

Declining Use of the Death Penalty for Offenders 18, 19, and 20 Years of Age

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Statement of Qualifications

I am a political science professor with wide-ranging interests in American and comparative politics and public policy. I received my BA, MA, and PhD degrees from the University of Michigan (1980, 1983, and 1986). I have been a faculty member since 1986 and have taught at the University of Iowa, Texas A&M University, Penn State University, and UNC-Chapel Hill, where I moved in 2009. My research generally involves statistical analyses often based on originally collected databases. I have been fortunate to receive a number of awards for my work, including six book awards, awards for database construction, and so on. In 2017, I was inducted in the American Academy of Arts and Sciences.

In 2008, I published a book about the transformation in United States public attitudes and use of the death penalty based on the rise of the “innocence” argument

about the possibility of errors in the system.¹ Since then, I have integrated the death penalty into my teaching and research. I regularly teach a course about the death penalty here at UNC-Chapel Hill; it enrolls over 300 students. In 2018, I published a book, *Deadly Justice: A Statistical Portrait of the Death Penalty* (Oxford University Press), which presents a variety of statistical analyses of such things as the geographical concentration of the death penalty, its cost, the share of death sentences reversed or carried out, the time from death sentence to execution, public opinion, and other matters. This book draws from a database I constructed, with the help of many students over many years, consisting of information about every execution in the United States since *Gregg v. Georgia* (1976). The database includes such things as the date of any execution, the crime, and death sentence, the county of conviction, and demographic information about the inmate as well as the victims of the crime, in some cases.

Background and Description of the Database Used Here

Since approximately 2013, I have been working to create a database of all death sentences (not just executions) in the United States, going back to the *Furman*

¹ Baumgartner, Frank R., Suzanna L. De Boef and Amber E. Boydston. 2008. *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge University Press.

v. Georgia decision in 1972. My student workers have compiled this database by starting with publicly available information from state department of corrections records; many states provide lists of inmates sentenced to death, executed, or remaining on death row. This has been a large undertaking, but over the years we have made substantial progress. The U.S. Department of Justice has also compiled much of the same information for its annual reports.² Those reports present only statistical summaries of inmates sentenced to death by state and by year, as well as the numbers of inmates remaining on death row. By contrast, my database has the underlying record for each individual sentenced to death.

I was contacted by Karen Steele, an attorney in Oregon, about collaborating on finalizing this database and working with Sophie Jewett, a private investigator, to fill out any missing dates of birth, dates of crime, and dates of death sentence, as well as the county and state of conviction for this post-1972 database. I was glad to volunteer my services, share my database, and work together to compile the most complete and accurate list possible. Ms. Jewett, my team of assistants, and I have been coordinating our efforts for most of the past year. Ms. Jewett has also reached

² See for example, Snell, Tracy L. 2014. *Capital Punishment, 2013–Statistical Tables*. Washington, DC: Bureau of Justice Statistics.

out to other scholars working on similar efforts, in particular the team lead by Prof. John Blume at Cornell Law School, who has a forthcoming article on the topic.³

Our work has led to the creation of a database with 8,638 inmates sentenced to death from 1972 through December 31, 2018.⁴ In addition to the state and county where the death sentence was imposed, we have sought to complete the dates of birth, crime, and death sentence for each individual. In most cases, we have found exact dates. In some, we know only the month and/or the year, not the exact date. And in some cases, we have found an indication (often from a state department of correction publication) of the age of the inmate at the time of their crime or death sentence, but not their exact birthdate. Table 1 summarizes this information.

³ Blume, John H., Hannah L. Freedman, Lindsey S. Vann, and Amelia Courtney Hritz. 2019. *Death By Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban against Executing Juveniles from 18 To 21*. Forthcoming, TEXAS LAW REVIEW, available at <https://ssrn.com/abstract==3341438>.

⁴ Some individuals are sentenced to death in different states for different crimes, and many condemned inmates have their sentence later overturned and subsequently reimposed; our database focuses on the first death sentence imposed for any given individual. There are more death sentences than individuals because of multiple death sentences on the same individual.

Table 1. Dates of Birth, Crime, and Age Information Collected.

	Number	Percent	Cumulative Percent
Dates of Birth			
Precise date found	6,728	77.89	77.89
Approximate date found	1,401	16.22	94.11
Missing	509	5.89	100.00
Total	8,638	100.00	
Dates of Crime			
Precise date found	8,531	98.76	98.76
Approximate date found	29	0.34	99.10
Missing	78	0.90	100.00
Total	8,638	100.00	
Ages at Crime			
Precise age calculated from dates of birth and crime	6,668	77.19	77.19
Age in years calculated from approximate dates of birth and crime	1,409	16.31	93.51
Age in years retrieved from published sources	234	2.71	96.21
Missing	327	3.79	100.00
Total	8,638	100.00	

As the table shows, we identified the date of crime in almost 99 percent of the cases, and precise dates of birth in over three-quarters of all cases; from this we could calculate the precise age of the individual at the time of crime, and we have this for 77.19 percent of all those identified. In some cases, we found references to only the year or month of birth or crime, in which cases we calculate only the age in years (but not in days) for the individual. Finally, for 234 cases where we were missing either the date of birth or the date of crime, we were able to find a reference to the age in years of the individual at the time of the crime. In the tables and figures below, we report ages in years where appropriate and where we look at exact ages including

days, we use only the 6,668 cases where we can calculate this precisely. We gain another 1,633 observations when looking only at age in years, allowing us to have ages for 96 percent of all those in the database.

