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## Ethics and Execution: Investigating the Death Penalty in Relation to Mental Health

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**ETHICS AND EXECUTION: INVESTIGATING THE  
DEATH PENALTY IN RELATION TO MENTAL  
HEALTH**

*Elizabeth Hall\**

In 1985, a domestic dispute in Alabama resulted in Vernon Madison killing a police officer. The jury found him guilty of capital murder and, consequently, sentenced him to death. Vernon Madison was on death row for the next few decades. During this time, he experienced a series of strokes and was ultimately diagnosed with a major vascular neurological disorder, or vascular dementia. This disorder results in attendant disorientation and confusion, cognitive impairment, and, most relevantly, memory loss.<sup>2</sup> As a result, the prisoner in question could not remember committing the crime for which the court sentenced him. Recent court opinions have stated that despite this question of mental capacity, should one understand the crime committed even if having not remembered it, the original ruling stands, and the charged personnel still stands to be executed. Nonetheless, the way society views mental health in the context of our criminal justice system is equally as fascinating as it is essential to ask ourselves where philosophy and criminal law intersect to answer these broader questions. Is it still ethical to conduct the death penalty on the convicted, despite their failure to remember their crime? On what factors does the answer to this question depend?

The earliest legal case relevant to the moral questions raised in Vernon Madison's case was *Ford v. Wainwright*, a similar instance in which a Florida man, Alvin Bernard Ford, was convicted of murder and sentenced to the death penalty in 1974. In 1982, however, he began to experience gradual changes in behavior characterized by delusion and paranoia, so much so that he referred to himself as "Pope John Paul, III."<sup>3</sup> The progression of Ford's disease shed light on his inability to understand why he was being executed or bridge the gap between his crime and the resulting punishment. It was not until later that he received a diagnosis of "Paranoid Schizophrenia With

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<sup>2</sup> Madison v. Alabama, No. 17-7505 (Feb 27, 2019).

<sup>3</sup> Ford v. Wainwright, Secretary, Florida Department of Corrections, No. 85-5542 (June 26, 1986).

Suicide Potential.”<sup>4</sup> Ultimately, the result of the case was the limitation of the death penalty from the Court, “that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane.”<sup>5</sup>

Not only did Madison’s defense utilize this precedent from *Ford v. Wainwright* but also the 2017 case *Panetti v. Quarterman*. As in the two other cases, Scott Louis Panetti was convicted of murder and sentenced to the death penalty. However, his mental state evaluations differed from the other two as Panetti was evaluated by a psychiatrist when tried for murder in 1995. It was stated that Panetti experienced fragmented personality, delusions, and hallucinations, and had been previously hospitalized for these disorders on numerous occasions.<sup>6</sup> When representing himself, Panetti claimed he was not guilty on account of his insanity, but the jury found him guilty regardless and sentenced him to death. While incarcerated on death row, he claimed his execution was a “part of spiritual warfare . . . between the demons and the forces of the darkness and God and the angels and the forces of light.”<sup>7</sup>

The *Panetti v. Quarterman* case cites that while the petitioner understood “that the state [was] saying that [it wished] to execute him for [his] murder[s],’ he [believed]... that the stated reason [was] a ‘sham’ and the State in truth [wanted] to execute him ‘to stop him from preaching [the Gospel].”<sup>8</sup> This acknowledgment raised a nuanced question from the Ford case, as the previous petitioner had no foundational understanding of the reasoning behind his execution. Panetti, however, clearly had the mental capacity to acknowledge the reason that the courts sentenced him to death, despite whether he believed it was just or not. This understanding of the State’s rationale and the law which it was upholding allowed the State to move forward with his execution. While Ford established that the execution of an insane person would “offend humanity” as barbaric and disrespectful of the dignity of society,<sup>9</sup> *Panetti v. Quarterman* set a precedent in which one does not necessarily need a rational understanding of the case to be executed under the death penalty, but merely the reasoning behind it.

In the aforementioned string of court cases, the law most commonly referenced is the Eighth Amendment, which mandates “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual

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<sup>4</sup> Ford v. Wainwright, Secretary, Florida Department of Corrections, No. 85-5542 (June 26, 1986).

