

Capital Punishment

This embraces a respect for mankind, a respect for the individual's rights, a respect for an individual's freedom and respect for his property. Indeed, if we have any respect at all for man we must have a basic respect for life itself, not only my life or your life but all life, including that of the criminal. We must respect life, in so far as it is humanly possible without destroying the basic principle of protecting society itself.

Bill C-2 deals specifically with murder, culpable homicide, and not murders by reason of passion or manslaughter. So, arguments in respect of crimes of passion and a person in that particularly agitated state being deterred from committing a crime because of the existence of capital punishment are not relevant to the bill in front of us. I think it is clear, however, that persons committing crimes of passion are not affected by any penalty that might be imposed because such persons are to some degree insane, are not in control of themselves and certainly not thinking rationally of all the consequences which may befall them if caught. In any event, we are talking about culpable homicide, murder, within very strict terms.

Basically, I am opposed to capital punishment unless there is no other way to protect society. Man clearly has the right to protect himself by using any means that is essential to do so. It is quite obvious that one could easily think of a case where an individual, in order to protect his wife and family, would have the right, if it were absolutely essential, to commit an act of murder. If this is true in respect of an individual, I would think that, at least in theory, it would also be true of the state. I do not really subscribe to the argument that the state does not have the right to impose capital punishment. I believe it has that right if that is the only course available to it. I would argue, however, that it is not the only course it could follow in order to achieve its essential objective of protecting society.

Clearly, the policeman or the prison guard is an instrument of the state. In cases of robbery or attempted murder, surely a policeman has the right to protect society by shooting the criminal if that should be the only way to prevent him pursuing his illegal end. That point alone surely is sufficient proof that the state, under certain circumstances, not only has the right but possibly the obligation to exercise that right. However, we are not talking about that temporary resort to violence in order to protect society. We are speaking here of a person who has been convicted of a crime. At that point, hopefully, he is safely in jail and has been taken out of society. We must judge whether we have the right to impose capital punishment on him. Admittedly, in such circumstances the man has already been taken away from society, and society for at least that moment is adequately protected.

Unfortunately, the question of capital punishment is being discussed today against the vivid background of what I would call the permissive society. Many people are moving toward the re-instatement of capital punishment because they are really fed up with the permissive society. Many people feel that capital punishment is advisable because they suspect it is the only way to protect themselves. They feel that a person who is found guilty of culpable murder, is sentenced to life imprisonment but in fact, in a few years he is back in society, able to impose his

particular views on society and possibly to murder again. It is against that background that we must look at the question. I think it is in that area we must take some kind of corrective action. There is a feeling that we are far too lenient in rehabilitating the criminal, and that too little cognizance is being given by the Parole Board and by others to the real principle of protecting society. There is a lack of trust in those particular institutions. In my view the question of capital punishment can be properly considered only as a part of the over-all question of the law and penal reform. I hope that the committee which reviews this question will bear in mind this important point.

Earlier I referred to the Laporte case and I should like to talk about it in some detail. I mention that case because it has caused me great concern. In looking at the Criminal Code, we find that the maximum penalty for kidnapping is life imprisonment. The court does not have to impose life imprisonment, but that is the maximum penalty. In respect of murder, the maximum penalty and the minimum penalty are the same, life imprisonment. Let us look at these two things in the concept of someone who would kidnap a person, as happened in the case of Laporte. The penalty would be different if the men kidnapped him or kidnapped him and murdered him. The fact is that in murdering him they did not expose themselves to any further penalty. Given that example, I think we must take some kind of reasonable action. We must look at the maximum penalties and see them in relation to parole.

Under the present law relating to kidnapping, if one is sentenced to life imprisonment one is eligible for parole in a period of seven years. In the case of non-capital murder, which means the murder of anyone other than a policeman or prison guard, one is eligible for parole in a ten-year period. This means that in terms of eligibility for parole, there is only a three year difference between the time when a person sentenced for murder is eligible for parole and the time when the person sentenced for kidnapping is eligible for parole. I think that situation has to be corrected somehow or other. If the person guilty of kidnapping were given less than life imprisonment, then that person would be eligible for parole after the expiration of one third of his sentence or four years, whichever comes earlier, with a minimum amount to be served of nine months. Therefore, a person who is found guilty of kidnapping and is given, say, six years, would be eligible for parole after two.

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Another distinction which I have to point out here is that anyone who is given a life sentence is never really free. He may be out of jail on parole, but the fact of the matter is that he is on parole for the rest of his life. This means that any violation of that parole will put him back in jail, which is a very important point to recognize.

Let us have a look at some of the offences for which imprisonment for life becomes the maximum penalty. They are: hijacking according to section 76(1) of the Criminal Code, endangering the safety of aircraft in flight, causing injury with intent, rape, causing death by criminal negligence, capital murder, non-capital murder, manslaughter, attempting to commit murder, kidnapping, abortion, robbery, breaking and entering with intent of committing offences in the dwelling. All of these, and