

PENRY v. LYNAUGH; STANFORD v. KENTUCKY (1989) **Execution and Responsibility**

SUMMARY

In two death penalty cases, the Supreme Court has determined that it is constitutional to execute mentally challenged persons, (only if the jury is advised that they may reduce the punishment because of the disability) and that the execution of 16 year olds does not constitute cruel and unusual punishment under the Eighth Amendment.

The first case, *Penry v. Lynaugh*, divided the Court in nine different ways with various combinations of justices agreeing with different parts of an opinion written by Justice O'Connor. The second opinion, *Stanford v. Kentucky*, written by Justice Scalia, was less sharply divided, but the opinions show that death penalty cases continue to emphasize the disagreements among the justices. Both cases were decided by a single vote on the same day — June 26, 1989.

BACKGROUND

In June 1988 in the case of *Thompson v. Oklahoma*, the Supreme Court, by a vote of 5 to 3, decided that it was unconstitutional to execute persons who were 15 when they committed a particularly heinous crime. The issue that was debated in that case was whether such persons were not relieved by immaturity of some responsibility for their criminal acts. The Court decided the case on a rather technical point, though. It concluded that the Oklahoma legislature may not have been aware that the death penalty it enacted was applicable to 15 year olds under some circumstances and, consequently, said that the Oklahoma law was unconstitutional.

Shortly after the *Thompson* decision, the Supreme Court accepted these two cases and this time resolved the issue of responsibility in committing crimes rather clearly. In the case of John Paul Penry, experts found him capable of standing trial in Texas, even though he had the mental capacity of a six and a half year old. While on probation from a previous rape, he beat, raped, and stabbed a woman to death with scissors. The crimes at the core of the *Stanford* case are equally brutal.

From 1982 through 1988, 15 people age 16 or under were sentenced to death in the United States. An unknown, but presumably larger, number of mentally deficient persons are also currently under a sentence of death.

The question in these cases is whether all of these people should be freed from that sentence because of their presumed lower responsibility and understanding of their acts. Stated another way, are all 16 year olds so immature that they should be held to be less responsible for their conduct than older persons, and are all mentally challenged persons entitled to an assumption of a lower level of responsibility?

ANALYSIS

The Supreme Court's decision in these two cases amounts to a statement that there are some mentally challenged and very young offenders who are as responsible as any adult for their acts and should face the same penalties. The majority of the Court believes that juries are the proper groups to make these judgments. Thus, they held that capital punishment may be imposed on mentally challenged persons so long as juries were allowed to consider the person's retardation. If, having done so, they concluded that the person, despite the handicap, was as responsible as any other person for his/her act, then there is no constitutional bar to imposing death. Similarly, with 16 year olds, the Court concluded that since juries were aware of the person's age and often declined to impose a capital sentence on young offenders, the issue of responsibility was being dealt with on a case by case basis.

At issue in any death penalty case is the Eighth Amendment, which states that "Excessive bail shall not be required, nor excessive fines be imposed, nor **cruel and unusual punishments inflicted.**" In fact, Justices Brennan and Marshall view the mere existence of capital punishment as a violation of the Eighth Amendment prohibition against cruel and unusual punishment, and they dissent in every such case that comes before the Court.

Two general factors will be at work in future cases. Juries are comprised of ordinary citizens, and most people would find it very difficult to support the execution of a child or a mentally challenged person. On the other hand, as the facts in these two cases show, some juveniles and mentally challenged persons are capable of committing murders that are particularly horrible. While the gruesome details of these crimes need not be repeated, it is sufficient to say that these crimes would shock anyone and excite the desire to avenge. Juries will resolve these competing considerations in different ways, and the Supreme Court has determined that that is the appropriate constitutional method of handling the matter.

EXCERPTS FROM THE MAJORITY OPINION IN THE *PENRY* CASE (Justice O'Connor)

"Mental retardation is a factor that may well lessen a defendant's culpability for a capital offense. But we cannot conclude today that the Eighth Amendment precludes the execution of any mentally challenged person . . . simply by virtue of their mental retardation alone While a national consensus against execution of the mentally challenged may someday emerge. . . there is sufficient evidence of such a consensus today."

EXCERPTS FROM THE DISSENT OF JUSTICE BRENNAN

"The impairment of a mentally challenged offender's reasoning abilities, control over impulsive behavior, and moral development, in my view limits her culpability so that, whatever other punishment may be appropriate, the ultimate penalty of death is always and unnecessarily disproportionate to her blameworthiness and hence is unconstitutional."

EXCERPTS FROM THE MAJORITY OPINION IN THE *STANFORD* CASE (Justice Scallia)

“We discern neither a historical nor a modern societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age. Accordingly we conclude that such punishment does not offend the Eighth Amendment’s prohibition against cruel and unusual punishment.”

EXCERPTS FROM THE DISSENT OF JUSTICE BRENNAN

“There are strong indications that the execution of juvenile offenders violates contemporary standards of decency; a majority of States decline to permit juveniles to be sentenced to death; imposition of the sentence upon minors is very unusual even in those States that permit it; and respected organizations with expertise in relevant areas regard the execution of juveniles as unacceptable, as does international opinion.”