

CAPITAL PUNISHMENT IN CANADA

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ISSUE DEFINITION

Capital punishment has been debated in Canada with varying degrees of vigour for some 70 years. The issue contains religious, moral, legal, philosophical, economic and scientific aspects. The death penalty was abolished in Canada in 1976 by a narrow vote in Parliament. Recently there has been a renewed effort made toward its reinstatement. The preponderance of public opinion as represented by recent Gallup polls has supported this movement. The main thrust of arguments to justify the use of this extreme penalty is the view that it acts as a deterrent to murder. Whether this is true or not is debatable. The reintroduction of capital punishment would change the main goal of sentencing of violent criminals in Canada from reform and rehabilitation to deterrence. Would it result in less crime? Would it be justifiable morally or otherwise? This review considers the arguments for and against capital punishment and briefly outlines its history in Canada.

BACKGROUND AND ANALYSIS

Although it was not used in some ancient societies, capital punishment came to be generally accepted for many centuries mainly because of the desire for vengeance and the recognition of the sovereign right to inflict death in the name of society. In the last century many crimes were punishable by death. Gradually a tendency developed towards abolition of capital punishment. This was given greater impetus following World War II when nations such as Italy, Western Germany and Austria rejected this penalty and the Universal Declaration of Human Rights of 1948 recognized the rights and dignity of man. Great Britain established a Royal Commission on Capital Punishment which reported in 1953. The death penalty was removed in that nation in 1965 for a trial period and in 1969 permanently. It has since been abolished in

several other countries, including France, Spain, Australia, the Netherlands and Norway. On the other hand, most jurisdictions in the United States (38) have capital punishment and 70 prisoners have been executed in that nation since 1976. In March 1987, about 1,874 were on death rows. In the early 1980s, of member states of the United Nations, 35 had abolished the death penalty and 115 were retentionist.

In Canada capital punishment was at first an accepted part of the country's heritage. The concept of crime as sin, deserving of punishment, was strengthened by the idea of deterrence – that if punishment were sufficiently severe it would deter others from such crime. As the idea of diminished responsibility became popular, recognizing that some people are more responsible than others, imprisonment rather than execution came to be used as a deterrent punishment in more cases. Also, over the years public revulsion at the frequency and cruelty of public hangings grew. Increasingly commutations of death sentences were granted. Between 1867 and 1962 there were 710 executions, the last in 1962. Finally, in 1976 the ultimate penalty was removed.

Canadian public opinion, according to the polls, changed over the years from a clear majority support for the death penalty in 1943 and in 1953 to a bare majority of 51% in favour in 1960. By 1975 about seven out of every ten Canadians favoured the death penalty. Gallup polls showed, in 1984, 71% in favour of reinstating capital punishment for murder, 21% against it and 8% undecided, and on 30 October 1986, 68% in favour and 20% opposed.

Poll results vary with the wording of questions. In a Gallup poll taken in May 1986, respondents were asked what the penalty for murder should be – death or life in prison with no parole. Only 56% supported the death penalty while 33% favoured life in prison with no possibility of parole.

An Angus Reid survey in March 1987 indicated 73% of respondents in favour of capital punishment but a Gallup poll conducted in April showed that only 61% would vote for its reinstatement. A Decima poll taken in June 1987 showed 74% of its respondents favoured a national referendum on capital punishment and, if it were to be restored, most (78%) would have it apply to murderers of children and fewer (72% and 70% respectively) to terrorist murderers and killers of police or prison guards.

There are many possible reasons for a decision for or against capital punishment.

A. Arguments in Favour of Capital Punishment

The purposes of punishment generally may be categorized as deterrence, retribution and rehabilitation. In the case of capital punishment, the latter purpose is of course abandoned completely, but it is argued that the remaining two are fulfilled. The death penalty is said to be a deterrent to crime, just retribution for murder and necessary to protect society and the social order. In this view, capital punishment should be available at least as an option in sentencing.

