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# Executions in America: How Constitutional Interpretation Has Restricted Capital Punishment

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Executions in America: How Constitutional Interpretation Has Restricted Capital Punishment

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Thesis: In upholding the constitutionality of capital punishment, the United States Supreme Court has utilized a strict construction interpretation of the Fourteenth Amendment's Due Process Clause, which has led the opponents of capital punishment to abandon the Due Process approach and look to the Eighth Amendment, for which the justices utilize a loose construction interpretation.

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“Most people approve of capital punishment, but most people would not do the hangman’s job.”<sup>1</sup> Although capital punishment has been a constitutionally recognized practice since America’s colonial history, there is still great controversy that surrounds the tradition.<sup>2</sup> The Supreme Court of the United States (the Court), has often upheld the constitutionality of capital punishment through its interpretation of the Eighth and Fourteenth Amendments.<sup>3</sup> However, the methods of constitutional interpretation have varied throughout the court’s history, thus altering the constitutionality of aspects of capital punishment.<sup>4</sup> The methods of interpretation utilized by the Court can broadly be categorized as strict and loose constructionist, and encompass several specific views regarding the Constitution and its amendments.<sup>5</sup> Interpretations of constitutionality come in trends and depend on the particular Justices reviewing a case. For example, in 1972 the Court ruled that capital punishment violated the Eighth Amendment, then reinstated the practice in 1976.<sup>6</sup> Therefore, in upholding the constitutionality of capital punishment, the United States Supreme Court has utilized a strict construction interpretation of the Fourteenth Amendment’s Due Process Clause, which has led the opponents of capital punishment to abandon the Due Process Approach and look to the Eighth Amendment, for which the justices utilize a loose construction interpretation.

The famous case, *Marbury v. Madison*, heard by Chief Justice John Marshall’s Supreme Court in 1803, established the principle of judicial review, which provided the Court the power to declare an act of the United States government unconstitutional and therefore null and void.<sup>7</sup> It was Marshall’s passionate belief that the federal judiciary must have the power of judicial review. Delivering the opinion of his 19<sup>th</sup> century Court Chief Justice Marshall wrote,

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and *interpret* that rule. If two laws conflict with each other, the courts must decide on the operation of each (*Marbury v. Madison* 1803, emphasis his).

Marshall held that the Constitution was superior to any ordinary act of the legislature and therefore must govern any case to which both apply. In his ruling, Marshall applied a strict construction interpretation of the Constitution; he wanted to demonstrate that judicial review is a “logical extension of the Court’s exercise of judicial power, that is, the power to decide cases” as exemplified in Article III, Section 2 of the Constitution (Ducat 5. See Appendix B).

Regarding constitutional interpretation, authors Sotirios Barber and James E. Fleming hold, “Interpreting the American Constitution is a cognitive activity that takes place in a specific kind of context and proceeds from specific assumptions. The context is one of disagreement about whether an act of government is either permitted or required by some provision or associated principle of the Constitution. The assumptions at work in this context are; (1) that the Constitution, faithfully followed, would limit what the government may do; (2) that those limits can be known with reasonable confidence; (3) that reasonable persons would regard those limits in general as serving a paramount good” (Barber 13). Paramount good may be understood either from the perspective of the Founding Fathers, whose aim was the protection of natural rights, or more progressive thinkers who viewed paramount good as social progress. The Constitution not only limits what government may do, but also permits the government certain actions. Whether a strict or loose interpretation is applied, the ultimate aim of constitutional interpretation is to make sense of what the Constitution says—seeing for ourselves why anyone would voluntarily adopt the Constitution as supreme law.<sup>8</sup>

Strict construction interpretation is a broad term for the traditional approach to constitutional interpretation. It encompasses a more literal or narrow reading of constitutional provisions, which may either permit or limit government actions. A strict construction interpretation of the Constitution may protect state rights when those rights are at risk of being

usurped by the federal government (McClellan). However, words can have many different meanings which could change the entire context of a section or even the whole document itself. Textualism, Originalism, and Structuralism are three common forms of strict construction.<sup>9</sup>

Textualism finds constitutional meaning by consulting the plain words of the constitutional document. A famous example of the textualist approach to constitutional interpretation is Justice Hugo Black's view of the Ninth Amendment applied to *Griswold v. Connecticut* (1965), where he held that that the only constitutional rights are those enumerated in the text.<sup>10</sup> In the same manner, Originalism, also referred to as "Original Meaning," looks to the original public meaning of the words of the constitutional document, what they meant in 1791. "Original Intent" is another aspect of Originalism, but is not part of the focus of this essay.<sup>11</sup> Lastly, Structuralism looks to the overall constitutional arrangement of offices, powers, and relationships—"the meaning of the Constitution as a whole" (Barber 117). The leading structural principles include federalism, separation of powers, and democracy.<sup>12</sup>

In contrast to strict construction, loose construction and its specific approaches hold a very different view of constitutional interpretation. Loose construction allows the meaning of the text of the Constitution to change over time. Former Supreme Court Justice William J. Brennan wrote, "The function of the Supreme Court justice is to interpret the Constitution in such a way as to resolve the predominant social, economic, philosophical, and political questions of the day—which are often issues on which contemporary society is most deeply divided" (Stolyarov II). Loose construction uses the Necessary and Proper Clause and the General Welfare Clause of the Constitution in its determination of constitutionality. The Constitution is interpreted as authorizing congressional laws for any activity or purpose not explicitly forbidden to the federal government (Purvis).<sup>13</sup>

Common classifications of loose construction are the Philosophic Approach,<sup>14</sup> Doctrinalism, and Consensualism. These approaches all allow the meaning of constitutional provisions to change according to contemporary standards. The Philosophic Approach represents a fusion of constitutional and moral philosophy, how we ought to interpret the words of the Constitution to approximate their true meaning in a contemporary context.<sup>15</sup> Accordingly, constitutional law has involved controversial philosophic choices throughout American history (Barber 164). Doctrinalism, however, looks to constitutional provisions through layers of interpretations in previous cases rather than directly. These past interpretations purport to articulate constitutional principles in the form of rule or precedents that bind future courts (Barber 135).<sup>16</sup> It is difficult in constitutional law to decide why an old case should be a precedent for future cases.<sup>17</sup> However, it must be recognized that American constitutional practice does include a limited policy of stare decisis,<sup>18</sup> which makes old cases important, though not totally conclusive in judicial determinations of constitutional meaning. This can involve evolving meanings through changes from case to case. Consensualism consults a current social consensus on what the words of the Constitution mean, which can change and evolve over time.<sup>19</sup>

The methods of constitutional interpretation are essential to understand capital punishment and why its constitutionality has been upheld by the Court. Capital punishment has been an established practice in the United States since the country's colonial history, adopted from English custom. The "bloody" codes of England's criminal code, which listed hundreds of capital crimes, were modified to suit local colonial needs (Oshinsky 5). For example, in Massachusetts, where religion played a significant role in settlement, capital offenses included crimes such as blasphemy, witchcraft, and adultery.<sup>20</sup> The death penalty's legitimacy rested on

three well defined principles: deterrence, penitence, and retribution (Oshinsky 5). Capital punishment was popular during colonial times because it, “fulfilled the moral expectations of colonial Americans most of the time, and that was enough to make it the standard penalty for all serious crimes. Hardly anyone suggested that it be used more sparingly, much less that it be abandoned.”<sup>21</sup> The death penalty was seen as essential to preserving the moral and social order throughout the colonies (Oshinsky). In post-revolutionary America the power to impose the death penalty was left to the individual states.<sup>22</sup>

The Founding Fathers had made it explicitly clear that executions excluding torture did not violate the Eighth Amendment’s prohibition against “cruel and unusual punishment” (Oshinsky 7). The Fifth Amendment, adopted on the same day as the Eighth, prescribes that a person cannot “be twice put in jeopardy of life” for the same offenses, nor “be deprived of life, liberty, or property, without due process of the law.”<sup>23</sup> This presents the clear implication that a person can be executed if due process is provided. Similarly, the Fourteenth Amendment has been used by the Court as a legal mechanism in its determination of the constitutionality of state capital punishment. The Fourteenth Amendment permits capital punishment and allows the federal government to regulate and review execution laws. The federal government may intervene when there is an absence of due process. The Incorporation Doctrine applies the Eighth Amendment to the states through the Fourteenth Amendment which allows the federal government to intervene in capital punishment if there is due process but the prescribed execution method is cruel and unusual; this is not disputed.<sup>24</sup>

The Court applied the Due Process Approach when it reviewed *Furman v. Georgia* in 1972 and *Gregg v. Georgia* in 1976. In *Furman* the majority held that the imposition and carrying out of the death penalty in these cases constituted cruel and unusual punishment in

violation of the Eighth and Fourteenth Amendments. Georgia capital punishment laws violated the Eighth and Fourteenth Amendments because they allowed death to be imposed in an “arbitrary” and “capricious” manner. The court was profoundly divided on this issue presented in the case, thus the opinion was per curiam.<sup>25</sup> Chief Justice Blackmun wrote, “Although the Eighth Amendment literally reads as prohibiting only those punishments that are both ‘cruel’ and ‘unusual,’ history compels the conclusion that the Constitution prohibits all punishments of extreme and barbarous cruelty, regardless of how frequently or infrequently imposed” (*Furman*). Since the Court determined that Georgia’s capital punishment laws had been unjustly applied, the government had the right to intervene through the Fourteenth Amendment power to review state procedure.

However, in *Gregg v. Georgia* (1976), the Court upheld Georgia’s new capital-sentencing procedures, concluding that they had sufficiently reduced the problem of arbitrary and capricious imposition of death associated with earlier statutes. The new laws provided for bifurcated proceedings, one to determine guilt and one to determine whether to execute. Justice Stewart, delivering the opinion of the court, wrote: “We now hold that the punishment of death does not invariably violate the Constitution” (*Gregg*). The constitutionality of the sentence of death itself was not at issue, and the criterion used to evaluate the mode of execution was its similarity to “torture” and other “barbarous” methods.<sup>26</sup> The majority held that “evolving standards of decency” require focus not on the essence of the death penalty itself but primarily upon the procedures employed by the State to single out persons to suffer the penalty of death.<sup>27</sup> The Fourteenth Amendment Due Process approach was once more applicable because the Court again focused on the procedural aspects of capital punishment.<sup>28</sup>

*McClesky v. Kemp*, heard in 1987, illustrates one of the last major attempts by opponents of capital punishment to restrict the death penalty through the Due Process Approach. The Court reviewed a challenge to death penalty laws based on a study that showed murderers of white victims were far more likely to be sentenced to death than murderers of black victims.<sup>29</sup> McClesky argued that the Baldus study demonstrates that the Georgia capital sentencing system violates the Eighth Amendment. Justice Powell wrote, “This case presents the question whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that petitioner McClesky’s capital sentence is unconstitutional under the Eighth or Fourteenth Amendment.” The majority wrote, “In light of our precedents under the Eighth Amendment, McClesky cannot argue successfully that his sentence is “disproportionate to the crime in the traditional sense” (*McClesky*).

McClesky did not deny that he committed a murder in the course of a planned robbery, a crime for which this Court has determined that the death penalty constitutionally may be imposed.<sup>30</sup> His disproportionality claim “is of a different sort”<sup>31</sup> because McClesky argued that the sentence in his case is disproportionate to the sentences in other murder cases. Nevertheless, the Court held that because McClesky’s sentence was imposed under Georgia sentencing procedures that focus discretion “on the particularized nature of the crime and the particularized characteristics of the individual defendant,” they may lawfully may presume that McClesky’s death sentence was not “wantonly and freakishly” imposed (*McClesky*). Accordingly, the sentence is not disproportionate within any recognized meaning under the Eighth Amendment. Similarly, the Court stated that there was no evidence that the Georgia Legislature enacted the capital punishment statute to further a racially discriminatory purpose, and McClesky failed to demonstrate that “the legislature maintains the capital punishment statute because of the racially



disproportionate impact suggested by the Baldus study” (*McClesky*). Therefore, *McClesky*’s due process rights under the Fourteenth Amendment were not violated. Although there have been more recent cases that have partly used the Due Process Approach, their scope has been very narrow and apply only in a small number of death penalty cases.<sup>32</sup> As it stands, *McClesky* has been the last major attempt at restricting capital punishment through the Due Process Clause.

Post-*McClesky*, death penalty opponents began to rely on the Court’s more loose construction interpretation of the Eighth Amendment in an attempt to restrict capital punishment. In 2002 the Court reviewed *Atkins v. Virginia*, considering whether capital punishment is unconstitutional when applied to the mentally retarded, and if punishment is excessive judged by the standards that currently prevail.<sup>33</sup> Construing and applying the Eighth Amendment in light of society’s developing standards, the Court concluded that such punishment is excessive and that the Constitution “places a substantive restriction on the State’s power to take the life” of a mentally retarded offender (*Atkins*). The majority also held, “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society” (*Atkins*).<sup>34</sup> Using a more loose construction approach the majority relied on interpreting the Eighth Amendment according to contemporary standards of what constitutes “cruel and unusual” punishment.

The *Atkins* dissent, consisting of Chief Justice Rehnquist and Justices Scalia and Thomas, held to a more strict construction interpretation of the Eighth Amendment. The justices embraced the opinion that the question presented by this case is whether a national consensus deprives Virginia of the constitutional power to impose the death penalty on capital murder defendants like the petitioner. Writing separately, Chief Justice Rehnquist called attention to the “defects” in

the Court's decision to place weight on foreign laws, the views of professional and religious organizations, and opinion polls in reaching its conclusion (*Atkins*).<sup>35</sup> According to Rehnquist, making determinations about whether a punishment is “cruel and unusual” under the evolving standards of decency embraced by the Eighth Amendment, the Court has emphasized that legislation is the “clearest and most reliable objective evidence of contemporary values” (*Atkins*). In effect, Rehnquist does recognize that there are evolving standards of decency and these allow for the meaning of what is cruel and unusual to change over time. However, unlike the majority, Rehnquist holds that it is the province of the legislator—federal and state—to determine the meaning.<sup>36</sup> Further, the work product of legislatures and sentencing jury determinations—ought to be the sole indicators by which courts ascertain the contemporary American conceptions of decency for purposes of the Eighth Amendment.<sup>37</sup>

Capital punishment was further restricted in 2005 when the Court reviewed the case *Roper v. Simmons*. Reconsidering the decision made in *Stanford v. Kentucky* (1989),<sup>38</sup> the Court determined that the death penalty could not be applied to persons under the age of 18 at the time they committed their crime. Utilizing a more loose construction interpretation once more the majority argued that the Eighth Amendment’s provision against “cruel and unusual punishment” is applicable to the states through the Fourteenth Amendment Incorporation Doctrine. Relying on the Court’s decision in *Atkins*, the majority further held that the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. The right flows from the basic “precept of justice that punishment for crime should be graduated and proportioned to [the] offense” (*Roper*). Their opinion stated, “A majority of States have rejected the imposition of the death penalty on juvenile offenders under 18, and we now hold this is required by the Eighth Amendment” (*Roper*).<sup>39</sup> The Court’s determination that the death penalty is disproportionate

punishment for offenders under 18 “finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty” (*Roper*). Though the majority utilized foreign law in their decision, this utilization was not required, loose construction interpretation allows the court to use foreign law. It was the Court’s belief that this reality does not become controlling, for the task of interpreting the Eighth Amendment remains the responsibility of the Court.

Dissenting Justice O’Connor argued that, “The Court’s decision today establishes a categorical rule forbidding the execution of any offender for any crime committed before his 18<sup>th</sup> birthday, no matter how deliberate, wanton, or cruel the offense. Neither the objective evidence of contemporary societal values, nor the Court’s moral proportionality analysis, nor the two in tandem suffice to justify this ruling” (*Roper*). Although the Court found support for its decision in the fact that a majority of the States now disallow capital punishment of 17-year-old offenders, it refrained from asserting that its holding is compelled by a genuine “national consensus” (*Roper*).<sup>40</sup> O’Connor did agree with much of the Court’s description of the general principles that guide Eighth Amendment jurisprudence. The Amendment bars not only punishments that are inherently “barbaric,” but also those that are “excessive” in relation to the crime committed.”<sup>41</sup> However, O’Connor did not agree that capital punishment is a disproportionate penalty for juvenile offenders.<sup>42</sup>

Likewise, Justice Scalia along with Chief Justice Rehnquist and Justice Thomas argued for a more strict construction interpretation of the Eighth Amendment. Scalia vehemently wrote, “What a mockery today’s opinion makes of Hamilton’s expectation, announcing the Court’s conclusion that the meaning of our Constitution has changed over the past 15 years — not, mind you, that this Court’s decision 15 years ago was *wrong*, but that the Constitution *has changed*.”

