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The Social Policy of Capital Punishment (Canada 1976)

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THE SOCIAL POLICY OF CAPITAL PUNISHMENT

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INTRODUCTION

A few weeks before I chose to do a paper on Capital Punishment I thought that the issue was "dead". Except for a select group of social philosophers and men concerned with the administration of criminal justice, nobody bothered themselves with the topic enough to really study the issue. And like most important and controversial issues, it's not one that you can grasp in the reading of a memo or a few minutes of speculation and debate. It's literally a matter of life and death and therefore deserves the most careful study.

And then suddenly the subject started to engender more heat than light; a few police officers were killed, the newspapers clamored for strict enforcement of existing laws, the Solicitor General held firm on his abolitionary stand. I feel it is time, again, to bury the issue once and for all.

I shall try to do this by exposing some of the muddled thinking involved on both sides. Some arguments I will avoid entirely because they are not the product of any thinking at all. Hopefully I will focus, in depth, on all the utilitarian arguments.

When I began to study the issue, a number of things immediately emerged. The first was that I could not find any books written in favour of the death penalty (only a few articles), whereas I found dozens opposing it. You might take it to mean that people who are against capital punishment have enough sense to write a few books, or that those in favour of retention are too stupid to write a book on the subject, but it does not mean that at all. What it

means is that the people who have taken the trouble to study the issue, to become real experts, to familiarize themselves with the facts and the statistics, have reached the conclusion that capital punishment is nothing but vindicative repression.

Another point that I soon learned was that no other feature of the law has played so powerful a part in the shaping of criminal procedure and the law of evidence. In the really formative period, the eighteenth and nineteenth centuries, there were sometimes as many as 200 offences punishable by death in England. So many and so varied were these offences that the manner of death itself had to vary in order that some kinds of decreed death could be more painful, terrifying, spectacular or humiliating than others.

Many of the safeguards that surrounded the prisoner on trial, and before he comes to trial, have their origin in a wholesome fear of putting an innocent man to death, as expressed largely by juries who have refused to bring in guilty verdicts sometimes in the face of the most convincing evidence. In the criminal courts it is most noticeable that the standards of care, and indeed of fairness to the accused, depreciate steadily as you come down the scale of gravity in the cases being tried; "capital murder" of course, being at the top, while at the bottom, the whole transcript of a trial might sometimes read: "The Police say you were drunk last night. Were you? Pay five dollars."

The third point which I shall mention in my introduction is that the debate is more than merely a controversial one; it is a higher subjective one as well. It is a political question with the abolitionists (on the whole) being to the left, and the retentionists on the right. To those who believe that strong political loyalty

is inimical to clear thinking, it will be apparent that the problem carries "talking points". It enables those whose views on it are essentially superficial to range themselves stoutly on the side that enlists their political sympathy, adopting its arguments with the gratitude of men released from a painful dilemma. This is a conscience, bearing problems dealt with more appropriately by a free vote in Parliament than by the usual procedure which is likely to bring about voting along Party lines.

This essay will examine the subject from a civil libertarian's point of view and portray the many sides of the coin needed in order to affect a realistic social policy. Yet it won't take long before the reader will notice my bias, and with that in mind it is my profound wish that this issue will burn itself out in the minds of those who read this paper.

CANADA - IMPOSED JUDICIAL HOMICIDE

At the time of writing, all the formal intricacies of what crimes are suitable for hanging, the process of the hanging itself, the burial, and the mechanics of executive clemency and pardon are outlined in the Canadian Criminal Code.

Before December 29, 1967, there were many acts for which hanging may have been imposed. Everyone who committed piracy, as determined by the law of nations, and while committing or attempting to commit piracy murdered, attempted to murder or endangered the life of another person was to be sentenced to death.[1] Also, before that date everyone who, in Canada, killed, attempted to kill, harmed or restrained Her Majesty, or levied or prepared to levy war against Canada, or assisted an enemy power or used force to overthrow a province or the Government of Canada, or spied or conspired to spy by communicating information against the safety of Canada and when the country is at war, or attempts to do anything mentioned above, was liable to be sentenced to death.[2] And of course capable homicide that was murder was, upon conviction, a crime suitable for hanging.[3]

And then since December 29, 1976, by reason of chapter 15 of the Statutes of Canada, 1967-68, the death penalty has been limited to cases where the accused by his own act, caused or assisted in causing the death of a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or a warden, a deputy warden (now called director and deputy director),

instructor, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties, or counselled or proved another person to do any act causing or causing or assisting in causing the death.[4]

When, by the usual procedures, conviction has been ascertained, the prisoner is sentenced to be hanged by the neck until he is dead. Then the judge asks the jury whether it recommends clemency. If the jury does, or if it does not, it is included in the report sent to the Solicitor General of Canada, and given due consideration. The day appointed for the carrying out shall allow for sufficient time for the signification of the Governor-General's pleasure. Delay of execution may come, from time to time, from the sentencing judge or any judge who might have held or sat in the same court, for just about any reason.

Those who are sentenced to death are confined apart from all other prisoners, and only the director and those under his authority, the prison doctor, and a clergyman or minister may visit. Also, those who receive written permission from a judge of the sentencing court or from the sheriff may visit.

The execution takes place within the walls of a prison, and the sheriff and his aides (the hangman), the director, and the prison doctor must attend. A clergyman or minister who wishes to attend and any person the sheriff invites may attend. It is conceivable that tiers may one day be set up for those who wish to witness an execution, just like tiers were set up for those who saw the deaths of Nicola Sacco, Bartolomeo Vanzetti, Julius and Ethel Rosenburg and Caryl Chessman.

After the fact of death is realized, a coroner's inquest is held, the documents are sent to the Solicitor General of Canada, and the body is buried on prison soil unless the Lieutenant Governor in Council, the Commissioner of the Northwest Territories, or the Commissioner of the Yukon Territories orders otherwise. It should be noted, that failure to comply with the points on the execution does not make a death illegal where the execution would otherwise have been legal.

The Criminal Law Amendment (Capital Punishment) Act, enacted in November, 1973, renewed the 1967 chapter 15 of the Statutes of Canada.

The present situation that we are in is clear, Canada has been a de facto abolitionist country since December 1962.

THE EMOTIONAL USE OF THE DEATH PENALTY

The Capital Punishment debate would soon be solved if everyone were kept informed and kept problems in perspective limiting emotional bias. The topic has generated so much public discussion but very little factual information. So much nonsense has been exchanged between the groups favouring abolition and the groups favouring retention (or more severe applications of the penalty) that everyone has become confused by the claims and counter-claims. Even the level-headed person is not sure on which side of the fence to be on so he often opts out by straddling it. The Superintendent of the Ottawa Police Force, Tom Flanagan, hedged when I asked him his opinion on the subject, saying:"I'm not sure, I think I'm a short-term retentionist and a long-term abolitionist!"

My reasoning behind why the death penalty issue generates so much emotion within families and in society at large lies in the fact that some of the most emotion-laden issues confronting Canada today involve the lifestyle and social philosophy to which retentionists and abolitionists conform.

Those who favour the Death Penalty usually also believe in harsh treatment for criminals: 'spare the rod and spoil the child', believe in anti-miscegention and flogging and feel that coloured people are inferior and that Jews are too powerful. Those who favour abolition usually also favour the abolition of restrictions on abortions and on licensing laws, favour removing compulsory religious education from public schools, believe in Women's Liberation,

are against compulsory sterilization and believe that patriotism is a force against peace.[5]

Despite any theory based on the politics of personality, the religious argument is one to be confronted with.

Many thoughtful and conscientious Christians have justified the death penalty on religious grounds. Although few believe that the campaign to abolish the death penalty today is based on theories acceptable only to socialists, athiests and other irreligious radicals[6], only less than a century ago the most ardent advocates of the gibbits were the fundamentalist Protestant clergymen.