1. The Deterrence Hypothesis

The most important reason for the use of the death penalty is the probability of its deterrent effect which, based on common sense, must be greater than that of any other punishment. If it is accepted that punishment does deter crime, then to be logical, the ultimate punishment of the death penalty must have the greatest deterrent value.

The fact that the threat of capital punishment has not prevented some murders does not mean that it has not stopped others from happening. At the very least, the death penalty prevents the offender so punished from ever doing violence again. Its specific deterrence is absolute. To that extent it definitely protects society. Its use has been urged in relation to particularly heinous cases where guilt is admitted.

In the case of premeditated murder it can be assumed that the possible consequences of the act are considered. The Royal Commission on Capital Punishment in Great Britain heard evidence concerning such criminal cases in four countries which indicated that in some instances the threat of the death penalty had acted as a deterrent to murder. The Supreme Court of the United States in 1976 considered capital punishment a significant deterrent in many cases.

In the case of some professional criminals, it is the only sentence which might be expected to have a serious deterrent effect. They are accustomed to imprisonment and regard it only as an occupational hazard. The known existence of the death penalty may discourage some professional criminals from entering the country. It may deter those already present from carrying weapons and from committing crimes of violence.

Law enforcement authorities have contended that abolition of the death penalty increases the risk for police and prison staff. **(Since the last execution in 1962, some 16 prison guards and 95 policemen have been murdered in Canada.)** It seems reasonable to assume that in seeking to avoid arrest, a criminal would be less likely to shoot a police officer if there were a death penalty and that this penalty would deter an inmate from murdering in prison or while attempting to escape. If he were already serving a sentence of life imprisonment, no other sentence except the death penalty would be likely to have a deterrent effect on his behaviour.

Growing numbers of inmates serving life sentences may increase prison violence and murder. The homicide rate in Canadian penitentiaries is much greater than in the general population. Murder rates within the penitentiary population almost doubled between 1976 and 1981, with most occurrences taking place in maximum security institutions. In 1983 participation in major security incidents was higher among first degree murderers than among the rest of the penitentiary population.

It may be argued that even if a potential murderer does not stop to consider the possible consequences of a violent crime, he has been previously conditioned mentally by the existence of the most extreme form of punishment to be aware of the very serious consequences and therefore to avoid the criminal act. Furthermore, by reserving this drastic punishment for the most serious crime, the law would foster a special abhorrence of murder in the mind of the public and this in itself could be expected to have some deterrent effect.

The existence of the death penalty would also tend to deter an outraged community in some circumstances from violence such as lynching.

The results of studies on the effectiveness of capital punishment have been inconclusive. It has not been proven that the death penalty does not deter crime, particularly crimes of violence for gain and premeditated murder. In the absence of such proof, common sense indicates that it must have some deterrent effect. Some research in the United States and in Britain, based on an economic approach, has suggested that executions have resulted in the reduction of murder. However, the methods used in these studies have been criticized. Research in the United States reported in 1986 indicated that the murder rate there decreased by about 10% following widely publicized executions.

2. Retribution

The second main reason for punishment is retribution. Philosophers such as Kant and Hegel recognized it as the only proper reason for punishment, the service of strict justice. In this view, the death penalty is the only just punishment capable of providing retribution for the unpardonable crime of murder, the only punishment proportionate to the crime. It is appropriate not as a means of vengeance but rather of justice and as a sign of society's abhorrence of the crime. Punishment should adequately reflect public revulsion towards a very grave crime. Some murders particularly demand the most emphatic denunciation society can give. In addition, it may be considered a healthy function of society to be able to react officially in the strongest way possible to the most heinous of crimes.

