

# Comparative Capital Punishment

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**Research Handbooks in Comparative Law**

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Pic 1- Rome Coliseum. Source: Google.

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# Comparative Capital Punishment

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## **Legislation**

1215 Magna Carta.

1832 UK Anatomy Act.

1950 European Convention on Human Rights, 13<sup>th</sup> Protocol.

1965 UK Murder (Abolition of Death Penalty) Act.

1966 ICCPR

1969 UK Habeas Corpus Act.

1998 UK Criminal Disorder Act.

## **The format**

Comparative Capital Punishment has been divided into six parts, namely, an introduction; the substantive law; procedural law; administration; institutions and lastly, the future of the death penalty.

## **Introduction and background to capital punishment**

This substantial criminal law handbook consists of six parts and is 411 pages long. It is necessary that this matter is examined again as it has been a bone of contention for thousands of years and such a comparative analysis as studied in this law book, brings the

criminal law on capital punishment<sup>6</sup> to one table, so to speak. Comparative law is the science or practice of identifying, explaining or using the similarities and differences between two or more legal systems or their constituent parts, the aim of which may be either to accumulate and apply systemic knowledge or to empirically test general explanatory propositions. Some may say that comparative criminal law is useful because it pushes the boundaries of the discipline of criminal law outwards into social sciences and humanities.<sup>7</sup> However, what is certain is that capital punishment is an absolute deterrent today- a crime control strategy developed to eradicate a certain type of criminality and all aspects of dismantling this law around the world needs to be critically analysed before such gigantic decisions are made in any one country.

### **Comparative analysis**

This review will go a little further into capital punishment's background , just for a short while, in order to bring the reader to the stark reality of how grossly uncivilised humanity used to be. It starkly places the reality of punishment today in perspective and shows modern punishment of crime as appearing comparatively civilised. This reviewer's introduction concentrates on English common law which has been adopted in many countries of the world. The language of English is the reviewer's mother tongue. This however, does not prohibit examination of laws of many other countries, since we have been blessed today with facilities on the Internet such as *Google Translate*.<sup>8</sup>

### **UK Murder (Abolition of Death Penalty) Act 1965 (on British land)**

Capital punishment was abolished by the statute Murder (Abolition of Death Penalty) Act 1965, the same statute that imposed a life sentence for murder. This statute, and Article 1 of the Thirteenth Protocol to the 1950 European Convention on Human Rights, continues to prohibit any consideration of the re-introduction of the death penalty. A mandatory life sentence means that the sentence of imprisonment is not for a fixed period at the outset. However, the trial judge, if a defendant is convicted of the offence of murder, can specify

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<sup>6</sup> 'Capital punishment' is the execution of an offender who has committed a capital offence, i.e., murder. This term is a significant element in 'classical rational choice theory' and 'deterrence theory', both of which hold that the death penalty serves the purpose of deterrence, incapacitation and retribution.

<sup>7</sup> See Suls, J. and Wheeler, L. (Eds), (2000) *Handbook of social comparisons: theory and research*, New York: Kluwer Academic.

<sup>8</sup> See webpage <https://www.google.com/search?q=google+translate&oq=google+translate&aqs=chrome..69i57j69i6413j69i60j69i65.12410j0j4&sourceid=chrome&ie=UTF-8>, accessed on 16 December 2020.

a minimum term to be served and the Home Secretary must release the offender on license, once the stipulated period of sentence has been served. However, English capital punishment continued after 1965 for treason at sea. Capital punishment by hanging applied in the cases of treason and piracy on the high seas and until the UK Criminal Disorder Act 1998.

### **English Magna Carta 1215**

We are reminded that the Magna Carta signed by the English King John in June 1215, was revised in 1216, 1217, 1225, 1264 and 1272. The 1272 version remained unchanged for 500 years until 1828 when clause 26 was repealed. Fifteen other clauses were repealed in 1873 until the present time when just three clauses remain.

### **Habeas Corpus Act 1969**

It is of note that the cornerstone of liberty, habeas corpus, did not feature as law until the Habeas Corpus Act 1969 was passed. 'Habeas Corpus' is a written court order to bring the accused before the court.

Laws were a conundrum of the peculiar, the ignorant, the vile savagery of the time, the shenanigans, the fraud and deceitful and powerful ways of some in high office and the downright savagery of the times. We now live in relative sophistication where we can afford the luxury of the study of such intellectual pursuits as the study of comparative laws and society and culture. However, on examination of laws passed during the reign of King Henry VIII, we learn that he passed laws on whim. King Henry VIII reigned over England for 38 years and during this time, he had 70,000 people executed. This king even passed a special law in the year 1530 in order to kill by boiling alive one Mr John Roose, convicted of attempted poisoning of the Bishop of Rochester and the poor of that parish, no doubt, as an example to others. This act remained law until its repeal in 1863.

Punishments then were largely based on hearsay, superstition and the willingness of citizens then to view trials as entertainment, much as television programmes are watched today. People queued up to pay to get into courtrooms to listen to trials. Hundreds gathered to witness executions as though executions were entertainment and there was much consumption of alcohol and revelry at places where people were executed.

