

CAPITAL PUNISHMENT

NEW MATERIAL:

1965-1972

The Honourable Jean-Pierre Goyer,
Solicitor General of Canada

1972

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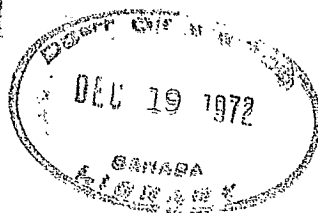
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CAPITAL PUNISHMENT

**New material:
1965-1972**

**Published under the authority of
Hon. Jean-Pierre Goyer,
Solicitor General of Canada**

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FOREWORD

Since December 29, 1967, the death penalty for capital murder has, by reason of Chapter 15 of the Statutes of Canada, 1967-68, been limited to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

The Act prescribed that it should continue in force for a period of five years from the day fixed by proclamation for its coming into force, and provided that it should then expire unless before the end of that period Parliament, by joint resolution of both Houses, directed that it should continue in force. It provided that upon the expiration of the Act the law existing immediately prior to the coming into force of the Act should again operate.

Parliament must, therefore, enact new legislation before December 29, 1972, if the law is not, on that day, to revert to what it was immediately prior to December 29, 1967, i.e., when murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act".

This Paper makes available to Senators, Members of Parliament and the general public information on developments related to capital punishment that have taken place in Canada and other countries since June 1965 when the paper *Capital Punishment: Material Relating to its Purpose and Value* was published by the Minister of Justice, the late Hon. Guy Favreau.

The author, Mr. Bernard Grenier, Barrister of Montreal, has faithfully followed the plan and intentions of the original paper. His work is an up-dating of the original, not a new edition. Mr. Grenier's work stands on its own feet and may be read alone. However, for a better understanding of the situation, it is recommended that it be read along with the 1965 paper which is still available from Information Canada. Both papers avoid taking up any position on capital punishment and strive to be informative and objective.

The subject of the death penalty continues to be controversial in Canada and to be a subjective issue that affects the conscience of every man and woman. It is my profound hope that this Paper will be of some assistance to Canadians who are attempting to solve this extremely difficult social problem.



SOLICITOR GENERAL OF CANADA

Ottawa, January 15, 1972.

PREFACE

This Paper on the death penalty consists of an updating of the study titled *Capital Punishment: Material Relating to Its Purpose and Value*, published by the federal Department of Justice in June 1965. The plan followed is substantially similar to that of the 1965 White Paper, but there will be new chapters of original material. The Paper is designed to set forth developments since 1965 in connection with the death penalty, in Canada and the rest of the world; to highlight new arguments put forward over the last six years in support of either the retention or the abolition of the death penalty; and to give an outline of the state of crime in Canada since the adoption by Parliament in 1967 of a statute to abolish the death penalty for a five-year trial period, except for the murder of a police officer or a member of a prison staff acting in the course of his duties.

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1. THE SITUATION IN THE UNITED KINGDOM

(a) ROYAL COMMISSION (1949-1953)

In 1949 the British Government set up a Royal Commission on Capital Punishment, whose terms of reference were:

to consider and report whether liability under the criminal law in Great Britain to suffer capital punishment for murder should be limited or modified, and if so, to what extent and by what means, for how long and under what conditions persons who would otherwise have been liable to suffer capital punishment should be detained, and what changes in the existing law and the prison system would be required; and to inquire into and take account of the position in those countries whose experience and practice may throw light on these questions.¹

These terms of reference, it should be emphasized, did not include consideration of the abolition or retention of the death penalty, but rather to inquire into the advisability of limiting or modifying same and into the consequences of such limitation or modification. The Commission concluded its study in 1953, and among its recommendations may be noted raising from 18 to 21 the minimum age at which the death sentence may be imposed. The Commission stated that for all practical purposes it is impossible to frame a statutory definition of murder, or to create classes or degrees of murder, that would effectively limit the scope of capital punishment. It did not recommend conferring on the judge the power to substitute a lesser sentence for the death penalty following a conviction for murder. The Commission found that in spite of its disadvantages, the best solution was to adapt the system in force in other countries, whereby the jury has the power to decide in each case whether life imprisonment can properly be substituted for capital punishment, to the law of Great Britain. In item 46 of its Conclusions, the Commission issued a very significant warning to the British Parliament:

We recognize that the disadvantages of a system of jury discretion may be thought to outweigh its merits. If this view were to prevail, the conclusion would seem to be inescapable that in this country a stage has been reached where little more can be done effectively to limit the liability to suffer the death penalty, and that the issue is now whether capital punishment should be retained or abolished (paragraph 611). (p. 278)²

Before work commenced the Chairman of this Commission, Sir Ernest Arthur Gowers, was a supporter of capital punishment. After presiding over the Commission for four years, however, and compiling information during the hearing of expert witnesses and travel to various countries which were experimenting with the death penalty, or had done so, Sir Ernest became an abolitionist.³ Sir Ernest's writings reflect his beliefs, especially the article titled "A Life for a Life", where *inter alia* he says:

¹ *Capital Punishment: Material Relating to Its Purpose and Value*, Department of Justice, Queen's Printer, Ottawa, June 1965, p. 2.

² *Ibid.* pp. 2 and 3.

³ "The Problem of the Death Penalty" by Marc Ancel, in *Capital Punishment*, ed. Thorsten Sellin, Harper & Row, New York, 1967, p. 16.

In Belgium, the European country most like ours, the results are said to have been so conclusive that further argument has been silenced, and the lesson seems to have been learned that the best way to inculcate respect for human life is to refrain from taking it in the name of the law. Such, at least, was the testimony given to the Select Committee by the Belgian Minister of Justice.⁴

(b) THE HOMICIDE ACT (1957)

Pursuant to the study by the 1949-1953 Royal Commission, the British Parliament in 1957 adopted the Homicide Act (Homicide Act, 1957, c. 11), which redefined murder and created a distinction between capital and non-capital murder, in particular by sections 5 and 6. The creation of these classes of murder ran counter to the opinion expressed by the Royal Commission in Recommendations 39 and 41. It also incorporated in English law the principle of "diminished responsibility" on account of an abnormality of mind occurring at the time of the crime; this defence (section 2) resulted in a conviction for manslaughter, and imprisonment for any term up to life, or confinement in a mental institution. The aim of the new statute was to limit the scope of capital punishment by confining its application to the most sordid types of murder, or to those committed by the most dangerous criminals.

This legislation was subject to considerable criticism from judges, criminal law experts and the legal world in general because of its discriminatory nature and its arbitrary classification of murder. Thus, a murder committed using a knife could be much more vicious and horrible than one committed with a firearm, yet only the latter carried the death penalty.

(c) THE MURDER (ABOLITION OF DEATH PENALTY) ACT, 1965

On several occasions Members of Parliament in London tried unsuccessfully to have the Commons adopt an act for the complete or partial abolition of capital punishment, until the Labour M.P. Sidney Silverman, one of the most persistent and long-standing opponents of the death penalty, on December 4, 1964 tabled a private member's bill to abolish the death penalty for murder. At the end of a long and lively debate which extended over March, April and May 1965, the House of Commons on July 13, 1965 adopted on third reading, by 200 votes to 98, a Bill abolishing capital punishment for a five-year trial period, i.e. until July 31, 1970. On October 26, 1965, the House of Lords by 169 votes to 75 ratified the Bill, to which it had added certain amendments regarding the parole of a murderer sentenced to life imprisonment, and, at the expiry of the Murder Act, the application of the law prior to 1965 only to murders committed after the expiry of said Act. On October 28, 1965 the House of Commons adopted the Bill as amended by the House of Lords. The 1965 Act, Chapter 71 of the Statutes of Great Britain, received Royal Assent on November 8 and came into force the following day, November 9, 1965. The text of this English statute will be found as an appendix to this chapter.

Two facts may be noted. Members were not subject to party discipline during the debate and voting on the capital punishment Bill. It was in fact a free vote, with each individual expressing his opinion and decision

⁴ *The Penalty is Death*, ed. Barry Jones, Sun Books, Melbourne, 1968, pp. 86 et seq. (93).

according to the dictates of his conscience. Also, Great Britain adopted its abolition statute for a five-year trial period despite the fact that, in 1965, 79 per cent of the English people were in favour of retaining capital punishment, or expressed their uncertainty on the abolition question. On this point Sir Sidney Silverman made the following observation:

We don't, in matters of life or death, think it is right to decide what is just or unjust by a spot, unconsidered reaction taken on the street corner or in a club or pub.⁵

The following arguments were put forward by the leading participants in the 1965 debate.

A. IN FAVOUR OF ABOLITION

— *Sir Frank Soskice*

The death penalty can and should remain in effect only if we are convinced of its necessity, and it is only necessary if it constitutes a unique deterrent. Consideration of the facts, however, in no way demonstrates that this prior condition exists.

— *Henry Brooke (ex-Home Secretary)*

The main weakness of the distinction between capital and non-capital murder lies in the possibility that it will allow the perpetrator of a vicious crime to escape the supreme punishment, while by force of circumstance a less foul crime receives the death penalty. In Mr. Brooke's view, it was unrealistic to try to improve the Homicide Act by these arbitrary distinctions between capital and non-capital murder: he was convinced of this by his tenure at the Home Office. The time had come to place the death penalty as such on trial. For the same reasons as Sir Frank Soskice, he was in favour of its abolition; further, he suggested that the overall policy on sentencing be reviewed because of the difficult situation which the abolition of the death penalty could create in institutions where long sentences were to be served.

— *Sir Sidney Silverman*

The purpose of this debate was not to abolish the death penalty, but to bring to an end the exceptions to its abolition prescribed by the 1957 Act. The legislator should not let himself be governed by public opinion when he is deciding on moral questions. The 1957 Homicide Act was the result of a political compromise between the Commons (abolitionist) and the House of Lords (in favour of the death penalty). The death penalty is not an effective deterrent; as deterrence constitutes the only rational argument for retention, it is no longer valid. Moreover, it is no better as a deterrent than other very severe penalties. It may be, however, that the death penalty should be retained for disciplinary statutes in the Army, the Air Force and the Navy, because the crime of treason in war-time gives rise to special circumstances. The sentence of life imprisonment is a most effective penalty, because the offender is never set free, and if he is granted parole, this can always be terminated if the parole conditions are violated. In any case, before releasing a murderer on parole, consideration will be given to the seriousness of the crime, the safety of the public,

⁵ "Case against Death Penalty", Trevor Thomas in *This Life We Take*, published by the Friends Committee on Legislation, San Francisco, 1965, pp. 12-13.

the prisoner's behaviour and the risk of slowly destroying a life saved at the outset. Experience and statistics show that murderers are no more likely than other prisoners to commit violent crimes against prison guards or fellow-prisoners, or to try to escape. On the contrary, their behaviour is good and they have every reason to keep it so because this affects the date of their parole. Sir Sidney objected to the automatic application of the death penalty prescribed in the 1957 Homicide Act, particularly because it makes no allowance for the accused's background. In conclusion, he asked the Members to take this important step towards a higher level of civilization by abolishing the death penalty.

— *S. C. Silkin*

The death penalty can only be justified by overriding necessity, and this is related either to punishment or to deterrence. The main objective of punishment is to stress the horror felt by a society at a crime, in this case, murder, through a penalty of great severity. In Mr. Silkin's opinion, if society really feels this horror regarding murder, it should itself refrain from taking the life of the murderer, since it would be committing the crime it claims to condemn. Capital punishment has no deterrent effect. A normal man will never kill his fellow, not because of the penalty attached to murder, but because it is not his nature to kill.

— *William Wilson*

His experience as a lawyer who had represented seven murderers in the courts led him to conclude that the death penalty is not an effective deterrent.

— *Dr. Shirley Summerskill*

The death penalty raises a moral problem, and it is unjustifiable and morally wrong to sanction and give legislative authority for the death of another human being. Our efforts should be directed towards treatment of the murderer by psychological means.

— *Evelyn Hooson*

The burden of proof rests with the supporters of capital punishment in view of the very nature of execution, a horrifying and inhuman process if ever there was one. Most murderers are not normal people. Those who are normal weigh the risks of being caught rather than the severity of punishment.

— *John Hynd*

He advocated abolition because of the mistakes likely to be committed by those who administer justice, the fact that the deterrent effect ascribed to the death penalty does not exist, and the harmful effect of an execution on young children living in the locality where it takes place.

— *David Kerr*

In his opinion, the responsibility for protecting prison guards had nothing to do with the debate.

— *R. T. Paget*

He was in favour of abolishing capital punishment, in spite of the opinion of the general public. Government must be for the people, not by the people.

— *The Lord Chancellor*

The problem of abolition or retention of capital punishment must be decided once and for all. If the crime rate is low or on the decrease, the supporters of the death penalty claim that its effectiveness is proven, and it must be retained. If, on the other hand, the crime rate is up, they contend that the time is not right to embark on the risky business of abolition.

B. OPPOSED TO ABOLITION

— *Sir Peter Rawlinson*

The judicial execution of a criminal represents a rather horrifying way of exercising the authority vested in the State: it amounts to the murder of one individual by another. Any discussion of the merits of capital punishment goes beyond the area of politics, and each person makes up his mind according to the dictates of his conscience and his judgment. Few people will change their opinion from reading statistics, studies or reports. Sir Peter feared that abolition of the death penalty would encourage the activity of organized gangs and result in a rise in the incidence of murders and crimes involving the use of firearms. The 1957 Homicide Act laid down a demarcation line which the criminal crossed at his peril. It was true that this Act created arbitrary classes, but the same could be said of the line, often a matter of inches, between aggravated assault and manslaughter; of the different sexual crimes, for which the severity of punishment depends on the victim's age; and of driving a motor vehicle while the capacity to do so is impaired by the influence of alcohol, which is or is not an offence depending on an individual's absorption rate. The death penalty should be retained if it has a deterrent effect, and in Sir Peter's opinion it has this effect on the armed robber and the rapist. The evidence was that the rate of crimes punishable by the death penalty under the Homicide Act had decreased since 1957, and abolition would risk giving a new impetus to organized crime. The Great Train Robbery was carried out with the commission of a very limited number of criminal acts, and the existence of the death penalty in our law may be what prevented any resort to violence. It is true that the death penalty has very little effect on persons who commit murder in the heat of passion, or on sex offenders, but this does not apply to the hardened criminal who has to decide whether he will use a firearm to commit theft. Abolition of capital punishment will increase the danger of violence, the frequency with which offensive weapons are used, and the general danger to life for the public. A clear distinction must be made between the sudden and unexpected death of an innocent victim, and that of the criminal who has planned his crime in full knowledge of the risks inherent in his undertaking.

— *T. L. Iremonger (Assistant Secretary for War in 1945)*

He was in favour of the death penalty because of the ineffectiveness of life imprisonment as a deterrent; the potential murderer has a hard time understanding exactly what this involves. As between saving the life of an innocent person and the risk of a judicial error, he would unhesitatingly choose the first alternative: he was more concerned for the victim than the criminal.

— Dr. Wyndham Davies

It was too soon to adopt the bill, because the state of research in the human sciences still did not indicate exactly what was to be done with the perpetrators of serious crimes. The sanctity of human life is an argument that cuts both ways, and which can justify the abolition of capital punishment just as well as its retention.

— Richard Glyn

The death penalty was vital in order to discourage professional criminals from killing or even from carrying a weapon in Great Britain. The annual number of executions in recent years was no more than two or three, hence it would be illogical to try to save the lives of two or three criminals and thereby imperil those of public servants, policemen, prison guards or ordinary citizens. Mr. Glyn quoted the case of American states which had retained the death penalty for murder of prison guards by prisoners serving long sentences, or New Zealand which was seeking to reinstate the death penalty.

(d) THE SEQUEL TO THE 1965 ACT

Commenting on the abolition of the death penalty for five years, Frank Dawtry points out that the obligation placed on the Home Secretary by s. 2 of the 1965 Act, to consult the Lord Chief Justice, or the Lord Justice General, and the trial judge before granting parole to a murderer, was designed essentially to reassure the public as to the importance which the government attached to public opinion and to their safety. This provision was in fact added by the House of Lords, which in the past had itself opposed legislative abolition of the death penalty. Further, Dawtry adds, the judges who made use of s. 1(2) generally recommended to the Home Secretary that an individual convicted of murder and sentenced to life imprisonment should serve at least 15 years before being granted parole.⁶

On August 12, 1966, nine months after the 1965 Act came into force, three policemen were killed in very dramatic circumstances; this aroused public indignation and caused many people to doubt the wisdom of Parliament's decision to abolish capital punishment for a five-year trial period. Since this extremely unfortunate occurrence, calm has been restored. Furthermore, the public always reacts very emotionally to an atrocious crime and often demands that repressive measures be adopted, from a spirit of retribution as much as from a desire for protection. Once feelings have calmed down there is a gradual return to more sober and balanced attitudes.⁷

As can be seen by looking at Table 1, to be found in Appendix 1, the number of murders known to the police since 1966, as well as the ratio of these murders per 1,000,000 population, have not increased considerably as the result of adoption of the 1965 Act. The significant data is that on the ratio per 1,000,000 population. As the population has increased each year, it is almost inevitable that the absolute number of murders will also increase. To get an accurate picture of the increase in the murder rate

⁶ "The Abolition of the Death Penalty in Britain", Frank Dawtry in *British Journal of Criminology*, Vol. 6, 1966, London, pp. 183 et seq.

⁷ "A student's view", Trevor Fisk in *The Hanging Question*, ed. Louis Blom-Cooper, Gerald Duckworth & Co., London, 1969, pp. 73 et seq.

for a given year, the absolute number of murders must be compared with population figures. This reveals a 0.3 decrease in the murder rate between 1965 and 1966, in the year following the abolition of capital punishment for a five-year period—from 2.8 down to 2.5. Then came a substantial increase of 0.7 (from 2.5 to 3.2) between 1966 and 1967: this difference was particularly due to the commission of a large number of murders followed by suicides. That increase was followed by a decrease of 0.2 from 1967 to 1968 (3.2 to 3.0), then by an even larger drop of 0.5 from 1968 to 1969 (3.0 to 2.5). Thus in 1969 we were back to the lowest rate experienced in the last 13 years, that for 1958 and 1966.

Table 1 also reveals an increase in the number of instances of section 2 manslaughter from 1963 forward, and especially from 1965. When section 2 manslaughter is added to murder, the combined rate represents a steady progression since 1962, which is not true of the murder rate taken by itself, as we have seen. Similarly, if we look at Table 2 we see a clear increase after 1966 in the proportion of convictions for manslaughter. From 1957 to 1966 (except in 1958), the number of convictions for murder nearly always exceeded the number of convictions for ordinary manslaughter (excluding section 2 manslaughter). Since 1966, however, with the exception of 1969, this trend has been reversed. It may be that the attitude of juries has changed, for it is believed that they might be more likely to find accused persons guilty of murder when the death penalty has been abolished. It must be said that even before 1965 the death penalty applied only to a relatively limited number of murders; however, there are some indications that juries were hesitant to convict an accused person of capital murder. Table 4 provides a good illustration of this. Indeed, under the 1957 Homicide Act, and before adoption of the 1965 Murder Act, the only motives that made murder capital were theft and resisting arrest or escaping from legal custody. The great majority of murders resulting from rage, a quarrel, jealousy or revenge were held, as shown by Table 4, to be non-capital, except for those committed with firearms. All the sex-linked murders and all but one of those arising from feuds were also regarded as non-capital, since in each instance a firearm was not used. Murder for the sake of theft presented some difficulty in classification. During the currency of section 5 of the 1957 Homicide Act, there were a number of murders for which no motivation other than theft could be found, but which resulted in convictions for non-capital murder, probably because it is difficult to prove that murder was committed during or as the result of commission of theft. These murders have therefore been classified under the heading "Theft or other gain". During the period after the 1965 Murder Act came into force the distinction between capital and non-capital murders was based essentially on the circumstances of the offence, and all those which seemed to have been committed in the course of theft were classified with capital murders.

It is to be noted that between 1957 and 1964, of the 69 accused found guilty of murders committed for any gainful motive whatever, only 41 (60%) were convicted for capital murder. This result clearly illustrates the difficulty of logically and coherently interpreting, and applying to concrete cases, the definition of murder committed in the course of theft; it also suggests that juries have been reluctant to find an accused guilty of

capital murder if they could find a way to reduce the charge to one of non-capital murder.⁸

The conclusions to be drawn from Table 3 are as follows: the pattern remains the same from one year to the next, though the figures are higher in absolute terms. Acquittals fluctuated between 3 and 10 per cent, without showing any particular trend. Few convictions for capital murder were recorded, the largest number, 12, occurring in 1960; of these 12 persons, seven were executed. This was a record for the period under consideration, and the figure fell to two in 1962, 1963 and 1964.

(e) FINAL ABOLITION OF THE DEATH PENALTY

On or about December 8, 1969 the Secretary of State for the Home Department gave notice of the resolution below, which he moved on December 16 following:

(Resolved) That the Murder (Abolition of Death Penalty) Act, 1965, shall not expire as otherwise provided by section 4 of that Act.

On December 15, 1969, the day immediately prior to the date set aside for the capital punishment debate, Mr. Quinton Hogg on behalf of the Official Opposition moved as follows:

That the House, while recognizing that the decision on the vote of capital punishment must be a matter for individual members, deplors Her Majesty's Government's action in asking Parliament to reach a conclusion on the question of the continuance of the Murder (Abolition of Death Penalty) Act, 1965, at an unnecessarily early stage, in disregard of the will and intention of Parliament as declared in that Act, and declines to come to a decision on it until after the publication of all available and relevant statistics covering the full year 1969.

Mr. Hogg's motion was defeated 303-245.

On December 16, 32 speakers participated in the debate, which ended with the adoption of the Government's motion by a vote of 343 to 185. The final official resolution of the Commons read as follows:

Resolved that the Murder (Abolition of Death Penalty) Act, 1965, shall not expire as otherwise provided by section 4 of that Act.

The debate in the House of Lords took place on December 17 and 18, 1969. On December 17 the Lord Chancellor, Lord Gardiner, moved the following resolution:

That the Murder (Abolition of Death Penalty) Act, 1965, shall not expire as otherwise provided by section 4 of that Act.

Lord Brook of Cumnor tabled an amendment to the main resolution, which would have left out all words after "that" and inserted

This House declines to come to a decision on the question of the continuance of the Murder (Abolition of Death Penalty) Act, 1965, until after the publication of all available relevant statistics covering the full year 1969.

This amendment was not formally moved.

Viscount Dilhorne also tabled an amendment to the main resolution, which would have left out all words after "expire" and inserted:

"until the thirty-first day of July 1973".

⁸ *Murder 1957 to 1968*, a Home Office Statistical Division Report on Murder in England and Wales by Evelyn Gibson and S. Klein, London, Her Majesty's Stationery Office, 1969, pp. 26, 29, 30.

The amendment was formally moved on December 18 and was defeated 220-174. The motion was agreed to accordingly. 42 members of the Upper House participated in the debate: 25 spoke in favour of the motion, 11 spoke against and 5 others, who were neither for nor against, stated that the decision should be postponed to a later date.

These then are the main arguments put forward on either side in the debate, both in the House of Commons and in the House of Lords.

A. HOUSE OF COMMONS

1. IN FAVOUR OF THE BILL (ABOLITIONISTS)

— *James Callaghan, Secretary of State for the Home Department*

Despite the abolition of capital punishment in the United Kingdom, the murder rate has remained remarkably stable.

It cannot be established that capital punishment is necessary for the protection of forces of law and order, or of prison officers.

Figures do not show that the abolition of the death penalty has had any impact on the number of sexual murders or child murders.

Estimated figures of capital murder convey no clear message about the deterrent effect of the penalty for murder.

The murder figure in 1969 is lower than in 1968. The rate of increase of violent offences has dropped since abolition. Abolition has little or no bearing on crimes of violence. Moreover research into the cause of violence has begun and offers long-term hopes.

Life sentences are carefully reviewed and paroles are always revocable.

There are less murders in the United Kingdom than in most advanced countries.

The public is not fully informed.

Capital punishment is not a deterrent and life imprisonment is just as effective. There is an imitative tendency in all criminal activities. Parliament must give a lead.

Capital punishment lowers the moral standard of the whole community.

— *Sir Geoffrey de Freitas*

There always exists a possibility of judicial error.

Retentionists are emotional and abolitionists are the rational ones.

Abolition would strengthen the forces for our democratic system by showing that it is possible to have a strong government without an all-powerful State.

— *Leo Abse*

Capital punishment is not a deterrent. Criminals do not have the same instincts and thought processes as the ordinary man in the street.

For some murderers the gallows may be an attraction; it can assuage the heavy guilt burdens they carry. Psychopathic murderers are not deterred.

There is growing concern about the fallibility of the police. Police are doing a disservice to themselves and the community by campaigning for retention. We must concentrate on crime prevention.

Society must be prepared to pay the social cost to have fewer murderers.

— *Dr. M. P. Winstanley*

Capital punishment will not protect the police.

The growing number of attacks of prison officers is only relevant if they were attempted murders.

The existence of capital punishment exerts an unwholesome effect upon unstable minds and may do something to increase the total amount of violent crime.

Capital punishment is extremely harmful to those involved in carrying out the executions. It is also irreversible and innocent men have been hanged.

Alternative is life imprisonment. Murderers should not be released unless responsible people say that it is safe for them to be released.

The public must be protected, and penal reform is one way to do it.

— *S. C. Silkin*

We do not necessarily have to be bound by public opinion.

— *William Hamilton*

We have no right to deliberately take life.

Parliament should not slavishly follow pressure groups and public opinion.

The rise in convictions for murder may be explained by the fact that juries are now more willing to convict than when the death penalty existed.

Capital punishment would not be a deterrent to many murder causes, e.g. alcohol, domestic quarrels, youngsters in brawls, insanity.

— *William Small*

Government is taking steps to prevent any increase in violence. Retentionists believe in retribution.

— *Denis Coe*

Evidence of other countries suggests that capital punishment is not a deterrent.

If the State searches for a sane and more Christian society, instead of imposing judicial murder, it must look at the root causes of crime.

— *Sir Edward Boyle*

One must use statistics with care because very often they are not conclusive.

The 1957 Act was unsatisfactory and any attempt at a new and improved Act on the 1957 model would not succeed.

He is against any penalty which deprives a person of any ultimate message of hope.

Organized and institutionalized killing is inexpressibly horrible.

It is unthinkable that we should return to capital punishment.

— *Hugh D. Brown*

Prison buildings and working conditions of the staff must be improved; prisoners must be supplied with tools and equipment, so that they can do something useful.

Prison officers are not protected outside the prison walls.
Drink has a bearing on crime.
The real problem is the increase in crimes of violence.

— *James Wellbeloved*

Prison officers are concerned that criminals with maximum sentences may feel they have nothing to lose in the absence of capital punishment. Police also believe that capital punishment gives them some protection.

Capital punishment may deter some criminals from violence but statistics do not support this belief.

Laws related to guns should be strengthened.

— *Niall MacDermot*

Longer sentences should be imposed for the use of firearms.

Statistics do not prove that the increase of armed crime is due to the removal or suspension of capital punishment.

— *Tim Fortescue*

It is impossible to make the 1965 Act responsible for the increase in violent crime, due to all the changes and influence which occurred since 1965.

— *Tom Driberg*

No character is unredeemable.

When a criminal sets out, he is in an emotional, not in a rational state.

— *William Ross, Secretary of State for Scotland*

Executing a man is barbarous.

The State should tackle violence with prevention, detection, conviction and adequate penalties.

This reflects the status of our country and the civilized state of our society.

2. OPPOSING THE BILL (RETENTIONISTS)

— *Quinton Hogg*

There are other alternatives to re-instituting the 1957 Homicide Act.

Law must be durable; it cannot go back and forth.

We must work for purposes and results, not from moral indignation.

The Home Secretary should not be solely responsible for the prerogative of mercy.

Abolition encourages killing witnesses; it is a premium on killing.

Statistics are contradictory.

Capital punishment is a deterrent.

— *Duncan Sandys*

Capital punishment will protect the community and help curb the growth of gangsterism.

Concern is not to punish but to deter, and capital punishment is a deterrent: criminals firmly believe it. There must be a connection between crime and punishment.

Reducing the penalty for killing does not show sanctity of life, nor is it a mark of civilized progress.

There was a very great rise in the number of capital murders since abolition. More and more criminals carry firearms nowadays.

The country as a whole wants capital punishment restored.

The 1965 Act has put a premium on killing.

— *Peter Doig*

We must pay a price for individual freedom, as well as national and international freedom.

Figures from Scotland prove that capital punishment is a deterrent.

It is a fallacy that murders and culpable homicides are mainly committed by non-criminals.

Police and the majority of the people want capital punishment restored. Police believe that the increased use of weapons in crimes is due to the abolition of capital punishment.

— *Edward M. Taylor*

Life sentences for life would impose an impossible burden on prison officers who would look after men who had effectively nothing to lose.

There was a dramatic leap in the number of assaults on police officers in Scotland.

— *Eldon Griffiths*

The death penalty is a useful form of protection for unarmed policemen.

The country will still retain capital punishment for Armed Forces, treason, espionage.

A deliberate attack on an unarmed policeman is not far short of an act of war against our society.

The number of woundings, assaults and murders has risen in London.

— *Frank Tomney*

The public is opposed to the abolition of capital punishment.

We should not give more satisfaction to murderers than to victims.

— *Sir Spencer Summers*

We have gone far enough, if not too far, in recent changes.

Abolition will diminish the public's respect for life.

We should prolong the experiment for 3 years. We should take longer to assess the impact of the growing disregard for law and order before deciding on permanent abolition.

A more satisfactory way of taking life than hanging could be found. We should have time to prepare for a new "fall-back" law.

— *W. R. Rees-Davies*

Government members are funkling the issue and abuse processes of the House.

We must first consider how to deal with serious crime; Government are namby-pamby about handling criminals.

A long prison sentence is worse than capital punishment.

Capital punishment should be exercised very seldom: this is the wish of the public.

Capital punishment discourages the use of weapons.

We should go back to the law as it was before it has been changed.

— *Danel Awdry (doubtful)*

People will feel more secure with capital punishment in the war against crime.

We need a new measure; capital punishment should be imposed in only a few cases.

— *Mark Woodnutt*

Capital punishment should be retained for the murder of prison officers, inmates and policemen; these people are at risk.

Assaults causing bodily harm to prison officers have increased.

— *Sir Richard Glyn*

Capital punishment is a deterrent in all cases, in treason, treachery, mutiny, etc.

Executions for treason and mutiny have accounted for over 20% of all executions since 1939. The death penalty is therefore not obsolete. If it is considered to be a deterrent here, why not for murder? Criminals themselves think capital punishment is greater punishment than life imprisonment.

Many criminals who commit offences against property serve longer sentences than those convicted of murder and sentenced to life imprisonment.

We need a new method of execution.

We must use capital punishment as a deterrent to save innocent lives.

Pleas in mitigation should be done in murder cases to get facts about the criminal while fresh in everyone's mind. The present law being what it is, there is no plea in mitigation since the sentence is automatic.

— *Harold Gurden*

Members, not the public, must make the decision tonight, but public opinion must be observed.

We must consider the loss of victim's life as well as of criminal's life.

There should be a law to prevent the release of murderers from gaol.

— *John Boyd-Carpenter*

This decision is not necessarily final. It is the worst moment to make this change permanent.

We must put more weight on the testimony of the police and prison warders.

B. HOUSE OF LORDS

1. IN FAVOUR OF THE BILL (ABOLITIONISTS)

— *The Lord Chancellor (Lord Gardiner)*

Dividing murder into capital and non-capital creates anomalies.

There was a very little increase in murder this century in 10-year periods.

We need 10 years to get meaningful data.

Juries now convict differently for murder; the atmosphere has changed.

Abolition does not change the trend of the murder rate.

Western Christian world has given up capital punishment and so should the United Kingdom.

This is no time for a new Bill. If the motion is passed, this question can later be reviewed.

— *Lord Foot*

The 1969 figures will not provide any useful answer. If the bill is not passed, we will go back to the intolerable 1957 Act. It is capricious and the Government would have to fill the void.

— *Baroness Wootten of Abinger*

It is a moral argument, and nobody's opinion will be changed.

There can be and there have been mistakes.

A penitent murderer can be a very valuable person.

Democratic countries have abolished capital punishment.

It is misleading to suggest that we shall be going against the declared wishes of Parliament if we carry this motion without amendment.

— *Lord Bishop of Durham*

Something must be done to put an end to violence in society and to attacks on policemen and prison officers. But capital punishment does not solve this problem because it is a negative deterrent. It creates and encourages social attitudes which make penal reform all the more difficult. It is negative, incoherent and devoid of creative possibilities.

Even one mistake is too high a price to pay when that price is measured in terms of human life and when human error is irrevocable.

Something must be done to meet right and proper revulsion which murder brings. An adequate alternative is not long sentences. Any government inquiry into crimes of violence should include a reference to appropriate methods of punishment. Punishment must make rehabilitation possible.

— *Earl of Longford*

All murderers are redeemable.

The Holy Scripture says: "Inasmuch as ye have done it unto the least of these my brethren, ye have done it unto me". Hanging without justification is killing the Christ in victims and in our souls.

— *Lord Morris of Borth-y-Gest*

Capital punishment should be retained only if absolutely necessary and essential for the purpose of saving lives of potential victims. But it has not been shown that capital punishment has exceptional potency as a deterrent.

Conclusions should be based not only on the last few years but on experiences prior to 1957, between 1957 and 1965, and after 1965. It has not been shown that capital punishment must be retained. There is no advantage in deferring the decision until 1974, 1973 or 1972.

— *Lord Goodman*

It would be dodging his responsibility for a Member to assume that an electoral voice can have any relevance in regard to capital punishment.

The information available is sufficient; it is nonsensical to suggest that an additional few months of investigation would add a relevant amount of new material.

Many criminals are led to believe that they are escaping the gallows because of the transitional era. Statistics are irrelevant until capital punishment has been abolished.

Certainty of conviction is required to safeguard the community.

This question should be dealt with by people who have made a detailed study of the subject.

Political implications ought to be disregarded.

Moral attitudes have nothing to do with capital punishment, but the decision will be of immense importance for the community in which we live.

— *Lord Bishop of Exeter*

The point at issue is this: Is capital punishment the right retribution for murder?

He supports Lord Dilhorne's amendment to extend the 1965 Act until July 31, 1973. He also favours the establishment of a Research Committee into causes of violent crimes and methods of prevention.

Far too much importance is attached to deterrence.

— *Lord O'Hagan*

There is no justification for favouring what is in fact murder by the State in times of peace.

Violence and crime need practical attention from the Government in a preventive form.

Taking a man's life is a moral matter. Morality must come first and Government should give a clear moral lead to the country.

— *Earl of Lytton*

Hanging is unthinkable and horrifying. If this matter were to be decided by the people, and if they were in favour of capital punishment, they should be consulted as to the method of carrying it out.

— *Viscount Norwich*

It is a vindictive practice and an admission of total defeat and total despair because it allows no possibility of correction.

— *Lord Advocate (Lord Wilson of Langside)*

The closer people come to the problem, the more they depart from the attitude suggested by polls.

— *Baroness Birk*

Those favouring additional time for study still cling to a crude connection between inadequate figures and deterrence.

Most social reforms were introduced against the will of people.

The corrupting influence of executions on society is tremendous. There is no more effective means of adding violence to society than continuing to keep over society the aura of a projected return to capital punishment.

We must abolish capital punishment and concentrate on prevention of violent crime. We must give a civilized lead to the country in order to deal with uncivilized elements in it. Until a decision is reached on the question of capital punishment, it will be difficult to proceed with effective measures for conviction necessary to reduce crime.

— *Lord Chorley*

With a long term of imprisonment, redress is still possible if a mistake was made.

— *Lord Sorensen*

Society must recognize its responsibility not merely to victim but also to culprit.

Rehabilitation, by getting to causes of pathological disease, restrains the natural impulse to wipe out offenders of society.

Many things heretofore sanctioned are no longer compatible with a civilized society.

— *Lord Taylor of Gryfe*

The death penalty places an unjust burden on the conscience of public servants; it is debasing for those who carry it out.

Reverence for human life is fundamental and implicit in Christian faith. There is no moral right to take life.

— *Lord Byers*

The House of Commons has taken a courageous decision, against a hostile public opinion. Some seats are at stake. A disagreement with the Commons would risk a return to the 1957 Homicide Act. Parliament should take a clear-cut decision now. In 1973 nothing will prevent the Government from introducing a new Bill, in light of information obtained, to restore the death penalty or limit it to certain crimes.

It is obvious that this will be an election issue and that Members of Parliament will have to account for their attitude.

— *The Lord Archbishop of Canterbury*

There may be unforeseen political complications at the end of the 3-year period which may prevent Parliament to consider this question in a serene climate.

Returning to capital punishment would have an inhibiting effect on the progress of a new and more scientific penology.

Public opinion must not be ruled by currents of sentiment rather than by thought-out judgments.

We should have a broad historical perspective; reform results from a series of violent steps upward with occasional downward slide, but on the whole progressing.

— *Viscount Eccles*

In every individual there is a divine spark, a hope beyond our reckoning, and it is wrong to extinguish it by an act of judicial retribution.

Time is on the side of abolition but time is not yet ripe. A 5-year period is not long enough to judge. This trial period must not be truncated for reasons of political convenience.

— *The Lord Chancellor (Lord Gardiner)*

There is not a single country in the world where abolition has resulted in an increase in murder.

This question must be decided on a free vote.

2. OPPOSING THE BILL (RETENTIONISTS) OR NON-COMMITTAL

— *Lord Brooke of Cumnor*

We should not make a premature decision without all the evidence; we will be able to raise the matter again in this Session.

The ratio between capital and non-capital murder remained the same after 1957 in spite of changes in the law.

Parliament should wait until the trial period is virtually complete; this is not the natural time for a decision. The Government should give Parliament respect.

— *Viscount Dilhorne*

Five years is too short a period for the statistics to show a true trend. Now we would be deciding only on figures for 3 years and on crude figures for a fourth.

He does not want to return to the 1957 Act and wants abolition for an extended period, up to July 31, 1973. Bringing in a one-clause bill would allow Parliament to extend the period of the 1965 Act.

A resolution of both Houses or a bill to extend the duration of this Act would avoid capital punishment becoming an Election issue. With facts and figures, the public would accept it more.

Abolition increases the risks of loss of innocent lives and of injuries.

The public thinks that capital punishment is a deterrent; they want tougher policy for law and order. He wants to be satisfied before he votes that abolition would not be harmful to the maintenance of law and order.

— *The Marquess of Salisbury*

Capital punishment is not a matter of individual conscience alone. Abolition affronts bitterly the consciences of a vast proportion of the population.

Our decision should be based on a mature assessment of facts. Extending the trial period until July 31, 1973, would give time for more reflection; if, in light of further experience and information, Parliament decided to restore capital punishment, it could be done in a more satisfactory form than that which previously obtained.

— *Lord Molson*

He rejects the assumption that there is no justification for retribution in punishment.

There is a great danger if the law gets out of line with the moral feelings of the majority of people.

Evidence goes to show that some people are incapable of being reformed. Suffice it to recall those recent cases of individuals convicted of murder who repeated their crime after being allowed out on licence.

Safety of law-abiding citizens constitutes a prime consideration.

Retention of capital punishment is preferable to long years of imprisonment causing moral and physical deterioration.

— *Lord Ailwyn*

The public does not believe that hanging necessarily deters but that it would bring an element of retributive justice. Hanging is beastly, so is murder.

He quotes from the Gowers Report: representatives of police and prison services are convinced of the uniquely deterrent value of capital punishment on professional criminals.

Hanging is superior to any other form of execution on grounds of humanity, certainty and decency.

— *Lord Wedgwood*

Statistics can be used to support or oppose abolition; they are only an indication rather than a justification for what ought to be done.

There is nothing constructive in serving "life" sentence of even 20 years in prison other than keeping a murderer away from further risks to the public.

It is a social issue which should receive a wider discussion at constituency level, even at the next Election.

To rush its Motion through Parliament well before the true trial period expires, constitutes a negation by the Government of a wise democratic action when strong representations against abolition are made by the public and those responsible for law and order.

Time and social climate are inopportune. There are indications that Parliament may subsequently lose some measure of credibility in the eyes of the electorate and may exaggerate difficulties in the prevention and detection of crime.

He favours electoral participation as a prerequisite of a final parliamentary decision.

— *Lord Ferrier*

Corporal punishment should be retained for those murderers of warders or policemen acting in the course of their duty, or of any member of the public going to the help of such warder or policeman.

The possibility of a referendum should receive serious consideration.

— *Viscount Massereene and Ferrard*

Figures are meaningless. With the same kind of violence 20 years ago, when medical sciences were not so advanced, many victims would have died, whereas today they can live.

— *Earl of Harrowby*

Mistakes may exist, but they are rare.

Liability of escape is a real danger and an added terror for those who live in a community in which a murder has been committed.

The job of politicians consists in devising a code of laws which will protect society from fear, terror and danger.

The Government does not realize the degree of menace that appalling crimes constitute in the country today, and the feeling which it is creating.

The ills of a country and crime cannot be cured without curing the individual.

— *Lord Monson*

Any alternative sentencing policy that adds to the feeling of insecurity, worries and tensions of the prison personnel, not including actual physical risks, ought to be reconsidered.

Statistics have different interpretations; some show that the trial abolition period has not changed the murder rate, while others show the opposite.

What the public wants is not so much capital punishment for worst murderers as adequate punishment and abolition of the farce of so-called "life" imprisonment for murder. This is an issue where expediency and justice, instinct and reason, retribution and deterrence are in alignment pointing towards the desirability of substitution of a determinate sentence for "life" imprisonment.

If the death penalty is immoral, Parliament should adopt a bill to abolish it for all offences for which it can be imposed.

— *Earl Ferrers*

Statistics can only show the number of crimes and the failure of capital punishment as a deterrent. They can never show how often capital punishment has deterred a potential murderer from committing a crime or how often it has encouraged one to leave his gun behind.

He is not in favour of a permanent abolition of the death penalty because its removal has resulted in an increase in the use of weapons.

— *Lord MacPherson of Drumochter*

Public opinion should be considered.

There has been an increase in the murder rate since 1965.

— *Lord Reid*

His objection to abolition might be removed if the Government made any real endeavour to reform the prison system. There is no such trend at present but 3 years may produce a reform of the system.

The question of murder is closely related to that of criminal violence; a high rate of violence is accompanied by a high rate of murder. Unless abolition is accompanied by some really significant measure showing a determination to stamp out violence, its effect will be appalling.

Because police do not have the necessary resources, the rate of detection and conviction of violent criminals is low. Society should direct its efforts towards an increase in powers, strength and efficiency of police forces. Expenditures on such a fundamental social service as protecting the public from violence should be increased.

2. THE SITUATION IN FRANCE

In France, the situation regarding the death penalty is at a relative standstill. France is one of the few West European countries to have retained the death penalty as the supreme punishment; the method of execution is still the guillotine. Far from legislatively limiting the field of

application, this country may be in the process of extending capital punishment to drug traffickers if we are to believe a statement made on July 26, 1971 by the Minister of the Interior, Mr. Raymond Marcellin, on Radio Europe No. 1.⁹

At the present time French positive law stands as follows:

I. *Common law crimes in peacetime*

[Trans.] It has long been pointed out that legislative change is steadily shortening the list of common law crimes committed in peacetime which call for capital punishment. The Penal Code of 1810 provided for 36 such crimes; the 1832 revision removed 11, and the constitution of 1848, by eliminating capital punishment in political cases, apparently did away with another six. In 1914 Garraud¹⁰ counted ten cases in the Penal Code and three in special statutes; Vidal and Magnol¹¹ speak of 12 cases in 1949. It must be recognized that despite the undeniable support which the abolitionist movement is gaining from public opinion, the modern-day legislator has felt the need to establish new common law capital crimes since 1950, namely, the three listed below, which should be of considerable practical importance:

- (a) armed robbery, even if committed in the daytime by only one person, and even if the weapon was not carried on the person but was kept in a motor vehicle used by the perpetrator (enactment of November 23, 1950, amending Article 381 of the Penal Code);
- (b) the wilful setting of fire resulting in death or grievous bodily harm (for example to rescuers—enactment of May 30, 1950, adding a final paragraph to Article 435 of the Penal Code);
- (c) habitual mistreatment of children under 15 years of age which has resulted in death, even though there was no intent to cause death (enactment of April 13, 1954, amending Article 312). In certain cases the legislator uses a deterrent to counteract the risk that the public authorities may find themselves powerless to establish a case against offenders. This has always been the practice with respect to the wilful setting of fire to occupied homes, which the enactment of May 30, 1950 extended to include the setting of fire to other property and thereby causing bodily injury; in cases of poisoning (Article 302); placing explosives on any public or private road (Article 435(2), on the basis of the enactment of April 2, 1892 which assimilated this act to attempted premeditated murder); and in cases involving wilfully caused railway accidents resulting in death (enactment of July 15, 1845, Article 16).¹²

Parricide (Articles 296-302) and infanticide (Articles 300-302) are also punishable by the death penalty, except in the case of the mother

⁹ *The Ottawa Citizen*, Monday, August 9, 1971 "Death to Traffickers? French Liberals Wary", Boris Kidel, p. 7. *L'Express* No. 1048 (August 9-15, 1971), "Mais qui est-ce donc, M. Marcellin", Pol Echevin, pp. 12-15.

