

Human Dignity, the Eighth Amendment, and the Death Penalty

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INTRODUCTION¹

According to the Eighth Amendment, excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.² American legal scholars emphasize that reference to human dignity plays a very important role in cases involving this amendment. In cases involving only the death penalty, however, this normative impact of human dignity is sometimes referred to as weak and meaningless.³ This position is probably justified by the fact that the United States is one of the few countries that still has capital punishment. In 2018, thirty-one state codes provided for it. The only period of time when the death penalty was not carried out in the US was from 1972 to 1976, and that was a result of *Furman v. Georgia*.⁴ This was because the ruling forced Congress and state legislatures to make changes to ensure that the death penalty was not imposed and carried out in an arbitrary and discriminatorily manner.

To put the following discussion into a broader context, it is helpful to look at statistics on the death penalty. In 2017, twenty-three executions were carried out

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² Constitution of the United States, United States Senate, accessed June 5, 2022, [https://www.senate.gov/civics/constitution_item/constitution.htm#amdt_13_\(1865\)](https://www.senate.gov/civics/constitution_item/constitution.htm#amdt_13_(1865)).

³ Maxine D. Goodman, "Human Dignity in Supreme Court Constitutional Jurisprudence," *Nebraska Law Review* 84, no. 3 (2006): 773.

⁴ *Furman v. Georgia*, 408 U.S. 238 (1972).

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in the United States, and until July 18, 2018—fourteen. A total of 1474⁵ executions have been carried out in the United States since 1976. At the same time, it is worth pointing out for comparison purposes that the abolition of the death penalty (in peacetime) was provided for in 1983 in Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, in which Article 1 states that the death penalty shall be abolished, and no-one shall be sentenced to such penalty or executed. The second document dealing with this issue is Protocol No. 13 of 2002, which provides for the abolition of the death penalty also during war.

The equivalent of the Eighth Amendment in the Polish legal system is Article 40 of the Polish Constitution, which states that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. At the same time, it prohibits the use of corporal punishment. As emphasized in the doctrine of constitutional law and criminal law, the prohibitions contained therein also apply to the imposition and enforcement of punishments by the competent state authorities, such as courts. As for the death penalty, it should be recalled that after Second World War, the death penalty was provided for in the 1969 Criminal Code in Poland (it was carried out by hanging). However, since 1988, death sentences have not been carried out, and since 1995 there has been a moratorium on executions. With the entry into force of the new Penal Code of 1997, it was abolished and replaced by life imprisonment.

Undoubtedly, the issue of the compliance of the death penalty with the idea of human dignity is extremely important and the debate on its admissibility is difficult on both sides of the Atlantic. However, the subject matter of the Eighth Amendment is broader. Therefore, first, the issues of the normative influence of human dignity on the understanding of the concept of cruel and unusual punishment are discussed, followed by the normative influence of human dignity on decisions and methods of executing the death penalty.

HUMAN DIGNITY AS A VALUE THAT DEFINES THE ESSENCE OF CRUEL AND UNUSUAL PUNISHMENT

One of the most significant rulings for the research problem in the context of the Eighth Amendment must be considered to be *Trop v. Dulles*⁶ from 1958. The Supreme Court stated that it was the idea of human dignity that underpinned the Eighth Amendment's prohibition of cruel and unusual punishment. In addition, it defined standards that shape the jurisprudence to this day in matters relating to the way criminals are punished.

⁵ Death Penalty Information Center, "Facts about the Death Penalty," accessed July 30, 2023, <https://deathpenaltyinfo.org/documents/FactSheet.pdf>.

⁶ *Trop v. Dulles*, 356 U.S. 86 (1958).

The case involved Albert Trop, who served as a private in the US Army during Second World War. In 1944, his unit was stationed in Casablanca, Morocco. Trop was punished for disciplinary violations with detention, from which he escaped. However, just one day later, he surrendered to an American military patrol he encountered. For his act, he was charged with desertion and sentenced to three years of hard labor, loss of pay, and disciplinary expulsion from the army. In 1952, Trop applied for his passport. His application was denied under the Citizenship Act of 1940. Under its provisions, a person who is a citizen of the United States, whether by birth or naturalization, loses citizenship as a result of desertion from the United States forces in a war, provided that he is convicted by a martial law court and, as a result of such conviction, is discharged or disciplinarily discharged from service with the United States forces. Both the Court of First Instance and the Court of Second Instance refused to issue a verdict confirming that Trop is still a citizen of the United States on the basis of the aforementioned provisions. As a result of Trop's appeal, the case reached the Supreme Court, which had to answer the question of whether a provision of the amended Citizenship Act authorized an unconstitutional penalty by allowing a person convicted of desertion during wartime to be stripped of citizenship.

By a five to four majority, the Supreme Court held that the penalty of deprivation of citizenship provided by the provisions of the 1940 Act was a cruel and unusual punishment within the meaning of the Eighth Amendment and was therefore unconstitutional. The Court began its reasoning by noting that the precise scope of the phrase "cruel and unusual punishment" has not been defined in depth in case law. However, its interpretation is firmly rooted in the Anglo-American criminal justice tradition. Indeed, the phrase in the Constitution is directly derived from the English Bill of Rights of 1688,⁷ and the principle it represents derives from as far back as the Magna Carta. The court firmly stated that the fundamental concept underlying the Eighth Amendment is the dignity of man. The state has the power to punish, but the purpose of the amendment is to ensure that this power is exercised within civilized standards. Depending on the nature of the crime, fines, imprisonment, and even execution may be imposed, but any technique that goes beyond the bounds of these traditional punishments is constitutionally suspect.⁸

At the same time, the Supreme Court noted that until that point it had rarely dealt with explaining and interpreting the Eighth Amendment. According to the justices, this was due to the fact that the United States is an enlightened democracy. The court emphasized that the wording of the amendment is not precise and

⁷ Section 10 of the Bill of Rights of 1688, entitled "Excessive Bail," established that no exorbitant bail shall be demanded, nor exorbitant fines imposed, nor cruel and unusual punishments inflicted. Bill of Rights (1688), Legislation.gov.uk, accessed September 6, 2023, <https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/data.pdf>.

⁸ *Trop v. Dulles*.

its scope is not static. Therefore, the content of the Eighth Amendment must be interpreted in accordance with the evolving standards of decency which determine the civilization progress of a developing society. The majority opinion referred to the opinion of Justice Charles Clark,⁹ which he included in a dissenting opinion at the level of the federal Court of Appeals for the Second District.¹⁰ He indicated that he agreed with those comments of legal doctrine¹¹ that the penalty of deprivation of citizenship against a person of no other nationality is an example of cruel and unusual punishment and, as such, is inconsistent with the Eighth Amendment. Importantly, Justice Clark expressed his belief that this type of punishment is not consistent with the American concept of man's dignity.¹²

The majority opinion provided detailed reasoning as to why a sentence of deprivation of citizenship should be considered cruel and unusual. It was emphasized how obvious it was that in this case there was no question of physical abuse or the use of common torture. Nevertheless, the effect of deprivation of citizenship is the complete destruction of the individual's status which enables him to function in society. The court held that this is a more primitive punishment than torture because it destroys the individual's entitlements, developed over centuries, which he has in the public sphere. Such punishment deprives the citizen of his status in both the national and international community. In practice, its existence becomes burdensome for the country in which it resides. While any country can grant him certain rights, and it is likely that he will enjoy limited alien rights as long as he is in that country, no country has to do so because he is stateless. Moreover, the exercise of even the limited rights of a foreigner may be terminated at any time due to deportation. In short, a stateless person loses the right to have any rights.¹³

Referring to the very essence of citizenship, the Court pointed out that it was not "a license that would expire in the event of misconduct." An essential component of citizenship is the numerous obligations, the fulfillment of which is essential for the security and well-being of society as a whole. However, the court questioned whether citizenship can be removed for evading basic civic obligations, even when the behavior of a citizen is highly reprehensible, as in the case of desertion. For example, those who do not pay taxes or do not comply with the rules that guarantee the fairness of elections also cause dangerous damage to their country, and yet such

⁹ Charles Edward Clark (1889–1963)—Justice of the federal Court of Appeals for the Second Circuit from 1939 to 1963, Dean of Yale Law School (1929–1939).

¹⁰ *Trop v. Dulles*.

¹¹ "The Expatriation Act of 1954," *The Yale Law Journal* 64, no. 8 (1955): 1164–200. In this extensive commentary on the deprivation of Citizenship Act, we also find several references to human dignity, including pp. 1189, 1191, 1198, 1199.

¹² *Trop v. Dulles*: "In my faith, the American concept of man's dignity does not comport with making even those we would punish completely 'stateless'—fair game for the despoiler at home and the oppressor abroad, if indeed there is any place which will tolerate them at all."

¹³ *Trop v. Dulles*.

cases do not provide for such an exceptional penalty. The court ruled that deprivation of citizenship cannot be a tool that the public authorities will use to express dissatisfaction with a citizen's behavior. In the majority opinion, the fundamental entitlement of citizenship is inviolable as long as a person does not renounce it himself.

