

# Considering the Death Penalty in the Human Rights Context

Guest Lecture PSCI 4357

Rebecca Larsen, November 11, 2021

# Outline

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## Group 4 Video and Q&A

### Considerations of the Death Penalty

- Public Opinion
- Philosophies of Justice
- International Variation Concerning Use
- Death Penalty Worldwide
- U.S. Case Study: Evolving Standards on Use and Safeguards

Discussion: Connecting to Larger Considerations of Punishment for Human Rights Violators

# Group 4 Video Project - China

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Group Video:

<https://www.youtube.com/watch?v=5H0a0EH67f8&t=6s>

# Public Opinion - Interactive Polling Activity

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Visit:

PolEv.com/rlarsen429

You can stay on the page, and it will refresh as the questions are updated.

## Public Opinion - Questions Posed in Poll

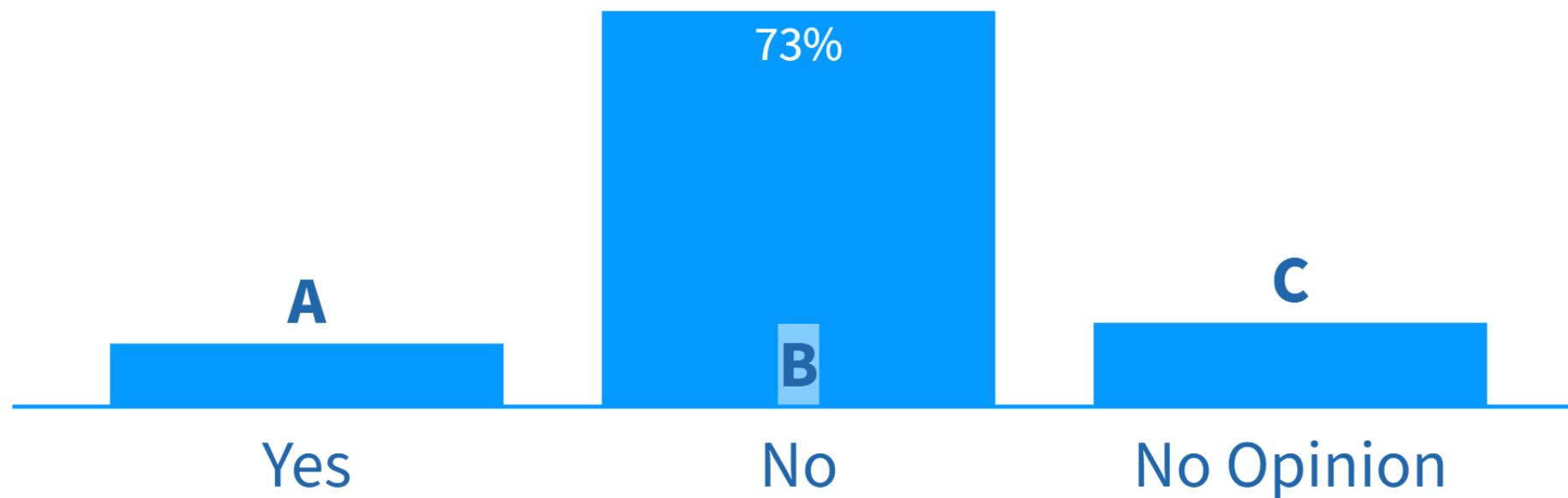
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- “Are you in favor of the death penalty for a person convicted of murder?”
- “Do you strongly oppose, somewhat oppose, somewhat favor, or strongly favor the death penalty for persons convicted of murder?”
- “Is the death penalty a proper punishment for a person convicted of mass human rights violations?”
- “Do you strongly oppose, somewhat oppose, somewhat favor, or strongly favor the death penalty for persons convicted of mass human rights violations?”