By referring to such quotes as "whoso sheddéth man's blood, by man shall his blood be shed" (Gen. 9:6), and "He that smiteth a man so that he die shall surely be put to death" (Exod. 21:12) and then by interpreting them to mean that this was the spirit of the ancient times, the retentionist is liable to be accused of faulty exegesis.

In studying the zeitgiest, it must be remembered that it was the Rabbinic interpretation of the Biblical Law coded in the Mishnah and the Gemara which became the law in the Jewish religious tradition. Although Jewish law had to remain within the Biblical framework, the law was not static. Thus legalistic strategems, which while not abrogating the law technically, made capital punishment practically unenforceable.

Corroboration by two eyewitnesses who could not be related to the accused either by blood or marriage was needed. These witnesses were cross-examined separately and for a conviction to take place both accounts

must have been exactly similar, and they must have proven that they warned the accused that what they were about to do was a penalty under pain of death. If false testimony was given, the accused would suffer the same sanctions which the accused would suffer if he were convicted on the basis of their testimony.[7]

If the Bible was the unadulterated authority, how can we account for the fact that when the supreme punishment was enforced, stoning, the "official" method of execution, was usually replaced by decapitation or being pushed from great heights? If we are going to proceed on an absolutized proof-text method why underscore one verse and erase the next?

In any case, why should we feel that an eye for an eye is any more binding than the taboo against pork? We all remember our selected application based on Exodus 22:18 which caused a good many "witches" to be burned at the stake. Moreover, lex talionis was a great landmark for the times: it meant that only one eye was to be removed, not two eyes. Nonetheless, the commandment was later interpreted to mean that monetary compensation should be granted to the victim for the damage caused him instead of the letter of the law meaning implied in Leviticus 24:2.

In view of the fact that one so often hears the philosophy of Jewish law degraded by the uninformed as being implacable "eye for an eye" justice, the law's character should be examined in full historic context, and in a proper perspective against the law of retaliation that prevailed in other ancient societies. For instance, the Romans, whose culture and legal philosophy put them near the

top of the ladder of civilization in antiquity maintained a system of punishment of far greater severity than did the Jews. Whereas they would crucify thieves (like those unfortunates who joined Jesus up the Via Della Roso) or break or cut off their arms or legs, the Rabbis of Judea merely imposed a fine on such offenders of an additional 100 per cent value of what had been stolen.

Here the reader will find a list of the churches who believe that Cain as well as Abel is made in the image of God: American Evangelical Lutheran Church; American Baptist Convention, American Ethical Union; American Unitarian Association; Augusta Evangelical Lutheran Church of North America; Central Conference of American Rabbis; Church of the Bretheren; Connecticut Valley Quarterly meeting of Friends (Quakers); Disciples of Christ; General Conference of the Methodist Church; Lutheran Church of America; Protestant Episcopal Church in the United States; Union of American Hebrew congregations; United Presbyterian Church in the United States; United Synagogue of America; Universalist Church of America, as well as numerous state and local church organizations. In Canada, the Anglican Church of Canada's Executive Council, the United Church of Canada, the Baptist Convention of Ontario and Quebec, the Religious Society of Friends (Quakers), certain local chapters of the Presbyterian Church in Canada, and the Canadian Section of the Lutheran Church in America.

"As I live, saith the Lord God,
I have no pleasure in the death
of the wicked, but that the wicked
turn from his way and live."

Ezekiel II

CAPITAL PUNISHMENT AS TOOL FOR SELECTIVE DISCRIMINATION AND ERROR

The English Conservative Government in 1956, argued for retention through the mouthpieces of two cabinet ministers, one of them being the then Home Secretary, Major Gwilym Lloyd George. Because so many legal institutions must fall into error before an innocent man is hung, he does not "believe that in recent times there is any case in which an innocent man has been hung."[8]

The usual retentionistic attitude is that while some innocent people do get executed (and I will present a few case histories shortly), the injustice is not created by bad law, but by bad administration. The abolitionists claim injustice not so much because the guilty may elude the arm of the law but because the innocent may not make it.

While I am trying to be rational, it is here that I become emotional. I will focus on a few true stories, from America and from Hungary, which have all occurred in this century - all recent events. Then I shall draw the reader's attention to American statistics to prove that the imposition of judicial homicide is levied by differential justice.

In 1913 Brooklyn-born Leo Frank, a twenty-nine-year-old superintendent of a pencil factory in Atlanta, Georgia, was charged with criminal assault and the murder of a fourteen-year-old Gentile girl whose body had been found mutilated and secreted in the cellar of the factory where Frank worked.

Prior to and during the court trial the rabble rousers and the yellow press of Georgia were whipping up a genuine hysteria among the masses, harping incessantly on the fact that Frank was both a northener and a Jew, so that outcome was a foregone conclusion: Leo Frank was sentenced to be hung. But the Governor of Georgia, John Slaton, stood firm against the clamour and because he was convinced of Frank's innocence (ten years later the real murderer confessed), the Governor commuted the sentence to life imprisonment, resigned and left the state. Then, with the unspoken consent of the authorities, the mob entered the prison and in the most brutal manner dragged out the prisoner and strung him up on a tall oak.[9]

One direct result of this case was the founding of the Anti-Defamation League for combatting prejudice and discrimination in the United States. The Chessman Case brought together the combined voices of the Vatican, the unofficial spokesmen of the Communists, leaders and personalities of every walk of life. Caryl Chessman was tried and convicted in California under the "Little Lindbergh Act", which allowed the death penalty (but was not mandatory) for detaining or carrying away a victim for the purposes of robbery, where bodily harm results. Chessman's trial, according to Dr. H. Elmer Barnes, was so bad that he "described Chessman's trial in 1948 as one of the most fantastic travesties of justice in the history of civilized criminal jurisprudence would involve considerable restraint in the choice of language."[10]

Although it would take much space to prove it, I am sure, along with many eminent jurists[11], that Chessman was innocent. After twelve years of suffering, during which time he acted as his own lawyer, the extreme execution of justice became a terribly unjust act. Chessman had already died a thousand deaths. The gas chamber only made him a corpse.

The next case, is for the writer, a rather personal one, and will shed some light on why, in the first place, the paper was begun. In 1944, Eugene Lebovits was tried in a Hungarian military tribunal of the Ninth Army Division in Kolosvar (Cluj) for desertion. The Criminal Code of Hungary stated that everyone who deserts the army for more than 48 hours is guilty of an offence punishable only by death. The intent that you will not return is presumed. It is a strict liability offence.

In 1940, by the orders of the Nazi regime, Rumania was partitioned, with the result that Lebovits was now living in Hungary. Before the S.S. eugenisists were put to work, many able-bodied Jews were drafted into the Hungarian-Nazi army. While statute decreed the Jews as unreliable and could therefore not carry a weapon, Lebovits and his regiment of 300 other Jewish soldiers spent their first year laying underground wire cable in the Carpathian Mountains under strict and inhuman conditions. When the need arose, their detachments were sent to the Ukraine, on the Russian front, to clean up the minefields, unarmed and chained, to march to certain death in front of German tanks. My father chose instead to escape - and wisely so. Two of his future brothers-in-law went there and never returned.

After nine months of freedom, Winestein (alias Lebovits) was blackmailed by Jewish informers. When he paid them no blood money Winestein heard that midnight knock. The law stated that if after eight days of capture the case did not get to court, the case would be dismissed. But since the eight days only began when the accused was in the city where the trial was to take place, Winestein was kept in Budapest in the infamous K.E.O. (counter-espionage) prison. Under torture every man has his breaking point, but for Lebovits, it was never reached for he only confessed on himself.

