MAJORITY OPINION FURMAN V GEORGIA

was convicted of murder in Georgia, and was sentenced to JUSTICE REHNQUIST have filed separate dissenting opinions.

Many States rewrote their criminal codes immediately, to more narrowly define and apply the death sentence. I think not. The four dissenters felt that the case should be remanded for further facts. There is scant danger, given the political processes "in an enlightened democracy such as ours," id. Since that time, successive restrictions, imposed against the background of a continuing moral controversy, have drastically curtailed the use of this punishment. It is immediately obvious, then, that since capital punishment is not a recent phenomenon, if it violates the Constitution, it does so because it is excessive or unnecessary, or because it is abhorrent to currently existing moral values. They are nowhere restrained from inventing the most cruel and unheard-of punishments, and annexing them to crimes; and there is no constitutional check on them, but that racks and gibbets may be amongst the most mild instruments of their discipline. As I have noted earlier, nothing in the history of the Cruel and Unusual Punishments Clause indicates that it may properly be utilized by the judiciary to strike down punishment authorized by legislatures and imposed by juries â€" in any but the extraordinary case. Similarly, in In re Kemmler, [p] U. Alabama, U. The power of the States to impose capital punishment was repeatedly and expressly recognized. Whether the English Bill of Rights prohibition against cruel and unusual punishments is properly read as a response to excessive or illegal punishments, as a reaction to barbaric and objectionable modes of punishment, or as both, there is no doubt whatever that in borrowing the language and in including it in the Eighth Amendment, our Founding Fathers intended to outlaw torture and other cruel punishments. Retaliation, vengeance, and retribution have been roundly condemned as intolerable aspirations for a government in a free society. The only explanation for the uniqueness of death is its extreme severity. The defendant in Weems, charged with falsifying Government documents, had been sentenced to serve 15 years in cadena temporal, a punishment which included carrying chains at the wrists and ankles and the perpetual loss of the right to vote and hold office. Juries, of course, have always treated death cases differently, as have governors exercising their commutation powers. Several studies have shown that poor minorities are more likely to be executed for crimes for which white or affluent people would be incarcerated. In several cases, that assumption provided a necessary foundation for the decision, as the issue was whether a particular means of carrying out a capital sentence would be allowed to stand. Several statutes that mandated bifurcated trials, with separate guilt-innocence and sentencing phases, and imposing standards to guide the discretion of juries and judges in imposing capital sentences, were upheld in a series of Supreme Court decisions in , led by Gregg v. Called upon to determine whether this was a cruel and unusual punishment, the Court found that it was. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. Georgia, Georgia case, the resident awoke in the middle of the night to find William Henry Furman committing burglary in his house. Student Resources:. Faced with an open question, we must establish our standards for decision.