**CAPITAL OFFENSES**

*(Note: Mentioning of rape.)* Alongside the federal government, 27 states allow the death penalty for offenses such as murder, espionage, genocide and treason. However, no person has ever been executed for a crime other than homicide since the landmark decision in *Gregg v. Georgia*, 428 U.S. 153 (1976) (holding that the death penalty is not per se unconstitutional). In 1995, Louisiana amended its death penalty statute to authorize capital punishment for the rape of a child under 12 years of age. Patrick Kennedy was convicted in Louisiana for the aggravated rape of his 8-year-old stepdaughter and sentenced to death in 2004. The Supreme Court of Louisiana upheld the statute, reasoning that the punishment was proportionate considering the unique harm inflicted upon the victim and society. The court also considered the national trend toward capital punishment for child rape. Five states, other than Louisiana, had recently adopted similar laws. However, on review, the Supreme Court held that the death penalty is categorically unavailable for cases of child rape where the victim lives. In his dissent, Justice Alito stated:

With respect to the question of the harm caused by the rape of a child in relation to the harm caused by murder, it is certainly true that the loss of human life represents a unique harm, but that does not explain why other grievous harms are insufficient to permit a death sentence.

What do you think? Is a crime ever severe enough to justify the death penalty? Should it be reserved only for homicidal crimes? What other crimes might justify capital punishment?

*I think there are truly terrible crimes that can warrant death, though only in the most extreme circumstances.*

*The death penalty is an adequate punishment for those who premeditated murder, as it truly fits the crime.*

*I believe in the deterrence theory. I do not think that the death penalty is a valid form of punishment for a majority of crimes, nor do I believe that the death penalty should be applied to any crimes committed by impoverished individuals, involving uncertain convictions, or mentally ill individuals. On the other hand, for certain crimes that do not meet the aforementioned caveats and that society deems so detestable that they should never be committed, capital punishment would be a more effective deterrent than a majority of other punishments due to its severity.*

*I do not believe there is any good in ending someone’s life. Each human, no matter their actions, has dignity that should not be taken away from them. Two wrongs do not make a right, killing a person because they committed a crime does not make that killing moral.*

*It is barbaric for the state to sanction the death of someone.*

**UNCERTAINTY IN CONVICTIONS**

While criminal sanctions such as imprisonment can significantly impact the course of a defendant’s life, the death penalty is unique in that its impact is truly irreversible: One can be released from prison, but never the grave. The death penalty’s irreversable nature presents difficult questions regarding the role of uncertainty in convictions. Nearly eight-in-ten Americans see ‘some risk’ of executing the innocent.[[1]](#footnote-1) Since 1973, at least 190 people who had been wrongly convicted and sentenced to death in the U.S. have been exonerated.[[2]](#footnote-2) Those who favor abolishing the death penalty argue that characteristics such as race and sex of both the defednant and the victim lead lead to wrongful convictions. Of the 190 exonerated, 103 were black.[[3]](#footnote-3) Emerging technology and methods, such as DNA analysis, have helped in overturning convictions. Up until July of 2018, 130 DNA exonerees were wrongfully convicted for murders; 40 (31%) of these cases involved eyewitness misidentifications and 81 (62%) involved false confessions.[[4]](#footnote-4) Nonetheless, a majority of Americans favor the death penalty arguing that uncertainty is inevitable in any criminal process and, therefore, should not overshadow moral considerations for allowing it as a sanction.

What do you think? Should concerns about wrongful convictions do not warrant the elimination of the death penalty?

*Yes: The possibility of wrongful convictions requires death penalty abolition, because a wrongful execution cannot be reversed. Wrongful imprisonment may be remedied by release and compensation, but nothing can bring a dead person back.*

*Conflicted: While I know criminal proceedings require a higher burden of proof than most other courts of law (or so I think...), for the death sentence to be issued I think it should either have a set time after the original trial to allow further appeals (which typically happens anyways with how long it takes to be "served" on death row) UNLESS the offender outright admits to the crime.*

*No: Isn't there a Catch-22 here? The movement to overturn wrongful convictions would probably not be as strong as it is today if not for death row. The justice system is not perfectible, and the risk of executing the innocent does not seem to me to be so great that we should abstain from executions altogether. We should administer capital punishment sparingly, perhaps, but to give it up categorically is an overreaction.*

**A DEFENDANT’S HISTORY**

The U.S. Supreme Court defines mitigating evidence as, "a defendant's character or record and any circumstances of the offense proffered as a reason for a sentence less than death." Generally, the decision during the mitigation phase of a capital case is between death and life in prison. Lockett v. Ohio, 438 U.S. 586 (1978). Sentencing authorities are required to consider all relevant mitigating evidence when the death penalty is at play. Eddings v. Oklahoma, 455 U.S. 104 (1982). Defense attorneys are also required to conduct a thorough investigation of all potential mitigating factors in the case, or else provide rationale for why the mitigating factors were not investigated. Wiggins v. Smith, 539 U.S. 510 (2003). Proponents of accounting for mitigating factors argue that individuals with difficult personal histories do not have the mental or emotional capacity to make reasonable decisions or that these individuals may act out of desperation. Opponents of mitigating factors argue that it is unjust to give different punishments for the same crime, and that doing so undermines the integrity of the justice system.

