

An eye for an eye

By JIM DAW

Happily, administrative murder has become the rarest of all punishments for crime.

A study reported in 1971, that there are fewer than 250 legal executions a year throughout the entire world (slightly less than half of these in the Republic of South Africa.)

Most of the developed nations of the western world have abolished the death penalty, including Great Britain, West Germany, Italy, the Netherlands, all the Scandinavian countries, Switzerland, Austria and Portugal. Belgium retains the death penalty on the statute books, but it has not been used since 1863. It has been abolished either formally or in practice in many Latin American countries including Argentina, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, Honduras, most of the federal states of Mexico, Nicaragua, Panama, Uruguay and Venezuela. Israel, Turkey and two of the Australian states do not use it.

LIECHTENSTEIN FIRST

Abolition came to some countries very early. Liechtenstein was the first country in the world to abolish capital punishment in 1798. Netherlands followed in 1870; Italy in 1890; Norway in 1905 and in Sweden in 1921.

Some states in the U.S. were forerunners in the abolitionist movement. In 1846, Michigan became the first jurisdiction in the English speaking world to abolish the death penalty; Rhode Island and Wisconsin followed a few years later. Six other states eliminated the death penalty as the punishment for first degree murder in the 1960s.

Presently, nine of the 50 states, plus two federal territories, have no death penalty at all, while another five have abolished it as the general penalty for first degree murder, although retaining it for a few relatively rare crimes.

Debates on the constitutionality of the death penalty as "cruel and unusual punishment" continue in the courts and the U.S. Congress.

In Canada, we are awaiting a decision on abolition or continuation of the five-year-suspension of the death penalty except for the killing of police or prison guards.

An abolition bill was first introduced to the House of Commons in 1914 by Robert Bickerdike.

ABOLITION INEVITABLE

Professor Anthony G. Amsterdam of the Stanford University law school argued in 1971 before a California criminal justice committee that no one with a sense of history can dispute that complete abolition will come ultimately.

"The question for us now is therefore not whether we shall retain or terminate the death penalty. It is whether, having already historically decided to terminate it, we shall have the courage to terminate it abruptly, or whether we shall insist on killing the few poor souls who remain on death row, the victims of our sloth in discarding an outgrown primitivism. Once the point of history has been reached at which the inevitable end of the death penalty is foreseeable, it is an astounding and unjustifiable atrocity to persist in killing these men," he said.

He called it inhumane, inefficient and uncivilized.

Further, he pointed out that the character of capital punishment has been drastically altered by its infrequent application. In the U.S. an average of 27 men were executed per year in the 1960s.

The number of executions in Canada has been declining steadily. In 1919 there were 28 hangings; 19 in 1934; nine in 1943 and five in 1951. The last two men executed were Ronald Turpin, 29, and Arthur Lucas, 54, Dec. 11, 1962 for killing a policeman. Since 1967 when the death penalty was limited to those convicted of killing policemen or prison guards, all 27 death sentences have been commuted by the cabinet.

"The men who will be executed are not being put to death because they committed murder, as there are so many other apprehended, tried and convicted every year," said Amsterdam.

BLACK AND POOR HANG

"The fashion in which the men who actually die are selected by the discretionary processes of criminal justice reflects, in its most intense and corrosive form, the bias, arbitrariness and discrimination that infects those processes. (In the U.S.) most who die are black, virtually all are poor and powerless, personally ugly and socially unacceptable."

U.S. department of prisons statistics show that of 3,859 persons executed since 1930, 54.6 per cent were black or of some other racial minority and of the 455 executed for rape, 89.5 per cent were non-whites.

(Excalibur was unable to find statistics on the background of those executed in Canada.)

Amsterdam argued also that capital punishment in its present form cannot serve any legitimate social function.

As a result of the public's inability to stomach the killing of more than a handful of the hundreds of murders it cannot be considered "retributive".

The deterrence argument is also weak, he said. A recent authoritative United Nations study has concluded "it is generally agreed between the retentionists and the abolitionists . . . that the data which now exists show no correlation between the existence of capital punishment and lower rates of capital crime."

