

The Unnecessary Punishment of Death - Part One

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Editors' Note

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Introduction

This article engages with a specific issue in the sovereign rejection of the death penalty. The focus for enquiry will be the governmental aim to create effective penal policies in its role of guardian of the mortal choices and decisions within a country. When considering how to punish the worst criminals in a state, or even how to punish those attacking a state from the outside, the question of the legitimacy of the death penalty arises. Max Weber identified that the state holds the "monopoly of the legitimate use of physical force in the enforcement of its order."¹ Historically the death penalty was generally considered to be a legitimate punishment for maintaining public order in society, but over the past thirty years in Western democratic societies, there has been an almost complete political metamorphosis rejecting this position. The use of the death penalty in America, or more cogently, the thirty five states which maintain the punishment, and its application in military and federal crimes, provides an anomaly to this trend.

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As such, this article explores to what extent the *legitimacy* of the death penalty is contingent on it being viewed as a *necessary* punishment for a social and politically valid aim; and alongside this analysis will be a consideration of the impact the internationalisation of the abolitionist discourse has had on any isolated, statist promotion of sovereignty.

By 1981, the geopolitical region of Western Europe had denounced the punishment.² It is analysed to what extent individual governments, as part of their own political policy, rejected the death penalty as a useful penological tool for both protecting the lives of individuals from domestic homicides and as an effective penalty for those outside (and inside) attacking the security of the state. Then the various discussions within the Parliamentary Assembly of the Council of Europe which analyzed the necessity of the death penalty in terrorist cases are engaged with. It is investigated to what extent these discussions led to the firm rejection of the death penalty in all circumstances in 2002. The European Union has also developed an abolitionist strategy and has mandated the abolition of the death penalty within its member states, and it seeks to promote global abolition as part of its external human rights project.

Then (in Part Two, which will appear in the next issue of the *Amicus Journal*) the extent to which the argument that the death penalty is unnecessary in the United States is analyzed. Hugo Bedau explicitly argued through his theory of the "minimal invasion principle" that the death penalty is unnecessary in the United States. A political and constitutional history is offered to reveal the

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cogency of Bedau's position. The debates during the drafting of the Bill of Rights in 1791 are considered, and a US Supreme Court jurisprudential thread is identified to determine whether the US Constitution can be interpreted to reveal that the death penalty is no longer necessary. The question of the necessity of the death penalty is then placed in context with the (in)effectiveness of state capital statutes to render a constitutionally viable sentencing policy, and then the exponential costs of maintaining the capital judicial system is balanced against an adequate alternative punishment through a prison sentence.

A Theoretical Approach to Sovereignty and the Legitimacy of the Death Penalty

In her *Foreword* to the "dialogue" with Jacques Derrida, Elisabeth Roudinesco explained that there was a certain level of dissimilarity between the two philosophers' approaches to the questions concerning sources of political power. She reveals that there were "differences . . . stated, points of convergence, discoveries on both sides, surprises, interrogations; in short, a complicity without

complacency."ⁱⁱⁱ Roudinesco preselected some of the topics for their discussion, which she discerned as the "great questions that mark our age."^{iv} Among these was the issue of the "death penalty and its necessary abolition,"^v and Derrida acquiesced in this selection and identified the special status of the punishment within intellectual enquiry on politics and power as he stated, "what is most hegemonic in philosophy should include a deconstruction of the death penalty, and everything with which it is in solidarity – beginning with a certain concept of sovereignty."^{vi} Derrida had uncovered this philosophical hegemony during a seminar on the death penalty at Cardozo Law School, and he reveals that he had come to the conclusion that sovereignty and the death penalty were in some sort of symbiotic relationship because the death penalty becomes applicable in "exceptional cases."^{vii} He provides a history of Western philosophy and a reading of the humanism of Cesare Beccaria and Carl Schmitt's theory of public law. Derrida claimed that no philosopher of the Western tradition had "contested the legitimacy of the death penalty."^{viii} He interpreted this philosophical tradition (which includes the

Enlightenment theory of the social contract and Immanuel Kant's categorical imperatives) as not having adequately solved the problem of how to deal with threats to the life of the sovereign and the life of his citizens. Derrida was of the opinion that there will always be circumstances where the death penalty would be viewed as necessary for the survival of the sovereign and his subjects. A favourite of Derrida's is Jean-Jacques Rousseau's legitimising of the punishment in the social contract through the execution of the "public enemy"^{ix} because survival is at stake: either the sovereign or the individual will perish.

In the same way, Derrida claims that the Italian Enlightenment humanist Cesare Beccaria allowed for the death penalty in exceptional circumstances. Beccaria is recognised as one of the main figures promoting the abolitionist discourse in modernity and within his tract, *An Essay on Crimes and Punishment*, he argued for the general abolition of

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the death penalty but conceded that "[t]here are only two grounds on which the death of a citizen might be held to be necessary."^x The first is when an individual "retains such connections and such power as to endanger the security of the nation, when, that is, his existence may threaten a dangerous revolution in the

established form of government."^{xi} The second was when the death penalty was demonstrated to be a deterrent, but Beccaria argued that "centuries of experience" had revealed that "the ultimate penalty has never dissuaded men from offending against society."^{xii} Derrida then proposes an extravagant reading of Beccaria's exceptions when he explains:

If one were to apply to the letter the list of exceptions Beccaria places on the suspension of capital punishment, it would be administered almost every day. As soon as the order of a society is threatened, or every time it is not yet assured, it is admissible to put a citizen to death, according to Beccaria, even if for him the death penalty is not a 'right.'^{xiii}

Derrida does not engage with the historical context of this Enlightenment position and the evolving techniques of the police force and punishment and the prevalence of crime in eighteenth-century Europe.^{xiv} In particular, it would have been beneficial if he had placed Beccaria in context with

the theories of the nineteenth-century European historian, François Guizot.^{xv} Through Guizot's reasoning on what are legitimate and necessary punishments, we can see that even Beccaria (and thus Derrida also) was mistaken about the quality of the death penalty for neutralising threats to the security of the state. Guizot observed that "[c]apital punishment, in spite of appearances, has not, even in a physical sense, the advantage of an immutable efficacy; for in suppressing a known enemy, it does not always suppress danger,"^{xvi} and he further explained, "[w]hat power seeks in the employment of capital punishment is security. I have shown that this it does not find."^{xvii} Guizot demonstrated that in creating mechanisms for the security of the state, the death penalty is impotent, and he further explained:

