

Institution: Birmingham City University
Unit of Assessment: 20
Title of case study: Influence of death penalty research: regional and municipal policies towards the death penalty.
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>This case study describes the impact of the work conducted by the Centre for American Legal Studies (CALs) relating to capital punishment and the death penalty. The impacts which will be identified, explained and evidenced in this document are as follows:</p> <ul style="list-style-type: none"> • Effects upon awareness and understanding of issues relating to the death penalty amongst key stakeholders in the national and international legal and political communities. • Changes to policy and practice at the regional level of the European Union, and in the domestic jurisdiction of the United States, and the strategic approaches of the British government's Foreign and Commonwealth Office. • Effects on the understanding and awareness of national and international policymakers regarding their knowledge of international issues relating to capital punishment and the death penalty. • Reduction or prevention of negative effects upon young people convicted of a subgroup of criminal offences in the United States. • Benefits to activities, processes and understandings of legal organisations in the United States. • Benefits to the performance and practice of UK lawyers applying their skills to US cases.
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Research undertaken by CALs has explored the theoretical and legal frameworks of capital punishment and the death penalty and has firmly situated these conceptual models in their applied historical and contemporary contexts nationally and internationally. All of the research is informed by emancipatory principles; there is a dual commitment to scholarly enquiry to advance legal academic theorising on the topic whilst also ensuring that the rights and needs of those affected by such legal penalties are recognised in the appropriate forums. As such, the research underpinning the impact of the Centre's work consists of the following interwoven strands:</p> <p><u>Historical and philosophical insights into capital punishment and the death penalty</u></p> <p>The work undertaken by CALs in this area provides important insights into the embedded cultural understandings, values and beliefs associated with capital punishment. Clearly, the concept of capital punishment raises fundamental questions regarding the relationship between the individual and the state and these questions have been critically considered in a wide range of research endeavours, which have explored cultural influences upon capital punishment as they have developed over time. This research is strongly comparative in nature, drawing upon developments in the US, European and African contexts.</p> <p><u>Research into policy and research to inform policy</u></p> <p>This research builds upon the foundations of the historical and philosophical scholarship described above to generate meaningful and applied insights into capital punishment within contemporary policy and legislative contexts. The work undertaken by the Centre in this research area has led to the development of particular expertise at the European levels. For example, the Centre has advised the European Commission of the European Union, and undertaken an exhaustive review of the jurisprudence of the Council of Europe's European Court of Human Rights on the death penalty, which has informed the on-going political and legal project focusing upon the removal of capital punishment in the European regions.</p>
<p>3. References to the research (indicative maximum of six references)</p> <p><u>Publications:</u> Author: Jon Yorke Title: The Evolving Human Rights Discourse of the Council of Europe: Renouncing the Sovereign Right of the Death Penalty' in Yorke J. (ed.) <i>Against the Death Penalty: International Initiatives and Implications</i>, (Farnham: Ashgate Publishing), pp. 43-74. Year of Publication: 2008</p>

This chapter was translated into Spanish as: "La evolución del discurso de los derechos humanos del Consejo de Europa: la renuncia al derecho del soberano a imponer la pena de muerte" in Luis Arroyo, Paloma Biglino and William Schabas, *Hacia la Abolición Universal de la Pena Capital*, (Valencia: Tirant Lo Blanch, 2010), pp. 107-147. The President of the International Academic Network for the Abolition of Capital Punishment, used this article and others to help inform the Spanish Presidency of the EU in 2009, and the global initiatives for abolition. In considering Yorke's scholarship, the President also invited him to present at the United Nations. In the President's reference he states that Yorke's, "scholarship is extremely important for the global abolitionist movement, and because of this I invited Dr Yorke to present an Overview of the 2010 UN Report on the Death Penalty, in the Commission on Crime Prevention and Criminal Justice [UN, Vienna]...Dr Yorke provided a cogent critique of international law, which benefitted those working on the death penalty at the United Nations."

Author: Jon Yorke

Title: 'The Right to Life and Abolition of the Death Penalty in the Council of Europe,' 34(2) *European Law Review* pp. 205-230.

Year of Publication: 2009

This article has become one of the leading articles in the world on the right to life and the death penalty. It was referred to at a conference at the European Commission in 2010, and is the reason why Dr Yorke was invited by the European Commission to present a speech on the EU and the death penalty in the Royal Palace in Brussels. He also participated in the EU Working Group on the Death Penalty, which drafted policies on the death penalty for the European External Action Service. In his reference Policy Officer of the EEAS, stated, "Dr Yorke's speech laid down much of the platform for the work of the Working Group on the Death Penalty, which drafted Recommendations for the European Commission and the European External Action Service's policy on the death penalty. Dr Yorke provided cogent observations in the "Coherence" and "Consistency" areas of the Recommendations. The Recommendations have helped to solidify the work of the EEAS in the bilateral and multilateral levels in the work towards the global abolition of the death penalty."

