What are the critical factors that determine whether a country replaces, retains or restores the death penalty? Why do some countries maintain the death penalty in theory but in reality rarely invoke it? By asking these questions, the editors hope to isolate the core issues that influence the formulation of legislation so that they can be incorporated into strategies for advising governments considering changes to their policy on capital punishment. They also seek to redress the current imbalance in research, which tends to focus almost exclusively on the experience of the USA, by covering a range of countries such as South Korea, Lithuania, Japan and the Caribbean Commonwealth. This valuable contribution to the debates around capital punishment contains contributions from leading academics, campaigners and legal practitioners and will be an important resource for students, academics, NGOs, policy makers, lawyers and jurists.

Peter Hodgkinson is the Founder and Director of the Centre for Capital Punishment Studies, Westminster University Law School, London. Prior to joining Westminster in 1989 he was a Probation Officer for fifteen years. He has published extensively on capital punishment.

William A. Schabas is Professor of Human Rights Law at the National University of Ireland and Director of the Irish Centre for Human Rights. He has published numerous books and articles and is editor-in-chief of Criminal Law Forum.
Capital Punishment

*Strategies for Abolition*

*Edited by*

Peter Hodgkinson and William A. Schabas
Contents

List of figures  vii
List of tables  viii
Notes on the contributors ix

1 Capital punishment: improve it or remove it?  1
   PETER HODGKINSON

2 International law and the death penalty: reflecting or promoting change?  36
   WILLIAM A. SCHABAS

3 Doctors and the death penalty: ethics and a cruel punishment  63
   ROBERT FERRIS AND JAMES WELSH

4 Replacing the death penalty: the vexed issue of alternative sanctions  92
   ANDREW COYLE

5 Religion and the death penalty in the United States: past and present  116
   JAMES J. MEGIVERN

6 On botched executions  143
   MARIAN J. BORG AND MICHAEL L. RADELET

7 Death as a penalty in the Shari‘ā  169
   M. CHERIF BASSIOUNI

8 Abolishing the death penalty in the United States: an analysis of institutional obstacles and future prospects  186
   HUGO ADAM BEDAU
Contents

9 Capital punishment in the United States: moratorium efforts and other key developments
RONALD J. TABAK 208

10 The experience of Lithuania’s journey to abolition
ALEKSANDRAS DOBRYNINAS 233

11 The death penalty in South Korea and Japan: ‘Asian values’ and the debate about capital punishment?
BYUNG-SUN CHO 253

12 Georgia, former republic of the USSR: managing abolition
ERIC SVANIDZE 273

13 Capital punishment in the Commonwealth Caribbean: colonial inheritance, colonial remedy?
JULIAN B. KNOWLES 282

14 Public opinion and the death penalty
WILLIAM A. SCHABAS 309

15 Capital punishment: meeting the needs of the families of the homicide victim and the condemned
PETER HODGKINSON 332

Index 359
<table>
<thead>
<tr>
<th>Figures</th>
<th>page</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1 Attitudes to the death penalty</td>
<td></td>
</tr>
<tr>
<td>10.2 Function of the death penalty</td>
<td>241</td>
</tr>
<tr>
<td>10.3 Institutions that should determine the abolition of the death penalty</td>
<td>242</td>
</tr>
<tr>
<td>10.4 Types of crime that should be punished by the death penalty</td>
<td>243</td>
</tr>
<tr>
<td>10.5 Public execution of criminals</td>
<td>244</td>
</tr>
<tr>
<td>10.6 Capital punishment for juveniles and women</td>
<td>245</td>
</tr>
<tr>
<td>10.7 Support for the death penalty if respondent believes that society has sufficient means for re-socialisation of criminals</td>
<td>245</td>
</tr>
<tr>
<td>10.8 Support for the death penalty if respondent believes that criminals can be sufficiently isolated</td>
<td>246</td>
</tr>
<tr>
<td>10.9 Support for the death penalty if all Lithuania’s neighbours decide to abolish it</td>
<td>247</td>
</tr>
<tr>
<td>10.10 The death penalty and Lithuania’s integration into the EU</td>
<td>247</td>
</tr>
</tbody>
</table>
Tables

