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THE DEATH PENALTY: WILL CANADA OR BRITAIN
RESTORE THIS PUNISHMENT?

Jayne Seagrave

1985

"Submitted to the Department of Criminology, University of
Ottawa, in partial fulfillment of the requirements for the
degree of Master of Arts."

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ISBN 0-315-30950-4

Acknowledgement

The planning and execution of this study would not have been possible without the support of three individuals and one organisation.

I would like to thank Rotary International for initially providing the funding which enabled me to study in Canada. Likewise, I would like to acknowledge Professor R. Hastings who also assisted greatly with the high cost of studying abroad.

Dr. C.H.S. Jayewardene proved to be an excellent thesis adviser, consistently offering clear and sound advice. I am extremely grateful to him.

Finally, Mr. C.P. Soar was a constant source of encouragement, never doubting that I would not complete this thesis, even when I felt it to be an impossibility.

This thesis would not have been written had it not been for these four, to whom I am indebted.

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INTRODUCTION

Arguments for and against the death penalty are deeply rooted in people's convictions about the nature of crime, the character of the criminal and the basic order of society. (Bowers. 1974). In this way the debates surrounding the death penalty have been waged at an emotional level, with the decision to abolish or restore this punishment not having been undertaken lightly in most democratic countries.

The author first became interested in the capital punishment debate while living in Britain during the seventies. Despite the fact that the death penalty had been abolished in 1969; in this country it was regularly introduced into the Parliamentary debates of this decade. After arriving in Canada, and witnessing the same pressure for restoration, although not through the vehicle of Parliament, the question as to why a country would restore the death penalty was proposed.

The purpose of this inquiry was thus to determine what forces were necessary for a country to consider the restoration of the death penalty, and, moreover to address the specific question as to whether Canada or Britain will restore the punishment. To be able to provide answers to these questions this study has been formulated in the following way.

The first chapter will be concerned with demonstrating

the principle arguments for and against the death penalty which have been waged over the centuries, to illustrate how these debates have been fought. Details will then be given of those countries and states that have restored the death penalty, and the reasons which have been advanced for their readoption of this punishment. By obtaining this data it will be possible to ascertain whether there have been any similarities in these countries' decision to introduce, and by comparing these similarities it will be possible to form the hypothesis.

The second chapter will involve a discussion of the methodology adopted for this study, and in the third chapter the hypothesis will be tested. By tracing the history of the abolition movement in both Canada and Britain, and by looking closely at the events concerning the death penalty which have occurred since these countries obtained de jure abolition, the hypothesis will be tested and it will be possible to determine whether the conditions necessary for the restoration of the death penalty are in existence.

The final chapter will be concerned with a wider analysis of why a country will consider the restoration of the death penalty, while at the same time suggesting reasons as to why Canada and Britain, although having received pressure to restore capital punishment have not done so.

CHAPTER I

THE ABOLITION AND RESTORATION
OF THE DEATH PENALTY

Arguments Concerning the Death Penalty

Arguments for and against the death penalty have been advanced for the last two hundred years. Ever since the Abolition Movement challenged the existence of capital punishment, individuals or groups of people have been advancing their opinions, providing arguments and counter arguments to add credence to their beliefs. The subject has produced a number of issues often debated with a great deal of fervour and emotion, and even today we see the same arguments being advanced to either advocate the reintroduction of capital punishment, or to promote its abolition. Interestingly enough these arguments revolve around the same ideas: for example, the retentionists claim that the penalty is a deterrent - the abolitionists claim that it is not; the abolitionists believe that it is not enforced equally - the retentionists believe it is. The debates are thus of a repetitive nature.

Probably the most fundamental argument advanced in this debate is that of deterrence. The deterrent effect of capital punishment, Fattah claims, became the focal point in arguments to support its retention or its reintroduction, and continues to be presented by its supporters as an indisputable justification for the state's deliberate taking of human life. (22. p29). The retentionists contend that the infliction of punishment on the offender deters others from committing crimes because it demonstrates to them what will

happen if they violate the law. (53. p60). As the death penalty is the severest punishment that could be inflicted, the general deterrent effect of it, it is argued, is great as most people will not commit a serious crime if they are aware that the consequence would be execution. Retentionists believe that the instinct for self preservation is so great that it will deter potential murderers and that, without this sentence, more odious crimes will be committed.

It is not just as a general deterrent however that this penalty is seen as important for retentionists. Like all other punishments it has a specific deterrent effect but, unlike other punishments an extremely broad specific deterrence. Van den Haag has argued that the death penalty is the only sentence which could deter three separate categories of offenders. (53. p212). First there are those convicts who are already serving life terms and consequently have nothing to lose by, for example, killing a prison guard; secondly, the death sentence would prevent those who have already killed once and would consequently kill again, such as in a hostage situation. Finally, there are the traitors and spies who, in times of war, could only be restrained by death. Although little research evidence exists to support this premise, Ehrlich used F.B.I. data to prove his hypothesis that the homicide rate, as a dependent variable, was a function of several independent variables,

including unemployment, labour force participation, age distribution, per capita income and probabilities of apprehension, conviction and execution. (40. p490). From these variables he made predictions and found that the relative magnitude of apprehension, convictions and execution variables were in line with his predictions, and therefore that each execution had served to deter seven to eight murders.

The findings of Ehrlich were criticized with McGahey arguing that he had relied far too strongly upon an economic analysis of criminality. (40. p498) while Bowers and Pierce asserted that Ehrlich provided no reliable evidence that the death penalty deters murders. (6). Frost (23. p73) too believed it to be erroneous to view capital punishment as a means of reducing the homicide rate, but the econometric model used by Ehrlich was probably most successfully disputed by Sellin. (50).

The abolitionists concede that if the death penalty is a deterrent it would be logical to maintain it, however, there is no justification for its retention as there is no empirical evidence to show that the death penalty deters potential criminals. Each instance of a capital offence, they point out, is an example of the failure of the threatened punishment to act as a deterrent. As most murders are crimes of passion, the psychological mechanism

of deterrence is non-operational, the death penalty would not deter an act which is not premeditated, and on most occasions is one of impulse. (53. p223).

Undoubtedly the most celebrated empirical study which tests the deterrent effect of capital punishment has been conducted by Sellin. In his research he looked at States that had temporarily or permanently abandoned the death penalty for murder and observed the incidence of crime in these States, then compared it to the experience of their retentionist neighbours. The comparative study led Sellin to the conclusion that there could be

no support for the belief in the deterrent power of the death penalty. Within each cluster of States, abolitionist and retentionist States yield rates remarkably similar to both size and trend and generally favour the abolitionist States. (50. p172).

Sellin chose States that were about the same size in population, of similar distribution of population and of similar wealth. He noted, for example, that homicide rates in Michigan, Ohio and Indiana were very similar even though Michigan had not had the death penalty since 1846. This led him to conclude that the death penalty did not influence homicide rates. (It should be noted that Sellin's work did not receive uniform acceptance. Wilson. (56. p19) has questioned Sellin's methodology of "Matching" the States).

Sellin also reached this conclusion by looking at those States that had capital punishment and had then abolished it. Again he found that the homicide rate did not increase after abolition, as the retentionists had advocated. He concluded that the increase in the homicide rate over a period of years may be more adequately attributed to the demographic change in population. As most murder is committed by urban males between the age of eighteen and thirty five of a lower socio-economic class, it is not surprising that when the population increases, so does the murder rate. (50. p173).

By comparing homicide rates in those cities that had had, and that had publicized an execution, Sellin was able to state that there was no difference in the homicide rate before and after an execution. This finding reiterated that of Graves. Graves went on to hypothesize, based on evidence from California, that the number of homicides actually increases before an execution takes place. (29. p326).

One of the strongest lobbying forces which advances the need for the death penalty is that of the police and prison officers. In 1954 the President of the Chief Constables Association of Canada stated,

I feel I am quite correct in saying that we of the police service are not in favour of the death penalty for murder being abolished, because there is no doubt in

our minds that it does act as a deterrent. (50. p89).

The risk to the policeman argument was also used in 1956 in a brief that the Association submitted to the Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment, which later recommended the retention of capital punishment for murder, treason and piracy, and in this respect was unlike many other commissions which had been established in other countries to look at the issue. (i.e.. Ceylon and Great Britain). (34. p370).

More recently on November 5th, 1984 Police Officers lobbied the Canadian Parliament for the reintroduction of capital punishment. They advanced that they have a dangerous job and therefore need the protection that the death penalty would give them. J. Forest speaking in the Canadian parliamentary debate during March and April 1966 illustrated that prison guards and other people have referred to the beneficial effect a hanging has on the inmates of a jail, and that it is clearly a beneficial means of control; as a method of protection and for control it is seen as important. (49. p85).

Not all police officers are however in favour of the death penalty. The Australian chiefs of police have argued for abolition, claiming that, when the death penalty existed, offenders will try everything to escape, even

killing the apprehending policeman, whereas, if the death penalty were not available, the offender would be less desperate. This view is the exception rather than the rule, as will be demonstrated later on, when it will be shown that in both Canada and Britain, the correctional agencies have been the strongest lobbying forces for reintroduction.

Abolitionists, of course, are not sympathetic to the opinions of the police officers. They claim, frequently citing the testimony of prison warders, that murderers are often the best behaved prisoners (32. p69) posing no threat to the prison officers, or to their fellow prisoners. They also point out that there is a risk of mortality associated with each job, and by citing on-the-job mortality rates, claim that the police do not have much more of a dangerous job than other forms of employment such as a construction worker, miner or farmer. The abolitionist argue that the death penalty has no effect on the number of murdered police officers. Empirical research by Sellin and Jayewardene has shown this to be true. (50. p34). Sellin compared the risk to police officers in retentionist and abolitionist States in America, he found that there could only be one conclusion:

namely that the belief of the police that in order to be safer in their occupation they need laws that threaten potential murderers with death has no factual basis.

(50. p101).

Jayewardene looked at the risk of the police killings in Canada, and concluded that the data did not support the hypothesis that the absence of the death penalty from the statutes increases the risk to the police officer. (34. p70). These findings have reiterated those of others such as Corderelli and Creamer and Robin. (12.13).

A third argument deals with the question of justice. Some retentionists argue that the system of punishments should be such that the punishment metered out matches the crime. Kant argued from the premise of "just desserts" that the offender should suffer as much as he had inflicted on the victim, and where possible, the same kind (Lex Talionis). In this respect the offender ought to be deprived of the advantage he had gained by disobeying society's rules. (55. p49).

The abolitionists counter this stance by arguing that the state should not condemn an act by performing the same act again:

A responsible society wants protection not revenge... Punishment for punishment's sake is not justice and is repugnant to modern civilized man. The death penalty is not only unnecessary and futile but also barbaric and brutal. (20. p223).

It is also claimed that the death penalty brutalises

society so that society is reduced to the same level as the offender. (4). If the point is taken one step further, the abolitionists argue, it could be decided that society ought to cut off the hands of the thief, and if a particular serious murder has been committed, inflict torture before execution. (49. p75). The abolitionists believe that there is no place in a civilized society for this barbaric punishment.

Retentionists sometimes reason that it is very expensive to keep a person incarcerated, for long periods of time, and that it would be more economical to execute these offenders. Abolitionists have rebuffed this point of view, stating that if there is no possibility of a death sentence, more convictions with fewer delays will result, thus less money and effort will be expended on appeals. (32. p71). It is also argued that cost should not be a ground for taking human life. (20. p222). Retentionists also sometimes argue that the death penalty is in some respects more humane, and that indeed the effects of long term incarceration are extremely brutal and more severe than the death penalty itself.

The administration of the death penalty produces gross inequalities in that it is uneven, unpredictable and frequently unjust. Fifty three percent of those executed in the U.S.A. since 1930 were negroes, despite the fact that

negroes comprise less than half of those charged with crimes punishable by death. (20. p221). Likewise, proportionally fewer women are sentenced to death, nor are the affluent or influential, who can afford to be adequately represented in court. It was claims of this nature which lead to the Supreme Court of America's decision on June 29th, 1972 that the death penalty was unconstitutional. On this date it was ruled that the imposition and carrying out of the death penalty constitutes cruel and unusual punishment in violation of the eighth and fourteenth amendments. The decision in Fuman v Georgia and related cases was based on the way that the death penalty was seen to be administered, with trial judges and juries having discretion to sentence to life or death. (28. p94).

The action of the Supreme Court had the influence of setting back national policy by making this statement which favoured abolition. To meet the concerns expressed by the court, thirty five States passes new capital punishment statutes between 1972 and 1976. In 1976 the Court ruled again in the case of Gregg v Georgia that the death penalty, ...does not invariably violate the constitution provided there are suitable limits to and guidelines for its use. (36. p189).

The Supreme Court therefore reacted to what it saw to be the unequal application of the death penalty, there is

also much empirical evidence to support this view. Wolfgang et al (57) and Bedau (3) have both illustrated the racial differences in the execution of condemned offenders, while Bowers has commented that discrimination occurred more acutely in the southern States of America and that it was most pronounced during the 1930's when the use of capital punishment was being extended under State authority. (5). Likewise, it has been noted that the wealthy and middle classes are rarely the victims of this punishment.

It is difficult to find cases where persons of means or social position have been executed. Defendants indicted for capital offences who are able to employ legal counsel through their trials are almost certain to avoid death penalties. (17.. p285).

Abolitionists believe that if the penalty is to be administered it should be done so in an equal and just fashion, at present its selective application has grossly distorted justice. (50. p68).

The retentionists are faced with problems of a practical nature, in that they can be seen to be torn between a desire to see murderers suffer the ultimate penalty, and to exact it. There is a paradox in the retentionist argument in that although they believe in its administration, they believe it should be used sparingly, so as not to lose its terrifying force. (50. p68). It has been

noted that jurors are reluctant to convict in capital cases for fear of causing the death of an innocent person. In Britain, for example, it was noted that the number of murderers found insane, and so spared from the gallows, dropped sharply after the death penalty was abolished in 1965.

It is hard to believe that there were fewer insane persons in Britain after abolition of the death penalty. (56. p187).

This example shows the reluctance of jurors to impose a verdict of murder when they are aware of the consequences.

Fattah observed that the acquittal rates increased for crimes punishable by death, and conviction rates tend to decrease, and that the opposite occurs when capital punishment is non-existent:

that jurors were not only less willing to convict for the capital offences (murder) than they were for manslaughter, but were also more inclined to bring a conviction for manslaughter when the charge was murder. (21. p188).

Research undertaken in Queensland has also produced similar results, refuting the claims of the retentionists. (3).

There are a number of administrative problems that the issue of capital punishment throws up. One of these is the probability of judicial error. Although the retentionists

would argue that today this would be highly unlikely, cases in the past have illustrated that it has occurred. It is believed that in England Mr. J.J. Evans was innocent when he was hanged in 1950, as was Mr. W.G. Rowlands who was also put to death in England three years earlier. (36). Bedau has listed the names of twenty four men who were put to death in various States of America for crimes that they did not commit. (3. p440-452).

Abolitionists also argue that individuals who have committed murders often suffer from undetectable mental illness, or may have been subject to a number of external factors frequently produced by society which have had an effect on their behaviour and may have been instrumental in causing their actions. Brannigan (7) cited a Canadian study of murder defendants and found that 44% of a sample of sixty eight murder defendants were either emotionally unstable, schizophrenic, chronic alcoholics or of substandard intelligence. If we regard the offender to be in some way a product of their environment, then it is possible to ask whether it is just to punish for something which may have been avoided if different socio-economic factors had prevailed.

Both the retentionist and abolitionist camps have argued using quotes from the Bible to qualify their position. During the 1966 Canadian Parliamentary debate R.N.

Thompson stated:

In my understanding of the scriptures I found that capital punishment was intended by God as a penalty for those who take law and justice into their own hands. Abolitionists have studied and interpreted the Bible in a different manner, quoting the Commandment "Thou shalt not kill" and have stressed the sanctity of life. Nevertheless, some retentionists have commented that the abolitionists fail to notice the following Commandment which states:

Whoever strikes a man willfully attacks another to kill him treacherously you may take him from my alter that he may die (54. p124).

The 1966 Canadian debate used both sides of the religious arguments. The positions adopted by the various politicians concerned were not based on empirical findings, but rather of their own interpretations of the Bible and Christianity.

The literature on capital punishment is saturated by writing on the pros and cons of the death penalty, nothing more can be added other than to comment that the same arguments arise irrespective of the country that is debating the proposed abolition or retention. Although the country, or the politics of the country, or the year of the debate may change, the issues do not.

It is obvious that the difficulty lies in the fact that the issue is beclouded by emotions and sentiments that beset proponent and opponent alike. All legislative

debates of the issue and public discussions in general give evidence of it. These sentiments and emotions and the beliefs they engender are deeply rooted in a people's culture. They are conditioned by a multitude of factors such as the character of social institutions, political and economic creeds, the class and caste structure, etc. If at a given time these beliefs become so oriented that they favour the abolition of the death penalty, data of the kind presented in the report will be acceptable as evidence: but if there is a resurgence of the old ideas, they are just as likely to be ignored. When people no longer tolerate the idea of putting a person to death for a crime, the death penalty will disappear, no matter what may happen to murder rates, for this is what has happened in the past... (49. p81).

Sellin thus argues that capital punishment will be abolished in the time when the emotional climate of a country is correct. However, other authors have argued more specifically that capital punishment will be retained or reintroduced when there is a need for control in that society. Ancel has noted that the recourse to capital punishment occurs at certain moments when a government believes that it is threatened. He notes that two world wars, economic crises, uneasiness of mind and the appearance of certain new forms of criminality have led to calls for

reintroduction. (1. p.5). More recently Taylor has taken a Marxist stance, believing that the increase in popularity of capital punishment in recent times is an indication of the declining ability of the existing social and economic arrangements to provide security. Taylor believes that capital punishment is seen by many to be a way to defend or protect the social order, and that when it is abolished there is the feeling that the social order is subverted. (51. p87).

