History of the Death Penalty

Introduction to the Death Penalty

Early Death Penalty Laws

The first established death penalty laws date as far back as the Eighteenth Century B.C. in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes. The death penalty was also part of the Fourteenth Century B.C.'s Hittite Code; in the Seventh Century B.C.'s Draconian Code of Athens, which made death the only punishment for all crimes; and in the Fifth Century B.C.'s Roman Law of the Twelve Tablets. Death sentences were carried out by such means as crucifixion, drowning, stoning, beheading, burning alive, and impalement.

In the Tenth Century A.D., hanging became the usual method of execution in Britain. In the following century, William the Conqueror would not allow persons to be hanged or otherwise executed for any crime, except in times of war. This trend would not last, for in the Sixteenth Century, under the reign of Henry VIII, as many as 72,000 people are estimated to have been executed. Some common methods of execution at that time were boiling, burning at the stake, hanging, beheading, and drawing and quartering. With drawing and quartering, convicts were hanged, removed from the gallows while still conscious, disemboweled, beheaded, quartered, and then placed on public display. Executions were carried out for such capital offenses as marrying a Jew, not confessing to a crime, and treason.

The number of capital crimes in Britain continued to rise throughout the next two centuries. By the 1700s, 222 crimes were punishable by death in Britain, including stealing, cutting down a tree, and robbing a rabbit warren. Because of the severity of the death penalty, many juries would not convict defendants if the offense was not serious. This led to reforms of Britain's death penalty. From 1789 to the mid-1800s, the number of crimes carrying the death penalty in England went from 350 crimes all the way down to merely 4 crimes punishable by death.

European attitudes as a whole about the death penalty began to change during the Enlightenment. In 1763, Italian criminologist Cesare Beccaria started the first significant movement to abolish the death penalty when he published Essay on Crimes and Punishments, which argued against capital punishment. He wasn’t against punishment, to which he wrote that punishment is “necessary to prevent the despotism of each
individual from plunging society into its former chaos,” but against the death penalty as it is only permissible for a state to take a life in rare instances, and then not as punishment, but only to prevent great harm to the community. He asked the age-old question, “Is death a punishment which is really useful, and necessary for the security and good order of society? What is the best way of preventing crimes?”

Beccaria wrote: “Can one suppose that the shrieks of some poor wretch will call back out of ever-advancing time actions already consummated? The aim, then, of punishment can only be to prevent the criminal from committing new crimes against his countrymen, and to keep others from doing likewise.”

The Death Penalty in America

Britain influenced America's use of the death penalty more than any other country. When European settlers came to the new world, they brought the practice of capital punishment. The first recorded execution in the new colonies was that of Captain George Kendall in the Jamestown colony of Virginia in 1608. Kendall was executed by firing squad for being a spy against the British for Spain. In 1612, Virginia Governor Sir Thomas Dale enacted the Divine, Moral and Martial Laws, which provided the death penalty for even minor offenses such as stealing grapes, killing chickens, and trading with Indians.

The next known execution, also in the Colony of Virginia, was of Daniel Frank, put to death in 1622 for the crime of theft.

Laws regarding the death penalty varied from colony to colony. The Massachusetts Bay Colony held its first execution in 1630, even though the Capital Laws of New England did not go into effect until years later. The New York Colony instituted the Duke's Laws of 1665. Under these laws, offenses such as striking one's mother or father, or denying the "true God," were punishable by death.

Among the 150 crimes for which a colonist could face execution, most likely by hanging, were arson and witchcraft.

The Abolitionist Movement

Colonial Times

The abolitionist movement finds its roots in the writings of European theorists Montesquieu, Voltaire, Beccaria, and Bentham, and English Quakers John Bellers and John Howard.

American intellectuals as well were influenced by Beccaria. The first attempted reforms of the death penalty in the U.S. occurred when Thomas Jefferson introduced a bill to revise Virginia's death penalty laws. The bill proposed that capital punishment be used only for the crimes of murder and treason. It was defeated by only one vote.
Also influenced was Dr. Benjamin Rush, a signer of the Declaration of Independence and founder of the Pennsylvania Prison Society. Rush challenged the belief that the death penalty serves as a deterrent. In fact, Rush was an early believer in the "brutalization effect." He held that having a death penalty actually increased criminal conduct. Rush gained the support of Benjamin Franklin and Philadelphia Attorney General William Bradford. Bradford, who would later become the U.S. Attorney General, led Pennsylvania to become the first state to consider degrees of murder based on culpability. In 1794, Pennsylvania repealed the death penalty for all offenses except first degree murder.

**Nineteenth Century**

In the early to mid-Nineteenth Century, the abolitionist movement gained momentum in the northeast. In the early part of the century, many states reduced the number of their capital crimes and built state penitentiaries. In 1834, Pennsylvania became the first state to move executions away from the public eye and carrying them out in correctional facilities.

In 1846, Michigan became the first state to abolish the death penalty for all crimes except treason. Later, Rhode Island and Wisconsin abolished the death penalty for all crimes. By the end of the century, the world would see the countries of Venezuela, Portugal, Netherlands, Costa Rica, Brazil and Ecuador follow suit.

Although some U.S. states began abolishing the death penalty, most states held onto capital punishment. Some states made more crimes capital offenses, especially for offenses committed by slaves. In 1838, in an effort to make the death penalty more palatable to the public, some states began passing laws against mandatory death sentencing instead enacting discretionary death penalty laws. The 1838 enactment of discretionary death penalty laws in Tennessee, and later in Alabama, were seen as a great reform. This introduction of sentencing discretion in the capital process was perceived as a victory for abolitionists because prior to the enactment of these laws, all states mandated the death penalty for anyone convicted of a capital crime, regardless of circumstances. With the exception of a small number of rarely committed crimes in a few jurisdictions, all mandatory capital punishment laws had been abolished by 1963.

By the 1850s, only Michigan, Rhode Island, and Wisconsin had repealed their states’ death penalty laws.

During the Civil War, opposition to the death penalty waned, as more attention was given to the anti-slavery movement. After the war, new developments in the means of executions emerged. The electric chair was introduced at the end of the century. New York built the first electric chair in 1888, and in 1890 executed William Kemmler. Soon, other states adopted this execution method.

**Early and Mid-Twentieth Century**
Although some states abolished the death penalty in the mid-Nineteenth Century, it was actually the first half of the Twentieth Century that marked the beginning of the "Progressive Period" of reform in the United States.

In 1910, in the Supreme Court case of *Weems v. United States*, the Court ruled that the definition of “cruel and unusual” in the 8th Amendment continually evolves as public opinion becomes more enlightened. This laid the groundwork for the numerous types of capital punishment that have been used as humane methods over the last century.

