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CAPITAL PUNISHMENT: MORALITY, POLITICS, AND POLICY

Throughout the world, from earliest recorded times, the death penalty has played a prominent role in social control. Abolition of the death penalty became a matter for political discussion in Europe and America beginning in 1764, when the young Italian jurist Cesare Beccaria (1738-1794) published his little book, *On Crimes and Punishments*. Beccaria's criticism of torture and the death penalty typified the Enlightenment zeal for rational reform of prevailing social practices. Beccaria's alternative to the death penalty was life in prison at hard labor. In short order Catherine of Russia decreed an end to the death penalty, and so did Emperor Leopold in the province of Tuscany in the Austro-Hungarian Empire. Maximilien Robespierre, a powerful leader in the French Revolution, attacked the death penalty as murder. In England, by the end of the eighteenth century, Parliament was being petitioned to reduce the number of capital felonies, which numbered in the hundreds; complete abolition was never a serious prospect.

The death penalty in America, 1793-1982

During the seventeenth century, the criminal justice systems in the American colonies took their main features from the mother country. A mandatory hanging carried out in public after conviction in a jury trial was the widely used

punishment for murder and other traditional felonies (arson, rape, robbery, burglary). In the new nation, the first significant step toward reform of the death penalty was taken in Pennsylvania in 1793, when the legislature created "degrees" of murder and confined the death penalty to offenders convicted of murder in the "first-degree"—willful, deliberate, and premeditated murder and felony murder (any homicide committed in the course of arson, rape, robbery, and burglary).

During the nineteenth century, state legislatures from Maine to Pennsylvania regularly received petitions from religious groups, notably the Society of Friends (Quakers), in favor of complete abolition. During this period two important further reforms were initiated. One ended public executions, thus confining the hangman and his necessary but sordid duties to the relative privacy of the prison yard. The other reform abandoned the mandatory death sentence upon a conviction of a capital felony in favor of giving the trial jury the power to choose between a death sentence and "mercy," in the form of a long prison term. Between 1847 (when Michigan abolished the death penalty for murder, though not for treason) and 1887 (when Maine abolished the death penalty), several states experimented with complete abolition.

With the advent of the Progressive Era, nine states across the nation, from Tennessee to Washington, repealed all their capital statutes; all but two (Minnesota and North Dakota)