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CANADIAN LEGISLATIVE BEHAVIOR
UNDER A FREE VOTE:
THE CASE OF CAPITAL PUNISHMENT

by

DIANNE POTHIER
(B.A., Dalhousie)

A thesis submitted to the Faculty of
Graduate Studies and Research in partial fulfillment
of the requirements for the degree of
Master of Arts
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ABSTRACT

The most distinctive feature of the Canadian Parliamentary system is the disciplined nature of parties. Accordingly, under normal circumstances, studies of Canadian legislative behavior should employ a perspective which focuses on them. Studies which assume that the individual MP is the unit of analysis are inappropriate because they obscure the fundamental determinant of legislative behavior - the party. Specifically, analyses of the legislative role orientations of Canadian MP's have been inappropriate because the ascription of role orientations has been carried out without reference to actual behavior patterns.

The conclusion that a perspective focusing on the parties is the only appropriate means of studying Canadian legislative behavior is, however, not necessarily applicable to the abnormal situation of a free vote. This thesis attempts to identify suitable ways of studying legislative behavior under a free vote through an analysis of the 1966, 1967, 1973, and 1976 capital punishment debates.

Under a free vote, the perspective of party is still relevant. As long as the government takes an official position on the bill, there are party pressures on backbenchers; the whips are not the only elements which contri-

bute to party cohesion. In addition, party is the key to understanding the quality of organization within Parliament under a free vote. Since the parties are normally the center of organization in Parliament, the only effective means of co-ordinating efforts under a free vote is through an adaptation of party organization. Since free votes are infrequent, it is very difficult, if not impossible, for MP's to develop an entirely different norm about organization in the House.

Turning to the individual MP, and his behavior under a free vote, the evidence suggests that 'legislative role analysis' is still inappropriate. Since MP's do not normally function as delegates, they do not suddenly become delegates upon the removal of the whip. Consequently, in explaining individual voting patterns, the analyst must account for legislators' personal opinions on the subject, a means of explanation specific to the particular case study. For the capital punishment debates, political party affiliation, education (sometimes mediated through occupation), and ethnic origin were related to legislative vote on the death penalty.

While the implication of this thesis is that 'legislative role analysis' is inappropriate to the study of Canadian legislative behavior, the concept of norms about party behavior is heuristically useful in focusing attention

on the process of change and adaptation in abnormal situations.

PREFACE

This thesis attempts to provide a detailed study of the recent capital punishment debates in the Canadian House of Commons, as a case study in legislative behavior under a free vote. The focus is legislative behavior, not the pros and cons of capital punishment; indeed no effort is made to argue either for or against the death penalty. This oversight is not meant to imply that the substantive issue is unimportant; rather, it is a reflection of the fact that the literature (both academic and non-academic) is already saturated with discussions on the subject. Anything that I might say would only constitute repetition. Nonetheless, my personal opinion about capital punishment is of some relevance to the thesis because it creates a potential bias, a bias which should be openly declared.

I am now, and always have been, an abolitionist; the transition to de jure abolition which is chronicled in this thesis is seen as a very positive achievement. I can only admire those abolitionist politicians who, especially during the 1973 and 1976 debates, stood up for that in which they believed in the face of considerable public opposition. This applies most particularly to former Solicitor General, Warren Allmand who, during the most recent debate, was subjected to tremendous public abuse because of his commitment to the

campaign for abolition.

This research on the capital punishment debates began as preparation for a paper written as part of the federal Parliamentary Internship Programme. Although the Internship Paper has been revised beyond recognition, the thesis would have been impossible without my experience as a Parliamentary Intern in 1975-76. Consequently, I owe a considerable debt of gratitude to the Canadian Political Science Association, the Canada Council, the sponsoring Life Insurance Companies, the numerous people on Parliament Hill associated with the Programme, and especially the former academic director, Jean-Pierre Gaboury. I should also express special thanks to the two Members of Parliament with whom I worked while I was an Intern, Jack Marshall and Alan Martin. My experience in Alan Martin's office was particularly useful in the writing of the thesis because it occurred during the time of the 1976 debate. The others who were Interns with me have also been very helpful, especially Dan Butler and Bruce MacNaughton, who initially suggested that I turn the Internship Paper into a thesis.

The transition to a thesis was facilitated considerably by the advice of my supervisors, Dr. Robert Jackson, Michael Whittington, and Ken Hart. All three forced me to clarify exactly what it was that I was trying to argue.

The validity of those arguments is, of course, still open to question. Also, David Chandler gave me access to his data on the 1966 and 1973 debates.

Last, but not least, I would like to express my appreciation to my typist, Dawn Butt.

TABLE OF CONTENTS

I	INTRODUCTION: THE STUDY OF CANADIAN LEGISLATIVE BEHAVIOR	1
II	CAPITAL PUNISHMENT IN CANADA: A HISTORICAL OVERVIEW	54
	(1) The legislative History of Capital Punishment in Canada	55
	(2) Public Attitudes Toward the Death Penalty	87
III	ANALYSING FREE VOTES FROM THE PERSPECTIVE OF THE PARTY	108
	(1) The Various Meanings of 'Free Vote'	109
	(2) Adapting Party Norms to a Free Vote Situation	134
IV	ANALYSING FREE VOTES FROM THE PERSPECTIVE OF THE INDIVIDUAL MP	157
	(1) Role Analysis	163
	(2) Personal Characteristics of MP's	179
V	CONCLUSION	220
APPENDICES		
A	DIVISIONS OF THE CANADIAN HOUSE OF COMMONS ON CAPITAL PUNISHMENT: MAIN MOTIONS, 1966 to 1976	232
B	QUESTIONS USED BY THE CANADIAN INSTITUTE OF PUBLIC OPINION IN ITS SURVEYS ON ATTITUDES ABOUT CAPITAL PUNISHMENT	245
C	A NOTE ON INTERVIEWING TECHNIQUES	247
BIBLIOGRAPHY		250

LIST OF TABLES AND FIGURES

TABLE I.1	Representational Role Style Orientations of MP's: Questions asked by Kornberg and Mishler, 1971-72	23
TABLE II.1	Capital Punishment Votes in the Canadian House of Commons Since 1966: Main Motions and Selected Amendments	61
TABLE II.2	Canadian Public Attitudes Toward the Death Penalty: Gallop Poll Results	88
FIGURE II.1	Total Crimes of Violence, Canada, 1965 to 1974	91
TABLE IV.1	The Relationship Between Vote in Parliament on the Death Penalty and the Safeness of the Seat: Pearson Correlation Coefficients	177
TABLE IV.2	The Relationship Between Background Characteristics of MP's and their Position on the Death Penalty: Zero-Order Gammas	193
TABLE IV.3	The Relationship Between Political Party and Position on the Death Penalty	194
TABLE IV.4	The Relationship Between Age and Position on the Death Penalty, Controlling for Education: 1973 and 1976 .	198
TABLE IV.5	The Relationship Between the Percentage of Urban Polls and Position on the Death Penalty, Controlling for Political Party: Liberals and Conservatives	199
TABLE IV.6	The Relationship Between Ethnic Origin and Position on the Death Penalty: Liberals	202
TABLE IV.7	The Relationship Between Educational Level and Position on the Death Penalty	204

TABLE IV.8 The Relationship Between Occupation and
Position on the Death Penalty 205

TABLE IV.9 The Relationship Between Education and
Position on the Death Penalty,
Controlling for Occupation, and the
• Relationship Between Occupation and
Position, Controlling for Education 208

CHAPTER I

INTRODUCTION: THE STUDY OF CANADIAN LEGISLATIVE BEHAVIOR

[W]hile parliament is legally supreme, it is functionally subordinate to the cabinet and the bureaucracy in the making of public policy. Today, parliamentary supremacy is largely a mythical expression of the belief that in our system of government ultimate political power should reside in the elected representatives of the people. Yet paradoxically, despite the very real functional limitations on parliament's ability to be truly "supreme", the myth remains significant as both a symbol and an operational principle of our form of democratic polity.¹

Few would deny that the position of the Canadian House of Commons in the policy process is a subordinate one, and for this reason, the tendency among academics is to make this point, and thereafter largely ignore the study of Parliament. Such a tendency reflects a bias, mostly a conscious one, that policy-making is the subject matter that ought to be studied. In contrast to academics, the interest of journalists is focused on Parliament to a much greater extent. This is in part because the deliberations in Parliament are much more accessible than those of either the bureaucracy or Cabinet, in part too because of the symbolic importance of the elected legislative body, but it is

also in part because journalists tend to view Parliament in a somewhat different light. Rather than essentially as a component of the policy process, Parliament is viewed more as an arena for jockeying among political opponents.

Parliament is seen as an important playground for the political game, and the players in the game are the parties.

Academics could perhaps take a cue from journalists in terms of the way to study Parliament, and turn a journalist's style into rigorous analyses. Before such a step is taken, however, it must first be established that the assumptions involved are valid ones. In terms of modes of analysis, the fundamental assumption of the above is that Parliament should be studied from the perspective of the parties. Forgetting for a moment any presumptions about how Parliament fits into the overall political process, there are two alternate perspectives, in addition to that of the parties, from which it is possible to study Parliament. These two perspectives involve the use of 'legislative role analysis' and the characteristics of individual MP's that determine their positions on legislative matters.² Each of these three possible approaches to the study of legislative behavior should be examined to assess its appropriateness in the Canadian case.

Recent interest in legislative behavior among political scientists grew primarily out of American studies in

the field, many of which adopted the perspective of 'legislative role analysis'. The premises of studies of legislative behavior using role analysis are that legislators can be classified according to their orientations on designated roles, and that these role orientations will be reflected in the behavior of legislators. There has been much discussion in the literature about the utility of role analysis, centering on the questions of whether behavior can be assumed to actually flow from role orientations, and/or whether role orientations are any more than surrogates for other characteristics of legislators.³ But there is a more fundamental assumption involved in the use of role analysis, one that has not really been assessed by its critics. That assumption involves the appropriate unit of analysis, an assumption about which the proponents of role analysis are quite explicit.

Better than any alternate concept in social science, the notion of role yields a model of the legislator as an acting human individual which is consistent with the basic understandings of individual and group psychology. At the same time, it yields a model of the legislature as an institutionalized human group which logically incorporates the model of the individual legislator and which relates the behavior of legislators to problems of legislative structure and function which are the traditional concerns of students in the field. Role, for any individual legislator, refers to a coherent set of "norms" of behavior which are thought by those involved in the interactions being viewed, to apply to all persons who occupy the position of legislator.⁴

The repeatedly stated assumption here is that the individual legislator is the appropriate unit of analysis.

A perspective that would relate the characteristics of individual legislators to their positions on specific issues differs from role analysis in that it is concerned with substantive questions before a legislature, rather than with the normative questions about how a legislator ought to function. Yet, such a perspective shares a fundamental assumption with role analysis; a perspective that is centered on the characteristics of individual legislators, by definition, takes the individual legislator as its unit of analysis.

Also by definition, a study of legislative behavior from the perspective of the parties would take the party, instead of the individual legislator, as the unit of analysis. The essential element which distinguishes a perspective of party from the other two possible perspectives is therefore a decision about the appropriate unit of analysis.

In addition to the question of the appropriate unit of analysis, there is also the question of the appropriate subject for analysis. Studies that use the individual legislator as the unit of analysis usually assume that voting is the legislative behavior that ought to be studied. If legislators determine their positions on issues without

direction from within the legislature, then their legislative votes are the ultimate statement of their positions. When legislative voting is under the direction of the party, however, legislative votes indicate something about the party's positions, but little about the individual legislators' position. If the focus is legislative behavior from the perspective of the party, the interest should concern aspects of legislative behavior other than individual voting records. The object is either an identification of party voting patterns, or an investigation of aspects of behavior other than voting. If a survey of individual voting records indicates that voting is basically according to party, other phenomena ought to be studied.

It is arguable that the 'other phenomena' are the pre-voting positions of legislators; even with strict party discipline, the individual legislator is still the appropriate unit of analysis. It could be inferred that the only difference is that, in a situation of strict party discipline, caucus positions should be considered, focusing on attempts by individual legislators to shape the party position. However, such a move involves not only a shift from voting to non-voting behavior. The behind the scenes efforts of individual legislators to influence legislative output can only be understood in terms of their party positions. In a Parliamentary system of highly disciplined

parties, a government backbencher would use entirely different means to affect legislative decisions than would his counterpart in the official opposition, and his chances of success would rest on very different grounds. Any influence attempt is made in recognition of the fact that, in the end, party discipline will be exercised. Consequently, this fact conditions how any such effort will be made. Moreover, on any given legislative matter, only a handful of MP's will likely articulate a personal position in caucus. A perspective directed toward an explanation of the positions of individual legislators would obviously encounter problems if most legislators did not indicate specific positions. This is not to argue that it is inappropriate to study attempts by legislators to influence party positions, but to argue that in so doing, the analysis moves away from a study of legislative behavior from the perspective of the individual legislator, and into the study of legislative behavior from the perspective of the party. In looking at the behavior of individual members, the objective is simply to observe the internal workings of the party.

The essential argument is that, where party discipline is strong, the party is too important to treat it as simply a collection of individual legislators. This is a case in which the whole is more than the sum of its parts.

There is continuous interaction, not only among individual legislators, but also among the parties; the interaction among the parties is overriding. When strict party discipline is the rule, it becomes inappropriate to consider the individual legislator as the unit of analysis, because to do so is to overlook the fundamental determinant of legislative behavior -- the party. In Canada, it is obvious that the development of the Parliamentary system has produced a legislature in which the most distinctive feature is the disciplined nature of the parties. The evidence for this conclusion should be briefly reviewed.

Responsible government implies party government; if the executive sits in the legislature, and is dependent of its backing, the government must secure some stable measure of support in the legislature, a task most easily accomplished through a unified and disciplined party. In the colonies of British North America, it was the fight for responsible government that shaped the initial alignment of political parties.⁵ Even after the granting of responsible government in the late 1840's, however, the alignment of political groups was still somewhat fluid; the development of very strict party discipline was a gradual one.

In the early years of Confederation, the Canadian House of Commons was not characterized by a genuine two-

party system. Sir John A. Macdonald was more the leader of the government party than he was of the Conservative party.⁶ The manner of conducting general elections had an important impact on the development of political parties. Before 1878, national elections were neither simultaneous nor held under a secret ballot. This meant that the government could time elections so that it could win the safe seats first, then have considerable leverage to barter patronage for support. It was not uncommon for candidates for office to avoid any affiliation with a party, and simply pledge themselves to support whomever was in power in order to secure local benefits. These were the members that Sir John A. Macdonald labelled the "loose fish".⁷ At the same time; the Liberal opposition was a rather loose coalition of disparate groups that did not yet really constitute a unified party.⁸

In this period, the notion of party discipline was still quite vague. Although the "loose fish" would generally support the government, they could not always be counted on to do so; members did display some measure of independence.⁹ Sir John A. Macdonald's government was defeated on a number of occasions in its first four years in office, including on some rather important questions; the government's reaction was simply to accept the decision of the House and carry on.¹⁰ Also in this period, the task

of the party whips was as much to secure support from the fringes of the party, or outside it, as to maintain support within the mainstream of the party.¹¹

The end of deferred elections and the introduction of the secret ballot diminished the role of patronage in elections. The consolidation of the Liberal party, and the absorption of the West into national politics, meant that there were two national parties operating in Parliament at least by 1896.¹² The expansion of the franchise meant that individual MP's became more dependent on the party for election to Parliament.¹³ By the turn of the century, the Canadian Parliament featured a very strongly disciplined two-party system.

The emergence of a multi-party system from a two-party system did not fundamentally change the disciplined nature of the parties, although in the transition phase, the Progressives were an exception to this rule. For the Progressives, opposition to strict party discipline was a matter of principle, and divisions within party ranks in voting on the floor of the House of Commons were considered quite tolerable.

So much freedom had not been heard of in the days of the old parties. It was exercised by the Progressives on divisions which were not routine but controversial, when unity would have counted most, and the spirit which made it possible operated to keep discipline at all times light and tentative.¹⁴

Indeed, the Progressives never really came to terms with the question of whether or not they actually constituted a party.¹⁵

For a very brief period of time, the Social Credit party also constituted an exception to the rule of strongly disciplined parties. In the 1962-63 Parliament, with the sudden arrival of 26 new members from Quebec, the party was going through considerable internal strains, and it did split on a number of votes. "The party's position was that a member had to maintain the party vote only on matters of Social Credit principle."¹⁶ In the mid 1960's the internal divisions led to a formal split between the Social Credit Party and the Ralliement des Crditistes. Now that the party is reunited, it does function as a disciplined party in Parliament, although the interest in activities in the House among members of the Crditiste caucus is quite low.¹⁷

With the brief exceptions of the Progressives and the Social Credit Party, the Canadian House of Commons has been characterized by very strongly disciplined parties since the turn of the century. "The legislative cohesion is present with such regularity, that the few instances in which there have been slight breaks in it have been historic occasions."¹⁸ The extent of party cohesion in Canada is even more striking than in the British system, where,

although cohesive parties are also the rule, major breaks in party ranks have not been uncommon.¹⁹

The extent of party cohesion in the Canadian House of Commons is illustrated by a study of the Twenty-sixth Parliament (1963-1965). In this study, cohesiveness scores were calculated for each party by taking the number of members voting with the majority of the party as a percentage of the total number of party members voting in that division. The results from each division were aggregated to get an overall cohesiveness score.

[T]he average cohesiveness rate for all parties and all votes was 96.8 per cent. The parties had the following average cohesiveness rates: Ralliement des Crditistes, 100 per cent; Liberals, 99.9 per cent; Conservatives, 98.4 per cent; New Democrats, 97 per cent; Social Credit, 92.9 per cent.²⁰

These cohesiveness rates were very high, especially since they included votes during the flag debate, some of which were held with party discipline explicitly not enforced. Voting in the Canadian House of Commons is basically a function of members' parties. There are exceptions, but they are infrequent.

The formal administration of party discipline in the Canadian House of Commons is through the party whips. The whips are responsible for ensuring that members show up for recorded divisions, and vote with the party. Unlike

in Britain, where distinctions among one-line, two-line, and three-line whips denote differences in importance of votes,²¹ no distinctions are made in notices of votes sent by whips in the Canadian Parliament. At least formally, all votes are treated as being of equal importance. In trying to ensure that members toe the party line, the whips in Canada do serve as a liaison between the party leadership and backbenchers,²² but such a function of the whips is much less important in Canada than in Britain, where the Chief Government Whip is a senior member of the Cabinet.²³ In Canada, the House Leaders, the responsible Cabinet Ministers (or Parliamentary Secretaries) or the chief opposition critics, more than the whips, are responsible for identifying and dealing with backbench criticism of party policy.

There are some sanctions available in the enforcement of party discipline. The positive sanctions include future promotions (especially for the government party), trips, or even office accommodations. In terms of negative sanctions, the extremes are expulsion from the party caucus and/or denial of renomination at the next general election, but such extreme steps are rarely taken. A less severe sanction is the removal from a currently held position. However, party cohesion is based on much more than formal sanctions (either positive or negative). Indeed a study of British Parliamentary parties showed that rebels who

defied party unity were rarely punished.²⁴ The sources of party cohesion are much broader, and much more subtle.

The sources of party cohesion, other than explicit sanctions on individual MP's, are found in the nature of the Parliamentary system. As was already noted, responsible government implies party government; if the government is to remain in power, it must be able to rely on its party's support in the House. However, it is not just the fear of defeat in the House that keeps a party united, and in any event, such consideration would only apply to the government party. Party cohesion in Parliament is also a function of simple loyalty to the party and its leadership, reinforced by the overwhelming importance of the party in the election of individual MP's. In addition, cohesion is a function of the importance of party unity for effective tactics in the House; it is also indispensable in presenting a positive image to the electorate. Party unity tends to be more crucial for the government party; nonetheless it is still of considerable importance to opposition parties, especially when they are trying to present the image of an alternate government.²⁵

Whatever the sources of party cohesion in the Canadian House of Commons, it is an undisputable fact that the parliamentary parties do act with remarkable cohesion. It would seem to be a simple corollary of this conclusion

that, if the objective is an understanding Canadian legislative behavior, it should be studied from the perspective of the parties. If the aim is to move beyond simple description, the question for the analyst should be: from what conceptual or theoretical framework should party behavior in Parliament be investigated. It would also follow logically that it is inappropriate to study Canadian legislative behavior from a perspective that takes the individual MP as the unit of analysis (i.e. role analysis or the characteristics of individual MP's related to their legislative positions).

However, although such conclusions may seem a logical extension of the foregoing discussion, they have not been seen as obvious by many students of Canadian legislative behavior. The pervasive importance of party is obvious enough to convince most analysts that roll call studies of the Canadian House of Commons are not very illuminating. But role analysis is seen by many as a useful means of studying Canadian legislative behavior. If only because that body of literature on role analysis is there, it must be dealt with, although so doing will constitute a major digression in the discussion. For there is either a serious problem with the conclusions drawn above, or a serious problem with the body of literature on role analysis.

The literature on legislative behavior that employs role analysis assumes that legislators, as individuals, can be assigned role orientations on a number of roles. One of the most commonly studied roles, in the literature as a whole as well as that on Canada, has been that of 'representational role style'. The term 'representational role style' is a relatively new one,²⁶ emerging out of role theory, but the concepts involved are much older.

By definition, legislatures pass legislation; the significance of legislation is closely related to the concept of representation:

The problem of representation is central to all discussions of the functions of legislatures or the behavior of legislators. For it is commonly taken for granted that, in democratic political systems, legislatures are both legitimate and authoritative decision-making institutions, and that it is their representative character which makes them authoritative and legitimate. Through the process of representation, presumably, legislatures are empowered to act for the whole body politic and are legitimized. And because, by virtue of representation, they participate in legislation, the represented accept legislative decisions as authoritative.²⁷

The debate over the meaning of political representation is centuries old; once representative institutions acquired a central position in the political process, the normative questions about what it means to be a representative were

bound to be given careful scrutiny. One of the oldest and most fundamental controversies is the question of whether a representative should act as a delegate or as a trustee, the 'mandate-independence' controversy. The most famous statement of the distinction is probably that of Edmund Burke, when he argued before the electors of Bristol that a representative ought to function as a trustee.

But his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure, - no, nor from any law and the Constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion....To deliver an opinion is the right of all men; that of constituents is a weighty and responsible opinion, which a representative ought always to rejoice to hear, and which he ought always most seriously to consider. But authoritative instructions, mandates issued, which the member is bound blindly and implicitly to obey, to vote and to argue for, though contrary to the clearest conviction of his judgement and conscience, - these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our Constitution! 28

The concepts of delegate and trustee are normative ones; they represent alternate ways in which a legislator could see his relationship to those he represents. The delegate sees himself as an instrument to carry out the will of the people, or at least what he perceives to be the will of the people. The position is founded on the notion that

the people are sovereign. The trustee sees himself as an instrument to protect the interests of those he represents, and ultimately uses his own best judgement as to what is in their interests. An essential element of the argument of the trustee is that he has both the time and the resources to make an informed judgement, time and resources not available to constituents.

Although the concepts of delegate and trustee are diametrically opposed to each other, it is possible for an individual legislator to combine elements of both. He could take a position that is a compromise between his own judgement and the views of his constituents. Or he could act as a delegate on certain types of issues, and as a trustee on other types of issues. In attempting to classify legislators as either delegates or trustees, the literature on representational roles classifies those who display elements of both as 'politicos'. Delegates and trustees are obviously pure types that would be expected to be rare in their pure forms. Thus the literature on representational role styles characterizes as delegates those who, in general, subscribe to the notion of a delegate and as trustees those who, in general, subscribe to the notion of a trustee. It is only those who combine substantial elements of both that are considered as politicos.

The distinctions between delegate and trustee are predicated on the assumption that the individual legislator is in the position of having to make a choice for or against legislative proposals; the dispute is about what criteria he should use to determine his position. The issue of delegate versus trustee was joined when the concept of party was still a very vague notion, when it was appropriate to conceive of each legislator independently making decisions. But the whole point of the argument in this Introduction has been that, as the Canadian Parliamentary system has evolved, it is the parties, not the individual legislators, that take positions.²⁹ Yet the literature on Canadian legislative behavior using the perspective of role analysis has apparently succeeded in dividing Canadian MP's, as individuals, not as parties, into the categories of delegate, politico and trustee. The question to be investigated here is whether that success is only apparent, or whether it is real. The discussion can now turn directly to the consideration of this body of literature; the most prolific writer in this area has been Allan Kornberg.

Kornberg has undertaken two major studies of the role orientations of Canadian MP's; on the basis of questionnaires conducted in 1962 and 1971-72. In the initial study, the question designed to elicit representational role

style orientations was an open-ended one; but there were also a couple of more specific, related questions.

The interviewees were first asked the following question: 'If you wanted to take a certain stand on an issue before the House, but felt that the majority of the people in your constituency would want you to take a different stand, what would you probably do?' Their responses indicate that 22 percent probably would be guided by constituency opinion; 42 percent would try to effect some sort of reconciliation between constituency views and their own, generally by trying to convince the constituents of the correctness of their own position; and 36 percent would take the position that they believed to be right regardless of constituency opinion.³⁰

Aside from the problem of whether such a general hypothetical question could be linked to specific situations, the question posed here seems to be framed with little consideration of its relevance. How often does an MP take a position in the House that is not a party position? On matters of detail, this often happens, at least in speeches, if not on votes. However, the legislator would not be able to get any reading on constituency opinion on matters of detail even if he wanted it. Apart from issues before the House on which members must take a position, members can also raise issues in the House, through private member's bills or in Question Period. Although most of what happens in Question Period especially does in fact reflect party positions, and is well planned party strategy, there is scope for an MP to initiate the discussion of a problem.

But if a member is introducing an issue into the House on his own, it is probably either because he is responding to a difficulty in his constituency, or because he is raising a new issue about which there had been no constituency input on either side. Neither scenario assumes a conflict between the legislator and his constituents. In the case of a potential conflict, the member could simply avoid it by not raising the issue. However, the general point is that most positions taken in the House by MP's, and certainly the positions on major issues, are in fact party positions. To pose the question in terms of the legislator vis-à-vis his constituents is either inappropriate or trivial.

In another question, the hypothetical conflict was posed in terms of the party versus the constituency.

In fact a substantial proportion of Canadian MP's were unable to even conceptualize such a conflict. The initial response to the question, 'If you felt that the majority of your constituents were opposed to your party's stand on a legislative issue, how would you probably vote on the issue?' were: 'I don't think this could ever happen but...' or 'I doubt that this would occur but...' 31

The fact that many MP's had difficulty conceptualizing the problem should have been an indication to Kornberg that members do not see their positions in such terms. When pressed, members did answer the question; 35 per cent said they would vote with the party, 49 per cent said they would

try to reconcile the views of the party and the constituency, and 18 per cent said they would vote against the party.³² Kornberg classified under 'reconcile' those whose response would be to explain the party's position to the constituency, which, in essence, is still taking the position of the party. Since most of the MP's in the middle group fell into this category, the proportion that answered that they would vote with the party was really much higher than 35 per cent. Even if consideration is restricted to the 16 per cent who said they would vote against the party, the total still seems quite high, given the record of divisions in the House. It would seem that such MP's must perceive the positions of their party and constituency to be in remarkable harmony; however, if that were the case (either in actual fact or as perceived by the MP), there would be little analytical utility in positing a hypothetical conflict. The fact that MP's had difficulty conceptualizing the question should have caused Kornberg to doubt the appropriateness of his question; the fact that 16 per cent said they would vote against the party, when hardly any actually do, should have caused Kornberg to doubt the validity of the answers. In his discussion, Kornberg did not express concern about either.

In the 1962 survey, the question that was used to distinguish between delegates, politicians, and trustees was

an open-ended one, "What do you think your representational rôle entails?"³³ The best way to understand, and assess, how the responses were coded, and assigned to the 'appropriate' categories, is probably through an examination of the 1971-72 questionnaire used by Kornberg and Mishler. In this later questionnaire, instead of an open-ended question, respondents were asked whether they agreed or disagreed with a whole series of statements. The statements were worded such that delegates were expected to agree with some, trustees with others.³⁴ From the description of the 1962 study, it seems that the same sorts of judgements were used; indeed the statements in the 1971-72 survey seem to have been largely taken from answers given to open-ended question asked in 1962.

The statements used by Kornberg and Mishler should be examined quite closely because, although they said that the questions were designed to distinguish between delegates and trustees, they appeared to be introducing an entirely different dichotomy without realizing it. The statements employed by Kornberg and Mishler are listed on the next two pages; their assumptions about the significance of each were as follows:

The first five statements are concerned with both the focus and the style of representation. Our assumption was that MP's who agreed or tended to agree with these statements were oriented toward the instructed

TABLE I.1

REPRESENTATIONAL ROLE STYLE ORIENTATIONS OF MP'S
QUESTIONS ASKED BY KORNBERG AND MISHLER, 1971-72

- 1) "The job of a MP entails being a sounding board for constituency opinion and then acting on it. I always attempt to find out what my constituents feel and make my decisions accordingly."
- 2) "My first duty is to my constituency; they are the ones who elected me."
- 3) "Let's face it, insofar as people care about parliament, what they care about is what you as a MP can do for them in the way of services and favours; not what comes before parliament in the way of issues and legislation."
- 4) "I am not at all certain that doing favours, running errands, or serving your constituents, call it whatever you wish, really helps get you elected. I am certain that not doing these things when asked will assure that you don't get elected."
- 5) "The most important part of a MP's job -- that is if he is interested in coming back to parliament -- is to go to bat for his constituents in their dealings with government, which usually means the civil service. Even statesmen have to be reelected and for that you have to look after your constituents."
- 6) "I can't see why there is any incompatibility between serving your constituency and the nation. I was elected to serve my country, but this is not and has never been inconsistent with serving my constituency and its people."
- 7) "My job as a MP entails fighting for what I think is right. It also entails being a representative of the people in my constituency. I accept the fact that I have to deal with their problems but I also have to fight for the integrity of parliament and for a program of legislation that is in the national interest."
- 8) "Even if a MP wanted to find out what his constituents felt about a major public issue, it would be impossible. The majority of people don't know. They don't have any information on these things. The rest, or most of the rest, simply don't care."
- 9) "A MP seldom has to sound out his constituents because he thinks so much like them that he knows how they would react to almost any proposal."

- 10) "My primary responsibility is to the nation as a whole. I am elected to serve the country."
- 11) "My primary responsibility as a MP is to do as good a job as I can for the country — to act according to my conscience. The alternative is toady to voters."
- 12) "If anyone tells you he makes his decisions here in parliament on the basis of what his constituents want, assuming he knew what they want, he is either kidding you or himself."

SOURCE: Allan Kornberg and William Mishler, Influence in Parliament: Canada, Durham, North Carolina: Duke University Press, 1976, pp.88-89.

delegate role style and regarded the constituency rather than the nation as the geographic area to which they owed their most vigorous representational efforts. Insofar as representational role styles were concerned, our assumption was that instructed delegates would tend to be constituency errand boys and thus should be more likely to agree with the statement that people care more about services than public policy decisions of MP's. They also should agree more often with the two statements that MP's who do not perform services and who do not go to bat for constituents will not be re-elected. Statements six and seven were intended to tap the politico representational role orientation whereas statements eight through twelve were intended to reveal MP's who found the Burkean-Trustee role an especially congenial one.³⁵

Kornberg and Mishler admitted to combining style and focus of representation in ~~their questions~~; however, they also seemed to be introducing a further distinction. Although questions eight through twelve are more or less in accord with the traditional notion of trustee, with the possible exception of question one, questions one through five have nothing to do with the traditional notion of a delegate. The term delegate refers to a legislator who makes choices on the basis of instructions from his constituents (or of whatever group he is a delegate). The first five statements used by Kornberg and Mishler, however, are not concerned with legislative choices made by MP's; they are concerned with services performed by MP's for constituents. The two are analytically quite distinct; the first refers to the MP functioning as a legislator, the second refers to the MP functioning as an ombudsman. Indeed, in their

third question, Kornberg and Mishler actually made such a dichotomy, implicitly assuming that MP's do distinguish between legislative and ombudsman functions. But by not labelling them as such, i.e. not explicitly recognizing the distinction, Kornberg and Mishler's operative assumption was that it is all one function.

The ombudsman function of MP's is not really even legislative behavior, because it is neither performed inside the legislature, nor is it preparatory to legislative action by Parliament. This does not make it unimportant, but the conceptual distinction between the legislative and the ombudsman function is a crucial one. The ombudsman function entails dealing with specific cases, specific complaints by constituents about administrative decisions. It is a function that can easily be performed by non-legislators; indeed, in most of the provinces it is a function that legislators share with an office of the Ombudsman that is formally designated to undertake such tasks. Although MP's and/or their staffs spend a great deal of time performing such duties, very little attention has been paid in the literature to the ombudsman function of MP's, which perhaps explains why it was easy for Kornberg and Mishler to ignore the issue of the legislative versus the ombudsman function. Yet, deciding the priority of one versus the other is a decision that all MP's have to

make, whether consciously or unconsciously.

The functions of ombudsman and legislator are not only analytically quite distinct, they are also functionally quite distinct. The two can become joined if, for example, a number of similar unemployment insurance problems from constituents suggests that the law should be changed, but basically the things that an MP does as an ombudsman have to do with legislation that has already been passed, about legislative decisions that have already been taken.

Apart from the different types of activities involved in relation to either function, there is another factor which distinguishes the legislative from the ombudsman function. As has been argued throughout this Introduction, the legislative activities of an MP are heavily conditioned by his party. In contrast, the diligence with which an MP responds to constituent complaints about administrative decisions or actions is not a matter of party policy, or a matter on which there is party direction or input; it varies across individual MP's, not parties.³⁶ MP's do make a distinction, even if at a subconscious level, between the legislative and ombudsman functions in terms of the relationship to the party.

This distinction is crucial in terms of what Kornberg and Mishler were trying to do. It is because the

ombudsman function is performed by MP's as individuals, not as members of a party, that their questions could readily differentiate among individual MPs. Kornberg and Mishler's problem arises in trying to impose that kind of differentiation with respect to the legislative function, (which is the function to which the concept of representational role style is supposed to be directed), without incorporating the overwhelming influence of party.

Although analytically and functionally distinct, the functions of ombudsman and legislator are mutually exclusive only in the sense of the time that can be devoted, to each. The fact that someone considers the ombudsman role very important does not make that person a delegate in terms of his legislative functions, as Kornberg and Mishler assumed. The fact that, through factor analysis, Kornberg and Mishler found that those who tended to agree with the first five statements also tended to disagree with the last four,³⁷ probably reflected less of an explicit rejection of the notion of trustee as such than a disposition that the entire legislative function was not too important to the MP.

There would seem to be some evidence for such a supposition in terms of the Crditistes. The Crditistes, in the sample used by Kornberg and Mishler tended, more than members of the other parties, to agree with the first statements and disagree with the last statements.³⁸

According to Kornberg and Mishler therefore, the Crditistes, in general, should be classified as delegates. Such a conclusion was also reached by Donald Murray.

The exceptional importance the Crditiste MP's attach to their constituents' views reflects their years of exposure to the Crditiste "constituency delegate" ideology. In answering the question, "do you try to lead or educate public opinion in the riding or reflect that opinion?" the MP's were unanimous in saying that their primary function was to reflect the view of their constituents in Ottawa.³⁹

But if one looks further, it becomes clear that what Murray was finding evidence of was not that the Crditistes function as delegates, but that they function as ombudsmen.

Furthermore, when asked to evaluate the relative importance of their legislative work as opposed to their constituency work all 12 backbenchers affirmed that their constituency work took up most of their time and 10 of the 12 went on to say that was the way it ought to be. One MP, Andr Fortin [later the party leader for a brief period] declared that if he had to choose between legislative work and constituency work, he would always choose the latter because "what goes on in the House is really a game".⁴⁰

It is arguable that this does not mean that the Crditistes should not be seen as delegates. Even if they consider the ombudsman function to be more important than the legislative function, they could still be delegates when actually performing the legislative function. However,

Murray himself provided the evidence against such a conclusion. His description of how the Crditistes do perform the legislative function was not one of MP's soliciting and reflecting constituency opinion. Instead, he described the adoption of party policy on legislative matters as being very haphazard, sometimes even based on whims.⁴¹ It must be stressed that Murray was still talking about party policy, and general party unanimity in the House; the Crditiste MP's do not individually make decisions about legislative matters on the basis of their constituents' views. Murray's evidence points to a conclusion that Crditiste MP's primarily function as ombudsmen, not that they function as delegates.

Returning to the consideration of Kornberg and Mishler's study, it seems clear that although they claimed to be distinguishing between delegates and trustees, they were actually distinguishing between legislators and ombudsmen. The wording of the questions by Kornberg and Mishler probably reflected at least an implicit recognition that the traditional notion of a delegate as one who acts according to the views of his constituents is untenable in a system of highly disciplined parties. Their failure to make this explicit, however, meant that Kornberg and Mishler never faced the question of how a system of highly disciplined parties affects the distinction between

delegate and trustee.

