When the Islamic State Kills: Ironies of American and ISIS Executions

Paul Kaplan

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Abstract
These research notes explore the idea of comparing executions in the United States (US) to executions undertaken by the Islamic State of Iraq and Syria (ISIS). Is it possible that America’s ostensibly rational, formal, and “clinical” death penalty is more painful for its victims than ISIS victims? I investigate this question by considering the suffering caused by the death penalty in the US, making some informed speculations about ISIS executions, discussing execution in two influential Islamic nations, and observing some ironies these topics raise about the rule of law and capital punishment. My goal with these notes is to spur interest in comparative research on state violence and the death penalty.

Introduction
These research notes explore the idea of comparing executions in the United States (US) to executions undertaken by the Islamic State of Iraq and Syria (ISIS). I became interested in this comparison while I was collaborating with the British scholar, Simon Cottee, who writes extensively about “jihadi” murder, both as an academic and as a journalist for The Atlantic (Cottee 2019). Part of Cottee’s research involves identifying, archiving, and analyzing terrorist propaganda videos—the horrifying and sometimes professionally produced films that ISIS and other groups create and disseminate depicting their members killing people. Because I have studied the death penalty in the US extensively, I am aware of how it causes suffering to the condemned, especially when botched. Is it possible, however, that America’s ostensibly rational, formal, and “clinical” death penalty is more painful for its victims than ISIS victims? I investigate this question by considering the suffering caused by the death penalty in the US, making some informed speculations about ISIS executions, discussing execution in two influential Islamic nations, and observing some ironies these topics raise about the rule of law and capital punishment. My goal with these notes is to spur interest in comparative research on state violence and the death penalty.

Paul Kaplan
pkaplan@sdsu.edu

1 San Diego State University, San Diego, US
State Violence and Studying the Death Penalty

An important project in Anglo-American critical criminology has been to understand state violence in multiple senses, including, of course, injury and death caused by state actors (e.g., Chevigny 1995; Garland 2010; Sarat 2001; Skolnick and Fyfe 1993; Zimring 2003), but also individual emotional, physical, and psychological trauma caused via confinement or other means of control (e.g., Blume 2005; Reiter 2016; Rhodes 2004), and structural violence caused by, facilitated by, or perpetuated hegemonically by government actions (e.g., Alexander 2010). The result is a kaleidoscope of concepts that encompass everything from poverty to execution. These scholars of punishment tend to problematize the rational/formal stance that “properly” carried out state violence is legitimate while citizen violence is illegitimate.

In nations such as the US, capital murder—aggravated intentional homicide—is an epitome of illegitimate violence. Execution—the killing of a person convicted of capital murder, by the state after due process of law—is a pinnacle of state violence. Of course, both actions are the intentional killing of a human being. The difference between them is that the former is often regarded as the worst thing a human being can do, while the latter is thought to be a regrettable but necessary act for a socially or morally important reason, such as deterrence or retribution. Illegal violence is carried out by individuals with very limited claims to a socially supported right to power; state violence is conducted by government agents with a monopoly on power that has some degree of social acceptance.

By all available measures, the death penalty has been declining around the world for decades, with a couple of notable exceptions. It has been abolished in recent years by a significant portion of the world’s countries, prominently all member states of the European Union. In the US, the federal government and twenty-four of the fifty states have death penalty statutes, although in all of these jurisdictions, it is used infrequently. For example, in 2019, the last year before the COVID-19 pandemic, there were only thirty-four death sentences given to defendants and only twenty-two executions in the US (all but one in the Bible Belt) (Death Penalty Information Center [DPIC] 2017).

Moreover, the death penalty comprises a miniscule portion of the violence meted out by criminal justice system in the US. According to The Guardian, police officers kill an average of 1100 each year (https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database). In the US, the total number of persons held in jails or prisons has hovered around 2 million persons since the turn of the millennium (World Prison Brief 2017). The incarceration rate in the US has been the highest in the world for a long time. The total number of executions in the modern era\(^1\) is 1534 (DPIC 2017). The total number of condemned persons living on death rows across the country currently stands at 2504 (DPIC 2017). Almost none of these individuals are likely to ever be executed. The scope of the actual application of the death penalty in the US is thus very small in comparison with the much bigger picture of state violence in all its explicit forms, including lethal violence.

