

BOOK REVIEW

Capital Drug Laws in Asia BY WING-CHEONG **CHAN**, MAI **SATO** AND MICHAEL **HOR** [Cambridge: Cambridge University Press, 2025. XXV + 274 pp. Hardcover: S\$184.38]

Singapore's drug laws are a ubiquitous part of our criminal justice system. Drug offences are among the most litigated criminal offences, and convictions for drug trafficking account for very many of the executions in Singapore. Ask any criminal defence lawyer, and they will say they have had experience, perhaps many experiences, with clients accused of drug offences. Ask them whether they believe those offences serve a valuable purpose, and the answer will probably be "yes". Ask further whether the existing legal framework is the best way to further those purposes, and the response may be more equivocal.

In *Capital Drug Laws in Asia*, three esteemed scholars in the field – Wing-Cheong Chan, Mai Sato and Michael Hor – put together a collection of essays that surveys the interaction between drug offences and the death penalty across Asian jurisdictions. The result is a volume of tremendous breadth and depth, which when read as a whole provides unique insights into Asia's "war on drugs".

In the Introduction, the editors provide a retrospective on the development of international drug policy and a survey of recent Asian developments and trends. The volume is then split into three parts, each focusing on a distinct facet of drug law and policy in Asia.

Part I, "Executing States", focuses on jurisdictions that retain the death penalty. Xi Li discusses how Chinese courts have tempered the application of the death penalty for drug traffickers to narrow contexts. Mai Sato and Leavides Domingo-Cabarrubias examine the enforcement of Iran's drug laws and assess them against the International Covenant on Civil and Political Rights. Wing-Cheong Chan and Michael Hor explore justifications for, and social and legal developments relating to, Singapore's mandatory death penalty for drug traffickers.

Part II, "People on Death Row", looks at the lived experiences of drug offenders. Thaatchayini Kananatu demonstrates how the subaltern history of Malaysian Indians may have influenced the community's overrepresentation in drug convictions. Carolyn Hoyle and Parvais Jabbar survey the motivations Indonesian offenders had for engaging in the drug trade despite its deadly consequences.

Part III, "Actors and Agencies", covers institutions and communities who contribute to the formulation and enforcement of drug laws and policies. Daniel Pascoe compares various Asian drug enforcement agencies and describes their common

outlook as implementers rather than creators of drug policy. Leavides Domingo-Cabarrubias and Mai Sato explore how non-governmental and civil society organisations mobilise to resist and reshape drug policy in the Philippines.

Part IV, “States in Transition”, looks at jurisdictions which have rejected or qualified the death penalty for drug offences. Ronnakorn Bunmee analyses the innovations in and drawbacks of Thailand’s new Narcotics Code. Karen Joe-Laidler and Kate Lowe observe how Hong Kong’s courts cite the death penalty when sentencing drug offenders even as the city itself rejects its use.

Other reviewers – and the editors themselves, in the Introduction – have written more on the contents of these rich chapters. Here, I will discuss four themes that emerge from the collection as a whole, which may be of interest to lawyers, policy-makers and scholars working on or with drug law and policy in Singapore.

First, on deterrence. The chapters demonstrate that deterrence remains a key justification for the death penalty in retentionist states like Malaysia and Indonesia, and even states which have refrained from using it like Hong Kong. In Singapore, as Chan and Hor note (at 84), deterrence is the main justification for the death penalty, and a recent study conducted by the Government suggests that this logic has significant public support (see Ministry of Home Affairs, “Findings from Recent Studies on the Death Penalty in Singapore” <<https://www.mha.gov.sg/media-room/newsroom/findings-from-recent-studies-on-the-death-penalty-in-singapore/>> (19 October 2022)). Yet, Chan and Hor also note (at 85–86) that surveys on deterrence and the death penalty in Singapore have faced criticism on methodological grounds (see Chan Wing-Cheong *et al.*, “How Strong is Public Support for the Death Penalty in Singapore?” (2018) 13(2) *Asian Journal of Criminology* 91; Mai Sato, “Singapore’s Death Penalty for Drug Trafficking: What the Research Says and Doesn’t”, *Academia SG* <<http://www.academia.sg/academic-views/review-of-death-penalty-research/>> (7 October 2023)). Similarly, Holye and Jabbar point out that while the deterrence argument assumes that would-be traffickers will react rationally to the cost of the death penalty, studies providing empirical support for that assumption are not readily available (at 135–136).

