preserve the "basic concept . . . [of] the dignity of man" by assuring that the power to impose punishment is "exercised within the limits of civilized standards."[58]

Capital Punishment

The Court's 1972 decision in *Furman v. Georgia*,[59] finding constitutional deficiencies in the manner in which the death penalty was arrived at but not holding the death penalty unconstitutional *per se*, was a watershed in capital punishment jurisprudence. In the long run the ruling may have had only minor effect in determining who is sentenced to death and who is actually executed, but it had the indisputable effect of constitutionalizing capital sentencing law and of involving federal courts in extensive review of capital sentences.[60] Prior to 1972, constitutional law governing capital punishment was relatively simple and straightforward. Capital punishment was constitutional, and there were few grounds for constitutional review. *Furman* and the five 1976 follow-up cases that reviewed state laws revised in light of *Furman* reaffirmed the constitutionality of capital punishment *per se*, but also opened up several avenues for constitutional review. Since 1976, the Court has issued a welter of decisions attempting to apply and reconcile the sometimes conflicting principles it had announced: that sentencing discretion must be confined through application of specific guidelines that narrow and define the category of death-eligible defendants and thereby prevent arbitrary imposition of the death penalty, but that jury discretion must also be preserved in order to weigh the mitigating circumstances of individual defendants who fall within the death-eligible class.

While the Court continues to tinker with application of these principles, it also has taken steps to attempt to reduce the many procedural and substantive opportunities for delay and defeat of the carrying out of death sentences, and to give the states more leeway in administering capital sentencing. The early post-*Furman* stage involving creation of procedural protections for capital defendants that were premised on a "death is different" rationale.[61] Later, the

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[58] 356 U.S. at 99–100. The action of prison guards in handcuffing a prisoner to a hitching post for long periods of time violated basic human dignity and constituted "gratuitous infliction of 'wanton and unnecessary pain'" prohibited by the clause. Hope v. Pelzer, 536 U.S. 730, 738 (2002).

[59] 408 U.S. 238 (1972).

[60] See Carol S. Steiker and Jordan M. Steiker, *Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 HARV. L. REV. 355 (1995).

[61] *See*, *e.g.*, Gardner v. Florida, 430 U.S. 349, 357–58 (1977): "From the point of view of the defendant, [death] is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its