stand a rule that refused to apply the presumption unless the interrogation took place in an especially coercive setting—perhaps only in the police station itself—but if the presumption arises whenever the accused has been taken into custody or his freedom has been restrained in any significant way, it will surely be futile to try to develop subcategories of custodial interrogation. Indeed, a major purpose of treating the presumption of coercion as irrebuttable is to avoid the kind of fact-bound inquiry that today's decision will surely engender.

. . . surely the fact that an earlier confession was obtained by unlawful methods should add force to the presumption of coercion that attaches to subsequent custodial interrogation and should require the prosecutor to shoulder a heavier burden of rebuttal than in a routine case. Simple logic, as well as the interest in not providing an affirmative incentive to police misconduct, requires that result. I see no reason why the violation of a rule that is as well recognized and easily administered as the duty to give *Miranda* warnings should not also impose an additional burden on the prosecutor. . . .

Furman v. Georgia

408 U.S. 238 (1972)

William Henry Furman was convicted of murder in Georgia and sentenced to death. Another petitioner was sentenced to death after being convicted of rape in Georgia. A third petitioner was sentenced to death in Texas for the crime of rape. The Court was asked whether the death penalty in these cases constituted cruel and unusual punishment and was therefore unconstitutional.

PER CURIAM.

Petitioner in No. 69–5003 was convicted of murder in Georgia and was sentenced to death pursuant to Ga. Code Ann. § 26–1005 (Supp. 1971) (effective prior to July 1, 1969). 225 Ga.253, 167 S. E. 2d 628 (1969). Petitioner in No. 69–5030 was convicted of rape in Georgia and was sentenced to death pursuant to Ga. Code Ann. § 26–1302 (Supp. 1971) (effective prior to July 1, 1969). 225 Ga. 790, 171 S.E. 2d 501 (1969). Petitioner in No. 69–5031 was convicted of rape in Texas and was sentenced to death pursuant to Tex. Penal Code, Art. 1189 (1961). 447 S. W. 2d 932 (Ct. Crim. App. 1969). Certiorari was granted limited to the following question: "Does the imposition and carrying out of the death penalty in [these cases] constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?" 403 U.S. 952 (1971). The Court holds that the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The judgment in each case is therefore reversed insofar as it leaves undisturbed the death sentence imposed, and the cases are remanded for further proceedings.

So ordered.

MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL have filed separate opinions in support of the judgments. THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST have filed separate dissenting opinions.

MR. JUSTICE DOUGLAS, concurring.

. . .

The words "cruel and unusual" certainly include penalties that are barbaric. But the words, at least when read in light of the English proscription against selective and irregular use of penal-

ties, suggest that it is "cruel and unusual" to apply the death penalty—or any other penalty—selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer though it would not countenance general application of the same penalty across the board. . . .

There is increasing recognition of the fact that the basic theme of equal protection is implicit in "cruel and unusual" punishments. "A penalty . . . should be considered 'unusually' imposed if it is administered arbitrarily or discriminatorily." The same authors add that "[t]he extreme rarity with which applicable death penalty provisions are put to use raises a strong inference of arbitrariness." The President's Commission on Law Enforcement and Administration of Justice recently concluded:

"Finally there is evidence that the imposition of the death sentence and the exercise of dispensing power by the courts and the executive follow discriminatory patterns. The death sentence is disproportionately imposed and carried out on the poor, the Negro, and the members of unpopular groups."

A study of capital cases in Texas from 1924 to 1968 reached the following conclusions:

"Application of the death penalty is unequal: most of those executed were poor, young, and ignorant.

"Seventy-five of the 460 cases involved co-defendants, who, under Texas law, were given separate trials. In several instances where a white and a Negro were co-defendants, the white was sentenced to life imprisonment or a term of years, and the Negro was given the death penalty.

