

MEMORANDUM

CAPITAL PUNISHMENT

Introduction

The purpose of this memorandum is to disclose concisely and by way of some statistics the state of the law relating to capital punishment in New York, the United States, and in other countries, to the end that the Commission, in connection with its task of taking a position on the death penalty, may have at its disposal a brief background statement of some of the relevant statistics and factual observations. There is a wealth of literature on the subject as evidenced by the bibliography which is included.

Some of the Arguments Pro and Con

Pro:

1. The death penalty is the most powerful deterrent of serious crime.
2. It is in the interest of elemental justice--a life for a life.
3. The offender may be a continuing source of danger to society and hence it is best to put him permanently out of the way.
4. The aims of punishment by imprisonment may be frustrated by commutation of sentence or pardon.
5. A person subject to a sentence for life, with no fear of greater punishment, may be emboldened to cause greater harm than originally contemplated--thus, a wrongdoer may be tempted to kill his victim, to remove a witness, or after incarceration, to kill his keeper to effect his escape.
6. Where imprisonment is the highest form of penalty, desperate prisoners constitute not only a danger, but a great strain upon the security and discipline of the prison.
7. Fear of execution is the ^{strongest} ~~shortest~~ incentive to repentance.
8. If capital punishment were abolished, there would be greatly increased incentive and excuse for mob action or lynching.
9. Capital punishment is relatively inexpensive to the state.
10. In the pleas for abolition, little is heard of rights or claims of the victim of the original wrong.

11. Sometimes, where capital punishment is rigorously applied, there is a notable reduction in the number of murders.
12. Some states, that had abolished the death penalty, restored it in consequence of the increase in the number of murders.
13. Capital punishment need not be regarded as a retaliatory measure, but simply as notice to a potential murderer of the consequence of his act.
14. The rights of society, including its safety and protection, take precedence over all other considerations.

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Con:

1. Capital punishment represents nothing more than the survival of lex talionis--an eye for an eye--a conception which society is discarding.
2. Society has no right to take a life.
3. The death sentence, once executed, is beyond recall; if there has been error, there is no possibility of rectification. From time to time, there is a brooding doubt in a community regarding the actual guilt of a person executed. In certain retrials, persons originally convicted and sentenced to death have been found not guilty.
4. Legal executions have a general brutalizing effect upon the community.
5. Capital punishment may permit insufficient opportunity for repentance.
6. There is no adequate evidence to prove that capital punishment serves as a deterrent.
7. Those who have taken life are not necessarily hardened or hopeless offenders. Indeed, in some prisons, the majority, perhaps 90 per cent, of those convicted of murder in the first degree have had no previous prison record.
8. There is no indication of an increase in the number of criminal homicides in states which have abolished capital punishment. There appears to be little connection between homicide rates and capital punishment. Some abolitionist states have fewer criminal homicides than comparable death penalty states.
9. There has been no increase in the number of lynchings in abolitionist states.
10. The offender may be mentally incapacitated, in which case capital punishment is concededly inappropriate.
11. Capital punishment, as a means of punishment, is ineffective and useless because of general aversion to it in many quarters: (a) juries will often not convict; (b) if they convict, it is often with the hope or expectation that the