

## THE DEATH PENALTY

Abolition means more than not executing; it means training society in the habit of not killing or seeking violent solutions to problems. Only this training, universally adopted, can save our planet from the devastation of war and the atom bomb.

The existence of Amnesty International, together with the fact that United Nations seeks to move itself, however slowly, towards achieving abolition, seems to prove that humanity knows which direction it must take.

The Amnesty Report on the Death Penalty (1979), Chapter II, The Death Penalty in International Law and Organization, states, "Since most countries retain the death penalty for certain crimes, it is not surprising that international law does not prohibit its use. What may cause surprise is that, as recently as 1971, no less a body than the General Assembly of the United Nations affirmed "the desirability of abolishing (capital) punishment in all countries". (Resolution 2857 (XXC I) of 20 December 1971.

Amnesty found it significant that the United Nations Covenant, which came into force on 23 March 1976, and to which 47 countries were then party, refers to capital punishment in the context of the right to life and also treats it as something transitory, pending abolition, in its article 6, which states, "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant".

On a less hopeful note is the observation in the Stockholm Declaration (which arose out of the Amnesty International Conference in Stockholm in December 1977 which marked the beginning of works on a world-wide scale for the abolition of the death penalty) "The death penalty is increasingly taking the form of unexplained disappearances, extra-judicial executions and political murders".

Nevertheless, looking at history on a larger scale, one acknowledges the truth of Barend van Niekerk's comment: "The history of the death penalty is the history of the movement to have it abolished. Capital punishment has been with mankind since the dawn of history and a study of its historical evolution involves primarily a study of endeavours to have its application limited or excluded".

Unfortunately progress in any humanitarian direction seems to be bound up with economics; for historians have shown that gentler, saner, more constructive attitudes to the problems of society occur first in the more prosperous and settled communities. Studying history from the point of view of the rise and fall of personal freedom, Lord Acton concluded, "Liberty is the delicate fruit of a mature civilization" and indeed the story of abolition follows this pattern. It is the Western countries that have given the lead, and it is the equipment of peace and prosperity that seems to have enabled them to do so. It is significant that the less settled European countries have lagged behind the others, and Greece and Spain remain the only non-communist European states where the death penalty exists (but is seldom carried out).

/If ...

If peace and prosperity are the likely base for abolition, one wonders how one can expect an uneasy society like ours even to consider abolishing the death penalty: and indeed it certainly doesn't consider it. It is not surprising that our country leads the Western world in judicial execution. Whites believe themselves threatened by a total onslaught. The black and white public are scared of crime in general and believe matters would be worse if there were no capital punishment. This belief in the death penalty as the protector of a troubled society has deep historical roots (though virtually no historical justification).

This would seem to make the task of abolitionists here almost impossible. Faced with a public that does not seem disconcerted by over 100 executions a year since 1977 or by the fact that multiple hangings now take place, faced also with the future prospect of an increase in statutory offences which carry the death penalty, organisations like ours, whose basic interest is in civil rights, tend to become inert with the hopelessness of the task.

Perhaps the advice of Amnesty International and the example of Barend van Niekerk point the way.

In December 1979 Amnesty International wrote to our President, who was then Sheena Duncan, "Amnesty International hopes sincerely that you share our concern about the use of the death penalty. We hope also that you will use all appropriate means to persuade members of Government and other relevant authorities of the need to achieve the total abolition of the death penalty in SA. As a first step in that direction, we believe that the Government of SA should be encouraged to advise the State President to make much greater use of the powers of clemency". What Amnesty is pointing out is that abolition is a slow process, and one would agree that a reformist line of action is dictated by the lessons of history - and also the example of Barend van Niekerk. What Barend van Niekerk did was to inject blind energy into the task. Determinedly, he used his intellect and his considerable ability to write and talk persuasively over a concentrated period in the late 60s, and his achievement was a marked drop in the execution rate in the early 70s. Between 1968 and 1971 the annual number of executions had climbed to 80 and over. In the years 1971-76 executions dropped to between 43 and 60 per annum. As the interest that he had aroused began to fade, the execution rate began to climb again, with 71 executions in 1976-7 and over a hundred every year since then, with 148 taking place in the statistical year 1978-9. (Figures from Ellison Kahn, Law Journal Vol 98 part III Aug 1981).

South Africa's claim to be a Western democracy is important because the claim in itself educates the public to think, albeit imperfectly and superficially, in the democratic tradition. Our hypocrisy at least involves the admission of a standard, to which the government binds itself by paying it lip service: and this provides reformers with important leverage, which Barend van Niekerk used: "The abolition of the death penalty is, all said, primarily a moral question ... and it remains to be seen whether South Africans, and especially those leading them, who

so often vaunt their moral characteristics, will rise to the occasion in abolishing an institution which contradicts their morality and sullies their law". He wrote also, "It is, after all, in his attachment to certain ideals and sentimental values, especially when they relate to the dignity of man, that Western man has, in his better moments, distinguished himself from his counterparts elsewhere on this planet. By questioning and ultimately abolishing the death penalty, South Africa will strike a telling blow in the defence of the values of the civilization it so often seeks to represent on this continent".

The Black Sash is a small organisation that has to react to many urgent issues in our society all at once - in particular the crises brought about by the pass laws and resettlement. For this reason we are unlikely to match Barend van Niekerk's energy in any one year. But we could write and speak more often on the subject, especially in answer to letters in the press. A routine death penalty section in each annual regional report might be a useful discipline.

This fact paper is not a scholarly exercise, but is just a summary of readily available abolitionist arguments which might help members to play their part in the debate whenever opportunity arises. The sources I have used were all published some time ago and so facts and figures that are quoted do not take account of recent trends. I have relied on The Amnesty International Report of 1979, John Dugard's Human Rights and the South African Legal Order published in 1978, "Hanged by the Neck" by Arthur Koestler and C H Rolf published in 1961, Christopher Hibbert's "The Roots of Evil" and Barend van Niekerk's articles in the Law Journal of 1969 and 1970.

#### POPULAR DEMAND

Retentionist letters to the press often claim that because of popular demand, democratic states are obliged either to retain or re-impose the death penalty.

Both in England and SA this argument has been reinforced by judges and public representatives who have steadfastly believed in the validity of the popular demand. See Appendix III.

But popular demand, though often creative, is also alarmingly influenced by popular prejudice. There are conflicting strains within our heritage: on one hand there is the cumulative effect of our rational, humanist literature; on the other the strong influence of irrational traditional belief.

Koestler wrote: "This belief in the irreplaceable deterrent value of the death penalty has been proved to be a superstition by the long and patient inquiries of the Parliamentary Select Committee of 1930 and the Royal Commission on Capital Punishment of 1949, yet it pops up again and again. Like all superstitions, it has the nature of a jack-in-the-box:

however often you hit it over the head with facts and statistics, it will solemnly pop up again, because the hidden spring inside it is the unconscious and irrational power of traditional belief".

