CAPITAL PUNISHMENT

Does It Prevent Crime? ... by Fred J. Cook

CAPITAL punishment today faces fierce attack in many areas of the world in which the atom has posed a new threat and placed a new premium on human life. In England, an especially vigorous campaign seems destined soon to put a term to the ancient dictum that the scales of justice demand a life for a life. In Canada and in many sections of the United States, notably in New York and California, controversial cases illustrating the ease with which the innocent may be convicted have stirred the public and called for sober reflection on the appalling finality of execution.

The time seems propitious, as it has not been since the days before World War I, to subject the issue to the scrutiny of man's highest intelligence and the judgment of his conscience.

Public opinion on capital punishment in America has lagged far behind that in many other democracies in the world. In Western Europe, among all the democracies that are our friends, only two—France and England—still impose the death penalty. And in England, the House of Commons already has passed a bill calling for legislation either to abolish capital punishment immediately or to suspend it for an experimental period.

The case for capital punishment rests upon just one contention—that the threat of death, horrible and irrevocable, serves as a deterrent to the commission of heinous crimes like rape, murder and treason. Hardly anyone today will argue that execution is justified as retribution. We acknowledge this subconsciously by the emphasis we place upon finding more humane ways to accomplish it. Hanging has been replaced by electrocution, electrocution in some cases by the supposedly “more humane” gas chamber. If it is basically right to punish by killing, why this effort to make the punishment as painless as possible? No, our whole revulsion at the process, our efforts to ameliorate its horrors, are symptoms of a deep-seated guilt. But, we console ourselves, capital punishment is necessary; otherwise, many more murders would be committed.

In England, the Royal Commission on Capital Punishment made a global survey of the subject and concluded that there is no clear evidence that the abolition of capital punishment has led to an increase in homicides or that the reintroduction of the death penalty has led to a fall. In other words, it could find nothing to indicate that the threat of execution deters the murderer.

The Royal Commission had to reckon with many complex factors in its study. It found that statistics are compiled on different bases in different countries; that racial and environmental factors make comparisons uncertain; that frequently, even when capital punishment is retained on the statute books, it is so rarely used that its influence as a deterrent must be considered negligible. Nevertheless the commission found in Australia and in this country certain states, located side by side, some with the death penalty and others without, that provide a firm basis for comparison. It cited specifically the experience of Queensland and New South Wales in Australia and of North Dakota, South Dakota and Nebraska in the United States as showing that the murder rate does not vary with the degree of potential punishment awaiting the offender.

Statistics compiled annually by the Federal Bureau of Investigation lead to the same conclusion. Just six states have abolished capital punishment, all prior to World War I. The wave of gangsterism that accompanied Prohibition in the immediate postwar era led to a public outcry for severity in punishment, and the campaign against the death penalty was halted, never since revived in its old fervor. It follows, therefore, that the experiences of the six “abolition” states are now all of long duration and that their homicide rates must by now reflect—if they ever are to reflect—the predicted dire effects arising from the abandonment of executions. Let us look, then, at the homicide statistics for Maine, Rhode Island, Michigan, Wisconsin, Minnesota and North Dakota—all states without the death penalty—as compared with some of their capital-punishment neighbors.

In New England, according to the FBI’s Uniform Crime Report (containing the urban murder rate in each state per 100,000 population), the Maine rate has been high, but Rhode Island, another abolition
state, has been consistently among the lowest. In 1953, for example, Maine’s homicide rate of 1.8 compared with an all-New England average of 1.4, and in 1954, its 2.4 was double the New England average of 1.2. But in the same years Rhode Island had an almost negligible rate: in 1953, its .4 rate compared with 1.8 in neighboring Connecticut, a death-penalty state; in 1954, Rhode Island’s .9 was well below Connecticut’s 1.4.

Similarly, in the Midwest, the states without the death penalty—Michigan, Minnesota and Wisconsin—consistently out-perform the roughly comparable death-penalty states of Illinois, Indiana and Ohio. In 1954, this was the box score: Michigan, 4.5; Minnesota, 5; Wisconsin, 1.1. By contrast, Illinois had 54; Indiana, 3.5, and Ohio, 3.8. In the same year, the last for which full statistics are available, North Dakota (without the death penalty) showed no homicide rate at all, while neighboring South Dakota had 1.4 and Nebraska 2.6.

