

## BOOK REVIEWS

CAPITAL PUNISHMENT: A WORLD VIEW. BY JAMES AVERY JOYCE. New York: Grove Press, Inc., 1962. Pp. 288. \$1.95.

*Thorsten Sellin* †

Since Beccaria published his famous essay on *Crime and Punishment* in 1764, the death penalty has been under constant attack in civilized nations. Now and then, the abolition movement has exhibited more than usual strength—as shown by sudden increases in propagandist and scholarly publications—and effectiveness—as reflected in legislation which removes the death penalty, at least temporarily, in this or that jurisdiction. This occurred in Europe in the years following the publication of Beccaria's essay and the 1848 revolutions, and in the United States during the decades just preceding the Civil War and the First World War. The period between the two great wars was relatively quiescent in this regard, but since 1945 there has been growing awareness of the problem and strong and persistent efforts in many countries to abolish capital punishment. No period has seen as many important publications on the subject by private authors or by official bodies, especially in England and the United States. The book which is the subject of this review is one of the most recent of these productions and is the work of a British international lawyer who has long displayed a keen interest in many aspects of world affairs.

The book opens with a long chapter on the *Chessman* case, which the author analyzes in some detail and makes the vehicle for an acerbic critique of the administration of American justice—which in this instance can evoke little disagreement. Chapters of an historical nature follow, graphically tracing the use of the death penalty in ancient Israel and Rome and during the Middle Ages, with special attention to the Inquisition. The witchcraft trials of the sixteenth and seventeenth centuries, the *Calas* case made famous by Voltaire, the rationalistic philosophers of the Enlightenment, the role of Beccaria, the growing abolition sentiment in the nineteenth century and its effects, and the present status of the death penalty around the world are all dealt with. Useful information on the current situation in Eastern Europe and the Soviet Union is presented in this connection.

The chapter devoted to British abolitionism gives a very adequate summary of the movement which resulted in the appointment of the Select Committee on Capital Punishment in 1930 and the Royal Commission

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which from 1949 to 1953 studied the question of whether or not existing legislation on the subject could be improved. The Commission's report, the most important official document on capital punishment ever published, gave great encouragement to the abolitionists, in spite of the fact that the nature of its mandate precluded any recommendation on the retention or abolition of the death penalty. Arthur Koestler's *Reflections on Hanging* and Sir Ernest Gowers' *A Life for a Life*, both published in 1956, gave further impetus to a national campaign which led the House of Commons to vote for abolition in 1956, only to be frustrated by the veto of the House of Lords. The victory in the House had been won because party leaders had agreed on a free vote. When a renewal of the effort was made in the next session of Parliament, the conservative leaders cracked the whip and defeated it. In an attempt to stave off an early resumption of the legislative campaign, the Government introduced and secured passage of the Homicide Act of 1957, which considerably limited the scope of murder punishable by death to a category called capital murder, similar in principle to our first degree murder. Since then, studies made by the Home Office indicate that capital murders have increased while the non-capital ones have decreased.

The chapter on the United States reviews the history of capital punishment in our nation and calls attention to inequalities in its application, especially noticeable when the race of the offender is taken into consideration.

The chapter which is likely to be most informative examines relevant decisions of the United Nations. The earlier sections of the book present the more or less standard data found in all recent publications on the death penalty, but the chapter on the United Nations assembles information in print for the first time, relating a most interesting development. The policy organs of the United Nations decided late in the 1940's that one of the areas that should be explored, studied, and made the object of purposive activity was that of "social defense." In 1949, an *ad hoc* international group of experts was called together by the Secretariat in order to draw up a work program dealing with the prevention of crime and the treatment of offenders. In the list of projects proposed for study and action, the group included capital punishment. The report of the group was adopted by the United Nations, and work was begun on some of the high priority projects. During the next few years, the capital punishment project remained on the list, but in 1953 it was dropped even from its low priority status, largely because of United Kingdom and United States opposition. It was to reappear, however, in an unexpected quarter.

In 1957, The Third Committee of the General Assembly began discussion of Article 6 (The Right to Life) of the Draft Covenant on Civil and Political Rights. Capital punishment became an incidental, though very important, issue. The discussion revealed the strong sentiments pro and con existing among the countries, and also a general feeling that the

ultimate disappearance of the death penalty was desirable. In 1959, after considering a resolution sponsored by half-a-dozen smaller countries, the Committee voted to ask the General Assembly to request the Economic and Social Council to invite the Commission on Human Rights to undertake a world-wide factual study of capital punishment. The Assembly approved by a vote of 57 for, none against, and 22 abstentions. A year later, the Council ordered the Secretariat to undertake the study. It is hoped that the results will be placed before the World Congress on the Prevention of Crime and the Treatment of Offenders in 1965.

The author vehemently asserts that the death penalty is illogical in a system of correctional treatment founded on a positive program of rehabilitation. He concludes with an attack on the concept of deterrence as it appears in international relations.

