select potential jurors—known as the jury pool, or *venire*—from government records such as voter registration lists or property tax assessment rolls. In two separate cases, the Supreme Court ruled that jury pools may not exclude blacks or women.[103] The Court has also ruled that prosecutors and defense attorneys may not exclude potential jurors on the basis of race or gender.[104]

At the time the Sixth Amendment was written, the United States employed English trial procedure, in which a twelve-member jury had to reach a unanimous verdict to convict a defendant. By the 1960s, however, many states had reduced the size of juries and made it easier to obtain a conviction. They reasoned that smaller juries and nonunanimous verdicts would save time and money, and result in fewer hung juries. In 1970, the Court upheld the constitutionality of smaller juries in noncapital (not involving the death penalty) cases.[105] Two years later, it held that nonunanimous verdicts in noncapital cases also were constitutional. The Court rejected the assertion that the disagreement of a minority of jurors raised questions of "reasonable doubt" about the verdict.[106]

The Eighth Amendment: Cruel and Unusual Punishment

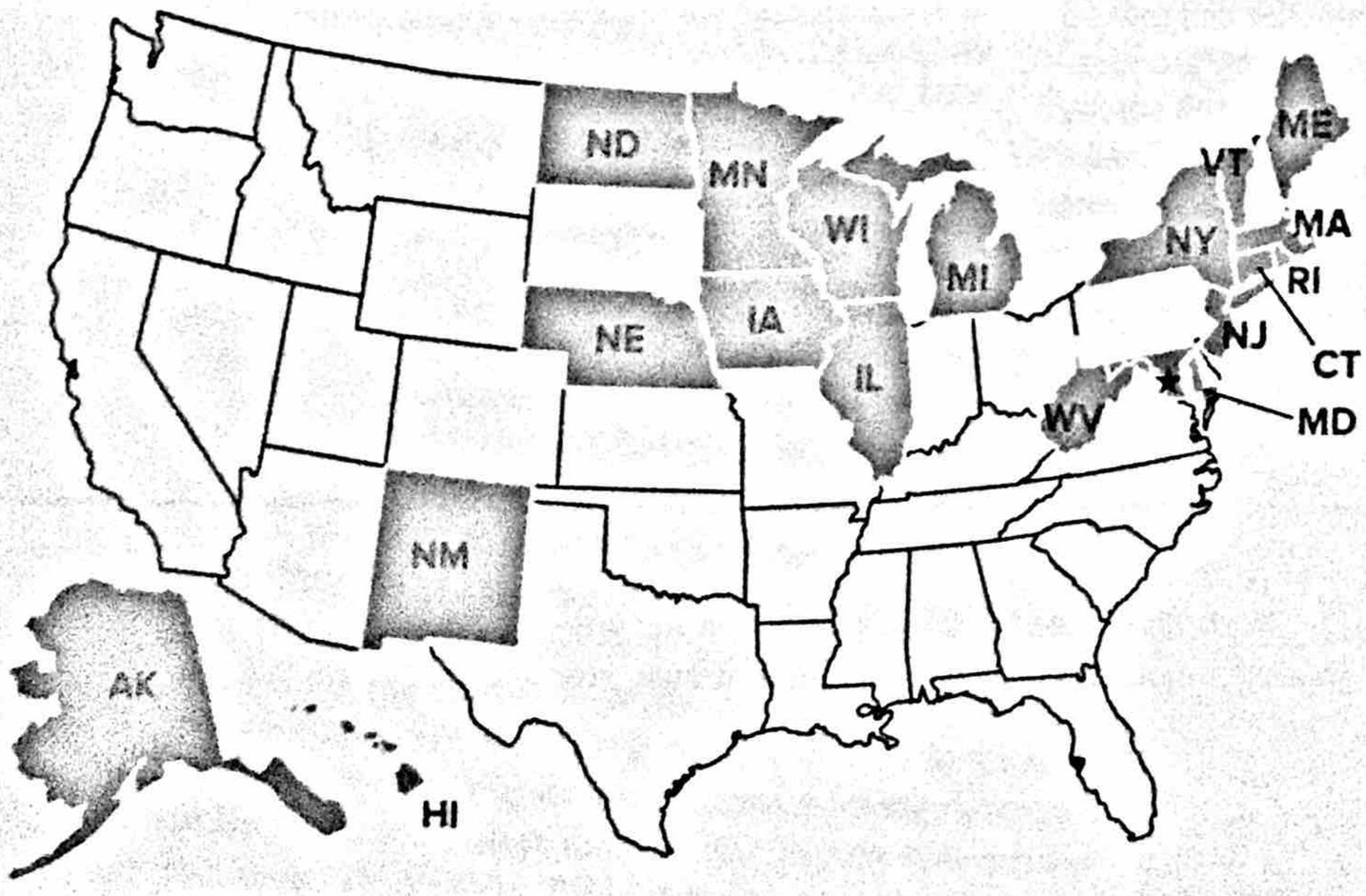
The Eighth Amendment's ban on cruel and unusual punishment was probably the Framers' reaction to the barbarous methods of torture and execution practiced in medieval England, such as being stretched on the rack and/or disemboweled. Most of the debate over cruel and unusual punishment in the United States, however, has focused on the death penalty.

The issue received little attention from the Supreme Court until the 1970s. Then, in 1972, a deeply divided Court ruled that the Georgia death penalty was unconstitutional because it led to unacceptable disparities in executions. African Americans who murdered whites were much more likely to receive the death penalty than whites convicted of the same crime.[107] Only two of the justices, however, said the death penalty was unconstitutional in all circumstances.

Gregg v. Georgia The Supreme Court decision that upheld the death penalty in the United States.

Four years later, the Court clarified its position by upholding a new Georgia death penalty statute in **Gregg v. Georgia**.[108] The Court found the law constitutional because it contained adequate safeguards for the defendant. The law prescribed separate phases for trial and sentencing. The trial phase would determine the defendant's guilt or innocence; a verdict of guilty triggered a second phase to consider punishment. The law required jury or judge to consider both aggravating factors and mitigating factors in making a sentencing decision. An aggravating factor is any factor that makes the crime worse, such as murder for hire or felony murder, which is the commission of a murder while committing another felony such as robbery or rape. A mitigating factor is any factor that might excuse the crime to some extent, such as reduced mental capacity on the part of the defendant. The law also provided for an automatic appeal to the state's highest court.

States Without the Death Penalty



A majority of states still have the death penalty.

Source: Death Penalty Information Center.

Opponents of the death penalty have been encouraged by recent events. Public support for the death penalty has declined since 1992, as has the number of executions and death penalty sentences (see Executions in the U.S. figure), with the revelation that many innocent persons have been sentenced to death. The declining murder rate has also contributed to a decrease in executions.

In 2000, former governor George Ryan (R-IL) ordered a moratorium on all executions in his state after DNA tests led to the release of thirteen men on death row. Other states are now offering free DNA testing for death row inmates. In 2002, the Supreme Court ruled that the execution of mentally retarded defendants is cruel and