

Against the Death Penalty

International Initiatives and Implications

Edited by Jon Yorke ■

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Edited by

JON YORKE

University of Surrey, UK

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List of Contributors

Sangmin Bae is Assistant Professor of Political Science at Northeastern Illinois University. Her current research focuses on the impact of international human rights norms on domestic policy change. Her previous research on the death penalty has appeared in *The International Journal of Human Rights*, *Human Rights Review*, *Asian Affairs*, *International Politics*, and in Austin Sarat and Christian Boulanger (ed) *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford University Press, 2005). In her book, *When the State No Longer Kills: International Human Rights Norms and Abolition of Capital Punishment* (SUNY Press, 2007), she addresses the role of political leadership and domestic political institutions in helping explain why some countries comply with international norms against the death penalty while others do not.

Lilian Chenwi, is a Senior Researcher in the Socio-Economic Rights Project of the Community Law Centre, at the University of the Western Cape, South Africa. She has worked for a range of academic research institutions in the human rights field. She has assisted in various capacities in the editing of scholarly journals in human rights law, and has a record of publications on socio-economic rights, as well as on the death penalty in Africa, including the leading publication, *Towards the Abolition of the Death Penalty in Africa: A Human Rights Perspective* (Pretoria: Pretoria University Law Press, 2007).

Richard C. Dieter is an attorney of New York City. He has been the Executive Director of the Death Penalty Information Center in Washington, DC since 1992. The Center is a non-profit organisation serving the public and the media with analysis and information on issues concerning capital punishment. The Center prepares in-depth reports, issues press releases, and conducts briefings for journalists and others working on this issue. Mr. Dieter has worked for many years on issues related to human rights and the death penalty, including work as the director of the Community for Creative Non-violence's pre-trial release program, the founder of the Alderson Hospitality House for visitors to the women's federal prison in Alderson, West Virginia, and the founder of the Quixote Center's death penalty project. He has given numerous speeches at universities and is frequently quoted in the major newspapers around the country. He has testified about the death penalty before numerous state legislatures and has prepared reports for the U. S. House Judiciary Subcommittee on Civil and Constitutional Rights. He has authored articles on the death penalty for both magazines and scholarly journals.

Lina Gyllensten is a Research Associate at the Centre for Capital Punishment Studies, School of Law, University of Westminster, London. She is responsible for the Humane Advocacy Programme, the Centre's Occasional Papers Series and monitoring and research on the death penalty in the former British Commonwealth Caribbean and Asia. Lina is also currently managing the CCPS Internship Programme.

Peter Hodgkinson, OBE, is Director of the Centre for Capital Punishment Studies, School of Law, University of Westminster, London. He is an advisor to the Council of Europe, and was a founding member of the British Foreign Secretary's Death Penalty Panel. He has authored a number of publications on the death penalty including Peter Hodgkinson and Andrew Rutherford (ed) *Capital Punishment: Global issues and prospects* (Waterside Press, 1996); Hodgkinson, et al, *Capital Punishment in the USA*, UK Parliamentary Human Rights Group, 1996 and Hodgkinson and William Schabas (ed) *Capital Punishment: strategies for abolition* (Cambridge: Cambridge University Press, 2004); 'Capital Punishment – The families of homicide victim and the condemned', *Death Penalty. Beyond Abolition*, and 'Alternatives to the death penalty – The United Kingdom experience' in *Death Penalty. Beyond Abolition* (Strasbourg: Council of Europe, 2004).

Roger Hood, CBE, QC (Hon), PhD, DCL. FBA is Professor Emeritus of Criminology at the University of Oxford and Emeritus Fellow of All Souls College. From 1973 to 2003 he was Director of the Oxford Centre for Criminological Research. He has held research and teaching posts at the LSE, University of Durham, the Cambridge Institute of Criminology and Oxford, and is a visiting professor at the University of Virginia Law School, Adjunct Professor at the City University Law School Hong Kong, and Guest Professor at the College of Criminal Law, Beijing Normal University. In 1986 he received the Sellin-Glueck Award of the American Society of Criminology for 'Distinguished International Contributions to Criminology'. He has been a consultant to the United Nations, responsible for preparing the Secretary-General's quinquennial reports on the status of the death penalty worldwide. Among his books are: *Key Issues In Criminology* (with R. F. Sparks 1970); *A History of English Criminal Law: The Emergence of Penal Policy* (with Sir Leon Radzinowicz 1986); *Race and Sentencing* (1992); *The Death Penalty: a Worldwide Perspective* (4th ed. With Carolyn Hoyle 2008); and *A Fair Hearing? Ethnic Minorities in the Criminal Courts* (with Stephen Shute and Florence Seemungal (2005).