"Another ethnic disparity is found in the type of sentence imposed for rape. The Negro convicted of rape is far more likely to get the death penalty than a term sentence, whereas whites and Latins are far more likely to get a term sentence than the death penalty."

. . .

MR. JUSTICE BRENNAN, concurring.

II

. . .

In determining whether a punishment comports with human dignity, we are aided also by a second principle inherent in the Clause—that the State must not arbitrarily inflict a severe punishment. This principle derives from the notion that the State does not respect human dignity when, without reason, it inflicts upon some people a severe punishment that it does not inflict upon others. Indeed, the very words "cruel and unusual punishments" imply condemnation of the arbitrary infliction of severe punishments. . . .

III

. . .

The question . . . is whether the deliberate infliction of death is today consistent with the command of the Clause that the State may not inflict punishments that do not comport with human dignity. I will analyze the punishment of death in terms of the principles set out above and the cumulative test to which they lead: It is a denial of human dignity for the State arbitrarily to subject a person to an unusually severe punishment that society has indicated it does not regard as acceptable, and that cannot be shown to serve any penal purpose more effectively than a significantly less drastic punishment. Under these principles and this test, death is today a "cruel and unusual" punishment.

. . .

In comparison to all other punishments today, then, the deliberate extinguishment of human life by the State is uniquely degrading to human dignity. I would not hesitate to hold, on that ground alone, that death is today a "cruel and unusual" punishment, were it not that death is a punishment of longstanding usage and acceptance in this country. I therefore turn to the second principle—that the State may not arbitrarily inflict an unusually severe punishment.

The outstanding characteristic of our present practice of punishing criminals by death is the infrequency with which we resort to it. The evi-

dence is conclusive that death is not the ordinary punishment for any crime.

There has been a steady decline in the infliction of this punishment in every decade since the 1930's, the earliest period for which accurate statistics are available. In the 1930's, executions averaged 167 per year; in the 1940's, the average was 128; in the 1950's, it was 72; and in the years 1960–1962, it was 48. There have been a total of 46 executions since then, 36 of them in 1963–1964. Yet our population and the number of capital crimes committed have increased greatly over the past four decades. The contemporary rarity of the infliction of this punishment is thus the end result of a long-continued decline. . . .

When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system. The States claim, however, that this rarity is evidence not of arbitrariness, but of informed selectivity: Death is inflicted, they say, only in "extreme" cases.

Informed selectivity, of course, is a value not to be denigrated. Yet presumably the States could make precisely the same claim if there were 10 executions per year, or five, or even if there were but one. That there may be as many as 50 per year does not strengthen the claim. When the rate of infliction is at this low level, it is highly implausible that only the worst criminals or the criminals who commit the worst crimes are selected for this punishment. No one has yet suggested a rational basis that could differentiate in those terms the few who die from the many who go to prison. . . .

Although it is difficult to believe that any State today wishes to proclaim adherence to "naked vengeance," *Trop* v. *Dulles*, 356 U. S., at 112 (BRENNAN, J., concurring), the States claim, in reliance upon its statutory authorization, that death is the only fit punishment for capital crimes and that this retributive purpose justifies its infliction. . . . As administered today, however, the punishment of death cannot be justified as a necessary means of exacting retribution from criminals. When the overwhelming number of criminals who commit capital crimes go to prison, it cannot be concluded that death serves the purpose of retribution more effectively than imprisonment. The asserted public belief that murderers and rapists deserve to die is flatly inconsistent with the execution of a random few. . . .

MR. JUSTICE STEWART, concurring.

The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.

For these and other reasons, at least two of my Brothers have concluded that the infliction of the death penalty is constitutionally impermissible in all circumstances under the Eighth and Fourteenth Amendments. Their case is a strong one. But I find it unnecessary to reach the ultimate question they would decide. See *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 347 (Brandeis, J., concurring).

. . .

