

The Technology of Mercy: From the Gallows to the Chair

Where human society exists, there exists crime—a consistent concern of civilization has been the question of how to deal with offenders, especially those who commit the most serious types of crime. Capital punishment, the most severe form of discipline, cannot be reversed once carried out; as a result, it inspires a number of moral questions and an enduring ethical debate. Entering the twentieth century, an America growing from civil war into a world power employed hanging as punishment. The onset of the Progressive Era brought the policy of execution into question, and for a period led to the abolition of capital punishment in ten states. Inconsistency and gore in the gallows, pressure from Western Europe, and belief in the human rights of convicts prompted the Progressive abolition movement, while the introduction of the electric chair and the gas chamber, exposure to death in the First World War, and upswing in violent crime ended the country's second major attempt at abolition.

The earliest American policy concerning capital punishment came, like most of early America's inhabitants and customs, from England. Crimes ranging from murder—the only crime that qualifies for execution today—to theft and counterfeiting warranted a death penalty in the early American colonies.¹ One of the earliest set of laws enacted concerning capital punishment was Virginia governor Sir Thomas Dale's "Divine, Moral and Martial Laws," which extended capital punishment to a variety of acts including stealing grapes, missing church for three Sundays, attempting to export personal goods,

¹ Stuart Banner, *The Death Penalty: An American History*. (Cambridge: Harvard University Press, 2002), 111.

and engaging in trade with Indians. The nature of the acts to which Dale attached such severe punishment indicate that he intended to discourage any behavior that was religiously heretic, morally unacceptable, or served to advance personal interest more than he wished to punish only the most violent criminals. Executions by hanging and stoning surged during the Salem witchcraft frenzy in 1692 and 1693 within the Puritan community, highlighting the close bond between religious heresy and the penalty of death in early America. It was not until the second half of the eighteenth century that the number of capital offenses in the States was reduced in response to the rise of America's first movement for abolition of capital punishment.²

In the 1760s and 1770s, Americans began to question the use of capital punishment for a number of small offenses; the law stood, but juries routinely underestimated values of burgled goods to avoid the offender's execution. In 1767, Italian philosopher Cesare Beccaria's *Essay on Crimes and Punishments* was printed in English and widely read by community leaders and politicians of Europe and America, sparking a movement toward abolition. Thomas Jefferson and George Washington read the essay and, in varying degrees, pushed for the reformation of American capital punishment policy. Beginning in Pennsylvania in 1786, the states reduced the extent of the death penalty to varying degrees of murder and treason and the long-standing English influence in American penal systems dissolved.³

The gallows, until executions moved inside prison facility walls in the later half of the nineteenth century, were a public venue. Hangings traditionally served as a crime deterrent as much as a punishment, and fascination with death drew crowds of tens of

² Death Penalty Information Center, "Part I: History of the Death Penalty." <http://www.deathpenaltyinfo.org/part-i-history-death-penalty> (accessed April 12, 2009).

³ Death Penalty Information Center, (n.d.).

thousands to the worst criminals' executions. Newspapers advertised the opportunity for readers to "Build Scaffold for Execution of Negro," allowing citizens to be a part of the entire justice process.⁴ Hanging was, however, an inconsistent procedure—most law officials only ever conducted a single execution, and the number of variables involved led to deaths that were often botched and painful, rather than quick and dignified. In 1895 the hanging of Michael McDonough in Columbus, Ohio was described by papers as a "sickening scene" in which "the rope cut deep into the neck when the body dropped, severing the trachea and jugular vein. The blood spurted out on one of the physicians under the scaffold and then flowed in a torrent to the stone floor in the room." It took a minute and a half for the victim's heart to cease—hardly a quick and painless end.⁵ Examples of fumbled hangings were common: when murderer Marshal Morton was hanged in 1874, his "head was entirely severed from his body, which fell lifeless to the ground." The use of a thin rope cut through Morton's neck, rather than quickly severing his spine.⁶ The hanging of Andrew Tracy, an intelligent young lawyer, "was horribly bungled" when the knots did not hold his weight and he dropped to the ground, half-conscious before being successfully hanged a second time.⁷

In response to the obvious pain associated with traditional hanging procedures, different approaches to execution were developed and tested. Utah gave its convicts the choice between hanging and execution by firing squad. "Why do condemned murderers

⁴ "Build Scaffold for Execution of Negro: Governor Lowden Will Veto Anti-Capital Punishment Bill: Will Lewis Slated to Die next Friday," *Belleville News-Democrat*, vol. 62 issue 136 (1917). <http://docs.newsbank.com> (accessed April 5, 2009).