In the end, our database consists of 8,638 observations, covering all individuals sentenced to death in the United States between June 30, 1972 (that is, after the United States Supreme Court’s *Furman v. Georgia* decision) and December 31, 2018. This represents as close to a census of all death sentences within the United States as we have been able to compile.⁵

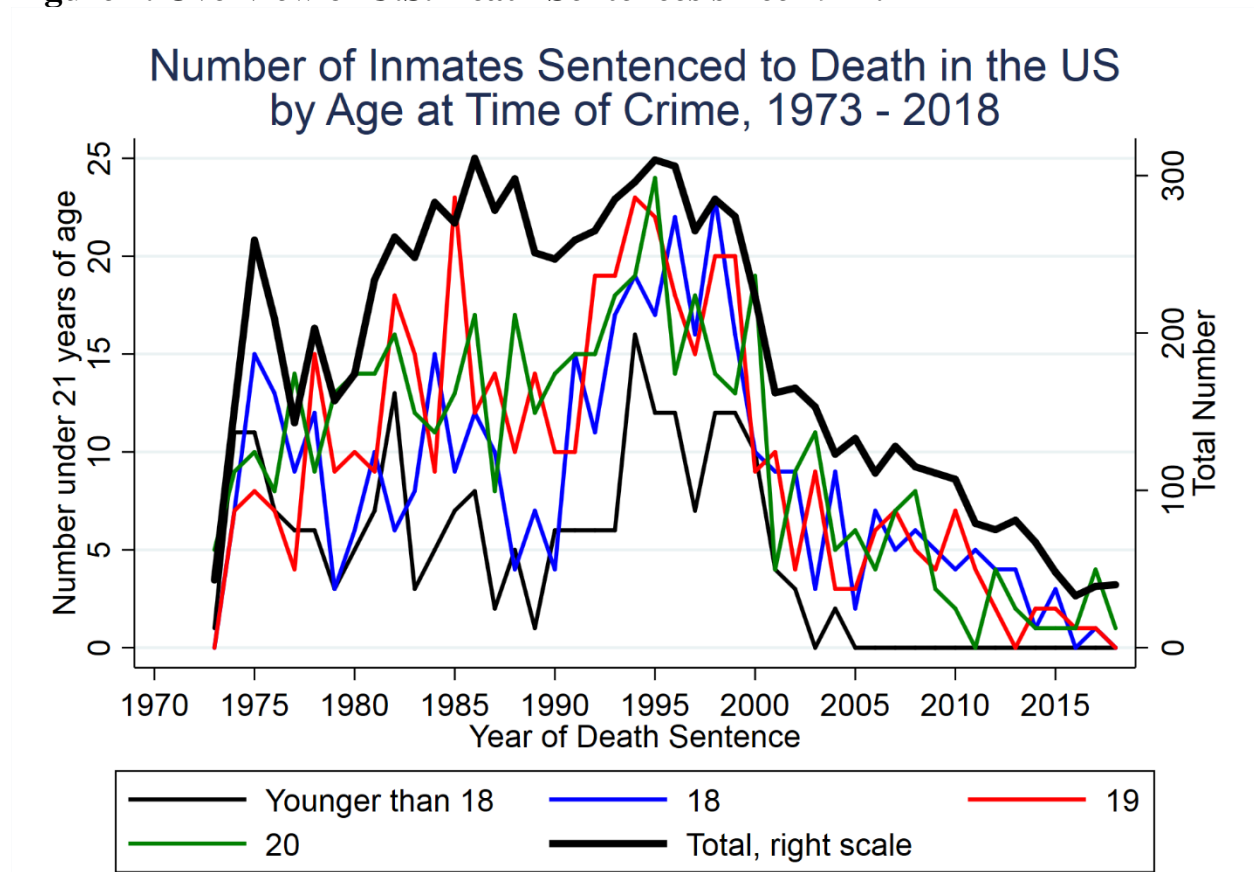
Throughout this document, I refer to “youthful offenders” which I define to mean those offenders who were 18, 19, or 20 years of age at the time of the commission of the sentencing offense. Also throughout this document, when I refer to the “modern period” in reference to capital punishment, I refer to the time period from June 30, 1972, through December 31, 2018.

⁵ In its most recent report covering the period of 1973 through 2016, the U.S. Department of Justice lists 9,178 death sentences, or about five percent more than our total. Our number is slightly lower partially because we record only one death sentence per individual, whereas the DOJ report sometimes includes more than one for the same individual. See <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6246>, data tables, Appendix Table 5.

Historical Background

Since *Furman*, over 8,000 individuals have been sentenced to death, and over 1,500 have been executed. Figure 1 shows the total number of individuals sentenced to death as well as the numbers who were less than 18 years old, and those 18, 19, and 20 years old at the time of the crime. Note that the total annual number is measured on the right scale, and the individual ages on the left scale. For example, in 1975, 259 individuals were sentenced to death, nation-wide, of whom fifteen were 18 years of age. In 2018, forty were sentenced, of whom none was 18, none was 19, and one was 20 years old.

Figure 1. Overview of U.S. Death Sentences since 1972.



Note that total death sentences reach a peak in the period between 1985 and 1995, reaching 310 in 1995. The Death Penalty Information Center (DPIC) lists 315 death sentences in 1996, slightly more than we record here (306). This minor disparity relates to missing information regarding the age of the offender at the time of the crime. While the numbers differ slightly, Table 1 shows that we have age-at-crime data for over 96 percent of the total cases, and the trends shown in Figure 1 are consistent with those of other studies, for example those from the Bureau of

Justice Statistics and DPIC, generally considered authoritative sources.⁶ The key background to note is that total death sentences have been as high as 300 per year, but youthful offenders have always been a small minority of this total. In recent years, numbers of youthful offenders sentenced to death have declined to single digits.

