# The Royal College of Psychiatrists and the Death Penalty

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The Royal College of Psychiatrists recently issued a revised statement on its position concerning capital punishment. The College proposes to support psychiatrists who refuse to be involved in the capital process, but accepts that some may take up limited involvement in the manner set out in the document. The Royal College is the professional body for psychiatric practitioners in the United Kingdom and Ireland. Almost no public statements are issued from the College without first being deliberated on within at least two of its three major committees. The new document on capital punishment remains in the spirit of the previous ones. The topic of capital punishment is noncontroversial within the British medical profession. In all European countries, capital punishment is against the law, because there is an overarching directive from the Council of Europe (a wide group of nations, wider than the European Union) insisting that it be abolished.

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In 2003, the Royal College of Psychiatrists in London issued a revised statement on its long-standing position in respect to capital punishment.[1]

As a reminder, here are some extracts from that document:

> This statement by the Royal College of Psychiatrists follows a review of previous statements published in the Bulletin in 1992 (reconfirmed in 1997) and in 1994.
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> The College considers that the death penalty is not compatible with the ethic upon which medicine is based, to act in the best interests of the patient. . .
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> The College supports individual psychiatrists who do not wish to take any part in a process that might end in a person's death. It also believes that the law and citizens in conflict with the law should have access to highly qualified, well-trained and ethically sensitive psychiatrists. There is concern that where the death penalty is still practiced that there will be division within professional bodies leading to the withdrawal of some of the most skilled practitioners from the legal process. The College will support psychiatrists who become ethically involved in the legal process and also those who take an ethical stance in seeking changes in the law, even if this brings them into conflict with the authorities and with their colleagues.
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> It may be ethically justifiable to give an opinion to the court on fitness to stand trial; even if the consequence of being fit were that a possible guilty verdict would lead to the death penalty. At this point, although acting for the organization, there may be sufficient distance from the decision around death and it is in the interests of the individual to have a fair trial. The involvement of more experienced practitioners may elucidate mental disorders that others may not recognize. Each case should be judged on its merits.
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> It is ethically justifiable to enter into the defense of a person with a mental disorder and/or to seek a lesser sentence than the death penalty, when the individual or those acting for him/her, seek this opinion. It may be reasonable to take such instruction from the court itself but this then changes the relationship with the defendant and needs to be fully explained. The finding that there is no mental disorder leaves a serious dilemma for the psychiatrist, as this statement to the court may appear to be directly related to a person's death. Psychiatrists in this position must be aware of their own needs for support and opportunities to discuss with peers who have experience in this field.
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> It is quite contrary to the medical ethic for a professional opinion to recommend the death penalty. There is debate about the involvement of psychiatrists on the prosecution side. It can be argued that working for the prosecution seeking death penalty is in reality working for the judicial system, the prosecution being an arm of the judicial process, and the point can thus be made that to exclude the psychiatric testimony for the prosecution is unjust as it perpetuates an unbalanced system. On the other hand the concerns must be that the psychiatrist will provide evidence that will harm the defendant, which is contrary to traditional medical ethics. There is need for caution and sound legal advice when offering opinion about risks of further offending as this may be used to justify the death penalty in sentencing. There is no ethical consensus on this issue of psychiatric testimony and it should remain a matter for the individual's conscience.
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> It is appropriate to treat patients on a voluntary basis while they are awaiting execution. The sole purpose of treatment is the patient's best interest and there is no organizational involvement.