By 1917, twelve states had banned the death penalty. However, this reform was short-lived. There was a frenzied atmosphere in the U.S., as citizens began to panic about the threat of revolution in the wake of the Russian Revolution. In addition, the U.S. had just entered World War I and there were intense class conflicts as socialists mounted the first serious challenge to capitalism. As a result, five of the six abolitionist states reinstated their death penalty by 1920.

In 1924, the use of cyanide gas was introduced, as Nevada sought a more humane way of executing its inmates. Gee Jon was the first person executed by lethal gas. The state tried to pump cyanide gas into Jon's cell while he slept, but this proved impossible, and the gas chamber was constructed.

From the 1920s to the 1940s, there was a resurgence in the use of the death penalty. This was due, in part, to the writings of criminologists, who argued that the death penalty was a necessary social measure. In the United States, Americans were suffering through Prohibition and the Great Depression. There were more executions in the 1930s than in any other decade in American history, an average of 167 per year.

In the 1950s, public sentiment began to turn away from capital punishment. Many allied nations either abolished or limited the death penalty, and in the U.S., the number of executions dropped dramatically. Whereas there were 1,289 executions in the 1940s, there were 715 in the 1950s, and the number fell even further, to only 191, from 1960 to 1976. In 1966, support for capital punishment reached an all-time low. A Gallup poll showed support for the death penalty at only 42%.

**Constitutionality of the Death Penalty in America**

**Challenging the Death Penalty**

The 1960s brought challenges to the fundamental legality of the death penalty. Before then, the Fifth, Eighth, and Fourteenth Amendments were interpreted as permitting the death penalty. However, in the early 1960s, it was suggested that the death penalty was a "cruel and unusual" punishment, and therefore unconstitutional under the Eighth Amendment. In 1958, the Supreme Court had decided in *Trop v. Dulles* that the Eighth Amendment contained an "evolving standard of decency that marked the progress of a maturing society." Although *Trop* was not a death penalty case, abolitionists applied the
Court's logic to executions and maintained that the United States had, in fact, progressed to a point that its "standard of decency" should no longer tolerate the death penalty.

Public support for the death penalty reached its lowest point in 1966, when a Gallup poll showed only 42% of Americans approved of the practice.

By the end of the 1960s, all but 10 states had laws authorizing capital punishment, but strong pressure by forces opposed to the death penalty resulted in an unofficial moratorium on executions, with the last execution during this period taking place in 1967. Prior to this, an average of 130 executions were being carried out.

Between 1967 and 1972, the U.S. observed what amounted to a voluntary moratorium on executions as the Supreme Court wrestled with the issue. In several cases not directly testing its constitutionality, the Supreme Court modified the application and administration of the death penalty.

In the late 1960s, the Supreme Court began "fine tuning" the way the death penalty was administered. To this effect, the Court heard two cases in 1968 dealing with the discretion given to the prosecutor and the jury in capital cases. The first case was *U.S. v. Jackson*, where the Supreme Court heard arguments regarding a provision of the federal kidnapping law requiring that the death penalty be imposed only upon recommendation of a jury. The Court held that this practice was unconstitutional because it encouraged defendants to waive their right to a jury trial to ensure they would not receive a death sentence.

The other 1968 case was *Witherspoon v. Illinois*. In this case, the Supreme Court held that a potential juror's mere reservations about the death penalty were insufficient grounds to prevent that person from serving on the jury in a death penalty case. Jurors could be disqualified only if prosecutors could show that the juror's attitude toward capital punishment would prevent him or her from making an impartial decision about the punishment.

In 1971, the Supreme Court again addressed the problems associated with the role of jurors and their discretion in capital cases. The Court decided *Crampton v. Ohio* and *McGautha v. California*. The defendants argued it was a violation of their Fourteenth Amendment right to due process for jurors to have unrestricted discretion in deciding whether the defendants should live or die, and such discretion resulted in arbitrary and capricious sentencing. Crampton also argued that it was unconstitutional to have his guilt and sentence determined in one set of deliberations, as the jurors in his case were instructed that a first-degree murder conviction would result in a death sentence. The Court, however, rejected these claims, thereby approving of unfettered jury discretion and a single proceeding to determine guilt and sentence. The Court stated that guiding capital sentencing discretion was "beyond present human ability."

**Suspending the Death Penalty**
The issue of arbitrariness of the death penalty was again brought before the Supreme Court in 1972 in *Furman v. Georgia*, *Jackson v. Georgia*, and *Branch v. Texas* (known collectively as the landmark case *Furman v. Georgia*).

Furman argued that capital cases resulted in arbitrary and capricious sentencing, with some saying that the death penalty was merely “legal lynching” in the south because of the extraordinarily high rates it was handed out to the poor and minorities. Furman was a challenge brought under the Eighth and Fourteenth Amendment. With the *Furman* decision the Supreme Court set the standard that a punishment would be "cruel and unusual" if it was too severe for the crime, if it was arbitrary, if it offended society's sense of justice, or if it was not more effective than a less severe penalty.

By a vote of 5 to 4, the Court held that Georgia's death penalty law, which gave the jury complete sentencing discretion, was unguided and could result in arbitrary sentencing. The court held that the death penalty laws, as written, violated the "cruel and unusual punishment" provision of the Eighth Amendment and the due process guarantees of the Fourteenth Amendment.

Thus, on June 29, 1972, the Supreme Court effectively voided 40 federal and state death penalty laws, finding them “arbitrary and capricious,” thereby commuting the sentences of 629 death row inmates from around the country who had been sentenced to death between 1967 and 1972. Their death sentences were lifted because existing laws were no longer valid.

The decision in *Furman v. Georgia* did not rule the death penalty itself to be unconstitutional, only the specific laws by which it was applied. Thus, the states quickly began to write new death penalty laws designed to comply with the court's ruling.

**Reinstating the Death Penalty**

Although the separate opinions by Justices Brennan and Marshall stated that the death penalty itself was unconstitutional, the overall holding in *Furman* was that the specific death penalty laws were unconstitutional. With that holding, the Court essentially opened the door to states to rewrite their death penalty laws to eliminate the problems cited in *Furman*.

Advocates of capital punishment began proposing new laws that they believed would end arbitrariness in capital sentencing. The states were led by Florida, which rewrote its death penalty law only five months after *Furman*. Shortly after, 34 other states proceeded to enact new death penalty laws. To address the unconstitutionality of unguided jury discretion, some states removed all of that discretion by mandating capital punishment for those convicted of capital crimes. However, this practice was held unconstitutional by the Supreme Court in *Woodson v. North Carolina*.

Other states sought to limit that discretion by providing sentencing guidelines for the judge and jury when deciding whether to impose death. The guidelines allowed for the
introduction of aggravating and mitigating factors in determining sentencing. These guided discretion laws were approved in 1976 by the Supreme Court in *Gregg v. Georgia, Jurek v. Texas*, and *Proffitt v. Florida*, collectively referred to as the *Gregg* decision.