Three weeks and eight days later Lebovits was in Kolozsvar, environ of the Ninth Army Division. The 1944 trial was open, and his parents, brother and sister were there to watch the trial, the burning candle (signifying a capital offence) and their 23-year-old relation get sentenced to the firing squad.

Executions must take place within two hours after the sentence. There is no such thing as an appeal. Ten soldiers, three of whom have real bullets and seven of whom have blanks, fire three rounds at the head of the prisoner with all the inmates forcibly present. The morning trial lasted from nine a.m., to eleven a.m. Only one defense was possible - insanity. That failed. Not following usual procedure, the tribunal recessed. Lebovits and his family went into a waiting room. The accused was already dead - but what would his family think for the rest of their lives? At one p.m., the adjournment ended. The sentence of death was read and it

seems as if two of his ten lawyers were related to General Veres, and in the same breath as the one in which he made the sentence, Veres commuted his obliteration to ten years' hard labour. "Long live Hungarian Justice!" his mother yelled out (a bit ironically perhaps, for within the year's end the same Hungarian Justice summarily executed every member of my father's family). Cocky and baffled, he went back to his cell and when told by other inmates how the firing squad was practicing in the yard during his trial, Lebovits buckled under.

Hungary V. Lebovits bears out a few points which need enunciation. Even in time of war we must refrain from capital punishment. Some may feel that this case should not have been included, though, because it occurred during troubled times and that such an instance would never happen in another time or in another place. Hungary during 1944 was quite stable; anarchy came about a few months later. Such political miscalculations have happened elsewhere and in peaceful times. And, further, I believe that if we let our finer sensibilities get blunted during peacetime, war crimes will never move us.

As we look back at history we find that the procedures and safeguards were not as good as they are today. Tomorrow we will find our present system archaic. To have two-hour trials when the black candle is burning, not to have any appeal, and to have res ipsa loquiter criminal codes, is well, unfortunate. But to kill a youth almost instantaneously and then punish the innocent family quite slowly and harshly for the rest of their lives in an era of supposed individual responbibility is a sheer display of psychopathy. Especially when, while there is so

much room for error there is a clostrophobia for recovability.

Borchard's classic, Convicting the Innocent, documents many more cases in the United States.[12] If I may, I should like to present the reader with some of Borchard's more interesting cases.

In 1883, Will Purvis was sentenced to death for murder after eyewitness testimony convicted him. The knot was placed around his neck at the scaffold, but when the trap door opened, Purvis fell harmlessly to the ground - the knot slipped. Because of that, he was pardoned in 1898. A good thing too. In 1917, the guilty man made a death-bed confession. The Mississippi State Legislature indemnified him in 1920.[13]

In 1901, J. Brown went to the gallows for murder but the hanging was averted on the grounds that the execution warrant listed the jury foreman's name. Brown was commuted to life imprisonment. His supposed accomplice gave a deathbed confession in 1913, and Florida released and indemnified him in 1929.[14]

The Sacco and Vanzetti, the Julius and Ethel Rosenburg, and Caryl Chessman cases have provided much for the causes celebre, and the Stephen Truscott case has made Canada infamous. But when an error is made in circumstantial evidence or false identification or false confession, more is at cause. I believe in every such case, deliberate concealment is the weight that loads the legal dice.

If concealment was involved, it may well have been concealment far more than economic gain or

saving face. In fact, it may well have been mere concealment; the prejudice was out in the open. Take, for example, the study done by the Florida Civil Liberties Union in 1965. Fifty-four men were sentenced to death for rape in Florida between 1940-1964. Forty-eight were black, six were white. While only one white man was executed, twenty-nine Blacks were - and twelve more were living on death row. Yet, 152 Blacks were convicted of rape while 132 Whites were. "No one will pretend that this small difference can explain the ratio in executions (29-1)". Also, no White has been executed for raping a Black girl.[15]

In New York, between the period of November 27, 1957, and November 26, 1962, forty of the fifty persons sentenced to death were either black or Puerto Rican. Eleven people were executed and 100% of them were either Black or Puerto Rican.[16] The eminent criminologist, Wolfgang, has also found this disparity in sentencing to exist, although more so before sentencing.[17]

Before 1968 and the Witherspoon V. Illinois case[18], there existed, in many states, laws which systematically excluded jurors opposed to the death sentence from deciding the sentence, but this does not apply to a jury which must decide on the guilt or innocence of the accused.[19] At the same time, it has been shown that those in favour of capital punishment are not inclined to give the accused a benefit of doubt and generally tends to bring conviction.[20] Further, I believe that the death penalty, as is possible in Canada only for police and correctional officers, is also discriminatory - what

about those in other dangerous professions like bank tellers, pharmaceutical clerks and wives. Policemen and prison guards join their occupations voluntarily, and may leave at any time. Many years have passed where the fireman's job was more risky than the policeman's job.

> "I shall ask for the abolition of the penalty of death until I have the infallibility of human judgment demonstrated to me."
>
> LaFayette[21]

ADMINISTRATION OF JUSTICE: SWIFT AND TRUE?

The original author of our criminal code, Sir James Fitzjames Stephen, has written that "criminals should be hated".[22] In fact our criminal law is based on the fact that they should be, and are, hated. I feel that capital punishment, as it exists in our society, usually only makes heros of those who could achieve fame and recognition in no other way.

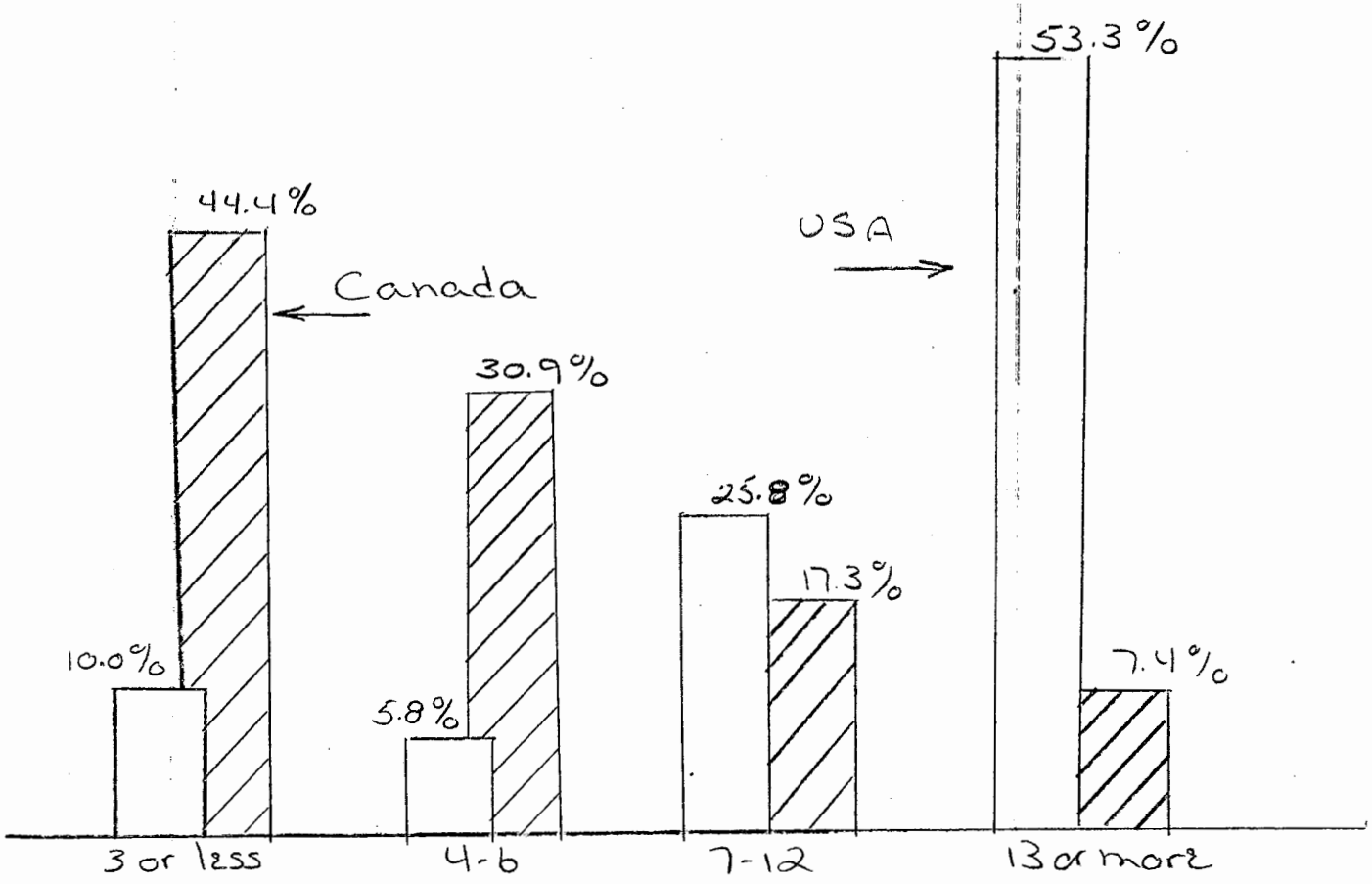
Severe punishment wins sympathy for the criminal. Often, people remember more about the execution for the crime than the crime itself. A great deal of the morbid public interest in trials stems from the fact that it may include the death sentence. Everything from the prisoner's life history, his photograph, his most trivial utterances and his final composure, are recorded in such details usually only reserved for the Queen's visit to Canada. This sensationalism disturbs the fact finding process. Public sentiment will demand conviction or freedom regardless of guilt or innocence. Administration of the law is always hampered by those cases where the death penalty is at stake.

