

AMERICA POLICY BRIEF

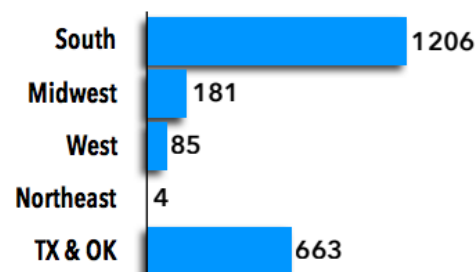
Capital Punishment

ELIMINATING AN ARBITRARY, OUTDATED, AND INCONSISTENT FORM OF PUNISHMENT

What is the issue?

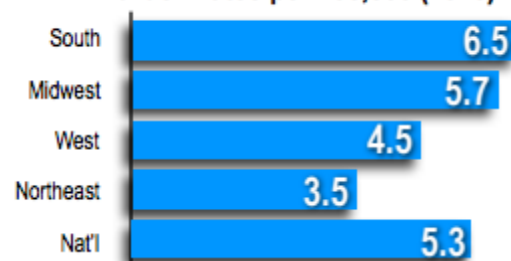
“Only 43 of the nearly 200 countries that participate in the UN routinely use capital punishment” (Fisher, 2011) and a variety of reasons exist to explain this phenomenon. As Susan Bandes explains, capital punishment serves as an outdated, corrupt, and prejudiced means of serving justice. *Furman v. Georgia* found the death penalty constitutional and simply focused on alleviating flaws which created “the appearance of careful or even over-zealous scrutiny, but little actual constitutional protection for the rights of defendants” (Bandes, p.906). So why would the United States continue on with capital punishment? Diana L. Falco and Tina L. Freiburger emphasize that the only reason capital punishment is still a form of correctional policy in America is because of strong public support. Leaders, administrators, and policy makers look towards public opinion and polls for support and use it as a ploy in re-election campaigns, to maintain an image of being tough on crime. Judges may feel more pressure to assign verdicts of the death penalty and uphold them if polls indicate that that is what the public favors. If the public's opinion now carries so much weight, it is stressed that methods being used to measure public opinion and support fail to take into consideration the complexity of the issue. The issue is more multifaceted than many judge. Justice Marshall explained that if the public was properly informed, then support for capital punishment would decrease. His statements finally sparked a more in-depth approach of polling the public beyond just “yes” and “no” answers. Unfortunately this was still inconclusive, which is no surprise with findings regarding how complex this matter is. Findings support the argument that methodological limits allow just a portion of the public's true opinions and beliefs to be represented (Falco, Freiburger p.831). Since 1973, over 160 people have been released from death row due to evidence of innocence (Death Penalty Information Center, 2018). America is allowing clearly lacking public opinion polls to be used as evidence in favor of taking lives, possibly innocent, as punishment. Actual evidence from the FBI Uniform Crime Report of 2016 shows that the South has the highest murder rate yet it accounts for over 80% of executions. Capital punishment does not work effectively as a deterrent from crime (Death Penalty Information Center, 2018). Not only are the accused facing death, but it is much like a lottery whether they

EXECUTIONS BY REGION*



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

Murder Rates per 100,000 (2016)

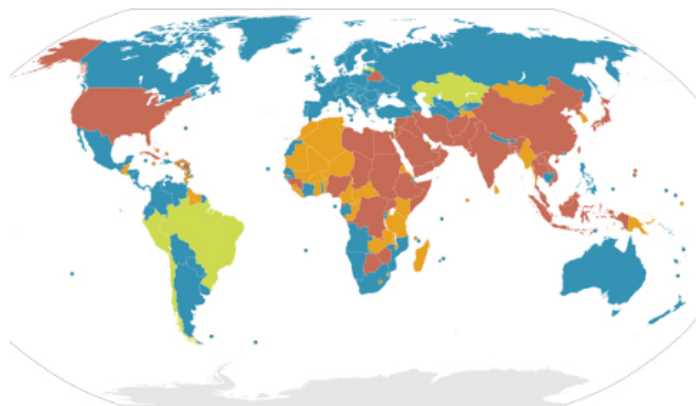


<https://deathpenaltyinfo.org/documents/FactSheet.pdf>

would be sentenced to it or not (Bandes, p.908). The death penalty is only legal in 31 states in America and within the states that do actually use it, it is not uniformly enforced (Deathpenalty.procon.org). So whether a person committed a crime in Mississippi versus Minnesota could mean life or death for them. Delving further, there are severe biases assigned upon the death penalty. A disproportionate amount of African Americans are executed especially when it comes to interracial murders. 20 white defendants with black victims have been executed while 288 black defendants with white victims have been executed (Death Penalty Information Center, 2018). A punishment as serious as the death penalty would need to be enforced uniformly and unbiased, which is clearly not possible in the United States.