The Court reaches this implausible result by purporting to advert, not to the original meaning of the Eighth Amendment, but to ‘the evolving standards of decency’ of our national society” (*Roper*, emphasis his).<sup>43</sup> The majority claimed an impossible assertion when it argued for a “national consensus” that affects the modern “standards of decency” and in effect the Court “throws overboard a proposition well established in our Eighth Amendment jurisprudence” (*Roper*). Further, it was Scalia’s opinion that judges are “ill equipped” to make legislative judgments as the majority attempted in this cases (*Roper*).<sup>44</sup>

More recently, in *Baze v. Rees* (2008) the Court ruled that Kentucky’s lethal injection procedure is consistent with the Eighth Amendment and does not violate the ban against “cruel and unusual” punishment. The Court affirmed the Kentucky Supreme Court’s ruling that a method of execution violates the Eighth Amendment only when it “creates a substantial risk of wanton and unnecessary infliction of pain, torture or lingering death” (*Baze*). It was held that lethal injection does not create such a risk.<sup>45</sup> Continuing, the Court wrote, “Kentucky’s decision to adhere to its protocol despite asserted risks, while adopting safeguards to protect against them, cannot be viewed as probative of the wanton infliction of pain under the Eighth Amendment” (*Baze*).<sup>46</sup> Kentucky’s lethal injection procedure was upheld because it provides sufficient safeguards that makes it one of the most humane forms of capital punishment, and therefore constitutional.

Dissenting Justice Ginsburg joined by Justice Souter, disputed the constitutionality of Kentucky’s protocol. They stated, “Kentucky’s protocol lacks basic safeguards used by other States to confirm that an inmate is unconscious before injection of the second and third drugs. I would vacate and remand with instructions to consider whether Kentucky’s omission of those safe-guards poses an untoward, readily avoidable risk of inflicting severe and unnecessary pain”

(*Baze*).<sup>47</sup> Currently, no clear standard for determining the constitutionality of a method of execution emerges from prior decisions. This is so because the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society” (*Atkins*). Whatever little light prior method-of-execution cases might shed is “thus dimmed by the passage of time” (*Baze*).<sup>48</sup>

There is a general consensus in the Court that capital punishment in and of itself is not cruel and unusual, and its opponents have been unable to use the Eighth Amendment to overturn capital punishment as such. Loose construction interpretation of the Eighth Amendment has been more successful in designating the execution of certain groups as cruel and unusual because of the evolving standards of decency doctrine. A more strict construction approach to the Fourteenth Amendment restrains due process and any changes may be accommodated by the states so that they may retain capital punishment.<sup>49</sup> Therefore, in upholding the constitutionality of capital punishment, the United States Supreme Court has utilized a strict construction interpretation of the Fourteenth Amendment’s Due Process Clause, which has led the opponents of capital punishment to abandon the Due Process Approach and look to the Eighth Amendment, for which the justices utilize a loose construction interpretation.

#### Endnotes

<sup>1</sup> Quote from George Orwell, *The Road to Wigan Pier* (*Quotes on Capital Punishment*, [http://www.notable-quotes.com/c/capital\\_punishment\\_quotes.html](http://www.notable-quotes.com/c/capital_punishment_quotes.html)).

<sup>2</sup> Capital punishment is defined as execution (death) for a criminal offense. Offenses are called “capital” since the defendant could lose his/her head (Latin for caput). The means of capital punishment used in the United States include lethal injection, electrocution, gas chamber,

hanging, and firing squad. All capital offenses require automatic appeals, which means that approximately 2,500 men and women are presently on “death row” awaiting their appeals or death. Crimes punishable by death vary from state to state. A charge of a capital offense usually means no bail will be allowed (Ducat, Craig R). See Appendices J and K for capital punishments and methods of execution by state.

<sup>3</sup> *Constitutional Interpretation*: how a particular court, in this case Supreme Court, determines whether an action of the legislature, executive or judiciary contravenes the Constitution. In his article *Constitutional Interpretation: Powers of government*, Craig R. Ducat mentions that the several modes of judicial review must “interconnect” three elements: the justification for the review of government power in question, the standard of constitutionality to be applied to the courts, and the method by which judges support the conclusion that a given governmental action does or does not violate the Constitution (Ducat 76). The power of constitutional interpretation is also referred to as judicial review, which was established in 1803 by the famous case of *Marbury v. Madison*. See Appendix B for Article III of the United States Constitution. See Appendices D and E for the Eighth and Fourteenth Amendments.

<sup>4</sup> The United Supreme Court interprets the Eighth Amendment of the United States Constitution when determining the constitutionality of the capital punishment during a particular case. The justices determine whether or not the instance of capital punishment has violated the Amendment’s provision against cruel and unusual punishment and evolving standards of decency. Cruel and unusual punishment is defined as, “governmental penalties against convicted criminal defendants which are barbaric, involve torture and/or shock the public morality” (Law.com Dictionary). See Appendix D for the Eighth Amendment.

<sup>5</sup> Strict Construction: Broad term for the traditional approach to constitutional interpretation. Constructional provisions are read literally, either permitting or restricting government actions (Ducat). Loose Construction: Based on the Necessary and Proper Clause and General Welfare Clause. It relies on broad interpretation of the Constitution and the powers of Congress. Sometimes loose constructionists debate with strict construction over what the Founders *intended* (Pervis).

<sup>6</sup> These dates refer to two cases, *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976), which will be further explored in this paper. In these cases the Eighth Amendment was applied to the states through the Fourteenth Amendment's Incorporation Doctrine, which will be explained further in the course of this essay. See Appendices D and E for the Eighth and Fourteenth Amendments. See Appendices Y-AA for Information about the death penalty prior to 1972.

<sup>7</sup> The doctrine of judicial review was not created by Chief Justice John Marshall, the doctrine had its origins in early 17<sup>th</sup> century England. The case merely solidified the doctrine as a power of the Court when it held that the Judiciary Act of 1789 violated Article III of the United States Constitution. See Appendix B for Article III and Appendix F for Section 13 of Judiciary Act of 1789.

<sup>8</sup> *The Federalist* tries to answer this question for the founding generations and subsequent generations, and the soundness of that answer has nothing to do with the personalities advancing it. *Federalist 1* presents the Constitution as a means to “the preservation of the Union and then enhancement of the nation’s liberty...dignity... and happiness” (Barber 36). Therefore, *The Federalist* embraces a positive constitutionalism. Regarding judicial power, in *Federalist 78* Publius famously argues that judicial review is not undemocratic because it implies constitutional supremacy rather than judicial supremacy. Constitutional supremacy as the

“supremacy of the higher law of ‘We the People’ embodied in the Constitution over the ordinary law of agents of the people represented in legislation” (Barber 55). Publius saw the federal judiciary as, “one of the instruments for making the public sensible of its true interests” (Barber 55).

<sup>9</sup>These forms are discussed by Sotirios Barber and James E. Fleming in their book, *Constitutional Interpretation: The Basic Questions*. The authors believe that the “philosophic approach” is the best or most defensible approach to Constitutional Interpretation. This approach will be discussed in a later portion of the essay.

<sup>10</sup>The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” In laymen’s terms, the rights of Americans include rights in addition to those enumerated. However, Black’s textualist point of view holds that the only constitutional rights are those enumerated in the text. He believes that is undemocratic for unelected judges to invent rights against majoritarian government beyond those rights specified in the text. Unwritten constitutional rights, like the right to privacy, are merely inventions of judges. The authors’ believe that Black’s claim to be governed by plain words turns out to be a way to escape responsibility for controversial choices (Barber 70).

<sup>11</sup>Original Intentions of the Framers of the Constitution can be either concrete or abstract. “Concrete” originalism holds that the framers’ intended *their* conceptions of justice even if (1) that conceptions was seen as unjust at the time, or if (2) it should prove unjust later, and if (3) intending injustice is itself unjust (Barber 84). While “abstract” originalism illustrates that the words and phrases of the constitutional document express a relatively clear set of intentions or meanings, *if* by meanings the Framers meant general concepts and ideas and *if* by intentions they



meant abstract intentions. Barber and Fleming assert that because constitutional provisions like due process are expressed as general concepts, the constitutional text itself is evidence that the framers' intentions were abstract. Thus, the Constitution does not define its terms or give examples of their proper applications (Barber 83). Robert Bork is a supporter of intentionalism for judges. Bork affirms that intentionalism would be mandatory for judges even if the Framers had not intended intentionalism for judges (Barber 81).

<sup>12</sup> For example, according to John Hart Ely, a best-known structuralist, a woman does not have a constitutional right to an abortion because the Constitution's "open-ended" provisions ("due process," "equal protection" and the Ninth Amendment) should include only those "unremunerated" rights essential to representative democracy, which he argues is the Constitution's leading structural value (Barber 118). Similarly, *McCulloch v. Maryland* (1819) represents differences in opinions about the nature of American federalism (national federalism versus states' rights federalism) that persist today and reflect fundamental disagreements on the "basic normative" properties of the Constitution (Barber 118). Barber and Fleming write that the question is not what the Constitution means as a whole; it is what we ought to say it means.

<sup>13</sup> Marshall and other Federalists favored this mode of constitutional interpretation. Loose construction allows the government to go beyond Article I Section 8 restrictions. Marshall believed that the government's actions should be aimed at exercising its Article I powers. See Appendix A for Article I Section 8 of the Constitution.

<sup>14</sup> The approach favored by Sotirios Barber and James E. Fleming, authors of *Constitutional Interpretation: The Basic Question*. They favor the broader "philosophic approach" to "moral reading" because they believe that fidelity to the Constitution requires, "a reliance on the social sciences" as well as the "fusion of constitutional law and moral theory"

(from Ronald Dworkin, *Taking Rights Seriously*. Cambridge, MA: Harvard University Press, 1997, 149).

<sup>15</sup> Barber and Fleming propose that good-faith constitutional interpretation requires a willingness to change our minds about the major and minor premises of past constitutional interpretations. There is a need to strive for (1) morally and/or scientifically sound understandings of constitutional provisions that appear in the major premises of legal syllogisms, and (2) true or sound accounts of the world that appear in minor premises. Interpretation requires that judges and other interpreters make up their own minds about constitutional meaning in a “spirit of self-critical striving to realize our constitutional commitments and to interpret the Constitution to make it the best it can be” (Barber xiii). For example, the change from *Plessy* to *Brown*, as well as other important changes in constitutional interpretation, illustrates the philosophic approach. The goal of the philosophic approach is truth or best understanding of constitutional commitments as distinguished from opinion. Also, the approach embraces other interpretation approaches discussed by the authors.

<sup>16</sup> An example of such precedent is the “separate but equal” doctrine of the Equal Protection Clause, created in *Plessy v. Ferguson* (1896), which was later overturned by *Brown v. Board of Education* in 1954.

<sup>17</sup> This is so according to Barber and Fleming because constitutional law is an area where it is generally agreed that courts can err about constitutional meaning and later courts may legitimately cancel the precedential value of old cases by overruling them. Precedents characteristically come in lines of decisions or series, and judges who would follow precedent typically ask what a whole series says about the law (Barber 136). This was the case when the Court considered *Brown v. Board of Education* (1954), in which stare decisis pointed to *Plessy*

and *Sweatt v. Painter* (1950), which further elaborated the doctrine of “separate but equal.” *Brown* ultimately overruled *Plessy* and *Sweatt*. Stare decisis cannot eliminate controversial choices in hard cases; doctrinalism cannot avoid the burdens and responsibilities of philosophic reflection and choice in such cases (Barber 140).

<sup>18</sup> Stare decisis is a legal policy that means letting the precedent stand as decided.

<sup>19</sup> Barber and Fleming break down the consensualist view using abortion as an example, which is another very controversial topic like capital punishment. The Major Premise breaks down as; Liberty (as guaranteed by the Due Process Clause of the 14<sup>th</sup> Amendment) includes only what a current social consensus says it includes. The Minor Premise would then be; a current social consensus supports no more than a liberty to decide to have an abortion in cases of rape, incest, or serious fetal deformity. The conclusion would therefore be; liberty (at present) includes a liberty to have an abortion only in those three circumstances.

<sup>20</sup> Also, in Virginia, where slavery prevailed over religion, property crimes and a separate code for slaves was emphasized as death penalty crimes. In Pennsylvania however, Quaker sentiment strongly opposed capital punishment and the legislature made murder alone a capital crime.

<sup>21</sup> Quote from historian Louis Masur (Quoted Oshinsky 5).

<sup>22</sup> During the 1800s executions declined along with the public spectacle that once surrounded them. By the Civil War many states including Michigan, Rhode Island, and Wisconsin had abolished the death penalty, while others had reduced the number of capital crimes. Any further reform or outright abolitions would be annihilated by the Civil War and the aftermath of Reconstruction, the “lawlessness of Reconstruction further convinced Americans of all regions of the need for extreme punishment to restore social order” (Oshinsky 8). However,

the Progressive Era of the early 1900s brought with it the abolition of the death penalty in many state, but the Great Depression of the 1930s, with its “fear of crime and disorder” would raise the number of executions to new levels (Oshinsky 8). Unlike the North, the South seemed “historically averse to national concerns” (Oshinsky9). Oshinsky writes, “But what truly defined the South, and isolated it from the national mainstream, was the legacy of slavery” (Oshinsky 9-10). The South’s reliance on capital punishment had been geared toward “racial control” and a continuation of its “race-based vigilante tradition” (Oshinsky10).

<sup>23</sup> See Appendices C and D for the Fifth and Eighth Amendments. See Appendix BB for some of the Founders’ thoughts on capital punishment.

<sup>24</sup> It is now widely held that most of the Bill of Rights is incorporated so as to apply to the states by virtue of the Due Process Clause of the Fourteenth Amendment. The Incorporation Doctrine was created after the Fourteenth Amendment, and at that time the Bill of Rights was held initially to apply only to the federal government (*Barron v. Baltimore* 1833). See Appendix L for a list of federal capital offenses.

<sup>25</sup> Latin for “by the court,” each justice wrote a separate opinion; none were persuaded to join with another. Justices Brennan, Douglas, and Marshall were ready to strike down capital punishment on Eighth Amendment grounds. Nixon appointees Burger, Blackmun, Powell, and Rehnquist were on the opposite end, while Stewart and White were somewhere in the middle. Thurgood Marshall wrote, “I cannot believe that at this stage in our history, the American people would ever knowingly support purposeless vengeance” (Oshinsky 50). Brennan’s opinion restated his view that a punishment is “cruel and unusual if it does not comport with human dignity and inflicts pointless suffering on the individual” (Oshinsky 51).

<sup>26</sup> In his opinion Justice Stewart referred to *Wilkerson v. Utah* (1879), in which the

justices ruled, “[I]t is safe to affirm that punishments of torture . . . and all others in the same line of unnecessary cruelty, are forbidden by that amendment . . .” Stewart continued on to state that the Court has not confined the prohibition embodied in the Eighth Amendment to “barbarous” methods that were generally outlawed in the 18th century. Instead, the Amendment has been interpreted in a flexible and dynamic manner. Thus the Clause forbidding “cruel and unusual punishments is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice” (*Furman*).

<sup>27</sup> In his dissent Justice Brennan wrote, “The fatal constitutional infirmity in the punishment of death is that it treats members of the human race as nonhumans, as objects to be toyed with and discarded. [It is] thus inconsistent with the fundamental premise of the Clause [forbidding cruel and unusual punishment] that even the vilest criminal remains a human being possessed of common human dignity. As such it is a penalty that subjects the individual to a fate forbidden by the principle of civilized treatment guaranteed by the [Clause]. I therefore would hold, on that ground alone, that death is today a cruel and unusual punishment prohibited by the Clause. Justice of this kind is obviously no less shocking than the crime itself, and the new ‘official’ murder, far from offering redress for the offense committed against society, adds instead a second defilement to the first” (*Gregg v. Georgia*). Justice Marshall held loyal to the view he formed in *Furman v. Georgia* that the death penalty is a “cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.” In *Furman* Marshall concluded that the death penalty is constitutionally invalid for two reasons, “First, the death penalty is excessive. And second, the American people, fully informed as to the purposes of the death penalty and its liabilities, would in my view reject it as morally unacceptable” (*Gregg v. Georgia*).

<sup>28</sup>The problem with the Due Process Approach is that it invites the government to change procedure in order to circumvent restrictions. The Eighth Amendment's cruel and unusual provision is more restrictive. In *Gregg* the Court determined that new death penalty procedures were not cruel and unusual, hence the Eighth Amendment was also applicable to the case.

