

Culture & Communication

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Anthropology 4, Winter 2021

Lecture 10: The death penalty in the U.S.

Today

1. Ethical standards in research – Institutional Review Board.
2. The What, How, and Why of a research project.
3. Some facts about the Death Penalty in the U.S.
4. The Law and the Process.
5. Biases, points of view, and the search for objectivity.

Ethics in Research

- The Observer's Paradox cannot be easily avoided, e.g. by hiding our cameras.
- All research protocols must be subject to a peer-review process (by the IRB – Institutional Review Board - on campus) that conforms to Federal Regulations aimed at ensuring that people's rights (human subjects') are not violated during research.
- Certain groups, e.g., children, incarcerated people, mentally disabled people, are considered "vulnerable populations" and their study requires special approval to make sure they will be protected and not negatively affected.
- UCLA complies with these regulations through the Office for the Protection of Research Subjects (OPRS) – All research projects (by faculty or students) are subject to review and approval.

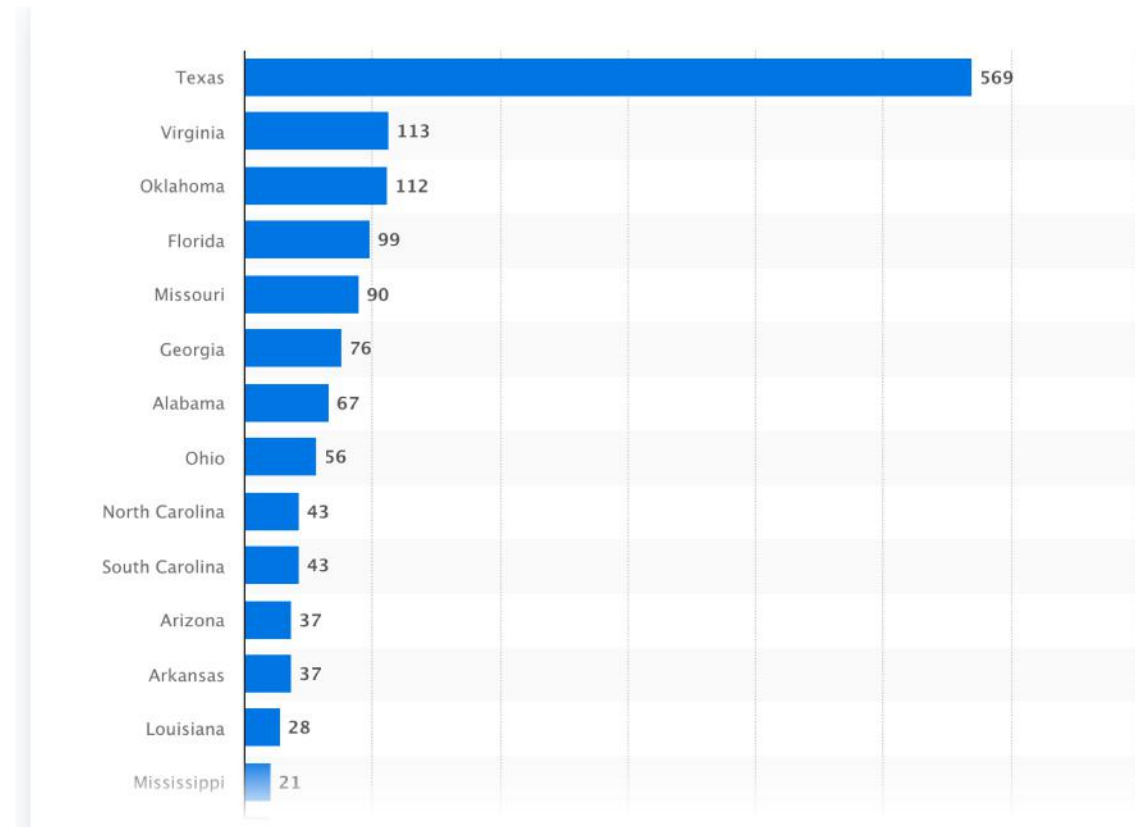
Part 1: The Research Questions

3 key questions in a research project

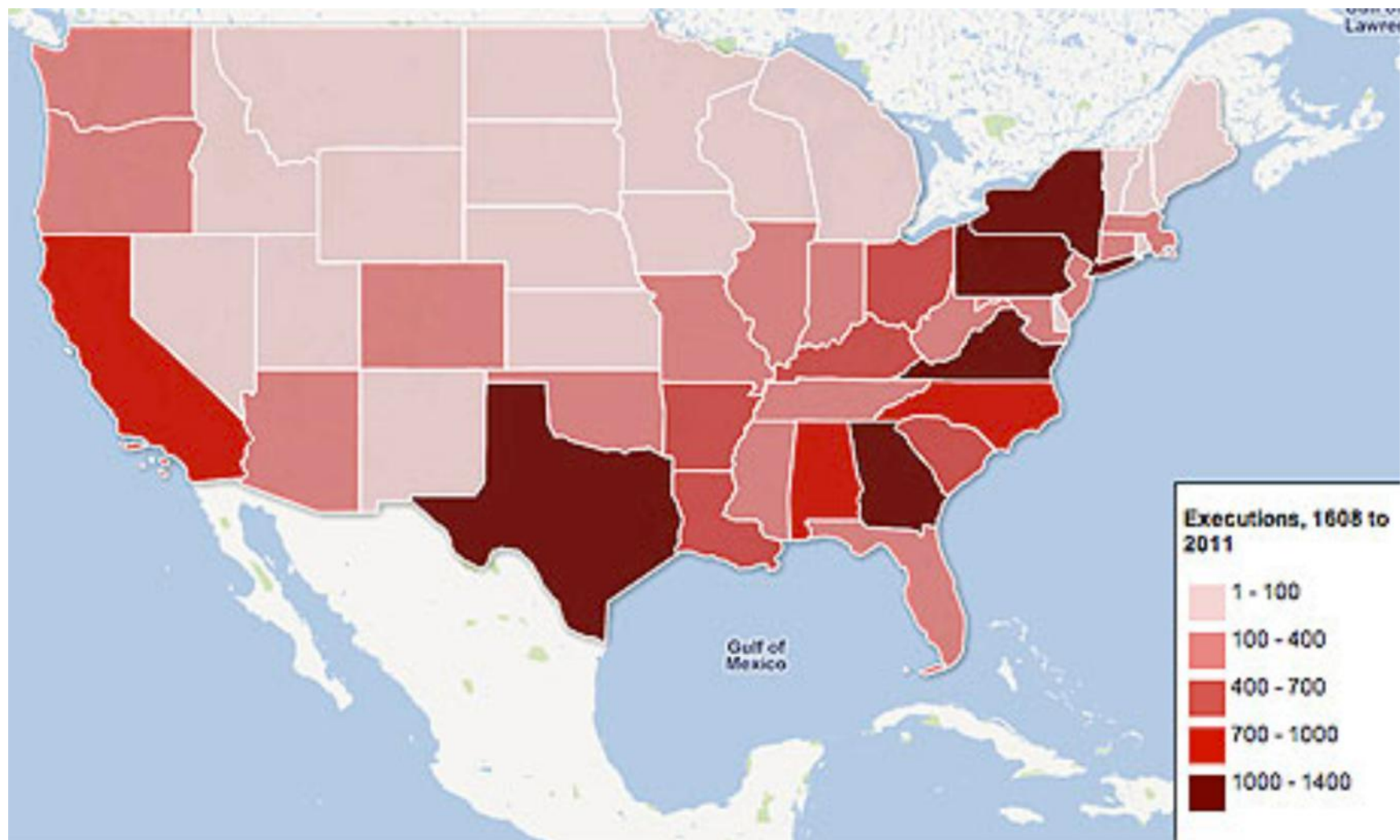
- WHAT - the “phenomenon”
- WHY - the possible causes, motivations, conditions, contexts
- HOW - the methods used to describe the WHAT and find the WHY

Here is a WHAT

A striking difference
between Texas and
other states.



