entry, shows they are disproportionately represented within the system, have greater chances of being incarcerated for a second time, and have higher institutional security classifications. This all points toward the need for specific attention to Aboriginal prisoners. Some advances have been made by CSC in recent years, and include the construction of the Healing Lodge for federally sentenced females (Okimaw Ohci), Aboriginal-specific health strategies in HIV/AIDS, endorsement of NativeSisterhood within the prison system, and the establishment of 24 halfway houses for Aboriginal males across Canada. Again, although CSC has acknowledged that Aboriginal prisoners have unique experiences and circumstances in comparison to non-Aboriginal prisoners, there remains a need for ensuing informed policy and practice.

Similar to the history of female prisoners in Canadian corrections, the acknowledgment of the uniqueness of Aboriginal in comparison to non-Aboriginal prisoners to date has come at an expense. In particular, Aboriginal offenders have often come to be thought of as a homogeneous group. For example, CSC’s OIA does not account for diversity within the Aboriginal offender population (e.g., Inuit, Metis, First Nations). Furthermore, risk and need assessment tools individualize offender risk and need, decontextualizing these from the social and political structures, and so the tools are not able to account for the impact of colonial oppression, which cannot be individualized.

**CONCLUSION**

Canada’s two systems of incarceration, federal and provincial/territorial, have numerous similarities as well as differences in their operations and prisoner populations. At the federal level, which is likewise characterized by similarities and differences, the history of corrections can be chronicled through four models of punishment: deterrence, rehabilitation, incapacitation, and reintegration. These models offer insight into CSC’s approach to imprisonment during various time periods, which assists in understanding the CSC’s historic and current policies and practices. CSC’s current ideology, conveyed in its mission statement and evident in its operations, relays the need for increased attention specific to female and Aboriginal prisoners.

—Colleen Anne Dell

**See also** Australia; Classification; Deterrence Theory; England and Wales; Federal Prison System; Incapacitation Theory; Just Deserts Theory; Robert Martinson; Medical Model; Native American Prisoners; Rehabilitation Theory; Rehabilitation Act 1973; Restorative Justice; State Prison System; Prisoners; Women; Women’s Prisons

**Further Reading**


**CAPITAL PUNISHMENT**

Capital punishment refers to the use of the death penalty as punishment for certain crimes. In America, almost 20,000 persons have been legally put to death since colonial times, with most of the
executions occurring in the 19th and 20th centuries. In recent years, opposition to the death penalty has become more vocal in many states, leading some criminologists to predict its eventual demise.

**HISTORY**

The United States has had a system of capital punishment in place since colonial times. The first recorded legal execution in the American colonies occurred in 1608 in Virginia, when Captain George Kendall was executed for the crime of spying for Spain. Since then, the crimes eligible for a death sentence have changed. For example, prior to the American Revolution, the list of capital crimes included idolatry, witchcraft, blasphemy, murder, manslaughter, poisoning, bestiality, sodomy, adultery, manslaughter, bearing false witness in capital cases, conspiracy, and rebellion. Now, the application of the death penalty is overwhelmingly confined to murder. It is noteworthy, however, the colonial Americans used the death penalty less often than courts do today despite the greater number of eligible crimes.

During the 19th century, the number of executions increased significantly, with more people put to death between 1800 and 1865 than in the entire 17th and 18th centuries combined. Changes were also enacted that included the introduction of the concept of degrees of murder and the removal of executions from the public realm. In some states, discretionary death penalty laws replaced those that mandated the death penalty for anyone convicted of a capital crime. In addition, the jurisdiction of executions was changed from local to state control. Individual towns were no longer responsible for capital punishment. Instead, the state became the executioner. Finally, the number of offenses punishable by death was reduced and some states began abolishing the death penalty. The number of executions decreased immediately following the Civil War. However, in the last two decades of the 19th century, the number increased again to approximately 1,000 each decade.

