

CAPITAL CRIMES

Should the death penalty be abolished as cruel and unusual punishment?

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT VIII

The Eighth Amendment to the Constitution bans "cruel and unusual punishments," but what is considered cruel and unusual has been sharply debated over the years. Except for a brief period in the 1970s, the Supreme Court has not forbidden use of the death penalty. But in recent years it has narrowed the category of people who may be executed. Last year, in a 5-4 decision, the Supreme Court declared the death penalty for offenders under the age of 18 to be unconstitutional. In a landmark decision two years earlier, the court declared it cruel and unusual to execute persons who were mentally retarded.

The divisive national debate over the death penalty involves questions of deterrence, ethics and procedure.



Recent controversies have touched on issues such as the purported rehabilitation of death-row inmates, the potential new role of DNA evidence and whether particular methods used to carry out executions, such as lethal injections, are themselves cruel and unusual.

As a constitutional matter, proponents of the death penalty point out that both the Fifth and Fourteenth Amendments specifically authorize the taking of life, so long as due process rights are provided to the defendant. Those favoring abolition of capital punishment maintain that national and international standards of decency have evolved to the point where capital punishment can no longer be tolerated by the Constitution.

Should the death penalty be abolished as cruel and unusual punishment?

YES

- Capital punishment offends modern ideas of human dignity. Over half the countries of the world have abolished the death penalty; the United States should follow suit.
- Exoneration of at least 88 death-row inmates since 1973 highlights serious flaws in the criminal justice system. As long as the death penalty is maintained, the risk of executing the innocent cannot be eliminated.
- The uneven application of the death penalty is discriminatory and unfair. Death sentences fall disproportionately on the poor and members of minority groups.

NO

- The death penalty is a form of retribution and deterrence justified by the text of the Constitution. The laws of other nations have no bearing on American legal practices and should not inform decisions about the death penalty.
- The Supreme Court has articulated workable standards for the administration of the death penalty. The 38 states that provide for capital punishment have adopted clear statutes to guide judges and juries.
- The Supreme Court has rejected the use of statistical studies that claim racial bias as the sole reason to overturn a death sentence. The existence of some systemic problems is no reason to abandon capital punishment.