

The Death Penalty: Any nation's shame

A publication of the John Howard Society of Ontario

March 2001

The John Howard Society of Ontario has long been an opponent of the death penalty. Over the years, both as an individual organization and as a member of a coalition, the Society has been heavily involved in activities geared to, first, abolishing the death penalty in Canada and, then, preventing its reinstatement. Canada did abolish the death penalty for offences under the *Criminal Code* in 1976. Further, a government motion in 1987 to support the reinstatement of the death penalty in principle was defeated. And finally, the death penalty for military service offences under the *National Defence Act* was abolished in 1999. Proudly, Canada now joins the growing number of nations that have abolished the death penalty for any offence and, by doing so, has met important human rights standards established by the United Nations.

We cannot afford, however, to be complacent. Domestically, calls for its return continue to this day. Individual Members of Parliament continue to introduce bills either to reinstate the death penalty or to bring about a binding referendum on the issue. The platform of the Alliance Party, the official opposition, includes a binding referendum on the death penalty. And while the current government has indicated no desire to reopen the debate, demands for greater opportunities for private members bills to be brought forward for a vote may make the debate a reality. We must be

vigilant and be prepared for actions within our borders.

As well, many countries still do have the death penalty and do execute people. In the United States, almost 700 men and women have been executed since the Supreme Court decision in 1976 which lifted the brief ban on the death penalty. Each year since that decision, executions have become more frequent and there are now more than 3,500 people on death row awaiting their execution. Our commitment to human rights internationally compels us to work towards the abolition of the death penalty globally.

It is, therefore, timely to remind ourselves of why we abolished the death penalty in Canada, why we should fight any attempts to reinstate it in this country and why we should press for global abolition.

Why oppose the death penalty? The moral, philosophical and religious arguments

For most opponents of the death penalty, moral, philosophical and religious beliefs are at the heart of their position. Perhaps the most basic is reverence for the sanctity of life, even in the most adverse circumstances. Some may argue that the death of the offender affirms the sanctity of life. It is difficult to understand, however, how killing people teaches that killing is wrong.

The death penalty is clearly a violation of one of the most basic of human rights - the right to life. Those who support the death penalty would argue that murder justifies the abrogation of any and all rights. Human rights, particularly one as basic as the right to life, are not, however, given or granted by governments and they cannot be taken away by governments. Human rights must belong to everyone or they belong to no one.

Executions, which are premeditated acts committed by the state, clearly constitute cruel and degrading punishment when one considers the physical pain inherent in any method of execution used and the psychological suffering caused by the process of awaiting one's hour of death. Such acts would clearly be considered torture by a government under different circumstances.

**Why kill people who
kill people to show
that killing people is
wrong**



Prisoners undergo paralysis of organs and burning of the flesh during electrocution, asphyxiation during gassing, tearing of the spinal cord or asphyxiation during hanging, respiratory paralysis during poisoning and destruction of the vital organs or the central nervous system during shooting.

Amnesty International

Opponents of the death penalty seek to eliminate all forms of torture, regardless of the circumstances.

If hanging a woman by her arms until she experiences excruciating pain is rightly condemned as torture, how does a state justify hanging an individual by the neck until dead? If administering 100 volts of electricity to the most sensitive parts of a man's body evokes moral condemnation, how does the state condone the administration of 2,000 volts to a human body in order to cause death?

Amnesty International

The death penalty is the last vestige of a brutal and antiquated notion of justice. Some justify the death penalty on a notion of justice that requires the punishment to fit the crime. In other words, it must be a "life-for-a-life" and one must forfeit his/her life if that individual intentionally causes the death of another person. But, we do not amputate the hand of someone who steals or use beating as a punishment for someone convicted of assault. We now believe that, in such cases, the punishment should be limited to the deprivation of freedom, with the ultimate deprivation of freedom being incarceration.

Opponents of the death penalty believe that public support cannot

justify its use. The history of our civilization is rife with examples where horrendous acts have been justified by claims of public support. Slavery of blacks and their continued disenfranchisement enjoyed high public support in the history of the United States. Had it not been for committed abolitionist and civil rights movements and courageous politicians who persisted despite public support, slavery and disenfranchisement in law could still be a part of the American reality. Clearly public support does not make an action right.

Abolition of the death penalty is supported by the leaders of the major religious denominations. While some may use religious texts to support continued use of the death penalty, religious leaders reject such literal translations. In fact, religious leaders have been in the forefront of campaigns world-wide to eradicate the death penalty, including the most recent campaigns in Canada in 1976 and 1987.

