

“The vast majority of the world’s judicial executions occur in a handful of nations.”

# The Death Penalty’s Continued Decline

DAVID T. JOHNSON AND FRANKLIN E. ZIMRING

Ten years ago, our book *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* was published. On the first page, we argued that Asia would be “the next frontier” in the two-century debate about execution as a criminal punishment, because 90 percent of the world’s executions take place in the region, making it a laboratory for learning what influences death penalty policy and practice in the rest of the world. We concluded the book with the observation that “the rate of executions and the prevalence of executing nations in Asia are declining and probably will continue to decline,” and that democratic reforms and human rights concerns are key drivers of death penalty downsizing in Asia and the rest of the world.

Lately, though, some other observers are saying that times have changed. In 2016, for example, Amnesty International reported “a dramatic global rise in the number of executions,” with “more people put to death in 2015 than at any point in the last quarter-century.” In 2018, the historian Samuel Moyn claimed that “the human rights movement has failed” and that “nearly every country seems to be backsliding.” And in 2019, Freedom House announced that in the previous year, more countries became more oppressive than more free—the 13th consecutive year of more decline than progress, according to its ratings.

Many well-regarded books have described and lamented these trends, with titles such as *How Democracies Die*, *How Democracy Ends*, *On Tyranny*, *The Road to Unfreedom*, and *Democracy May Not Exist But We’ll Miss It When It’s Gone*. As some democracies erode and human rights claims are challenged by authoritarian and populist forces, is a

sustained resurgence of capital punishment inevitable?

## ABOLITIONIST TRENDS

In most cultures and most of human history, the death penalty was taken for granted and applied to a wide range of offenders. In ancient Israel, execution was the punishment for everything from murder and magic to blasphemy, bestiality, and cursing one’s parents. In eighteenth-century Britain, more than 200 crimes were punishable by death, including cutting down a tree and robbing a rabbit warren.

But in the past half-century, use of the death penalty has declined dramatically. As of 1970, only 21 nations (about 1 in 8) had abolished the death penalty for all crimes or for “ordinary offenses” (meaning all crimes except insurrection and offenses committed in wartime). Today, the total is 114. Twenty-eight more nations retain the death penalty in law but have not executed anyone for at least 10 years.

At present, therefore, nearly three-quarters of all nations have abolished the death penalty in law or practice. The trend has continued in the most recent years. As Table 1 shows, the percentage of countries retaining capital punishment dropped by half over the past three decades, from 56 percent in 1988 to 28 percent in 2018. The proportion of retentionist countries continued to fall during the latest part of that period, from 32 percent in 2007 to 28 percent in 2018.

Although the trend toward abolition continues, it is also true that the pace has slowed since the 1990s. As Table 2 shows, 37 countries abolished the death penalty in the 1990s, compared with 23 countries in the 2000s, and 12 in the 2010s. Thus, the most recent two decades combined have produced less abolition than occurred in the 1990s.

The pace of abolition has slowed for several reasons, including the decline of democracy and the

---

DAVID T. JOHNSON is a professor of sociology at the University of Hawaii, Manoa. FRANKLIN E. ZIMRING is a professor of law at the University of California, Berkeley.

Table 1. The Number of Abolitionist & Retentionist Countries, 1988–2018

	Completely Abolitionist	Abolitionist for Ordinary Offenses	De Facto Abolitionist	Retentionist	Total Number of Countries
1988	35 (19%)	18 (10%)	26 (14%)	101 (56%)	180
1995	58 (30%)	14 (7%)	30 (16%)	90 (47%)	192
2000	76 (39%)	11 (6%)	36 (19%)	71 (37%)	194
2007	91 (46%)	10 (5%)	33 (17%)	63 (32%)	197
2018	106 (54%)	8 (4%)	28 (14%)	56 (28%)	198

Source: Amnesty International reports.

retrenchment of human rights in many countries. But the slower pace of abolition is also a statistical inevitability: by the year 2000, much of the lowest-hanging fruit had already been picked. Most notably, there will never be another cascade of abolition like the one that occurred in Central and Eastern Europe after the fall of the Berlin Wall in 1989.

During the long decade from 1989 to 2001, 23 European countries abolished capital punishment. Some did so as part of an effort to draw free from the legacy of political domination by the Soviets and their collaborators. Others abolished the death penalty because membership in the Council of Europe (an organization that promotes democracy and human rights) was made conditional on the renunciation of capital punishment.

### HEAVY USERS

The world is not neatly bifurcated into countries that have abolished capital punishment and those that still use it. Nations that retain the death penalty use it at very different rates. Consider the contrast between China and India, the two most

populous nations. Both retain capital punishment, but the total number of judicial (legally established) executions in India over the past 70 years (around 3,500) is less than China's annual average over the same period. And since 2000, India has executed only four people, giving it a per capita rate of execution that is approximately 1/25,000th the rate in China over the same two decades.