The History of the Abolition Movement

About three hundred years ago, capital punishment was well entrenched in society's armamentarian for social control. This entrenchment has been attributed to the insignificant value attached to human life, the belief in a just and necessary punishment for crime, and the dominance of the state. (1. p5). These three historical factors stressed the importance of capital punishment and did not engender any consideration of abolition, that is not until the late Seventeenth Century.

Seventeenth Century Europe saw the rise of modern science, a science unconstrained by authority and dogma, stressing experience over speculation and introducing the idea of using scientific discovery for the improvement of the human condition. (28. p49). This development laid the seed of change which was to come to fruition a hundred years later when Tuscany and Austria removed the death penalty in

1786 and 1787. The abolition in these two countries however, cannot be attributed solely to an alteration in the scientific climate of Europe: other influences were to have a profound effect.

In 1764 Cesare Beccaria wrote his celebrated essay "On Crimes and Punishment" which challenged the use and the very legitimacy of the death penalty. He wrote,

To me it seems an absurdity that the laws which are the expression of the public will, and which abhor and which punish murder should themselves commit one and that, to deter citizens from private assassination, they should themselves order a public murder. (44. p71).

Beccaria stated that as a man is not the creator of his own life it is beyond his power to confer on society the right to take it away. By systematically arguing in a concise way that the purpose of punishment was to minimise general suffering by preventing crime, and to minimise the pain of criminals by imposing on them the smaller penalties for prevention, Beccaria was able to influence many of the enlightened minds of Europe. His work however, was not accepted enthusiastically everywhere: it was strongly attacked by jurists and religious groups. (39. p35).

One of the most violent attacks on Beccaria was from Father Facchini a Vollombrosian Monk who criticized Beccaria's work for a number of reasons. He claimed Beccaria

was an enemy to Christianity, citing the fact that his book portrayed Monarchs as cruel tyrants, and pointing out that he stated that Christianity had been responsible for some suffering and loss of life. (39. p35). At the same time jurist Daniel Jousse stated:

In fact, this book, instead of throwing some light on the matter of crime and punishments, tends on the contrary to establish a very dangerous system and introduce new ideas which, if they were adopted, would simply overthrow the laws accepted up to now by the best-governed states, and would endanger religion, morality, and the most sacred rules of government. (39. p35).

Beccaria's work was not damaged by these comments which were no doubt made by men who had built their lives, reputations and fortunes on old customs and didn't want to see a young idealist "ruin their edifice". (39. p38). Indeed Beccaria is recognised as the first criminal law reformer:

He achieved this position, not because he was first with the ideas... but because he produced a brilliantly, concise, clear document that brought all these arguments together into forceful indictment of the tyrannical criminal law. (42. p151).

Beccaria was the first to argue for the abolition of capital punishment. He was a utilitarian believing that an

act is right and justified if it produces the best welfare consequences to the greatest number, and it was this belief that was adopted by many of the more enlightened minds of Europe such as Morellet, Diderot and Voltaire. Later, the philosophies advanced by Beccaria were to be extended.



Europe, during the Eighteenth Century was experiencing radical changes which led not only to an alteration in life style, but also to a development of a philosophy of punishment. During the last decade of the Eighteenth Century the severity of the European criminal law started to decline markedly. The decline was to a very large degree prompted by the ideas of the Enlightenment, these ideas being a mixture of Rousseau's ideas of social contract and a belief in natural laws and natural rights which led to a rationalisation of punishment. Beccaria, Bentham, Montesquieu and Voltaire were all instrumental in demystifying criminal punishment. (28. p54).

During the Nineteenth Century the abolitionist movement found three major currents to sustain it. First the humanitarian current which was closely allied to evangelicalism and which argues that to punish a man because he deserves it, and as much as he deserves, is mere revenge and therefore barbarious and immoral. It is maintained that the only legitimate motives for punishment are the desire to deter others by example, or to mend the criminal. (32. p30).

The humanitarian current was particularly vocalised in France by the works of Lamartine and Victor Hugo, and led to the removal of corporal or humiliating penalties.

Then there was the liberal current which developed after 1830 and tended to reduce the influence of the state as an absolute power. In France this current was represented by Guizot and Lucas and apexed in 1848 when the death penalty was removed for political crimes. (1. p7). The Liberal current followed the ideas of the Enlightenment that socially harmful behaviours, not sin, was to be punished and that most religious and "Victimless crime" should disappear. It advanced the principle of equality before criminal law, and the principles of individual guilt as ground for punishment. (28. p55). The liberal current influenced much of Europe during the Nineteenth Century, and had the effect of reducing the severity of punishment.

The third current was the utilitarian one which had its roots in Beccaria but which was eloquently extended in the works of John Stuart Mill and Jeremy Bentham, stressing the importance of pleasure as opposed to pain. From a utilitarian standpoint the death penalty is difficult to justify as the statistical evidence fails to confirm or refute the belief that capital punishment deters potential murderers and protects society. (8. p339). Utilitarians argue that an act is right or justified if it is likely to

produce the best welfare consequences, more satisfaction, or at least less distress, than any other act which might be performed as well. As the death penalty cannot be seen to deter, the utilitarians would argue that it serves no logical purpose and therefore should be abolished. The utilitarians wanted to minimise the pain of criminals by imposing on them the smallest penalties needed for prevention. They believe that human behaviour was the rational outcome of the anticipated pleasure-pain calculus, and that criminal punishments should involve exactly the minimum of pain necessary to outbalance the gratification expected from the criminal act, and not suffer more than the crime they sanction. (28. p55).

These three currents occurring at the end of the Enlightenment period were seen as bringing a more rational and humane period to Europe. This progress manifested itself in a number of ways; Italy established a criminal code which didn't contain capital punishment, while Britain abolished capital punishment for all but a handful of offences including murder and treason. (42. p184). It appeared that the road to abolition had been firmly laid. However, this was not to be.

The turn of the Century saw the development of what can be termed as conservatism. The development of the Industrial Revolution during the last years of the Nineteenth Century

saw a concentration of population in urban areas, and a rise in the newly established cities which threatened the calm of the Victorian era and posed a threat to the bourgeoisie.

Crimes developed against the work place (the Luddite Movement) and became more concentrated as large cities developed, (this process initially occurred in England but was soon evident in the rest of Europe). A new form of criminality was therefore developing and the ruling class were keen to control these outbursts. The Industrial Revolution caused the break up of families as many people had to move to the towns to become wage earners as opposed to artisans. The conditions of the cities became increasingly worse as crowding and insanitary conditions bringing disease became common place; the situation was "ripe for revolution" and needed to be controlled. (42. p172).

This development was fortified by another which had its foundations in Lombroso's work. There evolved the belief of criminal man, destined to commit crime because of his biological make-up. Although both Lombroso and his pupil Enrico Ferri were against the death penalty their work was taken by the Italian government and gradually modified so that they couldn't recognize it; so that it fitted in with the fascist regime of Mussolini's Italy.

The Twentieth Century witnessed the introduction of

authoritarianism (e.g. Italy and Fascism, Germany and Naziism) and the stress for a new social order.

The execution of the culprit marked for public vengeance was the tangible sign of the absolute power of the state... death was a means of government. (10. p18).

In the wake of each of the World Wars some harsh norms were enacted to sanction a few crimes perceived as especially dangerous, and there was a general tightening up of punishments.

The onset of World War One was seen as a major set-back for abolitionists and has to be seen as the main contributing factor to the restoration of capital punishment in five States (of America). (48. 17)

The early part of the Twentieth Century was a period of progressive commitment to rehabilitation, but this was soon to give way to a "get tough" attitude to crime during the Twenties when unemployment hit the affairs of many people. This swing back to harsher punishments was seen to manifest itself in an increased use of the death penalty.

1935 is the year with the highest number of executions in the United States... the resurgence in the defence and practice of the death penalty seems a striking parallel to the earlier economic climate. (46. p46).

As the Western World grew out of the effects of the Second World War more countries were seen to shake-off the

yoke of War time memories, and in so doing adopt a criminal justice policy which did not contain provision for capital punishment. (i.e. Austria and Italy).

The period from 1950 onwards was seen as a time of great optimism, when there was a firm belief in the rehabilitation and reform of the offender. The idea of abolition had simmered through the first few decades of the Twentieth Century (28. p87) but became more powerful during the fifties and sixties, when it appeared that the abolitionist trend had been firmly established, and indeed in many Westernized countries this has been the case, up until recently when countries such as Italy, (25), Britain, (27), France, (43), and Canada (26), have witnessed serious pressure for the recall of this penalty.

... the similarities between criminal justice policy during the current economic crisis and criminal justice policy during previous major economic crisis is striking to say the least. (46. p46).

TABLE 1

TABLE 1 ILLUSTRATING THE DOMINANT PUNISHMENT
PHILOSOPHIES FROM 1800 TO DATE

DATE	CURRENT	ADVOCATES	ARGUMENTS
1800	HUMANI- TARIAN	LAMARTINE VICTOR-HUGO	The only legitimate motive for punishment is to deter others or reform the offenders.
1830	LIBERAL	GUIZOT LUCAS	Followed the ideals of the Enlightenment. Stressed equality before the law.
1850	UTALITAR- IAN	J.S. MILL J. BENTHAM	An act of punishment is only justified if it brings the best Welfare consequences to the greatest number.
1880	CONSERVA- TISM	THE BOUREOISIE	Need for tighter controls to protect against a "new form" of criminality.
1900	SCIENTI- FIC	LOMBROSO FERRI	There is such a thing as the Criminal Man who is destined to commit crimes because of his biological make up.
1920	AUTHORI- TARIANISM	FASCISM NAZIISM	Tightening up of punishments on crimes perceived as particularly dangerous.

1950	REFORM REHABILITATION		Belief in the reform and the rehabilitation of the offender.
1970	CONSERVATISM	MARTINSON THATCHER REAGAN	Rehabilitation doesn't work. Stress the importance of law and order and the need to swing "back to justice".

This brief review of movements to abolish the death penalty lends credence to the views put forward by Ancel and by Taylor that the death penalty is used as an instrument of social control, at times when existent social norms are not sufficiently strong to control human behaviour in such a way as to maintain the integrity of society, and, as Sellin puts it, whatever may be the arguments that are used, the abolition or the retention of the death penalty depends on the existing social conditions and the psychological fervour of the people.

The Restoration of the Death Penalty

Over the course of time the penalty of death has been abolished in many countries, and in some of these it has been restored.

ARGENTINA

In Argentina the death penalty was abolished in 1921 and remained so until 1970 when it was reintroduced. It was again abolished in 1973 only to be reinstated in 1976, but even this act did not hail the end of its sporadic history, as it was again abolished in 1984.

Careful consideration of these on-again/off-again events of the last fourteen years indicate that they correspond to the political problems that Argentina has been facing.

In 1970 there was considerable political instability, in much of that year rioting took place in Coroba, Rosario and other Argentinian cities which resulted in the arrests of over 1,500 people. The death penalty was implemented during the time of these disturbances. In October, 1973, Juan Peron again became president and abolished the death penalty. On his death in July, 1974, he was succeeded by his widow who was deposed and replaced by the military junta in March, 1976. (18).

The restoration of the penalty in 1970 and again in 1976 was the concomittant of a turbulent political period, a period of political instability in which capital punishment was seen as an effective means of social control. The advent of democracy has enabled the most recent abolition to occur, and it is believed that the 1984 Law 23.077 will be final.

SWITZERLAND

Capital punishment was abolished in Switzerland in 1874 but a revision of the federal constitution in 1879 gave each canton liberty to reintroduce it. Fifteen cantons which represented 75% of the total Swiss population did not reintroduce it, but ten cantons did. Graven claims that this partial restoration of capital punishment in 1879 was due to a series of heinous murders committed in several cantons

which disturbed public tranquility and influenced public opinion. (36. p173).

Thus, the death penalty was restored in certain areas of Switzerland, because of a perceived increase of violent murders. Complete abolition occurred in 1937 when there seemed little evidence to support an increase in crime, together with a general feeling of humanity. (36. p174).

AUSTRIA

Austria abolished the death penalty as far back as 1787 but reinstated it in 1796. It was again abolished on April 3rd, 1919 at the end of the first world war when the Austro-Hungarian Empire was dismembered. (35. p35) The death penalty was restored by Dr. Dollfuss's government in 1934. Prior to this date however, it had been imposed under partial and full martial law. From 1919 onwards Austria was in a state of chaos passing from one economic or political crisis to another. (9. p89). The National Council for the Abolition of the death penalty (British) referring to the use of capital punishment in Austria has argued that this return to harsher measures reflected the disturbed conditions of a state which has recently passed through a period of revolutionary upheaval and civil war. This view has been reiterated by other writers who have stated that

capital punishment is the ready resort in times of violence, and confusion of governments, which feel their positions are somewhat precarious. (9. p89).

Thus in Austria too, the death penalty was restored to cope with the economic and political crisis that she was facing. It was implemented for political reasons of control, before final abolition in 1950.

ITALY

Although capital punishment had been in abeyance since 1877, it was not legally abolished until 1889, only to be reintroduced by Mussolini in 1928. It was reintroduced for cases tried before special tribunals for crimes endangering the King, his Chief Minister, or the safety of the state.

Italy experienced a decrease in the homicide rate during the period of abolition. Changes in the Italian social and political life and improved policing were characteristic of the period;

Italy had become united and she successfully established law and order and suppressed brigandage, she did not need recourse to the death penalty. (9. p87).

The 1931 penal code restored the death penalty for the worst types of murder tried before the ordinary criminal court. Dr. Adrian Dirgh argued when outlining the draft

Italian penal code in London, that once capital punishment has been introduced with the general approval of the nation, for a variety of crimes that might be termed political, semi political, or military, it was felt unreasonable to withhold the same penalty for the gravest crimes. He went on to argue that reintroduction had occurred because of a more scientific treatment of the subject, stating:

The reason was not that there was some increase. In fact there had been a considerable reduction in crime of that kind in recent years... But I think in the reasons for reimposition there is a reference back, if I may say so, to positive ideas. What is the use of keeping alive a man who murders his son by slow poisoning? He is better off dead... From my experience there are some people who have no good in them at all. It is those men whom we want to see done away with. (9. p35).

What Dirgh was basically saying was that there was a need for the death penalty so that the undesirable could be exterminated.

In 1928, when the death penalty was restored, the political fervour of the country had changed. A fascist government had been returned to power.

Calvert argues that capital punishment was reintroduced under fascism as it is more suited to this regime, where

violence is frequently resorted to, and government is a rule of force. (9. p88).

The reintroduction of the death penalty in Italy thus was for political reasons, and can be seen as an illustration of an expression of dominance during what were unstable times. Capital punishment was eventually abolished in Italy in 1944 after the ending of the second world war.

RUSSIA

In Soviet Russia the death penalty was officially abolished as long ago as the mid Eighteenth Century, then again by the new Bolshevik Government in 1918. (40. p242). It was however allowed as a rare measure in the penal codes of 1922 and 1926. (35. p87). After the advent of Communism, and between the period of 1927 - 1947 the death penalty was reserved solely for crimes against the state, and for military crimes, but in 1947 total abolition was proclaimed. This reform only lasted for three years as on January 12th, 1950 the Presidium Supreme Society reintroduced it for traitors, spies and saboteurs. (37. p144).

It was at this time that Stalinism was gaining ground and concern was mounting over security. The death penalty was reintroduced to cope with this state. On May 6th, 1961 the Presidium decreed that the death penalty be extended for

particularly grave crimes including treason to the country, spying, diversion, terrorist activities, burglary and premeditated murder.

It is difficult for obvious reasons to obtain detailed information about the exact reasons behind the extension of the death penalty, but from the information available it would appear that the death penalty was extended for political reasons. It would also appear however, that the comparatively recent introduction and extension has also been due to public pressure. Guillin has cited newspaper articles which criticize the court for being too lenient with criminals and states:

The extent of public fervour is reflected in the sobering newspaper report that a death sentence was greeted with the applause of the entire courtroom. (45. p243).

At least thirty five crimes are presently punishable by death in Russia, and there have been no recent developments to reduce this number. The reintroduction of the death penalty in Russia, it can be argued, was due to a belief by the Soviet state that the punishment can act as a measure of control, when social solidarity was considered to be of prime importance. There is a suggestion of public pressure but the information is insufficient to indicate why and how.

NEW ZEALAND

New Zealand abolished the death penalty in 1941 with an amendment to the 1890 Act, after holding it in abeyance since 1935. The issue of capital punishment was being debated and abolished at the same time as that of corporal punishment, and it was through the actions of the Labour Party which was in power at the time that abolition finally occurred. Critics have argued however, that it was the very conditions governing the first statutory abolition of the death penalty that caused the reversal within the next decade, in that this legislation was passed in a very hasty manner.

It has been popularly supposed that New Zealand's swing from abolition to restoration of the death penalty in 1950 may be explained in simple political terms: that capital punishment was as much entrenched in the more conservative, authoritarian dogma of the National Party, as abolition was left in the Left Wing humanitarian doctrines of the Labour Party, and that the return to the death penalty therefore was determined by a change of government. (19. p27).

There are however, other issues which clearly had an influence in prompting the return of legislation. The later

post war years were marked with an increase in the murder rate, together with some notably violent homicides which provoked Parliament to debate the issue. Editorials began to appear prior to reintroduction correlating the violent crime occurrence with the abolitionist nature of the country. These events together with the rejection by the House of Lords in Britain, of the Bill suspending capital punishment, was seen as an example which many believed New Zealand ought to follow. The strong public support for restoration, which was vocalized by such groups as the Federation of Farmers and the Womens Institute were also propelling forces stressing the need for capital punishment. (19. p32-38).