Total number of executions in the United States from 1976 to 2020, by state



Here is a WHY

Why does Texas have
such a high number of
executions?

HOW?

Here is the starting point of Conley's HOW:

“Texas jurors have sentenced capital defendants to death 80 percent of the time.” (p. 24)

Hence, study how jurors come to their decision.

Some starting questions in Conley's project

How can human beings sentence another person to die?

What is the role of “language” in this process?

How is language a form of “violence”?

How does the death penalty fit with democratic notion of justice?

How much does the public know about the process whereby someone is sentenced to death?

Pause

Premise: (in)visibility of the phenomenon

“the system and implementation of the death penalty in the United States remains to a large degree hidden from the population. Indeed, Sarat (2001b, 191) argues that the “survival of capital punishment in the united States depends, in part, on its relative invisibility.” (Conley 2016: 21)

Part 2: Some facts

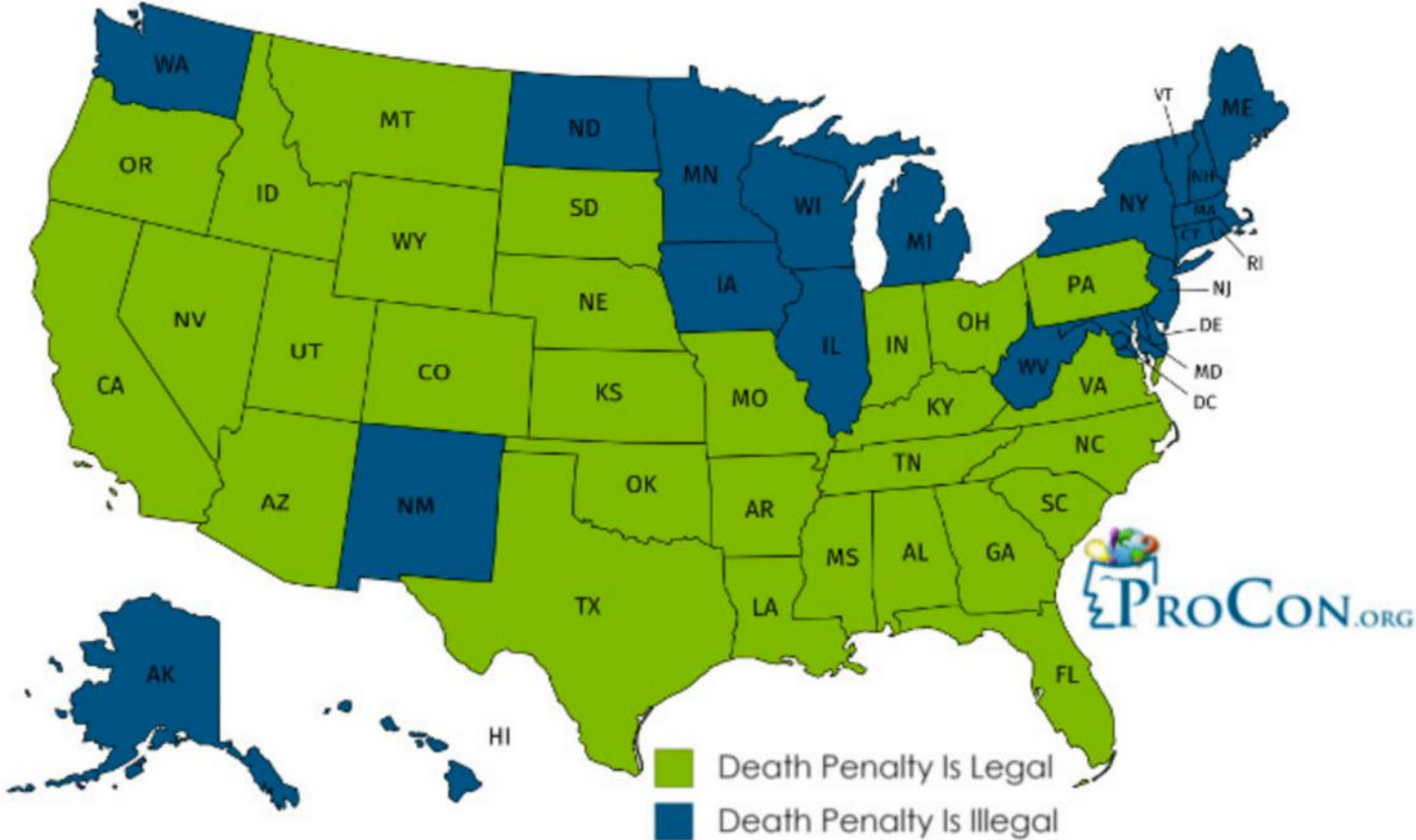
The US Supreme Court has ruled that the death penalty does not violate the Eighth Amendment's ban on cruel and unusual punishment.

