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CAPITAL PUNISHMENT:
PUBLIC OPINION AND ABOLITION IN GREAT BRITAIN
DURING THE TWENTIETH CENTURY

BY

CAROL ANN RANSONE

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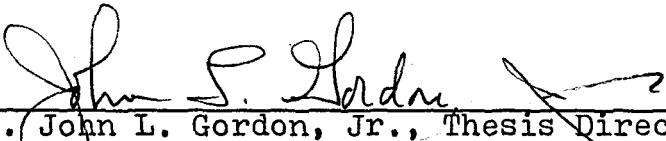
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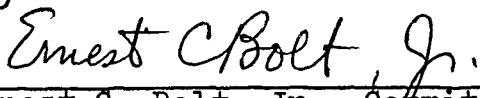
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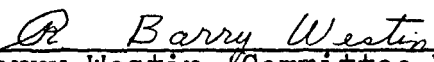
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PREFACE

The roots of this paper lie in years of study, work experience, casual discussion, serious research and perspicacious choice. Divergent interests and requirements were satisfied by the broad topic and eventual narrowing of focus which are presented herein.

In 1972 I needed a topic for the undergraduate seminar in which I was enrolled. My academic background led me to select capital punishment as the issue, the refining and sharpening of the topic led to an investigation of abolition in Great Britain and public opinion concerning the legislative action. This degree of specificity was necessary in order to incorporate historical and sociological perspectives. Regardless of evidence to the contrary, I believed the body politic would be able to assert an influence upon the elected officials. My heritage convinced me that in a democratic society eventually the majority would be able to persuade the legislative officials to comply with its wishes.

This theory was not grounded in political naivete or other unsophisticated suppositioning. It was simply an intriguing thesis, which I elected to research. All direction received indicated I was on

unstable footing when trying to apply American "givens" to the British system. Undaunted by mere fact, which was always open to interpretation, and smugly encouraged by my ethnocentricity, I undertook a general study of capital punishment -- initially worldwide and as far back in time as possible. The literature dealing with this topic is virtually endless. It is found in theology, philosophy, criminology, poetry, etc. Generally the topic is dealt with on either an emotional or clinical level; the two approaches are seldom mixed, unless a proponent of one or the other side calls upon statistics to "prove" the position taken.

In order to present as scientific a paper as possible, I have investigated as many avenues as possible to obtain information -- realizing that I was constantly dealing with highly opinionated material. This paper presents the matter in as unbiased a way as possible. The selection process, of course, dictates the writer will impose personal influence upon what ends up in the final work; hopefully this "fault" is compensated for by the research supporting this paper. The reader is left to draw conclusions of his or her own after reading the body of this paper. Mine are set out herein; they are by no means exhaustive, and this is the way I would leave it.

During the time this paper has been in the works many institutions and individuals have provided

invaluable assistance. It would serve no purpose to name all in either category. Appreciation has been expressed as considered appropriate. The errors, misinterpretations, oversights, etc., eventually and inevitably contained herein are mine; I would seek to share the blame no more readily than the credit.

CHAPTER I

BRIEF HISTORY OF CAPITAL PUNISHMENT AND PUBLIC OPINION

Executions are so much a part of British history that it is almost impossible for many excellent people to think of the future without them.

Viscount Templewood¹

Some form of capital punishment has been practiced for as long as there has been recorded history. Early laws were generally harsh and failed to consider the impact of crime on society. In 621 B.C. the Code of Dracon recorded the laws observed in Athens. The Code of Dracon revealed that almost all offences were punishable by death.² Two centuries later a more humanitarian attitude was expressed in Greece. Plato believed in the segregation and reform of the criminal rather than his execution.³

In England the death penalty for felony

¹Samuel Gurney Hoare, Viscount Templewood, The Shadow of the Gallows (London: Victor Gallancz Ltd., 1951), p. 16.

²Kathleen Freeman, The Murder of Herodes and Other Trials from the Athenian Law Courts (London: Macdonald & Co., Ltd., 1946), p. 15.

³James Avery Joyce, Capital Punishment, A World View (New York: Thomas Nelson & Sons, 1961), p. 58.

convictions was traced to the reign of Henry I. It has been estimated that seventy-two thousand criminals, including children as young as twelve, were put to death, an average of 2,000 per year, during the reign of Henry I. Crimes punishable by execution increased in variety during the medieval period and numbered over two hundred by the end of the Stuart period. Capital crimes included all felonies, the stealing of goods valued at forty shillings or more, and such comparatively minor offences as the cutting down of garden trees, wounding of cattle and burning of crops. Women were executed as readily as men. Public opinion, revolted by the savagery of such laws, supported reform. In the early eighteenth century juries often evaluated the worth of stolen goods at thirty-nine shillings to avoid the necessity of imposing the death penalty.⁴ Preliminary steps toward abolition were taken in the nineteenth century in conjunction with legal reform.

At the beginning of the nineteenth century there were approximately two hundred statutes in England which carried the death penalty, but interpretation and actual application of the laws resulted in nearly four times this number of offences being

⁴George Ryley Scott, The History of Capital Punishment, Including an Examination of the Case for and Against the Death Penalty (London: Torchstream Books, 1950), p. 76.

classified as capital crimes.⁵ There had been a tendency toward proliferation of the capital statutes in the eighteenth century although this began to change at the end of the century.⁶ The Enlightenment sparked humanitarianism and philosophers of this movement provided the foundation for nineteenth century reforms. Reform was slow in coming, however, because during the last decade of the eighteenth century and in the early nineteenth century, reform (regardless of how moderate) was considered dangerous by a British establishment obsessed with the fear of revolution.⁷ The experience of the French left the English hesitant to modify existing laws for fear even small change would lead to a general clamour for revision of the existing system.

Sir Samuel Romilly, in his efforts to reform the laws, decided to attack one statute at a time and succeeded in removing the death penalty for conviction of stealing from the person (pick-pocketing). This crime appeared to double following the removal of the death penalty, from 1809 to 1814, but the increased willingness to convict in the absence of capital

⁵Leon Radzinowicz, A History of English Criminal Law and its Administration from 1750, vol. 1: The Movement for Reform (London: Stevens & Sons Limited, 1948), pp. 1-10.

⁶Ibid., pp. 36-37.

⁷David D. Cooper, The Lesson of the Scaffold: The Public Execution Controversy in Victorian England (Athens, Ohio: Ohio University Press, 1974), p. 37.

punishment might have accounted for at least part of the rise.⁸ Romilly actively worked to arouse public sentiment against capital punishment. On January 25, 1819, the sheriffs of London presented a petition to Parliament from the Corporation of London which requested a revision of the criminal code. It alleged that the inordinate number of capital-punishment laws created a disinclination to put these statutes into effect and was, in part, responsible for the rapid increase in crime.⁹

The importance of public opinion was acknowledged during this year and it appeared that Parliament was not indifferent to the tenor of public opinion. In part responsive to the public clamour, a Select Committee on the Criminal Law was appointed in 1819 and it recommended the repeal of obsolete statutes-- those which covered less serious crimes, those in disuse and those enacted as emergency acts to deal with situations which no longer existed. Several statutes dealing with larceny and forgery were amended to allow transportation in lieu of capital punishment. The Committee favoured the abolition of capital punishment for all crimes against property where there was

⁸Radzinowicz, The Movement for Reform, pp. 498-501.

⁹Hoare, The Shadow of the Gallows, p. 28.

no violence against the person.¹⁰ The omnipotence of Parliament was said to be required to bow to the verdict of public opinion.¹¹ The reforms of the first quarter of the nineteenth century were minor and did not seriously challenge existing institutions; however, the reforming trend engendered discussions which fed later debates.

Jeremy Bentham, a prominent advocate of reform during this era, thought capital punishment should be abolished for murder but he did not make this conviction known until 1830. From 1820 until 1830 there was no persistent pressure for the total abolition of capital punishment.¹² In 1830 the banking community petitioned Parliament for the removal of forgery from the list of capital crimes. The members of this group felt this would lead to an increase in the number of convictions.¹³ In 1832 the death penalty was abolished for horse, sheep and cattle stealing as well as for larceny from a dwelling and many forms of forgery. From April through July, 1837, seven bills passed Parliament which reduced the application of capital

¹⁰Cooper, The Lesson of the Scaffold, pp. 36-37.

¹¹Arthur Koestler, Reflections on Hanging (New York: The Macmillan Co., 1957), p. 25.

¹²Leon Radzinowicz, A History of English Criminal Law and its Administration from 1750, vol IV: Grappling for Control (London: Stevens & Sons Limited, 1968), p. 326.

¹³Hoare, The Shadow of the Gallows, p. 29.

punishment. During that year the number of capital offences was reduced to sixteen.¹⁴

Abolition of capital punishment was first considered by Parliament in March 1840, when ninety Members voted in favour of a resolution to eliminate the death penalty.¹⁵ There were 161 votes against the resolution. William Ewart was responsible for the introduction of the resolution and was pleased with the movement of public opinion against what he termed "blood-stained" legislation.¹⁶ Abolition was considered again in 1849 and defeated by a vote of 75 to 51; in the following year the margin narrowed to 46 to 40. No explanation was found for the dwindling of the total votes when the question of abolition was considered; possibly this indicated a lack of interest in the issue when it was put to a vote. Judicial observers believed the public approved of capital punishment for murderers and public opinion in general hardened to the plea of abolitionists in the mid-century.¹⁷ On April 23, 1850, The Times reported, "All questions must ultimately rest on the decision of public opinion . . ." in reference to the

¹⁴Radzinowicz, Grappling for Control, pp. 305-323.

¹⁵John Laurence, A History of Capital Punishment (New York: The Citadel Press, 1960), p. 14.

¹⁶Cooper, The Lesson of the Scaffold, pp. 45-47.

¹⁷Radzinowicz, Grappling for Control, pp. 333-337.

abolitionist efforts of Ewart.¹⁸ The abolitionists of the early nineteenth century were a vocal minority, backed by sympathetic newspapers, journals and societies, all intent upon reform. This produced an illusion of public opinion without actual substance. The Times, considered more indicative of public opinion, consistently supported the retention of capital punishment.¹⁹

Hangings averaged fifty per year from 1811 until the 1830's, when the number of capital offences ranged in the hundreds, but executions dropped significantly after 1861, when the number of capital offences was reduced to four.²⁰ Under the Consolidation Act of 1861 capital punishment remained only for treason, murder, piracy with violence and setting fire to a dockyard or an arsenal.²¹

Broad social reform was advocated during the nineteenth century. The efforts of Bentham, Romilly and others were felt in many areas. Bentham led in the early reform efforts and directed special attention to the reduction of human suffering, which reflected the strong humanitarian philosophy of the time. According to Bentham, "In all cases the

¹⁸Cooper, The Lesson of the Scaffold, p. 52.

¹⁹Ibid., p. 53.

²⁰Alan Harding, A Social History of English Law (Baltimore: Penguin Books, Inc., 1966), pp. 259-260.

²¹Hoare, The Shadow of the Gallows, p. 31.

legislator must bear in mind the character of the offence, the nature of the punishment, the character of the offender, and the state of public opinion."²² Bentham believed laws would be violated with impunity when they were in conflict with the nature and sentiments of the people. Further, he felt criminals would be allowed to go free rather than face punishment which was excessively severe.²³ This philosophy continued to be propounded in many circles well into the twentieth century. The horrid conditions found in many English prisons initiated the move to humanize treatment of the criminal. Such sweeping reform was rooted in a time of improvement in the living conditions of many people; social distinctions were changing and the disparity between upper and lower strata was less distinct. The middle class, while gaining recognition, was not especially influential in the mid-nineteenth century. The major reforming spirit was fostered by the upper-class intelligentsia; it was inevitable that the complete legal system would become a target for this movement. There was no watershed with regard to capital punishment in the last century but, as general reform came to focus on specifics, the idea of eliminating the hangman drew advocates.

²²Sir William Holdsworth, A History of English Law, 16 vols. (London: Methuen & Co., Ltd., 1952), XIII:71.

²³Cooper, The Lesson of the Scaffold, p. 31.

A Royal Commission appointed in 1864 favoured the abolition of capital punishment but did not believe the public would accept total abolition at that time. Judges who appeared to testify before the Commission ". . . tenaciously supported capital punishment."²⁴ The Times noted a reputed advance in public opinion along more humanitarian lines with wonder, and the paper was unable to account for an increased support for reform of the laws relating to punishments. Increasingly demands were made for adjusting the punishment more equitably to the crime.²⁵ The Times clearly stood for the "larger body of opinion" which advocated continued use of a "blood-for-blood" philosophy when dealing with the convicted person and preferred this punishment be carried out in a public place.²⁶ Observations such as this indicated a movement existed for reform, to include abolition of capital punishment, supported by a minority of the public in absolute numbers, which through its efforts attracted attention disproportionate to its size.

In 1868 two efforts were undertaken relative to capital punishment. A bill introduced to eliminate the death penalty was defeated; however, proponents of change succeeded in removing the spectacle of hanging

²⁴Ibid., p. 129.

²⁵Ibid., p. 60.

²⁶Ibid., p. 87.

from general view. "Responsible, solid middle-class public opinion had begun openly to express discontent with public executions and to agitate to terminate them."²⁷ There was concern that the elimination of public executions would lead to total abolition since the people were not thought to be inclined to accept private executions. As the move to end public hanging gained momentum, however, indications were that the people would be more likely to accept the end of public executions than the total elimination of capital punishment.²⁸ Public hanging, which had attracted crowds of thousands in earlier times and provided a form of entertainment, was abolished in 1868.

As the nineteenth century drew to a close, the reformers began to focus more on the abolition of capital punishment and less on the general revision of the statutes. In 1878 Sir William Harcourt, speaking in the House of Commons, favoured the total abolition of capital punishment. Four years later Sir William was of the belief that public opinion did not favour abolition and he "proposed the retention of the death penalty for premeditated or deliberate murder, with imprisonment in case of unpremeditated homicide."²⁹

²⁷Ibid., p. 95.

²⁸Ibid., p. 97.

²⁹Scott, The History of Capital Punishment, p. vi.

During the final years of the century, crime seemingly increased by spectacular proportions and public opinion hastened to reconsider its stand on capital punishment, thus creating disappointment for the liberals, humanitarians and utilitarians.³⁰ Whether this increase in crime was real or simply perceived, it challenged the general movement toward more leniency in dealing with criminals. In 1898 a noted barrister published a book which strongly supported the death penalty and argued that a great number of jurists concurred. Defense attorneys were also said to support the retention of capital punishment.³¹

The early twentieth century saw a return to the reform movement. One author considered public opinion in the 1920's to be undergoing modification in the position previously taken on capital punishment. There were three reasons given for this modification: 1. The death penalty was irrevocable and the chance of mistake always existed; 2. A murderer's fear of being hanged did not discourage him from committing a murder; therefore, the death penalty was not a deterrent; 3. The

³⁰Thorsten Sellin, ed., Capital Punishment, Readers in Social Problems, Donald R. Cressey, Consulting Ed. (New York: Harper & Row, 1967), p. 7.

³¹Sergeant Ballantyne, Some Experiences of a Barrister's Life (London: Richard Bentley, 1898), cited by Bernard Lande Cohen, Law Without Order, Capital Punishment and the Liberals (New Rochelle, New York: Arlington House, 1970), p. 19.

public was repulsed by the idea of hanging women.³² In spite of the alleged modification in public opinion, the majority of Englishmen continued to favour capital punishment as the only penalty appropriate for a murderer. Most believed the death penalty was a deterrent and were satisfied with its irrevocability. In the general opinion an executed murderer presented no further threat to the public's safety and the possibility of hanging an innocent person was too slight to offset the positive aspects of capital punishment. Public opinion surveys did not elicit response on the application of the death penalty separately according to the gender of the murderer.

Following World War I two pressure groups were formed which played a crucial role in the continuing reform movement. In 1921 The Howard League for Penal Reform was organized by the merger of the Howard Association (established in 1866) and the Penal Reform League (established in 1907).³³ The National Council for the Abolition of the Death Penalty was

³²Elizabeth Orman Tuttle, The Crusade Against Capital Punishment in Great Britain, The Library of Criminology, no. 4, Edward Glover, Hermann Mannheim and E. Manual Miller, eds. (London: Stevens & Sons Limited, 1961), p. 29.

³³National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, Murder and Capital Punishment in England and Wales (London: National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, 1974), inside front cover.

founded in 1925.³⁴ These organizations worked vigorously for the reform of the law, upgrading of conditions in the prisons, and rehabilitation of the convicted and focused on abolition of capital punishment as a natural step in the campaign of reform.

The National Council for the Abolition of the Death Penalty was credited with championing an abolitionist bill through a first reading in the House of Commons in December of 1928.³⁵ The following October a Select Committee was appointed to find out what had transpired in countries where imposition of capital punishment was in abeyance or abolished. The enquiry into the issue of abolition was conducted during 1930 by the Select Committee, resulting in a majority report favouring experimental abolition for a period of five years.³⁶ The Committee considered the safety of society and in conclusion summarized:

Our prolonged examination of the situation in foreign countries has increasingly confirmed us in the assurance that capital punishment may be abolished in this country without endangering life or

³⁴E. Roy Calvert, Capital Punishment in the Twentieth Century, Fifth Edition Revised, and The Death Penalty Enquiry, Patterson Smith Series in Criminology, Law Enforcement and Social Problems, no. 153 (Montclair, New Jersey: Patterson Smith Publishing Company, 1973), p. 4.

³⁵Ibid.

³⁶Sir Ernest Gowers, A Life for a Life? The Problem of Capital Punishment (London: Chatto and Windus, 1956), p. 43.

property, or impairing the security
of Society. 37

There was dissension in the Committee with the Conservative members failing to endorse the final Report. Support for total abolition in Parliament was not strong enough to accomplish abolition. Partial explanation for the failure of Parliament to act was thought by some to be the public's desire for continuation of capital punishment. Less than a decade after public opinion had been said to be changing, it was cited as the primary reason for retention of the gallows.³⁸

Abolition of capital punishment was most conspicuous in its absence from Parliamentary debate during the thirties and early forties. Domestic issues such as capital punishment took second place to the crisis brought about by World War II during these years. Significant attempt at reform was not again undertaken until after World War II, when public opinion again evidenced concern over the use of the death penalty. In November 1946, as a prelude to debate on the Criminal Justice Bill, the bulk of the correspondence received by The Times favoured the abolition of the death penalty for the remaining capital crimes.³⁹ In a poll taken

³⁷S. C. R. 453 (para), Report of the Select Committee on Capital Punishment, 1929-1930, cited by Arthur Koestler, Reflections on Hanging, p. 55.

³⁸Tuttle, The Crusade Against Capital Punishment in Great Britain, p. 36.

³⁹Ibid., p. 57.

in November 1947 by the British Gallup Poll sixty-five percent of the sample registered approval of the death penalty, compared to twenty-five percent who favoured abolition.⁴⁰ A Daily Telegraph poll in 1948 indicated suspension of capital punishment was supported by thirteen percent of the general populace; of this group the majority was found to have higher than a secondary education.⁴¹

In 1948 Parliament debated the Criminal Justice Bill. Although the Bill did not provide for the abolition of capital punishment, experimental abolition was considered. A clause added by Sydney Silverman called for a five-year trial period of abolition. The suspension did not take place because, although it passed the House of Commons by a vote of 245 to 222, it was defeated in the House of Lords by a vote of 181 to 28. In this instance the House of Lords reflected the predominant public opinion more accurately than the House of Commons.⁴² According to one observer the clause for abolition of capital punishment was dropped,

⁴⁰James B. Christoph, Capital Punishment and British Politics (Chicago: University of Chicago Press, 1962), p. 43.

⁴¹Max Grunhut, "Murder and the Death Penalty in England," The Annals of the American Academy of Political Science, November 1952, p. 164.

⁴²Peter G. Richards, Parliament and Conscience (London: George Allen and Unwin, Ltd., 1970) pp. 40-41; and Scott, The History of Capital Punishment, p. 85.

at least in part, because of public hostility. Concern was voiced for the reaction the people might take if the death penalty was abolished and it was mentioned that the public might choose to take the law into its own hands if the Members of Parliament elected to eliminate the traditional method of dealing with murderers.⁴³

The Attorney-General furnished an evaluation of the relationship between public opinion and Parliament in 1948:

I want to deal with the extent to which we should have regard to public opinion, because I am certainly of the view that it is not right for a Government or for an individual Member of Parliament to disregard manifestations of public opinion about a matter upon which Parliament is about to legislate; but in deciding to what extent effect should be given to the manifestations of public opinion, I think one must try to ascertain to what extent that public opinion is well informed⁴⁴ and instructed.

This consideration was also alluded to by another author, who classified public opinion as uninformed.⁴⁵ The people probably did not have access to the sophisticated information available to members of the government, but information relative to capital punishment was readily

⁴³Scott, The History of Capital Punishment, p. 234.

⁴⁴Joyce, Capital Punishment, A World View, p. 95.

⁴⁵Scott, The History of Capital Punishment, p. 234.

available in the press. On an issue such as this the position taken was not normally determined by tangible fact but by a vast wealth of intangibles, to include all the prejudices, irrationality and emotionalism frequently connected with social issues. Capital punishment had existed for generations. The public believed in the effectiveness of the punishment and did not want it abolished. It was interesting to note that while concern over the public's qualifications to decide on the matter of whether or not the death penalty should be abolished was often voiced, few doubted the ability of the general public to make decisions on other issues of equal importance. For example, no one suggested the people were lacking sufficient information when it came to the election of Members of Parliament, a decision which had unparalleled effect on society.