3.1 The 1992 AMA policy on medical participation in the death penalty page 69

3.2 Elements of death penalty policy of selected professional associations 79

6.1 Botched executions in US capital cases, 1977 to 31 December 2001 147

6.2 Rate of botched executions by state, 1977 to 31 December 2001 149

6.3 Total executions and botched executions by method, 1977 to 31 December 2001 150

6.4 Number of cases involving evidence that a non-instantaneous and/or painful death occurred 152

6.5 Evidence of a lingering death: time of execution 156

10.1 Number of executed criminals in Lithuania since re-establishment of independence 235

10.2 Number of murders between 1990 and 1995 235

10.3 The attitude of the elite to the death penalty 249
Notes on the contributors

PROFESSOR HUGO ADAM BEDAU Professor of Philosophy, Emeritus, Tufts University; editor, *The Death Penalty in America* (1964, 1982, 1997); author, *Death Is Different* (1987); co-author (with Michael Radelet and Constance Putnam), *In Spite of Innocence* (1992); formerly chairman, Board of Directors, National Coalition to Abolish the Death Penalty. He is a Visiting Professor at the Centre for Capital Punishment Studies, University of Westminster.

PROFESSOR M. CHERIF BASSIOUNI Professor of Law, De Paul University, Chicago, since 1964; Fulbright-Hays Professor of International Criminal Law, University of Freiburg, Germany, 1970; non-resident Dean of the International Institute of Higher Studies in Criminal Sciences, Syracuse, Italy, since 1976. He studied law in France, Switzerland, Egypt, Italy and the US. He is the author of over twenty books and 100 law review articles and served as the Secretary-General of the International Association of Penal Law since 1974. He has been a UN consultant on a range of issues since the mid-1970s, which included chairing the committee of experts which prepared the UN Draft Convention on the Prevention of Unlawful Human Experimentation, and was co-chairman of the committee of experts, which prepared the UN Draft Convention on the Prevention and Suppression of Torture.

DR MARIAN J. BORG Associate Professor of Sociology at the University of Florida. Her research and teaching focus on criminology, deviance, and various processes of social control. She has conducted research on death penalty opinion, the use of violence among juveniles in response to conflict, and variation in homicide clearance rates across urban areas. Her publications have appeared in *Criminology, Law and Society Review* and *Deviant Behaviour*. Currently, she is working on a project examining legal responses in cases of police misconduct.
Professor Dr Byung-Sun Cho

Doctor of Juris (1989) from the University of Freiburg in Germany; LLM (1985) and BA (1982) from the University of Sung Kyun Kwan in Seoul, South Korea. Professor Cho is a Professor of Law at Chongju University College of Law in South Korea. He specialises in environmental law and criminal law. Professor Cho has served as an exchange professor at the University of Freiburg and a visiting professor with the University of Kiel in Germany. He was the Chairman of the Law Faculty and Law Graduate School at Chongju University from 1993 to 1995. Since then, he has been involved in research projects on such varied topics as organ transplantation, the reform of Korean atomic energy law, the death penalty and transitional justice. He has served as a legal consultant to the Korean Institute of Nuclear Safety, to TÜV Korea on environmental law, and to the Korean Environmental Protection Union. Professor Cho has travelled extensively in Europe and Asia to deliver lectures and presentations on the death penalty, human rights and environmental law. He teaches ‘Environmental Law in the Asian Region and International Environmental Law’ as visiting professor at the St Louis University School of Law, Missouri.