¹⁰ *Traité théorique de droit pénal*, 3rd ed., 1914 Vol. II, No. 484, p. 121.

¹¹ *Cours de droit criminel*, 9th ed., 1947, I, No. 461.

¹² "Considérations juridiques sur la peine de mort en droit français" G. Levasseur in *Pena de Morte*, International Seminar Commemorating the Centennial of the Abolition of the Death Penalty in Portugal, Coimbra, 1967, pp. 113 et seq. (118-120).

(Article 302(2)). So are acts leading to the death of children: enactment of January 14, 1937 (Article 355 of the Penal Code) on kidnapping ending in death; enactment of April 13, 1954 calling for the death penalty for child-beaters when the mistreatment was inflicted with intent to cause death (Article 312 of the Penal Code) or even when such mistreatment has been habitual and has resulted in death although there was no intent to cause it. The death penalty also applies to acts of cruelty and torture,¹³ (Article 303, provides for the death penalty for perpetrators of felonies accompanied by torture or barbaric acts; Article 344 provides for the death penalty if persons arrested, unlawfully imprisoned or detained have been physically tortured). A perjurer in a criminal matter may be sentenced to death if the accused has himself been sentenced to this punishment (Article 361(2) of the Penal Code).¹⁴ The aggravating circumstances of a murder are punishable by death: murder committed with premeditation or by lying in wait is an assassination (Articles 296 and 303); murder connected with another crime (Article 304(1)); murder connected with a related misdemeanour (Article 304(2)); violence with homicidal intention against the representatives of public authority in the performance of their duties (Article 233). Up until 1960, whenever a crime carrying a life sentence was committed by a recidivist already sentenced to such punishment, this crime made the perpetrator liable to capital punishment. This provision disappeared from Article 56 as redrafted by the decree of June 4, 1960. This is one of the rare instances of removal of the death penalty in recent legislative developments.¹⁵

II. *Capital crimes in time of war or against the security of the state*

As soon as the advent of totalitarian regimes cast the threat of a second world war over Europe, French law did not hesitate to decree the death penalty for certain offences against the external security of the state committed in peacetime, and its severity has not been relaxed since that time.¹⁶ It also provides for the death penalty for common law offences committed in time of war (pillage, theft from a home or other building which the occupants have vacated as a result of events of war); for offences against the external security of the state (acts of treason in peace or war, espionage; twenty-one capital crimes are listed under treason and espionage; some of these consist of actions which are defined in very vague terms); for offences against the internal security of the state—the method of execution being shooting rather than beheading—(use of arms to carry out or attempt an uprising, secession, the raising of troops or taking command of a unit; offences whose aim is to perpetrate the massacre or devastation of one or more districts, to organize, command or aid armed bands for the purpose of disturbing the state, attacking or resisting the forces of public security, organizing, commanding or abetting an insurrectional movement); for military offences set forth under Title II, Book III of the Code of Military Justice (desertion to the enemy, Article 389, C.M.J.; desertion in the presence of the enemy with conspiracy, Article 390(3); self-mutilation in the presence of the enemy, Article 398; surrender before

¹³ *Id. ibid.*, pp. 120-121.

¹⁴ *Id. ibid.*, p. 121.

¹⁵ *Id. ibid.*, p. 122.

¹⁶ *Id. ibid.*, p. 124.

the enemy, Article 401; military treason, Article 403; violence inflicted on a wounded or ill person with intent to rob him, Article 408(b); destruction of military or national defence premises or equipment if death has resulted or if the destruction has caused serious harm to national defence, Article 411(3); the wilful destruction of a ship or aircraft, Article 412; instigators of acts of rebellion in time of war, state of siege or state of emergency, Article 424(2); refusal to obey in the presence of the enemy or an armed band, Article 428; wilful non-performance in time of war, by a unit commander, of a mission for which he was responsible, if such mission pertained to war operations, Article 446; for the commander of a ship or aircraft which has been destroyed, if he is not the last to abandon the ship or aircraft, in contravention of orders received, Article 452; abandoning a position in the presence of the enemy or an armed band, Article 453).¹⁷

Levasseur points out that the death penalty distorts the development of the proceedings, the carrying out of the penal process and sometimes the jury's verdict, either because the prosecution portrays the accused as a detestable being in order to go after his head, or because the jury, repelled by the idea of the death penalty, allows extenuating circumstances for the most atrocious crimes. Abolition has its adherents in France, but the supporters of capital punishment, or simply the public at large, have brought their weight to bear and, through legislation, have obtained an increase in the number of capital crimes, among others in the area of political offences by means of the decree of June 4, 1960.

Jacques Léauté conducted a limited poll at the University of Strasbourg in connection with capital punishment.¹⁸ One hundred and seventy-five law students, eighty-eight art students and thirty-eight science students at the University of Strasbourg were polled on the penalty that should be imposed for a number of crimes. For each offence they had a choice of ten penalties ranging from death, life imprisonment and doing time to a simple fine and no penalty at all. The following are the most significant results. Among those who opted for the death penalty, there were on an average three times as many law students as arts students and seven times more men than women. Among the total population studied, capital punishment had its supporters but they were in a minority. The highest percentage in favour of the death penalty, i.e. for brutal murder, was 39.5, which is below the average. On the other hand, 20 per cent or over of the population polled asked for capital punishment in only five cases: 1. brutal murder, 39.5 per cent; 2. kidnapping when it was certain that the kidnapping led to the death of a minor, 33.5 per cent; 3. premeditated murder without a motive, 26.9 per cent; 4. violence and neglect of children under 15, if death was caused wilfully by the father, mother or an ascendant, 24.6 per cent; 5. intentional fatal poisoning without a motive, 23.6 per cent. In all other cases, the percentage in favour of capital punishment ranged from 0.3 to 19.3, and in only nine cases was it over 10 per cent.

None of the respondents would seek the death penalty for offences involving property; only more or less direct attempts on the life of

¹⁷ *Id. ibid.*, pp. 125-129.

¹⁸ "La peine de mort et la jeunesse estudiantine française", Jacques Léauté in *Pena de Morte*, Vol. II, id. pp. 349 et seq.

others, particularly where death resulted, seemed to warrant capital punishment in the eyes of some. Offences against children were penalized more severely than those committed against adults. The results also established the limitation of the law of retaliation, depending on the motive and circumstances of the act committed; thus, 39.5 per cent of those polled asked for the death penalty for brutal murder, whereas this rate drops to 0.3 for mercy killings. Less than 5.5 per cent would send an accused convicted of a crime of passion to the guillotine. The rate is 3.3 per cent for infanticide and 0.3 per cent for abortion.

Since 1964, there have been only three executions for common law crimes in France (in 1965, 1967 and 1969). The last person to be guillotined was a man of 25 convicted of the murder of two children. Since then four others have been sentenced to death, but in each case the President of the Republic has exercised his right of pardon.¹⁰ The annual number of executions has declined steadily from one period of history to the next, except after the war when it rose slightly. Thus, between 1826 and 1830, there was an average of 111 executions a year in France. In 1921 this number fell to 20; in 1946 it again rose to 33, dropping back to 16 in 1951. Between 1953 and 1969, 22 out of 85 persons sentenced to capital punishment were guillotined, i.e. an annual average of 1.38.²⁰

Although—barring surprises—France is not on the verge of removing the death penalty from its legislation, it seems to have joined the countries that have abolished it in practice.

3. THE SITUATION THROUGHOUT THE WORLD (THE UNITED STATES OF AMERICA EXCEPTED)

(a) LIST OF ABOLITIONIST AND RETENTIONIST COUNTRIES

According to the most recent surveys, 105 countries have retained the death penalty. This figure does not take into account the situation prevailing in states from which information could not be obtained.

This is the list of "retentionist"* countries and territories:

Afghanistan	Chad
Australia (except the States of New South Wales, Queensland and Tasmania)	Chile
Barbados	China (Taiwan)
Bechuanaland	Congo (Brazzaville)
Belgium	Cuba
British Guyana	Cyprus
Bulgaria	Czechoslovakia
Burma	Dahomey
Cambodia	El Salvador
Cameroon	Ethiopia
Canada	France
Central African Republic	Gabon
Ceylon	Gambia
	Ghana
	Gibraltar

¹⁰ *The Ottawa Citizen*, Monday, August 9, 1971, p. 7, see note 9.

²⁰ *Quid? Tout pour tous*, Paris, Plon, 1970, pp. 1396-1397.

* The word "retentionist" will be used throughout this paper as opposed to "abolitionist".

Greece	Peru
Guatemala	Philippines
Guinea	Poland
Haiti	Republic of Vietnam
Hong Kong	Romania
Hungary	Rwanda
India	Saudi Arabia
Indonesia	Senegal
Iran	Seychelles
Iraq	Sierra Leone
Ireland	Singapore
Israel	Somalia
Ivory Coast	South Africa
Jamaica	South Korea
Japan	Spain
Jordan	Sudan
Kenya	Surinam
Kuwait	Swaziland
Laos	Syria
Lebanon	Tanzania
Lesotho	Thailand
Liberia	Togo
Libya	Trinidad and Tobago
Liechtenstein	Tunisia
Luxembourg	Turkey
Madagascar	Uganda
Malawi	Union of Soviet Socialist Republics
Malaysia	United Arab Republic
Mali	United States of America (federal government, 37 states and District of Columbia)
Malta	Upper Volta
Mauritius (Island)	Western New Guinea
Mexico (3 states out of 29)	Western Pacific Islands (Fiji, British Solomon, Gilbert and Ellice Islands)
Mongolia	Yugoslavia
Morocco	Zaire
Nepal	Zambia
Nicaragua	
Niger	
Nigeria	
North Korea	
Northern Rhodesia	
Pakistan	
Paraguay	

The abolitionist countries are divided into two main categories: *de jure* and *de facto* abolitionists. The first have completely eliminated the death penalty from their civil legislation, or have retained it only for exceptional circumstances so rare that in practice it has virtually disappeared. Such is the case for countries which still impose capital punishment in wartime or under military laws. The second group is made up of countries which, while retaining the death penalty, never carry it out and commute all death sentences to prison sentences.

Here is a list of *de jure* abolitionist states with the date of their legislation eliminating capital punishment:

Argentina (1922) *	Mexico (federal government and 26 states out of 29) (1931 to 1970)
Australia (Queensland, New South Wales, Tasmania) (1922, 1955 and 1968)	Monaco (1962)
Austria (1945 and 1968) *	Mozambique (1867)
Bolivia (1962)	Netherlands (1870) *
Brazil (1889 and 1946) *	Netherlands Antilles (1957)
Colombia (1910)	New Zealand (1961)
Costa Rica (1882)	Norway (1905) *
Denmark (1930) *	Panama (never had it)
Dominican Republic (1924)	Portugal (1867)
Ecuador (1897)	Republic of San Marino (1865)
Federal Republic of Germany (1949)	Sweden (1921) *
Finland (1949) *	Switzerland (1937) *
Greenland (1954)	United Kingdom (1969)
Honduras (1957)	Uruguay (1907)
Iceland (1940)	Venezuela (1863)
Italy (1944)	

The group of *de facto* abolitionists includes the following countries:

Belgium, where a person sentenced to death is automatically pardoned. There has been no execution in this country since 1863, except in 1918 when a man who had killed his pregnant wife and displayed an attitude of the utmost cynicism was put to death. This was the second such crime committed in the region and the government did not want to shelter this individual in a French prison while his fellow-citizens were at the front. Because the country was in a state of war, the murderer was executed. The other exception concerned a series of charges of attempts against the security of the state which were brought after the Second World War. From 1944 to 1950, 242 persons out of a total of 3,000 sentenced to death, i.e. those who had committed the most serious crimes, were executed. In 1950 there were still some facing execution but their sentences were commuted because of the time that had elapsed. Belgium's foremost specialist on the question of the death penalty, P. Cornil, agrees that the death penalty should be retained in wartime when, he says, it is lawful to kill one's fellow man. He comments as follows on the 242 executions which took place from 1944 to 1950:

[Trans.] These were serious crimes committed in wartime and motivated by the state of war. It was therefore logical that capital punishment be imposed on the perpetrators of criminal acts committed in this exceptional situation when killing one's fellow man is lawful provided the conventions of war are observed. In such a case the death penalty can be regarded as a logical corollary of a judicial situation which our modern societies have still not been able to renounce.²¹

* Capital punishment has been retained during wartime or under military laws.

²¹ "La peine de mort en Belgique", in *Pena de Morte*, Vol. I, id. pp. 143 et seq. (146).

However, Cornil criticizes the Belgian custom of systematically commuting death sentences, which divests capital punishment of any punitive aspect and any deterrent effect. In addition to undermining the authority of the magistrature, automatic commutation becomes a farce and the accomplice of a system of which the executive arm disapproves without drawing the necessary conclusions. Cornil has recommended that Belgium, from its more than one hundred years of experience, should draw the conclusions that are self-evident. It seems that his wishes are being fulfilled, because his country is studying a bill which would make the practice of automatic pardon mandatory.

Luxembourg, where no death sentence has been carried out for a long time and a pardon is always available.

Nicaragua provides for the death penalty in article 37 of the *Constitution Politica*, but it has not been applied because no regulations have been made for its application.

Surinam, where the death penalty can be applied only with the authorization of the Governor, and then only during a state of war or siege. No one has been executed since 1927 and the complete abolition of the death penalty is expected in the near future.

Liechtenstein, where the death penalty has remained a dead letter since 1798.

Vatican City.

To these *de facto* abolitionist countries should be added the following states which have reduced the number of crimes punishable by death:

Canada, which in 1967 removed the death penalty from its legislation for a five-year trial period, except for the murder of policemen and prison guards in the performance of their duties. No one has been hanged since 1962.

Israel, where only treason, espionage, genocide and nazi crimes carry the death penalty.

Nepal, where murder or attempted murder of the Chief of the State or of a member of the Royal Family are still punishable by death.

Australia, whose federal government abolished the death penalty, except for murder and treason, in the Australian Antarctic Territories, Australian Capital Territory, Christmas Island, Cocos Islands, Norfolk Island and the Northern Territory.

Bulgaria which, since the new code was introduced on March 15, 1968, has reduced by one-third the number of crimes leading to the death penalty.

Northern Ireland, where the Criminal Justice Act of 1966 abolished the death penalty for murder, except for the murder of a person in the service of the Crown.

The state of Western Australia, which abolished capital punishment for murder (although the death penalty was retained for "wilful murder").

Ireland (Eire), which no longer imposes the death penalty for piracy with violence, wilful killing of a person protected by the Geneva

conventions of 1949, or for any homicides except "capital murder", which includes murder of a police or prison officer in the course of his duty, murder in the course of one of several offences against the state or in the course of activities of an unlawful organization, and "political" murder.

Pakistan, which eliminated the violation of any of the Martial Law Regulations repealed in 1962 from its list of capital crimes.

Zambia, where rape is no longer punishable by death.²³

Certain countries are thinking of amending their legislation. Afghanistan and Togo are in the process of drafting new penal codes. Cyprus is seriously contemplating the possibility of amending its law so as to make capital punishment a discretionary penalty. Finland will perhaps restrict the use of the death penalty even in wartime.²⁴ As things now stand, it can be imposed only for murder, high treason and the murder of the Chief of a state with which Finland has friendly relations, provided these crimes were committed in wartime and the execution took place during the war. If hostilities end before the execution has taken place, the death sentence is commuted to life imprisonment. In Trinidad and Tobago the entire question of capital punishment is now under review.²⁵

On the other hand, other states have no intention of removing the death penalty from their stock of sanctions; a case in point is South Africa, whose Parliament has never even debated this question. The number of executions was high, at least in 1966, as was the number of murders. According to some experts, the experience of other countries cannot be applied to South Africa because of the complexity of its social system. These experts conclude that South Africans are not ready to even discuss the abolition of the death penalty.²⁶ Not only do certain countries not want to do away with it, but some have extended the list of offences that are subject to capital punishment; for example, the USSR has added burglary and counterfeiting to capital crimes as a result of domestic economic difficulties. This is also the case in Turkey, where a bill on the prevention of terrorism, providing for the death penalty for persons convicted of kidnapping for economic, social or political reasons, was adopted by the Council of Ministers in Ankara. This bill further stipulates that any person who obstructs the search for the kidnappers and their victim, helps them escape justice or fails to disclose their place of hiding will also be liable to the death penalty.²⁷ Such is the case in France, which in 1960 restored the death penalty for certain political crimes,²⁸ and also in Nigeria which decided, around 1966, to make drug

²³ *Capital Punishment, Developments 1961 to 1965*, Department of Economic and Social Affairs, United Nations, New York, 1968, No. 20, pp. 7-8.

²⁴ "The Death Penalty in Finland", Inkeri Anttila in *Pena de Morte*, Vol. I, id. pp. 173 et seq.

²⁵ United Nations Economic and Social Council, *Capital Punishment, Note by the Secretary-General*, E/4947, February 23, 1971. Also see "The Status of Capital Punishment: A World Perspective", Clarence H. Patrick in *The Journal of Criminal Law, Criminology and Police Science*, No. 4, December 1965, Northwestern University School of Law, Chicago, pp. 397 et seq. (p. 408).

²⁶ *Le Devoir*, Thursday, May 20, 1971, p. 7.

²⁷ *Justice Peace Local Government Review*, 1966, 130140, pp. 710-711.

²⁸ "The Problem of the Death Penalty", Marc Ancel in *Capital Punishment*, edited by Thorsten Sellin, Harper & Row, New York, 1967, pp. 12 and 14.

trafficking and production punishable by death. By so doing, it seems that the Nigerian government authorities wanted to alert public opinion to the existence of a serious drug consumption and trafficking problem.²⁸ Among the other countries that have restored the death penalty are:

Cambodia, for sabotage of the economic or financial organization of the nation;

China (Taiwan), for the commission by a public official of any of the following offences: selling, converting or stealing government food-stuffs; using authority or false pretences to extort; taking bribes or gifts, etc. while involved in construction, purchasing or supply, etc.;

Republic of Viet-Nam, for these offences: illicit speculation or other action tending to upset the economy and finances of the state; active corruption and traffic in influence when the value offered is more than 100,000 piastres; communist association or communist entente for bearing arms against the state; physical violence against agents of the public force during the exercise of their functions;

Singapore, for committing or consorting with anyone who commits the offence of unlawfully carrying or possessing firearms, ammunition or explosives in a security area.²⁹

(b) THE EXPERIENCE OF ABOLITIONIST COUNTRIES

Italy abolished the death penalty for the first time in 1890, restored it during the Second World War and again abolished it definitively in 1944. From 1880 to 1920, the annual average homicide rate dropped from 10.6 per 100,000 persons to 3.5, even though the death penalty had disappeared in 1890. When it was abolished the second time in 1944 the annual rate was 13 per 100,000 population, and four years later in 1948, it was down to 6.9.³⁰ Between 1953 and 1965, the rate varied between a maximum of 3.96 in 1956 and a minimum of 2.58 per 100,000 in 1964. When the fluctuations in the average number of homicides in Italy during these 12 years are compared with the figures for the same period in a retentionist country, France, two facts emerge: first, the margin separating the maximum and minimum rates in Italy is very small compared with the corresponding margin in France where, unlike Italy, the rate varies substantially, from one year to the next, although neither the law nor the practice regarding execution has changed. Second, the average homicide rate for these 12 years is much lower in Italy than in France, despite the fact that the latter has retained capital punishment and continued to use it, whereas Italy abolished it in 1944. A number of social, economic, political and other factors may explain this marked difference. The above-mentioned Italian and French statistics will be found in an appendix.³¹ (see appendix 2, Table 5)

²⁸ "Drug Dependence and Abuse Notes" in *National Clearinghouse for Mental Health Information*, New York, December 1966 (3).

²⁹ *Capital Punishment—Developments 1961 to 1965*, id. No. 21, pp. 8-9.

³⁰ *Capital Punishment*, United Nations, Department of Economic and Social Affairs, Publication No. ST/SOA/SD/9, New York, 1962.

³¹ "Les crimes de sang nécessitent-ils une répression sanglante?" by Joseph Vernet, s.j. in *Pena de Morte*, Vol. I, id., pp. 367 et seq.

Sweden formally abolished the death penalty in 1921, but there had been only one execution in that country since 1900 (in 1910). Between 1869 and 1900, there were 12 executions, an approximate average of 4 per decade. Nothing in the Swedish statistics on homicide would support the conclusion that their fluctuation may have been influenced by the abolition of the death penalty in the twentieth century.⁸² These statistics will be found in an appendix (see Table 6). A comparison of changes in the average annual homicide rate in the North European countries and France from 1953 to 1965 indicates that this rate has remained almost steady, with a slight tendency to decrease, in the first group composed of abolitionist countries, while it has fluctuated widely in France despite the fact that this country has always retained capital punishment.⁸³

Rates per 100,000 persons

Germany: from 3.7 to 2.7	Netherlands: 3.0 to 2.5
Denmark: from 1.8 to 1.0	Sweden: about 2.0
France: from 11.47 to 0.84 with an average of 5.11	

Portugal abolished the death penalty for common law crimes on July 1, 1867, at the end of a 22-year period during which no one was put to death; the last execution in Portugal dates back to 1845. As early as 1852 the Portuguese Parliament adopted a law abolishing the death penalty for political crimes. Finally, in March 1911, military crimes ceased to be punishable by death. Several years earlier, in 1874, a soldier convicted of murder was awaiting execution but the pressure of public opinion forced the authorities to commute the death sentence to imprisonment. The 1933 Political Constitution declared the following principle, "There shall be no perpetual sentences, nor death sentence except, as regards the latter, the case of war with a foreign country, to be applied in the theatre of war".⁸⁴ Already in 1884 the Portuguese legislator had changed life imprisonment to temporary imprisonment with the possibility of parole. The Portuguese Penal Code of 1963-1966 fixes the maximum limit of imprisonment at 20 years, even for crimes which were previously punishable by death and imposes mandatory parole without exception as soon as two-thirds of the sentence has been served. It also allows the release of an inmate who has served half of his sentence. According to Eduardo Correia, the restoration of the death penalty in Portugal would do more to hurt the sensitivities of the community than would the commission of serious crimes.

[Trans.] With the evolution of civilization, other ways of embodying the evil of sanctions today cause as much suffering as did death, mutilation and torture in times past. If this is the case, it can then be said that the threat of losing one's freedom now exercises a deterrent effect similar

⁸² "The Impact of Legal Sanctions" in *Crime and the Legal Process*, William J. Chambliss, 1969, McGraw Hill Book Co., pp. 383-384.

⁸³ Joseph Vernet, *op. cit.*, p. 371.

⁸⁴ "Death Penalty? We Have Abolished it in 1867" in *Portugal, an Informative Review*, Published by the State Secretariat for Information and Tourism, No. 9, March 1971, pp. 26-27.

to that which the others had in the past. But that would confirm the *pointlessness* of relying on capital punishment and, consequently, its *illegality* within the very framework of general prevention.³⁵

Comparison of the average annual homicide rates in France and Portugal reveals that this rate is higher in France, a retentionist country, than in Portugal, an abolitionist country of long standing. These figures are reproduced in an appendix (see Table 7).

(c) THE UNITED NATIONS AND THE DEATH PENALTY

The study of this question began in 1959; since then, the General Assembly, the Economic and Social Council and the Commission on Human Rights have examined it and adopted various resolutions, including resolution 2393 (XXIII), adopted by the General Assembly on November 26, 1968. This resolution invites the Member States to ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases in countries where the death penalty still obtains and to inform the Secretary-General of action taken pursuant to this request. The resolution also requests the Secretary-General to submit a report on the subject to one of the sessions of the Economic and Social Council in 1971. The Secretary-General's report E/4947 on capital punishment, which is a follow-up to this resolution, was submitted to the members of the Council. During its presentation the director of the social development division pointed out that only 54 Member States, Canada being one, had answered the request and that consequently the report had to be regarded as partial and preliminary. This document reveals a consensus among the experts in favour of the abolition of capital punishment, as evidenced in paragraphs 130 and 153 of the Report of the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders (1968, U.N.F. publication No. 69.IV.3). The Italian delegation, which took the initiative in having this question put on the agenda of the Economic and Social Council, stated that the United Nations should redouble its efforts to achieve the objectives set forth in resolution 2393 (XXIII). However, a number of difficulties arise in the review of legal systems which retain the death penalty, and perhaps reasonable standards should be adopted for the gradual abolition of this penalty. The Italian delegation, also on behalf of Norway, the United Kingdom and Uruguay, introduced a draft resolution (E/AC 7/L.578) which takes note of the measures already taken by a number of states and affirms that the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment might be imposed. Except for a few minor distinctions, the majority of the delegations indicated that they were in agreement with this principle and its objective, while pointing out the practical difficulties experienced by some countries, particularly those with a federal system in which jurisdiction over criminal law belongs to the states. The French delegate expressed the opinion that despite the trend towards the abolition

³⁵ "La peine de mort, réflexions sur sa problématique et sur le sens de son abolition au Portugal", Eduardo Correia, translated from Portuguese by Andrée C. Rocha in *Pena de Morte*, Vol. I id., pp. 28-29. See also "La peine de mort au Portugal", Eduardo Correia in *Revue de Science criminelle et de Droit pénal comparé*, Vol. XXIII, 1968, pp. 19 et seq.

of capital punishment, it was premature to affirm abolition in all countries as the main objective.

Upon conclusion of the discussions, the Council adopted the draft resolution submitted by Italy, Norway, the United Kingdom and Uruguay by a vote of 21 to none with five abstentions in committee, and by a vote of 14 to none with six absentions in plenary session. Here is the text of the final resolution (1574L) of the Economic and Social Council:

"*The Economic and Social Council* having examined the report submitted by the Secretary-General in accordance with paragraph 3 of General Assembly resolution 2393 (XXIII) of November 26, 1968,

1. Takes note with satisfaction of the measures already taken by a number of States in order to ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases where the death penalty still obtains;
2. Considers that further efforts should be made by Member States to ensure full and strict observance anywhere of the principles contained in articles 5, 10 and 11 of the Universal Declaration of Human Rights, reaffirmed by articles 7, 14 and 15 of the International Covenant on Civil and Political Rights, and in particular of the principles that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that everyone is entitled to a fair and public hearing by an independent and impartial tribunal, that everyone charged with a penal offence has a right to be presumed innocent until proved guilty by a final sentence, and that every accused has a right to enjoy all guarantees necessary for his defence;
3. Affirms that the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment might be imposed with a view to the desirability of abolishing this punishment in all countries so that the right to life, provided for in article 3 of the Universal Declaration, may be fully guaranteed;
4. Invites Member States which have not yet done so to inform the Secretary-General of their attitude to possible further restriction and gradual abolition of the use of the death penalty or to its total abolition, by providing the information requested in paragraph 2 of General Assembly resolution 2393 (XXIII);
5. Requests the Secretary-General to circulate as soon as possible to Member States all the replies to the queries contained in paragraph 1 and 2 of General Assembly resolution 2393 (XXIII) submitted by Member States either before or after the adoption of the present resolution."⁸⁶

In his report to the Economic and Social Council,⁸⁷ the Secretary-General points out that the attitude of the Member States has not changed substantially since 1967, when the United Nations published the document entitled *Capital Punishment, Developments 1961-1965*. This document made the following observations:

⁸⁶ United Nations Economic and Social Council Resolution on Capital Punishment, Fiftieth Session, Agenda item 4, E/RES/1574 (L), May 28, 1971.

Id., *Capital Punishment, Report of the Social Committee* E/4993, April 29, 1971.

⁸⁷ Id., *Capital Punishment, Note by the Secretary-General* E/4947, February 23, 1971.

- (a) There is an over-all tendency in the world towards fewer executions. This is the result of less frequent use of the death penalty and of a steady movement towards legislative abolition of capital punishment.
- (b) There is a slight but perceptible tendency towards legislative provision for and actual application of the death penalty for certain economic and political crimes.
- (c) Where it is used, capital punishment is increasingly a discretionary rather than a mandatory sanction.
- (d) Almost all countries have provision for the exclusion of certain offenders because of their mental and physical condition, extenuating circumstances, age and sex; the scope of these categories of offenders is broadening.
- (e) A growing number of offenders who are sentenced to death are spared through judicial processes or by executive clemency.
- (f) There is a great disparity between the legal provisions for capital punishment and the actual application of these provisions.
- (g) With increasing frequency, an offender who is sentenced to death is confined, while awaiting execution, in conditions similar to those of other prisoners. Execution, if it takes place, is likely to be accomplished by shooting or hanging and accompanied by a minimum of publicity.
- (h) The tendency with regard to offenders who are subject to capital punishment but who have been accorded another penalty is to confine them in conditions similar to those of other prisoners and to provide mechanisms for their eventual release.
- (i) With respect to the influence of the abolition of capital punishment upon the incidence of murder, all of the available data suggest that where the murder rate is increasing, abolition does not appear to hasten the increase; where the rate is decreasing, abolition does not appear to interrupt the decrease; where the rate is stable, the presence of or absence of capital punishment does not appear to affect it.²⁸

To the observations of the 1961-1965 report, the Secretary-General adds some additional interesting comments.

All countries grant a person sentenced to death the right to appeal his sentence on questions of fact or law, or both. Some countries, such as Canada, provide for two appeals, i.e. to the provincial Court of Appeal and the Supreme Court of Canada. The generic term "Appeal" includes the following three recourses: (a) appeal proper: the retrial of the case by another, and generally higher court; (b) cassation: a recourse concerned with errors of law; (c) review or revision: when a decision has become final and new facts come to light disclosing a miscarriage of justice which it is intended to set aside by means of an exceptional procedure.

All states recognize the right of the accused to ask for mercy. The head of state or government, or the national assembly, has the power

²⁸ *Capital Punishment, Developments 1961 to 1965*, United Nations, Department of Economic and Social Affairs, New York, 1968, paragraph 9, pp. 3-4.

to grant a pardon on the advice of a special committee (*Commission des grâces* in Cambodia, the *Conseil supérieur de la magistrature* in France, etc.)

No execution of a death sentence is carried out before all legal procedures have been exhausted. This holds true in all countries although this provision is not always written explicitly into the law.

Among the legal safeguards given the accused are the right to be instructed in the legal procedures, the right to the facilities for preparing a defence, the right to be assisted in legal matters and to have a qualified and independent lawyer from the earliest stages of the proceedings to the later appeals. This is particularly important for indigent people unable to provide for themselves or for people unused to legal procedures. The Member States that replied to the questionnaire do not all have the right to legal representation and legal assistance written explicitly into their laws but this does not prevent most of them from providing such assistance to indigent persons.

Sub-paragraph (b) of paragraph 1 of General Assembly resolution 2393 (XXIII) asked the Member States to let some time elapse before carrying out an execution in order to reduce the risk of summary or hasty executions. Confusion arose from the ambiguity of this provision since no one knew whether this time-limit began when the sentence was handed down, when the final appeal was dismissed or at some other time. For purely humanitarian reasons, some countries preferred to carry out the execution as soon as possible after the dismissal of the final appeal. There is no uniformity with regard to a time-limit. The rapid executions of the conspirators in Morocco and of Communist party members in the Sudan following an abortive coup d'état in Morocco and the overthrow of the ruling government in the Sudan during the summer of 1971 prove that the recommendation regarding a time-limit has remained a dead letter in a number of countries.

Among the reasons for exclusion from the death penalty are insanity or mental illness within the meaning of the M'Naghten Rules of 1843, and diminished responsibility or mental disturbance or defect short of insanity; extenuating circumstances (provocation, drunkenness, etc.) which entail conviction of a lesser crime than murder or the imposition of a lesser sentence than death; age or sex, although no country expressly exempts women from the death penalty; however, the courts do not generally sentence women to death and when this does happen, they are very rarely executed. The laws provide that the execution of pregnant women be postponed until after childbirth and, in practice, the sentence is nearly always commuted.

The proportion of death sentences carried out over the years has either remained stable or has decreased substantially. The document on the death penalty prepared for the United Nations by Marc Ancel in 1960 reported 1,647 executions out of 3,108 death sentences or an average of 53 per cent during the last five-year period; from 1961 to 1965, 1,033 death sentences out of 2,006 were carried out, for an average of 50 per cent. The percentage has continued to decrease since then.

When a condemned man fails to obtain a commutation, his execution takes place, generally speaking, from three to nine months after he has been sentenced. The shortest period was eight days in Chad and the

longest was four years and nine months in Japan. These figures do not take into account the United States, where inmates have waited for more than ten years on death row.

The methods of execution used at the present time tend to reduce the suffering of the person executed. About thirty countries use hanging; shooting is used in some fifteen others; the Philippines, Taiwan and 24 American states electrocute their offenders; 11 American states use the gas chamber to inflict the death penalty; decapitation is the traditional means of execution in France, Dahomey, Laos and Viet-Nam, and garrotting survives as the means of execution in Spain. Execution for military offences is accomplished by shooting or hanging.

The countries where executions are still carried out in public are very few in number. In the majority of cases, executions are not held in public view and attendance is carefully limited. Only rarely are journalists authorized to attend an execution. Publicity is generally strictly controlled or forbidden and limited to a simple announcement.

In almost all the countries, accessory penalties have disappeared, although in some countries civil death, the deprivation of public rights and honours, and forfeitures of property to the state still persist. A condemned person usually disposes of his property as he pleases. In a number of cases, the dependants of a murdered person may seek financial compensation in a civil suit from the murderer's estate. In other cases the state itself compensates the dependants of the deceased and it is then subrogated to the victim's right to a separate civil action against the offender of his estate.

4. THE SITUATION IN THE UNITED STATES OF AMERICA

In the United States, the federal government and the individual states all have the power to pass criminal legislation within their respective areas of jurisdiction, so that there is considerable variation from one state to another in the laws governing capital punishment. So far 14 states and two American territories (Puerto Rico and the Virgin Islands) have totally or almost totally abolished the death penalty, while it remains for 34 states, the federal government and the District of Columbia. Here is the list of the nine states and two territories which have completely abolished it, with the date of final abolition in parentheses.

Alaska (1957)	Hawaii (1957)	Iowa (1965)
Maine (1887)	Michigan (1963)—it had been abolished in 1847, except for crimes of	
	treason)	
Minnesota (1911)	Puerto Rico (1929)	Virgin Islands (1957)
Oregon (1964)		Wisconsin (1853)
West Virginia (1965)		

Several of these states reintroduced capital punishment after abolishing it for a time, then abolished it definitely on the date shown above. These are Iowa (1872-1878), Oregon (1914-1920) and Maine (1876-1883). The first date is that of abolition and the second that of reinstatement.

The five states which have almost completely abolished the death penalty are New Mexico (1969), New York (1965), North Dakota (1915), Rhode Island (1852) and Vermont (1965). Crimes still punishable by death are murder of a police officer, prison guard or fellow inmate, or a second murder committed by a prisoner serving a life sentence.

Eight states tried abolishing capital punishment for a period of time, then reintroduced it after one or more heinous crimes which aroused public indignation. Here are the states concerned, with the dates of abolition and reintroduction for each; Arizona (1916, 1918), Colorado (1897, 1901) Delaware (1958, 1961), Kansas (1907, 1935), Missouri (1917, 1919), South Dakota (1915, 1939), Tennessee (1915, 1919), Washington (1913, 1919).³⁹

The crimes punishable by death in the states retaining capital punishment are divided into four categories.

- (1) *Crimes against government* (treason and perjury).
- (2) *Crimes against property* (arson, burglary, deliberate train wrecking resulting in the death of one or several persons).
- (3) *Crimes against the person* (murder, kidnapping causing injury or death to the victim, rape, duelling, grievous assault by a life prisoner, robbery with violence, mismanagement of bombs and explosives causing death or serious injury, attempts on an executive, lynching, assault).
- (4) *Miscellaneous crimes* (castration, causing a boat collision resulting in death, procuring an abortion resulting in the death of the mother, poisoning, espionage, piracy of an aircraft, communication of restricted data with intent to injure the United States, and so on).

In fact, over the last 40 years only seven types of crime have actually been punished by execution: murder (3,334 executions out of 3,859 or 86.4%), rape (455 executions or 11.8%), kidnapping (20 executions), armed robbery (25 executions), burglary (11 executions), aggravated assault (6 executions) and espionage or sabotage (8 executions). For the other crimes, the death penalty has fallen into disuse.⁴⁰

Since the execution of Luis José Monge on June 2, 1967, in the Colorado State Prison, following his conviction for murdering his pregnant wife and three of their seven children, no executions have been carried out in the United States by the civil authorities.⁴¹ Table 2 of Appendix K of the Justice Department's document entitled "Capital Punishment" breaks down the number of executions by state and year from 1930 to 1964. During this 34-year period there were 3,849 executions, 3,816 under state law and 33 under federal law. Between 1965 and 1971 only ten executions took place, seven in 1965, one in 1966 and two in 1967. There were none in 1968, 1969, 1970 or 1971, at least up to September of that year. These

³⁹ National Prisoner Statistics, No. 45, August 1969, *Capital Punishment 1930-1968*, United States Department of Justice, Bureau of Prisons, p. 30. See *U.S. News & World Report*, April 12, 1971, p. 26.

⁴⁰ "Survey of Capital Offences", Robert H. Finkel in *Capital Punishment*, Thorsten Sellin, Harper & Row, publishers, New York, 1967, pp. 22-30.

⁴¹ *Time*, Canada Edition, May 17, 1971, p. 40.

ten executions were carried out under state laws; there have been none under federal law since 1963.⁴² A table giving detailed statistics of these executions is appended (Table 8). The number of judicial executions has shown a marked downward trend over the last 40 years, particularly between 1935 and the present. This can readily be seen by comparing the figures for 1935, a record year in which 199 persons were executed, with those for the last four years, in which no death sentence has been carried out. Table 9 in the appendix shows clearly the rate of this decline.

This continuous decrease in the number of executions has not been accompanied by a corresponding decline in the number of death sentences pronounced by the courts, with the result that there is a considerable accumulation of prisoners on Death Row in the various American prisons. Whereas at the end of 1959 there were 189 prisoners awaiting execution in Death Row, in May 1971 the number was up to 650.⁴³ Table 10 of the appendix shows the continuous trend since 1961.

Another result of the suspension of executions in the United States has been a progressive increase in the period of time spent of Death Row by those condemned to death who are waiting for a decision on their fate. In 1961 prisoners under sentence of death remained in this situation for an average of 14.4 months, but by 1968 the average had more than doubled and stood at 33.2 months. Although the most recent data are not available, it is certain that this average has risen further since that time, as no one has been executed in the interval. Prisoners who have been waiting from four to five years to learn their fate are not unusual, and some have been waiting over 13 years.⁴⁴ The conditions under which those condemned to death are kept makes their wait all the more distressing; they are isolated from the rest of the inmates; they are seldom allowed out of their cells, and then only for short periods; they are under extreme psychological stress because of the uncertainty and precariousness of their future. However, some institutions have obtained authorization to integrate them progressively with the rest of the prison population, since no executions have been carried out for four years now, and no one knows when or how the matter will end. Connecticut's Department of Correction gives its three condemned men the same privileges as the other inmates in the maximum security institution at Somers. After being processed through the Reception and Diagnostic Center, each man will be classified for institutional programs as are inmates in the general population. There has not been an execution in Connecticut since May of 1960.⁴⁵

In the United States as in most western countries, the crime rate is increasing from year to year. The percentage of the increase varies from one period to another, but the upward trend is constant and continuous. Among the major crimes, murder and wilful homicide show the lowest rate of increase. Between 1960 and 1970 they rose by 75.7% in absolute terms and 56% in relative terms, based on the number of crimes per 100,000 population.

⁴² *National Prisoner Statistics*, *op. cit.*, pp. 8, 9.

⁴³ *Time*, May 17, 1971, p. 40.

⁴⁴ *Le Devoir*, Tuesday, May 18, 1971. See "A Pre-Posthumous Conversation with Myself", Edgar Smith in *Esquire*, Vol. LXXV, No. 6, June 1971. See "The Death Penalty in America, Review and Forecast" in *Federal Probation*, Vol. XXXV No. 2, June, 1971, p. 33.

⁴⁵ *Federal Probation*, Vol. XXXV, No. 2, June 1971, p. 82.

It would be interesting to trace the evolution of the overall crime rate and the homicide rate over the last twelve years, for the United States as a whole and for each state separately, in the light of the gradual disappearance of executions and of the variations among states with respect to retention and abolition of the death penalty. Following the example of Professor Thorsten Sellin of the University of Pennsylvania Center of Criminological Research, whose research is reported in detail in *Capital Punishment*,⁴⁰ it would be interesting to compare the homicide statistics for an abolitionist state with those of a group of contiguous retentionist states having similar geographical, economic, demographic and social conditions. Another possibility would be to compare the homicide rate before and after abolition of the death penalty in states which have recently abolished it, in order to see whether the change has had any effect on the rate. If the death penalty really acts as a deterrent, the homicide rate should be higher in an abolitionist state than in a retentionist state; it should also be higher after abolition than before, in an individual state. In studying this data it should be remembered that no death sentence has been carried out since June 1967, and that this fact has given rise to a degree of uniformity across the country which by no means reflects the legislative situation respecting the death penalty in the United States. Furthermore, although executions have been suspended, the courts of retentionist states have continued to impose the death penalty, and Death Row has continued to receive new inmates. Tables 11 and 12 of the appendix to this chapter give the evolution for the United States as a whole of the general crime rate and the rates of crimes of violence, crimes against property and homicides from 1960 to 1970, as well as the total number of offences and the number of murders and non-negligent manslaughters committed in each state from 1964 to 1970. Figures for 1958 to 1963 can be found in Appendix K of *Capital Punishment* published by the Canadian Department of Justice.

Before going into a detailed study of these figures, some preliminary remarks must be made concerning Table 12. The abolitionist states as a whole had an average homicide rate of 4.65 per 100,000 population in 1970, while the death penalty states had an average rate of 7.65. The average rates for the years 1964 to 1970 inclusively were, for abolitionist states, 2.7, 2.8, 3.45, 3.25, 3.9, 4.0 and 4.65, and for retentionist states, 4.9, 4.95, 5.9, 6.35, 6.7, 7.0 and 7.65. The margin between both categories of states was narrowest in 1965 (2.15) and widest in 1967 (3.10).

A comparison of the data for Maine, Vermont and New Hampshire shows that each state passed through troubled periods before and after 1964, although no clear or continuous trend can be seen. The homicide rate fluctuated considerably, rising sharply from 0.6 to 2.4 (1961-62) or from 0.9 to 2.7 (1964-65) in New Hampshire, and from 0.4 to 3.0 (1967-68) in Maine; then falling sharply again to 1.6 and 1.5 (1969-70) in Maine and to 1.9 (1966) in New Hampshire; or rising continuously to 3.2 (1963) to fall again to 0.9 (1964) in the last-named state. After a particularly bad year (3.2 in 1958), Vermont experienced a period of relative calm until 1967 (3.1), after which the rate began a steady decline to 1.3 in 1970.

⁴⁰ *Capital Punishment*, edited by Thorsten Sellin, Center of Criminological Research, University of Pennsylvania, Harper & Row, publishers, New York, 1967, pp. 135-155.

The average homicide rates for 1958-63 and 1964-70 are as follows: Maine: 1.8 and 1.75; New Hampshire: 1.8 and 1.9; Vermont: 1.05 and 1.7. Only Vermont, an abolitionist state since 1965, shows some increase in the rate, although this is slackening. The experience in Maine (abolitionist) and New Hampshire (retentionist) has been roughly similar.

Connecticut, Massachusetts and Rhode Island all show sharp increases in their homicide rates. The rise began during the 1958-63 period and reached its peak beginning in 1966. The averages for the two periods are, respectively, 1.4 and 2.4 for Connecticut, 1.5 and 2.85 for Massachusetts and 0.9 and 2.2 for Rhode Island. However, none of these states made any changes either in the application of the death penalty or in the relevant legislation. Rhode Island abolished capital punishment in 1852, whereas Connecticut and Massachusetts still retain it.

In New Jersey and Pennsylvania, two retentionist states, the averages before and after 1964 rose from 2.6 to 4.2 and from 2.5 to 3.9 respectively, and in New York State, which abolished the death penalty in 1965, the rate rose from 3.3 to 5.8. These are increases of 61.5% in New Jersey, 56% in Pennsylvania and 75% in New York.

The average for Indiana was 3.5 before 1964 and 4.1 between 1964 and 1970. Ohio shows 3.1 before and 5.0 after 1964, and in Michigan, the only abolitionist state of the three, the rate rose from 3.5 to 6.1.

For North Dakota, South Dakota and Nebraska, the averages were as follows: 0.96 and 0.8 for the first, 2.0 and 2.5 for the second and 2.37 and 2.43 for the third. Only North Dakota is abolitionist, and it shows a small drop in the rate, whereas the rates for the other two states have increased slightly.

