

L01 Outline the historical development of punishment

The History of Punishment

The punishment and correction of criminals has changed considerably through the ages, reflecting customs, economic conditions, and religious and political ideals.⁴

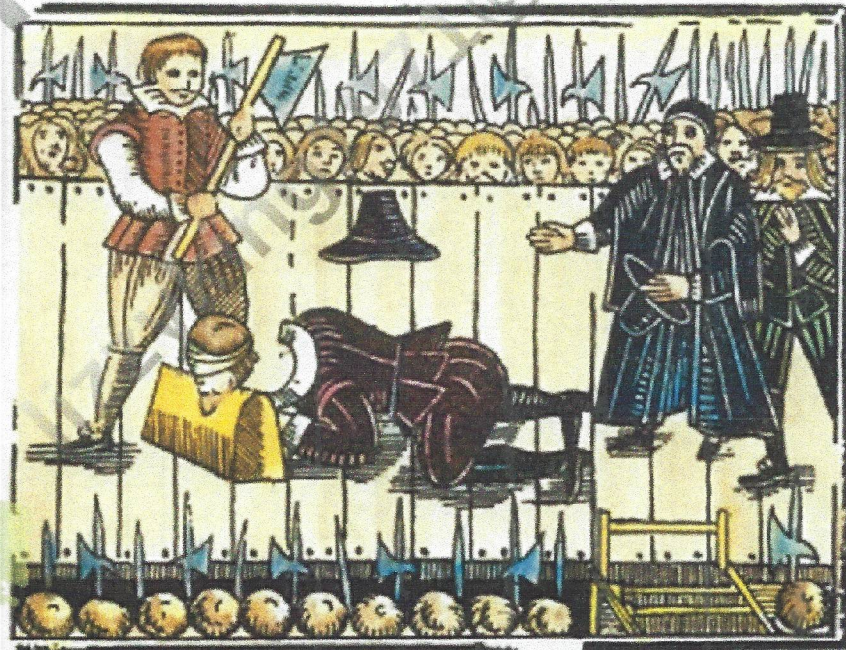
From Exile to Fines, Torture to Forfeiture

In early Greece and Rome, the most common state-administered punishment was banishment or exile. Only slaves were commonly subjected to harsh physical punishment for their misdeeds. Interpersonal violence, even attacks that resulted in death, were viewed as a private matter. These ancient peoples typically used economic punishments, such as fines, for such crimes as assault on a slave, arson, and housebreaking.

During the Middle Ages (the fifth to fifteenth centuries), there was little law or governmental control. Offenses often sparked blood feuds carried out by the families of the injured parties. When possible, the Roman custom of settling disputes by fine or an exchange of property was adopted as a means of resolving interpersonal conflicts with a minimum of bloodshed. After the eleventh century, during the feudal period, forfeiture of land and property was common punishment for persons who violated law and custom or who failed to fulfill their feudal obligations to their lord. The word *felony* has its origins in the twelfth century, when the term *felonia* referred to a breach of faith with one's feudal lord.

During this period, the main emphasis of criminal law and punishment was on maintaining public order. If in the heat of passion or while intoxicated a person severely injured or killed his neighbor, freemen in the area would gather to pronounce a judgment and make the culprit do penance or pay compensation called *wergild* (literally, "man payment"). The purpose of the fine was to pacify the injured party and ensure that the conflict would not develop into a blood feud and anarchy. The inability of the peasantry to pay a fine led to the use of corporal punishment, such as whipping or branding, as a substitute penalty.

The development of the common law in the eleventh century brought some standardization to penal practices. However, corrections remained an amalgam of fines and brutal physical punishments. The criminal wealthy could buy their way out of punishment and into exile, but capital and corporal punishment were used to control the criminal poor, who were executed and mutilated at ever-increasing rates. Execution,



The Granger Collection, NYC

In earlier times, punishment was often quite severe. Even kings, such as Charles I of England, were not immune to death by beheading.

banishment, mutilation, branding, and flogging were inflicted on a whole range of offenders, from murderers and robbers to vagrants and Gypsies. Punishments became unmatched in their cruelty, featuring a gruesome variety of physical tortures, often administered as part of a public spectacle, presumably so that the horrific sanctions would act as deterrents. But the variety and imagination of the tortures inflicted on even minor criminals before their death suggest that retribution, sadism, and spectacle were more important than any presumed deterrent effect.

