СМЕРТНА КАРА (ІСТОРИЧНИЙ АСПЕКТ)

Б. Вогт

Capital Punishment has been around since ancient times in every country. People could be put to death for selling beer by the Code of Hammurabi or for stealing the keys to one's husband's wine cellar by the laws of the early Roman republic. At the end of the 15th century in England there were seven major capital crimes: treason, homicide, larceny, robbery, burglary, rape, and arson. Capital punishment is now used only for offenses we regard as serious crimes. In most countries today death is the punishment for homicide and treason only.

The methods of capital punishment have also changed through the years. Criminals have been hung, boiled in oil, thrown to animals, crucified and stoned. Modern methods include shooting, the gas chamber, the electric chair and now lethal injection.

This paper will discuss capital punishment in the United States. It will first tell of the history of capital punishment and give the order of the states who have abolished it. It will also discuss racism as an issue in capital punishment and people's values of the pros and cons of using it.

I. History of Capital Punishment in the United States.

During the 18th century, which is referred to as the time of enlightenment, society started looking at the way they treated criminals. Many felt society was being inhumane to criminals. Some citizens of the United States wanted to outlaw the death penalty. In 1837, Maine changed its laws, so while courts were still allowed to sentence death, the executive branch did not nave the authority to enforce the sentence. 1845 brought about the organization of the American Society for the Abolition of Capital Punishment. It continually put bills before state legislatures to get rid of capital punishment. Michigan, in 1847, first English-speaking jurisdiction to abolish capital punishment,

except for treason. Other states in the United States were cutting back on the number of their capital crimes. Except for the states in the South, murder and treason were generally the only crimes punishable by death. States then started to follow Michigan's lead. Rhode Island in 1852 abolished the death penalty except for murder by a life-term convict. Wisconsin was the third state in 1853.

On the other hand people begin to feel less guilty about the death penalty when "more humane" methods were begin introduced. Two of these were electrocution in 1890 and lethal gas in 1924. These "humane methods" made it more difficult for reformers to fight against capital punishment.

Minnesota abolished capital punishment in 1911 because of a big controversy brought to the attention of the citizens by a newspaper reporter. In newspaper witnessed execution by hanging in St. Paul. The rope that was used was too long so for fourteen and half minutes the criminal suffered until strangled to death. The state found no better way out than abolish capital punishment altogether. Other states abolished as follows: Alaska (1957), Hawaii (1957), Oregon (1964), Iowa (1965), and West Virginia (1965). Instead of totally abolishing it, North Dakota (1915), New York (1965), and Vermont (1965) put stricter limits on when capital punishment could be used.

The South was not as willing to get rid of capital punishment as the North was. The federal government begin to keep statistics in 1930 and found that out of the 3,859 persons executed in the nation, 2,306 were executed by 16 southern states and the District of Columbia. Between 1960 and 1965, out of the 191 executions, once again the southern states and the District of Columbia had the majority with 103. To give a bigger picture, between 1882 and 1946 over 4,000 Americans were lynched

in southern states. Three-fourths of these were black. One reason why so many blacks were executed in the South was because there were more capital crimes for blacks than whites.

II. Racism

Blacks also were not always given attorneys and their sentences were worse than the white man would have received. Blacks were more likely to be given the death penalty and sometimes the death penalty would be different than the white man's. For example, being burned at the stake was common for blacks. In the court room, whether in the northern or southern states, judges would address blacks in disrespectful ways. Many times they were addressed as "boy" or "missy" to undermine their testimony. Even through the early 1970's, practices like these and not being represented were common in most levels of the criminal justice system.

In the 1980's, blacks accounted for over 1/4 of those arrested for burglary, 61% arrested for robbery, about 45% for homicide, and 46% were charged with forcible rape. Those numbers seem unreal when you consider blacks are roughly 12% of the United States population. Because of these figures and others like them, people feel our criminal justice system is racist and this includes the death penalty.

Anthony G. Amsterdam refers to the death sentences imposed in Georgia's 2,484 murder cases between 1973 - 1979 to make his point that there is racism in out criminal justice system. He points out that, although less than 40% of Georgia's homicide cases involve victims, in 87% of the cases in which a death sentence is issued, the victim is white. White victim cases are almost eleven times more likely to have a death sentence than are black victim cases.

When the race of the defendant is looked at, 22% of black defendants who kill white victims are sentenced to death; 8% of white defendants who kill white victims are sentenced death; 1% of black defendants who kill black victims are sentenced to death; and 3% of white

defendants who kill black victims are sentenced to death. Amsterdam also notes that out of about 2,500 Georgia homicide cases, only 64 involve killings of black victims by white defendants, so the 3% death sentencing rate is a total of two death sentences over a 6 year period. Murderers of white victims are still begin sentenced to death 4.3 times more often than those murderers of black victims today. Amsterdam gives one statistical bit of information. Since Georgia passed its present statute in 1973, 11 murderers have been executed, 9 of the 11 were black, and 10 of the 11 had white victims. He closes his argument with this question, "Can there be the slightest doubt that this revolting record is the product of some sort of racial bias rather than a pure fluke?" (Monk, 1989, pg. 144 - 145).