This landmark decision held that the new death penalty laws in Florida, Georgia, and Texas were constitutional, thus reinstating the death penalty in those states. It gave the courts wider discretion in applying the death penalty for specific crimes and provided for the current "bifurcated" trial system, in which a first trial determines guilt or innocence and a second trial determines punishment. Only after the jury has determined that the defendant is guilty of capital murder does it decide in a second trial whether the defendant should be sentenced to death or given a lesser sentence of prison time.

The Court also held that the death penalty itself was constitutional under the Eighth Amendment.

As a result of *Gregg* and subsequent decisions, 21 states threw out their old mandatory death penalty laws and hundreds of death row prisoners had their sentences changed to life in prison.

The ten-year moratorium on executions that had begun with the *Jackson* and *Witherspoon* decisions ended on January 17, 1977, with the execution of convicted murderer Gary Gilmore by firing squad in Utah. Gilmore did not challenge his death sentence, and his execution was the first in the United States since 1967.

Also in 1977, Oklahoma became the first state to adopt lethal injection as a means of execution, though it would be five more years until Charles Brooks became the first person executed by lethal injection in Texas on December 7, 1982.

**Determining the Constitutionality of the Death Penalty**

- *Furman v. Georgia*, (1972): Death penalty under current statutes is "arbitrary and capricious" and therefore unconstitutional under the Eighth and Fourteenth Amendments.
- *Gregg v. Georgia*, (1976): Reinstates the death penalty under a model of guided discretion; declared constitutional with the provision that rigid statutes be used as a guide.
Limiting the Death Penalty

Limitations within the United States

Despite growing European abolition, the U.S. retained the death penalty, but established limitations on capital punishment.

In 1977, the United States Supreme Court held in *Coker v. Georgia* that use of the death penalty in rape cases when the victim was not killed is disproportionate to the crime, and therefore unconstitutional. Other limits to the death penalty followed in the next decade.

- **Race**
  Statistics show that the death penalty is applied disproportionately to blacks who kill whites, compared to whites who kill blacks or each race killing one of its own.

  Race was in the forefront when the Supreme Court decided the 1987 case *McCleskey v. Kemp*. McCleskey argued that there was racial discrimination in the application of Georgia's death penalty, by presenting a statistical analysis showing a pattern of racial disparities in death sentences, based on the race of the victim. The Supreme Court held, however, that racial disparities would not be recognized as a constitutional violation of "equal protection of the law" unless intentional racial discrimination against the defendant could be shown. Discretion in sentencing need not mean discrimination in sentencing.

- **Mental Illness**
  In 1986, in *Ford v Wainwright*, the Supreme Court ruled that the execution of the insane violates the US Constitution's Eighth Amendment ban on "cruel and unusual punishment". However, the *Ford* majority neither defined competence for execution, nor did a majority mandate specific procedures that must be followed by the individual states to determine whether an inmate is legally insane. The result has been different standards in different states, judicial uncertainty, and minimal protection for seriously mentally ill inmates. The *Ford* decision left the determination of sanity up to each state.

  Someone who is insane is defined as someone who does not understand the reason for, or the reality of, his or her punishment. The National Association of Mental Health estimates that 5-10% of those on death row have serious mental illness, though.
• Mental Retardation
Mental retardation is generally refers to subaverage intelligence or particular I.Q. scores, specifically someone having an I.Q. under 70, and experts believe that 10-15% of death row inmates are mentally retarded. At least 33 mentally retarded men have been executed in the US since 1976, and studies suggest that at least 250 such defendants are currently on death row. In 1989’s Penry v. Lynaugh, the US Supreme Court held 5-4 that executing persons with mental retardation was not a violation of the Eighth Amendment.

In 2002 in Atkins v. Virginia, the Court ruled that executing the mentally retarded is unconstitutional as such a punishment violates the Eighth Amendment's ban on cruel and unusual punishment. The Court saw the changes in public attitudes since 1989, as then only two states – Georgia and Maryland – prohibited execution of the mentally retarded, but by 2002, the number of states exempting the mentally retarded had grown to 18, prompting the Court to remark, “it is fair to say that a national consensus has developed against it.”

The Court reasoned that mental retardation diminishes personal culpability, and renders the death penalty in the case of this category of offenders difficult to justify on deterrence and retribution grounds. The Atkins ruling overturned Penry v. Lynaugh by finding that "standards of decency" in the USA had evolved in the intervening years to the point at which a "national consensus" had emerged against such executions.

Justice Stevens, writing for the Supreme Court majority in Atkins, concluded that: "Mentally retarded persons... have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others."

• Juveniles
In the late 1980s, the Supreme Court decided three cases regarding the constitutionality of executing juvenile offenders. In 1988, in Thompson v. Oklahoma, four Justices held that the execution of offenders aged fifteen and younger at the time of their crimes was unconstitutional. The fifth vote was Justice O'Connor's concurrence, which restricted Thompson only to states without a specific minimum age limit in their death penalty law. The combined effect of the opinions by the four Justices and Justice O'Connor in Thompson is that no state without a minimum age in its death penalty law can execute someone who was under sixteen at the time of the crime.

The next year, in 1989, the Supreme Court held that the Eighth Amendment does not prohibit the death penalty for crimes committed at age sixteen or seventeen. (Stanford v. Kentucky and Wilkins v. Missouri). At present, 19 states with the death penalty bar the execution of anyone under 18 at the time of his or her crime.

In 1992, the United States ratified the International Covenant on Civil and Political Rights. Article 6(5) of this international human rights doctrine requires that the death penalty not be used on those who committed their crimes when they were below the age
of 18. However, in doing so but the U.S. reserved the right to execute juvenile offenders. The United States is the only country with an outstanding reservation to this Article. International reaction has been highly critical of this reservation, and ten countries have filed formal objections to the reservation of the U.S.

In a 5-4 decision in October 2002, the Supreme Court refused to reexamine whether executing killers who were under 18 when they committed their crimes is constitutional. The US was one of the last remaining countries in the world where it was legal to execute juveniles.

Since 1976, 227 prisoners who were juveniles at the time of their crimes were sentenced to death row, and 22 of those prisoners were executed.

In March 2005, though, in Roper v. Simmons, the United States Supreme Court declared the practice of executing defendants whose crimes were committed as juveniles unconstitutional. Christopher Simmons was 17 when he and a friend robbed, bound, and gagged a woman in Missouri, then threw her from a bridge into a river where she drowned. He had been sentenced to death, but with this ruling, the death sentence was commuted.

Simmons's attorney, Seth Waxman, said the death penalty did not deter minors, since "they weigh risks differently" to adults. The court ruled that he could not be held to the same standard of accountability as an adult.