In both Houses of Parliament during the debates on the Criminal Justice Bill and allied proposals regarding capital punishment, it was stressed that public opinion should be considered before passing legislation which would abolish the death penalty.⁴⁶ Lord Goddard defended capital punishment before his fellow peers simply on the ground that public opinion supported it.⁴⁷ Major Lloyd George, later Home

⁴⁶Ibid., p. 232.

⁴⁷Koestler, Reflections on Hanging, p. 27.

Secretary, also defended capital punishment because he felt that public opinion was opposed to abolition.⁴⁸

Viscount Samuel was influenced by public opinion which, he believed, was opposed to the abolition of capital punishment.⁴⁹ There was a sincere attempt to ascertain the feelings of ordinary people about capital punishment. Polls, undertaken by the press, special interest groups and organizations devoted to the monitoring of opinion, indicated a majority favoured retention and the House of Lords in acknowledging this opinion was able to maintain that it reflected ". . . the will of the people and the considered opinion of the Labour Government against the rash action taken by the House of Commons on a free vote."⁵⁰

Legislators began to devise a scheme in 1948 of classifying murder according to degrees based on which kinds were thought to contribute the most to the disturbance of public order. The Archbishop of Canterbury, Dr. Geoffrey Francis Fisher, presented the attitude of the Church of England during a speech in the House of Lords. It was the wish of the Church, according to Archbishop Lord Fisher, that the murderer be allowed sufficient time to repent, but the Church

⁴⁸Ibid., p. 164.

⁴⁹Tuttle, The Crusade Against Capital Punishment in Great Britain, p. 68.

⁵⁰Ibid., p. 71.

recognized the right of the State to take life as punishment for heinous offences. It was the Archbishop's personal opinion that capital punishment should be retained because it served as a deterrent to crime. He felt that the death penalty should be limited to the most foul cases of murder. Dr. Fisher's predecessor, Archbishop William Temple, did not believe capital punishment was justified in any situation and the Bishop of Chichester, Dr. George Kennedy Allen Bell, agreed with this view. Dr. Bell did not believe the State had a right to take human life, regardless of the circumstances. The Bishop of Winchester, Bishop Mervyn George Haigh, conceded the death penalty eliminated the possibility of the person's reforming himself but that did not outweigh in his mind the arguments in favour of retaining capital punishment. The Bishop of Truro, Dr. Joseph Wellington Hunkin, not only wanted to retain capital punishment, he felt it should be expanded to include grave crimes other than murder. Dr. Hunkin also believed the death penalty was a deterrent.⁵¹ Leading clerics, while divided on the issue, recognized the traditional role of the State in regard to punishment and most supported the retention of capital punishment.

The Lord Chief Justice, Lord Goddard, reported that the Judges of the King's Bench Division supported

⁵¹Gowers, A Life for a Life?, pp. 46-52

capital punishment's retention with only one exception; but other jurists were divided on the topic. Lord Buckmaster was an abolitionist who felt life was sacred and ought not to be taken by the Government. Furthermore, he did not believe that capital punishment was a unique deterrent. Lord Darling was strongly in favour of capital punishment and believed a murderer should forfeit his life for the crime of taking a life. Justice Donovan stated in the House of Commons during the debate on the Criminal Justice Bill that he felt experimental abolition should be tried. The tone of the judges in the House of Lords was quite different. The Lord Chancellor, Lord Jowitt, thought that capital punishment was a deterrent. The Lord Chief Justice, Lord Goddard, agreed with Lord Jowitt and added that the supreme crime should carry the supreme penalty. Further acceptance of the theory of deterrence was voiced by Lord Oaksey and Lord Maugham. In testimony before the Royal Commission four additional judges, Lord Justice Denning, Justice Byrne, Justice Humphreys and Lord Keith, spoke in favour of retaining capital punishment. In support of their position the judges said the penalty inflicted should reflect society's revulsion for the crime; the public conscience was satisfied with capital punishment; and the death penalty was a deterrent.⁵²

⁵²Ibid., pp. 52-60.

Home Secretaries were in a unique position to determine the value of capital punishment. It was the Home Secretary who was responsible for ". . . administering the law of capital punishment and advising the Sovereign as to the exercise of the royal Prerogative of mercy."⁵³ Sir Winston Churchill, who served as Home Secretary from 1910-1911, was of the opinion in 1948 that capital punishment should be retained despite the move by idealists to abolish the death penalty. Lord Brentford, who served from 1924-1929, supported the retention of capital punishment because he felt it was a necessary deterrent. Lord Templewood, Home Secretary from 1937-1939, was an abolitionist who deprecated excessive deference to public opinion. Manor Lloyd George, a private Member of Parliament in 1948, who later became Home Secretary, voted in favour of the measure to suspend capital punishment for a trial period. Chuter Ede, Home Secretary at the time of debate on the Criminal Justice Bill, urged Members of Parliament to reject the measure on the ground that it did not command the support of the majority of the people.⁵⁴

Although prominent statesmen, prelates and jurists of the period differed on the subject, a majority favoured the retention of capital punishment,

⁵³Hoare, The Shadow of the Gallows, p. 9.

⁵⁴Gowers, A Life for a Life?, pp. 60-66.

citing deterrence as the primary reason for their stand. Members of the general public who held similar beliefs were frequently classified as uneducated or uninformed by abolitionists, yet no such evaluation was made of the position taken by the more well-known proponents of the death penalty. This type of generalized classification emphasized the emotional tone associated with any discussion on the question of abolition.

In 1949 a Royal Commission was again appointed to investigate capital punishment. The Commission was charged with determining whether or not the law should be modified. The Commission was not to consider the advisability of abolishing capital punishment.⁵⁵

A bill was presented in 1953, in part as a response to the Royal Commission, to suspend imposition of the death penalty for five years; the measure failed. Substitution of life imprisonment was proposed in 1955; it also failed.⁵⁶ Nigel Nicholson, during a 1956 debate which dealt with abolition, said he believed public opinion was changing toward a more abolitionist position. Even so, he was acting contrary to the majority of his constituents in supporting abolition.

⁵⁵Scott, The History of Capital Punishment, p. 85.

⁵⁶W. F. Deedes, "To Hang or Not to Hang," The Daily Telegraph and Morning Post, December 21, 1964, p. 10.

He felt that it was permissible to go against the wishes of the majority ". . . because I believe that this is truly a matter of individual conscience and of judgment."⁵⁷ The Home Secretary, Major Lloyd George, as spokesman for the Government, which resisted the move to abolish capital punishment, told his fellow Members of Parliament that the Government believed it would be wrong to abolish capital punishment unless an overwhelming majority of the people favoured such change; the Government thought the contrary was true. Chuter Ede supported abolition although he acknowledged that public opinion was against the removal of the death penalty.⁵⁸ The measure to abolish capital punishment was passed by the House of Commons but was defeated in the House of Lords.⁵⁹

The scheme begun in the late 1940's to designate only those murders viewed as most heinous as capital offences led to the Homicide Act of 1957. The Act was a compromise between the House of Commons and the House of Lords necessitated by an unwillingness on the part of the House of Lords to completely abolish the death penalty. The Homicide Act retained capital punishment for murdering a policeman or prison officer,

⁵⁷Koestler, Reflections on Hanging, p. 71; and Tuttle, The Crusade Against Capital Punishment in Great Britain, p. 114.

⁵⁸Gowers, A Life for a Life?, pp. 66-68.

⁵⁹Deedes, "To Hang or Not to Hang," p. 10.

for murdering a second time, for murder committed in the course of such crimes as robbery and for murder by shooting or murder caused by an explosion. Placing murders in categories as specific as those under the Homicide Act significantly reduced the number of people liable to the death penalty but did not gain popularity when applied. The public continued to favour retention of capital punishment more broadly applied. Members of Parliament frequently referred to the anomalies of the Act; it was not clearly understood why murder with a gun disturbed public order more than murder with poison. The abolitionists were the most dissatisfied with the scheme of classifying murder because the Homicide Act stopped short of total abolition. The retentionists and abolitionists had reached a compromise which appeared to be unacceptable to everyone.

Dr. A. M. Stockwood, the Bishop of Southwark, furnished statistics before the Convocation of the Province of Canterbury covering the years from 1920 through 1949, 1955 and 1959. The Bishop relied upon these figures to indicate a general disinclination to apply the law permitting capital punishment. The figures representing murders known to the police were averaged for the three decades included. This mathematical operation distorted the data; for some of the years the number of known murders might have been

considerably higher than the average; during others it might have been inordinately low. From 1920 to 1929 the number of murders known to the police averaged 148.6 per year; from 1930 to 1939 the average per year was 132.9; and from 1940 to 1949 the yearly average was 166.6. One hundred thirty-three murders were known to have occurred during 1955. In 1959, after the passage of the Homicide Act, there were 141 murders.⁶⁰ The average number of murders in the years cited by Dr. Stockwood was 144.4, which supports his statement that the murder rate remained constant. The data for 1959, however, was not sufficient to prove stability following removal of capital punishment for certain types of murder. Additionally, Dr. Stockwood did not indicate whether or not the figure provided for 1959 included all known murders or only those classified as capital offences. Dr. Stockwood, dealing with alternative punishment, provided statistics for the number of hangings during the same period. From 1920 to 1929 an average of forty-eight were convicted of murder each year, but only 13.9 on an average were hanged. The number convicted from 1930 to 1939 averaged 45.6 and an average of 8.5 were executed each year. Convictions averaged 59.4 during the period 1940 to 1949; hangings averaged 12.7 yearly.

⁶⁰Church of England, Convocation of the Province of Canterbury, Upper House, "Minutes," Wednesday, 17 January 1962, p. 106.

In 1950 seventy were convicted of murder; only four were hanged.⁶¹ The percentage of those murders known to the police which resulted in convictions for the decades cited was: 1920-1929, thirty-two percent; 1930-1939, thirty-four percent; and 1940-1949, thirty-six percent. The majority of murderers, therefore, were either acquitted, found guilty of lesser crimes, committed suicide, died of natural causes or were not apprehended. Twenty-three percent of those convicted from 1920 to 1949 were hanged. In 1950 the percentage dropped to less than six. The figures apparently lent credence to the abolitionists' argument.

At the opening of Parliament on November 3, 1964, the Government voiced its interest in abolishing the death penalty. In the Speech from the Throne the Queen said: "Facilities will be provided for a free decision by Parliament on the issue of capital punishment."⁶² Reference to capital punishment in the Speech from the Throne brought comment in the debate on the Speech which ranged in content from appeals to emotionalism to rhetorical questions about the merits of such a step. Abstract and concrete concepts were advanced by the abolitionists and retentionists in support of their stands. Sydney Silverman, Labour

⁶¹Ibid., p. 107.

⁶²Great Britain, Parliament, Hansard's Parliamentary Debates (House of Commons), 5th series, Vol. 701 (27 October - 13 November 1964), col. 40.

Member for Nelson and Colne, who had worked for the cause of abolition for decades, presented to the House of Commons on December 4, 1964, a Private Member's Bill (See Appendix A) designed to accomplish abolition. The compromise between the House of Commons and the House of Lords over the Homicide Act of 1957 was no longer sufficient; Silverman's Bill sought nothing less than complete abolition of capital punishment. The fight for passage of the Murder (Abolition of Death Penalty) Bill, hereinafter referred to as Murder Bill, that encompassed ten months of debate in Parliament began with Silverman's eloquent speech on the Second Reading, December 21, 1964.

Abolition of the death penalty was not a new issue in Great Britain and public opinion had not altered during the century it had been considered. According to one author, the British ". . . when new decisions are necessary . . . do not possess the capacity to reach quickly a settled purpose or emotional vigour to carry through great experiments and adapt themselves to a new design."⁶³ Given a hesitancy to reconsider the position with regard to capital punishment the people had been faced with possible abolition long enough to have altered their opinions had there not remained a strong sentiment in favour

⁶³ Francis Williams, Socialist Britain: Its Background, Its Present, and an Estimate of Its Future (New York: The Viking Press, 1949), p. 255.

of capital punishment. Changes in the application of the death penalty took place before the introduction of the Murder Bill; change in public opinion did not accompany the changes in the law. The alterations anticipated from the Murder Bill were expected to produce ". . . in many people's minds a much more dramatic change . . . than occurred in 1957."⁶⁴

Many topics repeatedly entered the debate on the abolition of capital punishment, but the most consistently recurrent theme was popular opinion in relation to the Bill. This general theme fell into various divisions, among which were: how the people regarded abolition in general, the methods used to make public opinion known to Parliament, what the public opinion polls showed, the position taken by various segments of the public, the effect of abolition of the death penalty on public safety and the statistical evidence available to support either retentionist or abolitionist arguments.

⁶⁴Hansard, (Commons) Vol. 714 (14 June - 25 June 1965), col. 2148.

CHAPTER II

PARLIAMENT'S AWARENESS OF PUBLIC OPINION

The legislative process in England has been the prerogative of Parliament for centuries. The House of Commons and the House of Lords together pass the bills which become law for British subjects. Members of Parliament who sit in the House of Commons do so at the pleasure of the public. They are chosen to represent the people of their constituency. In this capacity, the Member of Parliament is expected to reflect the opinion of the majority of the electorate. Members of the House of Lords, however, owe nothing to the electorate; their places are gained through hereditary means or appointment by the Crown for life. During the debates on the Murder Bill several observers commented about the relationship of each House to the public.

In 1957 Parliament passed the Homicide Act in an attempt to effect a compromise. The House of Commons felt it had enough votes to abolish capital punishment but the mood in the House of Lords was quite different. As in all compromises, the Homicide Act did not completely satisfy anyone; the retentionists felt it went too far and the abolitionists believed it did not

go far enough. The majority of public opinion was in favour of keeping the death penalty. An article in The British Journal of Criminology in 1962 reflected on the situation brought to prominence by the Homicide Act and took the position that: "The price of Parliament's disdain for one of the great social documents of this century has been a discontented public on one of the major issues of our times."¹ The abolition of capital punishment was prominent in everyone's mind. It was considered to be an issue which affected society as none had in many years. Deep concern gripped the people as the possibility of abolition came closer to a reality.

In the General Election of October 1964 the Labour Party succeeded in gaining a slight majority. Labour advocated social reform but did not raise the specific question of abolition of the death penalty prior to the election. While the issue was not a matter of party politics, generally the Conservative Party supported retention of capital punishment while the Labour Party wanted to abolish the penalty. The Conservative position was stated at the 1961 Annual Conference which approved the retention of capital punishment by an overwhelming majority. At the Annual Conference in 1969 the Conservative Party carried a

¹L. J. Blom-Cooper, "Murder," The British Journal of Criminology, April 1962, p. 392.

motion to restore the death penalty by a vote of 1,117 to 958. The opinion among Conservatives seemed to be firmly in favour of retention. Harold Wilson explained the Labour Party's position in April of 1964:

We feel that, as this is an issue on which people have strong views and is to some an issue of conscience, it should be left to a free vote of the House, and we are prepared to find Government time for it. ²

The vote on the Murder Bill in 1965 indicated the feelings of the Labour Party; only one Labour Member in the House of Commons voted against the Bill.

The measure introduced in December 1964 was non-partisan. Voting on the Murder Bill was to be a matter of conscience for each Member of Parliament; the political parties and the Government advocated a free vote. Early reports in the newspapers began to provide proof that the Members were aware of public opinion and chose to disregard that sentiment. Samuel C. Silkin, Labour Member for Dulwich, told a reporter, "It may well be that public opinion is against what I hope will be done by this House to-day. One cannot tell on the basis of a few figures in the national press." He went on to say that he thought the Members should have the courage to do what they considered correct even if public opinion was against

²Richards, Parliament and Consicence, p. 52.

their action.³ Public opinion might not have presented sufficient evidence to influence Silkin, but it did influence others. One editorial said that if the House of Lords decided to reject the Murder Bill, the majority of the electorate would support its position. "Here, on the face of it, is a unique opportunity for the Upper Chamber to discharge its function as the guardian of the public will against the tyranny of a Commons elite."⁴ This theme recurred; the House of Commons, elected as delegates of the people, ignored public opinion and the House of Lords appeared to reflect the desires of the people.

There were a few Members of Parliament who felt the people were willing to have the death penalty abolished. These Members did not give reasons for their opinions but seemed convinced that the majority of Englishmen would favour removing the gallows from society. In the Lower Chamber, Sydney Silverman expressed the belief that there was wide public support for the broad idea of abolition.⁵ Silverman failed to substantiate his claim. His career had been devoted to the abolition of capital punishment; the

³"Barbarity of the Death Penalty," The Glasgow Herald, December 5, 1964, p. 7.

⁴"Lords and Gallows," The Daily Telegraph and Morning Post, February 20, 1965, p. 14.

⁵"Hanging: Bill Expected to Have Majority of 100," The Guardian, December 21, 1964, p. 1.

trend he mentioned could have existed among a selected segment of society. The public opinion polls showed only a minority in favour of reform, which did not signify "wide support" for an end to hanging. Perhaps the reference was to support of the Murder Bill by those in certain social strata--the more educated, elite or affluent. Without further identification of his frame of reference, the credibility of Silverman's statement could not be established. Other Members of Parliament agreed with Silverman's evaluation of public opinion. Edith Summerskill and Lord Silkin both detected a move in public opinion toward a more favourable attitude on the question of abolition. Many were said to object to the death penalty and claim ". . . it is improper and should therefore be removed from out list of punishments."⁶ Dr. Summerskill, Labour Member for Halifax, believed, ". . . public opinion will welcome the result of the Division tonight. The public have been educated over the years and feel that hanging is as outmoded as cutting off the hand for theft. . . ."⁷ She further stated, "I think the Bill will be passed without clamour or excitement because it is what public opinion wants."⁸ In the

⁶Grunhut, "Murder and the Death Penalty in England," p. 158.

⁷Hansard (Commons), Vol. 704 (14 December - 23 December 1964), col. 952.

⁸Ibid.

House of Lords public opinion was not thought to be as solidly in favour of the abolition of capital punishment. Lord Silkin did not go as far as Dr. Summerskill but voiced the feeling, "I think public opinion is changing."⁹ It might have been that in Halifax the public preferred abolition to retention, but this preference was not held by the majority of the public.

As debate in the House of Commons continued, Members acknowledged more frequently their awareness of the climate of public opinion. Results of public opinion polls received wide publication and petitions were presented to Parliament. Wyndham R. Davies, Conservative Member for Birmingham, wondered, "Why if the general public of this country do not want complete abolition of the death penalty, do the majority of members present seem to want this?"¹⁰ Puzzlement about the position taken by Parliament was widespread. The public expected the Members of Parliament to reflect the will of the majority; the concept of majority rule was central to democracy. On the issue of hanging, the House of Commons ignored the concept which led many to doubt the validity of the system.

Alternative punishment for the murderer was

⁹Great Britain, Parliament, Hansard's Parliamentary Debates (House of Lords), 5th series, Vol. 268 (12 July - 29 July 1964), col. 605.

¹⁰"The Silverman Case and the Other Side," Daily Mail News Chronicle, December 21, 1964, p. 8.

central to the issue of abolition. No one wanted to end hanging without providing a suitable penalty for those who would have previously received the death penalty. One newspaperman predicted that there would be violent public reaction if the Murder Bill was passed before an appropriate substitute was found to assuage public misgivings. He further stated, "In the face of such reaction the House of Lords, responding apparently with more sympathy to popular will than the Commons, could be moved once more to reject the Bill."¹¹

Sir Dingle Foot, Solicitor-General, spoke to the House of Commons during debate on the Bill and cited three main reasons which prompted him to vote for the Second Reading: 1. The State might err and execute an innocent person; 2. The death penalty influenced the jury to the extent that it might acquit a guilty person rather than sentence him to hang, or it might convict the individual of a lesser offence to avoid imposition of capital punishment; and, 3. The distinction between capital murder and other forms of murder was nebulous. The Solicitor-General also said that he was aware of public opinion, but a Member of Parliament was not a delegate and should exercise his judgment on the issue of abolition, even if the position he took

¹¹Deedes, "To Hang or Not to Hang," p. 10.

was unpopular with the general public.¹² Foot's first reason for objecting to capital punishment was well-founded. Innocent people were executed but the occurrence was infrequent. Human judgment exercised through the judicial system was not infallible; yet the general public preferred to take the chance of mistake as a necessary evil in order to insure the guilty did not escape punishment. Execution of innocent persons, in the opinion of one writer, ". . . does not affect the public mind to a sufficient extent to result in a popular demand for the abolition of capital punishment."¹³ On his second point the evidence was elusive. In the jury selection process for a capital murder trial prospective jurors were screened concerning their willingness to impose the death penalty. In cases where they failed to convict perhaps the evidence led to acquittal or imposition of a lighter sentence. Since a majority of the public believed in the efficacy of capital punishment, it was difficult to show that this group would hesitate to use the penalty if given the opportunity to do so. The Homicide Act drew a fine but distinct line between capital and non-capital murder. Foot, in disagreeing with the categorization

¹²"Hanging: Bill Expected to Have Majority of 100," p. 2.

¹³Lewis E. Lawes, Man's Judgment of Death (New York: G. P. Putnam's Sons, The Knickerbocker Press, 1924), p. 5.

of murder, was not alone. Many questioned the wisdom of classifying one type of murder, such as that of a police officer, as capital while another, murder by poisoning for instance, did not warrant the death penalty.

