THE DISMANTLING BEGINS!
[*Woodson* was decided the same day as *Gregg v. Georgia*.]

WOODSON *v.* NORTH CAROLINA
SUPREME COURT OF THE UNITED STATES
428 U.S. 280
July 2, 1976
[5 to 4]

OPINION: Justice Stewart/Powell/Stevens...The question in this case is whether the imposition of a death sentence for the crime of **first-degree murder** under the law of North Carolina violates the Eighth and Fourteenth Amendments...There were four participants in the robbery: [Woodson, Waxton, Tucker and Carroll.]...Tucker and Carroll testified for the prosecution after having been permitted to plead guilty to lesser offenses; [Woodson and Waxton] testified in their own defense.

The evidence for the prosecution established that the four men had been discussing a possible robbery for some time. On the fatal day Woodson had been drinking heavily. About 9:30 p.m., Waxton and Tucker came to the trailer where Woodson was staying. When Woodson came out of the trailer, Waxton struck him in the face and threatened to kill him in an effort to make him sober up and come along on the robbery. The three proceeded to Waxton's trailer where they met Carroll. Waxton armed himself with a nickel-plated derringer, and Tucker handed Woodson a rifle. The four then set out by automobile to rob the store. Upon arriving at their destination Tucker and Waxton went into the store while Carroll and Woodson remained in the car as lookouts. Once inside the store, Tucker purchased a package of cigarettes from the woman cashier. Waxton then also asked for a package of cigarettes, but as the cashier approached him he pulled the derringer out of his hip pocket and fatally shot her at point-blank range. Waxton then took the money tray from the cash register and gave it to Tucker, who carried it out of the store, pushing past an entering customer as he reached the door. After he was outside, Tucker heard a second shot from inside the store, and shortly thereafter Waxton emerged, carrying a handful of paper money. Tucker and Waxton got in the car and the four drove away.

The...testimony [of Woodson and Waxton] agreed in large part with this version of the circumstances of the robbery. It differed diametrically in one important respect: Waxton claimed that he never had a gun, and that Tucker had shot both the cashier and the customer.

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During the trial Waxton asked to be allowed to plead guilty to the same lesser offenses to which Tucker had pleaded guilty, but the solicitor refused to accept the pleas. Woodson, by contrast, maintained throughout the trial that he had been coerced by Waxton, that he was therefore innocent, and that he would not consider pleading guilty to any offense. **[Woodson and Waxton] were found guilty on all charges, and, as was required by statute, sentenced to death**. The Supreme Court of North Carolina affirmed. We granted certiorari...

[Woodson and Waxton] argue that the imposition of the death penalty **under any circumstances** is cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. We reject this argument for the reasons stated today in *Gregg v. Georgia*[1].

At the time of this Court's decision in *Furman*[2], North Carolina law provided that in cases of first-degree murder, the jury in its unbridled discretion could choose whether the convicted defendant should be sentenced to death or to life imprisonment. After the *Furman* decision..., the North Carolina General Assembly in 1974...enacted a new statute that...made the death penalty **mandatory**. The statute now reads as follows:

> *"Murder in the first and second degree defined; punishment.* -- A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, kidnaping, burglary or other felony, shall be deemed to be murder in the first degree and **shall be punished with death**. All other kinds of murder shall be deemed murder in the second degree, and shall be punished by imprisonment for a term of not less than two years nor more than life imprisonment in the State's prison."

It was under this statute that the petitioners...were tried, convicted, and sentenced to death.

North Carolina, unlike Florida, Georgia, and Texas, has thus responded to the *Furman* decision by making death the mandatory sentence for all persons convicted of first-degree murder...**[This] Court now addresses for the first time the question whether a death sentence returned pursuant to a law imposing a mandatory death penalty for a broad category of homicidal offenses constitutes cruel and unusual punishment within the meaning of the Eighth and Fourteenth Amendments.** The issue, like that explored in *Furman*, involves the procedure employed by the State to select persons for the unique and irreversible penalty of death...

The history of mandatory death penalty statutes in the United States...reveals that the practice of sentencing to death all persons convicted of a particular offense has been rejected as unduly

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[1]Case 8A-CUP-11 on this website.

[2]Case 8A-CUP-10 on this website.

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harsh and unworkably rigid. The two crucial indicators of evolving standards of decency respecting the imposition of punishment in our society -- jury determinations and legislative enactments -- both point conclusively to the repudiation of automatic death sentences. At least since the Revolution, American jurors have, with some regularity, disregarded their oaths and refused to convict defendants where a death sentence was the automatic consequence of a guilty verdict...