Beheadings were a common practice of execution in the 10<sup>th</sup> century and this form of execution was possibly introduced to England by the Normans. During the reign of King

Henry IV, execution by hanging, drawing and quartering a convicted human being became the norm. This gory form of ultimate punishment became more of an entertainment for crowds, to the point in the 1600s when a murdered person's heart was removed from the body in order to show the heart to the crowds. This practice included beheading the person and impaling the bodiless head on a pike in a prominent place. During this period and until the year 1790, convicted female prisoners were not hung, drawn and quartered but rather women were burned alive at the gallows whilst still being alive. Another uncivilised and barbaric execution practice around the country was the killing of a convicted person and leaving the dead body outside city walls and county towns, hung up and left to rot as a warning to others, much like the execution of Jesus Christ as depicted in the Christian Holy Bible. This practice was not formally abolished until 1834.

### **Execution by law “in the public interest” or “anarchist theory of punishment”?**

Execution by law was not just a matter of upholding the criminal law: there was also commercial sideline and perhaps more. However, in modern times, there is the belief by some in society that the concept of an anarchist theory of punishment includes belief that modern society is based on structured power relationships and that deviant behaviour (now called anti-social behaviour) is a direct product of fitting human relationships into hierarchical rules and that the modern punishment system preserves the power system while reducing human capacity and ability for cooperation. One might argue that this is truer than in ancient times since modernity comes equipped with almost universal computerisation and thus speedy collation, comparison and transparency.

### **Government donation of bodies to anatomy schools for medical research**

The Anatomy Act 1752 was passed which made it lawful for medical schools to receive four executed persons' corpses every year in order that medical students all around the kingdom could practice using real human bodies. The historical tale of men stealing corpses to sell to medical schools is commonplace since books have been written about the practice. In Edinburgh, Scotland, Messrs Hare and Burke used to charge hospital medical schools for each body they brought to them, until some persons began to kill innocent persons in order to be able to sell the bodies to medical schools. The government then passed a second Anatomy Act in 1832, and under this second Anatomy

Act, all executed prisoners' bodies were sent to anatomy schools in the country, free of charge, to be legally used by medics for dissection.

### **UK public hangings ceased in 1868**

Convictions of hangings continued but public hangings ceased in the year 1868, although hanging of convicted prisoners continued within the walls of prisons in the UK.

### **Part 1**

Part 1 of this law book includes very useful table-on pages 25-27 of all those countries in the world which still retain capital punishment today. This proves to be a clear and honest list with no hidden agenda. This list also provides the population figures for these countries and this is of enormous significance. With kind permission the list is reproduced below, as it will perhaps prove to be a primary list.

#### **Countries that retain capital punishment by populations (pp.26-27)**

<b>Country</b>	<b>Population (million)</b>
<b>CHINA</b>	<b>1380.7</b>
<b>INDIA</b>	<b>1310.1</b>
<b>USA</b>	<b>325.3</b>
<b>INDONESIA</b>	<b>260.5</b>
<b>PAKISTAN</b>	<b>195.2</b>
<b>NIGERIA</b>	<b>186.9</b>
<b>BANGLADESH</b>	<b>161.7</b>
<b>JAPAN</b>	<b>126.9</b>
<b>ETHIOPIA</b>	<b>101.8</b>
<b>VIETNAM</b>	<b>92.7</b>
<b>EGYPT</b>	<b>92.2</b>
<b>CONGO</b>	<b>82.2</b>
<b>IRAN</b>	<b>79.8</b>
<b>THAILAND</b>	<b>68.1</b>
<b>SUDAN</b>	<b>41.1</b>
<b>UGANDA</b>	<b>36.8</b>
<b>IRAQ</b>	<b>36.7</b>
<b>SAUDI ARABIA</b>	<b>32.7</b>
<b>MALAYSIA</b>	<b>31.8</b>
<b>YEMEN</b>	<b>27.4</b>
<b>KOREA-NORTH</b>	<b>24.2</b>

<b>TAIWAN</b>	<b>23.5</b>
<b>SYRIA</b>	<b>18.5</b>
<b>GUATAMALA</b>	<b>16.1</b>
<b>CHAD</b>	<b>14.4</b>
<b>ZIMBABWE</b>	<b>14.2</b>
<b>GUINEA</b>	<b>12.9</b>
<b>SUDAN-SOUTH</b>	<b>12.1</b>
<b>CUBA</b>	<b>11.2</b>
<b>SOMALIA</b>	<b>11.07</b>
<b>UNITED ARAB</b>	<b>9.8</b>
<b>BELARUS</b>	<b>9.5</b>
<b>LIBYA</b>	<b>6.3</b>
<b>LEBANON</b>	<b>5.9</b>
<b>SINGAPORE</b>	<b>5.6</b>
<b>PALESTINE</b>	<b>4.8</b>
<b>OMAN</b>	<b>4.5</b>
<b>KUWAIT</b>	<b>4.1</b>
<b>AFGHANISTAN</b>	<b>2.7</b>
<b>JAMAICA</b>	<b>2.7</b>
<b>QATAR</b>	<b>2.6</b>
<b>BOTSWANA</b>	<b>2.2</b>
<b>LESOTHO</b>	<b>1.9</b>
<b>BAHRAIN</b>	<b>1.4</b>
<b>EQUATORIAL GUINEA</b>	<b>1.2</b>
<b>COMAROS</b>	<b>0.8</b>
<b>GUYANA</b>	<b>0.7</b>
<b>ST LUCIA</b>	<b>0.4</b>
<b>ST KITTS</b>	<b>0.4</b>
<b>BELIZE</b>	<b>0.3</b>
<b>BARBADOS</b>	<b>0.3</b>
<b>ANTIGUA</b>	<b>0.08</b>
<b>DOMINICA</b>	<b>0.07</b>