If one may credit statistics, such figures are truly startling. They indicate that most of the states having no capital punishment actually boast lower homicide rates than comparable states retaining the death penalty. Wisconsin, which abolished capital punishment in 1854, consistently shows one of the lowest homicide rates in the nation. Michigan, which ended executions in 1847, has a far higher rate, but one still lower than in a comparable adjacent state, Illinois. Minnesota wiped out the death penalty in 1911 and has remained among the nation’s best-behaved; and North Dakota, which

### Condemned Row

The Nation telegraphed wardens of state prisons in all states retaining the death penalty, requesting the name, age and race of all prisoners in their custody under sentence of death, together with the date of execution. Replies received are here set forth. States not represented either have no executions pending or, because of institutional regulations, could not furnish the information.

Abbreviations used in the listing: W (white), N (Negro), Ind. (Indian), Fil. (Filipino), stay (of execution, usually at governor’s order), app (on appeal). The name of the prisoner, his age, race and the scheduled date of his execution are given in that order.

**Alabama**
- William Flakes 30 N May 11
- Joseph Sidney 22 N no date
- Jeremiah Reeves 26 N app.
- Edward Rodgers 42 N app.
- Willie Hawkins 30 N app.
- R. Smitherman 23 N March 30
- Melvin Jackson 19 N app.

**California**
- Robert O. Pierce 27 N April 6
- Smith E. Jordan 27 N April 6
- M. T. Cavanaugh 32 W April 13
- Henry Thomas 34 N stay
- Rayna T. Carmen 44 Ind. stay
- John Allen 35 W stay
- L. Franklin Smith 35 W stay
- Caryl Chessman 35 W stay
- H., C. Simpson 61 W stay
- William F. Rupp 22 W stay
- Eugene Burwell 32 N stay
- James A. Rogers 27 W stay
- B. F. Cavoatto 49 Fil. app.
- James Merkouriis 38 W app.
- Oscar H. Brust 47 W app.

**Connecticut**
- Earl C. Green, Jr. 39 W app.
- E. A. Morlock 26 Ind. app.
- Wilbert P. Friend 45 W app.
- V. E. Richardson 42 W app.
- J. R. Crooker, Jr. 24 W app.
- Burton W. Abbott 28 W app.
- Billy Gene Morse 24 W app.
- John H. Davis 41 W app.
- Richard G. Riser 30 W app.

**District of Columbia**
- Willis Lee Stewart 32 N no date
- Everett D. Green 65 W April 27
- Robert E. Carter 27 N no date
- A. R. Mallory 20 N no date
- C. E. Watson, Jr. 22 N no date

**Florida**
- M. D. Phillips 22 W no date
- Edgar J. Lavoie 54 W no date
- Fred Kimmes 29 N no date
- C. Copeland, Jr. 24 N no date
- Roosevelt Rhone 33 N no date
- Moses Dunmore 20 N no date
- Robert L. Colson 25 N no date

**Indiana**
- Emerson J. Flowers 44 W June 7
- Leslie Irvin 32 W June 12

**Maryland**
- Robert Jackson 22 N no date

**Massachusetts**
- Dominick L. Bonomi 34 W stay
- H. P. Arsenault 29 W stay
- Russell P. LeBlanc 26 W stay
- Arthur Develin 31 W stay
- Kenneth R. Chapin 20 W stay

**Nebraska**
- F. C. Grandisenger 23 Ind. March 30

**New Jersey**
- Joseph Grillo 28 W no date
- Silvio De Vita 23 W no date

**North Carolina**
- Del Adams 48 W April 20
- R. S. Connor 30 N app.

**Ohio**
- Alphonso Cosby 46 N Ind. stay
- Bernard Schreiber 18 W March 15
- Walter Wilson 29 N Ind. stay
- Samuel Tannyhill 26 W May 15
- Joseph Allen 60 N Ind. stay
- Earl Sullivan 32 W June 15

**Oklahoma**
- Robert Hendricks 44 W May 3
- Otto A. Loei 45 W app.

**Oregon**
- Jensen 27 W app.

**Pennsylvania**
- William Cole 28 N April 16
- David Darcy 31 W stay
- Harold Foster 31 W April 9
- Harry Gessard 40 W March 22
- Harry Wetz 27 W April 9

**South Carolina**
- Raymond Fuller 30 N app.
- James E. Smith 34 N app.
- Harold Byrd 23 N app.
- John T. Clarkscales 21 N app.
- Hamp Jones, Jr. 31 N stay