[p]unishments may destroy men, but they can neither change the interests nor sentiments of the people . . . [the government] may kill one or several individuals, and severely chastise one or several conspiracies, but if it can do no more than this, it will find the same perils and the same enemies always before it. If it is able to do more, let it dispense with killing, for it has no more need of it; less terrible remedies will suffice.^{xviii}

The death penalty has an appearance of being a sophisticated penological tool. But when enemies attack, it is a blunt instrument and is insufficient for dealing with the technical political nuances required to maintain a state's equilibrium. This is against the truncated position of when security is threatened, the only possible outcome is either survival or death; non execution leads to the death of the sovereign and his subjects, and an execution leads to the preservation of the life of the sovereign and his subjects. Guizot demonstrated that this is an overly simplified determination, and that even during war, the mortal choices governments make are more complicated, and different political strategies must be thought through for the immediate and long term fostering and flourishing of the populace. In the presence of great violence in society, such as during the French Revolution, Guizot stated, "[w]e live in a society recently overturned, where legitimate and illegitimate interests, honourable

and blameable sentiments, just and false ideas, are so mingled, that it is very difficult to strike hard without striking wrong."^{xix} Guizot called for governments not to react with death during threats to its security, but for political power to place a more sensitive analysis on political policies and penal techniques, to determine what would be beneficial to the state.

Derrida then placed his reading of Beccaria's legitimising of the death penalty in exceptional cases in juxtaposition with the Weimar Constitutional public law theory of Carl Schmitt. Derrida makes an attempt to identify the cogency of Schmitt for a theory against legal and political "limitations of sovereignty," and for proposing the ever-present possibility of the death penalty he engages with Schmitt's theory on "the right to suspend the law, or the rule of law, the constitutional state."^{xx} Article 48 of the Weimar Constitution enabled the president of the Reich to suspend the provisions of the constitution in times of public emergency, and to "suspend for the time being, either wholly or in part, the fundamental rights described [in the Constitution]" in an attempt to restore order, and Schmitt explains that what materialises is a "state of exception" in which the political and legal process create, "unlimited authority, which means the suspension of the existing legal order."^{xxi} This authority is exercised in moments of political reaction against internal and external threats to public order, and consequently in the use of emergency law, the "state suspends the law in the exception on the basis of its right of self-preservation," and that the sovereign "has the monopoly over this last decision."^{xxii} Schmitt explains that the ultimate questions of life and death are dealt with in the exception because "a philosophy of concrete life must not withdraw from the exception and

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the extreme case, but must be interested in it to the highest degree," and this is because in "the exception the power of real life breaks through."^{xxiii}

This political decisionism depicts a pre-World War II statist conception of sovereignty within a "borderline concept," where the sovereign is able to oscillate *inside* and *outside* of constitutional norms; as Andrew Norris observes this, for Schmitt, "sovereignty decides upon its own limits."^{xxiv} The mechanisms provided by Article 48 was utilised by Hitler to instigate the Holocaust, where Jews,

gypsies, and the disabled were killed for the mere fact of *who* they were; their crime was their *existence*. Such repugnant eugenicism was denounced in 1949–1950 by the drafters of the European Convention on Human Rights. To prevent such illegitimate *thanatos* in the future, the Council of Europe created the framework for a supranational region to protect human rights, which elevates these rights over absolutist political considerations of the individual states. During the drafting debates, Henri-Pierre Teitgen, the *rappporteur* to the Committee for Legal and Administrative Affairs, stated, “[i]t is necessary...to create in advance a conscience in Europe which will sound the alarm,”^{xxxv} and this is because “the reason of state” is a “permanent temptation,” and “Fascism and Hitlerism have unfortunately tainted European public opinion. These doctrines of death have infiltrated into our countries.”^{xxxvi} The drafters understood that the formulation of the European Convention on Human Rights would limit “state sovereignty on behalf of the law, and for that purpose all restrictions are permitted.”^{xxxvii} Hence the mechanisms for repudiating the state of exception, and Schmitt’s theory on sovereignty, were set in motion.

Roudinesco recognised the evolution of European human rights principles and firmly disagreed with Derrida’s position. It appears that Roudinesco had more appropriately considered the policies of the Council of Europe^{xxxviii} and the European Union^{xxxix} for the internal removal of the death penalty and the prerequisite requirement that new member states abolish the death penalty, when she stated “it seems impossible to me that the death penalty could be reinstated in Europe.”^{xxx} Derrida, in recalling Schmitt, replied, “Oh, of course it could!”^{xxxi} and he further argued that:

[a]s long as an abolitionist discourse has not been elaborated and effectively accredited (and this has not yet been done) at the level of unconditional principles, beyond the problems of purpose, exemplarity, and even the ‘right to life’, we will not be shielded from a return of the death penalty.^{xxxii}

Then Roudinesco replied:

I am among those who think that this is not possible. The abolition is inscribed into European law. It has become, in a way, *outside the law*, out of the reach of law, since it falls under a higher order, that of international treaties (emphasis in original).^{xxxiii}

Roudinesco correctly articulated the supranational nature of sovereignty within the Council of Europe and the role of legislation that provides for abolition. Roudinesco understood that through regional law, the Beccarian exception and Schmitt’s public law theory are now denounced and neutralised. This is what Roudinesco means when she thinks that the return of the death penalty is “not possible” – it is a practical impossibility in our current times. There would be insurmountable obstacles at each stage of a recreation of a

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capital judicial system; from the training of lawyers and judges, to the formulation of fair trial and appellate review processes, to the construction of death rows, the execution chamber and the execution machine. The Council of Europe has built up a wealth of political statements, legislation, and court judgments detailing how the right to life and the prohibition of inhuman punishment can be used to denounce the capital trial process, and in 2005 (so after the dialogue), the European Union adopted a Council Regulation on the prohibition of trading in equipment that may be used in the administration of the death penalty;^{xxxiv} it is the first regional instrument of its kind. The Regulation Article 3(1) prohibits EU member states from the export of “goods” that have “no practical use other than for the purpose of capital punishment,” and Article 4(1) prohibits the import of such “goods” into Europe. In Annex II of the Regulation, “goods designed for the execution of human beings” include the gallows and guillotines, electric chairs, airtight vaults for the purpose of execution by the administration of lethal gas, and automatic drug injections systems. This Regulation is important for the European policies that guard against the return of the death penalty, because as is explained in paragraph 7 of the introductory note, “[t]hese rules are instrumental in promoting respect for

human life and for fundamental human rights and thus serve the purpose of protecting public morals.”