Public Work and Transportation to the Colonies

By the end of the sixteenth century, the rise of the city and overseas colonization provided tremendous markets for manufactured goods and spurred the need for labor. Punishment of criminals changed to meet the demands created by these social conditions. Instead of being tortured or executed, many offenders were made to do hard labor for their crimes. "Poor laws," developed at the end of the sixteenth century, required that the poor, vagrants, and vagabonds be put to work in public or private enterprises. Houses of correction were developed to make it convenient to assign petty law violators to work details. In London, a workhouse was developed at Brideswell in 1557; its use became so popular that by 1576, Parliament ordered a Brideswell-type workhouse to be built in every county in England. Many convicted offenders were pressed into sea duty as galley slaves. Galley slavery was considered so loathsome a fate that many convicts mutilated themselves rather than submit to servitude on the high seas.

The constant shortage of labor in the European colonies also prompted authorities to transport convicts overseas. In England, an Order in Council of 1617 granted a reprieve and stay of execution to people convicted of robbery and other felonies who were strong enough to be employed overseas. Similar measures were used in France and Italy to recruit galley slaves and workers.

Transporting convicts to the colonies became popular: it supplied labor, cost little, and was actually profitable for the government because manufacturers and plantation owners paid for the convicts' services. The Old Bailey Court in London supplied at least 10,000 convicts between 1717 and 1775. Convicts would serve a period as workers and then become free again.

The American Revolution ended the transportation of felons to North America, but it continued in Australia and New Zealand. Between 1787 and 1875, when the practice was finally abandoned, more than 135,000 felons were transported to Australia.

Although transportation in lieu of a death sentence might at first glance seem merciful, transported prisoners endured terrible hardships. Those who were sent to Australia suffered incredible physical abuse, including severe whippings and mutilation. Many of the British prison officials placed in charge of the Australian penal colonies could best be described as sociopaths or sadists.

The Rise of the Prison

Between the American Revolution in 1776 and the first decades of the nineteenth century, the European and US populations increased rapidly. Transportation of convicts to North America was no longer an option. The increased use of machinery made industry capital intensive, not labor intensive. As a result, there was less need for unskilled laborers in England, and many workers could not find suitable employment.

The gulf between poor workers and wealthy landowners and merchants widened. The crime rate rose significantly, prompting a return to physical punishment and increased use of the death penalty. In England during the latter part of the eighteenth century, 350 types of crimes were punishable by death. Although many people sentenced to death for trivial offenses were spared the gallows, the use of capital punishment was common in England during the mid-eighteenth century. Prompted by the excessive use of physical and capital punishment, legal philosophers argued that physical punishment should be replaced by periods of confinement and incapacitation. Jails and workhouses were thus used to hold petty offenders, vagabonds, the homeless, and debtors. However, these institutions were not meant for hard-core criminals. One solution to imprisoning

Three-strikes laws have also been challenged on constitutional grounds. For example, on March 6, 2003, the Supreme Court upheld the three-strikes sentence of Leandro Andrade, a man sentenced to prison in California for 50 years for stealing \$153 worth of videotapes.³² It also upheld the conviction of Gary Ewing, who appealed a prior 25-year sentence for stealing a set of golf clubs.³³ In both cases, the Court ruled that the challenged sentences were not so grossly disproportionate as to violate the Eighth Amendment's prohibition against cruel and unusual punishment.

Imposing the Sentence

In most felony cases, except where the law provides for mandatory prison terms, sentencing is usually based on a variety of information available to the judge. Some jurisdictions allow victims to make impact statements that are considered at sentencing hearings. Most judges also consider a presentence investigation report by the probation department as they make a sentencing decision. This report is a social and personal history, as well as an evaluation of the defendant's chances for rehabilitation within the community. Judges may also issue credit for time already served, such as during pretrial detention.

