

UNITED STATES OF AMERICA

@Possible Reinstatement of the Death Penalty in New York

The new state governor of New York, George E. Pataki, has announced his support for reinstating the death penalty. Amnesty International believes that the legislation could be introduced to the state legislature very early this year, possibly even in January 1995. The last execution in New York was in 1963.

There have been 18 previous attempts by the legislature to reinstate the death penalty in recent years. On all occasions the bill was vetoed by the previous two governors of New York, Mario Cuomo and Hugh L. Carey. In June 1989 the legislature came within one vote of the two thirds majority needed to overturn the governor's veto.

Governor Pataki emphasised violent crime and his support for the death penalty during the elections for the state governorship of New York.

DETERRENCE AND THE DEATH PENALTY

In his inaugural address on 1 January 1995, Governor Pataki stated:

"Let me note that when a society does not express its own horror at the crime of murder by enforcing the ultimate sanction against it, innocent lives are put at risk....

"And let me say - and let me say: if one police officer's life is saved, if one less child is caught in the crossfire, if one fewer cabdriver or shopkeeper is killed in a robbery, then the death penalty will have proven itself worthwhile."

Detailed research, both in the USA and other countries, has produced no evidence that the death penalty deters crime more effectively than any other punishment. In many non-death penalty countries the homicide rate has decreased after the abolition of capital punishment. For example, in Canada the death penalty was abolished in 1976. Since abolition and the end of 1993, the rate of homicides per 100,000 population has dropped by 27%.

The homicide rate in New York is currently on a downward trend. Since homicides peaked in 1990, the murder rate has steadily declined over the past four years.

POPULAR SUPPORT FOR THE DEATH PENALTY

Many politicians cite popular support in the United States as a reason for reinstating the death penalty. However this may be misleading and simplistic. A poll which asks the question: "Do you support the death penalty?", will result in a strong "yes". But many studies that have presented the issues and alternatives have produced different results.

Amnesty International does not favour any particular punishment as an alternative to the death penalty. However it is worth noting that a 1991 survey of New Yorkers who were presented with a range of possible sanctions, favoured life without parole coupled with restitution to the victim's family by 73% to 19% over the death penalty. Even disregarding the restitution element, the survey found that life without parole was favoured 54.4% to 35.8% over the death penalty.¹

THE COST OF THE DEATH PENALTY

A 1994 study revealed the expense of the death penalty. Due to the complex nature of capital law and the added "penalty phase" of the trial (during which the jury hears arguments from the prosecution and defence as to whether a death sentence is appropriate), the bulk of the costs are incurred at the trial level. A study by Duke University concluded that adjudicating capital cases in North Carolina cost at least \$2.16 million per execution, compared to the cost of adjudicating life-without-parole cases.²

HISTORICAL PERSPECTIVE

On 6 August, 1890, William Kemmler became the first person in New York State and the USA as a whole to be executed in the electric chair. Prior to that the official mode of execution was hanging.

Executions peaked in New York during the 1930's when 153 persons died in Sing Sing's electric chair. The annual number of executions in the state declined sharply from 1945 to 1950, and then continued to decline throughout the 1950's. From 1950 to 1959, 52 executions were carried out in New York, roughly five per year.

On 1 July 1963, New York became the last jurisdiction in the USA to abolish mandatory capital punishment for murder.

Legislation that became effective 1 June 1965 so narrowed the number of offenses that carried a death sentence, that capital punishment was all but abolished in the state.

Legal rulings, including the 1972 US Supreme Court case of *Furman v. Georgia*, continued to stop the use of the death penalty in New York. In 1984 the New York Court of Appeals invalidated the last piece of legislation allowing death sentences to be passed.

In 1963, Eddie Lee Mays became the last person to be executed in New York.

¹New Yorkers Want Alternatives to the Death Penalty, William J. Bowers and Margaret Vandiver, College of Criminal Justice, Northeastern University, Massachusetts.

²*Millions Misspent: What Politicians Don't Say about the Death Penalty*, published by the Death Penalty Information Center, 1606 20th Street, NW, Washington, DC 20009, USA.

