

# Introduction: Deaths in Custody and Detention

Phil Scraton and Jude McCulloch

IT IS THE MORNING OF DECEMBER 30, 2006, AND NEWS HAS JUST ARRIVED THAT IN Baghdad Saddam Hussein has been hanged. His execution is a death in custody authorized and carried out by a state as a demonstration of its monopoly on the legitimate use of lethal force within its jurisdiction. In such circumstances, including several U.S. states, capital punishment on behalf of “the people” supersedes a fundamental principle of human rights conventions: the right to life. In the aftermath of September 11, 2001, the U.S. administration and its allies, most ardently the United Kingdom (U.K.) and Australia, have reconstructed the concept of a “just war,” redefined the context of “preeminence,” and established criteria for imposing regime change on “rogue states” regardless of their sovereignty. Though debates persist over the legality or otherwise of the military offensives against Afghanistan and Iraq and new targets are lined up within what U.S. President George W. Bush has promoted as the “axis of evil,” the self-styled “war on terror” potentially has no limits: a war without a named enemy, without boundaries, without legitimacy, without rules of engagement, and without prisoner protection.

As U.S. air strikes reduced Afghanistan’s towns and villages to rubble, 900 prisoners were taken near Kunduz and held captive in containers. They died in the fierce heat, without water or air, unprotected by the Geneva Conventions. A U.K. Foreign Affairs Minister regretted that “nasty things happen in war.” The U.S. Defense Secretary, Donald Rumsfeld, stated that those taken on the battlefield would not be treated as prisoners of war or “soldiers in action,” but as unlawful combatants, later reclassified “enemy combatants.” The “war on terror,” he claimed, was not a conventional war because in the military conflict the only legitimate, uniformed soldiers belonged to the U.S. and its allies. Those captured did not wear the uniform of any recognized army and were “indistinguishable from the general population.” Arguing that they were “committed terrorists,” military detention became the sole criterion of guilt.

Denied prisoner-of-war status, those trawled and selected by the military or security services were interrogated, tortured, and transported without the protection of international law or the Geneva Conventions. Incarcerated outside U.S. sovereign territory, they had no rights under the U.S. Constitution and no access to a jury trial. The process was not a spontaneous response; it had been preplanned. On November

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PHIL SCRATON (e-mail: p.scraton@qub.ac.uk) and JUDE McCULLOCH (Jude.McCulloch@arts.monash.edu.au) are the Guest Editors of this issue of *Social Justice*.

13, 2001, the U.S. had issued a Military Order, *Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*. It introduced a new form of stateless detention: indefinite internment without trial, and prosecution without independent legal representation. Three months later, Bush used his presidential authority to establish that “none of the provisions of Geneva apply to our conflict with al-Qaida in Afghanistan or elsewhere throughout the world.”

The sight of prisoners decanted from U.S. transport planes, some drugged, all clothed in orange boiler-suits, gagged, chained, and ski-masked demonstrated not only the awesome powers of the U.S. military-industrial complex to capture, detain, and torture, but also its disdain for international conventions and standards. In the early days of Camp Delta, Guantanamo Bay, children and old men among the 600-plus captives shuffled around cages open to the elements, yet closed to scrutiny. The irony of the Guantanamo mission—“Honor Bound, to Defend Freedom”—was not lost on those who had endured the tribulations and brutalities of interrogation at the hands of the U.S. military. As the allied military invasion of Iraq received war’s baton from the devastation of Afghanistan, the Guantanamo detainees became yesterday’s story, only to be revisited in the wake of the revelations of Abu Ghraib. From inside the walls of Abu Ghraib came photographic evidence of what many had suspected all along. The self-proclaimed “world’s number one democracy” was rendering prisoners to torturing states, engaging directly in torturing interrogations, and in inhuman and degrading treatment of civilian prisoners, as well as allowing routine humiliation as part of informal, discretionary practices.