The death penalty was an election issue (52. p31) and after gaining power, in 1949, - a fact which had been attributed to the high cost of living which had developed during the Labour Party's term of office, the Conservative Government was keen to restore the death penalty. (18). One of the strongest advocates in the newly established Conservative Government was the Attorney General T.C. Webb, who saw that his mission was to restore the death penalty with the minimum of delay. (19. p39). The Bill to reintroduce was introduced on August 7th, 1950, and from December 1st, 1950 New Zealand became a retentionist country. The Conservatives had managed to keep their

electoral campaign promise.

Though ostensibly the restoration in New Zealand can be seen as due to a change in government, deeper analysis shows that there were other factors such as the growth of serious crime, pressure from the media, public pressure, and the way that abolition had been secured, which prompted this reintroduction.

SPAIN

Spain had the death penalty on its statute books up until 1931 when it was abolished by the Republican Government of that year. It was restored three years later by General Francisco Franco after his victory in the Spanish Civil War (24). The restoration of the penalty was therefore perhaps due to a desire on the part of Franco to restore law and order to his country, and to ensure the continued existence of his fascist regime.

CEYLON

Capital punishment was suspended in 1956 in Ceylon, (after the Minister for Justice at that time had refused to execute anyone), but on September 25th, 1959 events took place that were to lead to its reintroduction. On this date an assassin shot Mr. Bandaranaike the popular Prime Minister

of the day. He died in the hospital the following day. This event lead to "political chaos and precipitated a crisis in the life of Ceylon" (35. p94). The assassination was condemned by all parties in Parliament, and on December 2nd, 1959 the Suspension of Capital Punishment (Repeal) Act 1959 became law.

These events are particularly interesting when they are viewed in the light of discussions which had surrounded the capital punishment debate. Although it was suspended in 1956, without any movement for abolition, it was again debated in 1958 because of an increasing public demand for its restoration. It was decided to appoint a Commission of Inquiry on Capital Punishment to enquire whether there had been an increase in the murder rate in Ceylon, whether this could be attributed to the suspension of capital punishment and, whether the liability under criminal law to suffer capital punishment should be abolished, limited or modified.

Although this enquiry concluded that there was no conclusive evidence in support of the arguments favouring the reintroduction of capital punishment, its reports contained sentiments advanced by individuals who believed that the general decline of authority and discipline in Ceylon could only be combatted by the reintroduction of the death penalty. Though these comments were eloquently

refuted, the report was published at a time when the Prime Minister was assassinated. On October 29th, 1959. The Suspension of Capital Punishment (Repeal) Bill was debated, later to become law.

The Minister of Finance at the time stated that the Bill had no connection with, or bearing on, the death of Mr. Banaranaika. Instead he argued that:

There is increasing indiscipline in the country, people are being murdered; there is little respect for law and order and for that reason we have decided upon the reintroduction of the death penalty. (Parliamentary debate. 29th October, 1959).

Others were, however, against reintroduction. Dr. Calvin R. de Silva for example:

But until you have the correct political social and economic policies, the tendencies for crime will remain. Why then cast among the hangman's rope our own responsibilities. Why instead of taking up the problems do we insist on a short cut...?

It is important to recognize here that the assassinated Prime Minister led a left of centre coalition, elected into power in 1956 after a devastating defeat of the right wing party that had been in power since independence. The changes the government was making was creating social, political and

economic stability.

Although the deciding factor which led to the reintroduction in Ceylon was the death of the Prime Minister, it is evident that the political and economic state of the country during the end of the fifties, and the threat this caused had an important if not ever-riding influence on the reintroduction of this penalty. It is interesting to note that since the suspension of capital punishment in 1956, there had been an increasing number of newspaper articles citing the increase in murder, and attributing this to the suspension of the death penalty.

When the Prime Minister was assassinated, there was an outcry in the press which had an effect of inciting the population to recall this penalty. Ceylon thus restored the death penalty for two reasons: firstly, due to the death of the Prime Minister and, secondly, because of the political economic state of the country.

In the United States of America eleven States have abolished and restored the death penalty.

ARIZONA

Arizona abolished it in 1916, but restored it two years later. What seems to have had an important influence on the restoration was the war and the climate of the time. (9.

p72).

War psychology and anticipation of a crime wave combined with hatred of immigrants and fear of radicalism to produce a virtual hysteria among the American people. (38. pxxxvi).

MAINE

In Maine the law had operated to prevent executions up until 1864. That year the murder of a warden in a State prison prompted Governor Samuel Cony to order the death of the offender.

This execution revived the abolitionist Movement and in 1869 Senator J.L. Stevens pressed for the abolition of the death penalty. The abolition occurred in 1876. (50. p153).

Opponents of abolition began blaming every murder as well as some non-capital offences on the lack of capital punishment. the legislature in 1883 accepted the reasoning and restored the death penalty. (38. pxxxii). Final abolition occurred four years later when the abolitionists were able to argue that the murder rate had not increased after the restoration.

SOUTH DAKOTA

South Dakota abolished the death penalty for murder in

1915, however restoration efforts occurred in 1927, but without success. In 1939 Governor Harlan Bushfield proposed the restoration of capital punishment following a series of brutal murders in the late thirties. (38. pxi). The legislature quickly acted to restore the penalty.

According to individuals present at the proposal to restore, much of the discussion consisted of:

reference to the shocking murders which had occurred during the preceding biennium. (15. p590).

The death penalty was finally abolished in 1977. (50. p157).

OREGON

In 1914 the death penalty in Oregon was formally abolished and replaced by life imprisonment. The abolitionist trend was started in 1912 by Governor West, who in 1914 managed to receive a majority of 157 votes to ensure constitutional change.

However, the period of abolition did not exist for long, for in 1918 the House of Joint Resolution wanted its reintroduction for murder. In 1919 it was advanced by Governor Withycombe that there was no penalty for treason, and in 1920 Governor Olcott said:

Since the adjournment of the regular session in 1919 a

wave of crime has swept over the country. Oregon has suffered from this criminal blight and during the past few months the commission of a number of cold blooded and fiendish homicides has aroused our people to a demand for greater and more certain protection...

Because of a series of dastardly homicidal offences a distinct public sentiment has developed that the public of the State should once more be given an opportunity to press upon the question of the restoration of capital punishment. (14. p23).

Oregon had an election in 1920 and re-established the death penalty subject to jury discretion. During the election campaign voters and pamphlets were published that stressed the issue of the dangerousness of the criminal.

MISSOURI

Missouri abolished the death penalty in 1917 in a wake of belief that was prevalent at that time which stressed the reformation of criminals. Little opposition was made to the reform, primarily because it was at this time that the country was preoccupied with the events of the first World War.

During the next two years however, dissatisfaction among the law enforcing agencies grew and concern was voiced

over the rise of serious crime after the killing of two policemen. Although a bill was enacted to restore capital punishment it was defeated by three votes.

Early in 1919 a man broke out of jail and killed the sheriff and his son, this resulted in a mob breaking into the jail and lynching the murderer. This event led to the restoration of the death penalty by an:

urgent public sentiment of fear and indignation brought about by crimes following the first World War. (31. p237).

It can be hypothesized that the population of St. Louis believed there to have been an increase of crime since the abolition of capital punishment.

DELAWARE

On April 2nd, 1958 capital punishment was abolished for the first time and only time in Delaware. Its reintroduction on June 14th, 1961 can be attributed to concern over the growth of violent crime, following two particular incidents, and can be regarded as

panic legislation based on emotion and revenge. (47. p149).

During the month of October 1960 a negro murdered an elderly farming couple in their home. This particularly

heinous crime was followed by the murder of an eighty nine year old woman in Georgetown on June 10th, 1961. On June 12th a bill to restore the death penalty was introduced by the victim's son and was passed. Cobin has argued that this particularly hasty piece of legislation was passed because of the:

...impact of the killing of three white people by young negroes at the very time that racial tension was high because of the desegregation movement in the school system, a strong demand from negroes for anti-discrimination and civil rights law, and the action and "sit in" groups seeking to desegregate restaurants in lower Delaware. (11. p361).

KANSAS

Kansas legally abolished the death penalty in 1907, but restoration occurred in 1935. There had not been an increase in the homicide rate in Kansas before restoration, but there had been an increase of bank robberies and armed raids on business property, which prompted a small but politically powerful group encouraged by banking interests to press for restoration.

A move in 1931 to restore the death penalty was blocked by veto by the then government. However a change of

governor enabled the law to be rapidly passed in 1935. It was claimed by the opponents of the death penalty that the measure was rushed through legislature, and that the State as a whole, together with many newspapers, were unaware of its passage. (41. p12).

IOWA

Abolition in Iowa occurred in an act of 1872 which was the result of a:

budding movement to restrict the use of the death penalty. (50. p149).

This period of abolition did not last long. In 1873 the nation began to experience a severe economic depression, which reached a climax in 1877 with the national railway strike. This strike had the effect of bankrupting most of the railway network and spawned widespread violence. Crime and, in particular, vagrancy was seen to be increasing at an alarming rate, and in response to this, a repeal of the 1872 act was undertaken in 1878. (50. p150).

COLORADO

Colorado abolished the death penalty in 1897, but reinstated it within four years in the face of what at that time seemed the threat of Mob Rule.

Lynching was carried out on three separate occasions in this State during the abolition years, as the public manifested its dissatisfaction of imprisonment for murderers. (3. p10).

These events together with the mounting unrest and disturbances in the mining regions appear to have been the overt causes for the restoration of the death penalty in 1901. (50. p157).

TENNESSEE

Capital punishment was abolished in Tennessee in 1915 after a wealthy merchant named Bowers led a:

crusade against the death penalty extended to what is reported to have been lavish entertainment of legislators in Nashville. (50. p164).

A bill which retained the death penalty for rape, but abolishing it for murder was passed in 1915, but was only in existence until the legislature of 1917.

In a communication between two governors at the time, it was stated that capital offences had increased during the period of abolition and this has been given as the reason for restoration. There is, however not a great deal of literature on this issue, so any conclusions must be seen as tentative. (50. p164).

WASHINGTON

In 1897 a bill to abolish the death penalty in Washington was passed by the House, but rejected by the Senate. However sixteen years later in 1913 the bill was passed, but the abolition only lasted until March, 1919.

There appears to be two contributing factors which led to this reversal, firstly the public outrage when in 1917 the murderer of a leading business man boasted that he would be sent to the pen to be fed and cared for at public expense (3. p334) and secondly the fear of a crime wave following the first World War. (50. p159).

The contribution of these two events led to the reintroduction of capital punishment.



TABLE 2

TABLE SHOWING THE MAIN REASONS HYPOTHESIZED
FOR THE RESTORATION OF THE DEATH PENALTY

Country State	Year of ABOLITION	Year of REINTRO- DUCTION	Period of ABOLITION	Reason(s) for Reintroduction
Argentina	1921 1973 1984	1970	49 3	Political changes
Switzerland	1874 1937	1879	5	Perceived crime wave (murder in certain areas)
Austria	1919	1934	15	Political changes
Russia	1947	1950	3	Political unrest
New Zealand	1941	1950	9	Change in government
Italy	1889	1928	39	Political change
Spain	1931	1934	3	Change in government
Ceylon	1957	1959	2	Assassination of the Prime Minister
Arizona	1916	1918	2	War psychology
Maine	1876	1883	7	Death of prison warden. Change of legislature and crime wave (murder). Crime wave after restoration.
South Dakota	1915	1939	24	Change of Legislature and crime wave (murder).

Missouri	1917	1919	2	Crime wave (murder)
Delaware	1958	1961	3	Crime wave (murder)
Kansas	1907	1935	28	Change of Legislature and crime wave (bank robberies)
Iowa	1872	1878	6	Economic climate and crime wave (vagrancy)
Colorado	1897	1901	4	Vigilantism
Washington	1913	1919	6	Change of Legislature and crime wave
Tennessee	1915	1917	2	Change in Legislature and crime wave
Oregon	1914	1920	6	Change of Legislature and serious crime wave (murder)

Although at first glance, it may be seen that the eight countries and the eleven States in the United States of America which have abolished the death penalty and restored it after varying periods of time have been quite diverse in their reasons for restoration, upon closer examination certain patterns begin to emerge which suggest that certain factors have come into play before the country can consider the reintroduction of the death penalty. The first and most important of these factors appears to be a change in government. When a change of government occurs, it is easier for the death penalty to be restored. However, a change in government is not always necessary for the restoration. In Russia, for example, it was the same government that abolished the death penalty in 1947 that reintroduced it in 1950. Here the operating force was a mounting concern over the security of the state at a time when Stalinism was gaining ground. Concern over state security can also be considered the reason for the reintroduction of the penalty, in Arizona in 1918 when the fear of radicalism produced a virtual hysteria among the people and also in Colorado where the people were literally taking the law into their own hands, lynching suspected murderers. In other countries where the government is changed revolutionarily, the restoration of the death penalty can also be attributed to a concern over the security of the state. Here the integrity

of the country and the political entrenchment of the party seizing power are other considerations. Italy illustrates the situation best. Even in the presence of seeming social, economic and political stability, the death penalty was reintroduced for the unashamed intention of getting rid of undesireables. When the change in government is wrought democratically, the restoration receives its motivational force from a persistent belief in an increasing incidence of crime occasioned by the abolition and dramatically demonstrated by particularly brutal murders. Even if this were not the factual situation, the prevailing social and economic conditions tend to promote the belief that it is.

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CHAPTER II

METHODOLOGY

This study seeks to evaluate the likelihood of Britain and Canada, two countries which have abolished the death penalty, reintroducing the penalty.

Where a search involves the study of specific cases, there have been three basic methodologies used. One is that of Grounded Theory. This methodology involves the development of theory arising out of the data, a theory that most economically explains the source and variation in the human material that one is explaining. (7. p212). Grounded Theory allows a use of both qualitative and quantitative data and is involved in a comparative analysis of diverse kinds of substantive groups to establish a theory that does not depend on a priori knowledge. In this respect it requires the three operations of collecting, coding and analyzing data to be undertaken jointly, in a belief that the definite separation of each of these operations hinders the generation of a theory. (5. p43). Thus a theory is formulated that fits the data.

An alternative to Grounded Theory has been Analytic Induction. This qualitative methodology uses "negative" cases to test a limited number of hypothesis. By using negative cases the hypothesis can be modified as more of these cases come to light. If the hypothesis does not fit the facts either it is reformulated or the phenomena to be explained is redefined. (3).

A third qualitative methodology is known as the Constant Comparative Methodology and is concerned with

generating and plausibly suggesting many categories, properties and hypothesis about general problems, problems which could be the result of conditions or consequences. (5).

There are four stages to the constant comparative method, firstly the researcher compares incidents applicable to each category he is testing in the hope that this constant comparison will start to generate theoretical properties of the category. Secondly the researcher integrates the categories and properties: the constant comparison causes an accumulation of knowledge pertaining to a property of the category which is in turn integrated. Thirdly the researcher starts to delimit the theory, in that major modifications become fewer, while at the same time it is possible to remove non-relevant properties. The fourth stage involves the writing of the theory and occurs when the researcher is sure his analytic theory forms a systematic substantive theory.

The three methods, it will be appreciated, are applicable to three different types of studies. Where an attempt is made to describe the phenomenon the appropriate methodology would be the Constant Comparative Methodology. By discovering the reasons why each country and state restored the death penalty it was possible to generate an accumulation of knowledge as to their motives, and, by looking at nineteen examples of restoration it became possible to develop hypothesis as to why restoration

occurred. The cases of both Britain and Canada were then examined to test the applicability of these hypothesis to two countries which had recently experienced pressure to restore the death penalty. By using elements of Grounded Theory to collect, code and analyze information of a qualitative and quantitative nature, which had been discovered in the analysis of these two countries, and by the use of Analytic Induction to confront the hypothesis developed by the Constant Comparative Method, with new cases, a general theory was developed incorporating all these findings.

Qualitative methodologies have been seen by some to be unsystematic, impressionistic and dependent upon the skills and sensitivities of the analyst, and therefore not guaranteeing that reproduction of a study using the same data will achieve the same results. (5) While these criticisms are valid, qualitative research was undertaken in this study as it was believed that this was the most adequate and efficient approach to contend with the difficulties of the empirical situation, and by the use of elements of three qualitative methodologies, it was hoped that any methodological limitations would be slight.

The literature review has not only produced information on the reasons for restoration, other relevant data has been discovered which is also applicable to this study.

In those countries after abolition, attempts are made by those who would favour its reintroduction to create a

climate of uncertainty by focusing attention upon so called crime waves. If there is in addition conditions such as a deteriorating economic climate as well as particularly brutal crimes which could result in a change of government then the stage is set for restoration. A crime wave leads population and governments to see that there has been a norm violation, this in turn leads to a general feeling of fear and uncertainty and a demand that something ought to be done. Economic crisis leads to unrest in a country and can result in a violent outburst. The control measure exerted is a heightening of norms and a rejection of those norm violators.

The data also shows that reintroduction is more likely to occur when the period of abolition has not been very long. Countries where the reintroduction came after a long period of abolition were ones where there was a revolutionary change in government. Though such has not been the situation in two States of the United States when the reintroduction occurred after over twenty years of abolition. The relationship of the period of abolition to the restoration of the penalty suggests that once a country has been abolitionist for a long period of time then the topic of reintroduction never arises; abolition is an accepted fact. This is the case in many Scandinavian countries, most of which have not had the death penalty

since the end of the Nineteenth Century, and do not debate the necessity of reintroduction. Even if they do debate, reintroduction is unlikely.