The four remaining justices disagreed with the majority position. Justice Felix Frankfurter, in a dissenting opinion (joined by the other justices), noted that desertion in wartime is also punishable by death. In view of this, he rhetorically asked whether "the constitutional dialectic is so far beyond reason that one can seriously argue that loss of citizenship is worse than death." This objection, however, was addressed in the majority opinion. It was pointed out that the death penalty has been used throughout American history, it is still widely accepted, and thus it cannot be said to violate the constitutional concept of cruel and unusual punishment. Furthermore, it was taken for granted that the existence of the death penalty does not imply condoning the infliction of punishments that do not deprive life but are inconsistent with the Eighth Amendment, such as physical mistreatment or torture.¹⁴

Summarizing the above considerations, it is necessary to emphasize the clear confirmation of the law-making nature of human dignity, which was explicitly referred to as the source of the Eighth Amendment. At the same time, the reference to the idea of human dignity had an impact on the range of punishments that could be imposed by the court. Moreover, the changing standards of decency in this regard were pointed out. This was understood as a situation in which, along with social development, views on a particular punishment may change (which will be quite relevant to the issue of capital punishment). As a side note, it is also worth noting that the penalty of deprivation of citizenship has been compared to medieval punishments of dishonor, such as banishment or outlawry (i.e., medieval forms of civil death, which were also directed against the honor, honor, and dignity of the convicted person).

In the context of the research problem of this work, the *Jackson v. Bishop*¹⁵ ruling of 1968 should be considered important. Even though it is a federal appellate court ruling, it is extremely important due to the content, social reception of this ruling, and the justice who wrote it. First, the ruling outlawed corporal punishment, which until its issuance had been used in Arkansas state prisons. Second, the justification was very well received by both the public and the US jurisprudence¹⁶ itself. Finally, the author of this judgment, Justice Harry Blackmun,¹⁷ became a justice of the Su-

¹⁴ *Trop v. Dulles*.

¹⁵ *Jackson v. Bishop*, 404 F.2d 571, 576 (8th Cir. 1968).

¹⁶ Linda Greenhouse, *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey* (New York: Times Books, Henry Holt and Company, 2005), 31.

¹⁷ Harry A. Blackmun (1908–1999)—Supreme Court justice from 1970 to 1994, nominated to the Court by President Nixon, initially voted in line with other conservative judges, but wrote the majority opinion in *Roe v. Wade* in 1973; retired in 1994; see more "Harry A. Blackmun. United States Jurist," in *Encyclopaedia Britannica* [online], accessed August 6, 2023, <https://www.britannica.com/biography/Harry-A-Blackmun>.

preme Court in 1970 (he was until 1994) and to this day is considered one of the most influential justices, inter alia as the author of the rationale for the *Roe v. Wade* judgment (granting women the right to terminate pregnancy) and for his position in cases concerning the death penalty.

Jackson v. Bishop involved the use of corporal punishment in an Arkansas state prison and the application of the Eighth Amendment's prohibition against cruel and unusual punishment to that practice. The regulations in force in the state of Arkansas allowed the prison authorities to use whipping on prisoners. This was performed by the guards using a leather whip over 1.5 meters (5 feet) in length, commonly known as a bull hide. After several independent complaints by inmates seeking to ban the use of bull hide as a disciplinary measure, the case went to a federal appeals court.

The appellate court indicated that whipping is the primary disciplinary measure used in the Arkansas state correctional system. Segregation and solitary confinement are limited. In addition, prisoners have only a few privileges, the revocation of which may be considered a punishment or disciplinary measure other than whipping. Justice Blackmun described in detail the procedure for imposing this punishment. He also pointed out that due to the abuses, new rules for the application of this penalty were introduced, which did not eliminate all the controversy, however. He emphasized that the court has divergent testimonies on the effectiveness of this punishment. On the one hand, it is indicated that its use fosters discipline and improves the general level of work and security in the prison; on the other, whipping generates hate in the inmate who is whipped, and this hate flows toward the whipper, the institution, and the system.¹⁸

In the justification, there were significant references to earlier judgments of this court (including the judgments of *Carey v. Settle*¹⁹ and *Lee v. Tahash*²⁰) and judgments of the Supreme Court (especially the *Trop v. Dulles* case). Pursuant to these regulations, the appellate court indicated that final imprisonment may lead to the deprivation of certain rights that the convict could otherwise exercise (e.g., voting rights). On the other hand, a prisoner may not lose all civil rights during and because of imprisonment. The court recalled the key statements made in *Trop v. Dulles*. First, human dignity is at the heart of the Eighth Amendment; second, the Eighth Amendment ensures that the punishment of criminals is carried out within the bounds of civilized standards and that any technique beyond those standards is constitutionally suspect. On this basis, Justice Blackmun held that the scope of the Eighth Amendment is not static and must take into account "the evolving standards of decency that mark the progress of a maturing society."²¹ Having defined the rules of interpretation, the Court indicated the values that must be taken into account when defining the nature of the regulations at issue. Among these, the Court pointed out man's basic dignity

¹⁸ *Jackson v. Bishop*.

¹⁹ *Carey v. Settle*, 351 F.2d 483 (8th Cir. 1965).

²⁰ *Lee v. Tahash*, 352 F.2d 970, 971 (8th Cir. 1965).

²¹ *Jackson v. Bishop*.

as the most important and requiring emphasis in the first place. The appellate court acknowledged that the restrictions contained in the Eighth Amendment's prohibition are not precise or easy to identify. On the other hand, he emphasized that when defining them, he was guided by such clear rules as disproportions between individual penalties and between the penalty and the crime itself, as well as broad and idealistic concepts of dignity, civilization standards, as well as humanity, and decency.²²

In view of the foregoing principles and values, the court unquestionably concluded that the use of "bull hide" in Arkansas prisons in the second half of the twentieth century is a punishment that is inconsistent with the Eighth Amendment. Regardless of its possible preventative effects, its use violates the essence of contemporary concepts of decency and human dignity and the principles of civilized society that Americans recognize as valid in their society. Finally, the use of "bull hide" also violates the standards of good conscience and fundamental fairness set forth in *Carey v. Settle* and *Lee v. Tahash*.

In conclusion, it is important to note the issues fundamental to the question of the idea of human dignity. Its legislative character was confirmed in the context of the Eighth Amendment, as it was considered to be the basis of this amendment. The processes of ethical and moral changes taking place in society, which the law should follow, were also indicated. It is also worth noting that the Court wrote about multiple concepts of human dignity, not one.

The rules set forth in *Jackson v. Bishop* at the Supreme Court level were cited in its 1976 decision in *Estelle v. Gamble*²³ which concerned J. W. Gamble, an inmate serving time in a Texas prison. He was crushed by a more than 272-kilogram (600-pound) bale of cotton while working. He was taken to the hospital and sent back to prison after he was given painkillers. As his condition worsened, he was again taken to the hospital. As a result of his injuries and pain, Gamble repeatedly refused to continue working, causing prison authorities to punish him with administrative measures. Gamble eventually concluded that the lack of proper medical care resulted in a significant deterioration of his condition, which should be considered tantamount to an Eighth Amendment violation.

The court ruled by an eight to one majority that the prison treatment described by Gamble did not violate the Constitution or constitute cruel and unusual punishment within the meaning of the Eighth Amendment. What is significant, however, is that it was in this case that the Supreme Court established the standards that a prisoner must rely on in order to effectively report a violation of the Eighth Amendment.²⁴ The reasoning behind the ruling included a reminder that the Eighth

²² *Jackson v. Bishop*.

²³ *Estelle v. Gamble*, 429 U.S. 97 (1976).

²⁴ As an aside, it is only worth noting that it was not until 1993, in *Helling v. McKinney*, that the Supreme Court expanded the requirements of proper medical care beyond what it established as the standard in *Estelle v. Gamble*.

Amendment contains “broad and idealistic concepts of dignity, civilized standards, humanity, and decency against which we must evaluate penal measures.” Accordingly, the Court held that punishments that are inconsistent with “the evolving standards of decency that mark the progress of a mature society” or that “involve the unnecessary and wanton infliction of pain.”²⁵

Justice Thurgood Marshall, who wrote the majority opinion, admitted that the Eighth and Fourteenth Amendments required Texas authorities to provide prisoners with adequate medical care. At the same time, however, he emphasized that the negligent or unintentional failure to provide adequate medical care does not constitute prisoner abuse prohibited by the Eighth Amendment. In contrast, it would be a violation of the amendment if prison staff were deliberately indifferent and failed to respond to a prisoner’s serious illness or injury. The court noted that in the case at hand, Gamble received various medical treatment seventeen times over a three-month period. As Justice Marshall acknowledged, failure to take X-rays or use additional diagnostic techniques may be medical malpractice at best. It is not cruel or unusual punishment because “medical malpractice does not become a constitutional violation merely because the victim is a prisoner.”²⁶

Another case relevant to this discussion was *United States v. Bailey*²⁷ in 1980. The case concerned prisoners who had escaped from the federal prison in the District of Columbia. During their trial, in which they were being held accountable for committing the federal crime of escape from prison, the inmates cited very poor prison conditions as their reason for escaping and described a series of events that occurred there that violated their human rights. They also emphasized that they were willing to turn themselves into the authorities on condition that they were assured of serving their prison sentence in another prison.

Important statements about the law-making role of human dignity were made in this case, not in the majority opinion (which rejected the prisoners’ argument), but in a dissenting opinion by Justice Blackmun, joined by Justice William Brennan. Justice Blackmun stressed that the majority opinion is logically correct and an example of excellent legal reasoning. However, it fails to take into account the broader social context, particularly the conditions that prevail in American prisons. The justice pointed out that the majority opinion would be appropriate if it were decided in an ideal world in which US prisons were places of humane treatment for the re-education and rehabilitation of prisoners.²⁸

Nevertheless, as Justice Blackmun noted, the case is not about an imaginary reality, but about the actual state and real conditions of American prisons. He recalled that both the Supreme Court and a number of other US courts receive many

²⁵ *Estelle v. Gamble*.