Roudinesco was interpreting the maintenance of the *now*, for a hopeful *future*. Derrida could not pull his gaze from the possibility of the return of war and disorder, and did not adequately consider the cogency of the hegemonic provisions created by the Council of Europe and the European Union. For the member states of the Council of Europe, Protocol No. 6 provides for the abolition of the death penalty in peacetime,^{xxxv} and Protocol No. 13 provides for abolition of the death penalty in all circumstances.^{xxxvi} Following the adoption of the Lisbon Treaty in December 2009, the European Union member states have the EU Charter of Fundamental Rights endorsed within their domestic law, and Article 2 mandates the right to life and provides for the abolition of the death penalty. Furthermore, through the Treaty, the European Union has incorporated the European Convention on Human Rights and Protocol No. 6 and No. 13.

This model for the severing of the death penalty from European sovereignty does not easily fit with the principle of sovereignty in the United States, and neither Derrida nor Roudinesco make an explicit attempt to frame the issue concerning the United States. The federal constitutional system, with the sovereignty of the federal government in relational existence with the sovereignty of the governments of the individual fifty states, provides variable processes for the removal of the death penalty within the United States. This is not to be viewed as a hindrance but as providing numerous possibilities for engaging sovereignty at both the federal and state levels. If at the federal level, the US Supreme Court is of the opinion that it cannot strike

down retentionist state statutes through holding that, once and for all, the death penalty is a violation of the Eighth Amendment (see discussions on this issue further in this chapter), we can evaluate the individual state's implementation or rejection of the punishment and engage in political dialogue with individual states. Indeed, the United States is a Council of Europe “observer state,”^{xxxvii} and its following of the development of human rights principles within the region will provide US abolitionists with comparative materials for political discussions. Renate Wohlwend, the *rappporteur* to the Parliamentary Assembly of the Council of Europe's Legal Affairs and Human Rights

Committee, has attempted to create a “transatlantic parliamentary dialogue” with US federal and state governments and the Parliamentary Assembly:

[a]sks the United States Congress and Government, at federal and state level to enter into a more constructive dialogue with the Council of Europe on this issue. It encourages American politicians to create abolitionist ‘caucuses’ in their respective parliamentary assemblies, and to continue to engage opponents in informed debate.^{xxxviii}

Furthermore, the United States is also a participating state of the Organisation for Security and Co-operation in Europe (OSCE), and out of the fifty-six participating states, the United States is one of only two states that impose the death penalty; the other one is Belarus.^{xxxix} The OSCE is a regional security organisation, and it is cogent that the vast majority of governments in the OSCE do not consider the death penalty to be an essential component of global security. The OSCE encourages transparency in all participating states' capital judicial systems, and the monitoring of the death penalty by this organisation is helpful for the continual strategies for removing the death penalty from sovereignty; in the 2009 edition of the annual report on the death penalty, Janez Lenarčič stated that it was a “useful resource for governments and civil society alike in the further discussion of issues relating to capital punishment and its abolition.”^{xl}

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The impact of the international abolitionist discourse on the United States did not go unnoticed by Derrida and Roudinesco. Roudinesco had argued that the death penalty was

connected to a “sort of social pathology,”^{xli} and Derrida responded that in “the question of pathology,” the “symptoms of a veritable crisis have begun to multiply in the American consciousness and conscience, notably because of international pressures.”^{xlii} The introduction to this chapter detailed the world abolitionist picture which reveals that the United States is the final liberal democracy to implement the death penalty. What this demonstrates is that there has been a change in the consciousness of sovereignty. Firstly individual sovereigns removed the punishment, which produced a marked change in the right of punishment, and then there was a collective

assimilation at various regional levels, and in the United Nations, with the majority of sovereign states voting for the first General Assembly resolution against the death penalty in December 2007. What has taken place is a demonstrable shift in the sovereign relationship with the death penalty; it has changed because of the realisation that the death penalty is no longer to be viewed as an integral component of sovereign power. This change in political discourse by abolitionist governments from all continents is a statement to individual retentionist governments that they should reconsider this penal policy. Indeed, the internationalising of the abolitionist position has revealed the penetrability of the individual sovereign monopoly to implement the death penalty.

European Perspectives on the Unnecessary Punishment

The Mid-Twentieth Century European Abolitionist Movement

Following the atrocities of World War II, the Council of Europe was founded in 1949 for the promotion of peace, the rule of law, and pluralist democracy in Europe. The question arose as to whether the death penalty could be reconciled with these political aims. Although the European Convention on Human Rights included the possibility of the death penalty within Article 2(1),^{xliii} there was dissatisfaction concerning the legitimacy of the death penalty following the atrocities of the war. The vast history of the sanguine sovereign had accumulated in the Holocaust, and as a consequence, the old arguments on retribution, deterrence, and the protection of the state were no longer as easily accepted as in the past. The fractures in these theories were becoming more receptive in European political and legal circles, and there was a growing governmental rejection of the death penalty.^{xliv}

