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LEGISLATIVE NOTE

A BILL TO ABOLISH CAPITAL PUNISHMENT IN PENNSYLVANIA

By

HON. FRANCIS WORLEY*

House Bill No. 1680 of the 1955 Regular Session of the Pennsylvania General Assembly was sponsored and introduced by the writer, and it provides, exclusive of the title and the enacting clause, as follows:

"Section I On and after the passage of this act it shall be unlawful for any court judge, jury body or person to impose a sentence under which any person is to suffer death by electrocution, hanging or any other means.

"Section 2 Where any statute now provides that a death sentence shall be imposed the court shall impose a life sentence in lieu thereof"

This bill was introduced on July 11, 1955, and referred to the Committee on Judiciary of the House of Representatives on July 12, 1955. The writer has also introduced another bill, House Bill No. 134, to abolish capital punishment at the 1953 Regular Session of the Pennsylvania General Assembly; and as the Vice Chairman of the Criminal Law Revision Committee of the Joint State Government Commission, the writer also worked against and voted against capital punishment at revision committee meetings. This Criminal Law Revision Committee was created by the writer's Resolution No. 11, Serial No. 15, of the 1945 Regular Session of the Pennsylvania General Assembly and which committee functioned during the Administrations of former Governors Martin and Duff.

Murder in the first degree is the only crime for which the death penalty can be imposed under Pennsylvania Law,¹ and in first degree murder the jury shall determine whether the death penalty or life imprisonment shall be imposed.² The Act of June 19, 1913, substituted electrocution in place of hanging in the execution of the death penalty.³ When hanging was used, Pennsylvania frequently had executions in public, an example of which, was the hanging of Benjamin Stewart in Market Square of Harrisburg in February, 1824. This scene was like a county fair, and it offended public decency to the extent that executions were thereafter performed away from the general public. It is of interest

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¹ PA. STAT. ANN. tit. 18, § 4701 (Purdon 1955).

² Act of May 14, 1925, P. L. 759.

³ PA. STAT. ANN. tit. 19, § 1121 (Purdon 1955).

to note here that the Pennsylvania Legislature in 1793 appointed a committee to consider the abolition of the death penalty for murder, and they strongly doubted whether in any case capital punishment should be resorted to in the state. William Bradford, then Attorney General of Pennsylvania, expressed the opinion that death as a punishment should have no place in our jurisprudence.⁴ P. N. Osborne, Chaplain of Pennsylvania's Rockview Penitentiary, stated the following:

"As Chaplain of Rockview Penitentiary, I have the painful duty of witnessing some of the executions that take place here To me capital punishment has come to be a crime of the first magnitude I shall be pleased to join any movement and assist in any way to cause capital punishment to become in our beloved State of Pennsylvania an unatoned-for mistake in her annals of jurisprudence."⁵

The writer has given the subject of capital punishment much thought, and he has no hesitation in saying that he does not regard the death penalty as essential to the security and well-being of our Commonwealth and our citizens; on the contrary, he believes its total abolition, and the greater certainty of conviction which would follow, would tend to lessen rather than to increase the crimes it is intended to prevent.

It is murder, not the murderer, that is the real problem. We cannot by killing one human being bring back to life the human being he killed, but we can do something practical toward preventing murder by more effective enforcement of the Fire-arms Laws, Drug Laws, etc. Let us put the cart behind the horse where it belongs. Let us prevent the killing in the first instance.

The writer is opposed to capital punishment because it is contrary to the Divine Law of love. He holds that there is some inner light of good in every person and that even the most degraded can be salvaged by love and faith, wisdom and compassion. People are not made good by force, but by love. In years to come the people will look back to the day when capital punishment was believed in, just as we regard the days when people believed in the burning of witches. The application of the death penalty is brutalizing and degrading to the public mind. It leaves no room for the reformation of character, which should be the principal aim of Criminal Law, nor for the revision of the sentence in the event of miscarriages of justice. Because execution of the death penalty is irrevocable and human judgment not infallible, innocent people have been put to death. Whether or not we are sitting on a jury in this Commonwealth which hands in the verdict of death, we must admit some share in the sentence since we, the citizens of this Commonwealth, have not elected enough members to the Pennsylvania Legislature who will actively support the abolition of capital punishment.

⁴ HARVEY, WHY CAPITAL PUNISHMENT? (1929).

⁵ HARVEY, *op. cit. supra* note 4.

It was Thomas Mott Osborne who asserted that of thirty-nine men who were executed during the two years that he was Warden of Sing Sing, he was sure at least four were innocent. For every such case that happens to reach the light of day, how many poor, friendless mortals have been put to death legally with motives undiscovered? While alive, the convicted innocent person has hope, but after his death there is not usually enough incentive among his friends to agitate for further investigation. Warden Lawes of Sing Sing stated that judges and juries erred in thirteen per cent of original commitments for murder in the first degree.⁶

Let us now look at how horrible these mistakes can be. For instance you might have sat on the jury in Boston which convicted Cero Gangi of murder in November, 1927. It was a case where a young, innocent Italian was doomed to die by twelve men—as responsible and as honest as you—for a crime which he did not commit. Cero Gangi was walking with his employer, Samuel Gallo, in the north end of Boston when a man in front of them, one Joseph Fantasia, was shot and killed. Running in terror from the scene of the crime, Cero lost his hat and it was chiefly on the evidence of a witness who had seen him “drop something”, that he was convicted. Sentenced to die in the electric chair during the week of November 4, 1928, Cero was within four hours of death when the chance discovery of a missing witness by his brother, Cosimo, resulted in a reprieve. The testimony of this witness proved without a doubt that it was not Cero but his employer, Samuel Gallo, who had fired the shot. Although there was no evidence of Cero’s implication in the crime, it was not until a year and a half later, in September, 1930, that he was officially exonerated and set free. Four brief hours had stood between Cero Gangi and death. Only the last-minute effort of Cosimo averted a horrible and irreparable mistake. Ask yourself what you would have felt had Cosimo not been in time and the discovery had come four hours later. You would have killed an innocent man—more brutally, more deliberately than the most cold-blooded murderer.

In conclusion may I suggest that it is up to us, the living citizens of Pennsylvania, to end this law which we permit to function. It is not only a relic of barbarism but costly to the taxpayers, unjust in its application and a failure as a deterrent. The death penalty has no place in modern civilization. It is a reproach to every thinking American.

⁶ HARVEY, *op. cit. supra* note 4.

