

Putting Culture into the Picture  
*Toward a Comparative Analysis  
of State Killing*

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**Introduction**

How do the ways we think and feel about the world around us affect the existence and administration of the death penalty? And what role does capital punishment play in defining our political and cultural identity? In this book, we argue that in order to understand the death penalty, we need to know more about the “cultural lives”—past and present—of the state’s ultimate sanction. A second claim is that this “cultural voyage” should be undertaken comparatively: we need to look beyond the United States and see how capital punishment “lives” or “dies” in the rest of the world, how images of state killing are produced and consumed elsewhere, how they are reflected, back and forth, in the emerging international judicial and political discourse on the penalty of death and its abolition.<sup>1</sup>

What do we mean by the cultural life of capital punishment? First of all, for the purpose of this introduction, we refer to capital punishment, or the death penalty, as legally administered state killing, used as a punishment in response to a crime.<sup>2</sup> By “cultural lives” we mean capital punishment’s embeddedness in discourses and symbolic practices in specific times and places. To talk about the penalty of death having, not only one, but several “lives” is not a simple pun. We argue that, after centuries in which capital punishment was a completely normal and self-evident part of criminal punishment, it has taken on a life of its

own in various arenas, which goes far beyond the limits of the penal sphere. We further claim that, even though it is important to consider political (Neumeyer 2004) and socioeconomic (Simon 1997) factors that shape the existence of capital punishment across geographic and social spaces, it is its cultural life that deserves more attention.

As David Garland (1990) has argued, punishment and culture are connected in two ways: culture gives punishment meaning and legitimacy and shapes its practice through cultural “sensibilities” and “mentalities.” On the other hand, punishment itself defines cultural and sociopolitical identities and provides vivid symbols in cultural battles. Punishment lives in culture as a set of images, as a marvelous spectacle of condemnation. The semiotics of punishment is all around us, not just in the architecture of the prison, or the speech made by a judge as she sends someone to the penal colony, but in both “high” and “popular” culture iconography, in novels, television, and film. Punishment has traditionally been one of the great subjects of cultural production, suggesting the powerful allure of the fall and of our prospects for redemption. But perhaps the word “our” is inaccurate here since Durkheim (1984 [1893]) and Mead (1918), among others, remind us that it is through practices of punishment that cultural boundaries are drawn, that solidarity is created through acts of marking difference between self and other, through disidentification as much as imagined connection.

And what is true of punishment in general is certainly true of those instances in which the punishment is death. Traditionally, public execution was one of the great spectacles of power and an instruction in the mysteries of responsibility and retribution. Even the privatization of execution has not ended the pedagogy of the scaffold. Execution itself, the moment of state killing, is today an occasion for rich symbolization, for the production of public images of evil or of an unruly freedom whose only containment is in a state-imposed death, and for fictive re-creations of the scene of death in popular culture. Yet all of this may miss the deepest cultural significance of state killing. As Baudrillard (1993: 169) suggests, in regard to capital punishment, “the thought of the right (hysterical reaction) and the thought of the left (rational humanism) are both equally removed from the symbolic configuration where crime, madness and death are modalities of exchange.”

It is a commonplace to state that the United States is alone among Western

industrialized nations in executing its citizens. Usually, analysis focuses on “American exceptionalism,” comparing the new with the old world (Steiker 2002; Moravcsik 2001; Poveda 2000). From a global perspective, however, the United States is not exceptional. Little more than a fourth of the world’s population lives in countries that have completely abolished the death penalty. Most U.S.-American death-penalty proponents hesitate to cite states like the Democratic Republic of Congo, Iran, Saudi Arabia, China, or North Korea as examples of countries which are also executing their citizens. However, there is at least one more industrialized democracy, Japan, and other politically respectable states such as India, South Korea, Taiwan, and Singapore in which capital punishment is still applied.

