

Death Penalty Questions for Sotomayor

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...and the Senators who vote to confirm her

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NOTE: Numbers in parentheses are pages and footnotes in the detailed paper downloadable [here](#).

The death penalty has received little attention in the Sotomayor debate. However, when a massive 707,000 homicides in 36 years (one every 27 minutes) result in 1,136 executions (0.16%), capital punishment has been all but abolished (42-43). What remains is a costly, agonizing farce, dragging out cases for decades (48). With no end in sight to intolerable homicides, and the U.S. Supreme Court having played a [major role](#) in this fiasco, the following questions (drawn from actual cases) will have continuing relevance in illustrating the danger of confirming activist justices who abuse their power and the public's trust. They should be addressed not only to the current and future appellate court nominees, but to the public and, especially, Senators who vote on nominees--and in turn face voters.

Questions

Does the Constitution require that a convicted murderer be allowed to succeed with the argument that he should not be executed because he only endangers old ladies, to whom he would not have access if sentenced to life without parole? In light of experience with pardons, escapes, murdered prison guards and inmates, law repeals, murders outside prison ordered by spared convicts inside, et cetera, can life without parole and lack of future dangerousness ever be guaranteed? If not, does the Constitution nevertheless mandate that trial judges must mislead juries by so guaranteeing (9-10)?

Can a man be considered mentally retarded if he carefully plans a rape and calculatingly murders the victim to avoid capture and return to prison (12-13)? Does the Constitution simultaneously bar a death sentence for murder with "insufficient" torture or suffering *and* for barbaric torture when, no thanks to the torturer, the victim does not die but endures immediate and lasting suffering (nn288, 98)?

Do you agree with justices who say that what is "heinous" if committed by a person one day over 18 becomes merely "irresponsible" if he is one day under 18 because such a murderer is a "juvenile," while at the same time, a victim of 16 is an "adult woman" (7; nn265, 334)? Is anyone nearly 18 years old so deficient in "moral culpability" that it is "indecent" and "uncivilized" to expect him to appreciate the wrongfulness of premeditated torture and murder and joyfully boasting about it (n363)? Where does the Constitution say that he must be kept alive "to attain a mature understanding of his own humanity" (53) and possibly murder again?

When a 300-pound grown man tortures and rapes an 8-year-old girl (to the extent that she requires surgery), is this inadequate "moral depravity" if she does not die? Should we forget his mature moral culpability because he still has "dignity" that must be "respected" to "allow him to understand the enormity of his offense," even though the offense is not enormous enough to justify execution (15, 53)?

Do you agree with justices who have said rape under threat of death, three weeks after giving birth, is not necessarily harmful (n265); and one cannot be expected to foresee new murders (an entire family, including a two-year-old) when he smuggles a gun-filled chest into a prison to help two convicted murderers escape--one serving a life sentence for murdering a guard during a prior

escape (52)?

Do you agree that, as a group, the depraved should be rewarded with reduced punishment because their numbers have grown (16); and, for individuals, do you agree that increased depravity merits a court-invented constitutional right to commit new depraved acts, including murder, free from punishment (42; n265)?

Do you agree with Justice Brennan that the battle over the death penalty is a moral one (5)?

Does the Constitution grant five justices the power and right to decide if democratically-determined criminal penalties are morally "unacceptable," and to reject them (n243)? If yes, why?

Must what constitutes "decency" be determined by five justices because "public perceptions of standards of decency ... are not conclusive" (36)? Why? Are the moral judgments and values of five Supreme Court justices superior to those of the American people and four other justices (15-16)? If yes, why?

Do you believe five justices are Constitutionally justified in asserting, contrary to numerous recent cases increasing jury responsibility ([e.g.](#)), that there is no basis for confidence in the judgment of decent jurors who vote for death sentences (16)? As recently as last month, seven justices [declared](#): "Jurors routinely serve as impartial fact finders in cases that involve sensitive, even life-and-death matters. ... in all cases, juries are presumed to follow the court's instructions" and "exclude ... raw emotions." Why are five justices justified in declaring the opposite when death sentences are imposed (n238)? Who should decide what is "moral depravity" and "moral culpability" - justices, or decent jurors and elected legislators?

Is it moral to value, in practice, the life of a law-abiding innocent citizen vastly less than that of a clearly guilty barbaric murderer (42-44, 47, 39, 19-20)? Is it moral to demand absolute death penalty perfection, with heartless unconcern for the perfect certainty of causing new innocent victims of clearly guilty murderers, kept alive by mistakes in catering to abolitionist sensibilities (10; nn49, 50, 52-55, 272)?

Is it profoundly immoral for murder cases to last over thirty years? Given the original torture inflicted--often sadistically--upon victims, is it moral to compound that torture by forcing their also-victimized families to endure decades-long obstructive legal proceedings unrelated to guilt or innocence (49-50)? Do you agree with Justice Stevens that the families of those raped, tortured and murdered are only "third parties" and it is a "misnomer" to deem them also victims (n305)? Is it moral for abolitionists to use the very torture they have inflicted, by manipulating a legal system run amok, as a weapon to compel proponents to surrender by accepting abolition and reduced sentences to relieve this (12; n321)?

Is it moral to label executed, sadistic, and premeditated murderers the real "victims" of violence and to "love and care" about them, empathizing with their plight rather than that of those they victimized (55, 41)? To be considered "decent" and "civilized," must one show more concern for the "suffering" and "humanity" of the cold-blooded than their past--and future--victims (19-20, 47, 15-16; n363)?

Should voters tolerate elected Senators who vote to confirm more judges who act upon the belief that the values of five unelected, unaccountable justices trump the public's in a representative democracy?