

# SHOULD THE DEATH PENALTY BE PUT TO DEATH?

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## Abstract

Originally making its way from England, the death penalty has been contested, called into question, and wrongfully imposed on many occasions within the United States alone. Fleshing out the court cases, statutes, and safeguards in which the aforementioned were implemented one could see for themselves if the death penalty should be put to death or kept alive.

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Over the course of history, not only has the death penalty been discussed but also the laws that surround the death penalty. The concept of the death penalty is defined and explained in the Fifth, Sixth, Eighth, and 14th Amendments of the United States Constitution. Whether it has been the United States Supreme Court Justices debating the constitutionality of the death penalty or even the general public debating the issue, it is safe to say it is a widely debated topic in American politics. The death penalty is not only domestically debated but globally as well. “Indeed, the gap between the United States and the rest of the world on this issue is growing year by year.”<sup>1</sup> Many nations, including those which are third-world countries such as Rwanda, are abolishing the death penalty. This factor makes the United States seem more behind on this issue than the rest of the world. This issue also creates a chasm between the United

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<sup>1</sup> Sandra Babcock, *The Global Debate on the Death Penalty*, Americanbar.org., 2022, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol34\\_2007/spring2007/irr\\_hr\\_hr\\_spring07\\_babcosp07/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol34_2007/spring2007/irr_hr_hr_spring07_babcosp07/), (last visited Nov. 30, 2022).

States and other nations as the years go on in which the United States allows the death penalty to be seen as constitutional. There appears to be no party line when it comes to the death penalty.<sup>2</sup> It has come under public scrutiny for not only taking a life but taking a possibly innocent life. While the death penalty is not used often today and many sentenced are put on death row to live out their lives, the appropriateness of even using the death penalty should be resolved.

Statistics show that the death penalty is not a deterrent. “There is no credible evidence that the death penalty deters crime more effectively than long terms of imprisonment. States that have death penalty laws do not have lower crime rates or murder rates than states without such laws.”<sup>3</sup> This begs the question; if the death penalty is not a deterrent then why are we putting people to death? Many times the victim’s death is overshadowed by the trial of their killer taking away the spotlight from the innocent lives lost. In addition, families may feel that an eye for an eye is necessary, while others take the route of forgiveness and do not want another life lost, still, others prefer to not contribute to another life lost when there are always errors that may be part of the process or when the criminal could make a positive contribution even if spending their life in prison. “The theoretical premise underlying the deterrence argument is simple: raise the price of murder for criminals, and you will get less of it. In general, the death penalty raises the price of homicide as long as execution is worse than life imprisonment for most potential murderers.”<sup>4</sup>

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<sup>2</sup> Amber Widgery, *Debating the Death Penalty*, Ncsl.org., 2020, <https://www.ncsl.org/research/civil-and-criminal-justice/debating-the-death-penalty.aspx>, (last visited Nov. 30, 2022).

<sup>3</sup> *The Death Penalty: Questions and Answers*, American Civil Liberties Union, 2022, [https://www.aclu.org/other/death-penalty-questions-and-answers#:~:text=Q%3A%20Doesn't%20the%20Death,than%20states%20without%20such%20laws,\(last%20visited%20Nov.%2030,%202022\).](https://www.aclu.org/other/death-penalty-questions-and-answers#:~:text=Q%3A%20Doesn't%20the%20Death,than%20states%20without%20such%20laws,(last%20visited%20Nov.%2030,%202022).)

<sup>4</sup> Donohue, John and Justin J. Wolfers, *The Death Penalty: No Evidence For Deterrence*, *The Economists' Voice*, 2006, vol. 3, Issue 5, pg 1-6,

Be that as it may, to understand the death penalty as a whole, one must see it in its historical context.