Delays in litigation procedure and execution invariably occur when a capital case arises. Remember the twelve years spent by Caryl Chessman in death row between the date of conviction and execution? By December 1965, 331 prisoners were awaiting execution in America. The average time spent at that time was 30.8 months, and by now, this average has been increased. For those who were killed that year, the average time

spent waiting was four years. The wait is a horrible one - but necessary from my point of view.

To begin with, a condemned man must have the right to have the errors at his trial rectified and have the right to obtain mercy of clemency from the state. Also, by temporarily stopping executions, the death houses become congested and moral pressure is exerted for abolition, under threat that there would be mass bloodshed once the stays have come to an end. Moreover, it would be political suicide for any state administration to have large number of executions when for years there have been none. The Katzenback Commission put its cards on the table and said, "the spectacle of men living on death row for years while their lawyers pursue appellate and collateral remedies tarnishes our image of humane and expeditious justice."[23]

The rights of individuals and society must be protected, but in this respect, at least, Canada is in a better position than the United States of America.



Months, by percentage, between sentence and execution in Canada and the United States from 1945-1955.[24]

penalty
The death is not more than the price is right. Clinton Duffy claimed, before the U.S. Senate Committee on the death penalty, that while a single execution costs $60,000, keeping a man in prison for 30 years only costs $45,000.[25] A study done by the California Department of Corrections in 1957 showed that California would save $180,244 in prison administration costs alone, if death row was abandoned.[26] Most murderers are first time offenders, and if the alternative of life imprisonment was made available, he would be able to pay his way entirely in the institution, and save his family from going on welfare.

Herbert Ehrmann also points out that in cases of mandatory death sentences for capital murder, the accused is willing to make a run for his money, even if guilt is obvious, just because his life is at stake. This costs society a fortune, If the death penalty was not in the books, the accused would be more likely to plead guilty and receive a lesser sentence.[27]

SURVEY OF EXECUTIONAL METHODS

The purpose of this chapter is not to seduce the sado-masochist, but to illustrate the brutality and the de-humanization of the executioner's tools. If our object is to deter, then we should pick the most severe of the lot, and perform it in a wide open and spacious space. If we choose to let the victim confess and thereby increase his chance to get to heaven, we should decide on one which destroys his body least, use torture to obtain confession, and do it in a place of worship. If we want to be retributive, only God knows what we should do - perhaps keep him in prison for life and if our mainstay is rehabilitation, let's really do something that satisfies our baser impulses!

But the point remains - our criminal code should reflect but one of these principles, just in case that one principle is incorrect.

Many societies have at different times incorporated a vast gamut of cruel and unusual punishments. Such methods are: flaying, skinning alive; *piene forte et dure*, pressing to death; boiling in oil; impaling - driving spikes through the body; crucifixion - nailing a body to a cross; garroting - turning a screw from the spinal marrow into the hind-brain (still used in Spain); burning and drawing and quartering, and whatnot. The imagination has been seemingly limitless.

When the British Medical Association was asked by the Royal Commission on Capital Punishment whether they would consider administering death sentences by lethal injections they refused "no matter how humane

certain and decent" it might be.[28] However, because those who favour retention usually don't care about the "unfortunate" details of executions and because abolitionists disagree with the whole thing in the first place, few people are interested in discovering a more humane way to exterminate.

HANGING:

Although the abolition of hanging and the replacement of it by electrocution or the gas chamber has been recommended by the Joint Committee of Senate and Commons on Capital Punishment (Canada 1956), hanging is still Canada's official method.

During its day, the gallows was used for its supposed deterrent value. Because the long drop had yet to be invented, men lived on the rope under strangulation for fifteen minutes or more. Witnessing a man jumping alive in a most awkward posture, and after careful notice, the dancing comes to a tedious halt is, to those who believe it, of great advertising potential.

More scandalous things have occurred in the course of a hanging than just the bowels giving way. When the drop is too long, the jaw is lost; when the rope is too thin the body is decapitated. When the traditional thirteen steps are climbed many a knee does sag and occasionally the prisoner faints. But even when a heart attack occurs the prisoner is "executed" anyway.

In England, in 1885, the three times the executioner pulled the lever, Lee, the accused, would not fall through the trap door. They dared not try a fourth time and Lee was reprieved.

Just recently in Canada, Arthur English failed to take note of a female prisoner's physique and the course of events became so baffling that she literally lost her head.[29]

In his book, A Life for a Life? the Chairman of the Royal Commission of Capital Punishment 1949-53, Sir Ernest Gowers states, "a future student of Britain in the 20th century will find few that will seem to him more quaint than that the decision between the death penalty and a less severe punishment should sometimes have depended not on the gravity of the offence, but on the shape of the offender's neck."[30]

The time proven elements for a successful hanging are: some thick rope, a knot placed directly beneath the left ear and above the left lower jaw, and a length of drop measured by the prisoner's weight. It is presumed, though not by myself, that another essential is the human who is to be hung.

SHOOTING:

Only once since 1912 did anyone choose the State of Utah's other alternative, ~~to~~ hanging. Because of its assumed popularity in makeshift times of turbulence (such as war), and because of its presence on the continents of Africa, Asia and South America, this technique needs some clarification.

In Utah, the officer in charge selects five men from a seemingly abundant number of volunteers. They are given new rifles, one of which is loaded with a blank. Not knowing who actually does the killing supposedly relieves the volunteer's conscience. The prisoner is tied

to a chair to prevent him from fainting, a blindfold is offered, sedatives are given, and a heart-shaped target is pinned to his chest. Twenty-five feet away comes the shot that the prisoner should never hear. In 1951 Eliseo Manes heard the shots and then bled to death.[29]

GUILLOTINE:

This sharp medicine for man's social ills reminds us of the blood that cleansed France during the Reign of Terror; yet it should be remembered that this painless though ugly instrument was, in itself, a reform. Proposed in the National Assembly in 1789 by Dr. Guillotin, the actual inventor was a lawyer named Dr. Louis.

