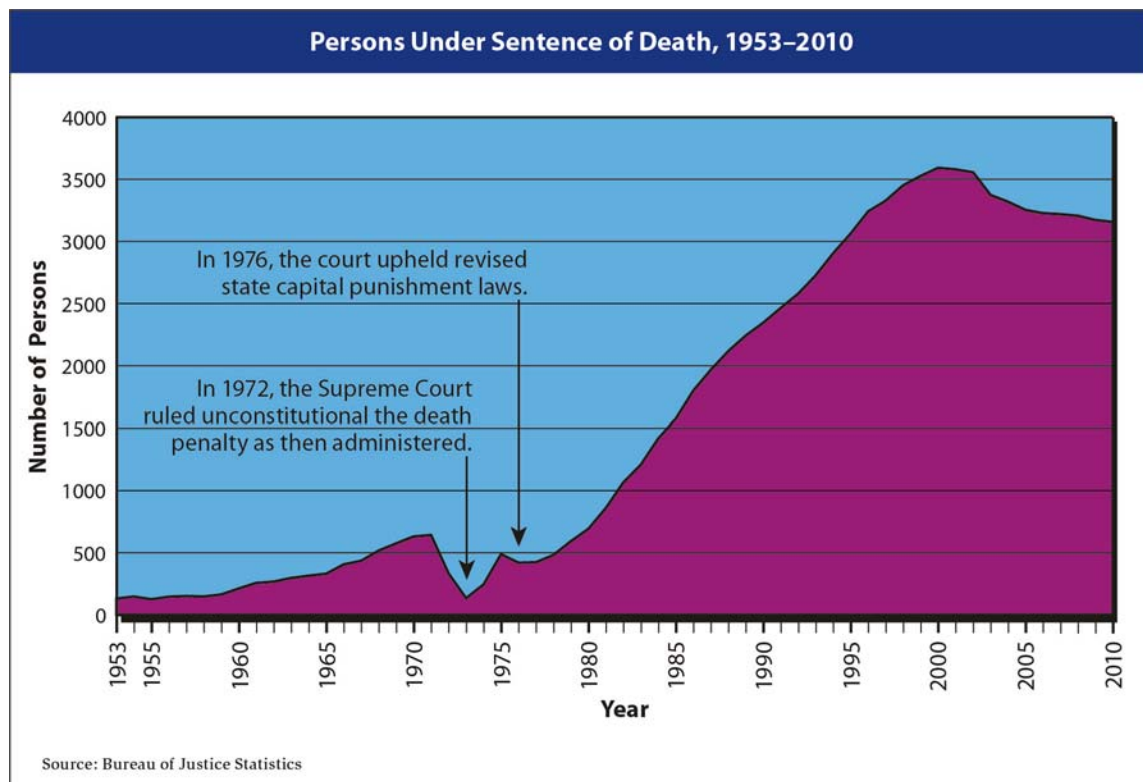


A History of the Death Penalty in America

“Capital punishment” is another expression for the “death penalty,” the legal execution of a criminal. The word *capital* comes from the Latin word for head. In ancient times, capital punishment was often carried out by beheading. This method has never been used in America. But criminals have been put to death by shooting, hanging, electrocution, poison gas, and lethal injection. Today, all states with the death penalty use lethal injection. Some states, however, allow one of these other methods as an option.

In the American colonies, legal executions took place as early as 1630. As in England, the death penalty was imposed for many crimes, even minor ones such as picking pockets or stealing a loaf of bread. During the 1800s in England, for example, 270 crimes were capital offenses, or crimes punishable by death. Thousands of people sometimes attended public hangings. Gradually, however, England and America reduced the number of capital offenses, until the main focus was on first-degree murder — murders showing deliberation, willfulness, and premeditation. They also moved executions within the walls of prisons to eliminate the spectacle of public executions.



In the 1800s, many people in America and Europe began to oppose the death penalty. Michigan abolished it in 1845 and Wisconsin entered the Union in 1848 without a death penalty in its statutes. The movement against the death penalty grew stronger after World War II, especially in Europe, where many were weary of so much killing during the war. One by one all the Western European nations and Canada did away with capital punishment, until the United States was the last Western democracy that still executed criminals.

Seventeen American states, mainly clustered in the Midwest and Northeast, have banned executions. New York, which had banned the death penalty 30 years before, reinstated it in 1995. But the New York Court of Appeals struck down the law in 2004, and the state legislature has refused to pass a new death penalty law. New Jersey (2007), New Mexico (2009), Illinois (2011), and Connecticut (2012) recently joined the ranks of states without capital punishment. And in 2011, the governor of Oregon announced a moratorium on the death penalty in that state while he remained in office.