²⁶ *Estelle v. Gamble*.

²⁷ *United States v. Bailey*, 444 U.S. 394 (1980).

²⁸ *United States v. Bailey*.

complaints about prison conditions every day. He acknowledged that the filth, homosexual rape, and brutality reported in them are not always expressions of the purely malcontent. He then emphasized that the Supreme Court itself had admitted, in the majority opinion, that the circumstances which the prisoners had complained about had indeed occurred. According to Justice Blackmun, it is in the light of this stark truth that this case must be judged. The justice was extremely harsh in his assessment of the conditions in which the prisoners were held. He wrote that: “the atrocities and inhuman conditions of prison life in America are almost unbelievable; surely they are nothing less than shocking.” The justice referred in detail to the testimony and evidence he had collected. He wrote that “a youthful inmate can expect to be subjected to homosexual gang rape his first night in jail, or, it has been said, even in the van on the way to jail.” Weaker prisoners immediately become the property of the stronger or entire prison gangs, who sell their sexual services. Due to the limited resources that society devotes to the prison system, prison officers are either not interested in ending such practices or are unable to do so. In this way, the prison guard is often indifferent to the serious health and safety needs of prisoners.²⁹

Meanwhile, as Justice Blackmun emphasized, it is society’s responsibility to protect the lives and health of prisoners. There can be no doubt that excessive or unprovoked violence and brutality by prison guards against prisoners violates the Eighth Amendment. At the same time, given past case law, particularly the rules established in *Estelle v. Gamble*, the justice found that failure to use reasonable measures to protect inmates from violence by other inmates also constitutes cruel and unusual punishment. As Justice Blackmun wrote, “rape or other violence serves no penological purpose. Such brutality is the equivalent of torture and is offensive to any modern standard of human dignity.”³⁰ The justice also emphasized that prisoners are forced to rely on the prison authorities for protection against such abuses, and prison authorities should meet the resulting obligations. The justice acknowledged that US prisons experience many problems, including overcrowding and poor-quality food. All this leads to many shortcomings in the entire penitentiary system. Nevertheless, the above situation cannot justify tolerating such places that do not meet the minimum standards of safety and decency. In evaluating prisons in the United States, Justice Blackmun referred to the experience of other countries, writing that: “the contrast between our indifference and the programs in some countries of Europe—Holland and the Scandinavian countries in particular—is not a happy one for us.” On the other hand, he acknowledged that the practices he cited show that improvements are possible in America itself.³¹ In concluding his argument, Justice Blackmun held that the real question presented in this case is whether the prisoner should be punished for helping to extricate himself from a situation where society

²⁹ *United States v. Bailey*.

³⁰ *United States v. Bailey*.

³¹ *United States v. Bailey*.

has completely abdicated its basic responsibility for providing an environment free of life-threatening conditions such as beatings, fires, lack of essential medical care, and sexual attacks.³²

The direction of the evolving understanding of the standard of cruel and unusual punishment and the standard of decency in society in the context of human dignity continued in the 2002 case of *Hope v. Pelzer*,³³ in which the important normative nature of human dignity was again emphasized. Larry Hope, while serving time in a prison in the state of Alabama, was punished twice by being handcuffed to a post (formerly used to tie horses, known as a hitching post). It was a punishment applied to prisoners who disturbed the order. Each time, prison guards handcuffed Hope in such a way that the handcuffs would cut into the prisoner's hands if he tried to change position. Additionally, the second time Hope was undressed and left in the sun for seven hours. During this time, he was only given something to drink but was not allowed to use the toilet. Hope filed a complaint, and the courts had to decide two questions: whether the prison guards' conduct violated the Eighth Amendment and whether they could be held accountable for it by the courts, or whether they were protected by qualified immunity.³⁴ The Federal Court of Appeals for the Eleventh District held that the punishment of being chained to a pole for tying up horses was cruel and unusual punishment within the meaning of the Eighth Amendment. Nevertheless, it confirmed that the defendants were granted immunity because, in its view, handcuffing to a post did not meet the criterion of infringement of the 'clearly established law' required to waive immunity.

As a result of Hope's appeal, the case was brought before the Supreme Court. By a six to three majority, the Court held that prison guards could not escape liability in this case. According to Justice John Paul Stevens, who drafted the majority opinion, a reasonable prison guard should know that using a post to tie up horses as punishment is unlawful because such practices constitute obvious cruelty.

Justice Stevens referred at several points in his argument to prior rules established based on the normative nature of human dignity. First, he referred to the text of an appellate court decision that relied on precedent from the 1974 case *Gates v. Collier*,³⁵ in which similar practices of punishment of prisoners were held to be inconsistent with the Eighth Amendment. In that case, handcuffing prisoners in cells or on fences surrounding buildings and leaving them so for many hours was considered a violation of contemporary concepts of decency, human dignity, and

³² *United States v. Bailey*.

³³ *Hope v. Pelzer*, 536 U.S. 730 (2002).

³⁴ In case *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) the Supreme Court has held that, where appropriate, qualified immunity protects state officials from liability unless their actions violate a person's federal constitutional rights. This immunity applies to state or federal employees when their actions, even if later found to be unlawful, do not violate a clearly established right.

³⁵ *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974).

the precepts of civilization that American society adheres to. In addition, the court recalled that the American justice system had abandoned the pillory as a means of punishment over one hundred years ago. Justice Stevens then concluded that handcuffing the prisoner to a hitching post for seven hours, leaving him there in full sunlight, and not being able to use the restroom, “created a risk of particular discomfort and humiliation.” Such circumstances of punishment violate, as defined in *Trop v. Dulles*, the dignity of man, the basic idea underlying the Eighth Amendment.³⁶

The court held that the obvious cruelty inherent in this practice should have provided guards with some notice that their conduct violated Hope’s constitutional protection against cruel and unusual punishment. Indeed, Hope was being treated in a manner contrary to the concept of human dignity because he was being held in a painful position for an extended period of time, and under circumstances that were both degrading and dangerous. Finally, this was not done out of necessity, but as punishment for prior conduct. It was also pointed out that this type of punishment was condemned in the US Department of Justice report, which found the systematic use by prison officers of Alabama of the penalty of being chained to a hitching post to be an inappropriate corporal punishment.³⁷

FURMAN V. GEORGIA

One of the most important cases concerning the death penalty was the 1972 judgment in *Furman v. Georgia*.³⁸ This judgment resulted in a four-year interruption in the administering of capital punishment in the United States. It forced Congress and state legislatures to introduce changes that would ensure that it would not be adjudicated and carried out in an arbitrary and discriminatory manner against black defendants.

William Furman shot the owner of the apartment during a burglary. During the police questioning, he testified that he shot blindly. During his testimony before the court, he stated that the weapon was fired accidentally when he stumbled while fleeing. Furman was found guilty of murder (according to felony murder rule) and sentenced to death. The appeal brought the case before the Supreme Court. The court, together with Furman’s case, considered two other cases: *Jackson v. Georgia* and *Branch v. Texas* (both sentenced to death for rape). The Supreme Court had to decide whether the adjudication and execution of the death penalty in these cases constitutes a cruel and unusual punishment, which violates the Eighth and Fourteenth Amendments.

³⁶ *Hope v. Pelzer*.

³⁷ *Hope v. Pelzer*.

³⁸ *Furman v. Georgia*.

In a five to four decision, the Supreme Court declared that the death penalty in these cases constitutes a cruel and unusual punishment, which violates the constitutional guarantees of protection of rights. The Court considered that the death penalty could not be imposed by proceedings that create the risk of arbitrary and discriminatory imposition and execution of the death penalty and thus assessed the circumstances of these cases. The majority opinion was prepared per curiam, and each of the five justices issued a separate opinion on the justification, which indicates the uniqueness of this case. The key to the research topic is the opinion of Justice Brennan, who based the inference and justification on the idea of human dignity, recognizing the death penalty per se as being unconstitutional (similar to Justice Marshall). Other justices indicated the issues of arbitrariness in its adjudication and discrimination against black defendants as the grounds for the judgment. In addition, a reference to the idea of human dignity appeared in the dissenting opinion of Justice Blackmun, who opposed the final sentence of the judgment.

