

First Question
Investigation
Abstract

The Death Penalty

By Dr. Gennat, Prison Director, Hamburg.

Germany is a confederation of 25 states each of which lives its own life either under its own laws or those imposed upon it by the empire. In the matter of justice each has almost complete sovereignty, the supreme court of the empire excepted each has its own independent tribunals. It must be remembered that the empire has existed only since 1871 while the statistics with which we are concerned go back to 1859.. For these reasons I limit myself to Hamburg, with a population of 977,744, and to the period during which I have acted as prison director, that is 17 years.

The death penalty cannot be decreed in the code of any of the states, it is exclusively in the domain of the laws of the empire. The crimes punishable by death are assassination, the attempt to assassinate the emperor, or the head of any of the confederated states, the intentional use of explosives if followed by death and the accused could have foreseen this result; causing the death of any person in an expedition for the capturing of slaves.

The number of crimes which entail the death penalty has not decreased. In a general way it may be said that in Hamburg only assassination may be taken into account here. Since 1899 the sentence of death has been pronounced against eight persons in Hamburg and there have been four executions. The other sentences were commuted to hard labor for life. No one condemned to death has committed suicide.

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Not only am I not in favor of the present limitation but I would make other crimes subject to the death penalty: derailing a train, causing an inundation, a shipwreck, or the loss of a vessel if they result in death and the author of the crime could have foreseen that result. .

The death penalty was introduced with great difficulty in 1871. It was vigorously opposed in the parliament (Reichstag). I cannot say whether the Reichstag faithfully interpreted the popular feeling. At the present time public opinion stands for the state of things created by the penal code of the empire. . Some would increase the number of crimes for which the death penalty should be pronounced, some would limit it to certain forms of assassination and others would do away with it altogether.

I have never witnessed an execution ~~and I can not speak of the horror.~~ ⁱⁿ horror. ~~its effect xxx xxx~~ but I hold the guillotine ~~in horror.~~ I would choose some other method of execution.

these eight
In studying [^]assassins I havenot been able to discover any ^{not} striking ~~an~~ abnormalities in them. In general culture they are below the average prisoner. That is they have all attended ~~in~~ public school. Those who killed for plunder were cruel in their crime. All but one had had previous convictions ~~of~~ crime. Of the three who were married two chose their wives as their victims. None of the eight was a native of Hamburg. The woman denied her guilt even on the scaffold.

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The Death penalty in the Transvaal.

By J.v. Roos, Director of prisons, Pretoria.

In the Transvaal, which comprises a population of 288,000 of the white race and a million of other races, it has been found necessary to keep the death penalty, tho the tendency has been to reduce the number of crimes for which it is applied. . The chief crimes are murder and the violation of white women by colored men. The violation of colored women by white men d does not entail the same punishment . The death penalty is also given for treason and brigandage and it may be for incest, for rape of a minor, for sodomy, bestiality and abortion. Since 1902 48 persons have been hung , and the same number have had the death sentence commuted into hard labor for life. When the accused has been declared guilty by a jury of 9 , of whom 7 must vote in the affirmative , the judge puts on a black cap and solemnly reads the death sentence . He afterwards sends a circumstantial report to the governor of the colony, which is accompanied by another from the minister of justice. The governor either confirms the sentence or exercises his prerogative of granting pardon. / All the executions take place in Pretoria .. The trap is used and the gallows is on the same landing with the cell. The hands are bound in the cell and a white cap put on which covers the face and head and the condemned is led into the death chamber . The legs are then tied and the trap falls. Death

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approving of public executions. The only witnesses are the high
sheriff, the prison director, the physician, the executioner
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present. After ^{post mortem} examination by the physician ^{the body} ~~it~~ is buried
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Abstract

The Death Penalty in France.

By R. Demogue,

Professor of Law in the University of Lille,

Member of the Prison Society of France.

The death penalty has always existed in French legislation..

It is true that a decree, of November 5, 1796, declared that dating from the establishment of general peace the death penalty should be abolished, ~~but~~ it had no practical effect. On the 28th of December, 1802 it was enacted that the penalty of death should continue to be imposed in cases determined by law. .

Though the death penalty still exists its abolition has many a time been demanded by the deputies in Parliament: in 1838, 1850, 1868, 1870, 1872, 1876, 1881, 1882, 1886, 1894, 1898. But even more significant, on the 5th of November, 1906 the lord keeper of the Great Seal presented to the Chamber of Deputies a bill for the abolition of the death penalty and the substitution of perpetual imprisonment, six years of which should be in cellular confinement. It was at first approved by the Commission of legal reform. But public opinion in general was unfavorable to the reform. During the years 1907 and 1908 votes in favor of the death penalty were sent to the government by 127 juries. Meantime capital punishments multiplied: 41 in 1907 instead of 14 in 1905.

