



BOOK REVIEW

Lil Scherdin ed. *Capital Punishment: A Hazard to a Sustainable Criminal Justice System?* 2014. ISBN: 9781409457190

There are few topics that provoke such divisive views as the death penalty. The recent Paris atrocities led to calls for the re-introduction of capital punishment in Europe, and yesterday morning, Jordan executed two convicted Jihadists within hours of ISIS burning a captured Jordanian pilot to death. The revenge element of the Jordanian executions appears to have been paramount in the timing. But can such a response by a state ever be rational—however, horrific the crime—or one that has no place in a sustainable system of criminal justice?

Schergin's book charts the history of states' use of capital punishment from being a largely uncontested tool of government, to the position today where a majority of states have abolished it. But what of those states that have retained it? Only seven have carried out more than 10 executions every year over the last 10 years: China, North Korea, Iran, Iraq, Saudi Arabia, Yemen, and the United States.

The opening chapters ask how should a modern democratic society respond to heinous acts that outrage society? The book's starting point is 22 July 2011. The day on which 'Norway experienced its worst criminal act since World War II', when 77 people were murdered by an extreme right wing killer. The first attack was a bomb outside the Prime Minister's office. The second involved the shooting of 69 young people. Lil Scherdin states that '...if ever there was the ultimate test of a criminal justice system without the death penalty, this was it'. In the Foreword, the then Norwegian Minister of Justice, Knut Storberget, sets out a powerful, inspiring account of Norway's collective response to the massacres and the approach of the criminal justice system to the trial and sentencing procedures. There were no calls for the death penalty by any group, political party, or the government. In fact, one of the victims stated that feelings of revenge, hatred, and retribution would destroy his life. This is contrasted with the response to the Oklahoma bombing (Timothy McVeigh), the sarin gas attacks on the Tokyo underground, and the 9/11 attacks in the United States.

The book is divided into five sections. The first section deals with governance and the death penalty, and the next three sections analyze the use of capital punishment in three geographical groupings—the United States, Asia, and countries with majority Muslim populations. The comparative analyses are fascinating. The breadth of experience from

the various countries is instructive in seeking to understand why this ultimate punishment has been retained in some places and abolished elsewhere.

The global situation raises many questions that this book seeks to confront: What are the factors that affect its retention and the calls for abolition? What part does politics, the judiciary, culture, and religious ideology play? What is the impact of the fact citizens of some retentionist states are held on death row in other countries? Is it an effective deterrence sentence? Is global abolition inevitable—particularly in light of the arbitrary and disproportionate application of the penalty, the relative costs involved in retention, the shocking exoneration of 142 innocent people previously on death row in the United States. These issues are analyzed in detail in the chapters on the United States, Japan, South Korea, Taiwan, China, India, Indonesia, and Morocco.

Some chapters deal with the philosophical issues lurking behind the more usual debates on the efficacy of the death penalty. Nils Christie analyses the effect of re-defining both the offender as a known, individual human being, as well as the labels used to define the deviant acts. When the court or jury sees and hears about an offender and his life, are they less likely to be considered a criminal unworthy to live? Jody Lyneé Madeira looks at the victim's perspective and asks whether the death of the offender provides a sense of 'closure' for the victims that a sentence of life without parole could not, set in the context of the Timothy McVeigh case and the Oklahoma bombing.

There are some disappointing chapters. Mohammed Habash sets out 'Islamic Visions for the Death Penalty'. He argues that Islamic Law is capable of keeping up with the times and that a merciful interpretation shows the human face of an Islamic justice, which does not impose capital punishment. The issues raised by Habash are fascinating and of increasing importance in times in which as he points out 'The ruthless and reckless application of "Sharia" by private parties has contributed to create a bleak picture of Islam in the field of crime and punishment'. However, I left this chapter with more questions than answers. The analysis of the 14 ways in which Islam avoids imposing the death penalty was not clear. Although it appeared to accept that the death penalty is available ('intercession is permissible in the context of retribution *where the death penalty may be applied*', italics added), it also asserted that 'capital punishment constitutes an act against the faith'. I would have welcomed a further discussion about the apparent role of the victim's family (as opposed to the state) in preventing a death sentence being carried out, and why an offender who murders a victim *without a blood relative* avoids the death penalty. His contention that 'some Islamic countries' have abolished the death penalty because of the need for scholastic and judicial consensus on the minimum conditions necessary to impose it would have benefitted from specific examples and a further discussion of how the abolition came about in each case, and the lessons that could be learnt—politically, culturally, and religiously.

I found Vidar Halvorsen's chapter on 'Criminal Justice, Sustainability, and the Death Penalty' somewhat difficult to follow. That may be because I am a lawyer and the writer delved the depths of theories of criminology, sociology, and philosophy to provide a framework for the argument that capital punishment is not sustainable.

The last chapter by Roger Hood is entitled 'Staying Optimistic'. It discusses how far the global situation has come in terms of abolition—both *de facto* and in practice, and the extent to which states can be persuaded to accept that the right to be protected from being put to death by the State is a universal human right.

Overall, this is a profound book written by a stellar group of authors that provides essential background reading for anyone who wants an in-depth understanding of the factors that have played a role in the abolition and retention of the State's ability to take a human life, and whether in 2015 such a punishment can still play a legitimate role in any criminal justice system.

Paul Taylor