The inappropriateness of the notion of delegate in a system of highly disciplined parties also emerges, unintentionally and unnoticed, as a conclusion of Jack Cramer's study of the effect of Parliamentary experience on legislative behavior. Cramer's hypothesis related to representational roles was that inexperienced legislators would tend to fall into the category of politico, while more experienced legislators would be either delegates or trustees.⁴² Although he did not say how he operationally defined delegate, politico, or trustee, Cramer's results did tend to support his hypothesis. But what is perhaps most striking about Cramer's results, and a facet of them which he did not mention, is that only 4.1 per cent of MP's were classified as delegates.⁴³ This seems to be some supporting evidence for the case that the notions of delegate and disciplined party do not mix.

There is one analysis of the role orientations of Canadian MP's that did try to come to terms with the fact of party discipline, although it did not do so very successfully. This was the study done for the Royal Commission on Bilingualism and Biculturalism by David Hoffman and Norman Ward. They used the categories of delegate, mixed type, and trustee, and they also fell into the 'trap' of classifying as constituency delegates those whose answers

were basically referring to ombudsman-type services.⁴⁴

However, they also created an additional category, that of party delegate.

The other type of delegate, the 'party delegate', is equally other directed: in this case the commands come from his party. The MP may entertain certain vague notions of general compatibility between his own and his party's views or between his constituents' views and those of his party, but for him such considerations are irrelevant. The party determines a position; he follows that line. There is no exercise of independent judgement (except perhaps in the formation of the original party line).⁴⁵

By introducing the concept of party delegate, Hoffman and Ward did recognize that party discipline affects the traditional distinction between delegate and trustee. But from the results of their questionnaire, they concluded that only 18 per cent of MP's were party delegates; the rest were classified as constituency delegates (12 per cent), mixed types (37 per cent), and trustees (33 per cent).⁴⁶ Hoffman and Ward were using the same categories employed by Kornberg; they just added one more. Robert Jackson and Michael Atkinson have commented, in general, about the studies of the representational roles of Canadian MP's that:

More important, while members hold particular role orientations they rarely arrive at personal judgements which differ from those of the party....In all of these cases the relevance of a classification of roles for predicting behavior in the Canadian setting

is suspect. Regardless of the role MP's claim to adopt, for the purposes of role enactment when voting on the floor of the House, all are party delegates.⁴⁷

If all MP's were party delegates, the ascription of role orientations would not distinguish among them; consequently, the concept of representational role style would not be analytically useful. But the problem is more fundamental, because there are serious conceptual difficulties with the notion of party delegate.

If a legislator is a delegate, that implies that he is a delegate of something external to the legislature; party is something that is internal to the legislature. This would not create a problem if the Parliamentary party were controlled by the extra-Parliamentary party; however, where the Parliamentary party is dominant, the concept of party delegate would have the legislators being delegates of themselves, a contradiction in terms. Furthermore, there is little doubt that, in Canada, it is the Parliamentary parties that are the chief policy making arms of the parties.

[T]he intra-governmental structure [elected legislative personnel] is primarily concerned with policy decisions. It is here that the party engages in day-to-day consideration of policy matters, either as the Government, the Opposition, or as a minor party....The extra-governmental structure, on the other hand, is primarily concerned with leadership and voter mobilization.⁴⁸

It is a common feature of political parties that they are controlled by the leadership (normally the Parliamentary leaders), not by the rank and file. Robert Michels called this an Iron Law.

The fundamental sociological law of political parties ... may be formulated in the following terms: It is organization which gives birth to the mandatories over the mandators, of the delegates over the delegators. Who says organization says oligarchy.⁴⁹

Of the Canadian political parties, only the CCF-NDP has made any serious claim that the extra-Parliamentary party has any real control over the Parliamentary party; in practice, however, the Parliamentary party has always been dominant, even if sensitive to the wishes of the rank and file membership.

The interesting thing about the CCF in this respect is not the degree to which its structure was more democratic than other parties, but that the structure made possible a degree of leadership control and manipulation which, given the nature of party factions, would not have been possible in any other kind of structure....The CCF presented an example of the operation of Michels' 'Iron Law of Oligarchy'.⁵⁰

The dominance of the Parliamentary party has not changed in the transition to the NDP. As a former federal secretary of the NDP, Cliff Scotten, has said, "There is an understanding that it is the Secretary's duty to tell the leader if his policy is not the party's policy, but that has never happened."⁵¹ As for the Social Credit party, the other

party with extra-Parliamentary origins, the dominance of the Parliamentary party extends to the routine tasks of day-to-day organization of the party.⁵²

In relation to the Liberal and Progressive Conservative parties, since their origins are Parliamentary, it is not at all surprising that the Parliamentary parties are dominant. There is considerable validity to the following comment,

[T]here are instances when the annual meetings of the federal Liberal or Conservative parties concern themselves with policy resolutions....But the discussion and even the passage of such policy resolutions are not considered matters of great moment in either party....The participatory wave in present day society is currently being accommodated by both major parties in what we consider a rather carefully controlled fashion.⁵³

Accordingly, in none of the Canadian political parties does the extra-Parliamentary party control the Parliamentary party, making it inappropriate to conceive of MP's as party delegates. This is not to suggest that all MP's are equally influential in shaping their party's policies; such is obviously not the case. The point is that party discipline is a feature that is internal to the legislature; party discipline itself does not make legislators delegates of any group external to the legislature. The concept of party delegate does not come to terms with

the problem posed by the existence of strongly disciplined parties for the traditional notion of delegate versus trustee.

Up to this point, it has been argued that the concept of constituency delegate is incompatible with strong party discipline, and that those MP's that Kornberg and others have labelled as delegates ought not to be conceptualized as delegates. It has also been argued that the concept of party delegate does not solve the problems of the entire notion of representational role styles with respect to Canadian MP's. There is still another problem that must be dealt with. It was argued earlier that the questionnaire used by Kornberg and Mishler was not directed to the traditional notion of delegate, but that it was directed toward the traditional notion of trustee. If it is being argued that it is inappropriate to assign representational role styles to individual MP's in the context of strongly disciplined parties, how is it that MP's did indicate sentiments that correspond to the traditional notion of a trustee?

The problem can probably best be approached in terms of the interview situation. An interview question about the representational role style of the particular MP assumes that the legislator makes individual choices about his actions. The legislator could contradict such an assumption

by saying that it is the party, not the MP, that represents, but that would amount to an admission that he as an individual is not very important. That may well be true, but most legislators would be expected to be reluctant to make such an admission to an interviewer, even if they were prepared to concede it to themselves. Both in terms of political astuteness and his own sense of self-worth, a politician is likely to portray his role as one that assumes that he, as an individual, is important.

The other relevant aspect of the interview situation is that the MP's are being asked to be very reflective about what it is that they do, without the opportunity for genuine reflection being afforded them. The interview situation demands an immediate response; in any event, MP's are generally too busy to have much time to think about how to fit the things that they do into an overall perspective. The legislator may never really succeed in reconciling his position as an individual representative with that of a loyal member of his party. The fact that he acts in concert with his party does not mean that he does not still, to some extent, approach legislative problems in personal terms.

Consequently, when asked questions about the roles of individual MP's, or when asked to agree or disagree with statements about the individual MP, the legislator is predisposed to conceptualize things in personal, rather than

party, terms. If he is answering the question in terms of the legislative function, he is not going to indicate a delegate role because he is not taking instructions from any group external to the legislature. He therefore talks about acting to protect the public interest (whether national or otherwise). He may well see himself as acting, in concert with his party, to achieve such ends. Being a member of that party, his definition and his party's definition of the public interest are not likely to be at extreme odds very often. Therefore, the fact that the party's definition prevails does not cause the MP many serious conflicts. The MP can talk about his own role as being one of protecting the public interest, in terms quite similar to the traditional notion of trustee, despite the fact that it is the party that is taking legislative positions.

Accordingly, the fact that MP's gave answers reflecting the traditional notion of trustee does not invalidate the conclusion that party discipline makes the distinction between delegate and trustee an irrelevant one. The concepts concern the criteria for legislative decisions by individual MP's; if it is not the individual MP's who make the decisions, it is inappropriate to apply the concepts.

The inference to be drawn from this discussion is that the apparent success in categorizing Canadian MP's

according to their representational role styles has been based on some very questionable assumptions. The fundamental problem with the literature has been the failure to come to terms with the fact of party cohesion. The analysts have been so preoccupied with the effort to place MP's into the "appropriate" categories, that they seem to have forgotten that the point of the whole exercise was to predict or analyse legislative behavior. By overlooking the party, they overlooked the most basic determinant of legislative behavior.⁵⁴

The overall conclusion derived from this discussion of the literature on Canadian legislative roles is that, in spite of all the ink committed to it, this mode of analysis is inappropriate to the study of Canadian legislative behavior.⁵⁵ The earlier conclusion, that the party is the only appropriate perspective from which to study Canadian legislation behavior, would seem to still stand. The fundamental question, which remains unanswered, is how to go about studying Parliament from the perspective of the parties.

In the general literature on legislative behavior, there is very little written from the perspective of the party. Party is often studied, but it is usually treated

as just one characteristic, among many, of individual legislators. The nature of the literature actually using the party as the unit of analysis has been summarized as follows:

In contrast to the sophisticated and highly developed body of comparative data gathered on individual legislative behavior, the field of party legislative behavior can claim only a few exploratory and purely theoretical studies. There has been virtually no attempt to examine the theories in a concrete situation. However, these studies have indicated several significant factors which influence legislative party behavior. Some 'external factors' which have been suggested are the 'general temper of the times', the strength and unity of the extra-parliamentary party, and the strength of the executive. Such 'internal factors' as the procedure of the legislature, party leadership and organization in the assembly, and the relative size of the legislative parties have also been considered. Others have suggested that the saliency of the issues which emerge in the assembly may structure the individual party's behavior. Various studies stress the importance of the party's ideology and its 'self image' for its actions, particularly in potential coalition situations.⁵⁶

The literature on party legislative behavior is still at a very exploratory stage, still in infancy.

The literature on the Canadian Parliament which does focus on the parties tends to be very abstract. The discussions usually concentrate on executive-legislative relations, or on the questions of how House rules, or rule changes, provide tools for either the government or opposition. In most cases, there is no attempt to apply the

conclusions (or hypotheses) to concrete situations. However, there is one analysis of party behavior in the Canadian House of Commons which does impose a conceptual framework on an empirical study. That study is Linda Geller-Schwartz's analysis of recent minority Parliaments.⁵⁷

Geller-Schwartz took a concept that is central to role theory, the concept of "norms", and applied it to the parties. In her analysis, party norms denoted assumptions about how the parties behave in Parliament; she identified the norms as an outcome of the historical development of the institution. Her discussion focused on the nature and adaptability of such 'rules of the game' in the Canadian House of Commons.⁵⁸ Geller-Schwartz made the point that norms encompass both formal and informal rules.

Few studies attempt to establish the link between the two sets of norms, although it is clear that the informal norms are not entirely divorced from the formal ones.⁵⁹

Although the concept of party norms is probably more of a heuristic tool than a theoretical one, it can help the analyst abstract general patterns from discrete instance of legislative behavior.⁶⁰

If the concept of party norms seems somewhat vague, it can perhaps be better understood in the context of Geller-Schwartz's case study. For her analysis, the relevant

norms were those of the Westminster model. The point of her inquiry was to determine whether, in minority government situations, there was any movement toward either a coalition model or a co-operative opposition model. In her study of minority Parliaments in Canada from 1957 to 1974, she found evidence of a slight, but perceptible movement away from the Westminster model toward a hybrid of the two alternate models.⁶¹

Norm is a very flexible concept in the sense that the expectations about behavior can range from the very specific to the very general. When studied in the context of party behavior, the concept can be useful in studying interaction among the parties, because the assumptions about party behavior inevitably incorporate relations among the parties.

The concept of party norms is largely irrelevant to the question of the policy positions of parties. Therein lies its advantage for the study of the Canadian Parliament. For if, as was noted at the beginning of this Introduction, Parliament is in a subordinate position in the making of public policy, it would be more advisable to investigate the Cabinet and/or the bureaucracy if the making of public policy were the interest.⁶² But in studying the House of Commons per se, it would seem to make more sense to view Parliament as an arena for political maneuvering. The ob-

jective is an understanding of how the parties interact; the concept of party norms provides a useful tool with which to approach this question.

Assuming that Canadian legislative behavior should be studied from the perspective of the party, the investigation of the nature of party norms, and of their adaptability, seems to be a fruitful avenue to follow. Geller-Schwartz was able to use it to structure her analysis of how Parliament functions in minority government situations; such an approach would seem to have the potential for wider application.

The above reflections on the study of Canadian legislative behavior have all been made with reference to normal circumstances. The general conclusions drawn were that party is the only appropriate perspective from which the study Canadian legislative behavior, and that it is inappropriate to study it from the perspectives of either legislative role analysis or the characteristics of individual MP's. What happens to these conclusions in the abnormal situations when party discipline is explicitly not enforced, when the whips are taken off, and there is a free vote? The basis of the conclusions drawn above was the extent of party cohesion; it was the strict party discipline

that made the party the only appropriate perspective from which to study Parliament. If the assumption of party cohesion is removed, the question is no longer simply how to study the parties. The question broadens to include whether, and/or to what extent, it is possible to understand legislative behavior from the perspective of the parties. If individual MP's are not under obligation to follow a party line, then it becomes appropriate to think of individual MP's as a unit of analysis. That reopens the question of whether legislative role analysis and/or the characteristics of individual MP's are appropriate perspectives. In other words, the entire question of the appropriate means of studying Parliament under a free vote is still an open one, and is the subject to be investigated in this thesis.

Parliamentary behavior under a free vote will be analysed by means of case studies, the cases being the capital punishment debates of 1966, 1967, 1973 and 1976. The issue of capital punishment is a substantively important one; its fate at the hands of Parliament during the last decade cannot be understood apart from the question of how Parliament functions under a free vote.

Chapter II of this thesis will review the history of capital punishment in Canada, with emphasis on developments since the mid 1960's. Chapters III and IV will

assess, respectively, the appropriateness of the perspective of the party and the individual MP for the study of legislative behavior during the capital punishment debates. The final chapter will attempt to draw some overall conclusions about the study of Canadian legislative behavior, not only in relation to free votes, but also in relation to the general functioning of Parliament.

NOTES

¹Richard Van Loon and Michael Whittington, The Canadian Political System Environment, Structure and Process Second Edition, (Montreal: McGraw-Hill Ryerson, 1976), p.416.

²It is arguable that there is a fourth perspective from which to study legislative behavior; i.e. to view Parliament in terms of government versus opposition. But in essence, this is the same as the perspective of the party. In a two-party system they are precisely the same; in a multi-party system (at least one without formal coalitions), at an empirical level, government and opposition must be disaggregated into parties to discuss actual behavior.

³e.g. Malcolm E. Jewell, "Attitudinal Determinants of Legislative Behavior: The Utility of Role Analysis", in Allan Kornberg and Lloyd Musoff (eds.), Legislatures in Developmental Perspective, (Durham, North Carolina: Duke University Press, 1970), p.461; Wayne L. Francis, "The Role Concept in Legislatures: A Probability Model and a Note on Cognitive Structure", Journal of Politics, XXVII, 3, (Aug., 1965), p.568.

⁴John C. Wahlke, "Theory: a framework for analysis", in John C. Wahlke, Heinz Eulau, William Buchanan, and LeRoy Ferguson, The Legislative System Explorations in Legislative Behavior, (New York: John Wiley and Sons, Inc., 1962), p.8.

⁵Paul G. Cornell, The Alignment of Political Groups in Canada 1841-1867, (Toronto: University of Toronto Press, 1962), p.82.

⁶Escott Reid, "The Rise of National Parties in Canada", in Hugh Thorburn (ed.), Party Politics in Canada, Third Edition, (Scarborough, Ont.: Prentice Hall of Canada Ltd., 1972), p.16.

⁷Ibid., pp.15-16.

⁸Ibid., p.18.

⁹Peter Bishop, "Restoring Parliament to Power", Queen's Quarterly, LXXVII, 2, (Summer, 1970), p.151.

¹⁰Eugene Forsey, "Government Defeats in the Canadian House of Commons 1867-1873", Canadian Journal of Economics and Political Science, XXIX, 3, (Aug., 1963), passim; Eugene Forsey, "The Problem of 'Minority' Government in Canada", Canadian Journal of Economics and Political Science, XXX, 1, (Feb., 1964), p.5.

¹¹Robert M. Stamp, "J. D. Edgar and the Liberal Party: 1867-96", Canadian Historical Review, 45, 2, (June, 1964), p.97.

¹²Reid, op. cit., p.21.

¹³Bishop, op. cit., p.152; Roman March, The Myth of Parliament, (Scarborough, Ont.: Prentice-Hall of Canada Ltd., 1974), p.7ff.

¹⁴W. L. Morton, The Progressive Party in Canada, (Toronto: University of Toronto Press, 1950), p.177.

¹⁵Ibid., passim.

¹⁶Linda Geller-Schwartz, "The Multi-Party System and Parliament: A Study of the Interrelationships in the Canadian House of Commons", (Unpublished Ph.D. Dissertation, University of Toronto, 1977), p.169.

¹⁷Donald Murray, "The Ralliement des Crditistes in Parliament, 1970-71", Journal of Canadian Studies, VIII, 2, (May, 1973), p.17ff.

¹⁸Frederick Englemann and Mildred Schwartz, Canadian Political Parties: Origin, Character, Impact (Scarborough, Ont.: Prentice-Hall of Canada Ltd., 1975), p.249.

¹⁹Robert Jackson, Rebels and Whips, (Toronto: Macmillan, 1968), passim; Anthony King, "The Chief Whip's Clothes", in Dick Leonard and Valentine Herman (eds.), The Backbencher and Parliament. A Reader, (London: Macmillan, 1972), passim.

²⁰David Hoffman and Norman Ward, Bilingualism and Biculturalism in the Canadian House of Commons, Documents of the Royal Commission on Bilingualism and Biculturalism, (Ottawa: Information Canada, 1970), p.285, fn.24, citing Judy Dibben, "Divisions", unpublished research paper prepared for the Royal Commission.

²¹Jackson, op. cit., pp.39-41.

²²Mariano G. De Marinis, "How Canadian Political Party Whips Contribute to Party Cohesiveness", (unpublished Honours Thesis, Carleton University, 1972), p.15ff.

²³Jackson, op. cit., p.36.

In Canada, with one brief exception, the Chief Government Whip has never been a member of the Cabinet. The exception was Joe Guay, who sat in the Cabinet as Chief Government Whip for a brief period in the fall of 1976. In bringing him into the Cabinet, the Prime Minister did cite the British practice as precedent, but it was generally assumed that the appointment was made so that Manitoba would have a Cabinet Minister, rather than because of any decision that it was desirable to have the Whip qua whip sit in on Cabinet deliberation. Such a conclusion is reinforced by the fact that soon after his appointment to Cabinet, Guay lost his job as chief Government Whip, after complaints that his salary as Whip, added to his salary as a Minister Without Portfolio, meant that Guay's total salary exceeded that of every other Cabinet Minister except the Prime Minister.

²⁴Jackson, op. cit., passim.

²⁵Ibid.; March, op. cit., passim.; Allan Kornberg, "Caucus and Cohesion in Canadian Parliamentary Parties", American Political Science Review, LX, 1, (March, 1966), pp.83-92; H. McD. Clokie, Canadian Government and Politics, Revised Edition, (Toronto: Longman's, Green & Company, 1950), pp.142-143.

It is often argued that the government can use the threat of dissolution to keep its backbenchers in line. However, dissolution when the party is divided is probably more risky for the party leadership than for backbenchers.

²⁶John C. Wahlke, Heinz Eulau, William Buchanan, and LeRoy Ferguson, "The Role of Representative: Some Empirical Observations on the Theory of Edmund Burke", American Political Science Review, LIII, 3, (Sept. 1959), pp.744 ff.

²⁷Ibid., p.742.

²⁸Edmund Burke, Works, Volume II, (London: John C. Mimmo, 1899), pp.95, 96.

²⁹Here, I am obviously referring to the final party position, not the positions of individual MP's, in caucus, trying to influence the party position. It is arguable that, if the consideration were restricted to caucus positions, it would be useful to distinguish between delegates and trustees. But such an argument entails a number of problems. Firstly, what constitutes the "appropriate" category for the legislator who simply accepts the party's position without question? Secondly, since the party position is conditioned by whether the party is the government, the official opposition, or a minor party, and the individual MP must take this into account in any attempt to lobby within the party, how could that be incorporated into a distinction between delegate and trustee? Thirdly, since caucus discussions are private, how could a legislator be a delegate if his mandators did not know what he was doing? (If an MP routinely made public what had happened in caucus, he probably would not be a member of that caucus for very long.) Finally, since the concepts of delegate and trustee are supposed to be normative ones, it would seem to drain the concepts of their essential meaning if, in the final analysis, the legislator accepted the decision of the party, whatever the views of his constituents or whatever his own assessment of the public interest. For all of these reasons, it has been deemed inappropriate to designate MP's as delegates or trustees depending on their caucus performance. Even if it were deemed appropriate, it would be very difficult to get the required data. It would be necessary to rely on interviews with MP's, and there would be a problem in establishing the validity of the answers. This problem would arise not only because the interest would be focused on non-public activities, but also because the aim would be to detect individual motivations, which could not really be checked against other sources. The wording of the questions would also be difficult, because to assume that MP's do think of themselves as delegates or trustees in caucus would prejudice the issue and bias the results.

³⁰ Allan Kornberg, Canadian Legislative Behavior A Study of the 25th Parliament, (Montreal: Holt, Rinehart, and Winston, 1967), p.98. It is questionable whether an attempt to convince constituents that one's position is right really constitutes "reconciliation".

³¹ Ibid., pp.98-99.

³² Ibid., p.99, computed from Table 5.9.

³³ Ibid., p.106.

³⁴ Allan Kornberg and William Mishler, Influence in Parliament: Canada, (Durham, North Carolina: Duke University Press, 1976), pp.86-96.

³⁵ Ibid., pp.85-86.

³⁶ Although it is true that the entire Crditiste caucus is characterized by the importance MP's ascribe to the ombudsman function, Murray, op. cit., p.17.

³⁷ Kornberg and Mishler, op. cit., pp.88-92. The fact that Kornberg and Mishler could really only make sense out of the first of their five factors perhaps is a result of the fact that they did not quite realize what it was that the questions were asking.

³⁸ Ibid., pp.88-89.

³⁹ Murray, op. cit., p.17.

⁴⁰ Ibid., this quote also assumes, as was argued earlier, that MP's do distinguish between the legislative and ombudsman functions.

⁴¹ Ibid., p.18 ff.

⁴² Jack Cramer, "Parliamentary Experience and Legislative Behavior" in Michael Whittington and Jon Pammett (eds.), Foundations of Political Culture Political Socialization in Canada, (Toronto: Macmillan Company of Canada, 1976), p. 200.

⁴³Ibid., p. 201.

⁴⁴Hoffman and Ward, op. cit., pp.68-69.

⁴⁵Ibid., p.67.

⁴⁶Ibid., p.71, calculated from Table IV.2.

⁴⁷Robert Jackson and Michael Atkinson, The Canadian Legislative System Parliament and Policy-Making, (Toronto: Macmillan of Canada, 1974), p.148.

⁴⁸Englemann and Schwartz, op. cit., p.175.

⁴⁹Robert Michels, Political Parties, (New York: The Free Press, 1962), p.365.

⁵⁰Walter Young, The Anatomy of a Party: The National CCF 1932-61, (Toronto: University of Toronto Press, 1969), p.140.

⁵¹quoted in: John McMenemy, John Redekop, and Conrad Winn, "Party Structure and Decision-Making", in Conrad Winn and John McMenemy (eds.) Political Parties in Canada, (Montreal: McGraw-Hill Ryerson, 1976), p.188.

⁵²Murray, op. cit., p.20.

⁵³Englemann and Schwartz, op. cit., pp.222-223.

⁵⁴If the literature distinguishing between delegates and trustees in the Canadian House of Commons seems of dubious value, what can be said about the other legislative roles identified in the literature: the areal and purposive roles. A legislator's areal role denotes whether he is oriented to his constituency or the nation; his purposive role denotes whether his goals are related to policies or to the area he represents. Are such analysis also inappropriate to the study of Canadian legislative behavior?

• An MP's areal and/or purposive role orientation might be related to the emphasis he places on the legislative versus the ombudsman functions, but as was noted

earlier, discussion of the obmudsman function moves the analysis away from legislative behavior. An MP's areal and/or purposive role orientation might also be related to the kinds of committees on which he sits, or the types of issues on which he makes interventions in the House. If that were the interest, it would seem to be more appropriate to consult the official records of the House and its committees. But more to the point, such information would still not tell the analyst much about legislative behavior. If the objective is an understanding of legislative behavior, it is important to comprehend what happens in Parliament, and what happens in preparation for Parliamentary action. Since almost all the inputs are channelled through the parties, the aim should be an understanding of how the parties operate.

⁵⁵This does not mean that the entire notion of role itself is inappropriate; for example, the positions of Prime Minister and Leader of the Opposition can be usefully conceptualized as roles. But two points must be made here. The first is that such roles have no meaning apart from the context of the parties. The second is that the consideration of roles in such terms is very different from the literature on legislative roles, which assumes that the role of legislator is a discrete one, with a number of dimensions on which all legislators have orientations. It is the assumption that it is analytically useful to conceive of 'legislator' as a discrete role that is being criticized here.

⁵⁶Geller-Schwartz, op. cit., pp.3-4.

⁵⁷Ibid., especially Chapters One and Five.

⁵⁸It should be noted that Geller-Schwartz's discussion of the 'rules of the game' in the Canadian House of Commons was very different from that of Allan Kornberg, in "The Rules of the Game in the Canadian House of Commons", in Hirsch and Hancock (eds.), op. cit., pp.261-278. Kornberg was talking about 'rules' related to individual behavior; Geller-Schwartz was discussing rules related to party behavior.

⁵⁹Geller-Schwartz, op. cit., p.5.

⁶⁰The concept of party norms raises some complex issues. The relationship between norms and behavior

generally incorporates a complicated maze of attitudes, beliefs, personality structure, etc. (See, for example, M. Brewster Smith, "A Map for Analysis of Personality and Politics", Journal of Social Issues, XXIV, 3, (July, 1968), passim.) The movement from individual to party norms is even more problematic, since parties obviously have no personality. Geller-Schwartz attempted to circumvent this problem by inferring norms from the consistent behavior patterns of the parties. She identified norms in terms of the historical development of the institution, completely ignoring personality as an element.

⁶¹Geller-Schwartz, op. cit., passim, especially Chapter Five.

⁶²This would not mean that Parliament should be ignored altogether, but rather that it should be treated in terms of policy refinement (VanLoon and Whittington, op. cit., Chapter 17). In assessing the efforts of individual MP's to affect legislation, the examination could not ignore the questions of how their positions within the parties condition their actions and determine their chances of success. Hence, the perspective of the party would still be overriding.

CHAPTER II

CAPITAL PUNISHMENT IN CANADA:

A HISTORICAL OVERVIEW

It is rare for either the Governor General or the Prime Minister to officiate at a royal assent ceremony, but shortly after noon on July 16, 1976, both were present in the Senate Chamber as a handful of MP's stood at the bar of the Upper House. The participation of the two right honourable gentlemen was undoubtedly related to the fact that bill C-84, the bill which removed capital punishment from the criminal code for the first time in Canadian history, was among the bills to which royal assent was given on that day. Although no decision by Parliament is ever final, it can hardly be disputed that the abolition of the death penalty marked a fundamental change in the nature of Canadian criminal law. Since Confederation, a total of 701 persons had been executed for capital offences;¹ the courts can no longer impose a sentence of death. The changes in Canadian criminal law which culminated in complete abolition date back to the last century.

(1) The Legislative History of Capital Punishment in Canada

In the era prior to the erection of prisons, hanging was employed quite extensively as a penalty for criminal offences. For example, in 1810, over 100 crimes were punishable by death in the colonies of British North America.² Over time, the number of capital offences was reduced substantially; by the mid 1830's, there were only about a dozen offences for which a person could be hanged. Nonetheless, the scope of capital crimes was still quite broad, ranging from robbery, arson, and certain sexual offences to murder and treason.³

By the time of Confederation, it was accepted that hanging should be reserved for only the most serious offences. When the Parliament of Canada first consolidated the criminal law in 1869, only four crimes were punishable by death: treason (including levying war against the crown), murder, rape, and piracy involving acts that endangered life.⁴ Death by hanging was the mandatory sentence for all cases of murder, piracy with violence, and the most serious forms of treason; it was an optional sentence for less serious forms of treason⁵ and for rape. A sentence of death did not necessarily mean that the person would be executed; the Cabinet always had the power of commutation. This power was derived not only from the royal prerogative of mercy; it was also statutory, explicitly

recognized in all criminal codes from 1869 until abolition in 1976.⁶ Since 1892, there had also been explicit provisions in the code stipulating that a judge passing a sentence of death was obliged to submit a report of the case to a Minister of the Crown,⁷ and that he had to set the execution date such that the Governor General would have time to "signify his pleasure". The option of issuing a commutation order to supercede the execution order issued by the judge was always available.⁸ The Cabinet had exercised this power of commutation 621 times since Confederation.⁹

The designation of capital offences in the criminal code was not substantially changed between 1869 and 1961.¹⁰ However, in the intervening period, there had been no lack of attempts to rid Canada of the death penalty. The first abolition bill in Canada was introduced in Parliament by Robert Bickerdike in 1914; that bill was "talked out" before it could come to a vote.¹¹ Nonetheless, the Montreal Liberal persisted; he reintroduced his bill in 1915, 1916, and 1917. On all three occasions, Bickerdike's bill did come to a vote, yet the low turnout of members suggests not only that Bickerdike's proposal was unacceptable to most MP's, but also that it was not taken too seriously. In 1915 there was simply a voice vote, no recorded division.¹² In 1916 and 1917, Bickerdike's bill was defeated by votes

of 21 to 4,¹³ and 26 to 15,¹⁴ respectively. The next abolition bill was introduced in 1924 by William Irvine, then a Progressive. The turnout for the vote on this bill was much higher than in earlier years; nevertheless, success for abolitionists seemed no closer. Irvine's bill was defeated by a vote of 92 to 29.¹⁵ It was not until 1950 that another abolition bill was debated in Parliament. That bill, introduced by Ross Thatcher (then a CCF'er), was 'talked out'.¹⁶ He reintroduced the same bill two years later, but withdrew it when the government promised that a joint committee of the Senate and House of Commons would look into the question of capital punishment. In light of that concession, Thatcher did not persist since it was "fairly obvious that if it does go to a vote the bill will be defeated."¹⁷

The joint committee's mandate encompassed capital punishment, corporal punishment, and lotteries. Although the committee report did recommend some changes in the law on the death penalty, on the crucial issues, it advocated the status quo. It recommended that capital punishment be retained in the criminal code, and that no degrees of murder be introduced.¹⁸ That report, however, did not silence the critics of the existing law, particularly abolitionists.

By 1960, there was some perceptible movement toward abolition; the Diefenbaker government was exercising its power of commutation much more frequently than had previous governments.¹⁹ In that year, Conservative MP Frank McGee introduced a private member's bill to abolish capital punishment for all crimes except treason. His bill occasioned the most extensive debate to that date on the question of abolition. The government allowed two full days of debate from time normally allocated to government business. Although there were several references to the 'free vote' during House deliberations, no vote was in fact ever held. While the government would have been prepared to allow a third day of debate, the sponsors of the bill declined, deciding that there was nothing to be gained from further discussion, since it was obvious that a majority of MP's was not yet ready to sanction abolition.²⁰ But if the debate on McGee's bills²¹ showed a majority of the House to be in favour of retention, it also brought to light considerable dissatisfaction with the existing law.

In 1961, Justice Minister Davie Fulton piloted a bill through the House which, for the first time, made a distinction between capital and non-capital murder. Capital murder, which carried a mandatory sentence of death by hanging, included murder that was planned and deliberate, was committed or counseled during the commission of certain

crimes of violence, or was the killing of an on duty policeman or prison guard. Any other murder, or any murder committed by someone under 18, was non-capital murder, punishable by a mandatory sentence of life imprisonment. The 1961 law also placed in the code, for the first time, the recognition that the jury had the right to make a recommendation with respect to clemency. It became mandatory for the judge to inform the jury of this right. Backed by the huge Conservative majority, the bill passed the House easily. Abolitionists, irrespective of their party affiliation, either supported the bill as moving in the right direction, or did not vote. The bill was opposed by 24 Liberal retentionists, and one Progressive Conservative, who did not approve of the fact that certain kinds of murder would no longer constitute capital murder.²²

After the Liberals were returned to power in 1963, prospects for abolition looked better, as the Diefenbaker government's practice of frequent commutations was transformed by the Pearson government into a pattern of commuting all death sentences. Yet, all abolition bills on the order paper continued to be sponsored by private members. In 1964, Prime Minister Pearson did indicate that the government was prepared to set aside time in the next session of Parliament for a debate on capital punishment, a debate which would culminate in a free vote. However, such a

debate during the 26th Parliament was never held; the 1965 federal election intervened.²³

In that election, the Liberal government was returned. It held to its commitment to provide time for a debate on the death penalty; the commitment was reiterated in the Speech from the Throne in 1966.²⁴ The debate in 1966 was the first time in over 40 years that a proposal to abolish capital punishment had come to a vote in the Commons. The debate in 1966 also marked the beginning of a decade of extensive Parliamentary activity in relation to the question of capital punishment. Since it is that Parliamentary activity, the functioning of Parliament under a free vote, that is to be analysed in this thesis, the legislative history from 1966 to 1976 should be reviewed in considerable detail.

On March 23, 1966, debate began on a total abolition resolution jointly sponsored by four Members of Parliament: Reid Scott (NDP), Robert Stanbury and J. A. Byrne (Liberals), and Terry Nugent (PC). The resolution was in the name of these four members because each of them had had a private member's bill on the order paper which would have abolished the death penalty. The debate was on a resolution saying it would be "expedient" to introduce a total abolition bill, whereby capital punishment would be replaced by life imprisonment, with parole only upon consent

TABLE II.1

CAPITAL PUNISHMENT VOTES IN THE CANADIAN HOUSE OF COMMONS SINCE 1966:
MAIN MOTIONS AND SELECTED AMENDMENTS*

DEBATE	SUBSTANCE OF MOTION	MOVED BY	DATE OF VOTE	YEAS	NAYS
1966	total abolition resolution	Reid Scott, Terry Nugent, Robert Stahbury, J. A. Byrne	April 5	112	143
	amendments to resolution: murder by a lifer is capital murder	C. A. Gauthier	April 4	23	199
	five year trial for total abolition	Donald Macdonald	April 5	113	138
	murder of an on-duty policeman or prison guard is capital murder	W. L. Klein	April 5	74	179
1967	bill to restrict, for a five year trial, the category of capital murder to the killing of an on-duty policeman or prison guard	Solicitor General Larry Pennell	Nov. 23	114	87
	second reading	Andrew Brewin	Nov. 23	37	106
	amendment (Committee of the Whole): total abolition	Solicitor General Pennell ^p	Nov. 30	105	70
	third reading				

continued

TABLE II.1 continued

DEBATE	SUBSTANCE OF MOTION	MOVED BY	DATE OF VOTE	YEAS	NAYS
1973	bill to renew the 1967 bill for another five years	Solicitor General Warren Allmand	May 29	138	114
	second reading				
	amendments (report stage): rape or kidnapping follo- wed by murder is capi- tal murder	Albanie Morin	Oct. 18	78	115
	second murder or murder during hijacking is capital murder	Allan Lawrence	Oct. 18	75	114
	third reading	Solicitor General Allmand	Oct. 24	119	106
1976	total abolition bill				
	second reading	Solicitor General Allmand	June 22	133	125
	amendment (report stage): murder of on-duty police- man or prison guard is capital murder (done through a motion to delete the clause of bill C-84 which removed that provi- sion from the Code)	John Reynolds	July 8	117	132
	third reading	Solicitor General Allmand	July 14	130	124

* For the actual divisions on the main motions, See APPENDIX A.

of the Cabinet. Even if the 1966 resolution had passed, a separate bill to enact total abolition would have had to have been piloted through all the normal stages of a bill.

The resolution was in the name of four backbenchers; the government's only initiative was to provide time, from the time normally allocated to government business, for the debate. Initially the government had agreed to set aside three days. On the third day of debate, it was expected that there would be a vote that night; when the days proceedings ended with some speakers still waiting to be heard, there was considerable confusion as to what would happen next. A motion by Government House Leader George McIlraith, proposing that the next day be set aside for the debate on capital punishment, did not get the required unanimous consent; unanimity was required because of the late presentation of the motion. After his motion was refused unanimous consent, McIlraith declined to give a firm commitment that the resolution would be allowed to come to a vote. Although he expressed the hope that there would be a vote, he said that the government was not prepared to set aside an unlimited time for debate to ensure that, no matter how many speakers wished to contribute, there would be a vote. The tone of this procedural discussion, both by government and opposition spokesmen, was that the government was making a great sacrifice in giving up its time for

private members' business.²⁵ Subsequent to this, the House Leaders of all the parties agreed to two more days of debate, with times specified for votes on amendments and on the main motion, and a House order was made to this effect. Nevertheless, this whole process of the way in which the time for debate was allocated was a clear indication that this was not a government measure.