The homicide rate rose throughout the United States between 1964 and 1970, even in the southern states which had both the highest homicide rate and the highest rate of executions. This increase varies from one region to another, depending on the population, the social and economic characteristics, and so on, but within any given region the rate of increase is essentially constant, independently of the attitude of each state towards the death penalty.

This uniformity in the crime rate increase makes it difficult to compare the periods before and after abolition in states which have eliminated capital punishment since 1964. It does not seem that the increase has been greater in these states than in neighbouring states which have retained the penalty. In New Mexico, abolition of the death penalty was followed by a rather substantial increase in the homicide rate; it rose from 6.1 to 9.4 between 1969 and 1970. However, the same phenomenon took place in the neighbouring retentionist state of Arizona, where the rate rose from 6.0 to 9.5 between 1969 and 1970.

In the United States as a whole the total crime rate rose sharply from 1960 to 1970; in 1960 it was 1,123.4 per 100,000 inhabitants but in 1970 it was 2,740.5; this represents an increase of 143.9 per cent. The rate of crimes with violence rose by 126.4 per cent and that of crimes against property by 146.8 per cent, whereas the homicide rate rose by 56 per cent. During these 10 years, there has also been a steady drop in the number of executions. This is an age of violence and crime in general, and

homicide is no exception to the rule; but the percentage increase of crimes with violence and crimes against property is greater than that of homicides.

Thorsten Sellin's research on the deterrent effect of the death penalty is well known. The preceding pages contain a summary of his comparative study of abolitionist states and contiguous states which have retained capital punishment. He reached the following conclusion: the presence or absence of the death penalty is not a determining factor in the fluctuation of the homicide rate. This rate does not vary within a given region between retentionist and abolitionist states having similar social, economic and geographical conditions. The rates do vary from one region to another, if social and economic, geographical and demographic differences are taken into account. These variations cannot be explained in terms of the death penalty alone. Sellin also established that the homicide rate is not higher in an abolitionist state than in a neighbouring retentionist state.

His study also considered those states which have abolished the death penalty; he compared their homicide rates before and after abolition to test the validity of the hypothesis that the deterrent effect of capital punishment would result in a higher rate after abolition than before. An analysis of these statistics led him to conclude that abolishing the death penalty does not give rise to any significant change in the murder rate, and that for all practical purposes the rate remains the same after as before.⁴⁷

Other states abolished capital punishment for varying periods of time, then reintroduced it following one or more heinous crimes. This happened in Delaware, which eliminated the death penalty in April 1958 but reinstated it in December 1961 as a reaction to four extremely brutal murders committed in rural areas of the southern part of the state and followed by considerable publicity. As these rural areas had a majority in the capital in Dover, the Senate and the House of Representatives voted to reintroduce the death penalty for first degree murder, despite the veto of the Governor himself. An article published in 1969 by Glen Samuelson shows that after capital punishment was reintroduced the annual murder rate was higher than during the period of abolition.⁴⁸ The following table illustrates Samuelson's findings: it lists the number of commitments to Delaware correctional institutions for manslaughter and murder.

Between July 1, 1956 and April 2, 1958, the 21 months preceding abolition, there were 40 commitments for murder, or an average of 1.9 per month and 22.8 per year. Between April 3, 1958 and December 18, 1961, the 44.5 months of abolition, there were 51 commitments for murder, or an average of 1.15 per month and 13.8 per year. Between December 19, 1961 and June 30, 1966, the 54.5 months after restoration, there were 80 commitments for murder, or an average of 1.46 per month and 17.5 per year. The annual average for the ten years is 17.1. The average for the abolition period is the lowest, 9.0 lower than the average for the preceding period,

⁴⁷ Thorsten Sellin, *Capital Punishment*, pp. 135-155.

⁴⁸ "Why was Capital Punishment Restored in Delaware?", Glen W. Samuelson in *Journal of Criminal Law, Criminology and Police Science*, Vol. 69, No. 2, June 1969 pp. 148 et seq.

Year (July 1 - June 30)	Manslaughter	Murder	Total
1956-57.....	11	28	39
1957-58.....	7	17	24
Abolition—April 2, 1958			
1958-59.....	8	12	20
1959-60.....	4	14	18
1960-61.....	7	15	22
1961-62.....	4	14	18
Restoration—December 18, 1961			
1962-63.....	8	14	22
1963-64.....	6	15	21
1964-65.....	5	23	28
1965-66.....	21	19	40
Total.....	81	171	252

3.7 lower than the average for the period following and 3.3 lower than the annual average.

Sellin⁴⁰ gives a brief summary of the statistics for the other ten states which, like Delaware, abolished the death penalty and subsequently re-stored it.

- *Arizona* had no death penalty for murder from December 1916 to December 1918. Forty-one murderers were convicted in the two years before abolition, 46 during the abolition years and 45 during the following two years.
- *Colorado* abolished capital punishment in 1897 and returned to it in 1901. The average annual number of convictions for murder during the five years before abolition, the abolition years, and the five years following were, respectively, 15.4, 18 and 19.
- *Iowa* abolished the death penalty for the first time from 1872 to 1878. Between 1865 and 1872, the average annual number of convictions for murder was 2.6; this figure rose to 8.8 during abolition and to 13.1 during the following seven years.
- *Kansas* lacked a death penalty between 1907 and 1935. The five years before 1935 showed an annual average homicide death rate of 6.5; between 1935 and 1940 the rate dropped to 3.8.
- *Maine* first tried abolition during 1876-1882, but data are lacking for this six-year period. Final abolition came in 1887.
- *Missouri* abandoned the death penalty in 1917 and brought it back in 1919. The homicide death rate per 100,000 population during 1911-1916 averaged 9.2 a year and during abolition 10.7; during 1920-1924 it was 11.
- *Tennessee*, unlike the other states, abolished capital punishment for murder in 1915 but retained it for rape. Reinstatement of the punishment came in 1919. Homicide death rates are available beginning only

⁴⁰ *Capital Punishment*, pp. 122-124.

with the year 1918, when the rate was 6.9 for whites and 29.2 for the coloured population. Except for a slight drop in 1920 in the white race, both rose steadily after the introduction of the death penalty to 10.8 for the whites and 52.5 for the coloured population in 1924.

- *Oregon* had no death penalty during 1915-1920. Fifty-nine murderers were committed to the state penitentiary during the five years before abolition and only 36 during the abolition years.
- *South Dakota* reintroduced the death penalty in 1939, having abolished it in 1915. Identical average homicide death rates were reported during the five years before and the five years after the restoration.
- *Washington* was without the death penalty during 1913-1919. The average annual rate of deaths due to homicide fluctuated widely during, before and after abolition. The average annual rate was 6.8 during the period of abolition and 5.8 during the first six years after the reintroduction of the death penalty.

In Philadelphia Robert H. Dann has carried out very ingenious research on the deterrent effect of capital punishment, from archives on crime in the thirties.⁵⁰ In this city in Pennsylvania, between 1927 and 1932, there were four or five notorious executions which made headlines in the newspapers. He therefore examined homicides committed 60 days before and after each of these executions, to see whether they had had any influence on the murder rate. His initial assumption was that these notorious executions ought to have had a very sharp deterrent effect on people living in the city where they occurred. The results of his research showed that in the various 60-day periods prior to the executions, there were 105 days without an homicide, whereas after the executions there were only 74 days free of homicide. Of the 204 homicides considered in this research, 19 ended in convictions for capital murder. Nine murders were committed some time before the executions and 10 shortly after; two of these took place in the ten days preceding, and five in the ten days following, the executions. A similar study undertaken some years ago in Philadelphia yielded the same results.⁵¹

Sellin concentrated his research on another aspect of the value and usefulness of the death penalty, in this instance the protection which it provides for policemen in the performance of their duties.⁵² Police associations maintain that criminals hesitate to use firearms to evade arrest in countries where murder carries the death penalty. They add that abolition of the death penalty would seriously compromise their safety. Sellin investigated the truth of these assertions by studying all murders of policemen from 1920 to 1954 in six abolitionist states and 11 neighbouring retentionist states. If what the police officers said was true, the number of policemen killed in the abolitionist states should be much greater than that in states which had retained capital punishment. In fact, this re-

⁵⁰ *The Deterrent Effect of Capital Punishment*. Robert H. Dann, Philadelphia: The Committee of Philanthropic Labour of Philadelphia Yearly Meeting of Friends, 1935 (Bulletin No. 29).

⁵¹ "A Study in Capital Punishment", Leonard D. Savitz in *Journal of Criminal Law, Criminology and Police Science*, Vol. 49, Nov.-Dec. 1958, pp. 338-341.

⁵² Thorsten Sellin, *The Death Penalty and Police Safety*, Appendix F of the transcript of testimony given to the Joint Committee of the Senate and House of Commons on Capital Punishment, Ottawa, Queen's Printer, 1955, pp. 718-728.

search showed that the rate of police killings per 100,000 inhabitants was the same in both groups of states. An analysis of 140 fatal attacks on American policemen from 1961 to 1963 supports essentially the same conclusions. Of these 140 policemen killed in the performance of their duties, only nine were in the six states which, at that time, had abolished capital punishment. In the latter group of states the risk of a policeman being killed as the result of a criminal action worked out at 1.31 in 10,000 policemen, whereas in neighbouring states which had retained the death penalty it was 1.32.⁵³

Replying to a questionnaire sent out by Prof. Sellin to the police forces of large American cities, policemen from the retentionist states said, in a proportion of better than 80 per cent, that the death penalty provided them with increased protection, while 75 per cent of policemen in abolitionist states replied that they did not believe in the protective influence of the death penalty: according to the latter group, there is no relationship "between the possible risk of the death penalty and the use of a deadly weapon by a criminal in a run-in with the police." [Trans.]⁵⁴

The following story will conclude this section. In his testimony to the 1949-1953 United Kingdom Royal Commission, Prof. Sellin relates that following the killing of several policemen in Austria, spokesmen for the police claimed that the death penalty represented such a threat to certain criminals that they would not hesitate to shoot at police officers in order to escape arrest. The police asked for and obtained abolition of the death penalty solely to protect their own lives.⁵⁵

One argument frequently put forward by supporters of the death penalty is that society must be effectively defended against persons who put others' lives in jeopardy. The best way of ensuring that the public has such effective protection is said to be by executing them and that otherwise such persons, once released from prison, will kill again. The figures compiled by Sellin and other researchers, however, indicate that prison inmates convicted of murder and released on parole achieve the highest percentage of success and are by far the best risks. Further, as Prof. Sellin points out, it must be remembered that several inmates sentenced to life imprisonment die in prison and thus serve all of their sentence, and a number of others must be hospitalized in psychiatric institutions, where they spend the rest of their days. As for those placed on parole, the following statistics clearly indicate the success rate.

From 1945 to 1954 in California, a total of 342 male prisoners convicted of murder in the first degree were paroled. By the end of June 1956, 37 of these, or 10.8 per cent, had violated some condition of their parole. Six of the 37 had absconded, 11 had been returned to prison for technical violations, another 11 for misdemeanours, and nine for commission of felonies (two for armed robbery, two for acts of gross indecency, one for sexual perversion, one for abortion, one for a narcotics offence, one for

⁵³ Thorsten Sellin, *Capital Punishment*, pp. 152-153. See also Department of Justice, 1965, *Capital Punishment*, pp. 96-101; this document also mentions studies carried out by Sellin on the Chicago police force, where he came to the same conclusions about the usefulness of the death penalty in guaranteeing protection for the police.

⁵⁴ "La peine de mort au Canada", André Normandeau, *Revue de droit pénal et de criminologie*, Vol. 46, 1965-1966, pp. 547 et seq. (p. 554).

⁵⁵ *This Life We Take: Case Against the Death Penalty*. Trevor Thomas, published by the Friends Committee on Legislation, San Francisco, 4th Revision 1970 p. 16.

assault to murder and one for second-degree murder). Thus, the overall success rate is 89.2 per cent, and the recidivism rate in a crime of the same type is 0.29 per cent (1 in 342).

A study of 92 persons convicted of murder in Massachusetts and paroled between 1957 and 1966 showed that, for this group of individuals, there was a recidivism rate (12.8%) much lower than that for other offenders released from Walpole and Norfolk (59.7%). Of the 18 individuals returned to prison, eight went back because of a technical violation, and only one had committed a second murder. Of the 92 subjects of this study, five had been convicted of murder in the first degree, 78 of murder in the second degree, seven of murder committed in the course of another crime, and the two others of being accessories before the fact.⁶⁶

In the State of New York, from July 1930 to 1961, 63 prisoners convicted of murder in the first degree were placed on parole; 61 of these had been condemned to death before receiving a commutation of the sentence. The average age at parole was 51 years; 56 of the 63 had otherwise never been convicted of a serious offence. Only three individuals violated a parole condition, and only one of the three was given another sentence, this time for burglary. From 1945 to 1965 in Ohio, 273 first-degree murderers were paroled. Two of these were returned to the penitentiary after committing fresh crimes, one for robbery and the other for assault with intent to rob.⁶⁷ In *Capital Punishment*, Giardini and Farrow cite statistics from Pennsylvania, Texas and Kentucky, and form the same conclusions as Thorsten Sellin, namely that the proportion of murderers who are paroled and commit a second murder is very low, and that they have a very high success rate.⁶⁸ Sellin adds that there is no evidence that the record of paroled murderers is worse in abolitionist than in retentionist states.⁶⁹

Would abolition of capital punishment and its replacement by a term of imprisonment endanger the lives of inmates, gaolers and staff members in prisons where murderers are confined? Prof. Sellin attempted to answer this question by carrying out a survey of all American prisons in 1966, to find the number of serious assaults and homicides committed in 1965 against inmates, guards and members of the prison staff. His final sample covers 45 of the 50 states, the District of Columbia and the Federal Bureau of Prisons. There were 603 victims, distributed among 37 out of the 47 jurisdictions, including four abolitionist states—Alaska, North Dakota, Oregon and West Virginia. Sixty-one of the 603 victims died at the attacker's hand: eight staff members and 53 inmates. Further details were available on 52 of these homicides, which were committed by 59 assailants. Of these 59, 43 were imprisoned for violent crimes, including 16 murders, one manslaughter and 19 cases of robbery with violence. Twenty out of the 59 persons responsible for prison homicides were serving time for crimes punishable by death, i.e. 11 first-degree murders and 9 other offences. Eight

⁶⁶ *An Analysis of Recidivism Among Convicted Murderers*, Massachusetts Department of Correction and Massachusetts Department of Mental Health, February 1970.

⁶⁷ Testimony by Thorsten Sellin, March 21, 1968, in *Hearings before the Sub-Committee on Criminal Laws and Procedures of the Committee of the Judiciary*, United States Senate, 90th Congress, Second Session, Washington, 1970, p. 83.

⁶⁸ "The Paroling of Capital Offenders", G. I. Giardini and R. G. Farrow in *Capital Punishment*, Thorsten Sellin, pp. 169-186.

⁶⁹ United States Senate, 90th Congress, 1968, *op. cit.*, p. 83. See also *Capital Punishment*, Department of Justice, 1965, p. 101.

homicides occurred in four abolitionist states, and two of these were committed by inmates convicted of murder. Nineteen retentionist states, on the other hand, were the scene of the other 53 homicides, and 20 of these were due to individuals serving time as the result of a capital crime. Accordingly, the proportion of homicides committed in prisons by inmates already convicted of murder or another capital crime is 25 per cent (2 out of 8) in the abolitionist states, and 37.7 per cent (20 out of 53) in the retentionist states. The results of Prof Sellin's study indicate that the death penalty does not necessarily prevent a prisoner from committing homicide, even when he has escaped the supreme penalty once. These data also show that the majority of murders committed in prisons are not attributable to convicted murderers: this will be shown below, in the chapter on the Canadian situation, in connection with Dogan Akman's study on homicides and assaults in Canadian prisons. Sellin concludes that abolition of capital punishment does not increase the risks of prison homicide, as this penalty has little or no deterrent effect on inmates who really want to commit acts of violence.⁶⁰

The report of the study commission set up in Florida on capital punishment mentions a final objection to abolition, raised by supporters of the death penalty. They maintain that an execution forestalls any popular reaction likely to be unleashed by a particularly atrocious murder. Capital punishment, in other words, is necessary to prevent the general public from lynching a murderer. The Commission points out that the number of lynchings is steadily decreasing in the United States, that these "popular executions", when they occurred, did so particularly in the South, where the death penalty has always been in effect, and that there is no evidence of lynching in abolitionist states. The Commission concluded that there is no connection between the lynching rate and abolition of the death penalty.⁶¹

In an article published in 1969 Michael Di Salle, former Governor of Ohio, says that many of those who bear responsibility for commuting death sentences are opposed to capital punishment. There are other Governors who believe in the deterrent effect of the death penalty. Some Governors of southern states have expressed their sympathy for the abolitionist movement, in spite of the fact that this region of the United States has long held the record for executions. We need only refer to the example of Governor Winthrop Rockefeller of Arkansas; though he was defeated in his bid for reelection, he nonetheless on December 29, 1970, commuted to life imprisonment the sentence of 15 state prisoners under sentence of death.⁶²

At the federal level the legislator has added new crimes to the list of capital offences, notably air piracy in 1961 and assassination of the President or Vice-President in 1964. Public hearings on capital punishment were held in the sixties, in the House of Representatives under the chairmanship of Abraham J. Multer in 1960, and in the Senate under

⁶⁰ "Prison Homicides", Thorsten Sellin in *Capital Punishment*, Thorsten Sellin, pp. 154 et seq.

⁶¹ *Report of the Special Commission for the Study of Abolition of the Death Penalty in Capital Cases*, The State of Florida, Tallahassee, 1963-1965, p. 25.

⁶² *Trends in the Abolition of Capital Punishment*, Michael V. Di Salle in *University of Toledo Law Review*, Vol. 1, No. 1, Winter 1969, pp. 1-15.

the auspices of Senator Philip A. Hart in 1968. This was the first time that such hearings had been held in either House. The Senate's interest in the problem resulted from the tabling of a bill by a group of Senators, on May 11, 1967, to abolish the death penalty in the United States and replace it with life imprisonment, for future convictions and for prison inmates currently under sentence of death. The hearings produced no concrete result at the legislative level, but were the occasion of an interesting debate that brought out the main views in the struggle against the death penalty.

In 1965, Deputy Attorney General Ramsey Clark announced that his office was opposed to application of the death penalty in the District of Columbia. Since then Mr. Clark has lent his assistance in the fight against capital punishment. In his speech before Senator Hart's Subcommittee, Mr. Clark stated:

Society pays a heavy price for the penalty of death it imposes. Our emotions may cry vengeance in the wake of a horrible crime. But reason and experience tell us that killing the criminal will not undo the crime, prevent other crimes, or bring justice to the victim, the criminal, or society. Executions cheapen life. We must cherish life... The death penalty should be abolished.⁶³

The Commission on Law Enforcement and the Administration of Justice established by President Lyndon Johnson is opposed to the death penalty. This attitude is based partly on the poor image of justice and judicial administration which the death penalty presents, and on the loss of public confidence which it produces, in the law itself and in the way it is applied. "The spectacle of men living on death row while their lawyers pursue appellate and collateral remedies contradicts our image of humane and expeditious punishment of offenders."⁶⁴ In its report, the American panel cites an extract from the testimonial of Justice Frankfurter to the 1949-1953 Royal Commission in the United Kingdom in which the judge stated his opposition to the death penalty. This opposition was not based on the risk of condemning an innocent man: it stemmed from his observation of the prejudicial effects which capital punishment has on the administration of justice. "When life is at hazard in a trial, it sensationalizes the whole thing almost unwittingly; the effect on juries, the Bar, the public and the judiciary I regard as very bad."⁶⁵ The Presidential Commission felt that this sensational appeal seriously compromises the effort to arrive at the truth. Some juries return acquittal verdicts, not on the basis of the evidence presented at the trial, but because they fear the death penalty. In *Stein v. New York*,⁶⁶ Jackson J. makes the following observation:

When the penalty is death we, like the State Court judges, are tempted to strain the evidence and even, in close cases, the law in order to give a doubtfully condemned man another chance.

⁶³ United States Senate, 90th Congress, 1968 *op. cit.*, pp. 92 and 94.

⁶⁴ *Task Force Report: The Courts*, Task Force on Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, Washington, 1967, pp. 27-28.

⁶⁵ *Task Force Report*, *id.*, p. 27. See also United States Senate, 90th Congress, 1968, *op. cit.*, p. 92.

⁶⁶ 346 U.S. 156, p. 196 (1953).

On January 7, 1971, the National Commission on Reform of Federal Criminal Laws, under the chairmanship of Edmund G. Brown, former Governor of California, released its final report. Departing from the attitude it had taken in June 1970, the Commission recommended abolition of all federal death penalty statutes.

On January 19, 1971, Attorney General Fred Speaker of Pennsylvania ordered the electric chair dismantled, and declared that the state's death penalty for certain crimes was unconstitutional and unenforceable. Two weeks later Mr. Speaker's successor, J. Shane Creamer, rescinded the constitutional ruling: he did allow the dismantling of the electric chair to stand, and ordered all Death Row inmates to be integrated with the rest of the prison population.

During the sixties many branches of the Church stated their opposition to the death penalty. This was also true for organizations with professional or social stature like the National Council on Crime and Delinquency (1963), the American Civil Liberties Union (1965), the American Correctional Association (1966), the Legal Defense Fund of the National Association for the Advancement of Coloured People, and the Defender Fund of the National Legal Aid and Defenders Association in 1970.⁶⁷ The last two organizations decided to oppose the death penalty on the judicial level, by direct intervention in the courts and providing adequate representation for persons under sentence of death in the United States who cannot afford a lawyer's services. Their objective is to have the death penalty declared unconstitutional.⁶⁸

The Supreme Court of the United States has consistently refrained from ruling directly on the constitutionality of the death penalty in connection with the provisions of the American Constitution and certain of its amendments, *inter alia* the Eighth, which forbids inflicting any cruel and unusual punishment; the Sixth, which guarantees the accused's right to be assisted by counsel; and the Fourteenth which makes all proceedings subject to "due process of law", and contains the well known provision for "equal protection of the laws". A very thorough study published by Gerald Gottlieb in 1961⁶⁹ set the standard for criticism of the death penalty under the Eighth Amendment. Arthur J. Goldberg was the first United States Supreme Court Justice to adopt this line of argument, handing down a dissenting judgment in 1963 in *Rudolph v. Alabama*.⁷⁰ Together with a young lawyer, he took up the argument and expanded upon it in an article published in 1970.⁷¹ In 1969 the Supreme Court for the first time heard argument based on the unconstitutionality of the death penalty, in relation to the protection given in the Eighth Amendment against any cruel and unusual punishment.⁷² The case involved armed robbery, and the Court annulled the conviction for other reasons without ruling on the constitutional aspect. The lawyers of the Legal

⁶⁷ "NLADA To Fight For Abolition of the Death Sentence", in *Federal Probation*, Vol. XXXV, No. 2, June 1971, p. 81.

⁶⁸ Hugo Adam Bedau, *op. cit.*, in *Federal Probation*, June 1971, pp. 32-34.

⁶⁹ "Testing the Death Penalty", in *Southern California Law Review*, Vol. XXXIV, Fall 1961, pp. 268-281.

⁷⁰ 375 U.S. 889 (1963).

⁷¹ "Declaring the Death Penalty Unconstitutional", Arthur J. Goldberg and Alan M. Dershowitz, *Harvard Law Review*, Vol. 83 No. 8, June 1970, pp. 1773-1819.

⁷² *Boykin v. Alabama*, 395 U.S. 238 (1969).

Defense Fund continued their attacks on the electric chair and the gas chamber. The most important of the cases involving them is *Maxwell v. Bishop*,⁷³ where they tried to have the death sentence, imposed on Maxwell as the result of a conviction for rape, declared unconstitutional. They relied on the two most frequently used arguments, concerning unitary trial, when guilt and sentence are decided on concurrently, and concerning the absence of any precise standard for the discretion left to the jury in choosing between capital punishment and life imprisonment. The Supreme Court spared Maxwell's life, though it again avoided ruling on the essential argument.

The decisions in *United States v. Jackson*⁷⁴ and *Witherspoon v. Illinois*⁷⁵ marked the first successes for the opponents of capital punishment. In the first case, the Supreme Court held that the Federal Kidnapping Act was unconstitutional in that it discouraged assertion of the Fifth Amendment right not to plead guilty and deterred the exercise of the Sixth Amendment right to demand a jury trial. In fact, this Act stipulated that a defendant would avoid a death sentence if he chose to avoid a trial by jury and accept sentencing by a judge, or if he pleaded guilty. In the *Witherspoon* case, the Court held that it runs counter to the spirit of the Constitution to systematically exclude prospective jurors because of their conscientious scruples against the death sentence. According to the Court, the defendant cannot have an impartial jury on the issue of his guilt or innocence when the jury has been drawn with an explicit bias in favour of the death penalty.⁷⁶

Surveys conducted by various researchers have confirmed that a juror biased in favour of capital punishment generally tends to sentence a defendant and is not inclined to give him the benefit of doubt; his authoritarian personality is highly uncompromising and has little perception of subtleties.⁷⁷

On May 3, 1971, the Supreme Court handed down a significant decision. By a vote of 6 to 3, it affirmed both convictions in the *McGautha v. California* and *Crampton v. Ohio* cases.⁷⁸ The aim of these two writs of certiorari was to obtain reversal of the death sentences imposed by juries in California and Ohio during a two-stage trial in the first case and a unitary trial in the other. McGautha was convicted of murder at the end of the first trial and sentenced to death after a second trial which dealt only with the sentence to be imposed, i.e. capital punishment or life imprisonment. He contended that the absence of any standards to guide the jury in arriving at a decision with respect to the sentence constituted a flagrant viola-

⁷³ 398 U.S. 262 (1970).

⁷⁴ 390 U.S. 570 (1968).

⁷⁵ 391 U.S. 510 (1968).

⁷⁶ Hugo Adam Bedau, *op. cit.*, in *Federal Probation*, June 1971, pp. 38-39.

⁷⁷ "The American Jury and the Death Penalty", Harry Kalven Jr. and Hans Zeisel, *The University of Chicago Law Review*, Vol. 33, 1965-66, pp. 769 et seq. "New Data on the Effect of a 'Death Qualified' Jury on the Guilt Determination Process", George L. Jurow, *Harvard Law Review*, LXXXIV:3, 1971, pp. 567-611. See also "Does Disqualification of Jurors for Scruples against Capital Punishment Constitute Denial of Fair Trial on Issue of Guilt?", Walter E. Oberer, *Texas Law Review*, Vol. XXXIX, May 1961, pp. 545-567. "On the Conviction Proneness and Representativeness of the Death Qualified Jury: An Empirical Study of Colorado Veniremen", Edward J. Bronson, *University of Colorado Review*, Vol. 42, No. 1, May 1970, pp. 1-33.

⁷⁸ Supreme Court of the United States, *Certiorari to the Supreme Court of California and Ohio*, Nos. 203 and 204, Argued November 9, 1970—Decided May 3, 1971.

tion of the "equal protection" and "due process of law" clauses of the American Constitution. Crampton, on the other hand, underwent a unitary trial during which the jury had to decide both the verdict and the sentence. He was convicted of murder and sentenced to death. In addition to relying on McGautha's argument, Crampton argued that the unitary trial practice placed the accused in an absurd position: if he wanted to avail himself of his right not to testify so as not to incriminate himself, he lost the opportunity of putting before the jury the reasons why he did not deserve the death penalty; however, if he took the stand in order to address the jury in an attempt to save his neck, he had to undergo cross-examination by the prosecution both on the circumstances of the crime and on the sentence to be imposed, thereby exposing himself to self-incrimination. By a vote of 6 to 3, the Supreme Court ruled that it saw no violation of the Constitution in such proceedings.

A United States Court of Appeals has created a precedent when it held that in rape cases in which the victim's life is neither taken nor endangered, the death penalty violates the Eighth Amendment's prohibition against "cruel and unusual punishment". It is a Maryland case, *Ralph v Warden* 438F. 2d 786 (4th Circuit, 1970). This decision which was rendered on December 11, 1970, is the first in American history in which a court has found the death penalty unconstitutional, as cruel and unusual punishment.

At the close of its first session in 1971 the Court also allowed the writs of certiorari submitted by 31 persons under death sentence and vacated their sentences, either because the juries which sentenced the accused to death were not chosen in conformity with the Court's decision in *Witherspoon v. Illinois* (23 cases), or because the statutes under which the accused were sentenced to death were similar to that struck down by the Court in *U.S. v. Jackson* (9 cases).⁷⁰

On June 29, 1972, the U.S. Supreme Court by a 5 to 4 vote ruled that capital punishment under most existing federal and state laws is unconstitutional because it violates the Eighth Amendment's prohibition against "cruel and unusual" punishment. This judgment was handed down in direct relation to three sentences of death, two imposed by courts in the State of Georgia and one in the State of Texas.

About a month later, the Attorneys-General of Georgia and Texas, together with the District Attorney of Philadelphia, petitioned the Supreme Court to reconsider its decision. At the time this paper was being printed, it was not clear what ultimate effect the Supreme Court decision would have on the death sentence in the U.S.A.

Conclusion

Public opinion has followed various trends of thought. The following table gives the results of four Gallup polls taken in 1936, 1953 and 1966 and 1969. The question asked was, "Are you in favour of the death penalty for murder?"

⁷⁰ Supreme Court of the United States, Monday, June 28, 1971, brochure reporting the decisions handed down by the Court, pp. 671-688.

	1969	1966	1953	1936
Yes.....	51%	51%	68%	62%
No.....	40	36	25	38
Undecided.....	9	13	7	5 ⁸⁰

More men believed in the value and usefulness of the death penalty (58% for, 33% against, 9% undecided) than women (45% for, 30% against, 16% undecided). The abolitionists compare these results with the figures mentioned by Douglas Lyons, chairman of a citizens group opposed to "legalized murder", in his address to Senator Hart's Senate subcommittee.⁸¹ Mr. Lyons stated that a Harris opinion poll taken on July 3, 1966 shows that the supporters of capital punishment are in a minority position compared with abolitionists. If we are to believe Mr. Lyon's statements, only 38 per cent of the people polled said they were in favour of capital punishment. Another poll taken in 1958 by the firm of Elmo Roper & Associates informs us that in the lower strata of American society, 53 per cent of the subjects interviewed were opposed to the death penalty, while in the upper strata only 42 per cent said they were in favour of its abolition. There are obvious weaknesses in the method of classifying individuals according to social strata; it is based on property owned and not on income, whereas in fact the amount of property that one has does not necessarily go hand in hand with income. Even so, this poll does give some indication of the opposing trends encountered in the United States. It further reveals that 78 per cent of Negroes are opposed to the death penalty.⁸²

The results of a survey published by the magazine *Psychology Today* in late 1969 revealed that, on an average, 63 per cent of the readers polled were against the death penalty even for the premeditated murder of a policeman, 67 per cent for premeditated murder in general, 66 per cent for treason in wartime, 87 per cent for rape and 90 per cent for the sale of drugs to minors.⁸³ At the same time, *Good Housekeeping* published the results of a similar poll taken among its readers. Unlike the readership of the first-mentioned magazine, 62.1 per cent⁸⁴ of the readers of *Good Housekeeping* supported the death penalty. Four American states put the question of the death penalty to a referendum (Oregon in 1964, Colorado in 1966, Massachusetts in 1968, Illinois late in 1970). Only in Oregon were the voters in favour of abolition, by a vote of 455,654 to 302,105. In the other three, they upheld the death penalty.⁸⁵

⁸⁰ *The Death Penalty in America*, Hugo Adam Bedau, revised edition, 1968, second printing, 1969, Aldine Publishing Cy., Chicago, p. 237.

See also Hugo Adam Bedau, op. cit., in *Federal Probation*, June 1971, p. 35.

⁸¹ United States Senate, 90th Congress, 1968, op. cit., p. 40.

⁸² "The Poor and Capital Punishment", Marc Riedel, *The Prison Journal*, Vol. XLV, No. 1, Spring-Summer, 1965, Philadelphia, Pa., pp. 24 et seq. (26-27).

⁸³ *Psychology Today*, Vol. 3, No. 6, November 1969, Del Mar, California, pp. 53-56.

⁸⁴ *Good Housekeeping*, November 1969, p. 24.

⁸⁵ Hugo Adam Bedau, op. cit., in *Federal Probation*, June 1971, p. 35.

5. THE SITUATION IN CANADA

(a) INTRODUCTION

Under s. 91(27) of the British North America Act, the criminal law and the procedure in criminal matters come under the jurisdiction of the federal Parliament. This rule is relaxed somewhat under s. 91(14), which grants the provinces exclusive jurisdiction over the administration of justice within the province, including the constitution, maintenance and organization of civil and criminal courts. Apart from this exception, the substantive law and the procedure in criminal matters are under federal jurisdiction and the entire country is governed by the same Criminal Code, known and designated as chapter C-34 of the Revised Statutes of Canada 1970.

Since the Act amending the Criminal Code (16 Elizabeth II, c. 15) came into force on December 29, 1967, the only crimes punishable by death have been capital murder (ss. 214 and 218), i.e. the murder of a policeman or a prison guard or any other member of the prison administration, acting in the course of his duties; piracy accompanied by murder, attempted murder or any act likely to endanger the life of another person (s. 75); and treason (ss. 46 and 47). In the first two cases the death penalty is mandatory while in the third it is discretionary. The sections establishing and defining these crimes are reproduced in Appendix 4.

(b) THE 1966 DEBATE

The question of capital punishment has been debated a number of times by the Parliament of Canada, particularly in the past 15 years. In 1914 Robert Bickerdike, M.P., introduced in the House of Commons the first Bill for the abolition of the death penalty.⁶⁰ This first attempt met with failure.

On June 27, 1956 the Joint Committee of the Senate and House of Commons reported that it was in favour of retention of the death penalty for murder, piracy and treason; it did not recommend any change in the definition of murder and, in particular, advised against the introduction of various degrees of murder, thus echoing the opinion expressed by the 1949-1953 Royal Commission in the United Kingdom. It recommended that appeal procedures be improved and that hanging be replaced by electrocution or the gas chamber at least.

Like the House of Commons in London, the Canadian Parliament disregarded the Joint Committee's recommendation that degrees not be included in the definition of murder, and amended the Criminal Code to classify murder as capital and non-capital (s. 202 and 202A of the former Criminal Code).⁶¹ As will be recalled, litigants, the magistrature and experts in criminal law in Great Britain criticized this arbitrary distinction which grants impunity for purely technical reasons to perpetrators of certain heinous crimes. The same criticisms were directed at the Canadian enactment and in this connection it is interesting to read the comments of the former Solicitor General of Canada, published in 1967 in the *Alberta*

⁶⁰ "Peine de mort, peine perdue", *Maintenant* (43-44), 1965, Montreal, p. 241.

⁶¹ *Capital Punishment*, Department of Justice, 1965, pp. 5-6 and Appendix E pp. 66-68.

Law Review.⁸⁸ In passing, we would like to mention the unsuccessful attempt by Member Frank McGee to have the abolition of the death penalty brought to a vote in 1960. His Bill was debated for two days but Mr. McGee decided to withdraw it before second reading since the chances of its being approved were almost nil.

The first major debate on the abolition of the death penalty took place in the spring of 1966. On March 21, 1966, the government house leader, Mr. George McIlraith, moved in the House of Commons that March 23, 24 and 28 be devoted to debate on the joint resolution by Messrs. Byrne, Nugent, Scott and Stanbury respecting the abolition of capital punishment. Mr. McIlraith stated that this resolution, moved by members of different parties, would remain their responsibility and would be decided on a free vote. On Wednesday, March 23, the four members tabled a resolution calling for the abolition of the death penalty in respect of all offences under the Criminal Code and for the substitution of a mandatory sentence of life imprisonment in those cases where the death penalty was mandatory; this Bill further stipulated that a person on whom a mandatory sentence of life imprisonment was imposed could not be released without the prior approval of the Governor in Council. The debate dragged on so long that on March 31 the government house leader had to announce that it would be resumed on April 4 and 5. On April 4 the amendment by Mr. Gauthier, Member for Roberval, whereby the death penalty would be retained for capital murders, as then defined, committed while a sentence of life imprisonment was being served, was defeated by a vote of 199 to 23. That same day the Member for Toronto-Rosedale, Mr. Donald Macdonald, moved an amendment to the main motion whereby the death penalty would be abolished only on a trial basis for a period of five years. On April 5 the House rejected this amendment by a vote of 138 to 113. Also on April 5, the Member for Montreal-Cartier, Milton Klein, moved an amendment whereby the abolition of the death penalty would be subject to two exceptions, namely, the murder of a police officer, or of a prison guard or any member of a prison staff. This amendment was defeated by a vote of 179 to 74. At the end of the debate the main motion was rejected by a vote of 143 to 112.

The arguments put forward by the abolitionists and the retentionists can be summarized as follows:

(1) *The abolitionists*

The removal of the death penalty does nothing to weaken the defence of society against potential murderers, and life imprisonment is just as much deterrent as the death penalty.

The abolition of this archaic and barbaric penalty will enhance the reputation and stature of Canada as a civilized country.

It is a moral question and one should not support it merely for vengeance. The death penalty does not remove the real cause of crime such as poverty and mental illness.

The taking of human life, even that of a murderer, is essentially evil, degrading, unjustified and unnecessary.

⁸⁸ *Capital Punishment*, L. T. Pennell, *Alberta Law Review*, Vol. V, No. 2, 1967, pp. 167-174.

The death penalty does not deter potential murderers and has no effect on the murder rate.

The fallibility of human justice may lead to one of the most serious injustices, the execution of an innocent person.

Hanging is an inhuman execution method.

A penalty must be remedial; the death penalty does not redress the wrong done to the victim and his family; it adds one evil to another and precludes any possibility of rehabilitating the criminal.

A human being is not an object and should not be used as a deterrent; he should not be only a simple means to an end.

Christian doctrine is not a defence of capital punishment and should not be used as an argument in its favour.

Modern-day social progress enables us to protect ourselves from all criminals; we have to admit that there is a normal and calculated risk.

It is impossible to prove or measure the deterrent effect of capital punishment.

Capital punishment is not a further protection to our police forces or to prison administration authorities.

Public opinion supports the abolition of the death penalty.

The most effective deterrent would be the extension of detention to a specific number of years to give no hope of release.

The death penalty should be abolished for a five-year trial period.

The poor are at a disadvantage compared with the rich since they cannot retain the services of the best legal counsel; this is one source of particularly intolerable discrimination.

How can the death penalty have a deterrent effect when executions take place in secret, far from public view, without any publicity?

The shameful deals made between the Crown Prosecutor and criminals acting out of the fear of capital punishment have no place in today's society.

Prisoners can make a very useful contribution to society; Caryl Chessman's books are a striking example of this.

A narrow margin separates revenge from punishment.

Most religious groups support abolition of capital punishment.

The victims of criminal violence or their families should be compensated.

Conviction of a capital crime often depends on how the case is tried, on the personality of the judge, the attitude and composition of the jury, the talent of defence counsel and, sometimes, of the Crown Prosecutor. There is also the risk of judicial error.

Our society is far from perfect; we cannot judge the innermost depths of another man. Recourse to the same methods as criminals use must be avoided at all cost.

The reason for punishment should be the protection of society by the deterrence of potential criminals or by the removal of offenders from society.

The most important religious precepts are mercy and charity; this applies to both society as a whole and each person individually.

It is by using his own conscience and intelligence that man will define and defend the fundamental principles in which he believes, and not by claiming that his ideas come from God.

There must be adequate penitentiaries where murderers can be sent and rehabilitated, whatever the cost. In this instance, money is of secondary importance.

The greatest deterrent is the fear of capture and arrest. More policemen should be hired.

Religious convictions are not a valid justification for retention of the death penalty.

Even though it is a free vote, the government must declare its position; this is a constitutional practice.

History does not support the argument that capital punishment is a deterrent.

Although crime is on the increase, there is no percentage increase of murder; now is the time to abolish capital punishment.

The manner in which there has been a disregard of the law in the last three years by the Cabinet has brought about abolition by executive order.

There should be no exceptions to abolition, but there should be a minimum prison sentence of 20 years for murder.

The government has been too lax in studying and allowing applications for release by murderers.

Since capital punishment has been abolished on a *de facto* basis, a backward step should not be taken; now is the time to officially abolish capital punishment, even for a trial period.

The state—that means you and me—has no right to kill; on the contrary, we should think in terms of reform and rehabilitation, not vengeance or putting people away as though they were annoying objects.

The religious view argues for the quality of mercy and the redeemability of mankind.

Useful and suitably paid work in prison would partially offset the cost of imprisonment. It costs more to retain capital punishment (trial and appeal costs, etc.).

Something can be gained by the convict and society through life imprisonment.

There are two laws: one for the rich, who are rarely sentenced to death and never executed, and one for the poor, the gallows' best customers.

It is not enough to abolish capital punishment for a five- or seven-year trial period. Minute records should be kept on all data on the subject, and on all details relating to murders, attempted murders, etc. so that at the end of the trial period the government can make a decision in the light of the facts, without emotionalism.

The murderer should be employed in prison so his rehabilitation will be a measure of restitution to the victim's family.

2

The enlightened countries have abolished capital punishment.

With capital punishment, the state compounds the crime.

The majority of Canadian people are ready for abolition.

The parole system must be changed and penitentiaries modernized so that in addition to providing for the safety of society they will contribute to the inmate's rehabilitation.

A mandatory sentence of life imprisonment would be an adequate sentence. The Parole Act should also be amended so that lifers would serve at least 20 or 21 years before being eligible for parole.

Killing in self-defence is the only justification for taking a human life.

The fight against crime will be won and the protection of society achieved only through positive measures such as improved crime detection and penal reform.

The abolition of capital punishment has become the hallmark of a nation's conscience. Canada should take this great forward step.

The real deterrent is certainty of detection and punishment rather than the severity of punishment.

By not executing criminals, specialists in human sciences could study their abnormal behaviour and apply the knowledge of psychology thus acquired as a preventive measure.

The death penalty should be retained for the murder of policemen and prison guards.

The solution to crime lies in the improvement of policemen's training and working conditions and in more courts and more adequate methods of crime detection.

The sentence to hang is seldom carried out and the long delays between sentencing and execution, when it is carried out, totally negate the supposed deterrent effect of capital punishment.

Capital punishment has a detrimental effect on both the state and the people; it sows the seeds of future crimes.

(2) *The retentionists*

It will prevent the criminal from repeating the offence.

We must retain capital punishment until we can determine the cause or reason for the compulsion to murder.

Divine law has created two sets of laws, one for the individual and one for the state. The state must protect the community and take the necessary measures to punish the criminal and deter those who might imitate him.

Who is qualified to decide when a convicted murderer is ready to go back into society?

The causes of crime are unknown, but they are not environment, or heredity; until cause and treatment are found, capital punishment should be retained.

It is not the individual but society that has the right to put a murderer to death—so says the Bible.

Murder is barbaric, capital punishment is not; it is retribution, not vengeance.

Those who intend to do wrong, for example armed bank robbers, should be hanged.

Social progress is not necessarily the result of excessive weakness.

Should there be abolition for treason, premeditated murder? Should we spare the lives of repeaters and syndicate gangsters?

If there is a risk of judicial error, then legal reform is needed.

No one can prove that capital punishment is a deterrent nor can they prove it is not.

If revolutionaries take over the country, some of the agents of the international revolutionaries will be in prison and ready to work for them after a coup d'état. This would not happen if capital punishment is retained.

The judicial system needs improvement, but capital punishment should be retained for murderers or where there is no possibility of rehabilitation.

Can we say that society has really evolved when we study the history of this century and when we consider atomic bombs and what is happening in Indonesia and Vietnam?

Capital punishment is remedial; punishment is short.

The provinces should have the jurisdiction as regards the execution of the death penalty and commutation of it.

Society has the right to maximum security which our penal institutions are still unable to offer. In this respect, we should also ensure adequate operation of the Parole Board.

Abolition of capital punishment would make things easier for syndicated crime now moving into Canada.

Miscarriages of justice are almost impossible in the present circumstances.

We are not ready for abolition; there is not enough prevention or control of organized crime.

Criminals give great importance to the penalties under the Criminal Code; without specific penalties, rules have no effect.

It is placing a very heavy responsibility on the shoulders of members of the Cabinet to provide that they will consider alone each case of mercy; a House standing committee should be set up to study each case and to make the necessary recommendations to the Executive.

In addition to protecting society, we should see to the protection of law officers and prison guards.

Society has the power and right to decide if a murderer deserves to live and how he must pay his debt to society.

The retention of capital punishment does not interfere with rehabilitation, improvement of our social environment, or the equitable administration of justice.

A real life sentence removes any possibility of rehabilitation.

Abolition does not mean our advancing civilization will be assured and certified.

Thought should be given to innocent victims and their families.

Capital punishment is the traditional Christian position. When the state takes the life of a capital offender it does so as God's agent, having received express authority from God.

Capital punishment is a necessity; it protects and cleanses society.