3. Other Points in Favour of Capital Punishment

In addition to the main arguments the following points have been made in favour of capital punishment:

- (a) Public opinion appears to be in favour of the death penalty. In a democracy the will of the majority should be respected.
- (b) The alternatives of life imprisonment or 25 years of mandatory imprisonment may be harsher and more cruel punishment than death. Some "life" prisoners have voiced this opinion. In 1982 it was reported that about one-third of 300 convicted Canadian murderers questioned indicated a preference for the death penalty over life imprisonment. In 1983 a convicted murderer in Saskatchewan formally requested the death penalty by lethal injection on the basis that his life sentence was "cruel and unusual punishment." The Court denied his request.
- (c) Long prison terms may have the effect of increasing the dangerousness of some criminals. Under the present system, even mass murderers such as Clifford Olson will eventually be released into society.
- (d) The death penalty is said to be more economical than imprisonment.
- (e) The rate in Canada of capital or first degree murder increased from .06 per 100,000 in 1962 and from .19 in 1976 to 1.33 in 1985. In view of this, the focus should be on the maximum possible protection of society rather than on treatment of the criminal.
- (f) Both the British Royal Commission and the Canadian Joint Committee after serious study recommended retention of the death penalty.

B. Arguments Against Capital Punishment

1. Immorality

The taking of human life is morally wrong for the state as well as wrong for the individual. The state should set an example by recognizing the sanctity of human life in all cases. This is the view of the Canadian Coalition Against the Return of the Death Penalty, which includes representatives of Christian churches and several organizations defending civil liberties.

An international conference held in 1977 on the abolition of the death penalty concluded with the Declaration of Stockholm which affirmed that it is the duty of the state to protect the life of all persons within its jurisdiction. It called upon all nations to abolish capital punishment.

The death penalty is fundamentally dehumanizing, proclaiming the worthlessness of the offender's life. It eliminates one of the three main purposes of punishment, rehabilitation. Those who choose alternatives to capital punishment support respect for all human life and make possible efforts by society to reform and rehabilitate the offender. Philosophers such as Plato, Hobbes and Rousseau have supported the view that virtue can be taught and punishment should be directed towards the correction of the offender. The aim should be to reform and deter criminals and to maintain public peace.

In many cases those who resort to violent behaviour have been disadvantaged from childhood and have lacked the chance to develop a sense of social responsibility. Punishment with the purpose of reformation and rehabilitation in such cases is the duty of a civilized society.

2. Refuting Deterrence

If all punishment has a deterrent effect, then the value of capital punishment must lie only in its marginal deterrence. The question becomes to what extent does it deter more than a prison sentence would do. Deterrence is a concept based on the assumption that crime follows the calculation of an individual's advantage. Legislators, relying on deterrence as a strategy to control crime, may increase the severity of penalties because they believe this will increase the individual's fear of punishment and decrease the incidence of crime. The question is whether sufficient knowledge is available to justify such an approach. The validity of literature supporting the deterrent effect of punishment has been questioned on the basis that deterrence

has been used in too broad a sense to be very meaningful. If a scientific evaluation of deterrence is to be made, new interpretations will be required of information now known and different premises developed for future research. Faith in deterrence should not be based on untested and unproven assumptions. This is the main criticism of the research based on economic models which appears to support the deterrence theory.

It should also be recognized that man is not always rational and therefore all actions are not deterrable. There are those who cannot be deterred by punishment. These include fanatics who do not count the cost, compulsives who cannot help offending and those committing "crimes of passion." In 1978 more than a third of homicide incidents in Canada involved domestic relationships.

Studies to date lead to the conclusion that the death penalty does not have any demonstrable deterrent effect greater than that of life imprisonment. The removal of offences from the list of those punishable by death has not resulted in any notable increase in the incidence of those offences. Some crimes even decreased in number after the death penalty for them was abolished. United Nations data confirm the view that abolition of the death penalty does not appreciably increase the incidence of crime. In Canada the overall murder rate decreased between 1976 and 1985. The number of homicides (murder, manslaughter and infanticide) decreased by about 20% from 1985 to 1986, in which year the homicide rate was the lowest since 1971, according to preliminary data.

