

CAPITAL PUNISHMENT IN GREAT BRITAIN: THEORIES CONCERNING ABOLITION

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As early as 450 B.C., records report the death penalty being used as criminal punishment in England. Though kings generally decided what type of punishment should be inflicted, those sentenced to death were most commonly thrown into a quagmire and left to die.¹ As the Middle Ages unfolded, the number of capital crimes increased, as did the cruelty of the punishment. It was not long until methods of burning, drawing and quartering, boiling, and hanging were used for commoners, while beheading, an honorable death, was left for the elite classes.²

Despite all the possible approaches, hanging replaced most other methods of capital punishment by 1547.³ This became the English tradition. For example, those executed at Tyburn in London were routinely paraded through the town, usually sitting on a coffin, wearing a shroud.⁴ Crowds gathered in the street to mock the condemned, and there were rarely fewer than three thousand present to watch the execution. With similar execution traditions developing around the country, public support of execution lasted well into the twentieth century.⁵ Yet, the death penalty was abolished in 1969. The reason England, having such strong tradition and public support behind capital punishment, voluntarily eliminated capital punishment from their penal code is still debated.

Four central theories, all centering around twentieth century occurrences, have been developed to offer a solution. First, scholars, such as Victor Bailey, conclude that the public developed sympathy for the condemned during the twentieth century and, as a result, pushed for abolition. Others believe that abolition resulted from a shift in

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¹ John Laurence, *A History of Capital Punishment* (Port Washington: Kennikat Press, 1932), 2.

² *Ibid.*, 6.

³ *Ibid.*, 8.

⁴ This London execution place was named after the Tyburn River. It is estimated that the public watched over 50,000 people executed there.

⁵ John Laurence, *A History of Capital Punishment*, 1777.

English penal philosophy after World War II. Another theory claims abolition is the result of the twentieth century Labour Party pushing for the issue in their newly formed platform. Finally, some reason it was a series of controversial trials in the mid 1900s that changed England's opinion on the death penalty.

All four of these theories provide significant information concerning the abolition of capital punishment in Britain, but none proves completely correct. Abolition was not won by a single set of twentieth century circumstances. Instead, the path to abolition was a two hundred year struggle against tradition and strong public opinion. Tom Phillips described the course of capital punishment in Great Britain as "a disease whose... symptoms slowly got better until a complete cure was effected in 1965."⁶ With roots in the eighteenth century, the cure was found by a series of select individuals and interest groups who met strong opposition but kept persistent until they accomplished their goal in 1969. By examining all the possible theories, it becomes obvious why the road to abolition was gradual development, not a twentieth century phenomenon.

Benevolent Sympathy for the Condemned

Some, including Professor Victor Bailey, claim that during the early and mid- twentieth century a majority of the public was "disturbed" and turned their support from the "barbarous and immoral" death penalty out of feelings of sympathy for the condemned.⁷ Evidence proves otherwise. The public was never fully supportive of abolition, and those who were rarely felt compassion for the criminal.

The early twentieth century Gallup polls provide evidence demonstrating that the majority of the public supported the use of the death penalty, before and after abolition. For instance, in November of 1938, fifty-five percent expressed they would not support abolition. Interestingly enough, as the year of abolition came closer, the numbers rose. A poll from March of 1953 said the use of the death penalty was acceptable to a seventy-three percent majority. As late as 1960, seventy-three percent of the public believed that abolishing the death penalty would increase the crime rate. When a five-year trial period for abolition drew to a close in 1968, a majority still supported capital punishment. A few years after abolition, in 1973, sixty-six percent still thought that death was an acceptable form of

⁶ Tom Phillips, "The Abolition of Capital Punishment in Great Britain," *Contemporary Review* 272 (February 1998), 1.