<sup>5</sup> *Id.*

<sup>6</sup> Panetti v. Quarterman, Director, Texas Department of Criminal Justice, Correctional Institutions Division, No. 06-6407 (June 28, 2007).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Ford v. Wainwright, Secretary, Florida Department of Corrections, No. 85-5542 (June 26, 1986).

punishments inflicted.”<sup>10</sup> How does this legal prohibition of cruel and unusual punishment affect these court cases concerning the death penalty, or more specifically, do the executions of the convicted infringe upon one’s Eighth Amendment rights? Now, these cases will be analyzed from two strikingly different angles. First, a psychological breakdown of the strokes suffered by the convicted, framing their state of mind, and further analyzing their competence is useful in analyzing the ethics of their executions.

Strokes are known to cause neurological deficits, which not only affect motor abilities but also learning, memory, and basic levels of understanding. Madison’s specific diagnosis of major vascular neurological disorder was associated with symptoms of confusion, trouble paying attention and concentrating, reduced ability to organize thoughts or actions, a decline in the ability to analyze a situation, develop an effective plan and communicate that plan to others, and problems with memory.<sup>11</sup> This line of defense is often used in the courtroom; many defendants on trial for an array of crimes will claim insanity in hopes of receiving a lighter sentence since we as a society have increased awareness of mental illnesses and do not blindly blame those suffering for the crimes committed as a result of these disorders. These petitioners lacked basic mental faculties like those previously mentioned, whether specific to Madison’s diagnosis or similar symptoms. This argument could be used to defend the lives of those on death row; how does one morally blame and take the lives of those suffering from such a debilitating medical condition?

The second point of view will utilize Australian moral philosopher Peter Singer’s approach to personhood and what faculties a person must possess. These philosophical theories are useful through their application to criminal law in the aforementioned Supreme Court cases for questioning the morality of sentencing a person to death for a crime they have no recollection of committing or no mental capacity to understand. Peter Singer stirs much controversy not only in the philosophical world but also in all academic fields. Singer’s definition of a person stems from that of John Locke “as rational self-consciousness aware of its past and future, Singer does not follow Locke in granting basic protection to the human being when the human being is considered in distinction from the person.”<sup>12</sup> This harsh definition of personhood presented by Singer plays into the ethics of

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<sup>10</sup> *The 8th Amendment of the U.S. Constitution*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/amendment/amendment-viii>.

<sup>11</sup> *Vascular Dementia*, Mayo Foundation for Medical Education and Research, (May 9, 2018), <https://www.mayoclinic.org/diseases-conditions/vascular-dementia/symptoms-causes/syc-20378793>.

<sup>12</sup> John Hymers, *Not a Modest Proposal: Peter Singer and the Definition of Person*, 6 *Ethical Perspectives* 126 (1999).

executing someone that does not possess this “rational self-consciousness” and defines them as a human non-person.

Some members of the philosophical community deem people that do not have this sense of self-awareness or rationality as human non-persons or defective humans. This idea can range from those with severe mental disabilities, those braindead, or even infants; all of these demographics would reside in this category of personhood under Singer’s philosophy. So how are we expected to treat a human non-person? John Hymers believes that those “defective humans... do not deserve this protection in themselves and must rely on external factors [because] we have no obligations to them, which we would have to any person.”<sup>13</sup> This colder, more utilitarian approach starkly contrasts with the argument that psychoanalysis and medical statistics provide, which shows a reason for sympathy and mercy. While expanding upon the symptoms suffered by the charged persons may incite instinctual care for them, Singer and Hymers define personhood by one’s ability to adequately contribute to society as a rational human being. Applied to the court cases, Singer and Hymers’ philosophies argue that it is entirely moral to execute these men by reason that they should not continue to hold a place in society as mentally ill individuals, taking resources from those who can better contribute to society.

The case of *Madison v. Alabama* has broad implications not only legally but ethically. Cases such as these question the inherent value of human life and on which criteria to base this value. While a neurological perspective grants these petitioners more room for mercy, ethicists supply a merciless philosophy that would deem men like Madison, Ford, and Panetti non-human and their lives not worth saving.

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<sup>13</sup> *Id.*