**Tennessee**
- Carl Hill 41 N app.

**Texas**
- Lonnie Brinkley 65 W March 6
- T. Lee Walker 21 N March 28
- M. W. Ellisor 33 W no date

**Utah**
- Paul B. St. Clair 58 W no date
- Vern A. Brahat 28 W no date
- Melvin L. Sullivan 26 W no date

**Wyoming**
- Ernest L. Lindsay 23 W April 2
- Clay Riggel 55 W app.
voided capital punishment in 1915, rates far better than its nearly identical neighbors, South Dakota and Nebraska. The result of this long experience, ranging from more than forty years to over a century, tempts one to conclude that abolition of the death penalty may actually reduce rather than encourage murder.

The experience of our American states in this regard is not unique; the same astonishing reverse reaction has been noted elsewhere in the world. Since 1921, when Sweden abolished capital punishment, its homicide rate has dropped. In England the death penalty was suspended for seven months from April 16 to November 18, 1948. The Royal Commission later examined crime statistics for this period and found that murders averaged about eleven a month. But in December, the month after capital punishment had been resumed, the number of murders leaped to twenty-five.

Is this mere coincidence or is there some relationship between the abolishment of capital punishment and the actual decline of murder? We cannot possibly know. The evidence is too scattered and too sketchy. But the mere fact that this trend has been observed in unrelated areas of the world lends point to the reminder that petty thieves are no longer hanged as they were in the early 1800's. Where thievery was concerned, at least, society found that the death penalty was no deterrent; pickpockets often made a gala event of a hanging, lifting purses in the very shadow of the scaffold.

In this connection, modern psychiatry suggests that there is, in capital punishment, a glorification of the villain and his deed. The highwayman who went to the gallows at Tyburn, for example, strutted across the world of his day a more dramatic figure in his moment of extremity than the lords and ladies of English society. In our own time, we have been treated often to the fantastic spectacle of the innocent voluntarily confessing to murder, putting their own lives in jeopardy for a moment in the spotlight. The Black Dahlia murders in California, to cite just one example, produced a swarming legion eager to confess to hideous crimes with which they could have had no possible connection. Such exhibitions suggest that capital punishment dramatizes the man doing battle for his life and so, psychologically, may actually be a stimulus to murder.

Be that as it may, it would seem that the minimum deduction to be drawn from homicide-rate statistics is this: capital punishment cannot be justified on its cardinal premise—that it serves as a deterrent. And so we are compelled to ask ourselves: If the case for capital punishment cannot be established, what is the case against it?

The first and perhaps most compelling argument against capital punishment is simply this: justice is not perfect. It does make mistakes. The innocent are convicted. And in murder cases, as long as capital punishment is tolerated, there is always the shocking possibility that the innocent may be doomed to death. In fact, the current crusade against capital punishment in England received its initial impetus from just such a miscarriage of justice.

In 1950, a simple-minded man named Timothy Evans was arrested on a charge that he had murdered his wife and child. Under long questioning, he confessed. Later he repudiated this confession, but he was tried and convicted. A major witness against him was a meek-mannered little man who lived downstairs in the same house, John R. Christie. Some time after Timothy Evans had been executed, police found the remains of six bodies in the house in which Evans and Christie had lived. Christie was arrested and quickly became infamous as "the strangler of Notting Hill." He confessed that he had killed at least seven women and that one of his victims had been Mrs. Evans. An examination of the bodies showed that all of the victims had been strangled in an identical manner—the same manner in which Mrs. Evans and her baby had been killed. The conclusion seemed inescapable that Evans, utterly innocent, had been murdered in the name of justice for the crime of another man.

BUT, you say, this is an isolated case of a kind which occurs so rarely that there is no validity in using it as an argument against capital punishment. Actually, such injustices occur much more frequently than we like to acknowledge. Evidence is tricky. Facts are sometimes two-sided, depending wholly on the right interpretation. In the Queens County suburbs of New York City, for instance, Paul A. Pfeffer was convicted of second-degree murder in 1953 slaying of navy sailor Edward S. Bates. The state's case envisioned Pfeffer, a man with a violent temper, leaping through the window beside the driver's seat in Bates's parked car and bludgeoning Bates to death. Pfeffer confessed, but later repudiated his confession. The jury convicted him on the basis of his confession, ignoring evidence that the window through which Pfeffer supposedly leaped was run all the way up—and was unshattered—when the body was found. Later, mass-murderer John Francis Roche confessed that he, not Pfeffer, had bludgeoned Bates to death in a §6 robbery. Pfeffer, temporarily freed, has since been convicted of other crimes, but there seems little room for doubt that he was jailed originally—and narrowly escaped the chair—for a crime he did not commit.

