

# 'Sadists and Softies:' Gender and the Abolition of the Death Penalty in Canada

## A Case Study of Steven Truscott, 1959-1976

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Volume 103, numéro 1, spring 2011

URI : <https://id.erudit.org/iderudit/1065478ar>

DOI : <https://doi.org/10.7202/1065478ar>

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Éditeur(s)

The Ontario Historical Society

ISSN

0030-2953 (imprimé)

2371-4654 (numérique)

[Découvrir la revue](#)

Citer cet article

Darbyson, N. (2011). 'Sadists and Softies:' Gender and the Abolition of the Death Penalty in Canada: A Case Study of Steven Truscott, 1959-1976. *Ontario History*, 103(1), 1-22. <https://doi.org/10.7202/1065478ar>

Résumé de l'article

Le 30 septembre 1959, Steven Truscott fut condamné à mort par pendaison pour le viol et le meurtre de Lynne Harper. Son cas, le fait qu'il était, dans toute l'histoire du Canada, le plus jeune condamné à mort, remirent au premier plan la question de la peine de mort, une question sur laquelle les Canadiens restaient toujours divisés. Dans cet article, à partir de ce cas, nous étudions comment le genre a influencé la manière dont les abolitionnistes étaient dépeints dans le débat sur la peine de mort durant les années 1966-1967, en pleine guerre froide. Les partisans de la peine de mort accusaient en effet alors les abolitionnistes d'être « mous » sur la question des crimes, d'être trop émotionnels, sentimentaux, et même, dans le cas des hommes, efféminés : on ne pouvait à la fois être un abolitionniste et être un « vrai homme ». Le débat sur la peine de mort révélait en fait l'insécurité des Canadiens quant au système judiciaire, et leurs peurs se manifestaient dans le discours, par des références relatives au genre de chacun.

# 'Sadists and Softies:' Gender and the Abolition of the Death Penalty in Canada

## A Case Study of Steven Truscott, 1959-1976

by Nicki Darbyson

*Steven Truscott was sentenced to hang by the neck until dead. Although the sentence was commuted to life imprisonment, doubts about his innocence, ladies and gentlemen, give urgency to the movement to abolish capital punishment. Next week in the House of Commons the abolition bill will get first reading.<sup>1</sup>*

On 20 March 1966, Laurier LaPierre, co-host of the CBC's *This Hour Has Seven Days*, wiped a tear from his eye as he called for the abolition of capital punishment in Canada, and a Royal Commission to investigate the trial of Steven Truscott. Truscott was found guilty of the rape and murder of twelve-year-old Lynne Harper in 1959, just outside Clinton, Ontario near an adjoining Royal Canadian Air Force military base. At 14 years of age, Truscott was the youngest person in Canadian history to be sentenced to hang, fuelling an ongoing debate over capital punishment. His sentence was commuted to life imprisonment on 22 January 1960. The next month, the Supreme Court of Canada

denied Steven Truscott an appeal without explanation, and his case quickly disappeared from public consciousness.

Interest in the Truscott case was revived in 1966 following the publication of Isabel LeBourdais' book *The Trial of Steven Truscott*, a national bestseller that claimed Truscott was innocent and called for a Royal Commission to investigate the trial. LeBourdais challenged the notion that the justice system was generally impartial and argued that Huron County residents were too shocked by the crime to give Truscott a fair trial. She pointed out that the "reward of \$10,000 for the killer, dead or alive was the largest reward ever offered by the Province of Ontario," and that "it was the first case on record in



<sup>1</sup> Laurier LaPierre, interviewing Doris Truscott, *This Hour Has Seven Days*, Canadian Broadcasting Corporation, 20 March 1966.

### *Abstract*

*On 30 September 1959, Steven Truscott was sentenced to hang for the rape and murder of Lynne Harper. Canadians were divided over the death penalty, and Truscott was the youngest Canadian in history to be sentenced to hang. This article uses the Truscott case to explore the ways in which gender expectations in Cold-War Canada affected the depiction of abolitionists in the 1966-67 death penalty debate. Retentionists accused abolitionists of being "soft" on crime, overly emotional, sentimental, and effeminate, despite the fact that both men and women took part. Masculinity and abolitionism were considered incompatible. The movement to abolish capital punishment illuminated Canadians' insecurities about changing perceptions of the justice system, and these fears manifested themselves in a gendered discourse.*

**Résumé:** *Le 30 septembre 1959, Steven Truscott fut condamné à mort par pendaison pour le viol et le meurtre de Lynne Harper. Son cas, le fait qu'il était, dans toute l'histoire du Canada, le plus jeune condamné à mort, remirent au premier plan la question de la peine de mort, une question sur laquelle les Canadiens restaient toujours divisés. Dans cet article, à partir de ce cas, nous étudions comment le genre a influencé la manière dont les abolitionnistes étaient dépeints dans le débat sur la peine de mort durant les années 1966-1967, en pleine guerre froide. Les partisans de la peine de mort accusaient en effet alors les abolitionnistes d'être « mous » sur la question des crimes, d'être trop émotionnels, sentimentaux, et même, dans le cas des hommes, efféminés: on ne pouvait à la fois être un abolitionniste et être un 'vrai homme'. Le débat sur la peine de mort révélait en fait l'insécurité des Canadiens quant au système judiciaire, et leurs peurs se manifestaient dans le discours, par des références relatives au genre de chacun.*

concluded that "the unusual vehemence" expressed in the reward characterized the highly charged mood at the time and "the tone in which subsequent proceedings were conducted."<sup>3</sup>

The Steven Truscott case was significant not only because it intersected with the capital punishment debate of the 1960s, but also because Truscott was a teenager. The fact that he was sentenced to die at 14 may be the primary reason why he was not executed. According to Carolyn Strange, Truscott's case "energized the movement against juvenile executions" and simultaneously "raised suspicions that innocent murder suspects of any age might face the gallows as a result of judicial error."<sup>4</sup> Abolitionists accordingly seized "the opportunity to promote their cause and accused cabinet members of flirting with child murder."<sup>5</sup> Bowing to public pressure, the Diefenbaker government introduced legislation in 1961 that provided a statutory prohibition against the execution of juveniles under the

which the bizarre western movie expression 'Dead or Alive' had been used."<sup>2</sup> She age of eighteen. There was no explanation of why he was not sent to juvenile

<sup>2</sup> Isabel LeBourdais, *The Trial of Steven Truscott* (Toronto: McClelland and Stewart Limited, 1966), 31.

<sup>3</sup> LeBourdais, *Trial*, 31.

<sup>4</sup> Strange, "The Lottery of Death: Capital Punishment, 1867-1976," *Manitoba Law Journal* 23 (1995), 612.

<sup>5</sup> *Ibid.*, 612.

*Laurier LaPierre, CBC Still photo dated 14 March 1965, by Dale Barnes.*

court. If the child was over 14 years of age, the law demanded the judge decide what was in the best interests of the child and the community. Judge Holmes sent him to adult court.<sup>6</sup> Public pressure demanded that Truscott be tried in front of a jury.

Following the publication of LeBourdais' book in 1966, Laurier LaPierre's sentiments were not uncommon since many Canadians, especially in Ontario, identified the potential innocence of Steven Truscott with the arguments to abolish capital punishment. The Steven Truscott case was an important milestone in the history of the abolitionist movement in Canada. From the standpoint of Canadian and Ontarian social history, however, its importance extends beyond capital punishment. The case is also important because of the light it sheds on the fissures in public opinion during the Cold War. For many Canadians, the capital punishment debate became associated with their desire for security and con-



formity in the Cold-War period.<sup>7</sup> Retentionists emphasized the necessity of law and order to maintain the nation's image on the world stage, while abolitionists focused on human rights, peace, and rehabilitation.<sup>8</sup> This division was expressed in Canada's political discourse in the 1960s. According to Gallop polls and surveys of MPs, there were marked correlations between abolitionism and the New Democratic and Liberal parties, and retentionist views and the Conservative

<sup>6</sup> Sher, *Until You Are Dead: Steven Truscott's Long Ride Into History* (Toronto: Vintage Canada, 2007), 135.

