

No death penalty, not even for sadistic psychopaths

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The news of Clifford Olson's terminal illness brought more than a few Canadians, including the *Chronicle Herald's* Paul Schneidereit, to wonder whether we should restore the death penalty ("Of forgotten victims, dying psychopaths and the death penalty," Wednesday 28 September).

Olson raped, tortured, and murdered eleven children and teens back in the early 1980s. He had spent thirty years behind bars for his crimes, unrepentant and obnoxious, before dying of cancer, on 30 September, in his prison's infirmary.

That Canadians are raising the issue makes this an especially good time to say again exactly why not even the vilest of criminals should face execution.

Now Schneidereit, it is important to note, is not calling for the return of capital punishment, at least not yet. He is, quite properly, terrified of the prospect of an innocent person losing his or her life at the hands of the state.

Olson would not have been wronged had he been executed, Schneidereit contends, and, indeed, it would have proper and good had he been. But the question, he adds, isn't about what would have been just in the case of one man. It is, rather, whether we can trust an institution, the death penalty, to be just.

Schneidereit cautions that the death penalty is appropriate only "in rare cases combining complete certainty of guilt with the most heinous crimes imaginable." People and legal systems being what they are, though, would prosecutors, juries, and judges consider the death penalty only in such rare cases? If I understand him correctly, Schneidereit won't join those calling for restoration until he's sure the risk to people who fall outside his conditions is nil.

When, though, we have to ask, does the legal system ever lack complete certainty in finding a person guilty of murder and sending him to prison? The answer is never. There cannot, in principle, be any higher standard than is officially in effect right now. Remember, should the court entertain a doubt, it will not pronounce the accused guilty.

It's hard to see how a two-tier system of proof or certainty could possibly work, for any doubt about guilt that would save from execution a person convicted of murder would simultaneously make imprisoning him unjust.

What about the condition that the crime be of the most heinous imaginable? The problem here is that there is nothing more heinous than murder. Of any two murders, neither could be more heinous than the other.

A common mistake in moral reasoning (or, perhaps, in moral imagination) is to suppose that committing two murders, say, is worse than committing one. Really, though, each murder is

a particular case of the worst thing. Two murders is not twice as bad as one, but instead is two instances of the very worst thing.

The same holds for torture or rape before murder. The murder is not any more heinous if the victim was tortured first. A murder is just as heinous when the victim is killed painlessly in his sleep. The torture or rape is itself heinous, of course, and so constitutes another heinous element to put beside the murder. It doesn't make the murder more heinous.

The point is that if any first-degree murderer deserves to die by execution, then all first-degree murderers deserve to die by execution, for each murder is the most heinous thing imaginable. For this reason, Schneiderei's requirement that capital punishment be reserved for the perpetrators of only the most heinous murders can make no difference. It will spare none of the lot—unless we decide to rank the lives of some victims as more valuable than those of others.

Commentators have proposed many other ways of selecting from among murderers those who merit execution—that the murderer doesn't repent, for instance, or doesn't seem a candidate for rehabilitation—but all proposals of which I'm aware are beset by intractable problems, either practical or ethical.

Of course, even if murderers merit execution, we might do well to incarcerate them instead. As Hamlet instructs Polonius, we should use people after our own honour and dignity (and not after their deserts, or who should 'scape whipping?). We would not, I hope, elect to create ourselves as a nation of killers or worse.

Yet Hamlet's way of thinking can be obtuse and self-indulgent. A teacher might think he's being magnanimous in not subtracting a late penalty, but really he's shirking an important duty to give the student only what she deserves. Perhaps murderers deserve execution and because of our concern for our self-image we're shirking our duty to give them what they deserve.

Murderers certainly deserve punishment, severe punishment, and punishment that everyone understands serves as punishment, and not instead as rehabilitation or correction. A society that neglects to punish wrongdoers is certainly shirking its duty.

This is the crux of the matter, then. Murderers deserve punishment, but a person simply cannot deserve to be executed. Execution is not a toll or a penalty or a punishment, things that one can deserve to have exacted from one, for there's no person who comes through the execution to appreciate it as a piece of punishment.

If that's right, in an execution there's just the terror, the intentional killing, and the corpse, and that looks an awful lot like murder.