As leading comparative death penalty scholars Johnson and Zimring (2009) make clear, it is difficult to know exact numbers of the world’s leading executor, China, because executions there are a state secret. Based on available evidence, however,

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\(^1\) The modern era describes capital punishment since the U.S. Supreme Court reinstated the death penalty in *Gregg v. Georgia* (423 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)).
analysts believe that China executes at least hundreds of persons per year and, perhaps in a peak year, many thousands (Smith 2020); if China averaged about 2500 executions per year since 1976, the total would add up to more than 100,000—a staggering number. Johnson and Zimring (2009) thus consider the death penalty to be an “operational” part of China’s criminal justice system. Japan, for comparison, has a population of about 127 million people and an almost nonexistent violent crime rate; it incarcerates very few people (World Prison Brief 2017). Japan’s death row currently has 128 occupants, and the country has executed a small handful of persons—fewer than 200 in the modern era (Cornell Center 2017).

In fact, the modern death penalty is a tiny part of the larger picture of punishment by the criminal justice system, essentially everywhere in the world except China (Johnson and Zimring 2009), although this picture is somewhat clouded by unstable nations and countries with extensive nonjudicial state killing, such as the Philippines. In the two highly developed democratic societies on opposite sides of the planet that do have a death penalty—Japan and the US—capital punishment is almost nonexistent. Johnson and Zimring (2009) refer to it as “symbolic,” meaning that executions have nothing to do with criminal justice and only matter very much to persons associated with the case or persons capitalizing on its publicity in one way or the other. Religious totalitarian states execute with some regularity, as will be discussed later, but the total numbers are still low compared to violent crime and incarceration. In large swaths of the world—Europe, Russia, most of North and South America, large parts of Africa, Australia, and large parts of Asia—the death penalty is absent.

Nevertheless, the death penalty garners enormous amounts of attention. It is obviously highly important to condemned persons (and their loved ones) and also to their victims’ families. Garland (2010) argues in Peculiar Institution: America’s Death Penalty in an Age of Abolition that the purpose of the contemporary death penalty has little to do with rationally defensible reasons, but that the death penalty thrives in political rhetoric and creates a venue to talk about the taboo topic of human death, which can provide symbolic benefits for people from many different groups. Advocates cynically support the death penalty to appear “tough on crime” or believe it can provide a retributive sense of “closure” to the family of victims and, perhaps, society; in a less obvious way, capital punishment profits defense attorneys by creating an intense and exciting career and “even a hint of glamour” (Garland 2010: 291). Kaufman (2020) argues that the capital trial serves as highly legitimated, formal, and ceremonial space for victims’ families to express mourning and be treated with respect, compassion, and seriousness. Garland (2010) suggests that talking about murder and execution can have a psychological benefit for all who discuss it.

Aside from its symbolic power, the death penalty remains a potent instantiation of state power in the southern part of the US. Tangible evidence of this is recent activity to increase the use of capital punishment in some southern states. In 2017, the state of Arkansas planned to execute eight men over four days because the prison’s supply of one of the execution chemicals was set to expire. According to Arkansas Governor Asa Hutchinson, a Republican, “It is uncertain as to whether another drug can be obtained, and the families of the victims do not need to live with continued uncertainty after decades of review” (quoted in Berman 2017). The state managed to execute four of the eight men, but the intent to kill more than one prisoner per day, based on expedience rather than deterrence or incapacitation, demonstrated strong support for capital punishment in Arkansas. Other examples include proposed legislation in fifteen states to either reintroduce an abolished death penalty statute or to beef up current laws. Probably the most prominent of these was California’s 2016 voter-approved proposition to speed up capital appeals, which narrowly defeated
an opposite proposition to abolish the death penalty. Examples of legislative tinkering toward more death include the idea of a “hierarchy of execution methods,” which constitute lists of options, such as death by firing squad, should lethal injection become impossible.

For these reasons, it is worth continuing to discuss the death penalty, especially when it actually involves execution. The remainder of these notes will focus on that phenomenon in the USA, the ISIS “caliphate,” Saudi Arabia, and Iran.

The Degrading Nature of the American Death Penalty

A myth about America’s death penalty is that it is somehow “clinical”—the idea being that because the condemned are given access to extensive legal processes, are sometimes treated with sympathy, and are ultimately executed in a clean, well-lit room by persons wearing gloves, that the whole process is devoid of degradation. Because persons executed in the US are not ordinarily beaten, starved, or intentionally tortured physically before their deaths, the process is seen by some as a form of euthanasia.

