

premise that the state has the power, has the authority to take a life if necessary. The death penalty is within the constitutional ambit of our power should we wish to exercise it. Historically, we have, and as a matter of fact, the Supreme Court has written on the subject at the time of the creation of the Constitution the death penalty was a part of our colonial experience. The fact that we have a power, however, doesn't mean that we should necessarily exercise it. It's critical that that power which the state has, in my estimation, be exercised in a nonarbitrary way. It has to be done in a rational way. And the level of analysis that we have done on the performance of the death penalty tells me that there is no rational pattern to the way that we use the death penalty. Those crimes, those conditions, those victims, those perpetrators which are weighed under our current system are not so finely calibrated that we achieve a rational application of this most powerful tool that we have as a state, as a government. And if we can't apply this tool or this weapon rationally, if we can't distinguish where those circumstances that justify its use end and those circumstances when life sentences should begin, if we can't make that distinction rationally, if we dip into those people that under other circumstances if their race was different, if their background was different, whatever, that they would receive a life sentence and pull them out and give them the death penalty or vice versa and give people life sentences who, because of their identity or background or whatever, commit the same kind of action that somebody else would be given the death penalty, if we can't separate those two groups rationally, then it seems to me we should forego this tool. There is a justification for the use of the death penalty that I often hear and that is that it's self-defense by society. It's a way of defending ourselves from people that are anti-social, that are violent, that can create harm for us. And it's true that even in the act of responding to an assailant an individual could kill their assailant. It's part of the idea of self-defense. If you're coming at me with a gun in a menacing way and I reasonably fear for my life, I can pull a gun and shoot my assailant. There is no criminal responsibility for the act...that act because I am defending myself. On the other hand, if a man with a gun in a threatening manner is motioning towards me, trips and falls, the gun falls out of his hand and he knocks his head unconscious on the ground ahead of me and I say to myself, well, now the tables are turned, and I pick up the gun and I shoot the unconscious man, that's no longer self-defense. I'm not in a threat for my life. The threat has ended and the act of picking up the gun