This article has also appeared in Peter Hodgkinson (ed), *Justice and Legal Issues*, Volume I, the Ashgate International Library on Capital Punishment, (Farnham: Ashgate Publishing, 2013). Hodgkinson is a leading expert on the death penalty and is the Director of the Centre for Capital Punishment Studies at the University of Westminster.

Author: Jon Yorke

Title: 'Inhuman Punishment and Abolition of the Death Penalty in the Council of Europe,' 16(1) *European Public Law*, pp. 77-104.

Date: 2010

This article also contributed to the impact described in the first entry above, and Dr. Yorke referred to it in his speeches in the United Nations in Vienna in 2010, and he provided an updating of the work at the World Congress Against the Death Penalty, in Madrid in 2013. This article was reproduced in English in: Luis Arroyo, Paloma Biglino and William A. Schabas (ed) *Towards Universal Abolition of the Death Penalty*, (Valencia: Tirant Lo Blanch, 2010), pp. 77-119, and the Spanish translation appeared as, 'Trato Inhumano y Abolición de la Pena de Muerte en el Consejo de Europa,' in Luis Arroyo, Paloma Biglino and William A. Schabas (ed) *Contra el Espanto: Por la Abolición de la Pena de Muerte*, (Valencia: Tirant Lo Blanch, 2012), pp. 323-369.

Dr Yorke's work on the "inhumanity" of the death penalty and that it is a violation of the "right to life" was used as a background source of information of the confidential report he wrote for the Foreign and Commonwealth Office, "Islam and the Death Penalty." Dr Yorke is a member of the Foreign and Commonwealth Office Death Penalty Expert Group, and the FCO reference states, "the Senior Minister of State, asked the Group about the issue of the death penalty within Islam, and Dr Yorke authored a report on this issue. This report has contributed to the Foreign and Commonwealth

Impact case study (REF3b)

Office's understanding of this issue, and has contributed to the FCO dialogue with Asian retentionist countries on the death penalty.”

'Is the Death Penalty Dying? European and American Perspectives' in, Austin Sarat and Juergen Martschukat (eds) *Sovereignty and the Unnecessary Penalty of Death: European and United States Perspectives*, (Cambridge: Cambridge University Press, 2011), pp. 236-267

'Capital Punishment,' in Joel Krieger, Margaret E. Crahan, Craig N. Murphy, and Ayse Kaya, (eds) *The Oxford Companion to Comparative Politics*, (Oxford: Oxford University Press, 2012), pp. 140-144.

Amicus Curiae Briefs – Authored by Professor Julian Killingley

Professor Julian Killingley has authored numerous amicus curiae briefs which have been filed in federal courts (the United States Supreme Court and Federal District Courts) and his legal arguments have directly contributed to the evolution and change in the law as it related to the death penalty and the punishment of juvenile offenders.

In Terrance Jamar Graham v. State of Florida; Joe Harris Sullivan v. State of Florida, Brief for Amnesty International, at al, as *amici curiae* in Support of Petitioners, in the Supreme Court of the United States, Nos. 08-7412, 08-7621, Professor Killingley's arguments contributed to the United States Supreme Court holding that this was a violation of the United States Constitution, Eighth Amendment's "cruel and unusual Punishment's clause, for a state to sentence a juvenile for a non-capital homicide to life imprisonment without the possibility of parole.

In Deck v. Missouri, Brief on Writ of Certiorari, with the National Association for Criminal Defense Lawyers, and the Bar Human Rights Committee of England and Wales, in the Supreme Court of the United States, No. 04-5293. Professor Killingley's arguments contributed to the United States Supreme Court holding that shackling a defendant in the sentencing phase of the capital trial violated the defendant's due process rights.

In Roper v. Simmons, Brief on Writ of Certiorari, with the Bar Human Rights Committee of England and Wales and the International Human Rights Committee of the Law Society of England and Wales, in the Supreme Court of the United States, No. 03-633, Professor Killingley's arguments contributed to the United States Supreme Court holding that it is a violation of the Eighth Amendment to sentence a juvenile defendant to death.

