**CRIMES & PUNISHMENTS: The 8th AMENDMENT**

The **8th Amendment** to the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” This amendment prohibits the federal government from imposing unduly harsh penalties on criminal defendants, either as the price for obtaining pretrial release or as punishment for crime after conviction.

The **Cruel and Unusual Punishments Clause** is the most important and controversial part of the 8th Amendment. In some ways, the clause is shrouded in mystery. What does it mean for a punishment to be “cruel and unusual?” How do we measure a punishment’s cruelty? And if a punishment is cruel, why should we care whether it is “unusual?”

As the debates over the ratification of the Constitution in 1787 demonstrate, the Cruel and Unusual Punishments Clause clearly prohibits “barbaric” methods of punishment. If the federal government tried to bring back the torture rack, or thumbscrews, or any other form of torture as instruments of punishment, such efforts would pretty clearly violate the 8th Amendment. But once we get beyond these areas of agreement, there are many areas of passionate disagreement concerning the meaning and application of the Cruel and Unusual Punishments Clause:

1. First and foremost, what standard should the Court use in deciding whether a punishment is unconstitutionally cruel? Should it look to the standards of 1791, when the 8th Amendment was adopted? Should it look to contemporary public opinion? Should it exercise its own moral judgment, irrespective of whether it is supported by societal consensus? Should it look to some other standard?
2. Second, does the Cruel and Unusual Punishments Clause only prohibit barbaric methods of punishment, or does it also prohibit punishments that are disproportionate to the offense? For example, would it violate the 8th Amendment to impose a life sentence for a parking violation?
3. Third, does the Cruel and Unusual Punishments Clause prohibit the death penalty? Many argue that capital punishment fails to advance any public good, that it is of a past era, and it should be eliminated. Proponents of the death penalty argue that some people have committed such atrocious crimes that they deserve death, and that the death penalty may deter others from committing atrocious crimes. They also point out that the punishment is authorized in a majority of states, and public opinion polls continue to show broad support for it.
4. Finally, are some modern methods of punishment – such as the extended use of solitary confinement, or the use of a three-drug “cocktail” to execute offenders – sufficiently “barbaric” to violate the 8th Amendment?

We must look to various Supreme Court rulings in order to see how the debate over the meaning of the 8th Amendment has changed over time.

**Weems v. United States (1910)**

*Weems v. United States, 1910*, marked the first time the United States Supreme Court reversed a lower court's decision that a punishment was indeed "cruel and unusual."

Paul Weems was an officer of the Bureau of Coast Guard and Transportation in the Philippines, which was then a US colony. Weems was convicted of falsifying a document with the intent of defrauding the government. He was sentenced to 15 years in prison with certain conditions to the confinement. He was to be shackled from wrist to ankle and forced to work at "hard labor" for the duration. Weems challenged the punishment as a violation of the Cruel and Unusual Punishments Clause.

The Supreme Court agreed. In its opinion, the Court said that such a serious punishment for such a minor crime was cruel and unusual and in violation of the 8th Amendment. This case is important because it is often viewed as having established a "principle of proportionality" when punishments are handed down. In other words, the punishment must be in proportion to the seriousness of the crime.

It should be noted that some people disagree with this principle, believing that it restricts lawfully elected legislators from determining what appropriate punishments for a crime should be, instead giving this power to unelected judges.

The creation of the "principle of proportionality" made this one of the most important 8th Amendment court cases.

**Trop v. Dulles (1958)**

*Trop v. Dulles, 1958*, was one of the most important 8th Amendment court cases because it set a precedent for how the Court would determine which crimes were cruel and unusual and which ones were not.

The circumstances of the Trop case were that Albert Trop, who was a US citizen, had deserted the Army while serving in Morocco in 1944. Several years later he tried to get a US passport, but was denied based on the Nationality Act of 1940, which said that if a person deserted the US Armed Services, he would lose his citizenship. Since he was no longer a citizen of the United States, he could not be issued a passport.

Trop filed suit. The district court and the Appeals Court for the Second Circuit agreed that Trop was no longer a citizen. The United States Supreme Court reversed the decision, however, saying that the removal of someone's citizenship was a violation of the 8th Amendment because it amounted to "the total destruction of the individual's status in organized society," meaning this was taking away all of the person's rights. Taking away all of a person's rights, the Court judged, was cruel and unusual.