Graphic by Peter Hsu



THE IRON LADY

Have you seen the iron lady's charms
Legs of steel, leather on her arms
Taking on a man to die
Life for a life, an eye for an eye,
And that's the iron lady in the chair

Stop the murders, deter the crimes away
Only killing shows killing doesn't pay
Yes that's the kind of lie it takes
Even though we make mistakes
And sometimes send the wrong man to the chair

In the death row, waiting for their turn
No time to change, not a chance to learn
Waiting for someone to call
Say it's over after all
They won't have to face the justice of the chair

Just before they serve him one last meal
Shave his head, oh, they ask him how he feels
Then the warden comes to say good-bye
Reporters come to watch him die
Watch him as he's strapped into the chair

And the chaplain, he reads the final prayer
Be brave my son, the Lord is waiting there
Oh, murder is so wrong you see
Both the Bible and the courts agree
That the states allow to murder in the chair

In the courtroom watch the balance of the scales
If the price is right, there's time for more appeals
The strings are pulled, the switch is stayed
The finest lawyers fees are paid
And a rich man's never died upon the chair

Have you seen the iron lady's charms
Legs of steel, iron on her arms
Taking on a man to die
Life for a life, an eye for an eye
And that's the iron lady in the chair

Phil Ochs

Amsterdam added that regardless of its effectiveness as a deterrent compared with imprisonment, "any efficiency is totally destroyed once capital punishment is not regularly and routinely administered."

"What prospective murder, after all, will be deterred by a penalty whose risk is less and less predictable, no more than the risk run by any commuter driving home along a crowded highway?" he questioned.

WHAT IS COST?

Even the argument of the cost to the taxpayer was disputed by Amsterdam. Court costs, additional security measures, the difficulty of selecting a jury and the many appeals pursuant to a murder trial in which the death penalty is a threat are more expensive than keeping a man imprisoned for life. Another study quotes that the recent Sirhan and Manson murder trials have each cost the state of California close to \$1 million. And because of the extra security on death row, condemned men cannot help to offset the cost of their own support by participating in productive activity.

In Canada the cost of keeping one murderer 50 years in prison would be about \$365,000 plus inflationary costs. If a murderer is sentenced to natural life in prison and serves 50 years, each taxpayer will pay only five cents towards the entire support of the inmate.

Part of the public hysteria surrounding the debate on the death penalty was prompted in the Toronto area by the recent killings of two policemen. But empirical studies fail to support the theory that, whether or not the death penalty deters murder in general, it does discourage the killing of policemen. In the U.S. the rate of police homicides during the period 1919 to 1954 was not significantly different for 182 cities in retentionist states (1.3 per 100,000 population) than in 82 comparable cities in states which did not have capital punishment (1.2 per 100,000).

During the years 1961-63, 140 police officers were killed by criminals or suspects, all but nine of them in retention states. In abolition states, 1.31 officers per 10,000 were killed and 1.32 in retention states bordering on them. Detailed analysis of data fails to show any added protection for state police in the death penalty states.

KILLING OF POLICE

In Canada even though the death penalty has been on the books for the killing of policemen during the five year trial period, the number of policemen killed has increased. Before the beginning of the test period, in 1966, there were two policemen killed. There were three in 1967, five in 1968 and five in 1969.

In a study prepared by Ezzat Abdel Fattah of the University of Montreal department of criminology, a table showing the relationship of the victim to the murder, by the percentage of cases, shows that employees as often kill their employers as prisoners do their guards. Employers and prison guards each composed .6 per cent of the total number of victims.

Policemen represented 5.1 per cent of all those killed. The deterrence theory is revealed as illogical when one considers that most murders are crimes of passion for which there is no meaningful decision to kill. And in one study, alcohol was associated with nearly two thirds of criminal homicides.

The Fattah study, showed that between 1867 and 1971 in Canada 72.8 per cent of the victims of criminal homicide were the relatives, friends and acquaintances of the accused.

And of the total, 44.9 per cent of the criminal homicides were the result of jealousy, vengeance, argument, violent sexual desire of emotional problems.

In the case of what one might call "rational killers" — robbers, assassins or professional gunmen — the threat of the death penalty is unlikely to play a large part in their thinking.

NO DETERRENT

Since the penalties for murder, whether death or long prison sentences, are both so severe as to destroy the future of anyone subjected to them, the crime would not be committed by a rational man unless he thought there was little likelihood he would be caught. For this reason, the difference in deterrent effect between the possibility of execution and life imprisonment must be small to the vanishing point.

A recent study in Chicago showed that police and citizens of that city killed 1,993 criminals from the 1923 to 1954, and that in that period of time only 81 were executed. If the risk of death during a criminal act doesn't deter a man, executions afterwards won't either.

It has often been suggested that the greatest argument against capital punishment is the danger of executing an innocent person.

The alternatives to the death penalty also produce more satisfactory results with the guilty parties. Besides protection of society, imprisonment affords the opportunity for rehabilitation (assuming an effective penal system exists.)

A 1971 Washington Research Project pamphlet entitled the Case Against Capital Punishment points out that "murderers are the least likely of all offenders to return to crime when they are paroled or released. They make the best prisoners. In some cases, the worst murderers can be transformed into decent and even exceptional human beings. In situations in which this is not the case, the prisoners can be indefinitely incarcerated."

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