

## **ARGUMENT FROM CONTINGENT REALITIES**

**PHIL 102  
Ethics, Politics, & Law  
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## **PRINCIPLE AND CONTINGENT REALITIES**

- **Arguments from pure principle**
  - Pro: Justice demands death
  - Con: Death is cruel and barbaric
  - Preaching to the choir
- **Arguments from contingent realities**
- **Concede the point in principle**
- **Concede it would be right in a more perfect world, but in this world**
- **Student/professor affairs**

## **Death Penalty & Principle**

- **Perhaps murders deserve to die**
- **Will concede, at least for argument**
- **In a more perfect world, capital punishment would be morally and constitutionally acceptable**
- **But, in the real world . . .**

## **Eighth Amendment**

**Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.**

## Fourteenth Amendment

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## Recent Constitutional Law

- *McGautha v. California*, 402 U.S. 183 (1971)
- *Furman v. Georgia*, 408 U.S. 238 (1972)
- *Gregg v. Georgia*, 428 U.S. 153 (1976)
- *Callins v. Collins*, 510 U.S. --- (1994)

## Arbitrary Administration

- Procedural cruelty
- Lightning analogy
- Class grades thought experiment
- Isn't this true of all punishment?
- Is there a higher responsibility for justice and fairness when the stakes are higher?
- Aren't they all guilty, so where's the injustice?

## WHY IT'S STILL ARBITRARY

- Presupposition in *Furman* – It's the jury
- Post-*Furman* corrections
  - Better define aggravated murder
  - Two stage trials
- Where the real power lies
- O. J. Simpson trial
- Lynne Abraham
- Robert Colville
- Justice Blackmun's conversion

## FOURTEENTH AMENDMENT



### Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. **No state shall** make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## BALDUS STUDY



Race Killer/Victim	Death Sentence	Percentage
Black/White	50 of 223	22%
White/White	58 of 748	8%
Black/Black	18 of 1443	1%
White/Black	2 of 60	3%
<b>Total by Victim</b>		
White	108 of 981	11%
Black	20 of 1503	1%

## ITTBE



- e<sub>1</sub>. Georgia homicides 1974-9
  - e<sub>2</sub>. Murderers of white victims -- 108 of 981 received the death penalty
  - e<sub>3</sub>. Murderers of black victims -- 20 of 1503 received the death penalty
- =====
- t<sub>0</sub>. Statistically significant correlation between the race of the victim and death sentence for murderer
- =====
- t\*<sub>0</sub>. Race of victim is causally relevant to who receives the death penalty

## JUSTICE POWELL'S OPINION



- Equal Protection challenge
- "Purposeful discrimination"
- Eighth Amendment challenge
- Slippery slope argument

## **DISSENTING OPINIONS**



- **Justice Brennan**
  - General opposition to death penalty
  - Baldus study demonstrates racial bias
  - Eighth Amendment consideration
- **Justice Blackmun**
- **Justice Stevens**

## **Contingent Realities**



- **Arbitrary and capricious administration**
- **Racially biased administration**
- **Socio-economic class discrimination**
- **Incompetent legal defense**
- **Danger of executing an innocent person**