As we have noted...in *Gregg v. Georgia*, **legislative measures adopted by the people's chosen representatives weigh heavily in ascertaining contemporary standards of decency**. The consistent course charted by the state legislatures and by Congress since the middle of the past century demonstrates that the aversion of jurors to mandatory death penalty statutes is shared by society at large.

Legislative action "weighs heavily"? Really? Stay tuned!

Still further evidence of the incompatibility of mandatory death penalties with contemporary values is provided by the results of jury sentencing under discretionary statutes. In *Witherspoon v. Illinois*[3], the Court observed that "one of the most important functions any jury can perform" in exercising its discretion to choose "between life imprisonment and capital punishment" is "to maintain a link between contemporary community values and the penal system." Various studies indicate that even in first-degree murder cases juries with sentencing discretion do not impose the death penalty "with any great frequency."...

Although the Court has never ruled on the constitutionality of mandatory death penalty statutes, on several occasions dating back to 1899 it has commented upon our society's aversion to automatic death sentences..."The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. This whole country has traveled far from the period in which the death sentence was an automatic and commonplace result of convictions...." *Williams v. New York (1949).*

...Perhaps the one important factor about evolving social values regarding capital punishment upon which the Members of the *Furman* Court agreed was...[that our Nation has rejected the concept of mandatory death sentences.] Mr. Justice Blackmun, for example, emphasized that legislation requiring an automatic death sentence for specified crimes would be "regressive and of an antique mold" and would mark a return to a "point in our criminology [passed beyond] long ago." The Chief Justice, speaking for the four dissenting Justices in *Furman,* discussed the question of mandatory death sentences at some length: "I had thought that nothing was clearer in history...than the American abhorrence of'...imposing a mandatory death sentence on all convicted murderers.'" As the concurring opinion of Mr. Justice Marshall shows, the 19th century movement away from mandatory death sentences marked an enlightened introduction of flexibility into the sentencing process. It recognized

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[3]Case 8A-CUP-9 on this website.

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that individual culpability is not always measured by the category of the crime committed. This change in sentencing practice was greeted by the Court as a humanizing development.

Although it seems beyond dispute that, at the time of the *Furman* decision in 1972, mandatory death penalty statutes had been renounced by American juries and legislatures, there remains the question whether the mandatory statutes **adopted by North Carolina and a number of other States following *Furman* evince a sudden reversal** of societal values regarding the imposition of capital punishment. In view of the persistent and unswerving legislative rejection of mandatory death penalty statutes beginning in 1838 and continuing for more than 130 years until *Furman,* it seems evident that the post-*Furman* enactments reflect attempts by the States to retain the death penalty in a form consistent with the Constitution, rather than a renewed societal acceptance of mandatory death sentencing. **The fact that some States have adopted mandatory measures following *Furman* while others have legislated standards to guide jury discretion appears attributable to diverse readings of this Court's multi-opinioned decision in that case.**

A brief examination of the background of the current North Carolina statute serves to reaffirm our assessment of its **limited utility as an indicator of contemporary values** regarding mandatory death sentences.

My goodness! In little over a page, the Court has gone from "weighing legislation heavily" to "limiting its utility as an indicator." How's that for "evolving standards"?

Before 1949, North Carolina imposed a mandatory death sentence on any person convicted of rape or first-degree murder. That year, a study commission created by the state legislature recommended that juries be granted discretion to recommend life sentences in all capital cases...The 1949 session of the General Assembly of North Carolina adopted the proposed modifications of its rape and murder statutes. Although in subsequent years numerous bills were introduced in the legislature to limit further or abolish the death penalty in North Carolina, they were rejected as were two 1969 proposals to return to mandatory death sentences for all capital offenses...

The [North Carolina legislature then removed] *"all* sentencing discretion [so that] there could be no successful *Furman* based attack on the North Carolina statute."

...North Carolina's mandatory death penalty statute for first-degree murder departs markedly from contemporary standards respecting the imposition of the punishment of death and thus cannot be applied consistently with the Eighth and Fourteenth Amendments' requirement that the State's power to punish "be exercised within the limits of civilized standards."

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...It is argued that North Carolina has remedied the inadequacies of the death penalty statutes held unconstitutional in *Furman* by withdrawing all sentencing discretion from juries in capital cases. **But when one considers the long and consistent American experience with the death penalty in first-degree murder cases, it becomes evident that mandatory statutes enacted in response to *Furman* have simply papered over the problem of unguided and unchecked jury discretion...**While a mandatory death penalty statute may reasonably be expected to increase the number of persons sentenced to death, it does not fulfill *Furman's* basic requirement by replacing arbitrary and wanton jury discretion with objective standards to guide, regularize, and make rationally reviewable the process for imposing a sentence of death.