On the other hand, the European Union proudly proclaims itself to be “death-penalty-free” and has succeeded in talking (and sometimes coercing) almost the whole of Eastern Europe into abolition (Fijalkowski 2001; Frankowski 1996). In the territory of Russia and the former Soviet states in Central Asia, Turkmenistan alone has abolished the death penalty completely, although Russia, Kazakhstan, and Kyrgyzstan have moratoria in place. The African continent presents a mixed picture, with nine fully and fourteen de facto abolitionist states and twenty-seven states with the death penalty.<sup>3</sup> Asia is, with the exception of a few small nations, an “abolition-free zone.”<sup>4</sup> Equally, no state in the Middle East—except the de facto abolitionist Israel—has decided to abandon judicially authorized state killing.

Abolitionists in Europe like to point out that the death penalty is unacceptable in a “civilized society.”<sup>5</sup> In addition, the Council of Europe has expressed its “firm conviction that capital punishment, therefore, has no place in civilised, democratic societies governed by the rule of law” (Council of Europe and Wohlwend 1999). European Court of Human Rights Justice Jan de Meyer put it simply when he said that “[Capital] punishment is not consistent with the present state of European civilisation” (*Soering v United Kingdom* 1989: 439). Some believe that a “civilizing process” leads inexorably to rejection of legalized state killing.<sup>6</sup> Europe, in this view, is a step ahead of the United States, which, along with the rest of the world, sooner or later will catch up. The optimistic view of the globalization of penalty is that the differences between countries will be leveled out in an abolitionist direction.<sup>7</sup> As the chapters in this volume suggest, this idea is inadequate to explain what has happened in abolitionist countries

and might be misleading when thinking about the global process of abolition. We argue that a closer look is needed at structures and processes on the national and subnational levels.

In recent years, there have been several publications which have looked comparatively into global processes of abolition (Hodgkinson and Rutherford 1996; Schabas 1997; Hood 2002; Boulanger et al. 2002; Reicher 2003; Hodgkinson and Schabas 2004). At the same time, there has been little systematic research on the determinants of the death penalty on a global scale, and most of it is concerned with the question of abolition (Greenberg and West 2001; Neumayer 2004). In comparative perspective, there are a variety of methodologies which one can employ to understand capital punishment. We think that comparative analyses are best served by methodological eclecticism, which combines insights from various approaches (Kohli et al. 1995). In what follows, we discuss previous research and highlight some aspects that we consider important for a comparative cultural research agenda on capital punishment.

### *Deadly Significant Relationships? Data-Driven Research*

That there can be no simple explanation for global variation seems clear. The number of possible factors that differentiate abolitionist from retentionist states is potentially infinite. This, of course, has not kept comparativists from trying to solve the puzzle on the aggregate level. They have collected data on various independent variables to determine how the dependent variable, the (non)existence of capital punishment, can be explained (e.g., Greenberg and West 2001; Neumayer 2004). Among the factors so far studied are:

*Crime rates.* That state punitivism cannot be explained as a simple response to crime has been a commonplace in analyses of punishment for a long time. This is confirmed by statistical analyses which show that crime rates, punitive attitudes, and policy responses are, if at all, only marginally correlated (Savelsberg 2000, Greenberg and West 2001). This, of course, doesn't mean that crime rates are not important,<sup>8</sup> but only that they do not translate directly into penal policy. For this reason, what has to be studied are the conditions under which high crime rates do result in extreme sentencing, including the death penalty, and when it does not.

*Socioeconomic indicators.* There is no clear statistical relationship between a

country's socioeconomic development and its use or non-use of the death penalty (Greenberg and West 2001, Neumayer 2004). This might be surprising, especially to theorists who think of the abolition of capital punishment as the product of the sociocultural process of "civilization."