It is not possible to provide estimates for the number of deaths in custody, by suicide, through torture, or through acts of brutality or neglect as a direct consequence of the military offensives in Afghanistan and Iraq. They would include the summary executions of those taken prisoner, those killed in holding centers and jails throughout the world, and those “rendered” by the U.S. to torturing states for interrogation. Often ignored in the debate over the revealed “excesses” of Guantanamo, Abu Ghraib, Camp Cropper, Bagram, and other jails, however, is the stark reality that such practices were not aberrations, but extensions of custom and practice institutionalized within prisons in the U.S., the U.K., and Australia. As such, they constitute an integral element in the growth of imprisonment, its maximizing of security over all other considerations, its use of technology and isolation against those prisoners considered a threat, and its interlocking processes of demonization and dehumanization.



Prison expansionism in the U.S. and the U.K. did not happen by chance. Elliott Currie (1998: 185–6) notes that in the late 1960s, successive U.S. commissions into crime and urban disorders “called for a *balanced* approach to crime,” recognizing that “a strong and efficient criminal justice system” must be matched by broader social reform in the form of improved equity and social justice. Their message was

that, “we could never imprison our way out of America’s violent crime problem.” To defeat violent crime and urban unrest would mean “attacking social exclusion.” The alternative direction at “the crossroads” was to neglect social disadvantage, the material reality of poverty and marginalization, and hit offenders hard with harsher laws, zero-tolerance policing, and uncompromising prison regimes. Successive U.S. administrations went down this road, leading to “bursting prisons, devastated cities, and a violent crime rate still unmatched in the developed world.”

Reflecting on the explosion in U.S. incarceration during the 1980s, Nils Christie (1994: 99–100) maps the harsh treatment of prisoners, the “new techniques” and instruments of containment, and the consolidation of supermax security prisons. In supermax prisons, chains, manacles, isolation, natural light deprivation, “non-lethal” weapons, and ritual humiliation provided the mechanics and instruments of modern confinement in the supposed “free world.” Reading *Corrections Today*, the official publication of the American Correctional Association, Christie was “close to not trusting my own eyes.” Images of prisoners “who would love to stab, slash, pound, punch and burn” their captors were “unbelievable.” Yet the Association, its interests fully integrated into those of large multinationals as providers of the fabric and means of imprisonment, was “the organization with the mandate to administer the ultimate power of society...an organization for the delivery of pain...sponsored by those who make the tools.”

Christian Parenti’s detailed exposé of the institutionalized violence endemic in California’s maximum-security prisons demonstrated chillingly that it constituted “an extreme expression of the nation-wide campaign to degrade and abuse convicts.” To prove their hard-line credentials, politicians perfected a “rhetoric” demonstrating to the electorate that “going to prison is no longer punishment enough.” In this volatile context of public clamor and political opportunism arose “a wave of political fads: from chain gangs and striped uniforms, to the stunning evisceration of prisoners’ legal rights” (Parenti, 1999: 174). It amounted to “bureaucratic abuse,” resulting in terrifying outcomes of deprivation, rape, torture, and even death. Parenti’s research reveals the spectacular expansion of the prison-industrial complex over four decades. It functions “to terrorize the poor, warehouse social dynamite and social wreckage.” The pathologizing of the poor and the marginalized, supported by academic constructions of the “underclass,” justified and legitimated “state repression and the militarization of public space” (*Ibid.*: 169).

Initially, in numbers imprisoned and in the sheer viciousness of regimes, the U.K. did not experience the excesses of the U.S. prison-industrial complex. More recently, however, the social and political climate within the U.K. produced and sustained a popular commitment to long sentences, harsh conditions, and reduced prisoner rights. During the 1990s, the failing Conservative Government coined the slogan “Prison Works” as a partial justification for its highly publicized “war on crime.” Critical while in opposition, the Labour Party in government showed no discernible concern about the unprecedented escalation in imprisonment over

which it has presided since 1997. In fact, within a decade under Labour, the prison population in England and Wales almost doubled. As Joe Sim (2004: 39) notes, “the expanding prison is literally and metaphorically the big house of the poor” and the England and Wales jurisdiction has become “the prison capital of Western Europe.” Further, a new “justification for the prison” emerged: “from the discourse of ‘prison works’ to the discourse of the ‘working prison,’” with the latter discourse legitimating the institution as “*the* place to regulate and normalize ‘at risk’ groups whose inclinations and tendencies are likely to generate reoffending behavior: drug abusers, the poorly educated, the physically unhealthy, the mentally distressed, and the recidivist” (*Ibid.*: 42). These prisoners are among the most vulnerable, at the greatest risk of self-harm, and most likely to take their own lives.