<sup>29</sup> McClesky was challenging the *Baldus study*, two sophisticated statistical studies that examined over 2,000 murder cases that occurred in Georgia during the 1970's. The raw numbers collected by Professor Baldus indicated that defendants charged with killing white persons received the death penalty in 11% of the cases, but defendants charged with killing blacks received the death penalty in only 1% of the cases. The raw numbers also indicated a reverse racial disparity according to the race of the defendant: 4% of the black defendants received the death penalty, as opposed to 7% of the white defendants. It was indicated that black defendants, such as McClesky, who kill white victims have the greatest likelihood of receiving the death penalty. McClesky claimed that the *Baldus study* demonstrated that he was discriminated against because of his race and because of the race of his victim. In its broadest form, McClesky's claim of discrimination extends to every actor in the Georgia capital sentencing process, from the prosecutor who sought the death penalty and the jury that imposed the sentence, to the State itself that enacted the capital punishment statute and allows it to remain in effect despite its allegedly discriminatory application (*McClesky v. Kemp* 1978). See Appendix M for demographic characteristics of prisoners executed and Appendix P for the number persons executed by race/method.

<sup>30</sup> *Gregg v. Georgia* (1976)

<sup>31</sup> *Pulley v. Harris, supra, at 43.*

<sup>32</sup> The most recent case is *Panetti v. Quarterman* (2007). In the case the Court ruled on

whether the Eighth Amendment permits the execution of a prisoner whose mental illness deprives him of “the mental capacity to understand that [he] is being executed as a punishment for a crime.” Using the Due Process Approach, *Panetti* illustrates a minor attempt at extending Due Process by trying to stretch beyond the limits of the Antiterrorism and Effective Death Penalty Act of 1996. The rest of the case was an Eighth Amendment case that referred to *Ford v. Wainwright* (1986), which prohibits the execution of the mentally ill. See Appendix G: More Post 1972 Supreme Court Capital Punishment Rulings.

<sup>33</sup> The Eighth Amendment succinctly prohibits “[e]xcessive” sanctions. It provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” (*Atkins v. Virginia*). See Appendix V for Death Penalty Public Opinion Polls.

<sup>34</sup> The majority utilized a loose construction interpretation for their holdings. They further stated, “Having pinpointed that the ‘clearest and most reliable objective’ evidence of contemporary values is the legislation enacted by the country’s legislatures. The practice (of executing mentally retarded offenders), therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it... As was our approach in *Ford v. Wainwright*, 477 U.S. 399 (1986), with regard to insanity, “we leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences” (*Atkins*). Both “evolving standards of decency” and loose construction constitutional interpretation allow for the definition of what is cruel and unusual to change over time. This is why both principles fit so closely together. See Appendix R for Information about Justices Who Authored Important Majority Opinions.

<sup>35</sup> Rehnquist wrote, “The Court’s suggestion that these sources are relevant to the

constitutional question finds little support in our precedents and, in my view, is antithetical to considerations of federalism, which instruct that any permanent prohibition upon all units of democratic government must [be apparent] in the operative acts (laws and the application of laws) that the people have approved” (*Stanford v. Kentucky*, 492 U.S. 361, 377 1989). See Appendix S for Information about Justices Who Authored Major Dissenting Opinions.

<sup>36</sup> The liberal, moderate, and conservative members of the Court, such as Kennedy and Rehnquist, believe in evolving standards of decency. However, the liberal members hold that it is the responsibility of the Court to decide how the standards affect the definition of cruel and unusual, while the conservatives hold that it is the duty of the legislator.

<sup>37</sup> Chief Justice Rehnquist continued, “More importantly, however, they can be reconciled with the undeniable precepts that the democratic branches of government and individual sentencing juries are, by design, better suited than courts to evaluating and giving effect to the complex societal and moral considerations that inform the selection of publicly acceptable criminal punishments” (*Atkins*). The ruling contained aspects of both strict and loose construction interpretation of capital punishment. Aspects of strict construction allows for democratic determination of due process while loose allows the standards of evolving decency to change over time—what people think is cruel and unusual.

<sup>38</sup> In *Stanford v. Kentucky* (1989) the Court determined whether it is permissible under the Eighth and Fourteenth Amendments of the Constitution to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime. A divided Court rejected the proposition that the Constitution bars capital punishment for juvenile offenders in this age group. See Appendix V for Death Penalty Public Opinion Polls.

<sup>39</sup> Juveniles were not to be classified as “the worst sort of offender” because according to



the majority, “Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders: [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means. Their irresponsible conduct is not as morally reprehensible as that of an adult” (*Roper*).

<sup>40</sup> O’Connor wrote, “Indeed, the evidence before us fails to demonstrate conclusively that any such consensus has emerged in the brief period since we upheld the constitutionality of this practice in *Stanford v. Kentucky*, 492 U.S. 361 (1989). But the Court has adduced no evidence impeaching the seemingly reasonable conclusion reached by many state legislatures: that at least *some* 17-year-old murderers are sufficiently mature to deserve the death penalty in an appropriate case. Nor has it been shown that capital sentencing juries are incapable of accurately assessing a youthful defendant’s maturity or of giving due weight to the mitigating characteristics associated with youth” (*Roper*). See Appendix O for statistics on offenders’ age at time of arrest for their capital offense.

<sup>41</sup> *Coker v. Georgia*, 433 U.S. 584, 592 (1977), plurality opinion

<sup>42</sup> O’Connor stated, “The proportionality issues raised by the Court clearly implicate Eighth Amendment concerns. But these concerns may properly be addressed not by means of an

arbitrary, categorical age-based rule, but rather through individualized sentencing in which juries are required to give appropriate mitigating weight to the defendant's immaturity, his susceptibility to outside pressures, his cognizance of the consequences of his actions, and so forth. In that way the constitutional response can be tailored to the specific problem it is meant to remedy" (*Roper*).

<sup>43</sup> Scalia continued, "Because I do not believe that the meaning of our Eighth Amendment, any more than the meaning of other provisions of our Constitution, should be determined by the subjective views of five Members of this Court and like-minded foreigners, I dissent" (*Roper*). Scalia is a "faint-hearted" originalist when it comes to cruel and unusual punishment. It is Scalia's belief that originalism is the "lesser evil" to nonoriginalist constitutional interpretation because it is more compatible with the nature and purpose of the Constitution (from his article, "Originalism: The Lesser Evil"). See Appendix U for Global Death Penalty Use in 2009.

<sup>44</sup> Scalia wrote, "*None* of our cases dealing with an alleged constitutional limitation upon the death penalty has counted, as States supporting a consensus in favor of that limitation, States that have eliminated the death penalty entirely. What might be relevant, perhaps, is how many of those States permit 16- and 17-year-old offenders to be treated as adults with respect to noncapital offenses. To support its opinion that States should be prohibited from imposing the death penalty on anyone who committed murder before age 18, the Court looks to scientific and sociological studies, picking and choosing those that support its position. It never explains why those particular studies are methodologically sound; none was ever entered into evidence or tested in an adversarial proceeding" (*Roper*). The "proposition" Scalia refers to is the idea that in determining whether a punishment is cruel and unusual the Court must look to the "evolving

standards of decency,” not a “national consensus.” This is so due to the fact that founding era capital punishment methods are not proposed as death penalty methods today. In part Scalia accepts the idea of evolving standards of decency. See Appendix T for Number of Executions by State since 1976.

<sup>45</sup> In their argument the majority wrote, “The asserted problems related to the IV lines do not establish a sufficiently substantial risk of harm to meet the requirements of the Eighth Amendment. Kentucky has put in place several important safeguards to ensure that an adequate dose of sodium thiopental is delivered to the condemned prisoner. Nor does Kentucky’s failure to adopt petitioners’ proposed alternatives demonstrate that the Commonwealth’s execution procedure is cruel and unusual. Kentucky has adopted a method of execution believed to be the most humane available, one it shares with 35 other States” (*Baze*).

<sup>46</sup> “Our society has nonetheless steadily moved to more humane methods of carrying out capital punishment. The firing squad, hanging, the electric chair, and the gas chamber have each in turn given way to more humane methods, culminating in today’s consensus on lethal injection” (*Baze*). See Appendix K for Methods of Execution by State.

<sup>47</sup> The dissent’s argument rested upon the fact that the Court has considered the constitutionality of a specific method of execution on only three prior occasions. Those cases, and other decisions cited by the parties and *amici*, provide little guidance on the standard that should govern petitioner’s challenge to Kentucky’s lethal injection protocol. In *Wilkerson v. Utah*, 99 U.S. 130 (1879), the Court held that death by firing squad did not rank among the “cruel and unusual punishments” banned by the Eighth Amendment. In so ruling, the Court did not endeavor “to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted.” Next, in *In re Kemmler*, 136 U.S. 436

(1890), death by electrocution was the assailed method of execution. The Court reiterated that the Eighth Amendment prohibits “torture” and “lingering death.” The word “cruel,” the Court further observed, “implies . . . something inhuman . . . something more than the mere extinguishment of life.” Those statements, however, were made *en passant*. *Kemmler's* actual holding was that the Eighth Amendment does not apply to the States, a proposition the Court since repudiated, see, *e.g.*, *Robinson v. California*, 370 U.S. 660 (1962). Finally, in *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947), the Court rejected Eighth and Fourteenth Amendment challenges to a re-electrocution following an earlier attempt that failed to cause death (*Baze*). See Appendix CC for Reports on the Cruelty of Certain Execution Methods.

<sup>48</sup> Closing Ginsburg wrote, “I agree with petitioners and the plurality that the degree of risk, magnitude of pain, and availability of alternatives must be considered. I part ways with the plurality, however, to the extent its “substantial risk” test sets a fixed threshold for the first factor. The three factors are interrelated; a strong showing on one reduces the importance of the others. Proof of “a slightly or marginally safer alternative” is, as the plurality notes, insufficient. But if readily available measures can materially increase the likelihood that the protocol will cause no pain, a State fails to adhere to contemporary standards of decency if it declines to employ those measures (*Baze*).

<sup>49</sup> The Fourteenth Amendment prescribes established due process procedure, and when utilized to consider the constitutionality of capital punishment it looks more to what the government is doing. The Eighth Amendment on the other hand looks at what the criminal is—mentally retarded or a juvenile, for example. It is easier to attack capital punishment through the Eighth Amendment because once it has been determined that a certain category of people are not

subject to capital punishment, the states cannot change the rule. See Appendix W for a list of Pro-Death Penalty Organizations and Appendix X for a list of Anti-Death Penalty Organizations. See Appendix DD for a Pro-Death Penalty Article.

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Appendix Z.....	Executions Prior to 1972 by Year
Appendix AA.....	Executions Prior to 1972 by Race
Appendix BB.....	Founders' Thoughts on Capital Punishment
Appendix CC.....	Reports on Cruelty of Certain Execution Methods
Appendix DD.....	Pro-Death Penalty Article

Appendix A  
Article I Section 8 of the United States Constitution

**Article I Section 8:**

**Section. 8.**

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Source: The United States Constitution.

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

## Appendix B

### Article III of the United States Constitution

#### **Article III-**

**Section 1-** The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

**Section 2-** The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;-- between a State and Citizens of another State,--between Citizens of different States,--between Citizens of the same State

claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Source: The United States Constitution.

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

Appendix C  
The Fifth Amendment of the United States Constitution

**Fifth Amendment:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, ***nor be deprived of life, liberty, or property, without due process of law***; nor shall private property be taken for public use, without just compensation.

Source: The United States Constitution, The Bill of Rights

Appendix D  
The Eighth Amendment of the United States Constitution

**Eighth Amendment:**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[Ratified 1791]

Source: The United States Constitution, The Bill of Rights

Appendix E

The Fourteenth Amendment of the United States Constitution, Sec. 1

**Fourteenth Amendment- Section 1:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.***

Source: The United States Constitution.

[http://www.archives.gov/exhibits/charters/constitution\\_amendments\\_11-27.html](http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html)

Appendix F  
Section 13 of the Judiciary Act of 1789

**Section 13 of the Judiciary Act of 1789:**

The Supreme Court shall have the exclusive jurisdiction of all controversies of civil nature, where a state is a party, except between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction... and shall have the authority to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

Source: Ducat, Craig R. Constitutional Interpretation: Powers of government. Cengage Learning, 2008. 9<sup>th</sup> ed.

Appendix G  
More Post 1972 Supreme Court Capital Punishment Rulings

CASE:

*Woodson v. North Carolina* (1976)

*Coker v. Georgia* (1977)

RULING:

Mandatory death sentences for first-degree murder violate the 8th and 14th Amendments (Due Process Approach).

The 8th Amendment prohibits the implementation of the death penalty for rape of an adult when the victim is not killed (Eighth Amendment Approach).



<i>Lockett v. Ohio</i> (1978)	Held that states may not limit the mitigating factors juries consider in imposing the death sentence; must allow for individualized sentencing (Due Process Approach).
<i>Enmund v. Florida</i> (1982)	Held that the Eighth Amendment forbids the imposition of capital punishment on those who aid and abet, but do not commit, a felony in which murder is also committed (Due Process Approach).
<i>Spaziano v. Florida</i> (1984)	The Court held that Florida's law allowing a judge to override the jury's death recommendation of life in prison did not constitute double jeopardy, and did not violate the constitutional requirement of reliability in capital sentencing (Due Process Approach).
<i>Ford v. Wainwright</i> (1986)	The Court held that the execution of the insane was unconstitutional (Eighth Amendment Approach-restrict capital punishment).
<i>Thompson v. Oklahoma</i> (1988)	The Court held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 16 when their crimes were committed (Due Process Approach)
<i>Felker v. Turpin</i> (1996)	A unanimous Court upheld the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 <sup>1</sup> (Due Process Approach-strengthening of due process).
<i>Buchanan v. Angelone</i> (1997)	The Eighth Amendment does not require that a capital jury be instructed on the concept of mitigating evidence generally, or on particular statutory mitigating factors (Eighth Amendment Approach).
<i>Panetti v. Quarterman</i> (2007)	The Court ruled that the Eighth Amendment prohibits the execution of a prisoner whose mental illness deprives him of "the mental capacity to understand that [he] is being executed as a punishment for a crime" (Due Process Approach).
<i>Kennedy v. Louisiana</i> (2008)	The Court struck down as unconstitutional a Louisiana statute that allowed the death penalty for the rape of a child where the victim did not die. "Based both on consensus and our own independent

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<sup>1</sup> The law limits state prisoners' filings second or successive applications for writs of *habeas corpus* if no new claim is presented. The act also creates a "gate-keeping" mechanism in requiring a three-judge panel to review an inmate's second or successive *habeas* applications and authorizes their denial without the possibility of further appeal.

judgment, our holding is that a death sentence for one who raped but did not kill a child, and who did not intend to assist another in killing the child, is unconstitutional under the Eighth and Fourteenth Amendments."