Dr Andrew Coyle

Director of the International Centre for Prison Studies at Kings College, University of London, whose objectives are to assist governments and other relevant agencies to develop appropriate policies on prisons and the use of imprisonment and to spread best practice in prison management. The Centre carries out all its work from a human rights perspective. In addition to its academic activities, the Centre is involved in prison reform projects in countries such as Brazil, Chile, Kazakhstan, Russia, Turkey and Venezuela. He has also served for twenty-five years at a senior level in the prison services of the United Kingdom. He has a PhD in criminology from the Faculty of Law at the University of Edinburgh, and has written extensively on criminal justice and penal issues. His books include Inside: Rethinking Scotland’s Prisons (1991), The Prisons We Deserve (1994), Managing Prisons in a Time of Change (2002) and A Human Rights Approach to Prison Management (2002). He is an expert on penal matters for the United Nations and the Council of Europe, including the latter’s Committee for the Prevention of Torture. He has visited prisons in over forty countries.

Professor Aleksandras Dobryninas

Professor of Sociology and Head of the Department of Social Theory, Faculty of Philosophy, Vilnius University. He was awarded his PhD in 1985 by the Institute of Philosophy, Sociology and Law, Lithuanian Academy of Science, Vilnius. Among his many publications Dr Dobryninas has written...
Notes on the contributors


PETER HODGKINSON Founder and Director of the Centre for Capital Punishment Studies, Westminster University Law School, London.

Prior to joining Westminster in 1989, he was a Probation Officer with the Inner London Probation Service for fifteen years during which time he developed an interest and expertise in the management of life sentenced and mentally disordered offenders. He is the Admissions Tutor for Law and module leader for two Criminal Justice courses and the Internship in Capital Punishment Studies. In addition, he teaches a course on capital punishment for the MA in Crime, Human Rights and the International Community. As advisor to the Council of Europe on the death penalty and a member of the UK Foreign Secretary’s Death Penalty Panel, he has worked with the administrations of a number of countries (Russia, Latvia, Lithuania, Estonia, Ukraine, Albania, Belarus, the United States, Yugoslavia, China, Kazakhstan, Armenia and Taiwan) developing penal strategies in preparation for replacing the death penalty and its aftermath. He has produced a number of publications on the death penalty, including Hodgkinson and Rutherford (eds.), *Capital Punishment: Global Issues and Prospects* (1996) and Hodgkinson *et al.*, *Capital Punishment in the USA* (1996).

DR ROBERT FERRIS Consultant Forensic Psychiatrist at the Oxford Clinic Medium Secure Unit in Littlemore, Oxford, and Clinical Director of Specialist Services for the Oxfordshire Mental Healthcare Trust.

He trained in medicine and psychiatry in Adelaide, South Australia, working in general adult and forensic psychiatry both there and in the Northern Territory before taking up a consultant post at Broadmoor Special Hospital at the end of the 1980s. Since then, he has continued working in the National Health Service, first at Broadmoor and later in a Regional Forensic Psychiatric Service based in Berkshire and Oxfordshire. He has a long-standing interest in ethical issues in psychiatry, particularly in relation to psychiatric involvement in the death
penalty. Research in this area has included a survey of the attitudes, involvement and ethical training and support of psychiatrists working in countries other than the US retaining the death penalty. He has pursued this interest over a number of years while a member of the Board of Directors of the International Academy of Law and Mental Health, and has published articles on the subject, as well as being directly involved in psychiatric assessments of defendants facing the death penalty in the Caribbean. He is a member of the Advisory Board of the Centre for Capital Punishment Studies at Westminster University Law School in London.

JULIAN KNOWLES Barrister at Matrix Chambers, Gray's Inn, London. His practice encompasses public law, extradition, human rights law and criminal law. He has appeared in a number of high-profile cases including the Pinochet extradition, the Lockerbie bombing appeal, the Hillsborough case and the Guinness appeal. A large proportion of his practice has an international aspect, and he has particular expertise in appellate work and cases involving difficult or novel legal issues. He is generally regarded as the leading junior counsel in death penalty work and has appeared in most of the significant capital appeals to the Privy Council from the Caribbean in recent years. He has also appeared as amicus curiae in a number of death row cases in the United States, and in 1999 was admitted to the State Bar of Florida where he represented 350 Members of Parliament before the Supreme Court in support of a British citizen on death row. In 2001, he acted on behalf of a number of death row prisoners in Trinidad and Tobago in proceedings before the Inter-American Court of Human Rights.