⁵ Sickening Scene: Spectators of the McDonough Hanging Witness Awful Sight." *The Duluth News Tribune* (1895): 1. <http://docs.newsbank.com> (accessed April 12, 2009).

⁶ "A Hanging Horror," *The Daily Constitution* vol. II issue 469 (1874): 1. <http://docs.newsbank.com> (accessed April 8, 2009).

⁷ "A Hanging Horror," *Daily State Gazette* vol. XXXIII issue 290 (1879): 2. <http://docs.newsbank.com> (accessed April 11, 2009).

choose shooting in preference to hanging?” asked Biloxi, Mississippi’s *Daily Herald* in 1911. Utah state prison warden Arthur Pratt answered, “so far we have not had a man who has chosen hanging... shooting is the more humane. It is painless and instantaneous.”⁸ In its article “Is Beheading More Humane than Hanging?” the *Philadelphia Inquirer* shared the account of Dr. Henry Wesley, an American physician who witnessed a beheading in Prussia. Expecting a gruesome spectacle, Wesley marveled at the procedure in practice: “The head was off, the man dead, almost before we knew it. There had been no struggle, no distressing battle against a fate that could not be beaten off.” “Judging from my own observations,” Wesley concluded, “[beheading] is better than hanging, more certain even than electricity. It has also that quality of horror which serves better than any other method ever devised... to hold the criminally inclined within bounds.”⁹ While beheading was still considered too barbaric and reminiscent of medieval Europe to be employed in the United States, Wesley’s testimony demonstrates that many Americans were weary of failed hangings, and ready for a new method in the late nineteenth century. Officials developed new forms of hanging in hopes of making the ceremony more solemn and efficient, but those that were not even more gruesome produced chilling images. The long-drop style of hanging aimed to insure that the neck was broken by the harder fall; the extra force succeeded in severing heads either completely or only partially. The “upright jerker,” which yanked subjects up by weights

⁸ “Prefer Death by Shooting, Utah Murderers Never Choose the Alternative of Hanging.” *The Daily Herald* vol. II issue 191 (1911): 8. <http://docs.newsbank.com> (accessed April 4, 2009).

⁹ “Is Beheading More Human than Hanging? American Physician Witnesses the Execution of a Murderer in Prussia.” *The Philadelphia Inquirer* vol. 146 issue 12 (1902): 6. <http://docs.newsbank.com> (accessed April 13, 2009).

rather than down by gravity, caused bodies to catapult violently into the air and crash back down to the ground like puppets.¹⁰

The American Progressive Era of reform began in the early 1890s, expanding the role of the government in agriculture, industry, and the general welfare of its citizens. A new belief in advancement of human rights allowed such changes as the ratification of the 19th Amendment, granting women's suffrage, and brought the policy of capital punishment to the forefront of public debate. As early as 1828, a French newspaper proclaimed that "the spirit of philosophy and that of humanity, which is inseparable from it, continue to make a rapid progress in all countries, and will end in universal reform." The Grand Council of the Valais in Switzerland had just abolished capital punishment, and German and Swiss cities were following suit.¹¹ In 1912 reader J. F. Irons wrote to the editor of the *Morning Oregonian*, claiming that "Capital Punishment [is] Not Progressive." "Care for the criminally sick as you would or should for those with other ailments... otherwise we logically are not their superiors, and equally deserve what we would give them."¹² Irons' words capture the progressive belief in the capabilities of technology, and the application of medical knowledge for the ailing psyche as well as the sickened body. The focus shifted from incarcerating prisoners as punishment to conditioning them for reintegration into society, through the use of community-work programs.

The progressive concept of reforming the criminal characterized the sentiment of Dr. L. Vernon Briggs, as he expressed to the *Wilkes-Barre Times* in 1922. A famous

¹⁰ Death Penalty Information Center, (n.d.).

¹¹ "Abolition of Capital Punishment." *American Mercury* vol. XLIV issue 2290 (1828): 2. <http://docs.newsbank.com> (accessed April 7, 2009).