Source: O'Brien, David M. *Constitutional Law and Politics*. Vol. 2 7 ed. Pages 1222-1225

Appendix H

## Death Penalty Fact Sheet (The Death Penalty Information Center)

1015 18<sup>th</sup> Street NW, Suite 704

Washington, DC 20036

Phone: (202) 289 - 2275

Fax: (202) 289 - 7336

Email: [dpic@deathpenaltyinfo.org](mailto:dpic@deathpenaltyinfo.org)<http://www.deathpenaltyinfo.org>

# DEATH PENALTY INFORMATION CENTER

## Facts about the Death Penalty

Updated October 25, 2010

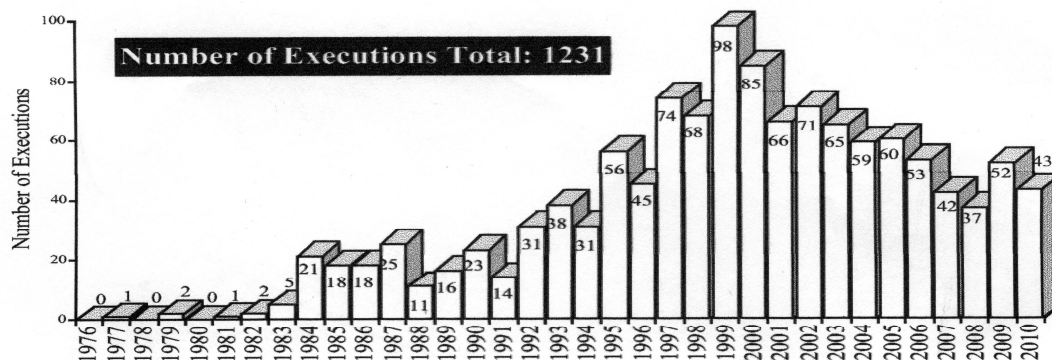
### STATES WITH THE DEATH PENALTY (35)

Alabama	Florida	Louisiana	New Hampshire	South Dakota
Arizona	Georgia	Maryland	North Carolina	Tennessee
Arkansas	Idaho	Mississippi	Ohio	Texas
California	Illinois	Missouri	Oklahoma	Utah
Colorado	Indiana	Montana	Oregon	Virginia
Connecticut	Kansas	Nebraska	Pennsylvania	Washington
Delaware	Kentucky	Nevada	South Carolina	Wyoming
				- plus U.S. Gov't U.S. Military

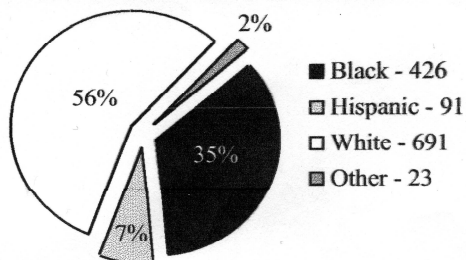
### STATES WITHOUT THE DEATH PENALTY (15)

Alaska	Massachusetts	New Mexico*	Vermont	- plus
Hawaii	Michigan	New York	West Virginia	District of Columbia
Iowa	Minnesota	North Dakota	Wisconsin	
Maine	New Jersey	Rhode Island		

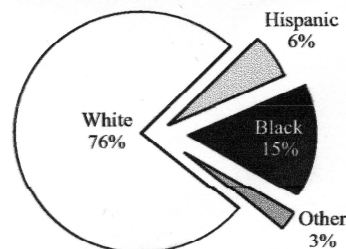
\*Two inmates remain on death row in NM.



### Race of Defendants Executed



### Race of Victim in Death Penalty Cases

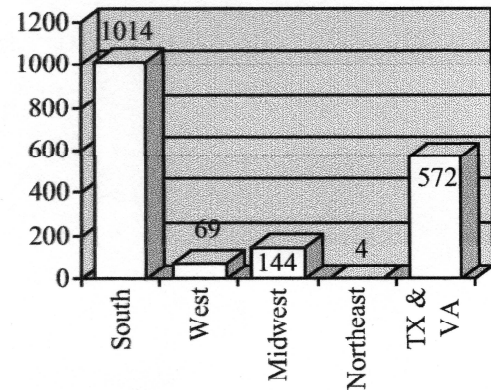


Over 75% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of murder victims generally are white.

## NUMBER OF EXECUTIONS BY STATE SINCE 1976

	Total	2010	2009		Total	2010	2009
Texas	464	17	24	Illinois	12	0	0
Virginia	108	3	3	Nevada	12	0	0
Oklahoma	93	2	3	Utah	7	1	0
Florida	69	1	2	Tennessee	6	0	2
Missouri	67	0	1	Maryland	5	0	0
Georgia	48	2	3	Washington	5	1	0
Alabama	48	4	6	Nebraska	3	0	0
N. Carolina	43	0	0	Pennsylvania	3	0	0
S. Carolina	42	0	2	Kentucky	3	0	0
Ohio	41	8	5	Montana	3	0	0
Louisiana	28	1	0	Oregon	2	0	0
Arkansas	27	0	0	Connecticut	1	0	0
Arizona	23	0	0	Idaho	1	0	0
Indiana	20	0	1	New Mexico	1	0	0
Delaware	14	0	0	Colorado	1	0	0
California	13	0	0	Wyoming	1	0	0
Mississippi	13	3	0	South Dakota	1	0	0
				US Gov't	3	0	0

## Execution By Region\*



\*Federal executions are listed in the region in which the crime was committed.

## DEATH SENTENCING

The number of death sentences per year has dropped dramatically since 1999.

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Sentences	295	328	326	323	281	306	284	235	167	169	154	140	138	122	119	111	106*

Source: Bureau of Justice Statistics: "Capital Punishment 2008." \*Estimate based on DPIC's research.

## JUVENILES

- In 2005, the Supreme Court in *Roper v. Simmons* struck down the death penalty for juveniles. 22 defendants had been executed for crimes committed as juveniles since 1976.

## MENTAL DISABILITIES

- Intellectual Disabilities:** In 2002, the Supreme Court held in *Atkins v. Virginia* that it is unconstitutional to execute defendants with 'mental retardation.'
- Mental Illness:** The American Psychiatric Association, the American Psychological Association, the National Alliance for the Mentally Ill, and the American Bar Association have endorsed resolutions calling for an exemption of the severely mentally ill.

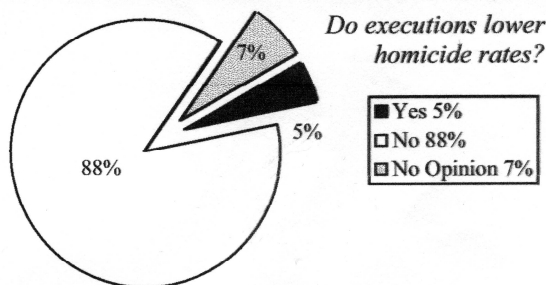
## WOMEN

- There were 61 women on death row as of January 1, 2010. This constitutes 1.9% of the total death row population. 12 women have been executed since 1976. (NAACP Legal Defense Fund, January 1, 2010)

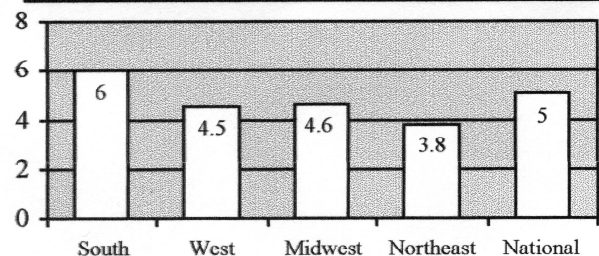
## DETERRENCE

- According to a survey of the former and present presidents of the country's top academic criminological societies, **88% of these experts rejected the notion that the death penalty acts as a deterrent to murder.** (Radelet & Lacock, 2009)
- Consistent with previous years, the 2009 FBI Uniform Crime Report showed that **the South had the highest murder rate. The South accounts for over 80% of executions.** The Northeast, which has less than 1% of all executions, again had the lowest murder rate.

## Criminologists View of Deterrence



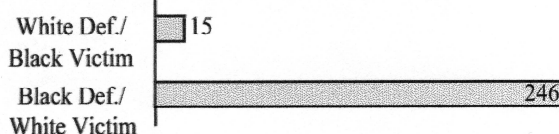
## Murder Rates per 100,000 - 2009



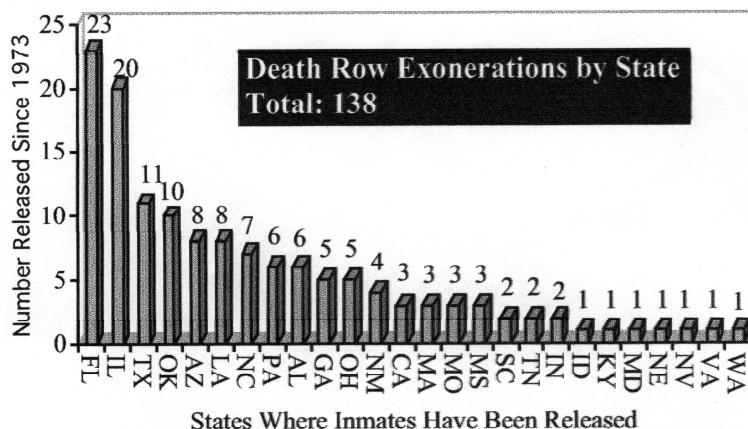
## Recent Studies on Race

- In 96% of the states where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. (Prof. David Baldus report to the ABA, 1998).
- 98% of the chief district attorneys in death penalty states are white; only 1% are black. (Prof. Jeffrey Pokorak, Cornell Law Review, 1998).
- A comprehensive study of the death penalty in North Carolina found that the odds of receiving a death sentence rose by 3.5 times among those defendants whose victims were white. (Prof. Jack Boger and Dr. Isaac Unah, University of North Carolina, 2001).
- A study in California found that those who killed whites were over 3 times more likely to be sentenced to death than those who killed blacks and over 4 times more likely than those who killed Latinos. (Pierce & Radelet, Santa Clara Law Review 2005).

## Persons Executed for Interracial Murders



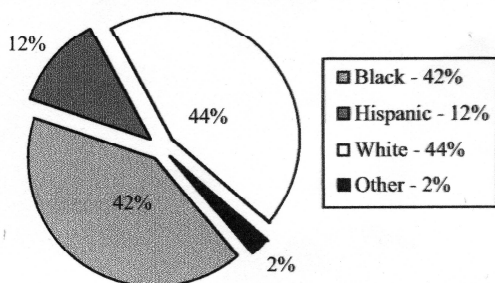
## Innocence



Since 1973, over 130 people have been released from death row with evidence of their innocence. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, Oct. 1993, with updates from DPIC).

From 1973-1999, there was an average of 3.1 exonerations per year. From 2000-2007, there has been an average of 5 exonerations per year.

## Race of Death Row Inmates



## DEATH ROW INMATES BY STATE: January 1, 2010

California	697	S. Carolina	63	Connecticut	10
Florida	398	Mississippi	61	Kansas	10
Texas	337	Missouri	61	Utah	10
Pennsylvania	222	U.S. Gov't	59	Washington	9
Alabama	201	Arkansas	42	U.S. Military	8
Ohio	168	Kentucky	35	Maryland	5
N. Carolina	167	Oregon	32	S. Dakota	3
Arizona	135	Delaware	19	Colorado	3
Georgia	106	Idaho	17	Montana	2
Tennessee	90	Indiana	15	New Mexico	2
Louisiana	85	Virginia	15	Wyoming	1
Oklahoma	84	Illinois	15	N. Hampshire	1
Nevada	78	Nebraska	11	<b>TOTAL</b>	<b>3261</b>

**Race of Death Row Inmates and Death Row Inmates by State Source:** NAACP LDF "Death Row, U.S.A." (January 1, 2010)

When added, the total number of death row inmates by state is slightly higher because some prisoners are sentenced to death in more than one state.

## EXECUTIONS SINCE 1976 BY METHOD USED

1057	Lethal Injection	36 states plus the US government use lethal injection as their primary method. Some
157	Electrocution	states utilizing lethal injection have other methods available as backups. Though New
11	Gas Chamber	Mexico abolished the death penalty in 2009, the act was not retroactive, leaving two
3	Hanging	prisoners on death row and its lethal injection protocol intact.
3	Firing Squad	

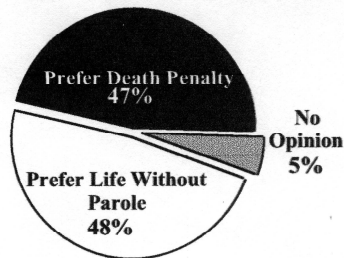
## FINANCIAL FACTS ABOUT THE DEATH PENALTY

- The California death penalty system costs taxpayers \$114 million per year beyond the costs of keeping convicts locked up for life. Taxpayers have paid more than \$250 million for each of the state's executions. (L.A. Times, March 6, 2005)
- In Kansas, the costs of capital cases are 70% more expensive than comparable non-capital cases, including the costs of incarceration. (Kansas Performance Audit Report, December 2003).
- In Maryland, an average death penalty case resulting in a death sentence costs approximately \$3 million. The eventual costs to Maryland taxpayers for cases pursued 1978-1999 will be \$186 million. Five executions have resulted. (Urban Institute 2008).
- The most comprehensive study in the country found that the death penalty costs North Carolina \$2.16 million per execution over the costs of sentencing murderers to life imprisonment. The majority of those costs occur at the trial level. (Duke University, May 1993).
- Enforcing the death penalty costs Florida \$51 million a year above what it would cost to punish all first-degree murderers with life in prison without parole. Based on the 44 executions Florida had carried out since 1976, that amounts to a cost of \$24 million for each execution. (Palm Beach Post, January 4, 2000).
- In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. (Dallas Morning News, March 8, 1992).

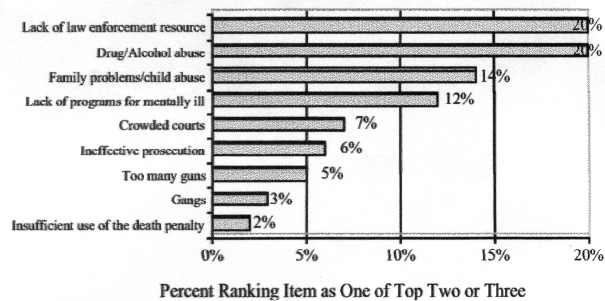
## PUBLIC OPINION

- The May 2006 Gallup Poll found that overall support of the death penalty was 65% (down from 80% in 1994). The same poll revealed that when respondents are given the choice of life without parole as an alternate sentencing option, more choose life without parole (48%) than the death penalty (47%).
- A 2009 poll commissioned by DPIC found police chiefs ranked the death penalty **last** among ways to reduce violent crime. The police chiefs also considered the death penalty the **least efficient** use of taxpayers' money.

### Support for Life Without Parole



### What Interferes with Effective Law Enforcement?



The **Death Penalty Information Center** has available more extensive reports on a variety of issues, including:

- "The Death Penalty in 2009: Year-End Report" (December 2009)
- "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis" (October 2009)
- "The Death Penalty in 2008: A Year End Report" (December 2008)
- "A Crisis of Confidence: Americans' Doubts About the Death Penalty" (2007)
- "Blind Justice: Juries Deciding Life and Death with Only Half the Truth" (2005)
- "Innocence and the Crisis in the American Death Penalty" (2004)
- "International Perspectives on the Death Penalty: A Costly Isolation for the U.S." (1999)
- "The Death Penalty in Black & White: Who Lives, Who Dies, Who Decides" (1998)
- "Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent" (1997)
- "Killing for Votes: The Dangers of Politicizing the Death Penalty Process" (1996)
- "Twenty Years of Capital Punishment: A Re-evaluation" (1996)
- "With Justice for Few: The Growing Crisis in Death Penalty Representation" (1995)
- "On the Front Line: Law Enforcement Views on the Death Penalty" (1995)
- "The Future of the Death Penalty in the United States: A Texas-Sized Crisis" (1994)

Source: Death Penalty Information Center. <http://www.deathpenaltyinfo.org/united-states>

supreme-court-decisions-1972-1996



## Appendix I

*Capital Punishment on Trial: Table Executions (1930-1967)***Executions and Homicides in the United States, 1930-1967**

Year	Five-Year Average	
	Executions	Homicides
1930-1934	155	11,398
1935-1939	178	9,565
1940-1944	129	7,425
1945-1949	128	8,264
1950-1954	83	7,773
1955-1959	61	7,727
1960-1964	36	8,983
1964-1967	3	11,870

{ 11 }

Source: Oshinsky, David M. *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America*. University Press of Kansas 2010.

## Appendix J

Bureau of Justice Statistics: Table- Capital Punishment by State, 2007

**Capital Punishment, 2007 - Statistical Tables****Table 1. Capital offenses by State, 2007**

State	Offense
Alabama	Intentional murder with 18 aggravating factors (Ala. Stat. Ann. 13A-5-40(a)(1)-(18)).