21 states and the District of Columbia have abolished the death penalty, while 29 states still retain the death penalty.

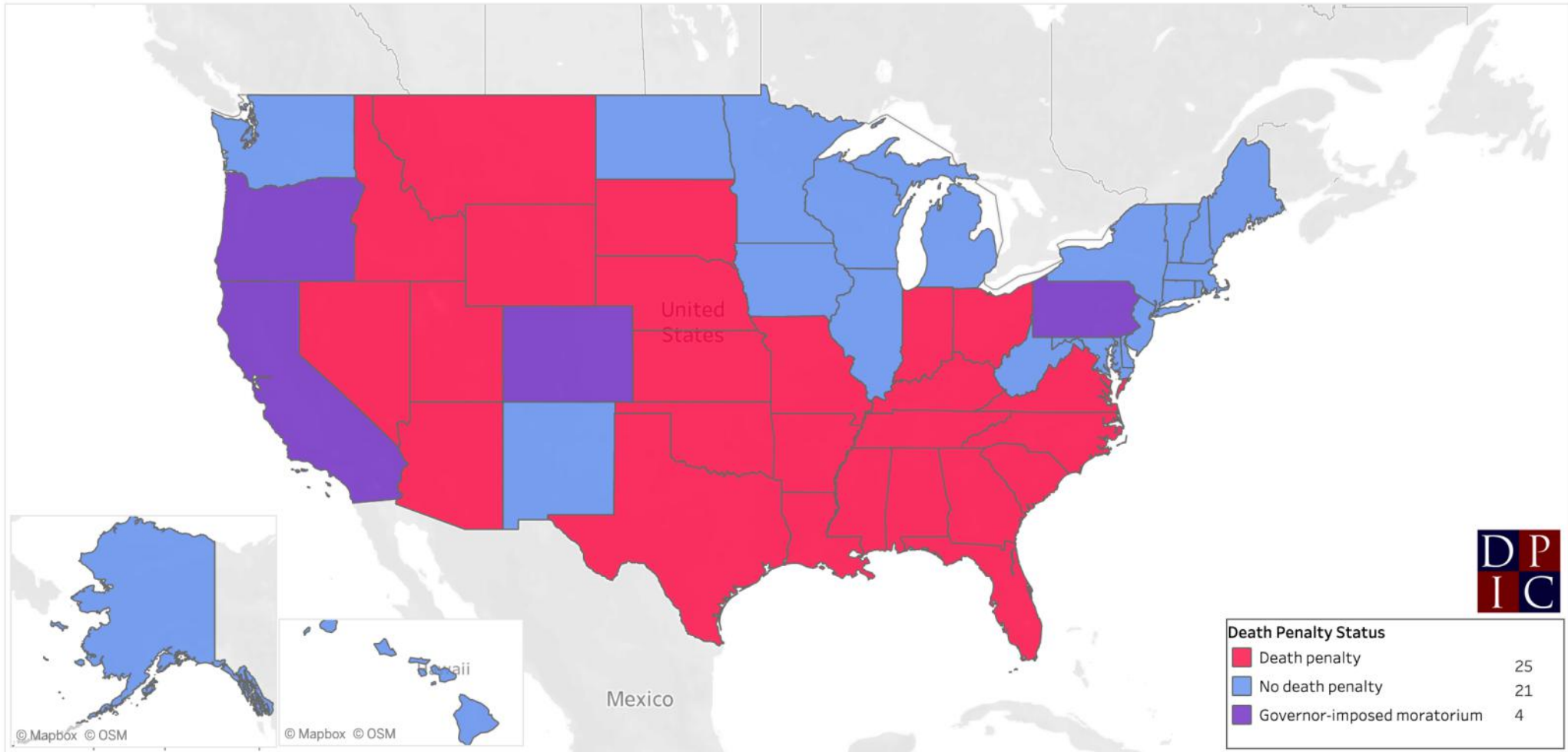
Governors have placed moratoriums on the use of the death penalty in: Oregon (2011), Colorado (2013), Pennsylvania (2015), and California (2019). But the laws have not changed.