More reasons to oppose the death penalty

Beyond the moral, philosophical and religious arguments, some very practical reasons related to issues of justice and effectiveness support the position against the death penalty.

■ The death penalty is not a deterrent to murder.

Those who support the death penalty often use the argument that it is a deterrent, either because the severity of the punishment will stop people from committing murder in the first place (general deterrence) or prevent a person from being able to murder again (the ultimate individual deterrence).

The argument of general deterrence assumes that people who murder know what they are doing and think about the punishment before acting, weigh the consequences of their actions, make their decisions rationally and act

accordingly. The majority of murders, however, are committed in the heat of passion and/or under the influence of alcohol and drugs, when there is little thought given to the possible consequences of the act.

Evidence from both the U.S. and Canada shows that it is difficult to make the case for the general deterrent effect of the death penalty. If it was a deterrent, one would expect to find increases in the homicide rate in Canada since abolition. In fact, the homicide rate has continually declined since 1975, the year before the abolition of the death penalty. In 1999, the homicide rate was the lowest since 1967. Further, the number of police officers killed in Canada has not been higher than 1962, the year of the last executions in Canada, when 11 police officers were killed. An analysis by the New York Times in 2000 found that, during the last 20 years, the homicide rates in U.S. states with the death penalty has been 48 percent to 101 percent higher than in states without the death penalty.

The argument that the death penalty at least ensures that the person will never murder again is premised on the belief that a high proportion of those released will murder again and that rehabilitation and change is impossible. In fact, those convicted of murder have much lower re-offending rates for any offence and incidence of another murder upon release is extremely rare. A study in the U.S. found that less than one-third of one percent - 0.31 percent - of the paroled murderers were subsequently convicted of homicide. Figures for Europe and Canada are similar.

■ Innocent people can be convicted of crimes and the death penalty is irreversible.

The growing evidence of fallibility of the justice system has convinced many, previously wavering, to oppose the death penalty. Canada had

experienced cases of wrongful murder convictions, most notably Donald Marshall Jr., David Milgaard and Guy-Paul Morin. A 1980's study in the U.S. identified 353 cases since the turn of the century of wrongful convictions for offences punishable by death and 25 were actually executed. In Illinois, 13 death row inmates have been cleared of their murder charges since 1977, either because DNA evidence exonerated them or their cases collapsed at a new trial ordered by the appellate courts. As a consequence, the Governor of Illinois, a proponent of the death penalty, imposed a moratorium on the death penalty in January 2000. A U.S. study released in June 2000 of over 4,500 death penalty appeal cases from 1973 to 1995 found that the state or federal government threw out the conviction or death sentence 68 percent of the time, either because of unreliable evidence or procedural defects.

Without the death penalty, there is always opportunities for some form of compensation to the individual, as we have done in the cases of Marshall, Milgaard and Morin. With the death penalty, there is no compensation.

■ **The death penalty is unfair.**

Evidence from the U.S. showed substantial evidence that factors other than the crime itself, namely race and economic status, greatly influenced who gets executed and who does not. In that country, it has been used almost exclusively on the poor and people of colour. Even in Canada, there is evidence of discriminatory practices. In the death penalty convictions that occurred between 1946 and 1962, French Canadians were more likely to be executed than were English Canadians.

The death penalty often makes little or no allowances for special circumstances. Mentally impaired individuals, those who have little or no understanding of the crimes for which they have been charged, have been

It's been 82 years since Pte. Stephen McDermott Fowles was shot at dawn by the British Army. The 21-year-old Manitoban had reported back late for duty after a personal leave. He was charged with desertion, court-martialled and executed ... Ms. Ballard (his grandniece) said that the family was officially told that Pte. had deserted. "It was a terrible shame. We didn't talk about it much. It wasn't until much later that we realized that he was just late from a visit to his girlfriend. And they shot him for that."

Ottawa Citizen, November 6, 2000

executed in the U.S. In the First World War, 22 Canadians were executed under military law for desertion and one for cowardice, most very young men charged with minor offences who were just trying to cope with the horrors of that war.

■ **The cost of enacting the death penalty with the necessary legal safeguards is greater than life imprisonment and reducing the cost means limiting the safeguards.**

U.S. research has consistently shown that the extra precautions, such as appeals, made necessary by the possibility of executing an innocent person, have resulted in executions being more costly than keeping the individual in prison for life. In order to accelerate executions and make them more "cost-effective", the U.S. Congress took steps in 1996 which have weakened due process and curtailed appellate review in death penalty cases. Considering what happens to death penalty cases on appeal, any savings in dollars is at the cost of justice.

