

# Baumgartner, POLI 203

## Spring 2016

Background on the Death Penalty  
Process

January 25, 2016

Readings: catch-up on Jost, then Just  
Mercy

# Catch-up from last week

- NC reforms reducing use of DP
- NC methods of execution
- Issues Pro and Con

# Big reforms reducing the DP in NC

- 1994: LWOP is the alternative to DP
- 2000: creation of Indigent Defense Services
- 2001: Prosecutors have discretion to seek DP
- 2002: no DP for mentally retarded (before US SC does same thing in *Atkins*, 2002)
- 2005: US SC rules in *Roper* against DP for juveniles
- 2006: Physicians oppose lethal injection, no more executions since then.
- 2009: RJA (But: revised 2011, repealed 2013, “Restoring Proper Justice Act” 2015)

# NC methods of execution

- Before 1910: hangings in front of local court house
- 1910: Executions centralized in Raleigh
  - Electric chair, no longer hangings
  - Gas chamber later
  - Lethal injections later
  - Each innovation an attempt to create a safer, calmer, more humane method
  - Similar to trends nationally.

# Issues (CQ researcher)

- Indigent Defense Resources
  - Last priority of a state legislature: pay for lawyers for guilty people. We are already paying for the prosecution!
- Vulnerable populations targeted
  - Mentally Ill
  - Mentally Incapacitated (e.g., low IQ)
- Innocence / Errors

# Issues (continued), Pro-DP Arguments

- Retribution is a legitimate goal of justice
  - Retributivist argument is “just desserts” – some crimes are so terrible the perpetrators deserve death
- Incapacitation
  - Remove the perpetrator, permanently, the only way to ensure no further crimes
- Deterrence
  - Conflicting studies on this topic, National Academy of Science review in 2012 said we should draw no conclusions

# Issues (continued)

- Local variation
  - State by state, but also within states
  - DA's decide whether to prosecute
  - Juries cannot be monitored
  - Strong tradition of “local control” but when does this veer into “arbitrary” or “capricious” if the same crime sometimes does and sometimes does not lead to death?
    - Recent Chapel Hill killings were in Durham County, just across the border. Death is on the table. Orange County has never had a death sentence...

# Issues (continued)

- Torture, delays, cancelled, stayed executions
  - Most death sentences are overturned
  - Most scheduled execution dates are cancelled, often at the last minute
  - Is that torture? Schedule your death, then say “oops”?
  - Many would say this is a positive, who cares if one of these individuals suffers? Justice Scalia: What an enviable death compared to what he inflicted...
  - On the other hand, do we want the government to do this, on purpose, by design, to torture someone?
- Race, Gender of inmate, victim
  - Female offenders: 10 percent of homicides, but only 15 women have been executed...

# Furman, Gregg, and the Constitution

- The safeguards in *Gregg v. Georgia* were supposed to eliminate the deficiencies recognized in *Furman*. Our question for the semester: has this occurred.
- So these questions of “equal protection of the law”, “cruel and unusual” punishments”, and “evolving standards of decency” are key.

# Just Mercy

- “...them without the capital get the punishment...” (p. 6)
- Why is the life of a public defender (or prosecutor) so different than that of a mergers and acquisitions attorney?
  - Law school saying from way back: “Two kinds of lawyers: social engineers, and ... parasites” (ouch!)

# Proximity

- 1980s to about 2010 or so
  - Three strikes you're out
  - President Clinton, campaigning for office in 1992, suspended his campaign for a day to return to Little Rock for the execution of Ricky Ray Rector, who was so brain damaged by a gun shot wound to the head that he asked to save his pecan pie from his last meal so he could eat it the next day.
- You must dehumanize to do these things.

# What Defines You?

- Think of the best three things you have ever done, things you would like people to about know you, or for your mom maybe to know, to make her proud.
- Think of the three worst things you may have ever been involved in.
- Now think of the single worst of those.
- Are you defined by that single act, forever?

# Venue-Shopping and Jury Bleaching

- Venue-changing at the discretion of the judge.
- Many southern counties are high in Af-Am populations, particularly rural Alabama. Stevenson's client, Walter McMillan, moved from Monroe County (40% Af-Am) to Baldwin County (on the coast, 9% Af-Am, not to other neighboring counties 40-75% Af-Am) (pp. 59ff)
- Judge: Robert E Lee Key...
- If the judge believes you to be a "drug kingpin" and he is a crusader in the "war on drugs" then his goal is clear...

# Peremptory Strikes and Batson

- NC: Each side gets 12 strikes for no cause
- However, in *Batson v. Kentucky* (1986) the USSC said that strikes for purely racial reasons are not allowed.
- But what is the standard?
- The striking side must proffer a “racially neutral” reason.
  - Note, it does not have to be reasonable.
  - The decision has almost never led to a successful challenge
  - Jury bleaching is currently in front of the USSC, as it is so rampant. All for NC RJA cases won when statistical patterns were considered.