There are 5 methods of execution in the United States: lethal injection, electrocution, lethal gas, hanging, and firing squad.

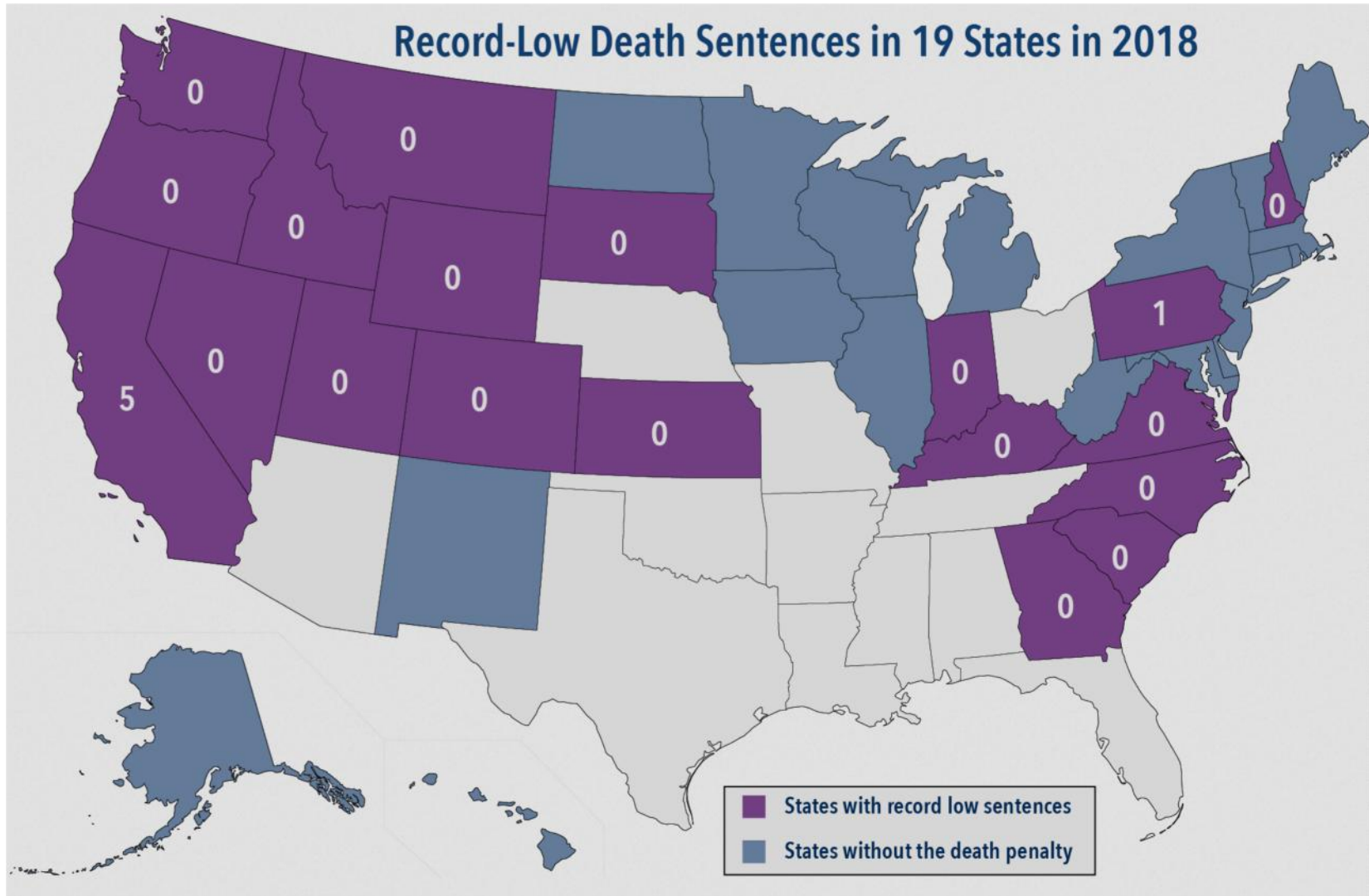
The Death Penalty Is Legal in 29 States and Illegal in 21 States & DC