When the debate was held in 1966, Canada had been under a situation of de facto abolition for over three years; the Cabinet had commuted all death sentences since December 11, 1962. This pattern of blanket commutations was criticized by people who strongly believed in the need for capital punishment; such a criticism was expressly stated in about a quarter of the speeches by retentionists during the 1966 debate.²⁶ Abolitionists had hoped that the de facto situation would facilitate de jure abolition. Initially, abolitionists in Parliament were very hopeful that the total abolition resolution would pass; especially near the end of the debate, however, they knew they were going to lose.²⁷

The structuring of the debate was very flexible in 1966, because the House was considering a resolution, not a bill; amendments were procedurally acceptable even if they violated the principle of the resolution.²⁸ Although the resolution itself concerned total abolition,

proposals for temporary and for partial abolition were also before the House. Three amendments were moved which would have substantially changed the resolution, if passed. The three amendments proposed, separately, a five year trial for abolition, capital punishment only for those convicted of a murder when under a life sentence, and capital punishment only for those convicted of the killing of an on duty policeman or prison guard.

Of the three amendments, the five year trial was the easiest for the abolitionists to support, because it offended the principle of abolition the least. Only four MP's who were to vote for the main resolution voted against the 'five year trial' amendment. By the same token, this was the hardest amendment for retentionists to support; only six MP's who were to vote against the main resolution voted for this amendment. This amendment was defeated on April 5, by a vote of 138 to 113.

The other two amendments, because they retained the principle of capital punishment, had a greater potential of winning over retentionists, but also alienated more abolitionists. The amendment proposing capital punishment in case of murders by 'lifers' was defeated on April 4 by 199 to 23; 7 MP's who were to vote against the main resolution and 16 who were to vote for it supported this amendment. The amendment concerning policemen and prison guards

was voted on just prior to the vote on the main motion on April 5. At a time when abolitionists were sure they were going to lose on the main resolution, more of them were ready to compromise. This amendment was defeated by a vote of 179 to 74; 60 MP's who were to support the total abolition resolution voted for the amendment as well as 14 members who were to vote against the main resolution. If all of those who voted for the main resolution had voted for the 'policemen and prison guards' amendment, that amendment would have just missed being passed.

On April 5, after five days of debate, the total abolition resolution was defeated by a vote of 143 to 112. Abolitionists were keenly disappointed; Solicitor General Larry Pennell was moved to tears by the defeat.²⁹ Nonetheless, abolitionists were not about to give up. Reid Scott (NDP) in his wind up speech, delivered at a time when he knew that defeat was imminent, declared that this was only the first round.³⁰

In that same wind up speech, Scott also indicated that he thought it would be more difficult for the Cabinet to commute all death sentences in the face of an express declaration by the House that it opposed abolition.³¹ Although it may have been more difficult, the Cabinet did continue to commute all death sentences. When Solicitor General Larry Pennell introduced a new bill on the subject

of capital punishment in the fall of 1967, the country was still in a situation of de facto abolition. Given this situation, and given the fact that the same Parliament was again being asked to debate capital punishment, many retentionist MP's (and even a few abolitionists³²) argued that the Cabinet was displaying contempt for Parliament and/or the law by its actions.

Although the 1967 bill was introduced by the Solicitor General, it was explicitly stated by Pennell that this was not considered a question of confidence in the government.³³ Since the same Parliament had pronounced itself against total abolition eighteen months earlier, Pennell did not try to achieve that. The 1967 bill incorporated two of the amendments that had been defeated, separately, in 1966. The 1967 bill dealt only with capital punishment for murder; it restricted, for a trial period of five years, the category of capital murder to the killing of an on-duty policeman or prison guard. The precise form of the bill, especially the exception for policemen and prison guards, was only given halting support even by the man who introduced it.³⁴ Pennell declared that

I believe that this bill will only be defeated in principle if there is an unhappy alliance between those who feel that the bill has not gone far enough and those that feel that it has gone too far.³⁵

Pennell was pleading for those who favoured total abolition

to support his bill, despite its shortcomings. The 'unhappy alliance' that Pennell had feared only materialized to a limited extent; only three members who had voted for total abolition in 1966 voted against the 1967 bill.³⁶ As a proposal for temporary and partial abolition, the bill was given second reading on November 23 by a vote of 114 to 87.³⁷

In Committee of the Whole,³⁸ Andrew Brewin (NDP) introduced an amendment proposing total abolition. The Chairman expressed doubts about the procedural acceptability of the amendment, but since no one was objecting, he allowed the motion to be put.³⁹ The reason why no one was objecting was obviously because it was clear that the amendment would be defeated, since the government was not prepared to support it, for fear of losing the whole bill in the end. The amendment was defeated by a vote of 106 to 37, after minimal debate. Another NDP member, Stanley Knowles, suggested that the five year trial provision be changed to make the bill easier to renew. Pennell again resisted, and no amendment was moved. The government seemed to take the position that it knew the bill in its initial form could pass, since it had passed second reading; it was not sure of the effects of any changes, so it was not prepared to support any such motions.

Three amendments that would have broadened the category of capital murder were also easily defeated. One would have made the murder of a child a capital crime; the second, the murder of a woman. The third amendment, and the only one over which there was any real debate, would have broadened the definition of policemen to include civilians assisting policemen.⁴⁰ The retentionists seemed only to be putting up a token fight in committee; they appeared to be resigned to the fact that the bill was going to pass. Perhaps too the retentionists felt they had won a limited victory, since the abolitionists had had to settle for partial abolition. After the bill was reported, there were two amendments proposing that the bill be referred back to the committee to consider broadening the category of capital murder. These amendments were defeated with practically no debate, and the third reading debate was also very short. On November 30, the bill was given third reading, by a vote of 105 to 70, three weeks after the debate had begun. Since the issue had been fully debated a short time before, there seemed to be no desire to have a long, dragged out debate.

After the passage of the 1967 bill, the Cabinet could no longer argue that it was commuting sentences in anticipation of a decision by Parliament about capital punishment; Parliament had just declared that the murder of

an on duty policeman or prison guard constituted capital murder. Referring to the power of commutation, then Justice Minister Trudeau declared, "it will be more difficult to exercise it freely".⁴¹ Again, although it may have been more difficult, the Cabinet continued to commute all sentences. The difference was that, as a result of the 1967 law, there were much fewer cases for the Cabinet to consider. Over the five year duration of the law, from December 29, 1967 to December 29, 1972, the Cabinet only commuted four sentences of persons convicted of the killing of an on duty policeman or prison guard.⁴²

During the period of the first five year trial for partial abolition, there was another very brief debate on the subject of capital punishment. This was in 1970, during the debate on the Public Order (Temporary Measures) Act which replaced the War Measures Act in dealing with the October Crisis. In Committee of the Whole, the Crditistes introduced an amendment that would have, on a temporary basis, brought back capital punishment for kidnapping followed by murder. After a brief discussion, the amendment was easily defeated.

The 1967 law expired at the end of 1972; 1972 was also the last year of the 28th Parliament. Given the fact that public opinion was heavily retentionist by this time,⁴³

no government would have been prepared to try for total, or even continued partial, abolition just before a general election. As a result, no action was taken during the 28th Parliament.

By the time the 29th Parliament met for the first time in January 1973, the act had already expired; the country was technically under the 1961 law, by which all premeditated murder, including the murder of policemen and prison guards, was capital murder. If anything were going to be done on the subject of capital punishment, it would have to be done early in the new Parliament.

The Liberal government had just barely clung to power after the 1972 election; given its precarious minority position, it was anxious to avoid defeat, even on a free vote. Since there were many new members, at the beginning of the session the government did not really have a very good idea of the sentiments of the House on capital punishment. These factors contributed to a cautious approach.

When Warren Allmand assumed the portfolio of the Solicitor General after the 1972 election, a new bill had already been drafted.⁴⁴ Bill C-2, which Allmand introduced in Parliament in January of 1973, extended the 1967 law for a further five years. Initially, there were doubts about the chances of a total abolition bill, and so the government held back.⁴⁵

The second reading debate extended over four months. Although the bill was about partial abolition, the actual debate revolved around arguments for or against capital punishment per se. Retentionists continued to criticize the Cabinet's record of having commuted all death sentences. This time, unlike either 1966 or 1967, the criticisms were not only based on past performance; they often contained an express assumption that the Cabinet would continue to commute all sentences in the future. Some explicitly indicated that they thought that this would be the case whether or not Parliament passed bill C-2. Retentionists did not seem to be convinced by assurances made by the Prime Minister,⁴⁶ and other government spokesmen, that each commutation decision was based on the merits of the particular case. The bill was criticized by abolitionists as well as retentionists; a few abolitionists indicated they would not support the bill on third reading if it were not changed to total abolition. Two liberal MP's, Marcel Prud'homme and Jim Fleming, indicated that they planned to introduce an amendment to abolish the death penalty completely, replacing it with a mandatory sentence of life imprisonment, from which parole could not be granted until at least 25 years had been served.⁴⁷ There were similar suggestions from outside Parliament, suggestions that total abolition coupled with tougher parole

provisions was desirable. Allmand expressed some interest in such proposals, but beyond that, he made no commitment.⁴⁸

Bill C-2 was given second reading on May 29 by a vote of 138 to 114. On the assumption that the government would stand behind its bill, the Justice Committee set aside three days to consider and report the bill. It also decided that the Minister and his officials would be the only witnesses. These motions were agreed upon without protest or resistance from retentionists.⁴⁹

In addition to the public suggestions about possible amendments, there had also been considerable discussion within the Department, in caucus, and in Cabinet about ways in which the bill might be amended.⁵⁰ However, Allmand seems to have taken the actual decision to proceed with certain amendments (chosen from a series of possible amendments drafted by the Department of Justice) without specifically informing his staff,⁵¹ or his Cabinet colleagues.⁵² Allmand's amendments would have changed the bill to total abolition, made it permanent instead of a trial period, and stiffened parole provisions. At that time, there was a regulation that a convicted murderer could not be paroled until he had served ten years; the amendment put this provision into the law, and added a provision whereby the trial judge could increase this minimum by up to an additional ten years.

When Allmand presented his amendments to the committee, Gordon Fairweather (PC) and Stuart Leggatt (NDP) were overjoyed; most other abolitionists made no comment. Retentionists were outraged, feeling that Allmand was trying to get abolition through the back door.⁵³ At the end of the meeting, his staff told Allmand that they thought the amendments were out of order because they altered the principle of the bill from partial and temporary abolition to total and permanent abolition. A furious Allan MacEachen, the Government House Leader, was of the same opinion.⁵⁴

The aftermath of the committee meeting was not, from Allmand's perspective, very positive.

Our caucus [Liberal] was very upset, and quite annoyed, and in a great state of confusion. The media came pouncing down on us [the government]. The opposition gleefully pulled us limb from limb.⁵⁵

Many abolitionists felt they were 'sticking their necks out' to support partial abolition; having gone through the difficult task of trying to explain this position to their constituents, they were not eager to go back to try to explain a support of total abolition, a position even further removed from their constituents' wishes. By his amendments, Allmand not only infuriated retentionists, "he even irritated abolitionists".⁵⁶ Some abolitionists, both Liberal and Conservative, indicated they were not prepared

to support the amendments.⁵⁷

After Allmand introduced his amendments, the retentionists were no longer content with only three committee meetings to deal with the bill. If the amendments were ruled in order, they were determined to force more meetings to consider them. An entire meeting of the committee was devoted to arguments about the procedural acceptability of the amendments.⁵⁸ Allmand's amendments had been formally moved by Rod Blaker (Liberal). The retentionists, and a few abolitionists, argued that a move to total and permanent abolition violated the principle of the bill. For his part, Allmand, based his case for the orderliness of the amendments on two grounds. One was that the principle of the bill was the penalty for murder, and this was not being violated. However a principle is not just a subject matter (punishment for murder) but must also include a position on that subject matter (what the punishment should be). The principle of bill C-2 was that, in some cases, it should be capital punishment. Allmand's second argument was that the same amendment had been accepted in 1967. The problem with this argument was that in 1967 the Chairman had indicated that it probably was out of order; he only allowed it because no one was objecting.

Chairman Jim Jerome reserved his decision until the next day when, "in his wisdom and his mercy, the Speaker

[sic-Chairman] struck down all of our amendments, and saved us from a terrible political fate".⁵⁹ The terrible fate was that if the amendments had come to a vote, they probably would have been defeated both in committee and in the House.⁶⁰ A defeat of a government amendment for total abolition would have been a major setback for the abolitionists. Gordon Fairweather, who at the time made a point to "unreservedly congratulate"⁶¹ the Minister for his proposed amendments, agrees in retrospect. "If Allmand had proceeded early that was one thing, but... he was saved really by Jerome".⁶²

This is not to suggest that Jerome's decision was procedurally incorrect. Robert McCleave (P.C.), a long-time retentionist, who in 1973 was the Deputy Speaker, made it clear, "If the committee had gone for total abolition and reported back, it would have had to be declared out of order as being inconsistent with the decision made on second reading".⁶³

At the time at least, the retentionists considered Jerome's decision to be a victory; the committee concluded its study of the bill fairly quickly. Amendments that would have declared rape or kidnapping followed by murder, and second murders or murder during hijacking, to be capital offences were defeated after minimal debate. An amendment that would have changed the method of execution was ruled

out of order as not relevant to the bill. Allmand's parole amendments were adopted with general agreement,⁶⁴ once the technical problems of fitting them into the bill were solved.

At report stage, Allmand did not bother presenting his amendments again; Flemming and Prud'homme did present their total abolition amendments, which Speaker Lamoureux ruled out of order. The amendment to change the method of execution was again ruled out of order. The two amendments broadening the category of capital murder were accepted for debate at report stage; these were Albanie Morin's concerning murder following rape or kidnapping, and Allan Lawrence's concerning second murders or murder during hijacking.

As the debate on report stage started, no agreement could be reached on the timing of report stage votes. It was well into July, and MP's were anxious to get back to their constituencies; however, the government wanted to dispose of the capital punishment bill first. Eventually, the government agreed to put off consideration of the bill until the fall, in exchange for an agreement that there would be only one additional day of debate on report stage, no amendments on third reading, shorter speeches, and extra hours. When the House adjourned for the summer, a House order was made incorporating these agreements.

In October of 1973, the two report stage amendments were defeated quite easily, and after a short third reading debate, the bill was given third reading on October 24, by a vote of 119 to 106. Abolitionists who had voted for the bill on second reading, but had threatened to vote against it on third reading if it were not changed to total abolition, did not in fact vote against it on third reading. One Conservative abolitionist, Jack Ellis, did switch his vote. He indicated that although he was confident that the government would continue to commute all sentences, he was voting against third reading as a protest against the bungling of the bill, and the lack of substantial measures to protect the public.⁶⁵ On the retentionist side, a few MP's had voted for second reading with the express hope that the category of capital murder be expanded; all of these members voted against third reading. All in all, there were five MP's who changed their vote between second and third reading of bill C-2.

The 1973 act did not expire until the end of 1977, but a bill to replace it was introduced on February 24, 1976, almost two years before the law lapsed. The timing of this fourth full scale debate on capital punishment reflected political consideration; "we didn't want to be faced with this going into an election year."⁶⁶ In May of 1975, when the Cabinet had started to stay executions

instead of commuting them, it had become obvious that Parliament was soon asked to make a decision about total de jure abolition.

Bill C-84, introduced by Solicitor General Warren Allmand, created two categories of murder, first and second degree, both having minimum sentences of life imprisonment. For first degree murder, a minimum of 25 years would have to be served before parole could be granted. For second degree murder, the minimum was 10 years, unless the trial judge raised it. Anyone required to serve 15 years or more before being eligible for parole had a judicial review after 15 years. The initial proposal was that a panel of three judges could reduce the parole eligibility time. An additional provision stipulated that day parole and unescorted temporary absences could only be granted starting three years before the parole eligibility date.

It was the beginning of May before the second reading debate began; it promised to be a long one. There were discussions among the House Leaders to try to reach an agreement on extra sitting hours and/or shorter speeches. An accord on the latter proved impossible, but it was eventually agreed that the House would sit on Tuesday and Thursday mornings, and that private members' hours would be suspended.

The 1976 debate resulted in the closest vote of all four debates since 1966; it was not until the night before the second reading vote that the abolitionists were sure they would win it.⁶⁷ The vote was held on June 22. The whips had made an effort to ensure that everyone was there; only three members, all retentionists, were absent. One, Albanie Morin, was very ill and was not expected. The absence of Erik Nielson and Walter Dinsdale was a surprise. When the Clerk gave the final account it was 133 votes for second reading, 125 against.

At this point, most retentionists were ready to concede defeat; many of them were almost relieved that it was at least over. Most MP's were also in no mood to spend the summer in Ottawa, and so wanted the bill dealt with quickly.⁶⁸ Some of the hard-line retentionists wanted to put off final consideration to the fall, because they felt that they had a better chance of winning then. They believed that if MP's got back to their constituencies to face the reaction, enough abolitionists would change their minds to defeat the bill. A handful of retentionists were prepared to fight to the finish.

In 1973 the government had agreed to put off the bill until the fall; it had no intention of doing so in 1976. It was precisely because the abolitionists agreed that they would be in trouble if they waited until fall

that the government was not prepared to adjourn for the summer until the bill was disposed of. Since the government had control over the summer adjournment, the government had the upper hand.

The bill went to committee the same afternoon that it had been given second reading. It was the retentionists who felt most strongly about the issue that attended, and the mood was a fighting one.⁶⁹ While in 1973 the retentionists had not opposed a motion that the only witnesses be the Minister and his officials, they resisted such a motion in 1976, forcing a number of recorded votes.⁷⁰ The questioning of Allmand was basically by retentionists, and basically still on the principle of the bill.

On June 23 Hugh Poulin made a tactical blunder that wasted a whole committee meeting. He wanted to get the bill out of the committee quickly, but he did not dare propose a motion that the bill have to be reported by a certain date, for fear that the government would be accused of invoking a kind of closure. If he had consulted with Gordon Fairweather or Stuart Leggatt, the opposition abolitionists on the committee, either of them would probably have proposed such a motion.⁷¹ Instead, Poulin went in without consulting them, and proposed that the committee sit on the evening of June 23, four times on June 24, and on June 25, if necessary. In reaction, Conservative reten-

tionists, some of whom had never before shown much sensitivity to the French culture, professed outrage at the insult to French Canadians of sitting on St. Jean Baptiste Day, the day of the patron saint of French Canada. It took Leggatt and Fairweather to state publicly that the real issue was when should the bill be reported. Fairweather proposed a motion, and after a number of procedural problems in the committee and in the House were sorted out, the committee agreed, on division, to report the bill by June 28. By the time this was done, the meeting was over.

Throughout the rest of the committee consideration, the abolitionists were mostly silent; they stayed just to ensure that no snap vote could be taken and won by retentionists. Abolitionists who had hoped to soften the parole provisions realized that this could jeopardize the whole bill, and backed off.⁷² The questioning was mostly by retentionists, concentrating on the principle of the bill, or on extraneous issues. As a result, the details of the bill, got 'lost in the shuffle.'

Several months earlier, Stuart Leggatt had decided to present an amendment to change the judicial review after 15 years from a decision by three judges to one by a judge and a jury. In all the debate on the principle of capital punishment, however, he forgot about it until the afternoon

that the bill was to be reported. He hurriedly put together the amendment, and submitted it to the committee. As originally proposed, it would have required a unanimous decision of the jury to reduce the minimum parole eligibility time. It was only after this was pointed out to Leggatt by someone watching the committee⁷³ that he added a clause saying that two-thirds of the jury could make the decision. The revised amendment was adopted by the committee, over Allmand's objections, and it was only after the bill was reported that Allmand (or his officials) noticed something else that Leggatt, in his haste, had overlooked. Leggatt's amendment required a few consequential amendments to other clauses. It was rather difficult for Leggatt to get that straightened out. In addition, Leggatt's amendment was wrongly printed in the reported bill, and that error almost went unnoticed.⁷⁴

Most of the amendments proposed at committee stage would have reinstated capital punishment in some way. The argument over the procedural acceptability of these amendments was a repeat of the 1973 discussion, except that each side in 1976 used the other side's 1973 arguments. Chairman MacGuigan ruled the amendments out of order on the same grounds that Chairman Jerome had in 1973. As had been ordered by the committee, the bill was reported on June 28; Leggatt's amendment was the only one adopted.

As report stage was starting, Government House Leader Mitchell Sharp presented a motion, agreed to by all the House Leaders, which stipulated that any recorded vote on either report stage or third reading would be at a time decided by the House Leaders. This was simply to avoid snap votes, but a handful of retentionists, who were still making a last ditch attempt to stop the bill at every turn, forced a recorded vote on the motion. It passed easily, but the retentionists did succeed in wasting some time.

The procedural arguments of the committee were repeated in the House; as expected, Jerome ruled the amendments reintroducing capital punishment out of order, as contrary to the principle of the bill. But to the surprise of most abolitionists, Jerome did rule two categories of amendments in order. He said that Bruce Halliday's amendments, which would have allowed a convicted person to choose capital punishment in certain instances, were in order because they introduced a new concept of choice. He also ruled that an amendment to delete a clause was in order, even if the deletion of the clause would destroy the principle of the bill. There were amendments to delete every clause that removed capital punishment from the criminal code; if any of the delete amendments had passed, capital punishment would have been retained in the code.

2

Even though the principle of the bill had supposedly been approved on second reading, report stage was still a debate on principle. Halliday, who had voted for abolition on second reading, indicated he might vote against third reading if his amendments did not pass. In opposing Halliday's amendments, Allmand attempted to be conciliatory, to try to keep his vote on third reading. As it turned out, not only most abolitionists, but also many retentionists, objected to voluntary capital punishment, and his amendments were easily defeated.

The delete amendments posed a more serious threat to abolitionists, but in the attempt to attract wavering government backbenchers, the amendments suffered on two grounds. One was that they were moved by the hard-line Tory retentionists; that in itself was an incentive for Liberal backbenchers to vote against them.⁷⁵ The other was that the form of the amendments was clumsy. Retentionists could not propose what they really wanted, because they were limited to amendments which would have deleted particular clauses. If any of these delete amendments had passed, the bill would have been left with a whole series of internal contradictions. When the delete amendments were defeated on July 8 by margins of 15 votes and greater, even the most determined retentionists gave up. They had won over George Hees, who had been a surprise abolitionist on

second reading, and had momentarily won over Bruce Halliday, but this was not enough. Retentionists could have thrown up further procedural roadblocks, but they did not bother.

Two amendment were passed at report stage. One made any second murder automatically a first degree murder. Most abolitionists, including Allmand, agreed to this because they did not think they were conceding very much. The other amendment that passed concerned escorted absences, which had not been part of the original bill. The effect on this amendment was that escorted absences for humanitarian and rehabilitative reasons had to be approved by the Parole Board.

After the defeat of the delete amendments at report stage, third reading was anti-climatic. There was an amendment to hoist the bill for three months, and that did bring about a procedural wrangle about the timing of the vote on the amendment. Through unanimous consent, this was eventually sorted out; the votes on the hoist motion and third reading were held on July 14. The hoist motion was easily defeated; third reading was by a vote of 130 to 124. Late changes had brought the margin up to the six vote spread.⁷⁶

After third reading, it was generally assumed that Senate approval was simply a formality. The Senate did pass the bill by a comfortable margin of 34 to 22 on July

16; however, that was only after Ray Perrault, Government Leader in the Senate, had worked until 6:00 a.m. that morning to make sure everything was alright.⁷⁷ This set the stage for royal assent, which for the first time in Canadian history, took capital punishment out of the criminal code in law as well as in fact. After a ten year struggle in Parliament, a struggle in which perseverance made up for some tactical errors, the abolitionists had won.

(2) Public Attitudes Toward the Death Penalty

The steps taken by the Canadian Parliament to achieve first partial, then total, abolition took place in the context of a public attitude that was, in its majority opinion, consistently retentionist. But the extent to which that opinion was retentionist changed significantly over time.

The most reliable evidence about Canadian public attitudes toward the death penalty is undoubtedly the results of Gallop polls periodically taken on the subject (see Table II.2). When the first such Gallop poll was taken in 1943, retentionists outnumbered abolitionists by a margin of four to one. That margin apparently held until the mid 1950's; thereafter, abolitionists gained significant ground. From the late 50's to the mid 60's, re-

tionists constituted only a bare majority. Allowing for sampling error, aggregate opinion over this period appears to have been quite stable. Although retentionists outnumbered abolitionists across the country during the 1966 and 1967 Parliamentary debates, there was no sign that

TABLE II.2

CANADIAN PUBLIC ATTITUDES TOWARD THE DEATH PENALTY
GALLOP POLL RESULTS**

	1943	1953	1958	1960	1965	1966	1971*	1972 ^Δ	1975 [†]
Should not be abolished	73	71	52	51	56	53	70	63	69
Should be abolished	18	22	33	41	35	37	20	30	23
No opinion	9	7	15	8	9	10	10	7	8
TOTAL	100	100	100	100	100	100	100	100	100

* In the 1971 poll, the question was whether capital punishment should be restored for kidnappers of people in public or political life.

Δ In the 1972 poll, the question was whether capital punishment should be brought back for murderers.

† In the 1975 poll, the question was whether there should be capital punishment for the killing of any innocent person. When asked whether there should be capital punishment for the killers of on-duty policemen and prison guards, the results were: 79% in favour, 18% opposed, and 4% don't know.

** For the precise wording of the questions, see Appendix B.

SOURCE: Ezzat A. Fattah, The Canadian Public and the Death Penalty. A Study of a Social Attitude, (Report prepared for the Department of the Solicitor General, Submitted March, 1975, Released February, 1976), p.105.

support for the death penalty was on an upward trend. The comparatively low level of retentionist sentiment over this period has been attributed to the socio-political environment. "With increasing political stability and economic prosperity, a steady erosion of public support for the death penalty took place."⁷⁸

The next poll on capital punishment conducted by the Canadian Institute of Public Opinion was not until shortly after the October Crisis of 1970. The question asked at this time concerned capital punishment for political kidnapping; in the immediacy of the crisis, support for the death penalty climbed to a level of 70%. At the end of 1971, the Justice Department admitted that its mail reflected a similar trend.

In recent months letters calling for restoration of capital punishment have been flowing into the Justice Department at an average rate of roughly 50 a week ... [T]he present flow of letters is far above what is considered normal and it has been on the increase for more than a year. 'It seems to have begun about the time of the FLQ crisis', the spokesman said.⁷⁹

As memories of the October Crisis faded, retentionist support in the polls fell off somewhat; it did not, however, return to the levels of the early and mid 1960's. The FLQ Crisis seems to have been a catalyst for retentionist sentiment that was more deeply rooted. By 1975, with October 1970 well in the past, the Gallop results indicated that the

extent of general support for the death penalty had returned to the levels of the 1940's and 1950's. On the more specific question of capital punishment for the killers of policemen and prison guards, retentionist support was even higher (79%). A poll commissioned by the office of the Solicitor General in 1976 indicated that 80% of Canadians favoured the restoration of the death penalty.⁸⁰

Accordingly, the 1973 debate in Parliament was held while retentionists outnumbered abolitionists by at least two to one. By 1976, retentionist support was clearly on the increase, and the margin over abolitionists was probably close to four to one. This was a dramatic shift from the mid 1960's, from the time of the first two full scale debates in Parliament. Again, the socio-political environment seems to be relevant to the change. "The pattern of public violence which was widely reported in Canada and the rest of the world in 1973 changed from the 1960's to include airline hijacking, airport and athlete massacres and kidnapping."⁸¹ When this is combined with increasing rates of murder and other violent crimes in Canada, (See Figure II.1) plus widely publicized prison escapes and parole violations, as well as a faltering Canadian economy, a general feeling of insecurity would be the expected result, an insecurity reflected in less

FIGURE II.1

TOTAL CRIMES OF VIOLENCE*, CANADA, 1965 TO 1974

Rate per 100,000 Population

*Includes murder/manslaughter, rape, robbery, wounding/attempted murder, assaults (not indecent), and other sexual offences.

SOURCE: Questions and Answers Relating to the Capital Punishment Issue
(Ministry of the Solicitor General, March, 1976), question #1,
Chart B.

tolerant attitudes. The increasing support for capital punishment in the 1970's was only part of a more general phenomenon of an increasing sentiment that the courts were being too lenient with criminals.⁸² The de facto abolition situation probably only served to reinforce such sentiments.

David Chandler has pointed out that while the public opinion polls (Gallop in particular) indicated that Canadians were becoming increasingly retentionist, what they did not show was the intensity of the opinions held.⁸³ However, Chandler's attempt to deal with this problem was not very satisfactory. He assumed that the intensity of opinion plotted against position on the death penalty would form an inverted bell curve,⁸⁴ but he never really justified that assumption. He also assumed that persons who favour capital punishment in some, but not all cases of murder (or even premeditated murder) do not feel very strongly about the issue.⁸⁵ However, there seems to be no basis for that assumption either. Some of the strongest and most persistent spokesmen for retention, whether inside or outside Parliament, are quite prepared to concede a legitimate place for commutations, especially if the jury recommended clemency. What they object to is blanket commutations, or the restriction or abolition of the option of capital punishment. The measurement of intensity of

opinion is much more complicated than an identification of how often a person would like to see the death penalty employed.

It can hardly be disputed that the intensity of an opinion is an important feature of an attitude. Moreover, the results of a Gallop poll conducted in 1976 indicate, indirectly, that there were significant differences in the intensity of retentionist opinion. When the question, "If we can achieve better law and order, would you or would you not be satisfied to see an end to the death penalty?", was asked, 48% said no, 41% said yes, and 11% had no opinion.⁸⁶ This 48% for retention was substantially less than the 70-80% obtained when a straight abolish or retain question was asked, indicating that for many the support of retention was, at best, conditional. The discrepancy also indicates that many did not accept the premise of the conditional question posed by Gallop in 1976. An implicit assumption that capital punishment is necessary for "better law and order" is, in itself, an important aspect of attitudes toward the death penalty. Chandler's argument that the measurement of public attitudes toward the death penalty is necessarily complex cannot be denied, but it would be equally difficult to dispute that Canadian public opinion was heavily in favour of capital punishment, whatever the intensity of that sentiment.

In addition to public opinion polls, public attitudes were also reflected in the lobbying activities of particular groups. On the retentionist side, the police associations were the strongest and most persistent lobbyists. In 1955, the Canadian Association of Chiefs of Police presented a strongly worded brief to the Joint Committee of the Senate and the House of Commons.⁸⁷ In late 1964, the Association sent a letter to Prime Minister Pearson, and in early 1965 to all MP's, arguing the need for the death penalty, and protesting the government's practice of blanket commutation.⁸⁸ Nonetheless, in 1965 the usual unanimity of the Association on this issue was broken. Even in anticipation of a debate in Parliament, the Ontario Association decided not to take a formal stand.⁸⁹ The national Association took the opposite position; it did pass a resolution favouring the death penalty. However, for the first time in memory, such a resolution did not pass unanimously; two chiefs opposed it.⁹⁰ Just prior to the 1966 and 1967 debates, the police chiefs were still a strong voice for retention, but a little less strong than they had been.

The 1967 law, on paper at least, put policemen and prison guards into a special position, ostensibly giving them special protection. When the Cabinet continued to commute sentences of the killers of on duty policemen and

prison guards, police spokesmen reacted angrily.⁹¹ In 1971, the Ontario Police Association passed a resolution calling for no commutation without a recommendation for clemency from the jury, and demanding that a life sentence mean life.⁹² In 1972, the newly elected President of the Canadian Police Association, Syd Brown, indicated, disapprovingly, that he did not expect the Cabinet to allow any more hangings.⁹³

In 1972, in a reversal of its stand, the Quebec Police Association indicated its approval of the status quo, however, this was but a brief aberration. In January of 1973 the Canadian Association of Chiefs of Police was not only demanding a return of the noose, but also calling for a referendum on the issue;⁹⁴ given the public opinion polls, it was quite obvious what the result of any referendum would be. By 1975, the rhetoric of police spokesmen was getting rather extreme; there were references to feared vigilante activity if the death penalty were not reinstated.⁹⁵ Also in 1975, on the occasion of the funeral of a murdered prison guard, prison guards across the country called a one day strike to dramatize their demands that capital punishment be brought back.⁹⁶ As Parliament prepared to debate the issue in 1976, police associations placed ads in newspapers throughout Canada in which they argued the need for capital punishment as well as for a referendum on

the matter.⁹⁷ The ads contained coupons asking readers to indicate their own opinions; the response, primarily by retentionists, in sending the coupons to police associations and Members of Parliament was extensive. Some local police associations also set aside funds for petitions and publicity campaigns.⁹⁸ Although police associations approved the tougher parole provisions contained in bill C-84, they were also determined that capital punishment be part of the criminal law, and that it be enforced. The police associations had always lobbied for retention; they had never put so much effort into the campaign as they did in 1976.

On the opposite side of the issue, the Canadian Civil Liberties Association and church groups have been the most consistent in their support for abolition. But although these groups made it a point to publicize their positions, they never actually conducted a campaign in favour of abolition. In 1976 the Canadian Civil Liberties Association did place newspaper ads making the case for abolition,⁹⁹ a move that was probably a response to the ads by the police associations; but the CCLA ads did not generate anything like an equivalent response.

In the mid 1960's the Canadian Society for the Abolition of the Death Penalty, led by former Conservative MP Arthur Maloney, was formed to launch a campaign against capital punishment. Its organization was effective, as

it launched a membership drive (at \$2 a member).¹⁰⁰ It was largely responsible for the fact that MPs' mail before the 1966 vote tended to be more in favour of abolition than retention.¹⁰¹ In 1972, when Parliament was getting ready to debate the issue again, an attempt was made to revive the Society;¹⁰² that attempt never really succeeded. In 1976, a committee of abolitionists, led by Mr. Justice Emmett Hall, was formed.¹⁰³ Unlike the Society in the mid 1960's, however, it never attained a high profile. The reasons why abolitionists were weakly organized in the 1970's, in comparison to the 1960's, probably reflected a number of considerations. Their following in the country was much smaller, but in spite of this, the battle to win over the government had clearly been won long before. Also, in 1976, those who tended to be most strongly in favour of abolition also tended to be the most critical of the strict parole provisions of bill C-84.

During the 1973 and 1976 debates, not only was public opinion more heavily retentionist, the retentionists were also more effective in getting their case before the public. The change from the situation during the earlier two debates was quite dramatic.

Now that the historical background has been outlined, the discussion can turn to analysis, to try to discover what conceptual framework provides the key to an understanding of the Parliamentary process through which de facto abolition became, after four tries, de jure abolition.

NOTES

¹Eight additional persons who were sentenced to death committed suicide before the scheduled date of execution. Hon. Guy Faureau, Minister of Justice, Capital Punishment Material Relating to Its Purpose and Value (Ottawa: Queen's Printer, 1965), pp.62-65.

²Frank W. Anderson, Hanging in Canada. A Concise History of Capital Punishment in Canada, (Calgary: Frontier Publications, 1973), p.15.

³Ibid., p.17.

⁴George Wheelock Burbridge (ed.), A Digest of the Criminal Law of Canada, (Toronto: Corsswell & Co., Law Publishers, 1890), passim. Anderson, op. cit., p.27, neglects to mention piracy with violence in his discussion of the 1869 law.

⁵Some lesser crimes of treason could not be punished by death.

⁶Burbridge (ed.) op. cit.; James Crankshaw (ed.), The Criminal Code of Canada, (Montreal: Whiteford & Theoret Law Publishers, 1894); John E. Crankshaw & Alexandre Chevalier (eds.) Crankshaw's Criminal Code of Canada, Fifth Edition, (Toronto: The Corsswell Co. Limited, 1924); J. C. Martin, (ed.), The Criminal Code of Canada, (Toronto: Cartwright & Sons Ltd., 1955); J. C. Martin (ed.), Martin's Annual Criminal Code, (Toronto: Canada Law Book Company, 1961 to 1975).

⁷From 1892 until 1954, the appropriate Minister was the Secretary of State; from 1954 until 1967 it was the Minister of Justice; from 1967 to 1976 it was the Solicitor General. See Ibid.

⁸Thus it was the judge who signed the execution order, not Cabinet Ministers and/or the Governor General; the latter signed only commutation orders. Accordingly, when John Diefenbaker talks about the agony of having signed the last two death warrants (e.g. House of Commons Debates, 1st Session, 29th Parliament, Jan. 30, 1973, Vol. 1,

p.784; and 1st Session, 30th Parliament, June 4, 1976, Vol. XIII, p.14177) he is in fact mistaken. The agony that Diefenbaker must have felt was from the lack of a signature, on a commutation order.

⁹ Faureau, op. cit., pp.62-65; and Questions and Answers Relating to the Capital Punishment Issue, (Ottawa: Ministry of the Solicitor General, 1976), question 38.

¹⁰ In 1954, when the entire code was revamped, rape was dropped as an offence punishable by death. This change was not very significant, however, since hanging had only been a possible penalty for rape; since the 1869 code had been passed, no one had been executed for that crime. Indeed, only one person had actually been sentenced to death (in 1927); that sentence had been commuted to 20 years. Martin (1955 ed.), op. cit., p.233.

¹¹ Debates, 3rd Session, 12th Parliament, Feb. 6, 1914, Vol. I, p.511.

¹² Debates, 5th Session, 12th Parliament, Feb. 18, 1915, Vol. I, p.281.

¹³ Debates, 6th Session, 12th Parliament, March 20, 1916, Vol. II, p.1968.

