tence.[66] Strong differences remain over such issues as the appropriate framework for consideration of aggravating and mitigating circumstances and the appropriate scope of federal review, but a Court majority still seems committed to reducing obstacles created by federal review of death sentences imposed under state laws that have been upheld as constitutional.

General Validity and Guiding Principles.—In *Trop v. Dulles*, the majority refused to consider "the death penalty as an index of the constitutional limit on punishment. Whatever the arguments may be against capital punishment . . . the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty."[67] But a coalition of civil rights and civil liberties organizations mounted a campaign against the death penalty in the 1960s, and the Court eventually confronted the issues involved. The answers were not, it is fair to say, consistent.

A series of cases testing the means by which the death penalty was imposed[68] culminated in what appeared to be a decisive rejection of the attack in *McGautha v. California*.[69] Nonetheless, the Court then agreed to hear a series of cases directly raising the question

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[66] Gone too is Justice Blackmun, whose early support for capital punishment gave way near the end of his career to a belief that the Court's effort to reconcile the twin goals of fairness to the individual defendant and consistency and rationality of sentencing had failed, and that the death penalty "as currently administered, is unconstitutional." Callins v. Collins, 510 U.S. 1141, 1159 (1994) (dissenting from a denial of certiorari and announcing that, "[f]rom this day forward, I no longer shall tinker with the machinery of death," id. at 1145). Justice Stevens has also concluded that the death penalty violates the Eighth Amendment, but, because of his wish "to respect precedents that remain a part of our law," he does not constitute an automatic vote against challenged death sentences. Baze v. Rees, 128 S. Ct. 1520, 1552 (2008) (finding the death penalty to violate the Eighth Amendment but concurring with the Court plurality that Kentucky's lethal injection protocol does not violate the Eighth Amendment). In Thompson v. McNeil, 129 S. Ct. 1299 (2009), Justice Stevens dissented from a denial of certiorari where the defendant had spent 32 years on death row; Justice Stevens found "such delays . . . unacceptably cruel." Id. at 1300. Justice Breyer dissented separately, and Justice Thomas concurred in the denial of certiorari.

[67] 356 U.S. 86, 99 (1958).

[68] In Rudolph v. Alabama, 375 U.S. 889 (1963), Justices Goldberg, Douglas, and Brennan, dissenting from a denial of certiorari, argued that the Court should have heard the case to consider whether the Constitution permitted the imposition of death "on a convicted rapist who has neither taken nor endangered human life," and presented a line of argument questioning the general validity of the death penalty under the Eighth Amendment. The Court addressed exclusion of death-scrupled jurors in Witherspoon v. Illinois, 391 U.S. 510 (1968). *Witherspoon* and subsequent cases explicating it are discussed under Sixth Amendment—Impartial Jury.

[69] 402 U.S. 183 (1971). *McGautha* was decided in the same opinion with Crampton v. Ohio. McGautha raised the question whether provision for imposition of the death penalty without legislative guidance to the sentencing authority in the form of standards violated the Due Process Clause; *Crampton* raised the question whether due process was violated when both the issue of guilt or innocence and the issue of whether