William Wilbanks disagrees with Amsterdam. He believes that the thought of criminal justice as racist is a myth. Wilbanks says a lot depends on whom you ask. If black are asked about capital punishment and the criminal justice system, they will say it is racist. If whites are asked the same question, they will say it is not. Some whites even believe the justice system is giving black breaks so it cannot be accused of racism.

Wilbanks states that at one time there was racial discrimination, but it has now declined. Who is sentenced also depends on where geographically the person is sentenced. Some states can be harsher or more lenient than others. Rural and urban courts also play a role in the sentencing. Wilbanks says if the legal variable were looked at by people, they would see that there is no black/white discrimination. The one fact that Wilbanks pointed out which I found the most interesting is that black judges harsher sentences to defendants than to whites and judged them more harshly than white judges would. Some I guess this would mean, if there was racism, it is more from blacks themselves than whites. A side question is: Could this be more a matter of money, with the poor getting the harsher judgement?

III. Pros and Cons.

Besides the feeling that capital punishment is wrong because of racism, some object to capital punishment for other reasons. Many people feel that in cases of murder the sentence should be life in prison instead. They argue that one death has already occurred and that family is in great sorrow. They don't understand why the state would want to put another family through the same torment.

People also warn against the risk of executing an innocent person. It is bad enough sentencing a man to prison and years later finding he is innocent. The state pays him money and apologizes as if that makes it any better. The man's life is already disrupted and his reputation ruined. How could the state make up for putting an innocent man to death? Instances are rare, but it does happen. Some people also believe punishment goes against the 8th and 14th amendments, "cruel and unusual punishment". These proponents say that, after all the appeals and the wait on death row, the criminal goes through some sort of change. They aren't the same person they were at the time of the crime. They should be saved from being put to death.

Many people who favor capital punishment take the religious stand, they say that life is sacred, and the criminals who murder, rape, and kidnap do not respect the sanctity of life. Those who use a religious argument quote Exodus 21:23-24, "life for life, eye for eye, tooth for tooth". The Bible specifically gives the government the right to take the life of one who has taken the life of another.

One big argument used is that by having the death penalty we can make examples out of people who receive the death penalty. It is hoped that such examples will deter others from such crimes. This has not been proven, however. There is no evidence that there are lower numbers of capital crimes in states with the death penalty than those without it. On the other hand, the comparative rarity of capital punishment

can be cited as the reason it fails to be an effective deterrent.

People for and against capital punishment use four terms to make their points. The first is deterrence. This means to make an example out of one to scare others away from doing the same or worse act. Retribution is the second. Proponents state that the criminal should die for his horrible act so the public will not matters into its own hands. Opponents of capital punishment argue the opposite and say there is no connection between lynching and capital punishment.

The third point that proponents also argue is that the economy has to be considered. They feel it is cheaper to execute a criminal than to feed and take care of him in prison on a life sentence. Opponents say this isn't true because all the appeals cost the state. All the appeals the criminal is allowed to make ends up costing more than giving them life in prison. Opponents also believe that a lot of prisoners can support themselves and if we use capital punishment we should execute all prisoners who cannot support themselves to save the state money. Of course, this remark is outrageous and that's the point they are trying to make.

The fourth argument for capital punishment is that it protects society from dangerous criminals. The convicted criminal insures that he will not commit that or any other crime again. The opponents answer to that is rehabilitation programs in jails which teach the criminal show to get along in society so they will no longer be a threat to it. These programs are not effective, however, the majority of the time.

Doing research for this paper really made me think about where I stand on this issue. I decided that I am for capital punishment and think people need to have more reverence for life. Only God has a right to take someone's, not murderers. God gives the government authority to punish the murderer. Also people argue that capital punishment is "cruel and unusual punishment", but humane is life in prison? Is there even

such a thing as "life" in prison? Most states give everyone a right for parole if his conduct is good, that means a murderer can be out walking the streets, when he should not even be alive, this includes those who are convicted to life in prison! The average is about twenty years in prison if a criminal has been sentenced to life. Capital punishment could also be cheaper than supporting someone in jail, if limits were put on how many times a person could appeal. Bills keep coming to the attention of the legislature, only allowing each criminal one appeal on a death sentence. I also don't feel racism is an issue in capital punishment. On the other hand, we must make every effort to assure that our courts treat all fairly, even though the poor who cannot afford an army of expensive lawyers.

Throughout the years many people have fought for their beliefs. Our founding fathers wrote in the Declaration of Independence that "all people have certain inalienable rights among them, life". Whatever your opinion on capital punishment is, all of us need to work to assure the life and well being of the United States citizens.

Смертна кара відома людству з давніх часів. Люди могли . наприклад, отримати таку кару за продаж пива (Закони Хамурапі) чи за крадіжку ключей від виного підвала іншої людини (Закони ранього Риму). У 15 віці в Англії за 7 злочинів була встановлена смертна кара. Зараз смертна кара встановлена в багатьох країнах за дуже небезпечні злочини, наприклад, вбивсто та державна зрада. Також змінювались засоби виконання цієї кари. Наприклад, раніше злочинців вішали, кидали у кипуче масло або до диких тварин тощо. Сучасні засоби виконання ціеї кари — це ростріл, газова камера, електричний стілець та особливі ін'єкції.