A third constitutional shortcoming of the North Carolina statute is its failure to allow the particularized consideration of relevant aspects of the character and record of each convicted defendant before the imposition upon him of a sentence of death. In *Furman,* members of the Court acknowledged what cannot fairly be denied -- that **death is a punishment different from all other sanctions in kind rather than degree**. **A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death...**We conclude that the death sentences imposed upon the petitioners under North Carolina's mandatory death sentence statute violated the Eighth and Fourteenth Amendments and therefore must be set aside...

CONCURRENCE: JUSTICE BRENNAN...[Not Provided.]

CONCURRENCE: JUSTICE MARSHALL...[Not Provided.]

DISSENT: JUSTICE WHITE/CHIEF JUSTICE BURGER/REHNQUIST...[Not Provided.]

DISSENT: JUSTICE BLACKMUN...[Not Provided.]

DISSENT: JUSTICE REHNQUIST...It is by no means clear that the prohibition against cruel and unusual punishments...was not limited to those punishments deemed cruel and unusual at the time of the adoption of the Bill of Rights...Thus for the plurality to begin its analysis with the assumption that it need only demonstrate that "evolving standards of decency" show that contemporary "society" has rejected such provisions is itself a somewhat shaky point of departure. But even if the assumption be conceded, the plurality opinion's analysis nonetheless founders...

Contrary to the plurality's assertions, they would import into the Cruel and Unusual Punishments Clause procedural requirements which find no support in our cases. **Their application will result in the invalidation of a death sentence imposed upon a defendant convicted of first-degree**

murder under the North Carolina system, and the upholding of the same sentence imposed on an identical defendant convicted on identical evidence of first-degree murder under the Florida, Georgia, or Texas systems - a result surely as "freakish" as that condemned in the separate opinions in *Furman*.

Anyone care to explain this irony?

The plurality is simply mistaken in its assertion that "the history of mandatory death penalty statutes in the United States thus reveals that the practice of sentencing to death all persons convicted of a particular offense has been rejected as unduly harsh and unworkably rigid."...

There can be no question that the legislative and other materials discussed in the plurality's opinion show a widespread conclusion on the part of state legislatures during the 19th century that the penalty of death was being required for too broad a range of crimes, and that these legislatures proceeded to narrow the range of crimes for which such penalty could be imposed. If this case involved the imposition of the death penalty for an offense such as burglary or sodomy, the virtually unanimous trend in the legislatures of the States to exclude such offenders from liability for capital punishment might bear on the plurality's Eighth Amendment argument. But **petitioners were convicted of first-degree murder, and <u>there is not the slightest suggestion</u> in the material relied upon by the plurality that there had been any turning away at all, much less any such unanimous turning away, from the death penalty as a punishment for those guilty of first-degree murder**...

There was undoubted dissatisfaction, from more than one sector of 19th century society, with the operation of mandatory death sentences. One segment of that society was totally opposed to capital punishment, and was apparently willing to accept the substitution of discretionary imposition of that penalty for its mandatory imposition as a halfway house on the road to total abolition. Another segment was equally unhappy with the operation of the mandatory system, but for an entirely different reason [:]...because people obviously guilty of criminal offenses were ***not*** being convicted under it. Change to a discretionary system was accepted by these persons not because they thought mandatory imposition of the death penalty was cruel and unusual, but because they thought that if jurors were permitted to return a sentence other than death upon the conviction of a capital crime, fewer guilty defendants would be acquitted.

So far as the action of juries is concerned, the fact that in some cases juries operating under the mandatory system refused to convict obviously guilty defendants does not reflect any "turning away" from the death penalty, or the mandatory death penalty supporting the proposition that it is "cruel and unusual." Given the requirement of **unanimity** with respect to jury verdicts in capital cases,...it is apparent that a **single juror** could prevent a jury from returning a verdict of conviction. Occasional refusals to convict, therefore, may just as easily have represented the intransigence of only a small minority of 12 jurors as well as the unanimous judgment of all 12...[That] certainly does not indicate that society as a whole rejected mandatory punishment for such offenders; it does not even indicate that those few members of society who serve on juries, as a whole, had done so.