Despite unequivocal evidence to the contrary, the incarceration of children as young as 10, and the catastrophic failure of prisons “on their own terms,” the media-fueled public perception has remained that of well-provided, relaxed regimes through which prisoners experience rehabilitation in education and work programs at the taxpayers’ expense. That the Prison Service Inspectorate has exposed repeatedly the conditions and regimes endured by those imprisoned in many young offenders’ institutions and women’s jails, also criticizing severely the squalor of previously condemned Victorian prisons, is of little consequence to politicians and media commentators locked into a “soft-on-crime” mindset. With virtually no public expression of concern over the appalling conditions inflicted on those sentenced for minor criminal offenses, including “antisocial behavior” and “nonpayment of fine,” it follows that apathy is exchanged for outright hostility toward those convicted of “terrorist” offenses.

Intimidation, abuse, and degradation have characterized the incarceration of Irish nationalist prisoners, men and women, held in British jails for over a quarter of a century. Yet early in 1997, following two aborted trials of high-security prisoners who had escaped from Whitemoor prison in England, a judge abandoned proceedings because he deemed the prisoners mentally unfit to stand trial. He expressed his concern that conditions in which they had been held since their recapture had made them ill. The U.K. government’s chief medical officer found that secure regimes within the special units were so “cramped” and “claustrophobic,” lacking in “meaningful work...social contact and incentives,” that “it was likely over a course of years that a proportion of [prisoners] would develop significant adverse effects to mental health.” This was, he concluded, unacceptable. All prisoners, regardless of their offense, were entitled to the “same rights as regards health and healthcare as any other person in the country.” Taken together, the judicial ruling and the chief medical officer’s findings were a damning indictment of regimes that, however politically expedient and popular with sections of the media, gradually had weakened the resolve and broken the spirit of individuals through inhumane and degrading treatments. It is against this backcloth, in the U.S., the U.K., and

elsewhere, that the punishing regimes under which those taken prisoner as part of the “war on terror” must be considered.

Bree Carlton’s article in this edition highlights continuities between the deployment of counterinsurgency tactics and brutalizing penal practice in U.S.-run military prisons such as Abu Ghraib and domestic maximum-security prisons. She provides a comparative critique of the systematic use of violence integral to Abu Ghraib and the Australian State of Victoria’s Pentridge Prison H Division maximum-security unit in the 1970s. Carlton argues that punitive conditions and regimes developed in the U.S.—and evident within detention and prison systems in other Western states such as Australia—were exported, thus achieving global application. She also examines highly publicized official discourses of denial and dangerousness that feed defensive and justificatory politics of penal expansionism. Through these discourses, the public exposure of abusive practices and systematic violence are marginalized and diminished as the state claims “necessity” to legitimate its “war” on the “worst of the worst.”



The connection between prisoner abuse in Iraq and prisoner abuse in the U.S. is not a matter of conjecture or persuasion. Tony Platt and Gregory Shank (2004: 2–3) note that the team leader tasked with reopening Iraq’s prisons previously “had been forced to resign as director of the Utah Department of Corrections...after an incident in which a mentally ill inmate died after guards left him shackled to a restraining chair for 16 hours.” He was then appointed to an executive post with the Management and Training Corporation, “one of whose jails was strongly criticized in a Justice Department report a month before the department sent him to Iraq.” On arrival he “identified Abu Ghraib as the best site for the U.S. prison.” Further, John J. Armstrong, appointed assistant director of operations of U.S. prisons in Iraq “was forced to resign in 2003” from his post as Connecticut corrections commissioner following the death of two prisoners. Previously, the prison guards’ union and the National Organization for Women had heavily criticized him for ignoring the sexual harassment of women guards by male colleagues.