. . . the death sentences now before us are the product of a legal system that brings them, I believe, within the very core of the Eighth Amendment's guarantee against cruel and unusual punishments, a guarantee applicable against the States through the Fourteenth Amendment. *Robinson* v. *California*, 370 U. S. 660. In the first place, it is clear that these sentences are "cruel" in the sense that they excessively go beyond, not in degree but in kind, the punishments that the state legislatures have determined to be necessary. *Weems* v. *United States*, 217 U. S. 349. In the second place, it is equally clear that these sentences are "unusual" in the sense that the penalty of death is infrequently imposed for murder, and that its imposition for rape is extraordinarily rare. But I do not rest my conclusion upon these two propositions alone.

These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been

imposed. My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race. See *McLaughlin* v. *Florida*, 379 U. S. 184. But racial discrimination has not been proved, and I put it to one side. I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.

For these reasons I concur in the judgments of the Court.

MR. JUSTICE WHITE, concurring.

. . .

The imposition and execution of the death penalty are obviously cruel in the dictionary sense. But the penalty has not been considered cruel and unusual punishment in the constitutional sense because it was thought justified by the social ends it was deemed to serve. At the moment that it ceases realistically to further these purposes, however, the emerging question is whether its imposition in such circumstances would violate the Eighth Amendment. It is my view that it would, for its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State would be patently excessive and cruel and unusual punishment violative of the Eighth Amendment.

It is also my judgment that this point has been reached with respect to capital punishment as it is presently administered under the statutes involved in these cases. Concededly, it is difficult to prove as a general proposition that capital punishment, however administered, more effectively serves the ends of the criminal law than does imprisonment. But however that may be, I cannot avoid the conclusion that as the statutes before us are now administered, the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice.

. . .

MR. JUSTICE MARSHALL, concurring.

III

Perhaps the most important principle in analyzing "cruel and unusual" punishment questions is one that is reiterated again and again in the prior opinions of the Court: *i. e.*, the cruel and unusual language "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Thus, a penalty that was permissible at one time in our Nation's history is not necessarily permissible today.

The fact, therefore, that the Court, or individual Justices, may have in the past expressed an opinion that the death penalty is constitutional is not now binding on us. . . .

[After rejecting the traditional purposes conceivably served by capital punishment (retribution, deterrence, prevention of repetitive criminal acts, encouragement of guilty pleas and confessions, eugenics, and economy), Marshall turns to other considerations.]

VI

. . . capital punishment is imposed discriminatorily against certain identifiable classes of people; there is evidence that innocent people have been executed before their innocence can be proved; and the death penalty wreaks havoc with our entire criminal justice system. Each of these facts is considered briefly below.

Regarding discrimination, it has been said that "[i]t is usually the poor, the illiterate, the underprivileged, the member of the minority group—the man who, because he is without means, and is defended by a court-appointed attorney—who becomes society's sacrificial lamb . . . ." Indeed, a look at the bare statistics regarding executions is enough to betray much of the discrimination. A total of 3,859 persons have been executed since 1930, of whom 1,751 were white and 2,066 were Negro. Of the executions, 3,334 were for murder; 1,664 of the executed murderers were white and 1,630 were Negro; 455 persons, including 48 whites and 405 Negroes, were executed for rape. It is immediately apparent that Negroes were exe-

cuted far more often than whites in proportion to their percentage of the population. Studies indicate that while the higher rate of execution among Negroes is partially due to a higher rate of crime, there is evidence of racial discrimination. Racial or other discriminations should not be surprising. In *McGautha* v. *California*, 402 U. S., at 207, this Court held "that committing to the untrammeled discretion of the jury the power to pronounce life or death in capital cases is [not] offensive to anything in the Constitution." This was an open invitation to discrimination.

There is also overwhelming evidence that the death penalty is employed against men and not women. Only 32 women have been executed since 1930, while 3,827 men have met a similar fate. It is difficult to understand why women have received such favored treatment since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes.