Also "Public opinion is still the strongest passive support of the hang-hards. The main reasons for this are ignorance, traditional prejudices and suppressed cruelty."

In acknowledging that a substantial portion of public opinion in any given country is inclined to favour capital punishment, we should remember that this is not necessarily, now or in the past, overwhelmingly so. In England dislike of capital punishment was the basis of each successive move away from it. (See end of historical section in Appendix III).

Koestler wrote, "In 1938 a Gallup poll on the question whether the death penalty should be maintained or not showed 50 per cent "ayes" in favour of hanging and 50 per cent "nays" and "don't knows". In 1947 there were 68 per cent in favour of hanging. In 1955 65 per cent voted against the death penalty. Such wild fluctuations of public opinion are unusual in a country where the floating vote amounts only to a small fraction of the total, and general elections are decided by narrow margins.

There is, no doubt, a steady, gradual increase in the number of people who favour a more humane administration of the law; but this slowly mounting tide does not account for the violent gales which blow now in one direction, now in the other. When the vision of the gibbet appears on the nation's horizon, opinion swings and twists like the body suspended from it; eyes bulge and reason is strangled. If the last victim happens to arouse pity up go the "nays" of mercy like a flight of doves; if he is a cool customer like Christie, up go the "ayes" like a swarm of vultures. "This is not a dignified or desirable state of affairs".

Popular demand, made up of the conflicting strains of humanist tradition and irrational belief, fluctuating and unreliable as it inevitably must be, perhaps expresses itself most creatively within the ponderous disciplines of parliamentary democracy. Elected representatives in England, left free to lead and to respond to the complexities and responsibilities of office, have been able to override popular demand for the return of the death penalty and the public has not felt sufficiently strongly to make this an electoral priority. Left and right wing politicians who currently demand more direct popular involvement in government should perhaps be warned by the history of the cruelties inflicted by popular prejudice.

#### DETERRENCE AND RETRIBUTION

The common argument in favour of the death penalty is the belief in its deterrent and retributive value. This argument was vividly presented in a recent letter to the Star (C J M Northam, 24.7.81).

/"Your ...

"Your editorial on hanging made me want to puke. Nowhere is there any indication that you recognise that people condemned to death have been convicted of violent crime ... nowhere is there a word of sympathy for their victims and their innocent, still-suffering families".

The classic answer to this was provided by a prison governor, writing some years ago in the Weekly Guardian:

"I am more afraid, and all of us should be more afraid, of those people who cry for death and blood and pain for criminals than I am of criminals themselves - and I have known thousands of criminals. The violence of the respectable burgess is the most terrifying of all - and the most destructive of all".

One might expect any retentionist, reading these words, to blush with shame and never again open his mouth in favour of any cruel punishment. But this doesn't happen. The violence of ordinary "respectable" citizens is bolstered by our heritage of traditional belief.

One has to consider the validity of the deterrent argument but also the following:

1. Obviously society needs to be protected from the results of criminal behaviour, but society possibly has more to fear from those who favour barbarous forms of punishment, who are many, and whose influence bolsters the vicious circle of institutionalised violence, than it has to fear from murderers, who are few, and who have no constituency.
2. Most individual acts of crime stem from the injustices and imbalances that cause poverty, overcrowding and hopelessness, or from violent psychopaths and schizophrenics whose malady society does not yet fully understand. (See the section on the nature of murderers).
3. "Respectable" institutionalised violence in SA causes suffering on a far larger scale than individual acts of crime can ever do. Countless people are punished without trial through detention, banning and banishment and 46 have died in detention. The pass laws cause unrelieved suffering to the majority of South Africans. Over 2½ million people have suffered forced removal from homes and livelihoods under the Government's resettlement schemes, "Black Spot" removals and the Group Areas Act. They, too, have innocent, still-suffering families who, incidentally, are the main victims of violence in the overcrowded ghettos in which they are forced to live.
4. In any given week in the South African press one can read of violence, beatings up and shootings that have resulted in death but have not been visited with the death penalty: which means our society already tolerates a vast amount of violence without recourse to the death penalty, or even very severe punishment. As we seem to hang only a small portion of the perpetrators of violent action which results

in death, why hang anyone at all? Moreover, hanging seems to have no influence on the increasing violence in our society.

### Retribution and Victims

In his law journal article Barend van Niekerk claims "experience in England, however, suggests that very often the murdered person's relatives do not desire a further taking of a life."

1. One would imagine that those who oppose the death penalty, and who favour humane approaches to the problems of violent crimes, would be far more likely to sympathise constructively with its victims (and indeed with all society's victims) than those whose temperaments lead them to concentrate on retribution rather than on the causes of crime.
2. Koestler: "The only people who have so far publicly urged the adoption of a scheme to compensate victims of crime are people who wish to see the death penalty abolished. Those who say that the abolitionist always forgets the victim are likely to be those who would resist the small addition to the National Insurance contribution that would enable victims to be compensated".
3. Letter quoted in the Koestler/Rolph book from a mother of a girl who was murdered in California in 1960:

"I cannot believe that capital punishment is a solution - to abolish murder by murdering, an endless chain of murdering. When I heard that my daughter's murderer was not to be executed, my first reaction was immense relief from an additional torment: the usual catastrophe, breeding more catastrophe, was to be stopped - it might be possible to turn the bad into good. I felt that this man, the victim of a terrible sickness, of a demon over which he had no control, might even help to establish the reasons that caused his insanity and to find a cure for it. Maybe he became what he is because of unnameable humiliations and rejection. To become useful would be a way to cure him. Neither those seven brave women of the jury nor any other women would have cause to fear him after twelve years.

"My daughter was against capital punishment. When she was eight years old she came home from school one day and told me a little boy had thrown a glass of water over her. 'And what did you do?' I asked her. 'At first', she said, 'I wanted to do the same to him, but I suddenly saw myself doing what he did ... He would have won.' As she grew up, this idea grew into a desire to help the destroyer".

### Deterrence - Factual basis

"One would expect, applying rules of logic and charity, that with such a drastic and final punishment as the death

/penalty ...

penalty the onus of proving its efficacy should be on the retentionists; however, except for blind affirmations of an almost mystical belief in the efficacy of capital punishment there is little, if indeed any, indication that retentionists have discharged - or even attempted to discharge - the onus".

Barend van Niekerk

The findings of the 1953 Royal Commission report are, according to Barend van Niekerk, "the most profound official study of every facet of the problem of the death penalty ever made anywhere in the world".

The Commission concluded: "All we can say is that the deterrent value of punishment in general is probably liable to be exaggerated, and the effect of capital punishment specially so because of its drastic and sensational character". An interesting background to this conclusion is the evidence of the Royal Commission given by the then world authority on the significance of murder statistics and their probable inferences, Professor Thorsten Sellin of the University of Pennsylvania:

"We cannot conclude from statistics that capital punishment has no deterrent effect?"

"No, there is no such conclusion".

"But can we not conclude that if it has a deterrent effect it must be rather small?"

