

## **"Let Him Have It"**

Mark Pawlowski reflects on the arguments against the death penalty in the light of the unsafe conviction of Derek Bentley for the murder of a policeman in 1952

The film, *Let Him Have It*, (1991), recreates the circumstances surrounding the murder of a London policeman during an attempted burglary of a warehouse in the early 1950s. Two South London boys, Derek Bentley and Christopher Craig, stood accused of the murder. Bentley was alleged to have called out to his accomplice, Craig, "let him have it, Chris" and, after a while, Craig shot and killed the policeman. Craig, who was 16 years old, was jailed. Bentley, on the other hand, was found guilty of murder and hanged on 28 January 1953. Both the verdict and sentence proved to be highly controversial and eventually the sentence was quashed by the Court of Appeal on 30 July 1998: *R v Derek William Bentley (Deceased)* [2001] 1 Cr App R 21.

### **The utilitarian argument**

Those who have argued for the death penalty maintain that it has a uniquely deterrent force compared with the alternative of imprisonment. The theory of punishment being implied here is the utilitarian position that what justifies the practice of punishment is its propensity to protect society from harm. Some commentators, however, go further and submit that the death penalty is something which morality actually demands because it is a uniquely appropriate means of retribution for the worst type of crimes, even if its use adds nothing to the protection of human life. This latter approach is, of course, independent of any question of fact or evidence as to what the use of the death penalty does by way of furthering the protection of society. The utilitarian position, on the other hand, has the advantage of compelling one to a factual inquiry as to the effects upon society of the use of the death penalty.

But what has been the weight and character of the evidence that the death penalty is required for the protection of society? There are two ways of answering this question. One is through statistics, the other through a common-sense conception of the strength of the fear of death as a motive in human conduct. The Report of the Royal Commission on Capital Punishment 1949-1953 summed up the results of four years' study of the facts, figures, law and moral principles in relation to murder and its punishment. It reached only a negative, albeit still important conclusion. This was the finding that there was no clear evidence in any of the figures that the abolition of the death penalty had ever led to an increase in the rate of homicide or that its restoration had ever led to a fall. The Report concluded that there was no evidence from the statistics that the death penalty was a superior deterrent to imprisonment.

The "other" evidence really amounts simply to the alleged truism that a person fears death more than any other penalty and that, therefore, it must be a stronger deterrent than imprisonment. However, the existence of the death penalty never meant certainty of death *now* for the murderer; it simply meant not a very high probability of death in the future. Moreover, in terms of the statistics, murder is committed to a very large extent either by

persons who, though sane, do not in fact count the cost (the terrorist bomber), or are so mentally impaired that they cannot count it (as a result of insanity or diminished responsibility).

### **The humanitarian perspective**

Two factors, it is argued, make the death penalty a prima facie evil and, therefore, only to be retained if there is some positive evidence that it is required in order to minimise murder. First, on the face of it, the taking of a life, even by the State, with its attendant suffering not only for the criminal but for many others, is an evil to be endured only for the sake of some recognisable common good. Secondly, the death penalty is irrevocable and the risk of an innocent person being executed is never negligible.

Both these factors are acutely highlighted in the Derek Bentley case. In the film, it is Bentley's family who are portrayed as the real victims. Bentley's father, in particular, is shown making passionate and desperate attempts to save his son's life and protect his family. In terms of the finality of the sentence, when the trial judge puts on the ritualistic black square on his head at the end of the trial in the film, he makes it clear that he can pass only one sentence, that of death. The Home Secretary, with whom lies the gift of clemency, also refuses to exercise his discretion to save Bentley's life. The film ends in a harrowing portrayal of a confused Bentley being hanged at Wandsworth prison. In the words of Steven Greenfield and Guy Osborn, "Pulped Fiction? Cinematic Parable of (In)Justice", (1996) 30 University of San Francisco Law Review 1181, at p. 1197:

"The film does not become an investigation into the guilt or innocence of Derek Bentley, but an investigation, indeed moral condemnation, of capital punishment. This is the significance of that final [execution] scene - the brutality of killing a 'three-quarter witted' boy."

In 1965, the death penalty for murder in Britain was suspended for five years and in 1969 this was made permanent: see, Murder (Abolition of Death Penalty) Act 1965. However, it was not until 1998 that the death penalty in Britain was finally abolished for all crimes.

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