

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

Abstract

This paper examines the abolition of the death penalty and considers whether, upon leaving the European Union, capital punishment could be reinstated in the 21st century.¹ Non-profit organisations like Amicus ALJ and the Death Penalty Project represent the UK internationally as opposing the death penalty.² However, recent discourse foreshadows a potential shift in this stance; thus, it is essential to address the emerging call for the return of the death penalty.³

My findings were incorporated into a short play in the style of Bertolt Brecht, immersing the audience in the realities of capital punishment in the UK.⁴ Brecht's theatre criticised reality, forcing the audience to confront their pain and injustices. Similarly, *A Capital Reset* invites audiences to scrutinise the existence of the death penalty, to appreciate the road to abolition and consider whether it is truly a movement we wish to reverse.

Introduction

Following the Southport attacks and Lucy Leiby's conviction of 7 counts of murder and 7 counts of attempted murder, it is unsurprising that some feel their sentences are too lenient.⁵ My primary aim is to spread awareness of the previous existence of capital punishment in England. As a result, this project does not purport to solve or conclude the ethical concerns surrounding the death penalty. However, the reintroduction of capital punishment today would significantly alter the UK's criminal justice system. Therefore, if it is to be reinstated, at the very least, we should all be more informed of the new reality it could bring us.

To achieve this aim, there were two main research areas:

1. The Road to Abolition
 - a. The growth of the abolitionist movement clarifies where the call for criminal law reform originated from and outlines the potential pros and cons of a capital system. If the justifications for abolishing the death penalty are still relevant in the 21st century, one can conclude that it is unlikely for capital punishment to be reinstated.
2. The Potential to Return
 - a. It is extremely rare for capital punishment to be reinstated once it has been abolished. This may be because abolition demonstrated that death sentences have no place in the pursuit of justice. However, if the UK were to feel that

¹ Capital punishment (death sentences) is no longer a part of the criminal justice administration of the United Kingdom. Currently, the maximum penalty for crime is life imprisonment.

² Both Amicus ALJ and the Death Penalty Project are UK-based non-profit organisations which provide free legal services to death row inmates in the United States and worldwide, respectively.

³ Eleanor Steafel, 'The death penalty is the only answer in cases like the Southport massacre' *The Telegraph* (London, 24 January 2025).

⁴ Brecht was a German poet and playwright, whose plays omitted theatrical illusion.

⁵ See 3.

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

justice can only be achieved with a capital system, it can hardly be denied. Contemporary attitudes will confirm whether there is a potential for the death penalty to return.

Methodology

My project was split into two, dedicating the first three weeks to research and the last three weeks to writing. Week 1 consisted of the Museum of London's online 'Executions' exhibition and blog, which provided general background knowledge for my project. I needed to have a clear overview of capital punishment in the UK before embarking on this in-depth study. As for my play, I immersed myself in Brecht's theatre: watched a production of 'Fear and Misery of the Third Reich' and read the script for 'The Measures Taken'.⁶ This enabled me to emulate his style and incorporate the metafictional status of his plays accurately.

Weeks 2 and 3 had a narrower focus on the death penalty, relying on a publication from the Death Penalty Project and Richard Clark's *Capital Punishment in Britain* to create a timeline of events. Further, to examine the criminal law of the 18th, 19th and 20th centuries, I read Sir Samuel Romilly's observations and followed the discussions within Parliament via Hansard.⁷ By the end of Week 3, I had visited the British Museum for the Enlightenment Gallery and the National Justice Museum. To avoid false assumptions and generalisations, it was integral that I understood the social context of these centuries, like the development of moral philosophy and thinking. Due to these exhibitions, I did not fall into the trap of isolating my research, where I may have been ignorant of other factors inherent in the abolitionist movement.

In the second half of my project, I wrote *A Capital Reset* and investigated contemporary political views via manifestos, interviews and news articles. From these, I was able to determine whether capital punishment will return.

The Road to Abolition

In 2024, almost three million people visited the Tower of London,⁸ revealing that the brutal past of England's criminal justice administration is no secret. It is important to acknowledge that this unforgiving, retributive system was not met with little opposition. Initially, the views of early abolitionist figures were silenced. Then, it proved impossible to show that only an unethical system would sentence a pickpocket and a murderer equally.⁹ Due to this, progress in the abolitionist movement was stunted until the 19th century. However, it is undeniable that

⁶ Translated from German by Carl R. Mueller.