<b>Arizona</b>	First-degree murder accompanied by at least 1 of 14 Aggravating factors (A.R.S. § 13-703(F)).
<b>Arkansas</b>	Capital murder (Ark. Code Ann. 5-10-101) with a finding of at least 1 of 10 aggravating circumstances; treason. <b>Revision:</b> Amended the definition of capital murder to include murder committed in the course of robbery, aggravated robbery, residential burglary, or commercial burglary (Ark. Cod Ann. § 5-10-101 (Supp. 2007)), effective 7/31/2007.
<b>California</b>	First-degree murder with special circumstances; train wrecking; treason; perjury causing execution.
<b>Colorado</b>	First-degree murder with at least 1 of 17 aggravating factors; first-degree kidnapping resulting in death; treason.
<b>Connecticut</b>	Capital felony with 8 forms of aggravated homicide (C.G.S. § 53a-54b).
<b>Delaware</b>	First-degree murder with at least 1 statutory aggravating circumstance (11 Del. C. § 4209).
<b>Florida</b>	First-degree murder; felony murder; capital drug trafficking; capital sexual battery.
<b>Georgia</b>	Murder; kidnapping with bodily injury or ransom when the victim dies; aircraft hijacking; treason.
<b>Idaho</b>	First-degree murder with aggravating factors; aggravated kidnapping; perjury resulting in death.
<b>Illinois</b>	First-degree murder with 1 of 21 aggravating circumstances.
<b>Indiana</b>	Murder with 16 aggravating circumstances (IC 35-50-2-9).
<b>Kansas</b>	Capital murder with 8 aggravating circumstances (KSA 21-3439, KSA 21-4625).
<b>Kentucky</b>	Murder with aggravating factors; kidnapping with aggravating factors (KRS 32.025).
<b>Louisiana</b>	First-degree murder; aggravated rape of victim under age 13 treason (La. R.S. 14:30, 14:42, and 14:113).
<b>Maryland</b>	First-degree murder, either premeditated or during the commission of a felony, provided that certain death eligibility requirements are satisfied.
<b>Mississippi</b>	Capital murder (Miss. Code Ann. § 97-3-19(2)); aircraft piracy (Miss. Code Ann. § 97-25-55(1)).
<b>Missouri</b>	First-degree murder (565.020 RSMO 2000). <b>Revision:</b> Added to the capital statute provisions for selecting members of the execution team and prohibiting disclosure of the identity of anyone who has been on the execution team (Mo. Rev. Stat § 546.720), Effective 8/28/2007.
<b>Montana</b>	Capital murder with 1 of 9 aggravating circumstances (Mont. Code Ann. § 46-18-303); aggravated sexual intercourse without consent (Mont. Code Ann. § 45-5-503).
<b>Nebraska</b>	First-degree murder with a finding of at least 1 statutorily defined aggravating circumstance.



<b>Nevada</b>	First-degree murder with at least 1 of 15 aggravating circumstances (NRS 200.030, 200.033, 200.035).
<b>New Hampshire</b>	Six categories of capital murder (RSA 630:1, RSA 630:5).
<b>New Mexico</b>	First-degree murder with at least 1 of 7 statutorily-defined aggravating circumstances (Section 30-2-1 A, NMSA).
<b>New York</b>	First-degree murder with 1 of 13 aggravating factors (NY Penal Law §125.27).
<b>North Carolina</b>	First-degree murder (NCGS §14-17).
<b>Ohio</b>	Aggravated murder with at least 1 of 10 aggravating circumstances (O.R.C. secs. 2903.01, 2929.02, and 2929.04).
<b>Oklahoma</b>	First-degree murder in conjunction with a finding of at least 1 of 8 statutorily-defined aggravating circumstances; sex crimes against a child under 14 years of age.
<b>Oregon</b>	Aggravated murder (ORS 163.095).
<b>Pennsylvania</b>	First-degree murder with 18 aggravating circumstances.
<b>South Carolina</b>	Murder with 1 of 12 aggravating circumstances (§ 16-3-20(C)(a)); criminal sexual conduct with a minor with 1 of 9 aggravators (§ 16-3-655). <b>Revision:</b> Added as an aggravating circumstance murder committed while in the commission of first-degree arson (§16-3-20(C)(a)(1)(j)), effective 6/18/2007.
<b>South Dakota</b>	First-degree murder with 1 of 10 aggravating circumstances. <b>Revision:</b> Amended the code of criminal procedure to allow for use of a 3-drug protocol in administering lethal injection(SDCL § 23A-27A-32), effective 7/1/2007.
<b>Tennessee</b>	First-degree murder with 1 of 15 aggravating circumstances (Tenn. Code Ann. § 39-13-204). <b>Revision:</b> Amended the definition of first-degree murder to include killing in the perpetration of rape or aggravated rape of a child (Tenn Code Ann. § 39-13-202(a)(2)), effective 7/1/2007.
<b>Texas</b>	Criminal homicide with 1 of 9 aggravating circumstances (Tex. Penal Code § 19.03); super aggravated sexual assault (Tex. Penal Code § 12.42(c)(3)). <b>Revision:</b> Revised the penal code and the code of criminal procedure to allow the death penalty for aggravated sexual assault of victims under the age of 14 when the offender has a previous conviction for a similar offense (TX Penal Code § 12.42(c)(3) and Tex. Code Crim. Proc. Art. 37.072), effective 9/1/2007.
<b>Utah</b>	Aggravated murder (76-5-202, Utah Code Annotated). <b>Revision:</b> Amended the criminal code to allow for an automatic sentence of life without parole if the death penalty is ruled unconstitutional (Utah Code Ann. § 76-3-207) and added to the definition of aggravated murder intentional killing
<b>Virginia</b>	First-degree murder with 1 of 15 aggravating circumstances (VA Code § 18.2-31). <b>Revision:</b> Added to the definition of capital murder willful, deliberate, and premeditated killing of a judge or a

witness when the killing is for the purpose of interfering with the person's duties in a criminal case (Va. Code § 18.2-31(14) and (15)), effective 7/1/2007.

### Washington

Aggravated first-degree murder.

### Wyoming

First-degree murder. **Revision:** Added as a capital offense murder during the commission of sexual abuse of a minor (W.S. § 6-2-101), effective 7/1/2007.

Note: New Jersey enacted legislation repealing the death penalty (P.L. 2007, c.204 (NJSA 2C:11-3)), effective 12/17/2007.

Nine states revised statutory provisions relating to the death penalty during 2007.

The Colorado Supreme Court struck a portion of that state's capital statute on April 23, 2007 (**People v. Montour**, 157 P.3d 489 (Colo. 2007)). The statute (**Colo. Rev. Stat.** § 18-1.3-1201(1)(a)) specified that defendants pleading guilty to a class 1 felony be sentenced by the judge, thereby requiring defendants to waive their right to a jury trial on all facts essential to determining death penalty eligibility as established in **Ring v. Arizona**. The court ruled that this was unconstitutional under Sixth and Fourteenth Amendments.

Source: National Prisoner Statistics Program (NPS-8).

See also Methodology.

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

## Appendix K

Bureau of Justice Statistics: Table-Method of Execution by State, 2007

**Table 2. Method of execution, by State, 2007**

<u>Lethal Injection</u>	<u>Electrocution</u>	<u>Lethal gas</u>	<u>Hanging</u>	<u>Firing Squad</u>
Alabama <sup>a</sup>	Alabama <sup>a</sup>	Arizona <sup>a,b</sup>	Delaware <sup>a,c</sup>	Idaho <sup>a</sup>
Arizona <sup>a,b</sup>	Arkansas <sup>a,d</sup>	California <sup>a</sup>	New Hampshire <sup>a,e</sup>	Oklahoma <sup>f</sup>
Arkansas <sup>a,d</sup>	Florida <sup>a</sup>	Missouri	Washington <sup>a</sup>	Utah <sup>g</sup>
California <sup>a</sup>	Illinois <sup>h</sup>	Wyoming <sup>i</sup>		

Colorado	Kentucky <sup>a,j</sup>
Connecticut	Nebraska
Delaware <sup>a,c</sup>	Oklahoma <sup>f</sup>
Florida <sup>a</sup>	South Carolina <sup>a</sup>
Georgia	Tennessee <sup>a,k</sup>
Idaho <sup>a</sup>	Virginia <sup>a</sup>
Illinois <sup>a</sup>	
Indiana	
Kansas	
Kentucky <sup>a,j</sup>	
Louisiana	
Maryland	
Mississippi	
Missouri <sup>a</sup>	
Montana	
Nevada	
New Hampshire <sup>a</sup>	
New Mexico	
New York	
North Carolina	
Ohio	
Oklahoma <sup>a</sup>	
Oregon	
Pennsylvania	
South Carolina <sup>a</sup>	
South Dakota	
Tennessee <sup>a,k</sup>	
Texas	
Utah <sup>a</sup>	
Virginia <sup>a</sup>	
Washington <sup>a</sup>	
Wyoming <sup>a</sup>	

Note: The method of execution of Federal prisoners is lethal injection, pursuant to 28 CFR, Part 26. For offenses under the Violent Crime Control and Law Enforcement Act of 1994, the execution method is that of the State in which the conviction took place (18 U. S.C. 3596).

<sup>a</sup> Authorizes two methods of execution.

<sup>b</sup> Authorizes lethal injection for persons sentenced after November 15, 1992; inmates sentenced before that date may select lethal injection or gas.

<sup>c</sup> Authorizes lethal injection for those whose capital offense occurred on or after June 13, 1986; those who committed the offense before that date may select lethal injection or hanging.

<sup>d</sup> Authorizes lethal injection for those whose offense occurred on or after July 4, 1983; inmates whose offense occurred before that date may select lethal injection or electrocution.

<sup>e</sup> Authorizes hanging only if lethal injection cannot be given.

<sup>f</sup> Authorizes electrocution if lethal injection is held to be unconstitutional, and firing squad if both lethal injection and electrocution are held to be unconstitutional.

<sup>g</sup> Authorizes firing squad if lethal injection is held unconstitutional. Inmates who selected execution by firing squad prior to May 3, 2004, may still be entitled to execution by that method.

<sup>h</sup> Authorizes electrocution only if lethal injection is held illegal or unconstitutional.

<sup>i</sup> Authorizes lethal gas if lethal injection is held to be unconstitutional.

<sup>j</sup> Authorizes lethal injection for persons sentenced on or after March 31, 1998; inmates sentenced before that date may select lethal injection or electrocution.

<sup>k</sup> Authorizes lethal injection for those whose capital offense occurred after December 31, 1998; those who committed the offense before that date may select electrocution by written waiver.

Source: National Prisoner Statistics Program (NPS-8).

See also Methodology.

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

Appendix L

Bureau of Justice Statistics: Table-Federal Capital Offenses, 2007

### Capital Punishment, 2007- Statistical Tables

**Table 3. Federal capital offenses, 2007**

<u>Statute</u>	<u>Description</u>
8 U.S.C. 1342	Murder related to the smuggling of aliens.

<b>18 U.S.C. 32-34</b>	Destruction of aircraft, motor vehicles, or related facilities resulting in death.
<b>18 U.S.C. 36</b>	Murder committed during a drug-related drive-by shooting.
<b>18 U.S.C. 37</b>	Murder committed at an airport serving international civil aviation.
<b>18 U.S.C. 115(b)(3)</b> [by cross-reference to 18 U.S.C. 1111]	Retaliatory murder of a member of the immediate family of law enforcement officials.
<b>18 U.S.C. 241, 242, 245, 247</b>	Civil rights offenses resulting in death.
<b>18 U.S.C. 351</b> [by cross-reference to 18 U.S.C. 1111]	Murder of a member of Congress, an important executive official, or a Supreme Court Justice.
<b>18 U.S.C. 794</b>	Espionage.
<b>18 U.S.C. 844(d), (f), (i)</b>	Death resulting from offenses involving transportation of explosives, destruction of government property, or destruction of property related to foreign or interstate commerce.
<b>18 U.S.C. 924(i)</b>	Murder committed by the use of a firearm during a crime of violence or a drug-trafficking crime.
<b>18 U.S.C. 930</b>	Murder committed in a Federal Government facility.
<b>18 U.S.C. 1091</b>	Genocide.
<b>18 U.S.C. 1111</b>	First-degree murder.
<b>18 U.S.C. 1114</b>	Murder of a Federal judge or law enforcement official.
<b>18 U.S.C. 1116</b>	Murder of a foreign official.
<b>18 U.S.C. 1118</b>	Murder by a Federal prisoner.
<b>18 U.S.C. 1119</b>	Murder of a U.S. national in a foreign country.
<b>18 U.S.C. 1120</b>	Murder by an escaped Federal prisoner already sentenced to life imprisonment.
<b>18 U.S.C. 1121</b>	Murder of a State or local law enforcement official or other person aiding in a Federal investigation; murder of a State correctional officer.
<b>18 U.S.C. 1201</b>	Murder during a kidnapping.
<b>18 U.S.C. 1203</b>	Murder during a hostage taking.
<b>18 U.S.C. 1503</b>	Murder of a court officer or juror.
<b>18 U.S.C. 1512</b>	Murder with the intent of preventing testimony by a witness, victim, or informant.
<b>18 U.S.C. 1513</b>	Retaliatory murder of a witness, victim, or informant.
<b>18 U.S.C. 1716</b>	Mailing of injurious articles with intent to kill or resulting in death.
<b>18 U.S.C. 1751</b> [by cross-reference to 18 U.S.C. 1111]	

	Assassination or kidnapping resulting in the death of the President or Vice President.
<b>18 U.S.C. 1958</b>	Murder for hire.
<b>18 U.S.C. 1959</b>	Murder involved in a racketeering offense.
<b>18 U.S.C. 1992</b>	Willful wrecking of a train resulting in death.
<b>18 U.S.C. 2113</b>	Bank-robbery-related murder or kidnapping.
<b>18 U.S.C. 2119</b>	Murder related to a carjacking.
<b>18 U.S.C. 2245</b>	Murder related to rape or child molestation.
<b>18 U.S.C. 2251</b>	Murder related to sexual exploitation of children.
<b>18 U.S.C. 2280</b>	Murder committed during an offense against maritime navigation.
<b>18 U.S.C. 2281</b>	Murder committed during an offense against a maritime fixed platform.
<b>18 U.S.C. 2332</b>	Terrorist murder of a U.S. national in another country.
<b>18 U.S.C. 2332a</b>	Murder by the use of a weapon of mass destruction.
<b>18 U.S.C. 2340</b>	Murder involving torture.
<b>18 U.S.C. 2381</b>	Treason.
<b>21 U.S.C. 848(e)</b>	Murder related to a continuing criminal enterprise or related murder of a Federal, State, or local law enforcement officer.
<b>49 U.S.C. 1472-1473</b>	Death resulting from aircraft hijacking.

Source: National Prisoner Statistics Program (NPS-8).

See also Methodology.

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

## Appendix M

Bureau of Justice Statistics: Table-Demographic characteristics of prisoners

### Prisoners under sentence of death, 2007

<b>Characteristic</b>	<b><u>Yearend</u></b>	<b><u>Admissions</u></b>	<b><u>Removals</u></b>
<b>Total inmates</b>	3,220	115 1	28
<b>Gender</b>			
<b>Male</b>	98.3%	98.3%	99.2%
<b>Female</b>	1.7	1.7	0.8

<b>Race</b>			
<b>White</b>	56.0%	58.3%	53.9%
<b>Black</b>	41.8	40.9	43.0
<b>All other races*</b>	2.2 0.9 3.1		
<b>Hispanic origin</b>			
<b>Hispanic</b>	12.9%	14.4%	9.5%
<b>Non-Hispanic</b>	87.1	85.6	90.5
<b>Number unknown</b>	413	1	12
<b>Education</b>			
<b>8th grade or less</b>	13.8%	7.9%	13.9%
<b>9th-11th grade</b>	36.7	36.5	43.5
<b>High school graduate/GED</b>	40.4	44.4	36.1
<b>Any college</b>	9.2	11.1	6.5
<b>Median</b>	11th	12th	11th
<b>Number unknown</b>	522	52	20
<b>Marital status</b>			
<b>Married</b>	22.2%	29.9%	20.4%
<b>Divorced/separated</b>	20.4	14.9	16.8
<b>Widowed</b>	2.8	2.3	5.3
<b>Never married</b>	54.5	52.9	57.5
<b>Number unknown</b>	362	28	15

Note: Calculations are based on those cases for which data were reported. Detail may not add to total due to rounding.

\*At yearend 2006, inmates of "other" races consisted of 28 American Indians, 35 Asians, and 11 self identified Hispanics. During 2007, 1 Asian was admitted; and 2 American Indians, 1 Asian, and 1 self identified Hispanic were removed.

Source: National Prisoner Statistics Program (NPS-8). See also Methodology.