# Your Responses

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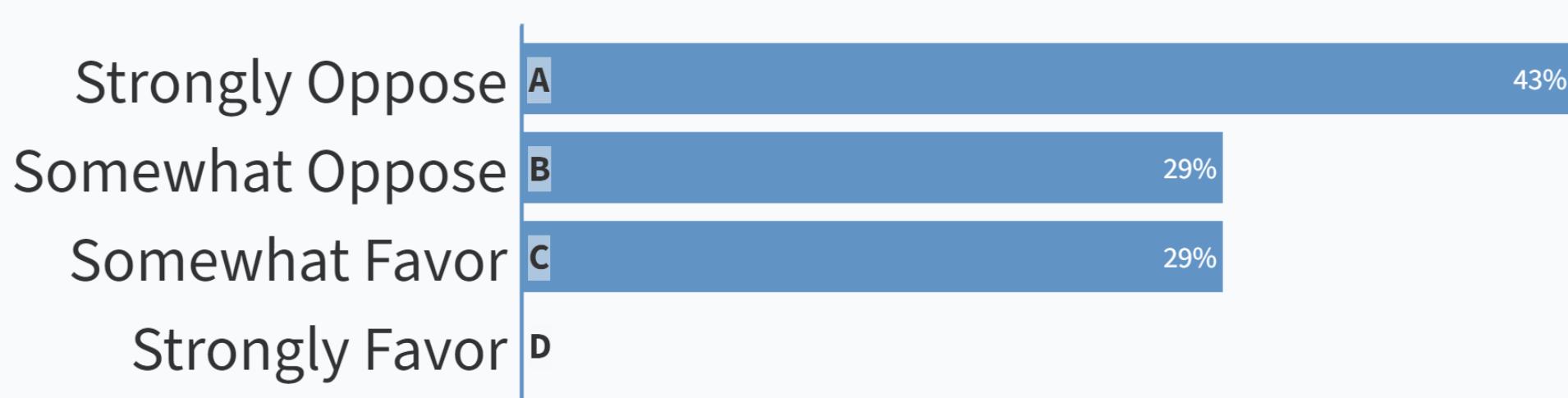
**Are you in favor of the death penalty for a person convicted of murder?**



# Your Responses

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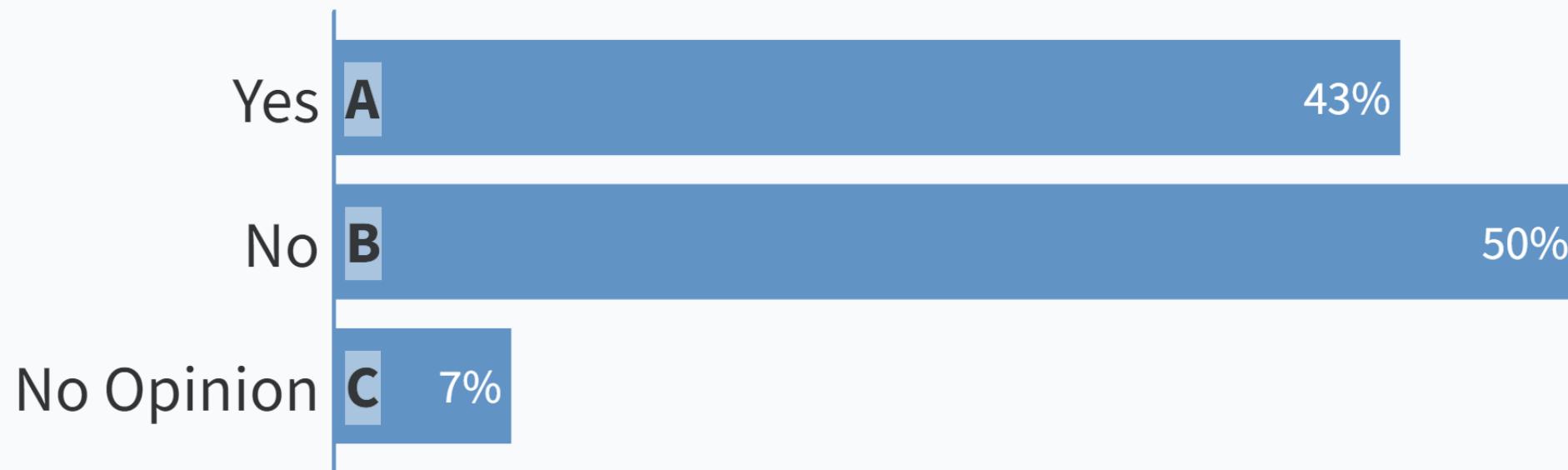
**Do you strongly oppose, somewhat oppose, somewhat favor, or strongly favor the death penalty for persons convicted of murder?**