A large daily paper having opened a referendum 1,083,000 persons

avored the death penalty while 328,000 were opposed to it. Only one conseil general and 42 sections of the League for Human Rights ranged themselves with the latter. In the face of this state of public opinion the Commission, July 2, 1908, reported in favor of retaining capital punishment and on the 7th of the following December the Chamber voted it by a large majority. The death penalty has

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been in continual operation since that time by law. As a matter of fact during those two years those condemned to death were successively pardoned. The penalty then is inoperative and that fact has seemed to stir up public opinion.

If the principle of capital punishment has never disappeared from the law the decision as to the cases where it should be applied has undergone many changes. Under the old regime the judges had arbitrary power and usage alone determined which cases should receive the death penalty. The penal Code of 1791 made 32 crimes punishable with death. The code of 1795 suppressed two of them. The penal Code of 1810 applied it for 37. The law of 1824 authorized magistrates to admit extenuating circumstances for infanticide committed by mothers. Though the sentence of death was pronounced it was often changed to hard labor for life.

Since 1825, when our criminal statistics began, the law has been repeatedly modified. The law of 1832 modified twelve articles; also in certain cases replaced the death sentence with imprisonment for life at hard labor, deportation or imprisonment from five to twenty years.

A still more important reform in 1832 was allowing the jury to consider extenuating circumstances. This allowed the jury, when it desired, to avoid the application of the death sentence which formerly would have followed the verdict of guilty.

The constitution of 1848 abolished the death penalty for political reasons. ~~The next~~ The law of 1901 suppressed the death penalty for mothers guilty of infanticide, replacing it with life imprisonment at hard labor, or for a definite term, according as there was premeditation or not.

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At the present time the penalty of death is provided for the following crimes, attempted ~~or~~ committed, or for complicity in them: ^{striking} ~~blows~~ or wounding a magistrate, a ministerial officer, an agent of the public force, a citizen charged with public service, in the exercise of that service, with intent to kill; Assassination, parricide, poisoning, infanticide by any except the mother; any crime accompanied by torture; , murder without premeditation accompanied, preceded or followed by another crime; castration with death within forty days; sequestration accompanied by bodily torture,; false witness resulting in ~~death~~ condemnation to death; intentional burning of any residence or vehicle containing persons; destruction of the same by explosives; the commission of another crime calling for this sentence by a life prisoner, etc. For soldiers and sailors death is prescribed for 22 causes in the army and 29 in the navy.

As statistics have been kept only since 1825 only vague reports can be given of the period before that. According to recent investigations in one ^{the years} ~~whose~~ province whose population is estimated to be 600,000 between 1750 and 1765 an average of seven or eight a year were accused of homicide, or 117 in all, with 49 executions.

(Seven tables of statistics follow)

These tables are for France alone, not including the colonies nor the crimes coming before military tribunals)

Crimes are more frequent, especially crimes of blood, at the time of changes in the government, as in France in 1830, 1848-51 and 1870. Every regime begins with frequent use of the death penalty and little by little the sentences are fewer.

It is remarkable how many crimes are committed which are not followed by prosecutions. It is also found that in spite of

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chemistry there are fewer cases of poisoning than formerly.

To-day there are hardly a dozen a year; half a century ago there were twenty or thirty. Crimes usually diminish with bad harvests of wine, though sometimes they are more frequent in good years.

Condemnations to capital

Capital punishment, very frequent before 1832, has greatly diminished since then by the acceptance of extenuating circumstances. ^{They} It increased from 1840 to 1854, owing to a new jury law. Very rare between 1860 and 1870 they increased to about thirty a year between the years 1871 and 1894. After that they were rare till, as a protest against the proposed abolition of the death sentence, they increased in 1906. The executions kept about the same step, save about 1880 when there were many pardons and again in 1906-7. The large number of pardons from 1878 to 1883 brought about a reaction and after 1880 condemnations were more frequent.

The jury is influenced not only by the number of the accused, but by all the crimes known through the journals. If there is much crime and few prosecutions the jury is severe. Too many pardons lead to a reaction of severity.

From 1873 to 1880 fifty-one per cent of those accused of capital offenses were declared guilty; 92 per cent with attenuating circumstances. From 1881 to 1905 there were 34 per cent found guilty, 87 per cent with extenuating circumstances.

No person has committed suicide to escape ^{a death sentence} ~~his fate~~, within forty years.