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

## Appendix N

Bureau of Justice Statistics: Table-Number of persons executed by jurisdiction 1930-2007

**Capital Punishment, 2007 - Statistical Tables****Table 9. Number of persons executed, by jurisdiction, 1930-2007**

<b>Jurisdiction</b>	<b><u>Number executed</u></b>	
	<b>Since 1930</b>	<b>Since 1977</b>
<b>U.S. total</b>	4,958	1,099
<b>Texas</b>	702	405
<b>Georgia</b>	406	40
<b>New York</b>	329	0



<b>North Carolina</b>	306	43
<b>California</b>	305	13
<b>Florida</b>	234	64
<b>South Carolina</b>	199	37
<b>Ohio</b>	198	26
<b>Virginia</b>	190	98
<b>Alabama</b>	173	38
<b>Mississippi</b>	162	8
<b>Louisiana</b>	160	27
<b>Pennsylvania</b>	155	3
<b>Oklahoma</b>	146	86
<b>Arkansas</b>	145	27
<b>Missouri</b>	128	66
<b>Kentucky</b>	105	2
<b>Illinois</b>	102	12
<b>Tennessee</b>	97	4
<b>New Jersey</b>	74	0
<b>Maryland</b>	73	5
<b>Arizona</b>	61	23
<b>Indiana</b>	60	19
<b>Washington</b>	51	4
<b>Colorado</b>	48	1
<b>Nevada</b>	41	12
<b>District of Columbia</b>	40	0
<b>West Virginia</b>	40	0
<b>Federal system</b>	36	3
<b>Massachusetts</b>	27	0
<b>Delaware</b>	26	14
<b>Connecticut</b>	22	1
<b>Oregon</b>	21	2
<b>Utah</b>	19	6
<b>Iowa</b>	18	0
<b>Kansas</b>	15	0
<b>Montana</b>	9	3
<b>New Mexico</b>	9	1
<b>Wyoming</b>	8	1
<b>Nebraska</b>	7	3
<b>Vermont</b>	4	0
<b>Idaho</b>	4	1
<b>South Dakota</b>	2	1
<b>New Hampshire</b>	1	0

Note: Military authorities carried out an additional 160 executions between 1930 and 1961.

Source: National Prisoner Statistics Program (NPS-8).

See also Methodology.

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

#### Appendix O

Bureau of Justice Statistics: Table-Age at time of arrest for capital offense

#### Capital Punishment, 2007 - Statistical Tables

**Table 7. Age at time of arrest for capital offense and age of prisoners under sentence of death at yearend 2007**

<u>Age</u>	<b>Prisoners under sentence of death</b>			
	<u>At time of arrest</u>		<u>On December 31, 2007</u>	
	<b>Number*</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Total number under sentence of death on 12/31/07</b>	2,955	100 %	3,220	100 %
<b>19 or younger</b>	317	10.7	1	--
<b>20-24</b>	812	27.5	42	1.3
<b>25-29</b>	677	22.9	249	7.7
<b>30-34</b>	508	17.2	431	13.4
<b>35-39</b>	321	10.9	574	17.8
<b>40-44</b>	172	5.8	546	17.0

<b>45-49</b>	88	3.0	583	18.1
<b>50-54</b>	34	1.2	357	11.1
<b>55-59</b>	19	0.6	250	7.8
<b>60-64</b>	5	0.2	127	3.9
<b>65 or older</b>	2	0.1	60	1.9
<b>Mean age</b>	29 yrs.		43 yrs.	
<b>Median age</b>	27 yrs.		42 yrs.	

-- Less than .05%

Note: The youngest person under sentence of death was a black male in Texas, born in June 1988 and sentenced to death in June 2007. The oldest person under sentence of death was a white male in Arizona, born in September 1915 and sentenced to death in June 1983.

\*Excludes 265 inmates for whom the date of arrest for capital offense was not available.

Source: National Prisoner Statistics Program (NPS-8). See also Methodology.

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

## Appendix P

Bureau of Justice Statistics: Table-Number of persons executed by race, Hispanic origin, and method

### Capital Punishment, 2007 - Statistical Tables

**Table 16. Number of persons executed by race, Hispanic origin, and method, 1977-2007**

Method of execution	<u>Number of persons executed</u>				
	White*	Black*	Hispanic	American Indian*	Asian*
<b>Total</b>	631	373	81	8	6
<b>Lethal injection</b>	536	301	79	7	6
<b>Electrocution</b>	82	69	2	1	
<b>Lethal gas</b>	8	3	0	0	0
<b>Hanging</b>	3	0	0	0	0
<b>Firing squad</b>	2	0	0	0	0

\*Excludes persons of Hispanic origin.

Source: National Prisoner Statistics. See also Methodology

Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

Appendix Q

Bureau of Justice Statistics: Table-Number of Persons Executed 1977-2007

**Capital Punishment, 2007 - Statistical Tables**

**Table 15. Number of persons executed, 1977-2007**

<b>Year</b>	<b>Number executed</b>
1977	1
1979	2
1981	1
1982	2
1983	5
1984	21
1985	18
1986	18
1987	25
1988	11
1989	16
1990	23
1991	14
1992	31
1993	38
1994	31
1995	56
1996	45
1997	74
1998	68
1999	98
2000	85
2001	66
2002	71
2003	65
2004	59
2005	60

<b>2006</b>	53
<b>2007</b>	42

Source: National Prisoner Statistics Program (NPS-8).  
See also Methodology

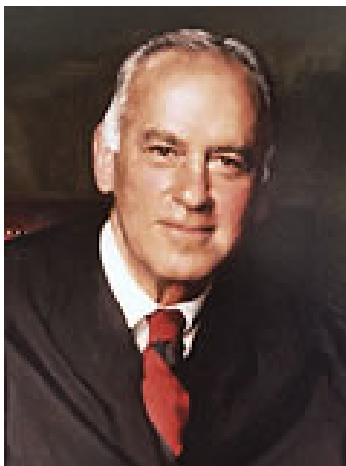
Source: U.S. Department of Justice. Office of Justice Programs, Bureau of Justice Statistics

<http://bjs.ojp.usdoj.gov/content/pub/html/cp/2007/cp07st.pdf>

#### Appendix R

#### Information about Justices Who Authored Important Majority Opinions

**Justice Stewart Potter:** *Gregg v. Georgia* (1976)



#### **Associate Justice**

State Appointed From: Ohio  
Appointed by President Eisenhower  
Judicial Oath Taken: October 14, 1958  
Date Service Terminated: July 3, 1981

**Justice Lewis F. Powell, Jr:** *McClesky v. Kemp* (1987)

#### **Associate Justice**



Virginia  
Nixon  
January 7, 1972  
Terminated: June 26, 1987

**Justice John Paul**



**Stevens:** *Atkins v. Virginia* (2002)

#### **Associate Justice**

State Appointed From: Illinois  
Appointed by President Ford  
Judicial Oath Taken: December 19, 1975  
Date Service Terminated: June 29, 2010

**Justice Anthony M. Kennedy:** *Roper v. Simmons* (2005)

#### **Associate Justice**

State Appointed From: California  
Appointed by President Reagan



Judicial Oath Taken: February 18, 1988  
**Current**

**Chief Justice John J. Roberts Jr:** *Baze v. Rees* (2008)



**Chief Justice**

State Appointed From: Maryland  
Appointed by President Bush, G. W.  
Judicial Oath Taken: September 29, 2005  
**Current**

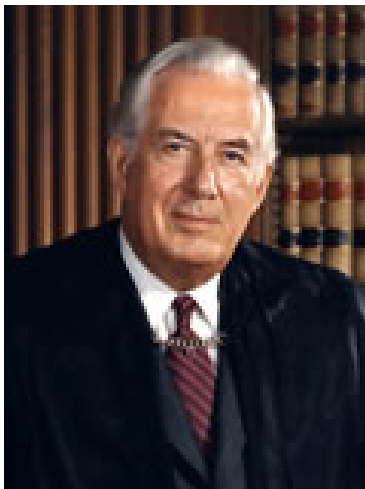
Source: U.S. Supreme Court. Members of the Supreme Court of the United States.

<http://www.supremecourt.gov/about/members.aspx>

#### Appendix S

Information about Justices Who Authored Major Dissenting Opinions

**Chief Justice Warren Earl Burger:** *Furman v. Georgia* (1972)



**Chief Justice**

State Appointed From: Virginia  
Appointed by President Nixon  
Judicial Oath Taken: June 23, 1969  
Date Service Terminated: September 26, 1986



**Justice Thurgood Marshall:**  
*Gregg v. Georgia* (1976)

**Associate Justice**

State Appointed From: New York  
Appointed by President Johnson, L.  
Judicial Oath Taken: October 2,

1967

Date Service Terminated: October 1, 1991

**Justice Harry A. Blackmun:** *McClesky v. Kemp* (1987)



**Associate Justice**

State Appointed From: Minnesota

Appointed by President Nixon

Judicial Oath Taken: June 9, 1970

Date Service Terminated: August 3, 1994

**Chief Justice William H. Rehnquist:** *Atkins v. Virginia* (2002)

**Chief Justice**

State Appointed From: Virginia

Appointed by President Reagan

Judicial Oath Taken: September 26, 1986

Date Service Terminated: September 3, 2005



**Associate Justice (Elevated)**

State Appointed From: Virginia

Appointed by President Nixon

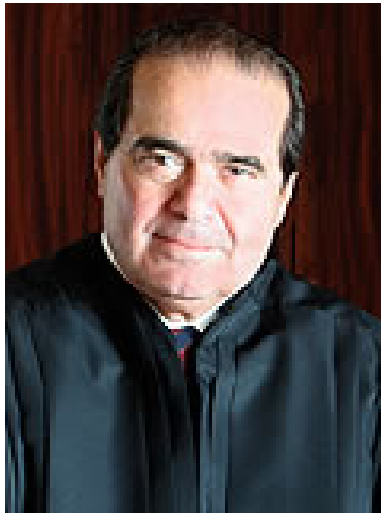
Judicial Oath Taken: January 7, 1972

Date Service Terminated: September 26, 1986

**Justice Antonin Scalia:** *Atkins v. Virginia* (2002)

**Associate Justice**  
Appointed by President  
Judicial Oath Taken:  
**Current**

State Appointed From: Virginia  
Reagan  
September 26, 1986



**O'Connor:** *Roper v. Simmons*  
(2005)

**Associate Justice**

State Appointed From: Arizona

Appointed by President Reagan

Judicial Oath Taken: September 25, 1981

Date Service Terminated: January 31, 2006

**Justice Sandra Day**



**Justice Ruth Bader Ginsburg: *Baze v. Rees* (2008)****Associate Justice**

State Appointed From: New York

Appointed by President Clinton

Judicial Oath Taken: August 10, 1993

**Current**

Source: U.S. Supreme Court. Members of the Supreme Court of the United States.

<http://www.supremecourt.gov/about/members.aspx>

## Appendix T

Number of Executions by State Since 1976

Population divided by # executed, 2010 Census figures

	<u>Total</u>	<u>2010</u>	<u>2009</u>	<u>Ratio*</u>		<u>Total</u>	<u>2010</u>	<u>2009</u>	<u>Ratio</u>
Texas	464	17	24	1/1,000,000	Illinois	12	0	0	
Virginia	108	3	3	1/2,600,000	Nevada	12	0	0	
Oklahoma	93	2	3	1/1,000,000	Utah	7	1	0	
Florida	69	1	2	1/9,000,000	Tennessee	6	0	2	1/3,000,000
Missouri	67	0	1	1/6,000,000	Maryland	5	0	0	
Georgia	48	2	3	1/3,000,000	Washington	5	1	0	
Alabama	49	5	6	1/780,000	Nebraska	3	0	0	
N. Carolina	43	0	0		Pennsylvania	3	0	0	
S. Carolina	42	0	2	1/2,000,000	Kentucky	3	0	0	
Ohio	41	8	5	1/2,000,000	Montana	3	0	0	
Louisiana	28	1	0		Oregon	2	0	0	



Arkansas	27	0	0		Connecticut	1	0	0
Arizona	24	1	0		Idaho	1	0	0
Indiana	20	0	1	1/6,000,000	New Mexico	1	0	0
Delaware	14	0	0		Colorado	1	0	0
California	13	0	0		Wyoming	1	0	0
Mississippi	13	3	0		South Dakota	1	0	0
					US Gov't	3	0	0

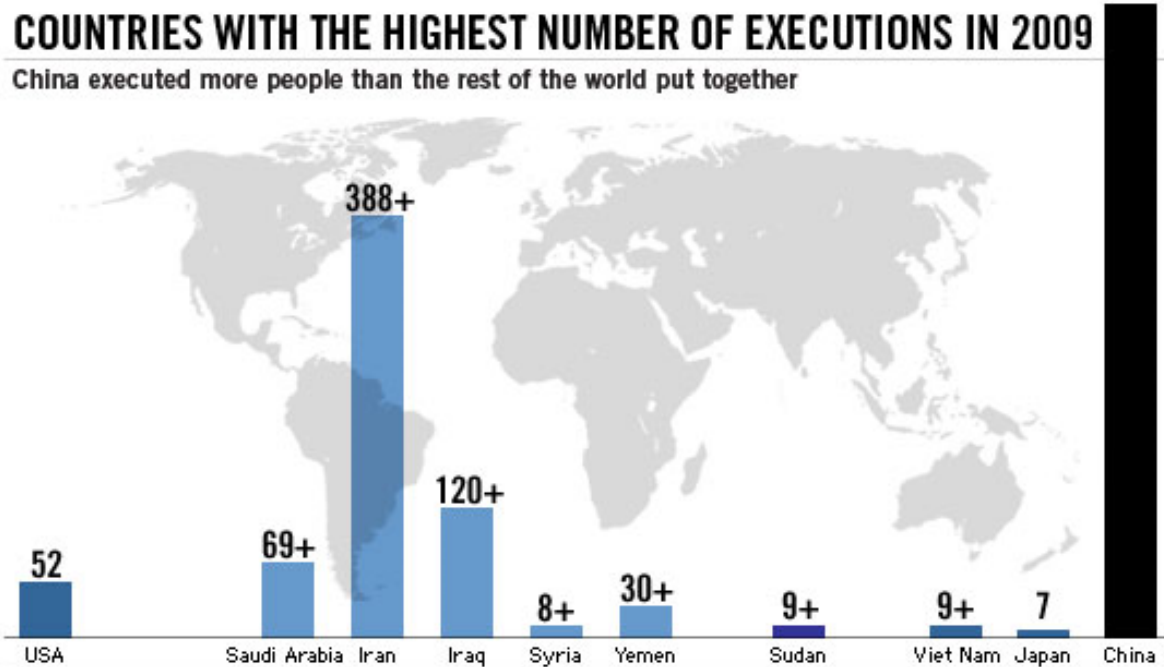
\*Ratios are approximate, calculated using 2009 execution figures

Source: Death Penalty Information Center. <http://www.deathpenaltyinfo.org/united-states-supreme-court-decisions-1972-1996>  
 2010 Census. State Population and the Distribution of Electoral Votes and Representatives.  
<http://www.thegreenpapers.com/Census10/HouseAndElectors.phtml>

#### Appendix U Chart: Global Death Penalty Use in 2009

##### The death penalty in 2009

More than two-thirds of the countries of the world have abolished the death penalty in law or in practice. While 58 countries retained the death penalty in 2009, most did not use it. Eighteen countries were known to have carried out executions, killing a total of at least 714 people; however, this figure does not include the thousands of executions that were likely to have taken place in China, which again refused to divulge figures on its use of the death penalty.



Methods of execution in 2009 included hanging, shooting, beheading, stoning, electrocution and lethal injection.

#### Death sentences and executions 2009

Where "+" is indicated after a country and it is preceded by a number, it means that the figure Amnesty International has calculated is a minimum figure. Where "+" is indicated after a country and is not preceded by a number, it indicates that there were executions or death sentences (at least more than one) in that country but it was not possible to calculate a figure.

Source: Amnesty International. The Death Penalty in 2009. <http://www.amnesty.org/en/death-penalty/death-sentences-and-executions-in-2009>

#### Appendix V Death Penalty Public Opinion Polls

*Sourcebook of Criminal Justice Statistics 2003*, page 146

#### Table 2.53

#### **Attitudes toward the death penalty for murder for selected groups**

#### United States, 2002

Question: "Do you favor the death penalty for...?"

	<u>Favor</u>	<u>Oppose</u>	<u>Don't know/refused</u>
Women	68%	29%	3%
Juveniles	26	69	5
The mentally retarded	13	82	5
The mentally ill	19	75	6

Note: These data are based on telephone interviews with a randomly selected national sample of 1,012 adults, 18 years of age and older, conducted May 6-9, 2002. For a discussion of public opinion survey sampling procedures, see [Appendix 5](#).

Source: The Gallup Organization, Inc., *The Gallup Poll* [Online]. Available: <http://www.gallup.com/poll/releases/pr020520.asp> [May 23, 2002]. Reprinted by permission.

#### *Sourcebook of Criminal Justice Statistics Online*

<http://www.albany.edu/sourcebook/pdf/t200372010.pdf>

#### Table 2.0037.2010

## Attitudes toward the death penalty for persons convicted of murder

By politics and religious affiliation, United States, 2010<sup>a</sup>

Question: "Do you strongly favor, favor, oppose, or strongly oppose the death penalty for persons convicted of murder?"