The advanced democratic state, via the checks and balances of interrelated, formalized processes of legal, political, and professional accountability, claims transparency for its public institutions. Yet behind the high walls of special hospitals, the bolted doors of psychiatric units and prison wings, those imprisoned continue to be subdued by a lethal mix of tranquillizing and anti-psychotic drugs, staff brutality, supervisory neglect, and defensive managements. Like the abandoned mental institutions before them, today’s high-security special hospitals form a closed world. Powerful staff and management interests have hindered inquiries into specific cases and more general allegations of inhuman and degrading treatment. Prisoners, euphemistically labeled “patients,” report threats and intimidation by staff as the means through which their voices are silenced. Within closed institutions, staff are

granted permissive discretionary powers, yet minimum mechanisms are in place to guarantee transparency. “Control and restraint” methods are used with impunity to inflict arbitrary punishment on “difficult” prisoners. Harsh measures—body-belts, force-feeding, and strip-cell isolation—are commonplace and endorsed by medical professionals. “Offenders,” including women and children with serious, identifiable mental conditions, are imprisoned. Others develop psychiatric problems as a direct consequence of prison conditions and regimes, leading to transfer from mainstream jails to special hospitals. A growing number of men, women, and children are isolated on strict suicide observation.

In the mid-1980s, following extensive primary research into deaths in police and prison custody (during arrest and in young offenders’ institutions), Scraton and Chadwick (1987a: 220; 1987b) demonstrated how negative imagery and established ideologies that were “deeply institutionalized in the British state” were mobilized to provide “the ready justification for the marginalization of identifiable groups.” This successfully deflected responsibility away from state institutions. The political management of identity constituted “a process of categorization which suggests that the ‘violent,’ the ‘dangerous,’ the ‘political extremist,’ the ‘alien,’ the ‘inadequate,’ the ‘mentally ill,’ contribute to their own deaths either by their pathological condition or their personal choice” (1987a: 233).

Their analysis suggested that advanced capitalism, neocolonialism, and patriarchy comprised interrelated political forms while generating ideological constructions of reality that justified, defended, and reinforced political-economic relations of dominance. Societal consensus, particularly in the context of economic marginalization or in the protection of more broadly drawn frontiers (the European Union, for example), was assumed through the rhetoric of liberal pluralism. Yet social forces within democracy’s civil society remain backed by the constant presence and occasional use of physical coercion. Draconian legislation and policy, the uncompromising products of successive Thatcherite administrations, depended on the exercise of state-sanctioned violence. They also required internalization through ideological appeal and acceptance, or—for those resisting the consolidation of authoritarianism—through mechanisms of fear. Successive Labour administrations have assumed the authoritarian mantle, not least in their introduction of legislation directed toward “antisocial behavior” at one end of the spectrum and “terrorism” at the other. The moralisms implicit in this inherited political project, initially identified by Stuart Hall (1979: 19) at the onset of Thatcherism, remain firmly in place: good versus evil, civilization versus barbarism, and moral authority versus permissiveness.

Throughout the 1990s, deaths in custody that led to verdicts of unlawful killing or neglect at inquests represented the sharp end of the continuum of state violence directed toward black people. Brutality knows no hierarchy, but the killing of Joy Gardner in July 1993, by officers of the Metropolitan Police extradition unit, exemplifies the impunity with which physical force directed toward those who resist

arrest became institutionalized. Bound with tape, her mouth gagged, she was dying of suffocation. Following her death, it became apparent that black people featured disproportionately in the figures of controversial deaths in custody. Oluwashiji Lapite, Brian Douglas, Leon Patterson, Wayne Douglas, Ibrahim Sey, Christopher Alder, Roger Sylvester, Sarah Thomas, Alton Manning, and Kenneth Severin became familiar names mourned within Britain's black communities. Each died in custody, with their families alleging neglect or brutality. In March 1998, the director general of the Prison Service in England and Wales offered a biological explanation for the proportionately higher levels of black prisoner deaths. He proposed that under restraint, "Afro-Caribbean people are more likely to suffer positional asphyxia than whites. That's the evidence that seems to be emerging, not just in this country but in other countries as well" (*The Guardian*, March 27, 1998).

