

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

[b] a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death."

In the Explanatory Note shown to the members of the House at the time:

The purpose of this Bill is to confine the imposition of the death penalty in relation to murder to the murder of police officers and others employed for the maintenance of the public peace, acting in the course of their duties, and to the murder of prison guards and other officers or permanent employees of prisons, acting in the course of their duties, for an experimental period of five years.

Sixteen police officers have been murdered since 1967. In each case the sentence of capital punishment has been commuted. This can only be done with the approval of the Governor-General in Council. Once such a sentence has been commuted, approval for any subsequent parole must come from the Cabinet. This possibility of parole is very ominous to some people, and without doubt, the parole system has been widely abused. In the face of this many groups are lobbying to have the death penalty restored, e.g., "Execution is the only way to halt the frighteningly steady increase in the murder rate."

—The Toronto Police Wives Association.

The 5 year moratorium on the death penalty came to an end late last year. The wider definition of capital murder used prior to 1967 is now the law of Canada once again. During this session of the House the Government is obliged to come to a decision on this question. The decision was already suspended once, in January. During that time the killings in Vancouver and Toronto have aroused a great deal of pressure for retention of the penalty. The Government is proposing to allow each of the 242 members a free vote on the question so that they will be free to vote in any manner. Charles Lynch has called this a 'sham'; in any respect, an unfair proposal. Without some leadership from the government, the majority of Canadians will never be prompted to face the issue.

The picture is not bright for the proponents of abolition. In

January of 72 a Gallup Poll showed 64 percent of Canadians favoured retention of the sentence of death — the most common reason given was the deterrent effect:

—Deterrent Effect: Does the existence of a death penalty serve to deter criminal behavior? There is a very sound argument that it deters the criminal behavior of at least one individual, the condemned. Other than that one is left with the proposition that hanging A will serve to prevent B from murdering C. The obvious answer to this train of logic is how is it that nothing seemed to deter A in the first place. Approximately 40 percent of the murders in Canada are so-called 'domestic murders', i.e., the well-known alternative to marriage counselling. Almost 50 percent of all murders are carried out with guns. Those who advocate deterrents seem rarely to advocate gun control. A survey by Marvin Wolfgang concluded that 75 percent of all murderers never consider the consequences of their act at the time. Murder as a social statement has always lacked any analytical base.

Most people will accept the fact that there are people within our society who have a predilection for violence, who are prepared to exercise this even at the loss of their own life. For professional gunmen and violent extremists the threat of death is obviously just one facet of a risky profession.

During the reign of Henry VIII over 72,000 thieves went to the gallows; no noticeable reduction in crime is recorded. In the 19th century in Great Britain, pick-pocketing was a capital offence; the highest incidence of it occurred, as it seems, at public hangings.

Where the death penalty is an effective deterrent, it would logically follow that to maximize its effect, executions should not be limited to the select group of witnesses chosen. With our modern facilities of communication, every hanging should be a widely-publicized colour television spectacular. And there are probably some adherents of capital punishment who would agree whole-heartedly with that last suggestion.

A report, prepared by the office of the Solicitor-General stated: "Homicide is most often committed in disadvantaged neighbourhoods near factories or downtown areas where there is abject poverty and where the future is gloomy because of chronic unemployment and a low level of education." In such conditions death becomes less and less a deterrent.

There is a solid argument that one pardon dispels the fear engendered by twenty executions. Dr. Fattah, a criminologist at the

University of Montreal, writes: "If you have the death penalty there is a much higher rate of acquittal for first-degree murders; a jury is less likely to file a guilty verdict if the life of a human being is at stake." It seems that deterrents can work two ways.

—Financial Burden of Prisoner Care: In a recent Gallup Poll, 4 percent of Canadians indicated that tax-payers should not have to support convicted murderers in prison for the rest of their lives.

In 1970 there were 7,641,731 tax-payers in Canada. The average per capita federal tax payable was \$790.00. Federal penitentiaries were budgeted for \$51,000,000.00. At this time there were 7,108 inmates. The average per annum cost of keeping a man in prison was just over \$7,300. Per inmate, each tax-payer paid one-tenth of a cent.

In a recent article in *Obiter Dicta*, the newspaper of Osgoode Hall Law School, Dahn Batchelor estimated the cost of keeping one prisoner in prison for 50 years at \$365,000.00 (excluding the inflation of costs). If this represented the life of a convicted murder, this would equal 5 cents per Canadian tax-payer.

Whether an individual life is worth a nickel to you is a very personal value judgement.

—Error: Imprisonment leaves room for rectifying mistakes. Capital punishment does not. Few murders occur in front of witnesses. At a trial, testimony and evidence can become a very confused mass of ideas. Juries, judges for that matter, are only human. Finally, the border-line in law between capital and non-capital murder is always very tenuous. A system of punishment which involves such a substantial risk of itself becoming a vehicle for murder deserves serious second thoughts.

—Vengeance Is Mine, Sayeth The Rate-Payer: Vengeance is not a social right, but a perversion: "No matter how glorified or how piously disguised, vengeance as a human motive must be personally repudiated by each and every one of us. This is the message of old religions and new psychiatries."

Karl Menniger,
Crime of Punishment

With our correctional techniques becoming more sophisticated, the man we send to the gallows is less likely to be the same man he was when he committed the crime. Arthur Maloney Q.C., the well-known criminal lawyer has argued that many prisoners change between the time of the act and their conviction as a result of their exposure to social workers, theologians, and their own consciences.

The suggestion that the government's failure to act violently in a murder case will

encourage private citizens to take matters into their own hands is too weak to merit serious comment.

—Alternatives: Percy Foreman, the famous American defence lawyer, has suggested that capital punishment is no punishment at all. You can only kill a man once; after that he has no more lessons to learn. The most severe, possibly the most effective form of punishment that the State can mete out is to imprison a man for the rest of his natural life. Some will argue that this is a more cruel measure. That, in itself, is a particularly God-like statement.

In his article, mentioned earlier, Batchelor suggested several alternatives:

1. Persons who have shown they have no respect for human life, e.g., terror-bombers, mass murderers, etc. should be imprisoned for their natural lives.
2. Persons who while engaged in criminal acts, directly kill a police officer should be imprisoned for their natural lives.
3. Persons under sentence of imprisonment for their life-span who directly kill a prison guard or fellow inmate, should be sentenced to confinement in an institution where their movements will be severely restricted for as long as prison authorities deem necessary.

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