In a similar case in California, Ernest Woodmansee, a member of the Sailor's Union of the Pacific, was sentenced to life imprisonment six years ago for the murder of a special police officer in San Francisco. The major evidence against him was that of a self-confessed participant in the slaying who turned state's evidence. Woodmansee insisted upon his innocence, and his union, aided by Erle Stanley Gardner, the lawyer and noted detective-story writer, backed him up. In time, the credibility of the key witness against Woodmansee was undermined; the murder weapon was found in the possession of the witness' sister; and Governor Goodwin J. Knight granted Woodmansee his freedom, on parole, with the
prospect that he later may be granted a full pardon.

The list of similar cases is virtually endless. Canada recently was shaken by the execution of Wilbert Coffin, convicted of murdering three American hunters in the wilds of Quebec. Coffin went to his death calling on God to witness that "I am innocent" and charging that evidence concerning the presence of other persons in a jeep near the murder scene was withheld during his trial. The controversial case led the Toronto Daily Star to attack editorially the entire concept of capital punishment.

Still another California case—that of Burton W. Abbott, twenty-eight, a University of California accounting student now awaiting execution for the kidnap-murder of young Stephanie Bryan—is now, like the Coffin case, stirring up the gales of controversy. The foreman of the jury that convicted Abbott said afterwards: "I have no more compunction stepping on him than I would stepping on the head of a rattlesnake." Yet Abbott wasn't convicted until the trial jury had deliberated for seven days, and even then two jurors, on different ballots, voted against conviction.

The Coffin and Abbott cases illustrate the uncertainty that often overshadows the most irrevocable judgment that can be pronounced upon man. Taken in conjunction with the demonstrable flaws in the Evans, the Woodmansee and the Pfeffer trials, such cases are a graphic indictment of the dangers implicit in capital punishment. The scope and seriousness of the issue of the wrong verdict, especially when life is at stake, was pointed up forcefully many years ago by Edwin M. Borchard, professor of law at Yale University, in a book provocatively entitled: Convicting the Innocent. Borchard tells in his book the case histories of sixty-five persons who had been convicted of crimes they did not commit:

SUCH statistical evidence led the House of Representatives Committee of the District of Columbia in the Sixty-ninth Congress to recommend a bill abolishing the death penalty in Washington. The bill failed, but the committee's comments are still valid and pertinent. The death penalty, the committee found, was "an arbitrary discrimina-

tion against an occasional victim." It added:

Almost any criminal with wealth or influence can escape it, but the poor and friendless convict, without means or power to fight his case from court to court or to exert pressure upon the pardoning executive, is the one singled out as a sacrifice to what is little more than a tradition.

The issue of capital punishment, then, resolves itself into this simple equation: on the affirmative side there is no evidence, no single incontestable fact, to show that capital punishment serves any social purpose. On the negative side it can hardly be disputed that it is barbarous; that it does sometimes result in the state-sanctioned murder of the innocent; and that it is undemocratic, since almost invariably only the poor and helpless pay the supreme penalty.

THIS should be enough, it would seem, to convince anyone that, where the death penalty is concerned, we are still thinking in the terms of primitive man. But even this is not the whole story. One other vital element remains to be considered and I know of no better way to illustrate it than to tell a personal experience.

As a young reporter, the first murder case I ever covered involved a typically brutal gangland slaying. A man's life had been bought and delivered for $50. The triggerman in that killing was a youth not yet twenty, and when the jury convicted him it recommended mercy—life imprisonment.

To me, the evidence had been complete and convincing; the half-admissions of the defense had been even more damaging than the evidence of the prosecution. Had anyone asked me, I would have said that, if the death penalty is ever justified, it would have been justified in this case.

Then came World War II—and with it a totally unexpected sequel.

It was a war that was fought not only on the battlefields, but in the research and medical laboratories at home. One of the major medical projects involved the search for drugs to protect our troops from disease in the jungles of the South Pacific. Time was of the essence; human guinea pigs were needed; and so volunteers willing to risk their
lives in the cause of medical research were sought in our prisons.