As inquest verdicts of unlawful killing began to stack up, the United Nations Committee Against Torture produced a report on its extensive U.K. investigation into custody deaths. It expressed profound concern over "the number of deaths in police custody and the apparent failure by the state party (U.K.) to provide an effective investigative mechanism to deal with allegations of police and prison authorities' abuse" (*Statewatch*, 1999: 8). The Police Complaints Authority commented that the police "have to ask themselves whether they are treating black and ethnic minority people as well as they would white people" (*The Guardian*, July 9, 1999). In this issue of *Social Justice*, the comment piece by Nick Moss demonstrates how racism in prison can take different, but equally lethal forms. Zaheed Mubarek was a young man convicted of a minor offense and allocated a shared cell with a known, violent racist who brutally murdered him. This happened in the care of Feltham Young Offenders' Institution near London, England. Direct responsibility for the murder was clear, but subsequent inquiries focused on the significance of institutionalized policies and practices within the jail. As Moss shows, these less tangible and demonstrable contributors to the death were no less significant.

A recent, internationally publicized example of institutionalized racism as a contribution to a custody death was the fatal police shooting of a Brazilian man, Jean Charles de Menezes, on a London underground train in July 2005. He was killed in the immediate aftermath of the London bombings, although he was not implicated in any way with those attacks. In this issue, Jude McCulloch and Vicki Sentas describe the circumstances of the death, tracing the incorporation of "shoot-to-kill," a colonial legacy from the north of Ireland and Israel and emblematic of preemptive strikes central to the "war on terror." The authors argue that the exceptional rule of law typical of the colonial periphery has "come home" in the form of extrajudicial killing licensed under shoot-to-kill policies, thus deepening the institutionalized racism embedded in established domestic policing.

Controversy over U.K. investigations and inquiries into custody deaths has not been confined to the deaths of black people. The suicides of young women

in Cornton Vale Prison in Scotland and of young men and children in custody throughout Britain raised serious questions concerning the escalating incarceration of children and young people for relatively minor offenses. As earlier research suggested, concerns over harsh regimes, violent bullying, and staff complacency were overshadowed by official explanations and internal inquiries that focused on individual pathology, personal inadequacy, and fractured family lives. If victims did not bring death on themselves by their aggression and refusal to conform, they did so by their character weakness and failure to adjust. Within the U.K., what emerged from two decades of campaigns and resistance regarding deaths in custody was evidence of a yawning gap between official discourse, inquiries, or verdicts and alternative accounts provided by bereaved families, regime survivors, rights lawyers, community workers, and critical researchers.

In their comment piece in this issue, Deb Coles and Helen Shaw trace the centrality of INQUEST to researching, disseminating, and campaigning on deaths in custody in England and Wales. Founded in 1980 by bereaved families and two researchers, INQUEST has documented cases, supported relatives, lobbied government, provided lawyers, and submitted evidence to inquiries and commissions. It has filled a significant civil liberties gap, the consequence of the state's reluctance to provide protection for its citizens through appropriate, exacting inquiries into deaths of those in its care. Coles and Shaw also exemplify the realizable potential of combining academic research, case-based analysis, well-briefed legal representation, and political campaigns involving the bereaved. As identified by Sivanandan (1981), it represents the necessary process of turning cases into issues.