The first Division in the House of Commons was reported in the press on December 22, 1964. The majority of 185 votes was labelled remarkable by The Guardian.¹⁴ There were 630 Members in the House of Commons; three hundred fifty-five voted affirmatively (56.35 percent) and 170 (26.98 percent) opposed the Murder Bill; therefore 105 (16.67 percent) of the Members failed to vote. Approximately one-third of the Members who voted for abolition were Conservatives. This figure was higher than had been expected and it was suggested that a large proportion of the Members who did not vote were Conservative. The Conservatives were thought to have absented themselves in part because they could not oppose the Bill in good conscience but they were aware of the overwhelming opposition to abolition in the country at large.¹⁵ The newspaper reported that Sydney Silverman was very conscious of the opinion polls which dealt with the question of abolition but said: "They did not daunt

¹⁴"355-170 Vote Victory for Mr. Silverman," The Guardian, December 22, 1964, p. 1.

¹⁵"185 Majority to Eng Hanging," The Daily Telegraph and Morning Post, December 22, 1964, p. 1.

him."¹⁶ After the Division, S. C. Silkin again voiced his conviction that the House of Commons should have the courage to do what it believed right regardless of public opinion. The Members were courageous in supporting a bill which the people did not want in view of the fact they owed their very membership in the House of Commons to the electorate. Brigadier Terrence Clarke, Conservative Member for Portsmouth, West, was adamant in his belief that the House was taking the wrong stand and he strongly felt the question of abolition should have been put before the people so they could express their thoughts on the subject. Sir Edward Boyle, Conservative Member for Handsworth, was of the opinion the Members should vote according to their individual conscience and not allow public opinion to influence their decision.¹⁷

The marked disagreement among the Members of Parliament over this issue sparked a lively debate. On the one hand retentionists in the House of Commons called for adherence to the will of the majority of the people, and on the other hand abolitionists advocated reliance on their own convictions and promoted total disregard of public opinion. Reginald Thomas Paget, Labour Member for Northampton, underlined the opposing positions when he said it was permissible to consider

¹⁶"355-170 Vote Victory for Mr. Silverman," p. 1.

¹⁷Ibid., p. 3.

public opinion on minor issues, a speeding citation, for example; but he avowed it was totally inappropriate to seek public opinion on a question of such magnitude as life or death.¹⁸ Clearly Paget felt the people unqualified to express an opinion on the Murder Bill. The decision in the House of Commons was attacked editorially by the Liverpool Daily Post, which said:

It is not a decision that is endorsed by public opinion in the country and indeed it very well might not be endorsed by the Lords who, not for the first time, more closely represent the electorate than do the elected House in this matter. 19

Anti-abolitionist fervour was strong among the peers, but for the majority of public opinion it was unfortunate that hundreds of the Lords who were retentionists did not normally attend the sittings of the House, thus neutralizing the potential threat to passage of the Bill.²⁰ As the people became aware that the House of Commons was for the most part devoted to passage of the Murder Bill, their hopes were focused on the House of Lords where similar movements had been defeated in the past (See Appendix D).

During March of 1965, the House of Commons began sitting in the morning to debate the merits of

¹⁸"Barbarity of the Death Penalty," p. 7.

¹⁹"Instead of Hanging," Liverpool Daily Post, December 23, 1964, p. 6.

²⁰"Anxious Abolitionists Look to the Bishops," The Guardian, January 6, 1965, p. 2.

the Murder Bill. Only fifty Members of Parliament were present for debate at the first morning session. Several speakers argued that the people were worried about the support given by the majority of the House to the abolition of capital punishment. John Wynne William Peyton, Conservative Member for Yeovil Division of Somerset, an abolitionist, was convinced a large number of his constituents believed he was wrong. Also referring to his constituency, Sir Arthur Harvey, Conservative Member for Macclesfield, accused Parliament of being out of line with public thinking on the matter under discussion. Peter Bessel, Labour Member for Bodmin, queried, "Have we the right to make this decision to abolish capital punishment, completely, absolutely and irrevocably, when really no party or, I doubt, any member has a mandate from the electorate to do so?"²¹ Obviously the House of Commons had the right to disregard public opinion and the Members had the power to legislate without considering the wishes of the people. Members were elected but subsequent control over their actions was removed from the public. They were free to act as their individual convictions dictated. One author commented, "That elected representatives should take it upon themselves to thwart the known wishes of a majority of their

²¹Norman Shrapnel, "Small House for the First Matinee," The Guardian, March 25, 1965, pp. 1-2.

constituents is certainly not good."²²

Debate continued in the House of Commons to recognize the public's stand on the abolition of capital punishment. Public opinion polls, petitions and letters constantly kept the Members informed on how the people reacted to the progress of the Murder Bill. Interest increased in the alternative methods of punishment and the choices available were investigated by Parliament. None of the penalties offered as substitutes for capital punishment pleased the public, which continued to voice its dedication to the maximum penalty for the maximum crime. Bessel, quoted again on April 29, 1965, said, "There is no doubt that ultimately capital punishment will be totally abolished, but the fact remains that public opinion is not educated to the belief that this is the time to do it."²³ If public opinion needed education, there was no evidence of an attempt to provide it. Statistics were provided, but they did little to alter public opinion. Perhaps the Members of Parliament believed a trial period would provide a form of education. No national campaign was mounted to influence the people. The humanitarian views shared by abolitionists in the House of Commons appeared in the newspapers; the public was not swayed. On some

²²Cohen, Law Without Order, p. 224.

²³"Death Penalty Bill," The Guardian, April 29, 1965, p. 2.

issues a prominent public figure had been able to effect a change in public opinion. An individual of this stature did not exist with regard to the abolition of capital punishment.

On May 26, 1965, Henry Brooke, Conservative Member for Hampstead, presented an amending clause to the Murder Bill which provided for a five-year experimental period. This limitation was passed because it was hoped that the opposition of the public would lessen if it knew that abolition was not necessarily going to be permanent; or it was hoped that public opinion would alter concerning capital punishment if given time. The amendment did not change public opinion; it only delayed making the Bill permanent. It did not prevent abolition of capital punishment from taking place and abolition was what public opinion strongly opposed. The public never favoured complete abolition for any length of time, whether or not the period was merely experimental.²⁴

As in all civilized societies, the British citizenry looked to the State for protection; it expected the Government to enact such laws as would control violence and provide a certain degree of safety. The public expected Parliament to stand for law and order and to create confidence and security.

²⁴Hansard (Commons), Vol. 713 (24 May - 4 June 1965), col. 529.

A Member in the House of Commons believed: ". . . we also have a responsibility for the peace of mind of the public at large."²⁵ Millions of the British people felt the Bill was dangerous; in the House of Lords the Bill was termed inexpedient and dangerous to society. R. H. Turton, Conservative Member for Thirsk and Malton, told the House of Commons, ". . . we cannot neglect the fact that the vast majority of people think that their security demands that there should be a death penalty."²⁶

The Murder Bill reached the House of Lords in July 1965. Early in the debate it was ". . . argued that the Commons had no right to abolish capital punishment without a mandate from the people."²⁷ The Lords traditionally tempered action taken in the House of Commons on the issue of abolition. The Lords were slower to undertake reform and less inclined to alter existing laws. The Upper House was largely responsible for passage of the Homicide Act in 1957 and were thought to be against changing that law. Initial response in the House of Lords lent credence to the belief that the peers would again modify the Bill

²⁵Hansard (Commons), Vol. 711 (26 April - 7 May 1965), col. 398.

²⁶Hansard (Commons), Vol. 793 (8 December - 19 December 1969), col. 970.

²⁷"The Lords and Hanging," New Statesman, July 13, 1964, p. 106.

passed by the House of Commons in order to avoid total, outright abolition of capital punishment. The public vested its last hope in the Lords. Sir John Hobson, Conservative Member for Warwick and Leamington, said the Murder Bill was simply not wanted by the country as a whole.²⁸ His Chamber had passed the Bill but he believed it necessary to register his doubts on the advisability of this action.

By the time debate began in the House of Lords, public opinion was reported to favour retention of capital punishment by as large a majority as three to one. Clamour for a national referendum was ignored. There appeared to be no way for the majority of Englishmen to exert sufficient pressure to make Parliament act in compliance with their wishes. Lord Long spoke as an experienced magistrate, a position he held for over forty years, and told his fellow peers that the confidence of the people would be destroyed if the Lords passed the Murder Bill.²⁹ Confidence was essential to the conduct of Government in Great Britain. Ministries were removed after a vote of no confidence. If the Government recognized the importance of Parliamentary confidence in its Ministers, even more vital was the trust of the nation as a whole in the House of Commons

²⁸"Abolition of Death Penalty Bill," The Guardian, July 14, 1965, p. 2.

²⁹"No Hanging Bill in Lords," The Guardian, July 20, 1965, p. 3.

and House of Lords. Public sanction of the law was vital to the maintenance of order. It was thought that a trial period of abolition would restore a degree of confidence and help prove the case for abolition of capital punishment to the satisfaction of informed opinion.³⁰ The case was not proven; the public had too long had a belief in capital punishment. It had served effectively throughout history as a penalty for murder. Parliament attempted to lead by example but it was an example the public was not willing to follow. The people of Great Britain were not ready for even a trial period of abolition. Even if capital punishment was only abolished for a short, experimental period, it would leave the public unprotected during that time.

Edward Gardner, Conservative Member for Billericay, told the media that passage of the Murder Bill would be in contempt of public opinion because the majority of Englishmen opposed the abolition of capital punishment.³¹ The people did regard Parliament with an emotion which approached contempt; the majority's position on the death penalty was ignored and while violent reaction did not occur, the public became more

³⁰Norman Shrapnel, "Peers Condemn Hanging by 100 Votes," The Guardian, July 21, 1965, p. 2.

³¹"Murder Bill in House of Lords," The Glasgow Herald, July 14, 1965, p. 5; and "Commons Row Over 'Liar' Charge," The Yorkshire Post, July 14, 1965, p. 11.

adamant in its opposition to the Bill. The awareness of Members of Parliament, such as Gardner, of the tone of public opinion served to underscore the disregard for popular feeling in Parliament.

The speakers in the House of Lords referred to the tenor of public opinion regularly. The peers evidenced concern for the mood of the people and, although they derived no direct support from the populace through the election process, there were those in the Upper House who believed the citizenry should have been consulted on the issue of abolition before the move to eliminate capital punishment was mounted in Parliament. Viscount Dilhorne succinctly stated the position of retentionists with regard to the right of the people in a democratic society to voice their opinion and have that opinion carry weight. In the Viscount's opinion, "If we reject this Bill, for which no mandate can be claimed, I believe the vast majority of people in this country will welcome our decision."³² Appeals of this nature in both Houses of Parliament emphasized the failure of the political parties to include capital punishment as an issue during the General Election. The people of Great Britain were effectively denied an opportunity to elect representatives who accurately reflected the position of the majority on

³²"Lord Chief Justice Against Hanging," The Glasgow Herald, July 20, 1965, p. 10.

the abolition of capital punishment. Knowledge of a candidate's stand on abolition might not have influenced the vote, but it would have given the people an opportunity to decide whether or not the person's stand on this issue was reason for altering their support. Without this knowledge the people were unable to consider the question of abolition at a time when public opinion might have exerted considerable impact. In essence, allowing the people to elect Members of Parliament without knowing whether they tended to be retentionists or abolitionists violated a basic tenet of democracy. Since the election was held in October of 1964 and the Murder Bill was presented less than two months later, the political parties must have known prior to the election that the matter would be raised. The omission of this issue usurped the right of the public to express its views at the General Election.

The Earl of Kilmur raised another point which deserved attention regarding the abolition of capital punishment. He said: ". . . this Bill comes to us as a measure that is untimely, unwanted by the people of this country and without an alternative deterrent being set."³³ Lord Kilmur accepted the deterrent effect of capital punishment, a theory challenged by

³³Shrapnel, "Peers Condemn Hanging by 100 Vote," p. 2.

the abolitionists. There was really no way to determine the value of capital punishment as a deterrent. If that question were solved, the issue of whether or not it was a unique deterrent arose. Capital punishment did effectively eliminate the possibility of a murderer's repeating his crime. For the public this guarantee offered a sense of protection. The only alternative suggested for the death penalty was life imprisonment and this penalty was considered by retentionists to be somewhat less than ideal. The murderer who received a life sentence was frequently considered rehabilitated and fit for return to society after a short period of incarceration. The people doubted the murderer could reform and be a non-violent member of the community. Doubts also arose over the cruelty of imprisoning someone for extended periods. It seemed there was no satisfactory answer to the question of what was to be done with the murderer once capital punishment was abolished. The Lords were no more successful in solving this dilemma than the House of Commons.

Press coverage of the death penalty issue lapsed during August and September of 1965 while Parliament was in recess, but attention again focused on the House of Lords in late October. Absence of a mandate from the people was once more cited as justification for rejection of the Murder Bill. Lord Colyton

issued a plea to his fellow peers to reject the Bill on the ground it did not have the support of the overwhelming majority of the people of Great Britain. Lady Wootten, a staunch supporter of abolition, on the other hand, encouraged the Lords to overlook public opinion, which she admitted was probably against the abolition of capital punishment. According to her the House of Lords should not follow the trend of public opinion when making its decisions.³⁴ The Yorkshire Post reported after the vote by the Lords to pass the Murder Bill that opponents of abolition had sought to show during debate that public opinion had swung even more heavily in favour of keeping capital punishment since the Lords first considered the Bill.³⁵ Lord Gardiner advised the House that the people sincerely believed removal of the death penalty would lead to an increase in the number of murders.³⁶ Last minute appeals to the sponsors of the Bill, Silverman in the Commons and Baroness Wootten in the Lords, to withdraw the Bill and test public opinion failed. Parliament was said to have no right to ignore the three national opinion polls, which showed the public favoured

³⁴"No Hanging Again Put to Vote," The Glasgow Herald, October 27, 1965, p. 7; and "Peers Pass No Hanging Bill," The Yorkshire Post, October 27, 1965, p. 1.

³⁵"Peers Pass No Hanging Bill," p. 1.

³⁶Ibid., p. 9.

retention, and set itself above the wishes of the people.³⁷ Both Houses of Parliament disagreed. With or without the agreement of the people, the Members of Parliament decided it was time to do away with the gallows.

Members of Parliament during debate on the Murder Bill called public opinion uneducated and implied the people were not qualified to make a decision involving life or death. Petitions were ignored and opinion polls were disregarded. Parliament took upon itself the authority granted by the people to legislate and passed the Bill without regard for the opinion of those who sanctioned its existence. The Murder Bill had been amended to provide for a trial period of abolition; Parliament was to reconsider the matter five years hence. It was hoped that the people would be encouraged to accept abolition more readily if they knew it was not intended to be permanent and unalterable.

The debates on abolition in 1969 evoked discussion of the aspect of timing. It was felt that delay in making the Murder Bill permanent was called for because the public was not ready to accept complete abolition. A motion for censure undertaken on this occasion emphasized the belief that the Government was

³⁷"Abolition of Hanging Confirmed by Peers," The Daily Telegraph and Morning Post, October 27, 1965, p. 27.

forcing a decision before enough time had passed for sufficient statistics to be gathered. Lord Silkin had been correct in foreseeing a change in public opinion, but it did not come in the direction he anticipated. When Parliament considered resolutions to make the Murder Bill permanent, public opinion not only had not caught up with that of the Members of Parliament but seemed to be hardening along the lines of favouring a return of capital punishment and there continued to be strong opposition to permanent abolition. One statistic which was available underscored the fear of the public that abolition of the death penalty had contributed to the increased violence. In a Home Office report on murders during the period from 1957 to 1968 it was stated that capital murder had increased sharply after 1965.³⁸

Statistics available to each side failed to establish with certainty that hanging served as a singularly unique deterrent. Various figures were available and various interpretations were given to the figures. (See Appendix H.) One analysis indicated that the murder rate in England and Wales from 1900 to 1967 averaged 150 per year, with a variance of twenty-five more or less murders known to the police in any given year. The Homicide Act did not prompt an increase in murder. Figures for 1957 to 1967 showed there were

³⁸Richards, Parliament and Conscience, p. 61.

a total of 1,619 murders known to the authorities; the yearly average was 147.2.³⁹ The argument of abolitionists was strengthened by figures which showed that the apparent dramatic increase of murders in 1967 could in large part be accounted for by noting the number of murderers who subsequently committed suicide or had murdered a relative or close friend. The thrust of the argument was that the individual who killed and committed suicide was mentally incapable of recognizing the deterrent value of capital punishment, since the suicide was more than likely planned prior to the murder. Anyone willing to take his own life was not thought to fear the State's depriving him of that life. The murder of a relative or close associate was most often considered a crime of passion, one not committed by the professional but a crime carried out in a moment of rage by someone incognizant of deterrence at the time of the murder. Murderers in these two categories were not thought to present a further threat to society. In 1966 twenty-nine murderers committed suicide and forty-five murders involved the killing of a relative or close friend. During 1967 murder of a relative or close friend rose to eighty-one while fifty-one suicides

³⁹The Howard League for Penal Reform, Murder and Capital Punishment (London: The Howard League for Penal Reform, n. d.), p. 8; and Social Responsibility Department, The British Council of Churches, "Report of the Penal Group," Fifty-fifth Meeting, Autumn 1969, p. 3.

of murderers occurred. The date for 1968 revealed 174 murders, of which sixty-nine were murders of relatives or close friends and forty-five were murders followed by suicide.⁴⁰

An increase in murder during the course of theft was noted but an increase in crimes of violence in general was thought to be responsible for this.

The rise in crimes of violence was

. . . both absolute and in proportion to the population. It cannot be deduced from the figures that the rise since 1965 is attributable to the abolition of the death penalty but these crimes of violence figures are being used by retentionists in support of the arguments that all potential/possible deterrents to violence, including the death penalty, are necessary and justifiable to protect the public in view of the growing violence, even if the efficacy of the death penalty cannot be positively demonstrated by the statistics.⁴¹

Figures provided in a report to the Police Superintendents' Association of England and Wales indicated that between 1913 (the first year, evidently, for which statistics were available) and 1965, the offence of violence against the person rose an average of 5.9 percent per annum; from 1965 to 1977 similar crime

⁴⁰The Howard League for Penal Reform, Murder and Capital Punishment, p. 1.

⁴¹The Church of England Board for Social Responsibility, "Note for House of Lords Debate," 1969, p. 2.

rose at a rate of 10.7 percent per annum.⁴²

In 1965 the Murder Bill removed the necessity of determining whether a murder was capital or non-capital. The absence of classification after 1965 made it impossible to provide information on the percentage of murders which would have carried the death penalty under the Homicide Act. It was difficult, as well, to reliably compare statistics on the subject relative to the periods before and after the Bill. It was thought that the absence of capital punishment encouraged juries to convict, but reliable statistics were not available to support this. No correlation was found between the existence of capital punishment for certain categories of murder and the numbers of those types of murder. Increase in the incidence of murder was attributed to factors other than abolition. The five-year trial period ". . . during which the imposition of capital punishment has been suspended is too short a time in which to gauge the effect, if any, of abolition upon the statistics of murder. . . ." ⁴³ An extended trial period, however, was not expected to provide any more conclusive statistical evidence.

⁴²K. Rivers, "Capital Punishment," A paper prepared for presentation to the Police Superintendents Association of England and Wales, July 1979, p. 9.

⁴³Social Responsibility Department, "Report of the Penal Group," p. 3.

The permanent abolition of capital punishment in 1969 did not provide the final word on the topic. Social disturbances had increased and terrorist activities created concern and fear among all Englishmen. No one seemed immune to the violence of various terrorist organizations, which murdered seemingly at will. All establishments were subject to bomb attack and considerable numbers of people died as a result of these explosions. Renewed demand for restoration of the death penalty by the people came as a result of the increased attacks. Early in 1973 the abolition of capital punishment was again brought before Parliament. Conservatives were in the majority and there was some indication that the Conservative Government favoured returning the gallows to their former function.⁴⁴ Traditionally, the Conservative Members of Parliament had been more inclined to advocate the retention of capital punishment and it was thought that their predominance in the House of Commons might provide a better opportunity for passage of a measure to restore capital punishment. The hopes of the public were not realized, however, as many Conservatives failed to vote on the issue or had altered their position. The House of Commons, by a margin of 320 to 178, voted

⁴⁴"Voting Again," Economist, April 7, 1973, p. 18.

to continue the abolition of capital punishment.⁴⁵ The 132 Members of Parliament who failed to vote would not have provided enough votes to restore capital punishment--even if all of those who had not voted had been in favour of its return. Parliament once more exercised its independence and acted contrary to public opinion. The leadership was provided; the public continued to follow their own conscience rather than the enlightened leadership of the Members of Parliament.

The following year capital punishment was again brought before Parliament. Public fear continued and renewed attempts were made to return capital punishment for those committing murder. Approximately seventy Tory Members of Parliament lobbied actively for the restoration of capital punishment, particularly for convicted terrorists.⁴⁶ The majority of the people wanted to re-employ the hangman. Public safety was categorized as being in jeopardy as a result of the wholesale killing related to terrorist activity. The large number of deaths and injuries inflicted by bombing and similar acts attracted attention; no longer was the solitary murder as noteworthy as it had once been. Public opinion did not persuade Parliament to reverse its stand. Even the increased incidence of

⁴⁵"The Commons Says It Again: No Return to Hanging," Economist, April 14, 1973, p. 17.

⁴⁶"Jenkin's Passage," Economist, November 30, 1974, p. 24.

terrorism was not sufficient in provoking the Members of Parliament to restore capital punishment.⁴⁷ Alternative methods of dealing with ordinary murder had proven successful in Parliament's opinion; the same methods would suffice in handling terrorists, who were not thought to be any different from the usual murderer. The most recent discussion in Parliament on the matter was held in July 1979 at which time mass public support was shown to favour capital punishment.⁴⁸

During Parliamentary debates on the issue it seemed that support for the reintroduction of the death penalty gained momentum in the House of Commons. Citing an awareness of public opinion, Sir Peter A. G. Rawlinson, Conservative Member for Surrey, Epsom, Joan Cristabel Jill Knight, Conservative Member for Edgbaston, Sir Ian Percival, Conservative Member for Southport, and Carol Mather, Conservative Member for Esher, rose to argue in favour of the reinstatement of capital punishment.⁴⁹ Several reasons were given for bringing back the gallows. Public apprehension over safety in view of the rising violence provided support for the arguments of these Members of Parliament. There was

⁴⁷ "Or Such Less Penalty," Economist, December 7, 1974, p. 18.

