



1930

Death Penalty and Crime

North Dakota Law Review

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Recommended Citation

North Dakota Law Review and Kavanagh, Marcus A. (1930) "Death Penalty and Crime," *North Dakota Law Review*. Vol. 7 : No. 3 , Article 2.

Available at: <https://commons.und.edu/ndlr/vol7/iss3/2>

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DEATH PENALTY AND CRIME

The Reader's Digest for February, 1931, publishes an article by Marcus A. Kavanagh, Judge of the Superior Court of Cook County, Illinois, condensed from the December, 1930, issue of Current History, which we take the liberty of quoting, to-wit:

The effect of capital punishment in Canada and the United States I have seriously studied through many years, and I unhesitatingly assert that there is no large city or thickly settled state where the death penalty, if even half way enforced, has not prevented murder.

Take the city of Chicago. There was a murder in Chicago every day for several years and not a single execution; then two young desperadoes were hanged. Not another murder took place for four weeks, and only three in six weeks. Is it unfair to claim that 25 to 30 citizens are alive today because a jury was merciful enough to the public to condemn the guilty?

There were only two or three executions a year for the next two years. The murder rate leaped fiercely, so that in 1919 there were 330 homicides. The judges and juries awoke. In 1920, when 11 assassins were executed, the number of homicides fell to 190; in the next year there were 14 executions and 194 homicides, a falling off in two years of 376 homicides. In the third year, 1922, there was but one execution and the murder rate rose to 228. In 1928 there was no execution, and 498 murders. Early in 1929 four assassins received the extreme penalty and the murder rate fell to 401.

Those who contend that the death penalty does not restrain the assassin forget that the predatory murderer is the craftiest and most hardened of all offenders. For him is required a deterrent more powerful than is needed for the ordinary law breaker. Perhaps no more convincing proof can be found than the contrast between Detroit and the two merging cities of Windsor and Sandwich, directly across the river. The Canadians have capital punishment and apply it. During 1928 and 1929 there occurred 485 homicides in Detroit, and not one in Windsor. Boston has had capital punishment for 300 years. The homicide rate in Detroit for 1929 was 18.6 per 100,000; in Boston it was 2.9.

Whether the death penalty lessens crime is forcibly answered by the experiences of our western states during the days of their first organization. Desperadoes ruled California in 1851-52. They stood guard at the voting places and composed the police force. Murder became so common in San Francisco as to excite no interest. At last law-abiding citizens formed companies of 20 men each, arrested the leaders of the desperadoes, tried them one afternoon and hanged four the following morning. They warned all evil characters to quit the city within 24 hours. In two weeks San Francisco was as free from crime as London is today.

In 1890, a large gang of alien criminals ruled by terror the city of New Orleans. The courts seemed unable to convict. For a witness to testify against the gang meant death. In 1891, five were tried for the killing of the chief of police, but no witnesses dared implicate the defendants. In March, 1892, 11 others were in prison awaiting the farce of a trial. A mass meeting of citizens was held and after discussing the intolerable situation they marched to the prison with the

most respected citizens in the lead, and shot the 11 prisoners to death. It was two years before New Orleans saw any more serious crime.

Eight states of the 48 have abolished the death penalty for murder. They are Kansas, Maine, Michigan, Minnesota, North Dakota, Rhode Island, South Dakota and Wisconsin. Each, excepting Michigan, is comparatively sparsely settled, with a homogeneous people. Eight other states abolished capital punishment, but the change was followed by so swift a surge of crime that the scaffold was put up again.

The League for the Abolition of Capital Punishment claims that the homicide rate for the states without capital punishment is lower than those which retain the death penalty. Taking the country at large, that is true, for the eight states without the death penalty are agricultural, with comparatively scattered population. To compare crime breeding conditions in western states, or the quietest of the New England states, like Maine, with densely populated New York, Illinois, Indiana and Ohio is to convey no information at all.