These political opinions had been gestating before World War II, as in 1928, the Howard League for Penal Reform compiled comparative municipal data from Denmark, Sweden, Norway, the Netherlands, and England, which indicated that the evidence collated could not by itself “prove either the utility or futility of Capital Punishment as a deterrent,” but that “we can obtain evidence of probability, almost amounting to proof, that its abolition does not permanently raise [the murder rate].”^{xlv} The Select Committee on Capital Punishment in 1930 conducted a wide-ranging

comparative analysis of European perspectives,^{xlvi} and the Belgium Minister of Justice prepared written evidence for the Committee and stated, “[i]t seems inconceivable that a Minister of Justice should ever think it possible to re-establish a penalty the uselessness of which, to put it no higher, has been amply demonstrated.”^{xlvii} The Danish government stated, “it seems unnecessary to propose the retention of capital punishment for the sake of public security.”^{xlviii} The Select Committee reviewed this evidence and concluded that “capital punishment may be abolished in [England] without endangering life or property, or impairing the security of society.”^{xlix} Then between 1949 and 1953, the British Royal Commission on Capital Punishment undertook a further comparative study, and the findings were essentially the same as those of the Select Committee, although more cautiously expressed. Professor Thorsten Sellin from the University of Pennsylvania gave evidence to the Royal Commission and stated that “it is impossible to arrive confidently at firm conclusions about the deterrent effect of the death penalty.”^l Lord Templewood reviewed the evidence presented by the various foreign governments and scholars to the Royal Commission, and stated more firmly that the “conclusion seems to be inescapable that, whatever may be argued to the contrary, the existence of the death penalty makes little or no difference to the security of life.”^{li}

Then in 1961, the question of the necessity of the death penalty arose in an exchange between Jean Graven, Judge of the Court of Appeal of Geneva, and his fellow abolitionists, Albert Camus and Arthur Koestler, at their symposium on the death penalty in Paris. The symposium proceedings were published as REFLECTION ON THE DEATH PENALTY, and Camus presented his arguments from his text, REFLECTIONS ON THE GUILLOTINE,^{lii} and Koestler from his REFLECTIONS ON HANGING.^{liii} In NEW REFLECTIONS ON THE DEATH PENALTY,^{liiv} Graven argued that his fellow abolitionists had missed the “true problem [concerning] the protection of the organized, civilized community.”^{liiv} In echoing the Beccarian exception, Graven was of the opinion that the death penalty should be reserved for “those antisocial elements which can be stopped only by being eliminated, in the ‘last resort,’”^{livi} and he asked “[w]hat then should be done with those individuals who have always been considered proper subjects for elimination? Society has not the right to kill even these ‘monsters!’”^{liiii}

Graven was presenting a legal phenomenology and did not demonstrate *how* such monsters were to be classified. He did not adequately identify *who* was

to decide this point of legal fact, and he did not provide for the elimination of the danger that any created classification of a capital crime may be widened in the future with the possibility of arbitrary executions being reintroduced. Writing at the same time as the symposium, the French criminologist Marc Ancel agreed that these vicissitudes of the capital judicial system were irresolvable:

Assuming [such human ‘monsters’] did exist, who would decide it? The jury on the basis of an impression? The special judges on the basis of the particular conception they would have of their duties? Experts? Whether or not one wants it, does not the taking of this road mean the admission that some human beings do not have the right to live or may have the right withdrawn from them? Here one approaches some of the worst ideas of totalitarian eugenicism . . . In such a system, an all powerful state arrogates to itself the ultimate power to decide, under the cover of pseudoscientific claims, what persons will have the right to live . . . In a world pretending to be humane and to believe in universal human rights, the first right of a person is the right to life that society should guarantee him. Therefore, the first duty of the state is to abstain from killing.^{lviii}

Through his studies on criminology and the death penalty, Ancel rejected the idea that juries could adequately identify who the “worst of the worst” were, and he was also not confident that individual judges could make consistently correct identifications. Furthermore, Ancel was of the opinion that the scientific methods that would include a mental health evaluation of the defendant by health care professionals were inadequate for identifying who should live and who should die. Consequently, the state cannot adopt the necessary fact-finding procedures to administer a fair capital judicial system.

James Avery Joyce similarly critiqued Graven’s argument and claimed that the judge had not adequately considered the wider picture of the fallacy of the death penalty as a cure for the criminal elements within society, and pointed to sociological reasons for the creation of “social monsters.” Joyce asked, “[h]ow did we get these

“monsters” anyway – national and international ones?”^{lix} He then identified that in 1960s Europe, more should be done politically and legally to understand the motivations behind attacks and learn effective policies for the future. Joyce understood that it is the administration of the death penalty that may create human “monsters” in the first place. The perpetuation of violence through a death penalty was not going to solve the problem.

The Council of Europe and the Rejection of the Death Penalty

The last execution in Western Europe was in France in 1977.^{lx} Denmark^{lxi} had removed the death penalty from its statutes for ordinary crimes in peacetime in 1933, and so had (West) Germany (which abolished the punishment for all crimes in 1949; East Germany had done so in 1978), Italy (1947), the Netherlands (1870), Norway (1905), Portugal (1978), Spain (1976), Sweden (1921), the United Kingdom (suspended in 1965 and confirmed in 1969), and France (1981).^{lxii} These Western European states were taking the first steps in the complete rejection of the death penalty, and it was this fertile political circumstance in which the Parliamentary Assembly was able to begin to formulate a regional position.

The Council of Europe replicated the arguments that had first become politically accepted by Western European governments. However, the debates revealed some dissenting voices in the Parliamentary Assembly of the Council of Europe. This was primarily due to fears raised by terrorist violence in some European countries in the 1960s to 1970s, and although France had not executed anyone since 1977, it still retained the death penalty and did not abolish it until 1981.^{lxiii} In 1980, the Parliamentary Assembly considered the evolving positions against the death penalty – including the governmental acceptance that the death penalty does not effectively contribute to the security of the state; that it is not an effective deterrent; that innocent

people could be – and have been – executed; that the punishment brutalises society; and that it is an uncivilised punishment.^{lxiv} Carl Lidbom, the *rappporteur* of the Legal Affairs Committee, argued that the “[l]ex talionis is obsolete,”^{lxv} and Oliver Flanagan of Ireland argued that European society must accept “certain essential limits on the power

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of the state to coerce or to condemn...we must consider what response will be most useful for society in the long run."^{lxvi} Flanagan's argument for the curtailing of state power was extended by Pieter Stoffelen of the Netherlands to the terrorist context when he stated:

The practical reason not to maintain or reintroduce the death penalty for terrorists is that terrorists often commit acts of terrorism as a revenge for the death of one of them, who by his death becomes a martyr.^{lxvii}

These arguments are essentially the same as Guizot's position in the eighteenth century, in that the death penalty should not be imposed during terrorist violence, and that the political powers should engage a more nuanced consideration for adopting policies to curtail violence in society. A more complex political reflection would lead to the conclusion of the counterproductive nature of the label of the "monster," "terrorist," or "worst criminal" for the legitimising of the death penalty. Following the 1980 debates, the Parliamentary Assembly drafted regional legislation to denounce the use of the death penalty in peacetime, and in 1983, Protocol No. 6 was adopted that removed the death penalty but provided an exception in war or during imminent threats of war.^{lxviii} Any claim that an individual was a "social monster" could not result in a death penalty in the domestic criminal law.