In 1952 eight years after Switzerland had completely abolished the death penalty, there were cries for reintroduction following the growth of organized crime, and the increase in violent crime in the 1950's. Switzerland discussed and rejected the idea. (6. p76). This occurred, in spite of the fact that neighbouring France had extended the death penalty to cover cases where the victim died from attacks by crime gangs, as there was a perceived growth of this type of crime, - crimes that were occurring in alarming numbers in Switzerland too. (6. p76). More recently France, which has only been abolitionist since 1981 has experienced pressure for reintroduction following a series of "torture-killings of elderly women in Paris". (8).

Examination of the dates on which reintroduction occurred reveals a great diversity ranging from 1878 to 1970, with no clusters around specific periods of time. Therefore no global assumptions can be made concerning the date of reintroduction: clearly reintroduction is dependent upon the circumstances of the individual country or State.

The experience of these countries and States permits us to hypothesize firstly that reintroduction is more likely to occur after a relatively short period of abolition, and that

if it is restored for only certain crimes, it is likely to be extended to deal with spates of crimes which may be deemed threatening. Secondly, reintroduction usually occurs following a change of government, or shift in legislative power. Such a change however, is sometimes not necessary. When the change occurs in a revolutionary way, that alone appears to be sufficient reason for restoration. Thirdly, when the change in government is democratically achieved, a sort of social turbulence prompted by the prevailing social and economic conditions and buttressed by a real or imaginary crime wave is necessary for the reintroduction of the death penalty. Fourthly, when there is no change in government, the death penalty could still be restored if there exists indications of a real threat to the social system.

In the final analysis it will always be the government who decides not only to change the legislation but also open serious debate over reintroduction, but these decisions are not made before lobbying interest groups have influenced their opinion. The importance of these interest groups have been demonstrated in studies dealing with other legislative change.

Roby, for example, studying changes in the law on prostitution found that any effort to change the law was restricted to a relatively small number of interest groups,

some of them prompting the change and others resisting it.

(9). In her study she documented and listed which groups were behind the pressure to reform at each stage of the reform movement and found that the primary basis for a group obtaining power were, their awareness of the various actions taken and to be taken in the formation or enforcement of law, the recognition of the importance of these actions to their interests, their professional (especially legal) knowledge, their public support, their political and financial support, their personal charisma and their means to informally withhold needed support or co-operation from the significant actor. (9. p109).

Dickson studying drug legislation, has identified five factors which tends to involve an organization or a group in the change process. (4). The first factor is the necessity of change: is it necessary for organizational survival. In the case of capital punishment the question becomes, will the government be more popular in restoring the punishment. The second factor is the ability of the organization to afford to attempt the change. Here the question is how costly would it be to debate or enact. The third factor is the size and complexity of the environment and its ability to prevent its alteration. In the case of the reintroduction of capital punishment, those who would be directly affected by the death penalty would be few, and notably not the rich and

influential. The fourth factor is the extent to which change must take place. Countries that reintroduce capital punishment see it as necessary to protect against the increase in crime, they don't see it to be necessary to reorganize the whole environmental structure, but just to act to curtail the increase in crime by increasing punishment. The final factor is the strength of the belief behind the policies to be changed. In the case of capital punishment the beliefs of the abolitionists and retentionists are held strongly and with a great deal of emotion. Public opinion in general, is pro death penalty.

Dickson was concerned with the actions of identified organization rather than the precipitating factors which have led an organization to consider change. He states that when one is talking about organizations changing their environment, one should make explicit what levels in the environment are being focused upon, how extensively they are being changed and how strongly they were held in the first place. (4. p147). As far as the drug legislation is concerned, Dickson has pointed out that the Narcotics Bureau in the U.S.A. faced with a non-supportive environment and a decreasing budgetary appropriation that threatened its survival, generated a crusade against marihuana use. (4. p143). He argues that some bureaucracies initiate, to use Becker's term "moral crusades" (1) to instill commitment to

groups and individuals outside the bureau.

A third study of interest here is that of Berk and his colleagues. They examined the politics of criminal law making using a qualitative approach and analyzed the history of the significant bills before the California State Legislature, 1955-1971. They discovered that there existed a wide and diverse number of groups which entered into the lobbying process, ranging from small but vocal citizen groups to partisan politicians, and most often none of these groups were able to dominate the legislative process. (2. p282). They also found that there was a back and forth swing between liberals and conservatives in terms of the legislation enacted and two ideological interests during this period. It appeared that parties rose and fell at the same frequency as the lobbying groups. Thirdly, they found an increasing ideological polarization between liberal and conservatives with a wider polarization coming with wider participation, with virtual stalemate between liberals and conservatives in many areas of criminal law making.

The findings of these three studies suggests that the nature and power of interest lobbying groups plays a very important role. What this study seeks to do is to study the abolitionist and retentionist activities in two countries that have recently abolished the death penalty - Canada and Britain - to see whether their experience is the same as

that of other countries.

By looking at the legislative history of abolition in both Britain and Canada it was possible to determine the influences that both these countries had experienced that enabled abolition to occur. Data was collected on the legislative history of abolition from books and journal articles. By reading these sources it was possible to determine how abolition had occurred. For both of these countries enough had been written to enable the researcher to gain an adequate knowledge of the factors influencing the change in legislation. In studying whether there had been any pressure to restore the death penalty in Britain and Canada such sources of data were not available, so it was necessary to go to newspapers to obtain this information. By obtaining news articles concerning the death penalty that appeared in one of each of these countries' national papers, since that country obtained abolition, it was possible to see if there had been any pressure for restoration.

The newspaper that was to be analyzed for Canada was the Globe and Mail. This decision was made primarily for three reasons, firstly it is Canada's only national newspaper, and although it has been criticized in that it is seen by some to over report the news of eastern Canada, at the expense of the west, the decision to use this paper was still felt to be better than to have used one of the

regional papers. Secondly, the Globe and Mail has a high standing amongst other Canadian newspapers and finally it offers a service entitled "Info Globe".

To be able to determine if there had been any serious cries for reintroduction, and if so by whom, it was necessary to read all the articles that had appeared in the Globe and Mail from November 1978. By the use of the "Info Globe" - a computer service, it was possible to receive a list of all the news articles which had appeared in the Globe and Mail that had the words "death penalty" or "capital punishment" in the title. Once this list had been obtained it was possible to go to each newspaper to read the article, and to learn of the story in detail.

The fact that this service was computerised naturally saved a considerable period of time, although it can be criticized as it is not fool proof, and of course, by using only two key terms any articles which had a title such as "Canada demands return of the noose" or "Hanging is an issue" will not have been identified by the data search.

By asking for only news articles the search would not have thrown up any editorials, or letters to the editor. As the volume of news articles was so large, and as it was felt that the editorials and letters in effect only reflect and comment upon the current events, this was not seen as too much of a failure.

The Info-Globe service has only been established since November 1978, and so although in ideal circumstances it would have been better if articles up until July 1976 could have been identified, this was not possible. However, by undertaking a review of the literature written since abolition it was possible to see that no major calls for reintroduction had occurred in that period.

The Info-Globe service gave the date, title and number of each article, and by then referring to the micro-fiche it was possible to read the entire article. Naturally some articles were not as applicable as others, and consequently it was necessary to select those that were of most relevance to the thesis. Here it is possible to realize that there may have been some bias in the selection of articles, and that the stand-point of the investigator may have prejudiced, unintentionally, the findings of this research. However, as it would have been completely impractical to detail in length the content of every article, a process of careful selection proved necessary. In an effort to combat any short coming that the selection might entail, all the articles which had been thrown up by the Info-Globe service and which were of Canadian content were counted, to provide a quantitation indication of the strength of the demand for restoration, and to reveal the periods of time when the subject was most popular.

In studying the situation in Britain, an attempt was made to apply as far as possible a similar methodology. Although data were obtained from articles the primary source of data used for documenting the pressures for reintroduction was, as for Canada, a national newspaper.

It may be appropriate to select the paper that is commonly quoted as the organ with the greatest authority or prestige in the nation concerned, e.g. The Times... (10. p338)..

The Times was chosen as it is a respected national newspaper and because it published "The Times Index". The Times Index is an index of subjects which is published yearly and which lists all the articles that have appeared in The Times under each of the subjects' headings during the year in question. Capital Punishment is listed as a subject under the main heading of 'Crime', and has been so since 1972. Before this date, it was a subject in its own right. By looking at this index, and by obtaining the references of the news articles, (but not the feature articles, correspondence, or Parliament discussed) which have appeared in the Times, (excluding the Sunday Times) from 1970 to 1984 it was possible to undertake the same methodology as had been applied for the Canadian newspapers. The only difference in this methodology is that the references were not on computer.

The same data analysis was employed for these British

articles, likewise quantitative research was used for plotting the frequency of the articles and showing when the subject was most newsworthy. From December 1st, 1978 to November 12th, 1979, The Times suspended publication due to industrial action, and during this time The Times Index listed articles that appeared in the Daily Telegraph: thus for this period of time those articles have been used in this study.

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CHAPTER III

THE ABOLITION AND PRESSURE FOR THE RESTORATION
OF THE DEATH PENALTY IN CANADA AND BRITAIN

The Case of Canada

The death penalty was abolished in Canada in 1976, becoming law on July 26th, 1976. Prior to this date the death penalty had been in abeyance since 1962 through the non-execution of convicted offenders. In 1963 and 1964 all sentences of death were commuted to life imprisonment with the use of the Royal Prerogative of Mercy. In 1963 the Liberals came to power and a Private Members Bill was introduced to abolish the death penalty, but this bill was not fully debated.

The government's reluctance to permit the bill to be fully debated was consequently interpreted as an expression not of the non partisan nature of the subject, but of the strategy of a pro-abolitionist government - de jure retention with de facto abolition. (25. p4).

In 1966 the House of Commons devoted three full days, March 23rd, 24th and 28th to the first debate on the abolition of the death penalty. The resolution called for:

the abolition of the death penalty in respect of all offenders under the criminal code for the substitution of a mandatory sentence of life imprisonment in those cases where the death penalty was mandatory. (5. p422).

This motion was rejected by a vote of 143 to 112 but it sponsored another motion aimed at abolishing the death

penalty for a trial of five years except for capital murder. On November 9th, 1967 the Solicitor General moved a second reading of the Bill, and all three parties agreed on a free vote. November 23rd saw the cumulation of seven days of debate whereby the House approved the second reading 114 - 87, it then passed the third reading, which began to be debated in the senate on December 12th, 1967. The Bill received Royal Assent on December 21st and came into force on December 29th, 1967, marking the beginning of a five year moratorium which was to come to an end on December 29th, 1972. (5. p422).

On January 11th, 1973 Warner Allmand the Solicitor General introduced legislation to extend the five year moratorium for an additional five years. The debate concluded on May 29th with the acceptance of the Bill, 139 - 114. The moratorium was never to reach its termination date, as in the winter of 1975/76 the government of Canada introduced a number of bills, recognizing a variety of issues, one of these being the abolition of capital punishment. After lengthy debate a free vote adopted de jure abolition. The Bill became law on July 26th, 1976, (5. p422).

Prior to these most recent attempts at abolition, attempts were made to abolish the death penalty through

Private Members' Bills. The first of such bills was introduced on February 5th, 1914 by Robert Bickerdike. (25. p99). He argued that capital punishment was murder committed by the state, a blot on christianity, a brutal and unnecessary form of punishment, ineffective as a deterrent, and the possibility of judicial error made it an unconscionable form of punishment. (1. p17).

Although the bill was discussed briefly, it was defeated by a motion for adjournment. Mr. Bickerdike tried again in 1915 and 1916 to reintroduce legislation to amend the criminal code but to no avail. His last attempt was made on January 31st, 1917 when he introduced the second reading of Bill Number Three,

to ammend the criminal code and to abolish the penalty of death.

This bill was debated on April 19th and May 2nd but was also defeated. (25. p100).

The next formal attempt to abolition was introduced to Parliament by Reverend William Irvine. In April 1924 the bill was debated and later a free vote resulted in its defeat, 29 for, 92 against. (25. p100). After this no attempts were made until 1948, so that the period 1914 - 1924 could be considered a first stage of the abolition movement. The second stage which eventually culminated in

the abolition of the death penalty in Canada, commenced in 1948 when the then Minister of Justice Hon. J.L. Isley moved Bill No: 337 to amend the Criminal Code to restrict the imposition of the death penalty. What was proposed in this bill was to restrict the imposition of the death penalty. Although at this time there was no intention of changing the punishment for murder, the seed had been sown.

The next move to abolish the death penalty came in the form of a Private Members Bill No. 2 in 1950 "to amend the criminal code to abolish the death penalty" moved by Mr. W.R. Thatcher. This bill was debated on four separate occasions but was finally withdrawn in the belief that the chances of it being accepted were poor. (25. p2). In 1953 Thatcher introduced a similar bill which was later withdrawn, but subsequently a Joint Committee of the Senate of the House of Commons was established to study the death penalty, corporal punishment and lotteries. With regard to capital punishment, the Committee were to investigate the feasibility of the abolition of this penalty and make recommendations. In 1956 the Committee issued its report and declared itself in favour of the retention of the death penalty for murder, piracy and treason.

Following the publication of this Report, bills to amend the criminal code were introduced in 1957, 1958, 1959,

and 1960. In November 1960 the government introduced legislation which classified murder into capital and non-capital, with only capital murder being punishable by death. Then in 1962 a bill was introduced to amend the criminal code to abolish capital punishment except for treason. This was later defeated. (1. p8).

There had been de facto abolition in Canada for approximately twenty years in the middle of the Nineteenth Century, but this abolition was due not to political events, but because juries were reluctant to bring about verdicts carrying the death penalty. (25. p104).

This very factual review of the legislative history of abolition illustrates what a gradual process abolition has been. Although the seeds of abolition were sown in 1914, they did not germinate until 1948, and then were very slow to grow and to eventually come to fruition. The Canadian Parliament has been very slow and cautious in accepting total abolition, preferring at first to experience a compromise between strong retentionist and abolitionist emotions in the form of a moratorium. These events show that abolition was not a rash move, but rather came about as a result of careful debate: both parties were slow to change the status quo, and both sought to produce change by executive rather than legislative action. (25. p6).

It is interesting to note that since the moratorium began in 1967 there have been sporadic attempts to get the death penalty restored. Public opinion has never shown to be firmly supportive of the abolition of the death penalty. In 1960, 51% said that capital punishment should not be abolished, the lowest percentage recorded. Since this date the percentage has increased so that in 1965 it was 56%; 1966 53%; 1971 70%; 1972 63% and 1975 69%. (6. p105).

The increased support shown by the public through the seventies mirrors the events in the early part of this decade, namely the October crisis of 1970, when two prominent figures were kidnapped. This altered any trend that there may have been towards abolition. The Canadian Gallup Poll of 1975 clearly shows that public mood definitely swung from abolition to restoration with 69% of Canadian adults favouring capital punishment. (6. p6). Fattah has argued that there are six factors which influenced this trend to restoration, these being political violence, terrorism, assassinations, student unrest, hijacking and political kidnapping.

If we assume that the socio-political climate in a given country (and in the world) is likely to give an impact on public attitude to the death penalty in that particular country, then it would not be difficult to

understand the Canadian mood and the Canadian sentiment regarding the death penalty. (6. p6).

By 1975, with October 1970 well in the past, the retentionist sentiment still appeared to be deep-rooted. By 1976, retentionist support was clearly on the increase, proving there was a shift from the mid-sixties which can be attributed to the socio-political environment of the time. Patterns of violence change to include airline hijacking, airport and athlete massacres and kidnapping.

When this is combined with increasing rates of murder and other violent crimes in Canada, as well as a faltering Canadian economy, a general feeling of insecurity would be the expected result. The increasing support for capital punishment in the early 1970's was only part of a more general phenomenon of an increasing sentiment that courts were being too lenient with criminals. (32. p88).

It was not only public opinion which was firmly behind the restoration of capital punishment, the police officers were also an extremely powerful lobbying group. In January 1973, the Canadian Association of Chiefs of Police was not only demanding the return of the noose, but also a referendum on the issue. (32. p88). In a brief that they submitted to the Federal Cabinet on Capital Punishment they highlighted the

following eight points - firstly, MP's should vote for retention even though it was against their conscience; secondly, legislators must consider the rights of society at large over all else; thirdly, a free vote does not mean voting according to conscience, but according to the views of the people you represent; fourthly, capital punishment is not barbaric; fifthly, murder statistics are unreliable in trying to determine whether the death penalty is a deterrent; sixthly, no detailed studies exist showing that there is an adequate alternative; seventhly, the past practice of commuting the death sentence brought judicial process into disrepute; and, finally, commutation should only be in cases where there was an honest doubt. (31).

In 1972 and 1974, efforts were made by the police officers to make the death penalty an election issue. The prison officers were also lobbying for reintroduction and, following the murder of a prison guard in 1975, called a one day strike to dramatize their demands for the return of capital punishment.

The law enforcement agencies highlighted the increase in the incidence of murder since the moratorium to demonstrate that there was a need for capital punishment, and argued each time a police officer was killed, that it was the result of the moratorium, believing that the absence

of the death penalty from the statutes increased the risk run by police officers in maintaining law and order. (25. p68). The Canadian Association of Chiefs of Police are most vocal in this call and reaffirms its retentionist position, and continues to renew its calls for reintroduction at each of its annual meetings. (5. p425).

Thus despite public opinion, which showed that in 1976 80% of Canadians favoured the restoration of capital punishment, (32. p90) and the strong lobbying undertaken by the police force, who, during this year, placed advertisements in newspapers throughout Canada in which they argued the need for capital punishment, it was abolished in 1976.

During the capital punishment debate the Ottawa Citizen carried a news article entitled: "Life and Death Vote: Press Bias Favoured Abolition". The article stated that the press had been biased in favour of abolition, and although some articles had been carefully reasoned, some had appeared very superficial:

One editorial in the Citizen suggested that a free vote would allow MP's to ignore their leader's vote according to conscience. It added arbitrarily that a retentionist vote would not be one of conscience, but one of vengeance. (26).

