

Defending Capital Punishment

It would be nice if we had a capital punishment debate worthy of a vibrant people, instead of the national excuse for one that lies drugged and dormant beneath a political blanket, awakened only occasionally when some public figure pulls back the sheets. Then our reflex reaction is - Quick, cover it up!

Meanwhile, we groan to learn that about 1,100 convicted murderers are out on day-parole in Canada at any one time. Some will murder again, with high certainty. Those responsible for their release will pass the buck. A Toronto man recently left his favourite restaurant in trembling disgust when he saw a new waiter approach: the man who'd murdered his daughter 19 years before.

If ever there was an issue to sharply outline the clash between the democratic masses and their academic and media elites, it is capital punishment. The people want it. The elites do not. Generally, the people take the moral view of crime and punishment, and the elites, the therapeutic view. Elites say the only motive for killing as punishment is revenge. They generally believe that crime arises from its conditions: the perpetrator can no more be responsible for his crime than for an abscessed tooth. They say therapy - not some punishment as barbaric as the crime - is required, because the criminal is sick.

In a famous essay of 1949 criticizing this therapeutic, or Humanitarian view of justice, the British writer C.S. Lewis contrasted it neatly with the Retributive view. The first sounds very nice because it appears to be mercy-based. But the hidden danger is that it dehumanizes us all by conceiving of man as a determined object, with no will of his own (otherwise he could have said no to crime, could he not?) and therefore no moral responsibility. It is thus a view that once adopted automatically diminishes the entire society by shunting justice to a secondary position.

He much preferred the second view that retribution - restoring the balance of justice - was fairer both to the community, and to the criminal. He summarized his critique in a telling statement about just deserts (what is deserved), as follows: "the Humanitarian theory removes from punishment the concept of Desert. But the concept of Desert is the only connecting link between punishment and justice."

And for making decisions about just deserts, he felt his barber was as qualified as any therapist, who may be well qualified in theories of the subconscious, but no more so than the barber in the matter of moral justice - necessarily a community affair. The people are the jury. For a century now, the therapeutic view has increasingly been used to separate punishment from justice, as if man were perfectible mechanically. But in the face of ever more barbaric crimes, it is surely time to ask a simple question. Namely - Can a society maintain civility by using a notion of individual mercy that diminishes its sense of collective justice?

And never mind the merely utilitarian, and by now useless criteria for assessing the viability of punishment: Does it incapacitate? Does it deter? Obviously, we do not incapacitate a vicious murderer by paroling him. Nor by releasing him after a euphemistic "life" sentence of 15, or even the maximum 25 years. Neither can deterrence ever be properly measured when all punishment is delayed, lenient, and invisible to the public.

The highest and best argument for capital punishment for premeditated murder, is society's need for and right to equity; for moral restoration. It is a right higher than any possible right of a murderer to enjoy the gift of life after the death of his victim. Justice should oversee mercy, not the reverse.

And importantly, the balancing satisfaction of retributive justice, even as it purges individuals of any lingering desire to kill, sends the ultimate message that killing for justice is a right of society, not of individuals. That such moral accounting must always be transferred to the larger society, where it belongs. This balancing of the books is required not because it is effective. Or a deterrent. Or because it may reform others. But simply because it is just.

Neither is it true that all deaths are equal. Any death is regrettable, but a salving, or expiatory death does not treat a criminal "as something less than human," as *The Globe and Mail's* Andrew Coyne put it in his Monday column. Quite the contrary. It is the highest and best way for a murderer to die. It is a retributive death, a form of repayment that gives meaning back to society, as well as to the criminal's soiled life, in fact lifting him out of the animal condition to which he has consigned himself. We must consider that this, too, may be called an act of mercy. And maybe "He paid the price, fair and square," is not such a bad epitaph.

The mistaken modern liberal notion that the issue of capital punishment concerns primarily the rights of the individual criminal, is deeply defective, and most certainly creates a climate for heinous crime by implying that society has no transcendent claim to equity; in fact has a lesser claim against the murderer than he made against his victim.

False mercy can never produce a cohesive people, nor a truly merciful one, because it makes us accomplices in the undermining of basic justice. In time, institutionalized injustice will convert a happy national home into a motel full of frightened, disconnected egos, from sea unto sea.

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