Post-Thompson v. Oklahoma and Roper v. Simmons Trends

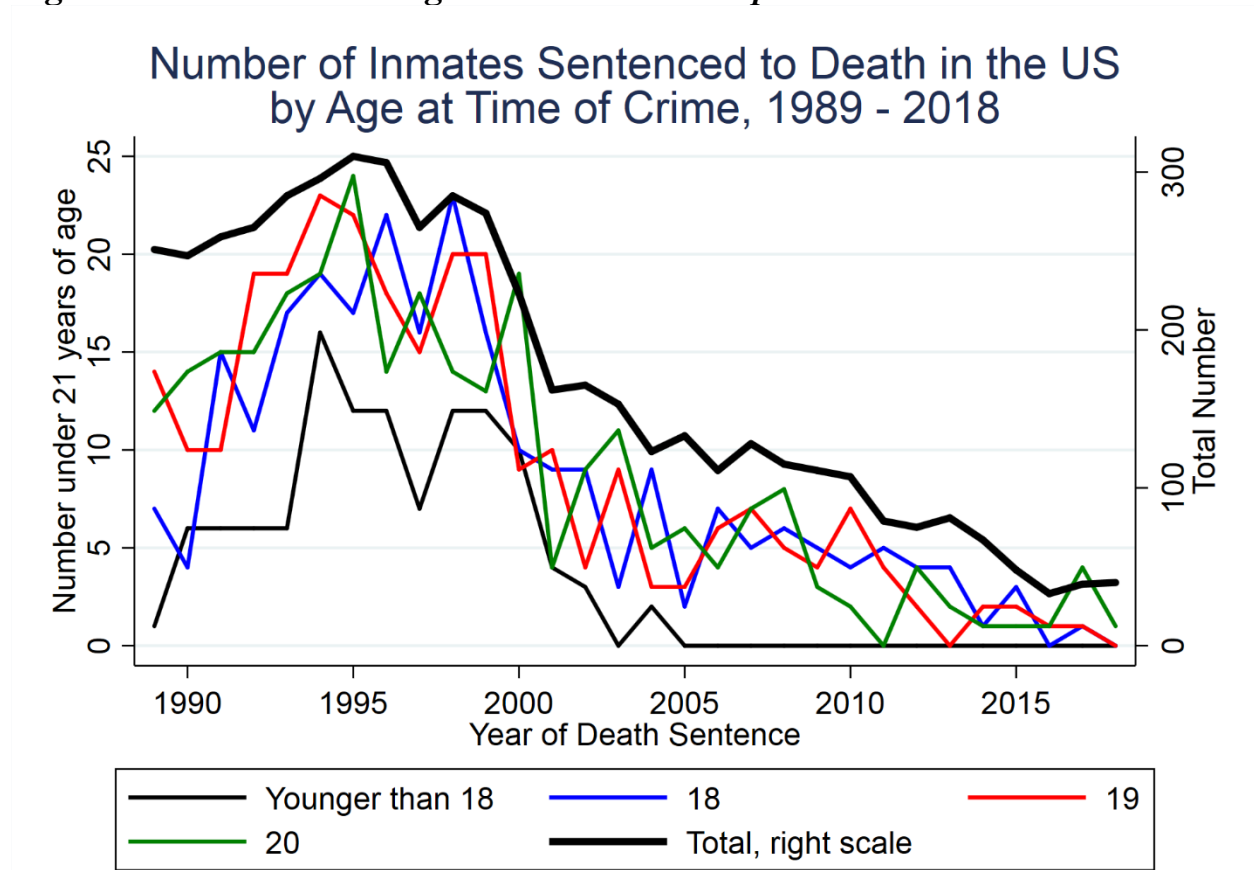
The United States Supreme Court ruled in 1988 that offenders younger than 16 years old at the time of their crime could not be sentenced to death;⁷ in 2005, it extended this ruling to those who were 17 at the age of the crime.⁸ Figure 2 shows the trends from Figure 1 for the post-*Thompson v. Oklahoma* period, after June 29, 1988. It also shows the complete elimination of death sentences for those under 18 years old after *Roper v. Simmons*, on March 1, 2005.

⁶ See Davis, Elizabeth, and Tracy L. Snell. 2018. *Capital Punishment, 2016*. Washington DC: Bureau of Justice Statistics, NCJ 251430, April. Retrieved from: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6246> July 2019. Also see <https://deathpenaltyinfo.org/facts-and-research/sentencing-data/death-sentences-in-the-united-states-from-1977-by-state-and-by-year>.

⁷ *Thompson v. Oklahoma*, 487 U.S. 815 (1988).

⁸ *Roper v. Simmons*, 543 U.S. 551(2005).

Figure 2. Death Sentencing Trends since *Thompson v. Oklahoma*.