Смертна кара — це актуальна проблема і для Сполучених Штатів. Ще у 18 віці в Америці почалася дискусія з приводу смертної кари і багато людей вважали цю кару негуманною до людини. Перший законопроект по скасування смертної кари в Америці був розроблений у 1848 році і деякі штати, починаючи з цього часу, вже відмінили цю кару за деякі злочини. Практично з цього часу смертна кара у ряді штатів була, за винятком південних штатів, поступово замінена на довічне позбавлення волі. Смертна кара у цих штатах була залишина лише за різні види вбивства та державну зраду. Смертна кара відмінялась не тільки завдяки якимось суспільно-правовим дослідженням, а досить часто, наприклад, у разі якихось публікацій у пресі, які писали про "невмілість" виконання цієї кари. "Провинність" правослухняних людей у застосуванні ціеї кари стала ще "меншою", коли почали застосовувати більш "гуманні" види виконання смертної кари. Так, у 1880 році почав застосовуватися електричний стілець, а у 1924 році - отруйний газ. Але процес відміни смерної кари продовжувався. Деяки південні штати відмінили смертну кару у 50-х та 60-х роках нашого століття. Північні штати, на відміну від південних штатів не "поспішали" скасовувати смертну кару. У цих штатах практично до 50-х років нашого століття ще застосовувалось лінчування. До цього потрібно додати, що тільки одна третина була білі злочинці. Ця проблема досить часто пов'язується з проблемою расизму. Наприклад, на протязі багатьох років темношкірі злочинці не мали права мати захисника і покарання призначалось їм більш тяжким, ніж білим злочинцам. До цих злочинців також частіше застосовувалась смертна кара і засоби її виконання були більш жорстокими. Наприклад, спалення на вогнищі застосовувалось до темношкірих злочинців. Причому навіть до 70-х років нашого століття у судах як північних та і південних штатів неуважне ставлення до темношкірих злочинців було, можна сказати, офіційно установленим порядком. Це дозволяє американським фахівцям (Anthony G. Amsterdam), котрі проводять спеціальні дослідження, вважати, що у такиій системі юрисдикції "зберігаються" елементи расизму.

фахівці (William Wilbanks) вважають, що у таких опитуваннях та дослідженнях є суб'єктивізм и не погоджуються з цими висновками. Ці фахівці вважають, що раніше, мабуть, і були такі елементи але зараз їх не має. Наприклад, темношкірі судді виносять більш тяжкі покарання темношкірим злочинцям, ніж білим. І, мабуть, зараз можливо казати що расизм більше є у темношкірих суддів. Але вони погождуються з тим, що, наприклад, географічне положення штату, міська чи сільська місцевість, де це скоєно, та ін., має свої "впливи" на судове рішення. До цього вони також додають міркування, що тяжкість вироку також може бути "зв"язана" з фінансовим становищем злочинця: чим він багатший, тим м'якший вирок.

Що до міркування населення, то тут можливо вказати на дві позиції. Люди, які проти смертної кари основним аргументом вважать можливість її застосування до невинних осіб, так як в судовій практиці помилки можливі. Люди, які підтримують необхідність смертної кари, вважать, наприклад, що життя кожної людини — це священне явище. Злочинець, який убиває або викрадає інших людей, не цінує святість життя. Частина релігійних людей вважає, що біблейскі правила дають можливость уряду відбирати життя у тих людей, хто не поважає життя іншого. Також вважається, що

людина, яка засуджена до смертної кари, є реальним застереженням для інших людей, котрі можуть позбавити життя іншу людину. Але останнє міркування не ϵ дуже вразливим. Бо у штатах, де ϵ смертна кара, злочинність не менша, ніж у тих штатах, де ії немає. Люди, які виступають за та проти смертної кари, застосовують 4 аргументи для підтримки своєї точки зору. Перший - це страх. Наявність такої кари може застергти інших людей від скоєння таких злочинів. Другий - це кара. Злочинці повинні загинути за свої небезпечні злочини. Але ті, хто заперечує це, кажуть що немає ніякого звязку між лінчуванням та смертною карою. Далі економічний аргумент. Дешевше так покарати злочинця, ніж дбати про нього, годувати його та ін., коли він засуждений до довічного позбавлення волі. Але опоненти кажуть, що не менше грошей. а, мабуть, і більше йде на увесь довгий "шлях" апеляційного процесу засудженого до смертної кари. У зв'язку з цим автор вважає за необхідне встановити чітку кількість можливих апеляций. Четвертий аргумент - смертна кара захищая суспільство від небезпечних злочинців. Люди, які вважать це доцільним, кажуть про те, що, на жаль, реабілітаційні програми, які є у тюрмах, неефективні і тому смертна кара є необхілною.