⁴⁸ D. Kenningham, Personal Letter dated April 7, 1981.

⁴⁹ "The Night the Hangman Was Turned Away," Economist, December 14, 1974, p. 17.

an increased belief among Parliamentary advocates of capital punishment in the efficacy of the penalty as a deterrent. Several Members thought terrorists were unwilling to lose their lives as a result of conviction for the violence that was perpetrated on society.⁵⁰

Margaret Thatcher, Conservative Member for Finchley and later Prime Minister, consistently favoured the reintroduction of the death penalty but she was unable to obtain sufficient support to effect a change in the law. The Members of Parliament continued to ignore public opinion and exhibited a unique ability to resist the beliefs of the overwhelming majority of Englishmen.⁵¹

Of the many explanations given for the gulf which existed between the masses and Members of Parliament on the question of capital punishment none is satisfactory on all planes. Possible reasons for the Members' forming the vanguard with reference to abolition include: Members were generally better educated and more amenable to change in existing institutions; those elected to Parliament felt little, if any, responsibility to the people, allegiance being owed to their respective parties, which failed to see the

⁵⁰ Bill Moyers, "Debate in London," Newsweek, December 30, 1974, p. 64.

⁵¹ "Must Night Fall?", Economist, December 6, 1975, pp. 9-10; and "Hang Gliding," Economist, June 10, 1978, p. 28.

matter of capital punishment as worthy of prominence when measured against other concerns; the reform of the law required change in the punishment commensurate with reforms of treatment of prisoners, emphasizing an increased concern about the perpetrator; historical evidence indicated that Parliament, at times, legislated social change with the expectation that public attitudes would adopt the new mores; Members of Parliament were normally able to obtain status to the extent that they were not subjected to the conditions prevalent in lower strata, where crime traditionally abounded; and, for the sake of argument, the cycle was due to come full round--the reform of the legal system begun in the nineteenth century, debated in pub and Parliament alike for well over one hundred years, had focused on many major obstacles in the course of humanization of the law and it was left with only the horrendous penalty before realization of its aim.

CHAPTER III

PUBLIC OPINION ON CAPITAL PUNISHMENT

Public opinion, at best elusive and difficult to define, was no more readily delineated on the issue of capital punishment. The sample survey, or public opinion poll, was one of the most valuable systematic devices available for gathering intelligence about popular feelings, desires and values with particular emphasis on the Murder Bill. Public opinion polls were very inaccurate in some cases, but the repetition of sampling over a number of years helped eliminate any chance of an error large enough to prejudice the results. Many polls were conducted at different times to determine the attitudes of the people and while the actual percentages varied, public opinion did not waiver from its belief in capital punishment. Further indication of public opinion came from petitions presented to Parliament (See Appendix C), as well as from letters (See Appendix B) written to Parliament and to the editors of various newspapers. Such data was often emotional and unsophisticated, to say the least, and the sampling obtained was not controlled as only more outspoken persons could be expected to

participate either through writing a letter or signing petitions.¹ These people, however, held convictions strongly enough to make them known and warrant consideration. Public opinion surveys were in another category, one approaching acceptance by those inclined to seek a scientific basis for argument.

Public opinion polls were presumed to accurately reflect the mood of the people concerning the abolition of capital punishment. The polls were conducted by reputable organizations, which were experienced in proper scientific sampling techniques, formulation of questions, actual gathering of information and the compilation of results into statistically relevant data. At no time did the polls sway the Members of Parliament. Members were cognizant of the published results but did not allow the overwhelming sentiment of the public in favour of retention to cloud what was seen as a clear-cut issue. Polls conducted by both the British Gallup and Harris polls showed that the people wanted to retain the death penalty. The Marplan Poll conducted in October 1969 reached the same conclusion. Information furnished by the Home

¹The impossibility of obtaining a sampling which would satisfy requirements of scientific control must be recognized. The writer of this paper elected to present all evidence obtained from published sources in order to overcome possible sampling bias. For example, newspapers from all geographic areas were used and radical political persuasion did not preclude consideration.

Office in April 1981 indicated eighty percent favoured capital punishment for cases involving murder of law enforcement officials and murder by terrorist activity.²

A survey conducted in November 1938, the earliest available on capital punishment, found that when asked if they thought hanging should be abolished, forty-nine percent of the people answered in the negative. Public opinion was almost equally split between those who wanted the death penalty and those who either wanted it abolished or were not sure. Redistribution occurred in public opinion before the polls taken in conjunction with the Murder Bill.

Prior to the passage of the Homicide Act in 1957 the people were questioned concerning their views on the issue of capital punishment. The alternatives were to retain capital punishment according to the law at that time, to retain it only in certain cases or to eliminate it as a punishment for murderers. Gallup Poll conducted the survey which showed only twenty-five percent of those questioned favoured retention in all cases, thirteen percent called for total abolition and fifty-seven percent of the sample wanted hanging kept for certain types of murder. When the percentage favouring retention of capital punishment in all instances was combined with the

²D. Kenningham, Personal letter dated April 7, 1981.

figure wanting the death penalty retained for certain types of murder only, eighty-two percent of the people supported capital punishment to some degree.³

In early 1960, according to one source, about eighty percent of the people desired a return of some form of corporal punishment for all crimes of violence and approximately seventy-five percent of the public wanted judges to be allowed more power to inflict the death penalty.⁴ The authority for these statistics was not identified but the results closely coincided with a Gallup Poll conducted in March 1960. The poll was undertaken by Social Surveys (Gallup Poll) Ltd., and it showed that, of those questioned, seventy-eight percent wanted to retain the death penalty. Moreover, seventy-three percent of those surveyed thought the complete abolition of capital punishment would bring an increase in the number of murders.⁵ This view occurred frequently in the public opinion polls. The public apparently saw a direct link between the retention of the death penalty and its protection from violent crimes, particularly from murder. As far as

³David Mason, "To Hang--or Not to Hang: What the Public Think," The Sun, December 3, 1964, p. 10.

⁴Charles Duff, A Handbook on Hanging, revised and enlarged ed. (Totowa, New Jersey: Rowan & Littlefield, 1974), p. 154.

⁵J. E. Hall-Williams, "Developments Since the Homicide Act, 1957," cited in Tuttle, The Crusade Against Capital Punishment in Great Britain, p. 162.

the people were concerned capital punishment was an effective deterrent. In a poll taken in July 1964, when the people in the sample were asked if they wanted capital punishment abolished altogether, the percentage that replied negatively was sixty-seven and that which replied affirmatively was twenty-one. The change in public opinion from pre-Homicide Act to pre-Murder Bill seemed dramatic. No doubt there was a decline in support for capital punishment but the variance of ten to fifteen percent may have resulted from such factors as sampling differences. The public possibly disapproved of the way the Homicide Act classified murder as capital and non-capital. Whatever the reasons or explanations, public opinion was not as strongly in favour of capital punishment in 1964 as it had been in the mid-1950's according to material gathered by Gallup Poll. Varied interpretation of the statistics made reaching a logical conclusion difficult. Other figures were presented to show that retentionists were gaining ground prior to the introduction of the Murder Bill.

The only opinion poll which focused on a selected segment of public opinion was undertaken by National Opinion Polls in late 1964. This survey singled out that portion of society with some form of higher education. It was found that forty-seven percent favoured the abolition of capital punishment

and forty-three percent favoured retention.⁶ A writer in the National Review at a later date concluded from these numbers:

There may be a consensus against the death penalty among the college educated. If so, it demonstrates a) the power of indoctrination wielded by sociologists; b) the fact that those who are least threatened by violence are most inclined to do without the death penalty. College graduates are less often threatened by murder than the uneducated. ⁷

No evidence was presented to support this claim. Those with more education generally lived in nicer neighborhoods and usually worked in the better areas, but the murderer was not known to be one to respect status in society. Wealth and education often were directly related and wealth made a person subject to robbery, which frequently ended in murder. Crimes of passion were just as likely among the college educated as any other segment of society. The lack of statistical evidence to support this statement indicated a strong possibility that the author was expressing a personal opinion. Nevertheless, the sample taken from the more educated portion of society indicated that those in this category held an opinion which did not coincide with that of the general public.

The Sun, on December 3, 1964, reported on

⁶Mason, "To Hang--or Not to Hang," p. 10.

⁷Ernest van den Haag, "The Collapse of the Case Against Capital Punishment," National Review, March 31, 1978, p. 397.

National Opinion Polls surveys conducted in February of 1962 and in November of 1964. The question used was: "Are you for or against capital punishment?" In February 1962 the respondents were found to be sixty-four percent in favour of retention, twenty-two percent in favour of abolition and fourteen percent were undecided. The same question, asked in November 1964, provoked similar reaction. At that time just over sixty-five percent wanted to keep capital punishment, around twenty-one percent voted against the death penalty and thirteen percent were unable to decide whether or not hanging should continue. Public opinion remained emphatically against the abolition of capital punishment. The polls clearly showed in this instance that there had been no substantial change in public opinion.⁸

A poll published in the Liverpool Daily Post and the Daily Mail News Chronicle on December 21, 1964 indicated sixty-seven percent of those consulted favoured retention of the death penalty, twenty-six percent supported the move for abolition and seven percent were undecided. The data cited was collected and compiled by the National Opinion Polls.⁹ This

⁸Mason, "To Hang--or Not to Hang," p. 10.

⁹"Poll on Capital Punishment," Liverpool Daily Post, December 30, 1964, p. 1; and Walter Terry, "Hanging: Most Want to Keep It," Daily Mail News Chronicle, December 21, 1964, p. 1.

poll also asked two questions other than the general query as to whether or not the individual wanted to retain or abolish capital punishment. The sample was asked, "Do you think that fear of the death penalty prevents people from committing capital murder?" The responses to this enquiry revealed sixty percent felt that it did, thirty-six percent felt that it did not and four percent did not know. Fifty-six percent of the people surveyed believed the abolition of capital punishment would lead to more murders.¹⁰ Sydney Silverman noted the decline in retentionist opinion with a degree of satisfaction.¹¹

In January 1965 several opinion polls were taken on the topic of the Murder Bill. When asked if they felt there might be circumstances under which a murder happened that the death penalty would not be warranted, just over one-half responded that they believed there might be situations when hanging was not appropriate. Seventy percent of public opinion in January 1965 believed that if the Murder Bill became law, the number of murders would increase.¹²

One detailed poll taken in early 1965 went

¹⁰"Poll on Capital Punishment," p. 2.

¹¹"Rope's End," Newsweek, January 4, 1965, p. 27.

¹²Hazel Ersking, "The Polls: Capital Punishment," Public Opinion Quarterly, Summer 1970, pp. 290-307.

beyond asking whether or not abolition was favoured.

The question in the poll was:

Should the death penalty be abolished altogether or not? If no or don't know: What is your main reason for advocating hanging--as the punishment most fitting the crime, or as a possible deterrent stopping others from committing such crimes?

The results of the poll were:

Punishment	25 percent
Deterrent	42 percent
Do not know reason	10 percent
In favour of retaining capital punishment, and no opinion	77 percent
Favour abolishing death penalty altogether	23 percent ¹³

During debate on the question of abolition, Members referred to polls also. Lord Long told the press during the House of Lords debates on the Murder Bill that seventy-five to eighty percent of the public was against passage of the Bill.¹⁴ His source for this data was not revealed, but Dr. Wyndam Davis (also spelled Davies), Conservative Member of Parliament, agreed with Lord Long's figures. Davis stated that the ". . . opinion polls had been perfectly plain and that something like eighty per cent. of the population did not want the complete abolition of capital

¹³Ibid.

¹⁴"No Hanging Bill in Lords," The Guardian, July 20, 1965, p. 3.

punishment."¹⁵

Lord Strange seemed to have conducted his own poll among the inhabitants of the Isle of Man. He interviewed two hundred constituents on the Isle and found that everyone questioned opposed the Murder Bill, thus providing the only poll to reflect one hundred percent agreement on the issue. It was Lord Strange's impression from the results of this poll that people from all walks of life in the country opposed the total abolition of capital punishment, and from his findings he concluded, "The general public is against this bill."¹⁶ Public opinion polls were termed the only way the people had of making their views known. Polls may not have been the only way, but the polls clearly showed the magnitude of the people's desire to retain hanging. Lord Wendlesham reminded the House of Lords on July 19, 1965, that public opinion, according to the Gallup Poll, was three to one in favour of hanging.¹⁷ The fact that all three main national opinion polls had shown sizeable majorities in favour of retention did not prevent the Murder Bill from becoming law.

Overall public opinion had not changed by 1966. The people were again asked about their opinions

¹⁵"Barbarity of the Death Penalty," p. 7.

¹⁶Shrapnel, "Peers Condemn Hanging by 100 Votes," p. 2.

¹⁷Hansard (Lords), Vol. 268 (12 July - 29 July 1965), col. 560.

concerning the relationship between the number of murders and the absence of capital punishment. Fifty-six percent felt that the number of murders had increased following abolition. With less than one year of the experimental five-year period completed, seventy-six percent of public opinion wanted to re-establish the death penalty for murder. With the definite majorities revealed by the polls, Parliament could not doubt the popular opposition to abolition.¹⁸

When debates began in 1969 on resolutions to make the Bill permanent, public opinion, as recorded by the polls, was still a topic both in Parliament and elsewhere. "The fact remains," one commentary observed, "that immediately before the recent debates, public opinion polls had indicated an almost overwhelming popular belief in the efficacy of capital punishment. . ."¹⁹ Articles which appeared in the United States did not fail to notice the tone of public opinion in Great Britain. Two items published during the week of December 29, 1969, reported the public's continued support of hanging: "Moreover, on the eve of the parliamentary debate, a poll showed 84 per cent of the British people were in favor of keeping the death

¹⁸ Ersking, "The Polls: Capital Punishment," pp. 290-307.

¹⁹ Ivor F. Burton and Gavin Drewry, "Public Legislation: A Survey of the Session 1969/70," Parliamentary Affairs, Vol. XXIII, p. 315.

penalty."²⁰ "Britain has abolished the death penalty for murder, despite polls showing that up to 85 per cent of the public would like to have it retained for certain killings."²¹

As provided in the amendment, the Murder Bill was reconsidered in 1969. At that time public opinion as reported in the polls was more against eliminating capital punishment than it had been in 1965. In 1969 the percentage of people who believed that capital punishment was a deterrent had risen to eighty or eighty-five percent.²² William Hamilton, Labour Member for Fife, West, told the House of Commons on December 16, 1969, that public opinion as shown in a recent poll favoured a return of capital punishment by a margin of four to one.²³ Other Members reported higher percentages; one cited a Harris Poll which found eighty-four percent in favour of hanging's return.

The opinion polls taken following the debates in Parliament on the Murder Bill are strong evidence of the public's dissatisfaction with the attempt to remove hanging for those convicted of capital murder. The

²⁰"Britain: Death to Hanging," Newsweek, December 29, 1969, p. 33.

²¹"In Britain, an End to Hangings," U. S. News & World Report, December 29, 1969, p. 6.

²²Hansard (Lords), Vol. 306 (2 December - 18 December 1969), col. 1139.

²³Hansard (Commons), Vol. 793 (8 December - 19 December 1969), col. 1228.

debates in Parliament did not reverse public opinion; evidence presented there did not initiate a modification of public opinion. The British people in polls subsequent to the passage of the Bill continued to believe in the effectiveness of the death penalty.

The climate of public opinion altered only slightly in the early 1970's. Terrorist activities increased and the people became more fearful for their safety. The public, which believed in the deterrent effect of capital punishment, wanted restoration of the ultimate penalty. By the summer of 1975, eighty-eight percent of the public was found to favour the return of the death penalty. In their opinion the Murder Bill was a mistake.²⁴ In December 1975 a Harris Poll confirmed that eighty-eight percent of the people wanted capital punishment returned for terrorist murders.²⁵ On an average during the decade following the passage of the Murder Bill several opinion polls conducted in England showed seventy-five percent favoured the return of capital punishment. In Scotland the average was as high as ninety percent.²⁶

Evidence provided by the opinion polls left no room for doubt as to the position of the general public

²⁴"Hang Gliding," p. 28.

²⁵"Must Night Fall?", Economist, December 6, 1975, p. 9.

²⁶Hurst, Personal Letter dated 10 March 1981, p. 1.

on the question of abolition. The only poll to indicate support for abolition dealt with the members of society who were more educated. The larger portion of Englishmen did not possess a higher education and these people overwhelmingly favoured the death penalty as a means of protection. The percentage of people wanting the death penalty increased over time. The figures provided for the 1970's showed as much as ninety percent in some areas supported hanging. The disregard by Parliament of this degree of support provoked in the minds of many a serious doubt of the fairness of the democratic system.

Having been denied the opportunity for a referendum and the chance to vote in the General Election for candidates whose positions on the abolition of capital punishment were known, the electorate turned to the right of petition in an effort to make their opinions known to Parliament (See Appendix for representative petition). The right to petition the Government was as basic to the British as any guarantee of participation in the governing of their country. It appeared after debate had progressed that the elected representatives were ignoring the wishes of the public. Various segments of society undertook the circulation of petitions and presented these to Parliament in order to underscore the majority's opposition to abolition of capital punishment. Among the petitions presented

one of the largest was that brought in by Duncan Sandys, Conservative Member for Streatham, which was reported to have one million signatures of people favouring the retention of the death penalty. A petition from the League of Justice and Liberty carrying 50,000 signatures also supported retention of capital punishment.²⁷ One lady collected 40,000 signatures on a petition in favour of retention and a group of mothers in Kirkby, concerned about attacks on women and children, prepared a petition asking for retention. J. Hiley, Conservative Member for Pudsey, reported that a petition circulated in Nelson had gathered about five thousand signatures; and he told the House of Commons that in another town 15,000 people signed a petition to indicate their opposition to the Murder Bill. Hiley challenged Silverman to undertake the circulation of a petition supporting the Bill.²⁸ No such petition was found. According to a letter in the Liverpool Daily Post one constituent had initiated a petition which obtained 3,000 signatures favouring the retention of capital punishment but Parliament was voting to abolish the penalty. He asked, "Is this British justice?"²⁹

²⁷Hansard (Commons), Vol. 714 (14 June - 25 June 1965), col. 213.

²⁸"Petitions on Hanging Bill," The Guardian, April 15, 1965, p. 2.

²⁹"The Death Penalty," F. Crook, Stopgate Lane, Liverpool, Liverpool Daily Post, January 13, 1965, p. 6.

Mrs. Charlotte Hurst, Chairman of the Citizens Protection Society, an organization which favoured the retention of capital punishment, reported that this organization was "responsible for a petition to Parliament resulting in 2.5 million signatures" advocating retention of capital punishment.³⁰

Introduction of the Murder Bill in 1964 drew attacks based on the thought that it was not the right time to consider removal of capital punishment. One Member told the House: ". . . the fundamental problem . . . is the widely held view that this is a singularly inopportune moment for the abolition of the death penalty."³¹ One reason for it being perceived as the wrong time to eliminate hanging from the judicial system was the concurrent increase in violence and crime, a factor pointed out by Members of Parliament as well as The Times.³²

With regard to the writers of various documents seeking recognition in Parliament, it seemed that the retentionists were vocal as individuals while the abolitionists were able to rely upon a strong network of groups organized to bring about abolition in the mid-60's.

³⁰Hurst, Personal Letter dated 10 March 1981, p. 2.

³¹Hansard (Commons), Vol. 710 (5 April - 15 April 1965), col. 437.

³²"No Hanging Bill Through: 204-104," The Times (London), July 21, 1965, p. 8.

Letter writers came from varied occupations, several geographical sections of the country and different social and educational levels. There was no indication of the reasons which led them to form the opinions expressed. Some believed the murderer could be reclaimed and that prison reform in general would ". . . come more easily once we have finally got rid of the gallows and begun to think of curing criminals as well as punishing them."³³ This type of utilitarian philosophy was responsible for reforms from the mid-century prior to debates and gained disciples as need arose to obtain greater reforms. The other predominant belief was that hanging represented an outmoded method of dealing with murderers. One correspondent felt, "The time has long been ripe for the removal of the last remaining hangover of medieval barbarity . . . the death penalty."³⁴ Barbarous or not, these two individuals represented the minority opinion with reference to sheer numerical majority.

Apathy did not seem to exist among the people where abolition was concerned. Public opinion reflected the interest prevalent in the debates at Westminster on the Murder Bill. It was not a piece of legislation

³³"Letters to the Editor," John Myers, 31 The Paddock, Wembley Park, Middlesex, The Guardian, January 1, 1965, p. 6.

³⁴"Ethics of Hanging," Iain Johnstone, Priory Road, West Kirby, Liverpool Daily Post, January 12, 1965, p. 6.

which was unfamiliar to the public. Expression of interest took the form of letters written to individual Members of Parliament and petitions prepared for presentation to Parliament (See Appendices for typical documents in both categories). One Member reported early in the discussion that his constituents were writing him to say: "This is a matter of great importance."³⁵ The people felt deeply about the abolition of capital punishment.