Editorials and articles of this nature, it was believed, helped change the law, however the article also stated that acts of this nature further convinced Joe Citizen that the "elite press" and "elite MP's" control the destiny.

Throughout the moratorium there had been certain characteristics to the attempts to restore the penalty of death. Firstly, these attempts were spear-headed by the police officers, who pointed to the increase in the incidence of murder since the moratorium to add credence to their pressure. Secondly, pressure grew when there was an election, as there was in 1972 and 1974 when it was the police officers who tried to make capital punishment an election issue, and, finally, there appears to be no pattern to these attempts at restoration, and indeed they have been rather sporadic.

Although the move to abolish was undertaken without the backing of the majority of the voters, there was clearly no sustained movement towards restoration immediately after 1976.

A paper presented in Washington D.C. in December 1982 stated:

There have been no major legislative attempts to reintroduce the death penalty (in Canada) after it was

abolished in 1976. (5. p429).

Indeed the years following de jure abolition were quiet ones, with the issue laying dormant with no active pressure for restoration. There were sporadic attempts but these did not draw mass support from a group of people.

In looking at the newspaper articles from 1978 to mid 1984, it is possible to see that the issue rarely received detailed coverage, and if it did so, it was a sort of reporting of a very factual nature, detailing the event and adding little comment from the groups responsible for that particular pressure for reintroduction, or from the newspaper itself.

Inevitably, the articles detailed the calls for reintroduction from the law enforcement agencies, who used any increase in the number of violent crimes, or a specific crime, and the consequential danger to their profession, to reiterate their argument for reintroduction. The media, up until October 1984 was primarily involved in reporting the activities for reintroduction from the police officers, whereas after this date it became increasingly involved in reporting the events in Parliament, as it seemed that the newly-elected Conservative government was heading towards a vote on the issue. If anything, the media can be seen in 1984 as the "go-between" reporting the police officers'

actions and then looking to the politicians for some reaction to the police demands. Prior to 1984, the government seemed uninterested in the capital punishment issue, but after September 1984 it appeared more sympathetic to the appeals from the lobbying groups.

In November 1977 after the murder of a Collingwood policeman, wives of the policemen presented then Prime Minister Trudeau with a petition calling for a referendum on capital punishment. (7). During August 1978 policemen were asked to contribute four dollars each for a national advertising campaign designed to put pressure on federal politicians to restore the death penalty. (8).

May 1979 saw the Progressive Conservatives gain office (although only for a period of six months). During the campaign their campaign director was quoted saying:

We aren't going to make it an issue, (27).

and indeed at this time there did not appear to be a strong lobbying force to make the death penalty an election issue. However, this is not to say that the electorate were not firmly in favour of the reintroduction of the death penalty. In 1979, a Gallup Report revealed that 68% were in favour of the punishment (70. p43) and by 1981 that figure had grown to 73% in favour (69). It is dangerous to recognize one over-riding factor which has contributed to the increasing

support for capital punishment, although Vidmar has argued that it is the individuals who feel most threatened by crime, who are likely to support the death penalty. (71. p337). If it can be advanced that many people perceive society as becoming increasingly violent, and therefore a growing number are worried by crime, it is possible to realize why the death penalty is supported by a growing number of people.

Throughout the beginning of the Eighties the Gallup Polls showed that public opinion in Canada still favoured the death penalty. In 1982 70% were pro capital punishment and in 1984 71% were. (30). Whatever the arguments of the abolitionist camp, they could never dispute that the majority of Canadians do favour the death penalty.

In August 1980 representatives of police governing boards in sixty-two Ontario communities urged Justice Minister Jean Cretien to reintroduce the death penalty for the murder of policemen and prison guards. (9).

During July 1982 the Public Service Alliance which represents prison guards and the Association of Chiefs of Police both pointed to the killings of guards by inmates serving long term sentences at Ancharbault Penitentiary as grounds for the reintroduction of capital punishment. (28, 29). Later in the same year a progressive conservative

motion proposed by Girue Fretz and Berno Frieson calling for a referendum on capital punishment was "talked out" in the House of Commons. (10).

Therefore although there were periodic discussions over the issue of capital punishment, the period from 1976 to June 1984 must be seen as a quiet one. The subject was raised but never managed to become a major issue of the day.

The table below documents the frequency of the articles of Canadian content which have appeared in the Globe and Mail from January 1978 to December 1984 with the words "capital punishment" or "death penalty" in the title. This graph illustrates that over the period from 1978 to July 1984 there was very little concern over the issue. Despite the fact that a federal election was planned for September 3rd, 1984 the Solicitor General stated that the death penalty was not an issue in the election. (11). Clearly though, after the Conservative Party won with a comfortable majority the issue came into the limelight.

TABLE 3

TABLE SHOWING THE FREQUENCY OF
GLOBE AND MAIL NEWSPAPER ARTICLES
CONCERNING CAPITAL PUNISHMENT

JAN. 1978 - FEB 1985

	1978	1979	1980	1981	1982	1983	1984	1985
JAN			1		1	1		2
FEB	1		*		1			2
MAR					1			
APR	1			1			1	
MAY		2*						
JUNE				1				
JULY					1		1	
AUG	1		1					
SEPT	1						4*	
OCT	1				1		8	
NOV			1				11	
DEC					1			
TOTAL	5	2	3	2	7	1	25	4

* FEDERAL ELECTION

A review of the articles which appeared in the Globe and Mail during the last four months of 1984, makes it clear that the main lobbying force behind the calls for reintroduction were police officers. At this time the Globe and Mail claimed:

There is a greater possibility now than at any time in the last eight years that the federal lawmaker will restore capital punishment... There is now a strong pro-execution lobby within the progressive conservative cabinet and in the party's parliamentary caucus. They are being encouraged by law enforcement lobbies in the aftermath of what has seemed a particularly bloody summer. (14).

The calls for reintroduction came loudest from police and prison guards who on November 5th organized a mass rally on Parliament Hill to call for reintroduction. Their calls came following the death of six policemen in Canada over six weeks period. Five of these killings had been in Ontario.

On November 13th two Conservative Back Benchers, Bill Damm and Gerry St. Germaine, introduced Private Members' bills calling for the reintroduction of capital punishment. (21). Prime Minister Brian Mulroney had stated that capital punishment is not a priority for the new government, (17), however, Conservative MP James McGarh (20), Solicitor General Elmur McKay and Justice Minister John Crosby claimed

that Parliament is likely to have a free vote on capital punishment during 1985.

Calls for the reintroduction of capital punishment started on September 3rd in direct response to the shooting of two policemen in Ottawa. (12). These calls were reiterated by the President of the Metropolitan Toronto Police Association who stated that the death penalty was a necessary step to protect society and claimed that there was an increasing number of people who wanted to:

kill cops to gain notoriety (13)

A few days later the Prime Minister stated that he would not allow a national referendum on the issue of capital punishment, but would leave open the possibility of a free vote on the death penalty by members of parliament. (15).

October 1984 saw Elmur McKay, the Solicitor General stating that he wanted to use the "high public sentiment" to reintroduce capital punishment. (16). While later in the same month Canada's third biggest union, the Canadian Labour Congress, with a membership of 180,00 including 9,000 prison guards, was urging a free vote on capital punishment. (18). Mr. McKay later told police representative that he hoped the issue of capital punishment would be debated and voted upon in this session of parliament. (19).

It was during the month of November when most of the activity to reintroduction occurred. Private Members bills

for reintroduction were presented to Parliament. Parliament was lobbied by police officers and prison guards and their wives, and a general fervour was created in the community. During this period Mr. McMuntry stated:

The recent tragedies and many other crimes have made some citizens wonder whether or not society is under seige. It is therefore not surprising that many Canadian citizens are demanding the return of the death penalty. (22).

Later in November a majority of over six hundred delegates to the annual meeting of the Union of Manitoba Municipalities passed a resolution backing the death penalty for first degree murder. (23). The issue was also discussed at a meeting of federal and provincial justice ministers in St. Johns after being introduced by Gordon Walker, the Ontario Minister of Justice.

November 1984 must be recognized as the period when the issue of reintroduction was more prevalent than at any other period since abolition, although the debate has continued after this date, it has not done so to such a great degree, indeed in January 1985 the Executive Director of the National Police Association, Edward Johnson stated:

We have had repeated calls for bringing back capital punishment and each time the pleas have fallen on deaf

ears. (24).

The newspaper articles, particularly in 1984 detailed the cries for the return of capital punishment. They cited the increase in violent crime and in particular drew attention to the number of police officers who had been killed while on duty over the Summer and early Autumn. After each violent crime, and following the Conservative win at the federal election, articles appeared detailing which group was lobbying for the reintroduction of capital punishment, while other articles showed how this lobbying force was growing.

The following table shows the dates of sixteen of the more extensive articles which appeared in the Globe and Mail between November 1977 and February 1985, and details the primary content of these articles which all have a recognized lobbying group, and require the introduction of capital punishment.

TABLE 4

TABLE SHOWING THE CONTENT OF SIXTEEN
GLOBE AND MAIL NEWSPAPER ARTICLES
CONCERNING CAPITAL PUNISHMENT

<u>DATE</u>	<u>PRECIPITATING EVENT</u>	<u>IDENTIFIED GROUP</u>	<u>ACTION DEMANDED</u>
Nov '77	Murder of a Collingwood	Wives of the Police Officers	Referendum on Capital Punishment
Aug '78		Police Officers collecting money	Pressure to be applied to federal politicians to restore capital punishment
Aug '80		Police governing Boards	Urged Justice Ministers to restore death penalty
July '82	Killing of prison officer by inmate	Public Service Alliance	Reintroduction of capital punishment
Dec '82		Progressive Conservatives	Referendum on capital punishment
Sept '84	Killing of Ottawa policeman	Police Association	Death penalty is necessary to protect society
Sept '84	6 policemen killed in 6 weeks	Police officers	Capital punishment for police murders
Sept '84	Police killings	Prime Minister	States there will be no referendum
Oct '84	High public sentiment	Attorney General	Retain capital punishment
Oct '84		Prime Minister	Free vote is

not a priority
for the govern-
ment

Oct '84

Canadian
Labour
Congress

Free vote on
capital punish-
ment urged

Nov '84

During police
Conference

Attorney
General

Hoped there
would be a free
vote

Nov '84

Member of
Parliament

Introduced
private members
bills

Nov '84

Police
killings

Police and
prison
officers

Lobby Parlia-
ment for re-
introduction of
capital punish-
ment

Nov '84

Manitoba
Municipali-
ties

Backed the
death penalty
for first
degree murder

Jan '85

No action by
Parliament

Police
Association

Demand a
debate in
Parliament

In analyzing the articles it can be seen that certain characteristics can be recognized during these attempts to restore the death penalty. The most identifiable characteristic is that overwhelmingly it was the police officers who were pressuring for reintroduction, and when not the actual officers it was some affiliated group. The only other important lobbying force were the Members of Parliament who introduced Private Members Bill, although this action was generally in response to the pressure applied by the law enforcement agencies.

Secondly, the calls for reintroduction usually occurred following the murder of a police officer, though it must be stated that prior to September 1984, even when a policeman was killed, little extensive focus was awarded by the media. (i.e. in 1977 following the death of a Collingwood policeman).

Finally, it cannot but help to be noticed that the recalls for capital punishment have occurred with the most force following a change in government. Though there was a change in government in 1979, this was only for a period of six months because the Progressive Conservatives gained office with such a small majority, radical change did not occur until September 1984, when the Liberals were comfortably beaten by the Conservatives for the first time in fourteen years. With this change of government came the

first serious pressure for restoration since de jure abolition in 1976.

Canada experienced a particularly bloody summer in 1984 with the death of six policemen in as many weeks. By the extensive reporting of these incidents and of the reactions of the police and the new conservative government, the media was able to create a general fervour which stressed the need for the reintroduction of the death penalty. Interestingly enough, these calls were the loudest that there had been since de jure abolition in 1976, and came immediately after a change of government. They stressed the necessity of capital punishment because of an increase in violent crimes; turbulent relationships had meant a breakdown of norms - a fear was generated in Canadian society that it was being threatened by violent crime, and that the only way to deal with the criminals is to punish them more severely. It has been the agencies of the social control which have been reiterating this point to the media, and the media which has been selling the point to the population.

Can these actions be seen as irrational? No. If, as was advanced in the hypothesis, cries for reintroduction occur during a period of turbulence, and more specifically following a change of government and a spate of violent crime, we can understand Canada's recalls for the death penalty as a rational response to the conditions of that

time.

The Case of Britain

The death penalty was abolished in Britain in 1965 for a five year experimental period, and then, four years later, in December 1969 permanent abolition was established, by a comfortable majority in both the House of Commons and the Lords.

The removal of the death penalty from the British statute book in 1965 was the culmination of an arduous process of public education and persuasion which had been sustained for half a century. (71).

The process of abolition in Britain had been of a slow and cautious nature, but really, received impetus following the 1957 Homicide Bill, and the anomalies inherent in this Bill, which enabled the 1964 newly elected Labour Government to address the issue. After Labour won the election a line in the Queens speech opening Parliament read:

Facilities will be provided for a free decision by Parliament on the issue of capital punishment. (33. p51).

The Murder (Abolition of the Death Penalty) Act was introduced by Sydney Silverman (Labour) and was passed during its second reading on December 21st, 1964, by 335 votes to 170, and its third reading on July 14th, 1965 by 200 votes to 98 in the Commons. The House of Lords accepted

the Bill by substantial majorities, the second reading was carried by 204 to 104 and the third by 169 to 75. (33. p54-5). It became law in 1965 suspending capital punishment altogether for a five year period.

Although the experimental period of abolition did not end until 1970 the Labour Government gave notice that it would move for permanent abolition in 1969 and did so in December of that year. (40. 41).

The history of the abolition movement in Britain really goes as far back as 1810. At this time 222 capital offences were on the statute books, a fact which caused Sir Samuel Romilly to begin his campaign against hanging. (41). Romilly was not in favour of complete abolition, only a reduction in use for certain offences. Romilly together with the efforts of Jeremy Bentham and Sir James Mackintosh in the early years of the Nineteenth Century brought success in the gradual diminution of the use of capital punishment (3. p187) so that by 1861 the Criminal Law Consolidation Act had reduced the number of capital offences to four. Seven years later public executions were abolished. (41).

The modern attack on capital punishment began through the Howard League for Penal Reform, but was canalized in 1925 by the formation of the National Council for the Abolition of the Death Penalty, which received much of its energy from Ray Calvert. In 1929 a Select Committee on

Capital Punishment was appointed which recommended the suspension of capital punishment for five years. The Committee was established by the short lived (1929-1931) MacDonald Government and had the effect of dividing the Labour and Conservative members, with Labour urging suspension until the Conservatives refused to ratify the report. No action was taken as Labour lost office almost immediately after the report.

In 1938, for the first time, the Commons carried a motion to abolish the death penalty, although only for a trial period of five years. The motion was introduced by a Conservative back-bencher, Captain Vyvyan Adams and was carried on a free vote of 114 votes to 89. (33. p39). Although the House of Commons carried this motion in favour of abolition, during the process of the 1938 Criminal Justice Bill, an attempt to insert an abolition clause was defeated. (3. p187).

The effects of the war silenced the issue until 1948. In 1945 a Labour Government was returned to office, but as it was during this period that the cabinet's time was taken up with the social and economic reforms, there was little time to consider the death penalty. That is, not until 1948 when the House of Commons had a free vote, initiated by Sydney Silverman and debated on April 15th, 1948 against government advice, following an amendment to the Criminal

Justice Bill which would have suspended the use of the death penalty for five years. The vote was carried by 245 to 222 but on June 2nd,

the Conservatives dominated the House of Lords, upheld the death penalty and struck out the Silverman clause 181 votes to 28. (33. p41).

The Labour Government tried to bring a compromise defining categories of murder, but the Lords rejected this too. (441).

These events led to the appointment of a Royal Commission to examine the question of capital punishment. Their report was presented to Parliament in September 1953 and although favourable to the abolitionist cause, the Conservative Government proposed no official action to be taken on any of its recommendations. (2. p111) The report, although having little immediate effect, managed to become known as one of the most authoritative reports on the death penalty. Events following its publication helped to reintroduce the debate on capital punishment. A new campaign, led by Gerald Gardiner and Victor Gollancz had been inspired by the Royal Commission's report, (3. p189), and led to the formation of the National campaign for the Abolition of Capital Punishment. (2. p131). These events together with two highly publicized executions in 1953 in which one victim had not committed the murder, and for the

others guilt was open to serious doubt, brought an emotional climate favourable to the abolition of the death penalty. (33. p44).

In March 1956 Silverman introduced a Private Members Bill to abolish the death penalty. He was able to carry this through all its stages in the House of Commons and under a free vote the abolitionist cause was victorious, 293 votes to 262. The Bill was later defeated in the Lords by 238 votes to 95. (33. p46).

After this defeat and to the fury of the abolitionists the government announced it would promote its own Bill to permit partial retention of the death penalty providing for "capital" and "non-capital" murder. (33.47). This measure became, in March 1957, the Homicide Act and retained five categories of capital murder.

For a while the issue subsided, the National Campaign suspended its activities, the increased Conservative majority in the 1959 election was not encouraging, however in December 1960 a new crusade began. There was a great deal of antagonism towards the 1957 Homicide Act. Many former retentionists in the Commons and the Lords were willing to vote for a limited trial period of abolition after nine years experience of judicial anomalies practised under the 1957 compromise. (4. p112).

The 1964 Abolition Bill was unique in certain ways:

For once parliament played an active role at the stage of policy formation instead of being called in at an advance stage to sandpaper the administrative policy.

(3. p43).

