

Nessa oportunidade, aquela Corte, por maioria, decidiu pela inconstitucionalidade de prisão de acusado condenado à morte, com base em norma promulgada pelo Estado da Louisiana, que previa a aplicação de pena de morte para condenados por estupro, quando a vítima fosse uma criança menor de doze anos. A Corte fundamentou sua decisão no fato de que a Oitava Emenda à Constituição dos Estados Unidos da América proibia a imposição de penas excessivas ou cruéis (*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted*), de sorte que, à luz dos padrões morais vigentes, não seria razoável estender a aplicação da pena de morte, amplamente aceita para a hipótese de falecimento da vítima em razão do crime perpetrado, também ao caso de estupro. Ou seja, levando em consideração a realidade social, a Suprema Corte entendeu ser incabível a pena de morte nesse caso, o que demonstra claramente o papel de agentes políticos exercido pelos integrantes daquele tribunal. Veja-se o seguinte trecho do voto vencedor: (...) *These concerns overlook the meaning and full substance of the established proposition that the Eighth Amendment is defined by "the evolving standards of decency that mark the progress of a maturing society."* *Trop, 356 U. S., at 101 (plurality opinion). Confirmed by repeated, consistent rulings of this Court, this principle requires that use of the death penalty be restrained. The rule of evolving standards of decency with specific marks on the way to full progress and mature judgment means that resort to the penalty must be reserved for the worst of crimes and limited in its instances of application. In most cases justice is not better served by terminating the life of the perpetrator rather than confining him and preserving the possibility that he and the system will find ways to allow him to understand the enormity of his offense (grifei). Difficulties in administering the penalty to ensure against its arbitrary and capricious application require adherence to a rule reserving its use, at this stage of evolving standards and in cases of crimes against individuals, for crimes that take the life of the victim. The judgment of the Supreme Court of Louisiana upholding the capital sentence is reversed. This case is remanded for further proceedings not inconsistent with this opinion.* (Fonte: <http://www.supremecourtus.gov/opinions/07pdf/07-343.pdf>)