On the day the Murder Bill received its Second Reading in the House of Commons, December 21, 1964, the Daily Mail News Chronicle reported that, "A majority of opinion in Britain believes that capital punishment should be retained, despite the Bill to end hanging which will be brought to the Commons today."³⁶ The Yorkshire Post agreed that public opinion firmly favoured retention.³⁷ In the Liverpool Daily Post a citizen indicated his concern that: "Our MPs are gambling their opinion and the comfort of a few murderers against public opinion and public safety."³⁸

³⁵Hansard (Commons), Vol. 707 (22 February - 5 March 1965), col. 1750.

³⁶Terry, "Hanging: Most Want to Keep It," p. 1.

³⁷"Thug's Charter," The Yorkshire Post, December 22, 1964, p. 41.

³⁸"Letters to the Editor," A. H. Ley, Greenfield Crescent, Waverton, Liverpool Daily Post, January 7, 1965, p. 6.

It was evident that a minority of the public triumphed on this issue.³⁹ In support of the minority opinion, one letter writer believed the criticism of the Members of Parliament for their leadership stand was unfair although abolition was unpopular with the electorate. He felt the Members of Parliament were not delegates and were entitled to vote on the Bill according to their own judgment and individual conscience.⁴⁰

With the noted increase in crime, it was not surprising that the people felt insecure. The move for abolition, regardless of the Parliamentary temperment, was ". . . too far ahead of public opinion."⁴¹ Parliament set the pace; it was thought that public opinion would follow its example. As one editorial saw it: "If capital punishment is abolished, . . . it will not be in response to public demand but to leadership by what thinks of itself as 'enlightened opinion.'"⁴² The idea of Parliament leading the way in the hope public opinion would follow was favoured by abolitionists, who generally felt reform should precede public opinion and noted, ". . . in most countries, abolition has

⁴⁰"The End of Hanging," William Farrell, Portmadoc, Liverpool Daily Post, January 15, 1965, p. 8.

⁴¹"Too Far Ahead of Public Opinion," Evening Standard, December 21, 1964, p. 24.

⁴²"The Great Divide," The Glasgow Herald, December 22, 1964, p. 8.

preceded a change in public opinion. . . ."43

Perhaps the most concise summary of public opinion concerning the abolition of capital punishment was that of Sir Hugh Lucas-Tooth, Conservative Member for Hendon, South, who remarked, ". . . I do not regard the Bill as a popular one."⁴⁴ Passage of the Murder Bill was not what the British people wanted. The opinion did not differ according to economic class or age bracket; both men and women, wealthy and poor, old and young favoured retention of the death penalty. Retentionists in Parliament felt that they spoke what the people believed when they termed the Bill as not only bad but dangerous. The issue of capital punishment enlarged the gulf between popular opinion and Parliament. In passing the Murder Bill, Parliament underlined the fact that it was out of step with public opinion.

Public safety and deterrence were two factors which influenced the position taken on abolition. There was no way to furnish statistical evidence on the number of potential murderers who refrained from taking a life because they would, in turn, lose their own. An event which did not take place could not be tabulated.

⁴³James Midgley, "Public Opinion and the Death Penalty in South Africa," The British Journal of Criminology, October 1974, pp. 345-348.

⁴⁴Hansard (Commons), Vol. 708 (8 March - 19 March 1965), col. 1539.

Nevertheless, since the threat of capital punishment served as a deterrent to many people, they felt it would provide similar deterrence to others.⁴⁵

Additionally, ". . . statistics were not in the minds of most people when deciding their attitude towards the death penalty."⁴⁶ Life imprisonment, the most frequently suggested alternative to capital punishment, was not considered a sufficient punishment to protect society from the murderer. Statistics available for the years 1960-1975 showed 469 prisoners were sentenced to life imprisonment only to be released on licence. The period served varied from six months to twenty-four years. Of the total released on licence, 153 served only nine years; 146 were imprisoned less than nine years; and 170 of those released served more than nine years of the original life sentence.⁴⁷ This leniency provoked one letter writer to say, "There are a few people I know who might conceivably be worth serving a term of imprisonment for but not worth being hanged for."⁴⁸ Conservative Member of Parliament,

⁴⁵"Hanging of Murderers," D. M. Macpherson, Riverdale Road, West Kirby, Liverpool Daily Post, January 2, 1965, p. 6.

⁴⁶"355-170 Vote Victory for Mr. Silverman," p. 2.

⁴⁷Central Office of Information, Reference Division, Criminal Justice in Britain (St. Albans: Staple Printers St. Albans Limited, Priory Press, 1978), p. 42.

⁴⁸"Life for a Death," Frank N. Walmsley, Hatch End, Middlesex, Liverpool Daily Post, December 11, 1964, p. 8.

T. L. Iremonger, Member for Ilford North, said he could not support the Murder Bill until he was sure he had done his duty to protect the public.⁴⁹ Editorially The Glasgow Herald registered concern that abolition would present a risk to public safety.⁵⁰ Concern also existed among parents for the safety of their younger children (See Appendix C for typical petition). It was suggested that abolition would lead to more thieves carrying guns because the penalty for murdering a robbery victim was not that much greater than the penalty for robbery alone and murder eliminated a potential witness. There was fear that abolition of capital punishment would jeopardise public well-being and belief that,

Whenever any individual by commission of a crime comes into such a relation to the public interest, that his death is a necessary means of securing the highest public good, his life is forfeited and to take the forfeiture⁵¹ is the duty of government.

The retentionists among the public considered capital punishment an intelligent safeguard of civilization.⁵² For whatever reason, the majority of the

⁴⁹"355-170 Vote Victory for Mr. Silverman," p. 3.

⁵⁰"Beyond Dispute," The Glasgow Herald, October 27, 1965, p. 8.

⁵¹"The True Penalty," T. G. H. Franklin, Lugsmore Lane, St. Helens, Liverpool Daily Post, December 14, 1964, p. 6.

⁵²William Lester, "Capital Punishment," America, April 10, 1965, p. 383.

public was convinced that capital punishment contributed to their safety. A country where the police were unarmed was frightened by the prospect of abolishing capital punishment for murderers, who would thereafter be more inclined to arm themselves with firearms when committing lesser crimes.

Serious crime in Great Britain increased at an average rate of ten percent a year during Parliament's debate on the Murder Bill. This increase caused considerable concern among the public over the threat to safety which abolition would bring. Public opinion became more inflamed with the brutal murder of three policemen in London on the 12th of August 1966, and numerous attacks on children. Generally the public believed that even the possibility of permanent abolition had contributed to the increase in violence. The potential murderer no longer had to fear the possibility of facing the gallows when apprehended for killing in the course of a robbery or killing to eliminate a witness or possibly to escape police custody.

The general public was extremely dissatisfied that the Murder Bill was even being contemplated by Parliament. Sir Peter Rawlinson, Conservative Member for Epsom, who strongly advocated retention of capital punishment, expressed fear that the removal of the death penalty from the field of organized crime

". . . would introduce a risk of greater violence, the wider use of guns and greater danger to the public."⁵³ Other Members felt that removal of the death penalty would reduce the security of the public and that protection of the potential victim was to be secondary to protection of the aggressor. In a letter to The Times one citizen wrote: "Most of us still feel that just punishment must have precedence over the reform of the criminal. The just punishment for murder is the death penalty."⁵⁴ It was believed that in the case of a professional criminal, the possibility of the death penalty's being invoked prevented a murderer from carrying a gun. Ewen Edward Samuel Montagu, in a letter to The Times, stated the majority of criminals did not carry weapons because they might be tempted to use them in the commission of a crime and would hang if caught.⁵⁵ The people realized that there were situations when the deterrent factor played no part, but they generally held that the threat of hanging served to keep murder at a minimum. Public opinion reflected the belief that the Murder Bill sought removal of the most severe penalty which meant that punishment for the crime no longer held as great a threat for the potential murderer.

⁵³Hansard (Commons), Vol. 704 (14 December - 23 December 1964), col. 899.

⁵⁴"Correspondence," The Times (London), December 16, 1969, p. 11.

⁵⁵Ibid.

Whether real or imagined, the fear of the people was evident in all material dealing with the question of abolition.

The Liverpool Daily Post received such an influx of letters during the 1964 debates on abolition in Parliament that it had to impose a cut-off on the publication of such letters. Letters included reference to all aspects of the controversy, but the public seemed to primarily be concerned with the protection of society as a whole from the murderer. One writer seemed to have found the optimum solution: "I'm in favour of abolishing it, provided it is done by the right people--the potential murderers. All they have to do is desist!"⁵⁶ Generally the man in the street was against passage of the Murder Bill but several letters were written in support of abolition.

The reasons behind the public's opposition to abolition of capital punishment were never specifically enumerated, but one feeling which had long been held was that of retribution. The sharp division in public opinion noted in Parliament in part came from the people's belief that hanging was the only punishment severe enough for a murderer. Public opinion believed that murder was a crime apart from other illegal activities. In opposing the Murder Bill the public

⁵⁶"Letters to the Editor," A. H. Ley, Greenfield Crescent, Waverton, Liverpool Daily Post, January 7, 1965, p. 6.

declared that it should remain the one crime that demanded special treatment. In favouring retention the public sought to maintain the supreme penalty; they felt that life imprisonment was too indefinite for those who took another's life. In addition, it was noted that

. . . the public are likely always-- or for a very long time--to feel that 'murder' (which they don't qualify) is the supreme crime and that 30-year sentences for robbers must somehow be matched by even greater ferocity for 57 murderers.

Punishment deprived one of the basic human rights, but retribution required more than deprivation. The concept of retribution, or paying back, provided the essential element of justice in punishment. Justice demanded a restoration of balance in the scales by exacting retribution. In order to justly inflict retributive punishment on someone, the person had to be responsible for a grievous offence. This led to the concepts of degrees of responsibility for and degrees of gravity of an offence which was committed. Tradition dictated that murder, because of the damage it did to society, was judged to be a grave offence which required retributive punishment conducive to the maintenance of order in society.

It remains our human duty to seek to impose upon offenders the punishment

57 "Hangmen Fight Back," New Statesman, November 14, 1969, p. 681.

which is as nearly as possible proportionate to the gravity of the offence and the culpability of the offender, the punishment which he owes in retribution. 58

The various elements of retribution might have escaped the full understanding of the people, but they held that it was necessary to retain capital punishment because no other penalty could match the gravity of murder. The public might have been content if a life sentence actually meant the murderer would be detained for the remainder of his life. Even this prospect did not please everyone.

At least it is to be hoped that, if the sentiment of the House on a free vote should favour the abolition of capital punishment, the reform of the law will take cognizance of the fact that very long sentences may be even more inhuman than a death penalty. 59

One gentleman felt, "It is unfortunate [referring to the trend in Parliament] because it is no more appropriate now, than at any other time of the year, to show compassion to murderers."⁶⁰ The death penalty was seen as the only guarantee that a murderer would not kill again; and the retentionists argued, "Hanging is speedy

⁵⁸Robert Exon, "Retribution," The Crucible January 1963, pp. 1-5.

⁵⁹Eric Sewell, "Why I Would Abolish Hanging, by the L. C. J.," Daily Mail News Chronicle, July 20, 1965, p. 1; and "Questions to Ask," Liverpool Daily Post, November 4, 1964, p. 6.

⁶⁰"Hanging of Murderers," D. M. Macpherson, Riverdale Road, West Kirby, Liverpool Daily Post, January 2, 1965, p. 6.

and merciful, many would say too good a fate for such evil men."⁶¹ A stronger advocate of retribution declared:

There is no reason why Members of the House of Commons should think it necessary to 'go the whole hog' and abolish hanging for murder in all cases. Very many people think it should be retained for certain offences, whatever sentimental talk there may be in some quarters about the 'climate of public opinion'. . . . sentimentality about preserving the lives of those who ruthlessly deprive others of life can grow to a fatuous extent. 62

The public retained the belief that murderers should be given a punishment which matched the crime. Only the death penalty met this requirement.

Under a democratic system, the people expected their opinions to carry weight. They felt they should have full knowledge of a candidate's position on issues which were to be debated in Parliament prior to the election in order to allow them to make an educated decision about which candidate should be chosen. In the absence of this information, Members of Parliament were returned who did not fully reflect public opinion and the people wanted a referendum in order to officially register their feeling. It was thought a referendum

⁶¹"Too Good a Fate?", Marion Blockley, Llandudno, Liverpool Daily Post, January 4, 1965, p. 6.

⁶²"'Fatuous' Sentiment Over Murderers," J. P. Jackson, London, The Daily Telegraph and Morning Post, December 21, 1964, p. 15.

on the abolition of capital punishment would provide sufficient pressure on Members to effect the defeat of the Bill. Abolition was not a part of the election campaigns of any political party in 1964; therefore, the electorate did not know a candidate's persuasion on the issue. Outrage was exhibited at this slight. As one writer put it,

It is, in my view, wholly wrong that the general public should be deprived of an opportunity to express their decision on this issue independently of a General Election. I feel very strongly that this decision ought to be arrived at by means of a referendum. . . .⁶³

Another wrote, "Regarding Mr. Silverman's Bill to abolish hanging--I think . . . the public should be allowed to vote on such a vital and important matter."⁶⁴ One individual felt that public opinion should have been gauged through the use of a plebiscite and went on to say that on an issue of such magnitude it was startling that Members of Parliament had undertaken steps to abolish capital punishment without considering the responsibility of Members to the electorate.⁶⁵ In the same vein a Liverpool resident wondered why the abolition of capital punishment was not made an issue in the

⁶³"Hanging of Murderers," D. M. Macpherson, p. 2.

⁶⁴"The Death Penalty," F. Crook, Stopgate Lane, Liverpool, Liverpool Daily Post, January 13, 1965, p. 6.

⁶⁵"The Death Penalty," D. J. Fletcher-Hunt, Sefton Park Road, Liverpool, Liverpool Daily Post, January 13, 1965, p. 6.

General Election.⁶⁶

Many people felt they were deprived of a basic right because they were not given the opportunity to register their opinions through a referendum or through inclusion of the question of abolition as an issue in a General Election. Sir Dingle Foot, Solicitor-General, realized his stand in favour of the Murder Bill would be unpopular with the people and admitted, ". . . it might be that a referendum would result in favour of retaining capital punishment."⁶⁷ He felt it his duty, however, to exercise his personal judgment on the issue regardless of how unpopular it might be. The Labour Party was taken to task by the press for its failure to consult the electorate by mentioning its stand on the abolition of capital punishment in the Party manifesto before the election.⁶⁸ Sydney Silverman emphatically stated:

We do not govern ourselves in this country by a referendum--by a Gallup poll. . . . We do not, in matters of life and death, think that it is right to decide what is

⁶⁶"The Death Penalty as a Deterrent," William Roberts, 30 Romeo Street, Liverpool, Liverpool Daily Post, December 28, 1964, p. 6.

⁶⁷"Hanging: Bill Expected to Have Majority of 100," p. 2.

⁶⁸Shrapnel, "Peers Condemn Hanging by 100 Votes," p. 2.

just or unjust by spot, unconsidered reaction taken on a street corner, in a club or in a pub. 69

Silverman further believed that, "Government by referendum would, presumably, never have succeeded in abolishing public executions. . . ." ⁷⁰ Peter Fidick, writing for the Liverpool Daily Post, acknowledged that ". . . even abolitionists can be heard to admit that if a national referendum were held on the subject, the chances are that the majority of the population would still favour retention." ⁷¹ Lord Colyton, in the House of Lords, also supported the call for a national referendum on the issue. ⁷² As late as 1974 and again in 1978 the matter of a national referendum was under some consideration on the question of abolition and the belief remained that ". . . a referendum on hanging would probably pass." ⁷³

Although public opinion did not reverse itself during the twentieth century according to public opinion polls, at least one unnamed journalist challenged this

⁶⁹"Barbarity of the Death Penalty," p. 7; and "Too Far Ahead of Public Opinion," p. 24.

⁷⁰"355-170 Vote Victory for Mr. Silverman," p. 1.

⁷¹Peter Fiddick, "Capital Punishment Under Review To-Day," Liverpool Daily Post, December 4, 1964, p. 8.

⁷²"Peers Pass No Hanging Bill," p. 1.

⁷³"Hang Gliding," p. 28; and Bill Moyers, "Debate in London," Newsweek, December 30, 1974, p. 64.

interpretation of the evidence. He cited abolitionist sentiment in Great Britain and alleged a gradual change in public opinion with an overall trend for abolition.⁷⁴ Another author, who did not furnish any statistical evidence for his allegation, said that a great shift in public opinion had occurred since the Second World War on the issue of abolition.⁷⁵ It is possible that the trend noted was among Members of Parliament. There were various interpretations of "trends" in and out of Parliament. It was postulated that some people might have voted for Labour candidates because of the impression that these Members would be inclined to work for abolition. Public opinion consistently favoured the retention of capital punishment.⁷⁶ No party campaigned on the issue of abolition, but historically ". . . one of the favourite political arguments in favour of the death penalty is that public opinion demands it."⁷⁷

The fervour of public support for capital punishment did not wane during the experimental period (1965-1969) of abolition. Interest remained high and

⁷⁴"Should Men Hang?," America, December 5, 1959, pp. 319-321.

⁷⁵Francis Boyd, "Public Opinion Shifts Towards Hanging Ban," The Guardian, July 21, 1965, p. 18.

⁷⁶"At the End of the Rope," Economist, December 26, 1964, pp. 1414-1415.

⁷⁷Duff, A Handbook on Hanging, p. 154.

people continued to write letters to Parliament and to the newspapers. Retentionists, previously complacent because of the lack of need to organize to maintain the status quo, became more vocal following initial passage of the Murder Bill. Alliances were solidified into formation of groups such as the Citizens Crusade Against Violence and the Campaign for Law and Order, with the end envisioned to be the return of capital punishment.⁷⁸ The people maintained the belief that only the death penalty existed as a suitable punishment for the murderer. In a country torn by strife relative to the Irish problem, a strong answer to terrorism was believed to exist in capital punishment. Public sentiment was found to be solidly in favour of reinstating the job of the hangman.⁷⁹ The citizen believed more concern was due the victim. Reformation of the murderer possibly appealed to the humanitarian, but it was the victim's relatives who suffered and deserved to be given consideration according to the majority of public opinion.⁸⁰ The most colourful presentation of the tenor of public opinion was published in the New Statesman:

⁷⁸Hurst, Personal Letter, p. 1.

⁷⁹"Or Such Less Penalty," pp. 17-18; and "Death Penalty: A World Survey," U. S. News & World Report, May 31, 1971, pp. 38-40.

⁸⁰"Not to Worry," New Statesman, March 29, 1974, p. 442.

Opponents of the death penalty have always tended to treat its advocates as either stupid, or vicious, or both. This has never been so (if it were, it would mean categorising a majority of the British people as such): it is part of liberal humbug to ignore the fact that most people in this country instinctively 81 favour capital punishment.

When dealing with the public's qualification to judge which side to support in this regard, another writer said:

In short, any decision is quite outside the capabilities of the average man or woman. . . . Without wishing in any way to disparage unduly the intelligence of the public, individually or collectively, I must say that an opinion however emphatically or unanimously expressed, which presents the views of those who possess no adequate knowledge of the matter in question is valueless. And because of this, public opinion is of no 82 evidential value whatever.

Reports compiled after four years of experimental abolition showed the anxiety expressed in 1965 was justified. Violence continued to rise at an alarming rate. Statistics revealed that from 1961 to 1964 there were seventy-one capital murders (See Appendix H); from 1965 to 1968 the number rose to 161. This represented an increase of 127 percent. Crimes of violence numbered 731 in 1964 and 2,333 in 1967.⁸³ Along with

⁸¹"Keeping a Cool Head," New Statesman, December 5, 1975, p. 697.

⁸²Scott, The History of Capital Punishment, p. 233.

⁸³"Conservative Party Conference Discussion," The Times (London), October 10, 1969, p. 11.

violent crimes the use of firearms also increased. In 1969 before Parliament considered making the abolition of capital punishment permanent, the death penalty as a deterrent became tied to the accelerated criminal activity. An article in The Times summed up the correlation between hanging and crime statistics: "Equally the trend in murder and organized violent crime is too disturbing and too relevant to the absence of capital punishment to justify abolition now."⁸⁴ Many statistics supported this view.

Public opinion on the abolition of capital punishment in 1969 was termed erratic by the New Statesman.⁸⁵ In the sense of not being fixed, that was true; but opinion concerning the Murder Bill never exhibited irregularity of public feeling. It may have been that the people did not back up their convictions with factual explanations but the majority consistently believed in capital punishment, in the right of the state to execute anyone convicted of a capital offence. The British had lived under a system of criminal law providing for execution in specific instances for many centuries. The people regarded the gallows as a part of life and a vital part of justice. A criminal who endangered society was subject to execution and

⁸⁴"Home Office Report on Murder Statistics," The Times (London), November 6, 1969, p. 11.

⁸⁵"Hanging or Rotting Alive," New Statesman, March 14, 1969, p. 345.

public opinion supported this method of dealing with him.

The debate on capital punishment was not ended when Parliament voted to confirm abolition in 1969. The people of Great Britain wanted it retained from the beginning and demanded the restoration of the death penalty after passage of the Murder Bill. The question was not settled by legislation and the answer eluded the public. Crime became more visible through the activities of terrorists. Murder by bombings and similar terrorist actions received extensive exposure in the media and increased public fear and concern.

CHAPTER IV

PRO-ABOLITION GROUPS

Various groups joined forces to advocate the abolition of capital punishment. The more vocal were the Anglican Church and The Howard League. It is difficult to evaluate the influence of the Church because access was not obtained to individual sermons. The doctrine as set forth at Convocation is available and one can only suppose that this was carried into each parish. The Anglican Church, while firmly supporting the abolition of capital punishment, did not actively campaign for abolition. As might be expected, the trend toward humanitarian treatment of offenders found expression in the Church. The Old Testament Biblical admonition of "life for life, eye for eye, tooth for tooth"¹ was laid aside and the Church adopted the more lenient attitude of the New Testament which stressed forgiveness.