Documentary Film:

Dr Jon Yorke was interviewed by the International Academic Network for the Abolition of Capital Punishment, and he presented his views on the evolution of political philosophy and the history of the death penalty in, *Still Killing: Academics for the Abolition of Capital Punishment*. Directed by Adán Nieto, Manuel Maroto and Marta Muñoz (ISBN 978-84-8427-825-2: Instituto de Derecho Penal Europeo e internacional (UCLM, 2011)

4. Details of the impact (indicative maximum 750 words)

The impact of the Centre's research around capital punishment and the death penalty is wide-ranging, both in terms of reach and significance. The key areas of overlapping and interconnected impact, and evidence in support of the same, are outlined below:

- *Effects upon awareness and understanding of issues relating to the death penalty amongst key stakeholders in the national and international legal and political communities.*

Key here is the selection of Dr Jon Yorke by the International Academic Network Against the Death Penalty to present an overview of the UN Quinquennial Report on the Death penalty, at the UN Commission on Crime Prevention and Criminal Justice in Vienna in 2011. Dr Yorke also presented a paper at the first African conference on the death penalty held in Uganda in 2004, which was used to inform the Kenyan Parliament during their legislative discussion on the country's Terrorism Bill.

- *Changes to policy and practice at the European level.*

Notable here is the application of Dr. Yorke's historical research as a member of the drafting committee of the Guidelines on Strategy Against the Death Penalty, which was submitted to the European Commission, the European External Action Service (EEAS) and to Lady Ashton, High Representative of the European Union. Dr Yorke made specific mention of the need to streamline the delivery of information on the death penalty, to continue to focus on the multilateral (UN) and bilateral dialogues and for the establishing of a wider academic community on the death penalty in the EU, and these were drafted as specific policy initiatives for the EU. Dr Yorke's recommendations which are recorded in the extracts of his speech in the final report of the EU-NGO Forum, were implemented as specific policies in the EU (See EU Report in Section 5, pp. 4, 7-10, 20-22).

- Effects on the understanding and awareness of national and international policymakers regarding their knowledge of international issues relating to capital punishment and the death penalty.

Most pertinent here is Dr Yorke's membership of the Foreign and Commonwealth Office, Death Penalty Expert Group (a sub group of the Secretary of State for Foreign and Commonwealth Affairs, Advisory Group on Human Rights). Drawing upon his policy-centred research, Dr Yorke has provided advice to the British government to inform their strategy for communications to Embassies in retentionist countries. He has also provided points of clarity on the UN and EU minimum standards on the death penalty. In 2012, the British government made particular note of the increase in executions in many Islamic countries. The Minister of State wanted to clarify the information provided to British Embassies in North Africa and the Middle East, and Dr Yorke was commissioned by the Expert Group to provide a report entitled, "Islam and the Death Penalty," for this purpose. In June 2013, Dr Yorke was invited to address the Academic Session of the World Congress Against the Death Penalty at the Royal Academy of Fine Arts in Madrid. Dr Yorke's panel was chaired by Mr. Jose Luis Rodriguez Zapatero, former Prime Minister of Spain.

- Use of Amicus Curiae Briefs (Friend of the Court) for the protection of constitutional rights the United States.

Professor Julian Killingley has acted as counsel and joining-counsel in a number of *amicus curiae* briefs which have helped protect the rights of those facing the death penalty, and has acted for Amnesty International, the Bar Counsel of England and Wales and the Bar Human Rights Committee of England and Wales. Dr Yorke's research supported an *amicus* brief contributing to the abolition of the sentence of life imprisonment the juveniles who commit non-homicide criminal offences. This case abolished the sentence of life imprisonment for juveniles who commit non-homicide criminal offences.

- Benefits to activities, processes and understandings of legal organisations in the United States.

This refers to the research-informed advice Dr Yorke provides to the American Bar Association's Death Penalty Moratorium Project, which is the federal professional body of practicing lawyers in the United States. He has provided guidance for the project on their statements on international law and the death penalty, and also on their initiatives for developing programmes in Africa.

- Benefits to the performance and practice of UK lawyers applying their skills to US cases.

Dr Yorke draws upon the policy research of the Centre in his capacity as an instructor on the CPD course run by the NGOs Amicus and Reprieve to train UK lawyers to represent people on death row in the United States.

5. Sources to corroborate the impact (indicative maximum of 10 references)

- 1) Desk Officer, Human Rights and Democracy Department, Foreign and Commonwealth Office.
- 2) Human Rights Policy Officer, European External Action Service, European Commission.
- 3) Director, Instituto de Derecho Penal Europeo e Internacional.
- 4) Director, Amicus.
- 5) 12th Annual EU-NGO Forum for Human Rights, EU Human Rights Instruments and the Lisbon Treaty, State of Play and Way Forward, Brussels, Belgium, 12-13 July, 2010, <http://protectionline.org/files/2012/08/12th-EU-NGO-Forum-on-Human-Rights-Final-Report-“EU-Human-Rights-Instruments-and-the-Lisbon-Treaty-State-of-Play-and-Way-Forward”.pdf> See Pages 4, 7-10 (instruments), and 20-22 (speech synopsis).