<sup>7</sup> Most historians would agree that the final movement to abolish the death penalty in Canada began after the Second World War and came into full swing in the 1960s. Carolyn Strange, "Lottery of Death", 594-96; C.H.S. Jayewardene, *The Penalty of Death: The Canadian Experiment* (Toronto: Lexington Books, 1977), 1; David B. Chandler, *Capital Punishment in Canada: A Sociological Study of Repressive Law* (Toronto: McClelland and Stewart Limited, 1976), 19-20.

<sup>8</sup> Jayewardene, *Penalty of Death*, 9-21; see chapter 13, 'Death on the Drawing Board' in Harry Potter, *Hanging in Judgement: Religion and the Death Penalty in England from the Bloody Code to Abolition* (London: SCM Press, 1993), 153-59; Roger Hood, *The Death Penalty: A World-Wide Perspective*, (Oxford: Clarendon Press, 1996), 196-203.

Party.<sup>9</sup> The increasingly strident political atmosphere of the 1950s and 1960s, which pitched a preference for security and traditional values against calls for social change, human rights and peace, led to the emergence of popular stereotypes of opponents and proponents of capital punishment.

Since women reformers had long been at the forefront of the movement to abolish the death penalty, many of those stereotypes employed gendered constructions. In the 1960s, many female reformers continued to utilize the nineteenth-century maternal feminist rhetoric in their concerns for youth, social justice and the campaign to abolish the death penalty. A common thread in the studies of maternal feminist activists during the Cold War period in Canada is the female internalization of the ideology of domesticity and the perpetuation of humanitarian issues as part of a “women’s culture.”<sup>10</sup> Joan Sangster and Linda Kealy argue that local and community politics have most often proved to be the primary arenas of women’s activism.<sup>11</sup> Barbara Roberts’ work on peace

activism in Canada similarly suggests that women have “nearly always worked to end war, injustice and human suffering.”<sup>12</sup> Roberts acknowledges that many maternal feminists were not essentialist, but believed that “women need not be biologically peaceful to transform society, only humane, responsible, caring, nurturing, tough-minded and committed.”<sup>13</sup> Involvement in these humanitarian organizations contributed to the formation of a feminist consciousness, or a ‘woman’s culture.’ However, this ‘women’s culture’ was limited to a specific demographic of women.<sup>14</sup> Maternal feminist social reformers in the 1960s were largely white, middle to upper-class women who had grown children and had the time and resources to volunteer. Many were involved in organizations that had political affiliations with the CCF and later NDP.<sup>15</sup> The fact that social reform movements and peace activism were deemed ‘women’s work’ and were associated with Communism in the Cold War period, speaks to the ways in which the feminization of social movements led to their marginal status in society.

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<sup>10</sup> Barbara Roberts, “Women’s Peace Activism in Canada,” in *Beyond the Vote*, edited by Linda Kealy and Joan Sangster (Toronto: University of Toronto Press, 1989), 277; Linda Kealy and Joan Sangster, “Introduction,” in *Beyond the Vote*, 12; Strange, Strange, Carolyn. “Mothers on the March: Maternalism in Women’s Protest for Peace in North America and Western Europe, 1900-1985,” in *Women and Social Protest*, edited by Guida West and Rhoda Lois Blumberg. New York: Oxford University Press, 1990. 210; Veronica Strong-Boag, “Their Side of the Story: Women’s Voices from Ontario Suburbs, 1945-60,” in *A Diversity of Women*, edited by Joy Parr (Toronto: University of Toronto Press, 1995), 50.

<sup>11</sup> Kealy and Sangster, *Beyond the Vote*, 12.

<sup>12</sup> Roberts, “Women’s Peace Activism,” 278.

<sup>13</sup> *Ibid.*, 278.

<sup>14</sup> Recent studies in gender history have emphasized the danger of viewing women as a homogenous group. See Joan Wallach Scott, “Gender: A Useful Category of Analysis,” in *The Feminist History Reader*, edited by Susan Morgan (New York: Routledge, 2006), 133-48.

<sup>15</sup> Linda Kealy, “Women in the Canadian Socialist Movement, 1904-1914,” in *Beyond the Vote*, 188-90.



In the 1960s, many Canadians perceived both male and female abolitionists to be soft, making the abolition of capital punishment a feminine movement, even though both men and women took part. Laurier LaPierre's emotional response to Steven Truscott's case sparked controversy and prompted his dismissal from the CBC three weeks later. Producers deemed the journalist's blatant abolitionist stance "unprofessional" and dramatic. LaPierre's display, and the reaction to it, reflected a larger pattern in the history of the abolitionist movement in Canada: abolitionist sentiments were seen as incompatible with the masculine conventions of the Cold War period, and charges of emotionalism feminized the abolitionists in an attempt to challenge their arguments.

The primary purpose of this article is to explore how gender stereotypes of the time impinged on the depiction of abolitionists in the 1966-67 death penalty debate. This study of the Steven Truscott case investigates the arguments and underlying motives of key male and female abolitionists such as Isabel LeBourdais, June Callwood, Doris Anderson, Justice Emmett Hall, Pierre Berton, Liberal MP James Byrne, New Democratic Party leader Stanley Knowles, Prime Minister Lester B. Pearson, and opposition leader of the Conservative Party, John Diefenbaker. It will draw special attention to the

activities of Callwood and LeBourdais, activists who were attracted to Truscott's case because of their general concern with youth welfare. Their motivations, along with prevailing cultural assumptions identifying reform movements with "women's work," offer a basis to explain the rhetorical stance and gendered language retentionists used to describe male abolitionists. Book reviews, editorials, and letters to the editor from the *Goderich Signal Star*, *Toronto Daily Star*, *Globe and Mail*, *London Free Press* and *Saturday Night Magazine* shed light on the language proponents of capital punishment used to describe abolitionists and their arguments. The conclusions drawn from these sources are a starting point for an assessment of the attitudes underlying the retentionist movement in Canada in general, and Ontario in particular.<sup>16</sup>

Prevailing assumptions about gender in the 1960s informed public characterizations of abolitionists and retentionists in the death penalty debates. The Truscott case revealed Canadians' anxieties about law and order, and also the way that gender constructions manifested themselves in those anxieties. As Christopher Dummitt points out, constructions of postwar masculinity prized men who were good breadwinners, heterosexual, white, responsible, and civilized.<sup>17</sup> At the same time, masculine "toughness" was promoted as a way to defend Western

<sup>16</sup> For a case of wrongful conviction in Saskatchewan, see Carl Karp and Cecil Rosner, *When Justice Fails: The David Milgaard Story* (Toronto: McClelland & Stewart Inc., 1991), 236-41; and in Nova Scotia, see Michael Harris, *Justice Denied: The Law Versus Donald Marshall* (Toronto: HarperCollins Publishers Ltd., 1986), 309.

<sup>17</sup> Christopher Dummitt, *The Manly Modern: Masculinity in Postwar Canada* (Vancouver: UBC Press, 2007), 121.

values against Communism. The capital punishment debate demonstrates the complexity of these gender constructs. While politicians and the courts emphasized the rationality of capital punishment, many male reformers challenged this assumption.<sup>18</sup> Postwar psychiatrists and psychologists were at the forefront of promoting rehabilitation over death in an attempt to prove that their profession could cure the mentally ill.<sup>19</sup> In Truscott's case, other masculine codes were appropriated to support his struggle; for example, "good men" help innocent kids. However, the overwhelming image the media presented of those supporting rehabilitation over capital punishment was one of a weak, effeminate and irrational man. Masculine cultural codes were used to shame men into conforming and to marginalize any opposition to capital punishment. To be an abolitionist was soft. Likewise, stereotypes of maternalism were used to justify women's place in the public debates over moral reform issues. The proponents of capital punishment labeled the men and women who took on the issue of youth justice and abolition softies in order to undermine their political authority and defend the reputation of the Canada's justice system.