In order to protect our social structure we must adopt concrete measures against those seeking to unsettle it.

The death penalty should be imposed on murderers of police officers and prison guards, those who commit a second murder and those raping and killing young children.

A psychiatric examination should be made mandatory for the accused; the Cabinet must retain its right to use the prerogative of mercy.

There has been an increase in the murder rate since the 1961 amendments and the policy of systematically commuting death sentences.

The death penalty protects the criminal himself, as much as the police.

There is no rehabilitation or reform possible for members of syndicated crime.

The death penalty may not be a deterrent, but it protects society against the criminals present.

The 1961 formula should be given a fair chance to work.

Change is not necessarily synonymous with progress. It has not been proved that abolition would be an improvement over the law as it now stands, or even that retention is less civilized than abolition.

Capital punishment is a lesser evil; it is unpleasant but necessary. It does not mean legalized murder.

Its deterrent value is with respect to people who did not commit crime. Research must be done into the root causes of crime.

Police forces and penitentiary staffs are in favour of capital punishment.

No other deterrent is as effective; fear of death is a much greater deterrent than fear of life imprisonment.

The death penalty is irrevocable, but it is deserved. It represents the only just and proper penalty for murder.

Life imprisonment is not more humane; it denies the prisoner the hope of being one day released from prison: it is a very refined form of barbarism.

Capital punishment prevents repetition of the crime even if it is not a deterrent the first time.

As a sovereign State, Canada has the jurisdiction and power to enforce its laws.

Canadians want capital punishment retained for the following crimes: treason, contract killing, premeditated murder, and murder of policemen and guards.

Crimes should be punished to maintain the "rule of law", and ensure that human beings have the right to form and live in a society. The death

penalty promotes public respect for law and protects persons, property and freedom. It emphasizes the seriousness of the offence.

When civilization has succeeded in eliminating crime it can allow itself to do away with penalties.

The sentences of all those now under sentence of death should be commuted, and a fresh start made when Parliament has come to a decision on the capital punishment question.

The severity of the penalty must reflect the horror which we feel at the crime and the sanctity of human life.

All factors must be taken into consideration before imposing the death penalty.

Supporters of the death penalty are not more barbarous or less civilized than the abolitionists.

Because of the disturbing increase in crime, the death penalty must not be abolished.

The best deterrent, the best way of checking crime, is to keep up the moral climate of society. To clean this up we must silence the critics of the death penalty and think first of the fate of the victims.

The most serious obstacle to achieving the ideal of a civilized society is premeditated murder, not capital punishment.

With the abolition of capital punishment prisoners serving life sentences will, so to speak, have leave to commit murder.

The death penalty must be used as a warning, and encourage thoughtful behaviour in the public.

If we want to suppress murder once and for all, we must increase our knowledge about the sources of crime.

To ensure the greatest possible stability in our judicial system, we should let judges, not politicians, review appeals and other remedies pursued by those under sentence of death.

The man who coldly plans his crime with care is no longer useful to society.

The police and provincial Attorneys General are in favour of the death penalty.

Abolition would place murder in the same category in the minds of the public as other less serious crimes.

A fund must be set up to assist the families of murder victims.

Abolition of the death penalty can only encourage among the public erosion of the rule of law, lack of discipline and disregard for authority.

(c) THE 1967 DEBATE

Following the defeat of the motion presented by the four Members in 1966, the Government of Prime Minister Lester B. Pearson sponsored and Parliament enacted Bill No. C-168, aimed at abolishing the death penalty for a five-year trial period, except for capital murder, i.e. the murder of a police officer or guard, or any other member of a prison staff, acting in the course of his duties, where the accused has caused or assisted in causing the death of any such individual or has counselled or

procured a third person to commit an act causing or assisting in causing the death. This enactment did not amend the sections of the Criminal Code relating to treason and piracy, so that these two crimes continue to be punishable by death. It provides that an inmate sentenced to life imprisonment as the result of commuting a death sentence, or as a minimum punishment, cannot be released without the prior approval of the Governor in Council. Finally, the statute contains a number of transitional provisions.

On Thursday, November 9, 1967, the Solicitor General, Hon. L. T. Pennell, moved second reading of Bill No. C-168 to amend the Criminal Code. He indicated that voting on this issue would be free of any party discipline, as this raised a matter of deep personal conscience. He added that the Bill, though similar in several respects to the motion tabled by four Members at the last session, had certain special characteristics. It included the two exceptions proposed during the previous debate as an amendment, i.e. retention of the death penalty for capital murder (see definition above) and the five-year trial period, and allowed Members to express their views in a single vote on the various proposals. The Bill was the result of a compromise, and was the most promising measure that could be introduced at that moment. Messrs. Woolliams, for the Progressive Conservatives, and Brewin, for the New Democratic Party, stated that members of their respective parties would be free to vote according to the dictates of their conscience.

The actual debate began in the afternoon on November 9, 1967, and continued on November 10, 14, 15, 16, 22 and 23; on the 23rd, the House approved second reading of the Bill by 114-87. The same day, as well as on November 29 and 30, the House proceeded in committee of the whole to consider and adopt each clause of the Bill. On November 30, Members approved by 105 to 70 the motion to send the Bill on for third reading, and then passed it on third reading.

The debate on second reading resulted in tabling of various motions for adjourning the debate and withdrawing the Bill, or adopting it on second reading and referring it for consideration by the Committee on Justice and Legal Affairs, or giving the Canadian people an opportunity to approve its principle by a referendum. The House rejected these one after another. A quick analysis of the speeches made on the motion to adopt the Bill on second reading indicates that 19 Members spoke for the motion, 27 against, and 5 were non-committal.

On consideration in committee of the whole, Members tabled various amendments to the Bill. One of these would have completely abolished capital punishment and replaced it by mandatory life imprisonment: it was defeated 106-37; another sought to add murder of a person 16 years of age or under to the definition of capital murder: 53 Members were in favour of this amendment, and 80 voted against; the Members refused by 87-49 to add the murder of a woman to the definition of capital murder; another amendment would have required the court to inquire into the needs and material circumstances of the families of the victim and of the accused, and to provide where applicable for maintenance of the victim's family out of the accused's property; this was defeated 69-43.

At the debate on third reading two Members moved that the Bill be read a third time and then referred to the committee of the whole House for certain amendments to be made, in particular to section 1, subsection 2, which lists the categories of persons whose murder is considered to be capital murder. These two motions were defeated on division.

The debate in the Senate began on December 12, 1967 with a motion by Senator David Croll for second reading. It lasted for three days, i.e. December 12, 13 and 14, and on December 14, the Senate approved second reading of the Bill by 40-27. In the debate 11 Senators spoke in favour of the Bill, and 16 against. It was passed in committee of the whole on December 14.

The Bill received Royal Assent on December 21, 1967, and came into force on December 29, 1967. The text of the Act to Amend the Criminal Code is included as an appendix (appendix 4). The difference in numbering between the above-mentioned sections of the Criminal Code and those referred to in the foregoing appendix, is explained by the coming into effect in 1970 of the new Revised Statutes, which rearranged and updated all federal statutes and, by so doing, altered their numbering.

The arguments presented in 1967 in support of either point of view did not differ from those of the preceding year; we need only note in passing certain unpublished statements.

A. HOUSE OF COMMONS

(1) *The abolitionists*

Especially since publication of the United Kingdom Royal Commission's Report, the onus of showing the unique deterrent and protective effect of the death penalty rests on its supporters.

The borderline between ordinary and capital murder is extremely tenuous.

Society can express its horror for crime just as well through life imprisonment; it proclaims its belief in the sanctity of human life by imprisonment, not by capital punishment.

There will be no automatic parole of life prisoners; their release will have to be preceded by a favourable recommendation by the Parole Board.

The compromise represented in this Bill lends great moral support to the law enforcement authorities.

A trial involving the death penalty lasts much longer than a normal trial; the death penalty has a detrimental effect on the administration of criminal justice.

By resorting to capital punishment the state lowers the value of human life in the minds of its citizens.

Even in countries where it has been retained, it is never applied. How can it effectively protect society?

The trend is towards the disappearance of corporal punishments.

The death penalty has become an act of arbitrary discrimination committed against an occasional victim.

Dr. Sellin's studies showed that abolition has no effect on the crime rate.

We cannot control the sick people who commit murder; moreover, capital punishment does not come into consideration in the majority of homicides: the murderer acts on a passionate impulse, or in the belief that he will not be caught.

Prison authorities have other deterrents to prevent the murder of their guards, e.g. solitary confinement or loss of privileges.

Murders are committed even when the death penalty is in force.

Murderers are the least likely offenders to commit a second offence.

The death penalty leads juries to return compromise verdicts instead of deciding according to the evidence. Its automatic nature prevents the judge or jury from imposing an appropriate sentence, in view of all the circumstances of the case.

Of 122 paroled murderers, only two have murdered again.

The public will have no respect for policemen if government gives them special protection when they do not need it.

As the Bill retains the death penalty for cases of treason under ss. 46 and 47 of the Criminal Code, these provisions should be amended to include the Governor General and the Prime Minister.

A commutation court should be created; this is a responsibility of the judiciary.

People have the right to be protected and feel protected; an information campaign should be launched to avoid any confusion.

The only appropriate sentence for a person who has committed pre-meditated murder is life imprisonment with no commutation.

The death penalty is an admission of failure, a counsel of despair. The violence inherent in any execution runs the risk of creating violence in society.

Temporary abolition is one more step towards the complete elimination of capital punishment.

It was the government's duty to re-open the debate on the death penalty: the 1966 resolution was not a piece of legislation, and Parliament had not taken a clear-cut decision.

The influence of television is changing public attitudes towards capital punishment.

Police and prison guards should be given better salaries to offset the risks they incur.

Discussions on this question have been going on for years; it is time for a decision to be taken.

At the end of the five-year trial period Parliament will review the Act in the light of the results achieved and the available data, and the matter will be settled.

It may be that the death penalty deters some individuals, but this cannot be proved. Justice, especially when this means the death penalty, must not be justified and based on mere possibilities.

For the death penalty to be a deterrent, human nature would have to be as stable and coldly rational as the law itself.

The final justification of any law is the good it does in the society in which it applies.

The defenders of capital punishment are sentimentalists.

(2) *The advocates of capital punishment*

It is not possible to talk of a free vote when the government is both judge and jury.

If the death penalty is effective in protecting policemen and prison guards, why not grant the same protection to all citizens?

The death penalty must be kept in reserve in case of need, to combat organized crime or to counter the efforts of those who would undermine the very foundations of society.

People have a strong feeling of insecurity as a result of the increasing number of murders committed in Canada, particularly in Quebec. The Quebec figures show a considerable rise in the murder rate in those years in which death sentences were consistently commuted.

A referendum should be held.

Attempts to rehabilitate criminals should begin when they are young; it is essential to go to the root of the trouble and combat juvenile delinquency.

The voters are in favour of capital punishment.

Statistics are not an accurate reflection of reality.

It is illogical to speak of respect for human life when some murderers are hanged and others are not. We should protest against massacres committed in unjustified wars; we should help those who are starving or who cannot afford the expensive professional services they need to solve their problems.

The Bill is discriminatory since it creates two classes of citizen in relation to the imposition of the death penalty. It is not a compromise, but a Bill of expediency whereby the government seeks to get out of an impasse after having made a shameful mockery of the law.

The Bill provides no penalty for treason.

It is for the advocates of change to produce conclusive arguments.

Life imprisonment encourages repeaters, especially in case of escape.

Policemen do not want abolition, and they are closest to the problem.

It is murder that should be the real subject of concern, not punishment.

The Bill is premature; we should await publication of the Ouimet report before considering abolition of the death penalty.

The Bill perpetuates Cabinet involvement in criminal punishment and rehabilitation, and they are not well constituted to deal with this. The release of a person sentenced to life imprisonment should not depend on a political decision.

Retentionist arguments have not been met by the other side.

The Bill flouts the principle of the equality of all citizens before the law.

Certain responsibilities should be transferred from Cabinet to the House.

The Bible teaches that we have the right to abandon all hope for these men.

The death penalty may not be the sole or the best deterrent, but it settles once and for all the problem presented by a murderer. Abolition of it constitutes an encouragement to crime, rape and murder.

Executions should take place in public.

Life imprisonment is not a good deterrent if it lasts an average of only eight years, ten months and a day.

Cabinet has consistently commuted death sentences, and yet murders are not only continuing, they are increasing. It has been proved that the policy of commutation or abolition has no deterrent effect.

It is no more logical to abolish capital punishment than to eliminate the prison system or the judicial system. Capital punishment is not founded on a desire for revenge, any more than a prison sentence is.

We must give just as much consideration to recidivism among parolees as we do to the possibility that innocent men have been hanged.

The government should satisfy the people's thirst for justice.

The penitentiaries are not equipped to accommodate prisoners serving life sentences; it is important that this situation be remedied before the Bill is introduced.

B. SENATE

(1) *The abolitionists*

The death penalty is tantamount to cold-blooded murder.

The Bible says "Thou shalt not kill".

The death penalty brutalizes and demoralizes those responsible for carrying it out.

Parliament should influence and guide public opinion.

Murderers can reform, just as other kinds of criminals can, but prudence demands at least ten years' confinement for a man whose death sentence is commuted to life imprisonment.

The long delay between sentencing and execution constitutes mental cruelty.

Parliament and the government should do everything in their power to eliminate war and violence, or to promote highway safety; road accident victims are far more numerous than the victims of murders.

Neither God nor men have the right to take life in punishment.

Juries are just not convicting people of capital murder.

No penalty will deter the mentally ill or those who kill in the heat of passion.

People react very differently, and no one can say that this "legislative and judicial killing" will protect society. In any case, an individual is not

solely responsible for what he is. Society must bear part of the responsibility.

Society suffers a moral deterioration as a result of the sensationalism surrounding a trial in which the life of the accused is at stake.

The death penalty undermines any effort to identify and treat psychopaths.

The death penalty stresses the punitive aspect of justice. Any penalty should seek to achieve four objectives: 1) deterrence; 2) punishment; 3) rehabilitation; and 4) the protection of society. Life imprisonment achieves all four.

The state may not take what it cannot give—life.

(2) *The advocates of capital punishment*

Capital punishment is considered in the calculations of leaders of organized crime.

The same principle which applies to war and civil defence also applies to capital punishment: it is the right of self-defence exercised in collective capacity by the state to protect citizens.

The death penalty may be cruel, degrading and irrevocable, but then so is murder.

We have become technological giants and moral pygmies; scientific development excites us, but the least demand for moral strength frightens us.

In view of the government's attitude since 1962, it is very unlikely that the murderer of a policeman or guard would ever be executed.

Hanging is painless.

Although the execution of an innocent man is unjust, the acquittal of a guilty man is no less a denial of justice.

One should not trust psychiatrists; they can be paid to diagnose a mental deficiency in a murderer.

The public will be less likely to assist the police if the death penalty is abolished.

(d) PERIOD OF PARTIAL ABOLITION OF THE DEATH PENALTY

The Murder Rate

The sixties and early seventies have been marked by a worldwide increase in crime, and Canada is no exception. Like most other countries, it has seen its overall crime rate move upward, especially for serious crime, i.e. indictable offences. Thus, in 1954 there were 56,847 convictions for this category of offence, but in 1966 the figure went up to 79,865 before falling in 1967 to 76,681. The number of persons convicted of indictable offences rose from 30,848 in 1954 to 45,703 in 1967.⁶⁹ A Table in an appendix (Table 13) shows the increase in the number of convictions for indictable offences and the number of persons convicted of these

⁶⁹ *Statistics of Criminal and Other Offences*, Dominion Bureau of Statistics, Annual Catalogue 85-201 pp. 10 and 12.

offences from 1962 to 1967. The Table for 1954 to 1962 is contained in the document titled *Capital Punishment*.⁶⁰

An examination of the number of actual offences reported to police forces in Canada, or known to them, indicates a relatively steady increase from one year to the next for about ten years. "Actual" offences are those which were substantiated on investigation. However, they have not all been classified by commitment for trial or otherwise: a large number of these cases are never completely settled, and the files remain open for a long time. A table in an appendix (Table 15) shows the development of these offences from 1962 to 1969, as well as the number which fall within the Criminal Code; these are always the most serious.

As these figures demonstrate, Canada has not escaped the rise in the crime rate experienced by most countries in the last ten years.

The homicide rate is no exception to this rule, and has increased quite steadily since 1960. Analysis of its rise is of special interest in view of the changes made in the Criminal Code in the past decade, with respect to murder and capital punishment. The question is: did abolition of the death penalty at the end of 1967 result in an increase in the frequency of murders in Canada?

Capital Punishment gives an outline of the number of homicides known to police and the number of homicidal deaths from 1954 to 1963, as well as the corresponding rate per 100,000 population seven years of age and over.⁶¹ The figures from 1964 to 1970 are set out in Table 14. It must be noted at the outset that these figures, especially for homicides known to the police, refer to the number of victims, not the number of incidents. This fact partly explains the wide margin separating the 1969 figures from those for 1970, when a single incident caused the death of 40 persons—elderly people who perished in the destruction by arson of Notre-Dame-du-Lac Home in the Province of Quebec. The homicides occurred in 1969, but the coroner found the accused criminally responsible in January 1970. As the Statistics Canada publication points out, "this incident involved one accused and 40 victims".⁶² If we want an accurate idea of the actual number of victims, 39 must be deducted from the total for 1970, which is 430—as if this had been murder causing only one death. This gives a figure of 391, or a rate of 2.1 per 100,000 population seven years of age or over, as shown in note (4) at the bottom of Table 14.

Allowing for this correction to the 1970 figures, we find that from 1969 to 1970 the actual rate of murders known to the police went from 1.9 to 2.1, instead of increasing from 1.9 to 2.3 as indicated in the table before the necessary corrections are made. From 1964 to 1967, in the four years leading up to abolition, the rates were 1.4, 1.5, 1.3 and 1.6; and during the three years following abolition, i.e. in 1968, 1969 and 1970, they were 1.8, 1.9 and 2.1, the latter figure representing the corrected 1970 rate. If the partial abolition of capital punishment had resulted in a spectacular increase in the murder rate, the largest increase would have occurred the following year and continued thereafter. The largest increase since 1964, however, took place one year before abolition,

⁶⁰ Table I of Appendix I, p. 109.

⁶¹ Table E, Appendix I, p. 104.

⁶² *Murder Statistics, 1970*, Dominion Bureau of Statistics, Annual Catalogue 85-209, p. 13.

between 1966 and 1967, when it was 0.3: the rate rose from 1.3 to 1.6, and the death penalty was still in effect at the time. This jump was only equalled between 1954 and 1970 by that in the 1959-1960 period, when it was also 0.3, moving from 1.0 to 1.3. We may note that in 1959-1960, not only was the death penalty in effect but it was also regularly applied. Even the increase from 1.9 to 2.1 between 1969 and 1970 (corrected rate) is less than these two increases of 0.3.

After the death penalty was abolished the murder rate continued to rise, but more slowly than between 1966 and 1967. From 1967 to 1968 the rate went from 1.6 to 1.8, representing a rise of 0.2. It increased by only 0.1 between 1968 and 1969, from 1.8 to 1.9. Until then the annual increase had been slowing down. From 1969 to 1970 the murder rate (after the correction mentioned above) rose from 1.9 to 2.1, which is an increase of 0.2. This climb is not unique: the last 16 years provide other examples of sudden and at times sharper increases than occurred in 1970. From 1959 to 1960 and 1966 to 1967, the murder rate increased by 0.3; from 1961 to 1962 it increased by 0.2, moving from 1.2 to 1.4; and from 1957 to 1958, it also increased by 0.2, from 0.9 to 1.1. It is worth pointing out once more that before December 1967 the death penalty was still the law of the land, and Canada executed some of its murderers until December 11, 1962. Since that date, no execution has taken place. It is interesting to follow the changes in the murder rate after 1963, the year following the last execution. We see that in 1963 and 1964 the rate stayed at 1.4, i.e. at the same level as in 1962. In 1965 it increased by 0.1, reaching 1.5, but lost 0.2 and fell to 1.3 in 1966. After 1963, the murder rate remained almost stationary, even showing a slight tendency to decline.

The murder rate has increased over the last fifteen years, climbing from 1.0 per 100,000 population aged seven years and over in 1954 to 2.3 (or 2.1 if the corrected rate is used) in 1970. This rise in the murder rate has been accompanied, however, by an increase in crime generally in Canada; it is not an isolated phenomenon but part of an all-embracing movement which is reflected in an increase in all types of crime. The following figures from Table 15 (see appendix) demonstrate this. In 1962, 796,675 actual offences (i.e. those which were substantiated on investigation) were reported or known to police forces, and of this number 514,986 fell within the Criminal Code. In 1969 the police were informed of 1,470,761 offences, 994,790 of which fell within the Criminal Code, an increase of 84.6 and 93 per cent respectively. The number of convictions for indictable offences as well as the number of persons convicted of such offences are also presented in an appendix (Table 13) and are mentioned in reference no. 89.

Homicides of police officers and prison guards

The 1967 statute amending the Criminal Code by abolishing the death penalty creates two exceptions for capital murder, that is for the murder of police officers and of guards or other prison staff members acting in the course of their duties.

Since 1961 the number of homicides of police officers has risen to 38,* which is an annual average of 3.8. The breakdown of these 38 homicides is very uneven, however, as is indicated by Table 16, which will be found in an appendix; this shows how many homicides were committed each year and the municipalities in which they occurred.⁹³

There are considerable, abrupt variations from one year to the next, and it is difficult to form any valid conclusions from these figures, especially as the number of such homicides is relatively low. In 1963 no policeman was killed by a criminal act, whereas the previous year 12 were victims of homicide. From 1964 to 1967 the number of homicides decreased and varied between 2 and 3. In 1968, i.e. the year following adoption of the statute to abolish the death penalty except for the capital murder of police officers and prison guards, the number of murders rose to 5; it remained at that figure in 1969, falling again to 3 in 1970.

As for the employees of federal penitentiaries, none have been killed since September 1964. On this point it would be interesting to analyze the circumstances in which, in the past, prisoners have attacked their fellow inmates or members of the prison staff. Dogan K. Akman has made a study of aggravated and simple assaults and homicides committed in Canadian federal penitentiaries in 1964 and 1965.⁹⁴ This research does not include provincial prisons. Akman listed 102 corporal attacks, committed by 106 assailants against 107 victims, i.e. 37 guards and other staff members, and 70 prisoners. The majority of incidents occurred in maximum security institutions. More than 60 per cent of the attacks were attributable to younger prisoners aged 20 to 29, and most of the assailants had been sentenced for robbery with violence, or simple theft. Robbers committed a third of the assaults against staff members and inmates, whereas thieves were responsible for a third of the attacks against employees and about half of those involving inmates. Among other crimes for which assailants were serving terms of imprisonment, there were one non-capital murder, three cases of manslaughter, one attempted murder, one case of rape, and one attempted rape. Of the 37 staff members who were victims of these attacks, 35 were correctional officers and two superior officers. Robbers and thieves were themselves the victims of over 70 per cent of the assaults. The group of victims also included one inmate serving time for non-capital murder and two convicted of manslaughter.

Two homicides resulted from these attacks: a young man aged 18, who was serving a 12-year sentence for robbery with violence, fatally wounded a guard, and a 27-year-old inmate convicted of armed robbery killed another prisoner. In addition to the two homicides, staff members were the victims of 11 aggravated assaults, 11 common assaults causing minor injuries, and 14 assaults resulting in no physical injury; inmates suffered 31 aggravated assaults, 34 common assaults with minor injuries, and 4 assaults with no physical injury.

* Except for one case, these homicides involved policemen killed while acting in the course of their duty.

⁹³ *Police Administration Statistics*, 1963, 1966 and 1969, Dominion Bureau of Statistics, Annual Catalogue 85-204, pp. 21-23.

⁹⁴ "Homicides and Assaults in Canadian Prisons", Dogan K. Akman in *Capital Punishment*, ed. Thorsten Sellin, pp. 161 et seq.

It can be seen that the three inmates convicted of manslaughter, the one convicted of non-capital murder and the one convicted of attempted murder have a remarkable record in comparison with perpetrators of simple theft and robbery with violence. They inflicted minor injuries on three officers, one minor injury and three more serious injuries on three inmates.

From May 1960 to May 1965, five of the 39 persons convicted of capital murder and sentenced to death in Canada were executed. This low 12.8 percentage was a precedent, since the execution rate ranged between 28.9 per cent for the period 1870 to 1879, and 74.9 per cent for 1930 to 1939. In 1964 and 1965 none of 87 known penitentiary assailants was serving a term resulting from commutation of a death sentence, and there is no reason to think any such person was among the assailants whom it was never possible to identify. It is known that between 1945 and 1964 there were three homicides of prison guards, and none was attributable to a life prisoner convicted of murder.*

Akman also examines the opinion that the excellent record shown by murderers whose death sentence has been commuted is explained by the fact that the most dangerous types have been executed. To do this he compares the mental characteristics of the prisoners who were executed between 1957 and 1965, and those whose sentences were commuted. Six of the 16 murderers who died on the scaffold were regarded as normal, and of the five persons who displayed mental deficiencies, only two showed all the symptoms of mental illness (psychopathy in the first and the possibility of delirium tremens and hallucination in the second). No psychiatric report exists for the last five cases. On the other hand, of the 69 whose sentences were commuted, 16 were regarded as normal, one was a borderline case, 12 had no psychiatric reports and the 40 others suffered from mental deficiency or serious illnesses such as schizophrenia, psychosis, perversion, psychopathy, etc. Akman states that it is thus no longer possible to argue that "the conduct of murderers whose sentences have been commuted for extenuating reasons is no reliable guide to what will be the conduct of other murderers."¹⁰⁵

The hazard rate for prison staff was .68 per cent in 1964 and .45 per cent in 1965; for inmates it was .47 per cent in 1964 and .48 per cent in 1965. The difference between the two rates is explained by the small size of the prison staff as compared to the huge concentration of inmates. The percentage varies unequally between institutions, as it is very high in some while in most of the others it is nil. Allowance must also be made for the fact that 18 victims did not sustain any injury whatever, while 45 assaults caused only slight injury. Such incidents occur every day outside of institutions without attracting special notice. They cause considerable concern in prisons because of the extreme susceptibility of the staff to any disruption of their psychological security, and the discipline and order that must be maintained.

From this study Akman concludes that, from all the evidence, the commuting of death sentences to life imprisonment has not increased the life and occupational hazards for penitentiary staff members or among the

* These figures apply only to federal penitentiaries.

¹⁰⁵ Akman, *op. cit.* p. 166.

prison population. Not only have persons whose sentences have been commuted not resorted to violence during the term of their sentences, but the attenuation of the threat of the death penalty has not resulted in any increase in homicides or assaults in Canadian penitentiaries.⁶⁶

(e) THE DEATH PENALTY AND PAROLE

The behaviour of murderer parolees who had been sentenced in Canada to life imprisonment after their death sentence had been commuted confirms the American statistics tending to show that the recidivism rate is very low in this group and that they very seldom commit a second murder. Statistics published in April 1968 by the National Parole Board and quoted by Colin Sheppard⁶⁷ show that from 1920 to 1967, 119 capital offenders who had first had their sentence commuted were granted parole. In April 1968, 89 of them were still on parole, 19 had dropped from sight and 11 had been returned to prison. Only one of the 119 committed a second murder and he was hanged in 1944. Between 1959 and 1967, out of the 32 under death sentence whose sentence had been commuted to life imprisonment and who were later paroled, only one was convicted of another crime, and it was not murder. Despite these encouraging results, Sheppard points out, the Parole Board is reluctant to release murderers, and government authorities are reluctant to give this agency the responsibility for doing so.

(f) THE IMPACT OF ABOLITION OF THE DEATH PENALTY ON THE INCIDENCE OF RAPE IN CANADA

The view is very widely held that because of the death penalty's unique deterrent effect on criminals, its abolition automatically means an increase in the rate of the crime for which it was imposed. The following example examines this.

Un until April 1, 1955, rape was punishable by death in Canada. On that date the Canadian Parliament amended the Criminal Code to eliminate the death penalty and replaced it with a maximum penalty of life imprisonment. It should be mentioned that no convicted rapist has been executed in Canada since Confederation. Given hereunder are statistics on the number of convictions for rape from 1950 to 1960, i.e. before and after the death penalty had been abolished as punishment for this

Year	Rape convictions in Canada
1950.....	37
1951.....	42
1952.....	42
1953.....	44
1954.....	27
1955.....	63
1956.....	52
1957.....	56
1958.....	52
1959.....	44

⁶⁶ Akman, *op. cit.* p. 168.

⁶⁷ "Towards a Better Understanding of the Violent Offender", Colin Sheppard in *Canadian Criminology Review*, Vol. 13, No. 1, January 1971, pp. 60 et seq.

crime. During this period the population increased from 13,712,000 in 1950 to 17,442,000 in 1959; the conviction rate per 1,000,000 population was therefore 2.7 in 1950 and 2.52 in 1959; in 1958 it was 3.06.⁹⁹

(g) PUBLIC OPINION AND CAPITAL PUNISHMENT

People, wherever they live and whatever their social class, have always been, and still are, interested in the question of capital punishment. It has implications for such fundamental concepts as life, freedom and the defence of public order; no one is indifferent to it. Canadians are no exception to this rule; accordingly, agencies specializing in public opinion polls have conducted surveys at regular intervals in order to ascertain public attitudes regarding capital punishment.

According to the results of Gallup polls,¹⁰⁰ in 1943 there were 20% of Canadians who supported the abolition of capital punishment while 73% said they were in favour of its retention. In 1950, 70% of Canadians supported the death penalty; this percentage dropped to 51 in 1960. Meanwhile the number of abolitionists increased to 33% in 1958 and 41% in 1960, then dropped to 35% in 1965 and 37% in 1966. In 1969 the Commission of Inquiry into the administration of justice on criminal and penal matters in Quebec, better known as the Prévost Commission, ordered a public opinion poll on criminal justice in the Province of Quebec.¹⁰⁰ This poll touched on capital punishment, among other things. The results of this survey show that there is a split in public opinion, with 52.5% in favour and 46.5% against this punishment. A slightly higher percentage of Quebecers preferred life imprisonment (45.8%) to the death penalty (44%) as punishment for murder, whereas for rape 8.4% of the population advocated the death penalty, 38.2% life imprisonment and 49.5% a prison term. However the report points out that these are relatively sketchy trends since the respondents had to answer in terms of a theoretical situation without taking special circumstances into account. Opinions may vary depending on the type of murder, and so on. Table 17 shows the breakdown of answers by region, age, level of education and language spoken; it also gives a description of the sample. These tables bring to light the following constants: the death penalty found its strongest support in rural areas and large cities while the average-sized cities and Montreal showed a fairly marked preference for life imprisonment. More than 50% of the 18 to 24 age group chose life imprisonment over capital punishment, which progressively gained in popularity in the older age groups. As the level of education increased, the percentage of retentionists decreased; there was an almost even split between supporters of life imprisonment and capital punishment among French-speaking people, whereas abolitionists outnumbered retentionists by two to one among the English-speaking and other groups.

⁹⁹ *Correctional Process*, Canadian Correctional Association, Vol. VI, No. 8, November 1961.

¹⁰⁰ "Peine de mort, peine perdue", André Normandeau in *Maintenant*, *ibid.*, p. 241. "Capital Punishment" cover story by Kenneth Bagnell in *The United Church Observer*, New Series, Vol. 27, No. 3, April 1, 1965, pp. 12 et seq.

¹⁰⁰ *Crime, Justice and Society*, Appendix 4, Vol. 1. Public opinion poll on criminal justice in Quebec, Montreal, 1969, Chapter 3, Policy on criminal matters, A. Penal Philosophy, 1. Severity and humanism (a) Death penalty and corporal punishment, pp. 79 et seq.

In late 1970, a few weeks after the Quebec October crisis, a Gallup poll¹⁰¹ showed that 70% of Canadians said they were in favour of the restoration of capital punishment for the kidnapping of a public figure or a politician, only 20% were opposed to this idea and 10% were undecided. Among English-speaking people, 69% agreed with this idea and 20% were against it; among the French-speaking, 75% were for and 19% were against it; among the other ethnic groups, 68% were in favour and 22% against it. Among public school graduates, 71% supported this idea while 15% opposed it; among university graduates, the percentages were 55 and 37 respectively.

In its Saturday, August 14, 1971 edition, the Montreal newspaper *La Presse* published the results of the telephone survey conducted by Sono-Pressé among people throughout the Metropolitan Montreal Area who could speak French.¹⁰² Three hundred and sixteen persons were questioned in French on various subjects, including the death penalty. Of the persons interviewed, 80.2% said they were in favour of the death penalty for murder; in this group 34.9% said that the death penalty should be imposed in all cases while 45.3% felt that it should be imposed only in certain cases. 18 per cent of the respondents were opposed to the death penalty in all cases. The question asked was, "Are you in favour of the death penalty for murder?" The breakdown of the answers was as follows:

	In all cases	In certain cases	In no cases	No opinion	No answer	
Percentage of men.....	36.9	41.3	20.0	1.8	0	100
Percentage of women.....	32.5	49.7	15.9	1.3	0.6	100
Percentage of total.....	34.9	45.3	18.0	1.5	0.3	100

Law enforcement authorities expressed satisfaction with these results, but some editors and representatives of various circles which are keenly interested in public affairs were surprised at the extent of the shift in public opinion towards the death penalty. Even though the French-speaking sector has always been more favourably inclined to the death penalty than the English-speaking sector, and even though this poll was taken among citizens who had been deeply affected by the political crisis that had occurred a few months earlier, the commentators were hard pressed to explain this abrupt reversal in the situation. As pointed out in the Montreal newspaper *Le Devoir*,¹⁰³

[Trans.] How is it that 80% of the people now approve of it when the trend over the past 25 years would have led one to expect a fifty-fifty split?

¹⁰¹ *Ottawa Citizen*, January 9, 1971.

¹⁰² *La Presse*, Montreal, Saturday, August 14, 1971, 87th Year, No. 188, p. A-6.

¹⁰³ Wednesday, August 18, 1971, p. 4, *Cette pauvre majorité silencieuse*, Laurent La-Plante.

Nowadays heinous crimes make newspaper headlines and prompt a good many citizens to review their thinking on the death penalty. The poll was taken at this juncture and consequently provides an answer which, although honest, is coloured by current events.

In the light of this survey, its staunchest supporters suggest that the question be re-examined and that the death penalty be reinstated in the Criminal Code, at least for murder, so as to satisfy the wishes of a community that wants its own protection assured and violent crime severely punished. During the 1970 October crisis two federal Members of Parliament tabled in the House of Commons Bills C-171 and C-85 to amend the Criminal Code; under these Bills, kidnapping a person for political motivation or with intent to confine him, transport him out of Canada or hold him for ransom or to service would have been punishable by death. These two Bills, which are reproduced in an appendix, were never passed in the House of Commons. In addition, a Montreal magistrate asked that the Criminal Code be amended to extend the death penalty to drug traffickers.¹⁰⁴

6. REPLY TO THE ASSOCIATION OF CHIEFS OF POLICE

The Department of Justice document titled *Capital Punishment* devotes an entire chapter to the letter of February 6, 1965, addressed to all Members of Parliament by the Canadian Association of Chiefs of Police, in which it expressed its fears regarding the holding of a free vote on the question of capital punishment at the next session. The Association enclosed with its letter a copy of a letter sent to Prime Minister Pearson on December 17, 1964, as well as a copy of its Brief to the Joint Committee of the Senate and House of Commons.¹⁰⁵ A few weeks after this circular letter was sent, the Canadian Society for the Abolition of the Death Penalty published its reply in a document dated April 26, 1965.¹⁰⁶

In support of their opposition to the abolition of capital punishment the police authorities cited figures from Statistics Canada (Dominion Bureau of Statistics) to show that from 1960 to 1963, the number of homicides went from 118 to 231, a 95 per cent increase. The Society's answer is that these figures, taken from the Statistics Canada's annual publication on homicide, presented homicides known to the police. The increase noted by the police was partly to be explained by the annual increase in the number of police forces reporting homicides that came to their attention. Moreover, in 1960 only police forces serving areas with 750 or more inhabitants supplied figures to Statistics Canada. Thus, Statistics Canada's figures for 1960 did not include either communities with fewer than 750 inhabitants, towns or villages with a greater population but without a police force, or places served by the Quebec Provincial Police. Finally, out of all the police authorities required to file a report, 108, or 11.3 per cent, had not sent Statistics Canada the 12 monthly reports required, and 77, or

¹⁰⁴ *La Presse*, Montreal, Tuesday, July 6, 1971, p. A-6.

¹⁰⁵ *Capital Punishment*, Department of Justice, 1965, pp. 12-14 and Appendix J, pp. 110-111.

¹⁰⁶ "A Reply to the Submission of the Canadian Association of Chiefs of Police", prepared for the Canadian Society for the Abolition of the Death Penalty by its Research Committee, in *The Death Penalty?* Department of Christian Social Service, Anglican Church of Canada, April 1965, Toronto, Ontario.

8.1 per cent, had submitted none at all. In 1961 all police forces had sent in their reports, regardless of population served; only the Quebec Provincial Police still did not take part in this service. The Quebec Provincial Police filed its first reports in 1962, so that in 1963 all police forces, without any exception, were participating in the system for centralization of data on homicide. The 1970 edition of *Murder Statistics*¹⁰⁷ publishes corrected figures for 1960 to 1963; these figures are based on homicides known to all police forces of the early sixties, including those which, at the beginning, were not yet participating in the system for gathering of data on homicide. There were 190 homicides in 1960, 185 in 1961, 217 in 1962 and 215 in 1963 (instead of 231 in 1963, as mentioned by the Chiefs of Police in their letter). The corresponding rates per 100,000 inhabitants aged 7 years and over are respectively 1.3 in 1960, 1.2 in 1961, 1.4 in 1962 and 1.4 in 1963. The Society concludes that the actual number of homicides known to all police forces, instead of increasing by 95 per cent (118 to 231), rose between 1960 and 1963 by 11.6% (190 to 215).

The letter from the Association of Chiefs of Police says that there has been a wave of murders and other violent crimes sweeping the country. The Society for the Abolition of the Death Penalty replies by citing statistics on the commission of certain violent crimes. The rate of serious assaults was 162 per million in 1946 and 118 per million in 1961. The average annual rate of convictions for indictable offences moved as follows between 1936 and 1960:

Years	Rate per 1,000,000 population*
1936-1940.....	377
1941-1945.....	353
1946-1950.....	334
1951-1955.....	298
1956-1960.....	334

In reply to the argument concerning the American statistics put forward by the Chiefs of Police, the Society's document cites figures taken from the Uniform Crime Reports published by the FBI in 1962:

Abolitionist states		Retentionist states		Homicide rate per 100,000 population
Wisconsin.....	0.9	Florida.....	7.7	
Rhode Island.....	0.8	South Carolina.....	10.1	
Maine.....	1.4	Georgia.....	10.3	
Michigan.....	3.3	Massachusetts.....	1.8	
		Connecticut.....	1.3	
		Ohio.....	3.2	
		Indiana.....	3.5	

¹⁰⁷ Dominion Bureau of Statistics, Annual Catalogue No. 85-209.

* The exact origin of these statistics is unknown.

The Southern states have a higher murder rate than those in the North, though the former have all retained the death penalty, while the latter are abolitionists of long standing. Further, the rate does not vary as between abolitionist and retentionist states, but from region to region according to socio-economic, geographic and demographic conditions; within a homogeneous region it is practically the same between states, regardless of their respective attitudes towards capital punishment.

The research conducted by Thorsten Sellin and Fr. Campion showed that the presence of the death penalty in a country's laws does not provide policemen with any additional protection, since the murder rate of police officers is substantially similar in an abolitionist and a retentionist state having the same social and economic conditions.¹⁰⁸ Finally, the Chiefs of Police contended that the commutation since 1957 of most death sentences to life imprisonment had increasingly encouraged criminals to choose Canada as their territory. They submitted no figures in support of this view. The Society's response is that if criminals settled only in areas where murder is not punishable with death, they would avoid such states as Illinois, Florida, California and New York (the latter only abolished capital punishment in 1965), and this they obviously have not done.

The Society for the Abolition of the Death Penalty concludes that the Association of Chiefs of Police has not established the necessity of Canada retaining the death penalty.

7. ARGUMENTS FOR AND AGAINST CAPITAL PUNISHMENT

Section 16 of *Capital Punishment* (Department of Justice, 1965) catalogues all the arguments advanced and the general assertions made by the supporters of capital punishment and by abolitionists. This list, though not exhaustive, gives a fairly good summary of a debate which has been going on for several centuries and during which the protagonists have advanced substantially the same arguments. It would be a duplication of effort to reproduce this list, since very few truly original ideas have been put forward since 1965. However, researchers and people who for one reason or another are interested in the question of capital punishment have unearthed some very significant facts and have expressed certain points of view which are likely to clarify the discussion. This text will deal with these new aspects of familiar arguments. This chapter is therefore not sufficient in itself; for a comprehensive view of the question it should be considered in conjunction with section 16 of *Capital Punishment*.

(1) ARGUMENTS FOR RETENTION

(a) THE PHILOSOPHICAL AND RELIGIOUS ARGUMENT

Philosophers and theologians have argued that the state does not have the right to take the life of a citizen even if he has been convicted of a heinous crime, because it is not up to the state to dispose of human life, which is God given and not a gift from the state. This, retentionists

¹⁰⁸ Proceedings of the Hearings of the Joint Committee of the Senate and House of Commons, p. 331, 1954; pp. 718-728 and 729-735, 1955.

reply, is specious reasoning: since the state did not give man his freedom, it should therefore not have the right to deprive him of it, for instance, by imprisoning him. According to Calvin, a judge who imposes the supreme punishment is also administering divine vengeance and obeying God's orders.

[Trans.] Carneluttia explained the lawfulness of capital punishment by the theory of expropriation in the general interest, the object being the taking of the offender's life when the common good of society requires it.¹⁰⁹

[Trans.] If the state's right to inflict death is challenged, the state will necessarily also have to be prohibited from imposing detention, hard labour, deportation, even exile—all the physical and moral sufferings that cut life short. If the state has no right over the life of its members, it has no more authority to cut it short than to put an end to it.¹¹⁰

If a criminal has committed a reprehensible act, he must suffer the consequences. If he has taken a life, he must suffer for what he made his victim endure, he too must lose a valued possession whose subjective worth is at least proportional to the value of the possession of which he deprived his victim. The only just and equitable punishment for murder is the death penalty, and only the state, the symbol and depository of the common good, has the power and right to punish a criminal according to the seriousness of his crime.¹¹¹

On November 22, 1958, a Catholic priest, Father Bernard Signori, wrote in *Monde nouveau*¹¹² that, in view of the fact that God is still the absolute master of life, "crime is first and foremost a crime against God before it is a crime against an individual or against society." He then established the lawfulness of capital punishment by pointing out that it has only a preventive function:

[Trans.] "The main purpose of punishment is to restore the social balance that the offence has upset. The offender wrongfully sets himself against society in order to impose his will on it by depriving it of order; ... the state can establish in its laws which crimes are so harmful to social life that they deserve the severest penalty. By so doing, society does not deprive its subjects of the right to life, any more than it deprives them of the right to freedom when it provides for prison sentences. The person who disrupts the social order by committing a crime personally deprives himself of the right to life or freedom. It is these possessions, to which he was no longer entitled, that are in fact taken from him when the sentence is carried out.

It is not this penalty (capital punishment) but the crimes it is meant to repress that are a vestige of barbarism. It remains for the state to decide the cases in which it is to be imposed, for it is not the only just penalty, even for the most serious crimes; there are other comparable penalties."

Pope Pius XII stated the same thing on September 13, 1952:

"even in the execution of a person sentenced to death, the state does not dispose of the individual's right to life. Responsibility then lies with

¹⁰⁹ "La peine de mort et le droit pénal turc", Sulhi Dönmezer in *Pena de Morte*, Vol. I, *id.*, pp. 199 et seq. (p. 205).

¹¹⁰ *Commentaire sur Filangier*, Benjamin Constant, see Dönmezer, pp. 205-206.

¹¹¹ "Capital Punishment: the Moral Issues", Max Charlesworth in *The Penalty is Death*, Edited by Barry Jones, Sun Books, Melbourne, 1968, p. 19.