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> Treating a patient on an involuntary basis requires careful consideration. If recovery means the person is then fit for execution then there is a dilemma. The psychiatrist may seek to treat on the conditions that the death sentence is commuted; if this is the case then the dilemma is resolved; if this cannot be obtained then each case needs to be assessed on its own merits. Discussion with peers is vital.
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> A psychiatrist should not certify that a person is fit for execution. This is too close to the decision to end a person's life.
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> A psychiatrist should not take part in an execution, nor should he or she confirm the death of an executed person.
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> The College recognizes the complexity of these issues but maintains that the death penalty is contrary to the medical ethic. The College will support psychiatrists who refuse to be involved in the process and those who decide to take up limited involvement in an ethically justifiable manner as described above.
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I understand that questions were asked about this statement within the American Academy of Psychiatry and the Law. I have been asked to indicate to AAPL *Journal* readers how the Royal College comes to make such a statement.

The Royal College of Psychiatrists is the professional body for psychiatric practitioners in the United Kingdom and in Ireland, and it also has many overseas members, mainly but not exclusively, in Commonwealth countries.

Briefly, the College aims to do the following things:

- advance the science and practice of psychiatry and related subjects;
- further public education in psychiatry and related subjects; and
- promote study and research work in psychiatry and all sciences and disciplines connected with the understanding and treatment of mental disorder in all its forms and aspects and related subjects and publish the results of all such study and research.

As far as many psychiatrists are concerned, the College is an examining body that gives them a basic qualification in psychiatry, enabling them to enter into higher training in psychiatry, and after three or four more years, to obtain a specialist certificate, which will enable them to practice psychiatry in any of the European Union countries. However, the College also deals with all medical politics as they pertain to psychiatry, with, inevitably, a special emphasis on British medical politics.

Each member belongs to both a division of the College, and also to a faculty. There are 12 divisions, each serving a geographical area. There are seven faculties that represent the major subspecialties in British psychiatry: general adult psychiatry, child and adolescent psychiatry, learning disability psychiatry, old-age psychiatry, psychotherapy, substance misuse psychiatry, and forensic psychiatry.

The two governing committees of the Royal College are its Council and its Court of Electors. The Council forms the trustees of the College and is the senior political and management body. Chairmen of all divisions and all faculties sit on it, together with elected representatives and others. Two subcommittees of the Council meet frequently and undertake a good deal of the day-to-day work of the College. These are the Public Policy Committee and the Executive and Finance Committee. Almost no public statements are issued from the Royal College without first being deliberated within at least two of these major committees. If a policy or document proves to be controversial, then, if time allows, a fairly wide discussion is held within the membership through its divisional and faculty structures before the senior committees make their final decision.

The Council issues many documents (reports) relating to policy and educational matters. These reports can be obtained from the College by members of the profession and members of the public. They are available on the College's Web site.[2] Such reports are revised regularly and are never allowed to be more than five years out of date. Some are removed at the five-year point, having served their purpose.

The document concerning capital punishment was reviewed in 2002–2003, because it was coming up to its five-year point. There was no other motive for re-examining this matter within the Royal College at this time. The Royal College's antipathy to capital punishment is totally noncontroversial within the profession and therefore did not need an elaborate trawl of opinion before the new document was issued. The document was drafted within the ethics subcommittee of the Royal College. This subcommittee is a standing subcommittee of the Public Policy Committee. Faculty representatives on the ethics subcommittee were able to discuss it with their own members.

The new document remains in the spirit of the previous ones, and has been revised for clarity and to take into account the fact that a number of British psychiatrists are occasionally asked to examine death row prisoners in other jurisdictions. This occurs par-

ticularly within the West Indies, which still have their final appeal court in the House of Lords in London. So far, it has only appeared in the Bulletin of the College[1] but it will soon be in the list of Council documents.

To an American audience, it may seem surprising that the topic of capital punishment is noncontroversial within the British medical profession. The World Medical Association and the British Medical Association also give advice to doctors to have little or nothing to do with procedures that will kill patients against their wishes. Indeed, in all European countries, capital punishment is against the law, because there is an overarching directive from the Council of Europe, insisting that it be abolished as a cruel punishment that infringes the Convention of Human Rights within Europe.