States with and without the death penalty - 2020



Record-Low Death Sentences in 19 States in 2018



Erosion of capital punishment

The erosion of capital punishment at the state and county level continued in 2020, led by Colorado's abolition of the death penalty. Two more states — Louisiana and Utah — reached ten years with no executions. With those actions, more than two-thirds of the United States (34 states) have now either abolished capital punishment (22 states) or not carried out an execution in at least ten years (another 12 states). The year's executions were geographically isolated, with just five states, four of them in the South, performing any executions this year. The Gallup poll found public support for the death penalty near a half-century low, with opposition at its highest level since the 1960s. Local voters, particularly in urban centers and college towns, rejected mass incarceration and harsh punishments, electing new anti-death-penalty district attorneys in counties constituting 12% of the current U.S. death-row population.

This year majority executions by federal government

A majority (59%) of all executions this year were conducted **by the federal government**, which in less than six months carried out more federal civilian executions than any prior president in the 20th or 21st centuries, Republican or Democratic, had authorized in any prior calendar year. **The Trump administration performed the first lame-duck federal execution in more than a century, while scheduling more transition-period executions than in any prior presidential transition in the history of the United States.** The executions reflected systemic problems in the application of capital punishment and drew widespread opposition from prosecutors, victims' families, Native American leaders, religious leaders, regulatory law experts, and European Union officials. In addition to the legal issues, the executions also presented public health problems, likely sparking an outbreak in a federal prison, infecting members of the execution teams, and causing two federal defense attorneys to contract COVID-19.

Law, Rights, Process

6th Amendment

Rights of Accused Persons in Criminal Cases

In all criminal prosecutions, the accused shall enjoy the right to a speedy and **public trial by an impartial jury of the state and district wherein the crime shall have been committed**, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Bench Trials & Jury Trials

In criminal matters, if the punishment could be greater than 6 months in prison the defendant is entitled to a trial by a jury of their peers

In Federal court, the right to a jury trial in a civil matter exists for any controversy where the amount involved is greater than \$20 (under the 7th Amendment to the US Constitution). This right applies to both the plaintiff *and* the defendant, and if either party requests a jury, it will be provided.

<https://www.quora.com/In-US-courts-when-is-a-jury-used-and-when-does-a-judge-decide>

Issues with principles and procedures

Between 1967 and 1977, executions in the United States were halted as evidence of racial injustice and arbitrariness in the use of the death penalty mounted.

