

January 1, 2013
The New York Times

When the Supreme Court reinstated the death penalty in 1976, it said there were two social purposes for imposing capital punishment for the most egregious crimes: deterrence and retribution. In recent months, these justifications for a cruel and uncivilized punishment have been seriously undermined by a growing group of judges, prosecutors, scholars and others involved in criminal justice, conservatives and liberals alike.

A distinguished committee of scholars convened by the National Research Council found that there is no useful evidence to determine if the death penalty deters serious crimes. Many first-rate scholars have tried to prove the theory of deterrence, but that research "is not informative about whether capital punishment increases, decreases, or has no effect on homicide rates," the committee said.

A host of other respected experts have also concluded that life imprisonment is a far more practical form of retribution, because the death penalty process is too expensive, too time-consuming and unfairly applied.

The punishment is supposed to be reserved for the very worst criminals, but dozens of studies in state after state have shown that the process for deciding who should be sent to death row is arbitrary and discriminatory.

Thanks to the Innocence Project and the overturning of 18 wrongful convictions of death-row inmates with DNA evidence and the exonerations of 16 others charged with capital crimes, the American public is increasingly aware that the system makes terrible mistakes. Since 1973, a total of 142 people have been freed from death row after being exonerated with DNA or other kinds of evidence.

All of these factors have led the states to retreat from the death penalty in recent years — in both law and in practice. In 2012, Connecticut became the fifth state in five years to abolish the penalty. Nine states executed inmates, the fewest in two decades. Three-fourths of the 43 executions in 2012 were carried out in only four states. The number of new death sentences remained low at 77 — about one-third the number in 2000 — with just four states accounting for almost two-thirds of those sentences. While 33 states retain the death penalty on their books, 13 of them have not executed anyone for at least five years.

Those 13 states plus the 17 without the penalty means that 30 states are not carrying it out — and that includes California, which retained the death penalty in a November referendum vote. Almost one-quarter of the 3,146 death row inmates in the United States, as of October, are imprisoned in California, but that state has not executed anyone in seven years.

California's chief justice said recently that the state's official moratorium, which has been in place for six years, is likely to continue for at least three more because of problems with the execution method.

In January, executions are scheduled to take place in Pennsylvania, Virginia and Texas. As it happens, major reviews of the death penalty are under way in each of those states. The reviews are very likely to find that those states have failed to meet standards of fairness under the Constitution, just as reviews of the capital systems in other states have concluded in the last decade.

The large number of states no longer carrying out executions indicates a kind of national consensus. It points to “the evolving standards of decency that mark the progress of a maturing society,” an idea that the Supreme Court has evoked in judging the constitutionality of punishments. The court used that analysis most recently when it ruled that mandatory life sentences without possibility of parole are unconstitutional for juvenile offenders even if they are convicted of homicide.

It should similarly recognize that under evolving standards capital punishment is cruel and unusual and should be abolished.

http://www.nytimes.com/2013/01/02/opinion/americas-retreat-from-the-death-penalty.html?emc=eta1&_r=0