¹⁴ Debates, 7th Session, 12th Parliament, May 2, 1917, Vol. I, p.1036.

¹⁵ Debates, 3rd Session, 14 Parliament, April 10, 1924, Vol. II, p.1313.

¹⁶ Debates, 2nd Session, 21st Parliament, April 18, 1950, Vol. II, p.1667.

¹⁷ Debates, 7th Session, 21st Parliament, April 17, 1953, Vol. IV, p.4049.

¹⁸ Favreau, op. cit., pp.4-5.

¹⁹ Ibid., pp.62-65.

²⁰ Debates, 3rd Session, 24th Parliament, Aug. 10, 1960, Vol. VII, p.7875.

²¹McGee reintroduced his bill in the 4th Session; he used a regular private member's hour to respond to arguments made by retentionists. Debates, 4th Session, 24th Parliament, Vol. IV, p.4126.

²²On second reading the bill was opposed by 20 Liberals and one PC. Debates, 4th Session, 24th Parliament, May 24, 1961, Vol. V, pp.5321-5322. On third reading, the one PC and 7 of the Liberals were not present; the bill was opposed by an additional 4 Liberals, 2 of whom had voted for second reading and 2 of whom had not been present then. Debates, 4th Session, 24th Parliament, June 6, 1961, Vol. VI, pp.5929-5930.

²³Ried Scott (NDP) who had the only abolition bill on the order paper in the 1964-65 session of Parliament, was, at least publicly, expressing quiet confidence that the bill would pass. A poll of MP's conducted by the United Church Observer in Feb.-March, 1965 indicated that abolitionists were leading 59 to 49. But since that left 154 MP's who did not answer or who had not yet decided how to vote, it is impossible to tell from the Observer poll what the fate of Scott's bill before the 26th Parliament would have been. Glen Bagnell, "Capital Punishment a look at the men and the issues in the fight to abolish the death penalty", United Church Observer, (April 1, 1965), p.13.

²⁴Debates, 1st Session, 27th Parliament, Jan. 18, 1966, Vol. I, p.9.

²⁵Debates, 1st Session, 27th Parliament, March 28, 1966, Vol. III, p.3323.

²⁶This and subsequent comments about the speeches during the 1966, 1967, 1973 and 1976 debates are based on a complete and careful reading of all speeches during the 1966 debate, and all second reading speeches during the latter three debates. The number of speeches on each occasion were as follows:

	# speeches for motion	# speeches against motion
1966	42	56
1967	18	31 (plus one undecided)
1973	42	62
1976	40	79

²⁷Robert Stanbury, interviewed June 29, 1976; Gordon Fairweather, interviewed July 21, 1976; Stanley Knowles, interviewed June 24, 1976. For discussion of interview technique, see Appendix C.

²⁸With respect to a bill, there can be no amendments to the bill itself until after second reading, approval in principle. Once the principle has been accepted, any amendment that would change the principle is out of order.

²⁹Knowles, op. cit.

³⁰Debates, 1st Session, 27th Parliament, April 5, 1966, Vol. IV, p.3909.

³¹Ibid.

³²e.g. Terry Nugent, L. B. Sherman, Howard Johnston.

³³Debates, 2nd Session, 27th Parliament, Nov. 9, 1967, Vol. IV, p.4077.

³⁴Ibid.

³⁵Ibid., p.4082.

³⁶Howard Johnston (SC), I. M. Brand (PC), and G. D. Clancy; M. T. McCutchen (PC), who wanted a five year trial for total abolition, voted against the main motion in 1966 as well as the 1967 bill. Debates, 1st Session, 27th Parliament, April 4, 1966, Vol. IV, p.3817, and 2nd Session, 27th Parliament, Nov. 22, 1967, Vol. IV, p.4581; R. E. Reginbal (PC) said that he was in favour of abolition, but thought that the alternative of life imprisonment was too vague and uncertain. Debates, 1st Session, 27th Parliament, March 28, 1966, Vol. III, p.3300. He voted against the resolution in 1966 and against the bill in 1967.

³⁷In addition, an amendment was defeated during the second reading debate; it proposed that the bill not be read a second time, but that the matter be referred to the justice committee for study.

³⁸In 1967, before rule changes, it was normal for a bill to go before Committee of the Whole.

³⁹Debates, 2nd Session, 27th Parliament, Nov. 23, 1967, Vol. V, p.4608.

⁴⁰There was a fourth amendment, that was defeated, relating to compensation for families of murder victims. The Chairman doubted its relevance to the bill, but allowed a vote nonetheless.

⁴¹Ottawa Citizen, Nov. 24, 1967.

⁴²Questions and Answers, op. cit., question 38. On January 4, 1968, the Cabinet commuted an additional 18 sentences of persons convicted of capital murder prior to the passage of the 1967 law. None of these individuals had killed a policeman or a prison guard; the Cabinet actions, in effect, simply made the bill retroactive.

⁴³See Section 2 of this chapter.

⁴⁴Warren Allmand, interviewed September 8, 1977.

⁴⁵Jim MacDonald, interviewed July 15, 1976.

⁴⁶Debates, 1st Session 29th Parliament, May 16, 1973, Vol. IV, p.3844.

⁴⁷Debates, 1st Session, 29th Parliament, Jan. 29, 1973, Vol. I, p.733.

⁴⁸Globe and Mail, Jan. 16, 1973; Ottawa Journal, May 30, 1973.

⁴⁹Standing Committee on Justice and Legal Affairs, June 19, 1973, pp.17:5-17:8.

⁵⁰Jim MacDonald, op. cit.; Allmand, op. cit.

⁵¹Jim MacDonald, op. cit.

⁵²Ibid.; Mitchell Sharp, interviewed on June 13, 1977; Allmand, op. cit., claims, to the contrary, that the amendments did have Cabinet approval. Perhaps it was simply that a misunderstanding arose out of Cabinet discussions, Allmand thinking he had approval to propose amendments, and others thinking that the discussions were preliminary and tentative.

⁵³Standing Committee on Justice and Legal Affairs, June 21, 1973, Issue 18, passim.

⁵⁴Jim MacDonald, op. cit.

⁵⁵Ibid.; see also: "Death Bill in Trouble, Allmand and Government Surprised by Reaction", Ottawa Citizen, June 22, 1972; "Grit MP's furious over Allmand Plan, Ottawa Journal, June 23, 1973.

⁵⁶Fairweather, op. cit.

⁵⁷Ironically, two of the Liberals who said they could not support Allmand in 1973 were in rather strategic positions in 1976. Hugh Poulin was Parliamentary Secretary to Allmand; Mark MacGuigan was Chairman of the Justice Committee.

⁵⁸Standing Committee on Justice and Legal Affairs, issue 19, June 26, 1973, passim.

⁵⁹Jim MacDonald, op. cit.

⁶⁰Gordon Fairweather, op. cit.; Stuart Leggatt, interviewed June 9, 1977; Mitchell Sharp, op. cit.

⁶¹Standing Committee on Justice and Legal Affairs, June 21, 1973, p.18:9.

⁶²Fairweather, op. cit.

⁶³Robert McCleave, interviewed June 29, 1976.

⁶⁴Marcel Prud'homme was objecting to almost everything, because he was still annoyed at Jerome for having ruled the total abolition amendments out of order.

⁶⁵Debates, 1st Session, 29th Parliament, Oct. 18, 1973, Vol. VII, 6981-2.

⁶⁶Jim MacDonald, op. cit.

⁶⁷Hugh Poulin, interviewed June 27, 1977.

⁶⁸Jim MacDonald, op. cit.; Fairweather, op. cit.

⁶⁹The most bitter exchanges came out of an incident staged by Liberal Simma Holt, a staunch retentionist. She had been on the justice committee since the beginning of the session, but had recently been replaced because she had been in hospital. To get back onto the committee, she had to get the whip to put her back on. Instead of going to the whip, she went straight to the committee, claiming she was a member. When Chairman MacGuigan told her that she was not, she threw a temper tantrum, saying that the government had kicked her off the committee because she was against the bill. This was an unfounded charge; very shortly, the whip was found, and she was put back on the committee.

⁷⁰Standing Committee on Justice and Legal Affairs, June 22, 1976, Issue 69, passim.

⁷¹Leggatt, op. cit.

⁷²Fairweather, op. cit.

⁷³That observer was this author.

⁷⁴Report stage was almost over when I noticed it, by accident. I phoned his office to tell his secretary, and it was straightened out. But there was no indication that he, or anyone else, had noticed it earlier.

⁷⁵David MacDonald, interviewed July 8, 1976; Jim MacDonald, op. cit.

⁷⁶"Poulin Unsung Hero of Abolition", Ottawa Citizen, July 15, 1976.

⁷⁷Comment by Perault related by Ross Milne, July 16, 1976.

⁷⁸Ezzat A. Fattah, The Canadian Public and the Death Penalty. A Study of a Social Attitude, (Report Prepared for the Department of the Solicitor General, Submitted March, 1975, Released February 1976), p.1.

⁷⁹Montreal Gazette, Dec. 15, 1971.

⁸⁰Globe and Mail, April 1, 1976.

⁸¹David Chandler, Capital Punishment in Canada (Toronto: McClelland and Stewart Limited, Carleton Library Original (No. 94), 1976), p.52.

⁸²Fattah, op. cit., pp.5, 116.

⁸³Chandler, op. cit., pp.43-53.

⁸⁴Ibid., p.49.

⁸⁵Ibid., pp.43-53.

⁸⁶Winnipeg Free Press, March 3, 1976.

⁸⁷Favreau, op. cit., pp.13-14.

⁸⁸Ibid., p.12.

⁸⁹Montreal Star, Aug. 6, 1965.

⁹⁰Globe and Mail, Sept. 17, 1965.

⁹¹Montreal Star, July 9, 1969; Toronto Star, July 11, 1969.

⁹²Toronto Telegram, Aug. 12, 1971.

⁹³Toronto Star, Nov. 25, 1972.

⁹⁴ Ottawa Citizen, Jan. 20, 1973.

⁹⁵ Toronto Star, Aug. 25, 1975.

⁹⁶ Ottawa Journal, June 30, 1975.

⁹⁷ Globe and Mail, Feb. 25, 1976.

⁹⁸ Toronto Star, Feb. 12, 1976.

⁹⁹ Globe and Mail, April 6, 1976.

¹⁰⁰ Toronto Star, Jan. 30, 1965.

¹⁰¹ Halifax Chronicle Herald, June 7, 1965.

¹⁰² Fraser Kelly, Toronto Star, July 29, 1972.

¹⁰³ Globe and Mail, April 16, 1975.

CHAPTER III

ANALYSING FREE VOTES FROM THE PERSPECTIVE OF THE PARTY

Although it was indicated in Chapter I that the object of this thesis is an investigation of Canadian legislative behavior under a 'free vote', and although there were several references in Chapter II to the fact that the capital punishment votes were 'free', the term 'free vote' has yet to be precisely defined. This is because there is no simple definition, no simple dichotomy between free votes and whip votes. Although a free vote indicates that it has been explicitly stated beforehand that the government will not consider the vote an expression of confidence, beyond that, the meaning is vague. Under a free vote the circumstances can range from a situation of no party pressures to one of extensive party pressures; the whip is only the most formal instrument of party discipline. The removal of the whip does not necessarily eliminate the more subtle and more informal pressures toward party cohesion. The extent of party pressures on members on any given free vote is therefore a matter for empirical investigation, not a question of definition.

There are additional aspects of behavior relevant to the parties that should be investigated in free vote situa-

tions. Normally, parties are the central actors in Parliament; the organization within the House is focused on them. This raises the question of how Parliament is organized under a free vote. This issue can be investigated in terms of the adaptability of norms about party behavior. It is possible to gain an understanding of the abnormal situation of a free vote by identifying the particular norms that must be abandoned or adapted, and the problems that arise as a consequence. A focus on the adaptation of party norms not only provides an organizing concept with which to understand behavior, but also helps to place free votes into the general context of Canadian legislative behavior.

Accordingly, in this Chapter the capital punishment debates will be investigated in terms of the precise meaning of free vote on each occasion (as indicated by the extent of party pressures), and in terms of the nature and adaptability of the relevant norms about party behavior.

(1) The Various Meanings of 'Free Vote'

The first clue to a comprehension of the precise meaning of a free vote is an understanding of why it was held. The usual rationale for a free vote, in a British Parliamentary system, is that, for an issue that touches on fundamental moral principles, the question should be decided according to the consciences of individual MP's, not accor-

ding to the dictates of the party whips. Questions of morality, it is argued, are above partisan politics.¹ In the recent British experience, the issues handled under free votes (capital punishment, homosexuality, abortion, movie censorship, divorce, and Sunday entertainment),² have indeed involved some fundamental moral and/or religious controversies. But the actual definition of a 'conscience issue' becomes a little arbitrary. For, as one observer of the British experience has noted, "In practice, a matter becomes an issue of conscience whenever it is convenient for the parties to treat it as such."³

If it is difficult, in the British context, to make a meaningful distinction between conscience issues as free votes, and non-conscience issues as whip votes, it is impossible to make such a distinction in relation to the Canadian experience. In the past few decades there have been two issues handled as 'free votes' in the Canadian House of Commons. Apart from the capital punishment debates, the only free vote was on one of the flag debate motions. While the issue of capital punishment, since it is literally a matter of life and death, can be easily considered a 'conscience issue', even John Diefenbaker would find it difficult to construct an argument that the design of the Canadian flag was a moral question. A divisive issue it certainly was, but it hardly involved questions of morality. Also,

other seemingly 'conscience issues', such as abortion, homosexuality, and divorce, which were occasions for free votes in Britain, were handled under whip votes in Canada. Indeed, the changes in the law on homosexuality and abortion were not only subject to the normal dictates of party discipline, they were also part of an omnibus criminal code bill. Thus 'conscience issue' is by no means synonymous with 'free vote'. The analyst must look beyond a designation as a conscience issue to understand why the four capital punishment debates since 1966 were all held without the whips being put on. Since the decision to have a free vote is essentially a decision of the government party, the situation within the Liberal caucus during each of the four capital punishment debates will be examined first.

In the first debate, in 1966, the underlying reason why the initiative was left to the backbenchers was the inability of the Cabinet to agree upon a policy that could be incorporated into a government bill. As Mitchell Sharp recalls:

In those days there was a genuine difference of view. There were people in favour of capital punishment. So I don't think the question of a government measure really was taken seriously, because of this division. ...If the government had introduced a measure in those days, what would it have introduced, in which it could have got all the members of the Cabinet together? Obviously a measure that some of us didn't like very much....If we had been able to agree on a bill, at the

beginning, that exempted policemen and prison guards, it would have been fine, but we couldn't, because some of us didn't like that. We didn't want to propose that; we might be prepared to compromise in order to get something, but not to take the leadership....So we preferred, under these circumstances, to let the matter be handled on a free basis, where we would all be free to vote as we wished, where the government's prestige was not on the line. Well, that was the reason. Government's don't introduce measures unless they can insure almost 100% support because they don't want to lose members of the Cabinet, nor to create the opinion that the government is divided, if they can avoid it. Therefore it is better under these circumstances to have the measure introduced by private members.⁴

As a consequence of the on-going necessity of decisions about commutations, the Cabinet could not shelve the entire matter in the face of its internal division. In the end, although most of the Cabinet voted for the total abolition resolution in 1966, six members voted against it. These were: Cardin, Laing, LaMarsh, Turner, Robichaud and Cadieux. Furthermore, it would seem significant that one of the ministers opposed to the resolution, Justice Minister Lucien Cardin, held a portfolio that, while not directly responsible for, is certainly related to, the issue of capital punishment.

A decision to have a free vote because of Cabinet divisions was not totally divorced from an argument that there should be a free vote on an issue of conscience. For it was the nature of the issue that made the Cabinet

division incapable of resolution through compromise. The question is ultimately an absolute one, based on criteria of morality -- does or does not the state have the right to take a life. There was a widespread feeling that party discipline could not be enforced on such a fundamental issue.⁵ Especially in a minority Parliament, it would have been risky to treat the vote as a question of confidence. In opting for a free vote on capital punishment in 1966, the Canadian Parliament was also following a precedent recently set in Britain; this added some legitimacy to the process.⁶

If, in 1966, Cabinet disunity was the basic reason for there having been a free vote, such was not the case in the last three debates. From 1967 on, and particularly in 1973 and 1976, there was virtual Cabinet unanimity, although it was never explicitly a question of Cabinet solidarity. In spite of agreement within the Cabinet, however, on each occasion there were pragmatic reasons why it was desirable to have a free vote, reasons not based on any actual principle of free votes for conscience issues.

In 1967, faced with a defeat of total abolition in 1966, the abolitionists within the Cabinet were prepared to settle for a compromise. The exemption for the killers of policemen and prison guards, the five year trial for this partial abolition, perhaps supplemented by peer group pressure from within the Cabinet, were enough to induce most of the retentionists within the Cabinet to support the Solici-

tor General's bill. Although Pennell explicitly said in his second reading speech that the matter was not a question of Cabinet solidarity,⁷ the only dissention was that Arthur Laing voted against third reading, having been absent for second reading, and Judy LaMarsh voted against second reading, but then supported third reading.⁸

Even with almost complete Cabinet backing, it would have been virtually impossible, in 1967, to put the whips on for a bill when, eighteen months earlier, in the same Parliament, a very similar measure had been handled under a free vote. Although the 1967 bill proposed partial and temporary abolition, whereas the 1966 resolution had suggested total abolition, separate amendment to have a five year trial for abolition, and an exemption for policemen and prison guards, had been defeated in 1966. Since these were the qualifications attached to the 1967 bill, the 1967 debate was very similar to the 1966 debate. The government was subjected to enough criticism in the House, even by a few abolitionists, because of the change from a private members' resolution to a bill introduced by the Solicitor General, i.e. a government bill. It would have been very difficult to defend, politically, if the whips had been put on. Also, the majority of the Liberal caucus favoured a free vote.⁹

In 1973, again with a bill introduced by the Solicitor General, this time Warren Allmand, it was never

explicitly stated during the second reading debate whether or not the matter was a question of Cabinet solidarity. But the Cabinet did in fact vote en bloc. Even with such unanimity, however, a whip vote was never seriously considered in 1973. The Liberals were in a very precarious position in Parliament, with only a couple of seats more than the Conservatives. To risk defeat in the House, followed by an election, on an issue like capital punishment was unthinkable. As Jim MacDonald, then special assistant to Warren Allmand put it, "In 1973, I think the government would have been crazy to make it a government vote".¹⁰

In 1976, Warren Allmand assumed, when he introduced the total abolition bill, that it was subject to the normal dictates of Cabinet solidarity.¹¹

I had presumed that since I had to go to Cabinet, and get Cabinet authorization for the bill, that therefore it was a government, a Cabinet bill, and therefore should have the backing of Cabinet at least, even though the decision was that there should be a free vote in Parliament. We hadn't discussed it,...I just presumed, and both Mitchell Sharp [then Government House Leader] and the Prime Minister said no, it's a free vote for everybody. I found that surprising. I thought, well, if that's the case, I should have sponsored a private member's bill and made the bill exactly like I wanted. If the Cabinet weren't committed to it, why did I need their approval for it? The bill was subject to the consensus of the Cabinet.¹²

Although it was not explicitly a question of Cabinet solidarity, the entire Cabinet did, nonetheless, support the bill.

The Government House Leader, Mitchell Sharp, said that the Cabinet was supporting the bill voluntarily;¹³ when the bill was before Cabinet no one, in fact, did express any opposition to abolition.¹⁴ If there were still unrepentent retentionists in the Cabinet (and Marcel Lessard and Jeanne Sauvé were reported to be such¹⁵) they apparently got the message, without anyone's having to say anything, that it was best to support the bill, and keep any private sentiments to themselves.

In 1976 it was seriously considered, for the first time, that a capital punishment vote should be a whip vote. Warren Allmand argued strongly for this position.

There were people on death row, and we had a majority, and I felt this was as important as any other issue in the country before Parliament, and if other issues were important, such as transportation rates and a whole lot of other things, questions of life and death were important, if not way more important, and the government should take a position, and use its party position to make sure that this important law was passed, and not risk it.¹⁶

Another consideration that worked in favour of there being a whip vote was an expectation that the whip could act as a counter-pressure to constituency sentiment.

There were some Members of Parliament who were personally in favour of abolition, but whose constituents weren't. Perhaps that was true of all of us, but at any rate, there were some more sensitive to the question than others. And if it became a question of confidence,

then those members could say to their constituents, I voted for this because the government said this is a matter of confidence, and I prefer this government to the Conservatives.¹⁷

Ultimately it was decided that, in spite of the above consideration, there would be a free vote nonetheless. This was, in part, an effort to reduce the political backlash that could be expected, since abolition was apparently contrary to the wishes of 70 to 80 percent of Canadians. In retrospect, even Warren Allmand agrees that, as long as the bill got through anyway, "it was better that it was a free vote, from a political point of view."¹⁸ The fact of a free vote also made it easier to argue against a referendum.¹⁹

But the most compelling reason for not having a whip vote in 1976 was the difficulty in explaining a change in precedent.

It was rejected because ... people felt too strongly about it....They said they could not explain how they were allowed to vote freely in one direction in two previous votes and then they would be forced by the whips to vote in another direction....We had about 30 or 40 members of the government caucus who were in that position.²⁰

The point was that, in order to maintain an appearance of fair play, a free vote was almost unavoidable, Otherwise,

It's almost as if the rules weren't good enough for you on the first three, so you switch them on the fourth. You play the

fourth period with two pucks just to make sure you win.²¹

Accordingly, in all four debates, the reasons for there being a free vote were essentially pragmatic. There was no overriding conviction, on the part of the government, that, on fundamental moral issues such as capital punishment, the issue must be decided by individual MP's, without any external pressures. Even if it had been decided that the vote would not be considered a vote of confidence in the government, there was no objection, in principle, to forms of pressure that were something less than coercion. In each debate, the existence and/or extent of party pressures on members was not a question of principle, it was a function of pragmatic considerations.

In 1966, since the Cabinet was split, there was no single government policy that the Cabinet could attempt to persuade backbenchers to support. The Cabinet was publicly non-committal during the debate on the total abolition resolution. Two Cabinet Ministers, Citizenship and Immigration Minister Jean Marchand and Secretary of State Judy LaMarsh, did give speeches in the House, but since the former was for the resolution, and the latter against it, they were obviously not outlining a government position. None of the three Cabinet Ministers most directly responsible for government policy on capital punishment and the criminal justice

system, Prime Minister Pearson, Solicitor General Pennell, or Justice Minister Cardin, spoke during the debate. In his speech in favour of the resolution, Opposition Leader Diefenbaker spent considerable time at the beginning of his remarks chiding the government for not taking a position on the resolution. Even under a free vote, he claimed, the government was under an obligation to state its position. Mr. Pearson's response was simply, "It's not a government matter".²² The failure of Pearson, Pennell, and Cardin to participate was lamented by Reid Scott (NDP), one of the movers of the resolution, when he gave the wind-up speech to the debate at a time when he knew the resolution would be defeated.²³ Pearson's decision not to speak, and what initially appeared to be a decision by Diefenbaker not to speak, engendered some editorial criticism in the nation's press as well.²⁴

In addition to the fact of no public Cabinet position, there was virtually no private Cabinet lobbying either. The lobbying among members during the 1966 debate was basically left to the sponsors of the resolution, and some of their strongest supporters outside the Cabinet.²⁵ Overall, there was virtually no party pressure on Liberal backbenchers to vote either way on the resolution. With a divided Cabinet, a hands off policy was the path of least resistance.

Although a free vote on a private member's resolution may have been the path of least resistance, for abolitionists it had turned out to be the path of no accomplishment. The defeat in 1966 "had the effect of telling the government that if it wanted to move on the issue, it would have to make it a government measure in one way or another."²⁶ Whereas in 1966 the Cabinet had played a very passive role, in the 1967, 1973, and 1976 debates it played a very active role, both publicly and privately. The Cabinet involvement amounted to much more than the fact that in each case the bill was in the name of the Solicitor General.

In all cases, however, where the government introduces a bill, it feels it has some responsibility to try to persuade people to support it; that's why they introduce it. Otherwise they wouldn't bother.²⁷

Part of the effort at persuasion was simply a public commitment to the bill on the part of the responsible Cabinet Ministers. In all three instances, the second reading debate was begun by the Solicitor General of the day. In 1967, Solicitor General Pennell expressed his personal commitment to complete abolition in very strong terms, although he was somewhat apologetic for the fact that his bill proposed partial and temporary abolition. Pennell described the exemption for the murder of policemen and prison guards as a compromise that "cannot be defended on every count in terms of clear, cold logic."²⁸ In 1973 Warren Allmand's

speech was, if anything, more defensive than Pennell's about the compromise nature of the bill; Allmand said that there should be a renewal of the trial period, instead of a move to total abolition, because all the evidence was not yet available.²⁹ It was an argument that few people accepted; Allmand freely admits that he did not really approve the 1973 bill in its initial form.³⁰ In contrast, by 1976, with a total abolition bill, the defensive tone was gone.³¹ Indeed, during 1975 Allmand had publicly stated that he, personally, would never in any way be associated with a hanging. Allmand's commitment to abolition had never been in doubt; his commitment to the 1976 bill was much clearer than to the earlier bill.

In addition, during each of the last three debates, the Prime Minister of the day spoke on second reading. While in 1966 Pearson had studiously avoided making any public comment before the vote on the total abolition resolution, in the 1967 debate he made his personal support of abolition quite evident.³² He too indicated that the compromise, while necessary to get the bill through, was illogical. In 1973, Prime Minister Trudeau's speech, like Allmand's, was rather defensive. Trudeau spent a good part of his speech giving assurances that the government really was concerned about public safety.³³ It was a speech about which W. A. Wilson of the Montreal Star commented, "The Prime Minister

veered toward leadership."³⁴ In 1976, Trudeau's speech was in marked contrast. To cite Wilson again, "The Prime Minister spoke with eloquence, but more importantly, he spoke with toughness."³⁵ In 1976 the Prime Minister's speech came at a time when the abolitionists were not at all sure of victory. Many think that his speech may have garnered, or insured, at least a couple of votes.³⁶ When you are winning or losing by the smallest of margins, even a few votes are crucial.

Apart from speeches by the Solicitor General and the Prime Minister, it was quite apparent well in advance of the vote that there was near-unanimous support from Cabinet in 1967, and unanimous support from Cabinet in 1973 and 1976. The Cabinet commitment to the bill was particularly strong in 1976.

There was a real determination that it had to get through this time [1976]. Last time, I think the government would have been prepared to withdraw the bill if it had run into too much trouble.³⁷

Although the government's backing of the bill was somewhat guarded in 1967 and 1973, it was clear that, in all three debates, it wanted the bill passed, even if it were not prepared to take the ultimate step of making it a whip vote. That kind of public endorsement by the Cabinet is bound to have a different impact than would a private members' resolution on which the Cabinet takes no public stand.

This would be true even if the government made no explicit attempt to privately exert pressure on backbenchers.

A person would have to be fairly unfeeling and fairly unimaginative to say that the Cabinet solidarity on an issue didn't have a very subtle, but a very impressive, effect on backbenchers.³⁸

A government bill, even under a free vote, puts the government's prestige on the line, to some extent at least. A defeat of a government bill, even if it did not lead to an election, would be highly embarrassing to the government. The stronger the government commitment to the bill, the greater would be the embarrassment; a defeat in 1976 probably would have involved the most 'loss of face'.³⁹ Government backbenchers would not be expected to take lightly a decision that might lead to embarrassment of the party. To vote against a government bill, knowing that this could contribute to its defeat, a government backbencher would have to be very sure of his convictions. He would not be a member of the Parliamentary caucus without having a fair amount of loyalty to the party.

The more partisan the debate, the greater the incentive for government backbenchers to support the government bill. The capital punishment debates do seem to have grown more partisan over time. In 1966, the debate really was non-partisan, despite criticism of government commutation policy. During the 1967 debate, the government was heavily

criticized, by opposition members, for having introduced a bill even though the House had just recently pronounced itself against a very similar measure. Despite such criticism, however, members on both sides of the House, including retentionists, made it a point to compliment Solicitor General Pennell. Warren Allmand, in 1973 and 1976, received no such acclaim from opposition retentionists. In 1973, the Liberals were vulnerable because of their precarious position in Parliament; especially after Allmand tried to amend the bill to total and permanent abolition, the attacks on the government (as opposed to the bill) became more intense. In 1976, the anti-government rhetoric by hard-line opposition retentionists was quite strong, especially at committee and report stage.

I think perhaps there's more of a partisan political element this time, which may tend to help the bill, in a sense, in that a few people may be rallying around the government on one side, but on the other there seems to be a tendency to see this as a way to embarrass the government.⁴⁰

Aside from the anticipated effects on the party as a whole, government backbenchers would also consider more personal consequences. Embarrassment of the party would reflect on the member personally. There is also the consideration of future prospects of promotion. Although voting against a government bill on capital punishment does not preclude a future appointment to the Cabinet (Iona

Campagnolo and Joe Guay are evidence of this), it would certainly not enhance the prospects. Even if these votes were not considered in future assignments of positions, the mere thought that they might be would not go unconsidered by backbenchers. There is no hard evidence that direct threats were ever made in relation to future promotions, but the question was undoubtedly at the back of the minds of government backbenchers who were considering a vote against the bill. Recriminations would be more likely if the bill were actually defeated; thus in 1976, when defeat seemed very possible, such considerations must have been on the minds of wavering Liberals.

In addition to the subtle pressure on backbenchers that is implied by a public commitment of the Cabinet to the bill, there were, in all of the last three debates, specific attempts by Cabinet Ministers to persuade backbench Liberals to support the bill. Behind the scenes Cabinet lobbying became a common feature of the debates after 1966.

People think that free vote means that people go in, vote on the merits of the case based on their own beliefs, and that nobody will ever talk to them; and that's silly. Everyone has an oar in this game, and everybody has the right to try to persuade other people. And part of the persuasion is going to be talking to your favourite Minister. There are very few Ministers who are going to lay the wood on you and say you better vote this way, or I'm not going to do this, that,

or the other thing for you; it doesn't work that way. But you know damn well that when Don Jamieson comes to you and says look, how are you going to vote on this, that Don has an interest in seeing this passed. It's a very subtle thing, but you still have the right to go away and make up your own mind.⁴¹

After having displayed a very low profile in 1966, the Cabinet became actively involved in lobbying during the next debate.

In 1967, the Solicitor General of the time, Larry Pennell, was most effective in persuading retentionist Liberals to abstain from voting or to back the Government.⁴²

Jean Marchand is also said to have been very active in seeking out support for the bill.⁴³ There is circumstantial evidence that this sort of Cabinet lobbying was quite effective. Since the 1967 debate was during the same Parliament as the 1966 debate, the same members were involved in both; the vote changes are thus very revealing. Nineteen of the members of the 27th Parliament who voted against the 1966 resolution voted for the 1967 bill; 17 of these 19 were Liberals. Moreover, only 6 of these Liberals had voted for either of the defeated amendments to the 1966 resolution that were incorporated into the 1967 bill. Admittedly, in 1966 there was not much discussion of, or time to think about, a five year trial or a special category of capital murder for the killers of policemen and prison

guards, and in 1966, these amendments were voted on separately. But especially for the 11 Liberals who voted against the 1966 resolution and the amendments, the fact that the 1967 bill was introduced by the government seems, on the face of it, to have been an important consideration in their decisions to support the 1967 bill.

In 1973, because the 1967 bill had already expired, the replacement bill had to be introduced into the new Parliament very early, leaving little time for Cabinet lobbying before the introduction of the bill. As the debate began, there was little evidence of active Cabinet efforts at persuasion.⁴⁴ But as the debate continued, active Cabinet support was enlisted to help get the bill through.⁴⁵ Again, Jean Marchand played one of the most prominent roles.

In the Quebec caucus there were a lot of waiverers, people who were uncertain, and Jean did a good job. He really delivered. It was not so much that he, you know, that he went out and traded bridges for votes. Again, that's not the way things are done. Marchand, at that point, carried a ... lot of weight with the caucus, an enormous amount of respect, and an enormous amount of good will towards him. When Jean phoned people up, and wanted to sit down and talk to them, they listened.⁴⁵

With respect to the 1976 debate, feelers were put out long before the bill was actually introduced to determine where people stood.⁴⁶ The Solicitor General, his Parliamentary Secretary (Hugh Poulin) and the Cabinet

generally were continually trying to persuade members.

Now, some pressure was brought to bear, in a sense. It was never left wholly to chance. Everybody was canvassed very carefully. And people who were in favour of abolition, but were worried about what their constituents might think, I think some of these people probably supported the government because they didn't want the government bill to be defeated. That's true, but it wasn't pressure such as would have existed had the whips been on. There was some pressure though.⁴⁷

There were also attempts to persuade Liberal retentionists to abstain.⁴⁸ That did not work; given the public interest in the debate by 1976, abstention was not a viable option. Near the end of the debate, when the outcome was in doubt, the 'heat' was really put on. The Prime Minister's speech was the impetus to a final pitch by a few Cabinet ministers to the waiverers.⁴⁹

There were days before the vote was taken when there were some misgivings, some concern about two or three members, as to how they were going to vote, and a great deal of pressure was put on at that stage.⁵⁰

Accordingly, in each of the 1967, 1973, and 1976 debates, there was considerable effort devoted to behind the scenes lobbying, to try to persuade Liberal backbenchers to support the bill. The above discussion suggests that this sort of pressure was strongest in 1976, and this was the perception of those on the outside. The Conservative caucus generally thought that there was more pressure on the

government side in 1976,⁵¹ Stuart Leggatt, the NDP justice critic, had the same impression.⁵² This increased pressure in 1976 was probably simply because the closeness of the vote made it more necessary. As Tory abolitionist David MacDonald commented, "If this were a private member's bill, I don't think it would get through."⁵³ Nonetheless, there were limits to the pressure. A specific incident during the 1976 debate, described by Stanley Knowles, illustrates this.

One Quebec Minister ... told me that he had been assigned to the members in his area, especially the fellows who weren't yet voting abolition. And he saw each of them, and he named them; he told me who came over and who didn't. And he named one member and said 'I had quite a time with him, and he said to me, if you order me, I will, as long as I can say I was told by the Government to do it.' And this Minister said, 'I told him I couldn't do that, and that I wouldn't do it.' And I said 'what happened?' He said [the back-bencher] voted retention. In other words, there were limits to which they went by way of persuasion.⁵⁴

There was persuasion, but not coercion. "This debate has always been freer than is suspected of actual armtwisting."⁵⁵

With the exception of the 1966 debate, party pressures have always been an important contributing factor in affecting how Liberal MP's voted. But just how important a consideration is impossible to say, since it is impossible to isolate the effects of party pressures. Many

members themselves probably could not disentangle the complex of factors that contributed to a decision to support the bill. Even if it is impossible to say how many Liberals voted for the bills because of party pressures, those pressures may well have meant the difference between victory and defeat, especially in 1976. Consequently, at a macro level, the pressures were probably very important, since they may have determined the outcome, even if, at the micro level, they only determined a few votes.

If, within the Liberal caucus, a free vote usually did not mean the complete absence of party pressures, it virtually did mean that in the opposition parties. In the NDP and Social Credit caucuses, internal consensus meant that no consideration had to be given to exerting party pressures on members. Social Creditors were almost always retentionists; NDP'ers almost always abolitionists. At least one NDP'er, Stanley Knowles, also thought that it was preferable to achieve abolition under a free vote because he thought that a free vote would make the decision less easy to reverse.⁵⁶ Within the Conservative caucus, the absence of party pressures on members reflected a much more complex situation than was found in the other opposition parties.

Within the PC caucus, the reasons why there could not have been anything but a free vote were as pragmatic as

within the Liberal caucus. In all four debates, not only was the PC caucus as a whole deeply divided, but also the party leadership (i.e. shadow cabinet) was equally split. In each case the Opposition Leader, Diefenbaker in 1966, Stanfield in 1967 and 1973, and Clark in 1976, supported the abolition motion along with a minority of the Tory caucus. Commenting on any effect that this might have had, Gordon Fairweather indicated, "I don't think it affected the caucus other than to have the caucus understand that in fact there was no party position."⁵⁷ In all four cases, the Conservatives were in a position similar to that of the Liberals in 1966; because the leading members of the party could not agree on a position, there was no one position that they could use party pressures to promote, even if they had wanted to.

I don't think there's any doubt that that is so, even though I'd have to say at the outset that the pressures of a shadow cabinet are much different than the Cabinet in power.... The fact that the shadow cabinet was split all over [resulted in] a true free vote, free vote for everybody.⁵⁸

There were, however, some attempts during the last two debates to get the party to take a caucus position. Allan Lawrence made this argument in 1973; he was virtually alone, and was 'shot down' very quickly in caucus.⁵⁹ In 1976 Lawrence again argued, unsuccessfully, against a free vote, but on this occasion he had allies.⁶⁰

Clark, especially, resisted intense pressure to make it a caucus issue. Stevens, Jack Horner, and Don Munro, I think were the main ones, and Lawrence.⁶¹

A caucus position, if there had been one, would obviously have favoured retention. But with some very committed Tory abolitionists, including the Leader, a caucus position for retention was really out of the question.