It also is evident that the burden of capital punishment falls upon the poor, the ignorant, and the underprivileged members of society. It is the poor, and the members of minority groups who are least able to voice their complaints against capital punishment. Their impotence leaves them victims of a sanction that the wealthier, better-represented, just-as-guilty person can escape. . . .

Just as Americans know little about who is executed and why, they are unaware of the potential dangers of executing an innocent man. Our "beyond a reasonable doubt" burden of proof in criminal cases is intended to protect the innocent, but we know it is not foolproof. Various studies have shown that people whose innocence is later convincingly established are convicted and sentenced to death.

. . .

While it is difficult to ascertain with certainty the degree to which the death penalty is discriminatorily imposed or the number of innocent persons sentenced to die, there is one conclusion about the penalty that is universally accepted—*i. e.*, it "tends to distort the course of the criminal law." As Mr. Justice Frankfurter said:

"I am strongly against capital punishment . . . When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the Bar, the public, the Judiciary, I regard as very bad. I think scientifically the claim of deterrence is not worth much. Whatever proof there may be in my judgment does not outweigh the social loss due to the inherent sensationalism of a trial for life."

. . .

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST join, dissenting.

At the outset it is important to note that only two members of the Court, MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, have concluded that the Eighth Amendment prohibits capital punishment for all crimes and under all circumstances. . . .

I

If we were possessed of legislative power, I would either join with MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL or, at the very least, restrict the use of capital punishment to a small category of the most heinous crimes. Our constitutional inquiry, however, must be divorced from personal feelings as to the morality and efficacy of the death penalty, and be confined to the meaning and applicability of the uncertain language of the Eighth Amendment. . . .

. . . it disregards the history of the Eighth Amendment and all the judicial comment that has followed to rely on the term "unusual" as affecting the outcome of these cases. Instead, I view these cases as turning on the single question whether capital punishment is "cruel" in the constitutional sense. The term "unusual" cannot be read as limiting the ban on "cruel" punishments or as somehow expanding the meaning of the term "cruel." For this reason I am unpersuaded by the facile argument that since capital punishment has always been cruel in the everyday sense of the word, and has become unusual due to decreased use, it is, therefore, now "cruel and unusual."

. . .

V

Today the Court has not ruled that capital punishment is *per se* violative of the Eighth Amendment; nor has it ruled that the punishment is barred for any particular class or classes of crimes. . . .

While I would not undertake to make a definitive statement as to the parameters of the Court's ruling, it is clear that if state legislatures and the Congress wish to maintain the availability of capital punishment, significant statutory changes will have to be made. Since the two pivotal concurring opinions turn on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling by providing standards for juries and judges to follow in determing the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed.

. . .

MR. JUSTICE BLACKMUN, dissenting.

[Blackman expresses his "abhorrence" for the death penalty and states that if he were a legislator he would vote against the death penalty and that if he were a governor he would be "sorely tempted" to exercise executive clemency. But he concludes that the Court oversteps its constitutional duties by striking down the Georgia and Texas statutes.]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST join, dissenting.

. . .

In terms of the constitutional role of this Court, the impact of the majority's ruling is all the greater because the decision encroaches upon an area squarely within the historic prerogative of the legislative branch—both state and federal—to protect the citizenry through the designation of penalties for prohibitable conduct. It is the very sort of judgment that the legislative branch is competent to make and for which the judiciary is ill-equipped. . . .

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL join, dissenting.

. . .

. . . The most expansive reading of the leading constitutional cases does not remotely suggest that this Court has been granted a roving commission, either by the Founding Fathers or by the framers of the Fourteenth Amendment, to strike down laws that are based upon notions of policy or morality suddenly found unacceptable by a majority of this Court. . . .

This philosophy of the Framers is best described by one of the ablest and greatest of their number, James Madison, in Federalist No. 51:

"In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to controul the governed; and in the next place, oblige it to controul itself."