⁷ Victor Bailey, "The Shadow of the Gallows: The Death Penalty and the British Labour Government," *Law and History Review* 18 (Summer 2000), 313.

punishment.⁸ However, the public's opinion was never asked in the form of an official government referendum or vote. Executioner Albert Pierrepoint⁹ expressed in his autobiography that he "would not pretend that, ...in 1964, and for many years afterwards, a national referendum of the population of Great Britain would ever have cast a majority for the ending of the death penalty."¹⁰ In fact, there were at least five new applications every week from men and women to become executioners.¹¹

Those of the general public who did support a push for abolition were not always behind it for benevolent reasons. Many supporters were not concerned with the suffering of the condemned but expressed that death was no longer a successful deterrent.¹² Pierrepoint suggested that if capital punishment was a successful deterrent, he "might be expected to know." Instead, he witnessed "young lads and girls, working men, grandmothers" walk with courage to their death. He explained that death "did not deter them then, and it had not deterred them when they committed what they were convicted for."¹³ Many abolitionists stood behind this claim, producing evidence from other countries where the death penalty was already abolished. If these countries crime rates had gone anywhere, it was down. There obviously were more successful ways to deter a crime.¹⁴

In addition, pointing to the suicide of a public executioner in 1932, many were concerned for the mental well-being of the person performing the execution, not the condemned.¹⁵ Pierrepoint supported this by stating that he "sincerely hope[d] that no man is ever called upon to carry out another execution," due to the effects it had on him and his family.¹⁶

⁸ George Gallup, ed., *The Gallup International Public Opinion Polls: Great Britain, 1937- 1975* (New York: Random House, 1976), 11-1229.

⁹ The Pierrepoint name was represented in the office of executioner from 1900 to 1956, the most current being Albert Pierrepoint II. After resigning in 1956, he has claimed that, looking back, he did not support capital punishment, feeling it achieved nothing except revenge. Albert Pierrepoint, *Executioner, Pierrepoint* (London: Harrap, 1974), 8.

¹⁰ Ibid., 170.

¹¹ Ibid., 187.

¹² Tom Phillips, "The Abolition of Capital Punishment in Britain," 1.

¹³ Albert Pierrepoint, *Executioner, Pierrepoint*, 211.

¹⁴National Council for the Abolition of the Death Penalty, "Capital Punishment Should be Abolished," (London: privately printed, 1935) [database online]; available from <http://nationalarchives.gov.uk/>.

¹⁵Ibid.

¹⁶ Pierrepoint's father and uncle were both executioners and experienced emotional effects from their careers later in life. Albert Pierrepoint, *Executioner, Pierrepoint*, 210.

Despite the emotional impacts of the duty, executioners had their job down to a science. They calculated various human weights and sizes to perform the most humane drop possibly. Only a few on the record had not been performed absolutely perfectly.¹⁷ Because of this, few could make a strong argument that capital punishment was inhumane or barbaric. Death was efficient and instantaneous. This is not to say that compassionate arguments towards the criminal were not used. C.O.P.E.C. (Conference on Christian Political and Economic Citizenship) of 1924, held in Birmingham, refuted capital punishment by stating that "the business of the Christian Community is to redeem the offender." Nevertheless, these arguments were held by a minority population.

Shift in Penal Philosophy

Near the end of WWII, Britain had become "a laboratory of social engineering."¹⁸ Public ownership of at least one fifth of the economy left many believing this is when the real foundations of the welfare state were erected.¹⁹ Historian Ken Morgan agreed when he stated, "Not since the Washington of the early New Deal in 1933 had the governmental agencies in a democratic country been so caught up in experimentation and social advance." Consequently, many believed that the beginnings of criminal justice reform served as a primary part of the postwar transformation.²⁰ Actually, none of the efforts made during this era produced real effects on the push for abolition. If anything, the movement went backwards during this time.²¹

Postwar Britain was much less welcoming to penal reform than many let on. The atrocities of the war and the flood of postwar human rights activation did not alter any opinions of capital punishment in Great Britain; rather, it justified them. The Nuremberg Court, beginning November 20, 1945, sentenced twelve of the twenty-two on trial to death. Ten of these men were hanged, and public opinion held that they deserved it. For many, these and similar trials served as justification to a "retributive approach to indigenous murder."²² Consequently, attempts in 1947 and in years following to reintroduce the Criminal Justice Bill of 1938²³ failed, and no legislation concerning

¹⁷John Laurence, *History of Capital Punishment*, 139.