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...That society was unwilling to accept the paradox presented to it by the actions of some maverick juries or jurors - the acquittal of palpably guilty defendants - hardly reflects the sort of an "evolving standard of decency" to which the plurality professes obeisance.

...The plurality concedes...that following *Furman* 10 States enacted laws providing for mandatory capital punishment. These enactments the plurality seeks to explain as due to a wrongheaded reading of the holding in *Furman.* But this explanation simply does not wash...The plurality's glib rejection of *these* legislative decisions as having little weight on the scale which it finds in the Eighth Amendment seems to me more an instance of its **desire to save the people from themselves** than a conscientious effort to ascertain the content of any "evolving standard of decency."

...It seems to me impossible to conclude from it that a mandatory death sentence statute such as North Carolina enacted is any less sound constitutionally than are the systems enacted by Georgia, Florida, and Texas which the Court upholds.

In Georgia juries are entitled to return a sentence of life, rather than death, for no reason whatever, simply based upon their own subjective notions of what is right and what is wrong. In Florida the judge and jury are required to weigh legislatively enacted aggravating factors against legislatively enacted mitigating factors, and then base their choice between life or death on an estimate of the result of that weighing. Substantial discretion exists here, too, though it is somewhat more channelized than it is in Georgia. **Why these types of discretion are regarded by the plurality as constitutionally permissible, while that which may occur in the North Carolina system is not, is not readily apparent. The freakish and arbitrary nature of the death penalty described in the separate concurring opinions of Justices Stewart and White, in *Furman,* arose not from the perception that so *many* capital sentences were being imposed but from the perception that so *few* were being imposed. To conclude that the North Carolina system is bad because juror nullification may permit jury discretion while concluding that the Georgia and Florida systems are sound because they *require* this same discretion, is...inexplicable.**

The Texas system much more closely approximates the mandatory North Carolina system which is struck down today. The jury is required to answer three statutory questions. If the questions are unanimously answered in the affirmative, the death penalty *must* be imposed. It is extremely difficult to see how this system can be any less subject to the infirmities caused by juror nullification which the plurality concludes are fatal to North Carolina's statute. Justices Stewart, Powell and Stevens apparently think they can sidestep this inconsistency because of their belief that one of the three questions will permit consideration of mitigating factors justifying imposition of a life sentence ...While the imposition of such unlimited consideration of mitigating factors may conform to the plurality's novel constitutional doctrine that "[a] jury must be allowed to consider on the basis of all relevant evidence not only why a death sentence should be imposed, but also why it should not be imposed," **the resulting system seems as likely as any to produce the unbridled discretion which was condemned by the separate opinions in *Furman*...**

Under the Georgia system, the jury is free to recommend life imprisonment, as opposed to death, for

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no stated reason whatever. The Georgia Supreme Court cannot know, therefore, when it is reviewing jury sentences for life in capital cases, whether the jurors found aggravating circumstances present, but nonetheless decided to recommend mercy, or instead found no aggravating circumstances at all and opted for mercy. So the "proportionality" type of review, while it would perhaps achieve its objective if there were no possible factual lacunae in the jury verdicts, will not achieve its objective because there are necessarily such lacunae.

Lacunae – missing parts, gaps, blank spaces.

...The plurality's insistence on "standards" to "guide the jury in its inevitable exercise of the power to determine which...murderers shall live and which shall die" is squarely contrary to the Court's opinion in *McGautha v. California,* written by Mr. Justice Harlan and subscribed to by five other Members of the Court **only five years ago**. So is the plurality's latter-day recognition, some four years after the decision of the case, that *Furman* requires "objective standards to guide, regularize, and make rationally reviewable the process for imposing a sentence of death." Its abandonment of *stare decisis* in this repudiation of *McGautha* is a far lesser mistake than its substitution of a superficial and contrived constitutional doctrine for the genuine wisdom contained in *McGautha*.

There the Court addressed the "standardless discretion" contention in this language:

> "...Those who have come to grips with the...task of...attempting to draft means for channeling capital sentencing discretion have confirmed...that to identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability..."

The plurality opinion's insistence that if the death penalty is to be imposed there must be "particularized consideration of relevant aspects of the character and record of each convicted defendant" is buttressed by neither case authority nor reason...[The plurality's description of] what it conceives to have been society's turning away from the mandatory imposition of the death penalty purports to express no opinion as to the constitutionality of a mandatory statute for "an extremely narrow category of homicide, such as murder by a prisoner serving a life sentence." Yet if "particularized consideration" is to be required in every case under the doctrine expressed..., such a reservation...is disingenuous at best...

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