### Gender and Abolition: Femininity

Steven Truscott's youth first attracted the attention of abolitionists, many

of them women like Isabel LeBourdais. She was brought up in an upper class home, was well educated, but became a stay-at-home mother and social activist when she married a lawyer. She wrote for *Saturday Night Magazine* and *Chatelaine*. LeBourdais was also an active participant in movements pressing for the rights of mental patients, a ban on nuclear weapons and civil rights. She was the only white member of the Toronto Negro Community Centre.<sup>20</sup> LeBourdais adopted Truscott's case in 1959, in large measure because of her shock at Justice Holmes' decision to try Truscott as an adult, justifying his decision as being "in the best interests of the child and the community." Having a son that age, LeBourdais could not understand why Truscott was not tried in juvenile court, where he would have received treatment and rehabilitation rather than death on the gallows.<sup>21</sup> LeBourdais' characterization of her motives is not surprising given the gender assumptions of the period. Women had been appealing to their role as mothers to justify their activism since the nineteenth century. The essentialist view that women were biologically better suited to care for, protect and raise children formed the basis of the ideology of domesticity prevalent in the 1950s and 1960s. Moreover, since women were "naturally" maternal and better nurturers and teachers of young children, they were considered to be the 'best suited' to proc-

<sup>18</sup> *Ibid.*, 121-22.

<sup>19</sup> *Ibid.*, 105.

<sup>20</sup> Sher, *Until You Are Dead*, 325.

<sup>21</sup> *Ibid.*

ess juvenile delinquents.<sup>22</sup> Since Truscott was tried as an adult in 1959, women were absent from the judicial process. Even Truscott's lawyer refused Doris Truscott's request to have women, "preferably women with teenage sons," on the jury, demonstrating the widespread assumption that women were "too emotional."<sup>23</sup>

Maternalist views had roots in a much earlier period. In her study of female juvenile cases in nineteenth and twentieth century Montreal, Tamara Myers argues that 'child saving' and juvenile justice were fundamentally gendered enterprises both in the manner of protection and discipline prescribed for children at the time, and the designation of women as best suited to process children and adolescents.<sup>24</sup> Myers states, "in an era that celebrated public motherhood, female juvenile court workers assumed a legitimacy to supervise and regulate family life for delinquents of both sexes."<sup>25</sup> As Myers concisely explains, emerging in the late nineteenth century and gaining strength

in the early twentieth, "maternalism was an ideology that cultivated, promoted, and celebrated the virtues of motherhood."<sup>26</sup> The allegedly "natural" female virtue of nurturing others was positioned as a compliment to masculine characteristics. Myers writes,

female reformers invoked a maternalist discourse to explain why they should have access to political, economic, and social power. Under the banner of 'public' motherhood, women became involved in nurturing and

humanistic protests because of the correlation with their expected and traditional roles in society.<sup>27</sup>

As LeBourdais' interest in the Truscott case suggests, maternalism was central to the political activism of women in the 1950s and 1960s as well.<sup>28</sup> The daughter of a suffragette, LeBourdais often used maternal rhetoric similar to their notions of gender in her activism. Writing to Prime Minister William Lyon Mackenzie King in 1948, LeBourdais asked "has the Prime Minister nothing to offer but speeches against the horrors



"Isabel LeBourdais, whose book raised questions about the Truscott investigation, talks with Steven Truscott in 1968 outside Collins Bay Penitentiary." Courtesy of Julien LeBourdais.

<sup>22</sup> Mothers were considered to be the solution to the 'youth problem' because they were the 'proper teacher' for young people. See Cynthia Commachio, *The Dominion of Youth: Adolescence and the Making of Modern Canada, 1920 to 1950* (Waterloo: Wilfred Laurier University Press, 2006), 26-27, 87.

<sup>23</sup> Frank Donnelly to Doris Truscott, "Truscott's personal files," September 1959, quoted in Sher, *Until You Are Dead*, 157.

<sup>24</sup> Tamara Myers, *Caught: Montreal Modern Girls and the Law, 1869-1945* (Toronto: University of Toronto Press, 2006), 6.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, 97.

<sup>27</sup> Myers, *Caught*, 97; Carolyn Strange, "Mothers on the March," 205.

<sup>28</sup> Strange, "Mothers on the March," 205.



of Communism, and dire pronouncements of the fate marching upon us? I ask this as the mother of four Canadian children.”<sup>29</sup> The letter condemns the use of war to fight Communism. She argues that war reduces human welfare to such a point that no system except Communism could survive.<sup>30</sup> Her open affiliation with the Co-operative Commonwealth Federation became stronger in the 1950s and 1960s when she became more politically active.<sup>31</sup>

In the early spring of 1960, LeBourdais wrote to the Truscott family to express her interest in writing a magazine exposé explaining why a 14-year-old would be tried as an adult and given the death penalty. Once she looked into it further, she “soon came to the conclusion that it wasn’t a sick boy who was guilty, but a perfectly normal boy who was innocent.”<sup>32</sup> She decided to write a book instead and dedicated it to Truscott’s mother, Doris Brennan, “with affection and profound respect.”<sup>33</sup>

*The Trial of Steven Truscott* was published on the eve of the 1966 federal parliamentary debate on capital punishment. The coincidence was the result of delays prompted by prolonged publication difficulties. According to her son Julian, LeBourdais was delighted by the proximity

of the two events, and the public shock that her book incited.<sup>34</sup> LeBourdais knew that her criticism of the legal system was controversial. Her son claimed, because the criticism was coming from a woman, it was “more of a shock” and “a bit unseemly.” “That didn’t bother [his mother]; in fact she relished that,” he explained.<sup>35</sup> Her feminist activism, like that of many other women, revolved around human rights and issues involving women and children.

Maternal feminist and Canadian social activist, June Callwood, was also an abolitionist interested in social justice. As the co-founder of the Canadian Civil Liberties Association (CCLA), and director of the Canadian Society for the Abolition of the Death Penalty, Callwood was an extraordinary example of the leading role women took in youth organizations and in protests defending the rights of the criminally accused. In February 1968, she drafted a letter to Justice Minister Pierre Trudeau regarding a judgment made by Justice Donohue in regard to a contempt motion. A young man refused to answer to a police officer after being asked to ‘move along.’ In this Toronto case, Justice Donohue concluded: “hippies...seemed to be

<sup>29</sup> LeBourdais to Prime Minister William Lyon Mackenzie King, 26 March 1948, File no. MG26 J1 Vol. 439, “William Lyon Mackenzie King Papers,” Library Archives Canada, Ottawa.

<sup>30</sup> *Ibid.*

<sup>31</sup> Sher, *Until You Are Dead*, 325.

<sup>32</sup> Sher, *Until You Are Dead*, 363; Isabel LeBourdais, interviewed by Laurier LaPierre, *This Hour Has Seven Days*, Canadian Broadcasting Corporation, 20 March 1966.

<sup>33</sup> Lisa Fitterman, “Steven Truscott’s ‘poor Mom’ spent decades fighting on his behalf (Obituaries) *Globe & Mail*, 30 January 2008).

<sup>34</sup> *Until You Are Dead*, 325.