Seema Kandelía is a Research Fellow at the Centre for Capital Punishment Studies, and teaches in the School of Law, University of Westminster. She has written widely on the death penalty including, *Incestuous Rape and the Death Penalty in the Philippines: psychological and legal implications*, Philippine Law Journal, Vol. 80, No. 4, June 2006.

Julian Killingley is Professor of American Public Law at Birmingham City University. His current research focuses on due process in American capital trial procedure and the US Supreme Court's Eighth Amendment jurisprudence. His previous research on the death penalty has included contributions to amicus curiae briefs before the US Supreme Court filed on behalf of the Bar of England and Wales Human Rights Committee and the Law Society of England and Wales. In 2005 he received a certificate of appreciation from the National Association of Criminal Defense Lawyers for outstanding service for his work in connection with the NACDL's amicus curiae brief in *Deck v. Missouri*. He has authored three reports for the Foreign & Commonwealth Office on executive clemency and executions of juvenile and mentally retarded defendants in the United States (Amicus, 2007).

Nicola Macbean is the founding director of The Rights Practice, an independent NGO which works with local partners to help realise international human rights standards. The organisation currently works primarily in China with projects including strengthening the defence in death penalty cases, promoting access to justice in rural areas and combating torture and ill-treatment through the development of monitoring mechanisms for places of detention. Nicola also consults occasionally for the UN Office of the High Commissioner for Human Rights on its technical cooperation programme with China and has conducted research for the Foreign Office on the death penalty in the Kyrgyz Republic. Nicola was previously Director of the Great Britain-China Centre. She has a degree in social anthropology from the University of Cambridge and a Masters in economics and educational planning from the Institute of Education. Nicola has also studied at the Chinese University of Hong Kong and Fudan University Shanghai and speaks Chinese. She hopes to complete an LLM in human rights at Birkbeck College in October 2008.

Jane Marriott is a Lecturer in Law at the University of Surrey School of Law, whose research embraces issues in American Constitutional Law and contemporary Jurisprudence. She has published on comparative constitutional law, prisoners' rights and constitutional issues arising out of attempts to regulate campaign finance.

William A. Schabas, OC, MRIA, is Professor of Human Rights Law, National University of Ireland, Galway, and Director, Irish Center for Human Rights. He is also the Global Legal Scholar, University of Warwick School of Law, and a Visiting Professor of Queen's University Belfast School of Law. He has published extensively on the death penalty in international law, including *The Abolition of the Death Penalty in International Law*, 3rd ed (Cambridge: Cambridge University Press, 2002).

Rachael Stokes is the Research and Publications Manager at Penal Reform International (PRI). She is also a National Council member of the World

Development Movement (WDM). Prior to joining PRI in 2006, she has worked for a number of UK and international organisations, including Victim Support and Christian Aid. She graduated from the University of Edinburgh with an MA in Social Anthropology and from the University of East Anglia with an MA in Social Development.

Quincy Whitaker, is a barrister who practises in criminal justice related human rights law from Doughty Street Chambers, London. Her practice encompasses all aspects of the criminal justice process from trial litigation to obtaining civil redress for unlawful State actions, domestic and international, including representing defendants at the Special Court for Sierra Leone and the ICTY. She has provided human rights training in the UK for senior police officers, the Foreign office and lawyers in private practice and on behalf of the Council of Europe and the Bar Human Rights Committee abroad. She acted as a consultant in the field of criminal justice in transitional societies for the Department for International Development in Kosovo capacity building with local defence lawyers on case work and Advocacy and HR Law training. She has extensive experience of constitutional death penalty litigation in the Commonwealth Caribbean at the Privy Council and domestically in the Caribbean. She is currently teaching LLM students on the Death Penalty, Prohibition on Torture, Fair Trial rights and Access to Justice on the Human Rights and the Developing World course at the LSE, and is joint author of *Criminal Justice, Police Powers and Human Rights* (Blackstones, 2001).