Second, on judicial discretion. We see that, in some retentionist jurisdictions, the death penalty has become an optional sentence, and courts have gained more leeway to recognise mitigating factors. For instance, Xi notes that Chinese courts now recognise various reasons not to impose the death penalty, including the accused’s voluntary cooperation with authorities, dilution of drug content in mixed substances, the extent to which the trafficked drugs exceed the threshold for the death penalty and the fact that the trafficker also uses drugs (at 26–36). Malaysia too has recently abolished the mandatory death penalty, though, as Kananatu notes, the extent to which that affects actual execution numbers remains to be seen (at 129–130). Singapore, by contrast, remains firm that the death penalty should be mandatory. Even after the 2012 amendments to the Misuse of Drugs Act 1973 (“MDA”), there are now only two exceptions, for drug traffickers who are mere couriers, and who either substantially assisted in the disruption of drug trafficking activities or suffered from an abnormality of mind impairing their mental responsibility for their acts (MDA, ss 33B(1)–33B(3)). Both exceptions are structured as rules rather than discretions. Courts have also confirmed that voluntary cooperation

short of substantial assistance and the dilution of drug content in mixed substances are not reasons which warrant the avoidance of the death penalty (see *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 (CA) at [45]–[48]; *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 (CA) at [160]–[172]).

Third, on presumptions. Both Singapore’s MDA and Malaysia’s Dangerous Drugs Act 1952 (“DDA”) contain provisions stating that an accused who possesses drugs shall be presumed to know their nature (MDA, s 18(2); DDA, s 37(d)), and that an accused who possesses drugs of a certain quantity with knowledge of their nature is presumed to possess them for the purposes of trafficking (MDA, s 17; DDA, s 37(da)), unless the contrary is proven on a balance of probabilities. These presumptions go a significant way to securing convictions for drug offences: supporters say this helps effectively combat drug trafficking; critics may respond that that puts the cart before the horse. For their part, courts have precluded prosecutors from relying on both presumptions against the same accused: in Singapore, by rigorous statutory interpretation (see *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 (CA) at [8]); in Malaysia, as Kananatu points out (at 125–127), by striking down a provision expressly permitting the use of “double presumptions” (see *Alma Nudo Atenza v Public Prosecutor and another appeal* [2019] 5 CLJ 780 (FC, MY) at [143]–[151]). Yet, courts have continued to uphold the constitutionality of the presumptions themselves, as recently as in the Singapore High Court’s decision in *Jumaat bin Mohamed Sayed and others v Attorney-General* [2022] SGHC 291 (“*Jumaat*”), which Chan and Hor discuss (at 96–97). Shortly after this volume’s publication, the appeal in *Jumaat* was dismissed (see [2025] 1 SLR 1287 (CA)).

Fourth, on disadvantaged communities. Various chapters reference – and Kananatu’s in particular vividly depicts (at 114–124) – the fact that many offenders convicted of drug offences come from poor and marginalised communities. The same may be said for various other crimes, but drug offences warrant particular attention given the severity of the punishments that follow. In *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 4 SLR 934 (HC) (“*Syed Suhail*”), a decision which Chan and Hor discuss (at 101–102), applicants unsuccessfully challenged the exercise of investigative and prosecutorial powers, relating to the offence of drug trafficking, on grounds that they discriminated against Malays. Perhaps the pertinent discrimination takes root at the societal level, where circumstances compel or motivate these communities to turn to drugs and crime. As the Attorney-General noted in his submissions in *Syed Suhail*, “Individual offending, and hence macro-level patterns of offending, are influenced predominantly by a number of complex sociological and environmental factors (such as socio-economic factors, proximity or exposure to drug-related offending and drug trafficking recruitment patterns)” (at [34(a)]). Of course, the complexity of these factors cannot be a reason to refrain from alleviating the burdens of those who carry them.

Questions about the death penalty, such as whether it deters, how it disenfranchises, and the extent to which its use is ever justified, have always been among the most important questions our society must confront. Nuanced and rigorous work on the topic, like the volume reviewed here, is always valuable. Chan, Sato, Hor, and the contributors have done us a service in helping us better understand – so that

we might better interrogate, accommodate or reform – the death penalty for drug offences in Singapore and in Asia more broadly.

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