

unusual punishment; at the time, such executions were legal in twenty states.¹⁰⁹ Three years later, the Court prohibited the death penalty for any defendant who was under the age of 18 when he or she committed murder.¹¹⁰ Before the decision, the United States was one of a handful of countries, including China, Pakistan, Iran, and Saudi Arabia, that executed juveniles. Despite these rulings, however, the national government and three-fourths of the states still have the death penalty, and the United States is now the only Western democracy that uses it.

Opponents of the death penalty were cheered again when the Supreme Court agreed to hear a Kentucky case that challenged the state's administration of the lethal injection method of execution: which chemicals were administered, the training of the personnel, the adequacy of the medical supervision, and the risk of error. The prisoner's contention was that if the first drug, the barbiturate, was an insufficient anesthetic, the next two drugs that paralyzed the prisoner and stopped the heart could cause excruciating pain without the prisoner being able to move or cry out. Such pain, it was

contended, would constitute cruel and unusual punishment. While the Court considered the case, it stayed the execution of the prisoners from states with the lethal injection procedure, and some states voluntarily halted their executions until the Supreme Court rendered its decisions. As a result, only forty-two executions were carried out in 2007 and none in the early part of 2008 until the Court rendered its decision.

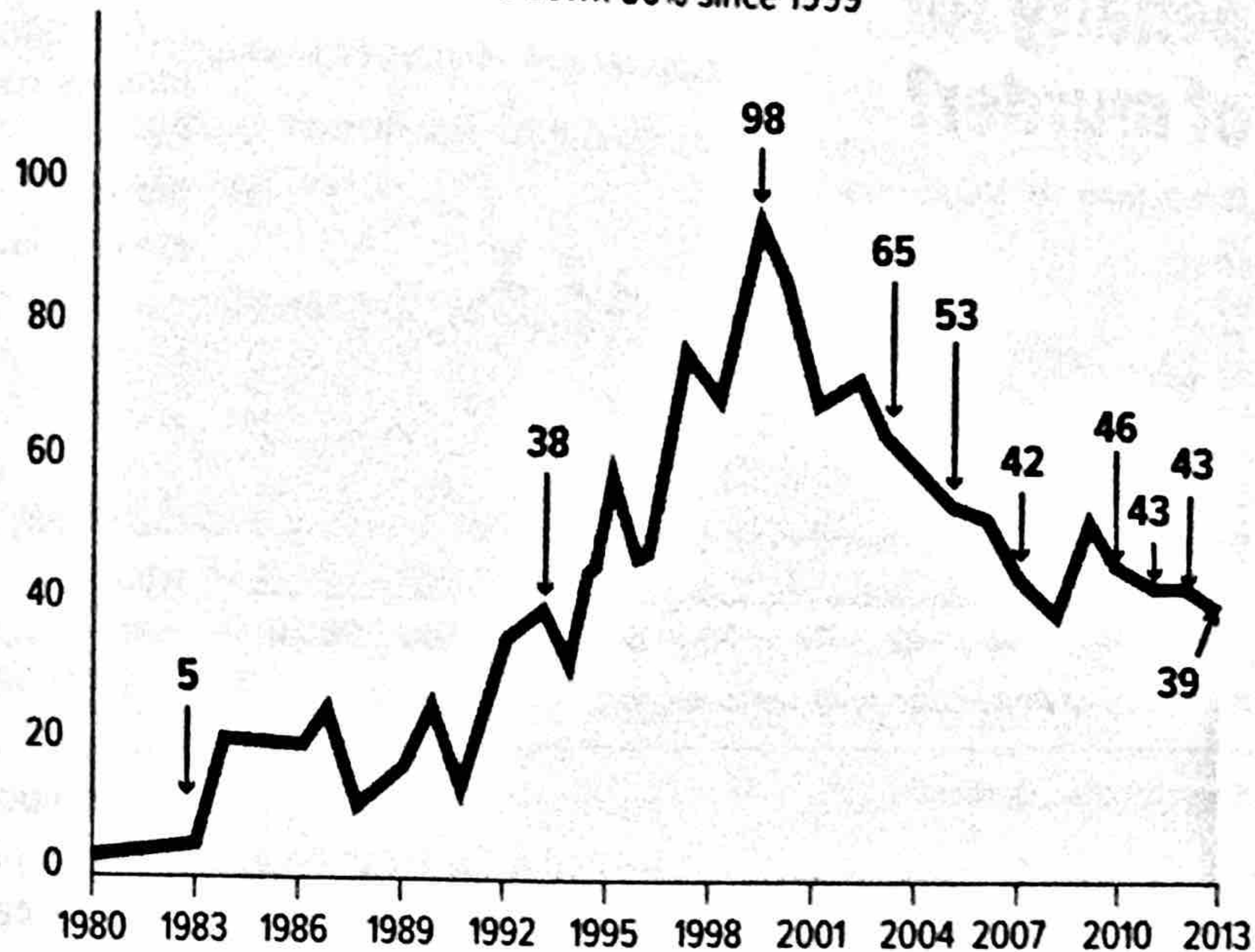
In April 2008, the Court upheld the Kentucky law.¹¹¹ For a 7 to 2 majority, Chief Justice John Roberts wrote: "Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of harm' that qualifies as cruel and unusual" punishment. Within days of the opinion, states began lifting their execution bans and went on to execute thirty-seven persons in 2008 and fifty-two in 2009.

The Court ended its term in 2008 by rejecting the death penalty for those convicted of raping a child.¹¹² A closely divided Court held that with the exception of treason and espionage cases, the death penalty should not be applied when the life of the victim was not taken. Prior to the decision, only five states allowed for the execution of rapists whose victims were children, and the others except for Louisiana applied the penalty only in cases where the defendant had previously been convicted of raping a child. The fact that only five states had such laws and that no prisoner had been executed for the crime for a period of forty-four years led the Court to conclude that a national consensus had been formed on the issue. The following year the Supreme Court made it easier for death row inmates to sue for access to DNA evidence that could prove their innocence. In *Skinner v. Switzer*, the prosecutors in Texas had tested some but not all of the evidence from the crime scene. The justices ruled that the defendant could sue the prosecutor under a civil rights law for refusing to allow testing of all the DNA evidence.

In 2010, the Court extended the concept of cruel and unusual punishment to apply to sentences of life in prison without the possibility of parole for juveniles who commit violent crimes other than murder. It held in *Graham v. Florida* that such a sentence leaves a young defendant without hope and thus violates the Eighth Amendment provision. Then in the 2012 *Miller v. Alabama* ruling, it

Executions in the U.S.

In the U.S., executions are down 56% since 1999



The number of executions in the United States continues to decline.

Source: Death Penalty Information Center.

The Supreme Court has ruled that the death penalty is not the type of cruel and unusual punishment that is prohibited by the Eighth Amendment of the Constitution.
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