The United States obtained its death penalty philosophy from England when the colonies inherited the same laws that England used. The first execution took place in 1608.<sup>5</sup> From there on out, the death penalty would face criticism and many reforms before it became what it is today. Four major reforms were statutes that distinguished murder in the first-degree and second-degree, discontinuing public executions, eliminating the automatic death penalty, and changing the most popular method of execution to the electric chair. Even with these reforms, there are continuing concerns with the death penalty. The faults with the death penalty are no secret and have caused much debate on the Supreme Court through multiple trials, even recently in 2020, with the case of *State v. Poole*.<sup>6</sup> *State v. Poole*<sup>7</sup> occurred subsequent to Mark Anthony Poole's 2011 death sentence in *Poole v. State*.<sup>8</sup> The 2020 case, *State v. Poole*<sup>9</sup> rescinded the requirement that only a unanimous jury

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[https://econpapers.repec.org/article/bpjevoice/v\\_3a3\\_3ay\\_3a2006\\_3ai\\_3a5\\_3an\\_3a3.htm](https://econpapers.repec.org/article/bpjevoice/v_3a3_3ay_3a2006_3ai_3a5_3an_3a3.htm), (last visited Nov. 30, 2022).

<sup>5</sup> Death Penalty Information Center. *Executions in the U.S. 1608-2002: The Espy File*, April 10, 2019, <https://deathpenaltyinfo.org/executions/executions-overview/executions-in-the-u-s-1608-2002-the-espys-file>, (last visited Nov. 30, 2022).

<sup>6</sup> *State v. Poole*, 292 So.3d 694, (2020), <https://casetext.com/case/state-v-poole-12807>, (last visited April 3, 2023).

<sup>7</sup>*Id.*

<sup>8</sup> *Poole v. State (Poole II)*, 151 So. 3d 402 (Fla. 2014), <https://www.leagle.com/decision/infco20140626194>, (last visited Nov. 30, 2022).

<sup>9</sup> *State v. Poole*, 297 So. 3d 694, (2020), <https://casetext.com/case/state-v-poole-12807>. (last visited April 3, 2023).

can impose the death penalty.<sup>10</sup> This case rejected the decision in *Hurst v. State*<sup>11</sup> which found Florida’s death penalty statute unconstitutional altogether. Florida found this unconstitutional because “it limited Hurst’s sentencing jury to an advisory role and reserved for the judge the authority to find the facts on which it based his death sentence.”<sup>12</sup>

When it comes to having the death penalty abolished, parts of the rationale come from the Constitution and past Supreme Court Justices that have spoken on it. In the case, *Furman v. Georgia*<sup>13</sup>, the Justices were divided on why the death penalty is unconstitutional. Justice Douglas, White, and Stewart thought that the death penalty was unconstitutional because of the 14th Amendment’s Equal Protection Clause. The unconstitutionality arose because the death penalty went against what was thought to be cruel and unusual punishment which fell under the 14th Amendment’s Equal Protection Clause. Justice White opined that the death penalty was infrequently imposed and did not actually act as a deterrent as many thought. Justices Brennan and Marshall suggested that the death penalty was unconstitutional based on the Eighth Amendment’s cruel and unusual punishment clause. The Eighth Amendment states “Excessive bail shall not be required, nor excessive fines imposed, nor

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<sup>10</sup> *Florida’s Supreme Court Decision in State v. Poole at Odds with Most States That Still Allow the Death Penalty*, (2020), Southern Poverty Law Center, <https://www.splcenter.org/presscenter/floridas-supreme-court-decision-state-v-poole-odds-most-states-still-allow-death-penalty#:~:text=%E2%80%9CToday%20Florida’s%20Supreme%20Court%20retreated,every%20other%20state%20but%20on%20e,> ( last visited Nov. 30, 2022).

<sup>11</sup> *Hurst v. Florida*, 577 U.S. 92, 136 S. Ct. 616 (2016), <https://casetext.com/case/hurst-v-florida-1>, (last visited Nov. 30, 2022).

<sup>12</sup> *Timothy Hurst, Whose Case Struck down Florida’s Death-Penalty Statute, Is Resentenced to Life*, Death Penalty Information Center, ( March 11, 2020) <https://deathpenaltyinfo.org/news/timothy-hurst-whose-case-struck-down-floridas-death-penalty-statute-is-resentenced-to-life.>, (last visited April 3, 2023)

<sup>13</sup> *Furman v. Georgia*, 408 U. S. 238 (1972) (*per curiam*), <https://supreme.justia.com/cases/federal/us/408/238/>, ( last visited Nov. 30, 2022.)

cruel and unusual punishments inflicted.”<sup>14</sup> This case went on to make the death penalty unconstitutional, and subsequently, put it on a four-year hiatus. This was the first time that the Supreme Court declared the death penalty unconstitutional and if all the Justices based their opinion on the Eighth Amendment, it could be the death penalty would not be used today. However, basing the decision on the 14th Amendment allowed the states to redo the statute to make it constitutional. In the words of Justice Potter Stewart, the death penalty was “freakishly imposed” both arbitrarily and capriciously. In other words, the death penalty was put in place or given out in a grotesque manner. Thus, basing the decision on the 14th Amendment made sure that this was rectified.