The total estimated world countries which use the death penalty plus three other countries, Russia, Philippines and Turkey, comprise 70 percentage of the world's

countries (by population) which have the death penalty in their laws and are likely to shortly have capital punishment in their laws.

### **Part 2-Substantive Law**

The 1976 International Covenant of Civil and Political Rights (ICCPR) states that capital punishment must only apply to the most serious of crimes and in part, addresses the allowable scope of capital offences.<sup>9</sup>

### **Part 3-Procedural Law**

Part 3 includes the specialist legal subject of extradition.

### **Parts 4 and 5-Administration and institutions**

This part address the real and present nuts and bolts of capital punishment, such as the imposition of a mandatory death penalty; methods of execution and the troubling situation where foreign nationals are concerned. In part 5 is discussed regional institutions dealing with the death penalty and also the role of the United Nations.

### **Part 6-future of the death penalty**

Finally this topic is rounded up in part 6 of the book. It is hoped that the death penalty, globally, will be forced into ‘gradual obscurity’ due to constitutional “right to life” legal decisions. Nevertheless it is imperative that these must be aired truthfully with cost-benefit analyses and not because protesters have rabble-roused governments into taking these decisions.

Issues to be truthfully addressed and considered include:

- \* What is the exact full cost to the particular country’s economy in keeping a convicted murderer in prison for life?
- \* What if any, is the contribution repaid by each life prisoner?
- \* What is the full, true and complete cost of monitoring someone were such a prisoner to be released on license after a period of time?
- \* List and analyse the number of jobs such capital punishment prisoners can be entrusted with and the full cost of supervising such prisoners?
- \* Can not specialist agencies separate out the very-high-risk prisoners who are sociopaths and psychopaths?

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<sup>9</sup> See article 6, para.2 of the ICCPR.

- \* At what stage is medical research in the creation of appropriate medications for these psychopaths and sociopaths?
- \* Are those agencies in power really working speedily towards a possibility that sociopaths and psychopaths can be trusted to take on certain tasks?
- \* Are personnel being trained at present as to how such persons can be treated and occupied without such prisoners causing absolute mayhem, riots, and further murders?
- \* Are governments sharing this research with other countries in order that mind-storms can be organised between high-level responsible government professionals?
- \* Have all countries, rich and poor, had access to funds in order to meet and share such precious information??
- \* Can we trust the accountants, lawyers, social workers, teachers, and others who work on such projects?
- \* Have gatekeepers been appointed so that any such project is not sabotaged by political means or by encouraging activists' protests?

One needs to be careful that the “*baby in not thrown out with the bathwater*”, in that there must be certainty after much consultation on the long-term future of such police and law repeals, considering economic projectivity, and being mindful that the many who protest and urge for such repeal of the death penalty do represent a fair portion of taxpayers, the wealthy, the educated, the parents of growing children, etc and not just students and unemployed. These decisions must be made by responsible, educated, law-abiding persons who are mindful of a future for all of us, not just the vociferous many. These are not decisions to be made by the impetuous few among government, not the ultra-conservative rich of the land, because society's sustainability depends on careful long-term plans, budgets and safeguards against any potential global hazards created by mental instability.

### Conclusion

My conclusion is that this is very important subject that must be debated and discussed between countries globally, preferably without the distracting hullabaloo that draws attention away from the meat of the matter -to emotional, activist protesters outside. A starting point to controlling protesters is to release the facts being debated to the civil rights agencies responsible for chaotic, disruptive protests which cost millions in police

time. I heartily recommend this book, written without jargon and which is also suitable for non-lawyers in its clear presentation. Its compilation of work by the many contributors is a feat in itself- for which readers will be grateful.

**Recommended Further Reading**

Bradley, C.M.(2007) (ed.) (2007) *Criminal Procedure: A Worldwide Study*, Durham, N. Carolina, U.S.: Carolina Academic Press, 2<sup>nd</sup> edn.

Landman, T. (2008) *Issues and Methods in Comparative Politics: An Introduction*. London: Routledge, 3<sup>rd</sup> edn.

Rush, E.R. and Torres, S.(1998) *The encyclopaedic dictionary of criminology*, Nevada, U.S.: Copperhouse Publishing Company.

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