<sup>35</sup> *Ibid.*

protestors against the prevailing way of life which sees merit in work, appearance and a sense of responsibility." The CCLA took issue with the judge's comment because he had not yet seen any evidence. She concluded that, "surely the fabric of the criminal court system is to, in all circumstances, protect the rights of the accused."<sup>36</sup> Callwood emphasized collective responsibility and claimed that, "in life, there are no innocent bystanders."<sup>37</sup>

Nicknamed "Canada's conscience," Callwood advocated public activism and the protection of individuals' freedoms, especially for vulnerable young people. While attending a conference for the "Troubled Child Project" in 1969, Callwood stated,

the greatest myth today is that this is a society of 'experts'...one of the best juvenile counselors I have used is a pharmacist...no special training with young people. This is where you come in...the public spirited citizen, the do-gooders....every one of you can be a stick of dynamite exploding and triggering community action.<sup>38</sup>

Like LeBourdais, Callwood's social activism was consistent with the gender expectations of the Cold War period and began with maternal motivations. Callwood claimed to have been radical-

ized when her son brought home young teens in need of food and shelter. In an interview with the CBC, she noted that once the middle-class kids went back to school and left Yorkville, the remaining young people were in dire need of social support. Callwood's realization that the hippie movement was more complicated than middle-class youth rebelling against society, motivated her to create the Yorkville Digger House for homeless youth.<sup>39</sup> Toronto politician Allan Lamport said "let them get cold and wet and dirty. It's not for the taxpayers to support them. Firemen should keep them on the move. The do-gooders don't know what the hell they're talking about."<sup>40</sup> Callwood responded: "That statement radicalized me."<sup>41</sup> She was arrested after trying to protect a young man who was being pushed around by a police officer in an alley. On police brutality, she later wrote, "it is vital in our society that the police do not oppress or bully the individual... If one person in society unjustly suffers, then we all suffer. No one is immune from potential restrictions to their freedom."<sup>42</sup>

Callwood's concern about personal liberties and youth rights attracted her to

<sup>36</sup> June Callwood to Justice Minister Pierre Elliot Trudeau, February 1968, LAC, MG31-K24, Vol 18, June Callwood Fonds.

<sup>37</sup> June Callwood, "Portrait in the First Person," *CityTV* (Toronto, 1970).

<sup>38</sup> June Callwood speech, June 1969, LAC, MG31 K24 Vol 20, Callwood Fonds.

<sup>39</sup> Adele Freedman, "June Callwood's caring yet controversial feminism," *Quill and Quire*, March 1985, 73; Anne Dublin, *June Callwood: A Life of Action* (Toronto: Second Story Press, 2006), 53.

<sup>40</sup> Allan Lamport, "Let them get cold and wet," in Michael Valpy, "A refuge for the youthful, mind-broke victims of a sick society," *Globe and Mail*, 19 June 1968, 10.

<sup>41</sup> Freedman, "June Callwood's," 73.

<sup>42</sup> June Callwood, "The Canadian Civil Liberties Association," *Journal of the Canadian Citizenship Council* Vol. 1 No. 1 (May 1965), 33. Accessed in LAC, MG31 K24 Vol. 19, Callwood Fonds.

Steven Truscott's case in 1966 after LeBourdais's book called for a Royal Commission to investigate Truscott's trial. Working on behalf of citizens in need of legal representation, the CCLA took interest in Truscott's case because it was "reiterating the whole process" of justice and appeal.<sup>43</sup> The case naturally tied in with the CCLA's abolitionist stance on capital punishment. In a speech for a CFTO/TV "Talkback" Series, Callwood questioned the meaning of the Canadian justice system.<sup>44</sup> Was its main goal "revenge or atonement?" She believed capital punishment only delivered revenge. It did not contribute a solution to crime prevention. In addition, Callwood's work with the CCLA reinforced her belief that the foundation of Canada's justice system was fundamentally flawed in large measure because many accused were not accorded the presumption of innocence.

Callwood actively petitioned for the abolition of capital punishment. As a well-known Canadian writer, she rallied widespread support for the cause. She approached friends and colleagues such as *Chatelaine* editor, Doris Anderson and CFRB radio host, Betty Kennedy for their support. In March 1966, Kennedy interviewed Isabel LeBourdais, NDP leader Stanley Knowles, and Liberal MP

James Byrne for a show entitled "Was Justice Done?" Kennedy pointed to the Truscott case as a reason for the abolition of the death penalty.<sup>45</sup> Her name on a petition for the abolition of capital punishment that was sent to Parliament in 1975 suggests that her commitment to the cause continued until parliamentary legislation ended the practice once and for all in Canada.<sup>46</sup>

Doris Anderson's participation in the abolitionist movement was precipitated by the "cooperative arrangement" she had with June Callwood: Callwood contributed articles to *Chatelaine*, and in return retained the right to call on Anderson to support her many causes.<sup>47</sup> Interestingly, for reasons unknown, Anderson declined to publish LeBourdais' article on Steven Truscott in *Chatelaine* when LeBourdais came to her with an article-length story following the original trial in 1960. This setback encouraged LeBourdais to write *The Trial of Steven Truscott*.

As Allan Lampert's retort about do-gooders who "don't know what the hell they're talking about" suggests, LeBourdais and Callwood were criticized for their use of maternal feminist arguments, particularly in their defense of Steven Truscott.<sup>48</sup> Similarly, LeBourdais' book was criticized for its "biased emotional approach." Abo-

<sup>43</sup> Julian Porter to June Callwood, 11 January 1967, LAC, MG31 K24, Vol. 18, Callwood Fonds.

<sup>44</sup> June Callwood Speech, "Revenge or Atonement" for Talkback CFTO, 12 August 1966, LAC, MG31 K24, Vol 6, no. 16, Callwood Fonds.

<sup>45</sup> Betty Kennedy, "Was Justice Done?" *CFRB Radio* 16 March 1966.

<sup>46</sup> "Canadian Civil Liberties Association and an Ad hoc Delegation of Citizens Concerned with Capital Punishment," 15 April 1975, LAC, MG31 K24, vol. 18, Callwood Fonds.

<sup>47</sup> Doris Anderson also signed a petition to abolish capital punishment in 1975. See Doris Anderson, *Rebel Daughter: An Autobiography* (Toronto: Key Porter Books, 2002), 167.

<sup>48</sup> Allan Lampert, "Let them get cold and wet," 10.

litionists, both male and female, faced such criticisms throughout the history of the death penalty debate. Historically, they have been accused of having “Quaker feelings” since Quakers were pacifists and among the most active of religious groups pushing for abolition in Canada and Britain;<sup>49</sup> Quakers also provided more opportunities and freedoms for women than other religious groups. Since most abolitionists used moral arguments, they, like Quakers, were deemed effeminate.<sup>50</sup>

The response to LeBourdais’ book took on a gendered meaning as well. She was condemned for her openly partisan approach. Arthur Maloney, a former MP and head of the Canadian Society for the Abolition of the Death Penalty called LeBourdais’ book an “eloquent plea” but noted she was guilty of the same “biased emotional approach” she decried among the jurors.<sup>51</sup> Likewise, Kildare Dobbs argued in *Saturday Night* magazine that the book was “marred by bias.” But still its power impressed him: “We see clearly that the Truscott trial was a solemn farce. At best the Truscott trial was shockingly careless.”<sup>52</sup> It was this “biased emotional approach” that caused Jack McClelland to refuse publication. In a letter to LeBourdais, McClelland wrote, “we would like to publish the book, but

only if you will stick to the facts and not tilt at windmills.”<sup>53</sup> LeBourdais hired a trusted friend and lawyer, Ted Joliffe, a left-wing activist with strong ties to the CCF party, to help her break her contract with McClelland and Stewart and get the book published first in Britain.<sup>54</sup>

The public response to the book reflects a regional divide. Many city newspapers and book reviewers praised it, but small-town reviewers from Huron County attacked her objectivity, especially on the basis of her gender. For example, *Star* magazine selected LeBourdais as the “outstanding woman of 1966” for her fight for Steven Truscott.<sup>55</sup> Many of the reviewers commented on the book’s importance in the death penalty debate. *Saturday Night Magazine’s* review of *The Trial of Steven Truscott* stated, “if a case of such importance can be so badly bungled, even more alarming travesties of justice must be commonplace. That we should retain the death penalty in a country where no one in a courtroom can be relied on to do his job conscientiously is incredible.”<sup>56</sup> In the *Probation Journal*, Frank Dawtry wrote that, her work has succeeded in its purpose, for a commission is now re-examining the case. In the meantime, “Steven Truscott has lost several years of his life

<sup>49</sup> Potter, *Hanging in Judgement*, 66-67, 88.