# Your Responses

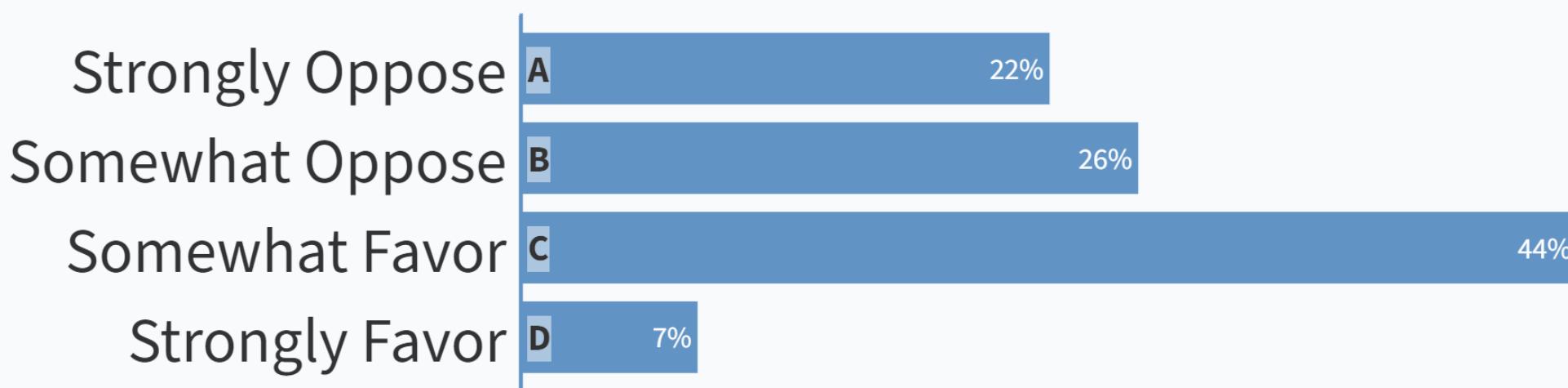
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**Is the death penalty a proper punishment for a person convicted of mass human rights violations?**



# Your Responses

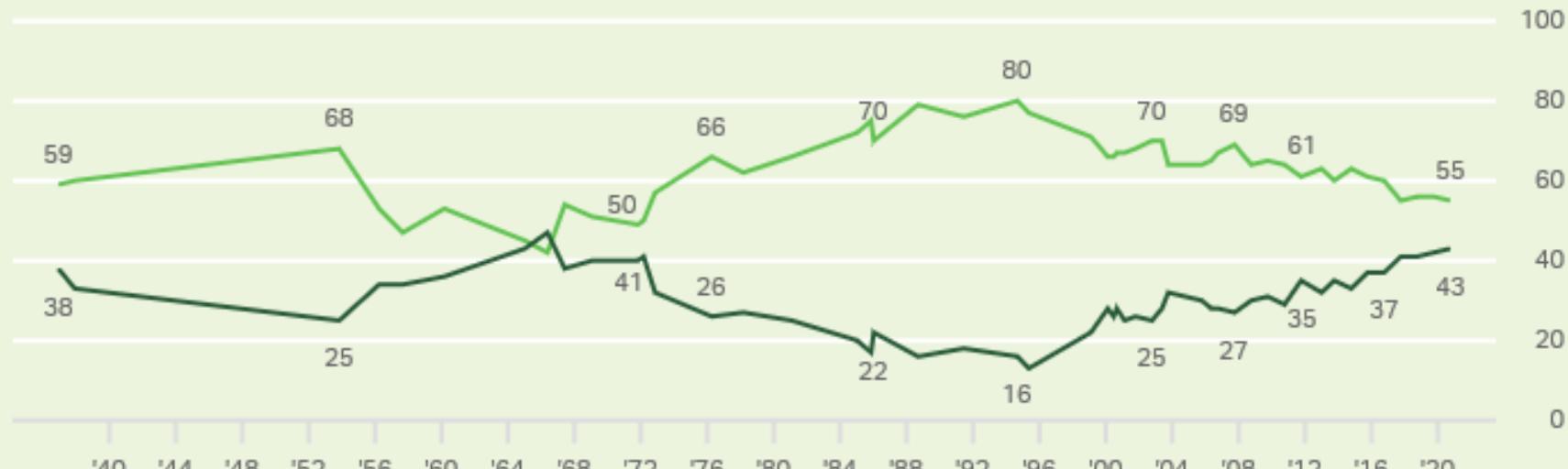
**Do you strongly oppose, somewhat oppose, somewhat favor, or strongly favor the death penalty for persons convicted of mass human rights violations?**



# Public Opinion - Comparing Your Responses to U.S. Residents

Are you in favor of the death penalty for a person convicted of murder?

