

ing that “victim impact statements” are not barred from evidence by the Eighth Amendment.¹³² “A State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim’s family is relevant to the jury’s decision as to whether or not the death penalty should be imposed.”¹³³ In the view of the Court majority, admissibility of victim impact evidence was necessary in order to restore balance to capital sentencing. Exclusion of such evidence had “unfairly weighted the scales in a capital trial; while virtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances, the State is barred from either offering ‘a glimpse of the life’ which a defendant ‘chose to extinguish,’ or demonstrating the loss to the victim’s family and to society which has resulted from the defendant’s homicide.”¹³⁴

Limitations on Capital Punishment: Proportionality.—

The Court has also considered whether, based on the nature of the underlying offense (or, as explored in the next topic, the capacity of the defendant), the imposition of capital punishment may be inappropriate in particular cases. “[T]he Eighth Amendment’s protection against excessive or cruel and unusual punishments flows from the basic ‘precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.’ Whether this requirement has been fulfilled is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that ‘currently prevail.’ The Amendment ‘draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society.’”¹³⁵ However, the “Court has . . . made it clear that ‘[t]he Eighth Amendment is not a ratchet, whereby a

also South Carolina v. Gathers, 490 U.S. 805 (1989), holding that a prosecutor’s extensive comments extolling the personal characteristics of a murder victim can invalidate a death sentence when the victim’s character is unrelated to the circumstances of the crime.

¹³² *Payne v. Tennessee*, 501 U.S. 808 (1991). “In the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief,” Chief Justice Rehnquist explained for the Court. *Id.* at 825. Justices White, O’Connor, Scalia, Kennedy, and Souter joined in that opinion. Justices Marshall, Blackmun, and Stevens dissented.

¹³³ 501 U.S. at 827. Overruling of *Booth* may have been unnecessary in *Payne*, because the principal “victim impact” evidence introduced involved trauma to a surviving victim of attempted murder who had been stabbed at the same time his mother and sister had been murdered and who had apparently witnessed those murders; this evidence could have qualified as “admissible because . . . relate[d] directly to the circumstances of the crime.” *Booth*, 482 U.S. at 507 n.10. *Gathers* was directly at issue in *Payne* because of the prosecutor’s references to effects on family members not present at the crime.

¹³⁴ 501 U.S. at 822 (citation omitted).

¹³⁵ *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2649 (2008) (citations omitted).