"I can make no such conclusion, because I can find no answer one way or another in these data. It is impossible to draw any inference, from the material that is in my possession, that there is any relationship between a large number of executions, small number of executions, no executions, and what happens to the murder rates".

"I think you have already agreed that capital punishment cannot, on the basis of your figures, be exercising an overwhelmingly deterrent effect?"

"That is correct".

"But you would not like to go further than that?"

"No."

Police constables, however, specifically in England and America, have remained convinced of the deterrent value of capital punishment, especially in relation to their own safety as policemen. But Professor Sellin, after exhaustive research, concluded in evidence to the Canadian parliamentary committee: "The claim that if data could be secured they would show that more police are killed in abolition States than in Capital punishment states is unfounded. On the whole the abolition States appear to have fewer killings, but the differences are small. If this is the argument upon which the police rest their opposition to the abolition of capital punishment it must be concluded that it lacks any factual basis".

The 1949 Royal Commission came also to this conclusion: "The penalty of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of

/punishment ...

punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective, and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent forces of the death penalty."

#### NATURE OF MURDERERS - NOT A CRIMINAL CLASS

Koestler compiled a complete record of all murderers executed in the eleven years 1949-1960. It is fascinating reading, and a strong argument in favour of abolition. In Appendix I I have quoted all the cases recorded in the Koestler/Rolph book covering the period from 1949-50 to give you an idea of the kind of person who was executed. Koestler/Rolph concluded: "It is a wretched parade, this ghostly army of lame dogs and lunatics whom we put to death in those eleven years. The record confirms the statement by Sir John Macdonell, based on the statistics of 1885-1905, and endorsed by the Royal Commission fifty years later, that murder 'is not generally the crime of the so-called criminal classes, but is in most cases rather an incident in miserable lives'".

Koestler writes: "Every analysis of the motive and circumstances under which the crime was committed shows the extreme rarity of the cold-blooded type of murder. Half a century ago, Sir John Macdonell, Master of the Supreme Court, analysed such criminal statistics as there were from 1886 to 1905 and found the following result: 90 per cent of the murders were committed by men, and nearly two thirds of their victims were their wives, mistresses or sweethearts. ... Approximately 30 per cent of the murders were caused by drink, quarrels and violent rage, another 40 per cent by jealousy, intrigues and sexual motives, and only 10 per cent by financial motives. Sir John Macdonell concludes his survey in the following words: "I hesitate to draw any conclusions from imperfect data as to matters of great complexity, but I am inclined to think that this crime is not generally the crime of the so-called criminal classes but is in most cases rather an incident in miserable lives in which disputes, quarrels, angry words and blows are common". Half a century later, the Royal Commission examined the statistics of the years 1900-49 and came to the conclusion that they "confirm Sir John Macdonell's statement that murder is not in general a crime of the so-called criminal classes".

#### THE DANGER TO SOCIETY OF RELEASED MURDERERS (Facts not up to date)

Evidence from Royal Commission 1953:

In Queensland and New Zealand, both abolitionist during the period under review by the Commission: only one case known of a reprieved man attempting murder in the last fifty years.

In Europe, the Royal Commission's inquiry embraced six countries: Belgium, Denmark, the Netherlands, Norway, Sweden and Switzerland. "In these 6 countries altogether six

/convicted ...



convicted murderers have committed crimes of violence after their release in the course of the last thirty years (two in Belgium and four in Denmark).

Koestler concluded: "These facts are so amazing and contrary to public belief that they call for some explanation. It is partly contained in the statements of the prison governors and Home Office experts already quoted: namely, that with rare exception, murder is not a crime of the criminal classes, and that the average murderer is not an 'enemy of society' in the broad sense. This general statement was borne out by the statistics on the motives and circumstances of murder. It was confirmed by the experience of abolitionist countries which show that released murderers are less apt to relapse into crime than other offenders. Broadly speaking, it boils down to this: that the vast majority of murderers are either 'crazy' in the elastic, non-legal sense of the word, or momentarily 'crazed'. A normal person in a normal state of mind just doesn't commit murder. Hence murderers are, by and large, either mentally abnormal, or acting under abnormal circumstances. The former belong not to prison but to a mental institution; the latter are easier to reform than any other type of criminal.

There remain the rare exceptions - the Christies and Haighs who, in all likelihood, cannot be reformed and would have to be kept safely locked away to the end of their natural lives. But these 'monsters', who so much agitate public imagination, form such a small percentage as to be almost negligible as a social problem. Moreover, they do not affect the question we are discussing - life imprisonment as an alternative to the death penalty - because they do not belong to prison but to an institution. The Royal Commission says about them: 'We agree with the Home Office that any convicted murderers whom it would be unsafe ever to release are likely to be in the category of the mentally abnormal'".

However, recent press reports in England indicate an increasing preoccupation with the problem of released murderers killing again and perhaps there is a change in the patterns quoted above: but this is surely a problem for psychiatrists who have to decide whether or not release is advisable.

### COST

The cost to the state of keeping convicted criminals in prison for life is often put forward as an argument in favour of the death penalty:

1. In western welfare states where abolition has by and large occurred, the state has long since assumed civilised responsibility for its handicapped citizens - and in this category murderers would involve a tiny fraction of any given national budget. Koestler/Rolph pointed out: "The practical consequences of abolition would in fact hardly be felt or noticed by the country. The

/cessation ...

cessation of the death penalty would simply mean (taking the current consequences of the 1957 Homicide Act) that on an average five persons per year would be added to the British prison population. Even the Home Office, traditionally opposed to abolition, agrees that these people 'would not be likely to give any exceptional trouble to prison officers'."

2. In any case, it seems an odd argument; to justify the extreme cruelty of execution on the grounds that this is the cheapest way to deal with murderers.
3. Execution carries hidden costs to society discussed in the next section on the damage done to society by the imposition of the death penalty.

#### THE DAMAGE DONE TO SOCIETY BY THE IMPOSITION OF THE DEATH PENALTY

One needs to balance the unproved advantages of the death penalty against the damage done to society by the morbid influence of judicial killing.

One should consider whether the eerie act of retribution by death does not increase rather than diminish society's problems; for it surely teaches the public to think in terms of violent and barbaric solutions rather than concentrating on constructive, preventative measures.

In 1764 the Italian humanist and reformer Cesare Beccaria wrote that in the same proportion as punishments become more cruel "human minds harden, adjusting themselves, like fluids, to the level of the objects round them". He pointed out that legal barbarity begets common barbarity, "The same spirit of ferocity that guides the hand of the legislature having guided also that of the patricide and assassin".

Similarly in the early 19th Century, Samuel Romilly expressed the same belief: that cruel punishments have an inevitable tendency to produce cruelty in people and that the image of the gallows appealed to their unconscious sadism.

One has to consider the damage done by the apparatus of execution and to those who are intimately involved (prison warders, hangmen, doctors) and the rippling effect through their friends and relatives. Whether these people react in horror, or whether their sadism is encouraged, the effect must be both profound and damaging.

