



CRUEL AND UNUSUAL

Capital Punishment in Louisiana and Beyond

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From 1972 to 1976, there were no executions in the United States following the Supreme Court decision in *Furman vs. Georgia*. The Supreme Court ruled that capital punishment violated the 14th Amendment and the 8th Amendment prohibition against cruel and unusual punishment because it was arbitrarily administered at best and racially biased at worst. Capital punishment was reinstated following the *Gregg vs. Georgia* decision in 1976. The *Gregg* decision stated that as long as there were policies to prevent the implementation of the death penalty arbitrarily or erratically, the death penalty was constitutional. In short, the death penalty could not be a mandatory sentence and had to be based on the circumstances of the case.

Time has revealed the concerns expressed in the *Furman* case to be valid. Furthermore, the standard established in the *Gregg* case is clearly incapable of being satisfied. To be certain, as I will illustrate using Louisiana as an example, capital punishment remains arbitrary at best and racist in practice. The immorality of the death penalty can be discerned on four grounds.

First, it is immoral for a society through the state to take a human life. Capital punishment rests on the assumption that for the society to protect itself, the state must be given the right to execute individuals. It is as if civil society was incapable of protecting itself through incarceration. Society does have the right to protect itself and it has a right to punish crime. The right to police is necessary to the sustainability of any civil society. However, both society and the state do not have the right to deprive an individual of their natural right to live. The means to remove the threat a person may pose from society through incarceration exists.

Second, in order for the death penalty to be remotely justifiable, the criminal justice system would have to guarantee that no innocent person would be sentenced to death and executed. The criminal justice system can make no such guarantees. According to a 2016 article published in Southern University Law Center's *Journal of Race, Gender, and Poverty*, from 1976 to 2015 Louisiana executed 28 human beings.¹ At the time this

article was published in April 2016, nine people had been wrongly convicted and sentenced to death by the State since 1976. That number now stands at 11. It is inhumane, immoral, and an exercise in the most grotesque form of public policy negligence to continue this practice in light of a criminal justice system that cannot guarantee that no innocent person will be put to death. There is no acceptable margin of error in this regard. There is no acceptable rate of executing innocent people—other than zero.

Third, sentencing and the application of the death penalty in Louisiana is quantifiably skewed racially. The last White person in Louisiana to be executed when the victim was Black was a soldier found guilty of stabbing two enslaved Black women with a bayonet in 1752, which predates the French and Indian War.² The data presented in the above article shows that between 1976 and 2015, a Black male convicted of killing a white female is 29.9 times more likely to be sentenced to death than a Black male who kills a Black male and is 10.8 times more likely to be sentenced to death than a Black male who kills a Black female.³ The racial disparities even extend into the appeals process, where cases of killers of Whites are clearly less likely to be reversed.⁴ This reveals a racial bias in the application of the capital punishment and exonerations.

Lastly, the death penalty cannot be justified morally in current law from the Bible. It is common for those who defend the death penalty to invoke the Bible as proof of the inherent morality of capital punishment. It is true that the Bible mandates the death penalty for those who commit murder. When capital punishment is placed in full context, however, the Bible does not limit the death penalty to murderers. The Bible requires the death penalty for idolatry in *Deuteronomy* 13:6, taking God's name in vain in *Leviticus* 24:16, working on the Sabbath in *Numbers* 15:32-36, and for rebelling against one's parents in *Deuteronomy* 21:18-21. The Bible also condones slavery in *Leviticus* 25:44-46 and *Ephesians* 6:5, including the selling of a daughter into slavery by her father in *Exodus* 21:7-11. Now, the vast majority of us agree that the Bible generally is a good guide for moral behavior, but it is not the same as a contemporary, morally valid criminal code.

Catholic social teaching is clear in its opposition to the death penalty on the grounds that it is state sanctioned killing of another human being. The practice violates the fundamental belief that all life is sacred until natural death. The death penalty also violates the notion of the

preferential option for the poor because those who are executed overwhelmingly tend to be poor themselves. Supporters of the death penalty often point out that the Church has historically supported the death penalty. While this is true, the Church clearly—acknowledging its own history of support—has moved away from this previous position to the current position in the Catholic Catechism that holds the death penalty as “inadmissible” and calls for its abolishment.⁵

Continuing the death penalty in Louisiana is an admission by the state that the prospect of executing an innocent person and the racial disparities in applying capital punishment are secondary concerns to the erroneous belief that the death penalty is a deterrent and is morally justifiable. Supporters of the death penalty should ask themselves two questions: how many innocent men and women executed is the magic number to cause me to rethink my support? How big must the racial disparities in applying the death penalty get before I reconsider whether the state has the right to execute a person? Capital punishment is an antiquated, flawed, and unjustifiable practice that must be abolished.

ENDNOTES

- 1 Baumgartner, Frank and Lyman, Tim. (2016). Louisiana death sentenced cases and their reversals, 1976-2015. *The Southern University Law Center Journal of Race, Gender, and Poverty*, 7, 59-75.
- 2 Ibid., 73.
- 3 Ibid., 71.
- 4 Ibid.
- 5 *Catechism of the Catholic Church*, 2267.



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