

Capital Punishment Isn't Unconstitutional; We Should End it Anyway

On April 1, The Supreme Court of the United States ruled against death row inmate Russell Bucklew's appeal of his execution method. Nixing his claim that a rare medical condition would make the execution unconstitutionally "cruel and unusual" by virtue of being excruciatingly painful the Court (in an opinion written by Associate Justice Neil Gorsuch) held that the Eighth Amendment "does not guarantee a prisoner a painless death."

SCOTUS has been the most prominent venue for opposition to the death penalty, but also the least effectual. Intermittent victories on procedural details produce false hopes that the Court will eventually find the death penalty as such an unconstitutionally cruel and unusual punishment. Then events like the retirement of Associate Justice Anthony "Swing Vote" Kennedy dash, or at least delay, those hopes.

The constitutionality of capital punishment has never really been in question. While some of the Constitution's framers disliked the practice ("I should not regret a fair and full trial of the entire abolition of capital punishments by any State willing to make it" wrote James Madison, one of those framers and later President of the United States), it was common practice at the time of the Constitution's ratification and has never in the round (as opposed to in particular details) been successfully challenged on constitutional grounds.

But it's still wrong, and it still needs to go.

The claim of inherent jurisdiction over life and death — the claim of a "legitimate" power to kill unarmed prisoners, in cold blood and with impunity (as opposed to the currently violent, in defense of self or others, subject to requirement to justify the deed) — is the very definition of totalitarianism. You can have limited government or you can have capital punishment. You can't have both.

Over the last half-century, opponents of the death penalty in America have energetically chipped away at both its popularity and its political legitimacy.

Exonerations of death row inmates, and execution fiascoes resulting from Mengele-like experimentation with methods, have probably pushed us past the point of no return as state governments reconsider (and in some cases declare moratoriums on) capital punishment.

In 2016, two American political parties — first the Libertarian Party, then a few weeks later the Democratic Party — enshrined opposition to capital punishment in their platforms.

In an era of ever-growing government power, this is one issue we seem to be moving in the

opposite direction on. We should move faster.