

# The Death Penalty: History, Exonerations, and Moratoria

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Today's topic is the death penalty. I will discuss multiple areas related to the death penalty, including its history; major Supreme Court decisions; contemporary status; racial differences; errors and exonerations; public opinion; moratoria; and ethics and morality. I will also refute common myths, including those that posit that the death penalty is humane; equally applied across the states; used largely by "Western" countries; color-blind; infallible; a deterrent to crime; and moral.

From ancient times through the 18th Century, methods of execution included crucifixion, crushing by elephant, keelhauling, the guillotine, and, non-metaphorically, death by a thousand cuts.

Between 1608 and 1972, there were an estimated 15,000 state-sanctioned executions in the colonies, and later the United States.

Executions in the 19<sup>th</sup> and much of the 20<sup>th</sup> Century were carried out by hanging, known as lynching when done extrajudicially, or by firing squad. In the late 19<sup>th</sup> Century, the electric chair, invented by dentist Alfred Southwick, came into use. Famed inventor Thomas Edison lobbied for its use, as part of ascheme to capture a larger share of the nascent energy market from his competitor George Westinghouse. The gas chamber, into which cyanide gas

is released to suffocate the prisoner, was introduced in 1924.

In 2001, the Georgia Supreme Court ruled that electrocution violates the Constitution's prohibition against cruel and unusual punishment, stating that it causes "excruciating pain...cooked brains and blistered bodies." In 2008, Nebraska became the last remaining state to agree.

In the 1970s and 1980s, anesthesiologist Stanley Deutsch and pathologist Jay Chapman developed techniques of lethal injection, along with a death cocktail consisting of 3 drugs designed to "humanely" kill inmates: an anesthetic, a paralyzing agent, and potassium chloride (which stops the heart beating). Lethal injection was first used in Texas in 1982 and is now the predominant mode of execution in this country.

Death by lethal injection cannot be considered humane. In one large study published in the prestigious medical journal, *The Lancet*, 88% of lethal injectees had lower levels of anesthesia than those required for surgery; 43% had concentrations consistent with awareness. Of course, because of the paralyzing agent, none were able to move or cry out.

In 1972, the Supreme Court temporarily halted executions. Four years later, after states rewrote their death penalty laws, the Court determined that the new laws were constitutional, and executions resumed. Since 1976, 32 states have executed 1389 prisoners (including 11 women). Texas leads all other states by wide margin. When former president George W. Bush was governor of Texas, he presided over 152 executions, claimed the death penalty was infallible, and openly mocked a death row inmate who had converted to Christianity. Former Texas governor Rick Perry presided over 230 executions, but he was in office longer, making "Bush the Lesser" the state's "executioner-in-chief."

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Public Health and Social Justice Website:

<http://www.publichealthandsocialjustice.org>

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Prescription for Justice Television:

<https://www.youtube.com/channel/UCJt34I9c5vT2RpZtkg6Im2A/videos>

Prescription for Justice Podcast:

<https://www.kboo.fm/program/prescription-justice>

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Before 2005, the United States was the only country to legally and openly execute juvenile defendants. In 2005, the Supreme Court ruled the death penalty unconstitutional for youths who are under age 18 at the time of their crimes. Seven separate international treaties prohibit the execution of juveniles, including the Convention on Rights of the Child, one of many human rights treaties the US has not signed.

In 1986, the Supreme Court ruled the execution of the mentally ill unconstitutional. In 2002, the court ruled the execution of mentally handicapped unconstitutional. Unfortunately, at least 34 mentally handicapped were executed between 1976 and 2002. Today states determine the definition of “mentally-impaired.” Nearly half of those executed between 2000 and 2015 had been diagnosed with a mental illness or substance abuse disorder as adults.

Globally, the US ranks 4th in executions, after China, Iran, and Saudi Arabia; it is followed by Pakistan and Iraq. Fifty-six countries (plus Taiwan and the Palestinian Territories) execute civilians. 35 more countries have death penalty laws on the books, but no longer use them.

Thirty-two US states currently allow capital punishment, although almost all recent executions have been carried out by just 5 states: Texas, Missouri, Florida, Oklahoma, and Georgia. On the other hand, many states have outlawed capital punishment, including Illinois, New York, New Jersey, New Mexico, Connecticut, Maryland, and Nebraska.

Blacks who murder whites are more likely to be sentenced to death than whites who murder blacks. Death sentences more common in rural areas than urban areas. Billions have been spent to implement the death penalty, partly a consequence of the multiple appeals that typically occur in death penalty cases.