Concurrent versus Consecutive Sentences

In some instances, when an accused is convicted of two or more charges, the judge must decide whether to impose consecutive or concurrent sentences. If the sentences are concurrent, they begin the same day and are completed when the longest term has been served. For example, say a defendant is convicted of burglarizing an apartment and assaulting its occupant. He is sentenced to three years on a charge of assault and 10 years for burglary, with the sentences to be served concurrently. After 10 years in prison, the sentences would be completed.

In contrast, receiving a consecutive sentence means that upon completion of the sentence for one crime, the offender begins serving time for the second of multiple crimes. If the defendant in the previous example had been sentenced consecutively, he would serve three years on the assault charge and then 10 years for the burglary, for a total term on the two charges of 13 years. Concurrent sentences are the norm; consecutive sentences are requested for the most serious criminals and for those who are unwilling to cooperate with authorities. Figure 9.1 shows the difference between a consecutive and a concurrent sentence.

The Effect of Good Time

When judges impose an incarceration sentence, they know and take into account the fact that the amount of time spent in prison is reduced by the implementation of "time off for good behavior." This concept was first used in 1817 in New York, and it was quickly adopted in most other jurisdictions. Good time is still in use today; inmates can accrue standard good time at a rate ranging from 10 to 15 days per month. In addition, some correctional authorities grant earned sentence reductions to inmates who participate in

concurrent sentences Prison sentences for two or more criminal acts, served simultaneously and run together.

consecutive sentence A prison sentence for two or more criminal acts, served one after the other.

Example: in state X

1. Rape is punishable by 10 years in prison
2. Possession of a handgun by 3 years
3. Possession of heroin by 4 years

Consecutive sentence

Rape + possession of a handgun
+ possession of heroin
 $10 + 3 + 4 = 17$ years
(each sentence must be served individually)

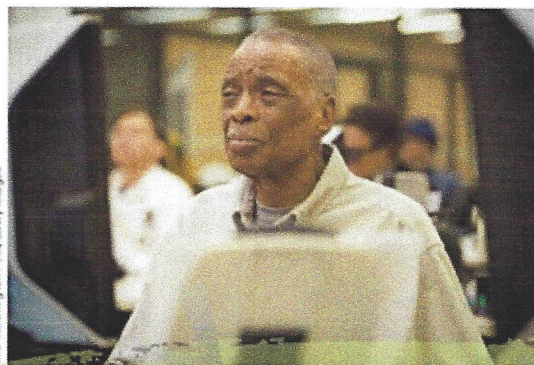
Concurrent sentence

Rape + possession of a handgun
+ possession of heroin
10 years
(all sentences served simultaneously)

FIGURE 9.1 Consecutive vs. Concurrent Sentences

treatment programs, such as educational and vocational training, or who volunteer for experimental medical testing programs. In some jurisdictions, more than half of a determinate sentence can be erased by accumulating both standard and earned good time.

Good-time laws enable inmates to calculate their release date at the time they enter prison by subtracting the expected good time from their sentence. However, good time can be lost if inmates break prison rules, get into fights, or disobey correctional officers. In some jurisdictions, former inmates can be returned to prison to serve the balance of their unexpired sentence when their good time is revoked for failing to conform to conditions set down for their release (e.g., by not reporting to a postrelease supervisor or by abusing drugs).



The Heron Group Post/Getty Images

Since being released from prison, David Belton takes advantage of free education programs, including this introduction to personal computers class. Belton spent over 40 years in prison for murdering a man. His service as a mentor in prison and good behavior eventually helped get him an early release.