■ % Favor ■ % Opposed



GALLUP

Source: Gallup, 2020 <https://news.gallup.com/poll/1606/death-penalty.aspx>

# Recap of Philosophies of Justice

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**Retributive Approach**

**Restorative Approach**

# International and INGO Positions on the Death Penalty

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## Examples:

- Amnesty International
- International Federation of Human Rights
- United Nations
- European Convention on Human Rights

All stated opposition to use of the death penalty

# International and INGO Positions on the Death Penalty

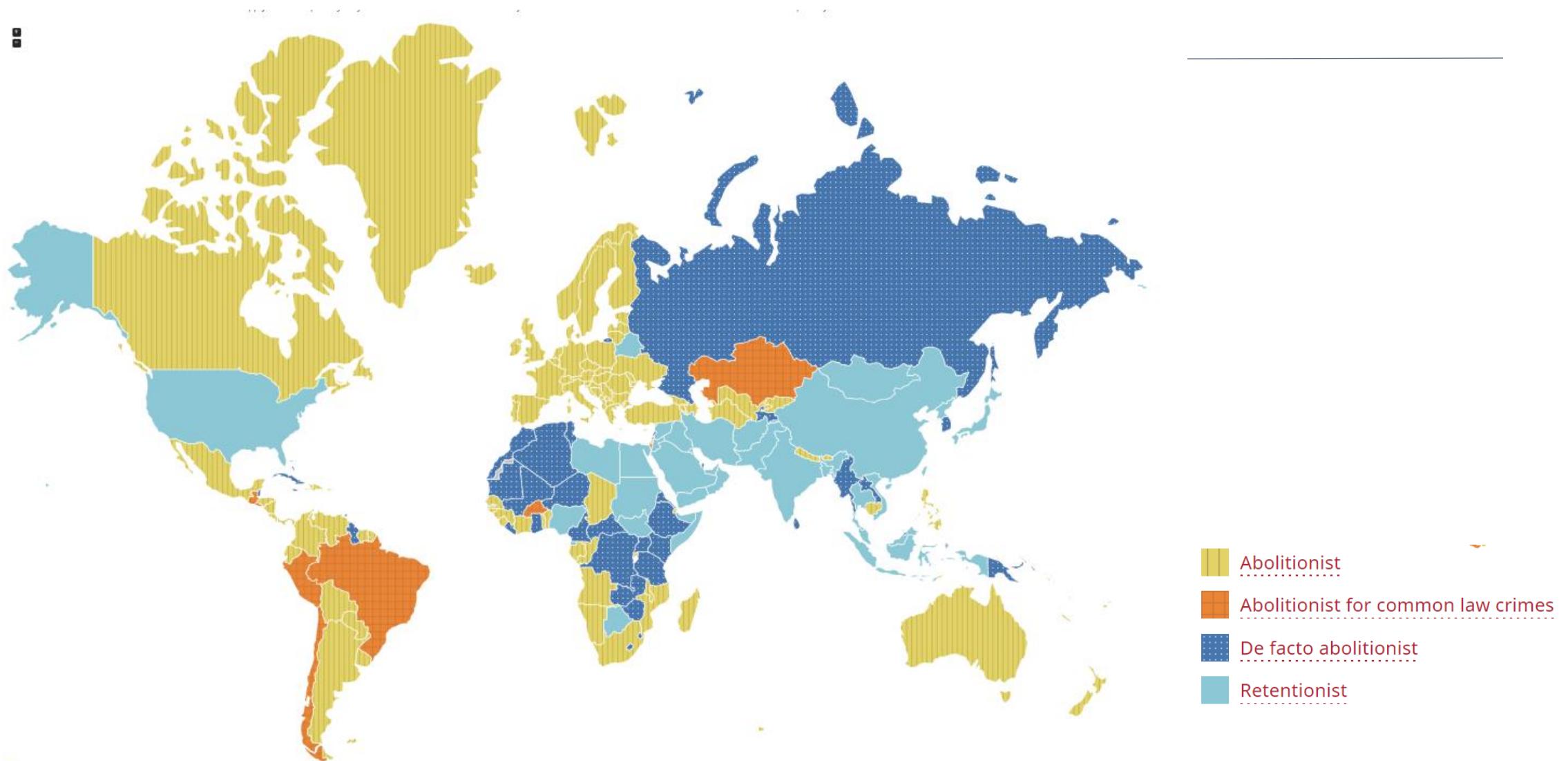
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## UN's International Covenant on Civil and Political Rights