Justice Brennan stated that the *Furman v. Georgia* case is a general question as to whether nowadays death is a penalty which is a cruel and unusual punishment, and, consequently, under the Eighth and Fourteenth Amendments, whether it is outside the powers of public authority. The fundamental role in his argument was played by the emphasis on the need to protect the internal value of intrinsic worth as human beings and the normative nature of human dignity. Justice Brennan's entire argument can be divided into two parts. In the first, he presented his point of view on issues regarding the interpretation of the Constitution, rejecting an interpretation solely based on historical premises and the original understanding of the text. In addition, he presented the characteristics of four standards that form an integral part of the Eighth Amendment and define whether a given punishment is "cruel and unusual." Firstly, is death a severe punishment? Secondly, is it likely to be measured arbitrarily? Thirdly, whether as a punishment for a crime was completely rejected by modern society? Fourthly, are there arguments to conclude that less severe imprisonment serves the purpose of punishment more effectively? In the second part of his argument, based on the four principles described above, he assessed the constitutionality of the death penalty. According to Justice Brennan, in connection with the death penalty, each of the above questions must be answered in the affirmative. This, in turn, leads to the recognition of the death penalty as incompatible with human dignity.³⁹

However, before proceeding to characterize the principles of interpretation of these four rules, Justice Brennan put forward the argument in which he rejected the theory that the Eighth Amendment should be interpreted only in the way that the Founding Fathers were doing it in their times. Brennan started by trying to define what the creators of the Constitution and the United States Bill of Rights were

³⁹ *Furman v. Georgia*.

guided by. He stressed that the Founding Fathers were particularly concerned about the scope of the legislative authority, and the Eighth Amendment was included in the Bill of Rights so that the legislator did not have an unlimited right to enact penalties for offenses. He rejected the statement that the sole purpose of the Eighth Amendment was to counteract penalties that were already considered cruel and essentially torture at that time (e.g., burning at the stake, crucifixion, or breaking the wheel). He believed, among other things, that this is why the content of the amendment is so general. What is more, as Justice Brennan reiterated, such a narrow and historical interpretation of the Eighth Amendment was rejected in the judgment of *Weems v. United States* of 1910.⁴⁰ While the creators of the Bill of Rights were sure that democratic power would not imitate the punishment of an arbitrary monarchy, they saw the possibility of other abuses of power that could shock people's sensitivity. That is why the Eighth Amendment should protect against any abuse of any authority in the sphere of punishment. Therefore, the right to freedom from cruel and unusual punishments, like other guarantees of the Bill of Rights, cannot be put to a vote or depend on the outcome of the election. The Bill was supposed to eliminate the regulation of the issues identified in it, by politicians by enacting the law. Putting the rights of citizens beyond the reach of the decisions of the majority or representatives of the executive branch and establishing these rules as legal principles for the courts served to liberate citizens from volatility and political controversy.

Afterward, Justice Brennan recalled the current rules regarding the interpretation of the Eighth Amendment, from the judgment of *Trop v. Dulles*. As stated in this judgment, the terms used in the text of the amendment are not precise and its scope is not static. While interpreting, one must first of all use the meaning defined by the evolving standards of decency that determine the progress of a mature society. Secondly, it is necessary to think about whether the punishment does not expose the individual to a situation that is excluded by the rules recognized by civilized society. This means that the clause on cruel and unusual punishments prohibits the imposition of uncivilized and inhuman punishments. The authorities must treat their citizens (including convicted criminals) with respect for their intrinsic worth as human beings. Therefore, punishment is cruel and unusual, if not compatible with human dignity. However, this approach does not in itself constitute the rules to assess the constitutional validity of respective penalties. To determine this, it is necessary to check whether the penalty is compatible with the four above-mentioned rules for the application of the Eighth Amendment.

The first rule in clause VIII of the amendment in question is that punishment cannot be so severe as to degrade the dignity of human beings. In assessing this, physical pain associated with punishment will be extremely important. Extreme harsh punishment brings physical suffering. However, one cannot ignore the issue

⁴⁰ *Weems v. United States*, 217 U.S. 349, 376 (1910).

of mental pain, which may also accompany some punishments and as such may be more serious than physical ones. Brennan recalled that such a belief was the basis of the *Trop v. Dulles* ruling. Moreover, the joint occurrence of physical and mental suffering was a premise for recognizing the unconstitutionality of the *cadena temporal*⁴¹ punishment in the judgment of *Weems v. United States*.

However, the severity of punishment can be more humiliating for the dignity of human beings than the pain. Certain punishments, and tortures, in fact, have been rejected in the past not only because of pain. As Brennan emphasized: “The real meaning of these punishments is that they treat members of the human race as non-human, but as objects to play with and to throw away. They are therefore contrary to the fundamental assumption of the clause that even the most despicable criminal remains a human being possessing common human dignity.” In addition, Brennan noted that the imposition of an extremely severe punishment may reflect the conviction that the person being punished is not entitled to be recognized as a fellow human being. This attitude can be seen regardless of the severity of the punishment itself. In some situations, punishment, like torture, can be so humiliating and indecent that in practice it means negating human status in relation to the offender. That is why Brennan decided that punishment can be degrading to human dignity simply because it is a punishment. As an example, Justice Brennan stressed that the state cannot punish someone for being sick, for example, suffering from venereal disease, being mentally ill, or addicted to drugs.⁴² In practice, in a situation like that, punishing for being ill means treating the individual as an object of illness, and not as a sick person. In concluding this part of his reasoning, Brennan pointed out that the punishment could simply be degrading because of its immensity and gave an example of the deprivation of citizenship in the case of *Trop v. Dulles*.

While discussing the second issue, Brennan analyzed the idea of the arbitrariness of punishment. This principle is derived from the view that the state does not respect human dignity when it imposes a severe punishment on some which it does not impose on others. Brennan referred to earlier judgments in which this principle was interpreted in detail. In the *Wilkerson v. Utah*⁴³ case, the Supreme Court dealt with the constitutionality of execution by firing squad during the war. He assumed that, during the war, shooting was a common method of serving the death penalty and, on this basis, considered it constitutionally permissible. From this, Brennan concluded that when a severe punishment is imposed in the vast majority of cases where it is legally available, the likelihood of it being arbitrarily imposed by the state is low. At the same time, however, if in a given case the imposition of a severe penalty

⁴¹ *Cadena temporal*—a punishment derived from the from the Spanish penal code and adopted by the colonies in America, involving imprisonment for at least twelve years and one day in shackles, hard and painful labor and the loss of many basic civil rights.

⁴² *Furman v. Georgia*.

⁴³ *Wilkerson v. Utah*, 99 U.S. 130 (1878).

is something other than what is commonly executed, there is a high probability that the state, contrary to the requirements of regularity and integrity contained in this clause, arbitrarily imposes the penalty. Therefore, if in other cases an equally severe penalty is not imposed or more severe crimes are punished less severely, there is an important premise that the state enjoys arbitrary and unrestrained power.⁴⁴

The third argument on which Justice Brennan based his argument concerned the attitude of society towards imposing punishment: punishment must be accepted by modern society. He took for granted that the rejection of a given punishment by the public is clear evidence that such a punishment is not compatible with human dignity. He considered the judges' duty to be objective in making such an assessment of social sentiment as a key element. He emphasized that no court could follow its own opinions. The judge cannot (and here Brennan referred to the concurrent opinion of Justice Frankfurter in the Louisiana case *ex rel. Francis v. Resweber*⁴⁵) seek confirmation of his own disapproval in the opinion of only part of society, or force his own views, instead of following the consensus of public opinion, which, for the purposes of due process of law, is a standard mandated in the Constitution. The court must therefore use certain objective indicators, on the basis of which it can conclude that modern society recognizes this severe punishment as inadmissible. Brennan considered such objective activities to review the history of the application of contested punishment and examine current practices. He emphasized, however, that the mere existence of punishment in law obviously does not mean its acceptance by the public. As he noted, at some point the punishment may simply become unacceptable to society, which is why the admissibility of severe punishment is not measured by its availability but by its use.⁴⁶

The last rule contained in this clause is that severe punishment cannot be excessive. Under this principle, punishment is excessive if it is unnecessary. A severe punishment imposed by the courts cannot be reconciled with human dignity when it is only the senseless infliction of suffering. If there is a significantly less severe penalty, but also suitable to achieve the purpose of the penalty, a more severe penalty is unnecessary and therefore excessive. In this context, Justice Brennan recalled the rule contained in the 1892 judgment of *O'Neil v. Vermont*,⁴⁷ according to which the clause is directed not only against punishments of a torture nature but against all penalties which, due to excessive length or severity, excessive length or severity are greatly disproportioned to the offenses charged.⁴⁸

To sum up the above description of the rules contained in the Eighth Amendment, Justice Brennan emphasized that, in his opinion, the main principle that is

⁴⁴ *Furman v. Georgia*.

⁴⁵ *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947).

⁴⁶ *Furman v. Georgia*.

⁴⁷ *O'Neil v. Vermont*, 144 U.S. 323 (1892).

⁴⁸ *Furman v. Georgia*.

a necessary condition for applying other rules is that punishment, due to its severity, cannot be degrading to human dignity. He pointed out that since the adoption of the Bill of Rights, the Supreme Court had ruled only in three cases that the penalty imposed was contrary to a clause of the Eighth Amendment: cadena temporal, i.e., twelve years of hard labor in shackles (*Weems v. United States*), deprivation of citizenship (*Trop v. Dulles*), and imprisonment for drug addiction (*Robinson v. California*). Each of these penalties was clearly contrary to human dignity, but this conclusion cannot be drawn solely on the basis of the violation of one of the principles cited. These “cruel and unusual punishments” seriously violated several principles, and it was their combined application that resulted in a final judgment. This is how Brennan saw the purpose of their application: they should provide the court with tools to confirm that the questioned punishment is contrary to human dignity. If the punishment is extremely severe, there is a high probability of being imposed arbitrarily, and if it is significantly rejected by modern society or there is no reason to believe that it serves the purpose of punishing more effectively than any less severe punishment, then its further inflicting constitutes a violation of the prohibition of cruel and unusual punishments.⁴⁹

Justice Brennan then moved from applying the principles described above to characterizing the death penalty. First, he referred to the issue of exceptional severity. He emphasized that the death penalty is, in his opinion, an exceptional punishment. Moreover, although the previous rulings emphasize that death is a “traditional” punishment, which “has been used throughout our history,” a point evidenced by its uniqueness, even the Fifth Amendment states that a person accused of a crime punishable by death has the right to specific procedural protection. However, it cannot be presumed (there is no evidence for this) that it should be treated equally in the context of the Eighth Amendment, i.e., that the prohibition of cruel and unusual punishments should not apply to it. Furthermore, Justice Brennan pointed out that so far only the constitutionality of certain forms of execution of this sentence was questioned: execution by shooting in the *Wilkerson v. Utah* case and repeated execution in an electric chair in the *Louisiana ex rel. Francis v. Resweber*.⁵⁰ However, the death penalty’s compliance with the Constitution has not yet been the subject of consideration by the Supreme Court. Moreover, the death penalty, widely recognized as the ultimate sanction, raises many doubts. Brennan pointed out that only in the case of this punishment does a nationwide debate take place: the application of any other penalty is not as procedurally restricted as capital punishment. In addition, no other punishment has been banned in so many states, and in those in

⁴⁹ *Furman v. Georgia*.