There has always been a morbid fascination with this machine. It takes a powerful man with a knowledge of anatomy to skillfully wield an axe so as to behead a man in a single blow. The Guillotine, like some of K-Tell's inventions, apparently has "a mind of its own." Kershaw has noted that those who were most fascinated by the Guillotine were just the ones whom the machine was supposed to deter:

> "One way or another, the guillotine is a favorite of the tattoo marks with which the French criminal classes adorn themselves - its employment in this regard having been perfected by the sardonic convict who had his neck encircled with a ring of tattooed dots, surmounted by the indelible instruction: "Cut along the dotted line!"[32]

The Guillotine is still used today in France. It resembles a pile-driver with grooved posts through which a heavy axe runs. The victim's neck lies on a curved block before the execution; afterwards the head falls into a basket. The diagonal blade strikes the neck from behind.[33]

ELECTROCUTION:

After the felon is strapped down to the notorious chair, the executioner attaches one electrode to the crown of the soon-to-be ex-convict's shaven head, and another to the calf of the right leg. The electrodes are strapped in a cup filled with a sponge soaked in salt water so as to maintain close contact and prevent severe burning. The switch is pulled and about 2,200 volts and 12 amps are hurled into the body. The eyes burn out and some smoke leaves the mask that covers the head, burned flesh is in the air, the veins stick out like iron coils. The late "We The People", Robert Elliot, testified in his memoirs that immediate unconsciousness results after the first jolt[34], nevertheless the electricity is passed again and again until death ensues.[35]

According to Hugo Adam Bedau, the idea to electrocute criminals came from those who feared that alternating current was deadly.[36] The first man to die in the chair was William Kemmler, having lost his 1893 bid to argue the unconstitutionality of this "cruel and unusual" penalty. Niccola Tesla, the electrical whiz, wondered whether electricity should ever have been invented. Some live better electrically, some die worse electrically.

ASPHYXIATION:

This method of forceful dispatch involves the dropping of sodium cyanide eggs into sulphuric acid, thereby producing a deadly combination of chemicals in an airtight chamber. An ardent opponent of the death penalty and former warden of San Quentin prison, Clinton Duffy, stated that the gas chamber involved "Funnels, rubber gloves, graduates, acid pumps, gas masks, cheesecloth, steel chains, towels, soap, pliers, scissors, fuses and a mop...distilled water, and ammonia."[37]

In 1924, in the State of Nevada, Gee Jon became the first man to die of lethal gas. To date, twelve American states use this method. Prisoners are told to breathe in and out when the smell of sting is in the air. Immediate unconsciousness is irrefutable - so is eventual and painless death, at least less pain and mutilation than in the other methods of execution. In the interim, while Canada still has the death penalty, I suggest that we switch from hanging to the gas chamber.

> Harm done for evil's sake
> surprises me not. History
> books are full of that.
> What hurts me is the evil
> done in the name of goodness.
>
> Gerald Lebovits

DETERRENCE AND THE PURPOSES OF CAPITAL PUNISHMENT

John Hogarth, in his widely acclaimed study, found five reasons why Canadian judges impose punishment.[38] In order of popularity for sentencing, those five justifications are:

(1) reformation
(2) general deterrence
(3) individual deterrence
(4) incapacitation
(5) retribution

The first step in finding out what Canadian policy is, and then to discover what it should be, comes first in defining our terms and then applying it to the capital punishment debate.

Reformation or rehabilitation is concerned with the changing of attitudes from the criminal to the law-abiding. It is perhaps our most hopeful element in the question of punishment, and our energies are becoming more and more directed to this philosophy. It goes without question, however, that in the manner we "treat" criminals today, our goal of reformation is highly unsuccessful. Yet because reformation is highest on the favoured list, reformation must not go entirely unheeded. If we execute a criminal, obviously he will not be reformed. If we do not, and we sentence him to a true life imprisonment, then perhaps we do not care if his attitudes are ever changed. Yet, if we sentence him to imprisonment with the opportunity for parole, which is what we have been doing since late 1962, the only way we can tell if rehabilitation has worked is if we study the individual

deterrence rates for lifers committing infractions in prison, and the success rates of paroled capital offenders, which I shall do shortly.

One theory that I have not yet alluded to is that there is no such thing as just reformation. If we be pure about it, we do not care if a cure is just, only whether it succeeds. What many have suggested is that what Peter refers to as kindness, Paul has referred to as cruelty. Some find abolitionists misguided because there are those who would rather be executed than face life imprionment, a fate considered by them to be far more cruel. While I should like to argue this point further, I feel that to do so would force a debate on the ethics of suicide, a topic distant from this one.

Incapacitation concerns the removal of an offender from society. This serves the purpose of protecting offenders and suspected offenders against unofficial retaliation because society would be disordered if we took the law into our own hands. Unofficial retaliation may also cause unnecessary suffering. The containment theory, as it has often been referred to, is claimed to be used because once an offender is away from us he can no longer harm us. Out of sight, out of mind.

To the believer of this theory, which smacks of retribution, capital punishment is a sure method of incapacitation (perhaps of decapitation if the hanging is done unprofessionally). After all, if our sole ofjective is to rid this offender from our view, why don't we just keep him locked up for life? If we only want to

protect ourselves from a very dangerous offender, and I presume we would only apply this theory of containment to dangerous or habitual criminals, why should we add official retaliation to all capital murderers, many of whom are first offenders, by way of the death penalty? Also, how could we execute a criminal just to protect him from unofficial retaliation? You cannot. Those who promote this theory usually are desperate followers of deterrence or merely retributionists in a different guise.

Although retribution ranks lowest on Hogarth's scale, I am not so sure that it does lead a more prominent weight in the minds of those behind the bench. At this point I feel that the reader may be wondering why I delve into the mind of the judge when he only obeys the legislator's orders. First of all, because Canada has already built degrees of murder, capital and non capital murder, and because we already have laws on the required element of responsibility on the men's rea, for children and those who are mentally defective, all that remains for the politician is approval or disapproval of capital punishment whereas the judge may influence a capital trial, the judge may influence the Governor-in-Council's final decision on whether or not executive clemency should be granted, and the judge may inevitably be the one who abolishes the death penalty by rendering a verdict on its unconstitutionality.

There are three elements of retribution. The first and third are very similar - the lex talionis. The second one differs because it is a little more merciful - the jus talionis.

(1) the criminal justice system be used so as to ensure that offenders atone by suffering for their offences.

(2) the same as above but with the condition that suffering be limited only to the point where other individuals may be deterred, and the individual has hope for rehabilitation.

(3) that retribution is in no way an eye for an eye but rather the community's expression of repudiation for the crime.

As far as capital punishment is concerned, the first (1) theory is all for it. Exact duplication of the murder is, of course, both inhumane and impractical, but the difference ends there. The pure believer of this theory would like to go back in time when all murderers were publicly dispatched. To him, there should be no separation between capital and non capital murder, sanity and insanity, old and young, male and female. The more horrible the crime, the more horrible the execution.

Although Canadian judges profess to belong to the third category, they really belong to the second. With the view to rehabilitation and general deterrence, the maximum penalty afforded by law should be imposed, as long as the suffering imposed does not exceed the limits of what is appropriate for the offence in question. To the believers of this theory, capital punishment should be utilized if nothing else may work. Such a system might fix the maximum penalty but leave the court free to impose less than the maximum.

In R.V. Willaert, 1953, 105CCC, Justice Mckay, speaking for the Ontario Court of Appeal

stated:

> "I am respectfully of the opinion that the true function of the criminal law in respect to punishment is in a wise blending of the deterrent and reformative with retribution not entirely disregarded..."

The famous and clarifying Willaert case also defined what they meant by retribution, and they used it in the third (3) sense of the term.