⁷ Romilly was a legal reformer who criticised the overt weaponisation of the criminal law, finding that the death penalty was wholly disproportionate to the crimes in respect of which it was imposed.

⁸ BVA-BDRC, 'Top 20 Most Visited Attractions Free and Paid England and Regions' (2025) accessed 21 July 2025.

⁹ Peter King, *Punishing the Criminal Corpse, 1700-1840* (Palgrave Macmillan, 2017) 127.

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

the persistent voices of the few led to the downfall of the Bloody Code,¹⁰ even if success did not come to fruition in their lifetime.

In failing to acknowledge the injustices of the Bloody Code, a significant disconnect existed between the expected administration of criminal law and court decisions. Sir James Mackintosh, a Whig (Liberal) politician, addressed this inconsistency in the House of Commons. He described the criminal law as 'savage in our threats... (but) feeble in our execution of punishments', potentially hoping to reform a needlessly barbaric system.¹¹ Mackintosh's efforts were not in vain; Parliament conceded that, for most capital felonies, death was a wholly disproportionate punishment. Thus, under the Judgment of Death Act 1823, death became the maximum sentence rather than the only sentence available for all capital crimes except murder. While this did not reduce the number of capital crimes, it enabled flexibility in sentencing for judges. Crucially, it could no longer be argued that death was the only suitable penalty for such offences, foreshadowing a bright future for abolitionists.

Under capital law, murders were increasing, and the criminal law inevitably found itself at the mercy of media sensationalism and public criticism.¹² Executions, intended to demonstrate the might of justice and the consequence of law-breaking, evoked public sympathy for the criminals, portraying them as victims.¹³ Eventually, Parliament had to accept that public executions were ineffective, despite their potential as a deterrent.¹⁴ Thus, executions were isolated from the public, confined to prison walls.¹⁵ New philosophical thinking invoked a moral re-evaluation of society, weakening the strength of the Bloody Code.¹⁶ By 1861, there were only five capital offences.¹⁷

However, total abolition was still unreachable. War is often considered an engine for social change. There is nothing like mass destruction and suffering to show that the world is off-balance. World War II sparked a political incentive to reconsider the treatment of criminals, transforming slow progress into success for the abolitionist movement.¹⁸ Abolition became a part of Labour's political agenda.¹⁹ As for the public, their grievances concerned miscarriages

¹⁰ The Bloody Code signifies the criminal justice system in which the death penalty was imposed for approximately 200 crimes, ranging from property damage to treason.

¹¹ HC Deb 21 May 1823, vol 9, col 398.

¹² HC Deb 21 April 1868, vol 191, col 1034.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Capital Punishment Amendment Act 1868.

¹⁶ The Age of Enlightenment (18th and 19th centuries) brought new ideas: philosopher Jeremy Bentham published two essays critiquing the death penalty. Further, the abolition of the slave trade is testament to a revised moral stance that humanity is lost when we treat people cruelly.

¹⁷ Paul Bridges, 'Executions & Death Penalty Reforms in Britain' (*London Museum*, 25 September 2022) <<https://www.londonmuseum.org.uk/blog/executions-and-death-penalty-reforms-in-britain/>> accessed 11 July 2025.

¹⁸ Julian Knowles QC, 'The Abolition of the Death Penalty in the United Kingdom: How it Happened and Why it Still Matters' (*Death Penalty Project*, 5 November 2015) accessed 13 May 2025.

¹⁹ Ibid.

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

of justice, and protests were organised for the reprieve of certain criminals.²⁰ Thus, the call for removing capital punishment entirely was politically induced,²¹ once it was clear that capital punishment is inseparable from its flaws: human error is inevitable.²² As guilt is not guaranteed, the death of the innocent is unavoidable.

