



Death Row

Death row refers both to the physical space where those awaiting execution are held and the general population who have been sentenced to death. Capital punishment is as old as written law. It was the ascribed punishment for 25 different crimes under Hammurabi's Code (c. 1700 B.C.). Since condemned individuals are typically confined between the moments of judgment and execution, some form of "death row" must be equally ancient. Through the centuries, however, death row has evolved from a rudimentary cell located near the place of public execution to a highly specialized, segregated unit within a modern penal facility.

THE EVOLUTION OF DEATH ROW

Historically, executions were public spectacles (and remain so in countries such as Saudi Arabia, Iran, and Nigeria). But throughout the 19th century, many Western countries began conducting executions in private, behind prison walls. In 1834, Pennsylvania removed its executions from the public gaze; Massachusetts, New Jersey, and New York followed in 1835. The last public hanging took place in England in 1868, in the United States in 1937, and the last public execution by guillotine took place in France in 1939. As these executions became private, the process was streamlined. In prisons built during the early 20th century, visiting facilities and the living quarters of the condemned were often placed very close to the execution chamber, sometimes merely paces away.

GLOBAL TRENDS

Amnesty International reports a gradual international trend toward the abolition of capital punishment. They state that as of August 2002, more than half the countries in the world have abolished capital punishment in law or in practice. Members of the European Union (EU), for example, enforce a mandatory ban on capital punishment. Citizens from abolitionist countries are not executed for their crimes unless they are committed under a retentionist jurisdiction. But offenders from countries retaining capital punishment may face execution. In 1998, 76% of all known executions occurred in just three countries: China, the Democratic Republic of Congo, and the United States of America.

Although 12 states and the District of Columbia have abolished the death penalty, the United States remains a solid retentionist nation. Thirty-eight different states authorize the death penalty, as does the U.S. military and the federal government. Since the death penalty was reinstated in 1976 by the U.S. Supreme Court, 842 people have been executed in America, including 3 in the national execution chamber at Terre Haute, Indiana.

THE RISE AND FALL (AND RISE) OF DEATH ROW IN THE UNITED STATES

The numbers of men and women on death row fluctuates in size over time. Their proportions are a function of the number of people condemned to die and the expediency with which executions are conducted. Of these two factors, however, the number of people condemned to die has the greatest effect on the population of death row. Obviously, the number awaiting execution shrinks dramatically when states abolish capital punishment.

American states began limiting or abolishing the death penalty as early as 1846. During the early 20th century, many U.S. states abolished or restricted capital punishment, but there was a resurgence in the practice from the 1920s to the 1940s. Throughout the 1950s and 1960s, however, public support for the death penalty waned.

Capital punishment was legislatively abolished in England in 1965. It was briefly struck down in the United States, as well.

In 1972, in the watershed case of *Furman v. Georgia*, the U.S. Supreme Court held that the death penalty (as then applied) constituted cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution. States halted their executions. Consequently, numbers on death row shrank from 334 (in 1972) to 134 (in 1973) as the sentences of condemned men nationwide were commuted. But just four years later, the American death penalty was resurrected. In 1976, in *Gregg v. Georgia*, the U.S. Supreme Court declared that, under new state legislation, executions could resume. At this point, death row began to grow once again. By 1977, when Gary Gilmore ushered in the modern era of American capital punishment with his execution before a Utah firing squad, the numbers on death row had already ballooned to 423.

Since Gilmore's death, the size of death row has steadily escalated. At the end of 2002, there were 3,692 condemned individuals waiting to die in America. Yet the size and composition of death row may continue to change. Throughout the late 1990s, DNA evidence suggested that innocent people could be found on death row, triggering intense public debate about the propriety of capital punishment, leading to legislative reform and executive action.

THE DEMOGRAPHICS OF DEATH ROW

Death row prisoners tend to fall into certain demographic categories. They tend to be adult males, often come from impoverished backgrounds, and disproportionately belong to racial minorities. Many endure long periods of incarceration before their execution. In the following section, each of these issues shall be dealt with in turn.