The Role of Mitigation in the Aileen Wuornos Case

*(Note: Mentions of sexual assault, suicide, and addiction.)* Aileen Wuornos case provides a fascinating example of the role of mitigation. Aileen Wuornos was a serial killer who, while working as a prostitute, killed seven of her male clients. Wuornos claimed that her clients attacked her and that she killed in self-defense. (Note: Aileen Wuornos’s life story inspired the movie Monster, starring Charlize Theron and directed by Patti Jenkins, who also directed Wonder Woman. Theron won an Academy Award for her role. Wuornos was also the subject of several documentaries, including Aileen: Life and Death of a Serial Killer).

During Wuornos’s trial, her defense team presented mitigating evidence focusing on Wuornos’s traumatic childhood and mental illness. When she was a child, Wuornos’s parents abandoned her; she was then raised by her maternal grandparents. Her father was convicted of child molestation, and while serving his term, committed suicide. Wuornos experienced physical and sexual abuse all through her childhood and teenage years. When Wuornos’s grandmother died of alcoholism, her grandfather kicked her out of the house, and she entered the foster case system. Wuornos was fifteen at the time. Later, Wuornos’s grandfather committed suicide.

The jury in Wuornos’s trial found only one mitigating factor: that Wuornos suffered from Borderline Personality Disorder. The judge, however, found five mitigating factors: (1)antisocial and borderline personality disorders; (2) physical abuse (3) the suicides of Wuornos’s natural father and grandfather; (4) Wuornos’s grandmother’s death from alcoholic; and (5) the fact that Wuornos’s mother abandoned her as an infant. Despite finding these additional mitigating factors, the judge followed the jury’s recommendation and sentenced Wuornos to death.

What do you think? Should a defendant’s difficult personal history be taken into account when assessing whether to impose the death penalty?

*Yes: a holistic approach can be helpful in determining if there's any hope of rehabilitation.*

*Yes: Trauma often plays a huge part in whether someone engages in criminal behavior as well as the severity of the crimes they may commit. Trauma physically rewires a person's brain and alters the range of behavior that is acceptable or justifiable. Not taking it into account when deciding whether the severity of a crime justifies the death penalty deprives a defendant of due process.*

*My opinion is conflicted: I worry about using "difficult personal history" to dispense justice unequally. On the other hand, I can imagine someone arguing that we ought to use that consideration to correct existing racial disparities in sentencing. I'm not sure what to think about the value of personal history as a moral excuse. Certainly poverty is correlated with crime, but that fact does not entail any one moral conclusion. Does the government owe its citizens a duty to lift them out of poverty? If it does, then poverty should mitigate criminal punishment of the poor. I tend to think that poverty is ineradicable, that poverty breeds crime, and that the government has a duty to punish crime. Whether this state of affairs is fair is irrelevant.*

*No: Personal history is irrelevant, insofar as we accept that we are all products of our past. No one chooses evil who has not been made to choose by their history.*

*No: I recognize backgrounds amongst offenders widely vary, and that I am very privileged myself, but everyone should know (dare I say, does know) murder is not acceptable. One's background carries little weight in my eyes when you have an innocent life taken and a whole community now affected.*

**SURVEY**

Add the numbers of your responses together. This will help us pair people up for discussion.

**Prompt A**: No crime is severe enough to warrant the death penalty.

1. Agree. 2. I have no opinion or my opinion is conflicted. 3. Disagree

**Prompt B**: Concerns about wrongful convictions warrant the elimination of the death penalty.

1. Agree. 2. I have no opinion or my opinion is conflicted. 3. Disagree

**Prompt C**: A defendant’s difficult personal history be taken into account when assessing whether to impose the death penalty.

1. Agree. 2. I have no opinion or my opinion is conflicted. 3. Disagree

**Total: \_\_\_\_\_\_\_\_**

1. Pew Research Center. (2021, July 13). Most Americans favor the death penalty despite concerns about its administration. Pew Research Center - U.S. Politics &amp; Policy. Retrieved from <https://www.pewresearch.org/politics/2021/06/02/most-americans-favor-the-death-penalty-despite-concerns-about-its-administration/> [↑](#footnote-ref-1)
2. *Policy Issues - Innocence*. Death Penalty Information Center. (n.d.). From <https://deathpenaltyinfo.org/policy-issues/innocence> [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. *DNA exonerations in the United States*. Innocence Project. (2020, August 26). Retrieved from <https://innocenceproject.org/dna-exonerations-in-the-united-states/> [↑](#footnote-ref-4)