But every state which has abolished the death penalty, except Wisconsin, has adjoining it another state, its exact counterpart in social, economic and racial conditions, where the death penalty exists. Maine, New Hampshire and Vermont are as nearly alike in general character as can be imagined. Maine has a population equal to the other two, but spread over nearly twice their area. In 1927 (last official report) Maine, with no death penalty, showed 15 homicides, New Hampshire and Vermont, with capital punishment, 3 each. In 1928, Portland, Me., had a rate twice as high as her neighbor, Manchester, N. H., with a larger population.

Much is made of the low rate in Kansas, where there is no capital punishment. Nebraska, adjoining on the north, is exactly like Kansas in character of population. The homicide rate in Kansas was reported 6.1; in Nebraska, 3.4. During 1929 there were 81 killings in Kansas and 48 in Nebraska.

From all these facts, I am satisfied that capital punishment in all except the rural states which have settled, homogeneous races, is justifiable. If the execution of 10 willful, deliberate murderers will save the life of one law-abiding citizen, it is justified. As a matter of fact, capital punishment has been practically abolished in most of the states. It is so rarely inflicted as almost to encourage the robber to kill his victim rather than let him live to testify in court. Out of 10,000 homicides committed in 1928, there resulted only 132 executions.

Life imprisonment has not deterred in the United States. It does not mean life imprisonment except in exceptional cases. Norman Hapgood, a few years ago, estimated that the average time spent in a Kansas prison under sentence of life imprisonment was four years. In Michigan it is 12 years, and that probably is a high average for the country. Will any one claim that it is a sufficient deterrent for murder?

It is argued that the State has no right to take life because the death is irrevocable. No one disputes the right of a private individual to kill in defense of his own life or that of his family. The right of a State to take a murderer's life is the same, the right of self-defense exercised in protecting its children. It is objected that innocent men have died on the scaffold. Perhaps so. The question remains; what

is best for the world at large? As a matter of fact, under present conditions, wrongful convictions have become so rare as to justify no argument. Out of the half million who have entered our prisons during the past 10 years, not 10 were later proved innocent.

By enforcing the death penalty, England has almost emptied her prisons of major felons, and almost abolished murder. The scaffold presents an abhorrent sight. The white face of a murdered man being carried into his home presents one many times more terrible. We will have to choose one or the other.

Apropos, also, of the present legislative situation, we add to the foregoing article a reprint of our editorial in the November, 1928, issue of Bar Briefs:

In discussing capital punishment in this State, it is frequently assumed that North Dakota has abolished that punishment in all cases. As the lawyers know, however, this is not true, for the statute (Section 11110a1) says: "Provided, that if a person shall be convicted of murder in the first degree while under such life sentence he may be punished by death."

Should it not be borne in mind, then, that this proviso was put into the law for a purpose? What was that purpose, if it was not protection to the men in charge of the state penitentiary? And if that was the purpose, then we have a right to assume that the members of the legislature believed that the proviso would act as a deterrent to the commission of such crimes within the walls of the penitentiary. Hence, if capital punishment is deemed a deterrent under those circumstances, would it not be a deterrent under ordinary circumstances; in fact, would it not be more of a deterrent to the commission of a first crime than a deterrent to the commission of a second, third or fourth?

The point was well presented at the annual meeting (1928) that so long as the individual is deemed, under the law, to have the right to take life as a matter of self-defense, there is no just ground for denying society the right to take life for the same reason. In other words, it was argued that the taking of life in cases of first degree murder was not by way of punishment, but by way of protecting society against other crimes of a similar nature, by the same individuals or by others.

There is another consideration, however, and this point was not argued at the annual meeting. It is this: If the members of the legislature considered it necessary to protect, by the overhanging threat of capital punishment, the officials and employes of our penitentiary, who are always well armed, and, supposedly, always on guard, should not society exercise the same care in protecting the ordinary citizen, who is prevented from carrying weapons by law, and who is scarcely ever on guard against the criminal?

A DISTINGUISHED GROUP

When the district court of.....county convened Monday, Judge, the venerable jurist, presided, and the attorneys who presented the cases for the consideration of the judge and jury were, and, whose long and distinguished legal service has shed lasting luster upon the county bar.