Jon Yorke, is Lecturer in Law at the University of Surrey School of Law, and a member of the Surrey European Law Unit (SELU). He has worked on death penalty projects in the United States and Africa, and currently researches on the Council of Europe and European Union strategies against the death penalty. He was a consultant for the British Institute of International and Comparative Law, Commonwealth Africa death penalty project, between 2003–5, and is a former committee member and journal editor of the *Amicus Journal* for the UK death penalty charity *Amicus*. He has published widely on the death penalty including in the *European Law Review* and the *International and Comparative Law Quarterly*.

Preface

In his 1848 Preface to *A Treatise on Death Punishments*, François Guizot wrote, 'I think the present time is favourable for ... attacking the use of capital punishment' (Guizot 1848, 249). A survey of the history of anti-death penalty discourse reveals a consistent lineage of optimistic voices arguing against the imposition of the punishment: and as such, in each generation, the 'present time' was thought favourable for attack. From the great oratory of Diodotus in 427 BCE, who against Cleon's call for the execution of the Mytilenians for revolting against Athens, asked, '[i]f we are sensible people, we shall see that the question is not so much whether they are guilty as whether we are making the right decision for ourselves' (Thucydides 1972, 219). Diodotus was making a principled argument against the punishment which was grounded in whether the punishment was 'right' for the Athenians. His position could be seen as a pre-liberal statement rendering the punishment 'illegitimate', and also, perhaps, the vast scholarship available to us today which renounces any claim to the death penalty's special deterrent quality can be seen as emanating from Diodotus when he argued:

One of Cleon's chief points is that to inflict the death penalty will be useful to us in the future as a means of deterring other cities from revolt; but I, who am just as concerned as he is with the future, am quite convinced that this is not so ... [w]e must not, therefore, come to the wrong conclusions through having too much confidence in the effectiveness of capital punishment (*ibid* 219, 221).

In 63 BCE, Cicero spoke in defence of Gaius Babirius. His passion for the campaign against the death penalty was clearly demonstrated, and he argued that honour should be bestowed upon his fellow Roman abolitionists when he stated:

Nothing in the world could give me greater satisfaction than the knowledge that I myself, during this present consulship of mine, had succeeded in expelling the executioner from the forum ... But instead the glory belongs in the first place, citizens, to our ancestors who, at the time when they drove out the kings, expunged every trace of their cruel ways from among the Roman people that had now become free. And, secondly, the credit belongs to a whole host of courageous men – the men who were determined that this freedom of yours should not be tainted by barbarous punishments, but should instead rely on the very leniency of its laws for its protection (Cicero 1990, 273).

Such 'courageous men' presented their arguments, sometimes at the expense of their own lives, against the all powerful sovereigns, and the abolitionist mantel had been passed down the generations. Particular significance for the modern day

movement must be given to the great work of the Enlightenment humanists Cesare Beccaria and Voltaire, and the utilitarian position provided by Jeremy Bentham. In many ways, their work can be seen as a moulding of the ancient arguments to provide a humanistic, ethical, political and philosophical position.

Each generation has to be reminded of the vicissitudes of this 'barbarous punishment' and consequentially, the governments of the world have become more sympathetic to the genealogy of these cogent claims (see Megivern 1997). In our postmodern period, the scholarship, judgeship and campaigning of *inter alia* Hugo Bedau, Austin Sarat, William Schabas, Franklin Zimring, Roger Hood, Albie Sachs, Arthur Chaskalson, William Brennan, Thurgood Marshall, and Eric Prokosch, has sought to take a stand against the retentionist claim. It is significant that the anti-death penalty chorus is continuously de-legitimising the sovereign arguments of the 'right' to impose the punishment, and also, operating to dismantle the 'power' to execute.

This vast historical discourse can be seen as intrinsically contributing to a unique epoch of global penal history when on 18 December 2007, the very first United Nations General Assembly resolution to renounce the death penalty was adopted.¹ Point two of the resolution '[c]alls upon all states that still maintain the death penalty to ... (d) Establish a moratorium on executions with a view to abolishing the death penalty'. The collective campaigns in the United Nations, by the abolitionist governments, the European Union, the Council of Europe, and various nongovernmental organisations, such as Hands Off Cain and Amnesty International, finally brought about this historical United Nations decision. It was a moment of jubilation for the global anti-death penalty community.

Roger Hood, in his Introduction to this book, and William Schabas, in Chapter 2, outline this resolution. However, both note points of caution. They state that there is still a way to go before witnessing global removal, as the General Assembly was not unanimous on the resolution. A careful reading of the resolution reveals that it should be interpreted as providing *part* of a pedagogical instruction for sovereign states on contemporary global penological standards. The resolution's value is demonstrated through its creation of a global 'norm' identifying that the punishment is no longer to be accepted as a legitimate aspect of sovereign rule. Also, the resolution is a reminder to those states which have removed the punishment that this abstention is to be continued.