<sup>50</sup> *Ibid.*, 66-67; 88.

<sup>51</sup> Sher, *Until You Are Dead*, 364; *Globe and Mail*, March 1966.

<sup>52</sup> Sher, *Until You Are Dead*, 364; *Saturday Night Magazine*, April 1966.

<sup>53</sup> From James King, *Jack: A Life with Writers*, (Toronto: Knopf Canada, 1999), 56-58.

<sup>54</sup> Ironically, McClelland and Stewart only published *The Trial of Steven Truscott* in Canada after it had been published in Britain. Sher, *Until You Are Dead*, 360.

<sup>55</sup> *Star Magazine*, January 1967.

<sup>56</sup> Sher, *Until You Are Dead*, 326.

in a penitentiary and we can only be glad that his youth saved him from losing it altogether in a country where the irrevocable penalty may still apply.”<sup>57</sup>

LeBourdais’ views on corporal and capital punishment met with strong resistance from retentionists. Following a letter that she wrote for the *Toronto Daily Star* on the problems with corporal punishment, a man replied, “a far better and certainly more meaningful title for Isabel LeBourdais’ letter of Jan 15 on lashing would have been “Sentimental Isabel Strikes out again.”<sup>58</sup> Criticisms of sentimentality demonstrate the predominance of the ideology of domesticity. LeBourdais wrote with passion and justified her interest in the trial on the “appalling nature” of sentencing a child to death, which fell within the expected domestic concerns of women. She challenged the justice system and actively argued for the abolition of the death penalty, but she did so on behalf of the interests and rights of a young boy in need of saving.

The reviews from Huron County newspapers emphasized her emotional approach and called her the “woman writer” or “widow” when criticizing her book. In an editorial from the *Goderich Signal Star* titled, “Vicious Vendetta Against Huron,” LeBourdais was attacked for portraying “the average local

resident of 1959 as a vindictive blood-crazed individual whose thirst can only be slaked by perpetuating judicial crimes against innocent teenage boys.”<sup>59</sup> “We can only suggest, Mrs. Le-Bourdais,” the editorial adds, “that the wave of emotion which rolls through your book has tossed you from your analytical surfboard somewhere out at sea.”<sup>60</sup> The jurors insisted that LeBourdais was “chasing a buck,” a motivation that accounted for the emotional nature of her book, and her selective use of evidence.<sup>61</sup> This response from Huron County’s jurors and citizens had little to do with the death penalty debate and more to do with defending the administration of justice in their community. An editor of the *Clinton Newsrecord* highlighted this point. Sympathizing with LeBourdais’ book, calling it “well-documented, well researched, well-written,” she noted that there would be some in Clinton who would question revisiting the Truscott case, essentially say: “why do we have to go into all that again?” In reply, the editor noted, a young man has just turned twenty-one after spending six years in prison, “and to him, we believe ‘all that’ is important.”<sup>62</sup> In Huron County, the controversy over the Truscott case morphed into a political controversy on the integrity of the region’s justice system.

<sup>57</sup> Frank Dawtry, “Book Reviews: *The Trial of Steven Truscott*, Isabel LeBourdais, Gollancz 32s. 6d.” 13 no. 32 *Probation Journal*, 1967, 2.

<sup>58</sup> Arthur Durnan, Evangelist from Scarborough, “Crime and Punishment,” *Toronto Daily Star*, 26 January 1970.

<sup>59</sup> “Vicious Vendetta Against Huron,” *Goderich Signal Star*, 24 March, 1966, 2.

<sup>60</sup> *Ibid.*, 2.

<sup>61</sup> “Claim City Author ‘Chasing A Buck,’” *Goderich Signal Star*, 31 March 1966, 1.

<sup>62</sup> Sher, *Until You Are Dead*, 360; *Clinton Newsrecord*, 26 April 1966.



## Gender and Abolition: Masculinity

Truscott's case demonstrates that social movements were characterized by gendered language. Since the abolition of capital punishment was concerned with issues of morality, compassion and rehabilitation, it was characterized as a woman's movement. Thus, although the abolition of capital punishment was not an exclusive female concern, but a mixed-gender movement, it assumed a feminine identity. Male abolitionists were described as soft, emotional, and flamboyant, and were commonly associated with Communists. This public emasculation demonstrates the extent to which Cold War anxieties over deviance manifested themselves in the death penalty debates in 1966-67.

The threat of Communism in the 1950s and 1960s resulted in a desire for conformity and the need to steer clear of deviance, which manifested itself in anxieties about masculinity and sexuality.<sup>63</sup> During the Cold War, deviance from mainstream norms "represented an independence of mind that could no longer

be tolerated" in a homogenized mass society.<sup>64</sup> The state attempted to regulate gender and sexuality using stringent stereotypes of masculinity and femininity.<sup>65</sup> According to historian K.A. Cuordileone, the Cold War "preoccupation with—and anxiety about—masculinity... puts a new premium on hard masculine toughness and rendered anything less than that soft and feminine and, as such, a real or potential threat to the security of the nation."<sup>66</sup> Furthermore, as Gary Kinsman has pointed out, the Canadian government funded and sponsored research that they hoped would detect homosexuals in Canadian society, and the Royal Canadian Mounted Police collected the names of thousands of possible homosexuals since they were designated "a 'national security threat' because of their 'character weakness', which supposedly left gay men and lesbians open to blackmail by Soviet agents."<sup>67</sup> Thus, the power of the hard/soft opposition in political discourse stems from the gendered symbolism that gave terms like "soft on Communism" and "soft on crime" meaning and resonance.<sup>68</sup> In the context of the Cold War, the debate over capital punishment

<sup>63</sup> For an overview of gender and sexuality in Cold-War Canada, see Mary Louise Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto: University of Toronto Press, 1997).

<sup>64</sup> Adams, 21. For examples of gender anxieties in the American Cold-War context, see Andrea Friedman, "Sadists and Sissies: Anti-pornography Campaigns in Cold War America" *Gender and History* 15 no. 2 (August 2003), 201; Michael Snyder, "Crises of Masculinity: Homosocial Desire and Homosexual Panic in the Critical Cold War Narratives of Mailer and Coover" *Critique* 48 no. 3 (spring 2007), 252.

<sup>65</sup> Richard Cavell, "Introduction," in *Love, Hate, and Fear in Canada's Cold War*, edited by Richard Cavell (Toronto: University of Toronto Press, 2004), 4.

<sup>66</sup> K.A. Cuordileone, "Politics in an Age of Anxiety': Cold War Political Culture and the Crisis in American Masculinity, 1949-1960," *The Journal of American History* (Sept. 2000), 516.

<sup>67</sup> Gary Kinsman, "'Character Weaknesses' and 'Fruit Machines': Towards an Analysis of the Anti-Homosexual Security Campaign in the Canadian Civil Service," *Labour/Le Travail*, 35 (Spring 1995), 134.

<sup>68</sup> Cuordileone, "Politics," 516

represented a struggle between conformity and deviance, security and chaos.

