

THE DEATH PENALTY

CENTRAL QUESTION



Should states abolish the death penalty?

INTRODUCTION



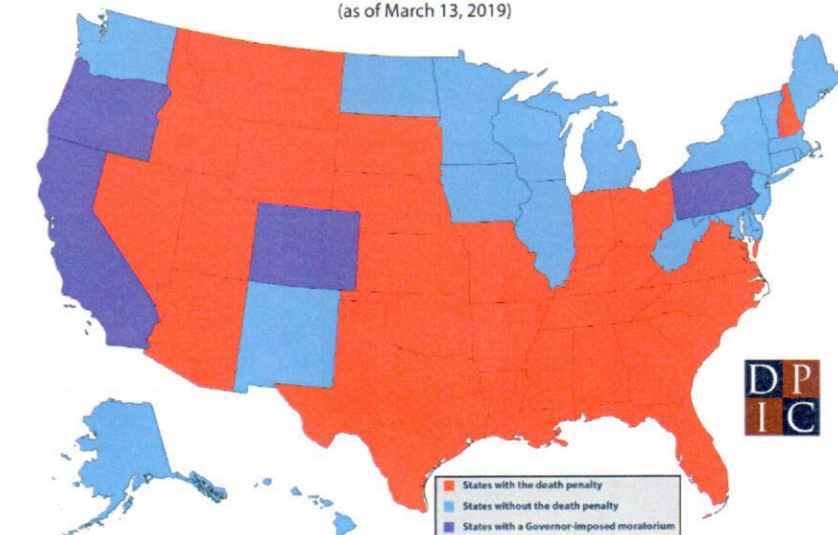
On March 13, 2019, Governor Gavin Newsom, D-Calif., signed an order to place a moratorium on the use of the death penalty in California as long as he is in office.¹ In the process, the governor renewed a nationwide debate about whether or not states should abolish the death penalty. In this *Close Up in Class Controversial Issue in the News*, we will explore the history and status of the death penalty, examine past challenges to the policy, and ask you to weigh the pros and cons of the paths forward.

BACKGROUND



What Are the Origins of the Death Penalty? The death penalty—also known as capital punishment—dates back to the 18th century B.C., to the Code of King Hammurabi of Babylon, which codified death as the punishment for 25 crimes. The death penalty later appeared in the 14th century B.C. in the Hittite Code, in the seventh century B.C. in the Draconian Code of Athens, and in the fifth century B.C. in the Roman Law of the Twelve Tablets. People who were sentenced to death in ancient times were crucified, drowned at sea, beaten to death, buried alive, impaled, or otherwise executed in similarly cruel fashion.²

States with and without the death penalty
(as of March 13, 2019)



In modern times it was Great Britain, which had a long history of using capital punishment and had established some 222 capital offenses (crimes punishable by death) by the 1700s, that most influenced the American colonies to adopt the death penalty.³ The first recorded execution in the colonies took place in Virginia in 1608, when George Kendall was executed for plotting to betray Great Britain to Spain. As the death penalty made its way to other colonies (and eventually, states), some were strict in its use while others employed it more sparingly.⁴

By the mid-1800s, concerns about the appropriateness of public executions pushed some states to make executions private, ushering in an era of reform. In 1846, Michigan became the first state to abolish the death penalty, except in cases of treason. Rhode Island followed in 1852 (before reinstating the death penalty in 1873, never using it, and abolishing it once more in 1984) and Wisconsin abolished the practice in 1853.⁵

The late 1800s and the early 1900s saw ebbs and flows in efforts to expand or reduce the use of the death penalty. By 1895, 18 states had moved to make death sentences discretionary (rather than mandatory); in 1897, Congress passed a bill reducing the number of federal capital offenses; and in the early 20th century, a handful of states abolished the death penalty (with some reinstating it several years later). The use of the practice surged from the 1920s to the 1940s, but the movement to abolish the death penalty gained strength again from the 1950s to the early 1970s.⁶

The centuries-long debate about the death penalty continues today. As of March 2019, the death penalty is legal at the federal level and in 30 states across the country (although there is a gubernatorial moratorium on the practice in four of those states—California, Colorado, Oregon, and Pennsylvania). Twenty states and the District of Columbia have abolished the death penalty.⁷

 What is the history of the death penalty in your state?

 What are the capital offenses in each state?

 What are the federal capital offenses?

Has the Death Penalty Been Challenged in Court?