⁵⁰ Willie Francis, who was sentenced to death for murder, survived execution in the electric chair in 1946. As a result, his attorney objected to its repetition, pointing out that the twofold execution is cruel and elaborate punishment. The Supreme Court denied the request, and in 1947 Francis was subjected to a second execution, this time ending in his death.

which it remains in the catalog of available penalties, it is envisaged only for the most heinous crimes. According to Brennan, the only explanation that can be offered for the exceptional nature of the death penalty is its extreme severity.⁵¹ This exceptional severity manifests itself in three aspects: caused pain, finality, and enormity. For Brennan, the planned killing of a man by the state is essentially nothing else but a denial of the executed person's humanity. Therefore, the deliberate deprivation of human life by the state must now be seen as extremely humiliating for human dignity, especially in comparison with any punishment used today.⁵²

Secondly, Justice Brennan dealt with the issue of the arbitrariness of the death penalty—that is, the State cannot arbitrarily impose an extremely severe penalty. In this respect, it relied on detailed statistical data. He pointed out that the death penalty could be imposed in the case of several crimes that are committed in the United States every year (mainly murders and rapes). Meanwhile, death is adjudicated in only a few dozen cases. Therefore, if death is pronounced in such a small number of cases where it is possible to judge, it must be pronounced arbitrarily. Brennan even stated that its adjudication was more like a lottery. At the same time, he rejected the position of advocates of maintaining this punishment that the rarity of its adjudication means deliberate selection, according to the principle that it is adjudicated only in extreme cases. According to Brennan, the Furman case proves quite the opposite. If his murder is considered to be an extreme case, then “nearly all murderers and their murders are also extreme.”⁵³

Then Brennan moved on to the third rule and, by analyzing the history and contemporary functioning of the American practice of punishing criminals, recognized that the death penalty was almost completely rejected by modern society. He also referred to the opinion of Justice Marshall, who presented the problem in detail. Brennan only noted that since the beginning of the existence of the United States, the death penalty has generated controversy in society for ethical reasons. There is still debate whether a society for which the dignity of the individual is the highest value can, without a fundamental inconsistency, apply the practice of intentionally killing some of its members. The justice recognized that in the United States, as in other Western countries, the fight for this punishment is between old and deeply rooted beliefs about retaliation, compensation, and revenge, and beliefs about the personal value and dignity of the common man, as well as beliefs about the scientific approach to understanding human behavior.⁵⁴

According to Justice Brennan, these ethical disputes resulted in constant changes and the evolution of America's practice of the death penalty. Execution methods

⁵¹ *Furman v. Georgia*.

⁵² *Furman v. Georgia*.

⁵³ *Furman v. Georgia*.

⁵⁴ Brennan here cited the work of Thorsten Sellin, *The Death Penalty: A Report for the Model Penal Code of the American Law Institute* (Philadelphia: Executive Office, American Law Institute, 1959).

perceived as more humane (electric chair and gas) displaced traditional methods such as hanging and shooting, which were burdened with the stigma of cruelty. In addition, concern for decency and human dignity forced a change in the circumstances of the execution itself. A public execution has also been abandoned as something humiliating and depraving to the general public.⁵⁵

Therefore, even though “the death penalty has been used throughout our history,” as stated in *Trop v. Dulles*, the true story of this punishment is the story of its continuous reduction. Brennan noted that what was once a common punishment is becoming increasingly rare in the context of ongoing moral debate. The evolution of this punishment shows that it is not an inevitable part of the American identity, and also that in the general public perception, it is becoming increasingly burdensome. Brennan concluded that the progressive decline in executions and the current rarity prove that American society is seriously questioning the legitimacy of this punishment today.

The last rule to be considered is that extremely severe and degrading punishment must not be excessive in relation to the purpose for which it was imposed. To clarify this clause, Brennan analyzed the extent to which other penalties could serve the same purpose as the death penalty. At this point, he again referred to the arguments presented more broadly in the opinion of Justice Marshall, in which he argued that imprisonment is more likely to achieve the intended aims of the sentence. Brennan considered that in the light of the principles set out above and their joint occurrence, it must be concluded that “arbitrarily subjecting a person to extremely severe punishment by the state is a deprivation of human dignity, which society considers as unacceptable, and it cannot be said to be more effective than much less severe punishment. According to these principles and tests, today, death is a cruel and unusual punishment. Brennan finished his conclusion by saying that death is an exceptional and extremely severe punishment and should be considered as profoundly offensive to human dignity.”⁵⁶

To sum up the above, two additional points should be noted. First, the impact of the idea of human dignity is not diminished by the fact that it appeared only in one of five opinions against the death penalty, because the author of each opinion referred to a different type of justification against the death penalty. Secondly, it should be pointed out that human dignity also appeared as an argument in the dissenting opinion of Justice Lewis F. Powell (joined by the Chief of Justice of the Court Warren E. Burger and Justices Harry Blackmun and William Rehnquist). However, it only appeared in relation to one of the arguments, that is, in the context of the unconstitutionality of the death penalty for rape. Justice Powell found it completely impossible to consider the death penalty grossly excessive in all crimes of this type.

⁵⁵ *Furman v. Georgia*.

⁵⁶ *Furman v. Georgia*.

He recalled that rape is widely recognized as one of the most serious violent crimes, and that is why in sixteen states it is punishable by the death penalty, and in most other states by life imprisonment. According to Justice Powell, there are several reasons why rape is so high on the list of serious crimes. Among them, he pointed out that rape is regarded as the cruelest form of interference with the privacy and dignity of the victim and is never a crime committed accidentally; often the victim suffers serious physical injury, and mental damages can be equally serious. Given the above, Justice Powell stated that in such cases the death penalty cannot be considered to be an excessively cruel penalty in connection to all of the crimes as such.⁵⁷

GREGG V. GEORGIA

The judgment in *Furman v. Georgia* resulted in a de facto moratorium on the death penalty. During this time, the authorities of individual states introduced changes to their provisions regarding its implementation, to implement the guidelines contained in the opinions of justices (it should be remembered that only Justices Brennan and Marshall found the death penalty entirely unconstitutional). The issue of the compliance of the death penalty with the Constitution was, however, on the Supreme Court's agenda four years later due to five cases: *Gregg v. Georgia*,⁵⁸ *Proffitt v. Florida*,⁵⁹ *Jurek v. Texas*,⁶⁰ *Woodson v. North Carolina*,⁶¹ and *Roberts v. Louisiana*.⁶² New laws introduced after the *Furman v. United States* judgment were applied in all trials regarding these cases, and five defendants were sentenced to death in the first instance and the conviction was upheld in the appeal instance. The convicts appealed to the Supreme Court for their verdict to declare the death penalty incompatible with the Eighth Amendment. The convicts argued that punishment is contrary to the idea of human dignity, deviates from the current social consensus on this issue, and is disproportionate to the crimes committed. These five cases were consolidated and heard together.

The Supreme Court pronounced its verdicts in these cases on the same day—July 2, 1976. In *Gregg v. Georgia*, *Proffitt v. Florida*, and *Jurek v. Texas*, the Supreme Court found that the new legal regulations met the criteria set out in the *Furman v. Georgia* judgment. However, in the other two cases, which challenged the constitutionality of North Carolina and Louisiana state laws, the court found that state laws violated the Eighth Amendment because they introduced the obligation to im-

⁵⁷ *Furman v. Georgia*.

⁵⁸ *Gregg v. Georgia*, 428 U.S. 153 (1976).

⁵⁹ *Proffitt v. Florida*, 428 U.S. 242 (1976).

⁶⁰ *Jurek v. Texas*, 428 U.S. 262 (1976).

⁶¹ *Woodson v. North Carolina*, 428 U.S. 280 (1976).

⁶² *Roberts v. Louisiana*, 428 U.S. 325 (1976).

pose the death penalty in the event of a conviction for committing certain crimes. In both of these judgments, there were indirect signs of the idea of human dignity.

In *Woodson v. North Carolina*, James Woodson was found guilty of first-degree murder. State laws provided for a mandatory death penalty in this situation. Woodson appealed, but the North Carolina Supreme Court upheld the judgment. The Supreme Court ruled by a majority of five to four votes on the conflict of state regulations with constitutional clauses. The court pointed out three problems related to the new law. First, the law “departs markedly from contemporary standards” regarding death sentences. Historical documents show that public opinion has rejected mandatory death sentences. Secondly, the law did not provide for any standards that judges could use when exercising “the power to decide which first-degree killers would live and who would die.” Thirdly, the law did not allow consideration of the nature and history of individual defendants before the death penalty. The court noted that the “fundamental respect for humanity,” which underpins the Eighth Amendment, requires such consideration. Meanwhile, North Carolina regulations treat all individuals convicted of a particular crime unacceptably not as individual human beings but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death.⁶³

Similarly, in the *Roberts v. Louisiana* case, the court found provisions ordering the death penalty for certain offenses to be unconstitutional. The court held that the new procedure did not provide the Louisiana courts with a constitutionally required opportunity to consider any mitigating circumstances related to the circumstances of the crime or the individual nature of the offender. The Supreme Court concluded its findings by stating that the act on the death penalty is unconstitutional under the Eighth Amendment because it introduces the imposition of the death penalty in the case of many different crimes of varying severity.⁶⁴

For research on the idea of human dignity in the Supreme Court’s jurisprudence in connection to the death penalty, the most important judgment regarding the case of *Gregg v. Georgia*, which went down in history as one of the landmark cases. The case concerned Troy Leon Gregg, convicted of robbery and two counts of murder using firearms.⁶⁵ During the trial, it was found that Troy Gregg and Floyd Allen were hitchhiking in Florida; on November 21, 1973, they were picked up by Fred Simmons and Bob Moore. During the trip, the car driver Simmons decided to give a ride to

⁶³ *Woodson v. North Carolina*.