In France executions have always been public. They take place in one of the public squares. This often gives rise to scandalous scenes. The crowd is held in order by a large armed force. The morning hour is generally chosen. Bills have often been introduced to suppress this publicity, the last attempt to do away with it was

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in January 1908. The mode is decapitation by the guillotine. Soldiers and those belonging to the navy are shot. Execution cannot take place on festival days nor Sundays. If a pregnant woman is condemned to death she is not executed till after the birth of the child., but it is a long time since any woman has been executed in France. The bodies are given up to the families if they claim them. a process-verbal of the execution is drawn up by the clerk, but the civil records do not tell the kind of death, in order not to injure the family.

Conclusions. It is certain if one looks at the law and the practice, that the present tendency is to restrict the death penalty to cases of wilful homicide and even to certain of such cases : aggravated murder, assassination etc. It would be very hard to get a jury to pass a sentence of death for striking a magistrate or burning an inhabited house etc. There is a tendency to suppress capital punishment for women. From 1833 to 1880 there were 45 women executed, two only since then.

It is not less certain that public opinion has been hostile to the attempt to do away with capital punishment. There are two reasons for this. First, the time was badly chosen, these later years having shown an increase in crimes of violence. This increase was manifested under a form which has disappeared, crimes committed by bands. In the second place the attempt to do away with it was not made with tact. It was thought that it would be sufficient to pardon those condemned to death, and commute their punishment into hard labor for life and sanction the abolition by law. But public opinion, wrong in part, it seems, has always held that hard labor, as it exists in the colonies, is not very intimidating. Criminals have little fear of it, and indeed at one time they committed

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crimes in the prisons to be sent to hard labor in the colonies rather than stay in the prisons in France , but the law of 1880 compelled such prisoners to stay in France.

To secure a chance to obtain the abolition of the penalty of death it would be necessary first to fix at once on perpetual imprisonment, with six months cellular confinement, in place of the death sentence . When public opinion, and criminals in particular were convinced of the severity of this penalty then the abolition of capital punishment would be comparatively easy. But the bill presented in 1906 did not take this way and the public saw in it only the abolition of the death sentence and the substitution of hard labor for it . In 1907 the violation of a child followed by murder , brought about a change of opinion about the abolition of the death penalty in some who had favored that abolition. It is not absolutely certain that with time and more adroit tactics the death penalty may not be made to disappear without arousing an adverse public opinion.

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First Question

Abstract

The Death Penalty in Sweden?

By Victor Almquist

Head of the Prison Administration, Stockholm, Sweden.
was employed in the beginning of the 19th century and
The death penalty has existed since 1864 in full force. It is
imposed for homicide committed by a prisoner with a life sentence
unless there are mitigating circumstances. Death, ^{or} hard labor for
life may be imposed for an attempt against the life of the king,
for high treason, for murder, except the infanticide if an illegitimate
child, for abortion which causes the death of the woman, for
rape with the aid of a narcotic, for arson which causes the death
of any person.. The number punishable by death has been reduced since
1864. Since 1864 124 persons have been condemned to death; only one
since 1904.

The executions are in the presence of a limited number of official
witnesses within the prison, by decapitation by the guillotine.
Between 1859 and 1909 there was one commutation of sentence and during
that time no one was known to commit suicide to escape the death
penalty.

Statistics show that homicides have been reduced almost
one-half during the last four decades, that is since the death
penalty has been so rarely applied. It is evident that the restriction
of the death penalty has not increased crime. I am tempted to
say that the man who sees the state shedding blood fears less to shed
it himself.

Public sentiment is generally in favor of the restriction of capital
punishment. There are always persons who demand the death of
the criminal when a brutal murder has been committed, but that is

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The Death Penalty .

By Hartvig Nissen, Secretary to the Minister
of Justice, Christiania, Norway.

Under the code of 1842 the death penalty was provided for a great number of crimes in Norway . It was abolished in 1902 by a law which went into force the first of January 1905. According to the code 1842 the executions were public , by day, and consisted in decapitation with the axe. The code of 1887 modified this procedure: decapitation , by guillotine, was in an enclosure and only a few officials were present. , but as there were no ~~condemnations to death~~ ^{executions} these new rules ~~had~~ were not practiced. For thirty years there have been no death sentences , ~~or~~ which have been followed by execution and the number of condemned has been smaller than when there were executions. The suppression of the death penalty has had no detrimental effect on crime..

In Norway , as elsewhere, opinion has been divided on the death penalty and during the discussion of the new penal code a proposal was made to retain it, but in one house it was defeated 57 to 25 and in the other by 25 to three.

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By HARRY HISS, Secretary to the Minister

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In Norway, as elsewhere, opinion has been divided on the death penalty and during the discussion of the new penal code a proposal was made to retain it, but in one house it was defeated 57 to 25 and in the other by 25 to 19.