> "The underlying and governing idea in the desire for retribution is in no way an eye for an eye or tooth for a tooth, but rather the community is anxious to express its repudiation of the crime committed and to establish and assert the welfare of the community against the evil in its midst. Thus the infliction of punishment becomes a source of security to all and is elevated to the first rank of benefit, when it is regarded not as an act of wrath or vengence against a guilty or unfortunate individual who has given way to mischievous inclinations but as an indispensible sacrifice to the common safety."

If the Honourable Worships allow me, I should like to analyze their argument.

Capital punishment, if I understand this argument correctly, is necessary to show society's denuniciation of an abhorrent crime. The citizenry would be able to band together to throw stones. People helping people. It sounds so beautiful.

This argument presupposes the need for actual suffering since someone unconcerned with lex talionis and only with mere denunciation would not care whether the accused was innocent or guilty or whether or not real suffering was meted out as long as the public thinks that the real sentence was imposed and that the accused was guilty. Also, is the Ontario Supreme Court inclined to think that the public would sleep better because the offender has been punished or because others are deterred when it says that "the infliction of punishment becomes a source of security to all?" And when someone is executed "as an indispensible sacrifice to the common safety" just as one would do to a holy lamb, is that done just to prevent someone from attempting any crime?

Nigel Walker, in his Aims of Punishment wanted to prove this argument groundless as well. He says that "the test question would ask whether the criminal must actually suffer, or whether it is sufficient merely to indicate society's abhorrence of his crime. For example: by a suspended sentence. If he says that the criminal must suffer, he must answer the question "why?" If he says "to reduce crime" he is really a desperate reductivist. If he says "to satisfy our feelings" he is asking us to treat the criminal sacrifically, as a mere instrument in a ritual. But if he says, as he probably will, "because he ought to suffer", he is just a retributivist in fancy dress."[39]

I find it most interesting that in defining retribution, all of Walker's three questions were answered by the court in the affirmative. But this just tends to prove my assumption that Canada's present philosophy lies in limited retribution. Unless some theory on deterrence can be shown, it will stay that way.

I have finally come to the true meat of the problem. Probably everything I have said before this coming debate on deterrence and maybe everything I will say afterwards will be part of the emotional argument. Only this question, it has been said, is the truly rational one.

Individual deterrence is concerned with the discouragement of an offender from offending again by the recall of subjectively objectionable measures taken against him.

It is obvious that individual deterrence is highly effective when execution is one of the measures taken against the prisoner. But what about homicides and assaults committed in prison by those who sentences were reversed by clemency? Since 1945 only four prison guards have been killed in Federal penitentiaries - all by robbers, none by murderers. In the Akmann study[40] on this subject he found that during his two-year study one guard and one inmate were killed, but both by inmates serving time for robbery. Murderers, he found, are also generally free from assault, but is that because the dangerous murderers were already executed? By comparing the mental characteristics between the executed and the commuted, Akmann found that those commuted were even more unstable than those executed! Perhaps they were commuted because they were unstable?

Murder parolees also tend not to commit a second murder. Colin Sheppard[41], in examining Canadian statistics from 1920 to 1961, found that only one of the 119 paroled capital offenders had done so and he was hanged in 1944. These statistics should be noted for my next chapter on alternatives.

General deterrence is concerned with the discouragement of potential offenders by the prospect of objectionable measures where everyone is a potential offender.

The first type of evidence is the anecdotal, which cannot be entirely dismissed. George Kirchway illustrated the absurbity of deterrence in a speech in 1923:

> "On June 21, 1877, ten men were hanged in Pennysylvania for murderous conspiracy. The New York Herald predicted the wholesome effect of this terrible lesson. We may be certain, it said editorially, "that the pitiless severity of the law will deter the most wicked from anything like the imitation of these crimes." Yet the night after this large scale execution, two of the witnesses at the trial of these men had been murdered and within two weeks five of the prosecutors had met the same fate."[42]

Then there is the old story about how pickpockets made a living by stealing from the morbid crowd who were watching a pickpocket get hung. Also, there are stories of how hangmen, who should well have been aware of their actions, later got hung themselves.

James Donald French, the only man executed in 1966 was convicted in Oklahoma of strangling his cellmate while serving a life sentence for a previous murder. French tried to have the lawyer in the first murder case disbarred because he reduced his death sentence to life imprisonment. He told his psychiatrist that he killed for a second time because he wanted to be executed. He even wrote letters to the Governor and the Supreme Court asking them not to allow anyone to delay or prevent his visit to the gas chamber.[43]

By using this sort of evidence I am sure that men have premeditated murder, thought of the death penalty and refrained, just as men have premeditated murder in abolitionist countries, have thought of life imprisonment, and have refrained. Telling such stories are fun but they are suspiciously dramatic.

A better way of studying the general deterrent effects of capital punishment is to classify murderers into categories:

(1) Those who are insane, either permanently or temporarily and who kill during such states.

(2) Those who kill while in heat of passion or while in emotional situations.

(3) Hired assassins.

The first two classes are labouring from such a defect of mind, it will be agreed, that for them to contemplate the hangman would be strange indeed. The third group is filled with men too egotistical to feel that they will get caught, let along be convicted or executed. This

theory may be argued on the grounds that only those who killed were not deterred. Those who didn't kill may have been deterred by the prospect of the death penalty.

Because of this, the abolitionist finally relies on statistical evidence where the surmise, that no one will ever know with certainty, how many murderers are refrained because of the death penalty, can be circumvented. There are two methods of approaching the answer to general deterrence. Both agree that capital punishment has had no appreciable influence on the murder rate.

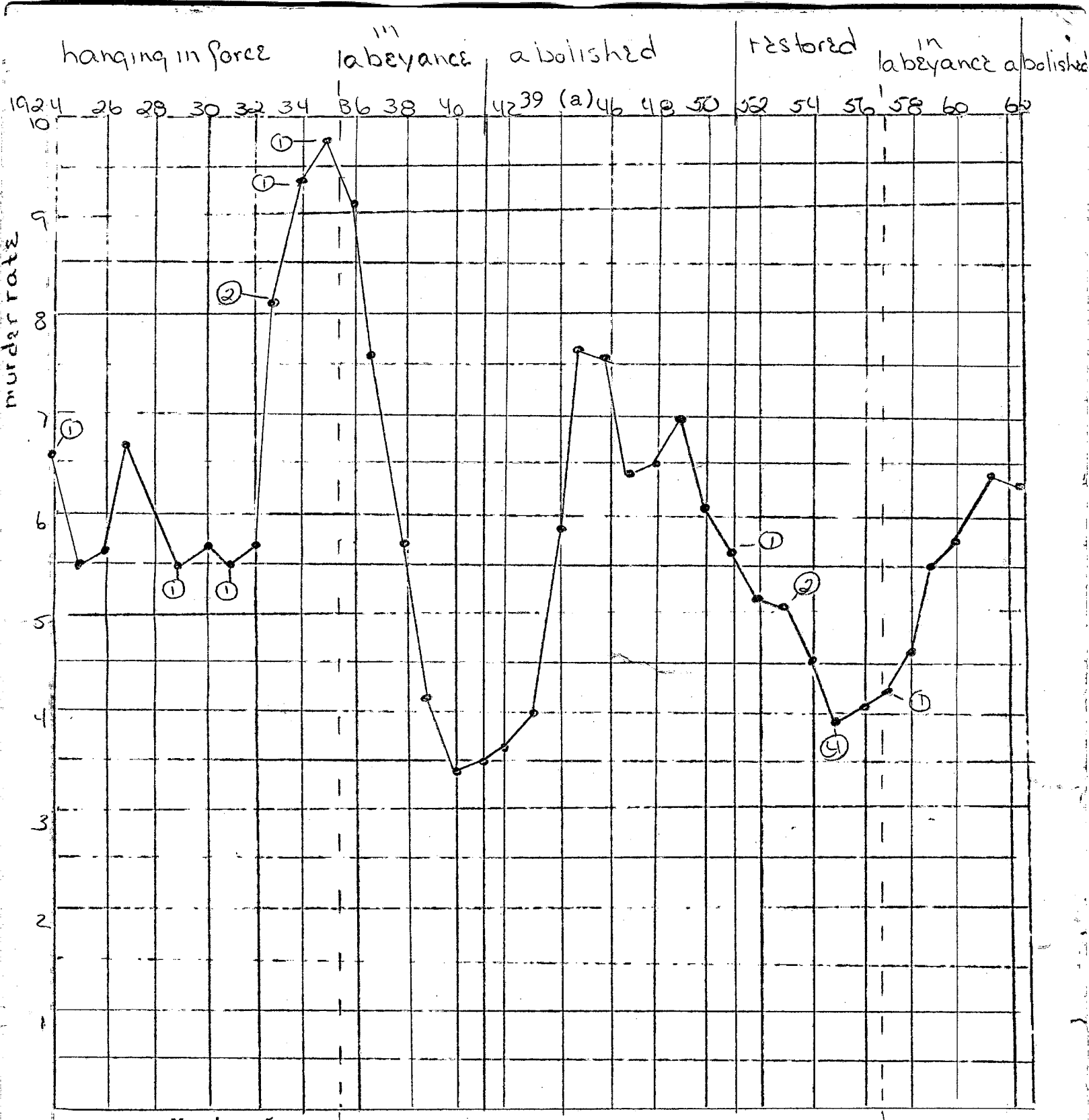
In two papers, Johannes Andenaes has agreed with this conclusion, but has placed several limitations on making any great generalizations on the whole theory of general deterrence. Murder is a crime strongly condemned and our research has only been limited to murder. It is possible that during wartime or during a revolution life imprisonment will have no deterrent power at all. Nobody believes that the group that put them in jail will be in power long and if that group succeeds and becomes entrenched there will be a general pardon for the prisoner. Yet a sentence of death is permanent and irrevocable. It is sure to intimidate many.[44]