PROFESSOR JAMES J. MEGIVERN Professor Emeritus, Department of Philosophy and Religion, University of North Carolina at Wilmington, where he taught from 1974 to 2001 and served as chairman for seventeen of those years. He is author of The Death Penalty: An Historical and Theological Survey (1997), and wrote the entries on capital punishment for Wade Clark Roof (ed.), Contemporary American Religion (2000) and The New Catholic Encyclopedia (2nd edn, 2002). He lectures widely on aspects of the death penalty in Christian history, especially by invitation to programmes held by Catholic diocesan Peace and Justice Offices.

PROFESSOR MICHAEL L. RADELET Professor and Associate Chair, Department of Sociology, University of Colorado-Boulder, and Visiting Professor, School of Law, University of Westminster, London. For the past twenty-five years his research has focused on race and death
sentencing, families of death row inmates, conviction of the innocent, public opinion on the death penalty, and mental health issues involving death row inmates. He has testified in approximately sixty-five death penalty cases, and worked with most of the last fifty people executed in Florida.

**Professor William A. Schabas** Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, where he also holds the chair in human rights law. Professor Schabas holds BA and MA degrees from the University of Toronto and LLB, LLM and LLD degrees from the University of Montreal. Professor Schabas is the author of *The Abolition of the Death Penalty in International Law* (3rd edn, 2002), *The Death Penalty as Cruel Treatment and Torture* (1996) and numerous journal articles on capital punishment. Professor Schabas is editor-in-chief of *Criminal Law Forum*, the quarterly journal of the International Society for the Reform of Criminal Law.

**Ronald J. Tabak** Ronald J. Tabak is experienced in death penalty and civil rights litigation. He has chaired the Committee on Civil Rights of the Association of the Bar of the City of New York and is co-chair of the Death Penalty Committee of the American Bar Association’s Section of Individual Rights and Responsibilities. He has been a leader in the ABA’s efforts to recruit and train lawyers for indigent death row inmates. Mr Tabak coordinates the *pro bono* practice at Skadden, Arps. Under his supervision, hundreds of attorneys at the firm each year handle *pro bono* cases suitable to their practices and interests. He has established a special *pro bono* programme in which most of the firm’s summer associates actively participate, and has made substantial use of the firm’s legal assistants on *pro bono* matters. Mr Tabak is the recipient of many honours and awards, including the New York Criminal Bar Association Award in 2001, the Legal Aid Society Awards in 1998, 1997 and 1984, the Thurgood Marshall Award of the Association of the Bar of the City of New York (1998), a Special Award from the Southern Center for Human Rights (1997), the New York State Association of Criminal Defense Lawyers’ Thurgood Marshall Award (1996) and the Rev. Dr Martin Luther King, Jr ‘Champions for Social Justice and Equality’ Award (2003). Among his numerous publications are ‘Is Racism Relevant? Or Should the Fairness in Death Sentencing Act be Enacted to Substantially Diminish Racial Discrimination in Capital Sentencing?’ (1990–1) *New York University Review of Law and Social Change*; Commentary, ‘The Death of Fairness? Counsel Competency and Due Process in Death Penalty Cases’ *Houston Law Review* (1994); *Hall Law Review* (1996); ‘The
Notes on the contributors


ERIC SVANIDZE Faculty of Law, Latvian State University (1979–81); Faculty of Law, Tbilisi State University (1981–4); General Prosecutor’s Office of Georgia (1984–99); Deputy Minister of Justice of Georgia and Government Agent to the European Court of Human Rights (1999–2000); Representative of Georgia to the Committee for the Prevention of Torture (2001 to present).

DR JAMES WELSH Coordinator of the Amnesty International medical programme based in London. For two decades, he has been involved in collaborative work on the documentation and analysis of human rights violations and in campaigning for their elimination. He has written numerous articles on health and human rights issues and has lectured in universities in the United Kingdom and abroad. His particular interests are the role of ethics in protecting human rights, doctors and the death penalty, and human rights education for health professionals.