How People Are Sentenced

The federal government conducts surveys on sentencing practices in state and federal courts.³⁴ The most recent survey found that more than 1 million adults are convicted of felonies in a single year. What happens after convictions? About 70 percent of all felons convicted in state courts were sentenced to a period of confinement—40 percent to state prisons and 30 percent to local jails.³⁵ The remaining 30 percent were sentenced to straight probation with no jail or prison time to serve. Felons sentenced to a state prison had an average sentence of four and a half years but were likely to serve only half of that sentence before release. Besides being sentenced to incarceration or probation, about one-third of all sentenced offenders are typically expected to pay a fine, pay victim restitution, receive treatment, perform community service, or comply with some other additional penalty. As Table 9.1 shows (most recent

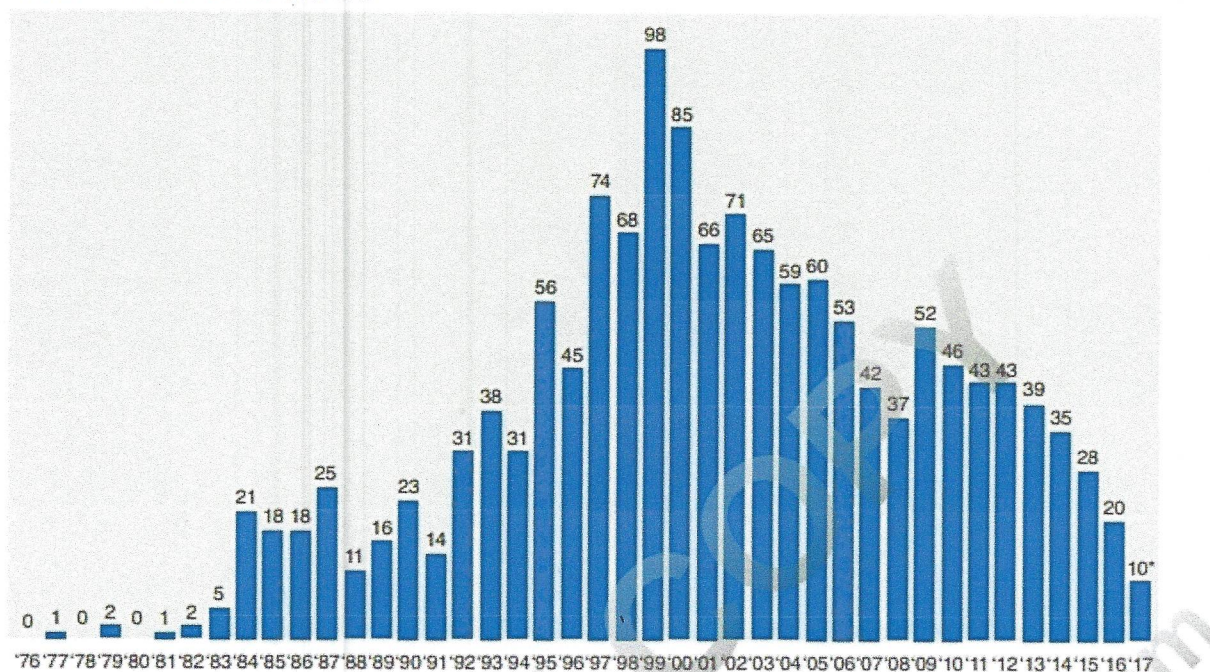
L04 Explain how sentences are imposed

TABLE 9.1 Mean and median sentence length by offense type for felony defendants

Offense	Number of months	
	Mean	Median
All offenses	52 mo	30 mo
Violent offenses	91 mo	48 mo
Murder	373	360
Rape	142	120
Robbery	90	60
Assault	62	36
Other violent	75	36
Property offenses	40 mo	24 mo
Burglary	52	36
Larceny/theft	31	24
Motor vehicle theft	34	24
Forgery	32	24
Fraud	47	36
Other property	29	24
Drug offenses	40 mo	24 mo
Trafficking	49	36
Other drug	29	18
Public-order offenses	31 mo	24 mo
Weapons	38	24
Driving-related	31	23
Other public-order	26	18

Source: Brian A. Reaves, *Felony Defendants in Large Urban Counties, 2009—Statistical Tables* (Washington, DC: Bureau of Justice Statistics, 2013), p. 30.

Number of executions since 1976: 1447



* Number of executions as of April 28, 2017.