Although it may appear that the political climate was well prepared for this change in legislation, there were two serious problems with the introduction of the Bill. Firstly, public opinion still favoured the retention of the death penalty and secondly, and consequently, there was in a number of cases strong pressure from constituencies on MP's to vote against the Bill. (33. p57).

Opinion polls conducted during 1965 showed over-whelmingly that 80% of the population were in favour of the retention of the death penalty, (34. p138) and indeed, four years later when the government was again debating the issue public opinion polls showed a majority of over 80% in favour of returning the penalty. (39).

The Capital Punishment debate did not lie dormant between 1965 and 1969. In November 1966 Duncan Sandys (Conservative) introduced a Bill under the ten minute rule to reintroduce capital punishment for the murder of a police officer, this was rejected by 170 to 292. (33. p59). During the 1969 debate Mr. Sandys presented a petition to the House of Commons said to contain a million signatures asking for the return of the death penalty. Richards has noted that:

it does seem that 1969 when compared with 1965 shows some movement of Conservative opinion in Parliament towards a limited return to hanging. The public opinion polls, the concern among Conservative constituency organized about crimes of violence and the mamouth petition... have had some effect. (33. p60).

After the suspension of capital punishment a great deal of evidence was collected in the Home Office's statistical divisions report on murder 1957-1968. Media reaction to the publication ranged from the Guardian's pro-abolitionist headline of: "Murder totals give new hopes to the Abolitionists" to the Telegraph's "Murder up since end of hanging - Deaths by shooting increase". Media reaction was therefore mixed, with the newspapers of the day generally reflecting the views of the political party that they are said to support.

The figures collected by the Home Office gave fuel to Mr. Sandy's argument. He claimed that there had been a 130% increase in "capital" murder since abolition, with the annual average increase from 17 in the period 1961-64 to an average of 38 a year during the period 1965-68. (38). Although Mr. Sandy and his supporters lobbied heavily against the restoration of capital punishment, the experiment with abolition ended in 1969 when de jure abolition was accepted. The Abolition Movement which had

started in the early 19th Century, but which had received its impetus in the 20th Century eventually culminated in 1969. However, the debate did not end there.

It wasn't until 1973 that there can be seen to have any serious pressure to restore the death penalty. Although the murders of two Glasgow policemen in 1970 and the attack on the Post Office Tower in London produced calls for restoration by MP's and individuals, it wasn't until April 11th, 1973 that Mr. C. Taylor MP (Conservative) used the ten minute rule bill to call for a vote on the reintroduction of capital punishment. Mr. Taylor argued that there had been an upsurge in violent killings since abolition, citing the events of Black September and the I.R.A. terrorists, as needing the deterrent that the death penalty brings. (43). Mr. Taylor's Bill was defeated by a majority of 142. This was the first attempt to restore capital punishment after abolition in 1969. It was an attempt which was not supported by Mr. Heath who was leader of the Conservative Government at the time, and who had said that the Government had no intention of reopening the debate on capital punishment earlier in the year. (42).

1974 witnessed a large number of I.R.A. bombings in England which had the effect of calling for the reintroduction of capital punishment. The first of these was the bombing of a coach carrying army personnel in February

1974. Then in July a bomb placed in the Tower of London killed one woman and injured thirty seven others, this event caused renewed cries from Conservative MP's to restore the death penalty. Later that month Sir Keith Joseph, Shadow Home Secretary said the next Conservative Government would reconsider the question of the reintroduction of capital punishment for terrorism. (44).

In October the I.R.A. placed a bomb in a public house in Guildford, which went off killing five guards and injuring sixty five others, this event, together with the bomb blast in a Birmingham pub which killed nineteen people increased calls by MP's for the reintroduction of the death penalty.

It was clear that many MP's were moving with the mood of their constituents and that there would be much support on both sides of the House for any motion to bring back capital punishment for crimes similar to the Birmingham outrage. (45).

During November 1974 two conservative MP's, Mrs. Jill Knight and Mr. Ian Percival tabled an amendment to the Prevention of Terrorism (Temporary Provisions) Bill seeking to restore the death penalty for terrorist murders, while at the same time five Tory MP's formed themselves into a steering group to ensure all back-bench groups pressuring for the restoration of capital punishment were co-ordinated.

(46). A free vote was eventually taken on December 11th, 1974 which showed 369 against the restoration of capital punishment, 217 for, giving a majority of 152. (47).

It is clear that the activities of the I.R.A. during 1974, and the large number of murders which occurred as a result of their bombings influenced greatly the decision to reintroduce capital punishment. The 1974 free vote was followed a year later by another motion by Mr. Ivan Lawrence (Conservative). The later half of 1975 had seen a bomb blast in Oxford Street, London, and at a Surrey pub in August of that year, which undoubtedly influenced Mr. Lawrence's decision to pressure for a free vote. (48). However, these bombings did not cause as much fervour for reintroduction as the murder, in November 1975 of Mr. Ross McWhinter.

Many Conservative MP's shocked by the murder of Mr. Ross McWhinter... said last night that they intended to renew pressure on the Government to reintroduce the death penalty for acts of terrorism which result in death. (49).

Mr. Lawrence moved that,

this house demands capital punishment for terrorist offences causing death,

it was debated on December 12th and rejected 361 to 232, a majority of 129, 23 less than the previous year.

The following three years were relatively quiet ones.

Capital punishment was debated briefly during the Tory Party Conference of 1976 (50) and 1977 when the Shadow Home Secretary Mr. Whitelaw promised that a Conservative Government would allow a free vote on the issue. (52).

A poll conducted for the BBC in 1977 showed that 89% of the population wanted the death penalty restored for terrorist murders and 66% for all murders, showing that the electorate were still strongly in favour of the death penalty. (51). However, it was not until 1979 that the issue returned to the limelight.

During March 1979 Mr. Airey Neave a Conservative MP and strong advocate of the the death penalty was killed by a bomb placed in his car by the I.R.A. His death prompted Mr. James Jardine, Chairman of the Police Federation to state that the death penalty should be restored. (35). Two days later The Telegraph reported that the:

Conservative election manifesto is understood to include a pledge that a Tory Government will hold an early Commons debate on restoring capital punishment for murders. The pledge takes on special significance because of the assassination of Airey Neave. (36).

On May 8th, 1979 the Conservative party won the general election and a month later announced that they would hold a free vote on capital punishment. During the 1979 election campaign the Conservatives had stressed the need for "law

and order" and had listened closely to the views of the Police Federation, which in a letter to Mr. Whitelaw, the Home Secretary, had stated:

Because of its abolition ruthless robbers were no longer reluctant to use guns, and terrorists believed they had total immunity. (37).

The House of Commons voted by a decisive majority of 119 against restoring capital punishment on July 19th, 1979. Although much of the debate focused upon terrorism and the problems in Northern Ireland, no change of policy occurred.

The following two years saw sporadic cries for reintroduction, usually as a result of a heinous crime. A bomb explosion on a crowded Belfast commuter train brought demands from Tory MP's for the return of the death penalty for acts of terrorism in January 1980, (53). while the Parliamentary spokesman for the Police Federation Mr. Eldon Griffiths MP stressed the need for the reintroduction of capital punishment after another murder by the Yorkshire Ripper. (54). In 1981 although the matter was discussed at the Police Federation Conference in May and at the Conservative Party Conference in October, it wasn't until November and the murder of the Unionist MP for Belfast South, Mr. Robert Bradford, that a call for the reintroduction of capital punishment for acts of terrorism was made. A Bill was introduced in Parliament by Mr. George

Gardiner (Conservative). (55).

Calls for reintroduction were again heard in March 1982, but this time the cries came loudest from the police force and not from the Members of Parliament. The first call came in early March following radical disturbances in the Brixton area of London. (56). During this month the Police Federation placed an advertisement in five national newspapers asking for the public to support the return of the death penalty. The advertisement stated that the death penalty was abolished in 1965 when terrorism was virtually unknown in the country, whereas in recent years terrorists from Ireland and other countries have carried out a series of outrages in Britain. This move was supported by over eighty MP's who signed a Commons motion supporting the Police Federation. (58). Both these actions followed the murder of two policemen during the previous week. (57).

Although during March Mr. Whitelaw had said that there was no possibility of reintroducing the death penalty, in April he decided that the House of Commons should be allowed a one day debate with as many as three votes on the matter, during the three days that the Criminal Justice Bill was allocated for its report stage. Mr. V. Bendall (Conservative) tabled three specific amendments to restore capital punishment for the killing of police officers, terrorist killings and armed robberies, however, the issue

was not treated with the same emotion that it was in the past, as it was considerably overshadowed by the Falklands crisis. (59). A free vote was undertaken on May 11th, and showed that MP's rejected by 357 to 195 the motion to restore capital punishment. The majority of 162 was greater than in 1979. (60).

The most recent cries for restoration of the death penalty occurred during the summer of 1983. On June 9th the Conservative Party was returned to office with a significant majority, during the election campaign both Mrs. Thatcher the Prime Minister, and her out-going Home Secretary Mr. Whitelaw promised an early free vote on the issue. (61). The pressure upon the government really began to increase in July. During this month Peter Tanner, the Secretary of the Police Federation wrote to all the MP's to tell them of the increase in the killing of police officers since the abolition of capital punishment, (62) while the Prison Officers Association issued a statement saying that:

Widening the basis of offences where capital punishment would be available would reduce serious crime in general, and advanced the death penalty for rape, kidnapping and serious offences of assault. (63).

As pressure continued to restore the death penalty many Conservative MP's stated that they were against restoration, as was the Home Office. On July 6th Sir Edward Gardiner

(Conservative) tabled the motion,

This House favours the restoration of the death penalty for murder

six amendments were also tabled specifying categories of murder which should be subject to the death penalty. (28). During the election Mr. Whitelaw had suggested that the debate would be a full government bill, but Mrs. Thatcher stated that she expected it to be introduced by a private member.

The media reported on the opinions of the church, judiciary, police and prison officers and penal reformers and predicted that the vote would be a close one. (65). As the Conservative Party had been returned to office with such a comfortable majority, and with a good number of new MP's it was felt that voting would be significantly different from the previous year. However, on the day of the vote, July 13th, the Times stated:

By last night there was no doubt that the Government, although officially neutral, has been bending all its efforts to secure the defeat of the motion... (66).

It would appear that the Government was well aware that the House of Lords was against restoration. The motion was rejected 368 to 223, a majority of 145. The smallest majority was received when voting for the amendment which called for capital punishment for terrorism, in this case

the majority was 116. Despite this vote a Gallup Poll conducted on the day of the vote showed that 77% of the public were in favour of capital punishment for terrorist murders and large majorities in favour of such a penalty for other offences. Public opinion clearly did not support the government's vote, and really showed no alteration since capital punishment was suspended in 1965.

The pressure for a free vote in 1983 did not occur following the increase in a certain crime, (although the terrorist offences of the Seventies were not easily forgotten) rather, the pressure was from the Police Federation and Prison Officers and from Conservative MP's. Following the defeat of the restoration motion, there was agreement among many MP's on either side of the House, that the question of restoring the penalty of hanging for murder may never be seriously considered again by a Parliament at Westminster, although Mr. D. Evans, General Secretary of the Prison Officers Association, said he could see no reason why the issue should not be debated again. (67). Despite these views, in October, 1984, following the bomb blast of a hotel in Brighton where most of the Conservative Cabinet was staying during their annual conference, calls for the reintroduction of the death penalty were made by Mr. P. Bruinvek (Conservative), Sir Ian Percival, former Solicitor General, Edward Ducann, Chairman of the 1922 committee, and

Mr. Geoffrey Rippon, a former cabinet minister who all signed a Commons motion calling for the introduction of the death penalty for terrorist murders. (68). Clearly the debate has not been laid to rest forever.

The following table summarizes the main periods when the pressure for reintroduction was fiercest, and, identifies the main lobbying groups and preceeding events which caused this pressure.

TABLE 5

TABLE SHOWING WHEN THE MAIN RECALLS FOR
CAPITAL PUNISHMENT WERE MADE AND BY WHOM

<u>DATE</u>	<u>PRECEDING EVENT</u>	<u>LOBBYING GROUP</u>
FEB 1970	Murder of two Glasgow policemen	Wives of the murdered policemen
FEB 1971	Bombings by terrorists particularly the attack on the Post Office Tower	Mr. C. Reed MP (Con)
APR 1972	Murder of the Blackpool Police Chief, Mr. G. Richardson	Mrs. Richardson and Mrs. Kellit-Brown MP (Con)

APR 1973 FREE VOTE

FEB 1974	I.R.A. bombing of a coach carrying army personnel	Conservative MP's
JUL 1974	I.R.A. bomb blast of the Tower of London	Mrs. Kellit-Brown MP and other conservative MP's
OCT 1974	I.R.A. bomb blast at a Guildford public house frequented by soldiers	Conservative MP's
NOV 1974	I.R.A. bomb blast of a Birmingham public house	Conservative and a few Labour MP's

DEC 1974 FREE VOTE

AUG 1975	Bomb blast in Oxford Street, London and a bomb blast in a public house (I.R.A.)	Mr. J. Stokes MP (Con)
DEC 1975	Murder by the I.R.A. of Mr. Ross McWhinter	Conservative MP's

DEC 1975 FREE VOTE

NOV 1977		Victims of crime civilian group
MAR 1979	Murder by the I.R.A. of Airey Neave MP	Police Federation
APR 1979	Murder by I.R.A. of Airey Neave	Conservative Party
JUN 1979	Terrorism and the increased use of guns	Police Federation

JULY 1979 FREE VOTE

OCT 1979	Murder of a police constable	Police Federation
JAN 1980	I.R.A. bombing of a crowded Belfast commuter train	Conservative MP's
NOV 1980	Yorkshire Ripper Murder	Mr. E. Griffiths MP (Con)
MAY 1981	Murder of five soldiers in Ulster by the I.R.A.	Mr. J. Jardine, chairman of the Police Federation
NOV 1981	Murder of Mr. R. Brad- ford, Unionist MP for Belfast, by the I.R.A.	Mr. G. Gardine MP (Con)
MAR 1982	Murder of two police- men	Police Federation
MAR 1982	Increase in violence and violent crimes	Police Federation and Conservative MP's
MAR 1982	Increase in number of offences with firearms	Mr. P. Matthews, Chief Constable of Surrey

MAY 1982 FREE VOTE

MAY 1983 Riots at Albany Jail
Terrorism

Mr. E. Griffiths MP
(Con) and the Police
Federation

JUL 1983

Prison Officers
Association

JUL 1983 Increase in the number
of murdered police
officers

Police Federation

JULY 1983 FREE VOTE

OCT 1984 I.R.A. bombing of a
Brighton Hotel, head-
quarters of the Conserv
ative Party Conference

Mr. P. Bruinuels MP
(Con)

The cries for the reintroduction of the death penalty have been heard loudest in 1974, 1979, 1982, and 1983. The following table shows that the frequency of newspaper articles concerning capital punishment has been greatest during these times.

TABLE 6TABLE SHOWING THE FREQUENCY OF TIMES NEWSPAPER ARTICLES
CONCERNING CAPITAL PUNISHMENT

	1970	1971	1972	1973	1974	1975	1976	1977
JAN			2					
FEB	5		1		1+			
MAR			2					1
APR			1	6*				2
MAY	4		1	1	1			
JUN	1+							
JUL					3			
AUG		3				1		
SEP		1		1		2	2	
OCT		6		2	4+		1	4
NOV		4	1	1	6	3		1
DEC					7+	5+		3
TOTAL	10	14	8	11	22	11	4	11

TABLE 6 - CONTINUED

	1978	1979	1980	1981	1982	1983	1984
JAN			2				
FEB	3	1		1			
MAR	1	1			9		
APR		7			3		
MAY	2	5+	1	2	4*	1	
JUN	2	3			1	2+	
JUL	3	9*	1			33*	
AUG		1					
SEP		1			1	1	
OCT		1	1	2			3
NOV	1		2	1			2
DEC	1				1		
TOTAL	13	29	7	6	19	42	5

* FREE VOTE

+ GENERAL ELECTION

The principle lobbying groups for the restoration of capital punishment have altered over the last fifteen years. During the 1974 debate, MP's were at the fore-front of the pressure for restoration, and almost without exception it has been Conservative MP's who have been most vocal in these cries. (Although five Labour MP's voted for capital punishment in 1974, since this date all Labour Party MP's have been consistant in their votes against the death penalty.) From 1979 onwards it has been evident that the Police Federation and the Law Enforcement agencies have been instrumental in promoting the debate, although 1979 could be identified as the time when the capital punishment issue received equal pressure from the police force and Conservative politicians. In 1982 and 1983 however, it was undoubtedly the police force and not to such a great extent, MP's who were calling for the death penalty.

The change in lobbyists has reflected the change in the main lobby issues. In 1974 there is no doubt that the pressure to restore centered around the problem of terrorism, which was far more accute than it is today. Although terrorism was still important in 1979, it was to a lesser degree, so that by 1982 and 1983 the debate had changed and now centered around the more general aspect of an increasingly violent society and the threat to police officers. It is therefore possible to recognize a

progression from the main lobbying group being Tory MP's, to it being the police force, and from the main issue being terrorism in 1974, to it being an increase in violence in 1983.

If it had not been for the Falkland crisis, the capital punishment debate would have undoubtedly received more media coverage in 1982. As it was, the government was too preoccupied with being at war, and hence it was the law enforcement bodies that pressured for reintroduction, at a time when other issues received precedence.

It is interesting to note that during the 1983 debate the Conservative Government, although officially neutral, seemed to be extremely worried that if the Commons did vote to restore the death penalty, a number of problems would be created in enforcing the legislation. Mrs. Thatcher retracted her previous statement that the debate would be introduced by the Government, and it seemed that many of the MP's who had stopped to consider the wider implications of the Bill, had reservations. Obviously, the fervour that the Conservative MP's had for the issue in 1979 was diluted by 1983 even though there was more Conservative MP's in the House.