The vast majority of the world's judicial executions occur in a handful of nations. In 2018, for example, 78 percent of all confirmed executions occurred in just four countries—Iran, Saudi Arabia, Vietnam, and Iraq. (This count excludes China, for which accurate figures are difficult to discern, as we explain below.) In 2016 and 2017, the top four executing nations accounted for 87 percent and 84 percent of the world's executions, respectively.

In short, an empirical approach to capital punishment must put things in proportion. The most frequent practitioners of execution are more important than all the others put together. So what are the trends in recent years among the world's heaviest users of capital punishment?

---

*Capital punishment is almost kaput in several regions of the world.*

---

Table 2. Number of Countries That Abolished the Death Penalty by Decade, 1980s–2010s

	Abolished All	Abolished Ordinary	Total Abolished	% of Countries Abolished in Decade
1980s	11	3	14	8%
1990s	33	4	37	19%
2000s	18	5	23	12%
2010–18*	11	1	12	6%

\*This count remains the same as of August 2019. Source: Amnesty International reports.

Table 3. Heavy Users of Capital Punishment: number of people executed in 29 countries in 1994–98 and 2013–17, with the annual rate of execution per million population in parentheses.

Country	Executions 1994–98 (rate)	Executions 2013–17 (rate)
China	n.a. (see text for explanation)	n.a. (see text for explanation)
Iran	505 (1.59)	2709 (6.68)
Saudi Arabia	465 (4.65)	627 (3.81)
Iraq	n.a., but probably in the 100s	469 (2.78)
Ukraine	389 (1.55)	0
Turkmenistan	373 (14.92)	0
United States	274 (0.20)	145 (0.09)
Texas	93 (0.94)	53 (0.37)
Virginia	37 (1.08)	4 (0.09)
Nigeria	248 (0.41)	7 (0.007)
Singapore	242 (13.83)	18 (0.63)
Belarus	168 (3.20)	9 (0.19)
Russia	161 (0.22)	0
Kazakhstan	148 (1.74)	0
Vietnam	145 (0.38)	429, for 3 years from 8/13 to 7/16 (1.50)
Egypt	132 (0.43)	116 (0.24)
Taiwan	121 (1.13)	18 (0.15)
Congo	100 (0.43)	0
Yemen	88 (1.10)	45 (0.32)
Sierra Leone	71 (2.84)	0
Kyrgyzstan	70 (2.80)	0
South Korea	57 (0.25)	0
Jordan	55 (2.12)	28 (0.58)
Pakistan	34 (0.05)	480 (0.49)
Afghanistan	34 (0.36)	24 (0.14)
Libya	31 (1.17)	0
Japan	24 (0.04)	21 (0.03)
India	24 (0.02)	2 (0.0003)
Rwanda	23 (0.58)	0
Zimbabwe	22 (0.37)	0
Indonesia	4 (0.02)	23 (0.09)

Sources: Oxford University Professor Roger Hood in *Punishment & Society* (2001, p. 336), Amnesty International reports, and the Death Penalty Database of the Cornell Center on the Death Penalty Worldwide.

Table 3 presents the number of executions in 29 countries for the periods 1994–98 and 2013–17. All but one of these countries executed at least 20 people in the first five-year period. The exception is Indonesia, which we include because it has the fourth-largest population in the world and the largest Muslim population of any nation. The main

pattern in Table 3 is major decline among most of the world's heaviest users of capital punishment.

Start with China, which has long led the world in the number of executions. In 2009, Amnesty International stopped publishing estimates of the minimum number of executions per year in China, because the lack of transparency made reliable

counts impossible. But other sources (including the Dui Hua Foundation) indicate that executions in China have declined dramatically in the past two decades, from 15,000 or more per year in the late 1990s and early 2000s to approximately 2,400 in 2013 and 2,000 in 2016.

Much attention has been focused on the broad and sustained offensive against human rights under Xi Jinping, who became general secretary of the Chinese Communist Party (CCP) in 2012 and president of the People's Republic of China (PRC) in 2013. Nonetheless, the best available evidence suggests that over the past two decades, the number of judicial executions in the PRC has declined by more than 80 percent—and this decline has continued during Xi's presidency. In absolute terms, this is one of the most dramatic declines in judicial executions any country has ever experienced.

Of the other 28 countries in Table 3, executions ended in 11 (Ukraine, Turkmenistan, Russia, Kazakhstan, Congo, Sierra Leone, Kyrgyzstan, South Korea, Libya, Rwanda, and Zimbabwe), 9 had their execution rate decline by more than half (the United States, Nigeria, Singapore, Belarus, Taiwan, Yemen, Jordan, Afghanistan, and India), and 2 had modest declines (Saudi Arabia and Egypt). In total, 23 of the 29 heaviest users of capital punishment in the latter half of the 1990s reduced their usage of execution in subsequent years. Of the remaining six nations, the execution rate rose significantly in four (Iran, Vietnam, Pakistan, and Indonesia) and remained stable in one (Japan). The rate change for Iraq cannot be determined because reliable figures for the 1990s are unavailable.