The Howard League for Penal Reform was formed in 1921. The Howard Association, founded in 1866, and the Penal Reform League, founded in 1907, joined

¹Exodus 21:23-24.

forces to create the new organization. Among other pursuits, The League actively advocated the abolition of capital punishment as part of a move toward general reform of the penal system. The Howard League furnished pamphlets which set forth its position and consistently presented a lobbying force to be dealt with. Although the size of The League's membership is not known, its members were frequently quite prominent and often vociferous advocates of their position. The group's goal was realized with the enactment of the Murder Bill in 1965. The League remains active to oppose reintroduction of capital punishment and to work for improved treatment of all prisoners.

The Lower House of the Convocation of Canterbury expressed support for abolition of the death penalty, or a trial suspension of five years, early in the 1960's. The Church of England in Convocation of the Province of Canterbury, which met on January 17, 1962, was presented with the following motion by the Bishop of Southwark, Dr. A. M. Stockwood:

That this House would welcome the introduction, and adoption by Parliament, of a Bill providing for: . . . the abolition of capital punishment or at least its complete suspension for a period of five ² years.

The complete motion advocated provision for the treatment necessary to assist in the reclamation of the offender

²Church of England, Convocation of the Province of Canterbury, "Minutes," p. 105.

and advocated some form of compensation for the relatives of homicide victims. The Bishop expressed his personal hope that an end to capital punishment was in sight. His stand and that of the Church had changed completely since earlier debates were had on capital punishment. Nearly all Bishops had supported retention of capital punishment in the late 1940's and early 1950's. Only speculation could explain the almost total change in position taken by the Prelates. For one thing, the gentlemen who took active stands on the issue just after World War II were generally aged and not alive to participate in the Convocation of early 1962.

The minutes of the Convocation revealed that the Bishops were cognizant of public opinion and knew that a majority of the people favoured retention of capital punishment. According to the minutes the attitude toward capital punishment had changed ". . . not only on the part of the general public but among bishops."³ The time frame referred to by this generalization covered approximately 150 years, which included attitudes held prior to the social reform undertaken in the mid-nineteenth century. The clerical change in attitude was emphasized by noting that in 1810 the Archbishop of Canterbury and six bishops voted against the abolition of the death penalty

³Ibid., p. 106.

for the crime of theft.⁴ In the House of Lords in 1956 ". . . both Archbishops and eight out of nine bishops present voted for the abolition or suspension of the death penalty."⁵ There was no evidence offered as support for the alleged shift in public opinion and polls refuted the change in public feeling, but the position of the Bishops had undergone considerable modification.

Documents and pamphlets published by The Howard League outlined the group's attitudes and opinions concerning capital punishment. The League spoke for people who were horrified and shamed by judicial killing.⁶ Members of The League believed abolition was right and the only appropriate moral position. They were not as active in petitioning Parliament as the people who favoured retention but the organization was vocal in other ways. One of the most frequently cited reasons for reintroducing capital punishment was the theory of deterrence. The Howard League attacked this concept in earnest and pointed out no statistical evidence existed to support the penalty as a deterrent.⁷

⁴Ibid.

⁵Ibid.

⁶The Howard League for Penal Reform, "A Letter to All Members of Parliament," June 1969, p. 1

⁷Ibid.; and National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, Murder and Capital Punishment in England and Wales, p. 4.

According to The League, professional criminals, excluding murderers, were deterred from using guns in the commission of crimes by the knowledge that the use of a firearm would mean a longer sentence if caught. A lengthy prison term was thought to be as effective a deterrent as the death penalty. Normally, the individual who planned a robbery did not initially intend to kill his victim; furthermore, most criminals who contemplated breaking the law did not consider that the probability of being caught was high. These people were considered unlikely to take the possible penalty into account before committing the crime. Return of capital punishment was not believed likely to affect the incidence of murder. "Any attempt at prevention must therefore be directed at the general prevention of violence. . ." and additionally, "it is a dangerous over-simplification to assume that this can be achieved by prescribing ever-increasing penalties, rather than tackling the fundamental causes."⁸ The causes of violence were not enumerated. In another pamphlet The Howard League stated: "There is no simple and direct relationship between the incidence of crime and the action taken by the courts in respect of

⁸National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform Murder and Capital Punishment in England and Wales, p. 6.

convicted offenders."⁹

The Bishops also discussed the theory of deterrence and concluded that evidence did not support retention of capital punishment as a unique deterrent. Life imprisonment as a substitute for the death penalty was considered. The Prelates supported this form of punishment because it provided an opportunity for the convicted murderer to repent and make amends for his actions. The Bishops, however, realized that public opinion accepted the validity of deterrence and rejected life imprisonment as an alternative to capital punishment. After dealing with deterrence and the absence of a satisfactory alternative to capital punishment as arguments in support of retention, the Convocation considered the argument that ". . . a Government should not go too far ahead of public opinion."¹⁰ There was a discussion of the various methods which might be used to define public opinion. It was recognized in Convocation that on previous occasions when Parliament had dealt with the question of abolishing capital punishment, the House of Commons, elected representatives of the public, voted to abolish capital punishment while the House of Lords, members of which were not elected but held their position as a

⁹The Howard League for Penal Reform, Murder and Capital Punishment, p. 5.

¹⁰Church of England, Convocation of the Province of Canterbury, "Minutes," p. 107.

part of their birthright, rejected the move to eliminate the death penalty. Bishop Southwark asked:

Did the House of Lords rather than the House of Commons represent public opinion, and, even if it did, should the Government bow to it? Was not it the duty of a Government to give a lead and to do what it believed to be right because it was right? 11

The members of The Howard League believed there was no valid argument to support the death penalty. Life imprisonment served to deter as effectively as the hangman. Members of The Howard League also discredited the retentionist's concept of retribution as an argument advanced in support of capital punishment. According to Howard League publications retribution rested upon a desire for vengeance and a need by the people for a scape-goat. They believed the idea of inflicting punishment of the same nature as the crime was antiquated. The League believed everyone experienced murderous impulses but because they were forbidden by society, these impulses were suppressed. Demand for the death penalty in the case of murder served as a transference of the forbidden urge onto the murderer. Implementation of capital punishment allowed the public to rid itself of pent up emotions such a fear, anger, envy and jealousy. Attacks on young children by sex maniacs and the murder of elderly spinsters though comparatively rare, were well-publicised and held in

¹¹Ibid., p. 108.

utter contempt by society. The Howard League rejected retribution as a defense of capital punishment in all instances.¹² The League was aware of the belief held by the majority of the public that the individual found guilty of an especially gruesome murder deserved to forfeit his life and society was entitled to exact that penalty. The League's reaction was: "We do not agree . . . we believe that a civilised society should advance beyond such a crude idea of justice. . . ."¹³ In support of this position, The Howard League invoked moral arguments against taking a life. The League said the State was wrong to kill, thus behaving just as the murderer and advanced the idea that two wrongs did not make a right.¹⁴ In a letter prepared for presentation to Parliament, the position for abolition was stated: ". . . the case rests chiefly on the moral principle that when a civilized state kills a human being in cold blood it ceases, to that extent, to be civilized."¹⁵

The irrevocable nature of capital punishment concerned the members of The Howard League. They felt

¹²The Howard League for Penal Reform, Murder and Capital Punishment, p. 4.

¹³National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, Murder and Capital Punishment in England and Wales, p. 4.

¹⁴Ibid.; and The Howard League for Penal Reform, "A Letter to All Members of Parliament," p. 2.

¹⁵The Howard League for Penal Reform, "A Letter to All Members of Parliament," p. 3.

there was always a possibility of error in the judicial process and once a murderer was executed, new evidence might be found which cleared the person. Additionally, human nature was fallible and the possibility of a miscarriage of justice existed as long as mere mortals were involved in the process of prosecution. The Evans-Christie murder case was cited as an example of the kind of mistake they feared. Evans was found guilty of murdering his daughter and executed. Subsequently another man named Christie was convicted of the murder. It was, of course, too late to correct the mistake and an apparently innocent man was hanged. Situations of this type did not occur frequently, but The Howard League was opposed to the taking of anyone's life by judicial process and thus risking the possible execution of an innocent individual.¹⁶

The objection to capital punishment expressed by the Bishops during the Convocation of 1962 was based in part on the belief that the primary rationale for retention was vengeance and ". . . from the specifically Christian point of view vengeance was entirely illegitimate."¹⁷ The presumption that the public was

¹⁶Ibid., p. 2; and The Howard League for Penal Reform, Murder and Capital Punishment, p. 6; and National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, Murder and Capital Punishment in England and Wales, p. 4.

¹⁷Church of England, Convocation of the Province of Canterbury, "Minutes," p. 109.

concerned first and foremost with vengeance was not backed up with empirical evidence. Vengeance was only one reason for retaining the death penalty. Deterrence and public safety were more frequently cited by the public as justifications for capital punishment. There was no attempt on the part of the Bishops to identify the underlying causes for public opinion. The Bishop of Exeter, Dr. R. C. Mortimer, acknowledged that, "It had for a very long time been the official teaching of the Church (and was still) that the community may and sometimes should inflict the death penalty upon certain types of offender."¹⁸ Cardinal Godfrey, Roman Catholic Archbishop of Westminster, had said the previous year, ". . . that Christianity recognised the right of the State to execute murderers."¹⁹ Other Anglican Bishops expressed concern that the State should not take unto itself the prerogatives of God in deciding when life would be ended. Bishop Mortimer argued that capital punishment was not necessary for the safety of the community in the twentieth century and was detrimental to the well-being of society.²⁰ He failed to explain why capital punishment was unnecessary. Murder was as abhorrent in the twentieth century as it had ever been

¹⁸Ibid.

¹⁹Mason, "To Hang--or Not to Hang," p. 10.

²⁰Church of England, Convocation of the Province of Canterbury, "Minutes," p. 113.

and there was no evidence that the incidence of murder had decreased to a point where it no longer represented a threat to public safety.

Dr. R. W. Stopford, the Bishop of London, said many people looked to the Church for guidance on the question of the abolition of capital punishment. He set forth no specific program for providing this guidance to the public. The Bishop of London voiced concern for society and the criminal but posited that capital punishment violated Christian principle and there was no case supporting retention.²¹

The emotional disturbance aroused among the public by the question of the abolition of capital punishment was dealt with by the Bishop of Chichester, Dr. R. P. Wilson, who declared that he doubted if any of the Bishops had not, as he had, received numerous letters ". . . from people who thought they were undermining the security of life and even of divine justice . . ." in supporting abolition.²² The Bishops felt it unadvisable to permit the emotionalism of the people to affect the position of the Church. Opinions held on emotional ground alone were not seen as rational or dependable but subject to extreme fluctuation. Several Bishops were aware of the public's concern for security and this concern was directly tied to the opinion that

²¹Ibid.

²²Ibid., p. 114.

capital punishment should be retained to guarantee their safety and protection. Bishop Mortimer addressed this point but his assurance that capital punishment was not essential to the maintenance of public safety did not allay the people's fears in that regard.

In concluding the Convocation of 1962, the President noted that every speaker had favoured the abolition of capital punishment. Referring to the Homicide Act of 1957, his conviction was ". . . that the present system of disparity between the treatment of murders in different categories contains features which are morally quite unjustifiable."²³ He did not say that capital punishment was morally wrong only that the practice of applying it only for certain types of murder was immoral. It was the wish of the President that the views of the Convocation be put across to the people in a document, which would provide ". . . a plain and coherent statement of such consensus as we have had of Christian principles and Christian obligations."²⁴

After a minor amendment was approved, the Convocation carried the motion introduced by Bishop Stockwood, unanimously.²⁵ A report of the proceedings of the Convocation was presented in the Economist:

The unanimous vote of the bench of
Church of England bishops in the

²³Ibid., p. 122.

²⁴Ibid., p. 123.

²⁵Ibid., p. 124.

upper house of Canterbury Convocation in favour of abolishing the death penalty for all types of murder, or of suspending it for five years, will give a powerful impetus to the campaign against capital punishment Taken with the vote of the lower house of Canterbury Convocation last October, also favouring abolition, it means that the mind of the Church, at least in the southern part of the kingdom, is officially against the death penalty. . . . And the effect of the opinion of the Anglican church on the views of Conservative back-benchers . . . can be surprisingly ²⁶ decisive.

While all the Bishops in the Convocation of Canterbury advocated abolition of the death penalty, one Bishop in the Convocation of York remained a retentionist. This Bishop was not identified.²⁷ A similar resolution to that approved by the Convocation was passed by the British Council of Churches at its Spring Meeting in April 1962.²⁸ Examples of documents propounded by the Church are found in the Appendices.

One of the more concise statements of the Church's feeling toward capital punishment was set forth by Dr. Edward Carpenter, Dean of Westminster Abbey. His opinions were echoed throughout the Convocation minutes of January 1962 and subsequent

²⁶"No Hanging Bishops," Economist, January 20, 1962, p. 212.

²⁷"Anxious Abolitionists Look to the Bishops," p. 2.

²⁸"Capital Punishment," Resolution passed by The British Council of Churches, April 1962, p. 1.

writings on the topic. Dr. Carpenter attacked capital punishment and avowed that the practice did violence to Christian teaching by ignoring the worth of every person, did violence to the Christian doctrine of grace through denying the murderer an opportunity for redemption and constituted an invasion of the sovereignty of God. Capital punishment as a deterrent was questioned because he found no statistics to support the theory.²⁹ The Church of England as an organized body did not express an official view on the abolition of capital punishment; the Archbishop of Canterbury in 1961 said the matter would be left to individual judgment and conscience.³⁰ The Prelates, in Convocation, singularly chose to endorse abolition; the decision received rather limited attention, perchance it was a foregone conclusion. Local clergy were presumably aware of the Church's opinion on the abolition of capital punishment and mirrored this opinion as their own. There is no way to unequivocally establish the validity of this; but it appeared likely that vicars in many parishes lent weight to the moral teaching of the Anglican Church. During the debate in the House of Lords on the Murder Bill, the Archbishop of York indicated that the peers should proceed with abolition, thus taking the lead, whether the people were ready or

²⁹Dr. Edward Carpenter, "How Christian is Capital Punishment," The Crucible, April 1962, pp. 41-42.

³⁰Mason, "To Hang--or Not to Hang," p. 10.

not for that step.³¹ The vote in the House of Lords on abolition of capital punishment found all Bishops present voting for the Bill in 1965.

In the opinion of The Howard League most murderers were mentally abnormal. Reference was made to the number of murderers who committed suicide as evidence of their unsound mental state. They felt that no one would take their own life unless they were suffering from some mental illness. It was felt that this category of murderer was unique and deserved special consideration. They were not likely to be deterred by any penalty. For those mentally abnormal murderers who did not commit suicide, they proposed special treatment; psychiatric care was mentioned and incarceration in special hospitals rather than prisons was suggested. Most murderers were not thought to be potential recidivists since their crime was committed in a moment of rage or on impulse. For these and others imprisoned for long terms, The League proposed that attention be given to the regime of prison life.

There has to be a sufficient variety of things to do and of challenges to be met to prevent a disastrous narrowing of experience. There may have to be high security of the perimeter of the prison; but inside

³¹Hansard (Lords), Vol. 269 (2 August - 8 November 1965) col. 538.

there must be scope for useful and imaginative work and recreation. 32

The Howard League advocated better conditions in prison than most had known on the outside.

In dealing with the problem of terrorists, The League challenged the large segment of public opinion which believed that speedy hanging of convicted terrorists would lessen the possibility of recrimination from other activists. The alternative was thought more likely to happen. Once the conviction occurred, the compatriots would retaliate by seizing hostages and threatening to kill them if their fellow terrorist was hanged. The legal process could not work quickly enough to avoid this reaction. It was also thought that the overly zealous terrorist wanted to be hanged in order to achieve the status of martyrdom. The danger of terrorist's recruiting juveniles, who were not subject to capital punishment, to kill was mentioned as a distinct possibility. In general, The Howard League considered terrorism as a political problem which required a political settlement.³³

Abolition of capital punishment in 1965 for a trial period of five years dictated subsequent debate

³²The Howard League for Penal Reform, Murder and Capital Punishment, pp. 2 and 6-8.

³³National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, "Statement," November 27, 1974, p. 1; and The Howard League for Penal Reform, "A Letter to All Members of Parliament," p. 3.

in 1969. The Church of England continued to voice its opposition to the punishment and the British Council of Churches appointed a representative to consider the statistics available regarding murder and to report the findings in order that a responsible public statement might be made.³⁴ Complete statistics were not available and it was difficult to gather valid figures on murder in so short a time.³⁵ The few years of trial abolition were not sufficient to determine trends in murder. This lack of evidence did not deter the British Council of Churches. In June 1969 the Penal Group of the Social Responsibility Department of the Council recommended reaffirmation of the opposition to capital punishment (See Appendix for text of the recommendation).³⁶

In the Autumn of 1969 the Penal Group dealt in depth with the debate on capital punishment. Statistics were presented to this meeting which gave the number of murders known to the police; and from these figures, the Penal Group determined that the incidence of murder had remained stable during the period of experimental

³⁴Social Responsibility Department, The British Council of Churches, "Minutes of the Thirteenth Meeting of the Penal Group," May 8, 1969, p. 1.

³⁵Penal Group, The British Council of Churches, "Statement," May 22, 1969, p. 1.

³⁶Penal Group, Social Responsibility Department, The British Council of Churches, "Recommendation," June 1969, p. 1.

abolition. Reliance on statistics alone as justification for continued abolition was cautioned in that too short a time had elapsed to allow a detailed evaluation of the effect of abolition upon murder statistics.

After reconsidering the arguments, the Penal Group recommended that the British Council of Churches reaffirm the opposition to capital punishment.³⁷

The British Council of Churches, which met in London on October 21, 1969, resolved that:

The Council reaffirms the opposition to capital punishment expressed in its resolution of April 1962 and recommends H. M. Government to provide now for the continued suspension³⁸ or abolition of the death penalty.

This resolution was later accepted by the Council of the Baptist Union of Great Britain and Ireland and by the Council of the Congregational Church in England and Wales.³⁹

During the 1969 debate on the Murder Bill in the House of Lords, the Bishop of Durham acknowledged that public opinion favoured the return of capital punishment by as much as eighty-four percent but disputed the wisdom of governing by public opinion.⁴⁰ The vote in

³⁷Social Responsibility Department, The British Council of Churches, "Report of the Penal Group," Fifty-fifth Meeting, Autumn 1969, pp. 3-4.

³⁸The Church of England Board for Social Responsibility, "Note for House of Lords Debate," 1969, p. 4.

³⁹Ibid., p. 5.

⁴⁰Hansard (Lords), Vol. 306 (2 December - 18 December 1969), col. 1154.

the House of Lords on permanent abolition found the Archbishop of Canterbury and eighteen Bishops voting in favour of the resolution. Only one Bishop, the Bishop of Exeter, voted against making the Murder Bill permanent in 1969; and this vote did not indicate support of hanging but a feeling that more time was needed to make a decision. The Church, along with the House of Commons and House of Lords, was aware of public opinion but chose to act in direct contradiction of that opinion. The Church believed it should set the example and await public opinion's acceptance of the position avowed by the Church.

The closing paragraph of The Howard League's letter to Parliament summarized the position it held. It declared its condemnation of violence and desire to protect the public, police, prison staff and public servants; it believed alternatives to capital punishment would provide this protection and that the return of the gallows would not prevent violence.⁴¹

The Howard League encompassed members from all strata of society. No membership roster was available for any given period of time, but Members of Parliament were among those who held the views put forth by The League and Members prominent in the debates on abolition, such as Lord Gardiner and Louis Blom-Cooper, were also

⁴¹The Howard League for Penal Reform, "A Letter to All Members of Parliament," p. 4.

members of The Howard League.⁴² The extensive publications made available by the group were available for general distribution. The texts are persuasive. There is no way to establish the impact these publications had on the general public. It is probable that some were influenced by the efforts of The Howard League; the full extent of this influence could not be determined. In addition to the published material, members of this group were also available for lectures and The League's views were expressed in the newspapers. No evidence was found to support a significant change of opinion brought about by the efforts of The League.

⁴²National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, Murder and Capital Punishment in England and Wales, Inside Front Cover.

CHAPTER V

RETENTIONIST ATTITUDES

Support for hanging found the greatest number of advocates among the police and prison staff members. Groups organized to advocate retention of or return to capital punishment were not well developed in the early 1960's. The status quo normally did not require special interest groups to work for retention of the existing laws. By early 1980 several organizations existed to advocate the return of hanging as punishment for murder--especially for terrorists. The names of more active groups (Citizens Crusade Against Violence, Campaign for Law and Order, Citizens Protection Society, National Housewives Association and National Association of Retired Police Officers) were uncovered, but little is presently known of the activities of these groups. The groups are responsible for circulation of petitions and are working to reinstate capital punishment. The influence of these organizations was expected to become more evident as time progresses.¹

English police were charged with the same

¹Hurst, Personal Letter, p. 1.

responsibilities as law enforcement officers throughout the world: prevention of crime, investigation of crime once committed, apprehension of the criminal, preservation of the public peace, reduction of crime through patrol and maintenance of public order and confidence. As a group, the police daily risked their personal safety in the furtherance of their duties. The British policeman differed markedly from his counterpart in other jurisdictions in one regard--the British police officer was ordinarily armed only with a wooden truncheon. Provisions existed to provide the police with firearms but this rarely occurred and then only happened under unusual circumstances.