The Supreme Court, thus, banned the execution of people convicted of crimes they committed before turning 18.

"Now the US can proudly remove its name from the embarrassing list of human rights violators - that includes China, Iran, Somalia, and Pakistan - that still execute juvenile offenders," said William Schulz, executive director of Amnesty International USA.

This decision thereby commuted 72 people’s death sentences throughout the country.

Supreme Court Justice Anthony Kennedy said, "The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest."

- Child Rape

In April 2008, the US Supreme Court heard the case of Kennedy v. Louisiana. The Supreme Court weighed the constitutionality of the death penalty for child rape in the case of a Louisiana man, Patrick Kennedy, who was convicted in 2003 of raping his then 8-year-old stepdaughter.
Kennedy was sentenced to death in Louisiana under a 1995 state statute there that gave the possibility of the death penalty to anyone found guilty of aggravated rape of a child 12 or younger.

Kennedy claimed that the sentence violated the 8th Amendment’s “cruel and unusual punishment” clause.

The Supreme Court ruled in *Coker v. Georgia* (1977) that the death penalty for the rape of an adult was "grossly disproportionate" and "excessive punishment" under the U.S. Constitution. But the ruling left open whether child rapists can be sentenced to death.

The last time someone in the U.S. was executed for something other than murder was in 1964, when a man went to the electric chair in Alabama for robbery. That same year, a man in Missouri went to the gas chamber in what was the last time someone in this country was put to death for rape.

Louisiana was the only state with someone on death row for rape of an adult or child. In fact, it had two people awaiting execution for child rape. The other man on death row in Louisiana for child rape was Richard Davis, convicted of repeatedly attacking a 5-year-old girl he looked after with his girlfriend in 2004 and 2005.

At least five other states — Georgia, Montana, Oklahoma, South Carolina and Texas — had similar laws.

"These are the only two men on any death row in any Western democracy for this offense," said Billy Sothern, a lawyer with the Capital Appeals Project, a non-profit law firm.

"By authorizing the death penalty for non-homicide rape of a child, Louisiana joins the ranks of such countries as Saudi Arabia, Uganda, Kazakhstan and China," said attorney Jelpi Picou of the Capital Appeals Project in New Orleans.

Kennedy's lawyer counters that there are signs that society believes death is excessive for rape, including that no one in America has been executed for any rape in more than 43 years. "Although rape is a very serious crime," attorney Jeffrey Fisher says, "no rapist should be punished more severely than the average … murderer, who by definition is not subject to capital punishment."

Besides murder, other state and federal crimes theoretically eligible for execution include treason, aggravated kidnapping, drug trafficking, aircraft hijacking and espionage. None of these crimes has been prosecuted as a capital offense in decades, if ever.

Among the groups who sided with Kennedy, who is African-American, was the American Civil Liberties Union, which emphasized the South's history of executing blacks for rape more often than whites.
Billy Sothern of the Capital Appeals Project cited Department of Justice statistics that all 14 rapists executed by Louisiana in the past 75 years or so were African-American. Nationwide from 1930 to 1964, nearly 90% of executed rapists were black, he said.

Another opposing group was the National Association of Social Workers. Social workers warn that if the court sanctions the penalty for child rape, it could further discourage reporting of the crime because in the majority of child sexual assaults, the attacker is a relative or friend of the victim.

Opponents also warn that the prospect of the death penalty could give child rapists a powerful incentive to kill their victims. They might figure they have nothing to lose by killing the lone witness.

"If they're going to face the death penalty for raping a child, why would they leave a living witness?" said Judy Benitez, executive director of the Louisiana Foundation against Sexual Assaults.

Benitez also says testifying in a death penalty case can be deeply traumatic for child. And the risk of wrongful prosecution may be higher is such cases since children might prove to be unreliable witnesses for the prosecution, because of their susceptibility to suggestive, leading questions.

But there is strong support for the execution of child rapists, too.

The trend, asserts Juliet Clark, assistant Jefferson Parish district attorney, "strongly supports imposition of the death penalty for this exceedingly grave offense."

In June 2008, the US Supreme Court ruled in the case of Kennedy v. Louisiana 5-4 that struck down the Louisiana law that permitted capital punishment for raping a child, thus outlawing the death penalty for child rape. Justice Anthony Kennedy said that the Constitution bars a state from imposing the death penalty for the rape of a child when the crime did not result, and was not intended to result, in the victim’s death. The ruling restricts the death penalty to cases of murder or treason.

Justice Kennedy, writing for the majority, warned about broader problems with the death penalty: "When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." He took into account the many dangers of the death penalty and concluded it should be restricted to homicides:

“Difficulties in administering the penalty to ensure against its arbitrary and capricious application require adherence to a rule reserving its use, at this stage of evolving standards and in cases of crimes against individuals, for crimes that take the life of the victim.”
Additional Death Penalty Issues

Innocence

Starting in 1982, DNA testing was first used as evidence in court to exonerate a condemned prisoner.

Kirk Bloodsworth was the first DNA death row exoneration in the U.S. in 1993. Bloodsworth was originally found guilty of the rape and murder of nine-year-old Dawn Hamilton in 1984 — a crime for which he was sentenced to death in Maryland in 1985. The principal evidence linking Bloodsworth to the crime was the testimony of five witnesses who placed him either with the victim or near the scene of the crime at the time it was believed to have occurred.

In 1992, however, Centurion Ministries of Princeton, New Jersey, helped Bloodsworth obtain court approval for testing of biological material preserved from the crime with DNA technology. The tests incontrovertibly established Bloodsworth's innocence. After the FBI confirmed the results, Bloodsworth was released June 28, 1993. He was the first U.S. death row prisoner to be exonerated by DNA. In December 1994, Maryland Governor William Donald Schaefer granted Bloodworth a full pardon based on innocence.

The State of Maryland paid Bloodsworth $300,000 for lost income, based on the rough calculation that he would have earned some $30,000 a year for the years from his arrest to his release.

Nine years later, in the spring of 2003, a Maryland forensic biologist who was studying evidence from the case found stains on a sheet that had not been analyzed. Investigators ordered DNA testing and ran the results through the national DNA database, which linked Kimberly Shay Ruffner to the crime. Ruffner was formally charged with the crime on September 5, 2003.

In 1987, two university professors – Hugo Bedau and Michael Radelet – conducted the first major study of wrongful death penalty convictions in their report entitled “Miscarriages of Justice in Potentially Capital Cases.” They reviewed the death penalty cases throughout the 20th century and discovered that 350 prisoners who had been convicted of capital or potentially capital cases were later found innocent.