If one identifies the most serious pressure for restoration occurring in 1974, 1979, 1982 and 1983, it cannot but help to be noticed that (with the exception of 1982)



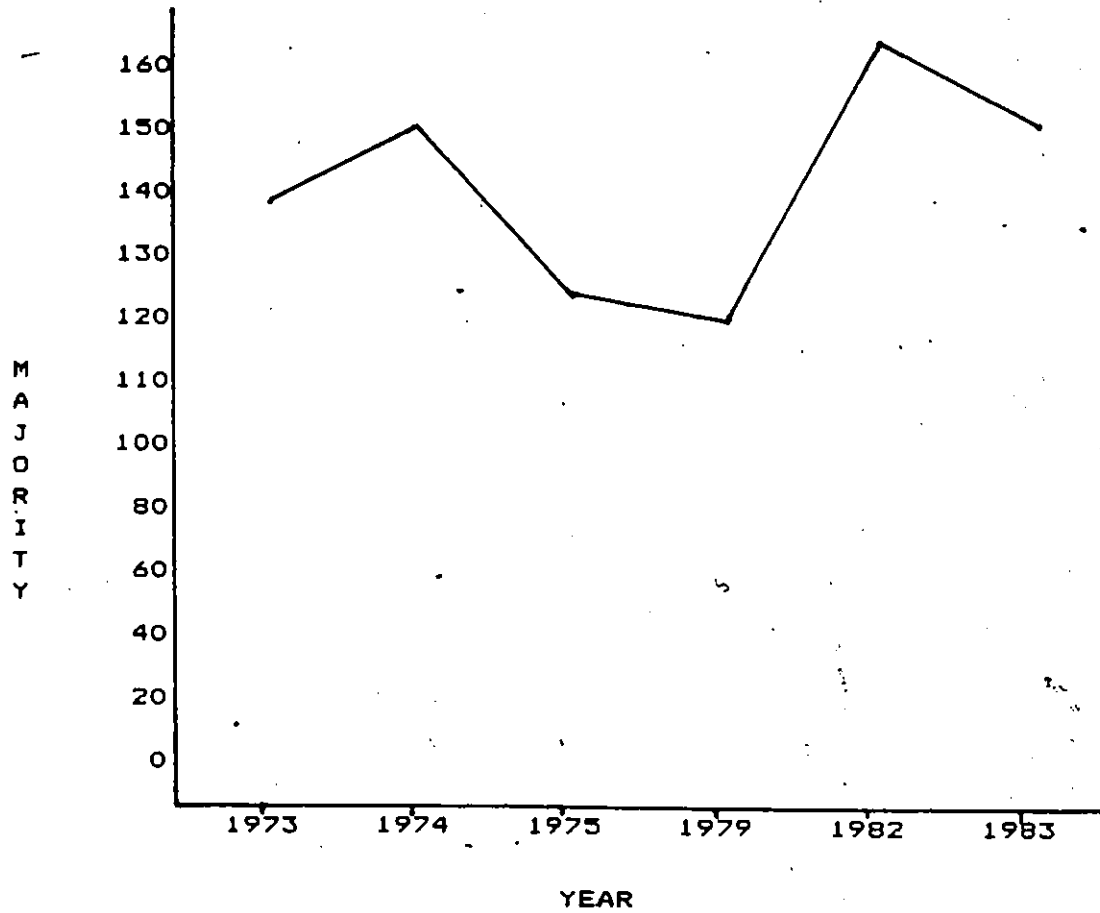
there had been a general election in each of these years. In February 1974, Mr. Wilson established a minority Labour Government, only to achieve a full majority later in that year, two months prior to a free vote on whether to restore the death penalty.

During May 1979, the Conservative Party gained office and the matter was debated in the following July. In June 1983, the Conservatives were again returned to office with a more comfortable majority, the following month the issue was debated. What is interesting is that although the subject is discussed the majorities against the reintroduction of capital punishment, irrespective of the government of the day, and that government's majority, have not fluctuated greatly. The following graph illustrates that the majority against the return of capital punishment has never fallen below 119. The subject is debated, but with hindsight we can see that the voting is never close. (See graph below).

Reflection upon fifteen years of de jure abolition illustrates that the attempts to restore capital punishment do have certain characteristics. Firstly, the calls for reintroduction occur following a general election, and more specifically, a change of government. Secondly, attempts to restore occur after a serious crime, or spate of serious crimes. This was particularly evident during the Seventies, when the terrorist attacks by the I.R.A. brought a series of

FIGURE 1

GRAPH SHOWING THE MAJORITY AGAINST THE RESTORATION
OF CAPITAL PUNISHMENT



calls for the restoration of the death penalty. More recently the Police Federation have argued that the increase in violent crime can only be combated by the death penalty.

Finally, the calls for the death penalty have come primarily from the police officers, and from the Conservative MP's representing this body. Until 1975, the Conservative politicians regularly introduced the subject, following a number of terrorist murders, but it was not until this crime decreased, did the Police Federation feel the need to keep the debate in the public eye, by continuing the pressure to restore on the government. The law enforcement agencies, and in particular the Police Federation have been instrumental in pressing for restoration over the last ten years.

In the hypothesis for this thesis it was stated that calls for the reintroduction of capital punishment occur loudest after a change of government. Britain has had six free votes, three of these following a general election. What is interesting is that even in 1974, although the Labour Party was in government, there was still a series of cries for restoration.

If the most recent calls for restoration are examined parallels can be seen between Britain and Canada. Both countries have had a change of government, and both now have

Conservative governments which are known to be more sympathetic to the pro-capital punishment lobby groups. In both these countries it has been the police officers and law enforcement agencies which have been advocating the need for capital punishment. In Canada, there has been the murder of police officers to add fuel to the debate, whereas in Britain the law enforcement agencies argued that crimes were becoming more violent and that society needed the "ultimate deterrent". Both countries have argued that their societies are becoming more violent, and that this violence was manifesting itself against police officers. Both societies have been experiencing the turbulence which is endemic to a capitalist society as it progresses through the post-capitalist stage of its development. Both countries have seen that the only way to curtail these turbulent times was to resort to stricter penalties. In Britain, this belief was eloquently described in the 1979 election manifesto of the Conservative party, which stressed the need for "Law and Order" in a society where norms were seen to be breaking down.

Canada and Britain have experienced the turbulence which, as shown in the hypothesis, is needed before a country will consider restoration, and thus have witnessed pressure to restore.

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CHAPTER IV

ANALYSIS AND INTERPRETATION

Neither Canada nor Britain have reintroduced the death penalty after its abolition. However in both countries:

- a) There have been cries for reinstatement.
- b) Activity towards reintroduction is most noticeable during and just after an election.
- c) Conservative MP's seem to support reintroduction.
- d) Those who lobby most for reintroduction are the law enforcement agencies - policemen and prison guards.
- e) The arguments used for reintroduction are the increasing violent nature of society, and the risk that law enforcement officers run.
- f) Deaths of policemen, violent crimes and acts of terrorism are all used to focus on the need for the reinstatement of the penalty.
- g) The majority of the public according to public opinion polls seem to support restoration of the penalty.
- h) Governments, while giving its members a free vote appear to oppose reintroduction.

The analysis of the experience of eleven States and eight countries who have abolished the penalty and reintroduced it led to the hypothesis firstly, that reintroduction is more likely to occur following a relatively short period of abolition and if it is restored

it is more likely to be extended. Secondly, reintroduction usually occurs following a change of government or shift in legislative power. Thirdly, when the change of government is democratically achieved, a sort of social turbulence prompted by the prevailing social and economic conditions and fueled by a real or imaginary crime wave is necessary for the reintroduction of the death penalty. Finally, when there is no change in government, the death penalty could still be restored if there exists indications of a real threat to the social system.

In applying these four hypothesis to Britain and Canada it can be seen that both of these countries have received pressure to restore the death penalty following a short period of abolition. Canada experienced the strongest pressure for restoration following a change of government, while Britain experienced three free votes immediately after a general election, although one of these was not following a change of government. Both of these countries can be seen to have experienced a period of turbulence, especially during the 1980's when focus on a 'crime wave' prompted lobbying groups to demand the return of the death penalty.

Brief examination of the socio-economic climate of Britain and Canada in the last few decades would perhaps better expose the dynamics involved.

Britain

The 1950's in Britain were noted for their prosperity. MacMillan's "You've never had it so good" decade was characterised by a growing export market, practically non-existent unemployment and a general increase in living standards for everyone. The post-war years were coming to fruition. The Sixties, however, were not so prosperous and were marked by oscillations between recession and recovery with a steady underlying deterioration in the economic environment. (4. p24). This was matched by what many believed was a general panic about law and order, which was to culminate in a law and order campaign constructed by the Heath shadow cabinet on the eve of the 1970 election. Prior to this date there were sporadic campaigns which, it has been argued:

effectively sensitized the social control apparatus...
to the possibility of a general threat to the stability
of the state. (3. p222).

The 1960's proved to be the era which prompted the issue of law and order to come into the spotlight and to become a deep popular worry. The 1970's saw the growth of this worry, which, while still evident in the Labour governments of Wilson and Callaghan, received its greatest impetus when Mrs. Thatcher became leader of the Tory Party in 1975, and claimed that both the Labour and Liberal governments were

the cause of the breakdown in social order.

Throughout 1978 and during the election campaign of 1979 the Tory leadership with its implicit and explicit support of the judiciary and the police, proclaimed that the victory of the new Conservative Party would result in a restoration of a real sense of order in social life. This renewed orderliness in social life would emerge, it was argued out of a combination of both morality and discipline. (17. pX).

Law and order was a deep popular worry towards the end of the decade, and became a central plank in the radical platform of the Tory Party. (7. p216). For the first time in any post-war election, the question of law and order was seen quite clearly to emerge as an important issue between the two parties, indeed the Conservative Party was seen to have two priorities in the 1979 election. Firstly, to reduce taxes, and, secondly, to increase law and order. This point is quite interesting, especially when it can be argued that other issues were equally important. Towards the end of the 1970's, the British economy was suffering a depression. Inflation was over 15%, real unemployment was running over two million and industrial capital was in sharp decline. Despite all this the crisis of declining markets, falling profits and high inflation were redirected into the;

commonsensical grounds of authority, discipline and control. (12. p35).

The Conservative Party proposed four specific commitments to law and order: firstly, and probably the best well-known, was the introduction of the Short Sharp Shock which, Taylor has argued, was an attempt to remoralize individuals of the working class, and attempted to teach young offenders discipline. (17. p28). Secondly, they proposed a commitment to a wider range of sentences; thirdly, a commitment to tougher immigration laws, and, finally, they proposed that there should be a free vote on hanging.

Votes on the restoration of the death penalty were not uncommon in Britain prior to 1979, what was unusual was that it should be an election issue. Thatcher, by stating that there would be a free vote was reiterating what had been forceably proposed at Tory Party Conferences and was showing her stance against liberal patrician Toryism. (5. p21). With public opinion running four to one in favour of restoration and by the capital punishment issue being an "ambiguous theme", the commitment of the leadership of the Tory Party was to an early free vote in the House of Commons. This commitment was widely interpreted as being equivalent to promising its return. (18. p229).

The issue of law and order and the recent debates on the death penalty were introduced into the political arena by the Conservative Government, under the leadership of Margaret Thatcher. A new style of radicalism has been said to have developed over the last ten years, some have termed it "Thatcherism". This swung back to justice has been accompanied by declining economic conditions in Britain, the most severe consequence of this being unemployment which was not curtailed through the Seventies and has continued to grow through the Eighties due to the decline of the heavy industries and the falling rate of productivity amongst workers employed in the manufacturing industries.

The radical Conservatives introduced a new style of right-wing politics into Britain, which stressed the importance of moral values, (particularly the value of individual effort) and believed that morals could be returned under the rule of law. Thatcher's rhetoric concerning the importance of Victorian values was well-received and quoted by the popular press, as was her argument that we all needed to suffer a little in order to put the nation "back on its feet". The New Right developed in Britain by tightening up the criminal justice system, giving more power to the law enforcement bodies, stressing the need for a return to traditional authoritarian methods

in the school and home and by open attacks on the "enemies of social order" for example, Trade Unions, and welfare scroungers, and an increasing criminalization of this group's activities. (12. p35-6). The New Right under the leadership of Thatcher also prompted two of the most detailed debates on capital punishment.

Canada

As Canada did not abolish the death penalty until 1976 it can hardly be said that she has evidenced a number of different calls for the return of this punishment. Indeed, as has been shown, the only really serious pressure for restoration occurred following the September 1984 federal election when the Conservatives gained office for the first time in fourteen years. Recent arguments for the restoration of this penalty have focussed upon the number of policemen killed, and indeed, the main lobbying force behind this pressure has been the police officers.

The social, political and economic climate in Canada during the 1970's cannot be said to have been in a decline to the same degree as Britain's (there are, however, tremendous problems when trying to establish a national picture of the Canadian economy due to the regional and provincial variations). In 1979, Canada had an inflation rate of almost 10% and unemployment was running at 8%. When compared internationally it cannot be said that Canada was

experiencing any anxiety over her economy, especially when in 1976 the G.D.P. for Canada was the third highest in the world, while the level of affluence in Canada in 1979 continued as one of the highest in the world. (18. p289).

Opinion polls conducted during the 1977 election showed crime and delinquency was third behind inflation and unemployment as priority issues, and at constituency levels capital punishment was an issue of populist mobilization. It would thus appear that Canada up until 1979 was not suffering from a period of serious economic decline. (12. p37).

Canada as a nation is extraordinarily vulnerable to market changes as 48% of her economy is foreign controlled. This factor coupled with uninterrupted decades of state policies consenting to economic inferiorization has meant that Canada, over the recent past, has been exposed to extremely high United States determined interest rates, branch plant closures, record unemployment and inflation, and a weakened currency. Gross national product and energy reserves have dropped, bankruptcies have risen, and the federal budgetary deficit for 1982-83 has been estimated at twenty million. (12. p38).

With this decline in the economic position of Canada, there has also been an increase in crime, especially violent

crime. This point had been reiterated by the police lobby groups throughout the 1980's and before, but was particularly vocalized in 1984 when Canada witnessed the most serious pressure yet to restore the death penalty. However, it was not an issue taken up readily during the 1984 election, and only became topical after the election.

The growth of the New Right form of politics in Canada, although not as easily recognizable as it is in Britain, can still be seen as to have occurred. Ratner and McMullen have argued that even before Mulroney the Liberals were conscious of the provincial nature of the country; a country which was characterized by divisions in the social and national cultures:

Recognizing its inability to present itself in the embodiment of the national interest... the liberal custodianship of the Canadian state is attempting to ensure hegemony through the covert elaboration of a control strategy aimed at enforcing a narrow state interest of what constitutes legitimate opposition and dissent.

Police powers have been extended due to the recommendations of the McDonald and Keable commissions, while at the same time state expenditure of health, welfare and social services has been decreasing. State control has

increased, although not through the encouragement of public sentiment as in Britain. Indeed, the modus operandi of the New Right in this "Order in Council" has been to produce moral panics by decree, and afterwards bid for legitimization from the established civic institutions. (12. p40). Thus although the New Right has developed in Canada, it has done so in a more subtle way, it will be over the Mulroney years that a real growth, if any at all, will occur.

Any social problem, crime included, is understandable only if it is seen within the framework of the social economic and political structure of the society. We are convinced that the problem of crime... is really the problem of capitalist society. Consequently, the crime problem... cannot be solved within the context of the political economy of capitalism. (10. p17).

The analysis of the recent political and economic history of Britain and Canada, shows that both these countries witnessed the growth of law and order and the New Right, in conjunction with what must be seen as deteriorating socio-economic conditions. This finding reiterates the view of the hypothesis; that social, economic or political turbulence need to be present before a country considers restoration of the death penalty, and clearly Britain, and to a lesser extent Canada have both recently

been suffering from this turbulence. If the issue is seen in a more wider spectrum it is possible to ask what is meant by "law and order". Kettle has ascertained that there are two aspects to this philosophy; firstly, it is a policy area covering crime and justice, and secondly, it is a much broader idea of attitude, even a sanction: a belief in the practice of discipline, of attitudes in the home, street and workplace. (7. p218).

But why is it that Canada and Britain (as well as other post-industrialized nations such as the United States) have experienced this drift to law and order? Why has the rhetoric become so popular during the election campaigns, when it could quite easily be advanced that inflation and unemployment are more pressing problems? More specifically, why have they experienced these cries for the death penalty? Marxist philosophers offer a plausible explanation when they argue that the attention paid to law and order is a direct result of the crisis of capitalism in post-industrial societies. Capitalism, by its very nature needs inequality, insecurity and competition to drive people to higher and higher levels of productivity. Capitalism requires an industrial reserve army which it can draw upon in times of need, and which it can reject when the work is not available. The crisis of capitalism has evolved along with

the capitalist mode of production. The bourgeoisie have used the industrial reserve army at times of need, but increasingly there has been no need to employ this group, and thus the ranks of the lumpen-proletariat have swelled, creating a potentially "dangerous" class to threaten the advanced capitalist state. Capitalism is suffering from a crisis of social reproduction in that the capitalist mode of production cannot generate anything like a sufficiently large number of employment opportunities for youth, and consequently the size of the dangerous class increases. (18. p22). The signs of the crisis are known to be economic slowdown, coupled with the dual threat of inflation and unemployment. (6. p9) - signs which have already been identified in this study. The consequence for the capitalist state is to take some action to control this potentially dangerous class, while at the same time drawing attention away from the issues of inflation and unemployment. situations which have been created by the state, and which many individuals would be concerned about if the state had not been engineering enough to direct attention onto the need for law and order.