Here we see clear evidence of a decline in death sentences for youthful offenders. Since 2005, the Supreme Court has mandated no involvement of juveniles in the capital punishment system, and during this period states have sentenced to death only a handful of youthful offenders of the ages of 18, 19, or 20 in any given year. In the last five years of the data reported here, 2014 through 2018, just five individuals aged 18, six aged 19, and eight aged 20 have been sentenced to death, nation-wide. In the ten years from January 1, 2009 through December 31, 2018, just twenty-seven 18-year-olds have been so sentenced; in the ten year period starting on January 1, 1991, the number was 166. Similar trends are apparent with each of the

other age groups of youthful offenders. Whereas death sentences have declined over the entire United States in the period since the mid-1990s, death sentences of youthful offenders have declined even more dramatically, to the low single digits or to none at all in certain years. No 18-year-olds at all were sentenced to death in 2016 or 2018, and just one in 2017.

Figure 3 brings more clarity to the data shown in Figure 2 by focusing only on the period of the decline in use of the death penalty, nationally, since 1995. It shows the total number of death sentences, which declined from 310 in 1995 to 40 in 2018, and the number of those sentenced to death who were aged 18 to 20 at the time of the crime; this series declines from 63, or 20 percent of the total, to just 1. Since 2013, the number of 18- to 20-year-old offenders sentenced to death has been measured in the single digits. From an average of over 15 percent of the annual totals in the first 10 years of the series, it has declined to a small proportion; just 2.5 percent in 2018.

Figure 3. The Decline in Use of the Death Penalty for Offenders Aged 18 to 20, 1995 to 2018.

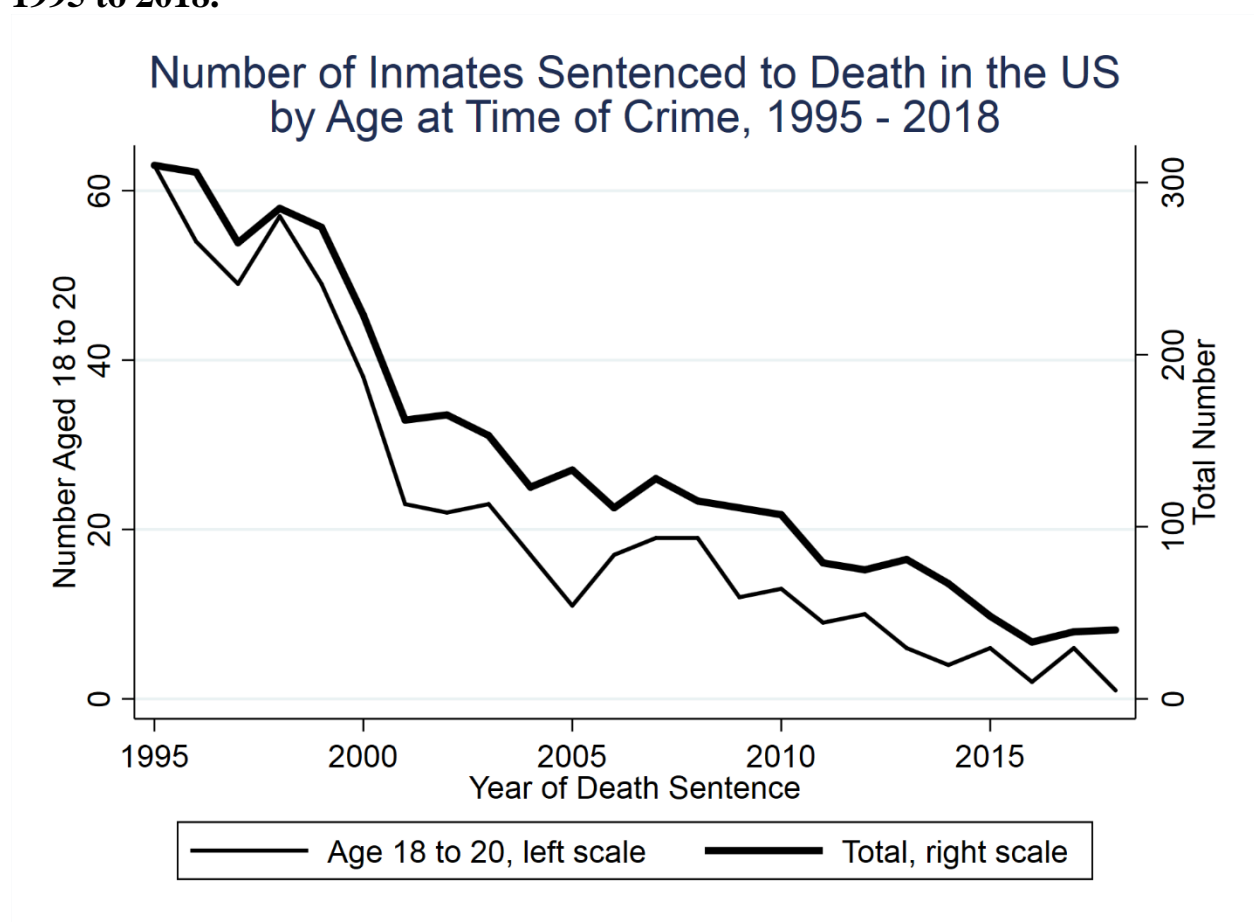


Figure 4 shows the full distribution of ages for individuals sentenced to death across the United States, during three different time periods: the period from 1972 through the *Thompson* decision in June 1988; the period between *Thompson* and *Roper*, and the post-*Roper* period. Table 2 summarizes the findings. Offenders over the age of 21 at the time of the crime increase from 81 percent to over 88 percent.

Figure 4. The Decline in Youthful Offenders Sentenced to Death. Pre-Thompson, Thompson to Roper, and post-Roper.