Age

Most death row prisoners are adults. Since 1990, only seven countries are known to have executed juveniles (individuals under the age of 18 at the time of their crimes): the Democratic Republic of Congo, Iran, Pakistan, Yemen, Nigeria, Saudi Arabia, and the United States of America. Only the United States and Iran formally authorize the practice with U.S. barring execution of those who are less than 16 years old. The execution of juveniles in the U.S. is relatively uncommon. Although juveniles account for 15% of murder arrests, they account for only about 2% (81) of prisoners on death row and about 2.6% (21) of individuals executed since the death penalty was reinstated.

Class

Death row prisoners disproportionately come from impoverished backgrounds. Poverty may correlate positively with aggravating factors such as prior criminal history or predictions of future dangerousness, leading juries to impose death sentences. Affluence, on the other hand, may correlate positively with mitigating factors—close relationships with family and friends, well-articulated remorse, or status in the community—decreasing the likelihood of receiving a death sentence. Perhaps more important, wealthy capital defendants can afford sophisticated “dream team” legal representation, while disadvantaged defendants are often represented by overworked or inexperienced public defenders who may not even want the case. Even Supreme Court justices acknowledge that poverty influences the dispensation of capital punishment. In the *Furman* decision, Justice Douglas wrote, “One searches in vain for the execution of any member of affluent strata of this society.”

Race

Race plays a significant role in the shaping of death row. Both the race of the defendant and the race of the victim may influence the imposition of a death sentence. Although whites constitute about 75% of the American population, they account for only 57% of those executed since the death penalty was reinstated and about 45% of those on death row. On the other hand, while blacks constitute only 12% of the American population, they constitute 43% of death row and account for 35% of those executed. Seventy-six percent (19) of the 25

prisoners on federal death row and 6 of the 7 prisoners on the U.S. military's death row are minorities. But research indicates that the race of the victim may play a more significant role on who is condemned to death than the race of the defendant. The murder of a white victim is more likely to result in a capital conviction than the murder of a nonwhite. More than 80% of capital cases in America involve a white victim, although only 50% of murder victims are white nationwide.

In *McCleskey v. Kemp* (1987), the U.S. Supreme Court considered research that demonstrated systemic racial discrimination in the imposition of capital punishment. After controlling for many nonracial variables, the research indicated that Georgia defendants charged with killing white victims were 4.3 times more likely to get the death penalty as defendants charged with killing blacks. While the Court did not challenge the legitimacy of McCleskey's data, it rejected his claim that these findings amounted to an unconstitutional risk of prejudice in death penalty decision making. Warren McCleskey was executed in 1991.

Gender

Death row is composed primarily of males. Some countries, such as Russia, explicitly made women ineligible for capital punishment. Other countries did so in practice. Although women comprise about 51% of the U.S. population and account for about 20% of criminal homicides, they account for only about 10% of murder arrests, 2% of death sentences at trial, about 1.4% of prisoners on death row, and about 1.2% (10) of those who have been executed since capital punishment was reinstated. Legal scholars explain this screening-out effect by citing gender discrimination in the attitudes of judges and jurors and by claiming gender discrimination is inherent in existing death penalty statutes.

Time Spent on Death Row

Historically, little time elapsed between sentencing and execution. Under England's Murder Act of 1752, executions were carried out just two days after sentencing; after 1834, only three Sundays elapsed before the sentence was carried out. These days, however, because of the "super due process" safeguards required under *Gregg*, contemporary death row prisoners in America spend years (not days or weeks) awaiting execution. The average duration from sentence to execution is now more than 12 years, and some prisoners have spent more than 20 years on death row.

CONDITIONS OF CONFINEMENT

Typically operated as a prison within a prison, characterized by lockstep security and minimal freedoms, death row represents the hardest time a prisoner can do. "**Death** row is the most total of total institutions, the penitentiary most demanding of penitence, the prison most debilitating and disabling in its confinement. On death row the allegorical pound of flesh is just the beginning. Here the whole person is consumed. The spirit is captured and gradually worn down, then the body is disposed of" (Johnson, 1998, p. 71).

Time on death row often drags. Because a sentence of death is supposed to be both definitive and final, death row prisoners do not participate in rehabilitative activities such as education, therapy, or job skills training. Nobody wants to invest resources in developing an individual who will be executed in a month or a year or a decade. Plagued by tedium, some death row prisoners throw themselves into their appeals, honing their skills as jailhouse lawyers. Others write voluminous correspondence, immerse themselves in religious study or literature, or turn to handicrafts and art projects as a pastime. Many seek to lose themselves in television.