Since the atrocities inflicted upon the United States on September 11, 2001 (hereinafter "9/11"), there has been a heightened global concern about terrorist violence and an increased claim that terrorism is an act of war. The Council of Europe revisited the threshold of punishment for convicted terrorists within the borders of the member states.^{lxix} In effect, the events of 9/11 were an opportune moment for the Council of Europe to affirm that the human rights organisation wanted to keep the wartime exception within Protocol No. 6. However, the Council was of the opinion that Protocol No. 6 was outdated, and that the wartime exception should not remain. Only nine months after the 9/11 attacks, and in the shadow of existing terrorist violence within some member states, the Parliamentary Assembly and the

Committee of Ministers drafted Protocol No. 13 to abolish the death penalty under all circumstances.^{lxx}

The Council was not merely making theoretical arguments against the death penalty for terrorists; it was creating legislation to solidify this rhetoric. The effect of Protocol No. 13 was to create not only an elevated position of human rights against any sovereign imposition of punishment, but it also dismantled any utilitarian notion of the benefit of the death penalty for governments and European society. However, the question remained as to whether member states would accept this evolved position. Indeed, it was a *prima facie* ideal moment for member states to reiterate the wartime exception and keep the death penalty as a sovereign state issue under Protocol No. 6. But the vast majority of member state governments have accepted the arguments revealing the punishment

to be inutile and therefore unnecessary, and, with the exception of Armenia, Azerbaijan, Latvia, Poland, and Russia, have embraced Protocol No. 13. It is now a hegemonic principle in the Council of Europe that the death penalty is abolished in all circumstances, even for the most serious crimes committed by terrorists.^{lxxi} The Parliamentary Assembly considers that the retention

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of the death penalty in terrorist cases is based upon "hollow arguments,"^{lxxii} and the French jurist and former Minister of Justice Robert Badinter rejected the utility of the death penalty for terrorists and argued that democracy "comes out as the moral victor" against terrorists when the death penalty is not imposed.^{lxxiii}

There is still the dark shadow of terrorism looming and so those advocating the position of liberal democracy need to keep on promoting the absolute nature of the right to life for everyone, including that of the terrorist, in order to contribute to neutralising the power of terrorism.^{lxxiv} Fátima Aburto Baselga of the Political Affairs Committee of the Parliamentary Assembly stated in 2007: "I am afraid that there is a real risk that in our times, in the context of the fight against terrorism, our societies lose sight of their principles and values and take steps backwards, driven by fear,"^{lxxv} and she warned of the "risk that in the context created by the fight against terrorism," recourse to the death penalty can become "more acceptable."^{lxxvi} Although the fear remains, it has not become a

legal and political reality. William Schabas identified, at a conference on the death penalty in Madrid in December 2009, that the increase in terrorist activity had not led to an increase in retentionist use of the death penalty worldwide.^{lxxvii} Terrorist violence has continued in Europe post-9/11, including the PKK attacks in Turkey,^{lxxviii} the ETA attacks in Spain,^{lxxix} the London tube and bus bombings,^{lxxx} and the attack on the school in Beslan in South Ossetia, Russia.^{lxxxi} In none of these cases was the death penalty used, and it is significant that Russia did not discontinue its moratorium on the death penalty^{lxxxii} by sentencing Nur-Pashi Kulayev to life imprisonment for his part

in the 330 deaths in the school siege. On November 19th, 2009, the Constitutional Court of the Russian Federation stated that due to Russia's signing of Protocol No. 6, the death penalty cannot be implemented,^{lxxxiii} and Svetlana Paramonova argues that because the Court determined that the nonapplication of the death penalty was part of the "legitimate constitutional regime," the decision points to an "irreversible process towards a definite abolition of the death penalty."^{lxxxiv}

[Part Two will appear in the next issue of the *Amicus Journal*.]

ⁱ Max Weber, *ECONOMY AND SOCIETY*, vol. 1, (ed: Guenther Roth and Claus Wittich) (Berkeley: University of California Press, 1978), p. 54.

ⁱⁱ In Western Europe, France was the only country likely to impose executions in the beginning of the 1980s, but it abolished the death penalty in 1981. Belgium still had the death penalty on its statute books but it did not impose an execution after 1953. It had a practice of automatic commutation of death sentences and abolished the punishment in 1998.

ⁱⁱⁱ Jacques Derrida and Elisabeth Roudinesco, *FOR WHAT TOMORROW . . . A DIALOGUE*, (trans: Jeff Fort) (Stanford: Stanford University Press, 2004), p. ix.

^{iv} *Id.* at x.

^v *Id.*

^{vi} *Id.* at 88.

^{vii} Here Derrida is continuing his observation made at his seminar on the death penalty at Cardozo Law School in 2001. Kyron Huigens notes that Derrida stated that "it is impossible to separate political sovereignty from the power over life and death. In order to maintain an essential aspect of its sovereignty, the state must reserve the right to impose the penalty of death, at least in exceptional cases," 'Derrida on the Death Penalty,' *Cardozo Life*, Winter, 2001, p. 23. Derrida also has engaged with the racism of the death penalty in the United States in *WITHOUT ALIBI*, (ed: Peggy Kamuf) (Stanford: Stanford University Press, 2002), p. 238; and in his 'Open Letter to Bill Clinton,' Derrida asked President Clinton to show an act of justice in granting Mumi Abu-Jamal a new trial, in *NEGOTIATIONS, INTERVENTIONS AND INTERVIEWS: 1971-2001* (ed: Elizabeth Rottenberg) (Stanford: Stanford University Press, 2002), p. 132.