LaChance’s (2016) analysis of “calm” executions includes intriguing insights about how aspects of the death penalty operate to create the false impression that the state is killing a person who has individual agency at the time of his execution. This, argues LaChance (2016), lends legitimacy to capital punishment because it characterizes the defendant as willful—a person who makes choices, including the choice to kill—while simultaneously treating him respectfully. LaChance (2016) focuses on the sense of reverence bestowed by the state on persons in their last hours. They famously are allowed a last meal of their choice, although these meals tend to be much more modest in reality than they are in description, and were discontinued in Texas a decade ago (Fernandez 2011). Perhaps more interesting is the tradition of allowing the condemned to deliver “last words.” Of course, these statements vary widely, but the formal practice of giving voice to the condemned lends a sense of dignity to the procedure. When the condemned person speaks his last words, he is characterized as an individual in control of himself and his destiny, seemingly taking as long as he likes to say whatever he wants. Some persons end their statements by “giving permission” to the warden to execute them. For example, Barney Fuller, executed in Texas on October 5, 2016, said: “I don’t have anything to say, you can proceed Warden Jones” (TDCJ 2017). As absurd as it seems, this creates the impression that the prisoner is somehow in control.

Another way the state creates this false impression is by allowing the condemned to “volunteer” to waive their mandatory appeals, speeding their time to execution. “Volunteering” usually causes a major legal and emotional quandary for capital defenders because they are sometimes able to see the logic in their clients’ wishes to end the horror of life on death row, but at the same time, they want to continue the fight to save their lives through legal relief. The term “volunteer” connotes agency, but Blume (2005) argues that while volunteering might be a form of rational choice, it is also a form of suicide, which violates most legal norms, especially when the decider is not terminally ill. In other words, because the volunteer’s agency is highly contingent, it cannot be understood as “a simple personal choice” (Blume 2005: 942).

In all its phases, but especially at the time of execution, the American death penalty is supposed to be a somber phenomenon in which the condemned is taken seriously and treated respectfully until he is dispatched quietly and painlessly. The US Supreme Court’s elusive doctrine of “evolving standards of decency” requires that the killing should be “the
mere extinguishment of life” (*In re Kemmler*, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519 (1890)) and nothing more. Pain and suffering are supposed to be superfluous to executions. The process should follow a script in which the condemned voluntarily positions himself on the gurney and does not resist being strapped in; he is then allowed to say a few words of his choice in front of a small audience, and finally someone inserts the needle, after which he peacefully closes his eyes and goes to sleep forever. When the process goes off-script, as it does regularly—when prison functionaries fail to quickly or correctly find a vein, causing blood to spurt, or when the prisoner evinces severe spasms or other signs of suffering as the chemicals enter his system—the violence of state killing is illuminated in a manner that contradicts it clinical esthetics.

The state of Alabama recently botched the execution of Doyle Lee Hamm, a man already dying of cancer, when prison staffers could not find a vein, sticking him repeatedly in his groin and leg with needles and puncturing his bladder, never able to satisfactorily inject the chemicals (Cohen 2018). Hamm’s execution was “canceled” and set to be rescheduled, but he later reached an agreement with the state of Alabama to allow him to die naturally in prison (Brown 2018).

In another botched execution, the state of Tennessee tortured Billy Ray Irick when he was lethally injected (Boucher and Tamburin 2018). And while the US Supreme Court has upheld lethal injection, the practice of lethal injection has become controversial as the condemned continue to challenge its constitutionality, drug companies refuse to sell their lethal products to states intending to use them for executions (Berger 2020), and states conduct lethal injections with increasing opacity (Konrad 2018).

The fact is that American executions have never been calm and respectful. The history of state killings in the US is littered with all forms of hideous botchings—what Sarat (2014) refers to as “gruesome spectacles.” Indeed, the move away from hangings, firing squads, the electric chair, and the gas chamber came about because the US Supreme Court could not tolerate what appeared to be the obvious infliction of pain caused by these methods. For most of American history, hanging was the primary form of execution, and hangings are difficult to undertake without causing evident suffering. Prisoners are decapitated, are left strangling for minutes, or try to climb off the scaffold while choking to death. Electrocuton was not much better, as prisoners caught on fire, bled profusely, or simply survived several jolts before finally succumbing after prison officials amped up the juice. Gassing people to death also presented problems, including the phenomenon of gas leaking out of the chamber, but more to the point, causing the prisoner to gag, choke, and cough for many seconds or even minutes before dying. As Scarry (1985) points out, human suffering is hard to understand unless it is seen, and the legibility of agony caused by strangling, electrocuting, and gassing made these gruesome executions too much for some Supreme Court justices to tolerate.