¹¹² Vol. XX, Nos. 5-6, quoted in *Monde nouveau*, Vol. XXVII, No. 4, April 1966, p. 123, *La peine capitale*, editorial by Guy Poisson, editor.

the public authorities to deprive the condemned man of the possession of life in expiation for his error after he has already, by his crime, divested himself of his right to life."¹¹³

(b) EFFECT OF THE DEATH PENALTY ON THE ADMINISTRATION OF JUSTICE

The abolition of capital punishment would undermine and seriously impair the administration of justice. This was the uniform view expressed to the Florida Commission on the abolition of capital punishment by police, sheriffs and prosecutors in that state.¹¹⁴ The argument that the death penalty is seldom used argues for its retention. The risk of error and injustice is minimal since juries, courts in general and government authorities are exercising extreme leniency, even with vicious murderers. Despite the infrequency of executions, the death penalty should be retained as punishment for those committing particularly heinous crimes. Three conditions are essential to the sound administration of justice: swiftness and certainty of arrest, and severity of punishment. According to Chief of Police Edward J. Allen,¹¹⁵ the third condition is the most important. If a bank robber were swiftly and surely sentenced to five days in jail or if a rapist were swiftly and certainly given a \$25 fine, neither of these would be an effective deterrent to potential criminals. Florida already has the fourth highest homicide rate in the United States, at 8.2 per 100,000 population; it is outranked only by three other southern states: Alabama at 10.2, South Carolina at 10 and Georgia at 9.4. If Florida abolished the death penalty, Chief Allen fears that its homicide rate would shoot up, and perhaps even exceed that in the three states just mentioned since it is adjacent to Alabama and Georgia and in close proximity to South Carolina. Since the southeastern region of the United States has always been an active hotbed of violence, abolition of the death penalty in Florida would have a doubly harmful effect on the incidence of crime: the people in Florida would be encouraged to commit homicides, and criminals from neighbouring states would be tempted to come and commit their heinous crimes in Florida with entire impunity.

In an article published in 1960,¹¹⁶ a prosecutor for Dade County, Florida, said that he was in complete agreement with the viewpoint expressed by Chief Allen to the Commission on capital punishment. According to Mr. Gerstein, whose opinion is shared by the majority of his colleagues with whom he has spoken, no penalty is as effective a deterrent as the death penalty. He admits that statistics do not confirm his statements but, he adds, in the opinion of sociologists and criminologists, statistics alone cannot prove the deterrent effect of capital punishment. Murder is a very complex sociological phenomenon, explainable by a series of factors such as race, heredity, geography, education, and so forth. The figures cannot take all these variables into account; they do not give the number of murderers who were deterred by the death penalty from committing a crime.

¹¹³ *Monde nouveau* *ibid.*, p. 123

¹¹⁴ Report of the Special Commission for the Study of Abolition of Death Penalty in Capital Cases, The State of Florida, Tallahassee, 1963-1965, pp. 33 *et seq.*

¹¹⁵ "Capital Punishment: Your Protection and Mine", in *The Penalty is Death* pp. 199 *et seq.*

¹¹⁶ "A Prosecutor Looks at Capital Punishment", Richard M. Gerstein in *The Journal of Criminal Law, Criminology and Police Science*, Vol. 51, No. 2, July-August 1960, pp. 252-257.

Some New York City policemen wrote to inform Mr. Gerstein of their convictions regarding the effectiveness of capital punishment, and to recount their past experiences to him. According to their testimony, accomplices to murder have often attempted to dissuade the murderer from resorting to violence or from killing an armed-robbery victim because of their fear of the death penalty. Once arrested and taken to the police station, some murderers have said they were terrified at the possibility of being sentenced to death. If this prospect had no deterrent effect, why would it make criminals so afraid, and why would they be deeply relieved to have their sentence commuted to life imprisonment?

Mr. Gerstein concludes by affirming the state's right to defend itself against those who shake the foundations of the social order. Certain individuals have proved that they cannot live in society and are impervious to any rehabilitation. The primary purpose of punishment is not rehabilitation but the punishment of the offender and the protection of society. Substitute penalties, life imprisonment or exile for life, do not offer the same degree of protection as capital punishment. Abolition of the death penalty would induce a country's youth to view laws prohibiting murder as mere conventions that can be easily set aside by citing supposedly progressive social theories.¹¹⁷ If man is under the impression that he may choose the laws he must obey, anarchy is not far off.

(c) DISCRIMINATION AND JUDICIAL ERRORS IN THE
ADMINISTRATION OF THE DEATH PENALTY

Proponents of the death penalty are all prepared to endorse the ideal of justice and the equality of all citizens before the law. If the abolition of this punishment did away with inequities and injustices, they would become abolitionists straight off. In their view, however, it is not the law but rather its application that creates injustices and inequities. A measure is not abolished merely on the grounds that it is poorly administered. Of course it is not just that some criminals elude the arm of the law, but would one go so far as to claim injustice because others did not evade it?¹¹⁸ Judicial errors are more possible than probable. So much sentimentality and caution surround a murder trial and appeals are so numerous that the possibility of error is almost nil. It is preferable to sentence an innocent man than to allow offenders to go unpunished.

Aware of the shortcomings inherent in human justice and the long delays caused by the endless legal proceedings during a murder trial, the former director of the United States Bureau of Prisons, James V. Bennett, made a number of interesting suggestions for bringing this type of case to a successful conclusion.¹¹⁹ The imposition of the death penalty would require the concurrence of the judge and jury; it would result from a separate jury trial on the issue of sentence, as divorced from conviction. There would be an automatic psychiatric examination of the defendant prior to sentence and an automatic appeal of the conviction and sentence. With

¹¹⁷ Gerstein, *op. cit.*

¹¹⁸ *Report of the Special Commission for the Study of Abolition of Death Penalty in the State of Florida*, pp. 33 et seq. "Capital Punishment: Your Protection and Mine", Edward J. Allen in *The Penalty is Death*, pp. 199sq.

¹¹⁹ *Of Prisons and Justice*, James V. Bennett, Director, U.S. Bureau of Prisons, sheet printed by the inmates at Leavenworth, Kansas.

these safeguards, society would be assured that the death sentence would not be lightly or indiscriminately used. Bennett believes in the importance of having an outlet for the public's feelings of vengeance and retribution when faced with heinous crimes such as murder for hire, murder involving a law enforcement officer engaged in his duties, treason, the kidnapping and injury of a child, the bombing of an airplane, school or church. Such crimes arouse public indignation to such a pitch that capital punishment proves to be the only just and equitable punishment.

In answer to the argument that the death penalty is not impartially applied, Ernest Van den Haag¹²⁰ states that the abolitionists do not have the right to claim injustice since they refuse to admit that one purpose of the death penalty is "doing justice". On the other hand, if justice is one of the purposes of punishment it becomes possible to justify any punishment—even death—on grounds of justice. Convicting and executing an innocent man are unjust, but the murder of an ordinary citizen is equally unjust. An attempt must be made to attain the high ideal of justice by endeavouring at least to prevent injustices from being committed. If it were proved that despite the risk of executing an innocent man the deterrent effect of the death penalty prevented the murder of law-abiding citizens, then the supreme punishment would be justifiable. On the other hand, if the imposition and carrying out of the death penalty serve no useful purpose, we must then side with the abolitionists because of the possibility of injustice inherent in this punishment. Everything depends on the deterrent effect of capital punishment.

(d) THE DETERRENT EFFECT OF THE DEATH PENALTY

Robert Vouin expresses his faith in the deterrent effect of capital punishment this way:

[Trans.] "How is it possible to contend that the death penalty is of no use as a general preventive because it has no deterrent effect? In fact, the penalty may be regarded as useless in that most civilized countries should be able to fight crime and protect society without it, at least in the case of most crimes. But when all countries cling to the principle of penalties as a means of preventing offences, and when man continues to cling to life, it is impossible to see how a deterrent capability generally acknowledged for other sanctions can be denied for the most serious penalty of all."¹²¹

According to Ernest Van den Haag, the deterrent effect of capital punishment does not depend on cold and rational calculation but on the likelihood and regularity of human responses to danger, and on the possibility of reinforcing internal controls by vicarious external experiences. Man is responsive to danger and this more or less conscious responsiveness restrains him from certain acts, even those he finds attractive, because of a fear of danger. Legal threats are constructed deliberately by legislators to restrain actions which may impair the social order. Thus legislation transforms social into individual dangers; people acquire a sense of moral obligation, a conscience, which threatens them should they

¹²⁰ "On Deterrence and the Death Penalty", Ernest Van den Haag in *The Journal of Criminal Law, Criminology and Police Science*, Vol. 60, No. 2, June 1969, pp. 141 et seq.

¹²¹ "Observations sur la peine de mort", Robert Vouin in *Pena de Morte*, Vol. II, pp. 41 et seq. (p. 43).

do what is wrong. Arising originally from the external authority of rules, conscience is internalized and becomes independent of external forces. The coercive imposition of external authority on recalcitrants and offenders constantly reinforces the social conscience of those who would not feel an obligation to behave lawfully if deviants were not to suffer punishment.

Like natural dangers, punishments deter 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 (e.g. parking regulation violations). In this case the feeling of obligation tends to vanish as well. There are persons who are non-responsive to punishment because they are either self-destructive or incapable of responding to threats, or even of grasping them. Others respond only to more certain or more severe penalties.

The author concludes that the effectiveness of capital punishment seems obvious, but punishment as a deterrent has fallen into disrepute. He quotes Lester B. Pearson, a former Prime Minister of Canada, who stated squarely that he supported abolition of the death penalty and proposed instead that the state seek to eradicate the causes of crime—slums, ghettos and personality disorders. Van den Haag rejects this opinion. Slums are no more causes of crime than hospitals are of death; they are locations of crime, as hospitals are of death. Strictly speaking, poverty might be viewed as one of the causes of crime, but here again, the author does not think so. Any relative disadvantage may lead to frustration or resentment, may foil often legitimate ambitions and may sometimes lead to crime. Not all disadvantages can be eliminated; not even poverty can be removed altogether from our society. An explanation of the crime rate on the basis of poverty or other disadvantages is neither complete nor satisfactory. Moreover, a large number of the poor never commit a crime whereas some rich people engage in criminal activities. While wealth makes certain offences such as theft or rioting pointless, it should not be inferred that poverty is the cause of committing them. Water extinguishes fire, but its absence is not the cause of fire. If everybody had all the necessities, people would steal for the sake of superfluities.

Van den Haag sees no connection between crime and ghettos. Negro ghettos have a high, Chinese ghettos a low crime rate. Ethnic separation, voluntary or forced, has little to do with crime.

The author does not see how the state could eradicate personality disorders even if all causes and cures were known and available. The known incidence of personality disorders within the prison population does not exceed the known incidence outside.

Those who contend that crime can be eradicated only through elimination of the social causes are comparable to a fireman who refuses to put out a fire on the pretext that the best way to reduce the number of fires is to discover and fight against the causes of fire. Van den Haag opts for the practical solution whereby fires are checked by using the equipment available, and by acquiring the most effective equipment. To take the opposite view would be tantamount to letting oneself be burned while waiting for "the long run" and "the elimination of the causes".

Whether a person engages in any activity—be it lawful or unlawful—depends on whether the desire for it is stronger than the desire to avoid the costs involved. If the cost is high he will refrain from doing it unless the desire is very strong. If the cost is low, he will not hesitate to give in to his desire. In this example the cost symbolizes the penalty, and the activity the crime. The best way to fight the activity (crime) is to increase the cost (penalty) or reduce the desire. Legislators can very easily change the penalty in order to effectively fight crime; they can even impose the highest cost by making punishable by death a crime they want at all costs to deter the people from committing.

To justify their opposition to capital punishment the abolitionists often raise the question of its irrevocability, especially when a judicial error occurs. Taking the opposite viewpoint, Van den Haag feels that the irrevocability of the death penalty is an added factor in its deterrent effect. In some cases it is the only possible deterrent. Let us suppose that prospective rebels are engaging in criminal activities in preparation for a coup d'état. If they believe in a victory, life imprisonment will have no deterrent effect since they have high hopes of being pardoned by the victorious rebels. In this case the irrevocability of the death penalty would be most effective since it would eliminate any possibility of the sentence being revoked. Furthermore, capital punishment is the only suitable punishment for spies and traitors in wartime and for lifers who commit a murder.

Thorsten Sellin has made studies on the death penalty and from his analyses he concluded that there is a lack of evidence for deterrence, and hence there is a lack of deterrence. Van den Haag challenges this conclusion; in his view, the results of Sellin's research lead to only one observation: he was unable to prove statistically that the death penalty has a deterrent effect. The statistics are too limited and do not take enough factors into account to permit the drawing of valid conclusions. A comparison between contiguous states with similar demographic, social and economic composition is inadequate and does not take into account deeper differences between one state and another, which may have a bearing on the homicide rate, independent of capital punishment. It may very well be that there are fewer homicides after abolition of the death penalty, but Sellin is careful not to add that there might have been still fewer with retention.

Offenders are probably unaware of the absence or presence of the death penalty state by state or period by period, which takes nothing away from the deterrent effect it has on them by inculcating in them a preconscious, general response to a severe but not necessarily specifically apprehended threat. For some time after abolition, offenders remain deterred because they are unaware that the law has been amended, or because they remember the severity of the penalty in the past. Van den Haag believes that general deterrence will be weakened more by local or partial abolition than by total abolition. Finally, he suggests that it be left to the discretion of the jury to impose the death penalty or an optional penalty in order to guard against the non-conviction of guilty defendants by juries who do not want to see them executed.

Irrevocability may support a demand for some reason to expect more deterrence than revocable penalties might produce, but not a demand for more proof of deterrence. Since it seems more important to spare victims than to spare murderers, the burden of proving that the greater severity inherent in irrevocability adds nothing to deterrence lies on those who oppose capital punishment. Proponents of the death penalty need show only that there is no more uncertainty about it than about greater severity in general.

In conclusion Van den Haag summarizes the dilemma facing society in this way: 1. If we execute the murderer and (a) achieve no deterrent effect thereby, a life has been expended in vain, or (b) the execution deters murderers from committing their crime, we have spared the lives of some future victims and of some potential murderers.

2. If we do not execute the murderer, (a) the absence of the death penalty harms no one and produces a gain—the life of the convicted murderer, or (b) the absence of the death penalty may result in the murder of innocent victims and thus produce a loss—the lives of the victims. Because of the uncertainty, a choice must be made, and Van den Haag chooses to sacrifice the life of the murderer in order to spare the lives of future victims. This was also the choice of the Florida Commission, which defeated a recommendation for the abolition of capital punishment by a vote of ten to three. This is also the choice of more than 70 per cent of the American states and the majority of people throughout the world.¹²²

(2) ARGUMENTS FOR ABOLITION

(a) THE PHILOSOPHICAL AND RELIGIOUS ARGUMENT

The noted French jurist Marc Ancel, the author of *Capital Punishment*, a report published by the United Nations in 1962,¹²³ submits his interpretation of the public favour in which capital punishment is still held, and synthesizes the philosophical and religious grounds of the case for abolition:

"In actual fact, it (retention of the former penalty) can be explained by the often unavowed persistence of the old primitive reflex for revenge which demands blood in atonement. To this is added an even less readily avowed fetishism for capital punishment, which is still regarded as a sacrifice to the goddess Justice, or as the exorcizing of the demon of evil, or as appeasement to those who want to see the crime solemnly wiped out by the judicial death of the convicted man. In all these cases—not to mention the unconscious sadism of many—the retention of capital punishment is, in the final analysis, nothing more than the ultimate expression of a theological mysticism rooted deep in the dark ages.

In an era that is as concerned for the rights of the person as the eighteenth century was for human rights, one may wonder whether the right to life—which has some of the characteristics of each—should not be regarded as a sacred possession which even the legislator must respect. Consequently it should be proclaimed that the state cannot have the power of life and death over the citizens and that society

¹²² "In Favour of Capital Punishment", Jacques-Barzun in *Crime and Delinquency*, published by the National Council on Crime and Delinquency, Vol. 15, No. 1, January 1969, pp. 21 et seq.

¹²³ United Nations publication ST/SOA/SD/9, Sales No. 62.IV.2, Department of Economic and Social Affairs.

cannot dispose of the life of its members. The essential purpose of the death penalty, whatever may be said about it, is the expending of a human life, irreplaceable as such."¹²⁴

Already in the 19th century France has stated the religious principles that are still relied upon by abolitionists today. The God of mercy, God who is good, who is the giver of life, cannot ask for the death of the offender. The state has not given life, and therefore has no right to take it. The Gospel preaches the forgiveness of sinners and promises redemption to all who repent. Ballanche, the philosopher from Lyons, said:

"...capital punishment was necessary and lawful in times past, and remained so until the teachings of the Gospel brought a new revelation... Under the reign of mercy, no one is excluded from the "brotherhood of man", no one should therefore be put to death or into prison. It (the Christian City) must work towards the eradication of offences through social reforms and the rehabilitation of the offender through brotherly charity."¹²⁵

As early as the fifth century A.D., Saint Augustine commented as follows on the murder of Christians by an heretical African sect:

"We do not wish to have the sufferings of the servants of God avenged by the infliction of precisely similar injuries in the way of retaliation. Not, of course, that we object to the removal from these wicked men of the liberty to perpetrate further crimes, but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any particular; and that by such coercive measure as may be in accordance with the laws, they be drawn away from their insane frenzy to the quietness of men in their sound judgment, or compelled to give up mischievous violence and to take themselves to some useful labour."¹²⁶

A large number of religious groups in Canada have expressed their opposition to capital punishment, for example, the Anglican Church of Canada, the Baptist Convention of Ontario and Quebec, the Religious Society of Friends, certain local chapters of the Presbyterian Church of Canada, the Canada Section of the Lutheran Church in America, and the United Church of Canada. The Presbyterian Church of Canada stated that it was in favour of the death penalty for certain particularly repugnant crimes and for premeditated murder. But in 1965 the General Assembly of the latter church set up a study committee on the death penalty as a result of the abolitionist stand taken by certain local chapters. Rabbi Israel J. Kazis claims that the Jewish ecclesiastical authorities did not support capital punishment, even though the Old Testament provides for this penalty. The burden of proof and the procedure in general made it almost impossible to sentence an accused to death, and the number of executions was very small. The Catholic Church has never taken an official stand on the question. Contradictory

¹²⁴ "L'abolition de la peine de mort devant la loi et la doctrine pénale d'aujourd'hui", Marc Ancel in *Pena de Morte*, Vol. II, id. pp. 415 et seq. (p. 422).

¹²⁵ "Les arguments d'ordre religieux dans les controverses sur la peine capitale en France du XIX^e siècle", Paul Savey-Casard, in *Pena de Morte*, Vol. II, id. p. 221.

¹²⁶ *Capital Punishment*, Unitarian Congress of South Peel, Port Credit, Ontario, Brief sent to all Members of Parliament on April 27, 1965 by Arnold Thaw and Arthur Harris.

opinions have been expressed, but none have borne an official stamp. However, the Vatican no longer executes criminals and often pleads in favour of clemency.¹²⁷

The argument that life is sacred comes up often in the debate, in support of either side. An article published in *Relations* provides an excellent illustration of this principle.¹²⁸

A tank charging full speed ahead; in its path, a lowly flower of the fields; to spare this fragile life, the vehicle of death makes a conspicuous detour: this eloquent image won the international cartoon award not long ago. What it illustrates is the contradiction and guilty conscience of a world that dedicates itself at the same time to the promotion of life and to its destruction.

All human life is sacred. In the West, this axiom is the basis for both morality and law; it governs our mores, culture, economy and politics; in the final analysis it lays the foundations for our democratic ideal of liberty, equality and fraternity. Because, before the law, the guardian of the common weal, all individual lives are of equal worth and deserve the same respect; because no one—not even the state—is permitted to sacrifice one life in order to save another supposedly more valuable life; because when all is said and done we refuse to admit as Caiaphas did that “it is good that only one should die for the people”, all members of society enjoy, in principle, not only the right to life but also, on an equal footing, each of the other fundamental human rights that stem from it as branches from a tree trunk. The day when, between two human beings—one rich, the other poor, one white, the other black, one a wise man, the other a fool—society assumes the right to decide arbitrarily which shall live and which shall die, no one will be safe any longer and our civilization, smitten to the core, will sink deep into barbarism.

It is on the grounds of this principle that the abolitionists oppose a man being sentenced to death and executed under civil authority. Life is too sacred to allow the state to dispose of it at will, even to punish the perpetrator of a heinous crime or to protect society against a dangerous criminal. The question should not be where does the sanctity of life begin but where does it end. Neither man nor the state has the right to decide at what moment life has lost its sanctity.¹²⁹ The notion of the sacredness of life, the horror at the prospect of deliberately and coolly killing a fellow creature, are enormously weakened by the existence of capital punishment. Whatever society does that cheapens human life (cases in point include irresponsible motorists whose rash behaviour jeopardizes the lives of their fellow man; the dissemination of literature and films centred on violence; war) rots the very foundations of that society's value system and carries the seeds of crime in general and murder in particular. That being the case, capital punishment will have no deterrent effect on the would-be murderer for he is the product of a society whose faults and negative values he personifies.¹³⁰ A society that has gradually ceased inflicting the death penalty first on thieves and children, then on

¹²⁷ *Renewal—Renouveau*, Special feature: “Religion and the Death Penalty”, Vol. VII, No. 1, February 1966, *Review of the Canadian Correctional Chaplains' Association*.

¹²⁸ “Libération de l'homme et respect de la vie”, Marcel Marcotte, s.j., in *Relations*, No. 360, May 1971, Montreal, p. 132.

¹²⁹ “Mr. Barzun and Capital Punishment”, Jerome Nathanson in *Crime and Delinquency*, Vol. 15, No. 1, January 1969, pp. 28-33.

¹³⁰ “A Primitive Sanction”, David Dalches in *The Hanging Question*, id., pp. 39 et seq. (p. 41).

rapists and other offenders, a society that has done away with public executions and regards even the most depraved offender as a human being with a potential for reformation instead of treating him like an animal—has this society not taken a big step forward? The death penalty has been removed for such cruel and dangerous crimes as rape and arson. The offender is not made to suffer the same harm that he has inflicted on his victim. We do not arrange for rapists to be sexually assaulted, nor burn down the houses of arsonists.¹³¹ Yet this is the fate in store for the murderer, who is punished by death for having killed. Murder is the only case where the *lex talionis*, which demands a life for a life, is fully applied. Instead of fighting crime, society has decided to destroy the criminal as though it could eliminate the cause by doing away with the result.¹³²

Hugo Adam Bedau¹³³ feels that the sanctity of life is a part of its very essence, contrary to the view held by other philosophers who think that persons, animals and living organisms are sacred, and not life itself. Since it is life which is sacred and not the person or thing invested with life, all lives have the same value, all are worth the same whether they be kings or servants, law-abiding citizens or offenders. When there has been a murder, the sanctity of the victim's life is not further heightened by the taking of the murderer's life. Life is an inalienable right and no one—not even the state—can take it away from anyone, not even in punishment for crime. Article III of the United Nations Declaration of Human Rights (1948) states that "Everyone has the right to life". A number of countries signatory to this declaration violate this provision with impunity by continuing to impose the death penalty. Governments generally neglect or refuse to embody the right to life in their laws and to elevate it to a categorical right. If they have done so, they never act accordingly.

(b) THE DEATH PENALTY AND PENOLOGY

When we look back on the history of punishments, we note that in primitive societies punishment was inflicted by the victim's family, who avenged any crime committed against one of its members. In the beginning, offenders paid for their wrongdoings in an atmosphere of violence, but this gradually gave way to monetary compensation according to a predetermined scale. As the central government grew in importance, the concept of crime changed. It began to interfere with the king's peace, and from that moment on revenge and punishment came under his authority.

The imposition of penalties started with the principle that man had full control over his will and that a crime stemmed from a deliberate intent to commit a prohibited act. Direct and very brutal corporal punishment was therefore inflicted on the accused in the hope of preventing the commission of further crimes. Most offences were punishable by death, including such petty infractions as the theft of food by a penniless man.

¹³¹ "The Historical Perspective", Kenneth Younger in *The Hanging Question*, *id.*, pp. 5 *et seq.*

¹³² "Capital Punishment and International Politics", S. Carter McMorris, Attorney, in *Criminal Law Bulletin* 3(8), 1967, pp. 564-567.

¹³³ "A Social Philosopher Looks at the Death Penalty", H. A. Bedau in the *American Journal of Psychiatry*, Vol. 123(11), 1967, pp. 1361-1370.

In the nineteenth century more than 200 crimes were capital in England; the number of executions was extremely high and most were accompanied by various tortures and cruelties such as the cutting off of hands, ears or nose, branding on the forehead, and the like.

A decrease in the number of capital offences involved a long process. When there was talk by some people in England in the nineteenth century of abolishing this punishment for the theft of five shillings, some voices spoke out on the importance of providing personal property with all the protection that the death penalty afforded, and that it would lose should the penalty be abolished. Once capital punishment was abolished, however, it was found that crimes diminished after they ceased to be regarded as capital. Moreover we are now witnessing the gradual abandonment of recourse to violence in punishment, whether it be the death penalty, the lash or any other type of corporal punishment. Nowadays the emphasis is on imprisonment, fines and probation.¹³⁴

Three main objectives have always been attributed to penalties: punishment, deterrence and rehabilitation. The purpose of punishment is to restore the social balance that has been upset by the perpetration of a crime. It is rooted in the theory that a criminal must suffer for what he has done and repay his debt to society. The offence is placed in one scale of the balance and, in the other, the amount of punishment necessary for restoring the balance. The problem is to determine how great the penalty must be in order to offset the offence. Contrary to what was believed in the past, it is not certain that the individual alone is responsible for his actions. Is a person who has been raised in a broken home, who has known only poverty and frustration, who has had no preparation for the work world, in the same position to weigh his actions as a person brought up in a normal family in comfortable circumstances? The social sciences teach us that man is the product of his times and of his environment; one cannot bear him a grudge because of the family and social background in which he has grown up. The community as a whole shares part of the responsibility for the wretched quality of the human environment which, instead of making young men and women into law-abiding citizens, encourages them to turn resolutely to crime. Of course society has the right to ensure its self-protection by punishing offenders, until it finds another way of eradicating crime. But in so doing, instead of taking pleasure in the thought that the offender got what he deserved, it should feel deeply remorseful that society has failed. Proponents of the punishment theory claim that offenders must be punished so that people will develop an instinctive feeling of horror at the very thought of crime; for example, if the murderer were hanged every time a murder was committed, the public's aversion for this crime would be increased ten-fold. Punishment further serves as a collective catharsis; all members of a society have antisocial feelings, and they demand that their desire for revenge be satisfied in order to make up for the repression of their own evil tendencies. If it is to appease this avenging instinct, punishment must be rapid and fitted to the crime, and should not take into

¹³⁴ *Crime and its Treatment in Canada*, edited by W. T. McGrath, Macmillan of Canada Ltd., Toronto, 1965, Chapter 1, "Crime and the Correctional Services", pp. 1 *et seq.* (pp. 5 and 6).

account extenuating factors such as provocation, poverty, age and mental health. The stiffer the penalty, the more it must rely on public approval, otherwise it will arouse sympathy for the criminal instead of respect for the law.

The death penalty meets this first objective of punishment; the public reacts to the commission of a heinous crime by expressing a violent desire for revenge and by demanding that the criminal be punished. The avenging instinct is still deeply rooted in man and the death penalty is one way of expressing it. However, there are doubts as to its efficacy; people react vindictively to an odious crime. There is something instinctive about this feeling and it fades away as rapidly as it wells up, if it is not quickly assuaged. Because of the long interval between the commission of the crime and the execution of the criminal (when it takes place), the death penalty fails to satisfy this hunger for revenge and punishment. Furthermore, the hanging takes place in secret, away from public view. Yet a portion of the population demands the retention of the death penalty because, in their opinion, it achieves the prime purpose of any penalty—punishment.

Capital punishment does not, however, have anything in common with the other two objectives of the penalty, namely, deterrence and rehabilitation. According to the theory of deterrence, an individual who is planning to commit a crime will be deterred from it by the thought of the sufferings endured by other offenders convicted of similar offences, and the fact that he has once been punished will stop an individual from committing further crimes. Thus the goal of this theory is the protection of society by the prevention of offences. Capital punishment has two kinds of deterrent effect, either special or general, depending on whether it relates to the offender himself or to other offenders. Special deterrence is completely effective since the death penalty does away with the criminal forever. The effectiveness of general deterrence, which is more difficult to assess, is also more doubtful. A number of specialists maintain that the best deterrent is still the certainty of being discovered and arrested and the moral censure which may ensue, for the offender is convinced that he can escape capture. For the full-time criminal, the penalty is one of the risks of the trade and he is prepared to run that risk. Nor does the death penalty deter the mentally ill or those who commit all kinds of crimes of passion. Sir Walter Moberly¹³⁵ claims that a relatively light penalty is enough to deter the criminal when it is applied without exception and quickly. But when the prospect of arrest and the imposition of the penalty are not absolutely certain, even the utmost severity proves ineffectual. In his view, the hope aroused in the minds of criminals by a single pardon outweighs the fear aroused by twenty executions. It is inevitable that some have their death sentences commuted, for the people would not tolerate as many executions as capital sentences. In addition to its uncertain nature, the death penalty constitutes a remote risk and the criminal feels that he can elude it; a remote danger does not carry the same emotional impact as an imminent danger. It is therefore doubtful whether capital punishment adequately meets the objective of deterrence.

¹³⁵ "The Ethics of Punishment", Sir Walter Moberly, Faber & Faber, London, 1968, Chapter 11, *Capital Punishment*, pp. 271-302.

The rehabilitation of the inmate, which is the third and final objective of the penalty, is not compatible with the death penalty. The rehabilitation process consists in resocialization, readjustment to the world outside the prison, re-entering the mainstream, and acquiring new standards. It is based on a faith in human worth and dignity, and on society's awareness of the importance of devoting time and energy to the rehabilitation of the offender. Since the death penalty physically destroys the criminal, it excludes from the outset any possibility of rehabilitation.¹³⁰

The supporters and opponents of the death penalty have one common concern, the protection of society. The former feel they can achieve this by doing away with the offender, both to be rid of him and to deter others; the latter see the resocialization of criminals as the best way to achieve this objective. The abolitionists are of the opinion that the state should urge and help man to live in society, not have him put to death. It will not meet this obligation by "murder", but rather by any means which will encourage the individual to adapt to society, and society to the individual: prevention, education, treatment, work, hospitalization of the antisocial subject.

If the law of man does not allow murder, if murder has neither a human nor a social function and hence is not lawful, if it is ill-advised, if it is immoral, if it is anti-aesthetic, how can it become lawful, moral, aesthetic and functional for a particular offence?¹³⁷

(c) IS LIFE IMPRISONMENT MORE CRUEL THAN THE DEATH PENALTY?

One of the arguments currently used by proponents of the death penalty is that execution is no more cruel than life imprisonment. In their opinion, the latter penalty destroys the personality of the inmate by removing any hope of his resuming a normal life some day. Reverend Father Joseph Vernet, S.J.,¹³⁸ wanted to verify the grounds for this assertion and, to do so, he conducted a survey in 1960 in European countries that have replaced the death penalty by temporary or life imprisonment in order to ascertain whether this system gave rise to more cases of insanity, premature deaths, suicides, escape attempts and frequent punishments. Table 24 in the appendix to this chapter gives the figures pertaining to each of these five variables. What emerges from the table is given hereunder.

There were 21 cases of insanity out of 1,009, or about 2 per cent. The general average in European countries is 25 cases per 10,000 population, or 0.25 per cent. Hence the incidence of insanity is ten times greater among inmates serving a life sentence, but it should be remembered that most of these offenders are in an extremely delicate mental state and their mental disorders are aggravated by life in a cell.

There were 12 escapes or attempted escapes out of 1,009 persons sentenced to life imprisonment, or 1.19 per cent. As a curiosity, and

¹³⁰ "Reflections on Some Theories of Punishment", Joel Meyer in *The Journal of Criminal Law, Criminology and Police Science*, Vol. 59, Chicago, 1968, pp. 595 et seq. See also Sir Walter Moberly, *op. cit.*, and W. T. McGrath, Ed., *op. cit.*, pp. 6-10.

¹³⁷ "L'abolition de la peine de mort dans le cadre de la défense sociale", Filippo Grammatica in *Pena de Morte*, Vol. II *id.*, pp. 79 et seq. (p. 84).

¹³⁸ "Les crimes de sang nécessitent-ils une répression sanglante?" Rev. Fr. Joseph Vernet, S.J., in *Pena de Morte*, Vol. I *id.*, pp. 367 et seq.

without trying to compare two very different situations, the author notes that at the same time, in France, there were 241 escapes involving 292 inmates, including 74 in solitary confinement, out of a prison population of 28,000 or 0.86 per cent. In either case the proportion of escapes was about 1 per cent.

The number of suicides in abolitionist countries, 4 out of 1,009, is too small to draw any valid scientific conclusions. As an indication, in 1960, in France, 16 out of 28,000 inmates committed suicide.

One has to point out that the elements of comparison are not the same for cases of insanity on the one hand, and cases of escapes and suicides on the other hand.

As may be expected, the average age of inmates serving life sentences is higher than that of ordinary inmates; deaths are neither frequent nor premature.

Finally, the figures on punishments reveal that inmates serving a life sentence in abolitionist countries display good behaviour; this is not surprising when we consider that a severe sentence leads to self-retrospection and a desire to obtain long-awaited parole without fail.

From his study Vernet draws three conclusions. The first is that the death penalty is no longer justifiable because, in punishing crime and protecting society, the alternative penalty has proved both its efficacy and its very relative degree of cruelty; the statistics quoted above are a good illustration of this. The second is that, while being more severe, the alternative penalty must continue to provide incentive and take the inmate's personal efforts into account. The third is that the lifer must be given the possibility of parole because, generally speaking, he is worth more than his act would imply. He must be kept from leading a bewildered, passive and purposeless life.

(d) THE DEATH PENALTY IS DISCRIMINATORY

One of the most frequent charges brought against the death penalty is that it is discriminatory. Its critics say that it is imposed only on the poor, the defenceless and the homeless, and on ethnic or racial minorities. In a number of countries it protects only policemen and prison guards, leaving defenceless ordinary citizens and persons whose lives are often in danger, such as bank, post office and pharmacy employees. The probability of an accused being convicted or acquitted is more or less strong, depending on which of two adjacent judicial districts of differing social composition he is tried in. In short, capital punishment is not imposed on an equal basis on all offenders and thus flouts a principle written into the Universal Declaration of Human Rights, that of the equality of all citizens before the law. Empirical studies have been conducted on this subject and they are worth dwelling on for a moment.

Since the United States began compiling statistics in 1930 on the death penalty and executions, 3,859 men and women have been put to death. This number is made up of 2,066 Negroes, 1,751 whites and 42 from various other ethnic groups, in percentages, 53.5 per cent of those executed have been Negroes, 45.4 per cent whites and 1.1 per cent from other ethnic groups. Yet Negroes have never made up more than one-eighth of

the American population. Despite the frightening number of rapes that have occurred in the United States since 1930, only 455 rapists have been executed, and 405 (or 89%) of them were Negroes. After quoting these figures taken from *National Prisoner Statistics on capital punishment*, Ramsey Clark wrote:

There can be no rationalization or justification of such clear discrimination. It is outrageous public murder, illuminating our darkest racism.¹⁰⁰

Research conducted by law students from the University of Miami and the University of Florida on convictions and executions for rape in Florida between 1940 and 1964 provides an illustration for the theory of the discriminatory application of capital punishment.

In Florida, as in the majority of states in the southern United States, rape is punishable by death. During the 25-year period covered by the study, there were 285 convictions for rape, i.e. 132 white men (or 46% of the total) for raping 125 white and 7 Negro females; 152 Negro men (or 54% of the total) for raping 84 white and 68 Negro females; and one Indian for raping a white woman. The most interesting data relate to those who have been sentenced to death. No white man has been sentenced to death for the rape of a Negro. For the rape of 125 white females (34 of them children under 14), six white men have been sentenced to death: four for attacks on children and two for a gang attack on an adult female. Only one of these men was executed—and that for the rape of a child. No white man has died for the rape of a white adult. There were 68 cases of rape of Negro women by Negro men; 26 of the victims were children under 14. Of these 68 cases, only three have been sentenced to death; two were on Death Row in 1965 and the Court of Appeal reversed the sentence of the third man. Thus, no Negro has died for the rape of a Negro. The situation is entirely different in the case of a white woman raped by a Negro. In 84 convictions, 45 defendants (or 53%) have been sentenced to death. Of the three Negroes convicted of the rape of a white child, only one was sent to the electric chair. The victims of the other 44 rapists given death sentences were adult females. Twenty-nine of these 45 Negroes have been executed. For all practical purposes, only Negroes die for rape, and then only when the female is white.

The Statutes of Florida contain provision for the creation of a Pardon Board composed of the Governor, the Secretary of State and several other commissioners. This Board studies applications for commutation of death penalties. It has no criteria, obeys no well-defined rule and does not give the reasons for its decisions. The following figures prove how heavily racial considerations weigh in the balance. In 1965, the Board had heard 38 of the 54 appeals for clemency from rapists under sentence of death. Of the four white supplicants, three had their sentence commuted. On the other hand, 32 of the 34 Negroes were denied relief. When these figures are compared to the statistics on applications for commutation from murderers, we note that race does not seem to be a factor where the crime is murder. From January 1, 1924 to December 31, 1964, the Pardon Board heard pleas from 216 convicted murderers (129 Negroes, 85 whites and 2 whose races are unknown). Thirty-

¹⁰⁰ *Crime in America*, Ramsey Clark, Simon and Schuster, New York, 1970, p. 335.

three (25.6%) of the Negroes and 21 (24.7%) of the whites secured commutation of sentences.

The conclusion drawn by the researchers is this: the State of Florida is deliberately using the death penalty to punish Negroes convicted of the rape of white women. Had the Legislature of Florida adopted a statute imposing the death penalty only on Negroes convicted of the rape of white women, any court would have properly ruled it unconstitutional. What Florida is unable to do directly it is doing indirectly through the combined discretions of juries and the Pardon Board.¹⁴⁰

Other researches made on the same subject came to the conclusion that the executioner's victims are the poor, the little man, the homeless, and Negroes, and that the rich man is never executed; very rarely is he even sentenced to death. Clinton Duffy, former Warden of San Quentin, stated in 1968 before the Committee on the Judiciary of the United States Senate that in 35 years he had asked hundreds of people attending his public addresses, "Do you know of anyone that was wealthy that was ever sentenced to be executed in the history of the United States?" After 35 years of lecturing he had yet to have one say that he did.¹⁴¹

Generally speaking, the poor carry very little weight with the authorities responsible for commutations, and they do not have the best counsel; this explains why so many of them are executed. This is the conclusion drawn by a study published in 1967¹⁴², which compared the case records of 439 persons sentenced to death for first degree murder in Pennsylvania between 1914 and 1958, some of whom were executed and others who secured a commutation of sentence; the purpose of this research was to check whether the racial factor had any bearing on the fate of inmates who were going to the electric chair or the gas chamber. This study shows that out of 147 Negroes under death sentence, 130 (88.4%) were executed and 17 (11.6%) had their sentence commuted. On the other hand, of the 263 whites under death sentence, 210 (79.8%) were put to death and 53 (20.2%) escaped execution. On an overage, 17.1 per cent of the inmates had their death sentence commuted to life imprisonment.

This study considered the type of crime which led to a death sentence, and it showed that 93.7 per cent of Negro and 82.6 per cent of white felony murderers* were executed. Felony murder constitutes the most serious crime; it is compared to non-felony murder, which is a lesser degree murder. White non-felony murderers do not obtain the same preferential treatment as white felony murderers; in the non-felony group, 79 per cent of the Negroes and 81.2 per cent of the

¹⁴⁰ *Rape: Selective Electrocution Based on Race*, study prepared in 1965 by law students from the University of Miami and the University of Florida for the Commission on the death penalty.

¹⁴¹ United States Senate, 90th Congress, 1968 *op. cit.* p. 25.

¹⁴² "Comparison of the Executed and the Commuted among Admissions to Death Row", Marvin E. Wolfgang, Arlene Kelly and Hans C. Nolde in *The Sociology of Punishment and Correction*, 4th printing, Norman Johnston, Leonard Savitz and Marvin E. Wolfgang, John Wiley and Sons Inc., New York, London and Sydney, 1967, pp. 63 et seq.

* "Felony murder" can be compared to capital murder and "non-felony murder" to non-capital murder.

whites were executed. Since the percentage of Negroes and of whites convicted of felony murder is substantially the same (62.4% of the Negroes and 58.4% of the whites), and since a higher percentage of Negroes than of whites in this group are executed, it seems that whites enjoy a certain advantage over Negroes. The research indicates that three times as many whites as Negroes convicted of a felony murder have their sentence commuted to life imprisonment.

The competence of defence counsel and the time he devotes to the preparation of the case considerably increase the possibility of an acquittal, a conviction of a lesser offence, a sentence of life imprisonment instead of a death sentence, or a commutation. It is usually thought that an attorney who has been retained by the accused himself, or counsel whose fees are paid by a specialized agency, obtains better results than counsel appointed by the court to represent the poor without a fee. A murder trial is costly in terms of time, research expenses and expert's fees; incidental proceedings are numerous, and defence counsel must devote long hours to the preparation of this type of case. This is a serious handicap to the poor man who does not have the financial resources necessary for ensuring full answer and defence. Furthermore, court-appointed counsel are generally young and inexperienced men. The results obtained by properly paid counsel speak volumes on this point. Thus, in New York, the number of stays of execution and commutations has increased markedly since the setting up of the New York Committee for the Abolition of Capital Punishment and its committee of attorneys who become involved with every case where there is a question of the death penalty. In 1967 no execution had taken place in the preceding four years.¹⁴³

A Chicago attorney, a member of the Board of Directors of the Illinois Division of the American Civil Liberties Union, has published an article¹⁴⁴ wherein he analyses the number of capital cases in which the prosecution or the defence availed themselves of scientific proof; the number is fairly limited. Between 1950 and 1966, out of 39 capital cases heard by the Supreme Court of Illinois in which it handed down a written opinion, scientific evidence was used in 15 cases (38%). In 1963, 1964 and 1965, the percentage fluctuated between 33 and 38.6. Most often, it is the prosecution that relies on this type of evidence; the defence has neither the money nor the physical opportunity to engage an expert in time to make an analysis, or if it does, its expert cannot examine the scene of the murder, the murder weapon or the body of the victim. Scientific evidence is of vital importance and sometimes saves lives.

Here is an example: The Ohio police found the incinerated body of a man in a ravine. The accused, a friend of the victim with whom he shared a motel room, stated that he had discovered the body in the room. Panic stricken, he allegedly placed the body in the trunk of the car, then went and burned it with the vehicle some distance from the motel. The prosecution contended that the victim had been alive when the accused set fire to the car. An expert whose services had been retained by the

¹⁴³ "From Death to Life", Gerhard O. W. Mueller in *Pena de Morte*, Vol. II, pp. 187 et seq.

¹⁴⁴ "Proof of Guilt in Capital Cases—An Unscience", Willard J. Lassers in *The Journal of Criminal Law, Criminology and Police Science*, Vol. 58, No. 3, Chicago, 1967, pp. 310 et seq.

defence stated that he had not found carbon monoxide in the victim's blood. If the victim had been alive when the accused burned the vehicle, traces of carbon monoxide would have been found in his blood. The development of science, money, a resourceful defence counsel and a competent expert prevailed against strong circumstantial evidence.

During their comparative study of Negro and white murderers sentenced to death, Wolfgang, Kelly and Nolde noted that the execution rate of inmates with private counsel was much lower than that of inmates defended by court-appointed counsel. This applies particularly to Negroes; 93 convicted men out of 102 (or 91.2%) represented by court-appointed counsel were executed and only 9 (or 8.8%) had their sentence commuted; in the group who were represented by private counsel there were nine executions (69.2%) and four commutations (30.8%). The number of individuals falling into the latter group is so small that it would be risky to draw overly categorical conclusions therefrom. Among white offenders, out of 149 accused defended by court-appointed counsel, 121 (or 81.2 per cent) went to the electric chair or the gas chamber, and 28 (or 18.8 per cent) had their sentence commuted. However, 53 (75.7%) of the 70 murderers who paid their own counsel were executed and the other 17 (24.3%) were spared. The widest gap between Negroes and whites is in the group defended by court-appointed counsel since twice as many whites (18.8%) as Negroes (8.8%) have sentences commuted. It is interesting to note that having counsel chosen and paid by the accused is a stronger guarantee of commutation than having a court-appointed legal adviser, and this applies to both whites and Negroes.

Another departure from the ideal of equal and equitable justice seems to stem from the disparity in attitudes towards the death penalty between juries from different regions. The jury often reflects the mentality of the community from which it is drawn; it is almost possible to predict mathematically whether the sentence will be death or life imprisonment, depending on the county in which the accused is tried. Jos. K. Balogh and John D. Green¹⁴⁶ analysed the attitude of the residents of three contiguous counties in California with regard to the death penalty and came to the conclusion that if an accused is tried in the suburbs of San Mateo County where the standard of living is relatively high, the likelihood of a death sentence is very low; this is true also for San Francisco County where capital punishment is used sparingly. The opposite occurs in Alameda County, an industrial and manufacturing centre where juries impose the death penalty more frequently.

