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## A STUDY IN CAPITAL PUNISHMENT

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The wide range of arguments endlessly propounded both for and against capital punishment may, for convenience, be separated into Dogmas which are founded on moralistic or philosophic beliefs, and Non-Dogmas which are capable of scientific verification. The former category encompassing such statements as, "The State does not have the right to take a human life," is by its very definition accepted or rejected on the basis of faith alone. The Non-Dogmas include arguments concerning errors of justice, economic advantages derived from execution as contrasted to imprisonment, and the eugenic value of the death penalty. In the final analysis, it would seem that the primary contention of this Non-Dogma class, and indeed the major justification for the retention of capital punishment, concerns its alleged deterrent value.

While a great deal has been written concerning deterrence and capital punishment, there have been exceedingly few empirical studies. Robert Dann in his monograph, "The Deterrent Effect of Capital Punishment,"<sup>1</sup> studied deterrence and the death penalty by analyzing the homicide rate of Philadelphia 60 days before and 60 days after five highly publicized executions of Philadelphia murderers, on the assumption that if capital punishment does indeed deter, ". . . deterrence should be most in evidence in the days immediately following the execution and in the locality where the crimes were committed and where the criminal is known. That is to say, it should be possible to notice periods of reduction in the homicide and murder rate, if not an absolute cessation of murders, mostly after executions."<sup>2</sup>

Though this study takes some of its basic assumptions and theoretical orientation from Dann's article, there are major differences from it

as regards methodological approach, units of measurement, and the analysis of data.

A preliminary investigation which aimed at getting some insight into the extent and type of publicity attendant on a few selected capital cases resulted in the following methodological decision: while it is obvious that the point of greatest deterrence, all things being equal, would be the day of execution of the criminal, the aforementioned investigation indicated that all things were not equal. This study is predicated on the assumption that at the point of maximum publicity, through the various media of mass communication, the greatest deterrence occurs, and in capital cases since 1944 at least, the greatest publicity came with the trial, conviction, and sentencing to death. The execution itself, in recent years, usually takes place a year or more after the sentencing and receives rather perfunctory notice in the newspapers; it lacks the sustained public attention that a continuing trial occasions and apparently the great time lag between the formal sentence and the actual execution has led to an editorial belief that public interest has all but vanished by the time the prisoner is put to death. Hence the execution receives relatively little "play" in the newspapers. As a case in point, George Gatlin raped and strangled a young girl in what was described as "the most atrocious crime in Pennsylvania history"; he was executed some eight months after receiving the death sentence and his execution was noted in one inch of space on page eighteen of *THE PHILADELPHIA INQUIRER*.

After a list of all twenty convicted felons who had received a death sentence in Philadelphia from 1944 to 1954 was secured, examination of the individual cases made it apparent that sixteen could not be utilized either because:

1. In some cases, immediately after conviction (and before sentencing) various appeals to the appellate courts were made, so that the formal sentencing to death, coming many months after the trial received minimal newspaper publicity; or

<sup>1</sup> ROBERT DANN, *The Deterrent Effect of Capital Punishment*, Bulletin 29, Friends Social Service Series, Committee on Philanthropic Labor and Philadelphia Yearly Meeting of Friends, Third Month 1935.

<sup>2</sup> *Ibid.*, p. 4.

2. It was considered necessary that in eight week periods prior and subsequent to any particular sentencing to death no other death penalty should be imposed, or else considerable "masking" of deterrent effect might take place; a number of cases did not meet this desideratum because their sentences were too closely bunched.

The four remaining capital offenders were all "felony-murderers" whose trial and sentencing received from 30 to 75 inches of print in THE PHILADELPHIA INQUIRER. They were:

1. Raymond Pierce who was sentenced to death on November 4, 1944, and who committed suicide shortly before he was to be executed.

2. William Chavis, who was sentenced to death on June 9, 1946, and who was executed a year and a half later.

3. Aaron "Treetop" Turner, who was sentenced to death September 27, 1946 and who subsequently had his sentence commuted to life imprisonment.

4. William Ramage, who was sentenced to death on September 24, 1947, and who was executed about a year later.<sup>3</sup>

Once the above-listed "Dates of Greatest Deterrence" was determined, it was necessary to determine the number of murders committed in an eight week period prior and an eight week period subsequent to each of those four dates. With the cooperation of the Philadelphia Police Department, the "Murder Books" of the Homicide Squad, which contained a listing and short resume of every homicide known to the police, were examined for the various time periods under consideration.

