

Looking out for the state of the public's satisfaction in the scheme of capital sentencing does not constitute serving justice. Today's system of capital punishment is fraught with inequalities and injustices. The commonly offered arguments for the death penalty are filled with holes. "It was a deterrent. It removed killers. It was the ultimate punishment. It is biblical. It satisfied the public's need for retribution. It relieved the anguish of the victim's family."(Grisham 120) Realistically, imposing the death penalty is expensive and time consuming. Retroactively, it has yet to be proven as a deterrent. Morally, it is a continuation of the cycle of violence and "...degrades all who are involved in its enforcement, as well as its victim."(Stewart 1) Capital Punishment has been part of the criminal justice system since the earliest of times. The Babylonian Hammurabi Code(ca. 1700 B.C.) decreed death for crimes as minor as the fraudulent sale of beer(Flanders 3). Egyptians could be put to death for disclosing the location of sacred burial sites(Flanders 3). However, in recent times opponents have shown the death penalty to be racist, barbaric, and in violation with the United States Constitution as "...cruel and unusual punishment." In this country, although laws governing the application of the death penalty have undergone many changes since biblical times, the punishment endures, and controversy has never been greater.

Perhaps the most frequent argument for capital punishment is that of deterrence. The prevailing thought is that imposition of the death penalty will act to dissuade other criminals from committing violent acts. Numerous studies have been created attempting to prove this belief; however, "All the evidence taken together makes it hard to be confident that capital punishment deters more than long prison terms do."(Cavanagh 4) Going ever farther, Bryan Stevenson, the executive director of the Montgomery based Equal Justice Initiative, has stated that "people are increasingly realizing that the more we resort to killing as a legitimate response to our frustration and anger with violence, the more violent our society becomes.

"Revenge is an unworthy motive for our society to pursue."(Whittier 1) In our society, there is a great expectation placed on the family of a victim to pursue vengeance to the highest degree -- perhaps 1 the death penalty. Pat Bane, executive director of the Murder Victims Families for Reconciliation (MVFR), stated, "One parent told me that people made her feel like she was betraying her son because she did not want to kill the person who murdered him."(Frame 50) This creates a dilemma of morality.

If anything, by forcing families to seek the death penalty, their own consciences will be burdened by the death of the killer. Furthermore, "Killing him will not bring back your son[s]."(Grisham 402). At some point, man must stop the violence. Seeking temporary gratification is not a logical basis for whether the death penalty should be imposed. Granted, revenge is easily confused with retribution, and most would agree that the punishment should fit the crime, but can society really justify murdering someone else simply on the basis that they deserved it? Government has the right and duty to protect the greater good against people who jeopardize the welfare of society, but a killer can be sentenced to life without chance of parole, and society will be just as safe as if he had been executed.

The key part of the death penalty is that it involves death -- something which is rather permanent for humans, due to the concept of mortality. This creates a major problem when "there continue to be many instances of innocent people being sentenced to death."(Tabak 38) In the United States legal system, there exist numerous ways in which justice might be poorly served for a recipient of the death sentence. Foremost is in the handling of his own defense counsel. In the event that a defendant is without counsel, a lawyer will be provided. "Attorney's appointed to represent indigent capital defendants frequently lack the qualities necessary to provide a competent defense and sometimes have exhibited such poor character that they have subsequently been disbarred."(Tabak 37). With payment caps or court determined sums of, for example, \$5 an hour, there is not

much incentive for a lawyer to spend a great deal of time representing a capital defendant. When you compare this to the prosecution, "aided by the police, other law enforcement agencies, crime labs, state mental hospitals, various other scientific resources, prosecutors experienced in successfully handling capital cases, compulsory process, and grand juries"(Tabak 37), the defense that the court appointed counsel can offer is puny. If, in fact, a defendant has a valid case to offer, what chance has he to offer it and have it properly recognized. Furthermore, why should he be punished for a injustice that was created by the court itself when it appointed the incapable lawyer.

Even if a defendant has proper legal counsel, there is still the matter of impartiality of judges. "The U.S. Supreme Court has steadily reduced the availability of habeas corpus review of capital convictions, placing its confidence in the notion that state judges, who take the same oath of office as federal judges to uphold the Constitution, can be trusted to enforce it."(Bright 768) This makes for the biased trying of a defendant's appeals, "given the overwhelming pressure on elected state judges to heed, and perhaps even lead to, the popular cries for the death of criminal defendants."(Bright 769) Thirty two of the states that impose the death penalty also employ the popular election of judges, and several of these even have judges run with party affiliations. This creates a deeply political justice system -- the words alone are a paradox. Can society simply brush off mistaken execution as an incidental cost in the greater scheme of putting a criminal to death?

In Canada, there were private member's bills introduced to end capital punishment as early as 1914, and again in 1915, 1916, 1917, 1924, and 1950. All were defeated. In 1954, the government established a joint committee of the House of Commons and the Senate, dealing with capital punishment and other items. The committee recommended abolition of the death penalty for offenders under the age of 18, and the substitution of the gas chamber for the gallows. Neither recommendation was followed.