The same question was raised and is still being raised in the United States in light of the *Witherspoon v. Illinois* decision¹⁴⁶ in which the Supreme Court of the United States ruled that the systematic exclusion of jurors opposed to the death penalty was unconstitutional. However, the Court condemned this practice only with regard to a jury responsible for sentencing; the anathema does not apply to a jury which must decide on the guilt or innocence of the accused. Studies conducted among jurors have revealed that those who are biased in favour of the death penalty definitely tend to sentence a defendant rather than give him the

¹⁴⁶ "Capital Punishment: Some Reflections", Jos. K. Balogh and John D. Green in *Federal Probation*, Vol. 30, No. 4, December 1966, pp. 24-27.

¹⁴⁶ 391 U.S. 510 (1968).

benefit of doubt. Some of these surveys have been cited earlier.¹⁴⁷ Edward J. Bronson's study on Colorado Veniremen¹⁴⁸ revealed another facet of the possibly discriminatory nature of the death penalty. By systematically challenging prospective jurors who have "conscientious scruples", citizens' groups having a common race, religion, sex, economic status or political affiliation would thereby be excluded, and this would decrease the representativeness of juries. Bronson discovered a very distinct abolitionist tendency among Negroes and Spanish Americans, women, unskilled workers, professionals, taxpayers with incomes below \$5,000 and persons with very high or very low levels of education. A member of an ethnic minority, a poor man or a female defendant having to face a murder charge may therefore find himself before a jury on which his own group is not represented or before a partial or non-representative jury.

Statistics for Florida and Edward Bronson's comment will conclude this chapter. In Florida, between 1930 and 1963, out of 36 convicted rapists who were executed, 35 were Negroes.¹⁴⁹

The very tools which enable the jury to do justice—the power to reject the mechanical application of technical law where necessary, the infusion of flexibility where the law is constrained—are also the tools of injustice and can be used arbitrarily and irresponsibly. This danger is compounded in capital cases where there are few standards for the imposition of punishment.¹⁵⁰

(e) THE DEATH PENALTY AND THE ADMINISTRATION OF JUSTICE

I. *The cost of an execution*

During his testimony before the U.S. Senate Committee on the death penalty, Clinton Duffy quoted an article published by an unidentified Illinois penologist in *Renewal*, February 1, 1963.¹⁵¹ According to the author of the article, an execution and all related expenses amount to \$60,000 whereas 30 years of imprisonment cost \$1,500 a year or \$45,000 at the end of 30 years, if there has been no cost-offsetting activity on the part of the inmate. If the prisoner did useful paid work, the costs incurred by the government would be offset by an equal amount. As the article in *Renewal* points out, each step of a capital trial is time consuming, complex and costly. One need only advert to the selection of a death penalty jury; the length of capital trials (in Michigan, where capital punishment was abolished a long time ago, a murder trial lasts two or three days; in California, where the death penalty has been retained, some capital murder trials last two or three weeks); the costs of prosecution and defence, both of which, more frequently than not, are borne by the state; the printing costs incident to motions and multiple appeals; the time of the judges of different jurisdictions; the cost of detaining, guarding and trans-

¹⁴⁷ See note 77.

¹⁴⁸ "On the Conviction Proneness and Representativeness of a Death Qualified Jury: An Empirical Study of Colorado Veniremen", Edward J. Bronson in *University of Colorado Law Review*, Vol. 42, No. 1, May 1970, pp. 1-33.

¹⁴⁹ *The State of Florida, Report of the Special Commission for the Study of Abolition of Death Penalty in Capital Cases*, p. 38.

¹⁵⁰ *On the Conviction Proneness and Representativeness of the Death Qualified Jury: an Empirical Study of Colorado Veniremen*, *ibid.* p. 31.

¹⁵¹ United States Senate, 90th Congress, 1968 *op. cit.* pp. 25, 26, 158, 159.

porting capital offenders; the costs of rehearsing and carrying out the execution; the cost of the upkeep of death row and the death chamber, the time of the Governor and other members of the prison administration; the executioner's salary; the time of the members of the government or agencies responsible for the study of pleas for clemency. Well-known persons such as California's Administrator of the Youth and Adult Corrections Agency, and Edmund G. Brown, former Governor of California, have also expressed the opinion that life imprisonment saves the state money.

A study made by the California Department of Corrections in 1957 showed that by abolishing the death penalty the state would save \$150,244 over a six-year period in administration costs alone. Doing away with Death Row at San Quentin would mean a saving of the wages of six permanent employees, as well as \$271 per man per annum, i.e. the annual amount it takes to feed each inmate. If a prisoner were made to work in return for suitable wages, he could even support his family with the income from his work.¹⁵³ The Senate Committee was given other figures for California showing that it costs \$90,000 to execute a man, whereas it costs the State slightly more than \$30,000 to feed and lodge a lifer in the state penitentiary.¹⁵³

A plea of guilty means a saving of time and money, and the State could allocate such funds to the hiring of more probation officers and thus work towards the rehabilitation of more offenders. In a capital murder case where the death penalty is mandatory the court may refuse to accept a plea of non-capital murder, particularly when the crime has been outrageous. The accused therefore has nothing to lose and he lets the prosecution adduce its evidence, in case he should succeed in escaping the hangman's noose. This is an expensive process which could have been avoided if the death penalty had been abolished. The accused would have pleaded guilty as charged and the president of the court would probably have sentenced him to a long prison term.¹⁵⁴

II. *The death penalty and the legal process*

The proponents of capital punishment claim that the possibility of a mentally ill or innocent person being sentenced to death is very remote because the laws of all countries provide for very strict procedures and numerous means of defence which are all safeguards against an unjustified conviction.

In actual fact, such safeguards sometimes prove more theoretical than real. First of all, there is the possibility of an error or oversight on the part of one of the judicial authorities whether it be the trial judge, the appeal judges or defence counsel.

In common law countries, including Canada, the law relating to the plea of insanity is based on the 1843 M'Naughten case, which listed a series of rules still used to determine whether the accused was of sound mind when he committed his crime, or whether he was fit to stand trial.

¹⁵³ *This Life We Take (Case against the Death Penalty)*, Trevor Thomas, Published by the Friends Committee on Legislation, San Francisco, 1965, pp. 20-21.

¹⁵³ United States Senate, 90th Congress, 1968 op. cit. pp. 46-47.

¹⁵⁴ "The Death Penalty and the Administration of Justice", Herbert B. Ehrmann in *Capital Punishment*, edited by Thorsten Sellin, pp. 203-204.

Many jurists and psychiatrists hold that these criteria are outmoded and that the law is lagging far behind psychiatric and psychological discoveries. It may therefore happen that an accused who is medically insane is found fit to stand trial or of sound mind when he committed his crime because legal proof of his illness cannot be established.

In addition to the strict framework imposed by the legal process and the rules of substantive law (mention need be made only of the subtle distinctions between capital and non-capital murder) there are all the types of emotionalism and prejudice which may lead a jury to return a biased verdict because it does not weigh the evidence objectively, but considers and believes only what suits it. The example often cited is that of a man charged with the murder of his wife under particularly gruesome circumstances. His defence was that he was insane at the time of the murder. Counsel for the accused had his client examined by two psychiatrists, who testified that the man was insane. Nevertheless the jury returned a verdict of guilty. The Court of Appeal ordered a new trial and the accused was found insane.¹⁵⁵

III. *The death penalty and protection of the police*

The chapters dealing with the situation in the United States and Canada analysed the theory that capital punishment constitutes an effective, even an indispensable, protection for policemen. No one will argue the fact that there are enormous hazards in police work. In 1960 there were 225,000 policemen in the United States. In addition to the 140 police killed criminally in 1961-1963, 97 died in accidents—a total of 237. This means an average annual rate of 3.1 per 10,000 police. The corresponding risks of being killed on the job by accident were 11 in the mining industries, 7.7 in contract construction, 6.5 in agriculture, and 4.2 in transportation and public utilities. During 1963, five of every 10,000 male workers between 20 and 64 years of age in the United States died because of homicide or accidents at work. Had the same rate applied to policemen, 127, instead of the actual 69, would have died one way or the other. The report of the National Bureau of Labour Statistics of the United States, published in 1961, shows that the total injury frequency rate, i.e. the average number of disabling work injuries per million employee-hours worked, was 36.3 for policemen and 36.7 for firemen; the average number of days of disability per case was 64 for policemen and 82 for firemen. The annual average risk for policemen in the United States, from 1961 to 1963, was 1.312 per 10,000 police in the abolitionist states and 1.328 in the bordering retentionist states.¹⁵⁶

(f) THE DETERRENT EFFECT OF THE DEATH PENALTY

The main argument in favour of the death penalty is that it has a deterrent or restraining effect. Deterrence is individual or general. It is individual when it affects the offender himself. Viewed in this light, individual deterrence is completely effective because execution destroys

¹⁵⁵ Herbert B. Ehrmann, "The Death Penalty and the Administration of Justice" in *Capital Punishment* pp. 189-206; Trevor Thomas, *This Life we Take*, pp. 25-29.

¹⁵⁶ "The Death Penalty and Police Safety", Thorsten Sellin in *Capital Punishment*, *ibid.* pp. 152-154.

the offender. It is general when it has an effect on other offenders, when it deters or restrains them from committing a crime. There are differences of opinion regarding general deterrence. Thorsten Sellin describes it as follows:¹⁵⁷

The process of deterrence is obviously a psychological one. It presumes in this connection that life is regarded by man as a precious possession which he wishes to preserve more eagerly, perhaps, than any other of his attributes. He would therefore defend it to the utmost against every threat, including the threat of capital execution. Every such threat, it is assumed, arouses his fear and as a rational being he would try to conduct himself in such a manner that the threat would be avoided or that, once materialized, it would be nullified. It is further assumed that the potential threat is made vivid to him by the fact that he knows that the death penalty exists.

The deterrent effect varies with the circumstances. If, in spite of the fact that judges continue to impose death sentences, capital punishment is never executed it loses its deterrent effect. If this effect is to materialize, there must be a serious threat of execution although it is impossible to measure how serious and real the risk of execution must be before it is an effective tool for deterrence and prevention.

To the assertion that the death penalty has a deterrent effect the abolitionists reply that in most cases murders are committed in a moment of aberration or of passion, and that the murderer does not consider the consequences of his act.

On the basis of these findings thus far, it is obvious that homicides are principally crimes of passion or violent slayings that are not premeditated or psychotic manifestations.¹⁵⁸

According to British statistics, in 72.4% of all homicides committed in England and Wales between 1900 and 1949, the murderer knew his victim; in the other cases, that is in 27.6% of the cases, it was impossible to ascertain the relationship between the victim and the offender. In the latter group of 27.6% it can be estimated, according to Hans W. Mattick, that $\frac{1}{3}$ or 9.2% of these homicides fall into the group where the victim and murderer knew one another. Therefore, in about 80% of the homicides (72.4% + 9.2%), there is a personal or emotional relationship between the two persons involved. Some emotional reaction during the murder of an unknown victim should not be ruled out entirely. Such is the case when a murder is committed during an armed robbery; the murderer is

¹⁵⁷ "The Death Penalty Relative to Deterrence and Police Safety", Thorsten Sellin in *The Sociology of Punishment and Correction*, Norman Johnston, Leonard Savitz, Marvin E. Wolfgang, John Wiley and Sons Inc., 4th ed., 1967, p. 74.

¹⁵⁸ "Criminal Homicide and the Subculture of Violence", Marvin Wolfgang in *Studies in Homicide*, Marvin E. Wolfgang, editor, Harper and Row, New York, 1967, p. 27. See also "The Unexamined Death", Hans W. Mattick in *The Penalty is Death*, edited by Barry Jones, Sun Books, Melbourne, 1968, pp. 153 et seq. "Murderousness", A Hyatt Williams in *The Hanging Question*, edited by Louis Blom-Cooper, Gerald Duckworth, London, 1969, pp. 91 et seq. "Towards a Better Understanding of the Violent Offender", Colin Sheppard in *Canadian Criminology Review*, Vol. 13, No. 1, Ottawa, January 1971, pp. 60 et seq. "The Death Penalty", John M. Macdonald in *The Murderer and his Victim*, Charles C. Thomas, publisher, Springfield, Illinois, 1961, pp. 324 et seq. "Careers in Murder" Walter Bromberg, M.D. in *The Mold of Murder—A Psychiatric Study of Homicide*, Greenwood Press Publishers, Westport, Connecticut, 1961, pp. 123 et seq. *Violent Men—An Inquiry into the Psychology of Violence*, Hans Toch, Aldine Publishing Co., Chicago, 1969.

overcome by fear and commits a fatal act through nervousness. The same reaction occurs during a sexual attack, where the killing of the victim is seldom premeditated.¹⁵⁹

An analysis of violent crime in the United States in a single year revealed that about 70% of all wilful killings, nearly two thirds of aggravated assaults and a high percentage of forcible rapes are committed by family members, friends and other persons previously known to their friends.¹⁶⁰ According to a study of 2,700 murders in the United States, only 37 were planned for economic, political or other ends such as vengeance. Most were the spontaneous product of quarrels.¹⁶¹ A Philadelphia study showed that between 1948 and 1952 only 12.2% of reported homicides were committed by strangers. In over 65% of the cases a relationship existed between the murderer and his victim.¹⁶²

In Canada, reported homicides of a domestic nature accounted for 45.5% in 1966, 43.1% in 1967, 42% in 1968, 38% in 1969 and 31.9% in 1970.¹⁶³ During these five years, the percentage of murders committed in connection with another criminal act (robbery, rape, arson) was 16.4 (36 victims) in 1966; 8.2 (23 victims) in 1967; 11.8 (37 victims) in 1968; 13.2 (45 victims) in 1969 and 24.9 (107 victims) in 1970. The rise in 1970 is explained, among other things, by the criminal fire at Notre-Dame-du-Lac, in the province of Quebec, which alone claimed 40 lives. The other murders which the police classified without mentioning the domestic relationship between the accused and the victim are cases where "the accused may have been insane, may have been involved in an argument immediately prior to the murder, may have been involved in an argument during a prolonged drinking bout, or the action may have been self-defence. There is also included in this group cases of jealousy, or professional killings carried out as deliberate acts in themselves and not during the commission of another criminal act."¹⁶⁴ If we consider the figures for 1966, to take but that example, we note that 45.5% of all homicides committed in Canada were domestic homicides, and that 16.4% accompanied the commission of another criminal act. These two categories alone account for 62% of all the homicides in 1966, and they stand in a ratio of 3 to 1. It can therefore be expected, as suggested by Hans Mattick, that in the remaining 38% there will be substantially the same correlation between homicides committed by professional killers ($\frac{1}{3}$ of 38% or 12.6%) and homicides committed during an argument, drinking bout, etc. ($\frac{2}{3}$ of 38% or 25.2%). By totalling the groups of similar homicides, we obtain a total of about 71 per cent (45.5% + 25.2%) domestic homicides or the homicide of friends

¹⁵⁹ Hans W. Mattick, *The Unexamined Death*, in *The Penalty is Death*, pp. 153 et seq.

¹⁶⁰ *The Challenge of Crime in a Free Society*, a report by the President's Commission on Law Enforcement and Administration of Justice, U.S. Government Printing Office, Washington, 1967, p. 18, quoted by Colin Sheppard, *Towards a Better Understanding of the Violent Offender*, *ibid.*, p. 61.

¹⁶¹ *Policy Statement on Capital Punishment*, Board of Trustees, National Council on Crime and Delinquency, in *Crime and Delinquency*, April 1964, p. 106.

¹⁶² *The Challenge of Crime in a Free Society*, *supra*, note 160, p. 39, quoted by Colin Sheppard, *Towards a Better Understanding of the Violent Offender*, *ibid.*, p. 8.

¹⁶³ These percentages are calculated on the basis of the number of victims and not the number of incidents. The 1970 figures are below normal because of the Notre-Dame-du-Lac fire which claimed 40 lives. This incident changed the percentage of domestic homicides and of those committed in the course of another criminal act by raising the latter and lowering the former.

¹⁶⁴ *Murder Statistics, 1970*, Dominion Bureau of Statistics, Annual Catalogue 85-209. pp. 13-15.

or acquaintances or homicides committed during an argument, quarrel, etc., and 29% (16.4% + 12.6%) for homicides committed during the commission of another criminal act or by professional killers.

A survey and analysis were made of all capital murder convictions in Canada from 1867 to the present, based on the files pertaining to each such case. This study gives the name, age, racial origin and occupation of the murderer and the victim, the scene of the crime, the nature of conviction, the date of commutation or execution, the murder weapon, the motive and the circumstances of the commission of the murder, the nature of the defence presented, the degree of brutality, the results of appeals, the recommendation for clemency by the judge, the jury or both, as applicable. Some files did not contain all the necessary information so that the accuracy of the results of the analysis is compromised accordingly. Furthermore, the determination of certain variables (for example, the degree of brutality) depended on the analysts' opinion and assessment, and certain judgments of somewhat dubious value may have slipped in. Even so, the study is very significant and instructive. We note that 72.8% of the capital murder victims were relatives, friends and acquaintances of the murderer and that in 44.9% of the cases the motive was jealousy, vengeance, argument, violent sexual desire, emotional problems, etc. In an appendix there are three tables (Nos. 25, 26 and 27) which give the main categories of circumstances surrounding the murders, the various types of relationships between the victim and the murderer and the motives or causes which prompted the murderers to act.

From all these figures, Hans Mattick¹⁶⁵ draws the following conclusion:

Considering the emotional nature of the overwhelming proportion of homicides, it should be clear that the rationality and calculation assumed by the deterrent theory of the proponents of capital punishment is directed precisely to those persons least capable or likely to exhibit it.

The homicide of a relative or a friend, an homicide committed by a drunk during a fight or by a schizophrenic during a period of mental derangement are all acts committed spontaneously, without reflection, on the impulse of the moment. When he is aware of what he is doing, the offender thinks of nothing but killing. At no time does he think of the punishment awaiting him or of the consequences of his act. Clinton Duffy¹⁶⁶ related the two following incidents to the members of the U.S. Senate Committee. The first involved a deputy sheriff who used to take prisoners sentenced to death in Los Angeles County to San Quentin in California, where that state's executions took place. He had had occasion to accompany a large number of such men and to become very familiar with the atmosphere of the penitentiary. One day he killed his wife and was in turn taken to condemned row. He told Duffy that he had not thought of the death penalty for one second. He had planned his wife's murder and thought of nothing else. An inmate at San Quentin had helped install the gas chamber when California changed from hanging to lethal gas. He even gave his fellow inmates a blow-by-blow description of the installation. Five years after his release he killed two members of his family and a third person who tried to break up his relationship with his half

¹⁶⁵ *The Unexamined Death*, in *The Penalty is Death*, p. 162.

¹⁶⁶ United States Senate, 90th Congress, 1968, *op. cit.*, p. 24.

sister. The court sentenced him to die in the gas chamber. When questioned by Duffy, he said that when the devil gets into a man, he thinks of nothing else but what he is going to do; at no time will he consider his possible punishment, even if it is the death penalty.

Homicide is most often committed in disadvantaged neighbourhoods near factories or the downtown area where there is abject poverty and where the future is gloomy because of chronic unemployment and a low level of education. The victim and the aggressor frequently live in the same house or housing complex, or at least near one another. In many cases the victim contributes to his own demise by being the first one to resort to force. Drunkenness plays a big role in the commission of homicide. The climate of violence which envelops today's society may also lead to killing, the extreme solution of a personal or collective problem. Marvin Wolfgang speaks of the existence of a subculture of violence among certain groups of citizens, particularly the most disadvantaged, and he sees a close link between the homicide rate and an individual's degree of integration into this subculture of violence. Some persons are more inclined than others to resort to violence to straighten out their difficulties. They have adopted or inherited this rule of life focused on violence and handed down from generation to generation. The subculture of violence reflects the values, beliefs and attitudes which are shared by its members, who have made it an intimate part of their lives and pattern their behaviour on it. When faced with a crisis, an insult, etc., they react violently, even to the point of killing. The prohibitions imposed by society have no hold on them. According to that theory, recourse to violence is almost instinctive for these people, and the penalty for a crime of violence, even murder, does not even cross their minds.

Another special group consists of psychopaths, sociopaths, schizophrenics and the mentally deranged who live in another world and often are not aware of what they are doing. As for professionals, businessmen, white-collar workers, intellectuals, in short, all those who have a high level of education or who belong to the upper strata of society, violence is not part of their system of values, and the fear of being arrested and brought before the courts, as well as the disgrace, censure or even ostracism to which they would be subjected, are enough to keep them away from murder.

Persons who commit robbery with violence in general and armed robbery in particular would not, according to certain theories, allow themselves to be deterred—for two reasons. The first is that they do not want to kill; the purpose of their action is to steal someone else's property, nothing more. Admittedly they carry a weapon but they have no intention of using it; they are convinced that they will succeed without firing a shot. The second reason is that they believe they have committed the perfect crime and are convinced that they will not be caught. During his numerous years of service at San Quentin in California, Clinton Duffy asked thousands of convicted murderers who had been spared the gas chamber whether they had given any thought to the death penalty before committing their crime. Invariably all answered that they did not expect to get caught or that it was a crime of passion, jealousy, rage, temporary insanity. He asked the same question of

thousands of robbers or men of aggression who had used deadly weapons such as a rifle or shotgun in the commission of their crimes. They might have become murderers. They gave similar answers: they were convinced that they would evade capture. Duffy said that he had met no one who had thought of the death penalty prior to the commission of his act. Peace officers often repeat the statements made by prisoners in jails that the thought of the death penalty was the only reason they did not use a loaded gun or they used a cap pistol. However, Duffy points out that once their trials are over the prisoners give a different story since they are no longer trying to curry favour. They say that they did not think of the death penalty for a second. If they used an unloaded gun or a toy gun it was because they did not want to hurt anyone. "All I wanted was their money, and I wanted to scare them, but I didn't think of the death penalty, and that is not why I did not use it."¹⁰⁷

As for professional killers and gangsters in general, they know that they will not be discovered or arrested because they rule over the families of victims and troublesome witnesses with a reign of terror and intimidation. No one ever informs against them. They regard the death penalty as a risk of the trade and, in their opinion, that risk is very remote. Psychological involvement in the murder and a feeling of guilt are reduced to their simplest expression when they are not completely stamped out. Very often it is kill, or be killed. Their sole preoccupation is to do their work properly, effectively and discreetly in order to avoid any possibility of arrest.¹⁰⁸

Ideological and political murderers and revolutionaries are aware of the risks inherent in their acts and accept them. In fact, the execution of a revolutionary often makes him a hero, and such dedication serves the cause he is defending. Such people are prepared for everything, even to die on the gallows in order to stir up public opinion through a brilliant deed. Ramsey Clark even contends that their revolutionary ardour would be further aroused if new capital crimes were created because of them.

Clinton Duffy does not believe that capital punishment has a deterrent effect on prisoners who want to commit an homicide. In late 1952 during a four-week period, there were four homicides in the big yard at San Quentin, in a spot within 20 paces from the gas chamber. According to Mr. Duffy, nothing deters an inmate from committing a murder he has in mind.¹⁰⁹

Were public executions, when they took place, an effective deterrent? They were thought to be the surest deterrent. In the nineteenth century, an English chaplain related that of the 167 condemned men whom he had comforted and conducted to the gallows, 164 had attended a public execution.¹⁷⁰ This well-known anecdote is taken from nineteenth century British history, the era of the bloody code when capital crimes numbered more than 200. Pickpockets made their biggest haul during public executions, especially when the hangman was getting ready to pull the rope, because

¹⁰⁷ United States Senate, 90th Congress, 1968, op. cit., p. 23.

¹⁰⁸ Walter Bromberg, *The Mold of Murder: A Psychiatric Study of Homicide*, pp. 123 et seq.

¹⁰⁹ United States Senate, 90th Congress, 1968, op. cit., p. 22.

¹⁷⁰ John M. Macdonald, *The Murderer and His Victim*, p. 326.

then all heads were raised and all eyes riveted on the gallows. Often these wily thieves would perform their sleight of hand just when a convicted pickpocket was being executed; we should add that this was a capital crime at the time.

Another fact deserves mention. The first Bank of England counterfeit bill appeared a few days after Parliament had passed legislation making counterfeiting a capital crime. Certain indications lead one to think that, instead of deterring criminals, public executions have a sort of fascination for some persons, to the point where they identify with the condemned man. A young Englishman named Marjeram murdered a girl for the sole purpose of getting himself hanged. He wanted publicity and told himself that he would be treated with deference if he were sentenced to die on the gallows. He had known a condemned man in prison and had attended his execution; he considered him a hero.¹⁷¹ Clinton Duffy also believes that executions promote crime. Hence, after Caryl Chessman was executed, at least two crimes similar to his were committed. Nowadays, executions take place away from prying eyes, with a very limited number of witnesses present, and only a short headline in the newspapers timidly mentions the incident.

Clinton Duffy's opinion that capital punishment is not a deterrent reflects the viewpoint of a certain number of American penitentiary wardens. In *The Death Penalty in America*,¹⁷² Hugo Adam Bedau reproduces an article published by Paul A. Thomas in 1957.¹⁷³ This article comments on and analyses the answers to a questionnaire which the author mailed to 55 wardens of state and federal penitentiaries regarding the problem of the death penalty and its deterrent effect. The author received 32 replies from 29 state penitentiaries and 3 federal penitentiaries in all regions of the country. He met with 6 refusals.

The first question read as follows, "Do you believe that capital punishment is a deterrent against murder?" Of the 26 replies, 3 (11%) were affirmative and the other 23 (89%) were negative.

The second question read thus, "Taking into account the offender's state of mind at the time of the commission of the murder, do you think that he really thinks about the consequences that he is likely to suffer because of his criminal act?" One (4%) warden answered "yes", 24 (92%) answered "no" and the last did not answer.

To the third question, "(a) In your opinion, does the execution of innocent men make the use of the death penalty a fallacy? (b) Is that enough to abolish it in the United States?" the answers were quite divided. To question (a), 16 wardens (62%) answered in the affirmative, 6 (23%) answered in the negative and 4 (15%) did not answer. The answers to question (b) were broken down as follows: 8 (31%) yes; 14 (54%) no; the last 4 did not answer. The results for the last question may seem surprising since the large majority of wardens do not believe in the deterrent effect of capital punishment. However, if we analyse the content of these answers we notice that some wardens do not regard the possibility of judicial error as sufficient reason in itself to justify

¹⁷¹ John M. Macdonald, *op. cit.*, *ibid.*

¹⁷² Revised edition, 1968, 2nd printing, 1969, Aldine Publishing Co., Chicago, pp. 242 *et seq.*

¹⁷³ "Murder and the Death Penalty", Paul A. Thomas, *American Journal of Corrections*, Vol. 19, No. 4, July-August 1957, pp. 16 *et seq.*

the abolition of the death penalty. The wording of the last question, because of its ambiguity and suggestive nature, made it very difficult to give a clear and precise answer. Some of the 14 wardens who answered "no" to the second part of the last question were of the opinion that capital punishment should be retained for certain outrageous crimes or for a murder committed by an inmate.

Swift apprehension, effective prosecution and quick conviction are the best deterrents against murder.¹⁷⁴ As things now stand, the various appeals before higher courts and the pleas for clemency with a view to a commutation drag on to the point where public vindictiveness and outrage give way to a feeling of solidarity with and compassion for the murderer.¹⁷⁵ The desire to see justice done is relative and very fluid. Often there is a public outcry demanding that the extreme penalty be imposed on a murderer whose crime has wounded people's sense of justice. But when these same people are asked whether they would want this treatment inflicted on one of their loved ones, the answer is always "no". Clinton Duffy has witnessed such sudden about-faces on several occasions.¹⁷⁶

If the threat of death were an effective deterrent, motorists would not drive at reckless speeds on the highways, without seat belts, in violation of the laws of basic caution. Smokers would give up cigarettes because of the danger of lung cancer. A frequently cited example is that of the two men sentenced to death in New Hampshire for the murder of a person whom they kidnapped in an abolition state; they then crossed another two abolition states and finally killed him in a state where capital punishment was in force.¹⁷⁷ What these two men feared was not the sentence that attended their crime, but capture; they wanted to make sure that they killed their victim in all impunity, where the risk of arrest was slightest. Therefore they fled the urban states and perpetrated their crime in a rural state where the efficiency and organization of the police forces left something to be desired. Trevor Thomas¹⁷⁸ raises the question, "Is it really the death penalty that deters a man from killing his neighbour? Is it not rather education, the principles inculcated in him during his childhood?"

Love, desire for approval and acceptance, favourable personal relationships, environment and other cultural factors all play greater roles than fear in controlling or giving direction to anti-social impulses. The "fear of death" theory omits another large factor—the inability of most people to comprehend their own destruction. Even men on death row cannot believe "this will happen to me".

It is hard to prove mathematically or scientifically whether capital punishment does or does not have a deterrent effect. The complexity of human nature makes it difficult to try to arrive at absolutely certain conclusions. William J. Chambliss¹⁷⁹ tried to establish categories of criminals

¹⁷⁴ *Crime in America*, Ramsey Clark, p. 331.

¹⁷⁵ "La peine de mort au Portugal", Eduardo Correia in *Revue de science criminelle et de droit pénal comparé*, Vol. XXIII, 1968, pp. 19 et seq.

¹⁷⁶ United States Senate, 90th Congress, 1968, *op. cit.*, p. 26.

¹⁷⁷ "What about the Victim?", Arthur Koestler and C. H. Rolph in *The Penalty is Death*, pp. 290-298.

¹⁷⁸ *This Life We Take*, *id.*, p. 11.

¹⁷⁹ "Types of Deviance and the Effectiveness of Legal Sanctions", William J. Chambliss in *Wisconsin Law Review*, Vol. 37, 1967, pp. 703-720.

according to their degree of commitment to crime, and categories of crimes according to the influence that the deterrent effect of penalties has on them. By combining these two variables it is possible to predict whether a penalty will effectively deter a certain type of individual from a certain type of crime. According to Chambliss, murder falls into the class of crimes which are impervious to capital punishment. However, it is doubtful whether these predictions are absolutely accurate in view of the numerous intangible factors inherent in human behaviour.

8. AN ALTERNATIVE SANCTION

Once we have set out the arguments advanced on either side, we must ask ourselves what sentence the Canadian Parliament should substitute for the death penalty, assuming it decides on complete and final abolition. At the present time s. 684(1) of the Criminal Code¹⁶⁰ (new numbering) provides that:

The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

It might be noted in passing that non-capital murder automatically results in life imprisonment,¹⁶¹ and that manslaughter is also punishable with life imprisonment, but here it is a maximum sentence;¹⁶² in the latter case the judge may impose a punishment ranging from suspension of the sentence to life imprisonment. The most widespread practice has been to commute death sentences to sentences of life imprisonment. Commutation does not deprive the prisoner of his right to be granted parole, subject however to certain conditions. Since the coming into effect of the Act of December 29, 1967,¹⁶³ which amended the Criminal Code provisions relating to the death penalty for a five-year trial period, release of a prisoner must receive the approval of the Governor in Council, and this applies to all cases. Section 684(3) of the Criminal Code provides as follows:

Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.

If at the end of the five-year period the Canadian Parliament has not directed that those provisions of the 1967 Act relating to capital punishment continue in force, s. 684(3) in its present form will be repealed and the following substituted:

If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to im-

¹⁶⁰ *An Act Respecting the Criminal Law*, Chapter C-34, Revised Statutes of Canada 1970, Vol. II.

¹⁶¹ *Criminal Code*, ss. 214(3) and 218(2).

¹⁶² *Criminal Code*, ss. 217 and 219.

¹⁶³ *An Act to Amend the Criminal Code*, Chapter C-35, Revised Statutes of Canada, 1970, Vol. II.

prisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.

These provisions, restating those in the old s. 656(3) of the Criminal Code, are set out in s. 4(1)(b) of the 1967 Act (Chapter C-35, R.S.C. 1970). It should be noted that an error has crept into the French text of this section: instead of corresponding to the English version, it reproduces word for word the current text of s. 684(3) of the Criminal Code (Chapter C-34, R.S.C. 1970), which was cited above. Accordingly, if the 1967 Act expires without Parliament extending its duration, we will again be in the situation that prevailed prior to December 29, 1967, when the approval of the Governor in Council was only necessary if it was mentioned in the certificate of commutation. As long as the statute remains in its present form, the parole of a prisoner who has had his sentence commuted will have to be authorized by the Governor in Council.

The Regulations adopted under s. 9 of the *Parole Act*¹⁸⁴ specify the minimum period of imprisonment which an inmate must serve before parole is granted. In the case of an inmate under sentence of death whose sentence has been commuted, the Board is not to recommend parole before he has served at least ten years of his sentence, less time spent in custody between arrest and commutation. This does not mean he will necessarily be paroled; it means at most that he will be eligible for parole at the end of the ten-year period. Everything will depend on the decision of the Governor in Council: if the latter refuses to approve his release the prisoner will have to serve his sentence of imprisonment in its entirety.¹⁸⁵

[Trans.]

"Finding a "substitute" for the death penalty is not as simple as we are inclined to believe. Moreover, the "painless" death penalty is itself a recent substitute, having displaced the death penalty of former times, which was slow and often accompanied by torture, mutilation and corporal punishment. In 1965 a substitute for the death penalty must preserve some elements of effective protection. We are now in the habit of regarding life imprisonment as the modern substitute. Those not in favour of abolition fear this policy, because they are afraid that a person who has killed once will kill again or attack others, and accordingly that he is potentially very dangerous for other prisoners and the prison staff. Such fears are groundless since, as we have pointed out, research has shown unquestionably that murderer inmates have similar, and often lower, rates of criminal assault than their fellow inmates. Those who favour abolition and defend the principle of life imprisonment are inclined to require that murderers sentenced to life no longer be paroled. Once again, this reasoning is unfortunately not based on the facts. Statistics on the recidivism rate among paroled inmates in fact show clearly that released murderers everywhere have the most creditable records of all inmates placed on parole."¹⁸⁶

¹⁸⁴ Long title: *An Act to Provide for the Conditional Liberation of Persons Undergoing Sentences of Imprisonment*, Chapter P-2, Revised Statutes of Canada, 1970, Vol. VI.

¹⁸⁵ *Parole Regulations*, established by P.C. 1960-681, amended by P.C. 1964-1827, 1968-48, 1969-1233, section 2, subsection 3 and 4.

¹⁸⁶ "La peine de mort au Canada", André Normandeau in *Revue de droit pénal et de criminologie*, Vol. 46, 1965-66, pp. 547 et seq. (p. 555).

This text gives a clear statement of the problem and lists the points that should be borne in mind in the search for an effective alternative sanction. It is to be noted that Prof. Normandeau suggests a maximum sentence of 10 or 15 years as an alternative sanction, using maximum term here in the legal sense, i.e. a sentence for which the statute would set the maximum at 10 or 15 years. He notes that nowadays a life sentence amounts to imprisonment for about 20 years. In his view, the developments in modern criminology and the perfection of new techniques of rehabilitation make possible effective treatment and successful social reintegration. If a murderer is rehabilitated, and no longer represents a risk to society, why should he be needlessly kept in prison? He feels that compensation of the victim's family by the offender out of income from his employment would also be a means of improving the present system of extended, non-productive imprisonment.¹⁸⁷

The report entitled *Capital Punishment, Developments 1961 to 1965*,¹⁸⁸ published by the United Nations in 1968, devotes the whole of Chapter II to an alternative sanction. According to the definition given by this report, the alternative sanction

...is the sentence imposed or carried out with respect to persons convicted of offences for which capital punishment might have been imposed by law, but who are not executed because either (a) the court or the jury has a discretion in imposing capital punishment and chooses a different penalty or (b) the court or jury imposed a sentence which was subsequently commuted by executive clemency to a different penalty.¹⁸⁹

Though this definition may not be wholly in accordance with current Canadian needs, there is nothing to prevent this country from learning from the experiences of other nations, as set out in the UN report, if it decided finally to replace the death penalty by an alternative sentence. In most countries the alternative sanction is the penalty carrying the severest deprivation of liberty, or a variation thereof: this was noted in the Ancel report in 1960. Thus in Upper Volta, Trinidad and Tobago, Laos, the island of Malta (for a maximum of 12 years), Luxemburg (15-20 years) and the Ivory Coast (with possibility of choosing imprisonment for a term of years), the alternative sanction is hard labour for life. Life imprisonment has the same role in South Africa, Australia (New South Wales and Queensland), Gambia, Malawi, Nigeria, the United Kingdom, Chad and Zambia; in the last country, the alternative of hard labour for life also exists. Other jurisdictions provide that the alternative sanction shall be imprisonment for life or for a specified number of years; these include the Netherlands Antilles (up to 20 years), Taiwan-China (12 to 15 years), France, Japan, the Central African Republic and Hungary (up to 15 years). Pakistan terms its alternative sanction "transportation for life", but this in fact is life imprisonment. The term "hard labour" is misleading, and in most cases simply means imprisonment for life, without the rigorous work-régime which this expression suggests. In countries which are abolitionist *de jure* or *de facto*, the penalty imposed

¹⁸⁷ "La peine de mort au Canada", *id.*, pp. 555-556.

¹⁸⁸ Department of Economic and Social Affairs, United Nations Publication ST/SOA/SD10, pp. 29-35, Nos. 99-122.

¹⁸⁹ United Nations, *op. cit.*, *id.*, p. 29, No. 100.

for crimes which are punishable by death in retentionist countries exhibits the same variety: hard labour for life in Austria, Ecuador, the Federal Republic of Germany and Switzerland; life imprisonment in the Netherlands, Norway and Sweden, as well as for murder in the United Kingdom and New Zealand.

In addition to imprisonment for life or a term of years, another option is open to the country which wants to replace the death penalty, namely that of the indefinite sentence. In an article published in 1967, Sheldon Glueck¹⁰⁰ says of this penalty that it achieves the dual objective of protecting society and rehabilitating the prisoner. It leaves the latter in doubt as to the end of his sentence, but requires him to be responsible for his future, since the date of his release depends on his behaviour and the progress he makes. A prerequisite for effectiveness of the indefinite sentence is for the prisoner to serve it in an institution equipped with a sufficient number of competent staff to carry out a genuine rehabilitative effort. According to John M. Macdonald, the imposition of an indefinite sentence on criminals suffering from psychopathy or any other psychic disorder would remove the risk of premature release at the expiry of the sentence, in cases where recovery was incomplete. Such offenders should never be set at liberty before they are in a position to rejoin society without risk.¹⁰¹

The American magazine *Esquire*¹⁰² published a report on an interview granted by Edgar Smith, a prisoner sentenced to death 14 years ago, who has lived since then on Death Row at the penitentiary in Trenton, New Jersey. Smith expresses interest in the idea of making murder a federal crime that would be punishable by an indefinite sentence, without minimum or maximum. The psychiatrists and psychologists would themselves decide on the date of the murderer's release, when he is fully rehabilitated and no longer presents any danger to society. The murderer would follow a schedule adapted to his needs and abilities, and could obtain parole only after completing his studies.

The indefinite sentence has opponents as well as supporters, among the former being the Canadian Committee on Corrections (Oumet Report). Chapter 11 of the Report, entitled *Sentencing*, makes the following recommendation: "The Committee recommends that indeterminate sentences as they now exist be abolished, subject to our recommendations concerning the dangerous offender." The Committee supports this recommendation as follows:¹⁰³

It will be remembered that the words "indefinite" or "indeterminate" carry no special legal significance except under the existing provisions of the Prisons and Reformatories Act¹⁰⁴ where they imply the right of release on parole by provincial authorities.

In our chapter on the Purposes and Organization of the Adult Correctional Services (Chapter 14), we recommend the abolition of the

¹⁰⁰ "Beyond Capital Punishment", Sheldon and Eleanor Glueck, Chapter I; "Twilight of Capital Punishment", Sheldon Glueck in *Pena de Morte*, Vol. I, pp. 265 et seq. (267-269).

¹⁰¹ John M. Macdonald, *The Murderer and His Victim*, *ibid.*, pp. 352 et seq.

¹⁰² "A Pre-Posthumous Conversation with Myself", Edgar Smith in *Esquire*, Vol. LXXV, No. 6, June 1971, pp. 112-115.

¹⁰³ *Report of the Canadian Committee on Corrections, Toward Unity: Criminal Justice and Corrections*. Ottawa, March 31, 1969, p. 205.

¹⁰⁴ Chapter P-21, Revised Statutes of Canada, 1970, Vol. VI.

system of indeterminate sentences as it exists in Ontario and British Columbia, and in Chapter 13 we recommend indeterminate sentences for Dangerous Offenders.

Some arguments against abolition have been advanced which are summarized as follows:

An indeterminate sentence of two years less a day for all young adult offenders considered to be in need of training provides a uniform sentence of indeterminate length regardless of the offence committed—the emphasis is thus strictly on the offender's need for training, not the offence. Being a sentence of indeterminate length it more readily conveys the idea, both to the offender and those associated with him and his training, that his time in custody will depend entirely on the progress he makes and that he can be paroled at any time once he is considered ready for it.

The Committee feels that similar objectives of control and correction as regards all offenders can be better achieved by resorting to a *definite* sentence, provided the parole authority is sufficiently close to the situation and considers all cases for parole. This, in the Committee's opinion, would be the direct result of the Committee's recommendations in the chapter on parole. This is in keeping with a recommendation of the Archambault Commission.¹⁰⁵

Moreover, many experts from the United States, where indefinite or indeterminate sentences are recognized by statute, appear to believe that definite sentences combined with parole have the same force and effect as indeterminate sentences with less danger of uncertainty and with a character of finality.

The United Nations agencies which have considered the problem of the death penalty and the alternative sanction do not appear to be impressed by the indefinite sentence as a solution, and they lean rather towards imprisonment for life or a term of years. The 1960 report prepared by Marc Ancel summarizes the position taken by learned authors, and concludes as follows:¹⁰⁶

If one ascribes to the death penalty, or to the substitute penalty, the essential function of protecting society and the human person, then one realizes that in many cases this function will be better discharged by what is conventionally known as a security measure rather than by a penalty properly so-called, the afflictive character of which cannot in any case be maintained absolutely and without qualification in the present stage of our civilization.

In the light of this last consideration many specialists conclude that the substitute penalty should be a form of deprivation of liberty for a specified term. To deny to the State the right to take the life of a member of the community means by the same token, it is maintained, that the individual, even an offender, should not be deprived of all hope and should be able to aspire to recover his freedom some day. All that should be imposed is a period of trial, as specified by law, for the term ordered by the court and under the control of the prison services. This idea has often been expressed by the penologists and criminologists of the Scandinavian countries, the Netherlands, Latin America, the United States and some of those of the Commonwealth.

At the meeting of the United Nations Committee of Experts on the Prevention of Crime and Treatment of Offenders, held in Geneva on August 6-16, 1968, delegates expressed the opinion that inmates whose

¹⁰⁵ Report of the Royal Commission to Investigate the Penal System of Canada, known as the Archambault Report; Ottawa, Queen's Printer, 1938, p. 248.

¹⁰⁶ *Capital Punishment*, United Nations, Department of Economic and Social Affairs, Publication ST/SOA/SD9, 1962, p. 64.

sentence of death has been commuted to imprisonment for life or a term of years should be placed on the same footing as other prisoners serving lengthy sentences. They should have the same privileges as the latter, i.e. be able to work and at some point be placed in a medium or minimum security institution, taking into account the degree of danger they represent, their propensity to escape and the prison facilities. This is what happens for the most part: prisoners subject to an alternative sanction are placed under the same régime as are other long-term prisoners.

Countries which report affirmatively that persons under an alternative penalty of imprisonment are subject to the same régime as are other prisoners include Afghanistan, Chad, China (Taiwan), the Ivory Coast, Malawi, Northern Ireland, Pakistan, Poland, the Republic of Vietnam, Senegal, Singapore, Somalia, South Africa, Trinidad and Tobago, Upper Volta and the United States. Countries which do not report any difference in the conditions of imprisonment include the Central African Republic, Cyprus, Dahomey, El Salvador, France, Gabon, Gambia, Greece, Malaysia, Monaco, New Zealand, Nigeria, the United Arab Republic and Zambia.

The practices of the reporting countries indicate that the concern is not whether the long-term prisoner is incarcerated as an alternative to being executed, but that he is a long-term prisoner, *per se*, and that, therefore, there are certain requirements relating to security measures and other considerations that are pertinent to all long-term prisoners. Japan reports that for such prisoners special emphasis is put upon productive work and mental stabilization in order to facilitate their eventual return to society. In general terms, current thinking tends towards increasing appreciation of the degenerative effects of protracted imprisonment on the prisoner, and the trend is towards developing penal systems whose purpose is to minimize such effects.¹⁹⁷

The Committee of Experts also suggested that prisoners serving a substitute penalty might be given a reduction in sentence for good behaviour, and be eligible for parole, in order to lessen the destructive effect of too long a term of imprisonment. The Committee finally recommended establishment of a system of periodic review of the records of prisoners who have not yet been released. Once set free, ex-inmates should be subject to regular supervision by parole officers or other persons. If necessary, a period in a minimum security institution might facilitate their settling into the outside world.