The execution rate increases in Table 3 deserve some discussion. The big rise in Iran gives it the highest per capita execution rate in the world for 2013–17, with nearly 7 executions per one million population per year. This is more than four times higher than the estimated rate for China (1.5) in the same period, but it is just three-fifths the peak execution rate (11.5) in China during the “Strike Hard” campaign of 1998–2001, when the CCP harshly cracked down on crime. It is also less than half of Singapore's rate (13.8) for 1994–98, when Prime Minister Lee Kuan Yew's government routinely used the death penalty against drug traffickers and users. Even so, the number of people

executed in Iran has increased so markedly over the past two decades that if we set China aside (for lack of reliable data), the total number of executions for all heavy users of capital punishment in 2013–17 (4,701) was actually greater than the total number of executions for all heavy users in 1994–98 (4,032).

Over the same quarter-century, the execution rate in Vietnam increased fourfold or more (from 0.38 to 1.5, though the latter rate is based on only three years of data). But this rise could be more apparent than real, since Vietnam seldom disclosed executions in the 1990s. In Pakistan, the execution increase was tenfold, from 0.05 to 0.49. These are both large increases, but Vietnam's rate in the 2010s would not have ranked it among the top 10 executing nations in the 1990s, while Pakistan's present rate would not have ranked it among the top 15 executing nations two decades earlier.

And then there is Indonesia. Since we completed our study of capital punishment in Asia a decade ago, Indonesia has executed 23 people—20 for drug trafficking, 17 of whom were foreigners. Over the past two decades, executions in Indonesia rose largely because of their political currency in the country's war on drugs.

At present, however, Indonesia's execution rate is the same as that for the United States (midway between the rates for Japan and Taiwan), and less than 1/70th the rate for Iran. To put this in perspective, the total number of executions in Indonesia between 2013 and 2017 was approximately the same as the number of executions in Iran during a typical two-week period in the same interval. Even after the recent rise, executions in Indonesia account for less than one-half of 1 percent of all the executions in Asia.

## REGIONAL STRONGHOLDS

Capital punishment is almost kaput in several regions of the world. All of Europe has abolished the death penalty except for Belarus, where President Alexander Lukashenko has maintained dictatorial rule since 1994. In Central and South America, 18 countries have abolished the death penalty and only 2 retain it, Belize and Guyana. In North America, Canada and Mexico have abolished capital punishment while the United States retains it. In Africa, 16 of 54 nations retain capital punishment, but only a few perform executions in

---

*Executions in China have declined dramatically in the past two decades.*

---

any given year. In 2018, just 4 countries—Egypt, Somalia, South Sudan, and Botswana—carried out all of the continent’s 65 executions.

There remain three death penalty strongholds in the world today: the United States, Muslim-majority nations, and Asia. Yet even in these places, many jurisdictions do not use the death penalty, and where it does exist there have been significant declines in its usage.

In the United States, 29 states retain capital punishment, but governors in 4 of them—California, Colorado, Oregon, and Pennsylvania—have declared official moratoria on executions. Thus, half of the 50 states have either abolished capital punishment or suspended executions. As in the world generally, the great majority of US executions are concentrated in a handful of places. Since 1977, more than half of them have been carried out by the three southern states of Texas, Virginia, and Oklahoma—and more than a third by Texas alone.

The death penalty is also retained in the US federal and military criminal justice systems, but there have been no executions in the latter for more than half a century. In the federal system, no executions have been carried out since 2003. In July 2019, however, Attorney General William Barr ordered the head of the Bureau of Prisons to carry out executions in the months to come. His stated aims were to bring the “worst criminals” to justice and to deliver relief to victims and their family members, but his move has reignited legal challenges to federal capital punishment. At the time of this writing in August 2019, it remains to be seen whether the 16-year federal moratorium on executions will end.

In the Islamic world, religious beliefs often shape death penalty policy and practice. Some Islamic states even claim that capital punishment must be practiced because it is divinely ordained. (Similar claims have been made in the United States by some Christian leaders.) There are 50 Muslim-majority nations in the world as of 2019, and 26 of them retain capital punishment. They account for nearly half of the 56 nations in the world that currently retain the death penalty.

Retention of capital punishment is especially prevalent among three kinds of Muslim-majority nations: those (like Iran and Saudi Arabia) that have formally established Islam as the ideological foundation of the state (5 of 6 nations retain);

those (like Pakistan and Iraq) that have endorsed Islam as their state religion (12 of 18 nations retain); and those (like Indonesia and Bangladesh) where the official position on religion is either unclear or unstated (4 of 4 nations retain).