With lethal injection, it seemed that American executioners had finally found a way to euthanize prisoners without causing evident pain and suffering. Multiple chemical cocktails—usually in the sequence of sedative, paralytic, and then a heart-stopper—could ensure that the person did not move after receiving the first injection. But as indicated, this seemingly euthanasic method has proven to be just as fraught as previous ones.

Botched lethal injections take two primary forms. The first is when drugs are not administered correctly or do not have the intended effect and prisoners do not receive the sedative drug and are paralyzed while conscious and then killed by an excruciating heart attack. In this scenario, prisoners are alert yet immobile while given a lethal dose of heart-stopping chemicals, which is what occurred in the case of Billy Ray Irick, mentioned above. The second form is when prison officials take a long time or are not able
to find a viable vein in which to inject the chemicals. This scenario has received attention because in some cases, it has taken dozens of minutes and, grotesquely, the assistance of the prisoner to find a vein, while in other cases, no vein could be found after puncturing the prisoner repeatedly and painfully. Photographs of Doyle Lee Hamm’s lower body showing the marks of failed injections were disseminated widely after his botched execution.

Descriptions of humans suffering while being executed and images of postmortem bodies or execution survivors that seem to indicate pain are obvious signifiers of the hurtful consequences of state violence. A harder-to-see effect is “death row syndrome”—a term that has been used to describe the bad effects of living on death row for a long time. Smith (2020: 242) explains:

While the term “death row phenomenon” refers to the particular experience of confinement under harsh conditions, the term “death row syndrome” has been used to describe the resulting psychological harms of that experience, or the set of psychological effects for inmates that can result from extended periods of time spent on death row, in harsh conditions, coupled with the unique stresses of living under sentence of death.

As Smith (2020) makes clear, this concept is not recognized in psychological and psychiatric reference materials, such as the Diagnostic and Statistical Manual (DSM). And even among death penalty workers on both sides, the concept is a marginal part of legal actions and policy debates. Nevertheless, “death row syndrome” has begun and should continue to be explored.

Permanent restrictive imprisonment causes severe human suffering. Beyond loss of liberty and social death, prisoners endure a range of emotionally, physically, psychologically damaging conditions and actions while incarcerated. People in prisons experience everything from the basic discomfort of living in close quarters to brutality from guards or other prisoners to extreme sensory deprivation in administrative segregation (AD-SEG). And despite the publicity of death row exonerations, almost none of the condemned in the US have much chance of eventual freedom from incarceration. Almost everyone on death row will stay there until they die from some fate other than execution. Moreover, the conditions of death row, while in some senses better than in prisons’ general populations, are among the most restricted in prison facilities. The condemned are highly isolated and deprived of the minimal privileges afforded others in prison (Toch et al. 2018).

Aside from the trauma of permanent restrictive imprisonment is the permanent specter of death that the condemned face. Unlike in Japan, where condemned prisoners have no idea when they might be executed, persons on death row in America have many years to wait before facing an actual execution date. Once that date is set, it is usually postponed repeatedly through legal actions. Even the volunteer’s impulse to get it over with is usually frustrated by resistance from his attorneys and courts reluctant to authorize a speedy execution. “Super due process” and a dedicated capital defense bar conspire for long-term life in prison for virtually every condemned person in the US. It is hard to know if this is good or bad for those on death row—a longer wait means a longer life, but it also means a seemingly endless existence of staring down one’s own death. Unlike the elderly or persons with terminal diseases, many of the condemned are healthy and in the chronological prime of their lives. And while their advocates care for them and they are sometimes treated decently by prison staff and others in prison, death row prisoners are otherwise pariahs. Only those living under these circumstances can really know what it is like, but the conditions cannot be considered healthy or humane.
So, in contrast to the multiple senses in which the American death penalty seems mild—where the condemned experiences “super due process,” seemingly respectful treatment, and sober rituals at the time of execution—capital punishment in the US is profoundly degrading. The condemned live for a long time under extreme restrictions and if they are ever finally executed, they can expect some chance of suffering multiple forms of pain and suffering before they die.