Anxieties about deviance were evident in Huron County in 1959. In his book *Until You Are Dead*, Julian Sher captures the atmosphere of small-town Clinton, Ontario: "Sunday church attendance remained strong. The temperance act was still in force. Clinton was a dry town. Order and discipline were ingrained both in the community and in the nearby air force base."<sup>69</sup> At the beginning of the two-week trial, Judge Robert Fergusson, the first judge to preside over the Truscott case, explained to the jury that, "Your churches may be the lid of respectability in the community, but you, gentlemen of the jury, by the barometer of that respectability, you are the screws that hold the lid down and in place." He went on to say: "the whole character of your community depends on the way you do your duty in this case."<sup>70</sup>

Following the publication of *The Trial of Steven Truscott*, Huron County citizens continued to defend the morality of the County. A Goderich man wrote to the *Goderich Signal Star*, "the crime against Lynne Harper was an especially revolting one, so much out of character with Huron that anyone familiar with the county could at once feel almost sure that it had not been committed by a sane native of the area." Insisting that it must have

been an "outsider," he continued, "Huron is an area normally free of crime: the vast majority of its citizens are outstandingly moral and law abiding."<sup>71</sup> This letter demonstrates that a fear of 'outsiders' was present in Huron County, and it also shows that by 1966, people were willing to consider Steven Truscott's innocence.

Because of LeBourdais' insistence on Truscott's innocence, the Supreme Court appeal became inextricably linked to the death penalty debate in 1966-67. Liberal MP James Byrne proclaimed, "I lost faith in the Canadian courts."<sup>72</sup> On 7 March 1966 he called on the solicitor general to establish a Royal Commission into the Truscott trial, insisting the "cards were stacked against the boy." He continued, "I personally am so convinced of this boy's innocence that I am prepared if necessary to stake my seat in the House of Commons on the outcome of an inquiry or a royal commission."<sup>73</sup>

New Democratic Party leader Stanley Knowles visited Truscott before the 1966-67 death penalty debates in Parliament. He claimed, "this was one of the reasons I developed a particular interest in the case, and decided to go down and see him... there was a widespread feeling of 'thank God we didn't hang this guy.' I heard one Tory say that there were lots more like him."<sup>74</sup>

The *United Church Observer* also

<sup>69</sup> Sher, *Until You Are Dead*, 3.

<sup>70</sup> Judge Fergusson, "Regina vs. Steven Murray Truscott: Trial Evidence," 5 October 1959, LAC, File no. 1832, no. 3 "Truscott Files."

<sup>71</sup> "Letter to the Editor," *Goderich Signal Star*, 26 April 1966, 2.

<sup>72</sup> Julian Sher, "Truscott: the justice system on trial," *Globe and Mail*, 17 August 2007.

<sup>73</sup> Sher, *Until You Are Dead*, 367.

<sup>74</sup> "MP Wants Full probe in boy's death sentence" *Toronto Daily Star*, 17 March 1966; Sher, *Until You*

commented on the connection of Steven Truscott's case with the death penalty debates in 1966, saying

we like to think that our courts are always just, if not infallible...Perhaps there is a lesson here for those about to consider the question of capital punishment in Canada. Human nature is susceptible to error. Think of the horror of discovering that error when it is too late to do anything about it.<sup>75</sup>

Liberal newspapers such as the *Toronto Daily Star* published stories with headlines such as "I pray that never again in Canada shall a fourteen-year-old hear those dreadful words 'to be hanged by the neck, until you are dead'" and "Truscott furor boosts anti-hanging hopes."<sup>76</sup> Truscott's case also made headlines in Britain, as an editorial in Manchester raged, "it outrages every human instinct that (Diefenbaker) does not reprieve the boy now." The *Toronto Daily Star* printed the article and quoted the paper as saying, "the one benefit from the Truscott case is that it may stir the Ottawa parlia-

ment into action in January."<sup>77</sup> The issues of youth and potential miscarriages of justice, which were central to the Steven Truscott case in 1959 and 1966, became critical arguments for abolitionists of the death penalty. Abolitionists referenced his case repeatedly in the 1966-67 debate that would abolish capital punishment for a five-year trial period, with the exception of those found guilty of the murder of on guard police officers and prison guards.<sup>78</sup> Capital punishment was formally eliminated ten years later in 1976.<sup>79</sup>

Truscott had few public supporters in 1959. The exceptions were abolitionists like Pierre Berton, who protested the death sentence, not necessarily Truscott's guilty verdict. The public attacked Berton for using Truscott's case for abolitionist means. In his poem, "Requiem for a fourteen-year-old," Berton wrote "it's true enough/ That we cannot brag/ Of a national anthem/ Or a national flag/ And though our Vision/ Is still in doubt/ At

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*Are Dead*, 370.

<sup>75</sup> *United Church Observer*, (Spring 1966); Sher, *Until You Are Dead*, 369.

<sup>76</sup> *Toronto Daily Star*, 12 April 1966; Sher *Until You Are Dead*, 369.

<sup>77</sup> "Boy in Goderich Death Cell Shocks U.K.," *Toronto Daily Star*, 1 December 1959, 1.

<sup>78</sup> Strange, "The Lottery of Death," 617-18.

<sup>79</sup> Historians differ in their accounts of why capital punishment was abolished in 1976. Carolyn Strange argues that "the image of unprincipled and partial justice proved to be the downfall of the death penalty: both abolitionists and retentionists demanded to know why some condemned persons were executed while others were granted reprieves led to its abolition," Strange, "The Lottery of Death," 617. According to historian Harry Potter, the debate over capital punishment was essentially a religious one, as the more liberal Christian denominations and Jewish congregations called for a punishment that included rehabilitation and compassion, Potter, *Hanging in Judgement*, vii-viii. The Catholic Church did not support abolition as a group until 1973 and were highly retentionist in 1966, Canadian Catholic Bishops Statement on Capital Punishment, "Press release at the Canadian Catholic Conference," Ottawa, 30 January 1973; Chandler, *Capital Punishment in Canada*, 123. Other historians focus on the hypocrisy of state-sanctioned murder as a deterrence to crime, Elizabeth Barnes, "Communicable Violence and the Problem of Capital Punishment in New England, 1800-1890," *Modern Language Studies* 30 no. 1 (Spring 2000), 7-26; Randall McGowen, "Civilizing Punishment: The End of the Public Execution in England," *The Journal of British Studies* 33 no. 3 (July 1994), 257-82.

last we've something/ To boast about:/ We've a national law/ in the name of the Queen/ To hang a child/ Who is just fourteen."<sup>80</sup> Retentionists lashed out against the lines: (the law) "makes no allowance for sex or years/, A judge's feelings, a mother's tears;/ Makes no allowance for age or youth/ Just eye for eye and tooth for tooth—If a child does murder/ The child must die."<sup>81</sup> A reader passionately advised Berton to write about the "feelings of the little girl upon meeting the murderous eye of her assailant."<sup>82</sup> The poem had been interpreted as a defense of the "young monster" as one man called Truscott.<sup>83</sup> In a follow-up column, Berton wrote that the poem unleashed a storm "more violent than I have yet know." A man called to say he hoped one of Berton's daughters was raped. Another woman shouted into the phone that Steve should never have been brought to trial: "if I'd been his mother I'd have killed him myself," she screamed. A third person wrote in with another suggestion: "The child should be whipped before he dies."<sup>84</sup> Berton responded in his column, "it is blood they want and blood they mean to get, and there is no reasoning with them."<sup>85</sup> He reiterated that it was not necessarily the guilty verdict he objected to, but the death penalty, "a law that belongs to the Dark Ages." "It is not the hangman whom we must weep for, in

this grisly matter, but the multitude who guides his hands—ourselves," Berton concluded. "Has no one got the point? Have we become so used to the extremes of cheap television, the blacks and whites of overblown westerns, the easy and lazy alternative of Mickey Spillane, that we see no other way out but death or anarchy?"<sup>86</sup> Berton used Truscott's youth to emphasize the rigidity of the law and the consequent problems with capital punishment.