¹² "Capital Punishment Not Progressive." *Morning Oregonian* vol. LII issue 16127 (1912): 8. <http://docs.newsbank.com> (accessed April 4, 2009).

criminologist of the time, Briggs called for Americans to “fight the crime wave exactly as we fight disease epidemics.” Genuinely believing that crime was a human ailment, he recommended that Americans “sentence criminals guilty of capital crime to life imprisonment—and let science study their cases.” Further, cities should establish “habit clinics” for “subnormal and abnormal children between two and seven to prevent possible future criminality.”¹³ While not all agreed on or even deeply considered the cause of criminal behavior, the process of hanging began to take its toll on the common man’s soul. The hanging of five Negroes in Chicago in 1912, as reported by the *Grand Forks Daily Herald*, “caused many to discuss the abolition of capital punishment in Illinois.” Said witness Sheriff Zimmer, “I am not so sure I believe in the wisdom of capital punishment... I believe a better law for the punishment of murder could be made.” Zimmer felt that life imprisonment with hard labor could be used to both deter crime effectively, as well as to benefit the widow and family of murder victims.¹⁴

In early 1911, two boys in Duluth, Minnesota were charged as adults in the murder of a police officer and were eligible to face hanging as a punishment. This reality upset the public, and a distinction between boys and men, and who it was appropriate to execute, had to be drawn. “I don’t see why we shouldn’t prefer charges against the person or persons who sold the revolvers to [the boys],” the Chief of Police said, “The boys are nothing but kids.”¹⁵ The prospect of ending the life of a human who did not fit the

¹³ “Would Establish Habit Clinics to Reduce Crimes: Famous Criminologist Favors Abolishment of Capital Punishment.” *Wilkes-Barre Times Leader* (1922): 12. <http://docs.newsbank.com> (accessed April 3, 2009).

¹⁴ “Five Hanged in One Day: Abolition of Capital Punishment Now Being Talked About in Illinois.” *The Grand Forks Daily Herald*, vol. XXXI issue 94 (1912): 1. <http://docs.newsbank.com> (accessed April 10, 2009).

¹⁵ “Hang Boys for Murder Crime? State Law Provides for Capital Punishment regardless of

ruthless killer stereotype made the public uneasy. A newspaper article relating the hanging of Richard White in Tallahassee—subtitled “Why Witnesses Thought the Victim Must be a Good Man”—provides an example of this assertion. White, from atop the gallows, “spoke for about forty minutes... with great fluency, the words rolling out like a cataract, in the sing-song style of the unlettered colored preacher.” White “spoke of his wicked life and warned his hearers against immoral practices” and asked the crowd to wish him “Good-by” before the trap was finally sprung, drawing outcry from the mostly Negro crowd. “He was sho’ a good man to die like that!” a witness reportedly remarked.¹⁶

The combination of gory public executions, capital reform in Western Europe, and focus on criminals as sympathetic beings suffering from ailment rallied a movement for abolition. Between 1907 and 1917, Arizona, Kansas, Minnesota, Missouri, North and South Dakota, Oregon, and Tennessee abolished capital punishment, ushering in the second age of abolition in the United States. Not all supported the measure, however; the argument was made that, no matter how or why killers were sick, they had still committed a capital offense and did not deserve to live. “Should we preserve the life of a man who in cold blood, after months of calm and cunning deliberation, destroys human life?” asked reader J. S. Rhoads in a letter to the editor of the *Morning Oregonian* in 1912. “Why should the cold-blooded criminal live? Will he reform and become an angel of good?”¹⁷ Another column written to the *Sunday Oregonian* a year earlier based its

the Culprit’s Age.” *The Duluth News Tribune* vol. 42 issue 250 (1911): 6. <http://docs.newsbank.com> (accessed April 5, 2009).

¹⁶ “A Tallahassee Hanging: Why Witnesses Thought the Victim Must be a Good Man.” *The Macon Telegraph* (1891): 4. <http://docs.newsbank.com> (accessed April 15, 2009).