⁶⁴ *Roberts v. Louisiana*.

⁶⁵ A detailed description of the circumstances of the crime and the contested criminal procedure contains, among other things, the article Magdalena Abu Gholen, “Dopuszczalność kary śmierci w kontekście Ósmej Poprawki a orzeczenie *Gregg v. Georgia* (1976),” in *Identyfikacja granic wolności i praw jednostki. Prawnoporównawcza analiza tożsamego przypadku pod kątem praktyki stosowania prawa amerykańskiego i polskiego*, ed. Mariusz Jabłoński (Wrocław: E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 2016), 83–103.

another hitchhiker, Dennis Weaver. Late in the evening, when they reached Atlanta, Weaver parted with all four. The next morning, Simmons and Moore's bodies were discovered in a ditch by the highway. On November 23, after reading the news of a double homicide in the newspaper, Weaver contacted the police and gave them information about his trip with the victims, including a description of the suspects. The next afternoon, Gregg and Allen were arrested. During the search, a gun was found in Gregg's pocket, which later turned out to be the one used to shoot Simmons and Moore. Gregg confessed to shooting and robbing the victims but said he did it in an act of self-defense. The courts of both instances found Gregg guilty of the crime he was accused of and sentenced him to death. Given the allegations made by Gregg's defense, the Supreme Court had to answer the question of whether the death penalty is per se inconsistent with the Eighth and Fourteenth Amendments.

The court ruled by a majority of seven to two votes that the death penalty did not violate these two amendments. Dissenting opinions were expressed by Justices Brennan and Marshall, who maintained their positions on the total unconstitutionality of the death penalty contained in opinions in the *Furman v. Georgia* case.

On the other hand, the majority of justices considered that in exceptional situations, for example, intentionally ending someone's life, careful and reasonable application of the death penalty may be appropriate if the judgment is issued using the appropriate court procedures. The court regarded the Eighth Amendment, which is interpreted in a flexible and dynamic way in order to adapt to the changing standards of decency, as only prohibiting the application of an excessively severe penalty. Such a punishment results in unnecessary and unwanted inflicting pain or is grossly disproportionate to the seriousness of the crime. On the other hand, neither does the legislator have to pass a resolution, nor does the court have to impose the least severe penalty. The Supreme Court emphasized that death had already been recognized as one of the acceptable penalties by the Founding Fathers and that throughout the entire existence of the United States, the Supreme Court had never found the death penalty to be unconstitutional by its very nature. The majority opinion pointed out that certain categories of penalties could not be annulled simply because other less severe ones served the purposes of punishment better. At the same time, it was acknowledged that punishment cannot be imposed without any justification, only to inflict unnecessary gratuitous infliction of suffering. However, it is clear that the death penalty has specific functions. The function of retribution and deterrence of potential future criminals are not unlawful factors that the legislator cannot consider when adopting the law. As the Court put it, just retribution is not the main purpose of criminal law (as stated in *Williams v. New York*⁶⁶), but nor is it a forbidden objective inconsistent with the respect for the dignity of men. Finally, the concerns expressed in *Furman v. Georgia* regarding

⁶⁶ *Williams v. New York*, 337 U.S. 241, 248 (1949).

the arbitrary or capricious sentencing for the death penalty may be considered by developing a proper criminal procedure.⁶⁷

In addition, the court emphasized the existence of a social consensus to maintain the death penalty. It found that this was confirmed by both political tendencies and jury decisions declaring this punishment. Furthermore, there is no conclusive evidence that the death penalty does not fulfill its purpose of stopping crime. Finally, it stated that the death penalty does not violate human dignity because some crimes are so serious that the only correct response is the death penalty. In addition, it cannot be considered disproportionate to the crime of murder.

Justices Brennan and Marshall delivered dissenting opinions, which related to the idea of human dignity. Brennan based his arguments on the concept of changing standards of decency in the context of the conflict of moral values, about which Sellin, quoted by him four years earlier, had written. He also recognized that the Supreme Court, as the final interpreter of the Constitution, has a duty to state that today's moral and ethical beliefs require us to recognize the death penalty as intolerable for society, as happened with a series of sophisticated tortures in the past. In addition, referring to his earlier opinions, he emphasized that among these concepts recognized in our cases and inherent in the Eighth Amendment is the basic moral principle, according to which the state, even if it administers punishment, must treat its citizens in a manner consistent with their internal value as human beings and the punishment cannot be so severe as to demean human dignity. The judicial determination as to whether the death penalty is in line with the idea of human dignity is therefore not only allowed but also necessitated by the Eighth Amendment. Brennan expressed his incredulity in the Supreme Court's disagreement with the statement in *Furman v. Georgia* that "compared to all other punishments today . . . the deliberate extinguishment of human life the State is uniquely degrading to human dignity." Finally, Brennan recalled that, in his opinion, in the *Furman v. Georgia* case, American civilization and law had developed sufficiently to recognize the death penalty as a "cruel and unusual" punishment, no matter what crime was committed or what were the circumstances, and that it is always a violation of the Eighth and Fourteenth Amendments.⁶⁸

Justice Marshall issued a similar criticism of the majority opinion. He noted that the mere fact that society "demands the life of a murderer in exchange for the evil he has done" cannot justify the constitutionality of the death penalty. As stated in the opinion of Justices Potter Stewart, Powell, and Stevens in the *Furman v. Georgia* case: "The Eighth Amendment requires more than the questioned punishment to be acceptable by the contemporary society." In order for the death penalty to be considered compatible with the Eighth Amendment, it first has to be "in line with the

⁶⁷ *Gregg v. Georgia*.

⁶⁸ *Gregg v. Georgia*.

basic concept of human dignity, which is the essence of the amendment,” as stated in the *Furman v. Georgia* case. In addition, the purpose of the punishment must also be consistent with “our respect for the dignity of other people,” as stated in the *Trop v. Dulles* case. Justice Marshall declared that according to these norms, taking a life just because a criminal deserves it is certainly contrary to the Eighth Amendment because it is justified by a complete denial of the wrongdoer’s dignity and worth.⁶⁹

EVOLUTION OF THE SENTENCING AND APPLICATION OF THE DEATH PENALTY IN THE LATE TWENTIETH AND EARLY TWENTY-FIRST CENTURIES

In the *Gregg v. Georgia* ruling, the Supreme Court affirmed the constitutionality of the death penalty. It is worth noting that human dignity was a theme in both judgments and served as an important normative argument for both supporters and opponents of the death penalty. However, just as the *Gregg v. Georgia* decision did not end the debate over the death penalty, the concept of human dignity continued to leave its normative mark on judgments in this area. Its influence is evident in subsequent decisions. This time, however, the rulings being discussed did not concern the constitutionality of the death penalty itself but addressed the compatibility of execution methods with the Eighth Amendment and the permissibility of its application in specific cases, in the context of the constitutionality of execution methods.

In terms of whether the methods of execution are in compliance with the Constitution, the judgment in *Glass v. Louisiana*⁷⁰ of 1985 should be considered significant. The case concerned Jimmy L. Glass. While serving a prison sentence for previous offenses, Glass and his inmate escaped from a state prison. During their escape from their pursuers, they attacked and murdered a married couple in their own home. For this double murder, Glass was sentenced to death, which in Louisiana was carried out by execution in the electric chair.⁷¹ Glass appealed against the convictions, criticizing this method of execution as inhumane: “Electricity causes unjustified infliction of unnecessary pain and suffering and is not in line with evolving standards of human dignity.” The Supreme Court refused to consider the case, de facto maintaining the judgment of the lower instance. However, a dissenting opinion was expressed by Justice Brennan (joined by Justice Marshall). In the context of the research problem, two points should be highlighted. First, it should be noted that

⁶⁹ *Gregg v. Georgia*.

⁷⁰ *Glass v. Louisiana*, 471 U.S. 1080 (1985).