“In countries which have not abolished the death penalty, sentence of death may be imposed only for the **most serious crimes in accordance with the law in force** at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”

Source: OHCHR <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

# Status of the Death Penalty Worldwide



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## Signed Onto the Rome Statute of the ICC:

Japan  
Bangladesh  
Nigeria  
Afghanistan  
Jordan  
Palestine

## Not Signed Onto the Rome Statute of the ICC:

U.S.	Singapore	Malaysia
China	Taiwan	North Korea
India	Sri Lanka	Thailand
Indonesia	Syria	Pakistan
Ethiopia	Libya	Qatar
Egypt	Somalia	United Arab Emirates
Iran	South Sudan	Vietnam
Iraq	Bahrain	Yemen
South Korea	Kuwait	Belarus
Saudi Arabia	Oman	

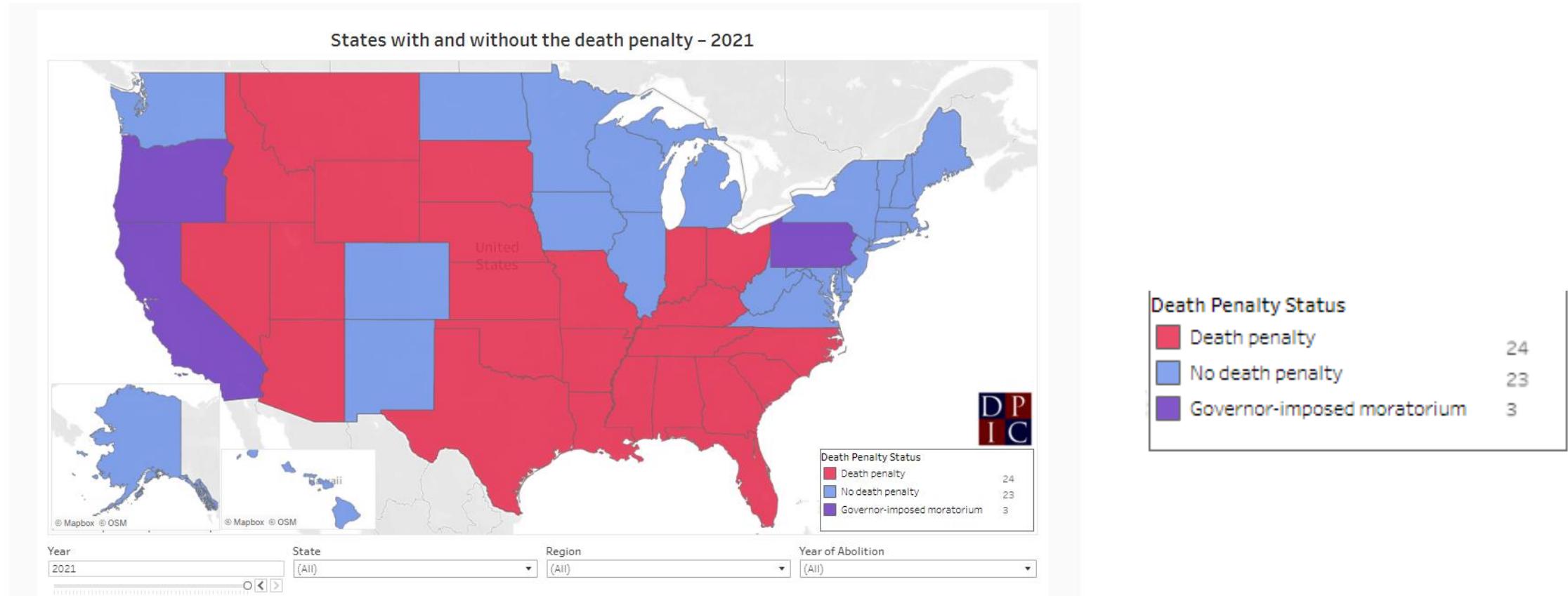
## Question:

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What theory/theories can explain differences in public opinion, nation state policy, and international positions on the death penalty?