¹⁸ Victor Bailey, "Shadow of the Gallows," 319.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid., 349.

²² Ibid., 309-310.

²³ This 1938 bill was introduced with two abolitionist amendments: Five year trial period or complete abolition. It was rejected 16 -7. Elizabeth Tuttle, "The Crusade Against Capital Punishment in Great Britain," (Ph.D. diss., University of Texas at Austin, 1959), 53-54.

capital punishment would be passed until the Homicide Act of 1957. Even then, this bill did not mention abolition, only “amendments of law relating to homicide and the trial and punishment of murder.” Specifically, it addressed the death penalty surrounding issues of “abolition of ‘constructive malice’, persons suffering from diminished responsibility, provocation, and suicide pacts.”²⁴

If the shift in penal philosophy in the years following the Second World War was as strong as some claim, there would have been more advancement seen in the area of abolition, especially from the Labour Party. This party, which was supposedly the main supporter of abolition, took office in 1945 with a parliamentary majority of one hundred and forty-six. The bill, if not easily passed, should have been at least reintroduced, but there was no progression.²⁵

Labour Party Platform Issue

Emerging in 1906, the Labour Party appeared to provide a realistic opposition to the Conservative Party, changing “parliamentary dynamics of the capital punishment debate.” This led many to believe it was the Labour Party’s support and influence that caused the push for abolition, but in reality, they did very little.²⁶

Capital punishment was usually divided right down party lines, regardless of evidence. For instance, a 1930 Select Committee was put together to examine the possibilities of abolition. Convincing arguments both for and against abolition were presented, yet neither side shifted at all. With seven Labour party members, six Conservatives, and two Liberals, the evidence proved of small influence, and the vote was split right down party lines.²⁷

If abolition was such a party issue, it would seem that, once in power, the Labour Party would strongly focus on abolition. This was not the case. The first two Labour Governments, 1924 and 1929–31, were met with limited success.²⁸ Parliament refused to allow time to even debate the issue. As Elizabeth Tuttle points out, the Labour Party was not “truly zealous for the abolition of capital punishment, or time would have been allocated for a debate on the subject.” Time for

²⁴ United Kingdom, Parliament, *Homicide Act of 1957* [database online]; available from Bournemouth and Poole College Online, http://sixthform.info/law/06_miscellaneous_originals_definitions/statutes/homicide_act.

²⁵ Victor Bailey, “Shadow of the Gallows,” 320.

²⁶ *Ibid.*, 315–316.

²⁷ *Ibid.*

²⁸ *Ibid.*, 307.

the first two Labour Governments slipped away. It would be up to the next victorious Labour Government to get the ball rolling again.²⁹

When the party took control of the Parliament by a large one hundred and forty-six majority in 1945, the time seemed perfect. Abolitionist groups like the National Council for the Abolition of the Death Penalty (NCADP) felt the end of WWII and the majority of the Labour Party “should bring success to our efforts for Abolition within the next few years.”³⁰ However, it would be close to twenty years before abolition was passed. A few strong individual abolitionists would continue the push, not the party itself. In fact, the trend of the Labour Party was beginning to worry abolitionists in the mid twentieth century. It seemed “the Labour’s leadership tended to be more enthusiastic abolitionists when in opposition than when in government.”³¹ This left the work up to leading groups and individuals truly devoted to abolition.

