The Death Penalty and Human Rights: Is the U.S Out of Step?

An overwhelming majority of Americans support the death penalty. The rest of the world, however, is slowly abandoning this ancient and ultimate punishment. Many countries have signed international agreements limiting and outlawing it.

Under our federal system of government, every state, and the federal government, has its own set of criminal laws. This means that Congress and each state legislature must determine whether to enact capital punishment in its jurisdiction. Today, 38 states and the federal government have death-penalty laws. These laws apply only to first-degree murders, those done with deliberation and calculation. Only 12 states do not have capital punishment (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin).

Current trends in the United States show strong support for capital punishment. In the last 20 years, support for the death penalty has never dropped below 57 percent in opinion polls. In a few polls, it has reached as high as 80 percent. During the 1990s, two states (New York and Kansas) decided to reinstate the death penalty, while no state abolished it. The death penalty has broad popular support.

Any death-penalty law and case must meet constitutional standards. The Eighth Amendment to the U.S. Constitution forbids “cruel and unusual punishments.” The Fifth and 14th amendments require “due process of law.” The 14th Amendment also promises “equal protection of the laws.” The Sixth Amendment guarantees every defendant a fair trial. Any defendant can appeal a death sentence on these or other grounds. Appeals courts scrutinize death-penalty cases to make sure proper procedures and constitutional standards have been followed.

The highest appeals court is the U.S. Supreme Court. This court has the final say on matters of U.S. constitutional law. It has made several landmark rulings on death-penalty cases.

After rejecting other death-penalty laws as unconstitutional, the Supreme Court in 1976 in Gregg v. Georgia upheld one type of death-penalty law. This type requires a separate penalty trial after a guilty verdict. In the penalty trial, jurors consider mitigating factors that tend to excuse the behavior and aggravating factors that make the crime seem worse. A court can impose a death sentence only if the aggravating factors outweigh the mitigating factors. This means that only the most depraved murderers can be punished by death.

The Supreme Court also considered challenges to the death penalty based on racial bias. One study presented to the court showed that in Georgia blacks who killed whites were sentenced to death seven times more often than whites who killed blacks. In 1987 in McCleskey v. Kemp, the Supreme Court 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
racial discrimination in a particular case. Since the defendant had offered no such proof, the court upheld the death penalty.

In cases following *McCleskey*, the Supreme Court limited some death-penalty appeals. Opponents of capital punishment attacked these decisions, saying a shortened appeals process will make it more likely that an innocent person will be put to death. According to the [Death Penalty Information Center](https://www.deathpenaltyinfo.org/), nearly 70 prisoners have been released from death rows since 1973 because DNA or other evidence proved that they were innocent. Supporters of capital punishment say that many prisoners have abused the appeals process, filing frivolous appeals simply to delay their execution. They point out that the appeals process averaged about 20 years. Even with the court limiting some appeals, they say the process is the most extensive and careful in the world, still lasting many years and costing millions of dollars. This process, they say, will ensure that no innocent person is executed.

Today, the death penalty seems firmly entrenched in the United States. In the last 20 years, about [500 prisoners](https://www.deathpenaltyinfo.org/) have been executed. In 1997, 74 executions took place. About 3,300 prisoners are currently on death rows, waiting out their appeals.

But new challenges against the death penalty are arising. This time from the international community. Many nations are urging the United States to sign treaties against capital punishment. If the U.S. government signed any treaty banning capital punishment, it would bind every state. [Article VI of the U.S. Constitution](https://www.archives.gov/federal-register/codes/us-constitution/section-6.html) states that all ratified treaties “shall be the supreme Law of the Land; and the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary Notwithstanding.”

Supporters of the death penalty strongly oppose any treaty that forbids capital punishment. They view this penalty as a fitting one for murder and a sensible response to the still-high (though declining) murder rate in the United States. They see these treaties as threats to the democratic right of any state to impose capital punishment.

**International Trend Against Capital Punishment**

This strong support of the death penalty contrasts with international trends. The use of the death penalty is declining around the world. In 1981, 27 countries banned the death penalty. By 1998, this number had risen to 63. More than 40 other nations have severely restricted capital punishment: They either limit it to wartime crimes or have not used it for 10 years or more. The United States and 90 other countries currently still use the ultimate punishment.

In 1997, governments in 40 countries executed slightly more than 2,000 prisoners, according to [Amnesty International](https://www.amnesty.org/), an international human rights organization. More than 80 percent of these executions took place in only four countries: 1,644 in China, 143 in Iran, 122 in Saudi Arabia, and 74 in the United States. It is believed that Iraq executed
hundreds of political prisoners, but these are unconfirmed. Also, worldwide in 1997, courts sentenced almost 4,000 persons to death.

In May 1998, the British House of Commons voted to adopt the European Convention for the Protection of Human Rights and Fundamental Freedoms. Along with other things, this human rights declaration requires those who sign it to abolish the death penalty for all civilian crimes. Among the major European nations today, only Russia refuses to abolish its death penalty, mainly because of a severe crime problem that began after the breakup of the Soviet Union.