By undertaking this careful p[ro]xy the capitalist state is able to justify an ever-increasing number of control measures, arguing that they are required to control crime.

Therefore, in the recent past many of the industrialized nations of the world have developed a new radical form of conservative politics, often called The New Right.

The swing to the right is not a reflection of the crisis: it is a response to the crisis. (4. p23).

To be able to understand the development of this new form of politics it is necessary to see it in a far more global fashion, than the analysis above undertakes. If one draws attention to the period of the Sixties it is possible to see that this era has been characterized by its permissive nature. It was during this time that there was a growth in the political and permissive society, which was helped along by students demonstrating in America and elsewhere against the war in Vietnam, liberation efforts by blacks which challenged the cherished notions of equal opportunity, organized struggles by women and other oppressed groups, and by the questioning of the justification of political repression in the name of law and order. (8. p168). The Sixties also saw the passage of what has been deemed "permissive legislation" on homosexual behaviour, abortion and prostitution. The criminal justice system was not so far removed as to not be affected by the belief in the rehabilitation and reform of the offender, with the blame for a criminal's actions being placed partly

on himself and partly on society. It was believed that the offender could be "corrected" and returned to society, and it was this policy which was followed up until the 1970's.

At the beginning of the Seventies there was the growing concern that sex education, the public display of pornography and non-violent demonstrations affected what has been called "social legitimacy", and discussions ensued which saw the New Right thinkers consistently arguing against these programs, and others which they saw as threatening. (18. p297). The economic crisis of the Seventies also began to make the rehabilitative model indefensible, and with this factor commitment to the belief in rehabilitation quickly eroded. (9. p8).

It is vital to illustrate that although many of the developments of the Sixties could not be seen as law and order issues, through the Seventies they were increasingly drawn into this arena. The moral crusades of the Sixties were superseded by law and order campaigns. (3. p5). The growth of the New Right meant that certain factors were focused upon, and primarily these were to do with law and order. The New Right argued that more policing was needed, tougher sentencing, better family discipline and that there was a threat to ordinary people going about their private business from thieves, muggers, etc. This language of law

and order was sustained by what Hall has termed "populist moralisms".

It is where the syntax of good versus evil, of civilized and uncivilized standards, of the choice between anarchy and order constantly divides the world up and classifies it into its appointed stations. The play on values and on moral issues in this area is what gives to the law and order crusade much of its grasp on popular morality and common sense conscience. (4. p37).

The new Right advocates illustrate that there had been an increase in crime, and believed that this was a result of the inexplicable and misguided permissiveness of the legal system. (16. p85). In focussing on this type of crime their attention was diverted away from white collar or victimless crimes, believing that predatory crime makes difficult or impossible the maintenance of "meaningful human communities" and that it is this type of crime which affects most citizens. (15 pXIX). Although prior to the early Seventies there would have been little support from the academic field that the crime issue ought to be directed solely at street crime, the 1970's saw criminologists such as Wilson and Van den Haag adding their authority to the notion that street crime was more prevalent than other types of crime.

Related to this was the creation in the early Seventies

of what Cohen termed "moral panics", whereby justice theorists engineered support for more stringent control strategies by creating a moral panic from the crime problem. (9. p21). During the growth of the law and order lobby groups, moral panics were created by the media, at the behest of the primary definer not only to the existence of a threat, but also to the mobilization of the control culture against such a threat. In this way the support of the population at large is seen as evidence of the need for more intense activity by the control culture, and consequently, the growth of law and order occurs. Hall takes the example of mugging to show how a moral panic develops, and is maintained often without justification, as an actual crime is not as wide spread as the media, or indeed the law enforcement agencies would have us believe. (3. p5). As the New Right politicians have been involved in an extension of policing and an increase in the number of police officers, more crime has been "discovered" which adds fuel to these crime panics.

Violent crime was also said to be on the increase by the New Right theorists, with the growth of terrorism prompting wide scale action. Terrorism in Britain has compelled a trained police response some of which, if it had not been for terrorism would not have developed. There

is no real doubt that the response of the Right to terrorism penetrates beyond the threat, and was indeed developed before the threat materialized in the 1970's. (7). Clearly, the worry of terrorist activities increased the growth in more sophisticated control measures to react to this belief, in particular it was the police who were becoming more politicized when they (under pressure from Parliament) reacted to the problem of terrorism.

In interpreting these events Hall has argued that there are three "thresholds" which from the point of view of the control culture, cause the law and order lobby to act. Firstly, there is the threshold of permissiveness, which is threatened by libertarianism; secondly, the threshold of extreme violence causing a concern about our ever-increasing violent society, and, thirdly, the threshold of legality which describes the point at which action begins to be sanctioned by the control culture. (3).

The New Right saw the increase in street crime, violence and terrorism as a result of the liberal politics of the Sixties, and as a direct result of the breakdown of social control and social order. Therefore, they advanced the need for tighter, stricter control measures. This spiral effect started in the late Sixties and has been developing through the moral panic stage to a general panic about

social order and consequently, the law and order campaign. The law and order campaigners seem to have sensitized the social control apparatus of the media to the possibility of a general threat to the stability of the state. Minor forms of dissent seem to have provided the basis of 'Scapegoat' events for a jumpy and altered control culture, and this progressively pushes the state apparatus into a more or less permanent 'control' posture. (3. p222).

This action has meant that there has been a growth in the criminalization of certain activities, which were previously not thought of as crimes. Criminal definitions are a most powerful means of social control, and can be used to control actions which conflict with those who create the definitions. (11. p316). By the criminalization of certain actions an increasing number of people are drawn into the criminal justice web and were subject to these more stringent control strategies.

The need for social control is twinned with a movement which stresses the need for social order, and, in the case of Britain, developed prior to the 1979 election campaign, when the Tories asserted that a renewed orderliness in social life would emerge out of a combination of, both morality and discipline - those factors which have been wittled away in the recent past. (17. pX).

The stress on individual responsibility was one of the core issues to the New Right. Wilson, a very prolific New Right author writes:

objective conditions alone, whether demographic or economic cannot account for crime increases... subjective forces, ideas, attitudes, values, played a greater part. (19. p207).

The result of this mentality is that the criminal is portrayed as evil and obviously responsible for his crime. There is a return to basics, with no room for any thought as to whether the state owes the criminal any remediation of the conditions that led him to crime. (13. p44). This ideology of individualism has the effect of blurring the issue of class, as frequently it is the family that is blamed for the character of the offender, and is criticized for not asserting enough authority or discipline on the child. But this need for authority and discipline is frequently taken a step further. Due to increased crime rates the capitalist state argues for further increases in social discipline, and, because it offers no other explanations or remedies for the causes of crime, it heightens attention to this need for authority and in so doing, received the consent to construct authoritarian programs. This preoccupation with the need for authority is

seen as a way to combat the social disorder which has been experienced in many westernized democracies and which has been attributed by the Right to the decline of traditional culture, the lack of moral education and even the "population mix". (17. p7).

Therefore, it can be seen that as the New Right has grown it has developed its policies to adopt social control and to establish authority, ignoring the real crisis of capitalism. The crusading issues of the Right have been identified as concern over the excessive leniency towards law breakers, that the rights of the offenders were greater than those of the victims, the erosion of discipline and authority, a resentment over the cost of crime and an abdication of responsibilities by authorities. (1. p81). The Right has sometimes been termed the "Justice Model", as it argues for increased justice and, indeed, in the recent past, it has been possible to identify definite actions which demonstrate the New Right's philosophy and how it has implemented its policies, and has extended the use of punishments. A hardening of penalties for those who are thought to be unambiguously guilty of their crimes, is one such policy, while the Kantian philosophy that it is morally right to meter out proportionate punishments has been extended. (9. p11).

Undoubtedly, the law and order lobby has been one of the most vocalized aspects of the New Right's movement, although its roots can be traced back to before the full dimensions of the economic recession were realized, it certainly has received a swell of populist support which has resulted in the law and order crusade, as well as a number of more specific crusades. But why has it received such wide-scale support? Marxism again offers a plausible explanation.

As individuals have been subject to ever increasing changes in their life style and in the capitalist society which they are part of, they are able to quieten their anxieties by adopting the philosophies of the New Right, which proclaims a need for a return to traditional authoritarian methods. As the New Right argues so simply and well that the experience of crime, theft and attack are the result of the lack of authority and breakdown of traditional culture, and as they offer no other remedies for the underlying causes of these actions, the Right welds people to the need for authority. (4. 37). Support for these policies comes from the social classes that are insecure economically and socially, particularly the unemployed, working class and lower middle class, as it is these groups who are most immediately affected by cycles of boom and

slump, inflation and unemployment.

The capitalist state in crisis has been able to sell the need for tighter control, it has argued successfully that the turbulent socio-economic conditions which many individuals are now facing is the result of a lack of authority, of the decline in traditional values, of a breakdown of control. By successfully marketing these beliefs to the population en masse it has diverted attention away from the economic problems of the crisis and has given the people a justification for the ever-increasing control strategies. We have been witnessing an age when there has been the conversion of an economic crisis into a political crisis, where socially vulnerable "target groups" have been held responsible for the slippage of social control, where increases in crime are portrayed as evidence for further increases in social discipline, police power, and state expenditure on law and order, and have been implemented by governments who have been democratically elected by a population that wants to see these controls. (17. p210).

In times of political instability and economic uncertainty people are likely to become more punitive in their attitude and more repressive in their approach to criminals. They are likely to look for scapegoats which can be blamed for societies' ills and on whom they can project

their own sentiments of hate, fear, anger, hostility and frustration. (1. p82). The Seventies and Eighties have been periods of such instability.

Is it, therefore, any wonder that Britain and Canada have both experienced cries for the reintroduction of the death penalty? As has been shown above calls for capital punishment or, indeed, any increased use of punishment are a rational response to a belief that there has been a breakdown in social control. The abolition of the death penalty has been equated in both Britain and Canada with the progressive undermining of authority and tradition, and thus honesty, trust and respect for possessive individualism in the social order as a whole is also undermined. (18. p305). The pro-capital punishment lobby groups have attributed any increases in crime to the unavailability of this sanction. The state is seen as being too "soft" on offenders, and all the time pressure mounts for this punishment, always with the justification that it will reduce violent crime and restore society to some romantic notion of how it used to be.

The pro-capital punishment lobby groups are those which, by their very nature are conservative in their views. As the political Conservative conscience has taken a definite shift to the right it is these bodies that have been arguing more fervently for capital punishment. As the

political power swung to the right in Britain in 1979 and in Canada in 1984, it was these groups which recognized that Parliament now housed politicians that were more sympathetic to their views, and consequently the stage was set for the capital punishment issue to re-enter the spot light. It is the lobby groups, and in particular the police force that call for measures of social control, but they are backed up by many individuals who during periods of economic crisis have increasingly precarious lives and who backed tighter control measures. (13. p36). This study has shown that in both Canada and Britain it has overwhelmingly been the police who have been lobbying for the death penalty and that, in both countries public opinion over the last twenty years has continued to favour the death penalty after being reduced in the 1960's.

The cries for capital punishment are just an extension of the law and order lobby group's policies of tighter controls and harsher penalties, and have come during the crisis that capitalist states have been experiencing to an ever-increasing degree over the last two decades. As governments have to deal increasingly with staggering numbers of unemployed and a declining economy - the consequences of a capitalist society which has grown out of control - the Right will have to show that it is seen to be

acting, and so will ease the tensions among the population by offering "shadow rather than substance". The reintroduction of the death penalty will be one of the shadows to appease the population, and thus is debated. (5. p21).

Cries for capital punishment can be seen, to use Hall's analysis, as a response to the crisis of hegemony. Hegemony secures the long-term social conditions for the continuing reproduction of capital, but as some writers have noted, during the recent past there has been a move from consensual to a coercive management of the class struggle by the capitalist state. (3. p218). Whereas in the early part of the Sixties the crisis of capitalism was undetected, by the beginning of the Seventies it was seen to be a problem. The growth of the Right, and in particular the Law and Order lobby became increasingly vocal in legitimizing the state's increased interest in the law, and in exercising "informal" control by use of law enforcement agencies. The cries for capital punishment are just one concrete example of the crisis of hegemony faced by advanced capitalist societies.

Britain, and, albeit to a lesser extent, Canada, have both been faced with growing unemployment statistics, and an inflation rate which is above a tolerable level. In this way, they have both experienced a crisis in hegemony as

their advanced capitalist states have suffered under the strains that are inherent to this mode of production. As these two ills have grown, and with the knowledge that they are powerless to act, the state in these western democracies has focused increasingly on the growth of violence and crime and has argued for the need for control, discipline and authority. The tensions caused by a capitalist state in crisis is seen by masses to be the result of a lack of this control and a decline in the traditional values, so the newly elected Conservative governments have not suffered opposition to the implementation of their policies. Support for the New Right has snowballed with individuals becoming increasingly aware of the crisis nature of discipline rather than the crisis of capitalism. All these factors have led to a cry for tighter controls, increased discipline and stricter penalties. A consequence of this has been calls for the restoration of the penalty of death.

The Nineteen countries and States that have restored the death penalty have done so following a period of political change and instability. Both Canada and Britain, two other recently abolitionist countries have witnessed pressure to restore following similar periods of instability. The cries for the restoration of the death penalty cannot be seen just as a reflection to the increase

in crime, the analysis must go beyond this simplistic interpretation and consider the wider socio-economic situation of the country involved. When this analysis is undertaken it reveals that the recalls for capital punishment are the rational response to a capitalist country in crisis. As we witness the steady decline of the capitalist mode of production across the Western world we must expect to see an increasing number of countries debating the death penalty issue. Sellin has claimed that it is the emotional climate of a country which will influence its abolition. Likewise it appears to be the emotional climate of a country, an emotional climate which has been influenced by the economic, political and social state of that country which will determine whether there are to be pressures for restoration. In both Britain and Canada, public opinion polls seem to indicate an increasing proportion of the public favouring capital punishment, and yet with all this withstanding the death penalty has not been restored. The question is why.

The research on Canada and Britain has shown that the main pressure behind the restoration of the death penalty has been from the law enforcement agencies. Although public opinion is supportive of the death penalty it rarely becomes organized into a powerful lobbying group. Likewise although

members of the ruling party in government are seen to be supportive of the death penalty, the government itself has been against it. This study has shown that the main lobbying group, the police officers, have not been powerful enough to affect change in society and to use Roby's formula, have failed to obtain the power needed because they have not had:

1. An awareness of the various actions taken and to be taken in the formation of law.
2. They have failed to recognize the importance of their actions to their interests.
3. They have not had the professional expertise.
4. They have failed to sustain active public, financial and political support.
5. They have not held sufficient personal charisma, or withheld support from a significant actor. (The pro-abolitionist camp). (14. p109).

The law enforcement agencies have, as a lobby group, been on their own and have not been powerful enough to exact a change in the law. Perhaps the abolitionists may also have been influential. Citizen groups, academics, lawyers, politicians, the Anti-Capital-Punishment group, the church and religious leaders have all spoken out against the death penalty, and it may have been to these groups that the politicians have been listening.

The ultimate decision to reintroduce the death penalty will always rest on the shoulders of government, and a government, when making the decision as to whether or not to reintroduce the death penalty, must decide what reintroduction would do to their hold on power. Even though they may realize that most of the population want the death penalty, when there is really only one interest group which is consistently pressuring for it, and when this interest group is seen as not holding a great deal of power, they will not alter their legislation. This is particularly true when there are a number of influential lobby groups fighting against reintroduction.

In conclusion to this study seven points have to be stressed:

1. With abolition, the question of the death penalty does not get resolved.
2. Cries to restore the death penalty are raised from time to time.
3. The retentionist lobby is usually the police.
4. Crime waves, which can be either real or imaginary are used to justify the arguments for restoration.
5. A period of turbulence, be this social, political or economic, can produce a right-wing movement which will promote the reopening of the debate and even a veiled

election promise of restoration.

6. The final restoration is the decision of the government.
7. The factor which influences a government's decision to restore will be their retention of political power. The interests here are two-fold; firstly, the direct threat to their power, and secondly, the relative strength of the abolitionist and retentionist lobby groups.

The Governments of Britain and Canada have both felt that the threat to their power is not significant enough to justify restoration, however this belief may not always exist, and if it were to change we should perhaps not be too surprised when the death penalty is returned to the statute books.

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ABSTRACT

This study attempts to evaluate the possibility that Britain and Canada would reintroduce the death penalty. Prior to this evaluation an answer had to be found for the more basic question: Why does a country restore capital punishment? Relevant hypotheses were generated by examining the experience of the nineteen countries and States that have abolished and restored the death penalty.

The hypotheses were developed using the Constant Comparative Methodology (Glaser and Strauss, 1967). The hypotheses stated that for a country to consider the restoration of the death penalty, there is usually a relatively short period of abolition, a change in government or legislative power, a period of social or economic turbulence which often manifests itself in a real or imaginary crime wave and finally, even when there is no change of government, the death penalty could still be restored if there exists indications of a real threat to the social system.

The history of the abolition movement in both Canada and Britain was then traced to determine whether the conditions necessary for the reintroduction of the death penalty existed in both these countries.

The main finding of this study was that though the conditions hypothesized as being necessary to the reintroduction existed in both Canada and Britain, the death penalty has not been restored. This may have been because the main lobbying group for restoration has not been able to obtain the power needed to alter the government's stance. There is also the possibility of the existence of a very strong lobby in both these countries.

This study has shown that with abolition the question of the death penalty does not get resolved. Although abolitionist lobby operated to get the penalty abolished, after abolition a retentionist lobby operates to pressure for its restoration. The final restoration decision however, is that of the government, and their decision to restore will be based on the strength of the abolitionist and retentionist lobby groups, and the threat posed to their power.