The physical environment of death row closely resembles that of super-maximum secure facilities. Because it is thought that death row prisoners "have nothing to lose," security is tight. Prisoners are usually confined to small single-occupancy cells for up to 23 hours a day and are monitored carefully. Movement is restricted: Meals are typically served to death row prisoners in their cells, and religious and legal services are often delivered to the cell (either by closed-circuit programming or book request). Prisoners are afforded opportunity to exercise for several hours per week, allowed to visit with family members and lawyers, and are usually permitted to have

some personal possessions in their cells.

The elite correctional officers assigned to death row attempt to emphasize professionalism and compassion, and strive to maintain the dignity of the prisoner throughout the process. Actual execution procedures are rehearsed to precision, minimizing the likelihood of mishap or error. These staff also supervise inmates in their final days on deathwatch.

These maximum-security facilities are expensive. When coupled with the appellate processes required under *Gregg's* super due process requirements, it is more expensive to execute a prisoner than to incarcerate him for a life sentence. A 50-year life sentence costs the government approximately \$1 million. On the other hand, the average execution costs somewhere between \$2 and \$3 million, and high-profile executions may cost more than \$20 million.

There are also tremendous (psychological) costs for the prisoners on death row. The austere deprivation of super-maximum secure conditions was characterized by the *Madrid v. Gomez* court as pressing "the outer bounds of what humans can psychologically tolerate," and the oscillating hope and despair of death row can be torturous.

DEATH ROW SYNDROME AND VOLUNTEERS

In his essay "Reflections on the Guillotine," Albert Camus (1961) wrote:

The devastating, degrading fear that is imposed on the condemned for months or years is a punishment more terrible than death.... Torture through hope alternates with pangs of animal despair. The lawyer and the chaplain, out of mere humanity, and the jailers, so that the condemned man will keep quiet, are unanimous in assuring him that he will be reprieved. He believes this with all his being and then he ceases to believe it. He hopes by day and despairs by night. As the weeks pass, hope and despair increase and become equally unbearable. (p. 200)

The anxiety of this sustained uncertainty may have legal as well as philosophical consequences. In *Soering v. United Kingdom*, the European Court of Human Rights held that extraditing a German national to the United States to face the death penalty would amount to a violation of the European Convention on Human Rights' prohibition against "torture or to inhuman or dehumanizing treatment or punishment." While the execution that Soering faced did not, itself, constitute a violation, a combination of the dehumanizing conditions of death row, the protracted delays between sentence and execution, and the stress of living under the ever-looming shadow of execution amounted to a violation of the European Convention. While the concept of a "death row syndrome" has met with little acceptance within the United States, it has achieved legitimacy in the international legal community.

Confronted with the prospect of enduring years, perhaps decades, of death row syndrome, some condemned prisoners exercise the little autonomy they retain, terminating their legal appeals, and "volunteer" for execution. Twelve percent of those executed since the death penalty was reinstated were volunteers, including Gary Gilmore (the first post-*Furman* execution by an American state) and Timothy McVeigh (the first federal execution after *Furman*).

COMMUTATION AND ABOLITION

Troubled by inequities and errors in capital sentencing, numerous organizations have called for a moratorium on the death penalty. Human rights groups such as Human Rights Watch and the American Civil Liberties Union along with religious organizations such as the American Jewish Congress and Catholic Charities USA lobby states to change their laws. They are further supported by a range of professional societies such as the American Bar Association and the American Society of Criminology and by dozens of city and county governments.

After 13 death row prisoners were exonerated in the post-*Furman* era, former Governor George Ryan of Illinois

declared a moratorium on all executions in January 2000. An appointed commission evaluated Illinois's death penalty, recommending that it either be overhauled or abolished. Then, in January 2003, Ryan commuted the sentences of all 156 death row prisoners in Illinois to life in prison. Although extremely controversial in the United States, Ryan's action was mirrored elsewhere. In February 2003, President Kibaki of Kenya lifted the death sentence for 28 prisoners and commuted the sentences of 195 others to life imprisonment.