As a penal colony to the British Empire, Australia was established as a police state. Banishment to the colonies, or "exile in chains" became an alternative to death by hanging in 1787 (Keneally, 1998). In the 80 years until 1868, more than 160,000 men, women, and children were transported to Australia's "fatal shore" (Hughes, 1988). Many died awaiting transportation while being held on decrepit hulks at various English ports, forced to work in extreme conditions, undernourished, and ruthlessly exploited (Branch-Johnson, 1957). On the interminable journey to Australia, loss of life was "fairly standard," and on some voyages up to one-quarter of the convicts died en route (Keneally, 1998: 27). These tragic deaths in custody reflected an institutional acceptance of, and ambivalence toward, prisoners' survival. For those who completed the journey, harsh conditions in the colony and a regime in which floggings and hangings were accepted practices meant that for many, banishment for the term of their "natural life" was a short-lived experience.

Irish prisoners were well represented in penal transportation to Australia. The British colonial relationship with Ireland, religious persecution, and resistance combined to secure the unwilling passage of many Irish Catholics. Among the first to be transported were members of the "Defenders," formed to counter at-



tacks on Catholics in the north. Many unrepentant “rebels” followed in their wake (Keneally, 1998: 38–39), with Australia becoming the “official Siberia” for Irish dissidents (Hughes, 1988: 181). Descendants of Irish convicts continued the long-established resistance to British repression as free settlers. That struggle, most famously encapsulated in the clashes between the police and the Kelly gang in rural Victoria in the 1870s, led ultimately to one of Australia’s most infamous deaths in custody, the death by hanging of Ned Kelly at the Old Melbourne Goal in 1880 (Jones, 1995).

The British invasion and occupation of Australia was based on the idea of *terra nullius* or “empty land.” Indigenous Australians, representing the oldest continuing culture in the world, had occupied Australia for 60,000 years. Britain’s new penal colony heralded the violent and premature death of many indigenous people. Deaths of indigenous people during the early decades of occupation were the product of police, military, and settler violence, combined with the introduction of new diseases and the reduction of food sources as land was enclosed for private use and stock that had been introduced (Reynolds, 1987). These indigenous deaths, in a country identified by the “mother country” as a vast prison, together with the deaths of convicts at sea and on shore, comprise Australia’s foundation deaths in custody. The continuing “history wars” in Australia, seeking to erase and deny the killing and deaths of indigenous people during settlement, exemplify quite strikingly the “denial” surrounding deaths in custody (Attwood, 2005; Cohen, 2001). That Australia’s foundation custodial deaths occurred in the context of a colonial relationship with the United Kingdom created the historical link and, in part, the intellectual impetus underlying the collaborations that form an important part of this collection.

Although the United States remains the only Western country that executes prisoners, judicial executions are not the only deaths in custody. In this issue, the parameters of deaths in custody are taken from the Australian Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991: 190; recommendation 41). They include deaths in prison custody, police custody, or juvenile detention, where the death is caused or contributed to by traumatic injuries, or by lack of proper care in custody. Also included are deaths in the process of detention, or restraint of a person and of those attempting to escape from prison, police custody, or juvenile detention.

Deaths in custody frequently represent the defeated, angry, and/or defiant endpoint to lives damaged by institutionalized violence and state coercion. They occupy the sharp end of structural inequality in societies riven by racism, sectarianism, classism, and misogyny. The impact of bereavement on families, friends, and supporters, often in already marginalizing material conditions of poverty, exclusion, and persecution, is profound and devastating. Condemnation, vilification, deceit, and cover-up are the frequent ingredients of official responses that accentuate the

pain of bereavement and survival. In these circumstances, “speaking truth to power” is crucial. Respecting the lives of those who die in custody through research and publication recognizes and dignifies their humanity and sustains those who grieve the loss of loved ones.

Critical analysis of deaths in custody provides vital insights into state coercion and institutionalized violence within advanced democratic societies. The continuities, consistencies, and connections between the inequality and violence in the wider society and the operational policies and practices within prison archipelagoes are well established in the literature. Writing on the ideological function of prisons, Angela Davis (2003: 16) argues that they:

function ideologically as an abstract site into which undesirables are deposited, relieving us of thinking about real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers.... It relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism, and increasingly global capitalism.... The prison has become a black hole into which the detritus of contemporary capitalism is deposited.