Recent Legal History of the Death Penalty

The 1950s and 1960s saw public protests over capital punishment, and the number of executions in America gradually declined. In 1967, there were only two, and the following year saw the beginning of an unofficial moratorium on executions. States waited to see how the Supreme Court would rule on the constitutionality of capital punishment. No executions took place in the United States from 1968 through 1976.

In the 1972 case of *Furman v. Georgia*, the Supreme Court declared capital punishment unconstitutional as it was then applied. The court said the death penalty was a violation of the Eighth Amendment prohibition against cruel and unusual punishment because of the inconsistency in who was given a death sentence and who was not. The court suggested that new laws might be acceptable, if they provided clear standards for imposing death sentences.

Between 1972 and 1976, 35 states wrote new capital punishment laws to try to meet the Supreme Court's suggestions. These new laws fell into two broad groups. One group, represented by laws in Georgia, Texas, and Florida, clearly described which capital crimes could be punished by death. These laws also set up a weighing system for deciding when the death penalty should be applied. In a separate penalty trial after a conviction for first-degree murder, a jury would consider **mitigating** circumstances, which tended to excuse the crime or the criminal's behavior, and **aggravating** circumstances, which made the crime seem worse. The court could only sentence someone to death if the aggravating circumstances outweighed any mitigating circumstances.

A second group of laws, represented by statutes from North Carolina and Louisiana, sought to overcome the Supreme Court's objections in another way. These laws simply made the death penalty mandatory for anyone convicted of a capital crime.

In 1976, the Supreme Court in *Gregg v. Georgia* ruled that the first type of law, based on the act of balancing mitigating and aggravating circumstances, was constitutional. This upheld the Georgia, Texas, and Florida death penalties. The court, however, struck down the second type. It declared unconstitutional North Carolina's and Louisiana's mandatory death sentences. The court said a mandatory sentence was unduly harsh and rigid and made no allowance for the particular circumstances of each case.

Executions began again in 1977, though many states still waited for a ruling on one further major issue: whether the death penalty was being applied equally. From 1977 through 1985, only 50 executions took place, though almost 2,000 prisoners waited on death rows.

The test case came with the Georgia case of *McCleskey v. Kemp* (1987). In it, lawyers for the condemned man submitted a careful study of how the death penalty had been applied in Georgia during the 1970s.

The study, by University of Iowa Professor David Baldus, showed that blacks who had killed whites had been sentenced to die seven times more often than whites who had killed blacks. Even after accounting for other variables, such as the viciousness of the crime, blacks had been sentenced to die more than four times as often as whites.

In its decision, the U.S. Supreme Court acknowledged that there seemed to be some *statistical* racial discrimination in Georgia's application of the death penalty. But the justices ruled by a 5-4 vote that a mere statistical variation was not enough to invalidate the death penalty. To do that, the defendant would have to show that the state had somehow encouraged the result or that there was actual discrimination in a particular case. Since the defendant had offered no such proof, which would be difficult to acquire, the court upheld the death penalty.

The Supreme Court has decided many cases since *McCleskey*. The most important was the 2005 case of *Roper v. Simmons*. The Supreme Court ruled it unconstitutional to execute murderers who were under 18 when they committed the crime. The court declared such executions violated the Eighth Amendment. The 5-4 court majority pointed out that only two nations in the world allowed such executions — the United States and Somalia. It also noted that although 19 states permitted these executions, only three states had carried them out in the last decade.

The Supreme Court has also struck down the death penalty for crimes against individuals that do not result in death. In 1977, the court ruled unconstitutional a law that imposed the death penalty for the crime of raping an adult woman (*Coker v. Georgia*). In 2008 in *Kennedy v. Louisiana*, the court struck down the death penalty for the crime of raping a child. The court has left open the question of whether capital punishment can be applied to crimes *against the state* that do not result in death — treason, espionage, and drug kingpin activity (all of which are capital offenses under federal law).

In recent years, about 50 prisoners have been executed each year. More than 3,000 inmates wait on death rows in prisons across America. Much of this backlog is caused by appeals. It takes an average of 14 years from a sentence of death to execution.

For Discussion and Writing

1. What reason did the Supreme Court give in *Furman* for saying that death penalty statutes were unconstitutional? How did states change their statutes to make them constitutional? Do you agree with the court that these statutes are constitutional? Why or why not?
2. What did the court decide in the *McCleskey* case? Do you agree with its decision? Why or why not?
3. What did the court decide in *Roper v. Simmons*? Do you agree with its decision? Why or why not?