In actual fact very few death row inmates are ever executed. The life expectancy of death row inmates is about 12 years, a consequence of this population being relatively aged.

There are currently 3,019 individuals on death row, with the highest numbers in California, Florida, and Texas; approximately 60 of these are women. Errors and exonerations are common. Serious constitutional errors mar 2/3 of capital cases, including

unqualified (or even sleeping) attorneys, prosecutorial misconduct, and improper jury instructions.

Since 1973, 146 people have been released from death row due to evidence of innocence (after an average of 11 years behind bars), thanks largely to DNA testing and dogged attorneys like those with the Innocence Project. The Justice for All Act of 2004 grants inmates convicted of federal crimes the right to DNA testing to support claims of innocence and increases financial compensation to wrongfully convicted federal prisoners.

Law enforcement sometimes arrests the wrong person, and criminology is an imperfect science. There have been 1,590 post-conviction exonerations in U.S. since 1989 (329 through DNA evidence). The true suspects and/or perpetrators have been identified in about 1/2 of the DNA cases. 1/3 of eyewitness identifications in criminal cases are felt to be wrong, and eyewitness misidentifications are responsible for 3/4 of convictions overturned by DNA evidence. Others have been convicted based on the unreliable testimony of jailhouse informants.

Furthermore, false confessions are common. This is likely due to coercion, mental exhaustion, and/or mental impairment. A 1969 US Supreme Court decision allows police to lie to suspects during interrogations, thus increasing the pressure and potential for false confessions. An estimated 10% of U.S. adults exonerated of crimes have falsely confessed, including 1/4 of those cleared by DNA testing. Open interrogation would discourage false confessions and decrease costs associated with appeals. Currently, Alabama, Illinois, Maine, and Minnesota require videotaping of every interrogation and confession.

65 percent of those exonerated have been financially compensated, as is required by 29 states, the federal government, and the District of Columbia. Awards vary from state to state.

Extensive criminological data have shown that the death penalty is not a deterrent to violent crime. Rather, in some cases, it may be an incitement to further violence. Death penalty states do not have lower homicide rates than states without capital punishment.

Public support for the death penalty has decreased from 80% in 1994 to 63% in 2014. Less than 1/2 favor the death penalty when the alternative

of life without parole exists. Even so, some who disapprove of the death penalty are willing to put up with errors, as a 2012 survey found that 57% felt the death penalty had been unfairly applied, and 73% were somewhat or very concerned that innocent persons had been executed.

Today, moratoria on the death penalty are in place in 15 states, and 4 more have gubernatorial moratoria. Some cities have called for moratoria. The American Bar Association, UN Commission on Human Rights, Amnesty International, and Human Rights Watch all oppose the death penalty.

The American Medical Association, American Public Health Association, American Nurses Association, and the American Board of Anesthesia all oppose health professionals' participation of in executions. However, only 7/35 death penalty states incorporate AMA ethics policy. Some states provide immunity to doctors participating in executions by preventing medical boards from taking disciplinary action against them. Many states also provide anonymity. Very few physicians are aware of AMA guidelines prohibiting physician participation in deaths, as it is not routinely covered in most medical schools' curricula.

U.S. President Donald Trump openly praises brutal dictators who have been responsible for extrajudicial

executions, such as Russia's Vladimir Putin and the Philippine's Rodrigo Duterte. His Supreme Court appointments could change interpretations of death penalty law for decades. The 2020 election will be a watershed moment in deciding the degree of America's respect for the rule of law.

Even those of us who are law-abiding citizens are, realistically, one police or eyewitness or forensic lab mistake away from being arrested and convicted unjustly. Thus, while it may not be popular to speak out on behalf of those on death row, who have been convicted of horrible crimes, many are likely innocent, and, even for those who aren't, as Russian novelist Fyodor Dostoevsky said, "A society should be judged not by how it treats its outstanding citizens but by how it treats its criminals." It is simply wrong to kill to show that killing is wrong. Even Corretta Scott King, Martin Luther King Jr's widow, recognized the universality of the commandment, "Thou shalt not kill." She wrote, "As one whose husband and mother-in-law have died the victims of murder ... I stand firmly and unequivocally opposed to the death penalty ... An evil deed is not redeemed by an evil deed of retaliation. Justice is never advanced in the taking of a human life. Morality is never upheld by a legalized murder

