

**Words of our Supreme Court Justices Regarding
Capital Punishment**

“I have no doubt as to the constitutionality of capital punishment, but I have grave doubts as to whether it now serves the purposes of deterrence and retribution, the principle purposes we identified in *Gregg* (to reinstate it).”

- Supreme Court Justice Lewis Powell

Darden v. Wainwright

“In the early hours of the morning, Bruce E. Callins will be executed by the State of Texas. Intravenous tubes attached to his arms will carry the instrument of death, a toxic fluid designed specifically for the purpose of killing human beings. The witnesses, standing a few feet away, will behold Callins, no longer a defendant, an appellant, or a petitioner, but a man, strapped to a gurney, and seconds away from extinction.”

- Supreme Court Justice Harry Blackmun

Callins v. Collins

“Twenty years have passed since this Court declared that the death penalty must be imposed fairly, and with reasonable consistency, or not at all, see *Furman v. Gerogia*, and, despite the efforts of the States and courts to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake.” Rather than continue to coddle the Court’s delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed.”

- Supreme Court Justice Harry Blackmun

Callins v. Collins

“From this day forward, I no longer shall tinker with the machinery of death.”

- Supreme Court Justice Harry Blackmun

“Adhering to my view that the death penalty cannot be imposed fairly within the constraints of the Constitution.”

- Supreme Court Justice Harry Blackmun (Standard dissent opening phrase)

“Adhering to my view that the death penalty in all cases is violation of the Eighth Amendment.”

- Supreme Court Justices William Brennan and Thurgood Marshall - (Standard dissent opening phrase)

“One area of Supreme Court Law more than any other besmirches the constitutional vision of human dignity. It is the death penalty. The races of a capital defendant and the victim are among the most powerful predictors of whether the defendant lives or dies. The statistics paint a chilling portrait of racial discrimination.”

- Supreme Court Justice William J. Brennan

“I have long believed that the death penalty is in all circumstances a barbaric and inhuman punishment that violates our Constitution as even the most vile murderer does not release the state from its constitutional obligation to respect human dignity. The state does not honor the victim by emulating the murderer who took his life.”

– Supreme Court Justice William J. Brennan

“I have long held the view that the death penalty is in all circumstances an uncivilized and inhuman punishment inconsistent with the Eighth Amendment.”

– Supreme Court Justice William J. Brennan

“Defendants charged with killing white victims in Georgia are 4.3 times as likely to be sentenced to death as defendants charged with killing blacks.”

– Supreme Court Justice William J. Brennan

McCleskey v. Kemp

At bottom, then, the Cruel and Unusual Punishment (of the Constitution’s IV Amendment) prohibits the infliction of uncivilized and inhuman punishments. The State, even as it punishes, must treat its members with respect for their intrinsic worth as human beings. A punishment is “cruel and unusual,” therefore, if it does not comport with human dignity.

The test, then, will ordinarily be a cumulative one: If a punishment is unusually severe, if there is a strong probability that it is inflicted arbitrarily, if it is substantially rejected by contemporary society, and if there is no reason to believe that it serves any penal purpose more effectively than some less severe punishment, then the continued infliction of the punishment violates the command of the Clause that the State may not inflict inhuman and uncivilized punishments upon those convicted of crimes.

In sum, the punishment of death is inconsistent with all four principles; Death is an unusually severe and degrading punishment; there is a strong probability that it is inflicted arbitrarily; its rejection by contemporary society is virtually total; and there is no reason to believe that it serves any penal purpose more effectively than the less severe punishment of imprisonment. The function of these principles is to enable a court to determine whether a punishment comports with human dignity. Death, quite simply, does not.”

– Supreme Court Justice William J. Brennan

Furman v. Georgia

“When this country was founded, memories of the Stuart horrors were fresh and severe corporal punishments were common. Death was not then a unique punishment. The practice of punishing criminals by death, moreover, was widespread and by large acceptable to society. Indeed, without developed prison systems, there was frequently no workable alternative. Since that time successive restrictions, imposed against the background of a continuing moral controversy, have drastically curtailed the use of this punishment. Today death is a uniquely severe punishment. When examined by the principles applicable under the Cruel and Unusual Punishments Clause, death stands condemned as fatally offensive to human dignity. The punishment of death is therefore “cruel & unusual,” and the States may no longer inflict it as a punishment for crimes. Rather than kill an arbitrary handful of criminals each year, the States will confine them to prison. “The State thereby suffers nothing and loses no power. The purpose of punishment is fulfilled, crime is repressed by penalties of just, not tormenting, severity, its repetition is prevented, and hope is given for the reformation of the criminal.”

– Supreme Court Justice William J. Brennan

Furman v. Georgia

Compiled in support of my friends on Death Row for www.bighouseart.com
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