Madison's observation applies to the Judicial Branch with at least as much force as to the Legislative and Executive Branches. While overreaching by the Legislative and Executive Branches may result in the sacrifice of individual protections that the Constitution was designed to secure against action of the State, judicial overreaching may result in sacrifice of the equally important right of the people to govern themselves. . . .

Gregg v. Georgia

428 U.S. 153 (1976)

After the Supreme Court in *Furman* v. *Georgia* (1972) declared the death penalty unconstitutional as practiced in Georgia and Texas, more than thirty states reinstituted the death penalty. But these states added new procedures in an effort to minimize the arbitrariness of the death sentence. On July 2, 1976, the Court handed down five decisions that reviewed these new state laws. In this case, Troy Leon Gregg was charged with committing armed robbery and murder. He was convicted and the jury returned a sentence of death.

Judgment of the Court, and opinion of MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS, announced by MR. JUSTICE STEWART.

The issue in this case is whether the imposition of the sentence of death for the crime of murder under the law of Georgia violates the Eighth and Fourteenth Amendments.

I

The petitioner, Troy Gregg, was charged with committing armed robbery and murder. In accordance with Georgia procedure in capital cases, the trial was in two stages, a guilt stage and a sentencing stage. *[The jury found Gregg guilty of two counts of armed robbery and two counts of murder. At the penalty stage, which took place before the same jury, neither the prosecutor nor Gregg's lawyer offered any additional evidence. The trial judge instructed the jury that it could recommend either a death sentence or a life prison sentence on each count. The jury could consider the facts and circumstances, if any, presented by the parties in mitigation or aggravation. To impose the death penalty, the jury had to first find beyond a reasonable doubt one of these aggravating circumstances: (1) that the murder was committed while Gregg was engaged in the armed robbery, (2) that Gregg committed the offense of murder for the purpose of receiving money and the automobile taken during the murder, or (3) the offense of murder was "outrageously and wantonly vile, horrible and inhuman" in that it involved the "depravity" of Gregg's mind.]*

[The jury found the first and second of these circumstances and returned verdicts of death on each count. The Supreme Court of Georgia affirmed the convictions and the imposition of the death sentences for murder.]

. . .

III

We address initially the basic contention that the punishment of death for the crime of murder is, under all circumstances, "cruel and unusual" in violation of the Eighth and Fourteenth Amendments of the Constitution. In Part IV of this opinion, we will consider the sentence of death imposed under the Georgia statutes at issue in this case.

. . .

B

. . . in assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people.

This is true in part because the constitutional test is intertwined with an assessment of contemporary standards and the legislative judgment weighs heavily in ascertaining such standards.

"[I]n a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people." *Furman* v. *Georgia*, *supra*, at 383 (BURGER, C. J., dissenting). . . .

C

In the discussion to this point we have sought to identify the principles and considerations that guide a court in addressing an Eighth Amendment claim. We now consider specifically whether the sentence of death for the crime of murder is a *per se* violation of the Eighth and Fourteenth Amendments to the Constitution. We note first that history and precedent strongly support a negative answer to this question.

. . .

The most marked indication of society's endorsement of the death penalty for murder is the legislative response to *Furman*. The legislatures of at least 35 States have enacted new statutes that provide for the death penalty for at least some crimes that result in the death of another person. And the Congress of the United States, in 1974, enacted a statute providing the death penalty for aircraft piracy that results in death. These recently adopted statutes have attempted to address the concerns expressed by the Court in *Furman* primarily (i) by specifying the factors to be weighed and the procedures to be followed in deciding when to impose a capital sentence, or (ii) by making the death penalty mandatory for specified crimes. But all of the post-*Furman* statutes make clear that capital punishment itself has not been rejected by the elected representatives of the people.

In the only statewide referendum occurring since *Furman* and brought to our attention, the people of California adopted a constitutional amendment that authorized capital punishment, in effect negating a prior ruling by the Supreme Court of California in *People* v. *Anderson*, 6 Cal. 3d 628, 493 P. 2d 880, cert. denied, 406 U. S. 958 (1972), that the death penalty violated the California Constitution.