⁷¹ Such a method of execution was allowed by the Supreme Court in 1890 in *In re Kemmler*, 136 U.S. 436 (1890). The first electro-execution was carried out in New York State.

the applicant denounced execution by electric chair not so much as contravening the Eighth Amendment itself, but the very idea of human dignity. Secondly, Brennan's opinion, written with passion and commitment, is entirely devoted to proving the thesis that execution in the electric chair as a method of executing the death penalty is incompatible with human dignity.⁷²

Justice Brennan reiterated that the scope of protection of human dignity resulting from the Eighth Amendment goes beyond the prohibition of unnecessary infliction of pain during punishment. Therefore, civilized standards require the minimization of physical violence during execution, regardless of the pain that this violence may inflict on convicts. Similarly, basic notions of human dignity require minimizing mutilation and distortion of the body of a convicted prisoner. These principles explain the prohibition of barbaric practices such as horse drawing and quartering in the Eighth Amendment. Generally speaking, the Eighth Amendment requires that within the limits of human possibilities, the chosen method of execution should minimize the risk of unnecessary pain, violence, and mutilation.⁷³

Meanwhile, as Justice Brennan noted, the evidence gathered so far suggests that electrocution is unusually violent and causes pain and humiliation far beyond "the mere annihilation of life." Witnesses routinely report that after turning on the power, the convict "shakes," "jumps," and "fights belts with extraordinary strength." The hands turn red, then white, and "the veins around the neck stand out like steel bands." The limbs, fingers, and hands, as well as the face of the prisoner, is severely deformed. The strength of the electric current is so powerful that sometimes the prisoner's eyeballs "rest on the cheeks." The prisoner often "defecates, urinates, and vomits blood and drool." In addition, Justice Brennan referred to the opinions of experts who are more frequently expressing opinions that other currently available means of execution, for example, the use of poisonous gas or lethal injection, causes the death of the convict in a more reliable, faster, less violent, and more humane manner. Given the above arguments, Justice Brennan emphasized that in his opinion, the arguments in favor of the methods of execution used regarding humanity and dignity are contradictory in themselves in terms of their conformity with the Constitution. Brennan ended his argument with a rhetorical question of whether execution in an electric chair is actually a "humane" method of depriving an individual of their life or whether it is nothing more than the modern technological equivalent of burning people at the stake.⁷⁴

Another ruling regarding the compliance of the method of execution with human dignity was the judgment of the Federal Court of Appeal in the case of *Campbell*

⁷² Justice Brennan recalled that in *Gregg v. Georgia*, he held that the death penalty is under all circumstances a cruel and unusual punishment, making it prohibited by the Eighth and the Fourteenth Amendment.

⁷³ *Glass v. Louisiana*.

⁷⁴ *Glass v. Louisiana*.

v. Wood from 1994.⁷⁵ Charles Campbell was sentenced to death in 1982, for crimes including rape and triple first-degree murder. The court found him guilty of raping and murdering Renae Wicklund and murdering her nine-year-old daughter Shanah and their neighbor Barbara Hendrickson. It is only worth mentioning that in 1977 Campbell was sentenced for raping Renae Wicklund, but in 1981 was released due to good behavior. After exercising all rights to appeal, Campbell was hanged (May 27, 1994).

In the judgment of the Federal Court of Appeal discussed here, one can find a dissenting and concurring opinion from Judge Reinhardt,⁷⁶ containing detailed argumentation regarding the incompatibility of executing the death penalty by hanging with human dignity. He noted that almost all states had abandoned this form of execution,⁷⁷ thus concluding that death by hanging ceased to be in line with the developing standards of decency. He also found it unjustified that this form of execution was clearly incompatible with respect for human dignity, which is the mark of a civilized nation.⁷⁸

Judge Reinhardt admitted that for many Americans the death penalty is not contrary to their social and religious values. Even those who recognize the constitutionality of executions by way of court rulings must admit that hanging is a savage and barbaric method of ending human life. The judge expressed his conviction that execution by hanging is a nasty remnant of less civilized times when science had not yet developed medically appropriate methods to end human life. Judge Reinhardt deemed hanging to be a primitive, harsh, and senseless action aimed at tearing the spine. Such a procedure is unnecessarily brutal and invasive, deliberately degrading and dehumanizing. The result is that the convict suffers great fear beyond the fear of death itself, and the consequences of hanging are often humiliating and disgusting. The judge cited evidence of a complete detachment of the head from the convict's torso and decided that this type of execution was undoubtedly a remnant of an earlier, more difficult period in which, when imposing punishment, people cared much less for human dignity and decency. In those states where hanging is still acceptable, it is referred to as a barbaric anachronism. Judge Reinhardt also stressed that the Constitution forces the state to carry out executions with as much dignity as possible. In the case of hanging, however, we are dealing with indignity resulting not from unnecessarily inflicted pain, but from "relatively painless degradation, savagery, and

⁷⁵ *Campbell v. Wood*, 18 F.3d 662 (9th Cir. 1994).

⁷⁶ Stephen Reinhardt (1931–2018)—Justice on the federal Court of Appeals for the Ninth District, known for his extremely tolerant and progressive views (called the "progressive lion of the Ninth District").

⁷⁷ Since the reinstatement of the death penalty in 1976, the states: Washington, Delaware, and New Hampshire have returned to hanging as an available method of execution. In Washington state, it was it (in 1994) and is still one of the two methods of execution, along with poison injection, used exclusively at the request of the condemned. Washington is the last American state with a working gallows.

⁷⁸ *Campbell v. Wood*.

brutality.” Meanwhile, the Constitution orders the death penalty to be enforced in the most civilized way possible. He emphasized that the use of this method of execution threatens not only the individual’s dignity but also the dignity of the entire nation and society. Judge Reinhardt noted that in order to implement the constitutional requirements in practice, it is necessary to eliminate as far as possible all degrading, brutal, and violent methods of execution and replace them with a scientifically developed and recognized method of ending life, i.e., using the appropriate medical procedures in the appropriate conditions. If the medical sciences have developed a method of ending life relatively painlessly and guaranteeing comparative dignity to a greater extent than before, then that new method should be used. In conclusion, Judge Reinhardt recalled that hanging is a brutal and barbaric procedure that had been strongly rejected in some states more than one hundred years ago when it began to be replaced by the electric chair. Even ignoring the risk of decapitation and the lack of immediate death, hanging is simply incompatible with the dignity of man. He remarked that the State of Washington, which permits death by hanging, has absolutely no respect for human dignity when it seeks to execute a man in this way.⁷⁹

In the context of the evolution of ways of executing the death penalty and the role that the idea of human dignity played in this process, it is worth mentioning one issue. Nowadays, injection with a lethal mixture of substances has become the dominant method of execution in the United States. This is the method considered to be the most humane, and as the rulings of the Supreme Court analyzed above state, it is also the most compatible with the idea of human dignity.

The twenty-first century has brought further changes in the context of the use of the death penalty. The direction in which case law is evolving in these cases is quite clear—the Supreme Court limits the use of the death penalty. In 2002, the Supreme Court ruled out the possibility of sentencing people with intellectual disabilities to death (*Atkins v. Virginia*⁸⁰), and in 2005, also minors (*Roper v. Simmons*⁸¹). In 2008, the Supreme Court restricted the use of the death penalty for child rape (*Kennedy v. Louisiana*⁸²), regarding the provisions providing for the death penalty as contrary to the Eighth Amendment.

In 2002, the Supreme Court issued a judgment in the *Atkins v. Virginia* case. Daryl Atkins was convicted of kidnapping, armed robbery, and first-degree murder. He attacked Eric Nesbitt along with William Jones. When it transpired that Nesbitt had only \$60 in his wallet, he kidnapped him and forced him to withdraw another \$200 from the ATM. Subsequently, both perpetrators took Nesbitt to a remote location and killed him, shooting him eight times. The perpetrators were arrested, inter alia thanks to security camera footage. During interrogation, they accused each

⁷⁹ *Campbell v. Wood*.

⁸⁰ *Atkins v. Virginia*, 536 U.S. 304 (2002).

⁸¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

⁸² *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

other of shooting Nesbitt, but Atkins' testimony was less credible. In addition, Atkins was incriminated by a cellmate who testified that Atkins had confessed to the murder. In exchange for a life sentence, Jones agreed to incriminate Atkins in court. During the trial, the jury found his version of events more consistent and reliable. The defense raised the argument that Atkins is mildly mentally retarded, and as evidence, they provided his IQ test result of fifty-nine, testimony from a psychologist, and documentation of his results from school. Despite this, Atkins was convicted of murder and received the death sentence.

The judgment was repealed by the Virginia Supreme Court for procedural reasons. During the re-trial, the prosecutor's office sought the help of its own psychology expert, who said that Atkins' vocabulary, general knowledge, and behavior suggested that he was of at least average intelligence. The prosecution also put forward two arguments recognized by the jury. Firstly, due to his current behavior, Atkins poses a danger to society. Secondly, the manner in which the crime was committed was particularly reprehensible. According to the law, these were both issues that would increase the sentence and support the death sentence. Atkins was again sentenced to death. Virginia's Supreme Court this time upheld the lower court's verdict. Therefore, the Supreme Court had to decide whether the execution of a person with an intellectual disability is a "cruel and unusual" punishment and, under the Eighth Amendment, is contrary to the Constitution.

The Supreme Court ruled six to three that the execution of persons with intellectual disabilities is contrary to the Eighth Amendment. The majority opinion was made by Justice Stevens. The starting point was a reminder of the rule from the *Trop v. Dulles* judgment that the basic concept on which this amendment is based is human dignity, and the interpretation of this amendment must be in accordance with evolving standards of decency that mark progress in a mature society. Further argumentation, however, dealt with the issue of excessive punishment and disproportion. The justice recalled that the assessment of proportionality under these changing standards of decency should be based on the most objective indicators and as such the legislative case law recognizes the legislative activity of state legislatures. In practice, therefore, this means following changes in state regulations. In the context of the death penalty for people with intellectual disabilities, Justice Stevens pointed out that two-thirds of state legislatures that maintain the death penalty have banned its use against such criminals. Justice Stevens summed up the opinion by saying that the interpretation and application of the Eighth Amendment in light of American changing standards of decency allows the conclusion that the death penalty is excessive and that the Constitution imposes significant restrictions on the state's right to take the life of criminals recognized as persons with mental disabilities.⁸³ At the same time, the Supreme Court declared that states are free to

⁸³ *Atkins v. Virginia*.

determine the definition of a person with mental disabilities, which still gives them some control over who can qualify for the death penalty (in 2014, the scope of this freedom was the subject of the case of *Hall v. Florida*⁸⁴).