FIGURE 9.3 US Executions Since 1976

Source: Death Penalty Information Center, *Facts About the Death Penalty*, <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>.

murder using extreme cruelty, are present.⁶³ The federal government still has provisions for imposing the death penalty for espionage by a member of the armed forces, treason, and killing during a criminal conspiracy, such as drug trafficking. Some states have laws permitting capital punishment for crimes besides first-degree murder, but those laws continue to come under scrutiny. Figure 9.3 provides a perspective on executions from 1976 to the present. Figure 9.4 presents a map of the death-penalty states and non-death-penalty states.

No issue in the criminal justice system is more controversial or emotional than implementation of the death penalty. Opponents and proponents have formulated a number of powerful arguments in support of their positions; these arguments are reviewed in the following sections.

Arguments for the Death Penalty

The death penalty has long been one of the most controversial aspects of the justice system, and it will probably continue to be a source of significant debate.⁶⁴ Let's first consider the views supporting availability of the death penalty.

DETERRENCE Proponents of capital punishment argue that executions serve as a strong deterrent for serious crimes. From a specific deterrent standpoint, an offender who is dead can no longer commit crime! From a general deterrent standpoint, proponents maintain that an execution can produce a substantial decline in the murder rate.⁶⁵ They argue, for example, that homicide rates increased dramatically in the 1960s and 1970s, when executions were halted by the courts, and death penalty laws were subsequently abolished. It is not a coincidence, they argue, that murder rates have dropped since the death penalty was reinstated; murder rates would actually be much higher if capital punishment were not being used.⁶⁶ The death penalty scares would-be criminals, and, not surprisingly, homicide rates drop after a well-publicized execution.⁶⁷

LOG List the arguments for and against capital punishment



Kathy Branson, mother of murder victim Kianna Jackson, stands with Jackson's grandmother, Diane Menzies, as she delivers a victim impact statement during the sentencing of Steven Dean Gordon in Santa Ana, California on February 3, 2017. Gordon was sentenced to death for the murders of Kianna Jackson, 20, Josephine Vargas, 34, Martha Anaya, 28, and Jarrae Estepp, 21. Authorities say Gordon and another sex offender, Franc Cano, abducted the four women with ties to prostitution and had sex with their victims before killing them.

suggests that race matters less for violent offense sentencing than it does for minor offense sentence, presumably because judges and juries will be less likely to let their own personal biases influence them in cases of serious offending.⁵⁶

In sum, although the true association between race and sentencing is complex, there is little question that the defendant's race helps shape the contours of justice.⁵⁷ Whatever the cause, the effects can be devastating. As Bruce Western warns, whole communities are being destabilized by the marginalizing and incarcerating of so many African American men. And doing prison time can turn minor offenders into hardened criminals, which removes any chance of rehabilitation. Indeed, the prison boom "may be a self-defeating strategy for crime control."⁵⁸

VICTIM CHARACTERISTICS Victim characteristics may also influence sentencing.⁵⁹ Victims may be asked or allowed to make a **victim impact statement** before the sentencing judge, which gives them the opportunity to tell their experiences and describe their ordeal. In a murder case, the surviving family can recount the effect the crime has had on their lives and well-being.⁶⁰ The effect of victim and witness statements on sentencing has been the subject of some debate. Some research suggests that victim statements result in a higher rate of incarceration, but other efforts find that the effects of victim and witness statements are insignificant.⁶¹

A victim's personal characteristics may influence sentencing. Sentences may be reduced when victims have "negative" personal characteristics or qualities. For example, people convicted of raping prostitutes or substance abusers receive much shorter sentences than those who assault women without these negative characteristics.⁶²

victim impact statement A postconviction statement by the victim of crime that may be used to guide sentencing decisions.

Capital Punishment

The most severe sentence used in the United States is capital punishment, or execution. Approximately 15,000 confirmed executions have been carried out in America under civil authority, starting with the execution of Captain George Kendall in 1608. Most of these executions have been for murder and rape. However, federal, state, and military laws have conferred the death penalty for other crimes, including robbery, kidnapping, treason (offenses against the federal government), espionage, and desertion from military service.