In 1966, following the publication of Isabel LeBourdais' book, which insisted on Truscott's innocence, public opinion changed drastically. Abolitionists using Truscott's case began incorporating the issues of human fallibility and wrongful convictions into their arguments. Because the book garnered so much public attention, it helped Truscott's lawyers convince the Supreme Court to hear the appeal. The outcome was an 8:1 ruling that Truscott's original trial was fair.

Justice Emmett Hall, the only judge to rule that a miscarriage of justice had likely occurred in Truscott's original trial in 1959, was a staunch abolitionist. His colleagues considered him to be "flamboyant" and "controversial."<sup>87</sup> In his biography of Hall, Frederick Vaughn wrote, "no judgment Emmett Hall ever wrote propelled him into such public, prominence as did his dissenting opinion in the

<sup>80</sup> Pierre Berton, "Requiem for a fourteen-year-old," *Toronto Daily Star*, 5 October 1959, 25.

<sup>81</sup> *Ibid.*, 25.

<sup>82</sup> "Hang Boy of 14? Readers Differ," *Toronto Daily Star*, 8 October 1959.

<sup>83</sup> "The Truscott Case: New Look at an Old Crime," *Toronto Daily Star*, 19 March 1966.

<sup>84</sup> Sher, *Until You Are Dead*, 313.

<sup>85</sup> Pierre Berton, *Toronto Daily Star*, 12 October 1959.

<sup>86</sup> *Ibid.*; Sher, *Until You Are Dead*, 313.

<sup>87</sup> Sher, *Until You Are Dead*, 2.

Truscott case. He became an instant hero for some, while his brother justices became heartless old men.”<sup>88</sup> Hall wrote,

having considered the case fully, I believe the conviction should be quashed and a new trial directed. I take the view that the trial was not conducted according to law. Even the guiltiest criminal must be tried according to law. That does not mean that I consider Truscott guilty or innocent—that was for a jury to decide. A bad trial remains a bad trial. The only remedy for a bad trial is a new trial.<sup>89</sup>

Hall’s dissent was controversial because he was the only judge to support LeBourdais’ conclusions, and because he insisted that at least two other judges had pledged their support and then withdrew at the last minute. These allegations further segregated Hall from his colleagues, who claimed he was “grandstanding.” Hall’s actions were completely out of keeping with Supreme Court decorum, as justices of the high court were expected to maintain a low and uncontroversial profile.

The public response to Hall’s dissenting opinion conveys the notion that his support for a new trial for Truscott was the result of his soft personality, which was pitted against the hard and tyrannical ways of the other justices. Many letters, especially from women and lawyers praised Hall for his decision. One St. Catharines woman wrote “Canada needs

and wants more men like you in our Canadian courts...I have great admiration and respect for you. God bless you.”<sup>90</sup> Another woman wrote, “without mercy there is no justice. Your colleagues seem to be tyrants. I recommend they mend their ways. There is no bigger man than one who would stop to help a child. We are proud of men like you.”<sup>91</sup> His colleagues were called “heartless” and “callous or vindictive” because they allowed the “rigor of the law to hold sway.”<sup>92</sup>

Because of the strong desire to protect the integrity of the justice system, Steven Truscott’s Supreme Court appeal in 1966 became a political matter more than a legal appeal. Of the nine judges to consider Truscott’s appeal in 1966, seven had been present when Truscott’s appeal was denied in 1960. In essence, many believed that the court was now being asked to sit in judgment on its own prior judgment of refusal to grant appeal.<sup>93</sup> Those who disapproved of Hall’s dissenting opinion claimed that he had been duped by “public relations types such as Pierre Berton and Isabel LeBourdais.”<sup>94</sup> Because abolitionists were assumed to be lenient and easily penetrable by propaganda, Hall was criticized with similar rhetoric. When he retired from the Supreme Court of Canada in April 1975, he led a delegation

<sup>88</sup> *Ibid.*, 203.

<sup>89</sup> Frederick Vaughn, *Aggressive in Pursuit: The Life of Justice Emmett Hall* (Toronto: University of Toronto Press, for the Osgoode Society for Canadian Legal History, 2004), 206; Sher, *Until You Are Dead*, 445.

<sup>90</sup> Vaughn, *Aggressive in Pursuit*, 206.

<sup>91</sup> *Ibid.*, 207.

<sup>92</sup> *Ibid.*, 209.

<sup>93</sup> Vaughn, *Aggressive in Pursuit*, 205.

<sup>94</sup> *Ibid.*, 208.



to Parliament Hill urging that the death penalty be completely abolished.

By 1966, abolitionists were incorporating into their arguments the issues of human fallibility, and the potential for miscarriages of justice that Justice Emmett Hall raised in his dissenting judgment. Public opinion had changed dramatically since 1959. Support for Truscott's appeal grew, which disturbed retentionists. "Expert" opinion from Truscott's prison psychiatrist claimed, "the reason for the Truscott controversy is the public's sadistic desire to be concerned about someone else's suffering."<sup>95</sup> Thus, some abolitionists and other people concerned with Truscott's fate were labeled sadists for speaking out against the justice system. Indeed the concern for Steven Truscott's suffering was a direct result of an increasing distrust in the justice system's ability to protect innocent people. Still, retentionists claimed that these concerns were simply "public emotionalism" and "hysteria." After the 8-1 ruling against a new trial for Steven Truscott, the Supreme Court said "it would be regrettable indeed if public emotionalism or hysteria were permitted to denigrate or subvert our judicial processes."<sup>96</sup>

In 1966, Huron County newspapers emphasized that abolitionists were swayed by emotion. In his column "Sugar and Spice," retentionist writer Bill Smiley

wrote "in my youthful, idealistic days, I had a crazy idea that the cold, deliberate taking of a human life by a civilized society was wrong. But I am becoming blunted in a world where women and children are bombed and burned daily, all in the name of peace."<sup>97</sup> Known for his shocking language and extremely conservative views, Smiley insisted that it was better to hang a few innocent people in the name of justice than to let murderers live. He utilized the language of hard and soft as well in his solution for those who disliked hanging as a method of execution: "Throw them all in a hat... For the softies: slashing of wrists and gentle expiration in the bathtubs, or an overdose of sleeping pills. For the hards: electrocution; gas; diving into an empty (concrete bottom) swimming pool; bullet through the head."<sup>98</sup> These views meshed with the retentionists' argument that the Canadian parliament was incapable of implementing the law since many murderers' death sentences were commuted to life imprisonment.

The language of hard and soft was constantly used in the 1960s to separate masculinity and femininity, and to emasculate those who represented a potential threat to society. Supporters of liberal politics were considered to be soft because they "sentimentalized collectivism."<sup>99</sup> The notion that "group ethos" softened individuals played an impor-

<sup>95</sup> Dr. George Scott, "Was Steven Truscott Guilty? I know the Truth," *Toronto Daily Star*, 20 April 1966, 1.

<sup>96</sup> Sher, *Until You Are Dead*, 448.

<sup>97</sup> Bill Smiley, "Sugar and Spice: Pick Your Execution," *Goderich Signal Star*, 28 April 1966, 10.

<sup>98</sup> *Ibid.*, 10.

<sup>99</sup> Friedman, "Sadists and Sissies," 522.

tant role in the feminization of organizations like the Canadian Society for the Abolition of the Death Penalty and the Canadian Civil Liberties Association (of which both Justice Emmett Hall and Pierre Berton were members). Abolitionists were deemed effeminate because they had left-wing political affiliations and advocated rehabilitation over death. In a period of intense anxiety over deviance, opposition to the death penalty, regardless of the reason, was seen as the epitome of a soft personality.

The largest retentionist organizations in the 1960s and 1970s were the Ontario Provincial Police Association and the Canadian Police Association, which included prison guards as well. In an advertisement, the Ontario Provincial Police Association asked the Canadian public to “take a stand on capital punishment” since “obviously our government cannot.”<sup>100</sup> They claimed that since 1967, when capital punishment was abolished for everyone but the murderers of police officers, thirty-three policemen had been slain and “not once has our standing capital punishment law been enacted.”<sup>101</sup> They went on to say, “your indecisive government has weakly postponed making a decision concerning the recent policemen killings in New Brunswick and Metro Toronto.”<sup>102</sup> The retentionists’ utilized the dichotomies of strong/weak

and hard/soft to encourage society to choose law and order over an alternative of chaos and injustice.