Controversial Trials

Tom Phillips argues that it was “not rational arguments but a series of controversial individual cases” that finally passed abolition legislation.³² Some of these cases included that of Derek Bentley and Timothy Evans. In 1953, Bentley, a nineteen year old boy with mental handicaps, had already been taken into custody for a break-in when his accomplice shot and killed a policeman. His companion, only sixteen years of age, was not sentenced to death, but Bentley, who did not pull the trigger, was. Pierrepoint was forced to carry out the execution despite much public outrage. In the second case, Evans’s daughter, Geraldine, had been found dead next to her murdered mother, Evan’s wife. With the help of a principle witness, John Christie, Evans was tried, convicted, and executed for his daughter’s murder. However, as the years passed, this “credible witness” turned out to be a “self –confessed necrophiliac murderer of seven women,” including Evan’s wife.³³ This led many to question if they had hung an innocent man. Crimes like these struck an interest from the public, but not the kind of interest that could be used to abolish capital punishment.³⁴

The truth was that many felt Evans’ execution was an unfortunate mistake but not a case for legislative reform. During this time, the Gallup Poll asked if the death penalty was applied in too

²⁹ Elizabeth Tuttle, “The Crusade Against Capital Punishment in Great Britain,” 44.

³⁰ Victor Bailey, “Shadow of the Gallows,” 308.

³¹ *Ibid.*, 318.

³² Tom Phillips, “The Abolition of Capital Punishment in Britain,” 3.

³³ Albert Pierrepoint, *Executioner, Pierrepoint*, 204–205.

³⁴ Albert Pierrepoint, *Executioner, Pierrepoint*, 204–205.

many cases. Only five percent of the respondents said yes, and fifty percent said it was not applied enough. Of those individuals who supported the death penalty, only nine percent would change their mind if an innocent man was wrongly executed. As for the Bentley case, the Homicide Act of 1957 provided for those with “abnormality of the mind” to be taken into special consideration.³⁵

It seems the real outcries that came from controversial cases were merely “propaganda versions of various controversial trials.”³⁶ Pierrepoint gives an example of how these trials were used more for entertainment purposes than actually confronting the issue of abolition. Take the two cases of Ruth Ellis and Mrs. Christofi, both women. Females had been executed before but in much fewer number than men. Ellis directly killed her lover, firing at leave five bullets from point blank range, whom she wrongly suspected was having an affair. Christofi hit her neighbor during a confrontation, inflicting injuries that later caused death. Happening only one month apart, Pierrepoint received many petitions, even a check for ninety pounds, not to carry out the execution of Ellis. It seems unusual that Ellis, killing in cold blood, received the attention. It would seem more logical to defend Christofi, whose intention was only to argue, never to kill someone. Pierrepoint reasoned it was because Ellis was pretty. The “blonde night-club hostess” won the hearts of the public, while no one gave notice to “a grey-haired and bewildered grandmother who spoke no English.”³⁷ If people were actually paying attention to these trials to promote abolition, Christofi should have received wider attention than Ellis. As Pierrepoint claims, “all public life is field for controversy and misrepresentation...a denial never gets the publicity of the first false publication.”³⁸ People read into these trials what they wanted, and they did not want to abolish the death penalty.

Two Hundred Year Struggle

Clearly, the war for abolition was not won by any one single twentieth century battle but many, over the course of two hundred years. Pushed largely by individuals and interest groups, abolitionists were essentially realistic in their strategy. They realized they were up against two strong factors, public opinion and years of tradition, and “neither of these responded readily to argument.”³⁹ It was these abolitionists’ determination and endurance, even when they were repeatedly rejected, that would eventually win the fight. Each one of

the movers was a necessary component because they developed arguments and goals that would last through generations. Though the struggle is much more complex, the theory can be best examined by a combination of three major pushes: Origins of Abolition, New Intensity, and Twentieth Century Push.