What was most important regarding this ruling, however, was the statement of Chief Justice Earl Warren in the majority opinion. In explaining their examination of whether or not removing someone's citizenship was "cruel and unusual punishment," Justice Warren stated that:

"The [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

In other words, he was saying that what was once considered an acceptable punishment by society may not be acceptable any more. In colonial America, for example, branding and cutting off the perpetrator's ear were considered to be acceptable forms of punishment, but today these are considered reprehensible. Likewise, other forms of punishment such as burning at the stake or crucifixion were acceptable in certain societies at one time, but no longer are acceptable.

What is acceptable to society can change from generation to generation. According to the Court, society's current standards should be considered when considering what is "cruel and unusual." This principle has come to be known as the "evolving standards of decency" principle. This standard was taken into consideration for later moves of the Court such as banning the execution of mentally retarded people and juveniles.

**Furman v. Georgia (1972)**

*Furman v. Georgia, 1972*, was a landmark 8th Amendment court case that seriously changed the way the death penalty was enforced in the United States. It was the lead case in a series of cases regarding capital punishment. For two centuries capital punishment was considered valid and just and this was the first time the Court made a decision that had serious ramifications regarding its continued use.

William Furman, an African-American man, was convicted of killing a man while attempting to rob the man's house. He was given the death penalty for his crime. Furman appealed the sentence and the Supreme Court agreed that the death penalty violated the 8th Amendment's prohibition against cruel and unusual punishments. Justice Potter Stewart, writing for the majority, wrote that:

"Of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed. My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to death, it is the constitutionally impermissible basis of race. But racial discrimination has not been proved, and I put it to one side. I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."

Justice Stewart was saying that the death penalty was being handed out wantonly, arbitrarily and capriciously, without any set of standards governing when the punishment should be given. In the case of Furman, Stewart believed that he may have been given the death penalty solely because he was a black man.

Consequently the Court gave two guidelines which must be followed in order to satisfy the 8th Amendment's proscription of Cruel and Unusual Punishment. The Court stated that the death penalty could only satisfy the 8th Amendment if the following conditions were met:

1. The scheme must provide objective criteria to direct and limit the death sentencing discretion. The objectiveness of these criteria must in turn be ensured by appellate review of all death sentences.
2. Second, the scheme must allow the sentencer (whether judge or jury) to take into account the character and record of an individual defendant.

In response, the states that then allowed capital punishment had to stop the procedure and rewrite the laws. Many opponents of the death penalty had hoped the Furman case would be the end of capital punishment altogether. They were very surprised and angered when the states began to rewrite their laws in an attempt to satisfy the Court.

In a 1976 case called *Gregg v. Georgia*, the concerns of the Court were adequately addressed by what is known as a "bifurcated" trial. The states had broken down their death penalty procedures into a "bifurcated" set of events, conducting trials and sentencing separately and using many written standards for the process, in accordance with the Court's guidelines set out in Furman. As a result, the death penalty was reinstituted, albeit with many more restrictions.

**Roper v. Simmons (2005)**

At the age of 17, Christopher Simmons was charged with murder for breaking into a woman's home, tying her up and throwing her off a bridge in Missouri. He received the death penalty for the crime. Later, based on *Atkins v. Virginia, 2002*, which reversed the death penalty for mentally impaired persons due to "evolving standards of decency," a Missouri court repealed Simmons' sentence and lessened it to life without the possibility of parole.

The State of Missouri appealed the decision to the Supreme Court of the United States. The appeal stated that it was cruel and unusual, and therefore a violation of the 8th Amendment, to execute someone whose crime had been committed before they were 18.

In *Roper v. Simmons, 2005*, the Supreme Court made one of its most important 8th Amendment court case rulings, agreeing with Simmons and the death penalty was overturned. The Court reversed itself from a previous ruling in *Standford v. Kentucky, 1989*, in which it had allowed the death penalty for minors who were 16 or 17 at the time of their crime. The Court cited research that found that juveniles have a lack of maturity and sense of responsibility compared to adults. Adolescents were found to be over-represented statistically in virtually every category of reckless behavior. The Court noted that in recognition of the comparative immaturity and irresponsibility of juveniles, almost every state prohibited those under age 18 from voting, serving on juries, or marrying without parental consent. The studies also found that juveniles are more vulnerable to negative influences and outside pressures, including peer pressure. They have less control, or experience with control, over their own environment.

The Court also stated that a national consensus against executing minors was developing in the United States, due to the fact that 18 of the 38 states that allowed the death penalty had already made it against the law to execute minors. The minority dissented that 18 states hardly made a "national consensus."