# U.S. Case Study: Evolution of the Death Penalty

# U.S. Case Study: Status of the U.S. Death Penalty



Source: Death Penalty Information Center, 2021: <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state>

## U.S. Case Study: 8<sup>th</sup> Amendment

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### 8<sup>th</sup> Amendment of the U.S. Constitution:

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

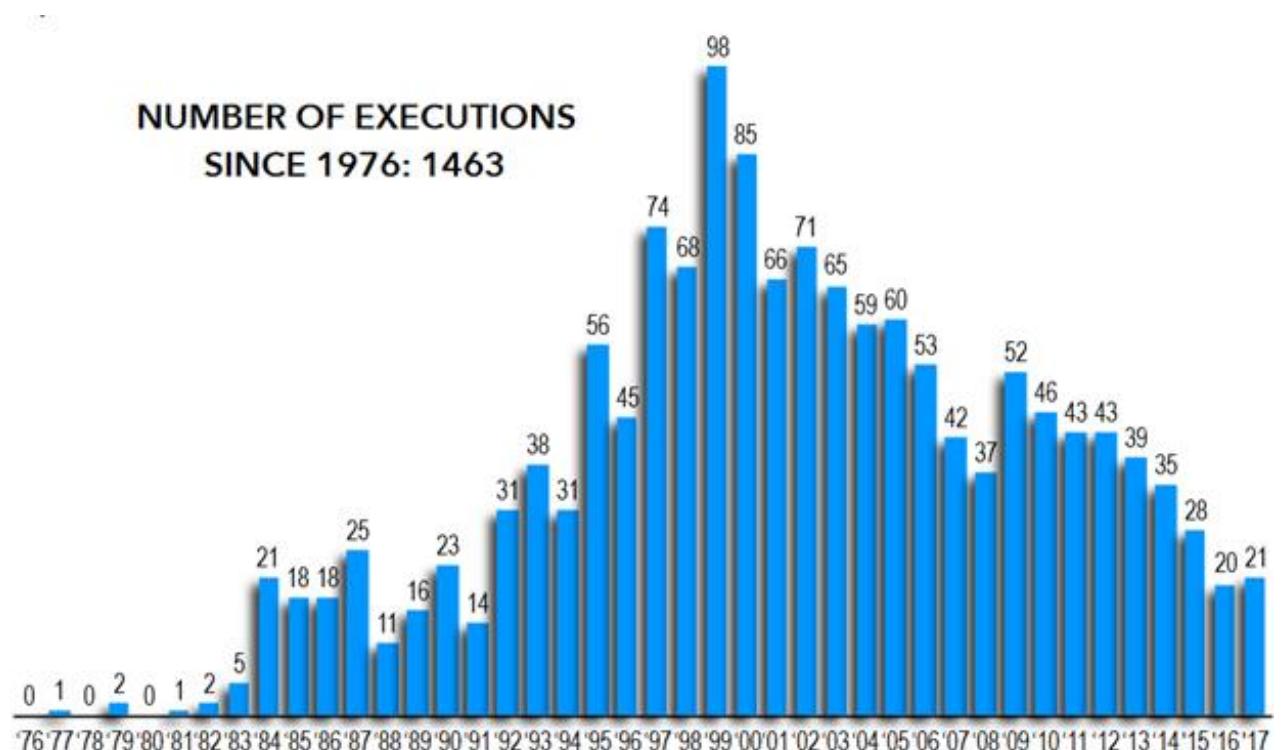
- Since 1947 the court has held that the death penalty is inherently neither cruel nor unusual.
- Concept: IF due process is observed, a person CAN be deprived of life.