Abolitionist efforts grew during this time period as well. Michigan eradicated the death penalty in 1846 for all crimes except treason. Five other states also enacted abolitionist legislation. By 1901, however, three of these states had reestablished capital punishment.

During the first two decades of the 20th century, the United States entered what is known as the Progressive period of social reform. More states abolished the death penalty or severely restricted its use. Six states (Kansas, Minnesota, Missouri, Oregon, South Dakota, and Washington) abolished the death penalty entirely, and three others limited its use to rare offenses such as treason (Arizona, North Dakota, and Tennessee). However, concern about communism and the threat of revolution led to the reinstatement of capital punishment in five states by 1920, and the number of executions across the country overall increased. The 1930s hold the record for the greatest number of executions in one decade in U.S. history, averaging 167 executions per year. The combination of organized crime during the Depression and the writings of criminologists who suggested that the death penalty was necessary to deter violence increased its popularity during this period. By 1950, only three states that had previously abolished capital punishment had not reenacted statutes allowing the death penalty.

During the 1950s, public support for capital punishment began diminishing again, although there were periods of strong support for it. International support for the death penalty was declining. Two cases were particularly noteworthy at this time for the debate surrounding capital punishment. First, the prosecution of Julius and Ethel Rosenberg garnered public support for capital punishment. The Rosenbergs were accused of engaging in espionage for the Soviet Union. Although there was public debate about their sentences as well as widespread international protest, the Rosenbergs were executed in 1953. A Gallup poll taken five months after their executions indicated strong support in the United States for capital punishment, with 70% of people supporting the death penalty. Less than one year later, however, another case occurred that led to strong opposition to the death penalty. Caryl Chessman, who had been sentenced to death in 1948, published the first of four books from death
row in California. In them he claimed innocence, and his case became the focus of worldwide opposition to capital punishment. Chessman’s execution was stayed eight times before his death sentence was carried out in 1960. National and international efforts to intervene brought the case into the spotlight. Following his execution, opinion polls indicated decreasing support for capital punishment. Four states abolished the death penalty within five years (Iowa, Michigan, Oregon, and West Virginia).

By the mid-1960s, a number of constitutional challenges to capital punishment had been raised. In the case of *Trop v. Dulles* (1958), the U.S. Supreme Court set forth the argument of evolving standards of decency that became important in later constitutional challenges to the death penalty. Eventually, three cases led to a moratorium on executions. *Maxwell v. Bishop* (1970) raised the issue of racial discrimination in the application of capital punishment, and *Witherspoon v. Illinois* (1968) called into question the use of “death-qualified juries” (or the practice of removing potential jurors for cause if they were opposed to the death penalty). *United States v. Jackson* (1968) focused on the requirement that a jury recommend death for federal kidnapping cases. The last execution prior to the 1972 national moratorium on executions occurred in Colorado in 1967.

**FURMAN V. GEORGIA AND ITS AFTERMATH**

In 1972, the Supreme Court ruled on the case of *Furman v. Georgia*, instituting a complete moratorium on executions in the United States. The *Furman* case focused on the arbitrariness and capriciousness of capital punishment that resulted from unrestrained discretion of juries. While the Supreme Court did not rule that the practice of the death penalty was unconstitutional, it did find that existing statutes (involving the process of sentencing) were unconstitutional. Death penalty statutes in 40 states and the federal government were overturned, and 629 death sentences were vacated. The *Furman* decision not only instituted a moratorium on executions but also established the “death is different doctrine.” This doctrine has led to the policy of treating capital cases as different from all other crimes, requiring what has been referred to as “super-due process” (Radin, 1980). Super-due process refers to the special procedures that are required in capital cases. It includes guided discretion, automatic appeal, and the suggestion that states review all capital cases to ensure that sentencing was proportional for similar crimes.