It was obvious that care had to be taken to select from those records only first degree murder cases, for in Pennsylvania the death penalty can be applied only for that crime, which is defined as, ". . . murder. . . perpetrated by means of poison, or lying in wait or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or kidnapping."<sup>4</sup>

<sup>3</sup> It will be noted that all four of the offenders were not actually executed but this in no way affects our underlying assumption that the greatest deterrence occurs at the point of greatest publicity, *i.e.*, the day of the imposition of the death penalty (and not its actual execution).

<sup>4</sup> Act of June 24, 1938, 18 Purd Pa Stat. Ann (1945) Sec 4701.

The "Murder Books," of course, did not list the killings specifically as first degree, second degree, manslaughter, etc., which meant that there was a crucial problem of determining which of the homicides were first degree murders.

There were, first of all, those offenses which were patently capital crimes either because of a subsequent conviction for first degree murder, or the crime was of such a nature—*e.g.*, a "felony-murder"—as to be certainly murder in the first degree even though there were no convictions because of the police's inability to identify, arrest or convict the perpetrator. These were classified as Definite Capital Crimes (DCC).

There were, in addition, however, a considerable number of murders that leave one doubtful as to the specific degree of the offense. These were cases in which the jury returned a verdict of "guilty of murder in the second degree", but the descriptions of the crimes were such as to suggest the possibility that, except for jury leniency, they may have been first degree murders. In Pennsylvania, the offender is prosecuted for "Murder in General," and the determination as to the precise degree of the killing rests with the court or the jury. In some cases, it was found that the prosecuting attorney specifically told the court that the offense involved only second degree murder, and the court (or jury), while still legally required to choose between first and second degree murder, never actually exceeded the "suggested" degree. The possibility then arose that where the prosecution did not declare the crime to be less than first degree murder, it felt there was at least some possibility of a conviction in the first degree; thus, in many instances the jury may have brought in a verdict of guilty of second degree murder, whereas some other jury, judging the same case, might well have returned a finding of guilty of first degree murder. Using as a guide Professor Schwartz's "Memorandum on the Punishment of Murder in Pennsylvania,"<sup>5</sup> particularly as it discussed the meaning of the concept of "wilful, deliberate and premeditated," and the effect of mental defectiveness and drunkenness on the degree of the offense in the courts of Pennsylvania, an intensive examination was made of all second degree murder convictions in which

<sup>5</sup> LOUIS SCHWARTZ, *Memoranda: Punishment of Murder in Pennsylvania, Royal Commission on Capital Punishment, Memoranda and Replies to a Questionnaire received from Foreign and Commonwealth Countries, Part II, United States of America*, pp. 776-778, London, 1952.

CHART I

NUMBER OF DEFINITE CAPITAL CRIMES, POSSIBLE CAPITAL CRIMES AND TOTAL CAPITAL CRIMES IN EIGHT-WEEK PERIODS PRIOR AND SUBSEQUENT TO FOUR DAYS IN WHICH THE DEATH PENALTY WAS IMPOSED

Weeks	Pre-Sentence Period (Period I)								Date of Sentence	Post-Sentence Period (Period II)											
	8	7	6	5	4	3	2	1		Total	1	2	3	4	5	6	7	8	Total		
Pierce	DCC	0	0	2	0	2	0	1	0	5	11/4/44	DCC	2	0	1	0	1	0	1	1	6
	PCC	0	0	1	0	1	1	2	0	5		PCC	0	0	0	1	0	0	1	0	2
	TCC	0	0	3	0	3	1	3	0	10		TCC	2	0	1	1	1	0	2	1	8
Chavis	DCC	1	1	1	1	1	2	0	1	8	6/9/46	DCC	1	0	0	2	0	2	1	1	7
	PCC	0	1	0	0	1	0	1	1	4		PCC	0	1	0	0	0	1	1	0	3
	TCC	1	2	1	1	2	2	1	2	12		TCC	1	1	0	2	0	3	2	1	10
Turner	DCC	0	1	0	1	0	0	0	2	4	9/27/46	DCC	2	0	2	0	1	4	1	0	10
	PCC	0	0	3	1	0	0	0	2	6		PCC	2	1	1	0	1	1	0	0	6
	TCC	0	1	3	2	0	0	0	4	10		TCC	4	1	3	0	2	5	1	0	16
Ramage	DCC	0	0	2	0	0	1	1	2	6	9/24/47	DCC	0	0	2	0	2	1	0	0	5
	PCC	0	1	0	0	0	0	2	2	5		PCC	1	0	0	0	0	1	0	0	2
	TCC	0	1	2	0	0	1	3	4	11		TCC	1	0	2	0	2	2	0	0	7
Total	DCC	1	2	5	2	3	3	2	5	23		DCC	5	0	5	2	4	7	3	2	28
	PCC	0	2	4	1	2	1	5	5	20		PCC	3	2	1	1	1	3	2	0	13
	TCC	1	4	9	3	5	4	7	10	43		TCC	8	2	6	3	5	10	5	2	41

$\bar{X}$  DDC 2.86;  $\bar{X}$  PCC 2.5;  $\bar{X}$  TCC 5.37

$\bar{X}$  DCC 3.5;  $\bar{X}$  PCC 1.63;  $\bar{X}$  TCC 5.13

the prosecution had not suggested to the court that this be the true degree of the murder, for the four 16 week periods in question.