I. Origins of Abolition

In 1764, Cesare Beccaria wrote *Essay on Crimes and Punishments*, expressing a view on capital punishment that widely contrasted his contemporaries. In his view, humans, not being the creator of life, had no right to take it away. Capital punishment could only be justified in two ways: if the death of an individual would save a popular government or if death was the only way to deter others from committing the same crime. These views directly influenced Jeremy Bentham and Sir Samuel Romilly, through whom English culture got its first dose of abolitionary thought.⁴⁰

Later in the eighteenth century, Bentham created a few arguments against the death penalty that would leave a lasting impression. First, he claimed the threat of death was not deterrent, and worsened criminals would be more influenced by “the contemplation of perpetual imprisonment, accompanied with hard labour and occasional solitary confinement.”⁴¹ This point was later picked up by Albert Pierrepoint, who felt no criminal he witnessed walking up to the scaffold was deterred by death. Bentham also stressed that judges and witnesses are both fallible, another argument that kept strong through the twentieth century.⁴²

Sir Samuel Romilly pushed abolition into the political arena. During his time, there were over two hundred and twenty offences punishable by death. While addressing Parliament, fellow Commons member Fowell Buxton reinforced Romilly’s main argument when he said, “Kill your father, or catch a rabbit in a warren—the penalty is the same! Destroy three kingdoms, or destroy a hop-bine—the penalty is the same!”⁴³ Romilly made a hard push but was only successful in passing three bills, which concerned the repeal of capital punishment in certain instances of theft. However, his work was not done in vain. He, together with other early abolitionists, had brought the cause to the surface. Later abolitionists readily picked up their ideas with new intensity.

³⁵ United Kingdom, Parliament, *Homicide act 1957*.

³⁶ Albert Pierrepoint, *Executioner, Pierrepoint*, 208-209.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Louis Blom-Cooper, ed., *The Hanging Question*, (London: Gerald Duckworth and Co., 1969), 5.

⁴⁰ Elizabeth Tuttle, *The Crusade Against Capital Punishment in Great Britain*, 2.

⁴¹ *Ibid.*, 3.

⁴² *Ibid.*

⁴³ United Kingdom, Parliamentary Debate May 23, 1821; Quoted in Victor Bailey, “Shadow of the Gallows,” 311.

II. Nineteenth Century New Intensity

After Romilly's death, the seeds of his ideas were cultivated by two men, Sir James Mackintosh and Sir Robert Peel. In March of 1819, Mackintosh's request for a Select Committee on abolition was accepted, and as a result, many bills formally supported by Romilly were eventually revised and passed. When Peel became Home Secretary in 1822, action started to increase. By 1827, eight acts were passed that took at least 250 old statutes off the books.⁴⁴

These two men's intensity was met and possibly surpassed by Quaker John Bright. He spent the majority of his life speaking and voting in favor of abolition in the House of Commons. Two main arguments solidified when Bright entered the field. The first of these was that the "certainty of punishment was more important than severity in preventing the development of crime." Secondly, he argued, drawing from Becceria, man "was usurping a power only belonging to God"⁴⁵ by practicing the death penalty.

These men's intensity spurred the creation of the Royal Commission of 1833, which concluded:

That the punishment of death ought to be confined to crime of High Treason (happily on of rare occurrence) and (with perhaps some particular exceptions) to offence which consist in, or are aggravated by, acts of violence to the person or which tend to endanger human life.⁴⁶

As a result, a bill was passed that removed twenty one of the remaining thirty seven offences punishable by death.⁴⁷

Though some limited success had been made, the majority of England still agreed with Sir George Grey who said that the feeling towards abolition, including those of newcomer William Ewart, were "contrary to the general feeling of the House and to the country."⁴⁸ Nonetheless, Ewart and Bright pushed on, producing bills in 1848, 1849, and 1850, and were denied every time. Again, though their persistence did not produce a new law, it brought their issue to the front. A Royal Commission was set up again in 1864, but again, its success was limited. The commission produced only the suggestion of outlawing public executions.⁴⁹

⁴⁴ Elizabeth Tuttle, "The Crusade Against Capital Punishment in Great Britain," 6-7.

⁴⁵Ibid., 10.

⁴⁶ United Kingdom, Parliamentary Debate, 1833; Quoted in Elizabeth Tuttle, "The Crusade Against Capital Punishment," 11.

⁴⁷ Elizabeth Tuttle, "The Crusade Against Capital Punishment in Great Britain," 11.