The jury also is a significant and reliable objective index of contemporary values because it is so directly involved. . . . the actions of juries in many States since *Furman* are fully compatible with the legislative judgments, reflected in the new statutes, as to the continued utility and necessity of capital punishment in appropriate cases. At the close of 1974 at least 254 persons had been sentenced to death since *Furman*, and by the end of March 1976, more than 460 persons were subject to death sentences.

. . .

. . . we cannot say that the judgment of the Georgia Legislature that capital punishment may be necessary in some cases is clearly wrong. Considerations of federalism, as well as respect for the ability of a legislature to evaluate, in terms of its particular State, the moral consensus concerning the death penalty and its social utility as a sanction, require us to conclude, in the absence of more convincing evidence, that the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe.

. . . we cannot say that the punishment is invariably disproportionate to the crime. It is an extreme sanction, suitable to the most extreme of crimes.

We hold that the death penalty is not a form of punishment that may never be imposed, regardless of the circumstances of the offense, regardless of the character of the offender, and regardless of the procedure followed in reaching the decision to impose it.

IV

We now consider whether Georgia may impose the death penalty on the petitioner in this case.

A

. . . the concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposi-

tion of sentence and provided with standards to guide its use of the information.

We do not intend to suggest that only the above-described procedures would be permissible under *Furman* or that any sentencing system constructed along these general lines would inevitably satisfy the concerns of *Furman*, for each distinct system must be examined on an individual basis. Rather, we have embarked upon this general exposition to make clear that it is possible to construct capital-sentencing systems capable of meeting *Furman*'s constitutional concerns.

B

We now turn to consideration of the constitutionality of Georgia's capital-sentencing procedures. In the wake of *Furman*, Georgia amended its capital punishment statute, but chose not to narrow the scope of its murder provisions. See Part II, *supra*. Thus, now as before *Furman*, in Georgia "[a] person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being." Ga. Code Ann., § 26-1101 (a) (1972). All persons convicted of murder "shall be punished by death or by imprisonment for life." § 26-1101 (c) (1972).

Georgia did act, however, to narrow the class of murderers subject to capital punishment by specifying 10 statutory aggravating circumstances, one of which must be found by the jury to exist beyond a reasonable doubt before a death sentence can ever be imposed. In addition, the jury is authorized to consider any other appropriate aggravating or mitigating circumstances. § 27-2534.1 (b) (Supp. 1975). The jury is not required to find any mitigating circumstance in order to make a recommendation of mercy that is binding on the trial court, see § 27-2302 (Supp. 1975), but it must find a *statutory* aggravating circumstance before recommending a sentence of death.

These procedures require the jury to consider the circumstances of the crime and the criminal before it recommends sentence. No longer can a Georgia jury do as Furman's jury did: reach a finding of the defendant's guilt and then, without guidance or direction, decide whether he should live or die. Instead, the jury's attention is directed to the specific circumstances of the crime: Was it committed in the course of another capital felony? Was it committed for money? Was it committed upon a peace officer or judicial officer? Was it committed in a particularly heinous way or in a manner that endangered the lives of many persons? In addition, the jury's attention is focused on the characteristics of the person who committed the crime: Does he have a record of prior convictions for capital offenses? Are there any special facts about this defendant that mitigate against imposing capital punishment (*e. g.*, his youth, the extent of his cooperation with the police, his emotional state at the time of the crime). As a result, while some jury discretion still exists, "the discretion to be exercised is controlled by clear and objective standards so as to produce non-discriminatory application." *Coley* v. *State*, 231 Ga. 829, 834, 204 S. E. 2d 612, 615 (1974).

As an important additional safeguard against arbitrariness and caprice, the Georgia statutory scheme provides for automatic appeal of all death sentences to the State's Supreme Court. That court is required by statute to review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases. § 27-2537 (c) (Supp. 1975).

