

punishment has been abolished for the past ten years in Canada. It is now time to examine this question again and ask ourselves, do we need to restore capital punishment for first degree murder?

Capital punishment is no doubt upsetting to many people. But there are many things in life which are necessary and unpleasant. For years, numerous clergymen, lawyers, sociologists and others have agitated for humanization of our penal system. Their efforts have succeeded in making our legal system more humane and more just. But in recent years I believe we have gone too far. Social scientists and criminologists have emphasized that society generally has created an environment which caused the criminal to act in the manner in which he did, and therefore society, not him, is to blame. But a battered society has discovered that these abstract theories linking crime to environmental causes do not translate into concrete programs to protect citizens against violent crime.

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There are two sorts of argument in favour of the retention of capital punishment. First, there is the doctrinal or philosophical point of view which may be summarized as follows: human life is so sacred that every means must be used to protect it; he who takes away life deserves death. There is also the argument of deterrence: if, in taking away a life a man knows he is risking his own, he will not kill. There has been a great deal of debate about whether the death penalty is a deterrent, how much of a deterrent, and whether it is a greater or lesser deterrent than life imprisonment. Statistics support both sides of the argument, depending who quotes them. One argument is that most criminals plan a crime on the basis that they are going to avoid any penalty and that is the basis on which cold-blooded murders are committed.

But if we do not know whether the death penalty will deter others, we are confronted with two uncertainties. If we impose the death penalty and achieve no deterrent effect thereby, the life of a convicted murderer has been expended in vain, from a deterrent viewpoint. There is a net loss. If we impose the death sentence and thereby deter some future murderers, we shall have spared the lives of some future victims. As for prospective murderers, again they, too, are spared punishment because they will have been deterred. In this case the death penalty will have led to a net gain, unless the life of a convicted murderer is valued more highly than that of the unknown victim or victims. Being deterred from murder, the would-be murderer is spared imprisonment.

The calculation can be turned around, of course. The absence of the death penalty may harm no one, and therefore produce a gain, namely, the life of the convicted murderer; or it may kill future victims of murderers who would have been deterred, and thus produce a loss, namely, the loss of victims' lives. To be sure, we must risk something certain, the death, or life, of the convicted man, for something uncertain, the death, or life, of the victims of murderers who may be deterred. This is in the nature of uncertainty. When we invest or gamble, we risk our money for an uncertain gain. Furthermore, there is no shortage of reported instances wherein more than one homicide has been committed by the same culprit either as a result of

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not being apprehended in time, after being erroneously acquitted, or during an escape from prison.

This being so, it cannot be questioned that once a killer has been liquidated, he is for ever incapable of killing again. Considered in this light alone, it would seem that the death penalty in the past has achieved at least one purpose. If, in general, the threat of punishment is conceded to have a deterrent effect, then the severer the punishment, the greater the deterrent effect; and, logically, the death penalty should have the greatest deterrent effect of all. Like natural dangers, punishment deters those who are tempted to break the law. However, the threatened punishment may be so light that the advantage of violating rules tends to exceed the disadvantage of being punished. In this case the feeling of obligation tends to vanish as well.

While considering the question of the deterrence of capital punishment, we must examine the situation and position of crime and murder in present-day society. Statistics have demonstrated a grave increase in the number of violent crimes, namely, murder, attempted murder, manslaughter, assault, rape, and armed robbery. With regard to the murder rate in Canada, a criminologist in a recent study noted that the analysis of murder statistics during the period 1961-70 indicates that there has been an increase in the incidence of murder in Canada over the whole period, but that this increase was slow at first, gaining momentum since 1967.

Serious though this upward trend in the murder rate is, when we speak of a particular sentence or a punishment as a deterrent we ought to refer to the following statistics compiled by Dr. Jayewardene, a professor of criminology. He calculated, from available data, the murder rate and expectancy of punishment for the years 1965 to 1970. In 1965, the murder rate was 1.5 per 100,000 of the population over seven years old. The expectancy of the death penalty for those murderers was 0.2 per cent, the expectancy of life imprisonment 16.8 per cent, the expectancy of other imprisonment 20 per cent, the expectancy of probation or suspended sentence 1 per cent, and the expectancy of no punishment 61.9 per cent.

In 1970, the murder rate was 2.3 per 100,000 of the population over seven years old. Expectancy of the death penalty was zero per cent, of life imprisonment 13.5 per cent, of other imprisonment 24.6 per cent, of probation or a suspended sentence 0.6 per cent, and of no punishment 61.3 per cent. These statistics show that a good many murderers are not apprehended, are not sent to trial, are not convicted of a lesser offence or are not convicted at all. This demonstrates the need not only for stiffer penalties for murder but for better law enforcement in the apprehension and conviction of criminals.

Where murder is premeditated, it is only common sense to assume that not only the consequences in the event of detection, but also the chances of detection are ordinarily taken into consideration. Anyone who thinks criminals do not weigh the possibilities of getting caught and do not understand they could be executed is living in a dream world.

Three conditions are essential to the sound administration of justice: swiftness, certainty of arrest, and severity of punishment. We must make sure these conditions are restored in the administration of our criminal justice