States immediately devised new capital punishment statutes. The new statutes either removed all discretion by mandating death sentences for all capital offenses or instituted standards of guided discretion. In *Woodson v. North Carolina* (1976), the Supreme Court rejected statutes that imposed mandatory death sentences. The Supreme Court then upheld the death sentence in *Gregg v. Georgia* (1976). The *Gregg* ruling provided for guided discretion, bifurcated trials, automatic appellate review of all death sentences, and proportionality review to detect sentencing disparities. The first execution following reinstatement of capital punishment was in Utah in January of 1977. Since then, nearly 900 persons have been legally executed in the United States.

**THE SUPREME COURT AND CAPITAL PUNISHMENT**

Since the *Gregg* decision, the Supreme Court has heard cases on a variety of issues related to capital punishment, including constitutionality, procedural issues, mitigating and aggravating circumstances, and who is eligible for execution. As the composition of the Court has changed, the decisions it has rendered have also changed. This is particularly evident in decisions related to the constitutionality of death penalty statutes and procedural issues. In *McCleskey v. Kemp* (1987), the Supreme Court revisited the issue of racial discrimination in application of the death penalty. Using social science research, *McCleskey* argued that a marked pattern of discrimination based on the race of the victim existed in capital cases. The Supreme Court found, however, that statistical analysis indicating a pattern of racial discrimination in death sentencing did not
make the death penalty statute unconstitutional. Instead, the Court stated, discrimination must be proven in individual cases. In *Pulley v. Harris* (1984), the Supreme Court ruled that states were not required to provide proportionality review of death sentences to determine fairness of sentencing. In a series of cases, the Supreme Court upheld the removal of potential jurors for cause if they were opposed to the death penalty. The Supreme Court ruled in *Herrera v. Collins* (1993) that federal courts did not have to hear claims of actual innocence based on newly discovered evidence.

There have also been a number of constitutional challenges to aggravating circumstances included in state death penalty statutes. Aggravating factors must be present to seek the death penalty, but the states differ as to what is considered an aggravating factor. Aggravating factors fall into three broad categories: those that focus on the characteristics of the offender (e.g., prior conviction for a violent crime), those that focus on the characteristics of the crime (e.g., occurring during the commission of a felony); and those that focus on the characteristics of the victims (e.g., law enforcement or multiple victims). The courts have also allowed the defense to present limited information about mitigating factors, circumstances that may be considered to reduce culpability. The Supreme Court has upheld the use of vaguely defined aggravators, allowed the use of victim impact statements, and required that mitigating factors be considered only if supported by evidence.

The Supreme Court has rendered a number of decisions regarding eligibility for a death sentence. In *Thompson v. Oklahoma* (1988), the Court ruled that an individual age 16 at the time of the offense can be sentenced to death. In *Ford v. Wainwright* (1986), the Supreme Court addressed the issue of prisoners who go insane while on death row, ruling that to be eligible for execution the offender must be able to understand the punishment and the reason for its application. The Supreme Court’s rulings on degree of participation in the offense have been less clear, however. In 1982, the Court ruled in *Enmund v. Florida* that an offender who neither killed nor intended to kill could not be sentenced to death. However, in 1987 the Court refined its position in *Tison v. Arizona*, stating that the lack of killing or intent to kill were irrelevant if the offender was a major participant in the crime and showed a “reckless indifference” to life.

Finally, the Supreme Court applied the “evolving standard of decency” interpretation to execution of the mentally retarded in *Penry v. Lynaugh* (1989). Penry, who was sentenced to death in Texas, had the mental capacity of a seven-year-old child. He appealed his sentence arguing that the Eighth Amendment ban of cruel and unusual punishment prohibited execution of the mentally retarded. His appeal was denied. The Court’s opinion stated that because no evidence of a national consensus against execution of the mentally retarded existed, there was no basis to suggest the Eighth Amendment was violated. The Supreme Court pointed out that only two states prohibited execution of the mentally retarded at that time, and national opinion polls provided little evidence of consensus on this matter. In 2002, the Supreme Court again agreed to hear the *Penry* case, signaling their desire to revisit the issue of mental retardation and capital punishment. Although Penry’s sentence was commuted for another reason prior to the arguments, the Supreme Court revisited the issue in *Atkins v. Virginia*. In the *Atkins* case, the court reversed its earlier decision based on the “evolving standard of decency” issue. By the time that the *Atkins* case was argued, 18 states had enacted legislation banning the execution of mentally retarded individuals, six within the year the case was argued. Furthermore, national opinion polls provided evidence of a growing consensus that mentally retarded individuals should not face execution. Thus, in June 2002 the Supreme Court handed down its decision to ban execution of mentally retarded individuals. In June 2002, another ruling of the Supreme Court had far-reaching implications. In *Ring v. Arizona*, the Court determined that a judge may not decide critical sentencing issues and impose the death sentence as this violates the right to trial by jury. Arizona and eight other states had statutes that allowed judges, not juries, to determine sentencing in capital cases. As many as 800 death sentences may be affected by this ruling.
CAPITAL PUNISHMENT IN THE UNITED STATES TODAY