*Regime type.* The more authoritarian a country is, the more it is likely to have the death penalty. Of 194 independent countries rated by Freedom House in 2003, 71 of 90 countries classified as "Free" were abolitionist (de jure or de facto), about 80 percent, versus 19 which were classified retentionist. For "Partly Free" countries, the ratio is 33 (62 percent) abolitionist to 20 retentionist. On the other hand, of the 48 countries rated as "Not Free" three-fourths (36) had the death penalty on the books and had executed someone in the last ten years, compared with 12 abolitionist countries.<sup>9</sup> These data make it clear that there is a relationship between democracy and respect for human rights on one side, and abolition on the other. But with the United States as the world's largest stable democracy and supporter both of human rights *and* of capital punishment, this correlation again leaves us puzzled about American "exceptionalism" within the "Western world."

*Religion* seems to matter (Hood 2001). Almost all of the states with a majority of Muslims, and certainly all of those claiming to adhere to Shari'ah law, have the death penalty. As Neumayer has pointed out, however, such numerical evidence might be misleading. He suggests that "the lack of democracy, the lack of political incentives, and the fact that most Muslim countries are located in regions with very few abolitionist countries might be more important explanations than Islam itself" (2004: 29). Most states in which Christians (and especially Catholics) are the majority do not execute their citizens (Greenberg and West 2001). Again, the United States stands out. Today, the United States is, together with Belarus, the only majority Christian country with executions. There is evidence from the United States that Evangelical Christians show stronger support for the death penalty than members of other religious groups (Grasmick et al. 1993; Green 2000). Finally, states which have declared themselves to be "atheist," such as the previously communist countries, and those who claim to be so today have not shown any special inclination toward abolition.<sup>10</sup> The same is true for Asian countries where a numerical majority of citizens are Buddhist, even though it has been argued that the "compassionate element" in Buddhism favors abolition (Horigan 1996).

As these various data show, the relationship between religion and the death penalty, on an aggregate basis, is ambiguous. What we need are accounts of how religious beliefs translate into public policy in particular times at particular places. Religion is obviously a part of culture, but, as Geertz has argued (1973: 14) “culture is not a power, something to which social events, behaviors, institutions, or processes can be causally attributed; it is a context.”<sup>11</sup> Statistical data on the number of adherents to a particular religion do not necessarily help us explain differences between countries.

*Public opinion.* How popular is the death penalty and how is its popularity related to abolitionism? In the United States, the answer seems easy. Capital punishment is popular all over the country. Even though support has waned somewhat over the last few years, probably under the influence of growing media attention to miscarriages of justice, over 60 percent of respondents still support it (PollingReport.com 2004; Gross 1998; Cook 1998). However, the aggregate picture is, as always, somewhat misleading, since support varies by state, and so does the application of capital punishment (Norrander 2000; Zimring 2003). International comparisons blur the picture even further: In Canada, opinion polls indicated over 70 percent support for the death penalty during the 1980s and 1990s. In the UK in 1995, when the issue of reinstating the death penalty was debated and subsequently defeated in Parliament, 76 percent of British respondents supported the death penalty, and support remains high, even if it has declined recently (Death Penalty Information Center 2004). While in Western Europe support is currently around 30 percent, it has been consistently higher in Eastern Europe.<sup>12</sup> We know much less about the rest of the world, where there is little research on the topic, but the few figures available show general support of capital punishment.<sup>13</sup>

As various observers have noted, public opinion “appears to follow national political decisions—and, even then, only slowly—rather than leading it” (Moravcsik 2001). In Germany, for example, at the time of abolition in 1948, support for capital punishment was higher than it is in the United States today (Savelsberg 2000: 191). Looking at survey figures we have no way of knowing how deeply rooted support is. Moreover, surveys often don’t tell us much about the reasons for support at particular times and places, and how likely is it that these motives will lose their force.

