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Introduction

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Introduction

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- 1 The death penalty continues to generate numerous studies by sociologists, criminologists, historians, journalists, and lawyers, and remains a subject of popular fascination. Many studies of the United States, for example, endeavour to explain why most individual states and the federal government retain capital punishment, when nearly all other industrialised and post-industrial nations have abolished it completely.¹ Indeed, in the decades after the end of World War II, the United States seemed to be traveling a similar road to abolition as European nations, Canada, Australia and New Zealand. In 1965, legal scholar and criminologist, Norval Morris, reported to the United Nations on the status of capital punishment among world nations, at which time there were twenty-five abolitionist countries. Morris reported also that capital punishment had been abolished in nine individual US states.² Nevertheless, executions were still permissible in forty-one US states, the District of Columbia, and under federal statutes at that time.
- 2 Three articles in this themed issue focus on different aspects of capital punishment in different parts of the Anglophone world in the period from World War II to the 1980s, and are all from larger national, regional or state studies in progress. They were presented originally at the European Social Science History Conference at the University of Valencia in March 2016, in a session on Abolition and Change to the Death Penalty in Europe and North America, which explored transformations and continuities from the 1940s to the 1970s. In many jurisdictions, abolitionist politicians, civil servants, and bureaucrats achieved reform, but even as opposition to capital punishment in the West became more extensive, sophisticated and influential than ever before, in the years after World War II, the death penalty retained strong public support in the United Kingdom, the Caribbean, and the southern United States. Together, the articles illustrate that the history of capital punishment during these critical decades was complex, multifaceted and entangled with diverse political, social and cultural developments. They also complicate the post-World War II national histories of Britain, Jamaica, and the US Sunbelt state of Florida, and thus offer new research questions and explorations for regional, comparative and transnational projects. The articles further underline the resilience of conservatism in an age of abolition, particularly in relation to popular and political discourses on law and

order, protection and security, as well as race, class, immigration and mobility. Large sections of the populations in Britain, Jamaica, and Florida continued to equate capital punishment with enhanced individual and community safety.

- 3 Even so, the late-1940s was a pivotal moment in the history of capital punishment in the industrialised western world. In December 1948, the United Nations adopted the Universal Declaration of Human Rights, which recognised rights that are central to the ongoing campaign for the global abolition of the death penalty, including the right to life and protection from torture and cruel, inhuman or degrading treatment or punishment. The embrace of international human rights principles by nations and domestic constitutional regimes in post-World War II Europe resulted in, for example, the abolition of capital punishment in the newly formed Federal Republic of Germany (FRG) in 1949. This, however, brought the country's new government into conflict with Allied military authorities presiding over Nazi war crimes trials and executions, as executing major Nazi war criminals was a key part of the Allies' denazification programme. There were ideological, political, and popular divisions between those who felt execution was the only suitable punishment for Nazi perpetrators of terror and genocide and those who argued that the abolition of the death penalty altogether was a necessary precondition for overcoming the injustices and inhumanity of the past, as well as differentiating the new Germany from its murderous Third Reich past.³ The tensions between human rights and due processes discourses and continued advocacy of rough justice, just desserts, and exemplary execution are addressed in all three articles here.
- 4 In the United Kingdom, a Royal Commission on Capital Punishment was set up in 1949 by the post-war Labour government, and began an investigation that would conclude four years later that the law and enforcement of capital punishment for murder in the United Kingdom was riven by irresolvable contradictions. Historian Victor Bailey suggests Commission members equivocated over abolition, but they did set in motion events that led to the suspension and abolition of the death penalty in the United Kingdom by the end of the 1960s.⁴ Lizzie Seal's article draws on research into around 5,000 letters concerning capital cases, that were received by successive Home Secretaries in mid-twentieth-century Britain. She examines examples of pro-death penalty discourse in the letters as it was framed in relation to fears about safety and order in society. Although this was related to a belief that the death penalty could serve as a deterrent, the letters' main arguments centred on the pace of social change, often linked to the authors' views on post-war rising crime rates, population growth, immigration and the appearance of black and brown "others" in communities that were perceived to have been all-white and homogenous previously, declining morality and sexual permissiveness, and youth behaviour. Such transformations were often construed as making society more dangerous and insecure. The article also highlights which aspects of social change that the authors perceived as especially troubling, such as the behaviour of young auto bandits or Teddy Boys.
- 5 Seal argues that the public responses articulated in the letters help to shed light on continuities in punitive discourse and anxieties about social change, which endured throughout the same period in which there was growing public and official debate over abolition and retention, and certainly well-publicised anxieties over the Ruth Ellis, Derek Bentley, and Timothy Evans executions for example.⁵ Although criminological literature has frequently placed such sentiments within the context of social and cultural shifts in late-modern societies since the 1960s or 1970s, attitudes expressed in the letters

