

Current Issues and Topics

Innocence

The Supreme Court addressed the constitutionality of executing someone who claimed actual innocence in *Herrera v. Collins* (506 U.S. 390 (1993)). Although the Court left open the possibility that the Constitution bars the execution of someone who conclusively demonstrates that he or she is actually innocent, the Court noted that such cases would be very rare. The Court held that, in the absence of other constitutional violations, new evidence of innocence is no reason for federal courts to order a new trial. The Court also held that an innocent inmate could seek to prevent his execution through the clemency process, which, historically, has been "the 'fail safe' in our justice system." Herrera was not granted clemency, and he was executed in 1993. As of October 2012, 141 people have been freed from death row after their exoneration of all charges.

Public Support for the death penalty has fluctuated throughout the century. According to Gallup surveys, in 1936 61% of Americans favored the death penalty for persons convicted of murder. Support reached an all-time low of 42% in 1966. Throughout the 70s and 80s, the percentage of Americans in favor of the death penalty increased steadily, culminating in an 80% approval rating in 1994. Since 1994, support for the death penalty has declined. Today, 61% of Americans support the death penalty. However, research shows that public support for the death penalty drops when poll respondents are given the two choices a juror in the penalty phase of a typical capital trial would be given: death or "life imprisonment with absolutely no possibility of parole." Given that choice, support for the death penalty drops to 50% or less.

Religion and the Death Penalty In the 1970s, the National Association of Evangelicals (NAE), representing more than 10 million conservative Christians and 47 denominations, and the Moral Majority, were among the Christian groups supporting the death penalty. NAE's successor, the Christian Coalition, also supports the death penalty. Today, Fundamentalist and Pentecostal churches, as well as the Church of Jesus Christ of Latter-day Saints (Mormons), support the death penalty — typically on biblical grounds, specifically citing the Old Testament (Bedau, 1997). Although formerly also a supporter of capital punishment, the Roman Catholic Church now opposes the death penalty. In addition, most Protestant denominations, including Baptists, Episcopalians, Lutherans, Methodists, Presbyterians, and the United Church of Christ, oppose the death penalty.

Women and the Death Penalty

Women have, historically, not been subject to the death penalty at the same rate as men. From the first woman executed in the U.S., Jane Champion, who was hanged in James City, Virginia in 1632, to the 2010 execution of Teresa Lewis in Virginia, women have constituted only 3% of U.S. executions. In fact, only 12 women have been executed since the death penalty was reinstated. (O'Shea, 1999, with updates by DPIC).

Federal Death Penalty and International Views

The Federal Death Penalty

In addition to the death penalty laws in many states, the federal government has also employed capital punishment for certain federal offenses, such as murder of a government official, kidnapping resulting in death, running of a large-scale drug enterprise, and treason. When the Supreme Court struck down state death penalty statutes in *Furman*, the federal death penalty statutes suffered from the same constitutional infirmities that the state statutes did. As a result, death sentences under the old federal death penalty statutes have not been upheld.

A new federal death penalty statute was enacted in 1988 for murder in the course of a drug-kidnaping conspiracy. The statute was modeled on the post-*Gregg* statutes that the Supreme Court has approved.

In 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act that expanded the federal death penalty to some 60 crimes, some of which do not involve murder. There have been three federal executions under these laws: Timothy McVeigh and Juan Garza in June of 2001, and Louis Jones in March 2003.

In response to the Oklahoma City Bombing, President Clinton signed the Anti-Terrorism and Effective Death Penalty Act of 1996. The Act, which affects both state and federal prisoners, restricts review in federal courts by establishing tighter filing deadlines, limiting the opportunity for evidentiary hearings, and ordinarily allowing only a single habeas corpus filing in federal court. Proponents of the death penalty argue that this streamlining will speed up the death penalty process and significantly reduce its cost, although others fear that quicker, more limited federal review may increase the risk of executing innocent defendants. (Bohm, 1999 and Schabas, 1997)

International Views

In April 1999, the United Nations Human Rights Commission passed a resolution supporting a worldwide moratorium on executions. The resolution calls on countries which have not abolished the death penalty to restrict its use, including not imposing it on juvenile offenders and limiting the number of offenses for which it can be imposed.

As of January 2008, 138 countries are abolitionist in law or practice, leaving just 59 countries active in the use of the death penalty. Of the almost 1600 known executions to take place in 2006, 91% were carried out by the China, Iran, Pakistan, Iraq, Sudan and the USA. (Amnesty International, 2007)