

SCALIA, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 00–5250

WESLEY AARON SHAFER, JR., PETITIONER
v. SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH CAROLINA

[March 20, 2001]

JUSTICE SCALIA, dissenting.

While I concede that today’s judgment is a logical extension of *Simmons v. South Carolina*, 512 U. S. 154 (1994), I am more attached to the logic of the Constitution, whose Due Process Clause was understood as an embodiment of common-law tradition, rather than as authority for federal courts to promulgate wise national rules of criminal procedure.

As I pointed out in *Simmons*, that common-law tradition does not contain special jury-instruction requirements for capital cases. Today’s decision is the second page of the “whole new chapter” of our improvised “death-is-different” jurisprudence” that *Simmons* began. *Id.*, at 185 (SCALIA, J., dissenting). The third page (or the fourth or fifth) will be the (logical-enough) extension of this novel requirement to cases in which the jury did *not* inquire into the possibility of parole. Providing such information may well be a good idea (though it will sometimes harm rather than help the defendant’s case)—and many States have indeed required it. See App. B to Brief for Petitioner. The Constitution, however, does not. I would limit *Simmons* to its facts.