Consequently, even with some genuine sentiment that an issue like capital punishment had to be handled as a free vote, the commitment, among Conservatives, to a free vote was essentially expedient, as it was among the Liberals..

A lot of [Tory] retentionists have pushed hard the free vote thing to get more retentionist support from the government party, not because they are committed per se to the idea.. I think that some retentionists, if they were on the other side, in the government, would argue that this should be a government bill for retention.⁶²

The fact that there were no pressures on Tory members from the Conservative party as such did not mean there were no strains within the caucus. The situation was particularly tense in 1976.⁶³ Gordon Fairweather commented, "I've noticed that it's more unpleasant and more strident".⁶⁴ But as a party, the Conservatives really had nothing at stake with respect to the outcome of the vote, in contrast to the Liberals.

The meaning of a free vote varied considerably over the four capital punishment debates, and among the parties. For the Liberals, when the Cabinet had no official position (1966), a free vote meant that there were no real party pressures on members. Once it became a government bill, however, there were party pressures to vote for abolition. The Cabinet had an obvious interest in seeing its bill passed; this did not go unnoticed by Liberal backbenchers. The pressures were both implicit and explicit. The extent of such pressures seems to have increased over the last three debates. For opposition parties, in contrast, the distinction between a private members' resolution and a government bill was quite irrelevant; in all cases a free vote meant the absence of any real party pressures. Within the NDP and Social Credit caucuses, the lack of party pressures reflected a virtual unanimity of opinion. Within the Progressive Conservative caucus, the absence of party pressures was primarily a function of the fact that the leading members of the party had no single agreed upon position to promote. Throughout the debates, the presence or absence of party pressures reflected pragmatic considerations.

One implication to be drawn from the foregoing discussion is that most of the actual voting during the capital punishment debates cannot be explained as a function of party pressures. However, there is more to legislative behavior

than voting; the Cabinet lobbying already described is an important aspect of legislative behavior. Party also provides a useful perspective from which to examine other non-voting aspects of legislative behavior during the capital punishment debates.

(2) Adapting Party Norms to a Free Vote Situation

There are two fundamental features of the normal functioning of Parliament, norms that are centered on the party, which are not immediately transferable to a free vote situation. The first is that organization in Parliament is centered around the party. The second, which largely flows from the first, is that, since voting is essentially by party blocs, the outcome of votes is quite predictable, or is quite easily determined in advance. There are only a few parties whose voting intentions need to be ascertained.

Under a free vote, in order to achieve effective organization, the party either has to be replaced as the focus of organization, or the party has to be incorporated into the organization. Throughout the four capital punishment debates, the party was never successfully replaced as the focus for organization, although abolitionists made a feeble attempt to do so in 1966. In part as a result of lessons learned during 1966, from 1967 on, the abolitionists were quite successful in building an effective organization

around the party, although it was somewhat different from normal party organization. The retentionists were much less successful in incorporating the party into their organization, and were organizationally weaker as a consequence.

The usual predictability of votes simply does not hold under a free vote, and in order for participants to be on top of developments, compensation has to be made for that fact. This never really happened during the 1966 capital punishment debate, but from 1967 on the abolitionists did make compensation, using their organization to keep track of things. With inferior organization, retentionists were never as successful in keeping tabs on things, but this was never as crucial for them as for abolitionists. Abolitionists were taking the initiative; they had to be careful not to outmaneuver themselves. For retentionists, any attempt to defeat or emasculate the bill was worth a try, even if it did not work. Abolitionists were also lucky, in that the procedural rules usually worked in their favour.

The 1966 capital punishment debate was the first experience that MP^s had with a full scale debate under a free vote, and the transition was rather difficult. Individual MP's on both sides of the issue did lobby for support within the House,⁶⁵ but it was all very ad hoc. The retentionists, since they were not the ones taking the initiative, did not even attempt to construct an organization.

On the abolitionist side, the four movers of the resolution did try to work out a division of labour, so that they could talk to as many members as possible, however,

As I recall it, it wasn't all that well orchestrated or organized....It's just terribly difficult to organize if the parties are not involved at all.⁶⁶

The members "weren't used to the techniques of hard-nosed organization",⁶⁷ and there was very little real co-ordination. There was no consistent voting pattern on the amendments among abolitionists.

Abolitionists didn't caucus; there was very little attempt to get people to support this or that amendment, or not to support.⁶⁸

The amendment to have a five year trial for full abolition was supported by almost all abolitionists; however, there were different perspectives on the amendments that would have retained certain kinds of murder as capital offences.

As I recall, I think there was some feeling that if we made concessions we could probably win over enough people, and on the other hand, there was some feeling that we should stand for principle, and not make concessions that we didn't believe in. And there were probably some differences in assessments about whether or not making concessions would attract enough support to possibly put us over the hill.⁶⁹

On the two amendments that retained some form of capital murder, not even the sponsors of the main resolution voted in the same manner. Reid Scott voted for the 'murder by a

lifer' amendment and against the 'murder of a policeman or prison guard' amendment; Terry Nugent voted for both amendments; Robert Stanbury voted against the 'murder by a lifer' amendment and for the 'murder of a policeman or prison guard' amendment; J. A. Byrne was absent for the vote on the first amendment, and voted against the 'murder of a policeman or prison guard' amendment. Commenting on these different voting records, Robert Stanbury noted:

It just illustrates that we were very much individuals and it illustrates the value of the British Parliamentary system tradition of having party positions worked out. While we met several times, and compared our attitudes, we had nothing that could be really dignified by the title of a strategy.⁷⁰

Stanbury's comment illustrates the strength of the norm of party being the center of organization in Parliament. Without the parties being involved, the abolitionists didn't really know where to begin in setting up an organization. Without any real organization, there was no way to systematically assess the probable outcome of votes. The poor quality of the organization was an inhibiting factor for abolitionists in 1966, although even if there had been better organization, the abolitionists probably did not have the potential to win on a private members' resolution.

Yes, I think [quality of organization] was a factor. I don't recall that being, you know, a grave difficulty, but it certainly was a factor.⁷¹

Even though the abolitionists had lost in 1966, the debate had taught them some important lessons, lessons that were taken note of during the next three debates.

We had learned some bitter lessons ... that this cause, like any other, had to have the discipline of counting, of knowing where people were and whose support we could count on....We finally realized that ... we had to be tough about it in organizational terms; we couldn't rely on old Jones or old Smith or old Brown to show up.⁷²

The experience of 1966 had shown that such a disciplined organization outside of the parties was difficult. The easiest way to overcome this problem was to have the parties involved; the transition from a private members' resolution to a government bill made this possible for the abolitionists. It was not only that the fact of a government bill put some pressure on Liberal backbenchers (as discussed in the previous section), but also that the entire debate could be more carefully organized.

It is much easier to organize a debate and organize for voting if the government has some role. If the government introduces a bill, and even though the whips aren't on, there is a Minister and/or a Parliamentary Secretary to organize support, analyse it.⁷³

The fact that the last three capital punishment bills were all introduced by the Solicitor General meant that, on the abolitionist side, there was automatically one person designated to be in charge of the organization. In ordinary

circumstances, it is the Minister who introduces a bill, and/or his Parliamentary Secretary, who is responsible for guiding the bill through all of its stages. With respect to the last three capital punishment bills, the Solicitor General maintained this responsibility, but what was required for the management of a debate under a free vote was quite different from normal circumstances. Under ordinary conditions, the Minister keeps his ears open for criticism of the substance of the bill from within the caucus, and tries to respond to any that does arise by explaining the policy further, or by agreeing to amendments. In the absence of any concrete evidence to the contrary, he can safely assume that he has his party behind him. Under a free vote situation, no such assumption is safe; nothing can be taken for granted. With a free vote, if the Minister is to be on top of developments, he must be constantly monitoring where people stand, and what the projected vote will be. It is crucial to have this information in order to know where the persuasion efforts should be directed.

At all stages this process went on all the time. There was a very careful check kept on everybody, on where they all stood. It was all sorted out, re-sorted, and re-sorted; there was a very careful scrutiny kept on that debate.⁷⁴

Through practice over the three debates, people were getting better at adapting the party apparatus to a free vote

situation. On the abolitionist side, the organization in the 1976 debate was better than it had been in the earlier debates. Jim MacDonald, who was on Warren Allmand's staff in 1973 and in the PMO in 1976, compared the two debates:

[Organization] was better in that I think that there was better control of the numbers; they always knew where they were much better now [1976] than then [1973] and I think the credit for that goes to Jack MacDonald [executive assistant to Warren Allmand] who just was masterful in riding herd on every single person. We were doing it for the first time, and most of us in '73 were pretty inexperienced as of yet. I mean, we managed to keep our vote too, but we left more to chance than they did. They knew intentions much more thoroughly, I think, this time around, maybe because a lot of guys [M P's] who were here in '73 were here too; whereas there was a pretty significant turnover in '72, so you had fewer unknown quantities to deal with this time around.⁷⁵

The accuracy of the information did not always mean, of course, that the abolitionists liked what they were getting. A week before the second reading vote in 1976, the retentionists were ahead among those members who had publicly or privately declared themselves.⁷⁶ The undecided members were mostly Liberal backbenchers. An anecdote from Stanley Knowles indicates that the abolitionists were indeed worried..

In fact the other day when I was reporting to a Liberal spokesman, I said, 'there are sixteen of us [New Democrats], we're all here, we're all healthy, we're all voting the right way!' And the Minister said, 'that's not enough,

why didn't you elect more members
at the last election.⁷⁷

Probably largely as a result of government pressure, most of the undecided members eventually supported the bill.

The abolitionists were only one out in their predictions on second reading; they expected 134 votes, they got 133.⁷⁸

Hugh Poulin, Parliamentary Secretary to Warren Allmand in 1976, indicated that:

They all told me exactly how they were going to vote....There was only one who told me he was going to vote for abolition who voted for retention, only one who didn't tell me consistently all the way along what he was going to do.⁷⁹

In each of the last three debates, while the Solicitor General was the center of the abolitionists' organization, the contacts with abolitionists in the opposition parties were close and continuous. Gordon Fairweather was the chief contact in the Conservative caucus; Stanley Knowles and/or Stuart Leggatt were the contacts in the NDP; the Social Credit party was written off from the beginning. The co-ordination among the parties during the capital punishment debates was taking place during a period in which, in general, contacts among the parties were becoming more formalized and regularized through the House Leaders' meetings.⁸⁰ But although the contacts among the abolitionists were very close, much closer than on a whip vote even

in a minority government situation, there was never really one cross-party abolitionist organization. Within each party, careful count was kept of the abolitionist strength, then the key figures from each party pooled their information. The lack of one single abolitionist organization did not create any real problems, although it probably contributed to one minor difficulty. In 1976, at committee stage, it probably would have provoked less hostility if an opposition abolitionist had been the first to suggest a time-table for committee considerations, with the object of an early report date. Since it is usual for the Parliamentary Secretary to propose procedural motions, in the absence of agreement from the steering committee, it probably never occurred to Poulin to divolve the responsibility onto someone from another party. Although the need for cooperation among the parties was never forgotten, the participants did not forget about their party positions just because there was a free vote.

In addition to monitoring support for the bills themselves, the abolitionists also had to consider the possible consequences of amendments. They could be fairly confident that their support would hold on amendments, moved by retentionists, that added categories of capital murder; the entire lobbying effort had been directed against having such provisions in the code. But on other kinds of amendments,

abolitionists could be less sure of the consequences. For the most part, the attitude was consequently one of caution; given the unpredictability of a free vote, it was considered best to avoid risks. In 1967, with the memory of the 1966 defeat still fresh in his mind, Solicitor General Pennell refused to try to amend the bill once it had passed second reading. Other abolitionists also refrained from pushing amendments too far. In 1973, Solicitor General Allmand showed no such caution. His decision to try to amend the bill to permanent and total abolition was, in part, simply based on a feeling that he had to try for full abolition, even if it failed.⁸¹ But his optimism about the possibility of the amendments being passed probably reflected a failure to realize just how little could be taken for granted under a free vote. Allmand "did very little political groundwork"⁸² before proposing the amendments; that was especially dangerous in a free vote situation. The procedural rules, which made Allmand's amendments out of order, saved the abolitionists from the embarrassment of a defeat. In 1976, perhaps partly as a result of having learned from the experience of 1973, abolitionists realized the danger of trying to amend the bill. Abolitionists who thought the parole provisions were too inflexible did not try to amend them for fear that the entire bill might be defeated.⁸³

Liberal Jacques Olivier did draft some amendments to make

the parole provisions less strict, but he backed off even before officially presenting them to the committee, stating explicitly that he feared the consequences if they were passed.⁸⁴ Procedural rules again helped the abolitionists in 1976; the one crippling amendment that had a realistic chance of getting through, an amendment to make a second murder a capital offence, was ruled out of order because it violated the abolition principle of the bill.

Under a free vote, where the usual voting by party blocs was not at all operative, the abolitionists organization, even when centered around the parties, had to be based on the assumption that voting decisions were individual ones. This meant that considerable effort had to be put into accurately predicting votes. This could be done quite successfully in terms of whether or not people would support the bill. There was neither the time nor the resources to do this very well in relation to the amendments. No amount of organization could make the capital punishment debates as controlled or as predictable as a whip vote, although an organization built around the parties did bring some discipline to the debate.

The retentionists were never as well organized as the abolitionists. For one thing, since they were not taking the initiative, it was not as incumbent upon them to get organized. There were other factors as well. The reten-

tionists never had quite the same opportunity to build an organization around the parties as did the ~~abolitionists~~. On the abolitionist side, once the capital punishment initiatives became government bills, the Solicitor General was automatically in charge of the organization. On an ordinary bill, the counterpart to the Solicitor General would be the Conservative Solicitor General or Justice critic. But since, in all of the debates, the Tory shadow cabinet had no agreed upon position on capital punishment, neither the Solicitor General critic nor the Justice critic assumed the role of heading the retentionist organization, although in each case the particular individuals were, personally, retentionists. Erik Nielsen, the Conservative Solicitor General critic in both 1973 and 1976, commented:

The most that happened in these votes in one or more groups of members would try to garner support for or against the position, and that happened the last time [1976]. I personally took the position that a free vote means exactly what it says, and should be free of any lobbying, and even though it was my responsibility to manage the debate as far as the Opposition was concerned, I took part in no activities whatever with respect to either side of the question. I had my own personal viewpoint and exercised that through my vote. ...But if you got any central figure for organizing any particular lobby on one part of the question or the other, then you would be getting away from a free vote and into a party position.⁸⁵

Again, the pervasiveness of the assumption that organization means party organization is evident in Nielson remarks.

If retentionists were going to build an organization, therefore, it could not be based on the usual channels for dealing with matters falling under the jurisdiction of the Solicitor General. It was not until 1976 that the retentionists had anything that genuinely constituted an organization. Before that, the behind the scenes efforts of retentionists to gather support for the death penalty were essentially uncoordinated. The change between 1973 and 1976 was quite substantial; reports from both abolitionists and retentionists are agreed on that point. From the abolitionists' perspective:

[The retentionists] were ... a lot better organized this time around [1976] In '73, they weren't hard to handle at all.⁸⁶

Allan Lawrence, a Tory retentionist, indicated:

In the '73 debate, the organization as such was a very great deal less than the '76; '73 was much less than '76 in that in '73 there really wasn't any organization.⁸⁷

There were probably several reasons for the change from 1973 to 1976. In the first place, there were many new members in 1973; they had not had much time to get used to the normal organization within Parliament, let alone create an organization to fit the abnormal situation of a free vote. This would seem to apply most to John Reynolds, who was probably the most active retentionist organizer during the 1976

debate.⁸⁸ The increased support for retention in the public opinion polls provided another incentive for the retentionists to get organized, especially since the indications were, from the start, that the vote in the House would be close.⁸⁹ Also, since the 1976 bill was total and permanent, this was really the retentionists' last chance. They had already lost the last two battles (in 1967 and 1973); they were on the verge of losing the war.⁹⁰

The retentionist organization in 1976, although not based on regular party channels, was, nonetheless, based on the parties. John Reynolds and Jack Horner were the key people in the Conservative party who took it upon themselves to keep track of the members and to coordinate the lobbying.⁹¹ In 1976, the Tory retentionists had fairly good contact with the Liberal retentionists, something which had not happened, systematically, in the earlier debates.⁹² On the Liberal side, Joe Guay was one of the key retentionist organizers.⁹³ Since he was, at the time, the Chief Government Whip, Guay's efforts to assess the retentionist strength in the caucus were similar to the duties of his regular job. This probably made things easier for the retentionists within the Liberal caucus in 1976.

The evidence is that, in the 1976 debate, the abolitionists were more accurate in their assessments than were the retentionists. As was mentioned earlier, the aboli-

tionists were only one out in their predictions for the second reading vote. About a week before the vote, Jack Horner announced that there were 133 votes against the bill.⁹⁴ That would have been an absolute majority, and would have defeated the bill; Horner had obviously placed some people on the wrong side. The greater accuracy on the abolitionist side probably reflected the fact that the abolitionists had simply taken over regular party channels; the retentionists had had to create new channels within the parties.

On the question of amendments, the retentionists did not have to show the same caution as the abolitionists. Since they opposed the bills, they had nothing extra to lose, and possibly something to gain, as a consequence of votes on amendments. They did have the problem, in 1976, that their most desired amendments were ruled out of order. But that was not an organizational difficulty.

To get an understanding of how Parliament was organized during the capital punishment debates, a focus on the party is obviously helpful. To the extent that organization existed on either side, it was essentially based on the parties. The norm that organization is based on the parties was too strong to be easily abandoned or substituted. Without some involvement of the parties, members found it virtually impossible to construct a viable organization.

Free votes are too infrequent to enable members to develop and refine a completely different form of Parliamentary organization. The easiest way to organize in a free vote situation is to incorporate the parties into the organization. Throughout the capital punishment debates, the more systematically the parties were involved in the organization, the better that organization was. However, it was party organization unlike normal party organization; adaptations to a free vote situation were necessary. Changes were required primarily because the divisions within the parties made the outcomes of votes difficult to predict. Over time, i.e. with practice, the process of adapting party organization became easier; circumstances made this process easier for abolitionists than for retentionists.

Party provides a useful conceptual tool to understand pre-voting aspects of legislative behavior during the capital punishment debates. Yet party pressures have been shown to be of rather limited utility in explaining individual voting behavior. For all parties in 1966, and for opposition parties in the last three debates, party pressures explain virtually nothing. Even within the Liberal caucus, during the last three debates, about a quarter of the members voted against the bill on each occasion; this is unprecedented under

a whip vote. Consequently, something more than party pressures is needed to explain the voting patterns during the capital punishment debates; the perspective of the party needs to be supplemented. The question of how it should be supplemented is the subject of Chapter IV.

NOTES

¹Peter Richards, Parliament and Conscience,
(London: George Allen & Unwin Ltd., 1970), p.28.

²Ibid., passim.

³Ibid., p.213.

⁴Mitchell Sharp, interviewed June 13, 1977.

⁵Gordon Fairweather, interviewed July 21, 1976;
Robert Stanbury, interviewed June 29, 1976; Warren Allmand,
interviewed Sept. 8, 1977.

⁶Fairweather, op. cit.; Allmand, op. cit.

⁷House of Commons Debates, 2nd Session, 27th Parliament, Nov. 9, 1967, Vol. IV, p.4077.

⁸Turner, Robichaud, and Cadieux, who had voted against the main resolution in 1966, all voted for the 1967 bill. Turner and Robichaud, but not Cadieux, had voted for the policemen and prison guards amendment in 1966. The sixth Cabinet member who voted against the 1966 resolution, Lucien Cardin, was no longer an MP in 1967.

⁹Allmand, op. cit.

¹⁰Jim MacDonald, interviewed July 15, 1976.

¹¹Debates, 1st Session, 30th Parliament, Feb. 12, 1976, Vol. X, p.10870.

¹²Allmand, op. cit.

¹³Debates, 1st Session, 30th Parliament, Feb. 19, 1976, Vol. XI, pp.1120-1.

¹⁴Sharp, op. cit.

¹⁵ A partial indication of this is that Lessard, when not in the Cabinet, voted against the 1973 bill, and Sauvé, when a member of the Cabinet, was absent for second reading of the 1973 bill.

¹⁶ Allmand, op. cit.

¹⁷ Sharp, op. cit.

¹⁸ Allmand, op. cit.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Jim MacDonald, op. cit.

²² Debates, 1st Session, 27th Parliament, April 4, 1966, Vol. IV, pp.3789-90.

²³ Debates, 1st Session, 27th Parliament, April 5, 1966, Vol. IV, p.3908.

²⁴ "Leaders Lead, Globe and Mail, March 19, 1966; "Leaders Should Join Hanging Debate", Toronto Star, March 26, 1966.

²⁵ Stanbury, op. cit.

²⁶ Stanley Knowles, interviewed June 24, 1976.

²⁷ Sharp, op. cit.

²⁸ Debates 2nd Session, 27th Parliament, Nov. 9, 1967, Vol. IV, p.4077.

²⁹ Debates, 1st Session, 29th Parliament, Jan. 26, 1973, Vol. I, p.688.

³⁰ Allmand, op. cit.

³¹Debates, 1st Session, 30th Parliament, May 3, 1976, Vol. XII, pp.13088-13091.

³²Debates, 2nd Session, 27th Parliament, Nov. 16, 1967, Vol. IV, pp.4367-4373. In Pearson's case the statement of his convictions may have been a bit too strong; the intense way in which he characterized capital punishment as barbaric may have alienated some of the waverers, and hardened some of the retentionist feeling, especially among Opposition members. See: "Anti-hanging Bill's Chances Said Dim", Toronto Star, Nov. 21, 1967.

³³Debates, 1st Session, 29th Parliament, May 16, 1973, Vol. IV, p.3043.

³⁴W. A. Wilson, "Leadership Lacking in Crucial Debate", Montreal Star, May 23, 1973.

³⁵W. A. Wilson, "Trudeau No Timid Champion of Causes He Adopts", Ottawa Journal, June 19, 1976.

³⁶Douglas Fisher, "Trudeau Made the Difference", Halifax Chronicle-Herald, June 30, 1976; Knowles, op. cit., Stanbury, op. cit.

³⁷Jim MacDonald, op. cit.

³⁸Walter Baker, interviewed August 4, 1977.

³⁹Fairweather, op. cit.

⁴⁰Stanbury, op. cit.

⁴¹Jim MacDonald, op. cit.

⁴²Douglas Fisher, "Capital punishment a winner", Toronto Sun, Jan. 31, 1973.

⁴³Fairweather, op. cit.; David MacDonald, interviewed July 8, 1976.

⁴⁴Douglas Fisher, "Capital punishment a winner".

⁴⁵Jim MacDonald, op. cit.

⁴⁶Hugh Poulin, interviewed June 27, 1977.

⁴⁷Sharp, op. cit.

⁴⁸Ibid.

⁴⁹Douglas Fisher, "Trudeau made the difference".

⁵⁰Sharp, op. cit.

⁵¹Robert Stanfield, interviewed July 9, 1976.

⁵²Stuart Leggatt, interviewed June 9, 1977.

⁵³David MacDonald, op. cit.

⁵⁴Knowles, op. cit.

⁵⁵Fairweather, op. cit.

⁵⁶Knowles, op. cit.

⁵⁷Fairweather, op. cit.

⁵⁸Baker, op. cit.

⁵⁹Allan Lawrence, interviewed June 28, 1977.

⁶⁰Ibid.

⁶¹Fairweather, op. cit.

⁶²David MacDonald, op. cit.

⁶³Ibid.

⁶⁴Fairweather, op. cit.

⁶⁵Erik Nielsen, interviewed May 26, 1977;
Stanbury op. cit.

⁶⁶Stanbury, op. cit.

⁶⁷Fairweather, op. cit.

⁶⁸Ibid.

⁶⁹Stanbury, op. cit.

⁷⁰Ibid.

⁷¹Fairweather, op. cit.

⁷²Ibid.

⁷³Stanbury, op. cit.

⁷⁴Sharp, op. cit.

⁷⁵Jim MacDonald, op. cit.

⁷⁶Knowles, op. cit.; Geoffrey Stevens, "Leadership",
Globe and Mail, June 18, 1976.

⁷⁷Knowles, op. cit.

⁷⁸Ibid.

⁷⁹Poulin, op. cit.

⁸⁰Wendy Carter, "The Role of the House Leader in
Canada", (unpublished M.A. thesis, University of British
Columbia, 1973), passim.

⁸¹Allmand, op. cit.

⁸²Jim MacDonald, op. cit.

⁸³Allmand, op. cit.; Fairweather, op. cit.

⁸⁴The only amendment that was actually moved by an abolitionist was that of Stuart Leggatt, which changed the judicial review after 15 years from three judges to a judge and a jury. The effect of the amendment was rather minor, and it did not jeopardize the bill. It passed the committee with the support of the Tories and a couple of Liberals. The fact that it passed was a surprise to Leggatt, (Leggatt, op. cit.), probably because he was thinking in party terms and did not expect support from among Liberal members. But under a free vote, a break within the Liberal ranks should not have been totally unexpected.

⁸⁵Nielson, op. cit.

⁸⁶Jim MacDonald, op. cit.

⁸⁷Lawrence, op. cit.

⁸⁸When interviewed on July 14, 1976, John Reynolds not only denied being one of the chief organizers, but also denied that there was any retentionist organization at all. However, it was common knowledge to people working on Parliament Hill during the 1976 debate (as I was, as a Parliamentary Intern) that Reynolds was indeed involved in organizing retentionist support. Also, other people who were interviewed, both retentionists and abolitionists, referred to the prominent role played by Reynolds, without being specifically questioned about him. e.g., Poulin, op. cit.; Lawrence, op. cit.

⁸⁹Nielsen, op. cit.

⁹⁰Jim MacDonald, op. cit.

⁹¹Lawrence, op. cit.

⁹²Ibid.

⁹³Allmand, op. cit.

⁹⁴Ottawa Citizen, June 19, 1976.

CHAPTER IV

ANALYSING FREE VOTES FROM THE PERSPECTIVE OF THE INDIVIDUAL MP

If the party is only a partial means of explaining legislative behavior under a free vote, the perspective of party must be supplemented by a means of explanation that takes the individual MP as the unit of analysis.¹ As discussed in Chapter I, there are two ways to proceed, neither of which necessarily excludes the other. One method is to differentiate among MP's according to their legislative roles, the other is to try to explain members' personal opinions on the substantive issue.

From a theoretical standpoint, role analysis would obviously be preferable, because it is not tied to the specific issue before the legislature. If a legislator's role orientations could be identified, and linked to behavior, the results could be used to predict future behavior in relation to very different kinds of issues. In contrast, an explanation of an MP's personal opinions on a given legislative issue could only be used to predict future behavior on issues that were substantively very similar. Such an explanation would be of little utility in predicting behavior

across a broad range of issues.

Nevertheless, the theoretical appeal of role analysis should not be allowed to blind the analyst. The relevance of legislative role analysis to the study of Canadian legislative behavior under a free vote has yet to be established. If it is found not to be relevant, observers will have to be satisfied with a means of explanation which cannot be generalized beyond the specific case study. Such a limitation may not even pose a real problem since, in any event, the analysis concerns an exceptional circumstance, legislative behavior under a free vote. There are few other cases for which prediction would be desired.

In this Chapter, the capital punishment debates will be analysed from the perspective of the individual MP. The utility of both role analysis and an attempt to explain MPs' attitudes will be assessed. Whichever approach is used, it is still necessary to treat the four debates separately. Each debate had its own particular context; an examination of the behavior of individual MP's without some reference to that context would obscure potentially important determinants of behavior. Moreover, as a consequence of overlapping memberships, the analysis would involve a considerable amount of multiple counting if the members of all three Parliaments were grouped together.

While the debates are undeniably analytically quite distinct, the existence of overlapping memberships does raise an interesting question as to the stability of members' positions over time. Before proceeding to the detailed analysis of the separate debates, therefore, an initial overview of the four debates will be presented through a discussion of the voting records of the 74 individuals who were Members of Parliament during all four debates.

Of the 74 MP's involved, 37 are Liberals, 25 are Conservatives, 7 are New Democrats, 4 are Social Creditors, and one was a Social Credit MP during the first two debates but had become a Conservative by the time of the last two debates (A. B. Patterson). Of the 74, only 15 ever changed their vote over the four debates; 5 of these are Conservatives, 10 Liberals.

Two of the five Progressive Conservatives, Patrick Nowlan and Robert Coates, were consistently retentionist except in 1967. Both apparently voted for the 1967 bill because they approved of the exception for policemen and prison guards; by 1973, when it was clear that there was an exemption in law but not in fact, neither was prepared to support an extension of the 1967 law. For George Hees, the change occurred on second reading of the 1976 bill. In previous debates he had voted for retention; he voted

for second reading of the 1976 bill, then changed his vote on third reading, reportedly because of pressure from his constituency association.² For Heath Macquarrie, the decision seems to have been an agonizing one on each occasion. In 1966, he gave a hesitant retentionist speech, and voted against the resolution; in 1967 he gave an undecided speech, and did not in fact vote; in 1973 he gave a hesitant abolitionist speech, and voted for the bill; in 1976 he gave an undecided speech, and eventually supported the bill. The most puzzling change among the Conservatives was probably that of John Diefenbaker. Prior to 1976 he had always supported abolition, but in 1976 he spoke against the bill, saying that the death penalty was still essential in cases of treason (although the last person convicted of treason was Louis Riel³). Diefenbaker claimed that his position did not represent a change,⁴ although he had supported the 1966 resolution, which did include abolition for treason. To add to the confusion, at report stage of the 1976 debate, Diefenbaker supported amendments which would have retained capital punishment for crimes other than treason. Many were surprised by Diefenbaker's opposition to complete abolition during the 1976 debate. Gordon Fairweather commented that it marked a "tragic footnote to a career. I think that ... he doesn't want the present Prime Minister to have the honour of ending it."⁵ Of the

remaining 20 Conservatives who were MP's during all four debates, 5 were consistently abolitionist, 15 retentionist.

Among the ten Liberals who changed their vote at some point, two instances probably did not represent a genuine change in position. Fernand LeBlanc, otherwise consistently a retentionist, voted for second reading of the 1973 bill, declaring that, unless the capital punishment provisions were broadened in committee, he would vote against third reading,⁶ which he in fact did. Similarly, the only time that Paul Langlois voted for any of the motions was on second reading of the 1973 bill. He, however, was not present for third reading; it is probable that had he been there, he would have voted against it.⁷ Another member, Leonard Hopkins, voted for the 1967 bill only; he had also voted for the policemen and prison guards amendment in 1966, such that his vote on the 1967 bill was consistent with his earlier behavior. By 1973, when it was quite clear the real issue was not partial abolition, Hopkins voted against bill C-2. Two other Liberals, Gustave Blouin and Ian Watson, started out as abolitionists in 1966 and 1967, but ended up as retentionists by 1976. (Watson voted against both the 1973 and 1976 bills; Blouin was only present for the 1976 vote). There is nothing to indicate whether these changes reflected a change in their personal opinions, or constituency pressure.

The other 5 Liberals all switched from voting for retention in 1966 to abolition by 1976. Albert Béchard and Tom Lefebvre changed after the 1966 vote. (The former, but not the latter, had voted for the policemen and prison guard amendment in 1966.) Stanley Haidasz and Gerard Laniel changed on the 1973 vote; (Haidasz had been promoted to the Cabinet by this time). Antonio Yanakis was the most erratic; he changed every time: supporting retention in 1966, abolition in 1967, retention in 1973, and abolition in 1976. Although there is no direct evidence, it is probable that a decision to vote with the majority of the party was an important (if not the sole) part of the rationale for the vote changes among these five MP's. The 27 Liberals who voted consistently through all four debates fit into the general pattern of the party; 21 were abolitionists, 6 retentionists.

While there is perhaps more curiosity about the members who changed over time, what is most significant about these 74 veteran MP's is that, in general, their voting was quite stable over the four debates. If those whose changes were probably a function of intra-party pressure are eliminated, there were probably less than a dozen changes, in four debates, over ten years. Capital punishment is an issue that tends to polarize opinions; once a position is taken, it is not easily changed. The analyst must therefore try

to account for these initial positions. The balance of this Chapter involves an investigation of what is/are the appropriate means to explain the voting choices of MP's, beyond what can be explained by the party influences described in the previous Chapter.

(1) Role Analysis

In Chapter I, role analysis was discounted as an appropriate means of studying Canadian legislative behavior, under the normal circumstances of enforced party discipline, because role analysis employs the perspective of the individual MP rather than the party. Since it has been conceded that under a free vote it is, at least in part, appropriate to use the individual MP as the unit of analysis, does legislative role analysis then become an appropriate mode of inquiry?

There are some reasons to suggest that it might not. The use of the individual MP as the unit of analysis is only the first assumption of role analysis; another fundamental assumption is that behavior is based on norms. The norms about legislative behavior among individual MP's are developed in the context of strongly disciplined parties; that should determine how members perceive their legislative roles. If MP's do not normally function as delegates or trustees, they should not be expected to suddenly divide into these respective categories simply because it has been declared that there will be a free vote. As members of parties who are interested in electoral success,

MP's would normally take the anticipated public reaction into account when having some input into party policy. But it would be abnormal for MP's to act as though mandated by their electors to carry out the public will. Thus in adapting to the abnormal circumstance of a free vote, it would not be expected that MP's would suddenly assume the role of delegate, a role which would not correspond at all to their normal behavior.

The above comments are only suggestive however; an attempt should be made to examine the four capital punishment debates in detail to try to empirically determine whether delegate versus trustee is a relevant distinction.

In 1965-66, the prospect of a free vote on capital punishment was a new experience, which prompted some editorial advice to MP's. A number of editorials urged members to act according to the Burkean notion of trustee, and not to function as delegates.⁸ It should be investigated whether such editorials were addressing a genuine controversy, or whether they were 'knocking down a straw man.'

David Chandler, in his study of the 1966 and 1973 capital punishment debates, assumed without question that the distinction is a relevant one. But his means of distinguishing between delegate and trustee seems rather arbitrary. Chandler undertook an analysis about the 'representativeness' of MP's, based on two alternate assumptions about the

nature of public opinion, but based on one notion of the meaning of delegate versus trustee.

The first assumption is that each constituency mirrors the opinion of the country as a whole. Thus in 1966, 50 per cent or more of each constituency approved the death penalty. Similarly, in 1973, we assume that 60 per cent or more of each constituency approved it. If in addition we assume that there are no other influences on the MP but his constituency, we would expect that all MP's in both time periods would vote for retention. However, 112 in 1966 and 119 in 1973 voted against retention. We would expect that these MP's would then be less likely to assume a delegate role and would have the characteristics that scholars in the area have found to be associated with relative independence from constituency influences. Several of these factors are examined in the first section. In the second section, rather than assuming opinion to be evenly distributed in each constituency, we assume that constituencies vary in support for retention or abolition....We still assume that representatives are responsive only to their constituents, but now we do not necessarily expect that all who vote against retention will be voting against the majority of their electorate.⁹

Whatever the assumption about the distribution of public opinion, Chandler's distinction between delegate and trustee was clear. If a member's vote happened to coincide with the view of the majority of his constituents, he was a delegate; if not, he was a trustee.

Such an operational definition might be very reliable, but it is most unlikely that it is valid. The fact that a member's vote happens to agree with his constituents'

opinions does not mean that this was the reason for his vote. Moreover, it is the reason for the vote that is the distinctive feature of a delegate; a delegate follows instructions. A member whose vote was consistent with the majority of his constituents' views might well be the antithesis of a delegate. For example, one veteran retentionist member, who in 1976 was in the "happy circumstance that my vote was in accord with some 85% of my constituents' views";¹⁰ could hardly be labelled a delegate in light of the following comment.

With respect to a matter like capital punishment ... every member votes according to his conscience, if he's doing the right thing. If he's being hypocritical about it, he's voting the way his constituents feel he should vote in order to get re-elected.¹¹

There is no reason whatsoever to assume that a member is a delegate simply because he votes the way the majority of his constituents would prefer. It is just as likely (and, as will be argued below, considerably more likely) that he simply happens to personally hold the same opinion as do most of his electors. However, Chandler does not even consider this possibility; he proceeds through forty-five pages of discussion (and tables) all based on the assumption that congruence denotes a delegate, lack of congruence denotes a trustee. Nevertheless, his entire discussion is essentially meaningless, because his initial assumption is

groundless.

Chandler's discussion assumed, except for constituencies where the majority of voters favoured abolition, that all retentionists were delegates and that all abolitionists were trustees. Although there is no direct evidence of the distribution of opinion by constituency, given the strength of the retentionist sentiment in the country, especially during the last two debates, it is doubtful that there had ever been many constituencies in which abolitionists constituted a majority. Over the four debates, no member ever claimed in the House that the majority of his constituents were abolitionists; the closest that anyone ever came was in 1973 when one member, Eli Nesdoly (NDP) noted that his mail was running slightly in favour of abolition.¹² For most practical purposes, therefore, Chandler was assuming that all retentionists were delegates, and all abolitionists trustees. In contrast, it will be argued below not only that it is a mistake to classify most, if not all, retentionist MP's as delegates, but also that it is often a mistake to classify abolitionists as trustees. The case of the retentionists will be examined first.

