

In defense of vengeance...



Dave Fuller photo

In cases where a man is convicted of rape, an offence for which only the most brutal attacks generally get to court, 94 per cent of those released in 1973, had served less than three years. Given the

statistics, Canadians may be excused for thinking that the length of incarceration is often grotesquely out of proportion to the havoc and pain created by the criminal.

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While diversion advocates are lobbying to steer many crimes out of prison, the Law Reform Commission and Allmand are also lobbying to lighten the sentences of those imprisoned for violent crimes.

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Many Canadians suspect that the actual time served already for violent crimes may be too light. A combination of factors account for some relatively short-prison terms now: at the courtroom level many murders get reduced to manslaughter because it's claimed some unpleasant remark made by the victim "provoked" the murderer. Provocation reduces murder to manslaughter and this defence is helped by the convenience of not having the victim around to testify.

Manslaughter sentences may put offenders back on the streets fairly fast. In 1973, almost eighty-three per cent of the sentences given for murder-reduced-to-manslaughter were under ten years. Over half of those were under five years, which could mean parole in eighteen months or day parole much earlier.

INSANITY

About thirty-five per cent of those acquitted of murder are found not guilty by reason of insanity. This way out of a

murder conviction may be rising as the courts continue to interpret "insanity" more liberally. Though "temporary" insanity is not a defence in Canadian law, in fact it is not unusual for those acquitted on grounds of insanity to regain their equilibrium and freedom in a matter of months. One man acquitted of a triple murder charge on insanity grounds in 1971 was back at his mechanic's job in less than three years. This raised some eyebrows even in Toronto's progressive forensic community.

Of twenty-seven murderers discharged from prison in 1973 (actually thirty-seven were discharged but statistics are available on only twenty-seven), five served less than four years and twenty-one served between five and nine years; of manslaughter discharges, sixty-seven per cent had served less than three years; attempted murder discharges, seventy-seven per cent — less than four years; in rape convictions an offence for which only the most brutal attacks generally get to court, ninety-four per cent of those released had served less than three years. Given the statistics, Canadians may be excused for thinking that the length of incarceration is often grotesquely out of proportion to the havoc and pain created by the criminal.

GOOD IN EVERYONE

But Allmand sees no reason for fixing mandatory minimum sentences for a crime, no matter how brutal. This is in accord with his emphasis on the prisoner deter-

mining his prison sentence rather than society exercising retribution. Violent criminals should, he thinks, be moved in and out of prison according to their psychological state, with far less emphasis on the crime committed.

"There is some good in everyone," he says and denounces mandatory life imprisonment as an admission that rehabilitation has failed. He concedes that it may be difficult to tell who is rehabilitated and who is not, but will not allow himself to be prejudiced in this judgement by the crimes the prisoner has committed.

Like most advocates of lighter prison sentences and more diversion from the criminal justice system, Allmand talks as though it were a proven fact that leniency aids in rehabilitation and protection of society. If only society could forgo its vengeful instincts and abandon such useless concepts as deterrence, the argument goes, we'd all be better protected.

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In fact, though it must be acknowledged that the evidence is far from extensive, scientific studies either indicate precisely the opposite or are inconclusive. Recent work done in the United States assessed whether the certainty of receiving a prison sentence rather than probation or a fine and the

severity of the sentence would deter crime. All studies indicated that the certainty of going to prison has a significant deterrent effect. Severity seemed to affect only murder rates, though one University of Chicago study went further and concluded that severity also affected general crime rates.

COMMON SENSE

The news of these studies does not seem to have reached Ottawa. But common sense ought to have told us long before the scientists did. Some social scientists would have us believe that criminals are a breed apart, but in fact it's more reasonable to assume that some criminals, like the rest of us, weigh the risks and consequences of their actions and act accordingly.

One of our major problems today is that politicians and people in general divide roughly into two groups: liberals and conservatives. Liberals, as a general rule, want to do a great deal about improving the social environment and see little merit in punishment. Conservatives, as a general rule, see immense merit in punishment and care little about improving the environment. Whichever group happens to be in vogue or in power, it is clear that only half of the problem is being tackled by either.

It is quite evident that enlightened self-interest governs the action of some criminals, and these people could be effectively deterred by raising the penalties involved in crime and the opportunities and rewards offered by a non-criminal existence.

There is another group that commits crime in an impulsive, unpredictable, and "sick" fashion. This is the group most often cited by liberals when they talk about the futility of long prison terms as a deterrent.

MORAL RIGHT

The liberals, of course, are right: psychopaths and sociopaths will not measure their actions against their reasonable consequences. But even such people can be effectively incapacitated and society has every conceivable moral right to demand that they should be. At the same time, of course, insofar as sociopaths may be cured medically or may not even become sociopaths in the first place if they are permitted to grow up in a better environment, we should make every effort to achieve that better world concurrently with their incapacitation.

What society has a right to demand is that its members should not serve as guinea pigs for the sociologists any more than they should be the guinea pigs for the experiments of pharmaceutical companies.

NO SATISFACTION

A society in which crime goes without real punishment and victims receive no satisfaction for their injury is a society that may turn to vigilante justice. Men may be thrown off cliffs for stealing a television set.

The frightful cost of aping our Victorian ancestors and sweeping not sex but retribution under the carpet is beginning to show. Many Canadians are angry, resentful, and as Gallup poll statistics on capital punishment show increasingly bloodthirsty. Cynicism and a callous indifference to good and evil are the products of a society that, like ours, is less concerned with the needs of those who observe its rules than with those who break them.

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Regardless of whether punishment deters or rehabilitates, it is necessary for justice. When Warren Allmand was asked whether vengeance was an element of justice he was shocked: "No, no, of course not," he replied. But of course vengeance is as much a part of justice as mercy. Without either, society would have only passionless sanctions of utility, the most dehumanizing approach of all, the approach of scientists to rats in a Skinner maze.

Ultimately, in such a dispassionate paradise of bureaucrats, there would be neither love nor hate, neither vengeance nor mercy, only preventive regulations. Any society that denies the concept of individual responsibility must either perish in a chaos of criminal and vigilante lawlessness or end up denying all of its citizens any individual freedom.