There were approximately fifty police forces in Great Britain with a strength of about 120,000. The regular police force was augmented by constabularies, magistrates and local police authorities. The success of the police rested upon public support, for the number of officers was small in relation to the population (roughly 1 officer per 450 people).² Particular concern for the police became an issue related to the abolition of capital punishment. The relatively small size of the police force when compared to its responsibilities and the fact that officers generally were unarmed served to heighten interest in the protection

²Central Office of Information, Reference Division, Criminal Justice in Britain, p. 12.

of the police from possible assault or murder once the death penalty was removed. The general public felt the criminal had little to lose by killing an arresting officer in order to effect escape since he would not face hanging after the passage of the Murder Bill. There was a very low incidence of police murder in Great Britain and the people wanted to keep it that way. From 1946 to 1964 fourteen policemen were killed in the execution of their duty.³ The police were vulnerable and through their own organizations expressed their concern over the proposed abolition of capital punishment.

The abolition of capital punishment also had an effect upon the prison wardens and other prison staff. Seven prisons in England were organized to accommodate the criminal whose escape would be considered dangerous to the public, the police or the security of the State. Wardens and staff at these prisons normally handled the murderers. Prison staff did not carry firearms and served in situations where their lives were threatened by the criminal attempting to escape from confinement. Public opinion advocated retention of the death penalty as protection for the prison wardens and staff in recognition of the unique danger faced by these public servants. The murderer sentenced to life imprisonment

³Social Responsibility Department, The British Council of Churches, "Report of the Penal Group," p. 1.

was thought to be more likely to kill a prison official in order to escape if the threat of the death penalty was eliminated.⁴

Evidence given before the Royal Commission on Capital Punishment, 1949-1953, reinforced the belief that capital punishment was especially important in the protection of the police. Representatives of the police and prison service almost unanimously desired retention of the death penalty because they felt it was a unique deterrent and was particularly effective in deterring the professional criminal from carrying a weapon when murder was not the principle objective. The police also argued that fear of capital punishment discouraged murder in an effort to resist arrest, prevented criminals from killing to silence a victim of a lesser crime and deterred the criminal in general from using lethal means to obtain his objective. Police representatives believed the abolition of capital punishment would lead to more violence and more criminals carrying weapons. They also held that the professional criminal accepted imprisonment as a normal risk of his profession while the death penalty was in an entirely different category.⁵ Sir Harold Scott, the Commissioner of Police of the

⁴Central Office of Information, Reference Division, Criminal Justice in Britain, pp. 1-43 passim.

⁵Report: 1949-1953, Royal Commission on Capital Punishment, 1949-1953 (London: Her Majesty's Stationery Office, 1953), p. 21.

Metropolis (London), related two case histories during his testimony before the Royal Commission which served to emphasize the deterrent value of capital punishment. Based on these, he believed from his extensive experience in the criminal justice system that capital punishment was the only penalty severe enough to discourage murder. Sir Harold agreed with other testimony from the police community and said a criminal might be willing to serve a prison term for his actions, but he was not willing to "swing" for them.⁶ Sir Alexander Paterson, Prison Commissioner and Director of Convict Prisons, cited two reasons why he thought it necessary to retain capital punishment: First, capital punishment deterred the habitual criminal from carrying weapons. In reference to this category of criminal, he said,

. . . we who are in daily contact with professional criminals can safely say that with them the dread of the gallows is a strong deterrent. They have tasted prison and lost their fear of it. They may have misused their lives, but they are loth to lose them"

His other reason was that he was convinced long-term imprisonment was more cruel a form of punishment than the death penalty. He believed it impossible to serve more than ten consecutive years without physical and mental deterioration.⁷ The people who testified before the Royal Commission were eminently qualified to discuss

⁶Ibid., pp. 335-337.

⁷Gowers, A Life for a Life?, p. 45.

criminal behavior and the punishment of offenders. They daily dealt with those who broke the law and were able to ascertain from them their reasons for committing a crime. From these interviews it was apparent that the police were convinced that capital punishment deterred crime as no other penalty. Since the police were charged with prevention of crime, it followed that they wished to retain a penalty which aided them in performing their duty.

Under the Homicide Act the murder of a policeman or prison official was a capital offence. This provision was not meant to imply the life of a police officer or prison guard was more valuable than that of an ordinary citizen; but rather that these people risked their lives regularly in connection with their jobs. Other categories of murder were capital under the Homicide Act but protection for law enforcement personnel was paramount and capital punishment for the murder of a policeman or prison staff member was felt to make their jobs safer. The retention of the death penalty contributed positively to the morale of the people who dealt so closely with the criminal population. An argument frequently presented by retentionists from all walks of life was that capital punishment provided protection for the police officer. Statistics were presented which refuted this, but the figures were drawn from the United States. Comparison between

England and the United States in the area of fatal attacks on police was of questionable value. Societal conditions in these two countries varied to an extent which made direct relationship between murder of a police officer in one country to a similar crime in the other difficult to establish. There was evidence to show that police killings did not vary significantly in cities between retentionist and abolitionist states in the United States, and variation found was possibly explained by factors other than the presence or absence of capital punishment since there was no way to control for such variables as population size in the cities studied.⁸ The Bishop of Leicester, Dr. R. R. Williams, encouraged special consideration of the police when deciding to abolish or retain capital punishment. Bishop Williams acknowledged that the people were dependent upon the police for their safety and, further, that large numbers of the police force believed the possibility of the death penalty's being imposed made it easier for them to perform their duties.

Spokesmen from the Chief Constables' Association and the Police Federation told the Royal Commission that their members were strongly against placing any limitation on the power of judges to inflict

⁸The Howard League for Penal Reform, Murder and Capital Punishment, p. 9.

⁹Church of England, Convocation of the Province of Canterbury, "Minutes," p. 117.

the death penalty.¹⁰ Members of these two groups were opposed to the changes brought by the Homicide Act because some types of murder were then classified as non-capital. The police and prison officers as a body believed capital punishment deterred criminals and they had become powerful opponents to abolition in any form before the enactment of the Homicide Act.¹¹ Prison and police officers gained influence from the strength of association but it was not sufficient to cause Parliament to allow existing law to continue. The death penalty was restricted to the itemized categories of murder. Some relief was felt over the inclusion of the murder of a policeman or prison officer in the list of capital crimes but the police and prison officials were not fully satisfied with the limitations imposed.

When abolition came before Parliament in 1964, the police and prison officers favoured retention; they believed the presence of the hangman added to their security. Members expressed concern during the debates on the Murder Bill about the effect abolition would have on recruitment of policemen for the already understaffed force. The Home Office was concerned about the effect removal of the death penalty would have on the morale of the police force.

Faced with the possible abolition of capital

¹⁰Report: 1949-1953, p. 38.

¹¹Koestler, Reflections on Hanging, p. 41.

punishment for all categories of murder, concern among the police force increased. A letter published in The Guardian from the Dorset branch of the Police Federation warned:

. . . all members of the Police Service are deeply concerned with this problem of capital punishment. We feel that to abolish capital punishment for murder of a policeman while in the execution of his duty can have nothing but an adverse effect on the morale of policemen. 12

The substitution of life imprisonment for the death penalty did little to quiet the concern of the police and prison officers. They, better than most, were aware of the possibility the murderer sentenced to life imprisonment would obtain release on licence in less than ten years. The police agreed with the general public that a sentence of such short duration did not provide protection nor did it serve as a deterrent. The police were in favour of life sentences lasting at least twenty or thirty years; a term of this duration would have made the police "reasonably happy."¹³

Life imprisonment created problems for the prison system as well. In Great Britain many of the prisons were built over one hundred years prior to the abolition debate and the prisons most suited for maximum security were in poor condition. The wardens were tasked with

¹²"Hanging Bill in Committee," The Guardian, February 25, 1965, p. 2.

¹³"No Hanging Bill in Lords," p. 3.

supervision of the prisoners who normally would have been executed. These people presented a greater threat to the prison staff than criminals convicted of lesser crimes; and the prison was not equipped to provide the required security. The prisoners could not be hanged; therefore, since they were already serving the maximum sentence, they would suffer no greater penalty if they killed a prison warden during an escape attempt. The Bishop of Bristol, Dr. O. S. Tomkins, voiced the concern that the life imprisonment of murderers would create additional demands on a police and prison system already overtaxed.¹⁴ His evaluation was accurate. The number of murderers executed was not large during the decade preceding introduction of the Murder Bill, but their supervision required greater diligence from the prison guards. There was a potential for a large prison population composed of convicted murderers if the length of time served approached a true life sentence. The British prison system was not prepared to meet this demand.

Police officers also faced greater personal demands upon the abolition of capital punishment. Their responsibilities did not decrease but the perceived threat to their safety increased. Apprehension of criminals who no longer had to consider the death

¹⁴Church of England, Convocation of the Province of Canterbury, "Minutes," p. 120.

penalty was more dangerous for the policeman. Multiple murder carried the same penalty under the Murder Bill as did a single killing except for the possibility of serving more time before the granting of licence. There was no reason to expect a murderer to show more respect for the life of a policeman than he had shown for his initial victim. In England, as in most countries, the police frequently relied upon public assistance in the performance of their duties. The public was thought to be less inclined to render aid if capital punishment was abolished. As one individual evaluated the situation, after he expressed deep concern for the police in general, "The police, and those who come to their aid, ought to be safeguarded by the ultimate penalty."¹⁵

The opinion of the police was often mentioned in conjunction with public opinion in general. Police were a very small segment of British society, but one article said that most of them opposed the abolition of hanging.¹⁶ Ninety-five percent of the law enforcement personnel were reported in another article to be against the abolition of capital punishment.¹⁷ The source for this statistic was not provided, but in view

¹⁵"'Fatuous' Sentiment Over Murderers," p. 15.

¹⁶"Cheers for Bill to End Executions," The Glasgow Herald, December 5, 1964, p. 10.

¹⁷Percy Hoskins, "When the Rope Has Gone," Daily Express, December 4, 1964, p. 10.

of the statements made by prison and police officer's organizations, the figure was not unrealistic.

When abolition was considered by Parliament in 1964, the police and prison officials united in opposition. They had not wanted partial removal of the death penalty; they certainly did not want complete abolition. F. C. Castell, General Secretary of the Prison Officers' Association, bemoaned the lack of protection for prison officers which he thought would result if the Murder Bill was passed.¹⁸ The House of Commons was no more inclined to follow the trend of opinion among the police and prison officers than it was to be affected by the tone of public opinion in general. The unique position of these people in regard to dealings with the criminal element did not persuade Parliament to give their position special consideration. In a last minute effort to change the position of Members of Parliament, the Police Federation of England and Wales presented a document which stressed that as an organization they were against the abolition of capital punishment.¹⁹ The overwhelming support of policemen and prison staff members for retention of the death penalty did not achieve the endorsement of Parliament. In essence they were told to carry on with their duties

¹⁸"355 MPs Vote for End of Hanging," The Yorkshire Post, December 22, 1964, p. 1.

¹⁹"Hanging Bill in Committee," The Guardian, April 8, 1965, p. 2.

without the one penalty they believed afforded them some degree of protection. They were to continue to perform without benefit of firearms in the face of a criminal population they believed would not hesitate to use whatever weapons necessary to accomplish its objective.

In April 1965, after the Murder Bill had been recalled from Standing Committee C to the floor of the House of Commons, an amendment was introduced to retain capital punishment for the murder of a policeman in the performance of his duty.²⁰ The Scottish Police Federation in a memorandum stated its position: "We firmly request the retention of capital punishment for the murder of a police officer acting in the execution of his duties or any person coming to his assistance."²¹ The Secretary of State for Scotland told the House of Commons that he had received representations from the Chief Constables' Association which supported the position of the Scottish Police Federation.²² An amendment for the retention of capital punishment in the case of a prison officer killed while carrying out his duties was also presented. Members of Parliament were not influenced by the

²⁰Hansard (Commons), Vol 710 (5 April - 15 April 1965), col. 405.

²¹Ibid., col. 409.

²²Ibid., cols. 27-28.

opinion of the police or prison officers. The amendment to retain capital punishment for the murder of a policeman in the execution of his duty was defeated by a vote of 165 to 115; for the murder of a prison officer in the execution of his duty by 157 to 105.²³ Again Parliament showed that it was unwilling to limit abolition.

Three policemen were killed in London on August 12, 1966, and this prompted renewed activity on the part of the police to seek the death penalty for the murder of a policeman. Two apparent courses of action were brought to the attention of Parliament: "It is vital to restore capital punishment for murder of a policeman or to arm them, preferably the former."²⁴ The Police Federation conference had voted against abolition of the death penalty for killing a policeman. Members of the Federation now wrote the Members of Parliament to urge that hanging be returned. The return of hanging was generally preferred over the arming of the police. On December 18, 1969, the House of Lords considered its resolution to make abolition permanent and the Lord Archbishop of Canterbury reminded the House that opinion among the police in

²³Ibid., cols. 428, 1358. An amendment to make murder while in prison convicted of murder subject to capital punishment was also offered; it was defeated by a vote of 149 to 102 (Ibid., col. 1359).

²⁴"Policemen Writing to M. P. s," The Times (London), August 13, 1966, p. 1.

1965 strongly favoured a degree of retention of capital punishment. He went on: "We know that their view on the issue is the same to-day."²⁵ It was also noted in the House of Commons that the police wanted capital punishment restored. As a segment of public opinion the police and prison officers were possibly the most likely to be called on to deal with the professional criminal. This proximity to potential murderers made it understandable that ". . . police and prison officers lobbied for a return to hanging."²⁶

Police organizations renewed lobbying efforts in favour of the reintroduction of capital punishment in 1969. The police forces were understaffed and morale was low. It was believed that abolition contributed to these problems. Experimental abolition did not modify the position taken by policemen and prison officers. In May of 1969 the Police Federation and the Prison Officer's Association voted to support the reintroduction of capital punishment because of the concern for the protection of their members from potential murderers. Concern was also voiced about breaches in prison security and other problems felt to arise from the necessity of dealing with maximum security prisoners. Five years was not long enough to resolve the problem

²⁵Hansard (Lords), Vol. 306 (2 December - 18 December 1969), col. 1301.

²⁶"Britain: Sacking the Hangman," Time, December 26, 1969, p. 15.

involved with handling murderers as prisoners. Breaches of security were not detailed but the additional security required for dealing with murderers was not immediately available. The physical plants required updating and prison wardens needed to learn new techniques for dealing with those sentenced to life imprisonment. The Murder Bill had revised the law in 1965 but the adjustments necessary to implement the new law throughout the legal system were more complicated and time consuming than Members of Parliament expected.²⁷

Material gathered by P. M. Claisse and John Hough on behalf of the Church of England's Board for Social Responsibility and the British Council of Churches' Social Responsibility Department, respectively, recognized the concern of prison and police officer groups over ". . . the safety of their members in the absence of the death penalty." The notes mentioned the concern of the people on this point and the public's belief that capital punishment protected the police. The document attacked belief in the theory of deterrence so strongly held by the police and prison officers; and said if the criminal did not believe the possibility for getting caught existed, the fear of apprehension would not deter and, therefore, the death penalty would not deter. Claisse and Hough pointed out:

²⁷Social Responsibility Department, The British Council of Churches, "Report of the Penal Group," p. 1.

It is noteworthy that the police themselves, although in sections very much against abolition, have emphasised again and again in campaigns for larger police forces that the only real deterrent to any criminal activity is the fear of being convicted. 28

By implication the fear of being convicted encompassed the fear of being apprehended. The police favoured reinstatement of capital punishment because they believed it would protect them so that they could apprehend the violent criminal.

Information received from The Police Superintendents Association of England and Wales in 1981 indicated that members of this organization were divided on the issue of reintroduction of the death penalty.²⁹ The majority favoured reintroduction and only this majority achieved notice in publications. In November of 1980, writing in Police, a publication of the Police Federation, James Jardine, Chairman of the Police Federation of England and Wales, stated:

I support the death penalty. . . . the death penalty would deter some terrorists We want to carry on being an unarmed police force. We believe that the restoration of the death penalty would not only provide a fitting punishment for the worst murderers. It would protect the public³⁰ and the police.

²⁸The Church of England Board for Social Responsibility, "Note for House of Lords Debate," p. 4.

²⁹John Keyte, Personal Letter dated 12 March 1981, p. 1.

³⁰James Jardine, "Death Penalty Might Deter Terrorists," Police, November 1980, p. 8.

Jardine further stated that abolition of the death penalty had given rise to criminals becoming armed and the absence of capital punishment contributed to the outbreak of terrorist activities.³¹

The police and prison officers lost their bid to persuade Parliament to give special consideration to their plight. Parliament did not think the abolition of capital punishment placed a particular burden on policemen and prison guards. B. Ogden Chisolm, International Prison Commissioner, evaluated the death penalty early in the twentieth century:

Executions have a most degrading effect upon the public for they tend to make the public cry for greater vengeance, stronger laws, more drastic sentences³² and more rigorous prisons.

Members of Parliament agreed in the 1960's that hanging was a degrading act. Abolition became permanent and the police and prison officers were left to adapt to the new situation as best they could.

³¹Ibid.

³²Lawes, Man's Judgment of Death, p. 144.

CHAPTER VI

CONCLUSION

Great Britain took a large step in the reform of the criminal justice system in 1965. In making the decision to remove capital punishment, the voice of the people, which was loud in protest, was irrelevant to the final vote in Parliament. There was no doubt about where the British citizenry stood on the question of eliminating the job of the hangman. The public consistently asserted its opposition to the Murder Bill. At times the opposition reached as high as eighty-five percent of the population.¹ On the issue of abolition, however, the victory was won by a very small segment of the people.

Many groups involved in the debate on the abolition of capital punishment dealt with the theory of deterrence. Concrete evidence to support the theory was not found. In the absence of this documentation, the theory was discounted in Parliamentary debates.

¹"Britain: Death to Hanging," Newsweek, December 29, 1969, p. 33; and "In Britain, an End to Hangings," U. S. News & World Report, December 29, 1969, p. 6.

The public believed the death penalty deterred murderers and other criminals who were potential murderers. Members of Parliament, the Bishops and abolitionists in general were unable to accept this view. Retribution was considered and discarded as a reason for inflicting the death penalty. Public safety was advanced as justification of the death penalty. Parliament decided that life imprisonment would serve as effectively as capital punishment in protecting society from violence. The fears of the police and prison officers were insufficient to influence Members of Parliament. The time had come, so Parliament thought, for reform and nothing short of abolition was acceptable.

The public voiced its support of the death penalty through many channels. Polls reflected overwhelming support for the retention of the death penalty. Letters and petitions expressed public advocacy of capital punishment as the only just penalty for the murderer. The people were denied an opportunity to register their views through a referendum. There seemed to be no way for the majority of British citizens to obtain their goal. The Murder Bill was termed a matter of individual judgment and conscience and the Members of Parliament, in good conscience, were unable to allow hanging to continue. The minority of the public lobbied for and won passage of the Bill.

Statistical evidence for the period following

abolition indicated that murder increased in frequency (See Appendix for discussion of the murder statistics). These statistics were cited as evidence warranting the return of the gallows; but statistics required interpretation and the Members of Parliament were not willing to accept the figures as justification for reinstatement of the death penalty. The hangman was unemployed after 1965 and Parliament indicated in subsequent debates that it intended he remain so. Increased terrorist activity also failed to bring a reintroduction of capital punishment.

On a political plane, there was no indication that capital punishment existed as a party issue. In Great Britain the Members of Parliament display almost total loyalty to their party; they vote solidly as a group. Apparently other matters were paramount in the campaigns for election to Parliament and abolition was given very little time. In any case, the Members of Parliament disregarded their nebulous responsibility to their constituencies; they passed the Murder Bill in direct disregard of public opinion (See Appendix for text of Murder Bill). The people did not come to favour abolition after the Bill became law. During the experimental period public opinion continued to oppose complete abolition of capital punishment and increased its opposition rather than decreased. The Members of Parliament exercised their opportunity to vote their

individual conscience on the issue, but the conscience of the majority of the public was not considered. The vote in Parliament came in an isolated vacuum that reflected a lack of regard for the predominant opinion of the people.

Philosophically, one might advance the theory that elected representatives owe allegiance to the body which places them in power. This philosophical question was raised by the capital punishment issue. The topic was not resolved. There is support for the belief that those returned to Parliament should vote in accordance with the opinion of the majority of their electorate. The conviction that Members of Parliament should vote only in accordance with their individual conscience also has support. Public opinion wanted retention but the more prominent members of society, the elected representatives, felt that capital punishment was outmoded. Perhaps the idea that Parliament should legislate ahead of shifts in public opinion held sway. Whatever the explanation, the Members elected to vote according to their individual beliefs on the Murder Bill. The vote was free, Members were released from any obligation to party, and they chose to eliminate the gallows from British society. The strong group advocacy of abolition expressed by organizations such as The Howard League for Penal Reform, which represented an opinion held by a minority of the general public, was able

through repeated efforts to attain the goal of abolition.

Another political argument advanced supported the belief that Members of Parliament, once elected, were in a position to decide, on such topics as the abolition of capital punishment, what action would be in the best interest of the country. The Members were provided with information and statistics not available to the people at large. Their evaluation of this information led to the majority in both Houses voting to remove the penalty of death. The worst fears of the general public were not realized following abolition; murder did not become rampant. The Members of Parliament removed a punishment which was felt to be unnecessary and unduly cruel. Reforms have repeatedly been instituted in the Parliament; the people often accepted these reforms only after the lapse of several years. The majority of Englishmen were dissatisfied with the Murder Bill. There has been no appreciable change in the attitude of the people since 1965. The debate of the philosophical topic of representative government and its responsibility to the people continues. Regardless of this debate, the elected representatives in Great Britain chose not to follow the preponderance of public opinion on the issue of capital punishment. The Parliament exercised its legislative right. The people were unable to influence its decision. In this

instance the will of the minority prevailed.

