

1-18-2019

Could the Pope's Call to End the Death Penalty Keep Catholics Off Juries?

Aliza Plener Cover

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/faculty_scholarship

 Part of the [Constitutional Law Commons](#)

Outlook Perspective

Could the pope's call to end the death penalty keep Catholics off juries?

"Death qualified" juries shield capital punishment from social change

By Aliza Plener Cover

In August, Pope Francis declared the death penalty [morally unacceptable in all circumstances](#) and committed the church to its global abolition. This pronouncement broke from previous Catholic teaching, which permitted the death penalty in "very rare" cases of "absolute necessity."

Death penalty abolitionists hold out hope that the pope's new call to action may eventually sway the American public: Catholic voters and politicians might become more inclined to repeal the death penalty, Catholic prosecutors might increasingly exercise their discretion not to pursue capital punishment, and Catholic judges (including the five Catholic justices on the Supreme Court) might grow more receptive to legal arguments that limit the practice. A change in public opinion could also influence the Supreme Court, which considers society's "evolving standards of decency" in evaluating whether a punishment is "cruel and unusual" under the Eighth Amendment.

But because of the anomalous way we select juries in capital cases, greater opposition to the death penalty among Catholics could, counterintuitively, increase the number of death sentences imposed in this country. Such opposition could even solidify judicial support for capital punishment. This paradox is possible because of a process called "death qualification," in which a judge can disqualify certain prospective jurors who are opposed to executions. The pope's sharpening of the Catholic position on the death penalty helps reveal the problems with this system.

Death qualification produces a smaller, more adamantly pro-execution pool of jurors. Studies [show](#) that death-qualified juries are more inclined not just to impose the death penalty (because, somewhat obviously, those with qualms are excluded) but to convict in the first place. One [review of 14 studies](#) found that a "favorable attitude towards the death penalty translates into a 44% increase in the probability of a juror favoring conviction." [Research suggests](#) that death-qualified jurors are more persuaded by aggravating evidence at sentencing and less persuaded by mitigating evidence than those who are disqualified.

Death qualification weakens the connection between capital trial outcomes and the views of the broader community. In [a study of 11 capital trials in Louisiana](#) from 2009 to 2013, I found that more than 22 percent of prospective jurors were removed because they opposed the death penalty. And death qualification can disproportionately affect certain minority groups. One 2010 study found that in a mock capital sentencing

2/20/2019 Could the pope's call to end the death penalty keep Catholics off juries? The Washington Post
Repeated often enough, the combination of death qualification and peremptory strikes could exacerbate the split between community sentiment and trial outcomes. Widespread and growing opposition to the death penalty may simply lead to the exclusion of a higher percentage of death-averse jurors, which may lead to a steady, or even increasing, number of death sentences.

The Supreme Court [has identified](#) two supposedly objective data points it uses to evaluate evolving standards of decency related to capital punishment: laws authorizing it and numbers of death verdicts. If increased juror disqualification paves the way for more death sentences, the justices might conclude that support for the death penalty remains robust, despite a mounting societal movement against it.

Over the past half-century, the Supreme Court has repeatedly affirmed the practice of death qualification, without fully recognizing the mischief it has wrought. The pope's recent pronouncements heighten the tensions caused by an unjust system that allows only the most punitive Americans to serve on death penalty juries. It's time for death qualification to go.

Read more from Outlook:

[Five myths about conspiracy theories](#)

[Moving is the worst. It's also transformative.](#)

[Trump is ignoring the law to keep the shutdown from causing him political pain](#)

Follow our updates on [Facebook](#) and [Twitter](#).

Aliza Plener Cover

Aliza Plener Cover is an associate professor at the University of Idaho College of Law. This article is adapted from [an essay](#) recently published in the the Yale Law Journal Forum.