After *Furman v. Georgia*,<sup>15</sup> states were able to make death penalty statutes constitutional by redoing the statutes and avoiding the equal protection problems. For example, to mitigate the unconstitutionality of unguided jury discretion, some states removed all discretion by “mandating capital punishment for those convicted of capital crimes.”<sup>16</sup> This was later found unconstitutional in *Woodson v. North Carolina*<sup>17</sup> (where the U.S. Supreme Court held that North Carolina’s mandatory death penalty for individuals convicted of first-degree murder violated

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<sup>14</sup> *U.S. Constitution - Eighth Amendment*, Library of Congress, (2022), <https://constitution.congress.gov/constitution/amendment-8/#:~:text=Excessive%20bail%20shall%20not%20be,cruel%20and%20unusual%20punishments%20inflicted>, (last visited Nov. 30, 2022).

<sup>15</sup> *Id.*

<sup>16</sup> *Constitutionality of the Death Penalty in America*, Death Penalty Information Center, (April 5, 2019), <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/constitutionality-of-the-death-penalty-in-america>, (last visited Nov. 30, 2022).

<sup>17</sup> *Woodson v. North Carolina*, 428 U.S. 280, 96 S. Ct. 2978 (1976) , <https://casetext.com/case/woodson-v-north-carolina> , (last visited April 3, 2023).

the Eighth Amendment<sup>18</sup>). Others limited that discretion “by providing sentencing guidelines for the judge and jury when deciding whether to impose death.”<sup>19</sup> Furthermore, safeguards were created within guided discretion statutes, prompt review to the State Supreme Court, and bifurcated trials. Guided discretion includes giving the jury aggravators and mitigators. These have to be given before the death penalty can be recommended. An aggravator is something that shows the crime was done in HAC (heinous, atrocious, and cruel) circumstances. Mitigators can be anything - examples include mental incapacitation, mental illness, or even saying that the person may be a murderer but has been involved with charities. The only thing that prevents something from being a mitigating factor is the defendant’s imagination.

Next, prompt review to the State Supreme Court was created as a safeguard. If someone is given the death penalty they automatically go to the state’s highest court to get an appeal; whether they ask for it or not. The last safeguard is a bifurcated trial. A bifurcated trial is made up of two phases, the guilt and penalty phase. If the defendant is found guilty during the guilt phase they go on to the penalty phase which is where they will be sentenced. The team prepares for the penalty phase just as much as the guilt phase. The safeguards in *Gregg v. Georgia*<sup>20</sup> (a case in which the Supreme Court ruled that the death penalty statutes in place were unconstitutional under the Eighth Amendment’s cruel and unusual punishment clause) have only solved some of the issues in *Furman*. It has

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<sup>18</sup>Woodson v. North Carolina, 428 U.S. 280 (1976), Justia Law, [https://supreme.justia.com/cases/federal/us/428/280/#:~:text=North%20Carolina%2C%20428%20U.S.%20280%20\(1976\)&text=A%20death%20penalty%20law%20violates,punishment%20mandatory%20for%20certain%20crimes,\(last%20visited%20Nov.%2030,%202022\).](https://supreme.justia.com/cases/federal/us/428/280/#:~:text=North%20Carolina%2C%20428%20U.S.%20280%20(1976)&text=A%20death%20penalty%20law%20violates,punishment%20mandatory%20for%20certain%20crimes,(last%20visited%20Nov.%2030,%202022).)

<sup>19</sup> *Constitutionality of the Death Penalty in America*, Death Penalty Information Center. (April 5, 2019), <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/constitutionality-of-the-death-penalty-in-america>, (last visited Nov. 30, 2022).

<sup>20</sup> *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909 (1976), <https://casetext.com/case/gregg-v-georgia>, (last visited April 3, 2023).

resolved the issues that result from not having enough review of the different components that exist when proceeding to the execution of the alleged criminal. However, it has not resolved issues such as executing the wrong person or the biases that come along with who is given the death penalty. These safeguards have helped and without them, the death penalty would probably be considered unconstitutional. But there can be more done to make certain someone innocent is not executed. After all, this is not something that can be taken back once performed.