Andenaes noted that perhaps only the difference between life imprisonment and capital punishment for murder goes without effect. If the sentence would always be suspended there would be a radical difference in the homicide rates. He is also quick to point out that our application of this supreme punishment has been "slow, sparing and haphazard."[45]

I should now like to return to those two statistical methods as yet unmentioned. The first is an

analysis of the annual murder rate in relation to the population in countries where capital punishment has been abolished or still better, reintroduced, and where the rates are reported based on murderers known to the police.

Figure 2 indicates the years in which executions took place in New Zealand as well as the period which the death penalty was in abeyance or repealed from 1924-1962 all in the moving 5-year averages, the yearly average for the five years of which it is the last. It shows that the fluctuations in the murder rate seem to be independent of the use of the death penalty.



● Moving 5-year averages per million inhabitants of murders known to police.

○— Number of executions carried out in the year.

The other kind of evidence is the comparison of the murders known to police rated between states or countries alike in their legal definitions, penal system, social organization, composition of population and in their social and economic conditions.

Thorsten Sellin has attempted this sort of a study.[47] He compared Maine (no death penalty), Vermont (death penalty) and New Hampshire (death penalty), also Massachusetts (death penalty), Rhode Island (no death penalty) and Connecticut (death penalty) etc. His statistics have shown that murders are not less frequent in states that have the death penalty than in those that have abolished it. Murders have not increased when the death penalty was abolished and have not declined when it is restored.

Does the deterrent effect protect the police? Neither Sellin nor Father Campion think so.[48] Most law enforcement officers do think so, however. In fact, Canada's recent proclamation was done with a compromise intended. Yet the same evidence that defied the reductivism of the death penalty for non-capital murder defies the reductivism for capital murder.

In the final analysis, however, the rational argument will never decide policy. To quote the unrivaled authority, Sellin, but once more:

> "The question whether the death penalty is to be dropped, retained or instituted is not dependent on the evidence as to its utilitarian effects, but on the strength of popular beliefs and sentiments not easily influenced by such evidence...When a people no longer likes the death penalty for murderers it will be removed, no matter what may happen to the homicide rates."[49]

THE ALTERNATIVE

If capital punishment is to be abolished in Canada, what will replace it? I can confidently state that capital punishment has had no appreciable influence on the murder rate, even the murder of policemen. What I say may not be true for crimes other than murder, or that the severity of the punishment is without any deterrent effect. But I say that the choice between the death penalty and life imprisonment does not seem to affect the homicide rate.

At this point, it is wise to remember that history has shown us that all penal measures taken were alternatives to the death penalty. In fact, our whole criminal corrections system (or aggrogate) past and present, including fines, probation, and parole, prison, flogging and transportation are but many vast successful and unsuccessful attempts at finding alternatives. When life was worth little, capital punishment was worth much. While some alternatives still may seem cruel, most were introduced in eras of enlightenment and humanity. Even the method of execution was less horrible during such periods.

This first alternative I should like to discuss is what we now call executive clemency. Section 684(1) of the Criminal Code provides that "The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two year." I do not know of a recent case, however, where the Governor committed a capital offender to less than life imprisonment.

Within two weeks following a conviction in a capital case, the trial judge is required to send to the Solicitor General a report containing a summary of the salient facts of the case, along with any remarks or recommendations made by him or the jury with regard to the exercise of executive clemency. The complete transcript of the evidence, and the judge's charge to the jury are sent shortly afterward. While the prisoner remains in custody before execution, the sheriff and the director of the prison send the Solicitor General a full report including statements by the prison doctor and psychiatrist. Although appeal may be pending, the reports are carefully summarized and given to the Governor General in Council and preparations are made for due consideration. Apparently no detail is considered too trivial.

An inquiry is then held with the Minister and his officials to review the case. Then the Solicitor General arrives at a decision and takes his recommendation to his colleagues in the Cabinet. After yet another inquiry there, a final decision is reached whether commutation should be granted or not.

Solie Ringold[50], and in another study, Abramowitz and Paget[51], have found thirteen reasons why "mercy, compassion and forgiveness" is given.

~~THE ALTERNATIVE~~

1. The nature of the crime.
2. Doubt as to guilt.
3. Fairness of trial.
4. Relative guilt and disparity of sentences.
5. Georgraphical equalization of sentences.
6. Mitigating circumstances: duress, provocation, intoxication, self-defense.
7. Mental and physical condition of defendant.
8. Rehabilitation.
9. Dissents and inferences drawn from the courts.
10. Recommendations of the prosecution and trial judge (and the jury).
11. Political pressure and publicity.
12. Precedent.
13. The clemency authorities' view on capital punishment.

The usual alternative punishment in Canada is life imprisonment. The Criminal Law Amendment (Capital Punishment) Act, 1973, provides that a person who has been so convicted shall not be given conditional liberation until at least ten years have been served, less time spent in custody between arrest and commutation. Subject to the approval by the Governor in Council, the National Parole Board, by a vote of at least two-thirds of its members, may grant this parole.[52] Because the Goldenberg Commission on Parole in Canada submits that parole is not or should not be clemency[53], I can see no reason why the Governor in Council should approve the Parole Board's decision. The decision should be an administrative one alone. Likewise, Section 3(2) of the Capital Punishment Act, 1973, allows a

judge, with or without recommendation of the jury, to substitute "a number of years that is not more than twenty but more than ten" as the minimum time before eligibility for parole. The judicial arm via the courts should have no say in the matter of parole. How can anyone know, several years in advance, when a man will be ready for parole?

