

The recent publication of the Fifth Edition of *The Death Penalty: A Worldwide Perspective* by Roger Hood and Carolyn Hoyle (Oxford University Press 2015) shows the great progress made towards worldwide abolition of capital punishment over the past quarter of a century.

It is 25 years since Roger Hood published the first edition of this book, based on his report in 1988 to the United Nations Social and Economic Council (ECOSOC). This aimed to assess the progress that had been made since the UN General Assembly resolution of 1971 which made it clear that *the main objective* of the International Covenant on Civil and Political Rights which had been adopted in 1966 was to progressively restrict the number of offences for which capital punishment might be imposed, 'with a view to the desirability of abolishing this punishment *in all countries* (our emphasis). When the ICCPR came into force in 1976 a similar resolution followed, to emphasise its importance. In particular, Article 6(6) had made it clear that '*nothing* shall be invoked to delay or prevent the abolition of capital punishment by any State Party'.

At the time when the ICCPR was adopted only 12 countries had abolished the death penalty for all crimes for all offences and in all circumstances in peacetime and wartime. By 1988 the first edition of *The Death Penalty* noted that the number had gradually increased to 35, with another 17 countries having abolished for ordinary crimes in peacetime only (as had the United Kingdom) and a further 26 countries that appeared to be abolitionist *de facto*, not having executed anyone in the previous 10 years. The abolitionist countries were predominantly in Europe and South or Central America. The pessimistic conclusion of this edition was that 'In many regions of the world there is little sign that abolition will occur soon'.

From the second edition (1996) onwards the tone has changed towards gradually increasing optimism. It is abundantly evident that the goal set by the UN is moving ever closer to being achieved and at a rate that could not be envisaged in the 1980s, notwithstanding some very recent setbacks such as the resumption of executions in Pakistan after a moratorium of six years, provoked by the terrorist outrage in Peshawar; the decision of Jordan to resume executions after a period of eight years; and the many death sentences imposed during the recent turmoil in Egypt. This new edition, it is hoped, will make a convincing case for optimism and for rejection of pessimism.

At present, 107 countries have abolished the death penalty accounting for over half of the 198 independent countries in the world. Furthermore 100 of them have rejected it completely in all circumstances – an enormous increase from the 12 countries that had done so by 1966. As many as 82 countries have ratified the ICCP and/or one of the regional human rights treaties abolishing the death penalty and many have embodied abolition in their constitutions. At the United Nations, the resolutions for a moratorium on the death penalty and executions was supported in December 2014 by 117 countries, with 38 opposed, compared to 55 when the resolution was first introduced in 2007. Furthermore, the majority of countries that have embraced abolition in the last 25 years have moved swiftly from executions to complete abolition within a few years without going through a lengthy period of being abolitionist in practice while still imposing death sentences. This Fifth Edition notes that there are now only 39 countries that have executed anyone within the past 10 years, whereas as recently as December 2007 there had been 51. Eight countries had abolished the death penalty completely and the number regarded as abolitionist de facto increased from 44 to 52. In the United States seven states have abolished the death penalty since 2007. In 2013 only 22 of the 198 countries executed anyone, whereas the number in 1998 had been 37. Furthermore, in most retentionist countries the number of persons executed has fallen very substantially since the 1990s: for example, in China, Singapore, Vietnam and Malaysia and the USA. In fact, most retentionist countries, and states of America, can best be characterized as ‘low level and sporadic executioners’. In the five years 1996 to 2000, 26 countries executed at least 20 people in each of these years, yet in the five years 2009 to 2013, only seven nations were known to have executed 100 or more people, an average of 20 a year: China (by far the largest), Iran (by far the highest proportion per head of population), war-torn Iraq, Saudi Arabia, North Korea, Yemen and the USA (the lowest rate per head of population).

A new dynamic has been at work and a new pattern has been set since the end of the 1980s when the Berlin Wall came tumbling down: one which has sought to move the debate about capital punishment beyond the view that each nation has, if it wishes, the sovereign right to retain the death penalty as a repressive tool of its domestic criminal justice system on the grounds of its purported deterrent utility or the cultural preferences and expectations of its citizens, and instead to persuade countries that retain the death penalty that it inevitably, and however administered, violates universally accepted human rights embodied in the ICCPR, as interpreted and developed by International Human Rights institutions, by domestic Supreme

or Constitutional courts and embodied in constitutions. An ever more powerful group of advocates for abolition and defenders of the rights of those who may be subject to the death penalty has been making a powerful impact in the courts and seats of government: among them many European governments, including the United Kingdom FCO, The European Union, The World Coalition to End the Death Penalty, Hands off Cain, the International Commission, Reprieve, Penal Reform International, The Death Penalty Project and, of course, Amnesty International.

The evidence showing the failure of capital punishment to meet contemporary human rights standards in those countries that still retain it is extensively reviewed and critiqued in this Fifth Edition. It highlights the inappropriate scope of the crimes and persons punishable by death, in particular for drug trafficking; the failure to protect the disadvantaged and mentally ill, the paucity of resources and inadequate procedures to ensure a fair trial, the failure to provide just clemency proceedings, the dreadful state of death rows in many countries and other human rights abuses contrary to the international standards set by the ICCPR and the UN Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty. It reviews the evidence of the inevitable arbitrariness, discrimination and error that has been found in all death penalty systems and procedures – whether mandatory or discretionary — as well as the failure to provide proof of a unique deterrent effect on murder rates associated with the use of capital punishment. Attention has been paid also to the argument and evidence for the claim that abolition is impossible to achieve in the face of hostile public opinion. Not only is it concluded that the evidence is weak but also that popular sentiments should not over-ride the duty of the state to protect all its citizens from arbitrary violation of their right to life and freedom from cruel, inhuman and degrading punishment. Finally, this volume, like its predecessor tackles the question of what punishment should replace the death penalty and argues that any form of imprisonment should leave hope for the prisoner to be eventually paroled under supervision if shown by a competent authority to be no longer a danger if released. Life imprisonment without any hope of parole from the very beginning of the sentence is regarded as unnecessary, likely to lead to excessive punishment of persons who are not too dangerous to be released, and yet another form of cruel, inhuman and degrading punishment.

The spread of abolition throughout the world to include countries of varying cultures, religious creeds, and social and political structures, has severely undermined the argument of

those who have taken a cultural relativist's position on this issue and added greatly to the normative and moral force propelling the abolitionist movement. Although largely European led, it has been embraced in South and Central America, in many parts of Africa, among many secular Muslim states such as Turkey and Senegal, and is beginning to make headway in Asia. We note, for example, the abolition of the mandatory death penalty in an increasing number of jurisdictions, the willingness of the Attorney General of Malaysia to review the death penalty, the reforms in China to reduce and make less arbitrary the infliction of the death penalty with a view to eventual abolition, the further reductions in the scope of capital punishment in Vietnam, and the serious consideration of abolishing capital punishment now taking place in Thailand, Ghana, and Niger.

The situation on the global plane has undoubtedly moved towards universal abolition. Instead of abolitionists being on the weaker flank, constantly being called upon to justify their position, it is now the retentionists who are on the back foot. Most of these countries are recognising the need for reform to protect their national reputation in the human rights field, as is evident, for example, in China. As one prominent and influential Chinese senior scholar, Professor Zhao Bingzhi of Beijing Normal University put it recently at an international meeting: 'Abolition is an *inevitable international tide and trend* as well as a signal showing the broad-mindedness of civilized countries ... [abolition] is now an international obligation' (our emphasis).