Between 1957-1963, the Conservative government under John Diefenbaker commuted 52 of the 66 death sentences. In 1961, MP Davie Fulton (Minister of Justice) piloted a bill through the House which distinguished between capital and non-capital murder. In 1962, there were three cases of capital murder in which the juries recommended mercy. The government commuted all three of these deaths. In two other cases in 1962, the jury did not recommend mercy. Ronald Turpin, convicted of the shooting death of a policeman, and Arthur Lucas, convicted of stabbing a man to death, were hanged on December 19, 1962 in Don Jail, Toronto. The attending physician, William Hills, waited on a Stepladder, listening for their heartbeats with his stethoscope, and only after sixteen minutes could he declare their deaths.

There have been no executions in Canada since 1962. Between 1963-1967, the Liberal government under Lester Pearson commuted all death sentences.

In 1967, MP Larry Pennell (Solicitor General) Introduced a government bill providing mandatory life sentences for capital murder convictions, except for the murder of police officers and prison guards. It became law on December 29, 1967.

The three sentences of death given during the next five years were all commuted by the Liberal government, who suspended the use of the death penalty for civilian offenses for a trial period of five years (1967-1972). On January 1, 1974, Canada temporarily abolished the death penalty for the period up to December 1977. This temporary abolition was made permanent in 1976.

The issue of abolishing capital punishment in law was argued in the House of Commons under the Liberal government of Pierre Trudeau in 1976. After an impassioned debate lasting 98 hours, the abolitionists won the vote by 130 to 124 (Bill C-84). At the time, there were 11 men on death row across Canada. If the bill to abolish capital punishment had been defeated, some of these men who had killed policemen and guards would have been subject to hanging.

In the 1984-1988 Conservative government of Brian Mulroney, the debate was once again introduced. The public at first appeared to be overwhelmingly in favour

of a return to capital punishment. In Ontario and Quebec, five policemen were murdered over a short period of time. There was also a great deal of public outrage following the serial murders by Clifford Olson. From these events, which received wide media coverage, many Canadians perceived an alarming increase in crime.

However, as people were presented with more and more factual information, the numbers who favoured capital punishment decreased. In June 1987, following a free vote, capital punishment as a response to the crime of murder was again rejected in the House of Commons. The vote was 148-127 against the return of capital punishment.

Innocent people can-and have been- executed. With the death penalty errors are irreversible. According to a United States 1987 study, 23 people who were innocent of the crimes for which they were convicted were executed between 1900 and 1985(Long 79). Until human judgement becomes infallible, this problem alone is reason enough to abolish the death penalty at the hands of the state more dedicated to vengeance than to truth and justice.

A vast misconception concerning the death penalty is that it saves society the costs of keeping inmates imprisoned for long periods. In the act of preserving due process of justice, the court appeals involved with the death penalty becomes a long, drawn-out and very expensive process.

In the United States, "The average time between sentencing and execution for the 31 prisoners put on death row in 1992 was 114 months, or nine and a half years."(Stewart 50) "Criminal justice process expenses, trial court costs, appellate and post-conviction costs, and prison costs perhaps including years served on death row awaiting execution... all told, the extra costs per death penalty imposed in over a quarter million dollars, and per execution exceeds \$2 million." (Cavanagh 4) When you compare this to the average costs for a twenty year prison term for first degree murder (roughly \$330 thousand), the cost of putting someone away for life is a deal. Is it really worth the hassle and money to kill a criminal, when we can put them away for life for less money with a great deal more ease?

In earlier times--where capital punishment was common, the value of life was less, and societies were more barbaric--capital punishment was probably quite acceptable. However, in today's society, which is becoming ever more increasingly humanitarian, and individual rights and due process of justice are held in high accord, the death penalty is becoming an unrealistic form of punishment. Also, with the ever present possibility of mistaken execution, there will remain the question of innocence of those put to death. Finally, man is not a divine being. He does not have the right to inflict mortal punishment in the name of society's welfare, when there are suitable substitutes that require fewer resources. I ask society, "...why don't we stop the killing?"(Grisham 404)

Bibliography

- 1) Bright, Steven B., and Patrick J. Keenan. Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases. Boston University Law Review 75 (1995): 768-69.
- 2) Cavanagh, Suzanne, and David Teasley. Capital Punishment: A Brief Overview. CRS Report For Congress 95-505GOV (1995): 4.
- 3) Flanders, Stephen A. Capital Punishment. New York, NY: Facts on File, 1991.
- 4) Frame, Randy. A Matter Of Life and Death. Christianity Today 14 Aug. 1995: 50
- 5) Grisham, John. The Chamber. New York: Island Books, 1994.

- 6) Long, Robert Emmet. Criminal Sentencing. New York, NY: H.W. Company, 1995.
- 7) Stewart, David O. Dealing with Death. American Bar Association Journal 80.11 (1994): 50
- 8) Szumski, Bonnie, Lynn Hall & Susan Bursell. Opposing Viewpoints: Capital Punishment. Greenhaven Press, 1986
- 9) Tabak, Ronald J. Report: Ineffective Assistance of Counsel and Lack of Due Process in Death Penalty Cases. Human Rights 22.Winter (1995): 36
- 10) Whittier, Charles H. Moral Arguments For and Against Capital Punishment. CRS Report For Congress (1996): 1
- 11) Last Dance: Murder in Canada. Simon Fraser University: Canadian Learning Company Inc.