slave codes from the past
- Many argue that current leaders should not be held accountable for errors in the distant past
- *McCleskey v. Kemp*: Race is “real” and “ineradicable”. Two possible responses:
 - Deny it because it is too threatening. *McCleskey*.
 - Recognize it even if doing so is costly. *RJA*.