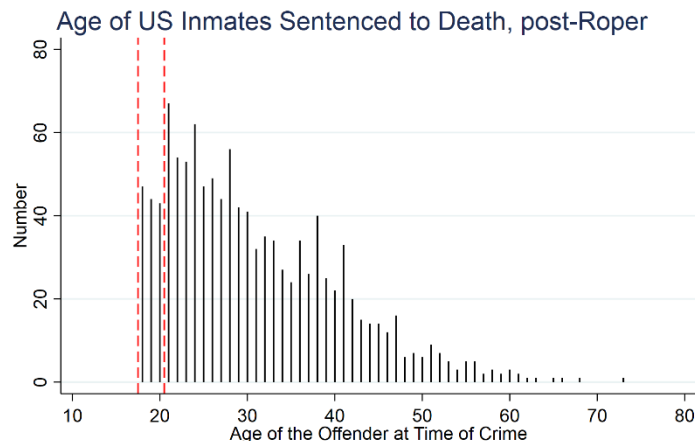
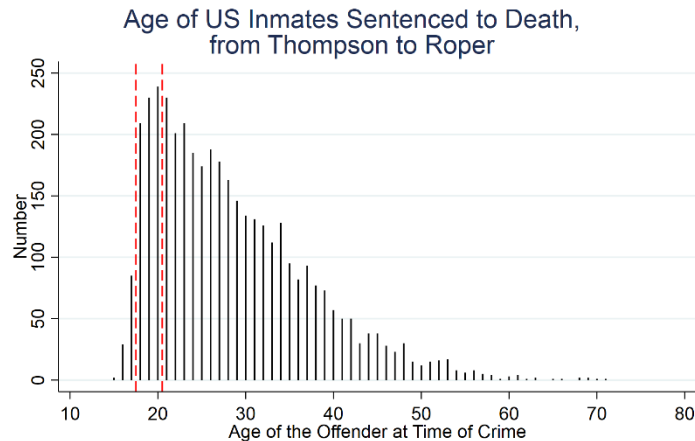
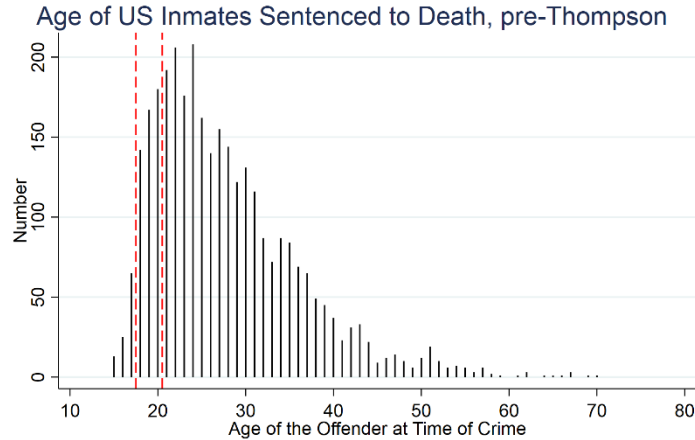


Table 2. Declining Use of the Death Penalty for Youthful Offenders.

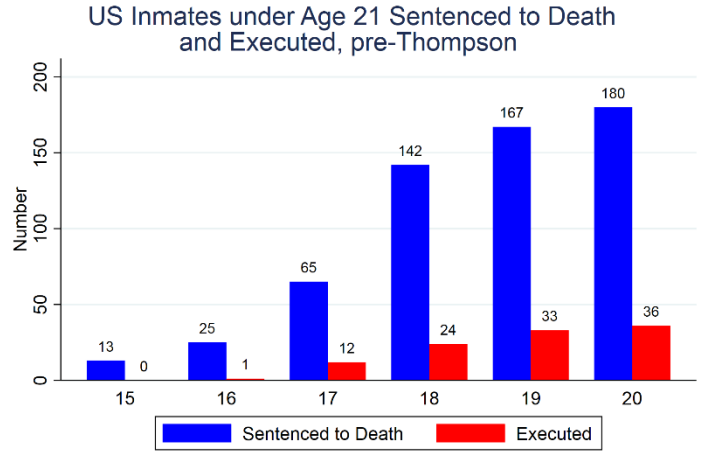
Age at Crime	pre- <i>Thompson</i>		<i>Thompson</i> to <i>Roper</i>		Since <i>Roper</i>		Total	
	N	%	N	%	N	%	N	%
Fifteen	13	0.41	2	0.05	-	-	15	0.18
Sixteen	25	0.79	29	0.73	-	-	54	0.65
Seventeen	65	2.04	85	2.13	-	-	150	1.80
Eighteen	142	4.46	209	5.24	47	4.12	398	4.79
Nineteen	167	5.25	230	5.77	44	3.85	441	5.30
Twenty	180	5.66	239	5.99	43	3.76	462	5.56
21 and over	2,591	81.40	3,194	80.09	1,009	88.35	6,794	81.72
Missing Cases	237		59		28		324	
Total	3,420	100.00	4,047	100.00	1,171	100.00	8,638	100.00

Note: Pre-*Thompson* refers to the period from 1972 through June 29, 1988; *Roper* was decided in March 1, 2005. Data through December 31, 2018.