As of late 2002, 38 states, the federal government, and the U.S. military have death penalty statutes in place. The District of Columbia and 12 states (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin) do not authorize the death penalty. More than 3,500 individuals in the United States are currently under a sentence of death. The vast majority of these are men, with 52 women awaiting execution in late 2002. More than 860 persons have been executed since 1976, including 10 women.

The use of the death penalty is not applied equally across all jurisdictions allowing it, however. In terms of per capita execution rates, Delaware has the highest per capita execution rate, followed by Oklahoma, Texas, and Virginia. Almost half of all executions have occurred in just two states (Texas and Virginia); Texas accounted for 37% of all executions between 1992 and 2002. More than 80% of executions post-Furman have occurred in the South. Other states and the U.S. military have death penalty statutes but have not executed anyone since the reinstatement of capital punishment.

THE FEDERAL DEATH PENALTY

The federal death penalty law also was struck down in 1972 by the Furman decision. In 1988, Congress enacted the Drug Kingpin Statute allowing execution for murder committed in the course of a drug conspiracy. The federal death penalty was further expanded in 1994 to include more than 60 offenses. Offenses not related to homicide include treason; espionage; large-scale drug trafficking; authorizing or attempting to kill an officer, juror, or witness in a Continuing Criminal Enterprise case; and using the mail system to deliver injurious articles with the intent to kill.

The federal government has executed two individuals since reinstatement of the federal death penalty. The first federal execution since 1963 was the 2001 execution of Timothy McVeigh, convicted of the 1995 Murrah Building bombing in Oklahoma City. Later in 2001, Juan Raul Garza was also executed. Garza was the first person executed under the federal drug kingpin law that allows execution for murders related to drug trafficking. As of late 2002, there were 26 men awaiting execution on Terre Haute Penitentiary Death Row.

In 1996, Congress focused on speeding up the appellate process in capital cases with the Anti-terrorism and Effective Death Penalty Act. This law restricts the federal appeals process by dismissing subsequent petitions when a claim has been rejected and through rejection of new claims unless rendered valid by a Supreme Court decision or based on compelling new evidence not previously available.

The federal death penalty has been strongly criticized. In 2000, the Justice Department released a report citing serious racial and geographic disparities in the application of the federal death penalty. Over 40% of the cases where the death penalty was sought originated in five jurisdictions. Furthermore, the report indicated that racial minorities were the accused in nearly 80% of federal cases in which the death penalty was requested. Other research has suggested that whites are more likely to avoid a federal death sentence by entering guilty pleas. In 2002, two district court judges ruled that the federal death penalty was unconstitutional. U.S. District Judge William Sessions of Vermont ruled that the federal death penalty is unconstitutional because of the evidence allowed in the guilt phase of the trial (United States v. Fell), while U.S. District Judge Jed Rakoff (New York) cited the probability that innocent individuals have been executed in declaring the 1994 federal death penalty law unconstitutional.