As Giardini and Farrow have pointed out, it is very seldom that a paroled capital offender commits another offence let alone murder.[54] However, occasionally an offender is paroled, and murder does take place. No one could be so well practiced at clairvoyance to predict which man will kill again. One solution is to bring back capital punishment; another is never to grant parole. Yet even that is not a sure guarantee against homicide in prison.

Day parole for pardoned offenders is another complaint I have with the system. Section 3(2) states that offenders shall not become eligible for temporary absence until three years prior to his eligibility for ordinary parole. Such passes should be made available for discretionary parole. A murderer is less dangerous than a "dangerous offender".

Because men interned in prisons for long periods of time usually are the most interested in doing their own time productively, capital offenders may work at jobs in the institution and support themselves and perhaps even their families on the outside.

By now, the reader has been made aware of some of the problems involved in capital punishment. Surely there must be a reasonable doubt by now? Juries are always warned that where a reasonable doubt exists, a verdict of not guilty must be found. If we fail at that common low

premise, then the least we could do is pick the lesser of the two evils, The lesser of the evils is by far the alternative suggested.

> We still don't know how to protect Abel, and we still don't know what to do with Cain.
>
> Karl Menninger

Gerald Lebovits
T. A. LAW 100

CONCLUSION AND SUMMATION

The object of a civil libertarian is to give both sides of the story. If he does this, he is then allowed to choose a side that favours him best. Here is an attempt at such a summary of arguments.

FOR RETENTION	FOR ABOLITION
Lex Talonis. "An eye for an eye and a tooth for a tooth." He who kills should himself be killed.	This is a barbaric and retributive attitude. You might as well pull out an eye from a man who knocked out another man's eye.
The Bible is the work of God and the Bible says that "He who sheddeth men's blood by man shall his blood be shed."	The Bible also says "Thou shalt not kill." All the ancient Jewish legal philosophers have condemned capital punishment and Israel has abolished the death penalty. Why is it that we now suffer a witch to live?" According to the Bible, we should not.
The greatest of all deterrents is the death penalty because the fear of death is the greatest of all fears.	Comparison between abolitionist countries and retentionist countries shows evidence that disproves this. The deterrent value between life imprisonment with parole and capital punishment is negligible.
It is impossible to rehabilitate certain types of criminals.	This may be true, but murderers are not of this sort. Because it is difficult to reclaim lunatics are we to kill them too? Where shall we stop?
Prolonged imprisonment is worse than certain death.	Few murderers have ever refused a reprieve. And those who have should be in mental institutions and not on death row. If as you say, life imprisonment is worse than death how can death have a greater deterrent value than life imprisonment?

RETENTION - Cont'd.	ABOLITION - Cont'd.
The supreme law of the State is safety. Murderers are enemies of the State and the State is not safe with dangerous murderers around.	This sounds like a totalitarian doctrine. All criminals are enemies of "the State". That is why they are not tried in civil courts. The death penalty does not give maximum protection anyway. Swift detection and sure conviction does it better.
The State should not keep a murderer alive at the taxpayers' expense for as many as thirty years or more.	The prisoner could earn his keep if he was paid the same as those on the outside are paid for doing the same things. Maybe he could even give something to his family too. The costs of administering a capital trial nullifies this view.
It would be socially expedient and hygenic to exterminate dangerous and abnormal murderers.	Nazi Germany has preached and practised this theory. This would do no good because very few would be executed anyway, and sterilization would have the same effect.
The public wants capital punishment.	Recent surveys show the opposite.
If the death penalty is not retained, society will show disapproval by lynch law.	If the death penalty is not abolished society will have a reference group for lynch law.

RETENTION - Cont'd.	ABOLITION - Cont'd.
If capital punishment is abolished what is there to stop a prisoner from killing a fellow prisoner or even a guard.	Some prisoners kill because they want to commit suicide and are afraid to do it themselves. Also, generally, evidence from abolitionist countries shows that this happens as often or as seldom as in retentionist countries.
The abolitionist countries afford no parallel to ours.	American statistics between alike States, both retentionist and abolitionist, show that there is no discernable difference in the homicide rates between the two.

FOR ABOLITION	FOR RETENTION
A civilized State, to deserve its name, must uphold, not violate, the sanctity of human life.	States have never acted along these lines. The fact that we accept war as an act of the State refutes this claim. Even an abolitionist will agree that the death of one man is a tragedy, but the death of one million is a statistic.
Human life can only be taken by the giver, namely the creator.	There must be a separation between Church and State. Besides, according to Judeo-Christian philosophy, life is not inviolate because of a belief in the after-life.

ABOLITION - Cont'd.	RETENTION - Cont'd.
Capital punishment does not deter murderers.	This cannot be proven. We know how many have not been deterred, but no one knows how many murders have been deterred by capital punishment.
The death penalty is a primitive idea rooted in revenge.	The boundary of acceptable norms is rooted by the fact that criminals should be hated.
Executions are irrevocable, irreversible and irreparable. Innocent men have been executed.	If this is true then the fault lies with bad administration and not with bad law. Every effort is taken to prevent miscarriages of justice. Moreover the only proof there is that innocent men are executed are usually deathbed confessions, which are, when reported, mere hearsay evidence.
Why should we be forced into relying on the death penalty when we should be spending our time and resources on discovering the causes of crime and then preventing it?	The same thing could be said of any penalty. We must secure the public mind until the causes of crime are known. The public must be satisfied until we can prevent crime from occuring.

ABOLITION - Cont'd.	RETENTION - Cont'd.
Capital punishment is nothing but an arbitrary discrimination against an occasional victim.	This argument just goes to prove that a crime must be particularly horrible before capital punishment is meted out.
A capital case distorts the fact finding process and sensationalizes the accused into being a hero.	Again, if capital punishment is meted out under these conditions, then the accused must surely have deserved it.
Judicial Homicide is mere vindicative repression.	Would you still say that if your little daughter was raped and murdered? We must not be weak, especially when crime is rampant in the streets.
Executions lead to lynch law.	Society cannot be ordered by the possible behaviour of a few of its unbalanced members.
Prison staffs are distressed and brutalized by the adverse effect executions have on those who have contact with it.	If this is true, why did they volunteer for their jobs and why have they not quit long ago? The prisoner's death is as painless as possible, and executions are carried out with the utmost decorum. Besides, why are prison staffs in favour of capital punishment?

ABOLITION - Cont'd.

Capital punishment inflicts immeasurable and lifelong suffering on the prisoner's relatives who are innocent of blame.

RETENTION - Cont'd.

The murder of his victim also brought suffering and the victim's relatives were even more innocent of blame. The victim is never taken into account by the abolitionists.

In conclusion, I feel it advisable that Canada abolish capital punishment, at least during peace time (reinstatement of capital punishment during war time may be another matter and subject of a different course of study), that a mandatory sentence of life imprisonment be substituted for capital murder, and that no man upon whom such a life imprisonment is imposed be released without prior approval of the regional and headquarters Branch of the National Parole Board. And in accordance with my introductory wish, I hope that we the people, hold a firm stand against judicial homicide for now and forever. A final note from Prof. Thorsten Sellin will suffice:

> "If an intelligent visitor from some other planet were to stray to North America, he would observe, here and there and very rarely, a small group of persons assembled in a secluded room who, as representatives of an all-powerful sovereign state, were solemnly participating in deliberately and artfully taking the life of a human being. Ignorant of our customs, he might

conclude that he was witnessing a sacred rite somehow suggesting a human sacrifice. And seeing our great universities and scientific laboratories, our mental hospitals and clinics, our many charitable institutions, and the multitude of churches dedicated to the worship of an executed Saviour, he might well wonder about the strange and paradoxical workings of the human mind."[55]

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Your paper was well done. In some respects, it does not fit the model of a "policy paper." It may have been excessively long without any real added benefit.

Generally, your arguments were presented well — your paper was easy to read — they are well supported & documented...

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