Comparative data-driven approaches are valuable as they can help us to

identify factors that might escape the attention of single-case studies. However, they have a number of shortcomings. Explanations that rely on factors at the aggregate level will necessarily miss crucial historical processes and national and regional peculiarities. They run the ever-present risk of “concept misformation” (Sartori 1970) which occurs when abstract concepts are operationalized without knowledge of the context. And finally, they have a hard time accounting for the processes in which structural conditions are mediated by actors, institutions, and historical contingencies.<sup>14</sup> This is why they need to be coupled with medium-range theories which allow for closer examination of individual cases.

### *The Big, but Not Complete Picture: Theory-Driven Approaches*

Most theoretical accounts of the death penalty deploy theories which concern particular countries (such as the United States) or comparative pairs (such as the United States versus Europe). We discuss three types of approaches: national political economy, institutional factors, and the dynamics of regional integration.<sup>15</sup>

#### *National Political Economy*

“Materialist” theories explain differences between countries in terms of material interests of individuals and groups. Earlier, Marxian-inspired theories argued that punishment was an instrument of the ruling class used to defend its dominant position.<sup>16</sup> Today, rational choice analyses have taken their place, albeit mostly with a different (or no) normative commitment. They argue that the choice of punishments can be explained by the “demand” for them in the political market.<sup>17</sup> Classes, powerful social groups, or political entrepreneurs are the protagonists in the explanatory framework of these approaches. Some think that the demand for harsher policies is exogenously caused by factors such as crime rates and public insecurity. Others argue plausibly that some of this demand is caused by political actors themselves, who cleverly use the topic to advance their own political careers (Zimring and Hawkins 1986), radicalizing punitive discourses as an effect. Still others do integrate “cultural” factors (mainly from opinion research), arguing that politicians act strategically in exploiting public sentiment to advance their agenda.

Even though we are skeptical regarding purely instrumentalist accounts, we

agree that the question “who benefits” from the existence of the death penalty is an important one.<sup>18</sup> Jonathan Simon (1997), for example, has highlighted the neo-liberal agenda of the “conservative revolution” which characteristically combines “lower taxes and the death penalty.” In his account, the death penalty in the United States has served a symbolic, not a directly “economic,” function. Neo-liberal reform of the welfare state generated insecurity and resentment and undermined confidence in the state’s capacity to provide security and legitimacy through welfare and regulation, a capacity that was associated with the modern decline of the death penalty. In response, the “tough on crime” rhetoric associated with support of capital punishment has been used to deflect discontentment and mobilize consent (see also Garland 2001).

It is certainly true that capital punishment can serve as a distraction from socioeconomic insecurities, and in this way, can accompany the decline of the welfare state. However, this is but one of multiple functions capital punishment can serve and is certainly not restricted to “neo-liberal” projects. It could serve the same function in any type of regime. It is not surprising that in the most “neo-liberal” country in Western Europe, Great Britain, we find some of the most vocal supporters of a re-introduction of the death penalty in Europe.<sup>19</sup> However, abolition in Britain survived “free votes” in Parliament even during Margaret Thatcher’s reign, and the Tories have not used the death penalty recently as a serious campaign issue (Hodgkinson 1996). More than just the interests of political actors seem to be at stake. One important analytical strategy is to look at the impact of institutions.

#### *Legal-Institutional Factors and Democratic Governance*

Recently, “new institutionalist” approaches have emphasized the need to study institutionalized agency, institutional differences, and historical conjectures (Koelble 1995; Hall and Taylor 1996; Thelen 1999). For our purposes, this means looking at how elite strategies and institutional arrangements have worked together in history to produce abolitionist and retentionist outcomes. For example, American penal law federalism is unparalleled in Europe. Congress cannot abolish the death penalty for the whole country even if it wanted to do so, making abolition a slow and incremental process rather than a once-and-for-all event.<sup>20</sup> As Zimring and Hawkins (1986) have shown, the tension between the right of states to choose criminal penalties and federal oversight has



led to a situation where capital punishment became a symbol for much larger struggles between the center and the periphery.