METHODS OF EXECUTION

Methods of execution have changed over time and vary slightly from state to state. By the end of 2002, all states except Nebraska allow lethal injection as a method of execution. Ten states, including Nebraska, authorized electrocution. Five states still authorized the use of the gas chamber, three states authorized hanging, and three authorized the use of firing squads.
Lethal injection was first authorized in Oklahoma in 1977, although the first execution by lethal injection did not occur until 1982 in Texas. Since 1977, the majority of executions have relied on this method. In lethal injection, three drugs are administered intravenously to the condemned person. First, sodium thiopental, an anesthetic, renders the individual unconscious. Pancuronium bromide is then administered. This drug induces muscle paralysis and stops breathing. Finally, potassium chloride is administered to stop the heart. Although developed as a more humane mode of execution, lethal injection has resulted in several botched executions. In several cases, technicians have had difficulty locating usable veins. The injection equipment has malfunctioned in other cases, either coming loose or becoming blocked. In several cases, the prisoners had severe reactions to the chemicals, resulting in convulsions.

Until the latter part of the 20th century, electrocution was regularly used for executions. The electric chair, first used in 1890, sends a large jolt of electricity into the body for approximately 30 seconds. Then, medical personnel determine whether the prisoner’s heart is still beating. If it is, another jolt is administered. This process continues until the person is pronounced dead. A number of electrocutions have required repeated jolts, and there are numerous documented cases of the condemned individual burning. In a Louisiana execution in 1947, an electrocution malfunctioned and was halted. The Supreme Court ruled that a second execution attempt did not constitute cruel and unusual punishment, and the prisoner was subsequently electrocuted successfully (*Louisiana ex rel. Francis v. Resweber*).

The gas chamber was developed in the 1920s as a more “humane” method of execution. The condemned individual is restrained in a chair in a sealed chamber, under which there is a container of sulfuric acid. A signal is then given, and sodium cyanide crystals are released into the chamber. The prisoner inhales the hydrogen cyanide gas that is released, resulting in asphyxiation. This method has been criticized as overly cruel, since the condemned individuals often struggle and appear to suffer. Today, it is allowed only in Arizona, California, Maryland, and Missouri. All four states, however, authorize lethal injection as well. It is also authorized in Wyoming if other methods are declared unconstitutional.

Two other methods of execution remain legal but are rarely used. Three states still authorize hanging as of 2002, but this method has been used only three times since reinstatement of capital punishment with the *Gregg* decision in 1976. In addition, two states authorize the use of firing squads. The use of a firing squad is also allowed in Oklahoma if other methods are declared unconstitutional. However, only two executions by firing squads have occurred since 1976. The firing squad execution of Gary Gilmore in January 1977 in Utah was the first post-*Furman* execution in the United States.

**CONCLUSION: CONTEMPORARY DEBATES ON CAPITAL PUNISHMENT**

Discussion of the death penalty has centered on several topics including the costs of maintaining it and whether or not capital punishment is a deterrent.
to homicide. The research on costs suggests that capital punishment is far more expensive than life without parole, due in part to the expenses related to trials as well as with the cost of the appeals process. The “death is different” doctrine requires more intensive investigation by both prosecutors and defense attorneys, although prosecutors generally have more funding available. Research on the deterrence aspect is mixed, but most studies indicate that the death penalty is not a general deterrent.

Beginning with the work of Cesare Beccaria, many criminologists have argued that instead of being a deterrent the death penalty actually has a brutalizing effect, increasing violence through example. Ernest Van den Haag, one of the few supporters of a deterrence argument, has suggested that since the death penalty is the most severe punishment it should have the greatest deterrent effect. However, research does not support his contention. States that have abolished capital punishment have not seen a rise in murders, and comparisons of contiguous states with and without capital punishment do not indicate any deterrent effect. International opinion about the American system of capital punishment has also been an area of interest. The United States and Japan are the only industrialized nations that still maintain a system of capital punishment. This, in conjunction with execution of juveniles and foreign nationals, has led to extensive international criticism, particularly from Western Europe.