. . .

V

The basic concern of *Furman* centered on those defendants who were being condemned to death capriciously and arbitrarily. Under the procedures before the Court in that case, sentencing authorities were not directed to give attention to the nature or circumstances of the crime committed or to the character or record of the defendant. . . .

For the reasons expressed in this opinion, we hold that the statutory system under which Gregg was sentenced to death does not violate the Constitution. Accordingly, the judgment of the Georgia Supreme Court is affirmed.

It is so ordered.

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, concurring in the judgment.

. . .

Statement of THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST:

We concur in the judgment and join the opinion of MR. JUSTICE WHITE, agreeing with its analysis that Georgia's system of capital punishment comports with the Court's holding in *Furman* v. *Georgia*, 408 U. S. 238 (1972).

MR. JUSTICE BLACKMUN, concurring in the judgment.

I concur in the judgment. See *Furman* v. *Georgia*, 408 U. S. 238, 405–414 (1972) (BLACKMUN, J., dissenting), and *id.*, at 375 (BURGER, C. J., dissenting); *id.*, at 414 POWELL, J., dissenting); *id.*, at 465 (REHNQUIST, J., dissenting).

MR. JUSTICE BRENNAN, dissenting.

. . .

The fatal constitutional infirmity in the punishment of death is that it treats "members of the human race as nonhumans, as objects to be toyed with and discarded. [It is] thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity." *Id.*, at 273. As such it is a penalty that "subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the [Clause]." I therefore would hold, on that ground alone, that death is today a cruel and unusual punishment prohibited by the Clause. . . .

MR. JUSTICE MARSHALL, dissenting.

In *Furman* v. *Georgia*, 408 U. S. 238, 314 (1972) (concurring opinion), I set forth at some length my views on the basic issue presented to the Court in these cases. The death penalty, I concluded, is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. That continues to be my view.

. . .

Since the decision in *Furman*, the legislatures of 35 States have enacted new statutes authorizing the imposition of the death sentence for certain crimes, and Congress has enacted a law providing the death penalty for air piracy resulting in death. 49 U. S. C. §§ 1472 (i), (n) (1970 ed., Supp. IV). I would be less than candid if I did not acknowledge that these developments have a significant bearing on a realistic assessment of the moral acceptability of the death penalty to the American people. But if the constitutionality of the death penalty turns, as I have urged, on the opinion of an *informed* citizenry, then even the enactment of new death statutes cannot be viewed as conclusive. In *Furman*, I observed that the American people are largely unaware of the information critical to a judgment on the morality of the death penalty, and concluded that if they were better informed they would consider it shocking, unjust, and unacceptable. 408 U. S., at 360–369. A recent study, conducted after the enactment of the post-*Furman* statutes, has confirmed that the American people know little about the death penalty, and that the opinions of an informed public would differ significantly from those of a public unaware of the consequences and effects of the death penalty.

. . .

. . . The mere fact that the community demands the murderer's life in return for the evil he has done cannot sustain the death penalty, for as JUSTICES STEWART, POWELL, and STEVENS remind us, "the Eighth Amendment demands more than that a challenged punishment be acceptable to contemporary society." *Ante*, at 182. To be sustained under the Eighth Amendment, the death penalty must "compor[t] with the basic concept of human dignity at the core of the Amendment," *ibid.*; the objective in imposing it must be "[consistent] with our respect for the dignity of [other] men." *Ante*, at 183. See *Trop* v. *Dulles*, 356 U. S. 86, 100 (1958) (plurality opinion). Under these standards, the taking of life "because the wrongdoer deserves it" surely must fall, for such a punishment has as its very basis the total denial of the wrongdoer's dignity and worth.

The death penalty, unnecessary to promote the goal of deterrence or to further any legitimate notion of retribution, is an excessive penalty.