As was discussed in detail in Chapter II, during the 1966 and 1967 debates a simple majority of the public was in favour of the death penalty. By 1973 the majority had become substantial, by 1976 overwhelming. For MP's who

considered themselves to be delegates, the reaction to public opinion over the four debates would have been essentially the same; in all cases the retentionist message was clear. But for MP's who did not think of themselves as delegates, the reaction to public opinion over the four debates would have varied according to pragmatic assessments of what reaction would be politically astute. Specifically, it would be expected that politicians would take much greater account of public opinion when it was more heavily weighted on one side of the issue (i.e. in 1973 and especially in 1976).

Comments from MP's actively involved in all of the debates suggests that there was indeed a substantial increase in the attention paid to public opinion over the four debates. Erik Nielsen, while commenting that one can never discount public opinion altogether ("it is always a factor"¹³) noted that, in contrast to the earlier debates, in 1976, "Public opinion this time affected the manner in which opposition members voted a great deal".¹⁴ The 1976 debate was the first time that any member explicitly said, in a speech against abolition, that he was taking the stand that his constituents wanted, even though he was personally an abolitionist; five members made such statements during the second reading debate (Doug Roche, Lloyd Francis, Frank Maine, Art Lee, and André Fortin).¹⁵ Also, between the

1973 and 1976 debates, seven members changed their position from abolitionist to retentionist (Walter Baker, Yves Demers, John Diefenbaker, Jack Ellis, Claude Lajoie, Jack Marshall and Marcel Roy). John Diefenbaker probably excepted,¹⁶ it is likely that most, if not all, of these members changed because of constituency pressure. The fact that, in previous debates, no one ever publicly admitted to voting for retention against his conscience does not mean, of course, that this never happened; however, there are a couple of indications that, if it did happen before, it happened very rarely. Stanley Knowles, who, in all the debates, was one of the key people keeping track of developments, when asked if this had been a common occurrence before 1976 answered, "No, not nearly so much; in fact, I would say there was almost none of that".¹⁷ Also, Mitchell Sharp, the Government House Leader in 1976, indicated that one of the reasons why it was seriously considered in 1976, in contrast to earlier debates, to put the whips on was because, "we knew this time that there were some abolitionists who were under great pressure from their constituents".¹⁸

There were many more MP's who argued, in the House, that it was necessary to follow public opinion than there were members who also admitted that their vote was contrary to their personal view. But again, the argument became more prevalent in the later debates. In 1966, not one reten-

tionist MP explicitly argued that Parliamentarians were under an obligation to follow public opinion. In 1967 a grand total of three made such an argument; furthermore, two of them were independents, and thus not ordinarily subject to the constraints of party discipline that normally preclude a delegate role. However, by 1973 almost 30% of retentionists argued that it was mandatory for an elected member to vote according to the dictates of public opinion; by 1976 almost 40% of the retentionists made such a claim during the second reading debate. Yet most of the people making such arguments were actually retentionists themselves; it hardly seems a coincidence that it was only in 1973, and especially in 1976, that an obligation to follow public opinion was assumed. This pattern leads the observer to be suspicious about members who argued that Parliament must follow public opinion. That argument was really only made by retentionists when it was abundantly clear that public opinion was overwhelmingly on their side. Retentionists really only started to push the idea of a referendum when it was quite clear that the retentionists would win it. That hardly suggests a strong commitment to the idea of referenda per se. If public opinion were against them, it is highly doubtful whether most of these members would have been making the same argument. Accordingly, while an argument about the need to follow public opinion

sounds, on the face of it, like a classical delegate argument, the members making it were probably not genuine delegates. It was only that, given the particular circumstances, it was politically safe to sound like a delegate (since opinion was so one-sided), while the member actually voted according to what he himself thought was the best course.

If it seems that it was really only in 1976, and even then only for a handful of members, that constituency sentiment was allowed to supercede the member's own opinions, that does not mean that members did not consult their constituents throughout the debates. But the fact that an MP listens to arguments from constituents, among others, in making up his own mind, does not a delegate make. Indeed it is doubtful whether even those who were abolitionists, but voted for retention, can genuinely be classified as delegates. It should be asked whether they actually saw themselves as delegates, or if they were simply fearful of the effect of an abolition vote on their chances in the next election. The fact that this phenomenon really only emerged in 1976, when public opinion was very heavily retentionist, suggests that it was the latter, not the former. Most abolitionists in the House interpreted it as the latter, and it was keenly resented. Confirmed abolitionists could respect, if not agree with, retentionists

who genuinely believed in the need for capital punishment; they found it hard to respect someone who thought that capital punishment was wrong, but was prepared to vote against abolition anyway.¹⁹ There was considerable peer group pressure for MP's not to simply follow their constituents' views, with the result that some MP's whose real rationale was probably based on constituency sentiment were reluctant to admit it.²⁰ The fact that there was such strong pressure against a member voting contrary to his conscience, and the fact that it was apparently only in 1976 that this was not an isolated incident, adds weight to the argument that the concept of delegate is foreign to the Canadian House of Commons.

Apart from the question of constituency sentiment dictating members votes, the general discussion of public opinion was much less a feature of the earlier debates than the later ones. In 1966, in only a quarter of the retentionist speeches was there any reference made to public opinion as a supportive argument; in 1967 the total was 40%. In contrast, in 1973, references to the fact of retentionist public opinion were made in almost two-thirds of the speeches of members opposing the bill; the total rose to more than three-quarters in 1976. Politicians reacted to public opinion in relation to how salient the issue appeared to be.

Accordingly, it seems that the retentionists were reacting to public opinion as pragmatic politicians, ever conscious of the electoral consequences of their actions, rather than as delegates. Although it cannot be directly tested, since the issue is a question of individual motivation, it seems that few if any of the retentionist MP's in any of the debates were actually functioning as delegates. This conclusion is the exact opposite of Chandler's assumption that all retentionists were delegates. His assumption that all abolitionists were trustees is also open to question. Abolitionists also reacted to the increasingly retentionist public opinion, in part by becoming increasingly defensive about the fact that they were defying the public's wishes in supporting an end to the death penalty. But in certain respects, many abolitionists did actually respond to public demands.

For abolitionists, the argument that it is often a mistake to classify them as trustees is not related to the issue of capital punishment itself; on that issue abolitionists were clearly defying public opinion. But many of them, in the last two debates, did respond to public opinion on the ancillary question of parole. In the first two debates, when public opinion was retentionist but not very heavily so, parole was not much of an issue in Parliament, either among abolitionists or retentionists. As an

indication, few members even mentioned complaints about parole during the 1966 and 1967 debates. By 1973, however, things had changed. By the early 1970's, public opinion had become heavily retentionist, and some sensationalized bail and parole violations had aroused public anger on this aspect of the criminal justice system. During second reading debate of the 1973 bill, over half the abolitionists argued the need for tighter parole and/or bail provisions (compared to a third of retentionist MP's). Some of the abolitionists were quite extreme in their demands. John Reid suggested that anyone responsible for the granting of parole that ended in tragedy should be required to serve out the remainder of the parolee's sentence, with that person being ineligible for parole.²¹ In the wake of the criticisms, the bill was changed at committee stage to tighten the parole provisions. This in part reflected a genuine concern among members that parole and bail violations had gotten out of hand; but it was also in part an attempt to placate the general public, and make abolition (even continued partial abolition at this point) more palatable.

In 1976 a similar process took place, although this time the tougher parole provisions were incorporated into the bill before Parliamentary consideration began. Since the tough parole provisions were already there, com-

plaints about parole leniency did not become much of an issue in the House during the 1976 debate. Those members who did not really approve the inflexibility of the new parole provisions, including the Solicitor General,²² were prepared to concede that this was the price they would have to pay to get abolition through, given the repressive mood in the country.

Among abolitionists, it was not simply a matter of deciding what was in the public interest, in spite of public opinion. They did react to public opinion, although not in the way most people would have preferred, simply because it would not have been very wise, politically, to totally ignore public sentiment. In the last two debates at least, abolitionists were not, in general, functioning as trustees; they had at a minimum moved some distance toward the category of politico.

The contents of MP's speeches, supported by recollections of key members on both sides of the Parliamentary debates, offer some indirect evidence in support of a general conclusion that MP's did not function as delegates during the capital punishment debates, that on the question of the death penalty itself, it was basically the members' own opinions, rather than their relationships to their constituencies, that determined voting patterns. There is another type of indirect evidence that can be used to support the

same argument, although it is by no means conclusive. If MPs' relationships to their constituents were an important determinant of their voting behavior, then it would be expected that those MP's in less safe seats would be more likely to take a popular stand (i.e. vote for retention) than would those in relatively safe seats. If, on the other hand, and as is being assumed here, the relationship between an MP and his constituents were basically irrelevant to his vote (except on a few occasions), no relationship would be expected between MPs' voting behavior and the safeness of seats.

This question is investigated in Table IV.1. Three alternate measures of the safeness of a seat were used: the number of consecutive times the member had been elected, the percentage of votes that he had obtained in the last general election, and the percentage margin by which the seat had been won. Since the coding of members' votes on the death penalty gave the higher value to a vote for retention, negative correlations would be expected if a member's vote on capital punishment were related to the safeness of the seat. As can be seen in Table IV.1, in no instance did such a relationship appear. The lack of any relationship between the safeness of seats and the vote in Parliament does not, of course, prove that members' relationships to their constituencies did not determine their votes; there

TABLE IV.1

THE RELATIONSHIP BETWEEN VOTE IN PARLIAMENT
ON THE DEATH PENALTY AND THE SAFENESS OF
THE SEAT: PEARSON CORRELATION COEFFICIENTS

Safeness of Seat	D E B A T E *			
	1966	1973	1976	
	Pearson r	Significance (One-tailed test)	Pearson r	Significance (One-tailed test)
Number of Consecutive times the member was elected	.20	NA**	-.03	.32
Percent of the Vote in the Last General Election	.01	NA**	.07	NA**
Percent Margin by which the Seat was Won in the Last General Election	-.01	.43	.05	NA**
				.01
				NA**
				.45

* The 1967 debate was omitted since it occurred during the same Parliament as the 1966 debate; to include it would be redundant.

** Not applicable; the sign of the correlation coefficient is opposite to that 'hypothesized'.

could be some other factor that distinguished members who felt bound to their constituency from those who did not. However, the lack of any relationship certainly adds no support to an argument that MP's votes were a function of their legislative roles.

The discussion in this section on role analysis suggests, if it does not prove, that it is irrelevant to distinguish between delegates and trustees in relation to the capital punishment debates. It seems that only a handful (mostly in 1976) ever voted for anything except their own personal opinion on the death penalty; even for those that did, they probably cannot be genuinely classified as delegates. Public opinion was often used as an argument, but usually only to buttress opinions that the MP already held. If all MP's, whether they voted for abolition or retention, fall into a designation somewhere between trustee and politico, there are no definable differences in legislative roles that can be either explained or used as explicants.

Even if the above arguments were disputed, and it were contended that it is relevant to distinguish between delegate and trustee, a very difficult problem of operationally defining delegate and trustee would still remain. Chandler's route, of simply using the member's vote, is obviously unsatisfactory: so too is a content analysis of speeches. It

seems quite clear that, in the last two debates, members who did not really think of themselves as delegates were making delegate-type arguments, because it was politically expedient to do so. Interviews with MP's could also run into the same problem. There would be difficulty in distinguishing the real motivations from the ones the member thought politically wise to convey to the interviewer. A good interviewer might be able to overcome such problems, but especially for the earlier debates, the interviewer would often never get beyond the hurdle of arranging an interview. Consequently, even if it were decided that it would be conceptually useful to distinguish between delegates and trustees, there would be tremendous difficulty in operationalizing the distinction. Accordingly, representational role style does not seem to be an appropriate concept for analysing the capital punishment debates.²³

(2) Personal Characteristics of MP's

Since it is highly doubtful that role analysis is either conceptually or operationally useful in explaining the voting behavior of MP's during the capital punishment debates, the discussion must turn to the determinants on MP's' personal opinions, if the analysis is to supplement what can be explained by party influences, as discussed in Chapter III. It is being assumed in this section that an

MP's vote in Parliament was merely a statement of his personal position for or against the death penalty. Ideally, it would be desirable to relate MPs' opinions about capital punishment to their more general attitudes on political and social issues, and to link those more general attitudes to the background characteristics of MP's, assuming that background characteristics summarize experiences which have shaped the individuals' attitudes and opinions.²⁴ In the absence of comprehensive attitudinal data on MP's, however, the analysis must be limited to a consideration of the background characteristics of MP's. Although any associations between background characteristics and opinions on the death penalty were probably mediated through a complex set of attitudes and opinions, such intervening relationships cannot be tested; they can only be assumed.

For present purposes, MP's are not being considered in a special position owing to the fact of their being legislators. Treating the members of each Parliament separately, they are simply being considered as 264(5) individuals whose opinions are conditioned by the same sorts of experiences as are those of ordinary citizens. The 'samples' are by no means random, but it would be expected that characteristics associated with a particular position on the death penalty among the general population would also be associated with that position among Members of Parliament.

Of the four capital punishment debates held during the last decade, only three (1966, 1973, and 1976) will be analysed in this section of the thesis. The 1967 debate is being excluded because it was held during the same Parliament as the 1966 debate. A few by-election results aside, the same individuals were involved in both debates, such that an analysis of both would be repetitious. There were changes of position by some MP's, but these changes were discussed earlier, in Chapter III. The 1966 debate was chosen for analysis instead of the 1967 debate not only because the 1966 vote was a clear choice between abolition and retention, but also because the turnout of MP's for the 1966 vote was much higher.

For the 1966 and 1973 debates, David Chandler has already undertaken an analysis relating the characteristics of MP's to their positions on the death penalty;²⁵ accordingly, the analysis presented here constitutes replication. It does not, however, really constitute duplication; there were a number of serious problems with Chandler's analysis which necessitate a re-examination of his findings. In none of his tables did Chandler provide statistical measures of association, making it impossible to assess the strength of the relationships he found. Moreover, the only control variable that Chandler ever used was political party; as will be seen below, when further controls are introduced, a

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number of the relationships that Chandler identified turn out to be, in fact, spurious. In addition, Chandler did virtually no collapsing of values within variables, with the result that he was sometimes attempting to draw conclusions on the basis of ridiculously small N's. Since these problems are so fundamental, it is not simply a question of refining Chandler's analysis; rather, the entire analysis will have to be redone.

In deriving the hypotheses to be tested in relation to MP's, the most general assumption is that a position in favour of retention of the death penalty is associated with conservative political attitudes, and a position in favour of abolition is associated with liberal political attitudes. A distinction should be made here between 'economic' and 'political' issues. The former are taken to refer to the nature and extent of government involvement in the economy, in income support measures, etc.; the latter are taken to include questions concerning criminal laws and the prison system, civil liberties questions, tolerance of minorities, etc. It is the latter, not the former, which are assumed to be associated with opinions on capital punishment. Opinion surveys taken in the United States have found evidence that support of the death penalty is an opinion held concurrently with conservative opinions on other political issues.²⁶

Among people actively involved in politics (i.e. politicians), party affiliation should constitute some sort of a label characterizing the individual's general political beliefs. Political party should therefore be related to opinions on the death penalty. Specifically, members of parties which usually take 'liberal' stands on political issues should tend to favour abolition of the death penalty; members of parties which tend to take conservative stands on political issues should be more likely to favour retention of the death penalty. Such use of political party as a background characteristic of legislators does not constitute identification of a factor which is thought to condition attitudes and opinions; rather, party affiliation is taken to represent a summary statement of attitudes and opinions.²⁷

In the Canadian context, it is no simple task to label the parties as either 'liberal' or 'conservative'; most studies of the Canadian political parties have been unable to identify genuine ideological differences among the parties. However, if the discussion is limited to criminal law and civil liberties issues, it is perhaps easier to detect differences.²⁸

In his study of the twenty-fifth Parliament, Allan Kornberg used a series of questions to construct a liberal-conservative scale. Although his questions extended beyond

the scope of civil liberties and criminal law issues, they did incorporate such matters. Kornberg's scale was based on four items:

attitudes toward the efficacy of interest group action, the power of trade unions, and the rights of individuals holding unpopular political and religious beliefs to publicly express these opinions.²⁹

Only the last two (expression of unpopular political and religious beliefs) are relevant to the present discussion, but since Kornberg did not present unaggregated results, these two items cannot be examined separately. His results on the four item scale showed NDP and Liberal MP's to be more 'liberal' and Progressive Conservative and Social Credit MP's to be more 'conservative' (gamma of .56).³⁰

Recent votes in the House of Commons on criminal law matters tend to support such a designation of the NDP and Liberal caucuses as more liberal than the Progressive Conservative and Social Credit caucuses. In 1969, under a Liberal government, the criminal code underwent a major revision; the most controversial aspects were the decriminalization of all sexual acts conducted in private between consenting adults, and the legalization of abortion under certain conditions. Mostly as a protest against these provisions, the bill was opposed by the entire Social Credit caucus and by most Conservative MP's. More recently, both caucuses

opposed gun control legislation, not only in its initial form in 1976, but also in its 'watered down' version in 1977. These examples would confirm the usual assumption that the PC's, and especially the Social Credit members, are more conservative on criminal law matters. Of the other two parties, the NDP is usually assumed to be more liberal than the Liberal caucus; the NDP's distinction as the only party to oppose the imposition of the War Measures Act in 1970 is probably the most striking evidence of this. Accordingly, the ordering of the parties from liberal to conservative should be: NDP, Liberal, Progressive Conservative, and Social Credit.³¹ In relation to capital punishment, therefore, the hypothesis is that NDP and Liberal MP's, (especially the former) should tend to support abolition, while Conservatives and Social Credit MP's (especially the latter) should tend to favour retention. At a descriptive level, this has already been shown to have been the case; however, the relationship will be examined more systematically in the following pages.

Also based on the assumption that a retentionist position is a conservative one, it would be expected that the personal characteristics usually associated with conservative attitudes would also be associated with a position in favour of the death penalty. More directly, the basis for the remaining hypotheses about MPs' positions regarding

capital punishment is the results of public opinion surveys (CIPO) over the years. These results have been studied both by David Chandler³² and Ezzat A. Fattah.³³

It is conventional wisdom that, as people grow older, they become more conservative. Recent Gallop poll results have indicated that older Canadians tended to be more in favour of the death penalty than younger people; this seemed to be part of a generally more punitive attitude toward criminals among older people. Such a trend, however, was really only in evidence in the 1970's.³⁴ The hypothesis derived from this is that, at least for the 1973 and 1976 debates, older members should be more supportive of the death penalty.

A rural environment is usually relatively unchanging, and is often associated with conservative attitudes. In the 70's, CIPO polls showed people from urban areas to be more abolitionist.³⁵ Again the hypothesis is directed especially to the last two debates; it would be expected that members from urban constituencies would be more likely to favour abolition.

Although Gallop results were somewhat uneven, Roman Catholics tended to support capital punishment more than those of other religious faiths.³⁶ Since most French Canadians are Catholics, it is difficult to separate the effects of religion and ethnic origin. French Canada, par-

ticularly Quebec, has usually been seen as a more conservative society, clinging to tradition to maintain its culture, although this has been changing considerably since the Quiet Revolution. French Canadians have been consistently more in favour of the death penalty according to the Gallop Poll results.³⁷ Thus it would be expected the Catholic and/or French Canadian MP's would be more in favour of the death penalty.

CIPO polls in Canada have quite consistently shown that people with higher levels of education were more in favour of abolition than those with less education.³⁸ Explanations for such a trend have been quite specific to the issue at hand.

One orientation towards understanding different attitudes to legal punishment, in general, and capital punishment, in particular, is to suppose that there are two different, sometimes contradictory rationales for legal punishment. One is an indignant, moralistic, vindictive, retributive justification which usually leads to harsh punishment. The other is utilitarian, pragmatic, therapeutic in its rationalization....The amount of education that a person has received should be related to these distinct orientations. Education in North America typically means that a person is processed through institutions which generally reward rational, calculating, utilitarian, analytic understanding of phenomenon. The culture of science influences most higher education. The prediction is then, that with more education people will take a more utilitarian view of the death penalty than a retributive view. Since the weight of evidence is that the death penalty probably does not deter murder, we would expect those with more education to be

less supportive of the death penalty.³⁹

This, then, is the hypothesis in relation to MP's. A further argument in support of such a hypothesis would be a supposition that the well-educated would be more impressed with the statistical evidence about deterrence, while those with less formal education would be more inclined to trust 'common sense' evaluations of deterrence. The assumption here is that, through formal education, individuals are encouraged to justify statements and arguments with concrete evidence.

The Canadian Gallop results have not provided any information on the relationship between occupation and attitudes toward the death penalty. Nevertheless, since occupation is quite closely related to educational levels, it was decided to test for variations in MPs' positions on the death penalty among different occupational groups, as a refinement of the hypothesis about education. However, no specific hypothesis was formulated.

CIPO polls have shown that there has been a fairly consistent trend for women to be more abolitionist than men.⁴⁰ But since there are so few women MP's, such a hypothesis cannot be tested among Parliamentarians.

The Gallop polls also identified regional variations in opinion on the death penalty; such variations in relation to MP's will not be tested, for two reasons. Firstly,

region is a multichotomous nominal variable; with the relatively small N's involved, meaningful analysis would be difficult. Secondly, and more importantly, region is really just a container variable that has no specific meaning. For example, to say that people from Ontario are more abolitionist than people from Quebec tells the analyst nothing unless he knows what is the relevant distinction between those two provinces. The regional label itself denotes nothing.

In reporting Gallop results, neither Chandler nor Fattah did any controls to test whether any of the relationships noted above was spurious. In the present analysis of MP's, such controls will be introduced, where appropriate. In summary, the hypotheses to be tested in relation to MP's are that there should be more support for retention among: Social Creditors and PC's, older members, those from rural constituencies, Roman Catholics, French Canadians, and members with less formal education (perhaps with variations according to occupation).

The data sources for the required variables were: Chandler's 1966 data set,⁴¹ the Parliamentary Guide, the Reports of the Chief Electoral Officer, and Hansard. The Parliamentary Guide provided information on the members' age, education, religion, and ethnic origin. Age was later collapsed to 47 years and

under, versus 48 and over, according to the approximate median age within each Parliament. For education, the only reliable distinction that could be made was between those who had attended university and those who had not; any finer distinction was impossible because of the haphazard way in which educational information is given. For religion of the member, the distinction made was between Catholic and non-Catholic. French ethnic origin was operationally defined according to whether there was a French version of the biographical sketch of the member; by inspection, this proved to be a very valid indicator. Occupational information was also obtained from the Parliamentary Guide, supplemented by the Reports of the Chief Electoral Officer. The political party of the member was available from either of these sources.

The urban/rural balance of the constituency was operationally defined in terms of the percentage of polls that were urban. There is some problem with this definition, because polls are not of equivalent size. There is also the problem that a member need not be from his constituency, or from a constituency in the area. The definition in terms of percentage of urban polls was used nevertheless, because it seemed to be the most reliable and least problematic way to determine whether the member came from a rural or an urban environment. The variable was later dichoto-

mized to 50% or less urban polls, versus more than 50% urban polls.

The member's position on the death penalty was determined according to his vote as recorded in Hansard. For 1966, the vote on the main resolution was used; for 1973 and 1976, the results of both second and third reading were considered. Unless there was explicit evidence to the contrary (in speeches), a vote for the resolution/bill was taken to be a vote for abolition, and a vote against, a vote for retention. In the case of a change in vote between second and third reading, the third reading vote was used, unless the member's speech suggested otherwise. If the member did not vote, missing values were assigned; abstention was not treated as a deliberate position. Although this might not have been always true, there are only a few cases involved in any event. Excluding the respective speakers, there were only 9 MP's absent for the vote on the main resolution in 1966; in 1973 only 5 missed both second and third reading; and in 1976 only one (who was near death) missed both readings. Thus there could not have been enough deliberate abstentions to materially affect the results of the analysis. Also, no attempt was made to account for Liberal retentionists who voted for abolition because of party pressure, or of abolitionist members who voted for retention because of constituency pressure. Since it is impossible to

accurately identify such members in many instances, they were all simply classified according to their vote.

Since most of the variables are dichotomous, the use of contingency tables is the most appropriate means of analysis. Although the three Parliaments do not strictly constitute samples, significance tests are nonetheless being used, so that only non-random distributions within tables will be treated as important. The .05 level is employed, and all the tests are one-tailed, because the hypotheses are directional.

Table IV.2 summarizes the findings for all variables (except occupation which will be discussed later) for all three debates. There seems to be some support for all of the hypotheses except the one that Roman Catholics would tend to be more retentionist than non-Catholics. The individual findings should be discussed in detail, and the possibility of spurious relationships must be investigated.

As can be seen from Table IV.2, the relationship between party and position on the death penalty was by far the strongest; in Table IV.3, this relationship is examined in detail. As was expected, Social Creditors and Progressive Conservatives tended to be retentionists, and Liberals and New Democrats tended to be abolitionists. Since the Social Credit party and the NDP are more unambiguously 'conservative' and 'liberal' respectively, these two caucuses

TABLE IV.2

THE RELATIONSHIPS BETWEEN BACKGROUND
CHARACTERISTICS OF MP'S AND THEIR
POSITION ON THE DEATH PENALTY:
ZERO-ORDER GAMMAS

<u>Background Characteristics</u>	<u>Predicted Direction</u>	<u>D e b a t e</u>		
		1966	1973	1976
Party	-	-.80*	-.88*	-.89*
Age	+	.28	.31*	.30*
Rural/Urban	-	-.42*	-.31*	-.35*
Religion	+	.14	.24	.23
Ethnic Origin	+	.39*	.06	-.04
Education	-	-.45*	-.58*	-.52*

*p < .05 (one-tailed test)

The significance test used was that presented in
E. Terrance Jones, Conducting Political Research,
New York: Harper & Ross, 1971, p.171:

$$z \text{ score} = \text{gamma} \left\{ \sqrt{\frac{2(S+D)}{2N(1-\text{gamma}^2)}} \right\}$$

TABLE IV.3

THE RELATIONSHIP BETWEEN POLITICAL PARTY
AND POSITION ON THE DEATH PENALTY

	P A R T Y			
<u>Position</u>	<u>Social Credit/ Creditists</u>	<u>Progressive Conservative</u>	<u>Liberal</u>	<u>New Democrat</u>
<u>1966</u>				
Abolish	7%	19%	58%	100%
Retain	93	81	42	0
	100 (N=14)	100 (N=95)	100 (N=125)	100 (N=21)
			gamma = -.80, p<.05	
<u>1973</u>				
Abolish	0%	23%	77%	97%
Retain	100	77	23	3
	100 (N=14)	100 (N=107)	100 (N=107)	100 (N=30)
			gamma = -.88, p<.05	
<u>1976</u>				
Abolish	0%	18%	72%	100%
Retain	100	82	28	0
	100 (N=11)	100 (N=96)	100 (N=137)	100 (N=16)
			gamma = -.89, p<.05	

would be expected to be more one-sided, and this was the case. Indeed, with one exception each, Howard Johnston for the Social Credit party in 1966 and Barry Mather for the NDP in 1973, both caucuses were unanimous. The PC's were, over the three debates, consistently around 5:1 for retention. It was only in the Liberal caucus that proportions changed substantially over the three debates; it was the change among Liberals that made the relationship stronger in 1973 and 1976 (gammas of $-.88$ and $-.89$ respectively) than in 1966 (gamma of $-.80$). The Liberals changed from about 3:2 in favour of abolition in 1966, to about 4:1 for abolition in 1973 and 1976. This change probably reflected, at least in part, the Cabinet pressure on backbenchers which, as discussed in Chapter III, was virtually nonexistent in 1966, but fairly substantial in 1973 and 1976.

The hypothesis about party is based on the assumption that a retentionist position is a conservative stand and an abolitionist position a liberal one. Within the Liberal and Progressive Conservative caucuses, that kind of distinction relative to votes on the death penalty did tend to hold. In 1966, Prime Minister Pearson commented, privately, that the vote on the total abolition resolution would show who were the real liberals.⁴² Within the Conservative caucus it is the 'red Tories' who are consistently abolitionists (although there are some Tory abolitionists

who are decidedly not red Tories). Similarly, within the Liberal caucus, those members who are retentionist tend to be on the conservative wing of the party.

Since the relationship with party was so strong, party is obviously a critical control variable, at least potentially. Since the Social Credit and NDP caucuses are quite small, however, it is impossible to control with respect to either. Moreover, party is too crucial a variable to collapse the parties. As a result, whenever a control for party is required, only Liberals and Progressive Conservatives will be included in the analysis.

From Table IV.2, it appears that the hypothesis that older members should be more retentionist was weakly supported in relation to the 1973 and 1976 debates (gammas of $-.31$ and $-.35$, respectively). David Chandler also identified such a relationship (although it did not hold for the Conservatives in 1973).⁴³ However, the apparent tendency for younger members to have been more abolitionist should be approached with caution. The relationships between education and position were much stronger than the relationships between age and position. Since university education has become much more accessible in the past few decades, it would be expected that younger members would have more formal education than older members. Thus the apparent tendency for younger members to have been more abolitionist

might only be because members with a university education were more abolitionist. As can be seen from Table IV.4, this was indeed the case. Among members with university education, younger members had no greater tendency to vote for abolition in either 1973 or 1976. The same was true of those without a university education. The findings of Gallop polls in the 1970's that, among the general population, older people were more retentionist may or may not have been spurious with respect to education, but for MP's at least, the relationship between age and position on the death penalty was indeed spurious.

Similarly, the apparent tendency for members from rural areas to have been more retentionist than those from urban ridings should be seen as suspect. The uncontrolled relationships were weak to moderate (gammas of $-.42$, $-.31$, and $-.35$), but that may only be because, in recent elections, Progressive Conservatives and Social Credit candidates have been much more successful in rural ridings, and Liberal and NDP candidates more successful in urban ridings. As can be seen from Table IV.5, taking the Liberals and Conservatives separately, urban members were no more inclined to oppose the death penalty than were rural members. Again the relationship, which seemed fairly consistent over the three debates, was spurious. David Chandler did not draw such a conclusion because he was using the urban/rural

TABLE IV.4
THE RELATIONSHIP BETWEEN AGE AND POSITION ON THE DEATH
PENALTY, CONTROLLING FOR EDUCATION: 1973 AND 1976

Debate	Relationship Between	Predicted Direction	Zero Order Gamma	Controlling For	Conditional Gamma	Partial Gamma
1973	Aged Educa- tion	-	-.34*			
	Education & Position	-	-.58*			
	Age & Posi- tion	+	.31*	Education	Non-University University	.35 .22 .24
1976	Age & Edu- cation	-	-.59*			
	Education & Position	-	-.52*			
	Age & Posi- tion	+	.30*	Education	Non-University University	.48 .09 .13

*p<.05

TABLE IV.5

THE RELATIONSHIP BETWEEN THE PERCENTAGE OF URBAN POLLS
AND POSITION ON THE DEATH PENALTY, CONTROLLING FOR
POLITICAL PARTY: LIBERALS AND CONSERVATIVES

Debate	Relationship Between	Predicted Direction	Zero Order Gamma	Controlling For	Conditional Gammas	Partial Gamma
1966	Percent Urban & Party	-	-.66*			
	Party & Posi- tion	+	.71*			
	Percent Urban & Position	-	-.39*	Party	Liberal PC's	-.14
1973	Percent Urban & Party	-	-.37*			
	Party & Posi- tion	+	.83*			
	Percent Urban & Position	-	-.26*	Party	Liberal PC's	-.09
1976	Percent Urban & Party	-	-.50*			
	Party & Posi- tion	+	.85*			
	Percent Urban & Position	-	-.31*	Party	Liberal PC's	-.04

*p<.05

nature of the constituency to test the 'representativeness' of MP's. For such relationships, Chandler did not control for party.⁴⁴

Table IV.2 indicates that there was no relationship between a member's religion and his vote on the death penalty; none of the gammas is statistically significant at the .05 level. Actually, among Liberals in 1966, there was a fairly strong tendency for Roman Catholics to be more retentionist (gamma = .60), but this relationship was spurious with respect to ethnic origin. It was French Canadian Liberals, rather than Catholics per se, who tended to have been more retentionist. Since virtually all French Canadian MP's are Catholics, it is impossible to compare across religious affiliation. But among English-speaking Liberals, Catholics had no greater tendency to support the death penalty than did non-Catholics. The data on Canadian public opinion as a whole also suggested that the relationship between religion and position on the death penalty might have been spurious with respect to ethnic origin.⁴⁵

Table IV.2 indicates that only in 1966 was there such a relationship between ethnic origin and attitudes of MP's toward capital punishment (gamma for 1966 = .39, gammas for 1973 and 1976 not significant at the .05 level). However, since so few French Canadian MP's are Conservatives, it is really only appropriate to examine this relationship among

Liberal MP's. The appropriate conditional tables are presented in Table IV.6. From this table it can be seen that in both 1966 and 1973, French speaking Liberals were more likely to vote against abolition than were their English-speaking colleagues, although the relationship was stronger in 1966 (gamma of .65 in 1966 compared to .53 in 1973); it was only in 1976 that the relationship was no longer statistically significant. But if the tables are examined closely, it is clear that the real change among French-speaking Liberals was between the 1966 debate and the two debates of the 1970's. The reason why the overall relationship was significant in 1973 but not in 1976 was due to changes among English-speaking members, not French MP's. English-speaking Liberals were slightly more abolitionist in 1973 than in 1976. For French-speaking Liberals there was a substantial shift, and it took place after the 1966 debate. In that first debate they were 3:2 for retention; in the last 2 debates they were 2:1 for abolition. This shift probably reflects two factors. One would be the subtle Cabinet pressures, in 1973 and 1976, on backbenchers to vote for abolition even if their own personal opinion leaned toward support of the death penalty. The other factor would probably be the effect of the Quiet Revolution in changing Quebec, and hence much of French Canadian, society, making it less rooted in the past and more receptive to change. The newer

TABLE IV.6

THE RELATIONSHIP BETWEEN ETHNIC ORIGIN
AND POSITION ON THE DEATH PENALTY: LIBERALS

POSITION	ETHNIC ORIGIN	
	Non-French	French
<u>1966</u>		
Abolish	75%	39%
Retain	25	61
	100 (N=68)	100 (N=57)
	Conditional gamma = .65, $p < .05$	
<u>1973</u>		
Abolish	.87%	67%
Retain	13	33
	100 (N=53)	100 (N=54)
	Conditional gamma = .53, $p < .05$	
<u>1976</u>		
Abolish	77%	66%
Retain	23	34
	100 (N=81)	100 (N=56)
	Conditional gamma = .25, $p > .05$	

crop of Quebec MP's would be expected to have reflected such changes more acutely.

Within the Liberal caucuses of both 1966 and 1973 there was no relationship between ethnic origin and either education or occupation, so the relationships between ethnic origin and position on the death penalty were not spurious with respect to either education or occupation.

Table IV.7 shows the relationship between education and position on the death penalty, and seems to indicate fairly strong support for the hypothesis that university educated members should tend to be more abolitionist, especially for the last two debates (gammas, in chronological order, of $-.45$, $-.58$, and $-.52$). However, since a person's education level largely determines his occupational opportunities, it should be investigated whether it was a member's education, occupation, or both which seemed to affect his attitudes on the death penalty. Table IV.8 shows the votes on the capital punishment motions among various occupational groupings.

For all three debates, there were significant differences across occupational groupings, but the relative positions changed somewhat. In 1966, professionals and white collar employees were about equally likely to vote for abolition (about 3:2) and businessmen and farmers about equally likely to vote for retention (about 4 or 5:1). The

TABLE IV.7

THE RELATIONSHIP BETWEEN EDUCATIONAL LEVEL
AND POSITION ON THE DEATH PENALTY

POSITION	Non-University	University
<u>1966</u>		
Abolish	30%	53%
Retain	70	47
	100 (N=102)	100 (N=144)
	gamma = -.45, $p < .05$	
<u>1973</u>		
Abolish	31%	62%
Retain	69	38
	100 (N=75)	100 (N=180)
	gamma = -.58, $p < .05$	
<u>1976</u>		
Abolish	30%	58%
Retain	70	42
	100 (N=69)	100 (N=187)
	gamma = -.52, $p < .05$	

TABLE IV.8

THE RELATIONSHIP BETWEEN OCCUPATION AND
POSITION ON THE DEATH PENALTY

POSITION	O C C U P A T I O N				
	Lawyer	Other Professional	White Collar/ Blue Collar*	Businessman	Former
<u>1966</u>					
Abolish	55%	60%	61%	23%	16%
Retain	45	40	39	77	84
	100 (N=67)	100 (N=55)	100 (N=31)	100 (N=64)	100 (N=25)
	Chi-Square = 31.7, $p < .05$ Lamda = .23				
<u>1973</u>					
Abolish	63%	62%	46%	44%	22%
Retain	37	38	54	56	78
	100 (N=67)	100 (N=65)	100 (N=56)	100 (N=48)	100 (N=18)
	Chi-Square = 14.4, $p < .05$ Lamda = .16				
<u>1976</u>					
Abolish	62%	55%	48%	41%	22%
Retain	38	45	52	59	78
	100 (N=66)	100 (N=67)	100 (N=64)	100 (N=44)	100 (N=18)
	Chi-Square = 11.6, $p < .05$ Lamda = .16				

* Blue collar workers were grouped with white collar workers because the two groups share the common distinction of being non-professional employees. But since so few MP's held blue collar jobs prior to their being elected to Parliament, it really does not make much difference how blue collar workers are classified.

dichotomy here seemed to be between people who owned their own business (a farm being a form of business enterprise), and those that were either employees or members of a self-governing profession. Perhaps it was that businessmen and farmers had the conservative outlook of a self-made man, while employees and members of self-governing professions were exposed to enough diversity to have been more liberal, on social issues, if not necessarily on economic ones.