Two other issues related to capital punishment have marshaled considerable interest: racial and economic inequities in the system and wrongful convictions. The Furman ruling was based on inequitable application of capital punishment, and reinstatement was designed to reduce the arbitrariness and discrimination inherent in the system. The continued pattern of minority death sentences, at both state and federal levels, has generated serious concern. Regional patterns of executions have been identified as a serious problem with more than 80% of post-Furman executions occurring in the South, while only 44% of all homicides occurred in that region. A 1990 U.S. General Accounting Office study concluded that race of the defendant was a factor in the decision to prosecute a case as a capital case.

Furthermore, since 1973 more than 100 persons have been released from death rows across the United States, 12 as a result of DNA analysis. In Illinois, the release of 13 men from death row led to Governor George Ryan declaring a moratorium on executions in January 2001. Two years later, in January 2003, he then commuted the sentences of all of those on death row to life in prison. As of this writing, the long-term impact of this unusual decision is unclear. Opponents of the death penalty hope for a gradual erosion of this practice in the United States. Only time will tell.

—Susan F. Sharp

See also Cesare Beccaria; Death Row; Deathwatch; Furman v. Georgia; Gary Gilmore; Juvenile Death Penalty; Timothy McVeigh; Julius and Ethel Rosenberg; Terre Haute Penitentiary Death Row; Karla Faye Tucker; Violent Crime Control and Law Enforcement Act 1994

Further Reading


Legal Cases


CELEBRITIES IN PRISON

With few exceptions, celebrities in the United States do not go to prison. Their wealth, power, and influence afford them many privileges, including the leniency of the criminal justice system. It is, therefore, worth examining the rare cases in which celebrities are incarcerated, to see why they received such unusual treatment.

Celebrity by definition is a social construct that is usually shaped in large part by the media. People become celebrities because some aspect of their lives is thought to be newsworthy. Such figures typically include individuals who enjoy success in professional athletics, entertainment, politics, and business. Fame can also be a result of notoriety, as some of the subsequent sections will address. It should be noted that few women achieve celebrity status in prisons like men both because of the relative rarity of women in positions of power and influence in our patriarchal society, and because crime is largely a male activity. People of color are also unequally represented in the subsequent sections; sometimes they are overrepresented, and other times they are underrepresented. This is due to the systemic racism of our society generally, and in the criminal justice system specifically.

CELEBRITY CONVICTS

This category includes incarcerated actors, politicians, musicians, and athletes. In most instances, these individuals are imprisoned only after numerous run-ins with the law. Their fame usually affords them a certain amount of leniency from the courts, until they have offended numerous times. Notable examples include boxer Mike Tyson, who was imprisoned on a rape charge; televangelists Jim and Tammy Faye Bakker, who were incarcerated for fraud and conspiracy; and actor Robert Downey, Jr., and musician Bobby Brown, who both spent time behind bars for drugs. In addition, night club owner Steve Rubell was incarcerated for tax evasion, Louisiana Governor Edwin Edwards and Ohio Congressman James Traficant, Jr., were sentenced to prison for racketeering, and former NFL player and music entrepreneur Suge Knight was locked up for assault and a probation violation. Most recently, businesswoman Martha Stewart received a 5-month sentence for lying to investigators about her sale of InClone Systems stock in late 2001.

EX-CON CELEBRITIES

Ex-con celebrities are usually individuals who were incarcerated before they became famous and have subsequently reached celebrity status in some area of endeavor (usually) unrelated to their crimes and incarceration. Often, their demographic characteristics and the circumstances of their crimes closely approximate those typical of the incarcerated population. This category includes comedian Tim Allen, who was sentenced to prison for drugs; boxer Ralph “Sonny” Liston, who was found guilty of larceny and robbery; and activist and community leader Malcolm X and musician Merle Haggard, both of whom did time for burglary. Author Piri Thomas was incarcerated for attempted murder, while boxing promoter Don King served a sentence for manslaughter, actor Mark Wahlberg spent time in prison for an assault charge, and author and security consultant Frank Abagnale was convicted of forgery and fraud.