There are still other problems that the safeguards have not resolved. An automatic appeal to the State's Supreme Court is designed to try and help prevent people from being killed who are being wrongfully accused, yet there are still those that slip through the cracks. This is one of the areas where the safeguards have helped, but it is still a problem in some cases. The death penalty was ultimately found to be constitutional, and is still used today even though there can still be errors. Whereas the safeguards did not necessarily "solve" the pre-existing issues, they did create a safer channel for deciding who got executed and who did not. While it was found to be unconstitutional after being in effect for years, it was then found constitutional again with the addition of the safeguards. However, the safeguards do not ensure absolute justice and fairness in that it is still possible for a wrongly charged person to be found guilty and executed. Seeing how even the Justices have gone back and forth on this topic for years, it is no surprise that the citizens of the US are doing the same "The death penalty has been the subject of heated debate in the United States for over 150 years."<sup>21</sup> Keeping someone in prison is far more cost-effective than executing them. "Many people believe that the death penalty is more cost-effective than housing and feeding someone in prison for life. In reality, the death penalty's complexity, length, and

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<sup>21</sup> William O. Jr. Hochkammer, *The Capital Punishment Controversy*, Journal of Criminal Law and Criminology, Vol. 60, Issue 3 (1970), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5609&context=jclc>, (last visited April 3, 2023).

finality drive costs through the roof, making it much more expensive.”<sup>22</sup> In a study conducted by the Death Penalty Information Center the group found, “Reviewing 15 state studies of death-penalty costs conducted between 2000 and 2016, the study found that, across the country, seeking the death penalty imposes an average of approximately \$700,000 more in costs than not seeking death.”<sup>23</sup> The fact that someone’s life can be wrongfully taken is enough to make any person think that the death penalty may not be as safe as the safeguards make it out to be.

While the death penalty has been around for centuries, that does not mean that all the problems have been ironed out. The death penalty is something that can take a wrongfully accused life in the blink of an eye. “An average of 3.94 wrongfully convicted death-row prisoners have been exonerated each year since 1973.”<sup>24</sup> Carlos DeLuna was convicted for allegedly stabbing and killing a Texas convenience store clerk, Wanda Lopez in 1983 and he was later put to death in 1989. However, in 2006 a Chicago Tribune Investigation released evidence that DeLuna may not have been Lopez’s killer and an innocent man (DeLuna) was killed. The two reporters Maurice Possley and Steve Mills cast doubt on DeLuna’s guilt and pointed it toward another man by the name of Carlos Hernandez, who had a prior record of similar crimes and repeatedly confessed to the murder of Lopez.<sup>25</sup> This is just one case where an alleged innocent life was taken. However, there are many more.

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<sup>22</sup> *Wasteful & Inefficient*, Equal Justice USA, (May 30, 2019), <https://ejusa.org/resource/wastefulinefficient/#:~:text=The%20alarming%20cost%20of%20the,making%20it%20much%20more%20expensive>, (last visited April 3, 2023).

<sup>23</sup> *State Studies on Monetary Costs*, Death Penalty Information Center, (2017), <https://deathpenaltyinfo.org/policy-issues/costs/summary-of-states-death-penalty>, (last visited February 1, 2023).

<sup>24</sup> *Facts about the Death Penalty*. (Dec. 11, 2017), Death Penalty Information Center. <https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf>, (last visited April 3, 2023).

<sup>25</sup> “*Executed but Possibly Innocent*, Death Penalty Information Center, May 2019, <https://deathpenaltyinfo.org/policy-issues/innocence/executed-but-possibly-innocent>, (last visited Nov. 30, 2022).



In the eyes of many, the death penalty is something that serves as another form of justice. However, one can see that the death penalty does not always act as justice, but as a way in which someone's life can be taken wrongfully. The justice system has tried to create channels for the death penalty to go through in order to become something that aligns with the Constitution. But does it work correctly 100% of the time? No, evidence proves that it doesn't, certainly with the number of cases where the person assigned the death penalty is later proved to be innocent. And because the results of putting someone to death are so extreme and truly final, shouldn't the process guarantee 100% accuracy? All things considered, shouldn't the death penalty be abolished, if only to save one innocent life?