The Supreme Court addressed the constitutionality of executing someone who claimed actual innocence in Herrera v. Collins (1993). Although the Court left open the possibility that the Constitution bars the execution of someone who conclusively demonstrates that he or she is actually innocent, the Court noted that such cases would be very rare. The Court held that, in the absence of other constitutional violations, new evidence of innocence is no reason for federal courts to order a new trial. The Court also held that an innocent inmate could seek to prevent his execution through the clemency
process, which, historically, has been "the 'fail safe' in our justice system." Herrera was not granted clemency, and was executed in 1993.

Since Herrera, concern regarding the possibility of executing the innocent has grown. Currently, 139 people have been exonerated and released from death row because of innocence, many as a result of DNA evidence, since 1973.

As a result of a 5-4 Supreme Court ruling in June 2009, prisoners have no constitutional right to DNA testing that might prove their innocence. It is a state’s right issue whether they wish to allow a prisoner the right to DNA testing. Forty-six states currently have laws that allow at least some prisoners to gain access to DNA evidence.

The case before the court concerned Alaska, which has no DNA testing law, and prisoner William G. Osborne, who was convicted in 1994 of kidnapping and sexually assaulting a prostitute in Anchorage.

The Supreme Court ruled that Osborne does not have a constitutional right to have access to DNA evidence in his case. “After conviction,” Justice Alito said, “with nothing to lose, the defendant could demand DNA testing in the hope that some happy accident — for example, degradation or contamination of the evidence — would provide the basis for seeking postconviction relief.”

Only four states — Alabama, Alaska, Massachusetts and Oklahoma — do not have laws in place specifically dealing with postconviction DNA testing. Prosecutors often fight hard to deny access to DNA evidence even in states that nominally allow it, saying the prisoner in question had not met the statutory conditions.

In states that allow DNA evidence, it is sometimes limited. Some laws, for instance, do not allow prisoners who have confessed to seek DNA evidence, though false confessions have been common among exonerated inmates. Other states allow testing only if it was unavailable at the time of trial.

The major change in terms of innocence and wrongful convictions came in November 1998 when Northwestern University held the first-ever National Conference on Wrongful Convictions and the Death Penalty, in Chicago, Illinois. The Conference, which drew nationwide attention, brought together 30 of these wrongfully convicted inmates who were exonerated and released from death row. Many of these cases were discovered not as the result of the justice system, but instead as the result of new scientific techniques, investigations by journalism students, and the work of volunteer attorneys. These resources are not available to the typical death row inmate.

The conference was the brainchild of Northwestern Law Professor Lawrence C. Marshall, who had recently won the cases of three innocent men — Rolando Cruz, who had been under sentence of death for a 1983 murder; Willie Rainge, who had been wrongfully convicted of an infamous 1978 rape and double murder; and Gary Gauger, who had been sentenced to death for the murders of his parents. The conference made
headlines nationally and internationally, greatly raising the salience of the innocence issue, particularly in the context of capital punishment.

Then, two and a half months after the conference, there was another dramatic development — the exoneration of Illinois death row prisoner Anthony Porter, whose execution had been only two days away when a legal team, including Larry Marshall, won a reprieve from the Illinois Supreme Court. The reprieve made it possible for Northwestern Professor David Protess and several of his undergraduate students at the Medill School of Journalism to reinvestigate the case. Porter’s innocence was established in February 1999 when Paul Ciolino, a private investigator working with the Protess group, obtained a video-recorded confession from the man who had committed the murder for which Porter had been condemned to die.

The events prompted Illinois Governor George H. Ryan to declare a moratorium on executions in January 2000, a politically dangerous step that triggered a nationwide re-examination of the capital punishment system. Governor Ryan then appointed a Commission on Capital Punishment to study the issue in the state.

In one specific case outside of Illinois of executing the innocent, Brian Baldwin went to his death in Alabama in 1999 for a murder his co-defendant claimed to have committed alone.

Brian Keith Baldwin, a 40-year-old African American, died in the Alabama electric chair in 1999 for the murder 22 years earlier of a white teenager, Naomi Rolon — a crime that Baldwin’s co-defendant, Edward Dean Horsley, claimed to have committed without Baldwin’s knowledge. Baldwin’s conviction and death sentence rested on a confession that he claimed had been extracted by torture — beating and electroshock.

Although there was no question that Baldwin had been involved in Rolon’s abduction and robbery, the only evidence linking him to the murder was his purported confession, which he testified he had given after being beaten and shocked with a cattle prod.

The confession was incorrect about material details, including how Rolon died and the instrument with which she had been bludgeoned. At the time of their arrest, there was blood on Horsley’s clothes, but not on Baldwin’s. Forensic evidence developed after Baldwin’s trial indicated that Rolon had been beaten by a left-handed person — which Horsley was and Baldwin was not.

The trial lasted only two days — August 8 and 9, 1977. Baldwin’s court-appointed attorneys conducted no investigation and presented no witnesses other than Baldwin himself, even though Baldwin had identified potential witnesses who might have corroborated his torture claim.

In addition, jurors did not learn that Rolon apparently had been beaten and stabbed by a left-handed person and that Baldwin was right-handed, that there was blood on Horsley’s
— but not on Baldwin’s — clothes, or that Baldwin’s purported confession was wrong about important facts.

Most recently, in September 2008, the case of convicted murderer Troy Anthony Davis came to the forefront. He was sentenced to be executed in Georgia by lethal injection, but the US Supreme Court has granted a stay of execution while it reviews the case. Davis has been convicted of killing a Savannah, Georgia police officer in the parking lot of a fast food restaurant in 1989. The case, which drew national and international attention, was based solely on eyewitness evidence. Seven of the nine witnesses who initially testified that Davis was the killer have recanted. There was also no physical evidence presented at his trial, and no weapon was found. But Davis' petitions for a new trial have been denied.

Defense attorneys say that at the time of the high-profile crime, witnesses were afraid. They say police coerced them into blaming Davis, who was African-American, for the murder of off-duty Savannah Police officer Mark McPhail, who was white. The Southern regional director of Amnesty International, Jared Feuer, also says that to this day, no one has looked at whether the evidence points to Davis' innocence or to his guilt. He says the fact that seven witnesses recanted, combined with the absence of physical evidence, including a murder weapon and DNA, raised too much doubt about whether the state was executing an innocent man.

"This is bigger than Troy Anthony Davis. This is about a system of injustice we have to expose," Davis' sister, Martina Correia, said.

In the last 30 years, 135 people have been exonerated from death row in 25 states – since 1990, 26 were from Louisiana alone.

**Public Support**

Support for the death penalty has fluctuated throughout the century. According to Gallup surveys, in 1936 61% of Americans favored the death penalty for persons convicted of murder. Support reached an all-time low of 42% in 1966.

Throughout the 70s and 80s, the percentage of Americans in favor of the death penalty increased steadily, culminating in an 80% approval rating in 1994.