Much of the debate over the death penalty has centered on the Eighth Amendment to the Constitution, which reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”⁸ There have been several landmark challenges to the constitutionality of the death penalty, leading the Supreme Court to issue similarly landmark decisions:

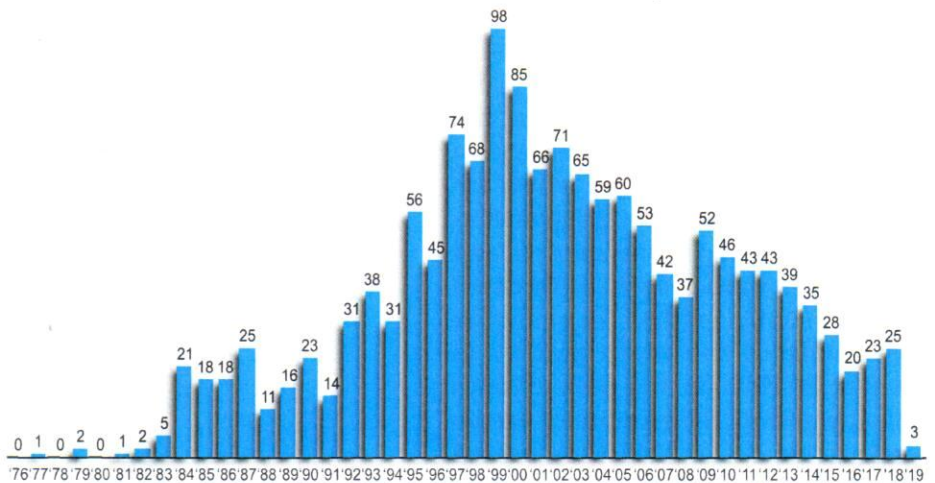
- ***Furman v. Georgia* (1972).**

This case dealt with William Henry Furman, who was robbing a home when a resident discovered

him. He attempted to flee and tripped, discharging his gun and killing a person. He was convicted of murder and sentenced to death. However, the Supreme Court ruled that the imposition of the death penalty—in this case and two related cases—constituted cruel and unusual punishment. The decision forced states and Congress to rethink laws for capital offenses to make sure the death penalty would not be administered capriciously or discriminatorily.⁹ The effect of the ruling was a four-year moratorium on all executions.¹⁰

- ***Gregg v. Georgia* (1976).** In this case, the Supreme Court refused to expand its ruling in *Furman*.¹¹ Instead, the Court decided that the death penalty is constitutional when it is carefully and judiciously applied to extreme criminal cases, such as when a defendant has deliberately killed someone.¹²

Number of Executions since 1976: 1,493



Source: Death Penalty Information Center, April 2019.

- **Coker v. Georgia (1977).** This case dealt with a convicted murderer and rapist who escaped from prison, raped a woman, and was sentenced to death on the rape charge. The Supreme Court found that the death penalty was “grossly disproportionate” for a rape that did not result in death, and that the penalty must be proportionate to the crime.¹³ The Court extended this ruling in *Kennedy v. Louisiana* (2008), deciding that the death penalty cannot apply to cases of child rape in which the victim lives. Because only six states allowed execution for child rape at the time, the Court said the national consensus made the death penalty disproportionate.¹⁴
- **Atkins v. Virginia (2002).** The Supreme Court concluded that executing “mentally retarded” criminals violates the Eighth Amendment, as a mental handicap lessens the guilt of the offender and makes the death penalty too severe.¹⁵ Years later, in *Hall v. Florida* (2014), the Court held that an IQ test may not decide whether or not someone is intellectually disabled for the purpose of being eligible for the death penalty.¹⁶
- **Ring v. Arizona (2002).** The Supreme Court ruled that it is unconstitutional for “a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty.”¹⁷
- **Roper v. Simmons (2005).** In the case of Christopher Simmons, who was sentenced to death at the age of 17, the Supreme Court ruled that the execution of minors is unconstitutional. The majority opinion cited teenagers’ lack of maturity and responsibility, incomplete character development, and susceptibility to negative influences.¹⁸
- **Baze v. Rees (2008).** The Supreme Court upheld the constitutionality of Kentucky’s lethal injection protocol (diazepam to relax the convict, sodium pentothal to make the convict unconscious, pancuronium bromide to stop breathing, and potassium chloride to cause cardiac arrest).¹⁹

In other words, the Supreme Court has ruled that the death penalty does not violate the Eighth Amendment’s ban on cruel and unusual punishment. However, the Court has used the Eighth Amendment to determine when the death penalty may be used and how it may be carried out.