**ISIS Propaganda Executions**

A counterpoint can be found in the executions carried out by ISIS. There is an involved conversation to be had about the complex origins of ISIS and the ethics of paying attention to its violent actions. I would like to set that discussion aside for now and analyze its publicized killings at face value because by doing so, we can see how, in a sense, ISIS carries out executions in a more transparent and perhaps less painful manner than the insidiously harmful version in the US. Observing overtly retributive “state killing” by ISIS can help illuminate the hypocritical practice of the death penalty in the US.2

Much of what I write here comes from the aforementioned Simon Cottee, largely in the form of personal communications, but also based on presentations he has made about his research. The first thing to say is that disseminated ISIS executions do seem to depict actual death in the form of beheadings, shootings, and other lethal violence. It is tempting to hope that any form of media that explicitly shows the murder of a human being is fake. Unfortunately, at least some ISIS beheadings were confirmed by Western government sources to be legitimate (Rayner and Beach 2014). Some of them have high production values, mimicking Hollywood style horror movies, including soundtracks and professional camera work. Indeed, Cottee argues that ISIS propaganda is “more horror than terror” because the depictions of violent, bloody death resemble scenes in American horror movies, albeit distinct from *Friday the 13th* slasher films and the like due to actual death. ISIS executions are uploaded to jihadi-focused social media sites and quickly downloaded by “ISIS fanboys” before they can be deleted. These are then circulated among connoisseurs via websites devoted to sharing these videos.

According to Cottee, ISIS films follow a general script: the condemned person is forced to confess to a crime such as apostasy, spying, or treason; the victim condemns Western governments; the crime in question and Western governments are condemned by an ISIS soldier; the prisoner is then killed in a grisly manner without any pretense of dignity (e.g., no last words); the mode of killing is sometimes intended to mirror the crime, an example being several men forced into a car which is then blown up with a rocket because the men had fired a missile at an ISIS vehicle. Cottee has collected a notorious video which

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2 A question that arises about ISIS is whether it is a “state.” The name indicates that its leaders and proselytizers think it is. Its stated *raison d’être* is to establish a new caliphate, an Islamic polity. In its heyday, it provided some state-like services to its subjects. External measures of statehood certainly suggest that ISIS is currently not a state and has never been, even at its peak. It was never recognized as a country by any government outside of itself, it operated as a quasi-state inside the borders of two recognized countries (Iraq and Syria), and it was always under existential threat. Therefore, calling its executions “state killing” stretches the concept of state violence. But this is part of the point—looking at overtly retributive violence undertaken by self-labeled “state agents” who enthusiastically bloody their hands can help illuminate the underhanded nature of similar acts by American counterparts who claim that their state-sanctioned bloody hands are actually clean.
culminates with a very young child fatally shooting a prisoner tied to a chain-link fence. This video looks like a professionally made commercial or short film, and in a truly bizarre twist, the male toddler who shoots the prisoner resembles the horror movie character “Chuckie” from the campy franchise Child’s Play.

These disgusting details repel most people, but they are viewed and discussed actively in subcultures. Journalistic accounts have contributed to a pervasive narrative of ISIS as a terrifying and more ruthless successor to Al-Qaeda that promotes its fanatical savagery through internet-based real-life snuff films (e.g., Wood 2015). One academic study suggests that ISIS killing videos are attractive to unemployed Christian men in the US (Redmond et al. 2019), while another suggests that they are disseminated via Western social media platforms to target people worldwide in support of ISIS (Awan 2017). It is hard to know the true propagandistic influence of films involving beheadings, but it is clear that this is part of their objective. During its peak around 2014, ISIS controlled considerable territory in Syria and Iraq, and counted many Europeans as its constituents, both in its territory and in Europe, itself (Brzuszkewicz 2018).

It is also hard to know what it was like to be a condemned person under ISIS control. Media accounts based on statements by persons imprisoned with beheading victims, such as James Foley, indicate that prisoners were tortured prior to being killed (Rayner 2014). It is likely that conditions of ISIS imprisonment were unpleasant at best. But life on ISIS’s death row was always much shorter than in the US, even if it might stretch into a year or more. (Foley lived for almost two years between his kidnapping and eventual beheading.) Moreover, Western ISIS prisoners were not persons convicted of a capital crime by a recognizable system of legitimate adjudication. Rather, they were innocents unfortunate to have been captured. Partly because of this situation, most ISIS prisoners may have held hope they might be released or rescued because this has occurred, albeit rarely (Rayner 2014). These prisoners probably knew that strenuous efforts were being made to get them out and that it was at least possible that these efforts might succeed. Victims of ISIS might also have held out hope that they would not be killed, even when taken to an apparent execution site and prepared for execution. According to media reports from ISIS captives who managed to get out, captors would sometimes subject detainees to mock executions (Rayner 2014). This must have been exceedingly traumatic but may have created some sense of hope that they would not be killed before winning freedom through ransom or some other action on their behalf. This stands in stark contrast to the minimal hope of freedom for the condemned in the US, who do have a good chance of avoiding execution through a change in sentence to life without parole (LWOP) but do not have a good chance of leaving prison.