Pat Carlen (1998: 10) notes that women’s incarceration “incorporates and amplifies all the anti-social modes of control that oppress women outside the prison.” In this issue, Phil Scraton’s article on the death of Annie Kelly, who from childhood was held in a maximum-security women’s unit in the north of Ireland, illustrates the context of suffering endured by self-harming and suicidal women in prison. He notes how she was a repeat offender who committed relatively minor offenses. As a child and as an adult, the prison gate was a revolving door. With no stability outside, she was treated harshly inside, often held in strip conditions “down the block,” where she finally died. Revealing and analyzing the gender-specific circumstances of her imprisonment and death, and the investigations and inquiries that followed, Scraton demonstrates how even in cases with clear evidence of institutional liability, prison managers and staff avoid accountability.

Annie Kelly first came into conflict with the law as a 12 year old, soon after the tragic death of her brother. The incarceration of children, from an early age, remains an enduring scandal especially in those advanced democratic states with a low age of criminal responsibility. In this issue, against a backdrop of what he identifies as “rampant punitiveness,” Barry Goldson considers the deaths of 29 children over 15 years in state prisons and private jails in England and Wales. By individualizing and pathologizing children who take their own lives, he observes, institutional responsibility for those in their care is neutralized and denied. Goldson also questions the role of managerial reformism, the demonization of children and young people, and the flawed processes of investigation and inquiry.

Critical analysis of what happens in prisons and of what constitutes coercive policing operations provides alternative accounts to official discourse. Deaths in

custody often bring scrutiny to operational policies and practices within prisons and the police. Hogan, Brown, and Hogg (1988: 6) illustrate this well:

Death is the most serious outcome of brutality, neglect, and excessive zeal: it is not the only one. The incidence and nature of deaths at the hands of the state may tell us a great deal about the general quality of state institutions and practices as they relate to particular sections of the population.

As Chris Cunneen points out in this issue, the 1991 Australian Royal Commission into Aboriginal Deaths in Custody failed to halt indigenous deaths in custody. Yet it was successful in documenting the life stories of those who had died, the nature and extent of indigenous over-representation in the criminal justice system, and the wider structural issues underpinning over-representation. The Royal Commission report was a major milestone in understanding the relationship between indigenous people and the criminal justice system and remains an invaluable resource for researchers. Its investigation into 99 deaths in custody illuminated and demonstrated unequivocally the long-standing impact of colonization on indigenous people. As Cunneen (2001: 250) states: “The process of criminalisation, the denial of human rights, marginalization, and incarceration ensure that Aboriginal people are maintained as a dispossessed minority, rather than a people with legitimate political claims on the nation-state.”

The shocking cases considered by the Royal Commission provided a broader public understanding of the processes of racism in the criminal justice system and Australian society. Cunneen’s article examines five recent indigenous deaths in custody, demonstrating that the Royal Commission’s recommendations remain ignored, while ongoing problems of indigenous discrimination within the criminal justice system persist. The article also notes that over the last decade in Australia, more punitive approaches to law and order have combined with a move away from the recognition of indigenous rights, including the right to self-determination, ensuring that indigenous people remain grossly over-represented in custody and, accordingly, deaths inside.

Deaths in custody are often catalysts to violent community-based reaction to what is perceived as pervasive state violence with impunity. For example, in November 2004, following the death of an indigenous man in police custody on remote Palm Island in Australia’s north, the local police station was burnt to the ground, forcing police officers to flee for their lives. Fatal police operations and shootings by police are often the spark for retaliatory violence. In 1985 in Broadwater Farm, England, one police officer was killed and hundreds injured when a local African-Caribbean woman collapsed and died during a police raid, only days after a similar incident in Brixton when police shot and paralyzed another African-Caribbean woman. In Victoria, Australia, a 1988 fatal police shooting triggered a spiral of violence that led, over several months, to the fatal shooting of two police

officers and two “suspects,” in what many believe was a series of revenge killings (McCulloch, 2001: 108).