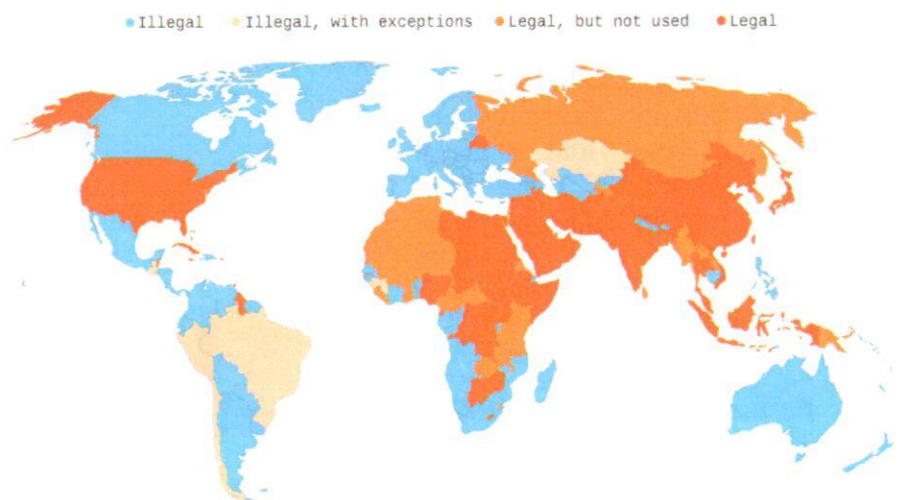
THE CURRENT CONTROVERSY



Should states abolish the death penalty?

Today, the United States is one of 53 countries (out of 195 sovereign nations) that use the death penalty—a group that also includes the fellow advanced-economy nations of Japan, Singapore, and Taiwan.²⁰ One hundred and six countries have abolished the death penalty in law; another 36 countries have abolished the death penalty in practice. Worldwide, the United States ranked eighth in the number of executions carried out in 2017 (23), behind China (a number believed to be in the thousands), Iran (507+), Saudi Arabia (146), Iraq (125+), Pakistan (60+), Egypt (35+), and Somalia (24). (Amnesty International could not confirm the number of executions in North Korea in 2017.)²¹

Capital Punishment by Country, 2017



Data: Amnesty International; Map: Kerrie Vila/Axios

DEATH ROW PRISONERS BY STATE: October 1, 2018

California	740	Georgia	56	Utah	9
Florida	354	Oklahoma	48	Washington	8
Texas	228	Mississippi	46	U.S. Military	4
Alabama	182	South Carolina	39	Colorado	3
Pennsylvania	158	Oregon	33	South Dakota	3
North Carolina	143	Arkansas	32	Virginia	3
Ohio	142	Kentucky	31	Montana	2
Arizona	121	Missouri	25	New Mexico	2
Nevada	76	Nebraska	12	New Hampshire	1
Louisiana	70	Indiana	11	Wyoming	1
U.S. Gov't	62	Kansas	10		
Tennessee	61	Idaho	9	TOTAL: 2,721	

Source: NAACP Legal Defense Fund/Death Penalty Information Center.

So, what is the status of the death penalty in the United States?

- Between 1976, when executions resumed, and March 2019, 1,493 people were executed in the United States.²² This group includes the serial killer and rapist Ted Bundy, the serial killer John Wayne Gacy, and the Oklahoma City bomber Timothy McVeigh.

- More than half of these executions took place in three states: Texas (560), Virginia (113), and Oklahoma (112).²³

- Of those executed since 1976, 56 percent were white, 34 percent were black, nine percent were Hispanic, and less than two percent were another race. Of the victims in the cases that resulted in an execution, 76 percent were white, 15 percent were black, seven percent were Hispanic, and two percent were another race.²⁴

- As of October 2018, there were 2,721 prisoners on death row in the United States.²⁵
- Since 1973, 164 death row inmates have been acquitted of all charges in the crime that placed them on death row, have had all charges related to that crime dismissed, or have received a pardon based on evidence of innocence.²⁶

It is in this atmosphere that a nationwide debate continues about whether or not states should abolish the death penalty. Advocates of abolition argue that the death penalty is inhumane and frighteningly irreversible, and that the risk of executing an innocent person will always be present. Those who believe in keeping the death penalty argue that it is an appropriate, rarely used punishment for extreme cases of evil—and one that acts as a powerful incentive for criminals to assist law enforcement efforts.



[View the Pew Research Center's interactive map of annual executions by state, 1977-2015](#)



SHOULD STATES ABOLISH THE DEATH PENALTY?



YES: The death penalty is unjust, inhumane, and irreversible.

If the United States is truly committed to human rights, equal justice, and government restraint, it is time to abandon the death penalty. This practice is inhumane and irreversible, opening the door to frightening miscarriages of justice.