The morbidity of public excitement at times of sensational murder trials and executions can only be harmful.

#### CRUELTY

The gruesome cruelties of execution procedures (to say nothing of multiple execution procedures) can surely be taken as read.

There is a vast amount of literature on the subject.

/THE ...

THE ARGUMENT FOR PREVENTION RATHER THAN PUNISHMENT

The conclusions in Christopher Hibbert's social history of crime and punishment "The Roots of Evil" are useful:

"It may well be that only one in every four crimes is ever traced to the culprit and those who enjoy the highest chances of impunity are the ones who have reached the top of their procession. Crime for these men does, in fact, pay. 'The great thing', Ferri (Italian author of Sociologia Criminale 1929-30) was surely right in thinking, 'is to be convinced that, for social defence against crime, as for the moral election of the masses of men, the least measure of progress with reforms which prevent crime is a hundred times more useful and profitable than the publication of an entire penal code'.

"It is, of course, inept to make extravagant claims for modern reformative techniques and psychological treatment. Crime will always be with us. But at least these techniques and this treatment offer the best chance - indeed, perhaps, the only remaining chance - of combating it in a civilized society; just as an increased, better equipped, better trained, and better paid police force offers the one sure chance of reducing the numbers of active, professional criminals who continue to remain at large.

"It is<sup>as</sup> true as it was when Beccaria wrote his great book that the solution lies not in making punishments more severe, but in making them more certain and in relating them to each individual criminal, so that if he is reformable he may be reformed.

"To devise ways of achieving these objects, to learn from the lessons of history that cruel punishments do not reduce the amount of crime but even tend to extend it, and that to punish criminals with any severity at all without attempting either to understand them or to change the soil which continues to produce them is dangerous as it is short-sighted, to understand that punishment for its own sake is evil and that there are germs of evil in the best of us and seeds of good in the worst, to recognise that there are no cheap or quick solutions to the problem of crime which has deep and intractable roots running beneath the whole surface of life, to encourage studies which may lead to an explanation of criminal conduct, these should be the endeavours, the aspirations, and hopes of the future".

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APPENDIX I

PATTERNS OF MURDER

KOESTLER/ROLPH

1949

1. MARGARET ALLEN, 43, killed in a quarrel an elderly woman friend. The judge described the act as "senseless, unjustified, and purposeless". Defence: insanity.

/Allen ...

Allen was the twentieth child of a family of twenty-two. At 29 she went to a hospital, afterwards said that she had had an operation which changed her sex, and had worn men's clothes ever since. After her execution Chaplain Walker, of Strangeways, resigned from the prison service. Hanged on 12 January 1949.

2. GEORGE SEMINI, 24, a Maltese miner, inflicted a fatal knife wound in a fight against three men. One of the three had made an offensive remark about Semini's girl-friend as they walked past. He had a previous record of violence. Defence: provocation and 'chance medley'. In rejecting Semini's appeal the Lord Chief Justice invoked the test of 'the reasonable man' in discussing provocation. Hanged on 27 January 1949.
3. JAMES FARRELL, 18, killed his girl-friend, aged 14. Defence: insanity. Farrell's mother had been in a mental home for the past three and a half years. Hanged on 3 March 1949.
4. KENNETH STRICKSON, 21, killed Borstal matron Irene May Phillips, 56, in an alleged brainstorm. Defence: insanity. E.E.G. abnormal; medical officer of Lincoln Prison testified to 'abnormal parental and personal psychopathic and epileptic history'. Father 'a lunatic' (according to counsel), mother went off with another man when Strickson was twelve months old; brought up by grandmother and in orphanage. Hanged on 22 March 1949.
5. (R.M.) HARRY LEWIS, 21, of no fixed address, a small-time burglar, entered through an open window the flat of cartoonist Michaelson. Surprised by victim, he knocked him down with a steel chair. Lewis was unarmed. Michaelson died the next day. Hanged on 21 April 1949.
6. BERNARD COOPER, 49, strangled his wife allegedly because she accused him of continuing to carry on improper relations with his daughter, aged 14 (which he admitted, but said he had stopped), and constantly urged him to let himself be castrated. Hanged on 18 May 1949.
7. DENNIS NEVILLE, 22, labourer, killed his girl-friend of 21 after she told him she was with child by another man. Discharged from the Army with 20 per cent disability pension because of 'anxiety state of psycho-neurosis'. After his discharge his father was killed in a brawl and his brother killed in action. Two defence psychiatrists testified to schizophrenia. Hanged on 2 June 1949.
8. SIDNEY CHAMBERLAIN, 32, lorry-driver, married, had been associating with a girl of 15; when his wife and the girl's parents objected he strangled her, allegedly at her own request, intending to commit suicide. Twice refused legal aid. Defence: insanity. Medical evidence for defence put his mental age at 11, medical evidence for prosecution put it at 12. Hanged on 28 July 1949.

9. (S.R.M.) REX HARVEY JONES, 22, Rhondda Valley miner, strangled his girl-friend of 20 on a Welsh mountainside after intimacy. He said he had drunk seven pints of beer. He called the police and led them to the body. He had an exemplary character. Mr Justice Croom-Johnson, in summing up: 'You have to steel your hearts against good character and steel your hearts in order to see that justice is done, not merely to the individual, but for the good of all citizens.' Hanged on 4 August 1949.
10. ROBERT MacKINTOSH, 21, steel worker, strangled his girl-friend of 16. Pleaded mental blackout because "since Egypt and Palestine not the same person as before". Hanged on 4 August 1949.
11. JOHN GEORGE HAIGH, 39, the "acid-bath" murderer. Sir David Maxwell Fyfe, for the defence, quoting the testimony of Dr Yellowlees, described him as a classic case of paranoia, acting under the delusion that a divine and mystic force drove him to drink the blood of his victims and his own urine. Hanged on 10 August 1949.
12. WILLIAM J DAVIES, 31, a waiter, lived with a waitress for four years. After a jealous quarrel he attacked and killed her with a knife in the cafe where she worked. Hanged on 16 August 1949.
13. TIMOTHY EVANS, 25, lorry driver, illiterate and mentally backward, charged with murdering his child. Evans's counsel accused prosecution witness Christie of murdering Mrs Evans and the child. (Christie was later found to have murdered seven women in circumstances identical with those of Mrs Evans's death; the probability that he killed Evans's child too, because its presence was inimical to his own defence, is now almost universally accepted.) Hanged on 8 November 1949.
14. (S.R.M.) BENJAMIN ROBERTS, 23, a miner, found his girl-friend in the arms of another man. Shot her, then shot himself in the head with a double-barrelled sporting gun. Was nursed back to life and hanged on 14 December 1949.
15. JOHN WILSON, 26, a Durham miner, strangled his girl-friend in a cornfield, then confessed immediately to his father. Defence: provocation. Hanged on 14 December 1949.
16. E. S. COUZINS, 49, a caretaker, shot his woman friend's son-in-law because the victim 'made trouble between them', then cut the victim's throat and his own throat. Defence: insanity. Hanged on 30 December 1949.