In recent years, the Supreme Court has limited the death penalty to first-degree murder and then only when aggravating circumstances, such as murder for profit or

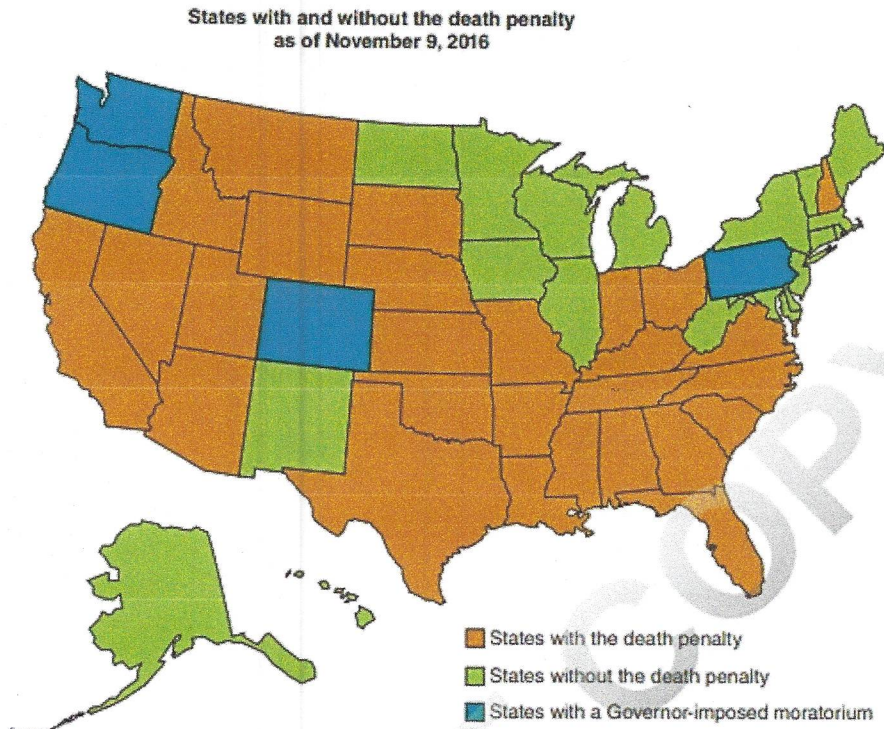


FIGURE 9.4 States with and without the Death Penalty

Source: Death Penalty Information Center, *States with and without the Death Penalty*. <http://www.deathpenaltyinfo.org/states-and-without-death-penalty>

MORALLY CORRECT Death penalty supporters often argue that such a harsh punishment is morally correct. After all, it is mentioned in the Bible and other religious works. And although the US Constitution forbids “cruel and unusual punishment,” it does not prohibit the death penalty, as it was widely used at the time the Constitution was drafted. The “original intent” of the founding fathers was to allow the states to use the death penalty. Supporters also argue that the death penalty is morally correct because it provides the greatest justice for the victim and helps alleviate the psychic pain of the victim’s family and friends. In sum, the death penalty makes a moral statement: there is behavior that is so unacceptable to a community of human beings that one who engages in such behavior forfeits his right to live.⁶⁸

PROPORTIONAL TO THE CRIME Putting dangerous criminals to death also conforms to the requirement that the punishment must be proportional to the seriousness of the crime. We use a system of escalating punishments, so it follows that the most serious punishment should be used to sanction the most serious crime. Before the brutality of the death penalty is considered, the cruelty with which the victim was treated should not be forgotten.

REFLECTS PUBLIC OPINION Supporters also argue that the death penalty is justified because it represents the will of the people. A majority of the general public believe that criminals who kill innocent victims should forfeit their own lives. Public approval rests on the belief that the death penalty is an important instrument of social control, can deter crime, and is less costly than maintaining a murderer in prison for life. Research by Alexis Durham and his associates found that almost everyone (95 percent) would give criminals the death penalty under some circumstances, and the most heinous crimes are those for which the public is most likely to approve capital punishment.⁶⁹

UNLIKELY CHANCE OF ERROR The many legal controls and appeals currently in use make it almost impossible for an innocent person to be executed or for the death penalty

REALITYCHECK

Myth or Reality?