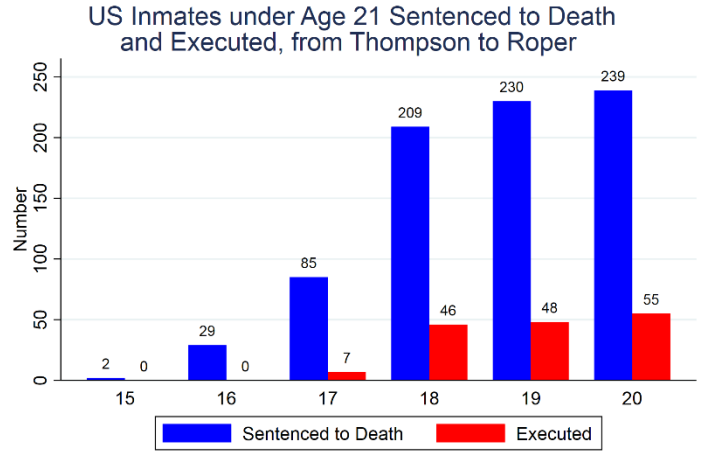
The data from Figure 4 and Table 2 make several things clear. First, youthful offenders have never constituted a large proportion of all those sentenced to death. Second, trends against their inclusion in the death penalty system have been clear. Since *Roper*, of course, those 15, 16, or 17 years old have been completely exempted from the system. But, if we look at 18-year-olds, the death sentences imposed on those individuals declined from 209 in the *Thompson-to-Roper* period, to only 47 cases since *Roper*. Between the same two periods, offenders 18, 19, or 20 years old declined from 17 percent of the total to 11.73 percent, from 678 individuals to 134. In sum, while the death penalty has been on the steep decline among offenders of all ages in the period since the mid-1990s, this decline has been even sharper among those aged 18, 19, and 20.

Figure 5 notes an even more striking development: Not a single youthful offender whose sentence came in the post-*Roper* period has had that sentence carried out. The Figure compares the same three time periods as before, showing the numbers of individuals of each youthful age category sentenced to death and executed. Ages are calculated at the time of the crime. The first graph in the Figure shows the pre-*Thompson* period, and the second focuses on the period between *Thompson* and *Roper*. In both cases, the red bars indicate the number of individuals executed. In the third graph, for the period since *Roper*, there are no red bars, reflecting the complete lack of executions of youthful offenders.

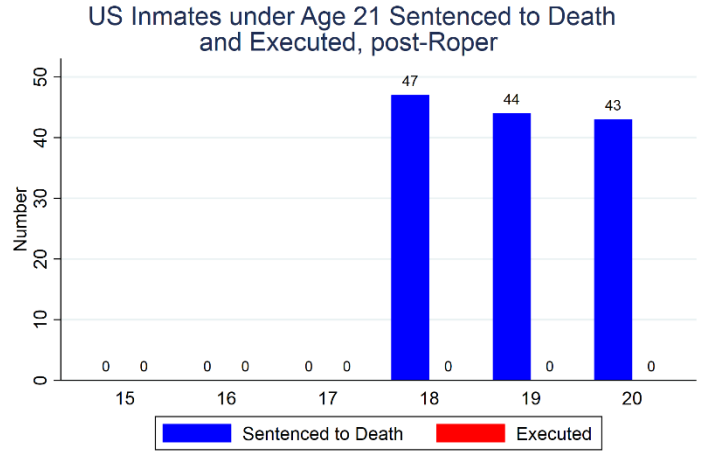
Figure 5. Youthful Offenders Sentenced to Death v. Executed. Pre-Thompson, Thompson to Roper, and post-Roper.



Based on 3,183 inmates of all ages sentenced to death and 655 executed. Includes only those whose initial death sentences came before June 29, 1988.



Based on 3,988 inmates of all ages sentenced to death and 784 executed. Excludes those whose death sentences came before June 29, 1988 and after March 1, 2005.



Based on 1,143 inmates of all ages sentenced to death and 22 executed. None of those executed were under 21 at the time of the crime. Excludes those whose death sentences came before March 1, 2005.

A total of 20 juveniles have been executed in the United States during the modern (post-*Furman*) period; one was sixteen at the time of the crime. Thirteen of these executions stemmed from pre-*Thompson* death sentences, and seven more came after *Thompson* but before *Roper*. Executions of individuals aged 18, 19, or 20 at the time of their crime were not uncommon, with twenty-four 18-year-olds executed in the period before *Thompson*, and 46 in the period between *Thompson* and *Roper*, and slightly higher numbers for 19- and 20-year-olds. In the period since *Roper*, no offenders younger than 21 years old at the time of their crime have been executed, nationwide. That is, the third part of Figure 5 shows something very striking: Though a dwindling number of youthful offenders are still sentenced to death, none have been executed.

Randy Lee Guzek was born on May 29, 1969, and sentenced to death in Deschutes County, Oregon, on March 18, 1988, for a crime that took place on June 29, 1987. His age at the time of the crime was 18 years and 30 days. Nationwide, just 25 individuals have been sentenced to death who were over 18 but younger than Mr. Guzek; none were in Oregon (states with such cases are: Texas, 6; Florida, Pennsylvania, and California 3; Oklahoma and Mississippi, 2; and Alabama, Arizona, Connecticut, Louisiana, Ohio, Tennessee, 1). Of these 25 individuals, only Texas carried out such an execution; it did so four times. As is common, Mr. Guzek's initial death sentence was overturned on appeal, and in fact he has been sentenced

to death on four occasions, the most recent being June 17, 2010.⁹ No individual as young as Mr. Guzek has been sentenced to death nationwide since 2010, the date of his most recent death sentence.

Since Oregon reinstated capital punishment *via* the initiative process in 1984, 63 individuals have been sentenced to death; Guzek is the youngest. One other individual was 18 years old at the time of his crime, but was much closer to his 19th birthday. Two individuals were 19, five were 20, and the other 54 individuals were 23 years old or above at the time of the commission of the sentencing offense. The state of Oregon has executed two individuals in the modern period; they were each 51 years of age at the time of their crimes and both were volunteers, having given up all appeals.