⁴⁸ Ibid., 15.

⁴⁹ Ibid.

Two new players would emerge after the 1864 Commission, Sir Eardley Wilmot and J.W. Pease. They stirred up one of the most convincing arguments used in abolition; focusing on other countries that had already abolished the death penalty. This argument was expressed by Bright when he said:

The Attorney General...says, what murders would be committed if hanging were abolished? The burglar or the garrotter would be tempted to kill his victim; but the answer to that is, that in all countries where capital punishment has been abolished, there is not one atom of proof that any such thing has occurred.⁵⁰

Although a later bill by Pease was defeated two hundred and sixty three to sixty four, these men's arguments "laid the foundation upon which the twentieth century case for the abolition of the death penalty was built." From then on, the arguments changed very little right up to abolition.⁵¹

III. The Twentieth Century Push

With only murder, treason, piracy, and arson left punishable by death, the twentieth century push was met with a strong resentment.⁵² However, a few individuals did continue to push, including former executioner James Berry and Penal Reform League founder Captain Arthur St. John. The historical cycle was continued with bills that were continually drafted, printed, and never heard of again. Like always, these individual's fruitless sacrifices helped bring ideas to other's attention. Roy Calvert, the leader of the NCADP, was one of those individuals. Writing *Capital Punishment in the Twentieth Century*, Calvert capitalized on the logical arguments of abolishing the death penalty. Again, these included death as an unsuccessful deterrent and the stationary or declining murder rates in capital punishment free countries.⁵³

In 1930, a Select Committee suggested that a test period of abolition be tried during peace time, but again, the bill went no where. The same failure occurred in 1938. In 1948, abolitionists inched a little closer with an amended Criminal Justice Bill, but it was defeated by the House of Lords. With all the commotion, another Royal Commission was set up in 1949 to look into the issue.⁵⁴ Things for

⁵⁰ United Kingdom, Parliamentary Debate 1864; Quoted in Elizabeth Tuttle, "The Crusade Against Capital Punishment in Great Britain," 22.

⁵¹ Elizabeth Tuttle, "The Crusade Against Capital Punishment in Great Britain," 26.

⁵² Albert Pierrepoint, *Executioner, Pierrepoint*, 170.

⁵³ Tom Philips, "The Abolition of Capital Punishment in Britain," 3.

⁵⁴ Albert Pierrepoint, *Executioner, Pierrepoint*, 171.

abolitionists were not looking any better, but the sacrifice and determination sparked a debate which resulted in the Homicide Bill of 1957. Discussed above, this act gave Britain a mild taste of abolition because it severely limited the number of executions. Just as abolitionists had been claiming for years, there was no increase in the murder rate.

The last influential individual was Sydney Silverman. Just like his predecessors, he continually pushed for bills, was rejected, then picked up and pushed again. Finally, in 1964, Silverman gave one last push. He presented an abolition bill that was read three times and adorned with an amendment.⁵⁵ This amendment stated that abolition would expire in five years unless it was directly implemented again by both houses to keep it permanent. It passed, two hundred and four to one hundred and four. Four and a half years into the experiment, it was deemed a success and voted in permanently on December 18, 1969.⁵⁶

Conclusion

From the evidence, it is obvious that all of these key players were needed for abolition to conclude the way it did. Though the theories focusing just on the twentieth century provide important information, no single event or theory originated from that time alone was responsible for abolition. The death penalty had been a long standing tradition in England, and it took over two hundred years of individuals and groups pushing for abolition, despite being continually rejected and knocked down. These fighters created arguments and determination that were taken up by generations after. With these types of roots, the process of abolition was nothing sudden. Instead, capital punishment had “been on its way out since the first murmurings of doubt about its efficacy were heard in the eighteenth century.”⁵⁷

⁵⁵ This amendment was suggested by member Henry Brooke. *The Times* (London), December 19, 2002.

⁵⁶ Ibid.

⁵⁷ Tom Phillips, “The Abolition of Capital Punishment in Britain,” 1.