A May 2004 Gallup Poll found that a growing number of Americans support a sentence of life without parole rather than the death penalty for those convicted of murder. Gallup found that 46% of respondents favor life imprisonment over the death penalty, up from 44% in May 2003.

During that same time frame, support for capital punishment as an alternative fell from 53% to 50%. The poll also revealed a growing skepticism that the death penalty deters crime, with 62% of those polled saying that it is not a deterrent.
These percentages are a dramatic shift from the responses given to this same question in 1991, when 51% of Americans believed the death penalty deterred crime and only 41% believed it did not. Only 55% of those polled responded that they believed the death penalty is implemented fairly, down from 60% in 2003. When not offered an alternative sentence, 71% supported the death penalty and 26% opposed.

The overall support is about the same as that reported in 2002, but down from the 80% support in 1994.
Recent Developments in Capital Punishment

Pioneer 'volunteers'

About one in eight Death Row prisoners in the US are so-called "volunteers", people who have decided they would rather end their life than endure conditions behind bars.

One of the most famous was Gary Gilmore, who became the subject of The Executioner's Song, a Norman Mailer book and a film starring Tommy Lee Jones.

In January 1977, Gilmore, a career criminal who had been convicted of a spate of murders and robberies, was executed in Utah after he waived his right to appeal.

In 2005, Michael Ross, who murdered the eight women in Connecticut and New York in the early 1980s, hired a lawyer to ensure he does get executed after 17 years of fighting against his execution.

Ross told a prison psychiatrist he hoped his death would ease the pain of his victims' families, adding: "I owe these people. I owe them. I killed their daughters. If I could stop the pain, I have to do that."

ACLU-Connecticut's legal director, Annette Lamoreaux, says: "One of the results of this is that when you look at people who have spent 15 years in that kind of condition it is understandable that they become depressed and suicidal. It is a manifestation of a kind of mental illness.

"So they say 'I want my life ended,' and the state says 'Sure, how can I help?'. It is a form of assisted suicide which should not be allowed."

These "volunteers" constitute 11% of executions nationwide, and will continue to dominate both the headlines and the execution schedules (8 of the last 16 executions in Florida have been volunteers).

This subset of prisoners waive all their appeals, typically fire their lawyers and write letters to governors begging for an execution date.

Volunteers make all sides of the debate uncomfortable. Death penalty supporters are uneasy with the idea that some prisoners may see their death sentence as a relief from a
tortured life. The courts don't want their appeals process short-circuited by the inmates' suicidal ideations.

This is also being seen in Italy. Hundreds of prisoners serving life sentences in Italy have called on bringing back the death penalty.

Italy has almost 1,300 prisoners serving life terms, of whom 200 have served more than 20 years. And some of the country's longest serving prisoners want the death penalty re-introduced.

It was started by a letter from a convicted mobster, Carmelo Musumeci, a 52-year-old who has been in prison for 17 years, that was co-signed by 310 of his fellow lifers.

Musumeci said he was tired of dying a little bit every day.

We want to die just once, he said, and "we are asking for our life sentence to be changed to a death sentence".

Only time will tell how the government and parliament will respond to the prisoners.

**The Federal Death Penalty**

In addition to the death penalty laws in many states, the federal government has also employed capital punishment for certain federal offenses, such as murder of a government official, kidnapping resulting in death, running a large-scale drug enterprise, and treason. When the Supreme Court struck down state death penalty laws in Furman, the federal death penalty laws suffered from the same constructional infirmities that the state laws did. As a result, death sentences under the old federal death penalty laws have not been upheld.

In 1988, a new federal death penalty law was enacted for murder in the course of a drug-kingpin conspiracy. The law was modeled on the post-**Gregg** laws that the Supreme Court has approved. Since its enactment, 6 people have been sentenced to death for violating this law, though none has been executed.

In 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act that expanded the federal death penalty to some 60 crimes, 3 of which do not involve murder. The exceptions are espionage, treason, and drug trafficking in large amounts.

Two years later, in response to the Oklahoma City Bombing, President Clinton signed the Anti-Terrorism and Effective Death Penalty Act of 1996. The Act, which affects both state and federal prisoners, restricts review in federal courts by establishing tighter filing deadlines, limiting the opportunity for evidentiary hearings, and ordinarily allowing only a single habeas corpus filing in federal court. Proponents of the death penalty argue that this streamlining will speed up the death penalty process and significantly reduce its cost,
although others fear that quicker, more limited federal review may increase the risk of executing innocent defendants.

In June 2001, Oklahoma City Federal Building bomber Timothy McVeigh became the first federal prisoner executed in 38 years. A former Army soldier and security guard, he was convicted of eleven United States federal offenses and ultimately executed via lethal injection for his role in the April 19, 1995, Oklahoma City bombing which claimed 168 lives.

The U.S. Department of Justice brought federal charges against McVeigh for causing the deaths of the eight federal officers. It could not bring charges against McVeigh for the remaining 160 murders in federal court because those deaths fell under the jurisdiction of the state of Oklahoma.

Since McVeigh’s execution, there have been two other federal executions, bringing the total number of federal executions since 1927 to 37.

There are currently 58 inmates on federal death row across the U.S.

The US Military’s Death Penalty

Number of Executions  The US military has executed 210 soldiers and other members of the armed forces, between 1917 and 1961, either by hanging or firing squad. The greatest number of these, 174, took place from 1942-1961. This includes incidents from World War I and World War II.

The United States Army executed 36 soldiers during the First World War, eleven of these executions taking place in France and 25 hangings being carried out in the United States.

Fourteen German POWs were executed by hanging in Fort Leavenworth, Kansas in 1945. These POWs, members of the German Armed services, had been convicted by general court-martial for the murders of fellow Germans believed by their fellow inmates to be collaborating as confidential informants with the United States military authorities.

During WWII, US servicemen were executed everywhere from Australia, Great Britain, Algeria, Italy, New Guinea, France, India, the Philippines, Germany, and Japan, as well as in the US itself.

Of these 210 executions, almost all were carried out by the United States Army.

Date of last military execution  On April 13, 1961, U.S. Army Private John A. Bennett was hanged at Fort Leavenworth after being convicted of rape and attempted murder of an 11-year-old Austrian girl.

Method of Execution  Lethal Injection
**Death Row Location** U.S. Disciplinary Barracks, Fort Leavenworth, Kansas

**United States Military Death Row Roster Total: 8 (as of 1/5/2010)**

**Names:**

1. Kenneth Parker
2. Wade L. Walker*
3. Jessie Quintanilla*
4. James T. Murphy*
5. Ronald A. Gray
6. Dwight J. Loving
7. Hasan Akbar
8. Andrew Witt

* awaiting re-trial or re-sentencing

**Date the Death Penalty Was Re-enacted after Furman** In 1984, the death penalty was reinstated when President Ronald Reagan signed an executive order adopting detailed rules for capital courts-martial. Among the rules was a list of 11 aggravating factors that qualify defendants for death sentences.