“Execution is the ultimate, irrevocable punishment: the risk of executing an innocent person can never be eliminated,” noted Amnesty International. “Since 1973, for example, more than 160 prisoners sent to death row in the USA have later been exonerated or released from death row on grounds of innocence. Others have been executed despite serious doubts about their guilt.”²⁷

Take the case of Sabrina Butler, who was 18 when she was sentenced to death for the murder of her nine-month-old son. It took nearly seven years on death row for Butler to be cleared; her son had died of a kidney condition, and the bruises on his chest had come from Butler’s attempts to resuscitate him.²⁸ Or, consider the case of Kirk Bloodsworth, who was wrongfully accused of the rape and murder of a nine-year-old girl in 1984 on the basis of faulty eyewitness identification. Bloodsworth was finally released in 1993, becoming the first death row inmate to be cleared by DNA.²⁹

Bloodsworth and Butler were victims of a flawed system, but they are also the lucky ones. There is no way to tell how many of the people executed in the United States have been innocent, as courts do not typically entertain claims of innocence when a defendant is deceased.³⁰

“In America, we execute more human beings than any other democracy on Earth, and we administer the death penalty in ways that are absolutely contrary to our bedrock responsibility to ensure equal justice under the law,” wrote Governor Newsom. “In California, we have the largest death row anywhere in the Western Hemisphere, with 737 people awaiting execution. More than six in ten of them are African-American or Latino. Racial inequity has long plagued our death penalty process, and we know our state has sentenced at least five innocent people to death since 1973 (they were freed).”³¹

It should not be overlooked that the death penalty is costing states money that they cannot spare. A 2017 study prepared for the Oklahoma Death Penalty Review Commission found that death penalty cases in the state cost, on average, 3.2 times more than non-capital cases. And in Florida, the *Palm Beach Post* concluded in 2000 that enforcing the death penalty costs the state \$51 million per year more than it would to punish all first-degree murderers with life in prison without parole.³²

In the end, it is never acceptable to take another person’s life, no matter who that person is or what they have done. The government must begin to set this example now.



NO: The death penalty is carefully and infrequently used to punish true evil and provide closure.

There is a reason why a majority of Americans favor the death penalty for people convicted of murder, according to a 2018 poll conducted by the Pew Research Center.³³ The death penalty is an extreme punishment for extreme criminal cases—a method that is used carefully and infrequently to provide closure to victims’ families, to help fight crime, and to punish true evil.

To argue the case for the death penalty, one need only examine some of the criminals who are currently serving on death row. Take Rodney Alcala, one of the most infamous serial killers in U.S. history, who may have murdered as many as 130 women before being arrested and sentenced to death for the murders of five women.³⁴ Or consider Richard Allen Davis, who kidnapped 12-year-old Polly Klaas from a slumber party at her home and killed her. Davis chose to use his sentencing hearing not to ask for mercy or forgiveness—but to heartlessly accuse the dead girl’s father of molesting her. The judge who imposed the death penalty said, “Mr. Davis, this is always a traumatic and emotional decision for a judge. You made it very easy today by your conduct.”³⁵

The tragic truth about people like Alcala and Davis is that they are beyond rehabilitation. Their lives have been examples of manipulation and evil. Yet these are two of the people whose death sentences have been placed on hold by Governor Newsom’s moratorium in California. This is not justice. This is not closure for the families of the deceased.

Klaas’ father, Marc, said of Governor Newsom’s decision: “I died a little bit. ... He is advocating on behalf of pure evil. He is the champion of the death row inmate in California. Death row is filled with individuals who killed cops, women, babies, children.”³⁶

The reality of the death penalty is that it is used rarely and reserved for extreme cases. The number of executions in the United States has declined steadily since 1999, with only 20 people executed in 2016, 23 executed in 2017, and 25 executed in 2018.³⁷ By keeping the death penalty as an option, states retain a valuable tool in fighting crime, as the possibility of a death sentence can be a powerful incentive for a criminal to admit to his or her crime and assist the police in exchange for a reduced sentence.

“The death penalty is the most extreme option in the justice system,” the *New Hampshire Union Leader* editorialized. “It is a seldom used option, and rightly so. It should be reserved for crimes of pure evil. Like many extreme options, it is better to have them and never need them than need them and not have them. As long as pure evil exists in this world the death penalty should remain available.”³⁸

QUESTIONS TO CONSIDER



1. Do you support use of the death penalty? Explain your reasoning.
2. What do you believe to be the most powerful argument of the opposition? Why do you believe it is so compelling?
3. If you were on the Supreme Court, would you have ruled differently in any of the cases listed in this document? Explain your answer.
4. Do you believe a governor should be able to place a moratorium on the use of the death penalty in his or her state? Explain your reasoning.



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