^{viii} Derrida argued that the "[f]act about the history of Western philosophy: never, *to my knowledge*, has any philosopher *as such*, in his or her own, strictly and systematically philosophical discourse, never has any philosophy *as such* contested the legitimacy of the death penalty" (emphasis in original), in Derrida and Roudinesco, *FOR WHAT TOMORROW*, p. 146, and this is repeated in Jacques Derrida, 'Capital Punishment: Another "Temptation of Theodicy,"' in Seyla Benhabib and Nancy Fraser (ed), *PRAGMATISM, CRITIQUE, JUDGMENT: ESSAYS FOR RICHARD J. BERNSTEIN*, (Cambridge: MIT Press, 2004), pp. 202-03. He further emphasised, "[f]rom Plato to Hegel, from Rousseau to Kant (who was undoubtedly the most rigorous of them all), they expressly, each in his own way, and

sometimes without much hand-wringing (Rousseau), took a stand for the death penalty" (emphasis in original), p. 203.

^{ix} *Id.* at 153.

^x *Id.* at 66.

^{xi} *Id.*

^{xii} *Id.* at 67. Beccaria also affirmed this exception in a report to the Austrian Lombardy on the drafting of a new penal code, with Francesco Gallarati Scotti and Paolo Risi, and they stated that, "the death penalty should not be prescribed except in the case of absolute necessity," and that, "in the peaceful circumstances of our society, and with the regular administration of justice, we could not think of any case of absolute necessity other than the situation in which the accused, in plotting the subversion of the state, was capable, either through his external or internal relationships, of disturbing and endangering society even while imprisoned and closely watched," in, 'Opinion of the Undersigned Members of the Committee Charged with the Reform of the Criminal System in Austrian Lombardy for Matters Pertaining to Capital Punishment' (1792), in Aaron Thomas (ed), *CESARE BECCARIA, ON CRIMES AND PUNISHMENTS AND OTHER WRITINGS*, (Ontario: University of Toronto Press, 2008), pp. 153-55.

^{xiii} Derrida and Roudinesco, *FOR WHAT TOMORROW*, p. 149. See also, Derrida, 'Capital Punishment: Another "Temptation of Theodicy,"' p. 206.

^{xiv} For example see, Pieter Spierenburg, *THE SPECTACLE OF SUFFERING: EXECUTIONS AND THE EVOLUTION OF REPRESSION: FROM A PREINDUSTRIAL METROPOLIS TO THE EUROPEAN EXPERIENCE*, (Cambridge: Cambridge University Press, 2008).

^{xv} François Guizot, 'A Treatise on Death Punishments,' in *GENERAL HISTORY OF CIVILISATION IN EUROPE: FROM THE FALL OF THE ROMAN EMPIRE TILL THE FRENCH REVOLUTION* (Edinburgh: William and Robert Chambers Press, 1848).

^{xvi} *Id.* at 258. Guizot affirmed, '[c]apital punishment . . . has lost its efficacy . . . whatever individual it may fix upon, in destroying him, it by no means neutralises the impending danger,' p. 259.

^{xvii} *Id.* at 258.

^{xviii} *Id.* at 327. The French jurist, Marc Ancel, reviewed the French and British abolitionist arguments in the mid-nineteenth century and stated, "[i]n France, Guizot and Charles Lucas represented this movement [arguing against the death penalty for 'reason of state'], which in 1848 ended by removing

- the death penalty for political crimes The utilitarian current, which, in diverse forms, 'was evident from Bentham to [John] Stuart Mill or to Spencer, and among jurists to Rossi, affirmed that it was proper to search for happiness and not for pain. In particular, punishment should be 'no more than just, nor more than necessary'; *this led one logically to ask, if it was ever really necessary to punish any offender by death regardless of his crime*' (emphasis added), in Marc Ancel, 'The Problem of the Death Penalty,' p. 3, in Thorsten Sellin (ed), *CAPITAL PUNISHMENT* (New York: Harper and Row, 1967).
- xix *Id.* at 277.
- xx Derrida and Roudinesco, *For What Tomorrow*, p. 91.
- xxi Carl Schmitt, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* (trans: George Schwab) (Cambridge: MIT Press, 1998), p. 12.
- xxii *Id.* at 12–13.
- xxiii *Id.* at 15.
- xxiv Andrew Norris, 'The Exemplary Exception: Philosophical and Political Decisions in Giorgio Agamben's *Homo Sacer*,' p. 268, in Andrew Norris (ed), *POLITICS, METAPHYSICS AND DEATH: ESSAYS IN GIORGIO AGAMBEN'S HOMO SACER* (Durham: Duke University Press, 2005).
- xxv Council of Europe, *COLLECTED EDITION OF THE "TRAVAUX PRÉPARATOIRES," OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS*, volume 2 (The Hague: Martinus Nijhoff, 1975), p. 174.
- xxvi *Id.* volume 1, at 40.
- xxvii *Id.* at 294.
- xxviii For further discussion of the Council of Europe policies on the death penalty, see Jon Yorke, "Inhuman Punishment and Abolition of the Death Penalty in the Council of Europe," *European Public Law*, vol. 16, no. 1, 2010; Jon Yorke, 'The right to life and the abolition of the death penalty in the Council of Europe,' *European Law Review*, vol. 34, no. 2, 2009; Council of Europe, *DEATH PENALTY: BEYOND ABOLITION* (Strasbourg: Council of Europe Publishing, 2004).
- xxix For a discussion of the general European Union policies for the abolition of the death penalty, see Jon Yorke, "Part One: The Evolving European Union Strategy Against the Death Penalty: From Internal Renunciation to a Global Ideology," 16 *Amicus Journal* 25 (2006), and "Part Two," 17 *Amicus Journal* 26 (2007); Evi Girling, 'European Identity and the Mission Against the Death Penalty in the United States,' in Austin Sarat and Christian Boulanger (eds), *THE CULTURAL LIVES OF CAPITAL PUNISHMENT: COMPARATIVE PERSPECTIVES* (Stanford: Stanford University Press, 2005).
- xxx Derrida and Roudinesco, *FOR WHAT TOMORROW*, p. 91.
- xxxi *Id.*
- xxxii *Id.* at 137.
- xxxiii *Id.*
- xxxiv Council regulation concerning trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman, or degrading treatment or punishment (EC) No. 1236/2005, 27 June 2005; OJ, L 200/1, 30 July 2005.
- xxxv Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, 28 March 1983, Strasbourg, CETS No. 114.
- xxxvi Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, 3 May 2002, Vilnius, CETS No. 187.
- xxxvii See Abolition of the death penalty in Council of Europe observer states, Doc. 9115, Parliamentary Assembly, 7 June 2001.
- xxxviii Abolition of the death penalty in Council of Europe observer states, text adopted by the Parliamentary Assembly on 1 October 2003, (30th sitting), para. 10.
- xxxix The participating states of the OSCE are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of, Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, and Uzbekistan. See the OSCE website on the death penalty at <http://www.osce.org/odihr/13453.html>. The OSCE produces annual reports on the death penalty, see *The Death Penalty in the OSCE Area: Background Paper 2009* (OSCE: ODIHR, 2009).
- xl *Id.* at ix.
- xli Derrida and Roudinesco, *FOR WHAT TOMORROW*, p. 155.
- xlii *Id.* at 157.
- xliii The Convention for the Protection of Human Rights and Fundamental Freedoms, (1953), Article 2(1) states, "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."
- xliv James Megivern noted that the "old argument used to justify the theoretical legitimacy of the state's right to execute continued to be repeated by defenders of capital punishment, but it would never sound the same after Hitler," in *THE DEATH PENALTY: AN HISTORICAL AND THEOLOGICAL SURVEY* (New York: Paulist Press, 1997), p. 282. Christopher Hollis, the British Member of Parliament, argued that "the whole case stands or falls on whether the death penalty was a deterrent or not," in 'Epilogue,' in R.T. Paget and S.S. Silverman, *HANGED-AND INNOCENT?* (London: Victor Gollancz Ltd, 1953), p. 259. H.L.A. Hart affirmed, "[i]n any public discussion of this subject the question that is likely to be the central one is 'What is the character and weight of the evidence that the death penalty is required for the protection of society?'" in "Murder and the Principles of Punishment: England and the United States," in H.L.A. Hart, *PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW* (Oxford: Clarendon Press, 1968), p. 71.
- xlv S. Margery Fry (ed), *THE ABOLITION OF THE DEATH PENALTY IN HOLLAND AND SCANDINAVIA*, 2nd ed, (London: The Howard League for Penal Reform, 1928), p. 4. Carl Torp, Professor of Penal Law at the University of Copenhagen, succinctly stated that in Denmark, the absence of the death penalty had "not in any way contributed to an increase in the number of such crimes which were formally punished by death," in *THE ABOLITION OF CAPITAL PUNISHMENT IN DENMARK*, *id.*, Fry, p. 5. In Holland, Dr. J. Simon Van der Aa, pointed out that "since the abolition of capital punishment, the number of life sentences passed has shown a tendency to diminish," in *THE ABOLITION OF CAPITAL PUNISHMENT IN HOLLAND*, p. 8, in *id.* Victor Almquist, the Head of the Swedish Prison Administration, argued