Regional and international declarations against the death penalty obligate nations who agree to them. Thirty-two nations have signed and ratified one of these documents—the International Covenant on Civil and Political Rights. The covenant protects fundamental rights and specifically forbids the death penalty for juvenile offenders. In 1992, the U.S. Senate ratified this covenant, but only after reserving the right to execute juvenile offenders.

In 1998, the U.N. Commission on Human Rights voted for capital punishment nations to suspend criminal executions as a first step in completely ending them. Although not legally binding, this call for the suspension of the death penalty reflected the view of most major nations in the world.

**Criticism of the U.S.**

The United States has long championed human rights. But in 1998, the U.N. Commission on Human Rights issued a stinging report. It criticized the United States for its recent increase in death sentences and executions. It especially condemned the execution of women, mentally impaired persons, and juvenile offenders. The report denounced the United States for signing the International Covenant on Civil and Political Rights and reserving the right to execute juvenile offenders. This reservation, it stated, violated the purpose of the treaty. Also, according to the report, capital punishment in the United States is applied unfairly to disproportionate numbers of minorities and the poor who often fail to receive adequate legal representation.

U.S. officials quickly called the U.N. report inaccurate and unfair because it “fails to recognize properly our extensive safeguards and strict adherence to due process.” They argued that the Commission on Human Rights should spend more of its efforts investigating countries like China, which commonly violates basic due process of law and gives those sentenced to death little, if any, time to appeal.

**Juveniles and the Death Penalty**

The U.N. Convention on the Rights of the Child bars both capital punishment and life imprisonment without the possibility of release for crimes committed by juveniles under 18 years of age. Today, only six countries in the world carry out such sentences: Iran, Nigeria, Pakistan, Saudi Arabia, the United States, and Yemen.
In 1988 in *Thompson v. Oklahoma*, the U.S. Supreme Court stopped the execution of an offender who had committed a murder at age 15. The opinion of the court stated that it was unconstitutional to execute offenders for crimes committed when they were younger than 16. It declared that the death penalty “would offend civilized standards of decency” and thus would violate the Eighth Amendment’s prohibition against “cruel and unusual punishments.” The court reasoned that juveniles under 16 generally lacked the experience, education, and intelligence to fully comprehend the consequences of their deadly acts. It said that they were more susceptible to impulse and peer influence than adults. Although five justices voted to stop the execution, only four justices agreed with the opinion of the court. This made *Thompson* a “plurality opinion,” which holds less weight than an opinion joined by five or more justices.

The next year, the Supreme Court considered whether 16- and 17-year-olds could be executed. In two cases (*Stanford v. Kentucky* and *Wilkins v. Missouri*), the court voted 5–4 to uphold these executions. The court stated two tests for an unconstitutional punishment: Either the punishment had to have been considered “cruel and unusual” in 1789 when the Constitution was adopted, or it must violate the “evolving standards of decency that mark the progress of a maturing society.” The court concluded that executing 16- and 17-year-olds did not meet either test. The common law in 1789 treated 15-year-olds as adults. As for modern standards, the court looked to state law and federal laws. At that time, only 15 states rejected capital punishment for 16-year-olds and just 12 barred it for 17-year-olds. Seeing no national consensus against the death penalty, the court upheld it.

About half the states currently allow capital punishment for murderers who kill at age 16 or 17. Since 1985, nine juvenile offenders have been executed in the United States. This amounts to more than half of these executions worldwide. Although all nine were 17-years-old at the time of their offenses, they were well into adulthood by the time they were executed.

The case of Joseph Cannon is typical. At age 17, Cannon murdered Ann Walsh. At the sentencing hearing, his lawyer pointed out that the teenager had suffered severe head injuries after being hit by a car at age 4. Starting at age 7, he was frequently beaten and sexually abused by his stepfather. At 15, he was diagnosed as psychotic after attempting suicide. The prosecutor stressed the brutality of the crime. A single mother of eight, Walsh had taken in the homeless teenager. When she returned home one day, Cannon tried to rape her and shot her six times. The court found the aggravating factors outweighed the mitigating factors and sentenced him to die. Cannon remained on death row in a Texas prison for 21 years while appealing his case in state and federal courts.

Capital punishment for those like Joseph Cannon who commit horrible crimes as juveniles provokes strong opposing opinions. Miriam Shehane, president of Victims of Crime and Leniency, argues, “If someone does an adult crime, they are acting as adults, and they have to take responsibility.” On the other side of the debate, the National Coalition to Abolish the Death Penalty contends, “When we as a society sentence a child
to death . . . we surrender to the misguided notion that some children are beyond redemption.”

In a 1998 interview on the eve of his execution, Joseph Cannon, then 38, said, “Yes, I was dangerous when I was a kid. I am ashamed the way I’m going to die. I’m gonna be hated.”