	Favor	Oppose	Don't know/refused
Total	62%	30%	9%
<u>Politics</u>			
Republican	78	16	7
Democrat	50	42	7
Independent	62	30	8
<u>Religion</u>			
Protestant	65	26	9
White evangelical	74	19	7
White mainline	71	21	8
Black Protestant	37	49	14
Catholic	60	32	8
White Catholic	68	26	6
Hispanic Catholic	43	45	13
Unaffiliated	61	32	6

Note: These data are based on telephone interviews with a randomly selected national sample of 3,003 adults, 18 years of age and older, conducted July 21-Aug. 5, 2010. For a discussion of public opinion survey sampling procedures, see [Appendix 5](#).

<sup>a</sup>Percents may not add to 100 because of rounding.

Source: Pew Research Center for the People & the Press and Pew Forum on Religion & Public Life. ***Few Say Religion Shapes Immigration, Environment Views: Religion and the Issues*** (Washington, DC: Pew Research Center, Sept. 17, 2010), pp. 15, 25. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: Bureau of Justice Statistics. Sourcebook of Criminal Justice Statistics.

[http://www.albany.edu/sourcebook/tost\\_2.html#2\\_ab](http://www.albany.edu/sourcebook/tost_2.html#2_ab)

Appendix W

Pro-Death Penalty Organizations

## Citizens Against Homicide

A non-profit, public benefits organization serving families and friends of homicide victims

## Clark County Indiana Prosecuting Attorney

Steven D. Stewart, Prosecuting Attorney for Clark County, Indiana, has established this web site with information on Indiana's death penalty and an extensive listing of death penalty-related web sites.

### **Justice For All**

A Texas-based not-for-profit advocating for criminal justice reform with an emphasis on victim rights. Justice for All is a strong advocate of the death penalty, and has established a separate site, [Prodeathpenalty.com](http://Prodeathpenalty.com), dedicated to pro-death penalty information and resources. It has also established [Murdervictims.com](http://Murdervictims.com) for survivors of victims of homicide.

### **Pro-Death Penalty.com**

A resource for *pro-death penalty* information and resources. Includes case info on upcoming executions, a collection of death penalty links, and current news.

Source: University of Alaska Anchorage Justice Center. Death Penalty Organizations & Sites, Pro & Con. <http://justice.uaa.alaska.edu/death/procon.html>

## Appendix X Anti-Death Penalty Organizations

### **ACLU Death Penalty Campaign**

The [American Civil Liberties Union](http://AmericanCivilLibertiesUnion.org) considers the death penalty to be unconstitutional under the Eight Amendment to the U.S. Constitution and that its discriminatory application violates the Fourteenth Amendment.

### **American Bar Association Death Penalty Moratorium Implementation Project**

The Project will work toward achieving a national moratorium on executions until the death penalty process is reformed (Filed an amicus curiae\* brief in *Roper v. Simmons*).

### **Amnesty International Website Against the Death Penalty**

[Amnesty International](http://AmnestyInternational.org) is a well-known international human rights organization based in London, with chapters throughout the world. It has an ongoing worldwide anti-death penalty campaign and issues reports on the death penalty in a number of countries, including the U.S.

### **Campaign to End the Death Penalty**

A national grassroots organization dedicated to the abolition of capital punishment.

### **Citizens United for Alternatives to the Death Penalty (CUADP)**

An organization promoting viable alternatives to the death penalty and heightened visibility for those who seek better public policy in response to violent crime.

### **Coalition for Juvenile Justice**

A representative national nonprofit organization: to give voice to state-identified concerns and needs in juvenile justice; to advise state and federal policy makers and the federal Office of Juvenile Justice and Delinquency Prevention; and to generate ongoing collegial support and information exchange (Also filed an amicus curiae brief in *Roper v. Simmons*)

### **Death Watch International**

Organization based in the UK exploring the issue of the death penalty on a global scale. Their comprehensive website contains stories, news and factual information on the status of the death penalty around the world.

### **The Innocence Project**

A national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent further injustice.

### **The Moratorium Campaign**

Works towards obtaining a moratorium on the death penalty, educating the public, and collects signatures for a petition that will be delivered to the United States representatives to the United Nations on Human Rights Day.

### **Murder Victims Families for Reconciliation**

Abolitionist organization comprising relatives of homicide victims. "MVFR knows that - in spite of that pain - vengeance is not the answer. The taking of another life by state killing only continues the cycle of violence."

### **National Coalition to Abolish the Death Penalty**

A nationwide coalition of nearly 150 national, state, and local organizations working toward the abolition of capital punishment.

### **Physicians for Human Rights**

Physicians for Human Rights mobilizes health professionals to advance health, dignity and justice, and promotes the right to health for all.

**Students Against the Death Penalty**

A student-run organization that mobilizes youth through education and advocacy.

**World Coalition Against the Death Penalty**

The World Coalition Against the Death Penalty brings together all those committed to the universal abolition of capital punishment. Aims to strengthen the international dimension of the struggle against capital punishment.

**Unitarian Universalists for Alternatives to the Death Penalty**

A social action group seeking an end to the death penalty

\*Or “friend of the court” brief. Filed in the Supreme Court by parties not directly involved in a particular case but that has an interest in the issue before the Court.

Source: University of Alaska Anchorage Justice Center. Death Penalty Organizations & Sites,

Pro & Con. <http://justice.uaa.alaska.edu/death/procon.html>  
Death Penalty Information Center. <http://www.deathpenaltyinfo.org/united-states-supreme-court-decisions-1972-1996>

Appendix Y  
Executions Prior to 1972 by State

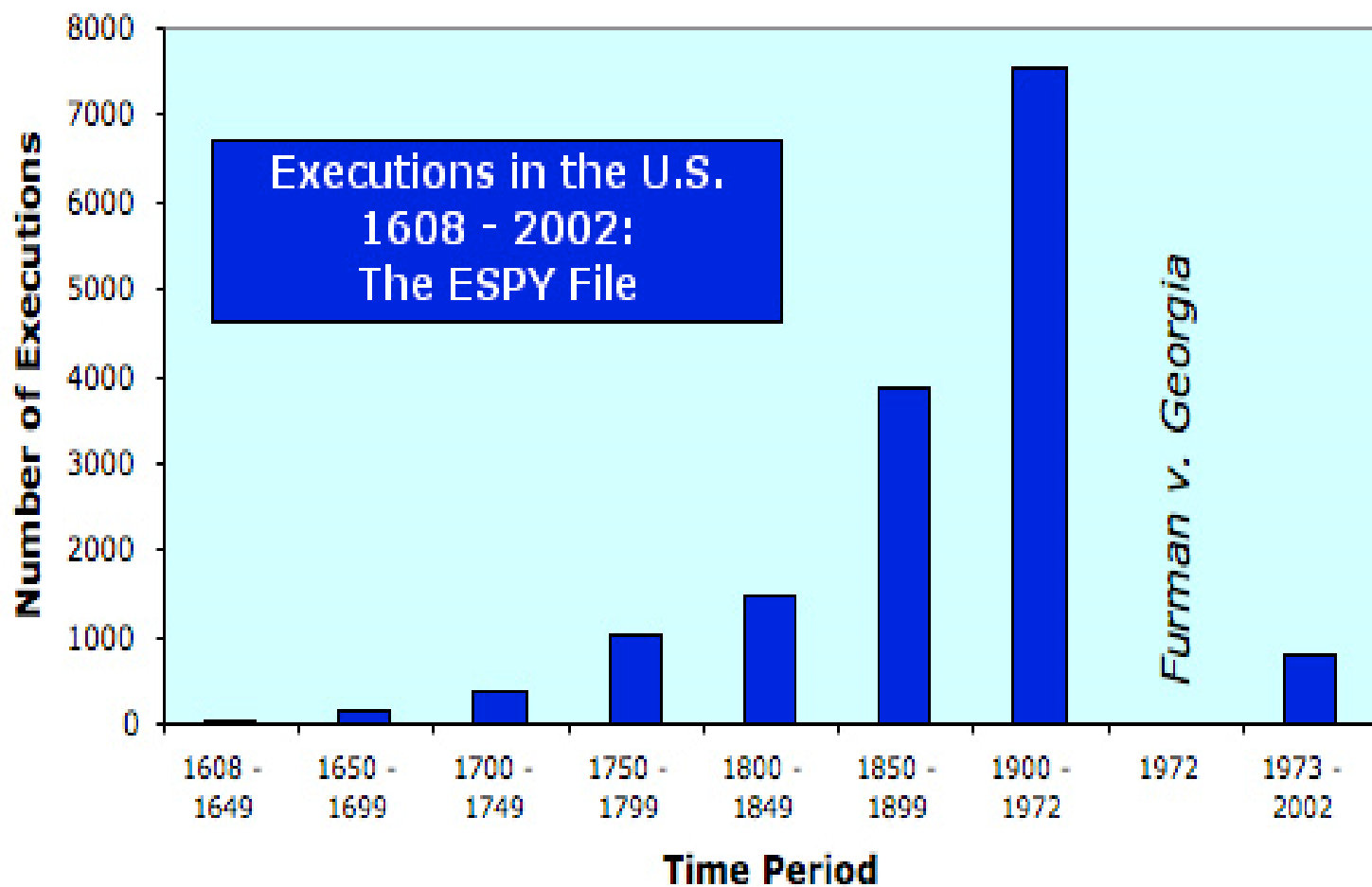
<b><u>State</u></b>	<b><u>Executions 1608-1976</u></b>
Virginia	1,227
New York	1,130
Pennsylvania	1,040
Georgia	950
North Carolina	784
Texas	755
California	709
Alabama	708
South Carolina	641
Louisiana	632
Arkansas	478
Ohio	438
Kentucky	424
New Jersey	361
Mississippi	351
Illinois	348
Massachusetts	345
Tennessee	335
Florida	314
Maryland	309
Missouri	285
West Virginia	155
Oklahoma	132
Indiana	131
Connecticut	126
Oregon	122
Washington, DC	118
Washington	105
Arizona	104
Colorado	101
New Mexico	73
Montana	71
Minnesota	66
Delaware	62
Nevada	61
Kansas	57
Rhode Island	52
Hawaii	49
Iowa	45

Utah	43
Nebraska	34
Idaho	26
Vermont	26
New Hampshire	24
Wyoming	22
Maine	21
South Dakota	15
Michigan	13
Alaska	12
North Dakota	8
Wisconsin	1

Death Penalty Information Center. <http://www.deathpenaltyinfo.org/united-states-supreme-court-decisions-1972-1996>

Appendix Z  
Executions Prior to 1972 by Year





Source: Death Penalty Information Center. <http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file>

Appendix AA  
Executions Prior to 1972 by Race

Race	Espy File 1608 - 1972	DPIC 1976 - 2007*
White	41% (5,902)	57% (621)
Black	49% (7,084)	34% (367)

Native American	2% (353)	1% (15)
Hispanic	2% (295)	7% (75)
Other (includes Asian Pacific Islander and unknown)	6% (855)	1%(9)
<b>Total Executions</b>	<b>14,489</b>	<b>1087</b>

Source: Death Penalty Information Center. <http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file>

#### Appendix BB Founders' Thoughts on Capital Punishment

**Thomas Jefferson:** *“Punishments I know are necessary, and I would provide them strict and inflexible, but proportioned to the crime. Death might be inflicted for murder and perhaps for treason, [but I] would take out of the description of treason all crimes which are not such in their nature. Rape, buggery, etc., punish by castration. All other crimes by working on high roads, rivers, gallies, etc., a certain time proportioned to the offence. . . . Laws thus proportionate and mild should never be dispensed with. Let mercy be the character of the lawgiver, but let the judge be a mere machine. The mercies of the law will be dispensed equally and impartially to every description of men; those of the judge or of the executive power will be the eccentric impulses of whimsical, capricious designing man.”*

**Alexander Hamilton:** was opposed capital punishment as “*extreme severity*”

**James Madison:** *“I should not regret a fair and full trial of the entire abolition of capital punishment.”*

**Benjamin Franklin:** *“That it is better [one hundred] guilty persons should escape than that one innocent person should suffer.”*

Source: Koellhoffer, Tara. Thomas Jefferson. Current Events, In His Own Words, If He

Blogged... 3 Jan 2007.

<http://thomasjefferson.worldhistoryblogs.com/2007/01/03/on-the-punishment-fitting-the-crime/>

Andrews, F. *The writings of George Washington: being his correspondence, addresses, messages, and other papers, official and private*, Volume 5. 1837.

[http://books.google.com/books?id=c8EKAQAAIAAJ&pg=PA13&lpg=PA13&dq=George+washington+and+capital+punishment&source=bl&ots=9x-QNUDUsV&sig=Mc9kzpvMlv3oNhhNDK0F4wypDyg&hl=en&ei=EE3xTNmXGKTvnQfthdybCg&sa=X&oi=book\\_result&ct=result&resnum=4&ved=0CCcQ6AEwAw#v=onepage&q&f=false](http://books.google.com/books?id=c8EKAQAAIAAJ&pg=PA13&lpg=PA13&dq=George+washington+and+capital+punishment&source=bl&ots=9x-QNUDUsV&sig=Mc9kzpvMlv3oNhhNDK0F4wypDyg&hl=en&ei=EE3xTNmXGKTvnQfthdybCg&sa=X&oi=book_result&ct=result&resnum=4&ved=0CCcQ6AEwAw#v=onepage&q&f=false)

<http://socyberty.com/law/the-death-penalty-2/#ixzz16d8j9nb5>

[http://books.google.com/books?id=ip0eaOoVWWIC&pg=PA263&lpg=PA263&dq=Alexander+Hamilton+on+capital+punishment&source=bl&ots=g-PIGSfZ1H&sig=SyR31nEAy3FosqSWZgR1QNZcikU&hl=en&ei=z0L1TMUmwq3wBpzAqfEG&sa=X&oi=book\\_result&ct=result&resnum=4&ved=0CCcQ6AEwAw#v=onepage&q=Alexander%20Hamilton%20on%20capital%20punishment&f=false](http://books.google.com/books?id=ip0eaOoVWWIC&pg=PA263&lpg=PA263&dq=Alexander+Hamilton+on+capital+punishment&source=bl&ots=g-PIGSfZ1H&sig=SyR31nEAy3FosqSWZgR1QNZcikU&hl=en&ei=z0L1TMUmwq3wBpzAqfEG&sa=X&oi=book_result&ct=result&resnum=4&ved=0CCcQ6AEwAw#v=onepage&q=Alexander%20Hamilton%20on%20capital%20punishment&f=false)

## Appendix CC

### Reports on Cruelty of Certain Execution Methods

Excerpt from Human Rights Watch Report, *So Long as They Die: Lethal Injections in the United States* (April 24, 2006).



Although supporters of lethal injection believe the prisoner dies painlessly, there is mounting evidence that prisoners may have experienced excruciating pain during their executions. This should not be surprising given that corrections agencies have not taken the steps necessary to ensure a painless execution. They use a sequence of drugs and a method of administration that were created with minimal expertise and little deliberation three decades ago, and that were then adopted unquestioningly by state officials with no medical or scientific background. Little has changed since then. As a result, prisoners in the United States are executed by means that the American Veterinary Medical Association regards as too cruel to use on dogs and cats. (Part IV, footnotes omitted).

Human rights law is predicated on recognition of the inherent dignity and the equal and inalienable rights of all people, including even those who have committed terrible crimes. It prohibits torture and other cruel, inhuman or degrading punishment. Human Rights Watch believes these rights cannot be reconciled with the death penalty, a form of punishment unique in its cruelty and finality, and a punishment inevitably and universally plagued with arbitrariness, prejudice, and error. Thus our first recommendation is that states and the federal government abolish the death penalty. If governments do not choose to abolish capital punishment, they must still heed human rights principles by ensuring their execution methods are chosen and administered to minimize the risk a condemned prisoner will experience pain and suffering. As state lethal injection protocols have never been subjected to serious medical and scientific scrutiny, Human Rights Watch recommends that each state suspends its lethal injection executions until it has convened a panel of anesthesiologists, pharmacologists, doctors, corrections officials, prosecutors, defense attorneys, and judges to determine whether or not its lethal injection executions as currently practiced are indeed the most humane form of execution. (Recommendations).

Source: Death Penalty Information Center. <http://www.deathpenaltyinfo.org/node/1711>

## THE DEATH PENALTY V. HUMAN RIGHTS

**Why Abolish the Death Penalty? (1)**  
**September 2007**

## **Amnesty International**

The time has come to abolish the death penalty worldwide. The case for abolition becomes more compelling with each passing year. Everywhere experience shows that executions brutalize those involved in the process. Nowhere has it been shown that the death penalty has any special power to reduce crime or political violence. In country after country, it is used disproportionately against the poor or against racial or ethnic minorities. It is also used as a tool of political repression. It is imposed and inflicted arbitrarily. It is an irrevocable punishment, resulting inevitably in the execution of people innocent of any crime. It is a violation of fundamental human rights.