One of the most eager and heroic of these volunteers turned out to be the young triggerman in that $50 slaying. Time and again he courted death, allowing himself to be injected with deadly germs to test the efficacy of the drugs that had been developed. He was wracked by high fevers, his athletic body was wasted to a shadow of itself—and yet no sooner had one experiment ended than he volunteered for another.

His courage and his selflessness made an indelible impression on the minds of his wardens; and when peace came, they saw to it that he won parole and was released from prison. Ever since, the record shows, he has led an honorable life.

Admittedly, this is only one case. I would be the first to acknowledge that the percentage of murderers who may safely be redeemed and be trusted to lead useful lives—a program that Maine is now trying out—is probably very small. Still, that small percentage is infinitely precious; it represents the highest triumph, the salvaging of the completely lost; and so the opportunity to win it is well worth preserving. But you cannot save, you cannot redeem when capital punishment puts an abrupt period to human life.

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THREE-STORY UNIVERSE
Lutheran Heresy Trial . . by David A. Runge

Milwaukee, Wisconsin

WHO IS Jesus Christ? Must a true follower of Christ believe, as the literalists insist, that He was actually born of a virgin? Did He rise bodily from the grave, or was it just a spirit that His disciples saw?

Questions like these, which have bothered Christians for ages, were brought to the fore by Milwaukee’s heresy trials.

The trials are over, with two of the three young pastors involved officially unturtled. The dispute goes on, however, and is not likely to be settled soon. Basically it involves the question of a fundamentalist versus modernist interpretation of the Bible. The trials merely heaped new faggots on this long-burning issue in Christendom.

Defendants at the trials were three Lutheran ministers, pastors of Milwaukee suburban churches. Each was tried by a separate jury of the Northwestern synod of the United Lutheran Church in America (ULCA).

The Reverend George P. Crist, Jr., thirty-one, was found guilty on nine of fourteen charges preferred against him by a special investigating committee, including charges that he denied Jesus was born of a virgin, that His body was physically resurrected from the grave, that His body was physically present in holy communion, or that He really performed many of the miracles ascribed to Him by the Bible. Suspended from his post, Mr. Crist demitted his nomination papers and left the Lutheran ministry to become research assistant at the University of Iowa. He preaches Sundays in a Congregational church.

The Reverend Victor K. Wrigley, thirty-six, was convicted on five of six counts of heresy almost identical with those against Mr. Crist. He also was suspended but his congregation defied the order and asked him to continue as pastor. The synod has given the congregation until April 26 to reconsider. Members of Mr. Wrigley’s church say that the synod may oust them but that they will never leave the synod voluntarily.

The Reverend John H. Gerberding, thirty-four, was acquitted but resigned his pastorate and has gone into weekly newspaper work at Lancaster, Wisconsin. He is free to accept a call from another congregation.

The TRIALS got widespread attention. Dr. Franklin Clark Fry, president of the ULCA, declared recently in a “secret” letter to 4,500 pastors that nothing so sensational had ever happened to the Lutheran organization. Dr. Fry, one of America’s most prominent Protestant clergymen, is chairman of the central committee of the World Council of Churches.

How did the heresy charges begin? Dr. Paul E. Bishop, Minneapolis, president of the Northwest synod, reported that for at least two years preceding the institution of formal charges, other pastors were expressing concern at certain “disturbing” doctrinal presentations by the three young men. In October, 1954, the trio were instructors at a Sunday School institute. After it, Dr. Bishop said that reports reached him of additional disturbing statements by the defendants, such as: “It is misleading to teach children to sing ‘Jesus Loves Me,’ for Jesus loved only the people whom he knew”; “Intercessory prayers are unnecessary”; “Instead of teaching people to be loyal to the church we should teach them to love their neighbors”; “One can’t take miracles as being true because many things were added to make them interesting.” In January, 1955, a member of Mr. Crist’s church complained to synod officials that the pastor’s sermons “bordered on the Unitarian. I believe that he has stepped far out of bounds from the vows he must have made . . .”

Dr. Bishop ordered an official investigation in February, 1955. Charges were filed during succeeding months accusing the pastors of “holding, preaching and teaching doctrine in conflict” with the Lutheran faith, and contrary to the constitution of the Northwest synod. The trials were held in Milwaukee between July and November. Mr. Crist and Mr. Wrigley were unfrocked at a special meeting of the synod in Minneapolis on January 26.

Throughout their hearings, the