As described above, for some persons executed in the US today, death is likely painful. In previous eras of hanging, electrocution and gassing, it certainly was. Lethal injection might be nearly painless sometimes, but when it is botched, it can cause pain, ranging from being repeatedly jabbed with a needle to the agony of feeling your heart stop while you remain paralyzed but alert. By contrast, what pain might be endured by the victim of an ISIS execution? The question may strike some as grotesque, but it is one, I assert, that is worth considering if there is any merit to my suggestion that American executions are “worse” than ISIS executions.

A question, then, is whether death occurs quickly during ISIS executions. The actions of cutting the victim’s jugular vein prior to or during decapitation or a bullet to the head probably causes instant death with the possibility of only milliseconds of physical pain. The guillotine was invented for the purpose of executing high status Europeans quickly and painlessly rather than by painful and overtly degrading methods used on low-status
criminals (see Whitman 2003). The story for ISIS victims crucified, burned alive, or otherwise tortured to death is obviously different, but if ISIS’s calling card has been beheading, it is likely that these victims died quickly. Are the milliseconds of pain during beheading more or less painful than experiencing a botched lethal injection? If the former involves a very fast sharp pain followed by death, but the latter involves moments of being punctured followed by unconsciousness or alert paralysis followed by the intense pain of heart stoppage, a poorly administered lethal injection probably means a more painful death. In either case, once the victim is dead, the body cannot experience pain or degradation, so corpse mutilation can only matter to observers. The irony is thus that ISIS’s enthusiasm for blood probably sometimes decreases victims’ suffering during execution while the opposite is true in America.

Other Differences

Aside from pain, there are other differences between American executions and ISIS executions. One is invisibility versus visibility. Executions in America are not conducted in secret but are undertaken in an exceedingly controlled environment with only a few observers allowed and no recordings of the proceedings. Public knowledge about them comes only from sterile official reports or eyewitness descriptions. This invisibility represents one of the famous contradictions of capital punishment because it seems to diminish the potential deterrent effect and also mutes any widespread sense of retributive justice. Of course, ISIS executions are intended to be disseminated widely, in a project of propaganda. Their purpose is to visibly demonstrate raw power, eagerness to bloody one’s hands, and a morally justified retribution against foes of ISIS, partly for the purposes of recruiting.

Another difference is that in the US, executed persons received the aforementioned “super due process” before they were killed, while ISIS prisoners have not been afforded such legal procedures (or any legal procedures, for that matter). All condemned prisoners in the US are provided with an appellate attorney, and although many must wait for years for that attorney to represent them, in many places, the legal representation has been of high quality for decades. No state in the US executes anyone quickly or without extensive attention from attorneys, courts, a parole board, and the governor’s office.

The situation is the opposite in ISIS executions. Although there is little verifiable information about ISIS adjudication processes, it is likely that ISIS prisoners go to their death shortly after being captured and that they are mistreated while imprisoned. The simple fact that ISIS has existed for only a few years means that their prisoners do not receive “super due process,” if any process at all. In some propaganda films, the victims are clothed in orange jumpsuits, which has been interpreted as a reference to prisoners in Guantanamo Bay or Abu Ghraib. In others, the men are dressed in tattered clothing and appear exhausted or beaten. Usually, they have their hands tied behind them. We do not know if they were offered any kind of ceremonial last meal, and they do not seem to say any last words of their choosing. Whenever the executioner commences, he slits the prisoner’s throat like a butcher in an abattoir. There is no pretense of dignity nor agency bestowed on these victims. Rather than quietly “putting the prisoner to sleep” in a painless act of euthanasia in a somber, monochromatic environment, ISIS executions accentuate vividness, violent action, and bloody color.

The significance of these differences is that American executions are able to maintain an appearance of legitimacy (albeit a diminished sense of legitimacy recently) when, in fact,
they obfuscate state violence. It simply does not seem as bad when the state kills a person after a lot of due process, a seemingly generous last meal, and the opportunity to speak. In contrast, ISIS executions resemble lynchings during the nineteenth century and early-twentieth century in rural America. They are distant from civilization, quasi-vigilantist, somewhat makeshift, violent, and performed for public consumption, although the final moment is almost certainly less painful than being lynched. Another similarity between lynchings and ISIS killings is that lynchings were sometimes tolerated or supported by government agents (Banner 2002). ISIS executions enjoy a similar tolerance from some Sunni leaders who at least covertly support ISIS and similar groups’ roles as players in proxy conflicts between Sunni and Shia powers in the Middle East (Cockburn 2016).