3. Risk to the Innocent

Perhaps the most forceful argument against capital punishment is the danger that an innocent person may be put to death. There is no system that can ensure infallibility of judgment. In the past there have been cases of mistaken execution and even with all the safeguards in the modern context the risk still exists. In 1982 Donald Marshall, wrongly convicted of murder, was released from penitentiary in New Brunswick after serving 11 years. Aside from the possibility of false evidence in a murder trial, the crime by its very nature, arouses emotions with the risk of incurring failures of perception in those making the decisions. It has been reported that 343 persons were wrongly convicted of murder in the past 200 years in the United States.

4. Inequality of Justice

The death penalty in practice is not administered with equality. Those who are executed are mostly from among the disadvantaged, the uneducated or minority groups. In the United States it has been found that the poor, the male, the black and the ignorant are most likely to be executed. Those with money or influence usually avoid the death penalty.

The existence of the death penalty also encourages inequality in the application of justice in a political context. There is a danger of its use under the guise of treason in the event of a dictatorship ever coming to power.

5. Uncertainty of Justice

The existence of the death penalty, with the likelihood of its commutation, renders justice uncertain. The effect of the frequent setting aside of solemn court decisions tends to degrade the system of justice in the view of the public. Furthermore, awareness of the existence of the death penalty may influence jurors. A guilty person may go free because the jury fears or feels revulsion toward the death penalty. In Canada the conviction rate for capital murder was less than 10% between 1960 and 1974. From 1976 to 1982 the conviction rate for first degree murder was about 20%.

6. Other Arguments

- (a) It is wrong to consider economic reasons when deciding on the relative values of the death penalty or imprisonment. The value of human life cannot be measured in monetary terms.
- (b) Reinstatement might strain the justice system further, with the appeal of all death sentences to the Supreme Court of Canada, and failing there, to the Cabinet.
- (c) The death penalty is cruel and inhumane. It is a relic of barbarism and unworthy of a civilized nation. Death by hanging is not always painless nor instantaneous. **Waiting for execution is a form of mental torture.**
- (d) Executions draw the attention of the morbid and may have criminogenic effects upon unbalanced individuals. In this way the death penalty may actually be a cause of violent crime. Some people may be inspired to be violent and some may actually desire the punishment of death.
- (e) The death penalty has a brutalizing effect on society, as shown by some shocking scenes at past executions. Research in New York revealed increases in the murder rate there following executions between 1907 and 1963.
- (f) The death penalty creates a dangerous illusion of safety when in fact dangerous criminals may more likely be returned to society under such a system.

More useful policies to reduce the murder rate might be developed in the legal, medical, social and educational fields. **Greater attention to the control of guns and alcohol, to speeding the administration of justice, to mental health care and to support systems for high-risk families might be more effective in preventing crime than the death penalty.**

PARLIAMENTARY ACTION

A. Early Activities

At the time of Confederation the death penalty was imposed in cases of murder, treason and rape. Early attempts at reform of the criminal law were led by Robert Bickerdike, who introduced legislation in 1914, 1915, 1916 and 1917 to abolish capital punishment. These efforts were unsuccessful as was a similar bill in 1924. In 1950 a Private Member's bill for abolition was introduced and subsequently withdrawn.

B. Joint Committee, 1953

In 1953, following the introduction and withdrawal of a similar bill for abolition, a Joint Committee of the Senate and the House was established to study capital punishment, corporal punishment and lotteries. It considered the feasibility of abolishing capital punishment. Its final Report in 1956 recommended retention of the death penalty for murder except in the case of children under eighteen. It recommended further that capital punishment be reviewed periodically by Parliament and that the method of execution be changed.

The issue was kept before the House by the introduction each year until 1960 of Private Members' bills for restriction of capital punishment.

C. Redefinition of Murder and its Aftermath

In 1960 the Government introduced Bill C-92 which divided murder into capital and non-capital categories, capital murder to be mandatorily punished by death and non-capital by life imprisonment.

Capital murder included planned and premeditated murder, or murder of a police or custodial official on duty and murder committed in the course of certain other criminal acts. Bill C-92 became law on 13 July 1961.

The new law did not end the discussion of the death penalty in Parliament. In 1962 and 1963 Private Members' bills for abolition were unsuccessfully introduced. A similar bill was debated in 1964 without coming to a vote.

