Baumgartner, POLI 203 Fall 2014

NC DP History

Reading: UNC Wilson Library Collection on-line, Kotch

October 15, 2014
Catching up

• Last 3 slides from Peffley and Hurwitz

• Race just “too hard” for some people to accept
McCleskey v. Kemp (1987)

- Baldus study of racial disparities in Georgia death sentencing cases shows disparate outcomes
  - Argument: general patterns v. individual intent
    - “Racially disproportionate impact”
    - “Racially discriminatory purpose”
  - (Duke Sociology Chair, Eduardo Bonilla Silva has a good book: Racism without Racists, arguing you don’t need intent to have disparate outcomes...)
  - Huge impact of this decision, patterns not relevant
  - Arguing for McCleskey, attorney Jack Boger, currently Dean of UNC Law...
A very close decision

- 5-4 decision, very close
- Justice Scalia: Racial bias is:
  - Real
  - Ineradicable
- Justice Powell:
  - Court concerned that 14th amendment claim, equal protection, would not be limited to capital cases and would shake the entire criminal justice system: “too much justice”
- Justice Brennan (voted with the majority):
  - Now that you have retired, would you change any vote: Yes, one. McCleskey v. Kemp.
NC RJA legislation explicitly based on McCleskey

• Justices said that a legislature could pass a law making statistical evidence be a part of the consideration, but current law did not allow it.

• This was the challenge picked up in the RJA

• This is why the RJA was so revolutionary and so controversial

• More about that later in the term.
NC History (Finally!)

• Public access
  – Huge public crowds, drinking, etc. Goal was to make a big public demonstration of the power of the state, common to executions everywhere.
  – 1868: law requires them to be inside
  – 1897: last public execution
  – 1910: centralized at Central Prison in Raleigh
  – Currently: minimal attendance, media, generally at night (similar to other states)
Methods

• Hanging
• Electrocution (1910) – “being Westinghoused”
• Lethal gas (1935)
• 1961 to 1984, no executions...
• 1984 –, lethal injection
  – 2006, NC Medical Board ruled any physician participating would lose their license.
  – This ban eventually lifted by NC Supreme Court declaring it illegal. Law still requires a physician...
• Current moratorium for 2 reasons:
  – RJA appeals still not yet resolved by the NC SC
  – Lethal injection procedures will be litigated when the first execution would be scheduled, none scheduled yet
Race

• Historical times
  – Slave rebellions, lynching
  – Death for robbery, other property crimes
  – Rape a capital offence until 1974

• Guy Johnson study in 1941
  – 330 murder cases from 1930 to 1940...
    • Black inmates: 32% got sentence of death
    • White inmates: 13% got sentence of death
    • White victim: 17.5% got sentence of death
    • Black victim: 0.4% got sentence of death

• Unah-Boger study in 2001
  – White victim increases odds of death by 3.5 times.
  – (BTW, Unah my colleague in Poli Sci; Boger Dean of Law School.)
Rough politics

• See 1988 in the timeline, execution of Ricky Lee Sanderson; Hugh Holliman was the father of the victim, and later elected to the NC House of Representatives

• See RJA flier on the class website. Holliman consistently supported the death penalty, but voted in favor of the RJA…
The Pardon

• Historically, before World War two:
• Judges routinely sentenced an inmate to death but accompanied their ruling with a request to the governor for a commutation (pardon)
• Governor’s pardons (sending the condemned to life in prison rather than to death) were considered a normal part of the legal system, a safeguard for where the death penalty was imposed by law, but seemed too severe
• No longer. They are extremely rare now. Once were common. Politically toxic, too prone to be exploited. This was not the case long ago.
Kotch - Mosteller

• Long-run history
• No point at which there is a clear break from the obviously racialized slave codes from the past
• Many argue that current leaders should not be held accountable for errors in the distant past
• McCleskey v. Kemp: Race is “real” and “ineradicable”. Two possible responses:
  – Deny it because it is too threatening. McCleskey.
  – Recognize it even if doing so is costly. RJA.