In 2005, the Supreme Court issued a judgment in the case of *Roper v. Simmons*. Christopher Lee Simmons was accused of murdering Shirley Crook. Her body was found on September 9, 1993. She had been murdered, tied with an electric cable, leather straps, and duct tape. She had broken ribs and bruises all over her body. The cause of death was determined as drowning. Simmons was sentenced to death in 1993 (he was seventeen at the time), yet the appeals to state and federal courts lasted until 2002. It was in 2002 that the Missouri Supreme Court suspended the execution of Simmons until the verdict was delivered in the *Atkins v. Virginia* case.

After this verdict, employing the arguments used in it, the Supreme Court of Missouri ruled that the Supreme Court ruling of 1989 in the *Stanford v. Kentucky*⁸⁵ case, in which the execution of minors was found not to be unconstitutional, was no longer valid. The court, referring to numerous acts issued since 1989, which limited the scope of the death penalty, decided that the views of society changed. While acknowledging that most Americans are currently opposed to the execution of minors, it found such executions to be unconstitutional. As a result of this judgment, the case was brought before the Supreme Court, which was required to answer the question of whether the execution of minors violates the prohibition of “cruel and unusual punishments” contained in the Eighth Amendment.

With a majority of five to four votes, it was ruled that decency standards changed in such a way that the execution of minors is a cruel and unusual penalty prohibited by the Eighth Amendment. Justice Anthony Kennedy wrote the majority opinion. Firstly, he recalled that because it protects even those convicted of heinous crimes, the Eighth Amendment confirms the government’s duty to respect the dignity of all persons. In the rest of his reasoning, Justice Kennedy referred to the issue of non-acceptance of the use of the death penalty for minors. He cited evidence of public consensus on this issue, indicating that most state legislatures had abolished this type of legislation.⁸⁶

An important role in the justification of this judgment was also played by reference to the experience of other countries and the regulation of international law. Justice Kennedy recalled that since 1990 only seven countries other than the United States had executed juvenile offenders: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, The Democratic Republic of Congo, and China. Since then, each of these countries has either abolished the death penalty for minors or has introduced a moratorium on its implementation. The justice said: “It is fair to say that the United States is now alone in a world that has turned its backs on the death penalty for minors.” In the fol-

⁸⁴ *Hall v. Florida*, 572 U.S. 701 (2014).

⁸⁵ *Stanford v. Kentucky*, 492 U.S. 361 (1989).

⁸⁶ *Roper v. Simmons*.

lowing, Justice Kennedy argued that it is necessary to consider the fact that “young people’s instability and emotional imbalances can often be a factor in crime.” Justice Kennedy defined the normative nature of human dignity and its place in the Constitution, in the entire political system, and in all American social and political thought. He emphasized that the Constitution “defined and based on innovative principles that were original for the American experience, such as federalism, a proven balance in political mechanisms through separation of powers; specific guarantees for the accused in criminal cases; and broad provisions to secure individual freedom and preserve human dignity.” The above principles and concepts “are central to the American experience and remain essential to our present-day self-definition and national identity.” At the end of the opinion, Justice Kennedy pointed out that these rules had first been applied in practice in the American political system, and that “affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.”⁸⁷

A reference to the idea of human dignity in the context of the impact of international law on American law was also found in a separate opinion given by Justice Sandra Day O’Connor.⁸⁸ The justice, though disagreeing with the majority opinion on the sentence, agreed with the argument about the importance of solutions contained in international law. She emphasized that over the last half-century, the Supreme Court had consistently referred to international law and regulations of other countries as an important source in terms of assessing evolving standards of decency. Such comparisons reflect the special nature of the Eighth Amendment, which derives its significance directly from the mature values of civilized society.⁸⁹

Justice O’Connor admitted that in many respects American law is separate. However, the American nation’s evolving understanding of human dignity is certainly not completely isolated from the values prevailing in other countries, or inherently contrary to those values. The justice concluded that this form of punishment is incompatible with fundamental human rights. This should not be surprising, bearing in mind the compliance with national and international values expressed in international law or in the national law of individual countries, especially where the international community was in clear agreement. In any case, the existence of such an international consensus could serve to confirm the veracity and legitimacy of the consensus existing in American society. However, as Justice O’Connor firmly stated, in this case, there is no national consensus in the United States.⁹⁰

⁸⁷ *Roper v. Simmons*.

⁸⁸ Sandra Day O’Connor (born March 26, 1930)—Supreme Court justice from 1981 to 2006, the first female Supreme Court justice, described as a moderate conservative; she was known for her dispassionate and meticulously prepared opinions; see more widely “Sandra Day O’Connor. United States Jurist,” in *Encyclopaedia Britannica* [online], accessed August 6, 2023, <https://www.britannica.com/biography/Sandra-Day-OConnor>.

⁸⁹ *Roper v. Simmons*.

⁹⁰ *Roper v. Simmons*.

One of the last rulings of this type is the judgment in the *Kennedy v. Louisiana*⁹¹ case from 2008. Patrick Kennedy was convicted of raping his eight-year-old stepdaughter. The circumstances of the rape were very violent. The raped girl needed immediate medical attention and surgery. The Supreme Court ruled that Kennedy's act was "one that cannot be recounted in these pages in a way sufficient to capture in full the hurt and horror inflicted on his victim." Emphasis was placed on the opinion of an expert in forensic medicine and pediatrics, who testified that these were the most severe injuries he had seen as a result of sexual assault during his four years of practice. He mentioned that a laceration to the left wall of the vagina had separated her cervix from the back of her vagina, causing her rectum to protrude into the vaginal structure. Her entire perineum was torn from the posterior fourchette to the anus. Kennedy consistently protested his innocence, but other evidence and subsequent testimonies by his stepdaughter refuted this (although she initially confirmed Kennedy's version). The court sentenced him to death and the sentence was upheld by the Louisiana Supreme Court. The case was brought before the Supreme Court, which had to answer the question of whether state regulations providing for the death penalty in the event of child rape were in accordance with the Constitution.

The court ruled by a majority of five to four votes that the Eighth Amendment prohibits the imposition of the death penalty for rape of a child if the offense did not result in the death of the child or the offender did not act with the intention of killing the rape victim. Evolving standards of decency must include and express respect for the dignity of the person, and the punishment of criminals must comply with this principle. The use of the death penalty in such a case would constitute the execution of a cruel and unusual punishment, and this would violate the national consensus in this case.⁹²

It is worth mentioning that this judgment caused huge controversy, both due to the circumstances of the rape by Kennedy and due to a mistake in the factual findings, which were central to the justification of the majority opinion. The judgment was criticized by both presidential candidates at that time: Barack Obama⁹³ and John McCain.⁹⁴ The focal point of the forensic analysis was the notion that child rape was treated as a crime of special importance in only six states and that no other state or federal jurisdiction allows the death penalty for that crime. However, the Supreme Court did not consider an amendment to the military penal code, which provided for the death penalty in such cases. The above information was published very quickly and appeared in such media as the New York Times. Therefore, the Supreme Court received several requests for re-examination. However, the Court refused to

⁹¹ *Kennedy v. Louisiana*.

⁹² *Kennedy v. Louisiana*.

⁹³ Patrick Martin, "Obama Attacks US Supreme Court Decision Barring Death Penalty for Child Rape," World Socialist Web Site, June 26, 2008, <http://www.wsws.org/en/articles/2008/06/obam-j26.html>.

⁹⁴ "Obama Disagrees with High Court on Child Rape Case," 19 News, June 26, 2008, <http://www.cleveland19.com/story/8559181/obama-disagrees-with-high-court-on-child-rape-case>.

reconsider it, arguing that in any event, consent to the death penalty in the military sphere does not mean that it is compatible with the Constitution in a civil context, which renders any reconsideration of the case pointless.

CONCLUSIONS

To sum up these considerations regarding the normative impact of the idea of human dignity on the Supreme Court's jurisprudence regarding the death penalty, it is difficult to agree with the statements that can be found in the doctrine of American law that human dignity has left a mark that is too weak in matters concerning the Eighth Amendment. While analyzing the evolution in the use of the death penalty, which has been so limited in recent decades, it is not easy to find a legal sphere in which the impact of the idea of human dignity would be more significant. Firstly, the idea of human dignity was recognized as a value directly protected by the prohibition of cruel and unusual punishments. Such a declaration completely changed the jurisprudence in this area. Secondly, the idea of human dignity was identified as a factor influencing the interpretation rules developed by the Supreme Court in the context of interpreting the standards applied, for example, the changing standards of decency. Thirdly, the order to respect human dignity has become an important element defining the understanding of the clauses contained in the Eighth Amendment itself. The fact is that the death penalty has not been abolished and that its compliance with the Constitution has ultimately not been questioned. However, it exists only in some states, and the direction of evolution in this area is quite clear, both in state and federal legislation.

Summary: The chapter critically examines the Eighth Amendment of the US Constitution, particularly its prohibition of cruel and unusual punishment, through the lens of human dignity. The paper aims to understand how the concept of human dignity influences the interpretation and application of this amendment, especially in the context of the death penalty. Key themes include historical and contemporary jurisprudence and the evolving standards of decency. The article concludes that human dignity has played a significant role in shaping the Supreme Court's approach to cruel and unusual punishment, leading to a more humane and just criminal justice system.

Keywords: Supreme Court, American law, human dignity, Eight Amendment, death penalty

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