THE RISK OF EXECUTING THE INNOCENT

Between 1900 and 1963 New York executed eight men whose guilt was in serious doubt. That is more than any other state in the country.³

As recently as 1981, Nathaniel Carter was wrongly convicted of the murder of Calice Herndon in New York. In 1983 new evidence produced during an appeal hearing resulted in Nathaniel Carter's conviction being overturned. Carter's legal aid attorney, William E. Hellerstein commented, "If New York State had the death penalty, God only knows what would have happened to this poor man."

REINSTATEMENT OF CAPITAL PUNISHMENT: A GROWING TREND IN THE USA

Should the death penalty be reintroduced in New York, the state will become another of the increasing number of states returning to the use of executions. Since 1991 seven states have resumed executions. They are (date of previous execution in brackets): Arizona (1963), California (1967), Delaware (1946), Idaho (1957), Maryland (1961), Washington (1964), Wyoming (1966). In April 1994, legislation reinstating the death penalty in the state of Kansas became law.

Since the use of the death penalty was resumed in the United States in the mid 1970s, 258 executions have been carried out. 9 juvenile offenders have been executed since 1977 and at least 37 juvenile offenders remain on death row in 12 States.

The United States increasing use of the death penalty goes against the growing trend of abolition of capital punishment in other countries. As of December 1994, 54 countries have abolished the death penalty for all offenses, while 16 have done so for all but exceptional crimes such as wartime crimes. Over 20 countries can be considered abolitionist *de facto*: they retain the death penalty in law but have not carried out any executions for the past 10 years or more. In recent years, an average of two countries a year have abolished the death penalty in law or, having done so for ordinary offenses, have gone on to abolish it for all offenses.

ARBITRARY AND RACIAL USE OF CAPITAL PUNISHMENT

There is now ample evidence that death sentences are imposed disproportionately on the poor, on minorities, on the mentally ill or retarded and on those without adequate legal counsel.

As of October 1994 there were 2,948 death row inmates in the 39 jurisdictions (37 states, the Federal Government and the US military) that impose the death penalty in the USA. 40.3% of those under sentence of death were black. However, blacks make up only 12.6% of the total US population. At least two black prisoners executed during 1994 had been convicted and

³Hugo Adam Bedau and Michael L. Radelet, "Miscarriages of Justice in Potentially Capital Cases".

sentenced to death by all-white juries after the prosecutors in each case had excluded all the available blacks during the jury selection process.

Several credible studies have shown that those accused of homicide involving white victims are far more likely to receive a death sentence than those convicted of killing black people. As of October 1994, 84.5% of those executed since 1977 were convicted of homicide involving white victims even though blacks are murdered in almost equal numbers.

After more than 20 years of constitutional analysis, former US Supreme Court Justice Harry A Blackmun concluded in an opinion published February 1994 that the death penalty as currently administered in the USA is unconstitutional and "remains fraught with arbitrariness, discrimination, caprice and mistake." Justice Blackmun went on to state, "Rather than continue to coddle the (Supreme) Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The problem is that the inevitability of factual, legal and moral error gives us a system that we know must wrongly kill some defendants."

Former US Supreme Court Justice Lewis F Powell has also expressed second thoughts about the death penalty. In a new biography, Justice Powell reportedly said that, were he still a member of the Court, he would vote against the death penalty in all cases and stated "I have come to think that capital punishment should be abolished." Like Justice Blackmun, Justice Powell now concludes that the death penalty cannot be decently administered and, as currently practised, brings the law into disrepute.

INTERNATIONAL HUMAN RIGHTS STANDARDS

International human rights standards and treaties encourage governments to restrict the use of the death penalty, with a view to its ultimate abolition.

The International Covenant on Civil and Political Rights (ICCPR), ratified by the USA in June 1992, states in Article 6 inter alia that "*Every human being has the inherent right to life*". In a general comment on Article 6 the Human Rights Committee, which supervises the implementation of the ICCPR, notes "*...all measures of abolition should be considered as progress in the enjoyment of the right to life....*". It goes on to say "*... The right to life...is the supreme right from which no derogation is permitted even in time of public emergency...It is a right which should not be interpreted narrowly.*" Article 4(3) of the American Convention on Human Rights states: "*The death penalty shall not be reestablished in the states that have abolished it.*"

Amnesty International opposes the death penalty as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in Article 5 of the Universal Declaration of Human Rights.