

*Capital Punishment*

rehabilitated, and the only alternative which society has openly demanded time and time again is the absolute assurance that the crime will not be repeated.

As a basic principle, an individual who will not abide by the laws of society should be removed from that society and dealt with in a proper manner. The proper manner might well vary according to the individual and the crime committed, graduating to the severest punishment for the worst offence. There is no doubt that the taking of a life is, indeed, the worst offence that can be committed. The severest punishment has traditionally been death. If one is to consider the purpose of remedial and corrective measures from the rehabilitation point of view, then death as a penalty is of little value. On this premise, some question the value of the death penalty, identify it with revenge, and say that it is hardly a corrective measure because of its finality. But the death penalty and punishment are not of their nature vengeful.

Punishment is more related to a forceful remedial action, one that will have a marked corrective effect and be so shocking to the recipient or to others that the act which merited the punishment will not be repeated if only because it attacks the self-preservation instinct and the natural desire to freedom of the offender.

Inasmuch as rehabilitation has its place where there is an assured chance of success, society has nevertheless unequivocally rejected the experimental attitude and has expressed the unqualified desire that the principle of maximum punishment, as opposed to the principle of rehabilitation, be retained so that, where applicable, the severest penalty, as a penalty will be applied.

The value of rehabilitation and punishment as separate ideas and methods in the field of corrections has long been debated. Some quarters feel that the idea of punishment as being vengeful is not proper. However, I submit that in this instance they have erred in removing punishment and substituting rehabilitation. Both have their value, but they are dependent upon the nature of the individual as well as the nature of the crime and what society expects by way of protection for itself, as a whole, as well as protection of its individuals.

This brings in the next facet in the evaluation of actual and contemplated corrective measures in rehabilitation and punishment. In either case, it is stated without argument from any quarter that the object is the prevention of crime and that the exercise or measure taken must have a deterrent quality. The quality of deterrence can be looked upon from two aspects, the first being repetition and the second being prevention. Following up on this premise, which is tenable even using the arguments of the abolitionists, the only penalty that can achieve the maximum deterrence from repetition of the crime and that would prevent crime is death. The principle of rehabilitation, so called life imprisonment or other measures, in the eyes of society, if not in the eyes of sociologists and others, has not proven adequate.

This issue of deterrence should not be decided only on the deterrent factor but must be a consideration. Nevertheless, there is much evidence to show that capital punishment is a deterrent. Paul Gascon, the executive secretary of the Public Service Alliance, which represents penitentiary guards, reported that the six guards taken hostage in the Kingston penitentiary riot in 1971 may owe their lives to the existence of capital punishment. He said: "The inmates were told that if a guard was killed, the responsible people would be hanged".

Criminal sanctions do not stop all crimes, but there is no question that the vast majority of Canadians want these sanctions and are convinced that they do deter some from committing crimes ranging from theft to murder. I believe it is imperative that our laws stress personal responsibility for one's actions. This assumption is a basic tenet of our civilization. I believe we must always take into account all factors surrounding the commission of a crime when sentencing a convicted criminal and thereby sometimes reducing a sentence. However, I do not accept the claim that every murder represents a failure of society and that society must acknowledge its guilt.

The other issue raised over and over by those supporting the abolition of capital punishment is that an innocent individual may be executed. This straw man raised by abolitionists is an illogical argument. It is probably very much less than the possibility that a criminal may commit another murder while serving a long prison term, or later when on parole. There is not one example of a person executed who was found later to have been innocent by a court or Government in Canada. However, it has been reported that convicts on parole and mandatory supervision in Canada were responsible for 41 murders and 27 manslaughter offences. One of the leading abolitionists in the United States, Adam Bedau, has stated: "It is false sentimentality to argue that the death penalty should be abolished because of the abstract possibility that an innocent person might be executed". He cites a study of the 7,000 executions in the United States from 1893 to 1971 and concludes that the record fails to show that such cases occur. The main point, however, is that if government functioned only when the possibility of error did not exist, government would not function at all. Human life deserves special protection and one of the best ways to guarantee that protection is to ensure that convicted murderers do not kill again. Only the death penalty can accomplish this end.

We have also heard over and over that juries may not want to convict someone of first degree murder. This is also a foolish argument. In trials for murder where capital punishment is the penalty for first degree murder, prospective jurors can be excused in such instances if they are opposed to capital punishment. I would like to quote from an article by the Mayor of New York, Edward Koch, on April 15, 1985 in the periodical *The New Republic*. He states:

Everyone wants his or her rights, and will defend them jealously. Not everyone, however, wants responsibilities, especially the painful responsibilities that come with law enforcement. Twenty-three years ago a woman named Kitty Genovese was assaulted and murdered on a street in New York. Dozens of