In an incredible irony, it appears that the viciousness of the entire process of ISIS’s death penalty is that, in some senses, it is less cruel than the death penalty in the US. Because they do not experience due process, ISIS victims of beheading do not live for very long under the bizarre and excruciating shadow of the lengthy wait for impending death that condemned persons in the US experience. Most persons killed by ISIS are imprisoned for weeks or months, not years, before their deaths. This imprisonment is surely bad, due to isolation, uncertainty, poor physical conditions, possible torture, and sensory deprivation. But ISIS prisoners spend their time knowing they are innocent, that allies are trying to free them by military force, and that there is some chance they might be freed. If they are executed, the moment of death is probably very fast and virtually painless. None of these things are true for the condemned in the USA. We can thus see a form of hypocrisy when considering the intentions of American executioners by contrast with those of ISIS killers.

Other Forms of Islamic Capital Punishment

As mentioned above, discussing ISIS as a “state” is problematic because of the political and cultural contexts surrounding its existence. It is arguable that ISIS is simply a mafia disguised as a religious phenomenon. Former President Barak Obama and plenty of Muslim leaders around the world have declared that ISIS is “not-Islamic” (Jenkins 2015: 6). The bases for this claim range from religious disagreement, to an understandable desire not to offend the vast majority of Muslims who do not approve of ISIS, to the perspective that sees ISIS as not a religious phenomenon but primarily the consequence of problems in the region caused by imperialist actions taken by the US (Jenkins 2015).

One ingredient of ISIS that is hard to dispute, though, is its commitment to a specific fundamentalist understanding of Islam. An article in The Atlantic in 2015 makes reference to Princeton Professor Bernard Haykel and delineates somewhat incredible beliefs ISIS members share that are based on Quranic interpretation. These include not only that it is necessary to behead apostates, enslave non-Muslim women, and tax subaltern Christians, but also that an anti-messiah is coming soon to defeat most of the Islamic army until Jesus Christ first arrives, after which a true Messiah comes to Earth and leads followers to victory over “the Roman armies” in the Syrian city of Dabiq (Wood 2015). And while ISIS beliefs represent a fringe among serious Islamic scholars, pillar states of Shia and Sunni Islam in the Middle East, including Iran and Saudi Arabia, base their societal structures on fundamentalist Quranic principles. A Venn diagram of religious law among ISIS and in Iran and Saudi Arabia would show some overlap, probably more than most in the latter nations would like to see. Their governments are overseen by clerics or religiously committed or constrained monarchs, and their legal systems represent what comparative scholars
call the “Islamic Legal Tradition” (Reichel 2018). As such, everything relating to criminal justice in these states exists in the context of fundamentalist Islamic principles. Most rules about crime and punishment pertain to interpersonal and social harms, but in Islamic systems, they are animated by how those harms are described in religious texts. Unlike in the West, moral transgressions that have nothing to do with interpersonal violence are literally condemned, meaning that people in Iran and Saudi Arabia are executed for behaviors such as homosexuality or apostasy. These countries practice capital punishment and are known as world leaders in execution. Unfortunately, outside knowledge about their death penalty institutions is limited almost entirely to reporting on executions by journalists and human rights organizations. Little is known about all the other aspects of their death penalty processes. Nevertheless, referring to this limited body of knowledge can help situate ISIS executions in relation to other Islamic states practicing the death penalty.3

The Cornell Center on the Death Penalty Worldwide at Cornell Law School maintains a death penalty database (www.deathpenaltyworldwide.org), which takes a cautious approach to making claims when states treat capital punishment as a state secret. For opaque countries, Death Penalty Worldwide cobbles together official documents (e.g., from the US Department of State), news reports (e.g., CNN), and reports from human rights nongovernmental organizations (e.g., Amnesty International) to produce what is arguably the most accurate snapshot of the death penalty as it is practiced around the globe.

Death Penalty Worldwide reports the following about Iran: the criminal justice system in general is not transparent, is pro-state, and lacks most due process protections Westerners expect. Capital crimes range from morality crimes, such as adultery and apostasy, to property crimes, such as recidivist theft, to interpersonal violence, such as rape and murder, to anti-state crimes, such as espionage. Prison conditions for the condemned are poor by Western standards. Appellate processes are ineffective for defendants. Execution is usually achieved by hanging, but other methods, such as stoning, have been used; there have been between 200 to 1000 executions annually since 2007—the first year listed in the Cornell database for Iran.