The United States is one of the few countries that still retains the death penalty.

REALITY. According to Amnesty International, 141 countries have abolished the death penalty in law or practice, or for certain crimes, leaving 57 retentionist countries.

Few of the retentionist countries are what we would call industrialized, advanced, or close allies of the United States. Why does the United States retain the death penalty when the majority of the industrialized countries in the world have abolished it?

to be used in a racist or capricious manner. Although some unfortunate mistakes may have been made in the past, the current system makes it virtually impossible to execute an innocent person. Federal courts closely scrutinize all death penalty cases and rule for the defendant in an estimated 60 to 70 percent of the appeals. Such judicial care should ensure that only those who are both unquestionably guilty and deserving of death are executed.

Arguments Against the Death Penalty

Arguments for the death penalty are countered as follows by those who support its abolition.

POSSIBILITY OF ERROR Researchers have estimated that on the order of 2,000 innocent defendants go to prison every year.⁷⁰ Thanks to the advent of DNA evidence, hundreds of wrongfully convicted individuals have been exonerated in recent years, but the wrongful conviction problem persists. This raises several questions. Why are these cases coming to light? How often are innocent people imprisoned? Has an innocent person been executed in the past 40 years? Why do wrongful convictions occur? What can be done to reduce justice system errors?

In the early 1990s, only two organizations existed to take on cases of prisoners claiming to be factually innocent. Today, more than 50 innocence projects exist. Collectively, as an Innocence Network, they screen claims of innocence, work to exonerate the factually innocent, promote policies to reduce errors of justice, and provide support for exonerees.

According to the Innocence Project, approximately 350 DNA exonerees have been released after being convicted of crimes they did not commit.⁷¹ Almost all of these exonerations were for the crimes of murder and rape. Experts and criminal justice officials estimate that at least one-half of 1 percent of all types of felony convictions are “wrong-person convictions.” This would mean that of the 1.1 million convictions each year, at least 5,500 people suffer the humiliation of being wrongly convicted, and 3,800 of them the anguish of being jailed or imprisoned for a crime they did not commit. Research by Samuel Gross and his colleagues estimates that 1 in 25 death row inmates is innocent.⁷²

The pressures to ensure convictions in homicide cases may lead to a higher rate of wrongful convictions in murder cases. There have been no official exonerations of an innocent person executed since 1973, but intensive investigations provide strong evidence that at least some people have been executed for murders they did not commit. See the accompanying Contemporary Issues in Criminal Justice box for more on the causes of wrongful convictions—and a summary of recent reform efforts.

WEAK PUBLIC SUPPORT Although many Americans approve of the death penalty, evidence suggests that their approval has declined over the past decade.⁷³ Also, when surveys give respondents a choice of punishments, such as life without parole, support for the death penalty declines.⁷⁴ Well-publicized cases of innocent people being sentenced to death have also helped erode support for capital punishment.⁷⁵ So although a majority of the public still support the death penalty in principle, a substantial proportion of the public lack confidence in its use and believe that executions should be halted until the justice system can be made foolproof.⁷⁶

Evidence also suggests that support for the death penalty is influenced by such factors as the personal characteristics of the offender and the circumstances of the offense.⁷⁷ People who generally support the death penalty may not want to see it used with juveniles, the mentally challenged, or the mentally ill.⁷⁸ And even if a majority support capital punishment, their motives must be closely examined: is it possible that support for the death penalty is a function of racist attitudes and the belief that capital punishment helps control and restrain the minority population?⁷⁹

LITTLE DETERRENT EFFECT The general consensus among death penalty researchers today is that the threat of capital punishment has little effect on murder rates. Indeed, a report released by the prestigious National Research Council of the National Academies reviewed more than three decades of death penalty research and concluded, “... the research to date