Among the 22 Muslim-majority nations that have secular constitutional systems, with a formal separation between government and religion, only 5 retain the death penalty (Chad, Gambia, Lebanon, Nigeria, and the Palestinian territories). Another 13 have abolished capital punishment in law (including Turkey and Turkmenistan); 11 have abolished it in practice (including Sierra Leone and Tajikistan). While the death penalty remains strong in many Muslim-majority nations, there is almost as much abolition in this region of the world as there is within the United States.

What about Asia, the focus of our book ten years ago? Approximately 60 percent of the world’s population lives in Asia, and in recent years most of the world’s judicial executions have continued to occur in this region—the large majority of them in China.

In 2009, we described the status of the death penalty in the 29 jurisdictions that constitute Asia. At that time, 9 jurisdictions had abolished the death penalty for all crimes, 7 had abolished it de facto by

not executing anyone for 10 or more years, and 13 retained the death penalty and continued to carry out executions. Ten years later, the distribution is almost the same. The only change occurred in Mongolia, where the death penalty was abolished in 2016 following an eight-year moratorium on executions.

During the past decade, we have seen little legal change in Asia, some significant declines in executions (as in China and Singapore), and a few increases (as in Vietnam, Pakistan, and Indonesia). In our view, Asia is still the next frontier in the worldwide debate over the death penalty. We remain optimistic that capital punishment in Asia will continue to decline in the years to come.

## BEYOND ABOLITION

Despite the lack of legislative change in Asia over the past decade, there are three areas in which recent Asian death penalty developments are encouraging. First, the number of judicial executions in Asia has almost certainly declined significantly. The drop in China all by itself probably reduced

---

*The drop in China all by itself probably reduced the worldwide total of executions by half.*

---

the worldwide total of executions by half since the start of the new century, and this suggests a decline in East Asia of at least two-thirds.

Second, there is broad stability in both *de facto* abolition and reduced execution rates, despite political circumstances that encourage the aggressive use of force by governments in the region. In the Philippines, where capital punishment has been abolished twice (in 1987, after Ferdinand Marcos was deposed, and in 2006, after it was reinstated in 1993), the explicitly bloodthirsty regime of President Rodrigo Duterte has tried to reinstitute the death penalty once again. But so far it has failed, despite Duterte's control over the legislative and executive branches of government. Judicial reluctance and a complex legal framework have diverted state violence into informal drug war carnage.

Similarly, a retrograde military regime in Thailand and an aggressively populist government in India have not interrupted relatively stable policies of near-zero executions. Even the recent surge in executions in Indonesia could be a sign of the problematic status of state killing in contemporary Asia. Why else would that state execute drug offenders almost exclusively while making sure that 85 percent of those put to death are foreign nationals?

The third encouraging sign is that execution can no longer be considered just another criminal sanction in Asia. In most of the region, as in most of the non-fundamentalist Islamic nations in the world, a strong stigma attaches to execution as an act of criminal punishment. This stigma is well established in most developed nations and in the discourse of human rights and international law. While it may be difficult to formally abolish the death penalty in many of the nations where it remains, there are significant barriers to restoring it to business as usual. In the immortal words of the US Supreme Court, death is different.

It would be premature to regard state execution as an endangered species of governmental policy worldwide, given the current political environment. Yet the practice remains under sustained attack by

both domestic and international opponents, and it seems inconceivable that modern governments will ever again use execution as a standard part of their administration of criminal justice. The Chinese reform of 2007, which requires death sentences to be reviewed by the Supreme People's Court, was a culminating indication that death is different in Asia as well. Progress toward the universal abolition of capital punishment may take much longer than the human rights movement desires, but the eventual outcome seems clear. The question is not "if," but "when."

Once that happens, will the campaign against capital punishment be seen as a freestanding triumph in the evolution of human rights? Or will those who have succeeded in stigmatizing premeditated and judicially sanctioned state killing recognize the links between judicial execution and the less formally sanctioned but much more common practice of extrajudicial killing by police and military personnel?

The abolition of capital punishment in the Philippines is a remarkable achievement, but tens of thousands of citizens in that country have been deliberately killed in an openly declared war on drugs led by Duterte. And in the United States, the annual number of judicial executions has dropped to less than 25 in recent years, but 40 times that many civilians are killed every year through the use of lethal force by police.

The main advantage of treating the campaign against capital punishment as a single-issue crusade is that doing so has built widespread support among governments and educated publics. But the main problem with a single-issue approach is that lower-visibility state violence produces a much higher death toll. If an isolated campaign against judicial execution coincides with or provokes higher levels of police and military killings, the number of unjustified killings could actually increase. In the long run, a successful campaign against judicial execution could seem quaint if it does not connect with concerns about other types of state violence. ■