demonstrate that crime had a similar role as a condensing symbol for fears about the pace and contours of social change in the 1940s and 1950s. Fear of violent crime on the street and in the home continued to drive criticisms of lacklustre government responses to public concerns about safety and social, class, and racial security.

- 6 In the United States, the National Association for the Advancement of Colored People (NAACP) presented evidence for the first time before the US Supreme Court in 1949, that the death penalty in rape cases was discriminatory on grounds of race. Ninety percent of men executed for rape were African American, and most had been convicted of interracial sexual violence against a white girl or woman.⁶ This, and other Civil Rights challenges, launched a new era of death penalty activism and jurisprudence that continues to shape debate on the issue into the twenty-first century.⁷ By the early 1960s, the death penalty was retained for rape in the District of Columbia and seventeen US states, specifically all former Confederate and southern border states, as well as Nevada, and the United States was one of only five nations which continued to execute men convicted of rape; the other four were Nationalist China, Northern Rhodesia, Nyasaland, and South Africa.⁸
- 7 Nevertheless, popular and official attitudes toward rape were changing in the southern states during the 1940s and 1950s, as many state governors became increasingly vexed by the disproportionate numbers of black men receiving death sentences for rape. Such sentiments had been rarely expressed in the earlier part of the century, particularly by defenders of lynching as a necessary means to protect white women from seemingly black males. Further, jurist Arthur Goldberg's view in 1962 that "the imposition of the death penalty was arbitrary, haphazard, capricious and discriminatory", and its impact was "demonstrably greatest among disadvantaged minorities", became part of Goldberg, Douglas, and Brennan's dissent from the U.S. Supreme Court's refusal to hear *Rudolph v. Alabama* (1963), an appeal from a death sentence imposed for rape – argued on grounds of proportionality of punishment, rather than race.⁹ Later in 1966, as Arkansas was preparing to execute William Maxwell, a black man convicted of raping a white woman, Maxwell's appeal became the first showpiece of the NAACP-Legal Defense Fund's litigation campaign that utilised statistical and other social science data to prove racial patterns of executions for rape could only be due to one factor: racial discrimination.¹⁰
- 8 Even in countries which retained capital punishment, the 1950s and 1960s generally saw significant decreases in the numbers of capital statutes, the declining frequency with which death sentences were imposed, and lower numbers of executions being carried out. Nonetheless, local conditions and local factors continued to shape regional and national trends in important ways. As the age of death penalty abolition slowly dawned in the United States, widespread reluctance to abandon the death penalty and executions was evident in many states, including Florida. Executive and legislative unease over selective execution by race, particularly in capital rape cases, was not shared by many local constituents or law enforcement agents, particularly if an African American serial rapist was believed to be at large or a gang rape had been reported.
- 9 Vivien Miller argues that the combination of black male offender and white female victim remained a powerful predictor of execution for rape in 1940s and 1950s Florida, and executions functioned symbolically and practically to police interracial social and sexual behaviour, and to reinforce gender, race, and class boundaries, but in an increasingly limited number of cases and in select counties. She notes that specific aggravating factors, such as an attack involving multiple offenders and one victim, and the invasion of

the white family home by a burglar-turned-rapist, increased the likelihood of a death sentence being carried out. Thus, both prosecutors and jurors were becoming increasingly selective as to which cases and which offenders warranted a death sentence. Florida courtrooms were important sites of Civil Rights protest, as black defendants and their lawyers sought to challenge racial inequities in the prosecution of interracial sexual violence and the lack of due process afforded non-white offenders. Yet, success was limited due to the dynamics of gang, serial, and white-home-invasion rape cases, as well as race- and class-based cultural expectations regarding black masculine behaviour and the performance of that behaviour. When executions for rape did cease after 1960, it was only because of decisive gubernatorial action, and this action was out of step with popular opinion generally.