Retentionists’ fears about law and order overlapped with the rise of Canadian nationalism and anti-Americanism. In the 1950s, Canadian concerns about “American gangsterism” underpinned retentionists’ arguments that the death penalty was a vital form of protection for Canadian society.<sup>103</sup> For example, John Diefenbaker, leader of the Conservative Party was an opponent of capital punishment but feared if capital punishment was eliminated for treason Canada would become a “come one come all” for assassins from all over the world.<sup>104</sup> Retentionists utilized this fear to portray the largely abolitionist government as indecisive, weak, irrational and soft.

Abolitionists were aware of the attack on their masculinity and set out to prove objectively and scientifically that the abolition of capital punishment would be advantageous to the nation. Although abolitionists had always argued that the reasons for capital punishment—especially deterrence to crime—were unfounded, the suggestion that they were easily swayed by emotion brought it to the forefront. In her study of the movement to abolish capital punishment in Britain, Elizabeth Tuttle argues that since abolition was unsuccessful in Brit-

<sup>100</sup> OPP Association, “We Ask You To Take A Stand On Capital Punishment,” *Globe and Mail*, 29 January 1976.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Carolyn Strange, “‘The Undercurrents of Penal Culture’: Punishment of the Body in Mid-Twentieth-Century Canada,” *Law and History Review* 19, no. 2 (2001), 382.

<sup>104</sup> *Ibid.*, 382.

ain at the end of the nineteenth century when many European nations abolished the death penalty, “the movement had to become modern and scientific.” She states, “reformers began to base many of their arguments on sociological and psychological data.”<sup>105</sup> This is not surprising given the rise of the social sciences and scientific expertise. As Dummitt argues, “those seeking to explain a murderer’s actions—including judges, lawyers, newspapers, and many members of the public—frequently invoked the language of psychiatry and psychology.”<sup>106</sup> With the introduction of psychological and sociological interpretations of crime, many abolitionists began to actively reject claims of emotionalism, and went about exposing the human prejudices that determined who the state executed and whom they sent to prison.

In his statement regarding capital punishment, Prime Minister Lester B. Pearson addressed the attack on abolitionists. He said

a criminal impulse is often the result of illness of mind or body or both—and needs treatment rather than punishment. I do not say this because I am soft on criminals but because history proves the ineffectiveness of punishment alone as a cure for crime, or as a protection for society. I base my argument

not on sentiment but on the record.<sup>107</sup>

Pearson’s argument against capital punishment claimed, “If it is argued at times—as it so often is—that opponents of capital punishment are swayed only by emotion, that they are weakly sentimental, I suggest that the very opposite is the case.” Pearson’s statement reflects a trend in the arguments of abolitionists in the 1960s to debunk the claim that abolitionists are emotional and effeminate. Pearson went on to say,

... in my personal opinion there can only be one reason left for wanting to retain capital punishment and that is retaliation—which is not based on reason but on emotion. Who, then, is really swayed by emotion? Who is really sentimental? To the degree that sentimentality may be considered a state of mind relying more upon emotion than reason, I suggest it is plainly the defenders of the death penalty who are the sentimentalists.<sup>108</sup>

Part of this spin, was the construction of retentionists as conservative, conventional, conforming, and uneducated individuals that refused to embrace the many changes occurring in society.<sup>109</sup> Abolitionists portrayed the retentionists as anti-hippie and heartless because they condemned liberals and civil libertarians. In 1966, many members of parliament were abolitionists or neutral.<sup>110</sup>

<sup>105</sup> Tuttle, Elizabeth Orman. *The Crusade against Capital Punishment in Great Britain* (Toronto: The Carswell Company Ltd., 1961), 144.

<sup>106</sup> Dummitt, *The Manly Modern*, 122.

<sup>107</sup> Prime Minister Lester B. Pearson, “Notes for the Prime Minister’s Statement re: Capital Punishment Bill,” Delivered 16 November 1967, LAC, File no. MG26 N9 Vol. 45, “Lester B. Pearson Files,” 16-17.

<sup>108</sup> *Ibid.*, 25-27.

<sup>109</sup> Jayewardene, *Penalty of Death*, 82.

<sup>110</sup> Chandler, *Capital Punishment in Canada*, 140-42.

## Conclusion

Truscott's case study offers a snapshot of the capital punishment debate in the 1960s. Using his story provides the opportunity to analyze abolitionists in Canada, and offers a new dynamic to our understanding of capital punishment, and to constructions of gender in Cold-War Canada. The fact that retentionists accused abolitionists of being sentimental demonstrates that gender expectations in the 1960s profoundly affected the depiction of the abolition movement.

The examples of key female abolitionists, such as Isabel LeBourdais and June Callwood, demonstrate that women had internalized the ideology of domesticity because they approached the Truscott case and the abolition movement from a maternal feminist perspective. Truscott's youth attracted them to his case, and they used his story as a warning to Canadians of the fallibility of the justice system. The potential execution of an innocent 14-year-old boy made headlines and drew many other abolitionists to his cause. Retentionists writing for or being interviewed by newspapers depicted women abolitionists as soft, overly emotional and biased. They used this gendered language to emphasize their femininity and challenge their authority in the political debate.<sup>111</sup> The moral nature of the death penalty debate validated the presence of women, such as June Callwood and Isabel LeBourdais in the abolitionist movement. Their interest and involvement in

Steven Truscott's case was accepted because of the historical gender expectation that women are naturally caregivers.

The designation of the death penalty as a moral issue led to its classification as a feminine movement despite the fact that both men and women took part. Thus, male abolitionists were depicted as effeminate and easily penetrable by propaganda. The vigor with which retentionists attacked men such as Pierre Berton and Justice Emmett Hall was especially fierce because these men challenged the constructed notion of masculinity in the Cold War. Retentionists attempted to marginalize abolitionist arguments by describing them with feminine language. The masculine toughness that retentionists argued would maintain order was pitted against the allegedly soft and sentimental abolitionist perspective. From Hall's dissent and Berton's concern for a "boy of fourteen who is not quite dead" to Laurier LaPierre's emotional display on the CBC's *This Hour Has Seven Days*, masculinity and abolitionism were considered incompatible. Men were accused of being sadists for caring about Truscott's suffering. "Hysteria" and "public emotionalism" were unacceptable since national security—achieved through conformity and a population with "hard" personalities—was the first priority.

The gendered language used in the death penalty debate reveals a great deal about gender expectations in Canada in the 1960s, as well as the role of the death

<sup>111</sup> Truscott was twenty-one at the time of the debate, and was release on parole for good behaviour in 1969. After years of campaigns and appeals Truscott was acquitted in August 2007.

penalty in maintaining the public's sense of security. The abolition movement exposed insecurities about changing perceptions of the justice system, and these feelings were manifested in a gendered discourse. The backlash from retentionists reveals a strong tension between the desire for conformity in the Cold War period and the human rights movement simultaneously gaining momentum.

The fact that gender had an impact on the movement to abolish the death penalty indicates the fallibility of the justice system. It is not surprising that the desire to save a young boy intersected with a

need to promote rehabilitation or that traditional feminine characterizations, such as soft and emotional, were used to denigrate the abolition movement. What is remarkable was the fierce public response to Steven Truscott's case and the way it illuminated the intense Cold War anxieties about the death penalty to the point where men were emasculated for protesting the death penalty and for speaking out on Truscott's behalf. However, despite all the accusations against them, the abolitionists who took up Truscott's case played an integral role in ending capital punishment in Canada.

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