In 1973 and 1976, however, such a dichotomy was not in evidence. In these last two debates the dichotomy was between professionals (the majority of whom were abolitionists) and non-professionals (the majority of whom were retentionists). The changing pattern in relationships with occupation may be associated with relationships between education and positions on the death penalty.

In order to use occupation in any control situation, it was necessary to dichotomize the variable, and this posed a problem. For if a consistent method of dichotomizing were used, the changes in the relationships with occupation over the three debates would be obscured. Accordingly, in order not to eliminate an actual relationship between occupation and position, it was decided that a different means of dichotomizing should be used. For 1966, businessmen and farmers were grouped in one category; the rest were put into the second category. For 1973 and 1976,

in contrast, all non-professionals were grouped into the first category, and all professionals into the second.

With occupation dichotomized, it is possible to obtain gammas for the relationships between occupation and position, and it is also possible to compare the strength of the relationships of occupation versus education with position (see Table IV.9). In 1966, occupation was more strongly related to position than was education. In contrast, in 1973 and 1976, education produced the stronger relationship. This suggests that for 1966 occupation might have been the actual predictor, while education displaced it in 1973 and 1976. Table IV.9 offers support for such a conclusion.

Table IV.9 introduces controls for both education and occupation. For 1966, the relationship between education and position did not hold when controlling for occupation. Within either occupational group, university educated members were no more likely to vote for abolition than were members without a university education. The occupation relationship did, as the above conclusion would suggest, hold when controlling for education. At either educational level, farmers and businessmen were more retentionist. Thus, for the 1966 debate, education had no direct effect on members' positions on the death penalty. Any effect of education was mediated through occupation; occupation was an

TABLE IV

THE RELATIONSHIP BETWEEN EDUCATION AND POSITION ON THE DEATH
PENALTY, CONTROLLING FOR OCCUPATION, AND THE RELATIONSHIP
BETWEEN OCCUPATION AND POSITION, CONTROLLING FOR EDUCATION

Debate	Relationship Between	Predicted Direction	Zero-Order Gamma	Controlling For	Conditional Gammas	Partial Gamma
1966	Education & Occupation	+	.88*			
	Education & Position	-	-.45*	Occupation	Businessmen/Farmers -.29 Profes./White Collar -.05	-.02
	Occupation & Position	-	-.67*	Education	Non-University University	-.75* -.56*
1973	Education & Occupation	+	.97*			
	Education & Position	-	-.58*	Occupation	Non-Professional Professional	-.52* NA**
	Occupation & Position	-	-.40*	Education	Non-University University	NA** .11
1976	Edu. & Occu.	+	.96*			
	Education & Position	-	-.52*	Occupation	Non-Professional Professional	-.43* NA**
	Occupation & Position	-	-.32*	Education	Non-University University	NA** .15

*p<.05

**Since virtually all professionals are university educated, valid conditional gammas could not be calculated, making the partial gammas invalid as well.

intervening variable in the relationship between education and position. It seems that although an individual's educational background conditioned his opinions, it was his work environment which constituted the more immediate catalyst for that opinion.

With respect to the major parties in 1966, there was a relationship between occupation and political party; Conservative MP's were more likely to be farmers or businessmen than are Liberals ($\gamma = -.44$). Thus the relationship between occupation and position should be controlled for party. When this is done, the relationship holds; the partial gamma is $-.57$, and the conditional gammas are $-.52$ (Liberals) and $-.57$ (PC's). The differences in the conditional gammas are not statistically significant. For the Liberals, the majority of professional/white collar workers are abolitionists, while the majority of businessmen and farmers were retentionists. For the Conservatives the majority of both groups voted against the resolution, but farmers and businessmen were much more heavily retentionist. Accordingly, the relationship between occupation and position, in 1966, cannot be attributed to the different occupational mixes within the parties.

In contrast to 1966, in 1973 and 1976, when the relationship between education and position was controlled for occupation, the relationship held. As a consequence of

the different recoding of occupation, only one of the conditional tables for each debate is valid; since virtually all professionals are university educated, it is impossible to assess any relationship between education and position, among professionals. But among non-professionals, it is possible to assess the relationship. For this occupational group, in both 1973 and 1976, it remained true that university educated members were more likely to vote for abolition. The conditional gammas fell only slightly in relation to the zero order gammas (from $-.58$ to $-.52$ in 1973, and from $-.52$ to $-.43$ in 1976). Thus, unlike in 1966, the relationship between education and position over the death penalty in 1973 and 1976 was not mediated through occupation. Since education was not related to party in either year, nor was the relationships between education and position simply reflective of party differences in education. When the relationship between occupation and position was controlled for education, the relationship did not hold. The conditional gammas for $\bigcirc$ university educated members were not significant at the .05 level for either 1973 or 1976; the relationship between occupation and position on the death penalty was spurious with respect to education. Taken by itself, occupation was unrelated to position on the death penalty.

For the 1966 debate, occupation intervened in the relationship between education and position; there was no direct relationship between education and occupation. In contrast, for the 1973 and 1976 debates, there did appear to have been a direct relationship between education and position, with any relationship between occupation and position having been eliminated.

David Chandler's analysis, as a result of the absence of controls, did not uncover such a change; Chandler only identified the original relationships between both education and occupation, and attitudes toward the death penalty.⁴⁶ While introducing controls does refine the analysis, it does not provide any explanation as to why such a change should have occurred. There is no obvious explanation for the change. Perhaps it has something to do with the fact that, at the time of the 1966 debate, evidence on the deterrent effect of capital punishment was rather sketchy, but by the 1970's, there was a fair body of statistical evidence pointing to a conclusion that the death penalty is not a special deterrent. The possible connection here is that people with more formal education would be more disposed to think of such evidence as credible, with the result that in the last two debates, the education relationship became much stronger, cancelling out any relationship with occupation. Admittedly, however, such a

possible explanation is pure speculation.

The hypothesis concerning education contained specific assumptions about the link between educational training and opinions on the death penalty. It was argued not only that those with a university education would be more utilitarian than retributive, but also that they would be more impressed by statistical evidence about deterrence. The fact that there appeared to be a fairly strong relationship between education and position in all three debates does suggest that there is at least something about the experience of university education which encourages support for abolition of the death penalty.

In summary, in the testing of the relationships between MPs' background characteristics and their positions on the death penalty, only a few of the apparent relationships remained intact after controls were introduced. For all debates, party was the most important discriminating factor. Even when party discipline was explicitly not enforced (at least not to its fullest extent) there was considerable cohesion within the parties. This was especially the case for the minor parties. Apart from the party, the most powerful predictor of a member's vote on the capital punishment motions was his educational level. Since the hypothesis related to education was the only one in which specific links were inferred between the background charac-

teristics and the particular issue of the death penalty, it is perhaps revealing that this relationship appeared both strong and consistent over time. The other significant predictor, which was limited to the Liberal caucus, was ethnic origin. The strength of this relationship diminished over time, and was no longer evident by the time of the 1976 debate. The cultural argument was much less concrete and specific than the educational hypothesis, and any link between the nature of French Canadian society and opinions on the death penalty was probably counteracted by Cabinet pressures on Liberal backbenchers in the later debates.

Even where the relationships between background characteristics and positions on the death penalty were apparent, the precise linkages between the two rested on speculation; they could not really be tested. Although the foregoing analysis did appear to account for much of the differences in voting patterns among MP's, there are still a number of 'loose ends'. The gaps primarily concern questions of how attitudes about capital punishment relate to attitudes about other issues.

When supplementing the perspective of party with a perspective using the individual MP as a unit of analysis,

the only appropriate means identified was one that was very specific to the capital punishment debates. The only fruitful avenue of investigation was an attempt to explain MPs' personal opinions on the death penalty. The alternate perspective, role analysis, seemed not to be relevant to the study of legislative behavior during these debates. Distinctions between delegates and trustees seemed to be artificial, rather than based on genuine differences in how MP's saw their relationships to those that they represented. On the straight question of abolition of the death penalty, only very rarely was a member's vote a reflection of his constituents' opinions instead of his own. When focusing on individual MP's, therefore, the knowledge that these individuals were legislators added very little to an understanding of voting patterns throughout the capital punishment debate.

The discussion in the last three Chapters has been almost totally confined to the specifics of the capital punishment debates. In the final Chapter, an attempt should be made to draw inferences beyond these particular case studies.

NOTES

¹For the purposes of this Chapter, the meaning of legislative behavior is confined to voting and to speeches in the House. The behind the scenes lobbying that is obviously a crucial part of legislative behavior has already been fully discussed in the previous chapter.

²Allan Lawrence, interviewed June 28, 1977.

³Fred Rose, the Labour Progressive MP involved in the Gouzenko affair, was convicted not of treason, but of conspiracy to violate the Canada Secrets Act.

⁴House of Commons Debates, 1st Session, 30th Parliament, June 4, 1976, Vol. XIII, pp.14175-14176.

⁵Gordon Fairweather, interviewed July 21, 1976.

⁶Debates, 1st Session, 29th Parliament January 29, 1973, Vol. I, p.758.

⁷His absence may have been a deliberate one, to avoid voting against the government, but that does not appear to have been a consideration on any of the other votes.

⁸United Church Observer, April 1, 1965, p.11; Vancouver Sun, Jan. 4, 1966; Hamilton Spectator, Feb. 16, 1966; Montreal Gazette, April 5, 1966; Le Devoir, April 6, 1966.

⁹David Chandler, Capital Punishment in Canada, (Montreal: McClelland and Stewart Limited, 1976), pp.81-82.

¹⁰Erik Nielsen, interviewed May 26, 1977.

¹¹Ibid.

¹²Debates, 1st Session, 29th Parliament, May 14, 1973, Vol. IV, p.3724. The only other times public support of abolition was cited was by a Liberal MP, Hubert Badanai,

who, in 1966 and 1967, argued that public opinion was moving toward abolition, but not that it was abolitionist.

¹³Nielsen, op. cit.

¹⁴Ibid.

¹⁵See footnote 26, Chapter II.

¹⁶See p.160.

¹⁷Stanley Knowles, interviewed June 24, 1976; Warren Allmand, who was a Liberal backbencher during the first two debates, and Solicitor General during the last two, when asked the same question, said that he could not comment on any difference between the debates without looking further into the matter. Warren Allmand, interviewed Sept. 8, 1977.

In 1965, before the debate had begun, in fact during what turned out to be the Parliament before the 1966 debate took place, the United Church Observer (April 1, 1965, pp.11-14) conducted a poll of MP's. The Observer reported (p.14):

A large number scrawled across our questionnaire words like these from an Ontario member, "Am still seeking the views of my constituents. My vote is not mine to do with as I please." Perhaps. But neither is it his to use without enlightened wisdom, regardless of his constituents.

Members making such replies might have sounded like something close to a delegate, but such responses could just as easily have been credible excuses from members who had not yet made up their minds, or did not yet wish to declare themselves publicly. (This is quite apart from the consideration that the people making such replies might not have been MP's by the time the 1966 debate was held, since there was an intervening election.)

¹⁸Mitchell Sharp, interviewed June 13, 1977.

¹⁹This conclusion was drawn from a number of informal conversations with abolitionist MP's during the 1976 debate, while the author was a Parliamentary Intern.

Even some retentionists frowned on such conces-

sions to public opinion. See, for example, the remark of Erik Nielsen, cited on p.166.

²⁰In her speech in favour of retention, Iona Campagnola explicitly argued that an MP should base her vote on her own judgement; yet her personal opinion was known to be abolitionist. Walter Baker, who had voted for the partial ban in 1973, but voted against total abolition in 1976, would only say in his speech that he could not condemn members who voted according to constituency opinion. He justified his own position by arguing that the death penalty was necessary for the killers of policemen and prison guards, although shortly after the 1973 vote he had told other MP's that he could never vote for capital punishment; many MP's doubted that his personal opinion had really changed. Lloyd Francis had said in his speech that he felt obliged to follow the results of a constituency poll, and that his predecessor, Peter Reilly, had been wrong to defy his constituents' views in 1973. But by the time of the vote, he was saying that he was personally becoming convinced that capital punishment was necessary. Doug Roche, who voted for the partial ban in 1973, voted against total abolition in 1976 while admitting that he was still an abolitionist. His rationale was not quite that of a delegate; it was more of a utilitarian argument that abolition could not work in the fact of intense opposition, and that abolition under such circumstances would encourage disrespect for the law. As the time of the vote approached, Roche was reported to be very concerned that the bill might not pass, despite the fact that he was voting against it.

²¹Debates, 1st Session, 29th Parliament, Jan. 31, 1973, Vol. 4, p.838. Reid probably did not realize it, but his proposal could have put the entire federal Cabinet in jail for the rest of their lives. For by law in 1973, no convicted murderer could be granted parole without the consent of the Cabinet.

²²Allmand, op. cit.

²³If representational role style is inappropriate, so are the other representational roles discussed in the general literature. Capital punishment (or any other matter likely to be handled under a free vote) does not involve a conflict between local and national interests, and it is strictly a policy issue.

²⁴In this discussion, it is not being assumed that there is any generic difference between opinions and attitudes. An effort is only being made to distinguish between opinions on the particular issue of the death penalty versus opinions across a whole range of issues.

²⁵Chandler, op. cit., Chapter Three.

²⁶Ezzatt A. Fattah, The Canadian Public and the Death Penalty. A Study of a Social Attitude, (Report Prepared for the Department of the Solicitor General, Submitted March, 1975, Released February, 1976), pp.59-60.

²⁷It should also be noted that this use of party affiliating is quite different from the use of party in Chapter III. Here, party is being treated as a characteristic of individual MP's; in Chapter III party was treated as the designation among groups in the legislature.

²⁸Whether or not any such differences constitute 'ideological' differences is irrelevant to the present discussion.

²⁹Allan Kornberg, Canadian Legislative Behavior A Study of the 25th Parliament, (Montreal: Holt, Rinehart and Winston, 1967), p.125.

³⁰Ibid.

³¹On the question of wiretapping, the PC's have tended to take a more 'liberal' position than the Liberal government, favouring more restrictions on police powers. However, this seems to be a function of which party is in power; all ten provincial Attorneys-General, irrespective of party, have supported police requests for wider wiretapping powers.

³²Chandler, op. cit., Chapter Two.

³³Fattah, op. cit., passim.

³⁴Ibid., pp.23-27, 123-124.

³⁵Ibid., pp.17-18, 108.

³⁶Ibid., pp.27-29, 130.

63. ³⁷Ibid., pp.27-29, 110; Chandler, op. cit., pp.60-

³⁸Fattah, op. cit., pp.34-39, 139-140; Chandler, op. cit., pp.53-56.

³⁹Chandler, op. cit., p.53.

⁴⁰Fattah, op. cit., pp.20-21, 118-119.

⁴¹Chandler's 1973 data were also available, but they proved to be unreliable; consequently, his 1973 data were not used.

⁴²Fairweather, op. cit.

⁴³Chandler, op. cit., pp.118-121.

⁴⁴Ibid., pp.97-99.

⁴⁵Fattah, op. cit., p.28.

⁴⁶Chandler, op. cit., pp.121-123, 126-127.

CHAPTER V

CONCLUSION

As outlined at the end of Chapter I, the object of this thesis was to determine the appropriate perspectives from which to study Canadian legislative behavior under a free vote, by means of an analysis of four capital punishment debates. Chapters III and IV seemed to indicate that, in relation to those capital punishment debates, a study using legislative role analysis was not very fruitful, but that both the perspectives of the party and the characteristics of individual MP's yielded useful insights. Three questions remain to be addressed in this Conclusion. Firstly, can the conclusions drawn about the capital punishment debates be assumed to apply to free votes in general? Secondly, are free votes more or less likely to occur in the future (i.e. is the first question very relevant to future legislative behavior)? And, thirdly, can this study be used to draw inference about Canadian legislative behavior in general?

In terms of free votes in general, the capital punishment votes do cover a very wide range. In relation to the various meanings of a free vote, they ranged from a

situation of virtually no party pressures (1966) to a situation of extensive party pressures (1976). They also spanned over three different Parliaments, during times of both minority and majority governments. Consequently, although it is always wise to be cautious about generalizing on the basis of only four cases, it would seem that conclusions which apply to all four debates should have some wider applicability. The conclusions drawn were at both the micro and the macro level.

It was assumed from the beginning that the individual MP is, at least in part, an appropriate unit of analysis under a free vote, since the MP is not under specific direction (as opposed to persuasion) to follow a party line. The question that was addressed at the micro level of analysis was whether the analyst should distinguish among legislators according to their legislative roles, according to the determinants of their personal opinions on the substantive issue, or both. The evidence suggested that, for the capital punishment debates, the distinction between delegate and trustee was not really relevant to the voting decisions of MP's. Moreover, if representational role style were to be relevant for any issue, capital punishment would seem to be an ideal candidate. The question is ultimately reducible to a straight yes or no proposition (should the state have the right to take a life as

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a form of punishment); the issue does not concern specific details of a complex policy.¹ Furthermore, throughout the debates, the public preference in relation to the capital punishment issue was quite evident. For both of these reasons, a would-be-delegate would have had no difficulty in determining his position; yet few, if any, of the MP's were seen to be acting as delegates. If delegates are rare or non-existent when circumstances for being a delegate are seemingly ideal, it suggests that a distinction between delegate and trustee would not be relevant for other free votes, where the complexity of the choice might make it difficult for a would-be-delegate to determine what he were mandated to do. Accordingly, when focusing on individual MP's under a free vote situation, the analyst seems forced to turn to the obvious, the personal opinions of legislators, and to try to account for these opinions. Although such a contention is perhaps frustrating for the analyst, since it does not relate to any underlying determinants of legislative behavior, it is a conclusion which probably extends beyond the capital punishment debates.

At the macro level, there are basically two inferences that can be drawn from the history of the capital punishment debates. The first is that, once the government takes an explicit position on a bill, done most effectively by making it a government bill, party pressures on

members are brought into play. The nature of responsible government, as it has evolved, means that the government's prestige is put on the line even if the vote is not considered a vote of confidence. The factors contributing to party cohesion in Parliament are much broader than the formal exercise of the whip. Therefore, even under a free vote, if the party leadership has a single policy, there are subtle pressures on backbenchers to support it.

This conclusion with respect to party pressures is hardly surprising; the second conclusion related to the parties under a free vote is perhaps more revealing. The history of the capital punishment debates points to a conclusion that the parties are the key to understanding the quality of organization within Parliament under a free vote. This was true in both negative and positive terms over the four capital punishment debates. A lack of party involvement resulted in very poor organization (1966); the systematic involvement of the parties is what made the abolitionists' organization so effective from 1967 to 1976. It would seem that free votes do not happen frequently enough for there to develop a norm about organization that is fundamentally different from a whip vote situation. Since the parties are normally the key to organization, an adaptation of party organization is the easiest way to adapt to a free vote situation; this is indeed what happened over the

capital punishment debates. The lack of any successful organization not in some way based on the parties suggests that it will be difficult to develop an entirely new norm about organization, unless the frequency of free votes were sufficient to allow a new norm time to evolve.

However, there seems to be little chance that free votes will become more frequent in the future. For each of the capital punishment debates, the decision to allow a free vote was not so much the preferred choice as it was a default option. Parliament was initially pushed into a free vote because of deep divisions within the Cabinet prior to the 1966 debate; from then on it was primarily the precedent of 1966 that ensured that the ensuing capital punishment votes would be free. In 1976 especially, that decision was a reluctant one. For the other free vote in recent memory, the decision to allow a free vote was even more reluctant. The flag debate began on the assumption that the whips would be on; it was only when it seemed that a free vote would help ease the pressure in a debate where emotions were running very high that the Pearson government agreed to make the vote on the resolution a free one.²

If, in the recent past, free votes have been held only when governments were pushed into them, the experience of the capital punishment debates, if anything, probably increased the resolve of governments to resist such pres-

sures in the future. The capital punishment debates proved to be a very unnerving experience for ministers who are not accustomed to having to worry about their bills being defeated. Even in a minority government situation, the degree of uncertainty is much less than under a free vote. In a minority government situation, once one of the opposition parties has indicated its support of the bill, the minister can relax. He might be forced to yield on certain amendments which the government would rather resist, but the bill itself is still quite certain of passage. In contrast, under a free vote, the situation is constantly in flux; the minister can never really relax. Other things being equal, governments would prefer not to have to operate in an atmosphere of uncertainty. There is nothing much they can do to prevent minority governments from happening; they are, by and large, capable of preventing free votes from occurring. Free votes, in the future, can be expected only when internal party divisions get out of control, and where the divisive issue cannot be put on the back burner. It is probable that every effort will be made to avoid such an eventuality.³

If free votes are not likely to be common occurrences in the future, does that mean that this thesis has no particular relevance beyond the specific case studies involved? Such a conclusion would seem to be overly

pessimistic; the study of the abnormal situation of a free vote can help to uncover, and even unmask, some of the facets of Canadian legislative behavior in general.

Under normal circumstances, it is difficult to disentangle the formal exercise of the whip from the more informal and more subtle pressures toward party cohesion. Since the informal pressures are usually superceded by the formal ones, the informal ones are not always apparent under a whip vote. The study of a free vote makes these informal pressures quite visible, as was seen in the discussion in Chapter III about the pressures felt by Liberal backbenchers to support the 1967, 1973 and 1976 bills. In the capital punishment debates, the amount of pressure seemed to be a function of what was deemed necessary to get the bill through. Although it is impossible to actually quantify party pressures beyond those of the whip, their importance should not be overlooked, either in a situation of a free vote, or under the normal circumstances of a whip vote.

In this thesis, two of the conceptual tools found in the literature on legislative behavior were applied. The first, party norms, proved to be a useful organizing concept. The discussion related to an abnormal situation; the use of the concept of party norms helped isolate what was distinctive about a free vote beyond the definitional

aspect of the removal of the whip. Posing the question of the adaptability of party norms ensured that the analysis would compare free votes to whip votes, rather than simply concentrate on free votes without any reference to the general context of Canadian legislative behavior. This was also the nature of Linda Geller-Schwartz analysis of recent minority Parliaments; her use of the concept of party norms made her discussion very explicit about the extent of the difference between majority and minority government situations, and how such a comparison changed over time. In the study of an abnormal situation, or in the comparison of legislative behavior under rather different circumstances, the concept of norms seems to be heuristically useful in focusing attention on both similarities and differences. Since the parties are the principal actors in the Canadian Parliament, it is the norms about party behavior which should be investigated.

Geller-Schwartz's conclusion based on her study of minority Parliaments, a conclusion which is also appropriate to this study of the capital punishment debates, was that:

[O]ne can conclude that parliamentary norms are resistant to change but they are capable of evolving over time to meet new circumstances.⁴

At this level of generality, such a statement reveals very little. It excludes the extreme cases of norms changing

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instantaneously, or of norms not changing at all, but there is obviously considerable distance between these two extremes. It is hardly a startling revelation to say that norms evolve. However, in any particular circumstance, a focus on the adaptability of party norms makes the details of the process of evolution the subject of inquiry. It is this focus on the dynamics of change which is useful, and potentially applicable to aspects of legislative behavior other than free votes or minority Parliaments.

In contrast, the other legislative tool taken from the literature on legislative behavior, legislative role analysis, seemed quite irrelevant to this particular study of Canadian legislative behavior. In the Introduction, it was argued that role analysis was inappropriate to the study of Canadian legislative behavior under the normal circumstances of party discipline; that argument was a conceptual one, not one based on evidence. For the exceptional circumstance of a free vote, however, evidence (albeit indirect) was sought to justify a distinction between delegate and trustee. Nevertheless, no such distinction seemed appropriate. Even when the confounding influence of party discipline was removed (or at least considerably reduced), there was no real evidence that MP's functioned as delegates. If there are virtually no delegates when the inhibiting factor of party discipline is removed, the

argument that there are virtually no delegates when the inhibiting factor of party discipline is fully operative would seem to be strengthened.

If, instead of party discipline nullifying the concept of delegate, it simply meant that MP's were delegates only until the party position were determined, (i.e. that they were delegates in terms of their caucus positions), it would be expected that, with the dictates of the party removed, MP's as delegates would become apparent outside caucus under a free vote. Since this did not happen during the capital punishment debates, strength is added to the assumption, made in the Introduction,⁵ that it is inappropriate to distinguish between delegates and trustees within caucus.

This study of the capital punishment debates also implies that, even when an MP breaks party ranks, observers should not look to the concept of legislative role for an explanation. The implication of the conclusion in relation to free votes is that it is not the specific instances of the enforcement of party discipline that make the concept of delegate untenable; it is the entire set of assumptions and norms on which the party system is based that made it untenable. Accordingly, legislative role analysis would seem to be totally inappropriate to the study of Canadian legislative behavior.

Although the question of whether or not the death penalty should be imposed under the criminal code of Canada is ultimately an issue that affects very few people directly, the issue is important because it is deeply symbolic, and because it touches on questions of morality and moral judgement. For committed retentionists, the final victory for abolition symbolized the surrender of an important element of society's security; for committed abolitionists, a return to the death penalty would have symbolized a submission, for no justifiable reason, to the violence that had been condemned as evil. While Parliament's decision to abolish the death penalty will likely stand for some time to come, the issues raised by abolition continue to be debated.

If only because the issue of capital punishment is substantively important, the Parliamentary debates deserved to be studied, and that entailed an understanding of how Parliament functions under a free vote. But beyond that, an understanding of how Parliament functions under a free vote can also contribute to an increased understanding of the overall functioning of Parliament. It is that which, hopefully, makes this thesis something more than an isolated case study.

NOTES

¹For capital punishment, while the arguments involved are complex, the final choice is simply for or against. The parole aspect raises more complex choices, but in the Parliamentary debates, the whole question of parole was ancillary to the main issue of capital punishment.

²Linda Geller-Schwartz, "The Multi-Party System and Parliament: A Study of the Interrelationships in the Canadian House of Commons", (Unpublished Ph.D. Dissertation, University of Toronto, 1977), pp.211-212.

³It is also possible that, in the future, free votes might be allowed on trivial issues, as has often happened in Britain. However, for trivial issues, the government would probably be unconcerned about the outcome, and members would not expend much energy trying to get organized. In addition, such debates would not be of much interest to analysts of legislative behavior.

⁴Geller-Schwartz, op. cit., pp.261-262.

⁵See Chapter I, footnote 29.

APPENDIX A

DIVISIONS OF THE CANADIAN HOUSE OF COMMONS ON CAPITAL PUNISHMENT: MAIN MOTIONS, 1966 TO 1976

1966: TOTAL ABOLITION RESOLUTION

CRIMINAL CODE

PROPOSED AMENDMENT REGARDING CAPITAL PUNISHMENT

Messrs. Byrne, Nugent, Scott (Danforth)
and Stanbury moved:

Resolved, that it is expedient to introduce a
measure to amend the Criminal Code for the
purposes of

(a) abolishing the death penalty in respect of
all offences under that act;

(b) substituting a mandatory sentence of life
imprisonment in those cases where the death
penalty is now mandatory; and

(c) providing that no person upon whom a
mandatory sentence of life imprisonment is im-
posed shall be released from imprisonment with-
out the prior approval of the Governor in Council.

April 5, 1966

The house divided on the motion (Messrs.
Byrne, Nugent, Scott (Danforth) and Stan-
bury) which was negatived on the following
division:

• (10:10 p.m.)

YEAS

Messrs:

Allmand	Badanai
Andras	Baldwin
Asselin	Ballard
(Richmond-Wolfe)	Barnett

Basford	Macaluso
Batten	MacDonald (Prince)
Beer	MacDonald (Rosedale)
Bell (Carleton)	MacEwen
Berger	MacInnis (Mrs.)
Begg	(Vancouver-Kingsway)
Blouin	MacKasey
Boulanger	McIlraith
Brand	McNulty
Brewin	Marchand
Brown	Martin (Essex East)
Byrne	Martin (Tannins)
Cameron (High Park)	Mather
Cameron (Nanaimo- Cowichan-The Islands)	Matheson
Cantelon	Munro
Carter	Nasserden
Cashin	Neveu
Chrétien	Nicholson
Clarke	Nugent
Côté (Longueuil)	Orange
Davis	Orlikow
Deachman	Otto
Diefenbaker	Pearson
Dinsdale	Pelletier
Douglas	Pennell
Drury	Pepin
Dube	Peters
Enns	Pickersgill
Fairweather	Prittle
Faulkner	Prud'homme
Favreau	Reid
Fawcett	Rideout (Mrs.)
Forrestall	Roxburgh
Foy	Saltsman
Gendron	Sauvé
Gilbert	Schreyer
Goyer	Scott (Danforth)
Graffey	Sharp
Granger	Sherman
Gray	Stanford
Greene	Stanbury
Harley	Stewart
Hellyer	Tardif
Herridge	Teillet
Howard	Tolmie
Howe (Hamilton South)	Tremblay
Hymmen	Trudeau
Johnston	Wahn
Klein	Walker
Knowles	Watson (Châteauguay- Huntingdon-Laprairie)
Lamontagne	Whelan
Legault	Winch
Lewis	Winters-112

April 5, 1966

NAYS

Messrs:

Addison	Choquette
Aiken	Churchill
Aikenbrack	Clermont
Allard	Coates
Asselin (Charlevoix)	Cude
Beaulieu	Comtois
Béchar	Côté (Dorchester)
Bell (Saint John-Albert)	Cowan
Bower	Crossman
Cadieu (Meadow Lake)	Crouse
Cadieux (Tetrebonne)	Danforth
Cantlin	Dionne
Caouette	Duquet
Cardin	Émard
Caron	Éthier
Chatterton	Fane
Flemming	McQuaid
Forbes	McWilliam
Forest	Mandziuk
Fulton	Matte
Gauthier	Mitchell
Godin	Mongrain
Grégoire	Monteith
Grills	Moore
Gross	More
Guay	Morison
Gundlock	Muir (Cape Breton
Habel	North and Victoria)
Haidasz	Muir (Lisgar)
Hales	Nesbitt
Hamilton	Nielsen
Harkness	Noble
Hees	Nowlan
Hopkins	Olson
Horner (Acadia)	Ormiston
Horner (Jasper-Edson)	Pascoe
Horner (The Battlefords)	Patterson
Howe (Wellington-	Pilon
Huron)	Pugh
Irvine	Racine
Isabelle	Rapp
Keays	Régimbal
Kennedy	Ricard
Kindt	Richard
Korchinski	Rinfret
Lachance	Robichaud
Lafamme	Rochon
Laing	Rock
LaMarsh (Miss)	Ryan
Lambert	Rynard
Langlois (Chicoutimi)	Scott (Victoria (Ont.))
Langlois (Mégantic)	Simard
Laniel	Simpson
Laprise	Skoreyko
Latulippe	Smallwood
Laverdière	Smith
Leblanc (Laurier)	Southam
Leblanc (Rimouski)	Starr
Leboe	Stefanson
Lefebvre	Thomas (Maisonneuve-
Lessard	Rosemont)
Lind	Thomas (Middlesex West)
Loiselle	Thompson
Loney	Tucker
MacEwan	Turner
MacLean (Queens)	Valade
Macquarrie	Vincent
MacRae	Wadds (Mrs.)
McCleave	Watson (Assinibola)
McCutcheon	Webb
McIntosh	Winkler
McKinley	Williams
McLelland	Yanakis-143.

• (10:00 a.m.)

Mr. Speaker: I declare the motion lost.

1967: TEMPORARY AND PARTIAL ABOLITION BILL

Bill C-168, introduced by
by Solicitor General Larry
Pennell, restricted, for a
five year trial period, the
category of capital murder to
the killing of an on duty
policeman or prison guard.

Benson	Macdonald (Rosedale)
Berger	MacEachen
Birt	MacInnis (Mrs.)
Boulanger	Mackasey
Brewin	McIlraith
Brown	McNulty
Byrne	Marchand
Cadieux (Terrebonne)	Martin (Essex East)
Cameron (High Park)	Martin (Timmins)
Cameron (Nanaimo- Cowichan-The Is- lands)	Mather
Cantelon	Matheson
Cantin	Morison
Cashin	Munro
Chalwood	Nasserden
Chretien	Neveu
Coates	Nicholson
Côté (Longueuil)	Negent
Côté (Nicolet-Yamaska)	O'Keefe
Davis	Olson
Deachman	Orange
Diefenbaker	Orlikov
Dunsdale	Pennell
Douglas	Penin
Drury	Peters
Ethier	Pilon
Fairweather	Prittle
Fawcett	Prod'homme
Forrestall	Reid
Gendron	Rideout (Mrs.)
Germa	Robichaud
Gilbert	Rochon
Gover	Roxburgh
Graffey	Saltzman
Granger	Sauvé
Gray	Sharp
Greene	Stafford
Groos	Stanbury
Harley	Stanfield
Hellier	Stewart
Herridge	Tardif
Honey	Teillet
Hopkins	Tolmie
Howe (Hamilton South)	Tremblay (Matapédia- Matane)
Hymmen	Tremblay (Richelleu- Verchères)
Jamieson	Trudeau
Jorgenson	Turner
Knowles	Wahn
Lafamme	Watson (Châteauguay- Huntingdon-Laprairie)
Lefebvre	Whelan
Légaunt	Winch
Macaluso	Yanakis—114.
MacDonald (Prince)	

SECOND READING:

Nov. 23, 1967

The house divided on the motion (Mr.
Pennell) which was agreed to on the follow-
ing division:

YEAS	
Messrs:	
Allmand	Barnett
Andras	Basford
Asselin (Richmond- Wolfe)	Batten
Badanal	Bécharde
Baldwin	Beer
	Bell (Carleton)

(Cont.)

Nov. 23, 1967

NAYS

Messrs:

Addison	Fane
Aiken	Flemming
Aikenbrack	Forest
Beaulieu	Fulton
Bell (Saint John- Albert)	Godin
Bower	Grégoire
Brand	Grills
Caron	Guay
Caslon	Gundlock
Chatterton	Haidasz
Churchill	Hales
Code	Hamilton
Comtois	Harkness
Cowan	Horner (Acadia)
Crossman	Horner (The Bat- tledords)
Danforth	Howe (Wellington- Huron)
Dionne	
Irvine	Mutr (Cape Breton North and Victoria)
Isabelle	Muir (Lisgar)
Johnston	Nesbitt
Kindt	Ormiston
Korchinski	Pascoe
LaMarsh (Miss)	Pugh
Langlois (Chicoutimi)	Racine
Laniel	Rapp
Laprise	Regimbal
Leblanc (Laurier)	Ricard
LeBlanc (Rumowski)	Richard
Leboe	Rinfret
Lessard	Rock
Lind	Rynard
Loiselle	Scott (Victoria (Ont.))
MacEwan	Simard
MacInnis (Cape Breton South)	Simpson
MacLean (Queens)	Smallwood
MacRae	Smith
McCleave	Southam
McCutcheon	Starr
McIntosh	Thomas (Maisonneuve- Rosemont)
McKinley	Thompson
McLean (Charlotte)	Wadds (Mrs.)
McLelland	Webb
McQuaid	Wooliams—87.
Monteith	
More	

• (4:00 p.m.)

Mr. Speaker: I declare the motion carried.

[Translation]

Mr. Habel: Mr. Speaker, I was paired with the hon. member for Peterborough (Mr. Faulkner). Had I voted, I would have voted against the bill.

Mr. Mongrain: Mr. Speaker, I was paired with the right hon. Prime Minister (Mr. Pearson). Had I voted, I would have voted against the bill.

[English]

Bill read the second time and the house went into committee

THIRD READING

Nov. 30, 1967

The house divided on the main motion (Mr. Pennell) which was agreed to on the following division:

• (5:00 p.m.)