While the Commons were prepared to abolish the death penalty, the Lords were unconvinced.²³ As a compromise, there were five exceptions to the abolition of the death penalty for murder.²⁴ The first distinction between capital and non-capital murder is that 'done in the course or furtherance of theft', despite theft not being a capital crime since 1808.²⁵ The law's inconsistency did not go unnoticed. In 1964, Labour allocated parliamentary time for Sydney Silverman's bill to abolish the death penalty for murder completely.²⁶ For Silverman, the criminal law was not and should not be influenced by contemporary attitudes, so public support for the retention of capital punishment was wholly irrelevant.²⁷ Convinced, Parliament replaced the Homicide Act 1957 with the Murder (Abolition of the Death Penalty) Act 1965. By 1994, there had been 13 attempts to reintroduce the death penalty, and each one was rejected with increasing majorities. Abolition significantly altered the criminal law and influenced political opinion to oppose the death penalty. Perhaps, once the criminal law has a new maximum penalty, it is difficult to reverse it.²⁸

It is important to note that the 1965 Act concerned murder alone, so there were several crimes punishable by death (including treason) until 1998. Membership in the European Union (EU) did not abolish capital punishment, nor did it inform the abolitionist movement.²⁹ Rather, Parliament implemented the European Convention of Human Rights (ECHR) into domestic law under the Human Rights Act 1998 (HRA). This included Protocol 6 – abolition of the death penalty for all crimes. There was no correlation between the EU and capital punishment; therefore, England & Wales would have abolished the death penalty in spite of membership.

The Potential to Return

As political voices were integral to the abolition of the death penalty, it will be those same voices with the potential to orchestrate its return. It would be fair to assume that the

²⁰ Julian Knowles KC draws attention to the three controversial cases of Derek Bentley, Timothy Evans and Ruth Ellis, highlighting either a campaign for a reprieve (pardon) from the Secretary of State or the anti-capital protests that followed their executions.

²¹ HC Deb 21 December 1964, vol 704, col 933.

²² *R v Mattan* [1998] EWCA Crim 676.

²³ HC Deb 21 December 1964, vol 704, col 880.

²⁴ Homicide Act 1957.

²⁵ Homicide Act 1957, S.5(1)(a).

²⁶ HC Deb 21 December 1964, vol 704, col 871.

²⁷ HC Deb 21 December 1964, vol 704, col 872.

²⁸ Carolyn Hoyle, 'Efforts towards abolition of the death penalty: Challenges & Prospects' (*Death Penalty Research Unit*, December 2023) accessed 3 July 2025.

²⁹ European Communities Act 1972.

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

Conservative Party, in line with their incentive to lead an unrelenting criminal administration, would support the return of the death penalty. Particularly with Members like Lee Anderson, who claim that capital punishment has a '100% success rate' because nobody commits a crime after their execution.³⁰ However, Rishi Sunak denied that Anderson's views represented the government.³¹

Although the Conservatives are no longer in power, it appears highly improbable that Labour would reinstate the death penalty. With Kier Starmer, a criminal barrister renowned for his pro bono work in overturning the mandatory death penalty in Uganda, as Prime Minister, the return of capital punishment is not a concern for the immediate future. As for Reform UK, according to Nigel Farage, there has been a 'generational shift', so the reinstatement of the death penalty 'just isn't going to happen'.³² While it is unclear what his stance on capital punishment is, it is evident that its return is not on Reform's political agenda. Similarly, the Liberal Democrats included worldwide abolition of the death penalty in their 2024 Manifesto, making their stance against the death penalty abundantly clear.

Admittedly, a significant shift in public opinion might induce a reintroduction of capital punishment to the United Kingdom. However, collective disappointment at the inadequacy of one criminal's sentence is not the same as supporting the return of the death penalty. It may be argued that capital punishment is necessary for cases in which there is undeniable guilt.³³ Some may believe that the UK has become a breeding ground of crime, that capital murders have increased since the abolition.³⁴ Yet, there is a crucial difference between theoretical support in debates and instigating a complete restructure of the criminal law. The public can find value in a capital system, agree that death is the most appropriate punishment for some crimes, without claiming it should be reinstated.³⁵

Conclusion

While support for capital punishment is undeniable, there is little cause for concern. Firstly, there is little evidence to conclude that such views are widespread across the nation.³⁶ Additionally, such support is not representative of the entire nation and, thus, as accepted by Nigel Farage, a referendum would fail.³⁷ On the road to abolition, it was evident that the justice

³⁰ Becky Morton, 'Lee Anderson: New Tory deputy chairman would support return of death penalty' *BBC News* (London, 9 February 2023).