And finally: Our international obligations

As a country, we take pride in our

membership in the United Nations and in our strong support of its role in defining and protecting human rights. Canada often played a leadership role in drafting the human rights instruments, beginning with the *Universal Declaration of Human Rights* adopted by the U.N in 1948. It set the direction for all subsequent work in the field of human rights, including the more recent undertaking aimed at the abolition of the death penalty. It begins with Article 3 of the Declaration which states that:

Everyone has the right to life, liberty and the security of person.

The meaning of the right to life is more fully defined in Article 6 of the *International Covenant on Civil and Political Rights* adopted by the U.N. in 1966. This covenant not only defines limits to the use of the death penalty for countries which have not abolished it but also refers to the abolition of the death penalty in terms that strongly suggest that abolition is desirable.

The Second Optional Protocol to the *International Covenant on Civil and Political Rights*, adopted in 1989, takes

What has been said...

Are we, as a society, so lacking in respect for ourselves, so lacking in hope for human betterment, so socially bankrupt that we are ready to accept state vengeance as our penal philosophy? ... To retain (capital punishment) in the Criminal Code of Canada would be to abandon hope and confidence in favour of a despairing acceptance of our inability to cope with violent crime except with violence.

Rt. Hon. Pierre E. Trudeau, June 15, 1976

An evil deed is not redeemed by an evil deed of retaliation. Justice is never advanced in the taking of a human life. Morality is never upheld by legalized murder.

Coretta Scott King, widow of Martin Luther King Jr.

More...

A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.

Pope John Paul II, 1999

I believe that any society that practices capital punishment brutalizes itself. It has an effect on that society and I do not believe that society can rid itself of murderers by itself becoming a murderer... The abolition of capital punishment has come to be taken as the hallmark of a nation's conscience.

T.C. Douglas, 1966

In all of these cases (of wrongful convictions), had capital punishment been imposed, there would have been no one to whom an apology and compensation could be paid in respect to miscarriage of justice (apart, possibly, from surviving family members), and no way in which Canadian society with benefit of hindsight could have justified to itself the deprivation of human life in violation of the principles of fundamental justice.

Supreme Court of Canada, United States v. Burns

a step further. The preamble characterizes the abolition of the death penalty as “contribut[ing] to enhancement of human dignity and progressive development of human rights”, makes the connection with other human rights documents as a foundation for abolition within the context of human rights work and indicates its conviction that “all measures of the abolition of the death penalty should be considered as progress in the enjoyment of the right to life.” On this basis, Article 1 states that:

1. No one within the jurisdiction of State Party to the present Protocol shall

be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

While Canada has yet to ratify this Protocol, the United Nations has made it clear - countries that retain the death penalty in practice or in law do not meet international standards of human rights.

As of September 2000, over one-half of the countries in the world have abolished the death penalty either in law or in practice. Given the fact that many have done so within the last 25 years, the message that the death penalty is a violation of human rights is

obviously being heard. We can help this movement continue to grow.

What you can do

- Share this information with friends.
- Write or call your Member of Parliament to let him/her know that you oppose any legislative action that could result in the reinstatement of the death penalty in Canada.
- Write letters to the editor in response to comments in the media supporting the death penalty, challenging the arguments.
- Participate in actions to stop executions in other countries. On the Internet, visit the following websites:
 - Amnesty International (www.web.amnesty.org) and (www.amnesty-usa.org/abolish),
 - American Civil Liberties Union Death Penalty Campaign (www.aclu.org/death-penalty),
 - National Coalition to Abolish the Death Penalty (www.ncadp.org),
 - Moratorium 2000 (www.moratorium.org),
 - The Canadian Coalition Against the Death Penalty (members.tripod.com/~ccadp/homepage.htm)
- Support the work of the John Howard Society of Ontario so that we can continue our efforts to ensure that Canada never again adopts the death penalty.

Effective, just and humane responses to crime and its causes

For more information, please contact us at:

John Howard Society of Ontario
123 Edward St., Suite 701
Toronto, Ontario
M5P 1E2
Tel: (416) 408-4282
Fax: (416) 408-2991
E-mail: jhso@johnhoward.on.ca
Website: www.johnhoward.on.ca

