

The Death Penalty in Oklahoma

GILBERT GEIS, University of Oklahoma, Norman

Capital punishment furnishes an example of the findings of empirical social science proving relatively unable to counteract emotionally-based popular thought in influencing public policy. For many years now, criminologists have been pointing out that the death penalty is not a deterrent to homicide, is irreparable in case of a judicial mistake, and is contrary to all Christian principles. They have demonstrated convincingly that of the large number of offenders who might be punished by death only a few are actually selected for execution, and these few almost invariably tend to be concentrated among the males, the Negroes, and the indigent.

The effect of these findings and opinions on policy has been, at best, erratic. At times, States have abolished capital punishment for longer or shorter periods, only to reinstate it in the face of subsequent public outbursts against a violator who could not be legally killed for his crime. Today, only six States, concentrated in the midwest and New England, do not have the death penalty, though executions have dropped somewhat with the passage of time, from the annual average of 150 during the 1930-1950 span to an all-time low of 62 in 1953.

Oklahoma has, apparently, been by-passed by most of the controversy on the merits and drawbacks of capital punishment. The writer did not see a single mention of this problem during the recent public excitement over the drawn-out DeWolfe case, though capital punishment itself was the most basic issue involved, and the motivating force in the widespread interest accorded the case. Had DeWolfe been sentenced to life imprisonment, appellate processes could have functioned with considerably less spectacle, and the pardon and parole board could have done its duty without, to quote its head, the "demagoguery" that was employed in the attempts to sway its decision.

In Oklahoma, except for an orgy of executions in 1933, there has been, otherwise, a steady, if relatively low, execution rate since Statehood.

THE LAW

Three crimes may be punished by death in Oklahoma: Murder, invariably first degree (that is, premeditated with malice aforethought), rape, and armed robbery. Murder is always a capital offense in American jurisdictions having the death penalty; rape is a capital crime in 17 of the United States, all southern or border, where the act proscribed is almost universally miscegenous rape of a white woman by a Negro male rather than any other type. Armed robbery, which was added to the Oklahoma statutes in April, 1925 primarily through pressure from business firms, and especially banks, is a capital crime in seven other states.

The Oklahoma appellate courts have generally been rather liberal in granting remissions from the severest penalties permitted by law when juries occasionally inflict them for armed robbery. In one case, for instance, the jury pronounced death for an armed robbery conviction, but the higher court ruled that this was too harsh a sentence for a "youthful offender" when no personal injury had resulted from the robbery. It ordered the sentence reduced to fifteen years in the State Penitentiary (2).

In practice, murder is the primary crime leading to execution in Oklahoma. Of the 73 offenders electrocuted by the State, 64 were executed for murder, five on rape offenses, and four, all in the summer of 1933, were electrocuted for armed robbery.

METHOD OF EXECUTION

Prior to 1913, the various counties in Oklahoma arranged for the execution of their own prisoners. Hanging was the method used by the counties, though, from semi-official statistics, more prisoners were lynched than hanged. Bye (1) records 57 lynchings in Oklahoma during the period from 1891 through 1915, all of Negroes, a figure considerably higher than the total of seven legal executions, though rather slim in comparison to the sum of 346 lynchings in Mississippi during the same period.

In 1913, the Legislature provided for all Oklahoma offenders sentenced to death to be electrocuted at McAlester, within the prison walls. A number of official requirements for electrocution were set, and several prohibitions were placed on the books. No person who became psychotic, for instance, between sentencing and the infliction of the death penalty, could be killed by the State, at least, until he recovered his sanity, nor could pregnant women be electrocuted until the termination of their pregnancy. The State installed the present electric chair in 1915, tested it for the first time on a calf, and then put it into official use on December 10th of that year to kill Henry Bookman, a Negro from McIntosh County.

In 1951, the Oklahoma legislature, after a strong emotional appeal which stressed the damage that electrocution may do to the body by burning, voted to substitute lethal gas (the present execution method used in eight states) for the electric chair (currently in use in 23 states). No funds were provided, however, and the subject was never brought up during the 1953 legislative session.

The decision for lethal gas is rather difficult to understand. No one has yet been able to convince most doomed men in the airtight lethal gas chamber to inhale the potassium cyanide fumes in a big gulp, so that the process of asphyxiation often becomes a drawn-out, gagging, and highly-unpleasant business. In addition, the problem of eliminating the gas from the prison is one of considerable complexity.