When most states revised their capital punishment laws, the Supreme Court allowed the death penalty to resume in 1976. But this approval inaugurated a new period of experimentation regarding the application of the death penalty.

In the eyes of many, including Justice Blackmun who oversaw this entire critical period of death penalty history, that experiment has failed to meet even the minimal standards of fairness and justice.

Part 3: The Language of Death Penalty Decision-Making

The Process

Jury selection - *voir dire* (French *voire* from Latin 'verus' 'true') – Prosecutor and defense attorney interview potential jurors ("*venire*" from Latin "*venire facias*" the order to come, serve in a jury) to assess whether they can be impartial.

Jurors are asked to put emotions aside.

They are asked whether they think they will be able to be objective.

(For example, "do you have an opinion on the death penalty? Will that influence your answer to the questions?")

Jury selection

“Not surprisingly, perhaps, during a trial i observed in a relatively liberal college city, a **much greater majority of the jury panel was excused at this point for their opposition to the death penalty** than in any other trial i observed. even though the initial jury pool included more people with anti-death penalty beliefs, the resultant group from which the jurors were chosen more closely resembled the other counties i visited, with fairly healthy support for the death penalty. although further discussion of this issue is not within the scope of this book, this initial “death qualifying” process starts the jury pool out as an already narrowed group, one that for many critics denies the defendant his Sixth amendment right to a jury that represents a cross-section of his community (e.g., Salgado 2005). (Conley 2016: 20)

2 questions

Jurors are asked to answer 2 questions, which will be consequential for their decision about whether to give life without parole or the death penalty.

- 1) “Future danger” question
- 2) “Mitigation” question

If jurors answer “yes” to question 1 and “no” to question 2, the defendant receives the death sentence.

1. “Future danger” question

Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society?

2. “Mitigation” question

Do you find that the evidence, taking into consideration all of the evidence, including the circumstances of the offence, the defendant’s character and background, and the personal moral culpability of the defendant, that there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

Outcomes of Answers

If jurors answer “yes” to question 1 (future danger) and “no” to question 2 (mitigating circumstances), the defendant receives the death sentence.

- A death sentence must be unanimous, while a life sentence requires only 10 votes.
- In case of a [hung jury](#) during the penalty phase of the trial, a life sentence is issued, even if a single juror opposed death (there is no retrial).

How do jurors come to their decision?

This question informed Conley's methods, the HOW

Ethnographic Methods (Conley)

Participant Observation → fieldnotes

Visited places

(e.g., death house, death chamber, cell)



Whose perspective? (defendants, lawyers, prosecutors, victims' family)

Interviews, open-ended questions [not questionnaires] (21 jurors from 9 death penalty cases; lawyers and judges; prison guards, wardens)

Analyzed jurors' narratives, statements, descriptions of their feelings.

Interviewing

1. To interview or not interview?
2. Advantages and limitations.
3. Strategies.
4. Contexts (e.g., a lab, an office, a home, on the street, in a café, etc.)
5. Degree of planning and formality.
6. Methods for keeping track of interviews (“inscription”).

Types of interviews

1) Formal interviews, e.g., with a prepared questionnaire, handed out or read to interviewees.

2) Informal interviews, conversational style, **open-ended**.

Casual questioning, e.g., in the midst of other activities, with some **themes** and maybe a **goal** in mind, for the purposes of better understanding something that was just mentioned.

An exercise

We listen to an interview by Robin Conley of a juror in death penalty trial in Texas.

[While the class listened to the audio file with the interview, the recording of the lecture was interrupted to comply with the human subjects protection protocol agreed upon with the I.R.B – see slide at beginning of presentation]

Two questions:

What did you learn about his experience in a capital case trial?

Was there something that struck you as unexpected?

Review

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5. Biases, points of view, and the search for objectivity (first part).