Other sociolegal changes are transforming the face of death row. Although about 70% of Americans favor the death penalty for a person convicted of murder, support decreases when life imprisonment without parole (LWOP) is introduced as an alternative. Given this choice, public support for the death penalty drops to the 45–50% range, and about 40–45% favor LWOP penalties. This divided public opinion is altering contemporary judicial practice. While the use of the electric chair was upheld as constitutional by the Florida Supreme Court in 1997, it was condemned as an unconstitutionally cruel and unusual form of punishment by the Georgia Supreme Court in 2001. In 2002, in *Atkins v. Virginia*, the U.S. Supreme Court held that the execution of mentally retarded prisoners violated the Eighth Amendment's prohibition against cruel and unusual punishment. Since an estimated 12–20% of condemned prisoners are mentally retarded, the holding could exert a profound impact on the composition of death row.

DEAD MAN WALKING: FROM DEATH ROW TO EXECUTION

When a prisoner's scheduled execution date nears, he or she is usually transferred from death row to a holding cell near the execution chamber. The prisoner remains in this cell under "deathwatch" during the 24 to 72 hours before execution. He or she is kept under continuous supervision, denied physical contact with others, granted a final meal, and prepared for execution.

In some states, the condemned may select between the five methods of execution: lethal injection, electrocution, gassing, hanging, and firing squad. In practice, the lethal injection has become the de facto standard in U.S. executions, used in 76% of the executions conducted since *Furman* and all but one of the executions since January 2001. Lethal injection is available in 37 states and employed by the U.S. military and federal government. Electrocution, in contrast, is available in 10 states and is the only means of execution available in Nebraska. Lethal gas is an option in 5 states, while hanging and the firing squad are available only in 3 states. After the prisoner is pronounced dead, a postmortem examination is conducted and then the body is released, usually according to the prisoner's wishes.

CONCLUSION

Death row has evolved from primitive origins to a highly specialized component of the modern U.S. penal system. Despite an international trend toward abolition, after the *Furman* and *Gregg* decisions abolished and rehabilitated capital punishment, America's death row has grown steadily in size. Prisoners on death row tend to be poor adult males, and minorities are overrepresented. **Death** row conditions are severe. Delays between sentencing and execution yawn into decades, and alternating states of hope and despair lead some prisoners to suffer from "death row syndrome." Recent social events have led some organizations to call for a moratorium on capital punishment and have triggered changes within the executive and judicial branches of government.

—J. C. Oleson

Further Reading

Amnesty International. (2003). *Web site against the death penalty*. Retrieved March 25, 2003, from <http://www.web.amnesty.org/rmp/dplibrary.nsf/index?openview>

Bohm, R. M. (1999). *Deathquest: An introduction to the theory and practice of capital punishment in the United*

States. Cincinnati, OH: Anderson.

Camus, A. (1961). *Reflections on the guillotine*. In *Resistance, rebellion, and death* (pp. 173–234) (J. O'Brien, Trans.). New York: Knopf.

Death Penalty Information Center. (2003). Retrieved from <http://www.deathpenaltyinfo.org/>

Gillespie, L. K. (2003). *Inside the death chamber: Exploring executions*. New York: Allyn & Bacon.

Hood, R. (1989). *The death penalty: A world-wide perspective*. Oxford, UK: Clarendon.

Johnson, R. (1998). **Death work: A study of the modern execution process** (2nd ed.). Belmont, CA: Wadsworth.

NAACP Legal Defense and Educational Fund. (2003, Winter). **Death row U.S.A.** Retrieved from <http://www.deathpenaltyinfo.org/DEATHROWUSArecent.pdf>

Von Drehle, D. (1995). *Among the lowest of the dead: The culture of death row*. New York: Times Books.

Legal Cases

Furman v. Georgia , 408 U.S. 238 (1972).

Gregg v. Georgia , 428 U.S. 153 (1976).

Madrid v. Gomez , 889 F. Supp. 1146 (N.D. Cal. 1995).

McCleskey v. Kemp , 481 U.S. 279 (1987).

Soering v. United Kingdom , ECHR (1989). Series A, No. 161.

Entry Citation:

Oleson, J. C. "Death Row." *Encyclopedia of Prisons & Correctional Facilities*. Ed. . Thousand Oaks, CA: SAGE, 2004. 215-21. *SAGE Reference Online*. Web. 1 Aug. 2012.



© SAGE Publications, Inc.

Brought to you by: SAGE