**Clemency Process** The President has the power to commute a death sentence and no service member can be executed unless the President personally confirms the death penalty.

**Capital Offenses** The Uniform Code of Military Justice provides the death penalty as a possible punishment for 15 offenses, though many of these crimes -- such as desertion or disobeying a superior commissioned officer's orders -- carry the death penalty only in time of war. All 9 men on the military's death row were convicted of premeditated murder or felony murder.

The following offenses are punishable by death at any time:

- Mutiny or sedition
- Misbehavior before the enemy
- Subordinate compelling surrender
- Improper use of countersign
- Forcing a safeguard
- Aiding the enemy
- Espionage
- Improper hazarding of vessel
- Murder
- Rape

The following carry a death sentence only if the crime is committed during times of war:
- Desertion
- Assaulting or willfully disobeying superior commissioned officer
- Spies
- Misbehavior of a sentinel or lookout

**Who Decides Sentence**  In a military capital case, the convening authority -- a high ranking commanding officer who decides to bring the case to a court martial -- decides if the death penalty will be sought. Once decided, the convening authority picks those servicemembers who will serve as panel members/jurors. One requirement for the panel is that if the accused so chooses, at least 1/3 of the panel must consist of enlisted personnel.

The only other requirement of a panel is that it consist of at least five members. Therefore, the number of panelists in a military death penalty case can vary from case to case.

**The Case of Private Ronald Gray**  In July 2008, US President George W Bush approved the US Army's request to execute Private Ronald Gray convicted of several charges of rape and murder. Gray has been on death row at the U.S. Disciplinary Barracks at Fort Leavenworth, Kan., since his 1988 death sentence.

It is the first time in more than 50 years that an American president has authorized a death sentence for a member of the armed forces. US military justice requires the president to approve a death sentence. President Dwight Eisenhower was the last US president to approve a military execution, in 1957.

Private Ronald Gray was convicted in 1988 of a spree of four murders and eight rapes in the Fayetteville, N.C., area over eight months in the 1980s while in the army at Fort Bragg in North Carolina. His crimes were committed against both military personnel as well as civilians. Because he was convicted in a military court his death sentence needed to be signed off by the president.

The White House is expecting further appeals, and that there is no timeline set for those appeals or Ronald Gray's execution.

The military also has asked Bush to authorize the execution of Dwight J. Loving, who has been at Fort Leavenworth, Kan., since 1989 after being convicted of killing two taxicab drivers while he was an Army private at Fort Hood, Texas. But the president has not yet made a decision on that case.

**The Military Commissions Act**

The Pentagon announced in February 2008 that it was formally bringing charges against five Guantanamo Bay prisoners over their alleged involvement in the 11 September 2001 attacks in the US. Prosecutors will seek the death penalty for the five, who include alleged plot mastermind Khalid Sheikh Mohammed.
The charges, the first for Guantanamo inmates directly related to 9/11, are being heard by a controversial military tribunal system.

The trials are being held by military tribunal under the terms of the Military Commissions Act, passed by the US Congress in 2006 to try terror suspects under separate rules from regular civilian or military courts.

In 2001, when George Bush announced that he wanted enemy combatants to be tried by the armed forces, his hope was to bypass basic legal protections such as the right of a defendant to be present at his own trial. In 2006 the Supreme Court decided that would violate the Geneva Conventions and that it was up to Congress to establish military commissions. Congress duly did so.

The Military Commissions Act set up tribunals to try terror suspects who were not US citizens. This excludes US citizens, who face US domestic law.

The Act is primarily aimed at al-Qaeda-type international terrorist suspects. It says that "any alien unlawful enemy combatant" is subject to trial by military commission. This excludes US citizens, who face US domestic law. However US residents who are not citizens are included.

To fall under the Military Commissions Act, suspects must be designated as "unlawful enemy combatants." This is because a prisoner who is a "lawful combatant" would have to be treated as a prisoner of war and be protected by international law. He could not be tried, other than for war crimes.

The US government decided to use the phrase "unlawful enemy combatants" in the law that set up the tribunals. An "unlawful enemy combatant" is defined by the US as someone who "has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces)".

According to the Geneva Conventions, a lawful enemy combatant is someone who fights in regular armed forces or in a militia that wears a "fixed distinctive sign", carries arms openly and abides by the rules of war.

A prisoner who is a "lawful combatant" would have to be treated as a prisoner of war and be protected by international law. He could not be tried, other than for war crimes.

The military commission is made up of between five and 12 US armed forces officers. However, if the death penalty is sought, then at least 12 members have to be on the commission. A qualified military judge will preside over the hearing.

To get a conviction, at least two-thirds of the commission members have to be in favor. This is different than a US jury trail where a decision has to be unanimous.
For a sentence of death, which can be sought if death occurred as a result of a defendant's action, all 12 commission members have to agree. The final decision on carrying out a death sentence will be taken by the US president.

If convicted, a defendant can appeal to a Court of Military Commission Review and then to the United States Court of Appeal, a civilian court. From there, an appeal might go to the US Supreme Court itself.

In June 2008, the US Supreme Court ruled that foreign suspects held in Guantanamo Bay have the right to challenge their detention in US civilian courts.

The court said the detainees had "the constitutional privilege of habeas corpus." Latin for "you have the body," habeas corpus is an ancient right acquired from English law under which a prisoner has to be brought before a court to have his/her detention justified.

Justice Anthony Kennedy said: "The laws and constitution are designed to survive, and remain in force, in extraordinary times."

The defendants had argued that, despite the fact that Guantanamo Bay is in Cuba, the US exercises total control and the principles of US law should apply there. The court accepted this.

The ruling is in favor of the prisoners held at Guantanamo Bay in Cuba and against what President Bush had wanted.

It was the third time that the court had struck down the administration's plans for Guantanamo. It ruled first that US law did extend there, then it said that the president lacked authority to set up military trials or commissions.

Each time, the administration hit back, getting Congress to authorize what they needed to keep the detainees locked up.

Speaking against this ruling, Justice Antonin Scalia wrote of the "disastrous consequences of what the Court has done."

"America is at war with radical Islamists," he said. The court's decision "will make the war harder on us. It will almost certainly cause more Americans to be killed."

Some basic requirements of US criminal law have been kept. The accused will have the presumption of innocence and proof of guilt will have to be "beyond reasonable doubt". He cannot be forced to testify against himself. He will have a military lawyer but can also have a civilian one.