1950

17. JAMES FRANK RIVETT, 21, labourer, strangled a schoolgirl aged 17, with whom he had been intimate for several years, then gave himself up to the police. He was tried at Suffolk Assizes on 20 January 1950. Counsel for the Crown raised the issue of Rivett's fitness to plead.

/Dr ...

Dr Calder, a psychiatrist, and Dr Basil Tracey, medical officer at Norwich Prison, both said Rivett was certifiably insane. The Judge, Mr Justice, Stable, told the Jury it was for them to decide, not the doctors. Hanged on 8 March 1950.

18. GEORGE KELLY, 27, and his friend Connolly, 26, were jointly charged with having, in the course of a planned robbery in a cinema in Liverpool, killed the manager by revolver shots. In the affray the assistant manager was also shot to death. Kelly had a long criminal record for assault, larceny, and receiving stolen property. He denied the charge. The further developments of the case were summed up in a memorandum submitted by the Muir Society, a Scottish lawyers' organisation for penal reform, to the Royal Commission in March 1950: "After a trial lasting thirteen days the Jury disagreed and separate trials were ordered. Kelly, after a second trial lasting six days, was sentenced to death. When Connolly was tried a second time for the murder of Thomas, the prosecution offered no evidence on that charge, and on the direction of the Judge the Jury returned a formal verdict of not guilty ...

"This society desires to express very bluntly the view that a criminal system which permits such procedure is a disgrace to a civilized country. To require an accused person to undergo such an ordeal a second time is unpardonable cruelty; not can it be overlooked that it may seriously prejudice the fairness of the second trial. It was not improbable that jurors in the second trial would have read accounts, both condensed and misleading, of the first trial, and have formed opinions without seeing witnesses". Hanged on 28 March 1950.

19. PIOTR MAKSIMOWSKI, 33, a refuse collector in a Polish settlement camp in Buckinghamshire, had lived for five months with a woman when she confessed that she was married, with two children. They made a suicide pact; he cut her wrists, then cut his own wrists, and went to the police station 'dishevelled and obviously distraught and with his shoes on the wrong feet'. Victim had no injury except wrist cuts, which could only have been inflicted with her consent. He refused legal aid, stating that he wanted to die. When sentenced to death he asked through the court interpreter whether he could be shot instead of hanged. Hanged on 29 March 1950.
20. WALTER SHARPE, 20, apprentice, together with Gordon Lannen, 17, intended to burgle Abraham Harry Levine's watch-repair shop in Leeds. Levine resisted, Lannen hit him on the head with his pistol and Sharpe shot him, alleging it was by accident. Lannen reprieved because under 18, Sharpe hanged on 30 March 1950.
21. DANIEL RAVEN, 23, advertising agent, brutally murdered his parents-in-law, Leopold and Esther Goodman. He pleaded not guilty, denying the act, but evidence of insanity was published and submitted to the Home Office by his solicitors ... after ...

after the trial. Raven had joined the R.A.F. at 16 and was the only survivor of a plane crash in which the remainder of the crew were killed. Discharged from the R.A.F. because of 'severe anxiety neurosis'. Dr M Mackenzie, who previously treated Raven, made a statutory declaration that he suffered from blackouts and brainstorms. Dr Denis Hill, of the London University Institute of Psychology, carried out E.E.G. tests in the presence of Home Office specialists, who reported (according to the solicitors' statement) that the prisoner was suffering from idiopathic epilepsy.

Sixteen thousand signatures on petition for reprieve.  
Hanged on 6 July 1950.

22 and 23. ROMAN REDEL and (S.R.M.) ZBIGNIEW GOWER, two Polish labourers, both 40, held up a bank in Bristol. In the subsequent chase Robert Taylor, a judo expert, grappled with Redel, who held a revolver, and was shot dead. Gower was unarmed, but sentenced on grounds of joint responsibility. Strong recommendation to mercy for Gower. Both executed on 7 July 1950.

24. DONALD DOUGLAS ATWELL, 24, gas worker, battered to death Lily Irene Palmer, 26, unemployed factory hand. She had been on the waiting list for an institution for mental defectives for the past three years. Atwell met her in a cinema, took her next day to the fields, where she allegedly told him that she had been 'out at midday with another chap. I got up and as I did so she said to me, "You slimy bastard, bringing me out here for nothing"'. He then went berserk. Defence: insanity. Dr C R Gibson, Bath police surgeon, said Atwell was mentally unstable but not certifiable, and lost control of himself because of the woman's insults.

Atwell never knew his parents, was brought up by his grandparents believing them to be his parents, and his aunts and uncles to be his sisters and brothers. Hanged on 13 July 1950.

25. JOHN WALKER, 48, labourer, killed Francis Wilson allegedly because Wilson had been consistently cruel to his wife, with whom Walker had been having an affair for many years with Wilson's consent. Hanged on 13 July 1950.

26. (S.R.M.) ALBERT PRICE, 32, painter, murdered his wife, Gladys, with an axe and suffocated their two children in their sleep because 'his mind broke down' when after years of financial trouble they received notice of eviction and had nowhere to go. He then tried to commit suicide, but lacked courage.

Plea: Guilty but insane. Hanged on 16 August 1950. The Howard League for Penal Reform commented that the case raised an important question. The Judge had told the Jury that any recommendation to mercy would be forwarded. 'One does not know whether, if the Jury had

/known ...

known their recommendation was to be set aside, they might have taken another line'.

27. (S.R.M.) Two brothers, PAUL HARRIS, 28, and CLAUDE HARRIS, 30, fatally injured a man with bottles and kicks in a public-house brawl.  
Plea: provocation and self-defence. They were both sentenced to death.  
The two brothers and their families had been known as "the inseparable Harrises". On 27 October 1950, Claude and Paul, who shared the same condemned cell, were told that there would be no reprieve. Paul thereupon made a full confession which partially exculpated Claude. Claude's sentence was subsequently commuted; Paul was hanged, three days after the confession, on 30 October 1950.
28. FRANK GEORGE TURNAGE, 31, ship's engineer, confessed to the sex-murder of Mrs Julia Beesley, aged 78. Turnage insisted, against his counsel's advice, on pleading guilty, and was sentenced to death after a trial lasting seven minutes. Hanged on 14 November 1950.
29. NORMAN GOLDTHORPE, 40, a cook, strangled Emma Elizabeth Howe, a prostitute, 66, in Yarmouth, 'to keep faith with the woman he loved'.  
Dr Matheson, principal medical officer, Brixton Prison, and Dr Tracey, medical officer, Norwich Prison, as well as Goldthorpe's Army records, described him as a psychopathic personality 'with impulsiveness to self-injury or the injury of others'.  
Defence: insanity. Hanged on 24 November 1950.
30. JAMES HENRY CORBITT, 37, toolmaker, strangled his girl-friend. She was found in the bed of their hotel room with a five-letter word written on her forehead by Corbitt with a ball-pen.  
  