In Saudi Arabia, the criminal justice system lacks effective appellate processes for defendants. Capital crimes range from morality crimes, such as adultery and apostasy, to interpersonal violence, such as robbery, rape, and murder, to anti-state crimes such as terrorism. Prison conditions for the condemned are poor by Western standards. Appellate processes are ineffective for defendants. The most common form of execution is beheading (perhaps with sedation prior to execution); there have been between 25 and 160 executions annually since 2007—the first year listed in the Cornell database for Saudi Arabia.

This information suggests that capital punishment is a small but consistent part of criminal justice in the major Shia and Sunni Islam states in the Middle East. The experience of being subjected to capital punishment in either country likely involves: being convicted for a crime of interpersonal violence, for anti-state activities, or for a moral transgression; some due process that heavily favors the state; living in harsh conditions on death row for a few years; limited access to appellate relief; and death by hanging or beheading. In other words, state killing in Iran and Saudi Arabia seems to represent the worst of both worlds of US and ISIS capital punishment. Prisoners suffer degradation and physical and emotional pain for periods of time longer than under ISIS control but shorter than in the USA. If they are eventually hanged, as in Iran, it is surely painful; if beheaded in Saudi Arabia, it

3 In future studies, Afghanistan might be included in this discussion. The newly sovereign Taliban regime appears to be holding public executions by hanging (Associate Press 2021).
probably is not. The entire process of capital punishment is probably worse for convicts in these countries than in either the US or ISIS.

**Conclusion: An Irony of Rule of Law and Human Suffering in the Death Penalty**

Based on this exploratory discussion of state killing in the US, ISIS, and Iran and Saudi Arabia, it appears that there is a confusing relationship between rule of law and human suffering. Common sense says that more rule of law should add up to less human suffering than little rule of law. The rational/formal promise of due process and equal protection is supposed to mean that all members of the society are treated equally by the legal system and have the same access to civil liberty protections. In theory, this should “trickle down” from grand ideological precepts to nitty-gritty material benefits for persons subject to state sanctions. No serious analyst of legal theory would make the claim that formal law is *supposed* to increase the suffering of citizens. At first glance, then, the death penalty in the US should be less miserable than in ISIS. It seems, however, that as bad as being condemned and beheaded by ISIS must be, it is a much shorter process than in the US and culminates with a quick and probably painless death. Extensive rule of law in the US *causes* suffering because it drastically extends the whole process of capital punishment, and also creates the bizarre phenomenon of fraught and painful lethal injections. Not only is lethal injection “invisible” because it is performed behind closed doors, but pain of slow physical death is sometimes made literally invisible when chemical injections are mishandled by prison officials. When *some* rule of law is sprinkled into the mix, as in Iran and Saudi Arabia, the worst aspects of capital punishment become most pronounced. State gestures there toward rule of law extend life on death row, and convicts are sometimes tortured to death via hanging (although some may be sedated beforehand).

The good news for fans of American style rule of law is that much of it in the early stages of the criminal justice process clearly protect nearly all offenders from the entire system of capital punishment. The same aspects of American jurisprudence and criminal justice that extend the suffering of the condemned and cause pain at the time of execution are precisely what filter out so many persons potentially eligible for execution to begin with. No one in the US receives a death sentence for a morality crime or a non-lethal act of interpersonal violence, let alone a property crime or even anti-state activities (unless they rise to the level of treason). Even persons convicted of assisting or facilitating lethal terrorism against the US are not likely to be capitaly convicted. Indeed, several notorious Islamic terrorists currently serve LWOP sentences alongside non-capitally convicted domestic terrorists, such as the Unabomber and Oklahoma City bomber Terry Nichols. In fact, almost all state violence in the US has nothing to do with the death penalty. Unlike ISIS, we conduct our state violence in the insidious and vast ecosystem of mass state supervision that includes electronic monitoring, excessive fines for small transgressions, incarceration, killing by police officers, migrant detention, parole, and probation. All of these forms of state coercion are backed by threats of ratcheting up the punishment. Literally millions of persons in the US live under this twenty-first-century form of state violence—far more than anywhere else on the planet. Very few people are intentionally killed by the government, even when homicides by police are included. All of this cruelty is exacerbated by the monumental bureaucratic institutional systems of American law and corrections—arguably the largest way that the US state causes rather than reduces suffering.
In these research notes, I have explored the idea that seemingly clinical executions in the US might actually cause more suffering than the ostentatiously violent executions undertaken by ISIS. In doing so, I have compared both situations with executions in Iran and Saudi Arabia that probably fall somewhere between the two in terms of observable violence but that probably cause more overall human suffering than either. My hope is that these notes will prompt interest in comparative research on the death penalty, in part to better understand the insidious nature of American capital punishment.

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