All the contributors to this book provide a valuable engagement, in various ways, with the abolitionist pedagogy and they demonstrate that an educative process is still required. Perhaps the most poignant example for this need in our recent history was the execution of Saddam Hussein on 30 December 2006. The verbal condemnations by the international community, including the United Nations and the European Union, were powerless to prevent him being hanged. Hence, the global abolitionist trend and the General Assembly resolution, must be juxtaposed against the 'utter fiasco' (Scharf 2007, 259) of the former Iraqi leader's

1 Moratorium on the use of the death penalty, UN Resolution, A/C.3/62/L.29.

execution.² Indeed, Renate Wohlwend, the former *rapporteur* to the Committee on Legal Affairs and Human Rights, of the Parliamentary Assembly of the Council of Europe, noted '[r]ight now, the scandalously blunderous way in which Saddam Hussein and his henchmen were executed in Iraq provides an excellent prompt to demand an end to executions, once and for all' (Wohlwend 2007).

To heed to Wohlwend's call the international movement to abolish the death penalty must demonstrate that the international and municipal laws which remove, or call for removal, fundamentally provide a paradigmatic platform from which a multi-disciplinary discourse, of *inter alia*, political philosophy, criminology, sociology, culture, religion, ethics, feminism, anthropology and history, can be used to combat a sovereign's *will* to impose the punishment. The execution of Saddam Hussein demonstrates that the anti-death penalty discourse has not yet reached its threshold. However, the current situation may be read in that although it has not yet *severed* the sovereign power and right of application, it is getting very close to a universal *suspension*. This book engages with the continuous need to demonstrate that the world should do without the repugnant punishment of death.

Jon Yorke
Guildford
Summer, 2008

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2 On the arguments surrounding the execution of Saddam Hussein, see also Doebbler 2007; Bohlander 2007; and Zolo 2004.

Zolo, D. (2004), 'The Iraqi special tribunal: back to the Nuremberg paradigm?'
Journal of International Criminal Justice, 313.

Acknowledgements

As a law student in 1996 and 1997, I worked with state and federal public defenders in Oklahoma on capital cases, and the experience which I gained through working with the passionate lawyers, meeting local ‘Sooners’ and visiting clients on H-Unit (Oklahoma’s death row in McAlester) made a life-long impression on me, and revealed the importance of the continued need for arguing that the state is not justified in imposing capital punishment. The ‘Okie’ lawyers which impacted my life were Hoss Parvizian, Brian Lester Dupler, Randall Coyne and Vicki Werneke, and I am eternally grateful to them for showing me the fruits of passionate, determined, lawyering, against violence imposed by the state.

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List of Abbreviations

ABA	American Bar Association
ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ADPAN	Anti-Death Penalty Asia Network
African Charter	African Charter on Human and Peoples' Rights
CCHR	Caribbean Centre for Human Rights
CCPS	Centre for Capital Punishment Studies
DPIC	Death Penalty Information Center
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECtHR	European Court of Human Rights
ECPM	Ensemble Contre la Peine de Mort
ECPTIDT	European Council of Prevention of Torture and Inhuman or Degrading Treatment
ICCPR	International Covenant on Civil and Political Rights
IV	International Victimology
LDF	Legal Defence Fund
LWOP	Life without parole
LWP	Life with parole
MORI	Market and Opinion Research International
NAACP	National Association for the Advancement of Coloured People
NGO	Nongovernmental Organisation
NHRC	National Human Rights Commission
OAU	Organisation of African Unity
PACE	Parliamentary Assembly of the Council of Europe
PCRAJ	Presidential Commission on the Reform of the Administration of Justice in Nigeria
PRI	Penal Reform International
RCCP	Royal Commission on Capital Punishment
RCICP	Report of the Commission of Inquiry on Capital Punishment
SCCP	Select Committee on Capital Punishment
SPLA	Sudan People Liberation Army
TAEDP	Taiwan Alliance to End the Death Penalty
UDHR	Universal Declaration of Human Rights
UNCPCJB	United Nations Crime Prevention and Criminal Justice Branch
UNHRC	United Nations Human Rights Committee
UNODC	United Nations Office for Drugs and Crime
VSP	Victim Support Programme
WSV	World Society of Victimology

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