They had been having an affair for eighteen months (both married to others). His diary showed that the relation was pathological on both sides. Defence: insanity.  
Hanged on 28 November 1950.
31. EDWARD ISAAC WOODFIELD, 49, labourer, strangled a 65-year-old woman shopkeeper. No apparent motive. Described as 'timid, mild-mannered man'. Defence: insanity. When asked if he had anything to say as to why he should not be sentenced to death, he said, 'God knows best, sir'.  
  
Dr Gibson, R.U. Hospital, Bath, said he could not find any definite evidence of present insanity in Woodfield but 'I have been more unhappy about this case than about any other in which I was involved'. Hanged on 14 December 1950.
32. JAMES RONALD ROBERTSON, a Glasgow policeman, killed Catherine McCluskey by running her over in a stolen car. His defence was that he knocked her down by accident, then panicked because of stolen car, absence from his beat,

/and ...



and associating with the woman. Majority verdict. Case mentioned in Royal Commission Report, page 322. Hanged on 16 December 1950.

33. NICHOLAS PERSULIOUS CROSBY, 22, a hawker in Leeds, killed a girl of 19, after raping her. Hanged on 19 December 1950.

## APPENDIX II. THE SOUTH AFRICAN EXPERIENCE

See below

In 1947 the report of the Lansdown Commission, the first official investigation into penal and prison reform to take place in SA, stated "that the abolitionists have not made out a case which would justify a recommendation for amendment of the law in this country".

"It is common knowledge based on the experience of the courts that, in the mind of the underdeveloped Native but recently brought into contact with western civilization and ideas, the sanctity of human life is a matter of less concern than it would be to the western civilized man; and the influence of the fear of death on such a Native's mind may or may not be less than in the case of the average European. The force of deterrence is and must remain largely a matter of opinion and speculation, and no opinion in respect of it, individual or collective, can advance the solution of the question".

A minority report from Mrs A W Hoernle quoted Rev Dr H P Junod, who, as prison chaplain to many dozens of men sentenced to die, had more knowledge than anybody else in SA on the human issues involved in capital punishment, "I have not met one murderer in whom the assumed effect of the penalty of death operated at all. He said he believed that the murderer was too obsessed with his own cunning in avoiding detection to think of possible punishment by death". Mrs Hoernle reiterated the teaching of Beccaria and others, saying "that swift detection and sure, but not excessive, punishment are far the best deterrents of crime, where positive teachings have failed to make persons conform to the social code".

In 1969 Helen Suzman, in a private motion calling for the establishment of a commission of inquiry into the desirability or otherwise of abolishing capital punishment, said: "The idea that abolition is not possible because of our Non-White population, the so-called 'barbarous' 80 per cent, is widely held in SA. People fear that the abolition of the death penalty will result in thousands of Non-Whites, overcome by their primitive instincts, murdering us in our beds. Incidentally, I want to say that prosecution figures over a 10-year period show that Whites commit murder and rape on non-Whites at a rate four times greater than Non-Whites on Whites.

In his reply the Minister of Justice mentioned (1) the negligible public demand for abolition; (2) he detailed a few particularly gruesome murders in order to demonstrate the fallacy of abolition. He quoted some statements of various authorities to show that capital punishment was an effective deterrent and he briefly mentioned some experience with

### Note.

The Viljoen Commission: Gov. Notice 1854 of 18.10.74, specifically prohibited consideration of the death penalty.

/abolition ...

abolition elsewhere.

Barend van Niekerk commented: "As regards that part of the Minister's speech in which the details are furnished of a few particularly brutal murders, there is little that can be said. Almost by definition, abolitionists are no less horrified by such murders than the most ardent retentionist. The question is simply whether a dastardly crime can be expiated by the taking of a further life. The judicial killing of a perpetrator may for a moment be balm to a murdered man's family - experience in England, however, suggests that very often the murdered person's relatives do not desire a further taking of a life - but it can certainly not bring any meaningful relief. Abolitionists, on the other hand, have often propounded the plan that a kind of collective insurance should be instituted in order to bring relief to the dependants of a murdered person and that the murderer should be allowed by prison labour also to make some contribution. Whereas in other countries murderers are studied in order to prevent future murders, we in South Africa kill them off".

In any event, Helen Suzman's motion was overwhelmingly rejected when the United Party joined with the government and voted against it.

#### Hanging the Wrong Person

Van Niekerk: "There is no documented case to the writer's knowledge of a person's being executed in SA for another's crime, nor is there likely to be one. The vast majority of those ending their lives on the Pretoria scaffold do not hail from social groups in society which would have the means, the knowledge and the persistence to have an executed man's innocence established even if it were at all possible. The Rev Dr Junod, who as prison chaplain, saw more people in SA being led to the scaffold than any other outsider, was not convinced that a wrong man had never been convicted in SA. Certain documented instances in England, America and elsewhere of executions due to mistaken identity should always constitute a sober reminder of the terrible possibility of this happening also in our country, where so much of the evidence in capital cases is delivered by unsophisticated persons and often also through interpreters. Unless we assume the preposterous, viz our legal system has got some unknown factor which puts it on a different footing from other systems as regards the possibility of an execution in error, we must ashamedly accept that people in the past have paid and that people will continue to pay the supreme penalty for crimes they did not commit".

#### JUDGES.

Van Niekerk: "The only serving judge whose opposition in principle to capital punishment is on record is Mr Justice J D Cloete, who stated that he had 'no hesitation' in advocating the abolition of the death penalty in SA because if a person had made up his mind to commit a capital crime he would do so irrespective of the penalties involved. Capital punishment, Mr Justice Cloete added, did not act as a deterrent and even the

/most ...

most experienced judges could make grave mistakes in imposing it".

Barend van Niekerk commented: "On the other hand, there has never been any hesitation on the part of retentionist judges or retired judges to express their views".

#### CAPITAL OFFENCES

Dugard wrote: "Until 1958 there were three capital crimes: murder, treason, and rape. Only in the case of murder, where no extenuating circumstances were found to be present, was the death penalty mandatory. Since then eight new capital offences have been created, but in all these cases the court is given a discretion to impose sentence of death. The new capital crimes are robbery and housebreaking with aggravating circumstances (1958), sabotage (1962), receiving training that could further the objects of communism or advocating abroad economic or social change in South Africa by violent means through the aid of a foreign government or institution where the accused is a resident or former resident of South Africa (1963), kidnapping and childstealing (1965), and 'participation in terroristic activities' (1967).

"From the time of Union in 1910 until the end of 1975, 2 740 persons have been executed but more than half these executions have occurred during the past two decades."