STATE AND FEDERAL INFO

Pennsylvania



History of the Death Penalty

Pennsylvania began carrying out executions in the early 1600s in the form of public hangings. In 1834, Pennsylvania became the first state in the U.S. to outlaw public executions and move the gallows to county prisons. In 1913, the state's capital punishment statute was amended to bring executions under the administration of the state rather than individual counties, and also changed the method of execution to electrocution. Between 1915 and 1962, there were 350 executions in Pennsylvania, including two women. The last prisoner executed by means of the electric chair was Elmo Smith in 1962. Pennsylvania passed a law in 1990 that changed the method of execution from electrocution to lethal injection, the current means of execution. Prior to 1976, Pennsylvania carried out 1,040 executions, the third highest number of any state. Only three executions have actually been carried out since reinstatement in 1976 despite the size of the state's death row, which for more than two decades was the fourth largest in the nation. The Commonwealth's death row has declined steadily in size from 246 in October 2001 to 175 in July 2016, without any executions, primarily as a result of death sentences being overturned in the courts and defendants being resentenced to life or less or acquitted. It is now the country's fifth largest death row.

The *Reading Eagle* reported in June 2016 that from the time the Commonwealth enacted its current death penalty statute in September 1978 through 2015, Pennsylvania had sentenced 408 prisoners to death. Of those, 191 had subsequently been resentenced to life or less or released (46.8%), including 169 resentenced to life (41.4%); 16 resentenced to a term of years (3.9%); and 6 exonerated (1.5%). 181 remained on death row (44.4%), including 28 whose convictions or death sentences had been overturned but who were awaiting further court proceedings. 33 had died on death row other than by execution (8.1%). 3 had been executed (0.7%).

Famous Cases

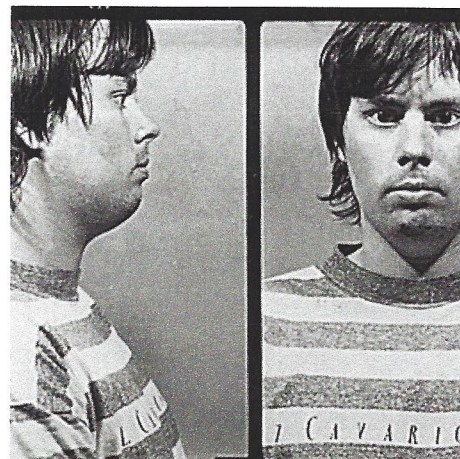
Mumia Abu-Jamal was charged with the 1981 murder of police officer Daniel Faulkner and both the conviction and the subsequent death sentence sparked fierce controversy. Throughout his three-decade stay on Pennsylvania's death row, Abu-Jamal's supporters maintained that he is innocent. Organizations including

INNOCENCE

Apr 09, 2020

[Victim's Mother Joins Fight to Free "Likely Innocent" Death-Row Prisoner Walter Ograd, Who Has Symptoms of Coronavirus](#)

Saying she wanted justice for her murdered four-year-old daughter, not "a closed case with an innocent person in jail," Sharon Fahy has joined with the Philadelphia District Attorney's Office and defense lawyers in the fight to im...



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ADDITIONAL INFORMATION

Death Penalty: **Yes**

Number of Executions Since 1976: **3**

Number of Executions Before 1976 (may include federal and military executions): **1040**

Current Death Row Population: **145**

Women on Death Row: **1**

Number of Innocent People Freed From Death Row: **9**

Number of Clemencies Granted: **0**

Date of Reinstatement (following Furman v. Georgia): **March 26, 1974**

First Execution After Reinstatement: **1995**

Location of Death Row (Men): **SCI Greene (Wayneburg) or SCI Graterford**

Location of Death Row (Women): **SCI Muncy**

Location of Executions: **SCI Rockview**

Capital: **Harrisburg**

Population: **12,702,379**

Murder Rate (per 100,000 population): **5.8**

Is Life Without Parole an Option?: **Yes**

Can a defendant get death for a felony in which s/he was not responsible for the murder?: **No**

Method of Execution: **Injection**

How is Sentence Determined?: **Jury**

Clemency Process: **Governor has authority to grant clemency with advice of Board of Pardons and Paroles**

Governor: **Tom Wolf**

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