Those cases which might be classified as first degree murder were classified as Possible Capital Crimes (PCC). They constituted approximately 25 percent of all the second degree murder convictions for the periods under examination.

Examination of Chart I reveals that with the sentencing to death of Raymond Pierce on November 4, 1944, there were 10 Total Capital Crimes (combining Definite and Possible Capital Crimes) in Period I (the eight weeks prior to 11/4/44), of which five were Definite Capital Crimes and five were Possible Capital Crimes. In Period II (the eight weeks after 11/4/44) there were eight Total Capital Crimes of which six were Definite and two were Possible. There was, thus, a 20 percent decrease from Periods I to II in Total Capital Crimes, but this was caused in a 60 percent decrease in the Possible crimes.

William Chavis had the death penalty imposed on him on June 9, 1946, and for Period I there were 12 Total Capital Crimes of which eight were Definite and four were Possible Capital Crimes. In Period II, there were 10 Total crimes of which seven were Definite and three were Possible. This represented a 16 percent decrease in Total Capital Crimes from Period I to Period II, with one less Definite and one less Possible Capital Crime in the latter period.

With the sentencing to death of Aaron Turner on September 27, 1945 we have by far the largest number of murders of all the periods under examination. In Period I, there were 10 Total Capital Crimes (four Definite and six Possible) while in Period II there were no less than 16 Total Capital Crimes (10 Definite and 6 Possible) which represented an increase of 60 percent, with a 250 percent increase in Definite Capital Crimes. It may be noted in passing that in the three days following Turner's sentencing (9/28/45 to 9/30/45) there

were two Definite and two Possible Capital Crimes committed.

William Ramage received the death penalty on September 24, 1947 and the chart reveals 11 Total crimes in Period I (six Definites and five Possibles) in contrast to seven Total Capital Crimes in Period II (five Definites and two Possibles).

When data relative to all four cases were combined, it was found that in the four eight-week periods prior to separate sentencings to death (the total of the 4 Period I's) there were 43 Total Capital Crimes, of which 23 were Definite and 20 were Possible Capital Crimes. The combined total for Period II was 41 Total Capital Crimes (28 Definite and 12 Possible Capital Crimes). There was, thus, a total decrease of about 4 percent in Total Capital Crimes, but this was caused by a sharp decline in Possible Capital Crimes (from 20 in Period I to 13 in Period II).

While aware that the numbers involved are minute and not susceptible to any rigorous statistical manipulation, it is interesting to note that the weekly mean of Definite Capital Crimes was 2.86 in Period I, which rate was exceeded by the Definite Capital Crimes in the first, third, fourth and fifth weeks in Period II. The weekly mean of Possible Capital Crimes in Period I was 2.5, which was exceeded or equalled only by the Possible Capital Crimes in the first and sixth week of Period II. The weekly mean of Total Capital Crimes is 5.37 in Period I, which figure is equalled

or exceeded by the Total Capital Crimes in the first, third, fifth, sixth and seventh week of Period II.

There emerges, therefore, no pattern that would indicate deterrence. Certainly the first idea that comes to mind, that the deterrent effect of the imposition of the death penalty might be felt shortly after the date of sentencing is not borne out by the data. The first, third and fifth week in Period II exceeded or equalled the average Total and Definite Capital Crimes rates in Period I. The second and fourth weeks in Period II are considerably lower in Total, Definite and Possible Capital Crimes than the average in Period I.

#### SUMMARY

It can be said in summary, that the author is aware that the short period of time under analysis and the extremely small number of murders dealt with prevent conclusive findings, but we must conclude from the data at hand that there was no significant decrease or increase in the murder rate following the imposition of the death penalty on four separate occasions.

It will be admitted that any decrease in the Total Capital Crimes from Period I to Period II is due to the Possible Capital Crime figures; cases that were somewhat arbitrarily selected, albeit within the desiderata listed by Professor Schwartz. Utilization of only Definite Capital Crimes disclosed a substantial *increase* (22 percent) from Period I to Period II.