¹⁷ “Capital Punishment Justified: Tender Sympathy for Desperate Criminals Held Dangerous.” *Morning Oregonian* vol. LII issue 16226 (1912): 10. <http://docs.newsbank.com> (accessed April 7, 2009).

support of execution on the will of God, and specifically underlined the inability of man to form policy himself. “Let me insist here on a very important fact. Man is not a competent legislator in morals. Moreover, he is not needed in that department of government in any capacity save as the agent of God.” For capital punishment, he claimed, “God... gave Noah, the second father of the race, a special penal law for murder: ‘Who so sheddeth man’s blood by man shall his blood be shed.’ (Genesis 9:6)”¹⁸ “One of the saddest signs of the times,” said Reverend D. J. Beale in 1873, “is the weakness of a blind compassion for the deliberate assassin.” He cited “universalism, infidelity, and pseudo-philanthropy” as factors to blame for failure to appropriately punish murderers.¹⁹

Opposition also came from non-religious critics: “society, it seems, is justified in removing by death an unpopular governor, but it is not entitled to mete out the same justice to one of its declared enemies,” claimed an article in Macon’s *Daily Telegraph* in 1909.²⁰ “The higher law says that no one shall pollute the land in which we live, for the land can not be cleansed of the blood that is shed therein but by the blood of him that shed it,” wrote a reader to *The State* in 1907.²¹ The belief that the worst crime should yield the ultimate punishment resonated with Americans who considered the administration of justice to be more important than the benefit of a lifetime of prison labor. In abolition states, the absence of execution as a crime deterrent produced

¹⁸ “Capital Punishment Upheld as God’s Law.” *The Sunday Oregonian* vol. XXX issue 3 (1911): 4. <http://docs.newsbank.com> (accessed April 4, 2009).

¹⁹ “Capital Punishment: What the Pulpit Says – a Sermon Against Its Abolition – Bible Views and the Protection of Society.” *The Sun* vol. LXXII issue 42 (1873): 1. <http://docs.newsbank.com> (accessed April 11, 2009).

²⁰ “Is Capital Punishment a Failure after All.” *The Macon Daily Telegraph* (1909): 7. <http://docs.newsbank.com> (accessed April 8, 2009).

²¹ “Favors Capital Punishment: Correspondent Shows Why it Should Not be Abolished.” *The State* (1907): 2. <http://docs.newsbank.com> (accessed April 7, 2009).

noticeable ramifications. In Colorado, a wave of “three murders, four attempted murders and a score of brutal assaults on women” within a month led “veteran detectives and police officials” to “declare that crime has rapidly increased since the abolishment of capital punishment two years ago.”²² In Pennsylvania, the Pottsville sheriff specifically invited “Slavs, Hungarians, Poles, Italians, Russians, Lithuanians, and other foreigners” to witness the hanging of a young Polish murderer in hopes that the “example [would] impress foreigners” with its “enormity.”²³

The decade between 1907 and 1917 churned with debate over the right of the government to decide a man’s fate. In the late part of the nineteenth century, a new factor in the problem of execution emerged—the electric chair. The device, which cycled alternating current of varying intensity through the victim’s body, provided first a pulse that killed the prisoner’s brain, and then pulsed repeatedly to disable vital organs. A description of the device in 1890 called it “not of horrid appearance,” but certainly captured its eerie construction qualities. “There is not a curved line on its sturdy frame,” claims the article, “and the arms of the chair! They are wide, very wide. Not for comfort of the occupant, no.”²⁴ The device can be seen in use on the cover of a Hispanic magazine at the end of this paper.²⁵ The euphemism of the article’s description and the plain construction of the chair starkly contrasted witness accounts of the earliest executions. The remains of murderer Harris A. Smiler demonstrated in disturbing detail

²²“Favor Capital Punishment: Alarming Increase of Crime in Colorado May Change the Laws.” *New Haven Evening Register* vol. LVII issue 211 (1900): 3. <http://docs.newsbank.com> (accessed April 10, 2009).

²³ “Aliens Invited to Witness Hanging: Pennsylvania Sheriff Decides Example Will Impress Foreigners with Enormity.” *The Bellingham Herald* vol. 17 issue 52 (1908): 1. <http://docs.newsbank.com> (accessed April 6, 2009).

²⁴ “The Fatal Electric Chair.” *The Daily Inter Ocean* vol. XIX issue 135 (1890): 2. <http://docs.newsbank.com> (accessed April 5, 2009).