Why is it important for America?

America has an extensive history of leading the discussion in democratization. Currently America can be seen attempting to convince leaders to relax restrictions and take steps towards democracy. What can be burdensome in this quest is the fact that America has the potential to punish its citizens with a firing squad, electrocution, hanging, and even gas chamber (R. Bohm, 1999). As previously mentioned, America is one of the few countries in the United Nations that practices capital punishment. It can be viewed that America is isolating itself from other democratized countries which we call allies. Not only is alienation an issue for America, but it can be seen as aligning ourselves with death penalty countries like Korea, Saudi Arabia, and Libya (Fisher, 2011). Are these kinds of comparisons what the leading democracy strives towards? Of course many claim that this is what the American people want but just considering methods of executions, 69% of Americans only support lethal injection. It is undeniable that America also has been trying to distance itself from its turbulent past. It is a country that has a history of enslaving African Americans for a time that spanned two centuries. Many would say that America has moved on from that time but others argue that the roots of capital punishment lay in slavery and America's use of lynching to enforce a caste system (Bandes, 905). Looking at how the death penalty operates today, the south not only assigned most death sentences, but stands out with the swiftness in which they carry them out. Executions seldom occur outside of the former slave states and this is a pattern that cannot be ignored. The message America is sending is not one of a progressive democratized country, but rather that of an old fashioned country with barbaric practices that refuses to take into consideration raw evidence. It is time America considers reason that rises above politics, emotion, and deep-seated prejudices.



Red- Countries with death penalty
Blue- Countries without the death penalty
Green- Special circumstances death penalty
Orange- With but have not used for 10+ years

What Can Policy Makers Do?

Since it appears that the majority of the evidence providing support and the continuity of capital punishment in America comes from public “support”, then an appropriate starting point for policy makers would be to invest more time and money into more detailed public opinion polls. Policy makers must try to use polls that more accurately measure variations in beliefs and opinion and changing of circumstances. This is a daunting and possibly inconclusive task to tackle so the natural next step would be to not only rely on the public's opinion to continue the use of capital punishment and policy surrounding it. Studies and research concerning the effectiveness of capital punishment for deterring crime, prejudices, and other aspects surround it must be on the forefront for making policy decisions. Beyond that, more funding should be provided for further in depth studies and the results should be taken under serious consideration before making any future policies concerning capital punishment. Since many studies indicate the death penalties failure to deter murder and other crime already exist, policy makers should consider other methods of deterrence that may act be effective (Falcon, Freiburger p.835). While capital punishment is legal in the United States, Policy makers must create more comprehensive policy regarding proper representation and a thorough appeal process for those facing the death penalty. There are apparent biases in the criminal justice system, especially in the disproportionate amount of African Americans sentenced to death, so all policy makers must take these steps to try to alleviate just a fraction of these injustices.

Works Cited

- 31 States with the Death Penalty and 19 States with Death Penalty Bans - Death Penalty - ProCon.org." *Should the Death Penalty Be Allowed?*, 28 Mar. 18AD, deathpenalty.procon.org/view.resource.php?resourceID=001172.
- "Facts about the Death Penalty." *DEATH PENALTY INFORMATION CENTER*, 17 May 2018, deathpenaltyinfo.org/documents/FactSheet.pdf.
- R. Bohm, "Deathquest: An Introduction to the Theory and Practice of Capital Punishment in the United States," Anderson Publishing, 1999. W. Eckenbarger, "Perfecting Death: When the state kills it must do so humanely.
- Falco , Diana L., and Tina L. Freiburger. "Public Opinion and the Death Penalty: A Qualitative Approach ." *The Qualitative Report*, vol. 16, no. 3, 3 May 2011, pp. 830–847.
- Susan A. Bandes, All Bathwater, No Baby: Expressive Theories of Punishment and the Death Penalty, 116 Mich. L. Rev. 905 (2018). Available at: <https://repository.law.umich.edu/mlr/vol116/iss6/6>
- Gray , Emily, et al. *Attitudes to the Death Penalty*. 2007, *Attitudes to the Death Penalty*.