In addition, Zimring, Hawkins, and Kamin (2001) have argued that the more democratic penal policy making is, the more it is prone to be driven by punitivism, with the irrational and emotional motives often found among death penalty supporters. Their empirical case is “three-strikes-and-you’re-out” legislation in California, but their hypothesis can be extended to capital punishment on a global scale. As one observer put it, “Basically, Europe doesn’t have the death penalty because its political systems are less democratic, or at least more insulated from populist impulses, than the U.S. government” (Marshall 2000). One has to be careful not to confuse “democracy” with “public participation in penal policy making.” The theory that nondemocratic societies are less punitive because they are more shielded from public pressure has little to it. Throughout history, most authoritarian states, including socialist, have used the death penalty liberally. This is not surprising since penal policy is a domain especially suitable for symbolic politics. Being “tough on crime” can be popular in any regime type.

The argument of Zimring and his colleagues, however, is more nuanced. They refer to popular participation in the penal policy-making process. The comparison between the United States and Europe, in this regard, is instructive. Observers have pointed out that American institutions are more “porous” and open to popular demands than European political structures. They expose many officials, particularly judges, to electoral competition for positions which in Europe are staffed by career bureaucrats or disciplined party politicians (Savelsberg 2000; Steiker 2002). Additionally, U.S. states allow penal policy to be made through referenda, such as the Californian “three-strikes” initiative. This would be unthinkable in most of Europe.<sup>21</sup>

How can this hypothesis be extended beyond the comparison between Europe and the United States? It seems safe to argue that less democratic states (in the participatory sense) seem to have an easier time abolishing capital punishment, since they can expect less resistance by a population overwhelmingly supportive of it. But neither the motivation nor the timing of abolition seems to have any necessary relationship with regime types.<sup>22</sup>

An important “institutional” factor in abolitionist outcomes is judicial abolition. It has so far taken place in Hungary, Ukraine, Latvia, South Africa, and

Albania, with Russia's constitutional court imposing a moratorium (Schabas 1996; Fijalkowski 2002). In each country, a strong majority of the populace supported capital punishment when the courts abolished it. This is not much different from countries in which it was abolished by parliamentary decision. But it certainly creates a greater legitimacy problem. It is no coincidence that all countries in which judicial abolition occurred had experienced a regime change beforehand. They had left behind regimes in which frequent human rights violations had occurred. In the aftermath, institutions which could claim a particular commitment to human rights had more influence than they would normally have had.<sup>23</sup> This has led to an interesting international development in which courts start citing each other's case law on judicial abolition. So far, the U.S. Supreme Court has remained split over the question whether foreign court jurisprudence is relevant to American cases.<sup>24</sup>

#### *The Dynamics of Regional Integration*

But there is another, maybe more important, reason for the abolitionist activism of these constitutional courts, namely the dynamics of regional integration. Abolition in Eastern and Southeastern Europe cannot be explained without looking at the fact that international organizations such as the Council of Europe and the European Union have made abolition a criterion of membership, and have actively promoted abolition in Western and Eastern Europe (Council of Europe 1999, 2004). Populations in postcommunist countries overwhelmingly support the death penalty, and it seems safe to say that most governments in the area abolished it less because of the "human rights appeal" of abolitionism and more because of anticipated benefits of compliance with European norms (Manacorda 2003; Fawn 2001). Turkey is a good example of a country that abolished capital punishment for no other reason than to remove obstacles on its way to EU membership.

In the rest of the world, such incentive structures just do not exist. Even if a numerical majority of states within the United Nations are now abolitionist, there is no economic benefit for others to join that majority, and little advantage in terms of "prestige," as long as economically and politically powerful nations such as the United States and Japan still retain the penalty. In Africa and Asia, no international institutions exist which act as forcefully as the Council of Europe and the EU in promoting abolitionism.<sup>25</sup> Interestingly in this regard is Latin America, where abolition has occurred without any regional initiative.