²⁵ Beltrame, Achille. “Execution by electric chair of Czolgosz.” Print, 20th century.

the power of this new technology: “Smiler’s face had been burned and seared by the electric fluid until it presented the appearance of having been broiled. . . . The face was furrowed and scarred as though with a hot iron.”²⁶ The effects of electricity on the human body, even the effects and capabilities of electricity in general, were still vastly unknown, making the results of such executions more remarkable. An 1893 report from the Wilkes-Barre Times recounted the botched electrocution of murderer William Taylor. “The foot rest broke and the dynamo gave out” during the first application of current; Taylor was not dead after the first attempt, and some time after the shock of 1,700 volts “he was groaning aloud and moving his head from side to side.” The foot rest was repaired and another dynamo sourced to finally kill Taylor, who recovered between shocks to the point of having to be physically restrained.²⁷ Despite these two early unsuccessful trials, the electric chair procedure proved, with practice, much more reliable and standardized than hanging. Both due to policy change and to the nature of the electric chair itself, executions were conducted inside prison walls and witnessed only by a handful of people, marking a distinct shift in the use of the penalty. America reached a moral maturity that did not make a public spectacle of death, and the execution was no longer used as a broadcast warning. The use of internal injury to incite death was perceived as cleaner, less painful, and more dignified than death by the gallows.

The idea to use poisonous gas for execution arose just before the turn of the twentieth century; the *Philadelphia Inquirer* reported on the suggestion of its use by Willard D. Johnson, a professor at Maryland Agricultural College, in 1899. Johnson

²⁶ “Horrors of the Electric Chair: Terrible Work of the Deadly Current.” *The State* issue 142 (1891): 1. <http://docs.newsbank.com> (accessed April 6, 2009).

²⁷ “A Bungling Execution: Murderer Taylor Placed Twice in the Electric Chair.” *Wilkes Barre Times* issue 1085 (1893): 1. <http://docs.newsbank.com> (accessed April 8, 2009).

expressed the idea of employing hydrocyanic gas, but his approach was critiqued because “death from it is often violent,” and “it would be expensive to produce in large quantities and very dangerous to handle.” A number of experts weighed in unfavorably, advocating instead the use of chloroform or another agent that would render the executed first unconscious.²⁸ More than two decades passed before Nevada became the first state, and the first place in the modern world, to employ gas for capital punishment. The previous Nevada method of execution by firing squad was replaced with gas, and partially motivated by the use of poison gases in the First World War. The *Dallas Morning News* covered the plan of execution of Hughie Sing and Gee Jon: “the men will die during the last week of April. The gas will be injected into their death cells at some time during that week unknown to the occupants. They will be pronounced dead and the State satisfied that justice is complete.”²⁹ The gas chamber, like the electric chair, provided the privacy, consistency, and decency attributed to death by internal injury that hanging failed for centuries to provide.

The Progressive abolition movement succeeded on a small scale—a small number of states stepped away from capital punishment for a short period of time—but the history of the movement provides valuable insight on the nature of the penalty of death. The period between 1900 and 1920 signified a shift in punishment for murder: a clear distinction between the goal of killing the offender, and the goal of ending his or her life. As America and its people matured into a prosperous world power, the Progressive period offered an opportunity to place a new faith in science, medicine, and human rights.