#### Racial Factor

Dugard at p 127 says: "It is impossible to divorce the racial factor from the death penalty in South Africa. Of the 2 740 persons executed, less than 100, it is estimated, were white; no white has yet been hanged for the rape of a black; and only about six whites have been hanged for the murder of blacks. Conversely, blacks convicted of the murder or rape of whites are usually executed. Indeed Mr C R Swart (later State President from 1961 to 1967) once boasted that during his tenure of office as Minister of Justice not a single reprieve had been granted to a black sentenced to death for the rape of a white woman.

"Statistics can be misleading but it is difficult to explain the following statistics which emerged during the trial of Professor van Niekerk in 1970 - unless regard is had to the racial factor. From 1947 to 1969, 121 blacks were sentenced to death for rape (of whites) while only 3 whites were sentenced to this penalty for rape (of whites) during the same period. For this same period 288 whites were convicted of rape upon blacks and 844 blacks were convicted of rape upon whites. The 288 convictions of whites produced no death sentences, but the 844 convictions of blacks produced 121 death sentences for rape. According to counsel for Professor van Niekerk, these figures 'cry out for a thorough investigation of the racial aspects of the death sentence ... as it is difficult, if not impossible, to believe that the discrepancies in the imposition of the death sentences over all the years covered by the statistics can be explained by the supposition that, for example, all the rape cases in which

/Non-Whites ....

Non-Whites were sentenced to death were per se more serious than cases in which white persons were the accused, irrespective of the racial factor.

'A thorough investigation of this subject is obviously desirable but it is clear that the authorities will do their utmost to prevent such an inquiry from taking place.

"They are facts that must be faced in any consideration of the question whether to retain or to abolish the death penalty, and if the supreme penalty cannot be retained without discriminating against blacks, then this is an additional ground in favor of abolition. This hard truth has been squarely faced in the United States and in Furman v Georgia Justice Douglas gave high judicial blessing to this unfortunate truth. After examining studies which showed that blacks were more likely to be sentenced to death than whites, particularly where the crime charged was rape, he stated: 'In a Nation committed to equal protection of the law there is no permissible "caste" aspect of law enforcement. Yet we know that the discretion of judges and juries in imposing the death penalty enables the sentence to be selectively applied, feeding prejudices against the accused if he is poor and despised, and lacking political clout, or if he is a member of a suspect or unpopular minority, and saving those who by social position may be in a more protected position.' He therefore set aside the death penalty statutes before the court on the ground that '(t)hey are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on "cruel and unusual" punishment.'

"There are special features of the South African system that increase the possibility of error and discrimination in the application of the death penalty. Most persons charged with capital crimes are unable to afford counsel and are defended by young inexperienced advocates appointed by the trial court in cooperation with the Bar Council. Moreover, advocates appear alone without the customary assistance of an attorney in such cases. As a result, the legal assistance provided in capital cases is seldom up to the standard of legal defence in criminal proceedings where the accused is able to afford to instruct his lawyer of choice. In addition, most criminal trials require the services of an interpreter who interprets the testimony of witnesses from one of the African languages into English or Afrikaans. However good these interpreters may be it is inevitable that important nuances of language are sometimes lost in the process of interpretation, which may result in error."

#### THE LEGAL PROFESSION

Barend van Niekerk: "There is a clear duty upon lawyers to speak out unequivocally on any issue affecting the administration of justice, and the scientific value or moral defensibility of capital punishment in peace time in our age certainly constitutes such an issue. By taking a narrow view of its professional and ethical duties, the organised legal profession must surely in certain respects take a significant share of the blame for the

/continuance ...

continuance of outdated penological concepts in SA."

### APPENDIX III

#### THE BACKGROUND TO POPULAR PREJUDICE

To save myself time, I have pieced together the historical perspectives of Koestler/Rolph, Dugard and Van Niekerk. I have sometimes left out quotation marks but indicated source in the right-hand margin.

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#### KOESTLER/ROLPH

Medieval common law imposed the death penalty only on a few grave offences, such as murder, treason, arson and rape. Under the Tudors and Stuarts the law became more rigorous, but at the beginning of the eighteenth century there were as yet no more than 50 capital offences.

#### VAN NIEKERK

Towards the end of the eighteenth century capital punishment was in decline on the European continent, with Russia (1767) Austria (1781) and Tuscany (1786) successively completely abolishing it.

#### KOESTLER/ROLPH

"At the beginning of the nineteenth century in England, listing roughly 230 offences to be punished by death, the Bloody Code included capital punishment for the stealing of turnips, associating with gypsies, damaging a fishpond, writing threatening letters, impersonating out-pensioners at Greenwich Hospital, being found armed or disguised in a forest, park, or rabbit warren, cutting down a tree, poaching, forging, picking pockets, shop lifting, and so on." Sentences of death were passed on children as late as 1833, when a boy of nine was sentenced to hang for pushing a stick through a cracked shop window and pulling out printer's colour to the value of twopence, but was respited owing to public protest.

Samuel Rogers relates in his Table Talk that he saw "a cartload of young girls, in dresses of various colours, on their way to be executed in Tyburn". And Greville describes the trial of several young boys who were sentenced to death "to their excessive amazement", and broke into tears. He laconically remarks, "Never did I see boys cry so".

The development of the Bloody Code was simultaneous with, and largely caused by, the Industrial Revolution. The spreading of extreme poverty with its concomitants of prostitution, child labour, drunkenness and lawlessness, coincided with an unprecedented accumulation of wealth as an additional incentive to crime. All foreign visitors agreed that never before had the world seen such riches and splendour as displayed in London residences and shops - nor so many pick-pockets, burglars, and

/highwaymen ...

highwaymen ... It was this general feeling of insecurity, often verging on panic, which led to the enactment, by the dozen, of capital statutes, making any offence from poaching and stealing, from the value of one shilling upwards, punishable by death. And each statute branched out like a tree to cover any similar or related offences.

This process went on for over a hundred years, and was only brought to an end when Robert Peel, in 1829, created the modern police force.

Had that been done a century earlier, the whole shame and terror could have been avoided. The reason why it was not done was, paradoxically, the Englishman's love of freedom, and his dislike of regimentation: the fear that a regular police force, once established, would be used to curtail his individual and political freedom.

Koestler ironically remarks, "Faced by the choice between the cop and the hangman, England chose the hangman. He was a familiar figure from the past; the cop was a new-fangled innovation from foreign countries, and a much too dangerous experiment. We mention this not for curiosity's sake, but because it is directly relevant to the controversy of our day. The last ditch stand of the defenders of capital punishment is made precisely on the same issue as that which started the whole disaster; namely, that if hanging were abolished, the police would have to carry arms to cope with the emboldened criminal. But the point that interests us here is, once more, the powerful unconscious influence of tradition: up to this day, the idea of allowing cops to wear a revolver is more abhorrent to the Englishman's sensibilities than the continuance of hanging".