D. Major Debates of 1966 and 1967

In 1966 four bills to abolish capital punishment were rejected. The debate in 1966 and again the following year centred on the issues of deterrence and retribution.

E. Partial Abolition

After lengthy debate, the Government-sponsored Bill C-168 providing for limited abolition for a trial period of five years and retaining the death penalty for capital murder, was passed on a free vote. It became law on 21 December 1967. This legislation restricted capital murder mainly to cases involving the death of police or custodial officers on duty, retaining the punishment for treason and piracy.

In 1973 these provisions were extended by Bill C-2 for a period up to the end of 1977.

F. Abolition

In July 1976, after lengthy debate, Bill C-84 was passed by a free vote in Parliament. It abolished capital punishment from the Criminal Code and replaced it with a mandatory life sentence with no parole for 25 years in cases of capital murder. Royal Assent was given on 26 July 1976.

G. After Abolition

Abolition did not end discussion of capital punishment in Parliament. Many Private Members' motions and bills in favour of its reinstatement or a national referendum on the subject have since been introduced without success in the Commons.

In the Commons Justice Committee on 1 November 1979 questions were asked relating to the behaviour of those incarcerated for 25 years – a major concern of retentionists. The Solicitor General replied that they were no more violent than other maximum security prisoners.

In 1979 and 1980, 29 Private Members' bills for the reinstatement of capital punishment and three proposing a public referendum on the subject were introduced in the Commons.

A number of petitions in support of capital punishment were presented in the House in 1981 and 1982 and Private Members' motions were made unsuccessfully to reinstate capital punishment, to refer the issue to the Justice Committee and to allow a free vote.

On 20 January 1983 a Private Member's bill (C-671) was introduced to provide for the execution of Clifford Robert Olson. Bill C-584, introduced in 1980 to reinstate capital punishment, was presented for second reading on 8 June 1983 but was talked out.

Several Private Members' bills for capital punishment were introduced in 1984. One came up for second reading but was talked out.

In the new Session, four capital punishment bills received first reading in November 1984. Petitions presented to the House, one with 2,297 signatures, called for the issue to be addressed and for a return to capital punishment. In December Bill C-209, for the execution of mass murderers, was presented for second reading, debated and talked out.

On 22 January 1985, a petition with 14,277 signatures was presented in the House, calling for a free vote in Parliament or a national referendum on capital punishment. On 24 January another, signed by 25,480, called for reinstatement of the death penalty for murder.

On 13 February another capital punishment bill (Bill C-223) received first reading in the House. On 27 March, five petitions with a total of 128,973 signatures were presented, requesting a free vote.

Bill C-240, introduced in the House on 22 May 1985, proposed the death penalty for first degree murder, substituting a more humane mode of execution (intravenous injection) for hanging.

In 1986 two new capital punishment bills were introduced, Bill C-272 on 5 March 1986 and Bill C-281 on 11 March 1986. Bill C-272 was among those selected in a draw by a special Commons committee. However, the Committee decided not to refer the bill for debate, but instead to call for a free vote on capital punishment before the next election.

On 26 June 1986 a Private Member's bill (C-292) was introduced in the Commons to make the penalty for first degree murder a life sentence without parole with an option for the convicted person to end life voluntarily by a self-administered lethal substance.

Early in the new Session, four Private Members' bills on capital punishment were introduced in the Commons. In November, a motion to refer the subject for study to the Justice Committee came to the attention of the special Commons selection committee but was not chosen for debate.

In December, a motion introduced in the Justice Committee for it to study capital punishment was debated but the issue did not come to a vote.

The Deputy Prime Minister introduced a government motion on 13 February 1987 to support reinstatement of capital punishment in principle and to establish a special committee of 15 Members to hold hearings and report within three months. It was to make recommendations on which offence(s) should be capital crimes and on the means of execution. The stated intention was to permit a full parliamentary debate and a free vote on capital punishment.