The Council of Europe is not the same as the European Union. The Council of Europe is a wider grouping of nations and is concerned with legal matters and matters of ethics. A good description of the Council of Europe can be found on its Web page.[3] It was founded in 1949 and now consists of 45 countries. It is distinct from the European Union, but no country has ever joined the Union without first belonging to the Council of Europe.

Its aims are to:

- defend human rights, parliamentary democracy, and the rule of law;
- develop continent-wide agreements to standardize member countries' social and legal practices; and
- promote awareness of a European identity based on shared values and cutting across different cultures.

It lists among its achievements 193 legally binding European treaties or conventions on topics ranging from human rights to the fight against organized crime and from the prevention of torture to data protection or cultural co-operation. It also has made recommendations to governments setting out policy guidelines on such issues as legal matters, health, education, culture, and sport.

The Council's most significant achievement is the European Convention on Human Rights, which was adopted in 1950 and came into force in 1953.[4] It sets out a list of rights and freedoms that states are under an obligation to guarantee to everyone within their jurisdiction. These rights include, among other things, the right to life, to protection against torture and inhuman treatment, to freedom and safety, to a fair trial, to respect for one's private and family life and correspondence, and to freedom of expression (including freedom of the press), thought, conscience and religion.

Protocols have added other rights to those set out in the Convention, such as the abolition of the death penalty.[5] Article 1, Protocol 6 says, "The death penalty shall be abolished. No-one shall be condemned to such penalty or executed." Thus, in two sentences, the Council of Europe has put capital punishment beyond the pale of democratic nations and has set an example to the whole of the international community. As a result, no execution has taken place in the Council's member states since 1997. When Russia applied to join the Council of Europe recently, among the many difficult adjustments it had to make was to give up its cherished practice of capital punishment, which was hitherto extensively used.

The Convention established an international enforcement body, the European Court on Human Rights, whereby states and individuals, regardless of their nationality, may refer alleged violations by contracting states of the rights guaranteed in the Convention to the Court established in Strasbourg. Its jurisdiction is compulsory for all contracting parties. It sits on a permanent basis and deals with all the preliminary stages of a case, as well as giving judgment on the merits. The Court consists of a number of judges equal to the number of contracting states to the Convention. Although candidates are initially put forward by each government, judges enjoy complete independence in the performance of their duties and do not represent the states that proposed them.

Apart from the protocol abolishing capital punishment, a convention of particular interest to forensic psychiatrists is the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989. The Convention supplements the protection available under the European Convention on Human Rights by establishing a European Committee for the Prevention of Torture (CPT). The CPT visits any places of detention it chooses to see how persons deprived of their liberty are treated. After each visit, the CPT draws up a report setting out its findings and the recommendations, which is sent to the state concerned. Psychiatrists frequently participate in

these visits, which are unconstrained and quite powerful.

In this context, it is relatively easy, therefore, for the Royal College to develop its abolitionist policy on capital punishment. It may be possible to find members of the College who do not agree with the Council statement, but they are in a very small minority. And no one has yet written to challenge it or spoken to any of the senior members of the College about it.

We recognize how fortunate we are to live within this abolitionist context. It was not always thus. I well remember my teachers, when I started in psychiatry, describing the agonizing dilemmas they were faced with by the use of capital punishment in Britain, the sleepless nights they suffered, and the distortions that the presence of the death penalty brought to psychiatry, especially to forensic psychiatry. A number of us on this side of the Atlantic are willing to assist in any small way we can to bring the American nightmare to an end also.

## References


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2. Royal College of Psychiatrists: http://www.rcpsych.ac.uk/index.htm
3. Council of Europe: http://www.coe.int/T/e/Com/about_coe
4. European Convention on Human Rights and Fundamental Freedoms. http://conventions.coe.int/treaty/en/treaties/html/005.htm (accessed May 20, 2004)
5. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty as amended by Protocol No. 11. http://conventions.coe.int/treaty/en/treaties/html/114.htm (accessed May 20, 2004)