Deaths in custody can also galvanize action against injustice. The death of Bobby Sands in 1981, the first of 10 Republican hunger strikers to die in the H-Blocks at Long Kesh, is now recognized as a defining moment in the conflict in the north of Ireland. In this issue, Bill Rolston’s review of Dennis O’Hearn’s excellent biography of Bobby Sands sharply illustrates the significance of the deaths of the hunger strikers. From their prison cells, the hunger strikers “brought the struggle to a moral platform which became a battle between them and the entire might of the British state” (Adams, 2003: 12). Also in this issue, Paul Howard revisits the dynamics of the struggle through his in-depth interviews with Republican prisoners who survived the hunger strikes. The recent deaths by hanging and hunger strikes at Guantanamo Bay are significant challenges to the U.S. administration’s abuse of authority. That a prisoner faced with injustice and brutality takes his or her own life is testament to the potential of human resistance. As a prisoner states, those in custody “reflect the overall social condition—a distillation or concentration of the worst effects of capitalism on human beings, as well as the strengths we humans have to endure injustice and cruelty” (Buck, quoted in Rodriguez, 2003: 200).

Rita Maran’s commentary addresses detention and torture at the Guantanamo military prison and how that facility has emerged as a symbol of the Bush administration’s drive to chisel away at historic laws and statutes within the United States, to rebalance the country’s tripartite system of governing, and to commit military aggression against populations abroad. This article surveys areas of concern that have surfaced because of Guantanamo, including conditions at the camp, its legal status, the issues of human rights law raised in connection with torture, how such matters have been addressed in the context of the United Nations system, and some notable U.S. government executive and judicial actions in relation to rule of law. As Maran notes, torture is morally wrong, and legally a crime; thus, citizens of the U.S. must never again be complicit when its or any government stoops far below minimal human rights in the moral and legal domains.

In his commentary, Steve J. Martin examines the use of force in U.S. confinement settings to distinguish lawful control tactics from corporal punishment, which is illegal in U.S. corrections. The essay focuses on an insidious pattern or practice of unlawful staff use of force that is cloaked with, or protected by, an air of legitimacy in which ostensibly lawful applications of physical force mask the intentional infliction of punishment, retaliation, or reprisal on prisoners. Such *de facto* corporal punishment is often used against mentally ill offenders whose behavior, as viewed by inadequately trained officers, is to be punished rather than treated. This pattern is reinforced by the wide range of high-tech, non-lethal weaponry available to correctional personnel, especially with the advent of “super” or “ultra” maximum-security prisons in which to house “super-predators.” According to Martin, demonized super-predators are often the recipients of high-tech weaponry,

and the rhetoric about them provides an ideological justification for unprecedented levels of force, even though hard-core troublemakers requiring maximum-security confinement are hardly a new phenomenon in corrections.

The articles in this issue focus on state violence and incarceration through analysis of a death, or deaths, in custody. They explore issues of power, justice, conflict, and resistance within prisons in a broader social, economic, and historical context. Also included is a contribution from a serving prisoner at Barwon maximum-security prison in Australia. Craig Minogue's article provides an account of deaths in custody from the inside. In prison since 1986, he reflects on his fear of dying in custody and on the impact of a fellow prisoner's death on him and other prisoners. He contemplates how death stalks prisoners after release, noting the disproportionately high mortality rate of released prisoners. Death and suffering of prisoners is easily forgotten or ignored by the public, illustrated here by comparing the public outpouring of grief following the 1996 shooting massacre at the site of the old Port Arthur Prison, Tasmania, and the public silence and indifference over the suffering of those who lived and died within the walls of that prison and the attached Point Puer Reformatory for boys. Although Port Arthur remains in the popular imagination as a tourist attraction, and a site of a recent mass shooting by a deranged young man, Minogue's article recalls the adult prisoners who suffered the "vengeance of the law to the utmost human endurance" and the child laborers who were worked to death during Australia's convict days. The editors are grateful to all the authors for their time and commitment in bringing this edition to fruition, but particular thanks are extended to Craig Minogue for his perseverance in overcoming the barriers to communication and collaboration imposed through incarceration.

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