On 23 March 1987, a Private Member's Bill (C-252) was introduced in the House to remove from the *National Defence Act* provisions for the death penalty for spying, leading a mutiny or taking part in a violent mutiny.

Debate on the government motion began in the House in April and continued intermittently. On 8 June 1987 an amendment to modify the motion by deleting mention of support for capital punishment was defeated by 110 to 52. An amendment to prolong debate was presented on 18 June 1987. On 22 June 1987 the Prime Minister spoke strongly in the House against the death penalty. The government moved on 29 June 1987 to end debate and late that night a vote on the issue was taken. The motion supporting the principle of capital punishment was defeated by 148 to 127.

CHRONOLOGY

- 1867 - At the time of Confederation the death penalty applied to cases of murder, treason and rape.
- 1914 - The first of many Canadian abolition bills was introduced in the House by Robert Bickerdike.

- 1950 - An abolitionist bill was introduced in the House and defeated.
- 1953 - The Joint Committee of the Senate and the House was established partly to consider capital punishment.
- 1954 - Death penalty ceased to apply for rape.
- 1956 - The Joint Committee recommended retention of capital punishment but its abolition for children under 18.
- 1961 - Parliament passed legislation to reclassify murder into capital offences, punishable by death, and non-capital offences.
- 1962 - A bill to abolish capital punishment except for treason was introduced and defeated.
- 1962 - The last executions in Canada were held.
- 1966 - A major debate in the House followed the introduction of a multi-party Private Members' bill for abolition which was finally defeated.
- 1967 - Parliament passed a Government bill to abolish capital punishment except in cases of murder of police and prison guards, for a five-year trial period.
- 1973 - The 1967 legislation was renewed for five years by a free vote in Parliament.
- 1976 - The Supreme Court of Canada decided that the death sentence for murder of a police officer was not a "cruel and unusual punishment" under the Canadian Bill of Rights.
- 1976 - By a free vote in Parliament capital punishment was abolished.
- 1977-1978 - Five Private Members' bills and several motions for capital punishment and a bill and two motions for a national referendum on the issue were introduced in the House of Commons.
- 4 June 1979 - Manitoba passed a resolution to recommend to Canada the reinstatement of the death penalty for first degree murder.
- 24 October 1979 –
2 May 1980 - Twenty-nine Private Members' bills for reinstatement and three for a referendum were introduced in the House.

- 1984 - The Canadian Association of Chiefs of Police passed a resolution for reinstatement and a police-sponsored march supporting a referendum took place on Parliament Hill.
- November 1984 - Petitions and four Private Members' bills to reinstate the death penalty were introduced in the House and representatives of five provinces and the Yukon were reported to have advocated a free vote in Parliament on the issue.
- 1985 - The Canadian Council of Catholic Bishops and the Protestant Canadian Council of Churches formed the Coalition Against the Return of the Death Penalty.
- 27 March 1985 - Petitions with a total of 128,973 signatures were presented in the House, calling for a free vote in Parliament on capital punishment.
- 5 June 1985 - Delegates to a conference of the Federation of Canadian Municipalities voted for such a free vote.
- 26 June 1986 - A Gallup poll revealed 89% of respondents favoured as a penalty for murder either capital punishment or life imprisonment with no possibility of parole.
- 3 October 1986 - New Private Members' bills on capital punishment (C-201, C-202 and C-203) were introduced in the House.
- 6 October 1986 - Bill C-206, to re-introduce capital punishment, received first reading.
- 2 February 1987 - A Private Member's Motion calling for a standing committee review of capital punishment was talked out.
- 13 February 1987 - A government motion was introduced to support capital punishment in principle and to establish a committee to hold hearings and report on which offence(s) should carry the death penalty and the method(s) of execution.
- 3 April 1987 - Statistics Canada released preliminary data showing a decrease in homicide from 1985 to 1986.
- 7 May 1987 - A Gallup poll was released showing support for the death penalty had declined to 61%.
- 29 June 1987 - The House of Commons voted against reinstatement of capital punishment, defeating the motion by 148 to 127 votes.

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