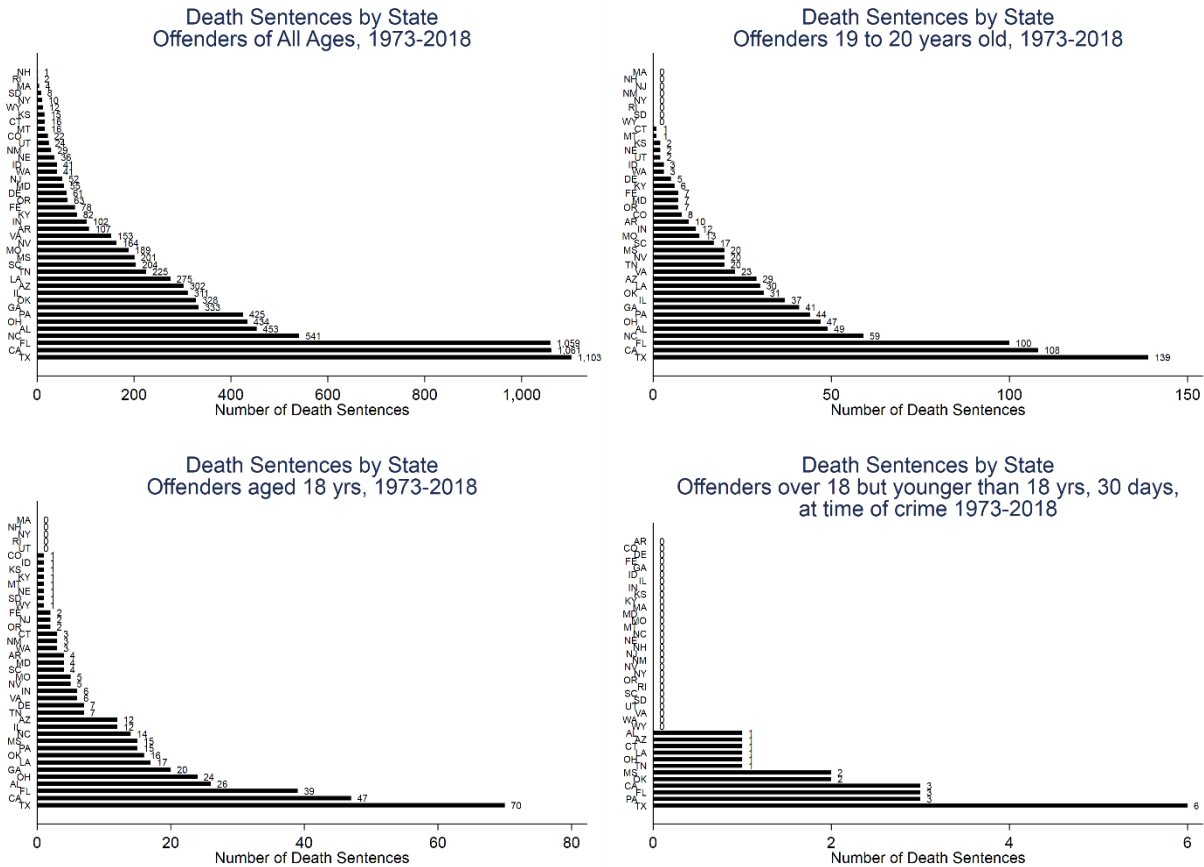
The geographic concentration of the death penalty has long been noted; the state of Texas carries out, by far, the largest number of executions, and the city of Houston (Harris County) has over 10 percent of the national total.¹⁰ In fact, as we look at the use of the death penalty on the most youthful offenders, the degree of geographic concentration increases. Figure 6 shows the distribution of death sentences by state for: offenders of all ages; offenders aged 19 to 20; offenders aged

⁹ In our associated database, we list Mr. Guzek's most recent death sentence. For other offenders, we use the first death sentence associated with that individual.

¹⁰ See Baumgartner et al. *Deadly Justice*, chapter 6.

