

# Divided US Supreme Court ruling bans execution of the mentally retarded

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After decades defending the practice, the US Supreme Court ruled 6-3 on June 20 that execution of the mentally retarded is a violation of the Constitution's Eighth Amendment ban on "cruel and unusual punishment." The ruling came in the case of Virginia death row inmate Daryl R. Atkins, who had been sentenced to die for a murder and robbery committed when he was 18 years old. Atkins's IQ has been measured at 59, well below the generally accepted definition of mental retardation.

The high court's ruling potentially affects death row inmates in the 20 US states that permit execution of the mentally retarded. Mental health experts believe that up to 10 percent of those convicted of capital murder are mentally retarded, and the ruling could call into question the death sentences of as many as 200 condemned prisoners.

Amnesty International estimates that since the Supreme Court reinstated the death penalty in 1976, 35 mentally retarded individuals have been put to death in the US. Amnesty also reports that since 1995 only two other countries—Kyrgyzstan and Japan—have allowed the execution of the mentally retarded. In that sense, last week's ruling is far from the landmark decision hailed by human rights and anti-death-penalty advocates. Rather the US—in the face of growing international and domestic pressure—in the year 2002 has finally prohibited a practice reviled and outlawed for decades by the vast majority of the civilized world.

Moreover, the justices' vote was not unanimous. The extreme-right core of the court—Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas—issued vigorous dissenting opinions. This is the same ultra-right trio, along with Justices Sandra Day O'Connor and Anthony Kennedy—all named to the Court by Republican presidents—who voted to block the

Florida vote count in the 2000 presidential election and install George W. Bush in the White House.

Last week's ruling reversed a 1989 decision, when the Court ruled 5-4 in *Penry v. Lynaugh* against a ban on executing the mentally retarded. At the time, only two states, Maryland and Georgia, prohibited such executions. Since then, 16 more states have enacted laws prohibiting execution of the mentally retarded. Fifteen European Union countries had filed a brief on behalf of Daryl Atkins, as well as a group of senior American diplomats who told the court that the US practice of executing retarded offenders placed the US at odds in dealings with other countries.

Opposing last week's vote to halt execution of the mentally retarded, Rehnquist, Scalia and Thomas took particular objection to the majority's reliance upon international and domestic opposition to the practice. In his dissenting opinion, joined by Scalia and Thomas, Rehnquist wrote that briefs filed in support of Daryl Atkins by the American Psychological Association and the American Association on Mental Retardation—which explained the differences in the mental capacities of the retarded—should have no influence on the Court's decision. Referring to the brief filed by the European Union, he wrote: "I fail to see ... how the views of other countries regarding the punishment of their citizens provide any support for the Court's ultimate decision."

Rehnquist rejected the majority's argument that "polling data shows a widespread consensus among Americans ... that executing the mentally retarded is wrong"—and claimed this should have no bearing on whether putting such individuals to death constitutes "cruel and unusual punishment."

His argument is that the Supreme Court should not "bend to public opinion"—and the growing opposition

not only to executing the mentally retarded, but the entire savage practice of capital punishment. This is the same court that wrote, regarding the Florida vote count, that “The individual citizen has no federal constitutional right to vote for electors for the President of the United States.”

Chief Justice Rehnquist has more than three decades of rabid opposition to democratic rights under his belt. Nominated in 1971 by Richard Nixon, he got his start in the Arizona campaigns of Barry Goldwater. He served as assistant attorney general in the Nixon administration at the height of its war against domestic political opposition, approving the notorious “Huston plan” which proposed the setup of concentration camps for Vietnam War opponents. More recently, he was a key player in spearheading the Clinton impeachment drive.

Taking this history into account, it is not surprising—though no less despicable—that the chief justice would oppose a ban on sending mentally retarded individuals to their deaths. Writing in his opposing brief, he declared that it had not been shown that this practice runs counter to the “evolving standard of decency” in America.

Antonin Scalia was similarly outraged by the Court’s decision to ban the execution of some of society’s most defenseless citizens. In his dissenting opinion he argued that the mentally retarded should not be spared the death penalty because “deservedness of the most severe retribution [capital punishment], depends not merely (if at all) upon the mental capacity of the criminal ... but also upon the depravity of the crime.” By this same twisted reasoning, the Court has sanctioned the death penalty for crimes committed by juveniles under the age of 18, arguing that an “adult crime” deserves “adult punishment.” Emboldened by this same thinking and other rulings by the Court, state and local prosecutors have sought adult murder convictions of children as young as 13 years old.

Although George W. Bush claims to oppose execution of the retarded, as governor of Texas he presided over the executions of at least three inmates with IQs below 70. In 1999 he opposed Texas legislation that would have banned execution of the retarded. Oliver David Cruz, a 33-year-old inmate with an IQ of 63, was executed in Texas on August 9, 2000, during the final phase of Bush’s presidential election

bid. The US Supreme Court voted 6-3 to allow his lethal injection to proceed.

A record 152 prisoners were executed in Texas during Bush’s five years as governor. In addition to the mentally retarded, these condemned individuals included juvenile offenders, foreign nationals, and sufferers of schizophrenia and other mental psychoses. Two women were also put to death. As is the case across the US, these death row inmates were disproportionately poor and minority and were often represented by inept or corrupt attorneys.

While the death sentences of mentally retarded offenders have been called into question by last week’s ruling, the death penalty still stands in America. Most of the estimated 3,700 inmates remaining on death rows in 38 US states—including the mentally ill, foreign nationals and juvenile offenders—are unaffected by the recent decision. Those who appeal their sentences on the basis of mental incompetency will also undoubtedly face challenges from state authorities.



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