- 10 Even active execution states such as Florida and Georgia in the US South conducted no executions at all after 1964, but did resume in the late 1970s.¹¹ Consequently, not only was there a patchwork of often conflicting practices in different countries, particularly those with federal structures, but oppositional customs were found in different jurisdictions within the same national borders. The last executions in Canada took place in 1962 ; but had ceased in the province of Quebec in 1960. Britain's efforts to engage with issues of death penalty reform and abolition on the international stage in the second half of the twentieth century were also fraught with local-colonial/post-colonial-metropole tensions. Government ministers in the United Kingdom sought to balance diplomatic pressures, human rights commitments, constitutional law, and the demands of local independence movements, in its response to clemency appeals from condemned prisoners in territories including the Bahamas, Belize, Cyprus, Hong Kong and St Vincent for example. The result was a patchwork of often contradictory decisions across different territories that reveals the limits of British opposition to the death penalty, and illustrates both the diversity of death penalty decision-making across common law jurisdictions, and Britain's limited capacity to promote a uniform approach to the death penalty in its remaining overseas territories at the end of Empire.¹²
- 11 James Campbell's article on the evolution of modern Jamaican capital punishment, and the critical period of the 1970s and 1980s, highlights the differing attitudes toward abolition and retention within Jamaica itself, and between the Commonwealth nation and the United Kingdom. Beginning with the February 1972 convictions of Mario Hector and Winston Williams for the murder of a bank security guard, Campbell examines death row conditions at the St Catherine District Prison in Spanish Town, and the acts of resistance by condemned prisoners to protest the beatings, denial of basic human rights, and the oppressive conditions of solitary confinement that were routinely experienced by capital offenders awaiting execution. While there was a concerted national and international campaign against executions in Jamaica and other Caribbean nations, that involved lawyers, activists, government ministers and members of the public, Campbell demonstrates that wide-ranging acts of resistance by death row prisoners were just as crucial in forcing capital punishment onto the political agenda. The Hector-Williams case further provided an important platform for critical legal challenges to Jamaica's juvenile death penalty laws.
- 12 Abolition of capital punishment in major western nations was a defining feature of the late 1960s and 1970s. It was eventually abolished in law in most industrialised nations, with the notable exceptions of the United States and Japan, by the 1980s. Amid significant doubts about the justice and efficacy of the death penalty, there was an unofficial

moratorium on executions in Jamaica in the late-1970s during which numerous death sentences were commuted, although executions were resume in the 1980s. Both Hector and Williams' sentences were commuted as public criticism and political debates about the future of capital punishment in Jamaica gained traction, just as Earl Pratt and Ivan Morgan, also convicted of murder, were entering death row in 1979. Their appeals were eventually successful when the Judicial Committee of the Privy Council in London ruled in 1992 that delayed executions were inhuman and degrading punishment.¹³

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NOTES

1. See for example, Bessler (2012) ; Bakken (2010) ; Garland (2010) ; Gottschalk (2006) ; Zimring (2004) ; Sarat (2001).
2. Hood & Hoyle (2008).
3. See for example, Kochavi (2000) ; Schabas (2008) ; von Kellenbach (2013) ; Bass (2014, especially chapter 5) ; Ward (2015).
4. Bailey (2000, pp. 305-350).
5. Seal (2014).
6. Rise (1998) ; Jonas (2005) ; Allen & Clubb (2009).
7. For example, Zarnow (2008, pp. 1003-1041) ; *State v. Speller*, 230 N.C. 345 (North Carolina, 1949) ; *State v. Speller*, 231 N.C. 549 (North Carolina, 1950) ; *State v. Speller*, 57 S.E.2d 759 (1950) ; *Shepherd v. State*, 46 so.2d 880 (1950).
8. *Washington Post*, 22 October 1963, A1 ; *New York Times*, 10 July 1966, 147.
9. Goldberg (1973) ; Goldberg (1986).
10. Banner (2002) ; Garland (2010).

11. There were no executions in the United States between 1967 and 1977. When the US Supreme Court ruled in *Furman v. Georgia* (1972) that the death penalty was administered in a capricious and discriminatory manner, and thus existing state laws and practices were unconstitutional, states quickly rewrote their capital punishment laws to include bifurcated trials and automatic appellate review of death sentences. The death penalty was reinstated when the court voted 7-2 in *Gregg v. Georgia* (1976).

12. Novak (2016, especially Chapter 4) ; Yorke (2016).

13. *The Independent* (UK), 2 November, 1993.

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