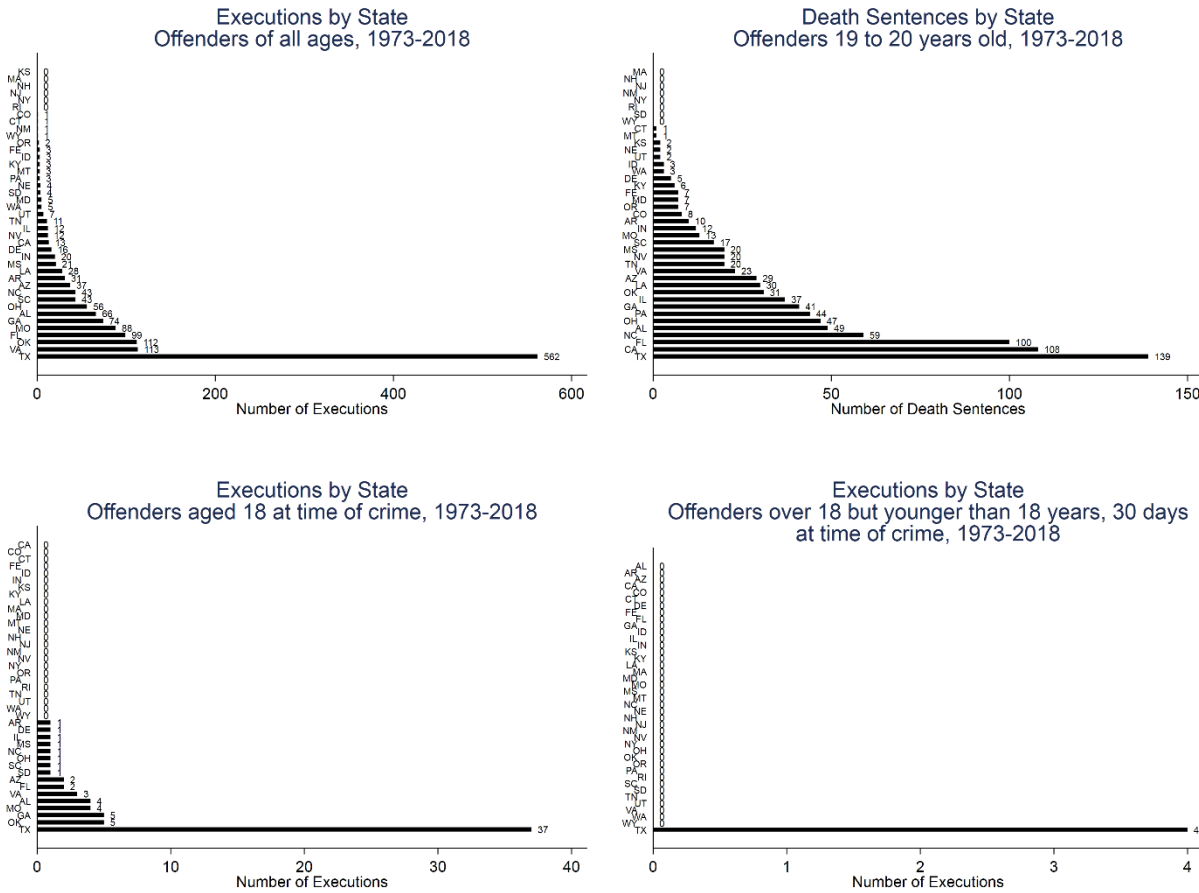
18 years old; and 18-year-old offenders younger than Randy Lee Guzek, who was 30 days past his 18th birthday at the time of his crime. Figure 7 shows the corresponding values among inmates later executed, and Table 3 provides the raw numbers associated with both sets of figures.

Figure 6. The Geographic Concentration of Death Sentences, by Age of Offender



Looking first at death sentences, three states (TX, CA, FL) have more than 1,000 death sentences in the modern period, with others showing lower numbers. As we limit our attention to younger and younger offenders, however, the degree of concentration becomes higher. Only 25 individuals nationwide have been sentenced to death who were over age 18, but younger than Mr. Guzek. All of these cases came from just 12 states, and only the state of Texas has sentenced more than three individuals in this age group.

Figure 7. The Geographic Concentration of Executions, by Age of Offender



Looking at cases having led to a judicial execution, Figure 7 shows even more striking evidence regarding the degree of geographic concentration. Whereas three states had high numbers of death sentences, only Texas has a large number of executions, more than three times higher the next highest state. Looking at the execution of youthful offenders, this concentration is even higher. It is indeed the only state to have executed anyone in the age group of 18 years to 18 years and 30 days.

Table 3. Death Sentences and Executions, by Age Group, by State, 1973-2018.

State	Death Sentences				Executions			
	All Ages	Age 19 to 20	Age 18	Age 18 to 18 years, 30 days	All Ages	Age 19 to 20	Age 18	Age 18 to 18 years, 30 days
TX	1,103	139	70	6	562	77	37	4
CA	1,061	108	47	3	13	1	0	0
FL	1,059	100	39	3	99	3	2	0
NC	541	59	14	0	43	3	1	0
AL	453	49	26	1	66	11	4	0
OH	434	47	24	1	56	9	1	0
PA	425	44	15	3	3	0	0	0
GA	333	41	20	0	74	13	5	0
OK	328	31	16	2	112	9	5	0
IL	311	37	12	0	12	1	1	0
AZ	302	29	12	1	37	5	2	0
LA	275	30	17	1	28	4	0	0
TN	225	20	7	1	11	0	0	0
SC	204	17	4	0	43	2	1	0
MS	201	20	15	2	21	1	1	0
MO	189	13	5	0	88	5	4	0
NV	164	20	5	0	12	1	0	0
VA	153	23	6	0	113	18	3	0
AR	107	10	4	0	31	2	1	0
IN	102	12	6	0	20	3	0	0
KY	82	6	1	0	3	0	0	0
FE	78	7	2	0	3	0	0	0
OR	63	7	2	0	2	0	0	0
DE	61	5	7	0	16	2	1	0
MD	55	7	4	0	5	0	0	0
NJ	52	0	2	0	0	0	0	0
WA	41	3	3	0	5	0	0	0
ID	41	3	1	0	3	0	0	0
NE	36	2	1	0	4	1	0	0
NM	29	0	3	0	1	0	0	0
UT	24	2	0	0	7	1	0	0
CO	22	8	1	0	1	0	0	0
CT	16	1	3	1	1	0	0	0
MT	16	1	1	0	3	0	0	0
KS	15	2	1	0	0	0	0	0
WY	12	0	1	0	1	0	0	0

NY	10	0	0	0	0	0	0	0
SD	8	0	1	0	4	0	1	0
MA	4	0	0	0	0	0	0	0
RI	2	0	0	0	0	0	0	0
NH	1	0	0	0	0	0	0	0