³¹ *Ibid.*

³² GB News, 'Nigel Farage gives his thoughts on the death penalty' (18 October 2021) <https://www.youtube.com/watch?v=N5WZzC0Jd58> accessed 15 July 2025.

³³ See 28.

³⁴ TalkTV, "'It was a deterrent!'" Reform UK MPs demand 'Debate' on death penalty amid Axel Rudakubana sentencing' (24 January 2025) <https://www.youtube.com/watch?v=5W6ml74rbFY> accessed 15 July 2025.

³⁵ Professor Tim Bale, 'Should No.10 prepare for a 'war on woke'?' (*Mile End Institute*, 2 July 2020) <https://www.qmul.ac.uk/mei/news-and-opinion/archive-2020-2022/items/should-no10-prepare-for-a-war-on-woke-professor-tim-bale-.html> accessed 28 July 2025.

³⁶ See 27.

³⁷ See 32.

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

system was solely a parliamentary matter, rendering the views of the public insignificant.³⁸ In the 21st century, that has not changed. This was confirmed by the Ministry of Justice in 2020, which responded to a petition to bring back the death penalty, asserting that the UK's stance will not change.³⁹

Crucially, for capital punishment to return, the UK would have to denounce the European Convention of Human Rights. Since 2002, the ECHR has included the abolition of the death penalty under all circumstances. As a matter of international law and foreign relations, it would be a disruptive political move, portraying the UK as defying human rights. In terms of domestic law, the HRA would need to be replaced, completely unravelling an established legal system. Admittedly, this is not an unfathomable outcome; Boris Johnson's government proposed a Bill of Rights, which purported to replace the HRA.⁴⁰ Even though the Bill, unable to survive haphazard changes in party leadership, was withdrawn in 2023, it was still proposed. While replacing the HRA is not impossible, human rights, and more specifically, capital punishment, are a collective responsibility and will not return without the support of the entire nation.

Reflections

Admittedly, in my first week of research, I realised my entire project was founded on an assumption, as I believed the death penalty was abolished due to membership in the European Union. This was not the case, revealing the extent of my ignorance in capital punishment. In hindsight, such an oversight was unsurprising; previous conversations concerning the death penalty were consumed with its impact in the United States. I chose to embrace how little I did know, allowing my questions and ignorance to guide my study. This project has taught me the importance of starting research with a clean slate, as misconceptions can hinder learning and obscure the truth of the past. In my opinion, research fails when you believe you know everything. It is not prior knowledge that makes such projects successful, but the ability to adapt and accept that you may be working to disprove what you thought you knew.

As for the research process, attitudes towards capital punishment and the criminal law were essential for determining whether the death penalty could be reinstated. There was value in these opinions, but equally, value in knowing where these opinions have come from. Professor Carolyn Hoyle demonstrates this with a Telegraph article that claimed 52% of their readers were in support of the death penalty.⁴¹ To a casual consumer, such a statistic conveys

³⁸ See 26.

³⁹ 'Bring back the death penalty' (*UK Government and Parliament*, 9 May 2020) accessible at <<https://petition.parliament.uk/archived/petitions/304809>> accessed 12 July 2025.

⁴⁰ Emma Guy, 'What will the return of the Bill of Rights mean for the UK?' (*Each Other*, 1 December 2022) <https://eachother.org.uk/the-bill-of-rights-is-set-to-return-what-does-it-mean-for-our-human-rights/> accessed 3 August 2025.

⁴¹ Professor of Criminology at Oxford University.

WOULD ENGLAND & WALES HAVE ABOLISHED THE DEATH PENALTY IF THE UK HAD NOT JOINED THE
EUROPEAN UNION?

majority endorsement, even though it is only slightly over half. However, this conclusion is unsurprising for a Conservative, right-wing paper and thus is not as representative of the nation's views as it may first appear.⁴² From Hoyle's article, I learned that the methodology for surveys is just as, if not more, important than the data they produce. Media sensationalism constructs false realities, and it is my duty, as a researcher, to determine the truth myself.

⁴² Carolyn Hoyle, 'Crude opinion polls on the death penalty distort public debate' (*Death Penalty Research Unit*, 28 August 2023) <<https://blogs.law.ox.ac.uk/death-penalty-research-unit-blog/blog-post/2023/08/crude-opinion-polls-death-penalty-distort-public>> accessed 7 July 2025.