Mr. Joyce's book is a frankly partisan, yet very thoughtful presentation of a timely issue. It is a worthy addition to the writings of such literary figures as Arthur Koestler and Albert Camus who in recent years have made notable contributions to the case for abolition of capital punishment.

INTERNATIONAL CLAIMS: THEIR PREPARATION AND PRESENTATION. BY RICHARD B. LILlich AND GORDON A. CHRISTENSON. Syracuse: Syracuse University Press, 1962. Pp. xiv, 173. \$7.50.

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Few areas of legal practice are as remote and mysterious to the average lawyer as that of international claims. A widespread tendency to regard the field as dull and esoteric, lack of general realization of the number and importance of such claims, and the relative paucity and inaccessibility of descriptive and research materials on the subject have combined to vest a virtual monopoly of claims practice in the hands of an extremely limited number of specialists. The fact that at least one-third of a billion dollars has been disbursed to American claimants in payment of international claims since the end of World War II suggests that such specialization has not been unprofitable.

The recent enactment of the World War II Claims Bill,<sup>1</sup> authorizing the Foreign Claims Settlement Commission to receive and determine outstanding World War II claims—estimated by the Commission to be held by some 35,000 American citizens—has emphasized the need for greater knowledge in this field by general practitioners. As is increasingly the case with many other areas of private and public international law, the

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<sup>1</sup> 76 Stat. 1107 (1962), 50 U.S.C.A. §§ 2001-17p (Supp. 1962).

subject of international claims has simply become of too great practical importance to be ignored any longer by the average lawyer.

The publication by Professor Lillich and Mr. Christenson of a concise guide to United States claims procedure is thus particularly timely and meets a very real need. While their book is more in the nature of a brief handbook than a comprehensive treatise on the subject, it should nevertheless be helpful in encouraging practice in this field by a much broader segment of the legal profession than has heretofore been the case.

Professor Lillich, who last year published an interesting companion study on American claims commissions,<sup>2</sup> and Mr. Christenson, who was until recently an attorney in the State Department's Office of the Legal Adviser, expressly limit the scope of their work to a description of the actual mechanics of preparing and presenting international claims to the Department of State, the Foreign Claims Settlement Commission, and the various international commissions on which the United States is represented. In order to keep the book brief, they have deliberately avoided any critical treatment of their subject, and do not generally discuss either the substantive law involved or foreign practice.

The book begins with a chapter on eligible claimants—the principal classes of claimants to which the United States extends protection. The next four chapters, comprising the bulk of the book, consist of an analysis of the actual preparation and proof of an international claim from the standpoint successively of nationality of the claimant, ownership of the claim, wrongful act by a foreign government, and damages. The final two chapters cover the procedures involved in presentation of a claim to the Department of State for espousal, and to national or international commissions for adjudication. Appendices, which make up about a third of the book, include an extremely useful "Sample Statement of Claim in Affidavit Form," a Foreign Claims Settlement Commission claim form, the Rules of Procedure of the United States-Japanese Property Commission, several published State Department memoranda dealing with the preparation and presentation of claims, and a good working bibliography.

Viewed as an introductory manual for the general practitioner, the book does a good job. The authors have managed to compress into a few pages a great deal of useful and hard-to-obtain information and suggestions, which up to this time have been available only from scattered sources such as State Department memoranda containing suggestions for preparing claims, and Foreign Claims Settlement Commission Reports. Many of the practical questions which an attorney preparing a claim will actually face, ranging from the number of copies of evidentiary documents which must be filed with the Department of State to methods of securing evidence with respect to takings in "iron curtain" countries, are intelligently anticipated. Frequent reference is made to leading decisions of the Foreign Claims

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<sup>2</sup> LILICH, *INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS* (1962).

Settlement Commission. Ease of use is increased by separate treatment of different types of claims: such as wrongful death, personal injury, and property; and different categories of claimants: including individuals, partnerships, corporations, and stockholders. In general, the style is clear and terse.

On the other hand, the conception of the book as a brief handbook and the authors' decision to restrict its scope to a descriptive examination of existing claims procedure will necessarily reduce its usefulness to international claims specialists and students of international law. The authors have been forced to treat only briefly some of the more complex and difficult problems in the claims area, such as indirect claims by American shareholders or corporations through foreign corporations. Similarly, they have been able to provide only a minimum of general background information, and touch only briefly on important issues, such as the requirement concerning exhaustion of remedies and the question of procedural protection for claimants seeking espousal of claims by the Department of State.

As a minor criticism, one may question the authors' judgment not to deal at all with the substantive law of international claims. While it is true, as they note, that an entire volume would be needed to cover this subject adequately, some brief introductory discussion of this law, and perhaps as well of the International Claims Settlement Act and its interplay with the process of lump-sum settlement, might have helped the general practitioner to see claims procedure in its full context. One may also question the publisher's judgment as to price, and hope that the comparatively high cost of this small volume will not impede its wide distribution.