Over the past decade an average of at least three countries a year have abolished the death penalty, affirming respect for human life and dignity.<sup>(2)</sup> Yet too many governments still believe that they can solve urgent social or political problems by executing a few or even hundreds of their prisoners. Too many citizens in too many countries are still unaware that the death penalty offers society not further protection but further brutalization. Abolition is gaining ground, but not fast enough.

The death penalty, carried out in the name of the nation's entire population, involves everyone. Everyone should be aware of what the death penalty is, how it is used, how it affects them, how it violates fundamental rights.

The death penalty is the premeditated and cold-blooded killing of a human being by the state. The state can exercise no greater power over a person than that of deliberately depriving him or her of life. At the heart of the case for abolition, therefore, is the question of whether the state has the right to do so.

When the world's nations came together six decades ago to found the United Nations (UN), few reminders were needed of what could happen when a state believed that there was no limit to what it might do to a human being. The staggering extent of state brutality and terror during World War II and the consequences for people throughout the world were still unfolding in December 1948, when the UN General Assembly adopted without dissent the Universal Declaration of Human Rights.

The Universal Declaration is a pledge among nations to promote fundamental rights as the foundation of freedom, justice and peace. The rights it proclaims are inherent in every human being. They are not privileges that may be granted by governments for good behaviour and they may not be withdrawn for bad behaviour. Fundamental human rights limit what a state may do to a man, woman or child.

No matter what reason a government gives for executing prisoners and what method of execution is used, the death penalty cannot be separated from the issue of human rights. The movement for abolition cannot be separated from the movement for human rights.

The Universal Declaration recognizes each person's right to life and categorically states further

that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In Amnesty International's view the death penalty violates these rights.

Self-defence may be held to justify, in some cases, the taking of life by state officials: for example, when a country is locked in warfare (international or civil) or when law-enforcement officials must act immediately to save their own lives or those of others. Even in such situations the use of lethal force is surrounded by internationally accepted legal safeguards to inhibit abuse. This use of force is aimed at countering the immediate damage resulting from force used by others.

The death penalty, however, is not an act of self-defence against an immediate threat to life. It is the premeditated killing of a prisoner who could be dealt with equally well by less harsh means.

There can never be a justification for torture or for cruel, inhumane or degrading treatment or punishment. The cruelty of the death penalty is evident. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

If hanging a woman by her arms until she experiences excruciating pain is rightly condemned as torture, how does one describe hanging her by the neck until she is dead? If administering 100 volts of electricity to the most sensitive parts of a man's body evokes disgust, what is the appropriate reaction to the administration of 2,000 volts to his body in order to kill him? If a pistol held to the head or a chemical substance injected to cause protracted suffering are clearly instruments of torture, how should they be identified when used to kill by shooting or lethal injection? Does the use of legal process in these cruelties make their inhumanity justifiable?

The physical pain caused by the action of killing a human being cannot be quantified. Nor can the psychological suffering caused by fore-knowledge of death at the hands of the state. Whether a death sentence is carried out six minutes after a summary trial, six weeks after a mass trial or 16 years after lengthy legal proceedings, the person executed is subjected to uniquely cruel, inhuman and degrading treatment and punishment.

Internationally agreed laws and standards stipulate that the death penalty can only be used after a fair judicial process. When a state convicts prisoners without affording them a fair trial, it denies the right to due process and equality before the law. The irrevocable punishment of death removes not only the victim's right to seek redress for wrongful conviction, but also the judicial system's capacity to correct its errors.

Like killings which take place outside the law, the death penalty denies the value of human life. By violating the right to life, it removes the foundation for realization of all rights enshrined in the Universal Declaration of Human Rights.

As the Human Rights Committee set up under the International Covenant on Civil and Political Rights has recognized, "The right to life...is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation..." In a general comment on Article 6 of the Covenant issued in 1982, the Committee concluded that "all

measures of abolition [of the death penalty] should be considered as progress in the enjoyment of the right to life within the meaning of Article 40".

Many governments have recognized that the death penalty cannot be reconciled with respect for human rights. The UN has declared itself in favour abolition. Two-thirds of the countries in the world have now abolished the death penalty in law or practice.

Amnesty International's latest information shows that(3):

- **90** countries and territories have **abolished the death penalty for all crimes**;
- **11** countries have **abolished the death penalty for all but exceptional crimes** such as wartime crimes;
- **30** countries can be considered **abolitionist in practice**: they retain the death penalty in law but have not carried out any executions for the past 10 years or more and are believed to have a policy or established practice of not carrying out executions,
- a total of **131** countries have abolished the death penalty in law or practice,
- **66** other countries and territories **retain** and use the death penalty, but the number of countries which actually execute prisoners in any one year is much smaller.

Amnesty International' statistics also show a significant overall decline in the number of reported executions in 2006. In 2006, 91% of all known executions took place in a small number of countries: China, Iran, Iraq, Pakistan, Sudan and the USA. Europe is almost a death penalty-free-zone -- the main exception being Belarus; in Africa only six states carried out executions in 2006; in the Americas only the USA has carried out executions since 2003.

Unlike torture, "disappearances" and extrajudicial executions, most judicial executions are not carried out in secret or denied by government authorities. Executions are often announced in advance. In some countries they are carried out in public or before a group of invited observers.

No government publicly admits to torture or other grave violations of human rights, although privately some officials may seek to justify such abuses in the name of the "greater good". But retentionist governments, those that keep the death penalty, for the most part openly admit to using it: they do not so much deny its cruelty as attempt to justify its use; and the arguments they use publicly to justify the death penalty resemble those that are used in private to justify other, secret abuses.

The most common justification offered is that, terrible as it is, the death penalty is necessary: it may be necessary only temporarily, but, it is argued, only the death penalty can meet a particular need of society. And whatever that need may be it is claimed to be so great that it justifies the cruel punishment of death.

The particular needs claimed to be served by the death penalty differ from time to time and from society to society. In some countries the penalty is considered legitimate as a means of preventing or punishing the crime of murder. Elsewhere it may be deemed indispensable to stop drug-trafficking, acts of political terror, economic corruption or adultery. In yet other countries, it is used to eliminate those seen as posing a political threat to the authorities.

Once one state uses the death penalty for any reason, it becomes easier for other states to use it with an appearance of legitimacy for whatever reasons they may choose. If the death penalty can be justified for one offence, justifications that accord with the prevailing view of a society or its rulers will be found for it to be used for other offences. Whatever purpose is cited, the idea that a government can justify a punishment as cruel as death conflicts with the very concept of human rights. The significance of human rights is precisely that some means may never be used to protect society because their use violates the very values which make society worth protecting. When this essential distinction between appropriate and inappropriate means is set aside in the name of some "greater good", all rights are vulnerable and all individuals are threatened.

The death penalty, as a violation of fundamental human rights, would be wrong even if it could be shown that it uniquely met a vital social need. What makes the use of the death penalty even more indefensible and the case for its abolition even more compelling is that it has never been shown to have any special power to meet any genuine social need.

Countless men and women have been executed for the stated purpose of preventing crime, especially the crime of murder. Yet Amnesty International has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. A survey of research findings on the relation between the death penalty and homicide rates, conducted for the UN in 1988 and updated in 2002, concluded: ". . . *it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.*"(4)

Undeniably the death penalty, by permanently "incapacitating" a prisoner, prevents that person from repeating the crime. But there is no way to be sure that the prisoner would indeed have repeated the crime if allowed to live, nor is there any need to violate the prisoner's right to life for the purpose of incapacitation: dangerous offenders can be kept safely away from the public without resorting to execution, as shown by the experience of many abolitionist countries.

Nor is there evidence that the threat of the death penalty will prevent politically motivated crimes or acts of terror. If anything, the possibility of political martyrdom through execution may encourage people to commit such crimes.

Every society seeks protection from crimes. Far from being a solution, the death penalty gives the erroneous impression that "firm measures" are being taken against crime. It diverts attention from the more complex measures which are really needed. In the words of the South African Constitution Court in 1995, "We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime...The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished".

When the arguments of deterrence and incapacitation fall away, one is left with a more deep-seated justification for the death penalty: that of just retribution for the particular crime committed. According to this argument, certain people deserve to be killed as repayment for the evil done: there are crimes so offensive that killing the offender is the only just response.



It is an emotionally powerful argument. It is also one which, if valid, would invalidate the basis for human rights. If a person who commits a terrible act can "deserve" the cruelty of death, why cannot others, for similar reasons, "deserve" to be tortured or imprisoned without trial or simply shot on sight? Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as to the best of us, which is why they protect all of us.

What the argument for retribution boils down to, is often no more than a desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction of personal vengeance in public policy and legal codes.

If today's penal systems do not sanction the burning of an arsonist's home, the rape of the rapist or the torture of the torturer, it is not because they tolerate the crimes. Instead, it is because societies understand that they must be built on a different set of values from those they condemn.

An execution cannot be used to condemn killing; it is killing. Such an act by the state is the mirror image of the criminal's willingness to use physical violence against a victim.

Related to the argument that some people "deserve" to die is the proposition that the state is capable of determining exactly who they are. Whatever one's view of the retribution argument may be, the practice of the death penalty reveals that no criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

All criminal justice systems are vulnerable to discrimination and error. Expediency, discretionary decisions and prevailing public opinion may influence the proceedings at every stage from the initial arrest to the last-minute decision clemency. The reality of the death penalty is that what determines who shall be executed and who shall be spared is often not only the nature of the crimes but also the ethnic and social background, the financial means or the political opinions of the defendant. The death penalty is used disproportionately against the poor, the powerless, the marginalised or those whom repressive governments deem it expedient to eliminate.

Human uncertainty and arbitrary judgments are factors which affect all judicial decisions. But only one decision -- the decision to execute -- results in something that cannot be remedied or undone. Whether executions take place within hours of a summary trial or after years of protracted legal proceedings, states will continue to execute people who are later found to be innocent. Those executed cannot be compensated for loss of life and the whole society must share responsibility for what has been done.

It is the irrevocable nature of the death penalty, the fact that the prisoner is eliminated forever, that makes the penalty so tempting to some states as a tool of repression. Thousands have been put to death under one government only to be recognized as innocent victims when another set of authorities comes to power. Only abolition can ensure that such political abuse of the death

penalty will never occur.

When used to crush political dissent, the death penalty is abhorrent. When invoked as a way to protect society from crime, it is illusory. Wherever used, it brutalizes those involved in the process and conveys to the public a sense that killing a defenseless prisoner is somehow acceptable. It may be used to try to bolster the authority of the state -- or of those who govern in its name. But any such authority it confers is spurious. The penalty is a symbol of terror and, to that extent, a confession of weakness. It is always a violation of the most fundamental human rights.

Each society and its citizens have the choice to decide about the sort of world people want and will work to achieve: a world in which the state is permitted to kill as a legal punishment or a world based on respect for human life and human rights -- a world without executions.

Recommendations:

Amnesty International calls on the UN General Assembly, 62nd session, (2007) to adopt a resolution:

- Affirming the right to life and stating that abolition of the death penalty is essential for the protection of human rights;
- Calling on retentionist states to establish a moratorium on executions as a first step towards abolition of the death penalty;
- Calling on retentionist states to respect international standards that guarantee the protection of the rights of those facing the death penalty; and
- Requesting the UN Secretary-General to report on the implementation of the moratorium to the next session of the UNGA.

Source: Amnesty International.

<http://www.amnestyusa.org/document.php?id=ENGACT510022007&lang=e>

Appendix DD

Pro-Death Penalty Article

## Death Decisions

By Michael Nevin (04/08/04)

In 1965 Robert Lee Massie killed Mildred Weiss in San Gabriel, California while robbing her and her husband. He received the death penalty. However, in 1972 all the death sentences in California were commuted to life, so in 1978 Massie was paroled. On January 3, 1979 Robert Massie shot and killed San Francisco liquor store owner Boris Naumoff and wounded a store clerk during yet another robbery.[1]

On February 6, 2001 San Francisco District Attorney Terrence Hallinan addressed a San Francisco court refusing to file a motion to set the execution date for Robert Lee Massie. Hallinan told the court, The death penalty does not constitute any more deterrent than life without parole.[2] Hallinan, a longtime and outspoken opponent of the death penalty, let his personal feelings outweigh his duty as a district attorney to carry out state law. The California State Attorney General's office was forced to step in and set the date of execution. Although it was too late for one San Francisco liquor store owner, Massie faced the ultimate deterrent as fate would eventually catch up with him.

Former Illinois Governor George Ryan, who commuted the death sentences of all 167 Illinois inmates in 2002, addressed the California Legislature last year saying, I don't know what's wrong with calling a delay for a couple years.[3] Ryan, who is under federal indictment for taking payoffs while Illinois Secretary of State, was nominated for the 2003 Nobel Peace Prize for his efforts to stop the death penalty.[4] He joined illustrious company that includes California death row inmate and L.A. Crips street gang co-founder Stanley Tookie Williams. Williams, a convicted killer of four, was nominated twice for the same peace award.[5] I would suspect Mumia Abu-Jamal, honorary citizen of Paris and executioner of Philadelphia police officer Daniel Faulkner, would lend his support for Ryan's nomination.

Ryan called for a moratorium in California where only 10 people have been put to death since 1977, although the state has sentenced 795 people to death between 1976 and 2002. Imperial County District Attorney Gilbert Otero stated, The state's citizens can take solace in the extraordinary safeguards used to ensure that only those murderers who are most deserving receive the death penalty. There is no need whatsoever to impose a so-called moratorium in California. California limits the death penalty to first-degree murder with special circumstances, train wrecking, treason, or perjury causing execution. A Cornell University study released in March 2004 found that California has a death sentence rate of only 1.3% while the national average stood at 2.2%.[6]

Several myths about the death penalty have been reported but continue to be debunked upon closer examination. The Liebman study at Columbia University, Broken System: Error Rates in Capital Cases, 1973-1995, released its results in 2000 claiming serious flaws in the system, including a high rate. It was later revealed that the misleading included any issue requiring further review by a lower court, even when the court upheld the sentence. The 23-year study found no cases of mistaken executions.[7] The numerous appeals in capital cases demonstrate the extraordinary adherence to due process. The fallacy that innocent people are being executed

cannot be validated, and it is intellectually dishonest for opponents of the death penalty to perpetrate this myth. The death penalty in America is undoubtedly one of the most accurately administered criminal justice procedures in the world.

The issue of race has been cited by critics, who complain that minorities are unfairly chosen for death sentences. According to the U.S. Bureau of Justice Statistics, since the death penalty was reinstated by the Supreme Court in 1976, white inmates have made up more than half of those under sentence of death. In 2002, 71 persons in 13 states were executed: 53 were white and 18 were black. The Cornell University study found that African Americans represented 41.3% of condemned inmates while they committed 51.5% of homicides.[8]

Upon closer examination, an issue can be made of the small number of executions compared to the number of people under sentence of death. According to the U.S. Bureau of Justice Statistics, at yearend 2002, 37 states and the federal prison system held 3,557 prisoners under sentence of death (all for committing murder), but only 71 were executed. In 1954 147 prisoners were under sentence of death, and 81 were executed. Many condemned inmates today are more likely to die of old age than lethal injection. Of the 6,912 people under sentence of death between 1977 and 2002 only 12% were executed.[9] A 2003 Clemson University study by Professor Joanna Shepherd concluded: If criminals prefer lengthy death row waits to short ones, as their numerous appeals and requests for stays suggest, then shortening the time until execution could increase the death penalty's deterrent impact I find that shorter waits on death row increase deterrence. Specifically, one extra murder is deterred for every 2.75-years reduction in the death row wait before each execution.[10] People behave economically by weighing cost and benefit. Incentive is a human behavior that cannot be overlooked when it comes to deterrence. The death penalty saves innocent lives when it is properly administered, making it a worthy punishment.

States that have the death penalty must provide extraordinary safeguards to ensure guilt. Once guilt has been established and appeals are exhausted, justice should be swift. The families of the victims deserve nothing less. The Pro-Death Penalty.com website offers a startling statistic: The 518 killers who were executed between 1998 and 2003 had murdered at least 1111 people. That is an average of 2.14 victims per executed killer. The people on death row made disastrous decisions while members of society. The next decision these killers should make is choosing menu items for a final meal.

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