- that “[t]he reduction in the number of capital sentences and the final abolition of the penalty so far from leading to an increase of offences of this kind was actually followed by a noticeable decrease in crimes legally punishable by death,” in ‘The Abolition of Capital Punishment in Sweden,’ p. 15, in *id.* Previously, in 1831, Jeremy Bentham had argued that the death penalty was “inefficient” and questioned its deterrent value, see JEREMY BENTHAM TO HIS FELLOW CITIZENS OF FRANCE ON DEATH PUNISHMENT (London: Robert Heward, 1831).
- xlvi *Report from the Select Committee on Capital Punishment* (London: HMSO, 1931), In giving testimony to the Select Committee, Professor Herbert Speyer of the University of Brussels stated, “in Belgium the infliction of the death penalty is not necessary for the protection of society and the reduction of crime,” p. 257. For a review of the findings of the Select Committee, see E. Roy Calvert, *THE DEATH PENALTY ENQUIRY: THE EVIDENCE REVIEWED* (London: Victor Gollancz Ltd, 1931).
- xlvii *Id.*, Appendix: Belgium, Note prepared by the Belgium Ministry of Justice, Supplied by the Belgian Embassy in London, p. 577.
- xlviii *Id.*, Appendix: Denmark, p. 584. Viktor Almquist, the Head of the Swedish Prison Administration, confirmed, “the state did not require the death penalty for its protection,” and that this “hitherto had not been contradicted by experience,” at Appendix: The Abolition of Capital Punishment in Sweden, p. 613.
- xlix *Id.* at xcvi.
- i ROYAL COMMISSION ON CAPITAL PUNISHMENT (1949–1953) (London: HMSO, 1953), pp. iii–iv, 24. Arthur Koestler argued “[t]o give it a fair hearing, we must set all humanitarian considerations and charitable feelings aside, and examine the effectiveness of the gallows as a deterrent to potential murderers from a coldly practical, purely utilitarian point of view . . . It will be seen that the theory of hanging as the best deterrent can be refuted on its own purely utilitarian grounds, without calling ethics and charity to aid,” in *REFLECTIONS ON HANGING* (London: Gollancz Publishing, 1956), p. 53.
- ii Viscount Templewood, *THE SHADOW OF THE GALLOWS: THE CASE AGAINST CAPITAL PUNISHMENT* (London: Victor Gollancz, 1951), p. 85.
- iii Albert Camus, “Reflections on the Guillotine,” in *RESISTANCE, REBELLION AND DEATH* (New York: Vintage Books, 1998).
- liii Koestler, *REFLECTIONS ON HANGING*.
- liv This book was published by the Institute of Comparative Law of the University of Paris in 1961, as referred to by James Avery Joyce, *THE RIGHT TO LIFE: A WORLDVIEW OF CAPITAL PUNISHMENT* (London: Victor Gollancz Ltd, 1962), in his ‘Appendix B, Postscript in Reply, pp. 268–73.
- lv *Id.* at 268.
- lvi *Id.*
- lvii Translated by James Avery Joyce, *id.*, p. 270. Marc Ancel affirmed the prominence of this retentionist argument in 1960s Europe, p. 20–22, in Sellin, *CAPITAL PUNISHMENT*.
- lviii *Id.* at 20–21. Ancel stated, “people talk of keeping the death penalty at least for social monsters or for crimes against humanity. Society would then act in self defense and remove these persons as it would dangerous beasts,” p. 20.
- lix Joyce, *THE RIGHT TO LIFE*, p. 270.
- lx Roger Hood, *CAPITAL PUNISHMENT: A GLOBAL PERSPECTIVE*, 3(3) *Punishment & Society* (2001).
- lxi Denmark had administered the death penalty for wartime offenses in 1950.
- lxii Belgium had retained the death penalty but did not impose it during this time and was considered de facto abolitionist. The last execution in Belgium was in 1950, and it finally abolished the punishment in 1998.
- lxiii See Debate on the Report on the abolition of capital punishment, by the Legal Affairs Committee, Doc. 4509, Parliamentary Assembly, 2nd Sitting, 22 April 1980. In the debates, Mr. Mercier of France observed the pressures surrounding the debates, “I should like to underline the paradox of the situation: a resolution calling for the abolition of capital punishment is submitted to the Council of Europe at the very time when death holds sway and human life is treated with contempt all over the world. Hatred and violence are rampant everywhere,” p. 55, and Mr. Smith of the United Kingdom, “the world is now a more dangerous place than it ever was, that we face increased terrorism . . . Surely it is amazing at this time that we should be discussing the total abolition of capital punishment throughout the European area. It must bring great comfort to those who indulge in the trade of terrorism and armed robbery to know that so many are prepared to turn to one side in the face of this war against civilised society,” p. 58, and Mr Michel of Belgium similarly argued, “[i]t would be absurd at a time when international terrorism is displaying great imagination in devising new methods, to do away with a penalty which enables present-day highwaymen to be taught a lesson,” p. 59.
- lxiv For a more detailed consideration of the debates in the Parliamentary Assembly, see Yorke 2009 and 2010.
- lxv Mr. Lidbom of Sweden, Debate on the Report on the abolition of capital punishment, by the Legal Affairs Committee, Doc. 4509, Parliamentary Assembly, 2nd Sitting, 22 April 1980, p. 53.
- lxvi *Id.*, Mr. Flanagan of Ireland, at 56–57.
- lxvii *Id.*, Mr Stoffelen of the Netherlands p. 60.
- lxviii Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, 28 March 1983, Strasbourg, CETS No. 114.
- lxix Guidelines on Human Rights and the Fight Against Terrorism, adopted on 11 July 2002, at the 804th meeting of the Minister’s Deputies. See also, Council of Europe, *THE FIGHT AGAINST TERRORISM: COUNCIL OF EUROPE STANDARDS*, 3rd ed, (Strasbourg: Council of Europe Press, 2005).
- lxx Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, 3 May 2002, Vilnius, CETS No. 187.
- lxxi See Jon Yorke, “The Evolving Human Rights Discourse of the Council of Europe: Renouncing the Sovereign Right of the Death Penalty,” in Jon Yorke (ed), *AGAINST THE DEATH PENALTY: INTERNATIONAL INITIATIVES AND IMPLICATIONS* (Farnham: Ashgate Publishing, 2008), pp. 65–66.
- lxxii Recent initiative in France to reintroduce the death penalty for the perpetrators of terrorist acts, Doc. 10211, June 17, 2004.
- lxxiii Robert Badinter stated “[f]aced with crime and cruelty, a democracy’s justice system rejects vengeance and death. It punishes but it does not kill; it prevents the terrorist from harming others but respects his life; by refusing to give him death,