Hearsay evidence and evidence obtained under coercion is allowed if it is deemed to have "probative value".
If evidence was obtained before 30 December 2005 (that is, the date when the Detainee Treatment Act came into force, outlawing "cruel, inhuman or degrading treatment"), the military judge can allow the evidence if "the totality of the circumstances renders the statement reliable" and "the interests of justice would best be served".

This suggests that some evidence obtained in the so-called "secret prisons" operated by the CIA abroad might be admissible. If it was obtained after 30 December 2005, then the judge would also have to be satisfied that no "cruel, degrading or inhumane treatment" had been used.

If convicted, a defendant can appeal to a Court of Military Commission Review and then to the United States Court of Appeal, a civilian court. From there, an appeal might go to the US Supreme Court itself.

About 50 of the 214 or so prisoners at Guantanamo Bay will face tribunals. But those who do not, because of a lack of evidence, face indefinite detention without trial.

Besides Khalid Sheikh Mohammed, who was born in Pakistan and raised in Kuwait, the other four defendants are Ramzi Binalshibh, a Yemeni, Walid Bin Attash, also from Yemen, Ali Abd al-Aziz Ali, who was born in Pakistan and raised in Kuwait, and Mustafa Ahmad al-Hawsawi, a Saudi.

Brig Gen Thomas Hartmann, a legal adviser to the head of the Pentagon's Office of Military Commissions, said the charges included numerous crimes related to the September 11th attacks, including conspiracy, murder, hijacking and terrorism.

The charges specifically listed "169 overt acts allegedly committed by the defendants in furtherance of the September 11 events", including 2,973 individual counts of murder - one for each person killed in the 9/11 attacks.

Gen Hartmann alleged that Khalid Sheikh Mohammed had proposed the attacks to al-Qaeda leader Osama Bin Laden in 1996, had obtained funding and overseen the operation and the training of hijackers in Afghanistan and Pakistan.

Khalid Sheikh Mohammed was said to have been al-Qaeda's third in command when he was captured in Pakistan in March 2003.

The BBC's Vincent Dowd in Washington says Khalid Sheikh Mohammed has said he planned every part of the 9/11 attacks but that his confession may prove problematic as the CIA admitted using controversial "waterboarding" techniques, or simulated drowning.

Human rights groups regard the procedure as torture, although the Bush administration did not.
In January 2009, new President Barack Obama ordered the closure of the Guantanamo Bay prison camp within one year. All military commission trials were stopped for reexamination, including that of Khalid Sheikh Mohammed.

But in November 2009, the United States said that it will try the five men accused of planning the September 11 attacks, including Khalid Sheikh Mohammed, not in a military trial but in a civilian federal trial in New York. Sen. Patrick Leahy said Mohammed “committed crimes of murder in our country and we will prosecute them in our country.”

The prosecutors will seek the death penalty against the five men.

**Foreigners on Death Row in the US**

In 2005, the US withdrew from part of an international agreement being used to fight for foreigners on death row.

The 1963 Vienna Convention gave the International Court of Justice - the UN's highest court - the right to intervene in the cases of foreigners held in US jails.

Part of the Vienna protocol requires that the ICJ makes a final decision when citizens of its signatory nations have been jailed abroad, specifically if they have been denied access to a diplomat from their own country.

The US withdrawal from that section of the treaty ensured the ICJ would no longer have powers of enforcement. The US state department said it was not appropriate that an international court should reverse the decisions of a country's criminal justice system.

The convention was seen as a means of protecting US citizens who had been jailed abroad, but in recent years the protocol has been used by opponents to the death penalty in the United States.

In 2005, the US Supreme Court rejected an appeal to consider arguments in the case of a Mexican citizen on death row in Texas. Jose Medellin, one of 51 Mexican nationals currently on death row in Texas, claimed his rights had been violated when he was sentenced to death in 1994 in Texas on rape and murder charges of two teenage girls without being allowed consular access.

At the time of his arrest, police did not tell him that he could request assistance from the Mexican consulate - in violation of the 1963 Vienna Convention.

In 2003, Mexico filed a lawsuit at the ICJ against the US, on behalf of Medellin and 50 other Mexican nationals on death row in the US who had also not received consular support. They argued that U.S. officials have disregarded the 1963 Vienna Convention which requires an “arresting government” to notify a foreign national of the right to talk with the detainee’s consulate or embassy, and says foreign governments can arrange legal
help for their nationals. It applies to Americans abroad and to foreigners arrested in the United States.

The International Court of Justice ruled that his conviction - and those of 50 other Mexicans on death row in the US - had violated the 1963 Vienna Convention as they had no access to consular officials upon their arrest.

Jose Medellin was executed in Texas in August 2008 after the US Supreme Court denied hearing a last appeal.

As of October 2009, there were 128 foreign nationals from 34 countries on death row in America, according to the Death Penalty Information Center. Fifty-five of these people are from Mexico.
The Public Spectacle of Death

That last gasp of public executions took place early in the morning in August 1936, when a crowd of 20,000 gathered to watch Rainey Bethea, a young black man who had been convicted of the rape and murder of a seventy-year-old white woman. According to local papers, the throngs included "children of primary school age and women with babies in their arms...in the crowd which had waited all night to witness the execution at dawn."

Bethea was led up a platform with 13 stairs, where six men waited to fit him with the noose. By 5:23 a.m., Bethea was swinging at the bottom of a rope, two months and seven days after the murder he allegedly committed. The spectacle caused by his death caused such an outcry among the spectators and in the press that hanging were thereafter conducted outside the presence of the public.

Today, the gallows and firing squads are anything but public, and are rarely used. But, as evidenced by the media feeding frenzies attendant such deaths such as Timothy McVeigh's and Taylor's in 1996, the public can still "be there," even if they aren't present as a member of the victim's family or one of the witnesses chosen by the condemned.

The Death Penalty Today
In the United States numbers of death sentences are steadily declining from 300 in 1998 to 110 in 2007.

One of the most widely followed cases of the last few years was that of John Allen Muhammad. He was a serial killer known as the Washington, D.C. sniper who carried out a series of 2002 sniper attacks, killing 16 people. Muhammad was arrested in connection with the attacks in October 2002.

His trial for one of the murders (the murder of Dean Harold Meyers in Virginia) began in October 2003, and the following month, he was found guilty of capital murder. In early 2004, he was sentenced to death. The Virginia Supreme Court affirmed his death penalty, stating that Muhammad could be sentenced to death because the murder was part of an act of terrorism.

John Allen Muhammad, 48, was executed by the state of Virginia for the murder of Dean Harold Meyers, one of 10 people killed during the attacks, in November 2009.

Muhammad's accomplice, Lee Boyd Malvo, who was 17 at the time of the shootings, is serving a life sentence in jail.

"One can have a certain indifference on the death penalty," read Victor Hugo's famous words nearby, "as long as one has not seen a guillotine with one's own eyes."