# U.S. Case Study: Supreme Court Action

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How Death Penalty is Applied:

- *Furman v. Georgia* (1972)
- *Gregg v. Georgia* (1976)
- *McClesky v. Kemp* (1987)

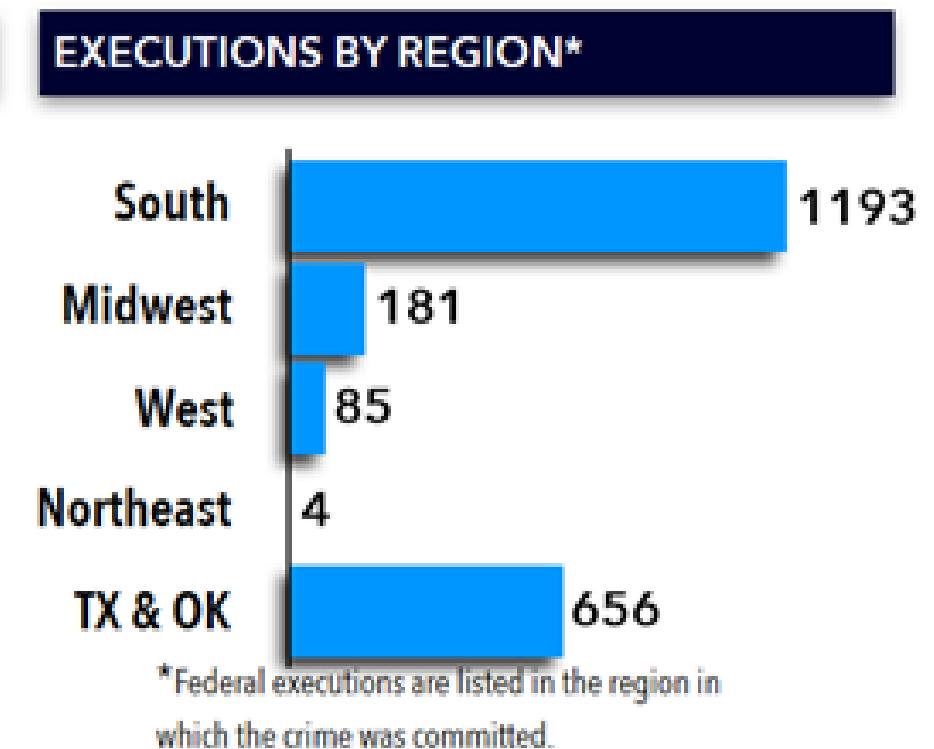


Source: Epstein, McGuire & Walker, 2021

# U.S. Case Study: Supreme Court Action

Who the Death Penalty is Applied To:

- *Atkins v. Virginia* (2002)
  - Prohibits using the death penalty on people with intellectual disabilities
- *Roper v. Simmons* (2005)
  - Prohibits using the death penalty on people under the age of 18



Source: Epstein, McGuire & Walker, 2021

## U.S. Case Study: Measures to Prevent and Deter Improper Use

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What measures are in place to prevent and deter improper use of the death penalty?

# U.S. Case Study: Measures to Prevent and Deter Improper Use

- **Appeals**
  - State Review
  - Federal Review
    - Antiterrorism and Effective Death Penalty Act of 1996
- **Legislative Investigations**
- **Civil lawsuits**
- **Temporary Injunctions**
- **Prosecutors**
  - Immunity
- **Investigators and experts**
  - Criminally charged
- **Judges**
  - Commissions on judicial conduct
  - Impeachment of Judges

# Connecting to International Human Rights

# Question:

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How can we connect the way we treat individuals in a criminal justice context to larger international considerations of how to respond to human rights violation perpetrators?

## Your responses:

- Connecting retributive and restorative to applications of criminal justice domestically
  - Community development
  - Using for human rights violators may be seen as getting off easy
- Case by case basis. Depends on the crime.
- International ideas should be the standard and apply them to U.S. policy
  - Applying U.S. standards - international moral imperialism
- Constructivist
- Banality of Evil
- Differences based on region

# Question:

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If regional or international courts utilize the death penalty as a punishment, what restrictions or oversight would be appropriate?

Your responses:

- Set standards (example – Rwandan harsh punishments vs. Yugoslav punishments)
  - Discrimination based on ethnicity
  - Depending on state by state is concerning
- Restrictions – minors, intellectual disabilities
- Most extreme crimes and most extreme cases
- Methods are not consistent
  - Considerations of pain and suffering
- Case by case basis.
- Used sparingly

# Summary

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Group 4 Video and Q&A

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