YEAS

Messrs:

Allmand	Knowles
Andras	Laflamme
Asselin (Richmond-Wolfe)	LaMarsh (Miss)
Badenault	Lefebvre
Baldwin	Legault
Barnett	Lewis
Basford	MacDonald (Prince)
Bechard	MacEachen
Beer	McIlraith
Bell (Carlton)	McWilliam
Benson	Marchand
Berger	Martin (Essex East)
Blouin	Martin (Timmins)
Boulanger	Mather
Brewin	Matheson
Brown	Morison
Byrne	Munro
Cadieux (Terrebonne)	Nasserden
Cameron (High Park)	Nevcu
Cameron (Nanaimo-Cowichan-The Islands)	Nicholson
Cantelon	Nowlan
Cantlin	Nugent
Cashin	Orlikow
Chatwood	Otto
Chretien	Obellet
Côté (Longueuil)	Pearson
Deachman	Pennell
Diefenbaker	Pepin
Dinsdale	Peters
Douglas	Pilon
Drury	Reid
Dubé	Ridout (Mrs.)
Émard	Rochon
Enns	Roxburgh
Ethier	Salisman
Fawcett	Sauve
Forrestall	Sherman
Gendron	Stafford
Germa	Stanfield
Gilbert	Stewart
Goyer	Tardif
Granger	Teillet
Graffley	Tremblay (Matapédia-Matane)
Cray	Tremblay (Richelieu-Verchères)
Greene	Trudeau
Harley	Turner
Herridge	Wahn
Honcy	Walker
Hopkins	Watson (Châteauguay-Huntingdon-Laprairie)
Howard	Whelan
Hymmen	Winch
Jamieson	Yanakis—105.
Jorgenson	

NAYS

Messrs:

Alkenbrack	Churchill
Asselin (Charlevoix)	Clancy
Bell (Saint John-Albert)	Code
Bower	Comtois
Brund	Cowan
Caouette	Crouse
Caston	Danforth
	Dionne

Duquet
Fane
Gauthier
Godin
Gundlock
Harkness
Horner (Acadia)
Horner (The Battledors)
Irvine
Johnston
Keays
Kindt
Korchinski
Lamg
Lambert
Langlois (Chicoutimi)
Lafiel
Latulippe
Leblanc (Laurier)
LeBlanc (Rimouski)
Lessard
Lind
Louelle
MacEwan
MacInnis (Cape Breton South)
MacLean (Queens)
MacRae
McCleave

McIntosh
McKinley
McLelland
Madill
Matte
Monteith
Moore
More
Muir (Cape Breton North and Victoria)
Patterson
Pugh
Racine
Rapp
Rinfret
Rynard
Scott (Victoria (Ont.))
Simard
Simpson
Smallwood
Smith
Southam
Starr
Stefanson
Thomas (Maisonneuve-Rosemont)
Thomas (Middlesex West)
Webb
Williams—70.

• (5:20 p.m.)

Mr. Speaker: I declare the motion carried.

Mr. Flemming: Mr. Speaker, I was paired with the Minister of Fisheries. Had I voted I would have voted against third reading.

Mr. Tucker: Mr. Speaker, I was paired. Had I voted I would have voted for the motion.

Mr. Habel: Mr. Speaker, I was paired with the hon. member for Peterborough. Had I voted I would have voted against third reading.

Mr. Addison: Mr. Speaker, I was paired with the hon. member for Hamilton West. Had I voted I would have voted against the motion.

Mr. McLean (Charlotte): Mr. Speaker, I was paired with the hon. member for Royal. Had I voted I would have voted against the motion.

Mr. Ballard: Mr. Speaker, I was paired with the hon. member for Verdun. Had I voted I would have voted in favour of the motion.

Mr. Kuidasz: Mr. Speaker, I refrained from voting because I was paired with the hon. member for the Northwest Territories.

[Translation]

Mr. Clermont: Mr. Speaker, I was paired with the hon. member for Saint-Denis (Mr. Prud'homme). Had I voted, I would have voted against the motion.

[English]

Bill read the third time and passed.

1973; TEMPORARY AND PARTIAL ABOLITION BILL

Bill C-2, introduced by Solicitor General Warren Allmand, renewed the 1967 bill for another five years.

SECOND READING:

May 29, 1973

The House divided on the motion (Mr. Allmand), which was agreed to on the following division:

• (2150)

(Division No. 23)

YEAS

Messrs.

Aschander	Boulanger	Demers
Allmand	Breau	Diefenbaker
Andras	Brewin	Douglas
Atkey	Broadbent	Drury
Baker	Buchanan	Dubé
Baldwin	Cacela	Dupont
Barnett	Cahk	Ellis
Barford	Caréhen	Ertner
Beatty	Clark	Fairweather
(Wellington- Grey-Dufferin- Waterloo)	(Rocky Mountain)	Faulkner
Bechard	Corbin	Firth
Beggs (Miss)	Côté	Fleming
Blackburn	Callen	Forrestall
Blais	Cyr	Foster
Blaker	Danson	Fox
	Davis	Gauthier
	De Bané	(Ottawa East)
Andron	MacDonald	Pelletier
Colbert	(Edmont)	(Sherbrooke)
Colesple	Macdonald	Penner
Gilles	(Rosedale)	Peters
Cleave	MacDonald (Miss)	Portelance
Goyer	(Kingston and the Islands)	Poulin
Graftey	MacEachen	Prud'homme
Gray	MacGugan	Paulton
Grier	MacInnis (Mrs.)	Reid
Guilbault	(Vancouver Kingsway)	Reilly
Hadasz	Mackasey	Richardson
Harding	Macquarrie	Ritchie
Harney	Marceau	Roche
Hellyer	Marchand	Rodriguez
Herbert	(Langelier)	Rompkey
Houmes	Marchand	Rooney
Howard	(Kamloops- Cariboo)	Rose
Hymmen	Marchand	Rowland
Jameson	(Hamilton East)	Roy
Jerome	Neale	(Timmins)
Knight	(Vancouver East)	Roy
Knowles	Nelson	(Laval)
(Winnipeg North Centre)	Nestoly	Saltsman
Lachance	Nystrom	Sharp
Lapote	Olausen	Smith
Lalonde	O'Connor	(Northumberland- Miramichi)
Lang	Olivier	Stanbury
Langlois	Orlikow	Stanfield
Laniel	Ouellet	Stewart
Leblanc	Pelletier	(Cochrane)
(Laurier)	(Stochetaga)	Stollery
LeBlanc		Symes
(Westmorland- Kent)		Trudeau
LeFebvre		Turner
Leggatt		(Ottawa- Carleton)
Lewis		Walker
MacDonald		Watson
(Cardigan)		Whelan-138

(Cont.)

May 29, 1973

NAYS

Mesars.

Alkenbrack	Danforth	Horner
Allard	Darling	(Battleford-
Andre	Dick	Kindersley)
Arrol	Dinsdale	Howie
Balfour	Dionne	Hueglin
Bawden	Dupras	Hurlburt
Beattie	Duquet	Isabelle
(Hamilton	Epp	Jarvis
Mountain)	Fortin	Jelinek
Beaudoin	Frank	Kempling
Bell	Fraser	Knowles
Blenkarn	Gauthier	(Nortfolk-
Boisvert	(Roberval)	Haldimand)
Campbell	Godin	Korchinski
Caouette	Guay	Kuntz
(Charlevoix)	(St. Boniface)	Laflamme
Caouette	Guay (Lévis)	Lambert
(Témiscamingue)	Hales	(Bellechasse)
Caron	Hamilton	Lambert
Clarke	(Qu'Appelle-	(Edmonton West)
(Vancouver	Moose Mountain)	Laprise
Quadra)	Hargrave	La Salle
Clermont	Hees	Latulippe
Coates	Higson	Lawrence
Comtois	Hollands	L'Heureux
Corniveau	Hopkins	Loiselle
Cossitt	Horner	Lundrigan
Crouse	(Crowfoot)	
MacInnis	Murta	Stewart
(Cape Breton-	Neil	(Marquette)
East Richmond)	(Moose Jaw)	Taylor
MacKay	Nielsen	Thomas
MacLean	Nowlan	(Malson-
Madill	Oberle	neuve-Rosemont)
Masniuk	O'Sullivan	Thomas
Mather	Paproski	(Moncton)
Matte	Patterson	Towers
Mazankowski	Reynolds	Trudel
McCain	Rondeau	Turner
McCleave	Rynard	(London
McKenzie	Schellenberger	East)
McKinley	Schumacher	Wagner
McKinnon	Skoreyko	Whicher
Mitges	Smith	Whittaker
Morin (Mrs.)	(Saint-Jean)	Wise
Muir	Stackhouse	Woolliams
Munro	Stevens	Yanakias
(Esquimalt-		Yewchuk—114.
Saanich)		

• (2150)

Mr. Speaker: I declare the motion carried.

Bill read the second time and referred to the Standing Committee on Justice and Legal Affairs.

THIRD READING

Oct. 24, 1973

The House divided on the motion (Mr. Allmand) which was agreed to on the following division:

• (1430)

(Division No. 43)

YEAS

Messrs.

Alexander	Bégin (Miss)	Chrétien
Allmand	Blackburn	Clark
Andras	Blais	(Rocky Mountain)
Atkey	Blaker	Corbin
Baker	Boulanger	Côté
Baldwin	Breau	Danson
Barnett	Brewin	De Bané
Basford	Broadbent	Demers
Beatty	Buchanan	Diefenbaker
(Wellington- Grey-Dufferin- Waterloo)	Caccia	Douglas
	Caik	Drury
	Carter	Dubé
Dupont	MacDonald	Pelletier
Éthier	(Egmont)	(Hochelaga)
Faulkner	Macdonald	Pelletier
Firth	(Rosedale)	(Sherbrooke)
Fleming	MacDonald (Miss)	Penner
Foster	(Kingston and the Islands)	Peters
Fox	MacEachen	Poulin
Gauthier	MacGuigan	Prud'homme
(Ottawa East)	MacInnis (Mrs.)	Railton
Gilbert	(Vancouver Kingsway)	Reid
Gillies	Mackasey	Reilly
Goyer	Macquarrie	Richardson
Graffey	Marceau	Roche
Gray	Marchand	Rodriguez
Grier	(Langeller)	Rompkey
Guilbault	Marchand	Rooney
Haidasz	(Kamloops- Cariboo)	Rose
Harding	Marshall	Rowland
Harney	McGrath	Roy
Hellyer	McRae	(Timmins)
Holmes	Morgan	Roy
Howard	Munro	(Laval)
Jamieson	(Hamilton East)	Saltsman
Knight	Neale	Sauvé (Mrs.)
Knowles	(Vancouver East)	Sharp
(Winnipeg North Centre)	Nelson	Smith
Lajoie	Newdoly	(Northumberland- Miramichi)
Lalonde	Nystrom	Stanbury
Lang	O'Connor	Stanfield
Laniel	Olausson	Stollery
LeBlanc	Olivier	Symes
(Westmorland- Kent)	Orlikow	Trudeau
Lefebvre	Ouellet	Turner
Leggatt		(Ottawa- Carleton)
MacDonald		Walker
(Cardigan)		Whelan—119

(Cont.)

Oct. 24, 1973

NAYS

Messrs

Alkenbrack	Ellis	Lambert
Allard	Epp	(Edmonton West)
Andre	Fortin	Laprise
Arrol	Frank	La Salle
Balfour	Fraser	Latulippe
Beattie	Gauthier	Lawrence
(Hamilton)	(Roberval)	Leblanc
Mountain)	Godin	(Laurier)
Beaudoin	Guay	Lessard
Bell	(St Boniface)	L'Heureux
Blenkarn	Hales	Loiselle
Boisvert	Haliburton	Lundrigan
Campbell	Herbert	MacKay
Caouette	Higson	MacLean
(Charlevoix)	Hollands	Madill
Caouette	Hopkins	Masnuuk
(Témiscamingue)	Horner	Mather
Clarke	(Crowfoot)	Matte
(Vancouver	Horner	Mazankowski
Quadra)	(Battleford-	McCaIn
Goates	Kindersley)	McCleave
Comtois	Howie	McKenzie
Cossitt	Hueglin	McKinley
Crouse	Hurlburt	McKinnon
Danforth	Jarvis	Mitges
Darling	Jelinek	Morin (Mrs)
Dick	Knowles	Muir
Dinsdale	(Norfolk-	Nunro
Dionne	Haldimand)	(Esquimalt-
Dupras	Korchinski	Saanich)
Murta	Rynard	Thomas
Nell	Schellenberger	(Moncton)
(Moose Jaw)	Schumacher	Towers
Nesbitt	Scott	Trudel
Nielsen	Skoreyko	Turner
Nowlan	Smith	(London
Oberle	(Saint-Jean)	East)
O'Sullivan	Stackhouse	Whicher
Paproski	Stevens	Whittaker
Patterson	Taylor	Wise
Portelance	Thomas	Wooliams
Reynolds	(Maison-	Yanakis
Ritchie	neuve-Rosemont)	Yewchuk—106.
Rondeau		

Mr. Speaker: I declare the motion carried
Bill read the third time and passed.

1976: TOTAL ABOLITION BILL

Bill C-84, introduced by Solicitor General Warren Allmand, completely eliminated capital punishment from the criminal code of Canada

SECOND READING:

June 22, 1976

The House divided on the motion (Mr Allmand) which was agreed to on the following division:

(Division No. 139)

YEAS
Messrs.

Abbott	Flynn	MacFarlane
Alexander	Forrestall	MacGuigan
Allmand	Foster	Mackasey
Aneras	Fox	Macquarrie
(Port Arthur)	Gauthier	Marceau
Anders	(Ottawa-Vanier)	Marchand
(Lincoln)	Gendron	(Langlier)
Appelton (Mrs)	Gilbert	Marchand
Baldwin	Gillespie	(Kamloops-Carleton)
Barford	Gillies	Martin
Beatty	Goodale	McGath
Bechar	Goyer	McIntyre
Begin (Miss)	Graffley	McRae
Benjamin	Gray	Milne
Blackburn	Guitbault	Munro
Blox	Hardasz	(Hamilton East)
Blaker	Halliday	Nicholson (Miss)
Boutanger	Harquail	Nysrom
Breau	Hues	O Connell
Brewin	Hnatyshyn	Oliver
Broadbent	Hogan	Orlowski
Buchanan	Holmes	Ouellet
Bussières	Jamieson	Pelletier
Caccia	Johnston	Penner
Cafix	Joyal	Feters
Campbell (Miss)	Kaplan	Philbrook
(South Western Nova)	Knowles	Pirard
Chretien	(Winnipeg)	Poulin
Clark	North Centre)	Prud'homme
(Rocky Mountain)	Lachance	Railton
Collette	Lalonde	Raines
Coslin	Lang	Reid
Côté	Lamont	Richardson
Cullen	Lapointe	Roberts
Cyr	Leclerc	Robinson
Dawson	(Westmorland-Kent)	Rodriguez
Dandim	Lefebvre	Rumpkey
De Bane	Legault	Rooney
Dikane	Lessard	Roy
(Northumberland-	Loiselle	(Timmins)
Nunavut)	(Champlain)	Salisman
Douglas	Lumley	Sauvé (Mrs)
(Nanaimo-Cowichan-	MacDonald	Sharp
The Islands)	(Cardigan)	Stanbury
Drury	MacDonald	Stanfield
Ductos	(Egmont)	Stewart
Dupont	MacDonald	(Cochrane)
Ethier	(Rossie)	Stollery
Fairweather	MacDonald (Miss)	Symes
Faulkner	(Kingston and the	Trudeau
Firth	Islands)	Whelan
Fleming	MacEachen	Yanukis-133

(Cont.)

June 22, 1976

NAYS

Mean.

Alkenbach
 Allard
 Andersor
 Andre
 (Calgary Centre)
 Baker
 (Gander Twillingate)
 Baker
 (Grenville-Carleton)
 Balfour
 Bawden
 Beaudoin
 Blouin
 Brusco
 Cadieu
 Campagnolo (Mrs.)
 Campbell
 (LaSalle-Émerald-Côte
 Saint-Paul)
 Carouette
 (Villeuveuve)
 Carouette
 (Témiscamingue)
 Caron

Clarke
(Vancover Quadra)
Clermont
Coates
Comtois
Condon
Corriveau
Cossitt
Crouse
Darling
Demers
Dick
Diefenbaker
Dionne
(Kamouraska)
Douglas
(Bruce-Grey)
Dupras
Duquet
Ellis
Flzinga
Epp
Fortin
Francis

Fraser
Friesen
Gauthier
(Roberval)
Guay
(St Boniface)
Guay
(Lévis)
Hamilton
(Qu'Appelle-Moose
Mountain)
Hamilton
(Swift Current-
Maple Creek)
Hargrave
Herbert
Holt (Mrs)
Hopkins
Horne
Howe
Huntington
Huriburt
Isabelle
Jarvis

Jelonek
 Jones
 Kemping
 Knowles
 (Norfolk-Haldimand)
 Korchinski
 Lajoie
 Lambert
 (Bellechasse)
 Lambert
 (Edmonton West)
 Landers
 Langlois
 Laprise
 La Salle
 Lavoie
 Lawrence
 Leblanc
 (Laurier)
 Lee
 Lonelle
 (Saint-Henri)
 MacKay
 MacLean
 Maize
 Malone
 Marshall

Masniuk
Matte
Mazanowski
McAin
McCleave
McKenzie
McKinley
McKinnon
Miges
Muir
Munro
(Esquimalt-Saanich)
Murta
Neil
Nowlan
Oberle
O'Sullivan
Paproski
Parent
Patterson
Pearsall
Portelance
Reynolds
Ritchie
Roche
Romdeau

Roy
(Laval)
Rynard
Schellenberger
Schumacher
Scott
Skoreyko
Smith
(Churchill)
Smith
(Saint-Jean)
Stevens
Stewart
(Marquette)
Tessier
Towers
Trudel
Turner
Wagner
Watson
Wenman
Whiteway
Whittaker
Wise
Woodlams
Yewchuk
Young—125

• (1300)

Bill read the second time and referred to the Standing Committee on Justice and Legal Affairs.

THIRD READING:

July 14, 1976

The House divided on the motion (Mr. Allinand) which was agreed to on the following division:

(Division No. 153)

YEAS
Messrs

Abbott	Flynn	MacFarlane
Allinand	Forrestall	MacGugin
Andras	Foster	MacKasey
(Port Arthur)	Fox	Macquarrie
Andres	Gauthier	Marceau
(Lincoln)	(Ottawa-Vanier)	Marchand
Appolloni (Mrs.)	Gendron	(Langelier)
Baldwin	Gilbert	Marchand
Bayford	Gillespie	(Kamloops-Cariboo)
Beatty	Gillies	Martin
Bechard	Goodale	McGrath
Begin (Miss)	Goyer	McIsaac
Benjamin	Graffley	McRae
Blackburn	Gray	Milne
Bias	Guilbault	Munro
Blaker	Haidasz	(Hamilton East)
Boulangé	Halliday	Nicholson (Miss)
Breau	Harquail	Nystrom
Brewin	Hnatyshyn	O'Connell
Broudbent	Hogan	Oliver
Buchanan	Holmes	Orlikow
Bussières	Jamieson	Ouellet
Caccia	Johnston	Pelletier
Cafik	Joyal	Penner
Campbell (Miss)	Kaplan	Peters
(South Western Nova)	Knowles	Philbrook
Chretien	(Winnipeg)	Pinard
Clark	(North Centre)	Poulin
(Rocky Mountain)	Lachance	Prud'homme
Collenette	Lalonde	Raulton
Corbin	Lang	Raines
Côté	Laniel	Reid
Cullen	Lapointe	Richardson
Cyr	LeBlanc	Roberts
Danson	(Westmorland-Kent)	Rodriguez
Daudin	Lefebvre	Rompkey
De Bané	Leggatt	Rooney
Droune	Lessard	Roy
(Northumberland-	Loiselle	(Timmins)
Miramichi)	(Chambly)	Saltman
Douglas	Lumley	Sauvé (Mrs.)
(Nanaimo-Cowichan-	MacDonald	Sharp
The Islands)	(Cardigan)	Stunbury
Drury	MacDonald	Stanfield
Duclos	(Egmont)	Stewart
Dupont	Macdonald	(Lochran)
Elther	(Rosedale)	Stullery
Fairweather	MacDonald (Miss)	Symes
Faultner	(Kingsline and the	Trudeau
Firth	Islands)	Whelan
Fleming	MacEachen	Yanakis—130

(Cont.)

July 14, 1976

NAYS
Messrs

Allard	Corniveau	Hamilton
Anderson	Consitt	(Swift Current-
Andre	Crouse	Maple Creek)
(Calgary Centre)	Darling	Hargrave
Baker	Demers	Hees
(Gander-Twillingate)	Dick	Herbert
Baker	Diefenbaker	Holt (Mrs.)
(Grenville-Carleton)	Dinsdale	Hopkins
Balfour	Dionne	Horner
Bawden	(Kamouraska)	Howie
Beaudoin	Douglas	Huntington
Blouin	(Bruce-Grey)	Hurlburt
Brisco	Duquet	Isabelle
Cadieu	Elliis	Jarvis
Campagnolo (Mrs.)	Elzinga	Jelinek
Campbell	Epp	Jones
(LaSalle-Emard-Côte	Fortin	Kempling
Saint-Paul)	Francis	Knowles
Caouette	Fraser	(Norfolk-Haldimand)
(Villeneuve)	Friesen	Korchinski
Caouette	Gauthier	Lajoie
(Temiscamingue)	(Roberval)	Lambert
Caron	Guay	(Bellechasse)
Clarac	(St. Boniface)	Lambert
(Vancouver Quadra)	Guay	(Edmonton West)
Clermont	(Lévis)	Landers
Coates	Hamilton	Langlois
Contois	(Qu'Appelle-Moose	LaSalle
Cordón	Mountain)	Lavoie
Lawrence	Munro	Schumacher
Leblanc	(Esquimalt-Saanich)	Scott
(Laurel)	Murta	Skoreyko
Lee	Neil	Smith
Loiselle	Niclsen	(Churchill)
(Saint-Henri)	Nowlan	Smith
MacKay	Oberle	(Saint-Jean)
MacLean	O'Sullivan	Stevens
Maine	Paproski	Stewart
Malone	Parent	(Marquette)
Marshall	Patterson	Tessier
Masnuk	Pearson	Towers
Mattie	Pearson	Trudel
Mazankowski	Portelance	Turner
McCain	Reynolds	Wagner
McCleave	Ritchie	Watson
McKenzie	Roche	Wenman
McKinley	Rondeau	Whiteway
McKinnon	Roy	Whittaker
Mitges	(Laval)	Wise
Muir	Rynard	Williams
	Schellenberger	Young—124

• (1450)

Mr. Speaker: I declare the motion carried.

Bill read the third time and passed

APPENDIX B

QUESTIONS USED BY THE CANADIAN INSTITUTE OF PUBLIC OPINION IN ITS SURVEYS ON ATTITUDES ABOUT CAPITAL PUNISHMENT

1943, 1953, 1958, 1960, 1965:

Some people say we should do away altogether with capital punishment - that is executing a person for murder. Do you think that we should or should not abolish capital punishment?

1966:

If a national referendum (a public vote) were held today on the question of capital punishment - that is executing a person for murder - would you vote for retaining the death penalty in Canada or abolishing it?

1971:

The criminal code was recently changed to abolish the death penalty except for certain crimes such as killing a policeman or prison guard on duty, on a five year trial basis. Do you or do you not think that the death penalty should be reinstated for the kidnapping of people in public or political life?

1972:

As you may know, some years ago Canada suspended the death penalty, except for the killing of prison guards or policemen on duty, on a 5-year trial basis, which comes to an end shortly. In your opinion, should the death penalty be brought back or not.

1975:

Do you favour or oppose capital punishment ...

- (a) for the killing of a prison guard or on-duty policeman?
- (b) for the killing of any innocent person?

1976:

Last fall, then Justice Minister, Otto Laing, remarked that, "What society wants is better law and order and it may be satisfied with than (sic that) instead of capital punishment."

If we can achieve better law and order, would you or would you not be satisfied to see an end to the death penalty in Canada?

APPENDIX C

A NOTE ON INTERVIEWING TECHNIQUES

Much of the analysis in this thesis is based on interviews with individuals who had prominent positions in some or all of the Parliamentary debates. Since the interviews form such a basic element of the discussion, a note should be made about the manner of interviewing.

The interview technique used was that which Lewis Anthony Dexter calls the "non-standardized" or "élite" interview.¹ This, in effect, amounts to no particular technique at all; the interview is simply a conversation in which the interviewer allows the interviewee considerable latitude in defining the situation. The use of a standardized interview, with pre-written questions, was rejected for several reasons.

It was felt that those being interviewed would feel more comfortable, and hence be more informative, if they were made to feel that they were simply having a conversation.² In any event, the nature of the subject tended to preclude pre-written questions. The questions often fed into one another, such that the answer to one question could have affected the way in which the next question should have been worded. Moreover, since the interviews were largely

concerned with behind the scenes activities, some of the revelations in the interviews were unanticipated; consequently, the means to follow them up could not have been pre-arranged.

Non-standardized interviews obviously result in questions being asked differently to different people, but this did not really constitute a problem in this instance. No effort was being made to select a random sample of people to be interviewed. Specific individuals were chosen because of their particular positions within the debates. It was expected and desired that different people would convey different types of information - that was why they were interviewed. Thus the consistency of questions across interviews was not a very important consideration.

NOTES

¹Lewis Anthony Dexter, Elite and Specialized Interviewing, (Evanston: Northwestern University Press, 1970), passim.

²In all cases the interviews were taped, to avoid the distractions of note-taking, and in the interests of accuracy. None of those interviewed raised any objection to the recording of the session.

BIBLIOGRAPHY

OFFICIAL PUBLICATIONS/GOVERNMENT DOCUMENTS - CANADA

- Fattah, Ezzat, The Canadian Public and the Death Penalty A Study of a Social Attitude, Report prepared for the Department of the Solicitor General, Submitted March, 1975, Released February, 1976.
- Favreau, Hon. Guy, Minister of Justice, Capital Punishment Material Relating to Its Purpose and Value, Ottawa: Queen's Printer, 1965.
- Goyer, Hon. Jean-Pierre, Solicitor General, Capital Punishment New Material 1965-1972, Ottawa: Information Canada, 1972.
- Hoffman, David and Ward, Norman, Bilingualism and Biculturalism in the Canadian House of Commons, Documents of the Royal Commission on Bilingualism and Biculturalism, Ottawa: Information Canada, 1970.
- House of Commons Debates, Selected Volumes, 1914 to 1976.
- House of Commons Journals, Selected Volumes, 1966 to 1977.
- Ministry of the Solicitor General, Questions and Answers Relating to the Capital Punishment Issue, Ottawa, March, 1976.
- Report of the Chief Electoral Officer, Twenty-Seventh General Election 1965; Twenty-Ninth General Election 1972; Thirtieth General Election 1974; By-Elections Held During the Year 1975, Ottawa: Queen's Printer/Information Canada.
- Standing Committee on Justice and Legal Affairs, 1st Session, 29th Parliament, Issues 17-20; 1st Session 30th Parliament, Issues 69-72.

SEMI-OFFICIAL PUBLICATIONS - CANADA

- Canadian Parliamentary Guide 1967; 1974; 1976; Ottawa.
- Criminal Codes of Canada (Chronological Order):

Burbridge, George Wheelock (ed.), A Digest of the Criminal Law of Canada, Toronto: Corswell &

Co., Law Publishers, 1890.

Crankshaw, James (ed.), The Criminal Code of Canada, Montreal: Whiteford & Theoret Law Publishers, 1894.

Crankshaw, John E. and Chevalier, Alexandre (eds.) Crankshaw's Criminal Code of Canada, Fifth Edition, Toronto: The Corswell Co. Ltd., 1924.

Martin, J. C. (ed.), The Criminal Code of Canada, Toronto: Cartwright & Sons Ltd., 1955.

_____, Martin's Annual Criminal Code, Toronto: Canada Law Book Company, 1961 to 1975.

BOOKS AND ARTICLES

Anderson, Frank W., Hanging in Canada. A Concise History of Capital Punishment in Canada, Calgary: Frontier Publications, 1973.

Birch, A. H. Representation, London: Pall Mall Press Ltd., 1971.

Bishop, Peter V., "Restoring Parliament to Power", Queen's Quarterly, LXXVII, 2, Summer, 1970.

Blair, R., "What Happens to Parliament", in T. Lloyd and J. McLeod (eds.), Agenda 1970, Toronto: University of Toronto Press, 1968.

Bradshaw, Kenneth, and Pring, D., Parliament and Congress, London: Constable, 1972.

Burke, Edmund, Works, Volume II, London: John C. Mimmo, 1899.

Carter, Wendy, "The Role of the House Leader in Canada", Unpublished M.A. Thesis, University of British Columbia, 1973.

Chandler, David, Capital Punishment in Canada, Carleton Library Original, Toronto: McClelland and Stewart Limited, 1976.

Christoph, J. B., Capital Punishment in British Politics, London: Allen & Unwin, 1962.

Clokier, H. McD., Canadian Government and Politics, Revised Edition, Toronto: Longman's Green & Company, 1950.

Cornel, F. G., The Alignment of Political Groups in Canada, 1841-1867, Toronto: University of Toronto Press, 1962.

Cramer, Jack C., "Parliamentary Experience and Legislative Behavior", in Jon Pammett and Michael Whittington, (eds.), Foundations of Political Culture. Political Socialization in Canada, Toronto: Macmillan Company of Canada, 1976.

Davis, James A., Elementary Survey Analysis, Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1971.

De Marinis, Mariano G., "How Canadian Political Party Whips Contribute to Party Cohesion", Unpublished Honours Essay, Carleton University, 1972.

Dexter, Lewis Anthony, Elite and Specialized Interviewing, Evanston: Northwestern University Press, 1970.

Englemann, Frederick and Schwartz, Mildred, Canadian Political Parties: Origin, Character, Impact, Scarborough, Ont.: Prentice-Hall of Canada Ltd., 1975.

Forsey, Eugene, "Government Defeats in the Canadian House of Commons", Canadian Journal of Economics and Political Science, XXIX, 3, August, 1963.

_____, "The Problem of 'Minority' Government in Canada", Canadian Journal of Economics and Political Science, XXX, 1, February, 1964.

Francis, Wayne L., "The Role Concept in Legislatures: A Probability Model and a Note on Cognitive Structure", Journal of Politics, XXVII, 3, August 1965.

Geller-Schwartz, Linda, "The Multi-Party System and Parliament: A Study of the Interrelationship in the Canadian House of Commons", Unpublished Ph.D. Dissertation, University of Toronto, 1977.

Greenstein, Fred, "Personality and Politics", in Fred Greenstein and Nelson Polsby (eds.), Handbook of Political Science, Volume 2, Micropolitical Theory, Don Mills: Addison Wesley Publishing Company, 1975.

Hamilton, W. H., The Transfer of Institutions, Durham, North Carolina: Duke University Press, 1946.

Hirsh, H. and Hancock, M. D. (eds.), Comparative Legislative Systems, New York: The Free Press, 1971.

Hockin, T. A., "Adversary Politics and Some Functions of the Canadian House of Commons" in Orest M. Kruhlak, Richard Schultz, and Sidney L. Pobihusky, The Canadian Political Process: A Reader, Revised Edition, Montreal: Holt, Rinehart and Winston of Canada, 1973.

Hodgets, J. E., "Parliament and the Power of the Cabinet", Queen's Quarterly, LII, 4, Winter, 1945.

Ionescu, Ghita and de Madariaga, Opposition Past and Present of a Political Institution, London: C. A. Watts & Co. Ltd., 1968.

Jackson, Robert, Rebels and Whips, Toronto, Macmillan, 1968.

Jackson, Robert and Atkinson, Michael, The Canadian Legislative System, Toronto: Macmillan of Canada, 1974.

Jewell, Malcolm, "Party Voting in American State Legislatures" American Political Science Review, IL, 3, September, 1955.

Jones, E. Terrance, Conducting Political Research, New York: Harper & Row, 1971.

Kornberg, Allan, Canadian Legislative Behavior A Study of the 27th Parliament, Montreal: Holt, Rinehart, and Winston, 1967.

_____, "Caucus and Cohesion in Canadian Parliamentary Parties", American Political Science Review, LV, 1, March, 1966.

Kornberg, Allan (ed.) Legislatures in Comparative Perspective, New York: David McKay Co., 1973.

R

Kornberg, Allan and Mishler, William (eds) Influence in Parliament: Canada, Durham, North Carolina: Duke University Press, 1976.

Kornberg, Allan and Musolf, L. D. (eds.), Legislatures in Developmental Perspective, Durham, North Carolina: Duke University Press, 1970.

Knowles, Stanley, The Role of the Opposition in Parliament, Toronto: Ontario Woodsworth Memorial Foundation, 1957.

Lovink, J. A. "Parliamentary reform and governmental effectiveness in Canada", Canadian Public Administration, 16, 1, Spring, 1973.

Leonard, R. L. and Herman, V., The Backbencher and Parliament: A Reader, London: Macmillan, 1972.

MacKenzie, Robert T. British Political Parties, Second (Revised) Edition, London: Mercury Books, 1963.

McMenemy, John, Redicop, John, and Winn, Conrad, "Party Structures and Decision-Making" in: Conrad Winn and John McMenemy (eds.), Political Parties in Canada, Montreal: McGraw-Hill Ryerson, 1976.

Michels, Robert, Political Parties, New York: The Free Press, 1962.

Miller, Warren E. and Stokes, Donald E., "Constituency Influence in Congress", American Political Science Review, LVII, 1, March, 1963.

Murray, Donald, "The Ralliement des Crditistes in Parliament, 1970-71", Journal of Canadian Studies, VIII, 2, May, 1973.

Pilkin, Hannah (ed.), Representation, New York: Atherton Press, 1968.

Peter Richards, Parliament and Conscience, London: George Allen & Unwin Ltd., 1970.

_____, The Backbencher, London: Faber and Faber, 1972.

_____, The Study of Parliament, An Inaugural Lecture, University of Southampton, The Camelot Press Ltd., 1972.

Smith, M. Brewster, "A Map for Analysis of Personality and Politics", Journal of Social Issues, XXIV, 3, July, 1968.

Stamp, Robert M., "J. D. Edgar and the Liberal Party 1867-1896", Canadian Historical Review, XLV, 2, June, 1964.

Thorburn, H. G. (ed.), Party Politics in Canada, Toronto: Prentice-Hall, 1973.

Underhill, F. H., Canadian Political Parties, Ottawa: Canadian Historical Association, 1957.

United Church Observer, April 1, 1965.

VanLoon, Richard and Whittington, Michael, The Canadian Political System Environment, Structure & Process, Second Edition, Montreal: McGraw-Hill Ryerson, 1976.

Wahlke, John, Eulau, Heinz, Buchannon, William, and Ferguson, LeRoy, "The Role of the Representative: Some Empirical Observations on the Theory of Edmund Burke", American Political Science Review, LIII, September, 1959.

_____, The Legislative System, New York: John Wiley, 1962.

Ward, Norman, The Canadian House of Commons Representation, Toronto: University of Toronto Press, 1950.

_____, "The Formative Years of the House of Commons 1867-91", Canadian Journal of Economics and Political Science, XVIII, 4, November, 1952.

Weir, W. G., "Minding Parliament's Business - The Party Whip", Queen's Quarterly, LXIII, 4, Winter, 1956-57.

Welsh, Susan and Carleson, Eric, "The Impact of Party on Voting Behavior in a Non-Partisan Legislature", American Political Science Review, LXVII, 4, September, 1973.

Young, Walter D., The Anatomy of a Party: The National CCF 1932-61, Toronto: University of Toronto Press, 1969.

NEWSPAPERS (Selected articles from the Library of Parliament Clipping File on Capital Punishment)

Calgary Albertan

Le Devoir

Le Droit

Edmonton Journal

Halifax-Chronicle Herald

Hamilton Spectator

Montreal Gazette

Montreal Star

Ottawa Citizen

Ottawa Journal

La Presse

Regina Leader-Post

St. John Telegraph-Journal

Toronto Globe and Mail

Toronto Star

Toronto Sun

Toronto Telegram

Vancouver Province

Vancouver Sun

Winnipeg Free Press

INTERVIEWS

Allmand, Warren, Solicitor General during the 1973 and 1976 debates, Member of Parliament (L-Notre Dame de Grace) during all four debates, interviewed September 8, 1977.

Baker, Walter, Conservative House Leader during the 1976 debate, Member of Parliament (PC-Grenville Carlton) during 1973 and 1976 debates, interviewed August 4, 1977.

Fairweather, Gordon, Member of Parliament (PC-Fundy Royal) During all four debates, interviewed July 21, 1976.

Knowles, Stanley, NDP House Leader and Member of Parliament (NDP-Winnipeg North Centre) during all four debates, interviewed June 24, 1976.

Lawrence, Allan, Member of Parliament (PC-Northumberland Durham) during the 1973 and 1976 debates, interviewed June 28, 1977.

Leggatt, Stuart, NDP Justice Critic and Member of Parliament (NDP-New Westminister) during the 1973 and 1976 debates, interviewed June 9, 1977.

MacDonald, David, Member of Parliament (PC-Egmont) during all four debates, interviewed July 8, 1976.

MacDonald, Jim, special assistant to Solicitor General Warren Allmand during the 1973 debate; Director of Communications in the Prime Minister's Office during the 1976 debate, interviewed July 15, 1976.

McCleave, Robert, Member of Parliament (PC-Halifax East Hants) during all four debates, Deputy Speaker during 1973 debate, interviewed June 29, 1976.

Nielsen, Erik, Conservative Solicitor General Critic during the 1973 and 1976 debates, Member of Parliament (PC-Yukon) during all four debates, interviewed May 26, 1977.

Poulin, Hugh, Parliamentary Secretary to Solicitor General Warren Allmand in 1976, Member of Parliament (L-Ottawa Centre) during the 1973 and 1976 debates, interviewed June 27, 1977.

Reynolds, John, Member of Parliament (PC-Burnaby Richmond Delta) during the 1973 and 1976 debates, interviewed July 14, 1976.

Sharp, Mitchell, Government House Leader during the 1976 debate, member of the Cabinet and Member of Parliament (L-Eglinton) during all four debates, interviewed June 13, 1977.

Stanbury, Robert, one of the movers of the 1966 resolution, Member of Parliament (L-York Scarborough), during all four debates, interviewed June 29, 1976.

Stanfield, Robert, Leader of the Official Opposition during 1967 and 1973 debates, Member of Parliament (PC-Halifax) during 1967, 1973 and 1976 debates, interviewed July 9, 1976.

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