democracy guarantees the humanity the terrorist denies through his crimes. Democracy comes out as the moral victor of the test inflicted on it by terrorism. That will not be the least of its victories in the eyes of generations to come,” in “The OSCE and the Death Penalty,” in *The Death Penalty in the OSCE Area* (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2006), p. 8. Badinter also noted that “[e]ach execution would only breed more terrorists in search of vengeance and that infernal cycle – terrorist attack, execution, terrorist attack – would never be stopped,” in *ABOLITION: ONE MAN’S BATTLE AGAINST THE DEATH PENALTY*, (trans: Jeremy Mercer) (Boston: Northeastern University Press, 2008), p. 92.

^{lxxiv} See also, Jean Baudrillard, *THE SPIRIT OF TERRORISM*, (trans: Chris Turner) (London: Verso, 2003).

^{lxxv} Promotion by the Council of Europe Member States of an International Moratorium on the Death Penalty, Parliamentary Assembly, Doc. 11321, 25 June 2007. Sigmund Freud reminded us that consciences can change and emotional shifts occur when questions of life and death are confronted, see, *ON MURDER, MOURNING AND MELANCHOLIA* (London: Penguin, 2005), pp. 167–94, 219–32.

^{lxxvi} Promotion by the Council of Europe Member States of an International Moratorium on the Death Penalty, Parliamentary Assembly, Doc. 11321, 25 June 2007.

^{lxxvii} William Schabas, Roundtable discussion: Strategies Against the Death Penalty in a Time Horizon of 2015, International Symposium on the Universal Abolition of the Death Penalty, Centre for Political and Constitutional Studies and the Institute for European and International Criminal Law, Madrid, December 9–11, 2009.

^{lxxviii} See, *Öcalan v. Turkey*, (2003) 37 E.H.R.R. 10; (2005) 41 E.H.R.R. 45.

^{lxxix} For a timeline of the ETA attacks, see <http://news.bbc.co.uk/1/hi/world/europe/545452.stm>.

^{lxxx} For a timeline of the London bombings, see <http://news.bbc.co.uk/1/hi/uk/4694069.stm>.

^{lxxxi} See http://news.bbc.co.uk/1/shared/spl/hi/world/04/russian_s/html/1.stm.

^{lxxxii} Presidential Decree No. 724 of May 16, 1996.

^{lxxxiii} See, Bill Bowring, “The Death Penalty and Russia,” in Jon Yorke (ed), *THE RIGHT TO LIFE AND THE VALUE OF LIFE: ORIENTATIONS IN LAW, POLITICS AND ETHICS* (Farnham: Ashgate Publishing, 2010), p. 284.

^{lxxxiv} Svetlana Paramonova, “The Death Penalty in Russia: Decision of the Constitutional Court of the Russian Federation from November 19, 2009,” conference paper, International Symposium on the Universal Abolition of the Death Penalty, Centre for Political and Constitutional Studies and the Institute for European and International Criminal Law, Madrid, December 9–11, 2009.