It is worth briefly considering at this point the release of prisoners serving alternative penalties. In its report published in 1960, the United Church of Canada study committee on capital punishment¹⁹⁸ recommended its final abolition and replacement by life imprisonment subject to eligibility for parole. In the view of the United Church, the Minister of Justice and the Parole Board should in the last resort decide on a prisoner's parole. This stand taken by the United Church raises a very important problem: who should take the final decision on granting or refusing the release of a murderer: the judiciary, the legislature or the executive? Hugo Adam Bedau¹⁹⁹ feels that this responsibility should be entrusted to an administra-

¹⁹⁷ *Capital Punishment, Developments, 1961 to 1965*, United Nations, Department of Economic and Social Affairs, Publication ST/SCA/SD10, 1967, p. 31.

¹⁹⁸ *Alternatives to Capital Punishment*, Full Text of the Report of the Committee on Alternatives to Capital Punishment to the 19th General Council of the United Church of Canada, Edmonton, Alberta, 1960.

¹⁹⁹ "A Social Philosopher Looks at the Death Penalty", in *American Journal of Psychiatry*, Vol. 123, No. 11, 1967, p. 1363.

tive tribunal, and removed from judicial control. He goes even further; in his opinion, the courts do not have the necessary professional training to impose sentence. There is no logical connection between the capacity to try the facts in light of the law so as to determine the guilt of the accused, and the capacity to assess the suitability and duration of punishment to be imposed on the accused. If there is a connection, it is based on tradition and history, and is not supported by reason.

In the State of Victoria in Australia, the Parole Board, when considering the case of a male prisoner, consists of a judge of the Supreme Court, the Director-General of the Department of Social Welfare, one of whose divisions deals with the penal system, and three other men with wide experience in social problems and criminal justice. When a female prisoner is involved, the Board includes, in addition to the judge and Director-General, three women whose qualifications match those of their male counterparts. The Board is required to make a written report and recommendations annually to the Minister concerned, regarding all prisoners convicted of murder who were not 18 years of age when their crime was committed. If the Minister so requests the Board must furnish a written report and recommendations on any person condemned to death whose sentence has been commuted. If the Minister feels such a person should be released, he must submit his views for approval by the Cabinet. If the latter accepts the Minister's suggestion, the Executive Council adopts a resolution giving legal force to the decision. The recommendation always makes the parolee subject to the Board's supervision for five or seven years, and to strict observance of the conditions of his release.

Also in Australia, if a decision by the Executive Council commutes the penalty of a person under sentence of death, and over the age of 18, to a sentence of imprisonment, the Executive Council is authorized by statute to specify the maximum duration of the alternative penalty at the same time, as well as its minimum duration (the period during which the prisoner will not be entitled to parole). The pressure of public feeling has caused the executive branch, when it commutes a sentence, to impose a penalty with a very high maximum and a substantial minimum term. Sir John Vincent Barry²⁰⁰ condemns this practice, and would prefer the alternative penalty to be one of life imprisonment. After seven years an independent Board consisting of competent individuals should consider the case, not to recommend immediate release but to make a report on the file to the Executive Council. When the Government finally took its decision, it would do so by accepting or refusing the recommendation made to it by the Board. It may be noted that if the Minister so requests, the Board may look into a case before expiry of the seven-year period.

The 1967 United Nations report²⁰¹ indicates that, in common with Australia, a large number of countries allow the release of a prisoner serving a life sentence or a term of years, before the sentence has expired. The commonest median length of imprisonment seems to be 10 to 15 years, and the average length is about 14 years. Table

²⁰⁰ "Views on the Alternative to Capital Punishment and the Commutation of Sentences", Sir John Vincent Barry in *The Penalty is Death*, *ibid.*, pp. 168-171.

²⁰¹ *Capital Punishment, Developments 1961-1965*, United Nations, *ibid.*, pp. 29-35.

28, set out in an appendix, indicates the actual length of incarceration of prisoners subject to an alternative sanction, according to figures supplied by 14 countries. Several factors prompt the competent authorities to grant a prisoner an early discharge: good behaviour; the advantage and disadvantages of prolonged imprisonment—taking account on the one hand of security requirements and the general trend in public opinion, and on the other the prejudicial effects of protracted incarceration on the prisoner—and the minimum imprisonment period set by the law. In general, the decision to release a prisoner is taken by the Minister of Justice, a board of commissioners or the members of a board on supervised parole.

Release may be "conditional": the parolee remains subject to restrictions which he must observe, but does not come under any particular supervision. Parole may be "conditional and supervised": a parole body must supervise the ex-inmate, who is required to remain in contact with its representatives, and even to meet with them on a regular basis. In both cases failure to observe the conditions of release results in withdrawal of the parole and forced return to prison for the unexpired portion of the sentence.

Afghanistan allows conditional release of a prisoner sentenced to life after fifteen years have been served; the minimum period is nine years in Norway and Sweden, and 25 years in Somalia. South Africa, Australia, Cambodia, the United States, France, Japan, Luxemburg, the Central African Republic, the Republic of Vietnam, the United Kingdom, Trinidad and Tobago and Zambia allow the release of prisoners subject to alternative penalties on a parole basis, when a certain portion of the total sentence has been served. At the outset, the parolee continues to be under the supervision of a competent authority. The duration of this supervision varies from one country to another, but often coincides with the unserved portion of the sentence.

The Committee of Experts on the Prevention of Crime and Treatment of Offenders commented on the Ancel report as follows:

The Committee devoted considerable attention to the question of a substitute penalty, viewing it as a most important problem. It was recognized that extended imprisonment constitutes the generally accepted legal alternative to capital punishment, and that the period of such imprisonment should not be so long that the offender would lose hope of ultimately rejoining the outside community. The Committee was firmly of the opinion that the conditions of such imprisonment should not be different from, or more arduous than, those which obtain for other types of prisoners in each country, so that the full facilities of the penal system can be made available for their treatment and that such prisoners can be classified and treated by the prison authorities in accordance with their custodial and training needs. It was further agreed that there should be periodic review of the cases of all such prisoners after they have served whatever is regarded in each country as the necessary minimum penalty for their particular crime. It was also agreed that when the prisoner is released he should, at least for a considerable period, be subject to supervision and possible reimprisonment if this should prove to be necessary.²⁰²

²⁰² *Capital Punishment, Developments 1961 to 1965*, United Nations, *ibid.*, p. 34.

The 1960 United Nations Report points out:²⁰³

Nothing further will be said on this point because the problem is one of penology and . . . distinct from the problem of capital punishment. Nevertheless, it is clear that, where abolitionist action is taken, the abolition of the death penalty necessarily presupposes a thorough study of the penalty which is to take its place, in the light of the teachings of modern penology.

9. CONCLUSION

The approach taken to the death penalty is based on moral, philosophical and religious factors; it involves the emotions as much as logical reasoning. Many supporters of either viewpoint are unyielding, and their convictions spring from the depths of their being. It has been said that research and collection of objective data on capital punishment would not weaken preconceived ideas, and would not contribute to the progress of the debate. The answer to this is that some individuals are still undecided, and the presentation of concrete and objective facts could aid them in coming to their decision. It is true that discussions on the death penalty are suffused with emotion, but it is precisely the desire to get rid of emotionalism, and give the debate a more realistic tone, that justifies the presentation of data and figures. This is the objective which the 1965 publication and this paper on capital punishment have sought to achieve.

²⁰³ *Capital Punishment*, Department of Economic and Social Affairs, p. 64.

APPENDIX I*

1965 MURDER ACT (ABOLITION OF CAPITAL PUNISHMENT) 1965 ELIZABETH II CHAPTER 71

An Act to abolish capital punishment in the case of persons convicted in Great Britain of murder or convicted of murder or a corresponding offence by court-martial and, in connection therewith, to make further provision for the punishment of persons so convicted.

[8th November, 1965]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

- 1.—(1) No person shall suffer death for murder, and a person convicted of murder shall, subject to subsection (5) below, be sentenced to imprisonment for life.
- (2) On sentencing any person convicted of murder to imprisonment for life the Court may at the same time declare the period which it recommends to the Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence under section 27 of the Prison Act 1952 or section 21 of the Prisons (Scotland) Act 1952.
- (3) For the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if at the commencement of this Act a person is under sentence of death for murder, the sentence shall have effect as a sentence of imprisonment for life.
- (4) In the foregoing subsections any reference to murder shall include an offence of or corresponding to murder under section 70 of the Army Act 1955 or of the Air Force Act 1955 or under section 42 of the Naval Discipline Act 1957, and any reference to capital murder shall be construed accordingly; and in each of the said sections 70 there shall be inserted in subsection (3) after paragraph (a) as a new paragraph (aa)—

“(aa) if the corresponding civil offence is murder, be liable to imprisonment for life”.

* Appendix to Chapter 2—The situation in the United Kingdom.

- (5) In section 53 of the Children and Young Persons Act 1933, and in section 57 of the Children and Young Persons (Scotland) Act 1937, there shall be substituted for subsection (1)—

“(1) A person convicted of an offence who appears to the court to have been under the age of eighteen years at the time the offence was committed shall not, if he is convicted of murder, be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against any such person; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty’s pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.”

- 2.—No person convicted of murder shall be released by the Secretary of State on licence under section 27 of the Prison Act 1952 or section 21 of the Prisons (Scotland) Act 1952 unless the Secretary of State has prior to such release consulted the Lord Chief Justice of England or the Lord Justice General as the case may be together with the trial judge if available.

- 3.—[General provisions of no interest.]

- 4.—This Act shall continue in force until the thirty-first day of July nineteen hundred and seventy, and shall then expire unless Parliament by affirmative resolutions of both Houses otherwise determines: and upon the expiration of this Act the law existing im-

TABLE 1

NUMBERS OF MURDERS KNOWN TO THE POLICE AND NUMBERS OF OFFENCES REDUCED TO MANSLAUGHTER BY REASON OF DIMINISHED RESPONSIBILITY UNDER SECTION 2 OF THE HOMICIDE ACT 1957

Year	Number of victims			Number per million of home population of England and Wales	
	Murder	s. 2 Manslaughter	Total	Murder	Murder and s. 2 Manslaughter
1957.....	135	22	157	3.0	3.5
1958.....	114	29	143	2.5	3.2
1959.....	135	21	156	3.0	3.4
1960.....	123	31	154	2.7	3.4
1961.....	118	30	148	2.6	3.2
1962.....	129	42	171	2.8	3.7
1963.....	122	56	178	2.6	3.8
1964.....	135	35	170	2.8	3.6
1965.....	135	50	185	2.8	3.9
1966.....	122	65	187	2.5	3.9
1967.....	154	57	211	3.2	4.4
1968.....	148	57	205	3.0	4.2
1969.....	124	64	188	2.5	3.8

Murder 1957 to 1968, a Home Office Statistical Division Report on Murder in England and Wales by Evelyn Gibson and S. Klein, London, Her Majesty’s Stationery Office 1969, Table 1, p. 2.

mediately prior to the passing of this Act shall, so far as it is repealed or amended by this Act, again operate as though this Act had not been passed, and the said repeals and amendments had not been enacted:

Provided that this Act shall continue to have effect in relation to any murder not shown to have been committed after the expiration of this Act, and for this purpose a murder shall be taken to be committed at the time of the act which causes the death.

[Appendix giving the list of all acts amended or repealed—of no interest.]

EXPLANATION OF TABLES 1 TO 4

TABLE 1

"There is always some difficulty in stating at any point in time what is the true figure for the number of murders that became known to the police in a given period. Deaths initially recorded by the police as murder may turn out not to be the result of crime, or an offender may ultimately be convicted of a lesser offence such as manslaughter or infanticide. The classification may change long after the event, perhaps by a decision on appeal, or by the clearing up of a case that remained unsolved for a long period. All figures in this report are related to the year in which an offence became known to the police, which may differ from the year in which it occurred or the year in which proceedings were concluded.

Table 1 shows on the new basis the latest corrected figures for murders known to the police and offences reduced to manslaughter by reason of diminished responsibility [section 2 of the Homicide Act 1957]. The number per million of population is shown both with and without section 2 manslaughter."*

TABLE 2

This table summarizes the results of persons committed for trial for murder.

TABLE 3

"This table shows the disposal of persons committed for trial for offences finally recorded as murder or section 2 manslaughter. It thus excludes acquittals on the grounds of self-defence or accident and those in which a co-defendant was convicted of some other offence."*

TABLE 4

This table shows the motives of male offenders convicted and sentenced for capital and non-capital murder.

* *Murder 1957 to 1968, id.*, pp. 1 and 3.

* *Murder 1957 to 1968, id.*, pp. 9 and 26.

TABLE 2
PERSONS COMMITTED FOR TRIAL FOR MURDER

	1957		1958		1959		1960		1961		1962		1963		1964		1965		1966		1967		1968		1969	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Persons committed for trial.....	117	100.	114	100.	122	100.	164	100.	144	100.	150	100.	157	100.	165	100.	188	100.	241	100.	236	100.	271	100.	266	100.
Found insane.....	20	17.1	19	16.7	25	20.5	22	13.4	20	13.9	15	10.0	12	7.6	10	6.1	8	4.3	5	2.1	9	3.8	5	1.8	10	3.8
CONVICTED OF:																										
Murder.....	36	30.8	25	21.9	44	36.0	49	29.9	40	27.8	44	29.3	36	23.0	52	31.5	51	27.1	69	28.6	65	27.6	76	28.0	79	29.7
Manslaughter (section 2).....	19	16.2	28	24.5	20	16.4	30	18.3	28	19.4	38	25.3	52	33.1	35	21.2	46	24.5	60	24.9	47	19.9	49	18.1	56	21.1
Manslaughter (other).....	29	24.8	27	23.7	21	17.2	31	18.9	38	26.4	31	20.7	35	22.3	38	23.0	47	25.0	75	31.1	85	36.0	89	32.9	78	29.3
Lesser offence....	—	—	1	0.9	2	1.6	1	0.6	2	1.4	2	1.3	2	1.3	1	0.6	5	2.7	1	0.4	1	0.4	4	1.5	3	1.1
ACQUITTED:																										
Final offence classification:																										
Murder.....	—	—	4	3.5	3	2.5	11	6.7	6	4.1	7	4.7	8	5.1	11	6.7	9	4.8	5	2.1	12	5.1	10	3.7	15	5.6
Manslaughter (section 2)....	—	—	1	0.9	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	0.4	1	0.4	2	0.7	—	—
Manslaughter (other).....	—	—	—	—	3	2.5	7	4.3	—	—	—	—	1	0.6	2	1.2	4	2.1	2	0.8	2	0.8	13	4.8	6	2.3
Lesser offence..	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	0.5	4	1.7	1	0.4	—	—	—	—
No offence: accident.....	12	10.3	7	6.1	3	2.5	11	6.7	3	2.1	6	4.0	4	2.5	11	6.7	8	4.2	11	4.6	7	3.0	10	3.7	5	1.9
No offence: self-defence...	1	0.8	2	1.8	1	0.8	2	1.2	7	4.9	7	4.7	7	4.5	5	3.0	9	4.8	8	3.3	6	2.6	13	4.8	11	4.1
In suspense.....																									3	1.1

Murder 1957 to 1968, id. Table 7, p. 10.

TABLE 3

PERSONS COMMITTED FOR TRIAL FOR OFFENCES FINALLY RECORDED AS MURDER
OR SECTION 2 MANSLAUGHTER, EXCLUDING THOSE CONVICTED OF OTHER OFFENCES
AND WITHOUT TAKING ACQUITTALS INTO CONSIDERATION

	1957		1958		1959		1960		1961		1962		1963		1964		1965		1966		1967		1968	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Committed for trial.	75	100.	77	100.	92	100.	112	100.	94	100.	104	100.	108	100.	108	100.	114	100.	140	100.	134	100.	140	100.
Insanity or diminished responsibility	39	52.	47	61.0	45	48.9	52	46.4	48	51.0	53	51.0	64	59.2	45	41.7	54	47.3	65	46.5	56	41.8	54	38.6
Convicted of capital murder:																								
Sentenced to death and executed....	3	4.0	5	6.5	4	4.3	7	6.2	4	4.2	2	1.9	2	1.9	2	1.9	—	—	Nil		Nil		Nil	
Sentenced to death and reprieved...	2	2.7	1	1.3	1	1.1	3	2.7	1	1.1	—	—	2	1.9	9	8.3	5 ^(c)	4.4	Nil		Nil		Nil	
Aged under 18 and ordered to be detained during Her Majesty's pleasure.....	1	1.3	—	—	—	—	2	1.8	1	1.1	—	—	—	—	—	—	—	—	Nil		Nil		Nil	
Convicted of murder:																								
Sentenced to death and reprieved...	6 ^(b)	8.0	—	—	—	—	—	—	1 ^(a)	1.1	—	—	—	—	2 ^(b)	1.9	—	—	Nil		Nil		Nil	
Sentenced to life imprisonment...	24	32.0	18	23.4	38	41.3	35	31.3	33	35.1	40	38.5	31	28.7	38	35.2	45 ^(d)	39.5	66	47.1	60	44.8	73	52.1
Aged under 18 and ordered to be detained during Her Majesty's pleasure.....	—	—	1	1.3	1	1.1	2	1.8	—	—	2	1.9	1	0.9	1	0.9	1	0.9	3	2.1	5	3.7	4	2.9

(a) One of these persons was sentenced to death under section 6 of the Homicide Act 1957 (convicted of murder prior to that of which he had just been convicted, or convicted of two murder committed under different circumstances); the remaining five were indicted before March 21, 1957.

(b) These persons were sentenced to death under section 6 of the Homicide Act 1957 (see note (a)).

(c) These persons were sentenced to death and reprieved before November 9, 1965, the date on which the Murder (Abolition of Death Penalty) Act 1965 came into force.

(d) Including two persons under sentence of death on the coming into force of the Murder Act 1965 (see note (c)) whose sentence became one of life imprisonment.

Murder 1957 to 1968, id. Table 8, p. 11.

TABLE 4
MOTIVE OF MALE OFFENDERS CONVICTED AND SENTENCED
FOR CAPITAL AND NON-CAPITAL MURDER

	Rage, quarrel, jealousy, revenge			Sexual	Feud		Theft or other gain			Other crime			Other or not known		
	Capital	Non-capital	Total	Non-capital	Capital	Non-capital	Capital	Non-capital	Total	Capital	Non-capital	Total	Capital	Non-capital	Total
1957.....	1	16	17	4	—	—	6	—	6	—	—	—	1	6	7
1958.....	—	15	15	1	—	—	5	1	6	1	—	1	—	—	—
1959.....	1	26	27	6	—	1	3	4	7	1	—	1	—	2	2
1960.....	1	20	21	4	—	1	10	5	15	1	4	5	—	3	3
1961.....	1	24	25	3	—	2	4	1	5	1	2	3	—	—	—
1962.....	—	25	25	3	—	2	2	9	11	—	—	—	—	1	1
1963.....	2	17	19	9	—	1	2	4	6	—	—	—	—	—	—
1964.....	2	29	31	—	—	—	9	4	13	—	2	2	—	6	6
1965.....	5	26	31	6	—	—	4	2	6	2	1	3	1	3	4
1966.....	2	25	27	7	1	3	21	—	21	5	2	7	—	2	2
1967.....	4	38	42	7	—	—	8	2	10	1	1	2	2	1	3
1968.....	4	41	45	6	—	—	16	—	16	—	—	—	1	7	8

Murder 1957 to 1968, id., Table 25, p. 29.

APPENDIX 2*

TABLE 5

Year	Homicide rate per 100,000 population	
	ITALY (abolitionist)	FRANCE (retentionist)
1953.....	3.42	2.79
1954.....	3.64	2.88
1955.....	3.68	0.95
1956.....	3.96	0.84
1957.....	3.29	8.95
1958.....	3.31	8.69
1959.....	3.25	11.47
1960.....	3.18	5.85
1961.....	2.93	7.31
1962.....	2.64	5.73
1963.....	2.66	3.12
1964.....	2.58	2.78
Average.....	3.21	5.11

Les crimes de sang nécessitent-ils une repression sanglante? "Joseph Vernet, in *Pena de Morte* Vol. I p. 370."

TABLE 6

Period	SWEDEN
	Annual average homicide rate per 100,000 population
1754-1763.....	.83
1775-1792.....	.66
1793-1806.....	.61
1809-1830.....	1.09 (does not include 1814 and 1818)
1831-1845.....	1.47
1846-1860.....	1.24
1861-1877.....	1.12
1878-1898.....	.90
1899-1904.....	.96
1905-1913.....	.86
1914-1916.....	.72
1920-1932.....	.52
1933-1938.....	.46
1939-1942.....	.47

"The Impact of Legal Sanctions" in *Crime and the Legal Process*, William J. Chambliss, 1969, McGraw Hill Book Co., p. 384.

*Appendix to Chapter 3—The situation throughout the world (United States of America excepted).

TABLE 7

Year	Homicide rate per 100,000 population	
	PORTUGAL (abolitionist)	FRANCE (retentionist)
1953.....	3.08	2.79
1954.....	2.96	2.88
1955.....	3.10	0.95
1956.....	2.36	0.84
1957.....	2.31	8.95
1958.....	2.42	8.69
1959.....	—	11.47
1960.....	—	5.85
1961.....	2.34	7.31
1962.....	1.80	5.73
1963.....	1.90	3.12
1964.....	2.50	2.78
Average.....	2.48	5.11

Joseph Vernet, *op. cit.*, p. 370.

APPENDIX 3*

TABLE 8

PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN
THE UNITED STATES: 1965-1971
(updating of Tables 2 and 3 in Appendix K of Capital Punishment)

Year	Total	States			Crime	Race
1965.....	7	Missouri.....	1	North Central	Murder	1 Negro
		Kansas.....	4	North Central	"	4 Whites
		Alabama.....	1	South	"	1 White
		Wyoming.....	1	West	"	1 White
1966.....	1	Oklahoma.....	1	South	"	1 White
1967.....	2	California.....	1	West	"	1 Negro
		Colorado.....	1	West	"	1 White
1968.....	0					
1969.....	0					
1970.....	0					
1971.....	0					
(at September 15)						

National Prisoner Statistics No. 45, August 1969, *Capital Punishment 1930-1968*, United States Department of Justice, Bureau of Prisons, pp. 8, 9, 10, 11.

*Appendix to Chapter 4—The situation in the United States of America.

TABLE 9
EVOLUTION OF THE NUMBER OF EXECUTIONS IN THE
UNITED STATES FROM 1930 TO 1971
(updating of Table 1 in Appendix L of Capital Punishment)

YEARS												(at September 15, 1971)
1930-34	1935-39		1940-44	1945-49	1950-54	1955-59		1960-64	1965-71			
Total.....	776	891		645	639	413	304		181	10		
BREAKDOWN BY YEAR, 1960-71												(at September 15, 1971)
1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	
56	42	47	21	15	7	1	2	0	0	0	0	

National Prisoner Statistics, id., p. 8, Table 2.

TABLE 10

FLUCTUATIONS IN THE NUMBER OF PRISONERS UNDER
SENTENCE OF DEATH IN THE UNITED STATES
FROM 1961 TO 1971

Year	Prisoners received with death sentence	Total number of prisoners under sentence of death	Commutations	Executions
1961.....	140	219	17	42
1962.....	103	266	27	47
1963.....	93	268	16	21
1964.....	106	298	9	15
1965.....	86	322	19	7
1966.....	118	351	17	1
1967.....	85	415	13	2
1968.....	102	434	16	0
1969.....	(1)	479	(1)	0
1970.....	(1)	525	(1)	0
1971.....	(1)	650 ⁽²⁾	(1)	0 ⁽³⁾

⁽¹⁾ These figures are not available yet.

⁽²⁾ At May 17, 1971. See *Time, Canada Edition*, May 17, 1971, p. 40.

⁽³⁾ At September 15, 1971.

National Prisoner Statistics, *op. cit.*, *ibid.*, p. 12.

The Death Penalty in America, Review and Forecast, Hugo Adam Bedau in *Federal Probation*, Vol. XXXV, No. 2, June 1971, Washington, D.C., p. 32.

TABLE 11
INDEX OF CRIME, UNITED STATES, 1960-1970

Year	Population	Total crime index	Rate per 100,000	Violent crime ⁽¹⁾	Rate per 100,000	Property crime ⁽¹⁾	Rate per 100,000	Murder and non-negligent manslaughter	Rate per 100,000
1960.....	179,323,175	2,014,600	1,123.4	285,200	159.0	1,729,400	964.4	9,000	5.0
1961.....	182,953,000	2,082,400	1,138.2	286,100	156.4	1,796,300	981.8	8,630	4.7
1962.....	185,822,000	2,213,600	1,191.2	298,200	160.5	1,915,400	1,030.8	8,430	4.5
1963.....	188,531,000	2,435,900	1,292.0	313,400	166.2	2,122,500	1,125.8	8,530	4.5
1964.....	191,334,000	2,755,000	1,439.9	360,100	188.2	2,395,000	1,251.7	9,250	4.8
1965.....	193,818,000	2,930,200	1,511.9	383,100	197.6	2,547,200	1,314.2	9,850	5.1
1966.....	195,857,000	3,264,200	1,666.6	425,400	217.2	2,838,800	1,449.4	10,920	5.6
1967.....	197,864,000	3,802,300	1,921.7	494,600	250.0	3,307,700	1,671.7	12,090	6.1
1968.....	199,861,000	4,466,600	2,234.8	588,800	294.6	3,877,700	1,940.2	13,650	6.8
1969.....	201,921,000	5,001,400	2,476.9	655,100	324.4	4,346,400	2,152.5	14,590	7.2
1970.....	203,184,772	5,568,200	2,740.5	731,400	360.0	4,836,800	2,380.5	15,810	7.8
Percentage increase from 1960 to 1970.....		176.4	143.9	156.5	126.4	179.7	146.8	75.7	56.0

⁽¹⁾ Violent crimes: murder, rape, robbery and aggravated assault.

Property crimes: burglary, larceny \$50 and over and auto theft.

Crime in the United States issued by John Edgar Hoover, Director, FBI, *Uniform Crime Reports*—1970, Washington, D.C., p. 65.

TABLE 12

INDEX OF CRIME BY STATE AND REGION

(updating of Table 1 in Appendix K of Capital Punishment)

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
NORTHEAST.....	1964	47,125,000	587,861	1,247.4	1,607	3.4
	1965	47,526,000	636,929	1,341.0	1,693	3.6
	1966	47,962,000	837,131	1,745.4	1,731	3.6
	1967	48,289,000	981,234	2,032.0	1,987	4.1
	1968	48,314,000	1,199,352	2,482.4	2,341	4.8
	1969	48,782,000	1,261,399	2,585.8	2,521	5.2
	1970	48,999,999	1,394,492	2,845.9	2,849	5.8
1. New England						
Connecticut.....	1964	2,766,000	30,996	1,120.6	49	1.8
	1965	2,832,000	33,277	1,175.1	46	1.6
	1966	2,875,000	37,548	1,306.1	57	2.0
	1967	2,925,000	46,262	1,581.6	70	2.4
	1968	2,959,000	61,451	2,076.7	73	2.5
	1969	3,000,000	70,048	2,334.9	86	2.9
	1970	3,032,217	78,076	2,574.9	106	3.5
Maine.....	1964	989,000	6,644	671.8	15	1.5
	1965	993,000	6,752	680.0	21	2.1
	1966	983,000	6,485	659.7	22	2.2
	1967	973,000	7,773	798.9	4	.4
	1968	979,000	8,727	891.4	29	3.0
	1969	978,000	10,129	1,035.7	16	1.6
	1970	993,663	11,344	1,141.6	15	1.5
Massachusetts.....	1964	5,338,000	73,440	1,375.7	105	2.0
	1965	5,348,000	80,610	1,507.3	129	2.4
	1966	5,383,000	89,055	1,654.2	128	2.4
	1967	5,421,000	100,989	1,862.9	154	2.8
	1968	5,437,000	129,651	2,384.6	188	3.5
	1969	5,467,000	149,807	2,740.2	191	3.5
	1970	5,689,170	170,900	3,004.0	197	3.5
New Hampshire.....	1964	654,000	3,571	546.0	6	.9
	1965	669,000	4,084	610.5	18	2.7
	1966	681,000	4,635	680.5	13	1.9
	1967	686,000	4,848	706.7	14	2.0
	1968	702,000	5,668	807.4	10	1.4
	1969	717,000	7,036	981.3	18	2.5
	1970	737,681	8,798	1,192.7	15	2.0
Rhode Island.....	1964	914,000	13,278	1,452.8	11	1.2
	1965	920,000	13,044	1,417.9	19	2.1
	1966	898,000	15,551	1,732.3	13	1.4
	1967	900,000	19,027	2,114.1	20	2.2
	1968	913,000	24,097	2,639.3	22	2.4
	1969	911,000	25,448	2,793.4	28	3.1
	1970	949,723	27,787	2,925.8	30	3.2
Vermont.....	1964	409,000	2,101	513.7	2	.5
	1965	397,000	2,300	579.4	2	.5
	1966	405,000	2,814	695.6	6	1.5
	1967	417,000	3,480	834.5	13	3.1
	1968	422,000	3,321	787.0	11	2.6
	1969	439,000	4,509	1,027.1	11	2.5
	1970	444,732	5,644	1,269.1	6	1.3

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
2. Middle Atlantic						
New Jersey.....	1964	6,682,000	91,637	1,371.4	207	3.1
	1965	6,774,000	94,611	1,396.6	219	3.2
	1966	6,898,000	110,345	1,599.7	240	3.5
	1967	7,003,000	138,630	1,979.6	276	3.9
	1968	7,078,000	172,532	2,437.6	358	5.1
	1969	7,148,000	175,722	2,458.3	369	5.2
	1970	7,168,164	196,709	2,744.2	412	5.7
New York.....	1964	17,915,000	268,120	1,496.6	833	4.6
	1965	18,073,000	290,647	1,608.2	833	4.6
	1966	18,258,000	458,964	2,513.8	879	4.8
	1967	18,336,000	533,216	2,908.0	993	5.4
	1968	18,113,000	642,041	3,544.6	1,181	6.5
	1969	18,321,000	653,405	3,566.4	1,320	7.2
	1970	18,190,740	713,453	3,922.1	1,439	7.9
Pennsylvania.....	1964	11,459,000	98,074	855.9	379	3.3
	1965	11,520,000	111,604	968.8	406	3.5
	1966	11,582,000	111,734	964.8	373	3.2
	1967	11,629,000	127,009	1,092.2	443	3.8
	1968	11,712,000	151,864	1,296.7	469	4.0
	1969	11,803,000	165,295	1,400.4	482	4.1
	1970	11,793,909	181,781	1,541.3	629	5.3
NORTH CENTRAL.....	1964	53,370,000	657,515	1,232.0	1,846	3.5
	1965	54,014,000	685,720	1,269.6	2,009	3.7
	1966	54,349,000	782,984	1,440.7	2,368	4.4
	1967	55,085,000	928,727	1,686.0	2,726	4.9
	1968	55,628,000	1,052,095	1,891.3	3,109	5.6
	1969	56,078,000	1,217,113	2,170.4	3,427	6.1
	1970	56,577,067	1,357,129	2,398.7	3,697	6.5
1. East North Central						
Illinois.....	1964	10,489,000	179,631	1,712.6	572	5.5
	1965	10,644,000	171,691	1,613.1	551	5.2
	1966	10,722,000	185,462	1,729.7	745	6.9
	1967	10,893,000	201,860	1,853.1	793	7.3
	1968	10,974,000	222,185	2,024.6	893	8.1
	1969	11,047,000	246,154	2,228.2	950	8.6
	1970	11,113,976	260,858	2,347.1	1,066	9.6
Indiana.....	1964	4,825,000	56,264	1,166.0	145	3.0
	1965	4,885,000	59,493	1,217.9	171	3.5
	1966	4,918,000	66,767	1,357.6	195	4.0
	1967	5,000,000	77,877	1,557.5	186	3.7
	1968	5,067,000	91,438	1,804.6	240	4.7
	1969	5,118,000	99,241	1,939.1	252	4.9
	1970	5,193,669	117,923	2,270.5	250	4.8
Michigan.....	1964	8,098,000	124,486	1,537.2	269	3.3
	1965	8,218,000	142,563	1,734.8	358	4.4
	1966	8,374,000	182,045	2,174.0	393	4.7
	1967	8,584,000	217,177	2,530.0	530	6.2
	1968	8,740,000	235,792	2,697.8	634	7.3
	1969	8,766,000	279,883	3,192.8	729	8.3
	1970	8,875,083	324,742	3,659.0	787	8.9

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
Ohio.....	1964	10,100,000	102,108	1,011.0	350	3.5
	1965	10,245,000	106,417	1,038.7	366	3.6
	1966	10,305,000	120,648	1,170.8	462	4.5
	1967	10,458,000	157,486	1,505.9	545	5.2
	1968	10,591,000	182,113	1,719.5	562	5.3
	1969	10,740,000	223,223	2,078.4	685	6.4
	1970	10,652,017	253,158	2,376.6	699	6.6
Wisconsin.....	1964	4,107,000	29,519	718.7	60	1.5
	1965	4,144,000	30,565	737.6	64	1.5
	1966	4,161,000	37,097	891.5	80	1.9
	1967	4,189,000	46,962	1,121.1	80	1.9
	1968	4,213,000	52,472	1,245.5	92	2.2
	1969	4,233,000	58,524	1,382.6	87	2.1
	1970	4,417,933	66,907	1,514.4	88	2.0
<i>2. West North Central</i>						
Iowa.....	1964	2,756,000	17,924	650.4	35	1.3
	1965	2,760,000	19,498	706.5	36	1.3
	1966	2,747,000	22,360	814.0	43	1.6
	1967	2,753,000	27,726	1,007.1	42	1.5
	1968	2,748,000	31,282	1,138.4	48	1.7
	1969	2,781,000	35,340	1,270.8	39	1.4
	1970	2,825,041	40,548	1,435.3	54	1.9
Kansas.....	1964	2,225,000	21,480	965.4	75	3.4
	1965	2,234,000	22,261	996.5	60	2.7
	1966	2,250,000	23,908	1,062.6	78	3.5
	1967	2,275,000	30,295	1,331.6	90	4.0
	1968	2,303,000	34,090	1,480.2	86	3.7
	1969	2,321,000	40,956	1,764.6	81	3.5
	1970	2,249,071	48,215	2,143.8	107	4.8
Minnesota.....	1964	3,521,000	39,027	1,108.4	51	1.4
	1965	3,554,000	40,881	1,150.3	50	1.4
	1966	3,576,000	47,108	1,317.4	79	2.2
	1967	3,582,000	56,886	1,588.1	58	1.6
	1968	3,646,000	68,147	1,869.1	81	2.2
	1969	3,700,000	74,842	2,022.8	69	1.9
	1970	3,805,069	80,034	2,103.4	75	2.0
Missouri.....	1964	4,409,000	67,877	1,539.5	240	5.4
	1965	4,497,000	72,059	1,602.5	300	6.7
	1966	4,508,000	75,738	1,680.2	245	5.4
	1967	4,603,000	87,642	1,904.0	337	7.3
	1968	4,627,000	104,811	2,265.2	408	8.8
	1969	4,651,000	127,098	2,732.7	485	10.4
	1970	4,677,399	129,329	2,765.0	499	10.7
Nebraska.....	1964	1,480,000	11,008	743.8	34	2.3
	1965	1,477,000	12,576	851.5	36	2.4
	1966	1,456,000	12,920	887.4	26	1.8
	1967	1,435,000	15,527	1,082.0	39	2.7
	1968	1,437,000	19,369	1,347.9	33	2.3
	1969	1,449,000	20,522	1,416.3	36	2.5
	1970	1,483,791	22,512	1,517.2	44	3.0

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
North Dakota.....	1964	645,000	3,567	553.0	6	.9
	1965	652,000	3,271	501.7	6	.9
	1966	650,000	3,642	560.5	12	1.8
	1967	639,000	3,809	596.1	1	.2
	1968	625,000	3,963	634.1	7	1.1
	1969	615,000	4,602	748.3	1	.2
	1970	617,761	5,227	846.1	3	.5
South Dakota.....	1964	715,000	4,624	646.7	9	1.3
	1965	703,000	4,445	632.4	11	1.6
	1966	682,000	5,289	775.6	10	1.5
	1967	674,000	5,480	813.1	25	3.7
	1968	657,000	6,433	979.1	25	3.8
	1969	659,000	6,728	1,020.9	13	2.0
	1970	666,257	7,676	1,152.1	25	3.8
SOUTH.....	1964	59,252,000	732,387	1,236.0	4,577	7.7
	1965	60,049,000	759,982	1,265.5	4,797	8.0
	1966	60,898,000	876,057	1,438.6	5,403	8.9
	1967	61,444,000	1,007,035	1,638.9	5,766	9.4
	1968	62,424,000	1,167,647	1,870.5	6,423	10.3
	1969	63,086,000	1,323,179	2,097.4	6,577	10.4
	1970	62,798,347	1,507,263	2,400.2	7,055	11.2
<i>1. South Atlantic</i>						
Delaware.....	1964	491,000	6,339	1,291.0	21	4.3
	1965	505,000	6,502	1,287.6	26	5.1
	1966	512,000	7,007	1,485.8	42	8.2
	1967	524,000	8,951	1,708.2	41	7.8
	1968	534,000	10,378	1,943.4	41	7.7
	1969	540,000	11,966	2,215.9	39	7.2
	1970	548,104	14,887	2,716.1	38	6.9
Florida.....	1964	5,705,000	109,965	1,927.6	489	8.6
	1965	5,805,000	116,732	2,010.9	518	8.9
	1966	5,941,000	135,455	2,280.0	612	10.3
	1967	5,995,000	154,973	2,585.0	630	10.5
	1968	6,160,000	178,736	2,901.6	731	11.9
	1969	6,354,000	201,180	3,165.9	720	11.3
	1970	6,789,443	244,399	3,599.7	860	12.7
Georgia.....	1964	4,294,000	53,594	1,248.1	503	11.7
	1965	4,357,000	52,271	1,199.7	491	11.3
	1966	4,459,000	58,366	1,309.0	504	11.3
	1967	4,509,000	61,588	1,365.9	501	11.1
	1968	4,588,000	71,599	1,560.6	636	13.9
	1969	4,641,000	82,750	1,783.0	551	11.9
	1970	4,589,575	101,279	2,206.7	702	15.3
Maryland.....	1964	3,432,000	49,858	1,452.8	229	6.7
	1965	3,519,000	60,464	1,718.2	236	6.7
	1966	3,613,000	74,512	2,062.3	254	7.0
	1967	3,682,000	97,987	2,661.2	293	8.0
	1968	3,757,000	123,741	3,293.6	350	9.3
	1969	3,765,000	123,552	3,281.6	350	9.3
	1970	3,922,399	131,283	3,347.0	362	9.2

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
North Carolina.....	1964	4,852,000	45,205	931.7	369	7.6
	1965	4,914,000	48,155	980.0	388	7.9
	1966	5,000,000	54,340	1,086.9	434	8.7
	1967	5,029,000	62,804	1,248.8	471	9.4
	1968	5,135,000	69,102	1,345.7	498	9.7
	1969	5,205,000	80,216	1,541.1	556	10.7
	1970	5,082,059	94,596	1,861.4	565	11.1
South Carolina.....	1964	2,555,000	31,081	1,216.5	206	8.1
	1965	2,542,000	27,880	1,096.8	245	9.6
	1966	2,586,000	31,300	1,210.4	301	11.6
	1967	2,599,000	33,567	1,291.5	291	11.2
	1968	2,692,000	37,516	1,393.6	366	13.6
	1969	2,692,000	45,541	1,691.7	336	12.5
	1970	2,590,516	53,540	2,066.8	377	14.6
Virginia.....	1964	4,373,000	49,856	1,127.3	297	6.8
	1965	4,457,000	51,635	1,158.6	296	6.6
	1966	4,507,000	56,301	1,249.2	295	6.5
	1967	4,536,000	64,574	1,423.6	333	7.3
	1968	4,597,000	74,747	1,626.0	383	8.3
	1969	4,669,000	81,070	1,736.3	276	5.9
	1970	4,648,494	99,904	2,149.2	391	8.4
West Virginia.....	1964	1,797,000	9,854	548.3	67	3.7
	1965	1,812,000	9,581	528.8	72	4.0
	1966	1,794,000	10,602	591.1	76	4.2
	1967	1,798,000	11,843	658.7	83	4.6
	1968	1,805,000	14,197	786.5	99	5.5
	1969	1,819,000	13,910	764.7	102	5.6
	1970	1,744,237	16,722	953.7	109	6.2
<i>2. East South Central</i>						
Alabama.....	1964	3,407,000	35,981	1,056.1	316	9.3
	1965	3,462,000	36,972	1,067.9	395	11.4
	1966	3,517,000	42,521	1,208.9	384	10.9
	1967	3,540,000	46,513	1,313.9	415	11.7
	1968	3,566,000	51,385	1,441.0	421	11.8
	1969	3,531,000	55,647	1,576.0	485	13.7
	1970	3,444,165	64,249	1,865.4	404	11.7
Kentucky.....	1964	3,159,000	32,755	1,036.8	164	5.2
	1965	3,179,000	33,431	1,051.6	168	5.3
	1966	3,183,000	38,181	1,199.5	223	7.0
	1967	3,189,000	41,523	1,302.1	230	7.2
	1968	3,229,000	47,609	1,474.4	288	8.9
	1969	3,232,000	53,745	1,662.9	336	10.4
	1970	3,219,311	61,057	1,924.5	357	11.1
Mississippi.....	1964	2,314,000	14,688	634.7	233	10.1
	1965	2,321,000	16,034	690.8	207	8.9
	1966	2,327,000	13,662	587.1	225	9.7
	1967	2,348,000	13,499	574.9	204	8.7
	1968	2,342,000	16,664	711.5	232	9.9
	1969	2,360,000	17,476	740.5	192	8.1
	1970	2,216,912	19,141	863.4	255	11.5

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
Tennessee	1964	3,798,000	41,920	1,103.8	225	5.9
	1965	3,845,000	41,635	1,082.9	307	8.0
	1966	3,883,000	49,529	1,275.6	304	7.8
	1967	3,892,000	59,600	1,531.3	347	8.9
	1968	3,976,000	63,535	1,598.0	345	8.7
	1969	3,985,000	66,371	1,665.5	382	9.6
	1970	3,924,164	74,101	1,888.3	346	8.8
<i>3. West South Central</i>						
Arkansas	1964	1,933,000	14,688	759.8	147	7.6
	1965	1,960,000	14,503	739.9	115	5.9
	1966	1,955,000	16,253	831.4	139	7.1
	1967	1,968,000	19,850	1,008.6	173	8.8
	1968	2,012,000	24,014	1,238.3	163	8.1
	1969	1,995,000	28,295	1,418.3	197	9.9
	1970	1,923,295	30,845	1,603.8	195	10.1
Louisiana	1964	3,468,000	42,418	1,223.1	287	8.3
	1965	3,534,000	41,840	1,184.0	285	8.1
	1966	3,603,000	53,505	1,485.1	355	9.9
	1967	3,662,000	61,681	1,684.4	341	9.3
	1968	3,732,000	66,644	1,785.7	354	9.5
	1969	3,745,000	73,544	1,963.8	356	9.5
	1970	3,643,180	87,606	2,404.7	426	11.7
Oklahoma.....	1964	2,465,000	29,844	1,210.7	110	4.5
	1965	2,482,000	28,543	1,150.0	110	4.4
	1966	2,458,000	31,534	1,282.9	135	5.5
	1967	2,495,000	34,038	1,364.2	166	6.7
	1968	2,518,000	40,506	1,608.7	162	6.4
	1969	2,568,000	43,020	1,675.2	148	5.8
	1970	2,559,253	49,929	1,950.9	151	5.9
Texas.....	1964	10,397,000	141,701	1,363.0	782	7.5
	1965	10,551,000	148,124	1,403.9	790	7.5
	1966	10,752,000	172,820	1,607.3	979	9.1
	1967	10,869,000	193,993	1,784.8	1,069	9.8
	1968	10,972,000	226,496	2,064.3	1,159	10.6
	1969	11,187,000	282,089	2,521.6	1,264	11.3
	1970	11,196,730	302,961	2,705.8	1,294	11.6
WEST.....	1964	31,567,000	636,460	2,015.0	1,219	3.9
	1965	32,231,000	697,384	2,163.9	1,351	4.2
	1966	32,647,000	768,056	2,352.6	1,416	4.3
	1967	33,045,000	885,277	2,679.0	1,614	4.9
	1968	33,494,000	1,047,479	3,127.4	1,775	5.3
	1969	33,974,000	1,199,761	3,531.4	2,062	6.1
	1970	34,809,359	1,309,313	3,761.4	2,211	6.4
<i>1. Mountain States</i>						
Arizona.....	1964	1,581,000	32,693	2,067.8	83	5.2
	1965	1,608,000	31,108	1,934.5	80	5.0
	1966	1,618,000	35,850	2,215.7	98	6.1
	1967	1,634,000	43,425	2,657.6	91	5.6
	1968	1,670,000	46,568	2,788.5	105	6.3
	1969	1,693,000	52,233	3,085.2	102	6.0
	1970	1,772,482	61,066	3,445.2	168	9.5

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
Colorado.....	1964	1,966,000	30,552	1,554.0	82	4.2
	1965	1,969,000	30,407	1,544.8	69	3.5
	1966	1,977,000	33,972	1,718.4	79	4.0
	1967	1,975,000	37,821	1,915.0	81	4.1
	1968	2,048,000	49,179	2,401.3	110	5.4
	1969	2,100,000	63,632	3,025.3	112	5.3
	1970	2,207,259	80,834	3,662.2	137	6.2
Idaho.....	1964	692,000	6,145	888.0	28	4.0
	1965	692,000	6,417	927.3	14	2.0
	1966	694,000	6,659	959.6	21	3.0
	1967	699,000	6,888	985.4	30	4.3
	1968	705,000	8,092	1,147.8	16	2.3
	1969	718,000	10,874	1,514.5	14	1.9
	1970	713,008	12,728	1,785.1	33	4.6
Montana.....	1964	705,000	7,845	1,112.8	19	2.7
	1965	706,000	7,643	1,082.7	12	1.7
	1966	702,000	8,386	1,194.6	20	2.8
	1967	701,000	9,144	1,304.4	17	2.4
	1968	693,000	9,725	1,403.3	23	3.3
	1969	694,000	10,330	1,488.5	25	3.6
	1970	694,409	11,366	1,636.8	22	3.2
Nevada.....	1964	408,000	11,387	2,790.9	32	7.8
	1965	440,000	10,541	2,395.7	37	8.4
	1966	454,000	10,715	2,360.2	48	10.6
	1967	444,000	12,268	2,763.1	48	10.8
	1968	453,000	13,684	3,020.8	25	5.5
	1969	457,000	16,221	3,549.5	41	9.0
	1970	488,738	19,531	3,996.2	43	8.8
New Mexico.....	1964	1,008,000	14,304	1,419.1	54	5.4
	1965	1,029,000	15,582	1,514.4	63	6.1
	1966	1,022,000	18,883	1,847.6	62	6.1
	1967	1,003,000	19,369	1,931.1	64	6.4
	1968	1,015,000	23,774	2,342.3	63	6.2
	1969	994,000	28,562	2,873.4	61	6.1
	1970	1,016,000	29,113	2,865.5	95	9.4
Utah.....	1964	992,000	12,196	1,229.5	15	1.5
	1965	990,000	13,803	1,394.3	15	1.5
	1966	1,008,000	16,655	1,652.3	20	2.0
	1967	1,024,000	16,607	1,621.8	28	2.7
	1968	1,034,000	18,779	1,816.2	30	2.9
	1969	1,045,000	22,762	2,178.2	26	2.5
	1970	1,059,273	25,134	2,372.8	36	3.4
Wyoming.....	1964	343,000	3,341	974.1	19	5.5
	1965	340,000	3,405	1,001.6	10	2.9
	1966	329,000	3,553	1,080.0	16	4.9
	1967	315,000	3,996	1,268.6	15	4.8
	1968	315,000	4,240	1,346.0	20	6.3
	1969	320,000	4,834	1,510.6	33	10.3
	1970	332,416	5,801	1,745.1	19	5.7

State and Region	Year	Population	Total crime index		Murder and non-negligent manslaughter	
			Number	Rate per 100,000	Number	Rate per 100,000
2. Pacific						
Alaska.....	1964	250,000	3,506	1,402.4	26	10.4
	1965	253,000	4,326	1,709.9	16	6.3
	1966	272,000	5,077	1,866.6	35	12.9
	1967	272,000	5,360	1,970.6	26	9.6
	1968	277,000	6,049	2,183.8	29	10.5
	1969	282,000	7,452	2,642.6	30	10.6
	1970	302,173	8,130	2,690.5	37	12.2
California	1964	18,084,000	438,399	2,424.2	740	4.1
	1965	18,602,000	491,713	2,643.5	880	4.7
	1966	18,918,000	534,578	2,825.7	868	4.6
	1967	19,153,000	614,342	3,207.5	1,039	5.4
	1968	19,221,000	723,445	3,763.8	1,150	6.0
	1969	19,443,000	804,483	4,137.6	1,386	7.1
	1970	19,953,134	859,373	4,307.0	1,376	6.9
Hawaii.....	1964	701,000	11,083	1,581.0	15	2.1
	1965	711,000	13,438	1,890.1	23	3.2
	1966	718,000	14,914	2,077.1	21	2.9
	1967	739,000	16,392	2,218.1	18	2.4
	1968	778,000	21,401	2,750.8	22	2.8
	1969	794,000	23,094	2,908.6	27	3.4
	1970	769,913	26,148	3,396.2	28	3.6
Oregon.....	1964	1,871,000	25,073	1,340.1	34	1.8
	1965	1,899,000	28,235	1,486.9	65	3.4
	1966	1,955,000	31,757	1,624.2	53	2.7
	1967	1,999,999	39,601	1,981.0	61	3.1
	1968	2,008,000	44,801	2,231.1	64	3.2
	1969	2,032,000	53,877	2,651.4	81	4.0
	1970	2,091,385	62,476	2,987.3	97	4.6
Washington.....	1964	2,984,000	39,936	1,338.3	72	2.4
	1965	2,990,000	40,766	1,363.4	67	2.2
	1966	2,980,000	47,057	1,579.2	75	2.5
	1967	3,087,000	60,064	1,945.7	96	3.1
	1968	3,276,000	77,742	2,373.1	113	3.6
	1969	3,402,000	101,507	2,983.7	124	3.6
	1970	3,409,169	107,613	3,156.6	120	3.5

— *Crime in the United States* issued by John Edgar Hoover, Director, FBI, *Uniform Crime Reports*, Washington, D.C.