Actually, from a "humane" standpoint, the British Commission on Capital Punishment (8) reported after an intensive investigation that hanging, if it is done correctly, is the most "humane" method of capital punishment. The Commission further noted that intravenous injections offered a possibility for more efficient and effective capital punishment.

THE OFFENDERS

No woman has ever been executed in Oklahoma, though women have often been convicted on murder charges. Seventy-three men have been electrocuted. A 74th person, Arthur Gooch, was hanged at McAlester in June, 1936, the first individual to be executed under the Lindbergh kidnaping law. At that time, all federal prisoners were hanged; now they are executed in the same manner the State provides for its violators.

No consistent pattern or trend emerges from a grouping of the yearly execution totals into five-year brackets. These figures follow:

1915-1920— 9	1940-1944— 6
1920-1924— 8	1945-1949— 7
1925-1929— 5	1950-1953— 4 (4 years)
1930-1934—25	—
1935-1939—10	Total 74

The sudden, precipitous rise during the dust-bowl depression period of 1930 through, at least the middle of the decade appears to have some causal connections. Perhaps, the high rise in the execution rate could bear witness for the psychological formula of frustration and insecurity erupting into aggression.

Racially, the 74 persons killed by the State since 1915 divide into 47 Caucasoids or whites, 25 Negroids, and two Indians (Mongoloids). The first seven persons executed by the State, between 1915 and 1918, were all Negro. The Negro homicide rate is generally considerably higher than that of the white, but, considering the relatively small number of Negroes in Oklahoma (less than 8 per cent in 1950), their representation among executions is rather high.

CONCLUSIONS AND RECOMMENDATIONS

Capital punishment solves no problems. It does not restore the victim to life, nor does it deter another murderer from committing another crime of a similar nature. During the years that Kansas eliminated the death penalty, to cite one example, its homicide rate remained, as it always had been, somewhat below that of Oklahoma (4). The same relationship holds true in homicide rates among neighboring states whether or not they have provisions for capital punishment in their statutes.

Most penologists, and a large majority of prison administrators who have had to arrange and to witness innumerable executions are unalterably opposed to the death penalty: the late Lewis E. Lawes of Sing Sing, Clinton Duffy of San Quentin, and Florence Monahan, head of the California women's prison system, can be cited as a few individuals in this category. It is generally felt by such persons that killing an offender is a retaliatory vengeance pattern that has no place in a civilized society.

The aims of modern penal policy are first, to protect society, and second, to attempt to rehabilitate the offender. The second function is shunted by capital punishment. As modern psychiatric knowledge expands, it is becoming clearer that many murderers, under good treatment, will readily become capable of uninvolved social adjustment, either outside or inside the prison.

The inequality of capital punishment appears to represent an outstanding objection. Often the difference between the electric chair and a brief stay at the mental hospital for treatment to relieve "temporary insanity" is the difference between one's ability to afford good lawyers and good psychiatrists. The outmoded McNaghten concept of criminal responsibility, as defined by one's ability to distinguish verbally right from wrong, has only aggravated the injustice that is often associated with the death penalty.

At the minimum level in Oklahoma, it is believed, both armed robbery and rape should be deleted from the list of capital offenses. While the death penalty is but infrequently applied for these crimes, the possibility of an offender being caught in its net is too dangerous to permit the legal stipulations to gather dust in the file of operative law.

Finally, it would be in keeping with scientific evidence were the State to abolish capital punishment altogether, with the single exception, as is the case of Rhode Island, of allowing the execution of prisoners killing a guard during an escape attempt in order to deter prison riots by "lifers" with nothing to lose.

LITERATURE CITED

1. BYE, RAYMOND T. 1919. Capital punishment in the United States. Philadelphia: Committee on Philanthropic Labor: 56, 65.
2. COLE V. STATE, 48 Okla. Cr. 220 291 P. 141.
3. ROYAL COMMISSION ON CAPITAL PUNISHMENT. 1949-1953. London: Her Majesty's Stationery Office: 246-261.
4. SCHUESSLER, KARL F. 1952. The deterrent influence of the death penalty. Ann. Am. Acad. Pol. Soc. Sci. 284 (Nov.):54-62.