Economic consideration had no part in the matter of capital punishment. There was no discussion of the cost involved with maintaining a population of convicted murderers. Some discussion was had about making restitution to the victims of homicide but to date this has not found fruition.

The moral issue regarding imposition of the maximum sentence was discussed at length by the Church. It was stated that killing was morally wrong regardless of whether the killer was an individual intent upon an evil deed or was a collective body carrying out the law. No justification was found for the taking of a life. This attitude was prevalent in Parliament and among abolitionists.

From a sociological standpoint it appeared that the idea of factors creating an environment which fostered conditions favourable to murder was popular, especially with abolitionists. The concept of rehabilitation was often advanced to support the removal of the gallows. It was theorized that society played a major part in causing a person to commit a murder and the individual thus driven to the extreme deserved to be resocialized. A humanitarian attitude prevailed among those who advocated an end to the death penalty.

On the whole the issue of capital punishment cut across all theoretical planes. It was not purely

one or the other. It was an issue that was debated both on empirical and emotional grounds. Evidence called forth to support both retentionist and abolitionist arguments delved into areas of concrete and abstract logic. Members of Parliament voted on the matter according to their individual beliefs. They definitely represented an opinion contrary to that held by most Englishmen but the people have had an opportunity to elect representatives to the House of Commons subsequent to the passage of the Murder Bill. The majority of the public has chosen Members of Parliament who favour continued abolition. Until such time as the people return Members who reflect the public's attitude on capital punishment, the Murder Bill will remain law. It is possible that other issues upon which candidates for Parliament take a stand have been more important. The general economic conditions have not been good in England since the 1960's; there has been general social unrest; nuclear armament is an important issue to name only a few topics which possibly warrant greater consideration than the reform of the law to exclude the gallows.

It is possible that Members of Parliament differ from the general public in areas such as education, often said to be a major factor, to an extent that they favour attitudes far in advance of that of the general populace. Further, one might surmise that

those elected feel that they are relatively safe from the murderer and their lack of fear makes it easier for them to remove what most of the people consider a safeguard to society. It may be that Members are also more supportive of a humanitarian attitude toward the criminal, who they see as a victim of the society in which external factors bring about conditions in which murder is, at times, the only solution to a problem. Additionally in 1969, at the time the Bill was due for expiration, the House of Lords, which might have blocked the Bill's becoming permanent, was being attacked on many fronts and there was talk of a complete restructuring of the Upper Chamber. There is no way to judge the impact this might have had on the House of Lords, which possibly was intimidated by the House of Commons. It may be that the House of Lords was concerned for its own existence and thought that the public might easily have been aroused to attack its Members inherited status and that the Lords allowed the Bill to become law to avoid subjecting the House to the attack in the House of Commons. The Commons, meanwhile, were able to rush through the making of the Bill permanent prior to elections. For whatever reason, the Murder Bill had sufficient support to become law and it continues as such.

In spite of substantial public opposition, the Murder Bill became law on Monday, November 8, 1965.

The gallows have not returned to British society. England joined a small minority of nations and became one of seventeen which abolished capital punishment for ordinary crimes (See Appendix for listing of countries according to their position of capital punishment). The latest figures available indicated that public opinion continued to favour a return of the death penalty. Members of the Government supported reintroduction of capital punishment. The minority victory remained, contested and challenged by the majority, but triumphant.

APPENDICES

APPENDIX A

TEXT OF MURDER (ABOLITION OF
DEATH PENALTY) BILL

Bill to abolish capital punishment in the case of persons convicted in Great Britain of murder or convicted of murder or a corresponding offence by court martial and, in connection therewith, to make further provision for the punishment of persons so convicted, presented by Mr. Sydney Silverman, supported by Mr. Humphrey Berkeley, Mrs. Braddock, Mr. Christopher Chataway, Mr. Michael Foot, Sir Geoffrey de Freitas, Mr. Leslie Hale, Mr. Stan Newens, Mr. Paget, Mr. Shinwell, Mr. Jeremy Thorpe, and Mrs. Shirley Williams; read the first time: to be read a Second time upon Monday next and to be printed.¹

¹Hansard (Commons), Vol. 703 (30 November - 11 December 1964), cols. 927-928.

APPENDIX B

LETTER TO PARLIAMENT

The following was typical of the letters received by Members of Parliament and accompanied the petition of Mr. James Hadley and Mr. David Cooper:

We believe that the death penalty should not be abolished. We believe this because the number of murderous attacks, particularly on young children, is not decreasing while imprisonment is the only deterrent, but is increasing.

We have been mistaken in thinking that the death penalty had already been abolished, since Her Majesty's judges have indicated in sentencing murderers that there is little likelihood of the death penalty being carried out.

In only ten days we two have collected some three thousand signatures from people who believe that the death penalty should be retained. This we have done while off duty from our work in a Midlands garage. We have visited various Midlands towns and London in our time off. If there was more time we could get thousands and thousands more to sign this petition. Those who have signed the petition so far think as we do,

that the law of demanding a life for a life is the only just deterrent to murderers.

Many believe as we do that the nation has not been given a proper chance to decide this issue. We have not been asked to vote for M.P.s because they are for or against hanging. That very important issue has been buried under other political issues. We feel it would have been better if every voter-- particularly every parent whose children may be the victims of murderous attacks--could have voted on this important issue.

Even at this late hour we ask that there should be a national referendum so that the public can decide for or against the death penalty.

We regret that our petition, hastily put together, was not in a form which would enable you to present it officially to Parliament. Nevertheless, we hope that you will, if you have the opportunity, tell the House of Lords that many people of all ages, from all walks of life and, surprisingly, many young people, still believe that the death penalty should be retained, particularly for violent murderers.²

²Hansard (Lords), Vol. 269 (2 August - 8 November 1965), cols. 532-533.

APPENDIX C

PETITION PRESENTED TO PARLIAMENT

Mr. Joseph Hiley, Conservative Member for Pudsey, presented the following petition from the League for Justice and Liberty against the Murder Bill which contained 50,000 signatures:

Whereas justice has been administered in the British nation since the days of King Alfred the Great in accordance with the Biblical principles of just retribution in punishment for proven offences and of individual personal responsibility for wrongdoing;

And whereas penalties should be imposed not only to protect society or to rehabilitate the convicted criminal but in the first place to restore the violate moral and legal order of God's Universe by giving the convicted criminal his just deserts;

And whereas the Word of God plainly teaches in both the Old and the New Testaments that Her Majesty's Government has received from God Himself the authority to wield the power of the sword of justice in the execution of convicted murderers and that the Government may, therefore, resort to its fundamental prerogative of inflicting the death penalty

in cases of murder most foul;

And whereas crimes of violence against the persons of Her Majesty's loyal and law-abiding subjects have greatly increased since the days of King George the Fifth

Wherefore your Petitioners pray that the death penalty be retained in cases of murder with malice aforethought, and that Justice with mercy be done, and seen to be done fairly, moderately and persistently throughout the land.

And your Petitioners, as in duty bound, will ever pray.³

³Hansard (Commons), Vol. 714 (14 June - 25 June 1965), cols. 213-214.

APPENDIX D

SELECTED CHRONOLOGY

- 1810 222 capital offences on statute books; Sir Samuel Romilly began campaign to abolish capital punishment
- 1818 Capital punishment abolished for shoplifting
- 1819- Horse, cattle, sheep stealing and 24 other
1833 crimes made non-capital; house breaking made non-capital
- 1827 Benefit of clergy abolished
- 1836 Coining and forgery made non-capital
- 1837 Burglary and theft from dwelling house made non-capital
- 1840 Resolution for abolition of capital punishment introduced for the first time in Parliament
- 1841 Abolition of hanging for rape
- 1861 Criminal Law Consolidation Act reduced number of capital offences to four
- 1864 Royal Commission favoured abolition but did not feel public was ready
- 1868 Public hanging ended
- 1908 Abolition of capital punishment for children under sixteen years of age
- 1921 The Howard League for Penal Reform founded
- 1922 Infanticide Act abolished hanging mother for killing of infant
- 1925 Criminal Justice Act
- 1928 First Bill to Abolish Capital Punishment introduced in House of Commons

- 1931 Sentence of Death (Expectant Mother) Act abolished hanging for expectant mothers
- 1933 Children and Young Persons Act raised the age from sixteen to eighteen for liability to death penalty
- 1940's Royal Commission of Capital Punishment was excluded from considering abolition
- 1947 Gallup Poll indicated sixty-five percent approved of capital punishment
- 1948 Suspension of capital punishment rejected as too far ahead of public opinion
- 1957 Homicide Act

Murder (Abolition of Death Penalty) Bill

1964

- November 3 Mention of Capital Punishment in Speech from the Throne
- December 4 Bill presented to the House of Commons
- December 21 Second Reading Debate

1965

- July 13 Bill passed by the House of Commons
- July 19 Second Reading Debate in the House of Lords
- October 26 Bill passed by the House of Lords
- October 28 Lords Amendments passed by the House of Commons
- November 2 Returned from House of Commons with Amendments
- November 8 Murder (Abolition of Death Penalty) Bill received Royal Assent

APPENDIX E

RESOLUTION PASSED BY UPPER HOUSE,
CHURCH OF ENGLAND, CONVOCATION OF
THE PROVINCE OF CANTERBURY

That this House would welcome the introduction, and adoption by Parliament, of a Bill providing for:

1. the abolition of capital punishment or at least its complete suspension for a period of five years;

2. treatment for the convicted person which would assist in his own reclamation and ensure the safety of society;

3. suitable compensation for the relatives or dependants of the victims of homicide.

Those present were: His Grace the Lord Archbishop of Canterbury (the Most Rev. Dr. Ramsey), the Lords Bishops of London (Dr. Stopford), Winchester (Dr. Allison), Salisbury (Dr. Anderson), Exeter (Dr. Mortimer), Norwich (Dr. Fleming), Birmingham (Dr. J. L. Wilson), Lichfield (Dr. Reeve), Leicester (Dr. Williams), St. Edmundsbury and Ipswich (Dr. Morris), Oxford (Dr. Carpenter), Worcester (Dr. Charles-Edwards),

Coventry (Dr. Bardsley), Lincoln (Dr. Riches), Ely
(Dr. Hudson), Chichester (Dr. R. P. Wilson), Bristol
(Dr. Tomkins), Southwark (Dr. Stockwood), Derby (Dr.
Allen), Truro (Dr. Key), Portsmouth (Dr. Phillips),
Bath and Wells (Dr. Henderson), Hereford (Dr. Hodson),
and Peterborough (Dr. Eastaugh).⁴

⁴Church of England, Convocation of the
Province of Canterbury, "Minutes," p. 105.

APPENDIX F

RESOLUTION PASSED BY THE BRITISH
COUNCIL OF CHURCHES, APRIL 1962

It was resolved nem. con.:

- (a) That the Council, being aware both of the arguments on moral grounds for the abolition of capital punishment and of the anomalous results of the Homicide Act 1957, urges H. M. Government to abolish capital punishment, or at least suspend it for a period long enough to give adequate evidence to enable a final decision to be taken.
- (b) That the Council recognises that the alternative to capital punishment must be an adequate sentence which reflects society's condemnation of the crime, is deterrent in effect, and makes provision for the rehabilitation of the offender and the protection of the community.
- (c) That the Council urges that suitable arrangements be made for some compensation of the relatives or dependents of the victims of homicide. 5

⁵Resolution passed by The British Council of Churches, "Capital Punishment," p. 1.

APPENDIX G

RECOMMENDATION OF THE BRITISH COUNCIL OF CHURCHES

SOCIAL RESPONSIBILITY DEPARTMENT PENAL GROUP

- (a) reaffirms the opposition to capital punishment expressed in its resolution of April 1962 and recommends H. M. Government to legislate for the abolition of the death penalty or for its suspension for a further period of five years;
- (b) recognises that any alternative to capital punishment must protect the community and reflect society's condemnation of violent crime;
- (c) accepts that murderers must be detained until the Secretary of State is reasonably assured that it is safe for them to be released and that this may mean the detention of some persons for the remainder of their natural lives;
- (d) is of the opinion that certain dangerous offenders whose violence falls short of murder should also be subject to such indeterminate ⁶ sentences.

⁶Penal Group, Social Responsibility Department, The British Council of Churches, "Recommendation," June 1969, p. 1.

APPENDIX H

STATISTICAL DATA

Figures shown throughout are raw numbers as furnished by sources noted. Statistics vary because in some instances the data was revised after further investigation. In some cases murder was reduced to a lesser offence, for example. In other cases what was first thought to be "normal" murder was later reclassified. No attempt is made to adjust figures but where revised figures were supplied, it has been noted.

Number of Murder Victims from 1957 to 1967 as furnished by the Criminal Statistics for England and Wales:

1957 154	1963 133
1958 158	1964 155
1959 141	1965 153
1960 135	1966 143
1961 132	1967 172 ⁷
1962 143	

Figures furnished by the Home Office revealed the following:

1964 153	
1965 151	
1966 139	Murder followed by suicide 29
	Murder of relatives 45
1967 168	Murder followed by suicide 51
	Murder of relatives 81
1968 174	Murder followed by suicide 45
	Murder of relatives 69 ⁸

⁷The Howard League for Penal Reform, Murder and Capital Punishment, p. 8.

⁸The Howard League for Penal Reform, "Murder and Capital Punishment, Additional facts and figures," p. 1.

Numbers of Victims of "Normal" and Abnormal Murder and S.2 Manslaughter as Provided by the Home Office

Year	Normal	Abnormal Suicide	Insane	S.2 Manslaughter	Total
1957	57	55	23	22	157
1958	47	44	23	29	143
1959	57	50	28	21	156
1960	51	45	27	31	154
1961	54	42	22	30	148
1962	56	47	16	42	171
1963	59	48	15	56	178
1964	76	49	10	35	170
1965	77	50	8	50	185
1966	88	29	5	65	187
1967	90	52	12	57	211
1968	96	45	7	57	205
1969	80	28	10	64	182
1970	112	19	4	66	201
1971	118	40	15	77	250
1972	113	26	10	95	244 ⁹

⁹National Campaign for the Abolition of Capital Punishment and The Howard League for Penal Reform, Murder and Capital Punishment in England and Wales, p. 11.

"Normal" Murder and Motives for Same Which does not
 Include Murders not yet Cleared up by Police. ¹⁰

Year	Rage Quarrel, Jealousy, Revenge or Sex	Theft or Other Gain	Escaping or Resisting Arrest	Other	Apparently Motiveless	Motive Not Known
1957	22	9		2	7	
1958	22	7		3		
1959	37	6	1	2		
1960	28	9	1	2	3	1
1961	34	6		3		1
1962	30	8		2	3	
1963	35	6		1		
1964	35	9		7	2	
1965	47	6	1	3	2	3
1966	35	15	5	7	2	2
1967	53	10	1	2	3	3
1968	52	17		4	6	
1969	45	26		2	1	1
1970	67	19		6	3	
1971	55	19	2	11	4	
1972	59	22	1	15		

¹⁰Ibid., p. 12.

Relationship of Victim to Suspect in "Normal" Murders¹¹
 (Not Including Offences not yet Cleared Up)

Year	Family or Close Relationship	Acquaintance or Associate	Policeman or Prison Officer	Stranger
1957	12	15		13
1958	13	9	1	9
1959	19	13	1	13
1960	14	16	1	13
1961	20	7		17
1962	23	10		10
1963	19	11		12
1964	20	23		10
1965	22	24	2	14
1966	20	24	4	18
1967	31	27		14
1968	34	21		24
1969	18	37		20
1970	27	44	1	23
1971	38	24	2	27
1972	25	28	1	43

¹¹Ibid., p. 13.

Numbers of Murders Known to Police Yearly From 1900 ¹²
 With Population Figures for each Decade

Column A = Murder, over one year old
 Column B = Murder, under one year old
 Column C = Manslaughter
 Column D = Total A and C
 Column E = Violence Against the Person

Year	A	B	C	D	E
1900 - Population 38,237,000					
1900	89	47			
1901	103	58			
1902	95	54			
1903	108	63			
1904	102	58			
1905	92	45			
1906	87	47			
1907	81	51			
1908	112	47			
1909	109	52			
1910 - Population 42,082,000					
1910	89	59			
1911	102	42			
1912	113	59			
1913	111	67	154	332	1,172
1914	92	49	128	269	1,042
1915	81	49	145	375	755
1916	85	61	111	257	560
1917	81	46	99	226	372
1918	81	50	73	204	399
1919	123	53	122	298	739
1920 - Population 44,027,000					
1920	121	58	134	313	791
1921	90	48	113	251	703
1922	100	45	98	243	596
1923	99	51	109	259	576
1924	105	45	110	260	618
1925	125	35	133	293	719
1926	114	40	128	282	1,034
1927	100	43	138	281	1,141
1928	99	37	122	258	1,242
1929	103	28	157	288	1,314

¹²Rivers, "Capital Punishment," pp. 18-20.

Year	A	B	C	D	E
1930 - Population 46,038,000					
1930	87	35	162	284	1,444
1931	111	27	124	262	1,339
1932	94	31	141	266	1,240
1933	111	30	192	333	1,455
1934	109	32	191	332	1,566
1935	101	19	171	291	1,726
1936	114	31	197	342	1,788
1937	88	26	171	285	1,957
1938	97	19	172	288	1,990
1939					
1940 - Population Unable to Furnish because of War					
1940	115	8	134	257	1,776
1941	135	11	145	291	1,910
1942	172	37	158	367	1,997
1943	139	35	114	288	2,279
1944	131	35	147	313	2,735
1945	173	45	217	435	3,282
1946	131	17	151	299	3,008
1947	135	40	138	313	3,480
1948	147	24	138	309	4,193
1949	119	17	131	267	4,330
1950 - Population 50,225,000					
1950	122	17	176	315	5,177
1951	123	9	176	308	5,523
1952	136	10	233	379	5,900
1953	131	12	158	301	6,092
1954	137	9	138	284	6,473
1955	125	10	122	257	6,926
1956	148	8	142	298	8,266
1957	151	15	147	313	9,589
1958	124	13	108	255	10,729
1959	142	7	92	241	12,505
1960 - Population 52,709,000					
1960	144	9	108	261	14,142
1961	136	11	105	252	15,285
1962	148	11	114	273	16,103
1963	142	11	135	288	18,279
1964	152	18	108	278	21,350
1965	161	10	134	305	23,365
1966	160	9	172	341	24,479
1967	184	16	193	393	26,681
1968	183	20	196	399	29,690
1969	182	22	188	392	35,362

Year	A	B	C	D	E
1970 - Population	55,515,000				
1970	186	26	181	393	38,735
1971	247	19	193	459	44,611
1972	251	21	204	476	45,999
1973				465	58,436
1974				600	60,740
1975				515	67,919
1976				565	75,332
1977				482	79,826

APPENDIX I

ABOLITIONIST AND RETENTIONIST

COUNTRIES AS OF 1980

Abolitionist by Law for All Crimes:

Austria	Iceland
Cape Verde	Luxembourg
Colombia	Nicaragua
Costa Rica	Norway
Denmark	Panama
Dominican Republic	Portugal
Ecuador	Solomon Islands
Finland	Sweden
Federal Republic of Germany	Uruguay
Honduras	Venezuela

Abolitionist by Law for Ordinary Crimes Only:

Brazil	Monaco
Canada	Nepal
Fiji	Papua New Guinea
Guinea-Bissau	Netherlands
Israel	New Zealand
Italy	Spain
Malta	San Marino
Mexico	Switzerland
	United Kingdom

Federated Countries with Divided Jurisdiction:

Australia	United States
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Retentionist Countries:

Afghanistan	Bahrain
Albania	Bangladesh
Algeria	Barbados
Angola	Belgium
Antigua	Belize
Argentina	Benin
Bahamas	Bermuda

Bhutan	Lebanon
Bolivia	Lesotho
Botswana	Liberia
British Virgin Islands	Libya
Brunei	Liechtenstein
Bulgaria	Madagascar
Burma	Malawi
Burundi	Malaysia
Cameroon	Maldives
Central African Republic	Mali
Chad	Mauritania
Chile	Mauritius
China (People's Republic)	Mongolia
Comoros	Morocco
Congo	Mozambique
Cuba	Namibia
Cyprus	Niger
Czechoslovakia	Nigeria
Djibouti	Oman
Dominica	Pakistan
Egypt	Paraguay
El Salvador	Peru
Equatorial Guinea	Philippines
Ethiopia	Poland
France	Qatar
Gabon	Romania
Gambia	Rwanda
German Democratic Republic	Saint Lucia
Ghana	Saint Vincent
Greece	Samoa
Grenada	Sao Tome and Principe
Guatemala	Saudi Arabia
Guinea	Senegal
Guyana	Seychelles
Haiti	Sierra Leone
Hong Kong	Singapore
Hungary	Somalia
India	South Africa
Indonesia	Sri Lanka
Iran	Sudan
Iraq	Suriname
Ireland	Swaziland
Ivory Coast	Syria
Jamaica	Taiwan
Japan	Tanzania
Jordan	Thailand
Kampuchea	Togo
Kenya	Tonga
Korea (Democratic People's Republic, North Korea)	Trinidad & Tobago
Korea (Republic, South Korea)	Tunisia
Kuwait	Turkey
Laos	Uganda

Union of Soviet Socialist Republics
United Arab Emirates
Upper Volta
Vietnam
Yemen (Arab Republic, North Yemen)
Yemen (People's Democratic Republic, South Yemen)
Yugoslavia
Zaire
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Zimbabwe

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