1965—pp. 52-55

1966—pp. 60-65

1967—pp. 62-67

1968—pp. 60-65

1969—pp. 53-63

1970—pp. 66-71

APPENDIX 4*

THE CANADIAN CRIMINAL CODE (1970 REVISED STATUTES OF CANADA, CHAPTER C-34)

214. (1) Murder is capital murder or non-capital murder.

(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

(a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

(b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death.

(3) All murder other than capital murder is non-capital murder. 1960-61, c. 44, s. 1; 1967-68, c. 15, s. 1.

218. (1) Every one who commits capital murder is guilty of an indictable offence and shall be sentenced to death.

75. (1) Every one commits piracy who does any act that, by the law of nations, is piracy.

(2) Every one who commits piracy while in or out of Canada is guilty of an indictable offence and is liable to imprisonment for life, but if while committing or attempting to commit piracy he murders or attempts to murder another person or does any act that is likely to endanger the life of another person he shall be sentenced to death 1953-54, c. 51, s. 75.

46. (1) Every one commits treason who, in Canada,

(a) kills or attempts to kill Her Majesty, or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;

(b) levies war against Canada or does any act preparatory thereto;

(c) assists an enemy at war with Canada, or any armed forces against whom Canadian Forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

(d) uses force or violence for the purpose of overthrowing the government of Canada or a province;

Appendix to Chapter 5—The situation in Canada.

- (e) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;
- (f) conspires with any person to do anything mentioned in paragraphs (a) to (d);
- (g) forms an intention to do anything mentioned in paragraphs (a) to (d) and manifests that intention by an overt act; or
- (h) conspires with any person to do anything mentioned in paragraph (e) or forms an intention to do anything mentioned in paragraph (e) and manifests that intention by an overt act.

(2) Notwithstanding subsection (1), a Canadian citizen or a person who owes allegiance to Her Majesty in right of Canada commits treason if, while in or out of Canada, he does anything mentioned in subsection (1).

(3) Where it is treason to conspire with any person, the act of conspiring is an overt act of treason. 1953-54, c. 51, s. 46.

47. (1) Every one who commits treason is guilty of an indictable offence and is liable

- (a) to be sentenced to death if he is guilty of an offence under paragraph 46(1)(a), (b) or (c);
- (b) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph 46(1)(d), (f) or (g);
- (c) to be sentenced to death or to imprisonment for life if he is guilty of an offence under paragraph 46(1)(e) or (h), committed while a state of war exists between Canada and another country; or
- (d) to be sentenced to imprisonment for fourteen years if he is guilty of an offence under paragraph 46(1)(e) or (h), committed while no state of war exists between Canada and another country.

(2) No person shall be convicted of treason upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused. 1953-54, c. 51, s. 47.

16 ELIZABETH II

CHAPTER 15

An Act to amend the Criminal Code

(Assented to 21st December, 1967)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor:

“(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

(a) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

(b) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death.”

2. Subsection (3) of section 656 of the said Act is repealed and the following substituted therefor:

“(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.”

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, namely:

(a) the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and

(b) where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court before which the accused is to be tried, and thereafter the offence

shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act.

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed.

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

4. (1) Subject to subsection (2), this Act shall continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force.

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate in respect of any offence alleged by an indictment to have been committed on, or on or about, a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

5. This Act shall come into force on a day to be fixed by proclamation.

TABLE 13

PERSONS CONVICTED, AND CONVICTIONS, FOR INDICTABLE
OFFENCES, AND RATE PER 100,000 POPULATION, 16 YEARS
OF AGE AND OVER, 1963-1967

(updating of Table I in Appendix I of Capital Punishment)

Year	Convictions		Persons	
	Number	Rate	Number	Rate
1963.....	78,518	648	42,914	354
1964.....	76,310	616	42,097	340
1965.....	75,300	594	41,832	330
1966.....	79,865	616	45,670	362
1967.....	76,681	592	45,703	341

—*Statistics of Criminal and Other Offences* 1963, 1964, 1965, 1966, 1967, Dominion Bureau of Statistics, Annual Catalogue No. 85-201, pp. 17 and 19.

TABLE 14

NUMBER OF MURDERS REPORTED BY POLICE TO THE DOMINION
BUREAU OF STATISTICS, AND HOMICIDAL DEATHS; RATE PER
100,000 POPULATION 7 YEARS OF AGE AND OVER, CANADA,
1964-1970

(updating of Table E of Appendix I of Capital Punishment)

Year	Murders known to the police	Homicidal deaths ⁽¹⁾	Murder rate ⁽²⁾	Death rate
1964.....	218	238	1.4	1.4
1965.....	243	255	1.5	1.6
1966.....	220	249	1.3	1.5
1967.....	281	309	1.6	1.8
1968.....	314	328	1.8	1.8
1969.....	342	375	1.9	2.1
1970.....	430 ⁽⁴⁾	⁽³⁾	2.3 ⁽⁴⁾	⁽³⁾

⁽¹⁾Homicidal deaths as officially recorded on provincial death certificates reported to D.B.S. Includes murders, infanticides, non-accidental manslaughters, assaults (by any means) and poisonings (by another person); excludes manslaughter, assaults and poisonings reported by coroners as accidental, homicides as result of intervention of police and legal executions. Deaths are classified by residence. These figures include deaths of Canadian residents occurring in the U.S.A., but exclude deaths of all non-Canadian residents occurring in Canada.

⁽²⁾The population data are taken from the 1961 and 1966 censuses and, for the other years, from official estimates made by D.B.S. between censuses.

⁽³⁾These figures are not available.

⁽⁴⁾Numbers of murders and rate per 100,000 population after adjustment: 391 and 2.1.

—Murder Statistics 1970, Dominion Bureau of Statistics, Annual Catalogue No. 85-209, p. 8.

TABLE 15

TOTAL NUMBER OF ACTUAL OFFENCES AND OFFENCES UNDER
THE CRIMINAL CODE REPORTED OR KNOWN TO THE POLICE,
AND RATE PER 100,000 POPULATION 7 YEARS OF AGE AND OVER

Year	Offences		Offences under the Criminal Code	
	Number	Rate	Number	Rate
1962.....	706,675	5,184.8	514,986	3,338.6
1963.....	874,572	5,560.7	572,105	3,637.5
1964.....	960,917	5,986.4	626,038	3,900.2
1965.....	989,451	6,031.9	628,418	3,831.0
1966.....	1,094,889	6,517.2	702,809	4,183.4
1967.....	1,190,207	6,858.4	786,071	4,529.6
1968.....	1,335,444	7,507.5	897,530	5,045.7
1969.....	1,470,761	8,080.7	994,790	5,465.6

—Crime Statistics (Police) 1963, 1966, 1969, Dominion Bureau of Statistics, Annual Catalogue No. 85-205, p. 14.

TABLE 16
POLICEMEN MURDERED, 1961-1970⁽¹⁾

Year	Total	Rate per 10,000 policemen	Killed accidentally
1961.....	2	0.77	5
2 Montreal, P.Q.			
1962.....	12	4.33	5
1 Joliette, P.Q.			
1 Montreal, P.Q., QPF			
2 St. Laurent, P.Q.			
1 Hamilton, Ont.			
1 Stamford Township, Ont.			
1 Toronto, Ont.			
1 Woodstock, Ont.			
3 Kamloops, B.C., RCMP			
1 Vancouver, B.C.			
1963.....	0	0.00	14
1964.....	3	0.98	7
1 Newfoundland, "B" Division, RCMP			
1 Guelph, Ont. ⁽²⁾			
1 Quebec, P.Q., QPF			
1965.....	2	0.62	3
1 Sudbury, Ont.			
1 Kelowna, B.C., RCMP			
1966.....	3	0.59	9
1 Toronto, Ont., OPP			
1 Saskatchewan, "F" Division, RCMP			
1 Alberta, "K" Division, RCMP			
1967.....	3	0.84	7
1 Acton Vale, P.Q., QPF			
1 Toronto, Ont., HQ, OPP			
1 Alberta, "K" Division, RCMP			
1968.....	5	1.34	10
1 Greenfield Park, P.Q.			
1 Montreal, P.Q.			
1 Hamilton, Ont.			
2 Toronto, Ont., HQ, OPP			
1969.....	5	1.30	9
1 Montreal, P.Q.			
1 Montreal, P.Q., QPF			
1 Sandwich West, Ont.			
1 Toronto, Ont.			
1 St. Boniface, Man.			
1970.....	3	0.75	⁽³⁾
1 Winnipeg, Man.			
2 MacDowall, Sask., RCMP			

—*Police Administration Statistics 1963, 1968, 1969, Dominion Bureau of Statistics, Annual Catalogue No. 85-204, pp. 21, 22, 23.*

QPF—Quebec Police Force (until 1968, Quebec Provincial Police)

OPP—Ontario Provincial Police

RCMP—Royal Canadian Mounted Police

HQ—Headquarters

⁽¹⁾ The policemen are members of one of the following police forces: Royal Canadian Mounted Police, Ontario Provincial Police, Quebec Police Force, municipal police forces (excluding agreements between the RCMP and the OPP), Canadian National Railways Police, Canadian Pacific Railway Police, National Harbours Board Police.

⁽²⁾ This case involves a policeman who was killed while he was off duty.

⁽³⁾ This information is not available.

TABLE 17
PRÉVOST COMMISSION—PUBLIC OPINION POLL ON THE
DEATH PENALTY

(Appendix 4, Volume 1)

TABLE 12, p. 115

Type of penalty	<i>Penalties for murder by region</i>				
	Montreal	Large ⁽¹⁾ cities	Average- sized ⁽²⁾ cities	Rural ⁽³⁾ areas	Quebec average
	%	%	%	%	%
Death penalty.....	38.8	47.7	42.7	50.5	44.0
Life imprisonment.....	50.0	44.0	47.0	39.5	45.8
Prison term.....	10.1	7.6	8.7	7.7	8.9

TABLE 19, p. 125

Type of penalty	<i>Penalties for murder by age</i>				
	18-24	25-34	35-44	45 and over	Quebec average
	%	%	%	%	%
Death penalty.....	26.8	46.0	46.4	49.1	44.0
Life imprisonment.....	59.9	43.9	44.3	41.9	45.8
Prison term.....	11.8	9.2	7.7	8.2	8.9

TABLE 34, p. 142

Type of penalty	<i>Penalties for murder by level of education</i>			
	0-7 years	8-12 years	13 years or more	Quebec average
	%	%	%	%
Death penalty.....	52.9	40.5	40.1	44.0
Life imprisonment.....	35.7	51.2	47.7	45.8
Prison term.....	10.3	7.6	10.6	8.9

N.B. 36.6 per cent of the professionals and technicians and 46.1 per cent of blue-collar workers support the death penalty, as do 37.9 per cent of people with incomes below \$10,000 and 51.7 per cent of those with incomes below \$4,000.

TABLE 96, p. 210

Type of penalty	<i>Penalties for murder by language spoken</i>		
	French	English and other	Montreal average
	%	%	%
Death penalty.....	44.5	29.0	38.8
Life imprisonment.....	45.4	53.0	50.0
Prison term.....	9.2	11.6	10.1

(1) This group consists of the most populous cities after Metropolitan Montreal, where the Commission conducted its polls. They are Rimouski, Chicoutimi, Metropolitan Quebec, Trois-Rivières, Sherbrooke, Hull, Rouyn-Noranda, Sept-Îles.

(2) This group consists of towns of 5,000 inhabitants and over, where the Commission conducted its polls. They are Chambly, the city of Granby, La Tuque, St-Georges West, Cap-de-la-Madeleine, Cowansville, Arvida, St-Jean d'Iberville, Granby Canton, Beauharnois.

(3) This group consists of towns of less than 5,000 inhabitants, where the Commission conducted its polls. They are St-Michel de Squatteck, Ste-Françoise, Berthier, St-Bernard, Sault au Mouton, St-Eloi, Waterville, Bourget, Evain Canton, St-Lambert de Lauzon, St-Jérôme Canton, Ste-Félicité, Ste-Justine, St-Siméon, St-Agapit, Trinité des Monts, St-Mathias, St-Gabriel de Brandon, Marieville, Allevyn et Cawood Canton.

Third Session, Twenty-Eighth Parliament,
19 Elizabeth II, 1970

THE HOUSE OF COMMONS OF CANADA

BILL C-85

An Act to amend the Criminal Code

(*Kidnapping*)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Subsection (1) of section 233 of the *Criminal Code* is repealed and the following substituted therefor:

- "233. (1) Everyone who kidnaps a person with intent
- (a) to cause him to be confined or imprisoned against his will,
 - (b) to cause him to be unlawfully sent or transported out of Canada against his will, or
 - (c) to hold him for ransom or to service against his will,

is guilty of an indictable offence and is liable to the *death penalty*."

Tabled by Réal Caouette

Third Session, Twenty-Eighth Parliament,
19 Elizabeth II, 1970

THE HOUSE OF COMMONS OF CANADA

BILL C-171

An Act to amend the Criminal Code

(*Kidnapping*)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Section 233 of the *Criminal Code* is repealed and the following substituted therefor:

"233. (1) Every one who, under the guise of political motivation, kidnaps a person with intent to intimidate or coerce the government, whether such government be federal, provincial or municipal, or with the purpose of bringing about any governmental, social, industrial or economic change within Canada by use or threat of force, violence, terrorism or physical injury to persons or damage to property, is guilty of an indictable offence and is liable to be sentenced to death.

(2) Every one who kidnaps a person with intent

(a) to cause him to be confined or imprisoned against his will,

(b) to cause him to be unlawfully sent or transported out of Canada against his will, or

(c) to hold him for ransom or to service against his will,
is guilty of an indictable offence and is liable to imprisonment for life.

(3) Every person who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of an indictable offence and is liable to imprisonment for five years.

(4) In proceedings under this section the fact that the person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by threats, duress, force or exhibition of force."

Tabled by Robert Thompson

TABLE 18

DISPOSITION OF CAPITAL CASES, 1965-1970
(updating of Table A in Appendix D of Capital Punishment)

Year	Sentenced to death		Executed	Commuted	Otherwise ⁽¹⁾
	Males	Females			
1965..... (since May 25) ⁽²⁾	9	0	0	6	3
1966.....	11	0	0	10	1
1967.....	10	0	0	8	2
1968.....	1	0	0	1	0
1969.....	0	0	0	0	0
1970.....	3	0	0	2	1 ⁽³⁾
Total.....	34	0	0	27	7

(1) "Otherwise" includes a decision of the Court of Appeal of a province or of the Supreme Court of Canada which results in the accused being acquitted, or his entering a plea of guilty to a lesser offence included in capital murder (non-capital murder, manslaughter), or the ordering of a new trial.

(2) This figure excludes convictions prior to May 25, 1965.

(3) This is an appeal to the Supreme Court of Canada, which is to be heard at the 1971 fall session.

TABLE 19

CAPITAL CASES CONSIDERED BY GOVERNOR IN COUNCIL,
1965-1971 (to 15/9/71)
(updating of Table B in Appendix I of Capital Punishment)

Year	Cases	Executed	Commuted
1965 (since May 25).....	5	0	5
1966.....	4	0	4
1967.....	5	0	5
1968.....	18	0	18
1969.....	1	0	1
1970.....	1	0	1
1971 (up to September 15).....	1	0	1
Total.....	35	0	35

TABLE 20

CAPITAL CASES CONSIDERED BY GOVERNOR IN COUNCIL FOR
FOUR PERIODS SINCE 1950
(updating of Table C in Appendix I of Capital Punishment)

Period	Cases	Executed		Commuted	
		No.	Per cent	No.	Per cent
			%		%
From Jan. 1, 1951 to June 30, 1957.....	90	55	61.1	35	38.9
From July 1, 1957 to April 15, 1963.....	66	14	21.2	52	78.8
From April 16, 1963 to May 25, 1965.....	14	0	0.0	14	100.0
From May 26, 1965 to Sept. 15, 1971.....	35	0	0.0	35	100.0

TABLE 21
 CAPITAL CASES IN WHICH POLICEMEN WERE VICTIMS IN COURSE
 OF DUTY FROM MAY 25, 1965 TO SEPTEMBER 15, 1971
 (updating of Table F in Appendix I of Capital Punishment)

Victim	Motive	Murder Weapon	Year Convicted	Recommendation for Mercy		Executed or Commuted
				Judge	Jury	
RCMP ⁽¹⁾	Escape arrest	Revolver	1965	Yes	No	Commuted
City constable	No motive	Revolver	1967	Yes	Yes	Commuted
RCMP	Vengeance	Rifle	1968	No	Yes	Commuted
City constable	No motive	Shotgun	1970	No	No	Commuted
City policeman	Escape arrest	Revolver	1970	No	Yes	Commuted
City detective	Escape arrest	Revolver	1970	No	No	Commuted

⁽¹⁾RCMP—Royal Canadian Mounted Police

TABLE 22

**LEADING CHARACTERISTICS OF CAPITAL MURDERS CONSIDERED
BY GOVERNOR IN COUNCIL SINCE MAY 25, 1965**
(updating of Table D in Appendix I of Capital Punishment)

Case	Age	Date of decision by Governor in Council	Motive	Recommendation of mercy		Murdered
				Jury	Judge	
86	18	November 10, 1965	Escape arrest	yes	yes	24-year-old R.C.M.P.
87	22	November 10, 1965	Robbery (with violence)	yes	yes	78-year-old man
88	43	November 29, 1965	Sexual assault	no	no	13-year-old boy
89	64	November 29, 1965	Revenge-resentment	yes	no	52-year-old man (acquaintance)
90	25	November 29, 1965	Armed robbery	no	no	55-year-old furrier
91	19	January 14, 1966	Motiveless	no	no	48-year-old prison officer
92	24	May 12, 1966	Revenge-jealousy	no	yes	21-year-old wife
93	25	August 3, 1966	Armed robbery	no	no	43-year-old assistant bank manager
94	30	October 6, 1966	Armed robbery	yes	no	71-year-old bank manager
95	36	January 24, 1967	Quarrel	yes	yes	42-year-old mistress
96	32	January 24, 1967	Revenge-jealousy	yes	yes	20-year-old sister-in-law
97	28	May 2, 1967	Revenge-jealousy	yes	no	25-year-old inmate
98	30	May 25, 1967	Suicide pact	yes	yes	51-year-old mistress
99	22	December 27, 1967	Revenge-quarrel	no	no	23-year-old man (acquaintance)
100	19	January 4, 1968	Armed robbery	yes	yes	44-year-old taxi driver
101	28	January 4, 1968	Robbery (with violence)	yes	no	56-year-old woman (neighbour)
102	53	January 4, 1968	Revenge	no	no	52-year-old painting contractor
103	31	January 4, 1968	Revenge	yes	no	41-year-old inmate
104	23	January 4, 1968	Fear of victim	no	no	21-year-old man (acquaintance)
105	19	January 4, 1968	Motiveless	yes	yes	24-year-old wife
106	23	January 4, 1968	Robbery (with violence)	yes	yes	66-year-old gas station attendant
107	33	January 4, 1968	Revenge-jealousy	yes	no	22-year-old mistress
108	42	January 4, 1968	Remove obstacle to marriage	no	no	40-year-old wife
109	29	January 4, 1968	Revenge-jealousy	no	no	Woman (acquaintance)
110	37	January 4, 1968	Robbery (with violence)	no	yes	74-year-old woman (acquaintance)
111	35	January 4, 1968	Armed robbery	yes	no	64-year-old bartender
112	45	January 4, 1968	Sexual assault	no	no	16-year-old girl
113	31	January 4, 1968	Armed robbery	yes	no	41-year-old man
114	34	January 4, 1968	Quarrel	yes	no	36-year-old woman (acquaintance)
115	31	January 4, 1968	Quarrel	yes	no	36-year-old woman (acquaintance)
116	33	January 4, 1968	Armed robbery	no	no	56-year-old vice-president of a fire-arm store
117	21	January 4, 1968	Armed robbery	no	no	Idem
118	32	July 3, 1969	Revenge	yes	yes	34-year-old R.C.M.P.
119	52	December 23, 1970	Armed robbery	yes	no	26-year-old constable
120	23	February 4, 1971	Motiveless	no	no	22-year-old constable

^(a)The premeditation in question is the more or less long-term preparation of the murder itself or of the criminal act which caused or accompanied it. It is a question of fact and of personal judgment; it is not the legal concept of "planned and deliberate" murder found in former section 202A of the Criminal Code.

Murder weapon	Whether murder pre- meditated ⁽¹⁾	Mental condition	Commuted or Executed
Revolver	no	Personality disorder; aggressive, hostile and antisocial—no psychosis...	Commuted
Choking	no	Mental deficiency—no sign of psychosis.....	Commuted
Choking, strangling	yes	Sexual psychopath—chronic and irreversible psychotic behaviour— sexual monster unable to control his instincts.....	Commuted
Bomb	yes	Weakened psychism of a psychotic type—gradual and chronic brain deterioration.....	Commuted
Pistol	no	Paranoid schizophrenic.....	Commuted
Knife	yes	Very aggressive psychopath—no psychosis—sociopathic personality disturbance.....	Commuted
Revolver	yes	Psychopathic personality of an asocial type—no mental illness.....	Commuted
Gun	yes	Personality disturbance of a sociopathic type, with marked antisocial tendencies—no psychosis.....	Commuted
Gun	yes	No information.....	Commuted
Gun	yes	Schizoid personality of a passive-aggressive type—no psychosis.....	Commuted
Rifle	yes	Deep neurotic complex—depressed and irrational—no psychosis.....	Commuted
Knife	yes	Rather pronounced neurosis—no psychosis—personality disturbance of a sociopathic type.....	Commuted
Gun	yes	Schizophrenic—fundamentally unstable personality.....	Commuted
Revolver	no	Characterial neurosis of a depressive type—sociopathic behaviour.....	Commuted
Gun	yes	No information.....	Commuted
Stabbing	no	Not insane.....	Commuted
Gun	yes	No information.....	Commuted
Iron bar	yes	No information.....	Commuted
Revolver	yes	No information.....	Commuted
Gun	no	No psychosis—persecution complex—depression—sexual problems.....	Commuted
Iron bar	yes	No information.....	Commuted
Thrown from car	yes	No information.....	Commuted
Poison	yes	No information.....	Commuted
Rifle	—	No information.....	
Stabbing	no	Pathological personality of an antisocial type with schizoid behaviour— sexual problems—paranoid tendencies.....	Commuted
Gun	no	No information.....	Commuted
Bludgeon and strangling	yes	No information.....	Commuted
Gun	no	No psychosis—history of improper social adaptation.....	Commuted
Beating	no	No information.....	Commuted
Beating	no	No information.....	Commuted
Gun	no	Aggressive personality, affective retardment.....	Commuted
Gun	no	Characterial neurosis of a depressive type.....	Commuted
Gun	yes	Antisocial personality of an aggressive and explosive type.....	Commuted
Gun	no	Sociopathic personality of a dysocial type.....	Commuted
Gun	no	Deep personality disturbance—no sign of psychosis—brief amnesic periods due to liquor and tranquillizers.....	Commuted

TABLE 23

REPORTED CASES OF POLICE OFFICERS KILLED ON DUTY BY
CRIMINAL ACTION FROM 1964 TO 1970

(Updating of Table G in Appendix I of Capital Punishment)

April 5, 1964
1 victim

(This offence occurred in Guelph, Ontario, but the police officer was off duty when he was killed)

Case no. 12
October 31, 1964
1 victim

The killing took place in Trois-Pistoles, Quebec, and the victim was a corporal in the Quebec Provincial Police. The victim died as a result of being shot by the accused when he went to the latter's home accompanied by two constables to serve a court summons. Accused was 48 years of age. He was charged with capital murder, but was found not guilty by reason of insanity.

Case no. 13
December 17, 1964
1 victim

The killing took place in Whitbourne, Newfoundland, and the victim was a constable in the R.C.M.P. The accused and three accomplices escaped from St. John's Penitentiary and were located at 8.20 A.M. by two police officers who chased them. The escapees were able to disarm the other constable and used his revolver to shoot the victim. The accused was 18 years old. He was convicted of capital murder and the sentence was subsequently commuted to life imprisonment.

Case no. 14
April 10, 1965
1 victim

The killing took place in Kelowna, British Columbia, and the victim was a constable in the R.C.M.P. Two police officers attended at the accused's cabin to investigate a report that he was holding a girl against her will. Upon approaching the cabin one constable was shot and killed with a .22 calibre rifle. The accused, age 59, committed suicide.

Case no. 15
October 14, 1965
1 victim

The killing took place in Sudbury, Ontario. The victim was a police sergeant in the Sudbury Police Department. The victim, accompanied by a constable, had proceeded to a Sudbury residence to take into custody a probationer for return to a mental hospital. As the victim was knocking on the door, a single shot was fired through that door penetrating his heart; he died instantly. The accused used a .300 calibre Savage rifle. Following a tear gas attack, police entered the residence but found the accused dead; he had committed suicide by shooting himself with the same rifle.

Case no. 16
April 4, 1966
1 victim

The killing took place in the suburbs of the city of Ottawa. The victim, an Ontario Provincial Police constable, age 30, was escorting a mentally disturbed person for committal to a local Sanatorium when the patient broke free and ran out into the grounds of the institution. The victim gave chase and caught up to the patient; a scuffle ensued during which the patient was able to take the officer's .38 calibre colt revolver and shoot him several times. The accused, age 26, was arrested and subsequently charged with capital murder. A jury brought in a verdict of not guilty by reason of insanity and he was ordered confined to the Ontario Hospital at Penetanguishene.

Case no. 17
October 26, 1966
1 victim

The offence took place in Willow Bunch, Saskatchewan. The victim was the Willow Bunch Town constable. While answering a domestic complaint, he was met at the door of his residence by the accused, who was armed with a .22 calibre rifle. The constable retreated; however, the accused followed him and shot him three times. The accused, age 28, was acquitted of capital murder by reason of insanity.

*Case no. 18
November 22, 1966
1 victim*

This offence occurred in the Stony Plain District of Alberta. The victim was a constable in the R.C.M.P. The accused was involved in a fight in a cafe after which he left the cafe, acquired a .303 calibre rifle and returned to the cafe. In the meantime, the police constable had arrived at the cafe to investigate the reported disturbance. The accused, upon entering the cafe, shot and killed the constable, wounded one of the men he had been fighting with, then shot and wounded one of the cafe patrons. The charge of capital murder against the accused was reduced to non-capital murder and he was sentenced to life imprisonment. He was 22 years old.

*Case no. 19
June 23, 1967
1 victim*

This offence occurred in Grande Prairie, Alberta, and the victim was a corporal in the R.C.M.P. The accused called the police office stating that he had killed his wife. Two policemen went to the address given and upon approaching the residence one of the policemen was shot from ambush with a .22 calibre rifle. The accused had strangled his common law wife prior to the arrival of the police. The accused was convicted of capital murder and the sentence was subsequently commuted to life imprisonment. He was 30 years old at the time of the offence.

*Case no. 20
June 28, 1967*

At night on this date the Chief of Police of Acton Vale, P.Q., responded to a call for assistance by one of his police officers, to intercept the accused, who had driven his automobile in a dangerous manner in the streets of the community. While the police chief was attempting to intercept the vehicle there was an exchange of shots and the police chief and the accused were mortally wounded. At the coroner's inquest a verdict was rendered to the effect that if the accused had survived he would have been held criminally responsible for the death of the police chief.

*Case no. 21
August 19, 1967
1 victim*

The killing took place in the rural area of Monkton, Ontario. The victim, an Ontario Provincial Police constable, age 38, had patrolled to a farm in the area to investigate a family quarrel. Accompanying him was a local Justice of the Peace. As the victim pulled to a stop in the farmyard, he was fired upon from within the farmhouse, one bullet entering his head, killing him instantly. The Justice of the Peace, age 78, in an effort to escape from the police vehicle was shot through the left shoulder; the resultant internal bleeding and shock brought on death. Reinforcements arrived at the scene, and following a tear-gas attack on the house, it was entered by officers, where they found the accused, age 42, dead, having committed suicide by shooting himself. A Mauser 8 m.m. rifle was used in this double murder and suicide.

*Case no. 22
January 5, 1968
1 victim*

On this date a detective-sergeant of the Municipal Police of Greenfield Park, P.Q., was at a branch of a banking institution, exercising surveillance, when four individuals entered the bank to commit armed robbery. The police sergeant identified himself and there was an exchange of gun-fire. One robber was wounded. The police officer died some days later as a result of his wounds. The accused was sentenced to prison for life.

*Case no. 23
May 8, 1968
1 victim*

The killing took place in Montreal, P.Q. The victim was a detective of the Montreal City Police. The victim went to an apartment house to arrest a prison escaper. On opening the door of the apartment the victim was struck in the chest by a bullet from a 9 m.m. Luger, fired by the escaper, who was hidden behind furniture in the darkness. The escaper, who was aged 23 years, turned his weapon on himself and committed suicide.

*Case no. 24
December 11, 1968
2 victims*

These killings took place in Minden, Ontario. The two victims, both members of the Ontario Provincial Police, one a sergeant, age 38, and the other a corporal, age 43, were part of a team of officers who attempted to arrest the accused, age 35, who earlier had made threats to kill members of his own family. Both victims walked up to place of residence of accused in an effort to reason with him. He met them in the doorway of his home. Accused opened fire using a 44.40 calibre Winchester rifle on the victims, shooting the sergeant twice and the corporal once; both died instantly. Accused was overpowered by other officers and was later charged with two counts of capital murder. At his trial he was found not guilty by reason of insanity and committed to the Ontario Hospital at Penetanguishene.

*Case no. 25
December 22, 1968
1 victim*

This killing took place in the city of Hamilton, Ontario. The victim was a police sergeant, Hamilton Police Department. Victim was on a special patrol in company with other officers and was in the process of checking a residence to question suspects in a number of break and enterings when he and one other officer were attacked by five men who came out of the house. During the scuffle, the victim was shot twice with a .38 calibre revolver, through the left chest and the left armpit, and was severely kicked about the head. Death was almost instantaneous. Five persons were arrested and charged with capital murder, Section 206 C.C. Dispositions were as follows:

- 1st accused—age 27 years—convicted of manslaughter, Sec. 207—14 years.
- 2nd accused—age 28 years—convicted of manslaughter, Sec. 207—14 years.
- 3rd accused—age 26 years—convicted of manslaughter, Sec. 207—8 years.
- 4th accused—age 31 years—convicted of manslaughter, Sec. 207—7 years.
- 5th accused—age 31 years—convicted of assault on a police officer, Sec. 232(2)(a)—6 months definite, 6 months indefinite.

*Case no. 26
May 12, 1969
1 victim*

The killing occurred at Montreal, P.Q. The victim was a constable of the Montreal City Police. The accused had just escaped from penitentiary and was being pursued by several police vehicles. Upon reaching an intersection where a barricade had been erected, the accused struck the police car, then struck the victim who was standing near his vehicle, and crushed him with the wheels of his stolen truck. The accused pleaded guilty to manslaughter and was sentenced to 15 years in prison. He was 30 years of age.

*Case no. 27
July 18, 1969
1 victim*

The killing took place in St. Boniface, Manitoba, and the victim was a police constable who was responding to a burglar alarm at a local store. When he stepped out of the cruiser car he was shot by one of the hold-up men. Four men were charged with capital murder. Three men were convicted of non-capital murder and sentenced to life imprisonment. The fourth man was convicted of capital murder but his sentence was commuted to life imprisonment.

*Case no. 28
August 23, 1969
1 victim*

This killing took place in the town of Sandwich West, Ontario. The victim, a police constable, Sandwich West Police Department, was responding to a call concerning domestic complaint. As he approached the residence of the accused, he was shot and killed. There were three shots fired into the victim. Two other

Sandwich West Police constables who went to assistance were also shot by the accused and wounded. One member lost sight of one eye and the second suffered the loss of a lung. The accused, age 24, was arrested and charged with capital murder. He was found guilty and sentenced to hang. Sentence was commuted to life imprisonment.

*Case no. 29
October 5, 1969
1 victim*

The killing took place in Toronto, Ontario. The victim was a police constable. Victim was on special patrol in a police vehicle when it is believed he stopped a person for investigation. The police officer's dead body was found several hours later, shot three times with his own weapon. The accused was 22 years of age. He was convicted of non-capital murder and sentenced to life imprisonment.

*Case no. 30
October 7, 1969
1 victim*

The killing occurred in Montreal, P.Q. The victim was a Quebec Provincial Police corporal who had gone to a place where a disturbance was taking place. The Municipal Police had decided not to work. In the course of this disturbance some shots were fired and the corporal was killed. It was not possible to discover the person who caused this death.

*Case no. 31
June 27, 1970
1 victim*

Two detectives from the Winnipeg Police Department were on stake-out duty in search of a suspect responsible for several violent sexual offences. When attempting to apprehend a male suspect believed to be responsible for the offences, one of the detectives was stabbed twice in the chest with a knife, one of the wounds penetrating the heart and being fatal. His partner was also severely stabbed in the chest, but survived the wounds. The suspect seized a revolver from one of the victims and fired two shots at the detectives lying on the ground, but missed. The suspect, aged 35 years, was subsequently arrested and convicted on a charge of capital murder and sentenced to be hanged. However, his appeal (as of September 23, 1971) is presently before the Supreme Court of Canada.

*Case no. 32
October 9, 1970
2 victims*

This offence occurred in the MacDowall District of Saskatchewan. The victims were a sergeant and a constable in the R.C.M.P. The policemen went to the home of the accused to investigate a complaint of unlawfully discharging a firearm. The constable was shot as he stood in the doorway to the residence of the accused and the sergeant was shot a short distance from the dwelling. A .303 calibre rifle was used. The accused was 40 years of age and he committed suicide before he could be taken into custody.

APPENDIX 5*

TABLE 24

STUDY BY REV. FATHER JOSEPH VERNET

Country	Insanity		Escapes		Suicides		Deaths			Number of lifers who died in 1960	Punishments	
	Number of lifers	Cases of insanity	Suc- ceeded	At- tempted in 1960	Homi- cides	Suicides & attempts in 1960	Average age in 1960				Days in cell	Various punish- ments in 1960
							Whole penal population	Lifers				
								Alive	Dead			
Austria.....	155	3	2	0	2	1	34 years	42 years	43 years	2	107	47
Belgium.....	101	1	0	0	57	1	—	47 years	—	0	—	20
Denmark.....	33	0	3	0	15	1	26 years	38 years	—	0	31	—
Italy.....	673	16	4	0	51	1	30 years	54 years	64 years	1	171	75
Norway.....	3	0	0	0	3	0	45 years	44 years	—	0	—	—
Netherlands.....	11	0	0	0	—	0	47 years	46 years	—	0	Life for murder of inmate	—
Switzerland.....	33	1	1	2	—	0	38 years	42 years	—	0	10	—

Les crimes de sang nécessitent-ils une répression sanglante? R. F. Joseph Vernet, S.J. in *Pena de Worte* vol. I, pp. 378-380

*Appendix to Chapter 7—Arguments for and against capital punishment.

TABLE 25
LEADING CIRCUMSTANCES OF CAPITAL MURDERS IN CANADA,
FROM 1867 TO 1971

Category	Number	Percentage
Offences involving inmates and staff of welfare institutions	23	1.5
Offences involving a sexual element (other than family altercations) ..	114	7.4
Attacks on police officers	76	5.0
Attacks on civilians intervening to prevent crime or a breach of the peace	5	0.3
Attacks resulting from family altercations (including those which occurred outside the house)	314	20.5
Attacks resulting from domestic (residence) altercations other than family (including those which occurred in or around the house concerned)	187	12.2
Attacks resulting from altercations between people who were working together	61	4.0
Attacks in or around places of public entertainment	26	1.7
Robbery	393	25.7
Attacks in streets and other public places, e.g. woods, parks, etc. (excluding attacks in or around places of public entertainment and robbery) following quarrels, or provocative behaviour by the victim or in which it was known that there was some previous association between the offender and the victim	139	9.1
Attacks, etc. in streets and other public places (excluding attacks in or around places of public entertainment and robbery) in which there is neither specified provocation by the victim nor any other previous connection between offender and victim	34	2.2
Other	107	7.0
No information	52	3.3
TOTAL	1,531	99.9

TABLE 26
RELATIONSHIP OF VICTIM TO OFFENDER AT THE TIME OF THE
OFFENCE OF CAPITAL MURDER IN CANADA, FROM 1867 TO 1971

Victim	Number	Percentage
Wife	153	10.0
Husband	30	2.0
Mother	8	0.5
Father	13	0.8
Son	18	1.2
Daughter	16	1.0
Brother	15	1.0
Sister	3	0.2
Other relative	58	3.8
Sweetheart	35	2.3
Mistress	58	3.8
Friend	380	24.8
Acquaintance	328	21.4
Stranger	255	16.7
Policeman	78	5.1
Prison Officer	9	0.6
Employer	9	0.6
Other	9	0.6
No information	56	3.7
TOTAL	1,531	100.1

TABLE 27
MOTIVES OR CAUSES OF CAPITAL MURDERS IN CANADA,
FROM 1867 TO 1971

Motive or cause	Number	Percentage
Robbery.....	421	27.5
Intoxication.....	11	0.7
Revenge.....	187	12.2
Jealousy.....	68	4.4
Quarrel.....	138	9.0
Brawl.....	25	1.6
Sexual Assault.....	72	4.7
Sexual Passion.....	35	2.3
Insurance.....	20	1.3
Money.....	6	0.4
Inheritance.....	10	0.7
Illegal operation.....	11	0.7
Remove obstacle to marriage.....	55	3.6
Escape arrest.....	71	4.6
Escape custody.....	11	0.7
Escape discovery.....	10	0.7
Political.....	5	0.3
Motiveless (i.e. bizarre, incomprehensible).....	114	7.4
Revenge/jealousy.....	39	2.5
Revenge/quarrel.....	19	1.2
Sexual passion/motiveless.....	2	0.1
Quarrel/brawl.....	7	0.5
Quarrel/motiveless.....	4	0.3
Quarrel/robbery.....	4	0.3
Gain/remove obstacle to marriage.....	3	0.2
Revenge/quarrel/brawl.....	6	0.4
Intoxication/revenge/quarrel.....	5	0.3
Arrest/custody.....	1	0.1
Jealousy/sexual.....	1	0.1
Intoxication/quarrel.....	3	0.2
Suicide pact.....	2	0.1
Revenge/jealousy/quarrel.....	12	0.8
Other.....	99	6.5
No information.....	54	3.5
TOTAL.....	1,531	99.9

APPENDIX 6*

TABLE 28

ACTUAL LENGTH OF INCARCERATION OF PRISONERS SUBJECT TO AN ALTERNATIVE SANCTION (IN YEARS)

Country	Average	Median	Minimum	Maximum
Afghanistan.....	15-20	—	—	—
Australia.....	15-16	—	—	—
Central African Republic.....	—	15 ^a	10	20
Chad.....	20	10	5	20
Cyprus.....	11.5	20	—	20
Ivory Coast.....	14	20	5	natural life
Japan.....	13.9	10 ^b	9.1	23.5
Malawi.....	10	10	10	15
Malta.....	14	—	—	—
Nigeria.....	14	12	12	16
Republic of Vietnam.....	—	—	2	10
Trinidad.....	13.25	13	10.8	16.75
United Kingdom.....	8.7	9	.2	22
Upper Volta.....	15	20	15	25

^aThis is the median length for "temporary forced labour"; for "perpetual forced labour" the median length is twenty-five years.

^bThe Japanese figure excludes offenders receiving an alternative penalty by virtue of their age; for that group the median length is seven years.

—*Capital Punishment: Developments 1961 to 1985*, United Nations, p. 32

*Appendix to Chapter 8—An alternative sanction.

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