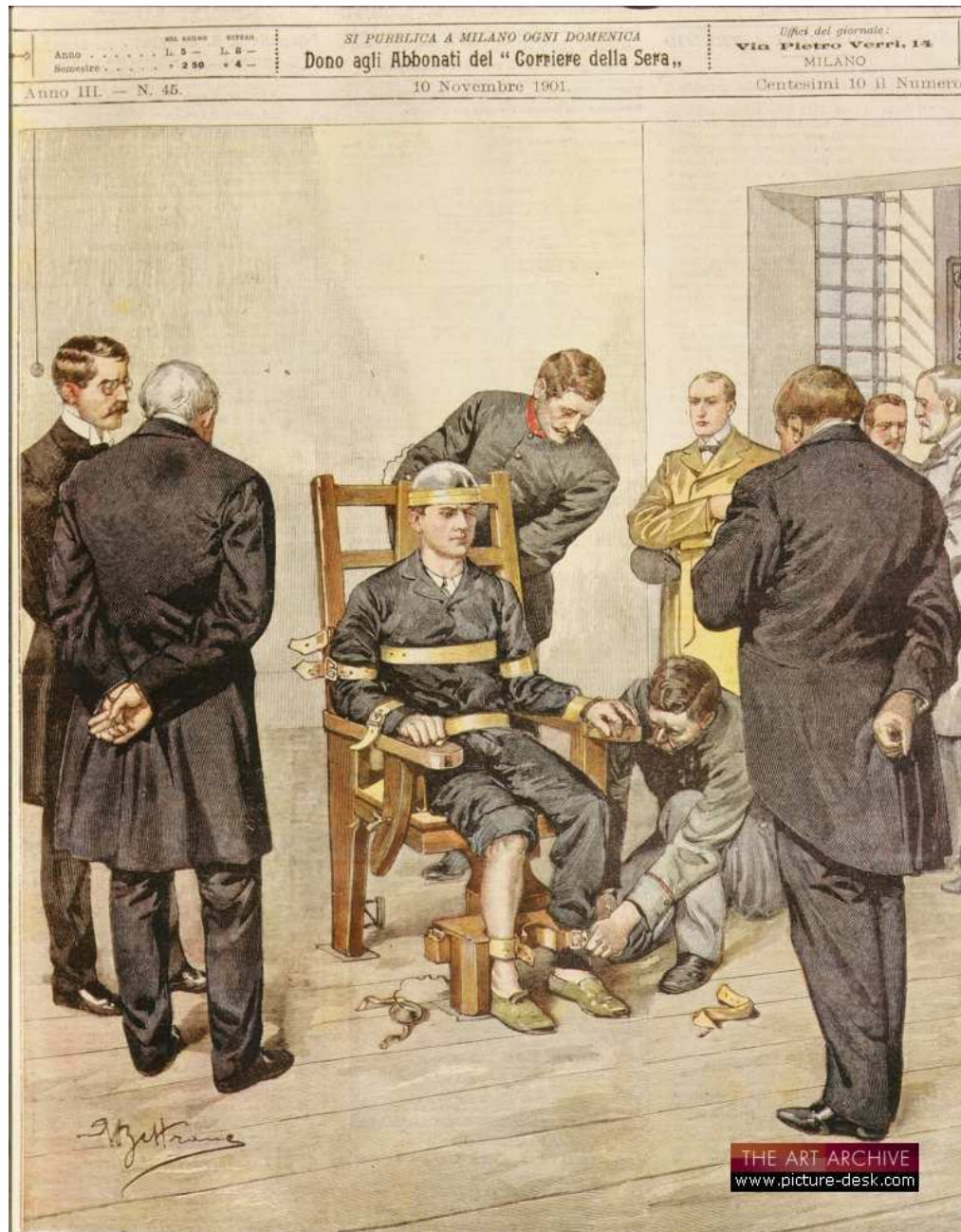
²⁸ “Gas for Criminals: Local Experts Oppose Its Use in Executions: Professor Johnson’s Suggestion Pronounced Dangerous.” *The Philadelphia Inquirer* vol. 141 issue 62 (1899): 2. <http://docs.newsbank.com> (accessed April 8, 2009).

²⁹ “First Legal Execution by Lethal Gas to be Held at Carson City.” *Dallas Morning News* (1922): 6. <http://docs.newsbank.com> (accessed April 12, 2009).

Technology finally enabled punishment to be painless, dignified, and ultimately fit the Constitution's mandate of being neither cruel nor unusual. Exposure to death in the First World War, an upswing in crime after abolition, and the demise of the gallows brought capital punishment back to most states that outlawed it under Progressive influence, and technology only improved the practice in the decades that followed. Today, government killing is systemized, streamlined, consistent, and effective; however, controversy always remains.

On March 19th of this year, New Mexico became the second state after New Jersey to formally ban capital punishment, while fourteen states do not employ the practice.³⁰ America stands alongside such countries as China, Iraq, and Iran as one of the few remaining nations to continue the procedure, while debate over national policy continues between abolitionist and supportive Americans. The Progressive Era's effect on capital punishment policies generates increased interest with the rise of a new Democratic party under President Barack Obama; perhaps the progressive young generation of Americans plans to tackle the issue in due time. Social changes mark the new millennium and the new generation, as the world shrinks with the growth of the internet and exposure to previously-foreign lifestyles becomes possible. Whatever the future holds, the policy on capital punishment exists as a finger on the moral pulse of the nation.

³⁰ Deborah Baker, "New Mexico governor abolishes capital punishment." *Associated Press*. (March 19th, 2009), http://www.google.com/hostednews/ap/article/ALeqM5jK5KO2fnkM_9t1eyS0TE3p9NMt3QD97174UO1 (accessed April 8, 2009).



Execution by electric chair of Czigosz.

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