VAN NIEKERK

"The 19th Century saw both in England and on the Continent a sharp decline in capital punishment. In England capital crimes were reduced to fifteen by 1837. On the continent, Portugal abolished capital punishment in 1867 except for military crimes in time of war ... In 1848 the Frankfurt Parliament recommended the abolition of capital punishment, followed in 1870 by the Reichstag of the North German League. In both instances, however, these endeavours at abolition subsequently failed. In the United States during the same period concerted private moves were made to expunge death as punishment from the country's criminal law. These efforts were especially potent in the north-eastern states, where Michigan became the first State to abolish capital punishment in 1847".

The 20th Century is undoubtedly the century of abolition. Western Europe has for all practical purposes become an abolitionist continent in time of peace. Greece, Spain and Turkey retain but seldom use the death penalty. West Germany is one of the few countries where the death penalty has been abolished both in time of war and peace.

VAN NIEKERK

"The 'White' commonwealth countries have abolished it either de jure or de facto.

DUGARD

/The ...

The entire South American continent (with minor island exceptions such as Cuba and Haiti) are either de facto or de iure abolitionist. In England the 1953 report of the Royal Commission on Capital Punishment which concluded that there was no indication that capital punishment served any substantial purpose as a deterrent to capital crime, led to the provisional abolition of capital punishment in 1965. "has contributed immensely to making its continued application deeply suspect all over the world".

VAN NIEKERK

In the United States a ten year moratorium on the death penalty came to an end in 1977. However, the Supreme Court in 1976 declared the mandatory death penalty to be unconstitutional and the trial court is obliged to consider aggravating and mitigating circumstances before it passes sentence of death.

DUGARD

### THE ATTITUDE OF ENGLISH JUDGES

Koestler claimed "As a body the judges of England have, as far as historical evidence goes, at every crucial juncture exerted their influence in favour of maximum severity as against any humanitarian reform".

In this regard, his chapter "The Judges' View" makes fascinating reading. Here, for your interest, and to give you a brief insight into the background which provoked the above remarks, are a few excerpts:

KOESTLER/ROLPH

The movement for reform was led by Samuel Romilly, with little direct success: he committed suicide in 1818. If Romilly was St George, the dragon had two heads: Chief Justice Lord Ellenborough and Lord Chancellor Lord Eldon. Supported by their learned brethren of the King's Bench, by part of the Bishop's Bench, and by some noble fossils in the House of Lords, they opposed every reform of the statutes on the same grounds as those on which capital punishment has always been defended and is being defended today: that it is the only effective deterrent; that no alternative punishment is equally effective, that mitigation of the law is a dangerous experiment which would lead to an increase in crime, and that public opinion won't stand for it".

"Romilly's bill to abolish the death penalty for shoplifting to the value of five shillings and over was passed by the Commons and defeated by the Lords no less than six times between 1810 and 1832. During that time Chief Justice of the Court of Common Pleas, Lord Wynford stated, 'We do not wish the laws of England to be changed. He claimed he would vote for the Romilly Bill if it could be shown that a single individual had suffered under the existing law, and that the humanity of judges was proverbial. 'This, at a time when children from the age of seven upward were being publicly hanged". Lord Ellenborough, May 1810: "I am convinced, with the rest of the judges, that public expediency requires there should be no remission of the terror against this description of offenders. Repeal this law and see the contrast - no man can trust himself for an hour out of doors without the most

/alarming ...

alarming apprehensions that, on his return, every vestige of his property will be swept off by the hardened robber".

"In 1948, during the House of Lords debate on the suspension of capital punishment for a trial period of five years, Viscount Simon: "We have no right ... to risk an experiment which may put in jeopardy innocent human lives ... women who at this hour fear, as they never feared before, the knock at the door after it is dark".

"In the same debate, Lord Goddard: "It is a common reproach against judges (though I believe it is absolutely groundless) that they are - the word generally used - reactionary, and are always on the side of severity. It is not so. It is an idea that I think has been fostered by the historical fact that a great predecessor in my office, Lord Ellenborough, in the early days of the last century, was a bitter opponent of the reforms then suggested to make a great number of offences which were then capital, non-capital. I suppose that, to a large extent, he reflected the opinion of his time, and perhaps sufficient credit is not given to him, because at least he erred in good company. If your Lordships refer to the Parliamentary Debates of those days you will find that nearly the whole of the Bench of Bishops supported him".

Lord Goddard was defending capital punishment for murder in 1948 on the grounds (among others) that public opinion was in favour of it, and the passage referring to his "great predecessor" implied that Ellenborough was equally right in defending capital punishment for shoplifting etc because public opinion was in favour of it. The historic truth is, as we saw, the opposite. Ellenborough did not reflect the opinion of his time, but was defeated by it. Public opinion was reflected in the juries' refusals to convict, which put the Bloody Code out of action; in the flood of petitions from the calico printers, the jurors, the bankers, the Corporation of London; and lastly, by the Commons, who passed repeal bill after repeal bill which the Lords rejected - as they rejected in 1948 and 1956 the Commons' abolition bill.

APPENDIX IV

A CREED FOR ABOLITIONISTS.

KOESTLER/ROLPH

One should not deride what is sometimes called the 'emotional' condemnation of the death penalty, for the emotions or inherent feelings can sometimes be a sure guide to what is right. But the abolitionist case is complete on other grounds; and it may be convenient to have, in summarised form, a 'creed' which crystallises one's thoughts:

1. Every kind of punishment deters; but in the experience of abolitionist countries shows that the death penalty is neither a necessary nor a unique deterrent.
2. The death penalty is irremediable. When a mistake has been made - and it is known now that there have been mistakes - nothing can put it right.
3. The hangman is a disgrace to any civilised country.

/Doctors ...



Doctors (through the B M A) have made it clear that they would never take over the executioner's job by administering lethal injections. We depend, for our professional killers, on the type of person who voluntarily applies for the job of operating a rope and trapdoor.

4. Murder is largely committed by insane or psychopathic people, to whom the death penalty has little or no meaning.
5. Reliance on the death penalty discourages the reduction of crime which would follow an all-out attack on its social causes.
6. The death penalty forgoes all hope of reforming the offender.
7. Executions magnify the unwholesome news value of murder reports, leading to imitative crime.
8. This is the one public problem, above all, in which governments should lead the governed. 'The voice of the people' can be sane and rational, or irrationally impassioned when under the influence of demagoguery or sensationalism.
9. There are worse crimes than direct murder, yet we punish them with prison sentences of a few years' duration - and often we do not punish them at all: fraudulent conspiracies, for example, which often result in ruin and even premature deaths for many victims.
10. The few murderers who would have to be imprisoned for life - perhaps one a year - are certain to be the mentally dangerous types who would have to be placed in lifelong confinement sooner or later, whether they murdered or not.
11. The Old Testament doctrine 'an eye for an eye', etc, totally rejected by the New Testament, was in any event no more than a relic of a Babylonian law which prohibited the exaction of more than an eye for an eye. Even so, we do not commit indecent assaults on men convicted of arson; and whereas the murderer's victim meets his death in minutes or seconds, we take an average of five months to kill the murderer, playing with him all the time.
12. Abolition of the death penalty has never made any difference to the number of murders in any country.

JILL WENTZEL.